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

Pledge of Allegiance Led by Council Member Kelly West
Invocation by Mayor Martinez

WRITTEN COMMUNICATIONS
None.

ORAL COMMUNICATIONS
None.

CONSENT CALENDAR
1. REQUEST FOR STREET CLOSURE
Recommendation: That the Council approve the closure of E. Belleview Street, beginning at Main Street and extending east to the east edge of the applicant’s property line, on October 16, 2004, from 8:00 a.m. to 4:00 p.m.
Documentation: Minute Order 01-101204
Disposition: Approved.

COUNCIL ACTION: MOVED by Council Member Stadtherr, SECONDED by Council Member West that Council approve Item No. 1. The motion carried unanimously.

SCHEDULED MATTERS
2. STUDY SESSION -- REVIEW AND CONSIDERATION OF REVISIONS TO CITY’S ITINERANT, STREET, AND PEDDLER VENDING REGULATIONS
Recommendation: That the Council review the materials presented and provide direction as requested for the development of a comprehensive regulatory ordinance.

City Manager John Longley presented the item, and City Attorney Julia Lew presented the staff report.

In response to Mayor Pro Tem Irish’s question, Ms. Lew confirmed that permit fees could include costs for enforcement. She recommended that such fees could include a condition that provided for a recapturing of the costs for enforcement against those businesses that did not abide by the conditions of the permit.

Ms. Lew then indicated that the temporary structures detailed in Item No. 3 of that evening’s Agenda should also be considered in conjunction with the current discussion, as those types of vending activities sometimes utilize temporary structures. She stated that both should be considered simultaneously.

Council Member Hamilton questioned if the regulations concerning door to door peddlers affected charitable organizations.
Ms. Lew responded that the effect would depend upon how the particular organizations solicited the contributions. She elaborated that some organizations merely requested contributions, which would not be covered under the current regulations. With regard to door to door non-profit sales, Ms. Lew explained that these types of sales could or could not be covered, depending on how the Council wished to proceed. Currently, Ms. Lew stated, peddlers, solicitors, and canvassers were treated differently. She cited door to door cookie sales by Girl Scouts as an example, and explained that such sales were typically obtained by taking orders for future delivery, therefore such sales would be considered a solicitation and be regulated by Chapter 8. Ms. Lew pointed out that such sales would not be prohibited, but instead guidelines would be set forth regulating permitted times, etc. She stated that at Council’s discretion, Girl Scout cookie sales could also be exempted from the permit requirement, yet such sales could be required to meet other certain conditions. She stated that these were the types of issues that could be addressed when modifying these Code sections.

In response to Council Member Hamilton’s question regarding solicitations at store fronts, Ms. Lew indicated that if, for example, a solicitation occurred at the door of the business and that business objected to such solicitations, that activity could be prohibited; however, she pointed out, if the solicitations took place outside, in front of the business on public property, the activity would be categorized under “street vending,” which would be allowed as long as the vendor moved every five days. Ms. Lew again stated that these were exactly the types of issues for which she and staff were seeking direction.

Council Member West questioned if panhandling and soliciting activities that often took place on the steps of the Post Office were governed by Federal law.

The City Attorney stated that she believed such activity did fall under Federal jurisdiction, but pointed out that the applicable regulations would depend upon the exact type of activity. She pointed out, for example, if the activity was merely distribution of a religious or political message, that type of activity was protected by the First Amendment. She recommended that very limited restrictions, if any, be placed on this type of activity, and cited attempts by various cities to indirectly restrict it, such as passing “no littering” laws. She pointed out that all such attempts had been unsuccessful. Ms. Lew explained that such cases must pass the strict scrutiny test by the courts to determine whether the action had been narrowly tailored to fulfill a strong governmental purpose. She warned that this was a very difficult standard to meet, and pointed out that in most cases where strict scrutiny applied, the government lost.

Council Member West asked how the regulations were to be policed, to which Ms. Lew responded that once again the issue of enforcement was raised. She pointed out that while the regulations could be set forth, enforcement remained an issue.

In response to Council Member West’s question, City Manager John Longley estimated that currently enforcement was handled on a complaint basis, most of which was conducted through the Finance Department. He pointed out that as Council was aware, there currently was not a consistent Code enforcement presence in the community, and that in order for the City to commence an all-encompassing Code enforcement effort, such effort would require a number of people.

Council Member West voiced concern with modifying Codes when Council and staff knew that the regulations could not be enforced. He explained that while he did believe such revisions were needed, he questioned whether such action would handicap the City in the future.

Council Member Hamilton commented that the City was currently handicapped, and that revising the Code would actually help the City.
Council Member Stadtherr suggested that a form of self-regulation existed in that many citizens simply regulated themselves. He then stated that witnesses also played a role in enforcement by reporting alleged violators to the City.

Mayor Pro Tem Irish voiced support for proceeding with modifications to the Code and agreed with Council Member Stadtherr’s comments regarding citizen and self-enforcement.

Ms. Lew clarified, at Council Member Hamilton’s request, that she and staff were proposing both a clean-up of existing regulations, and the establishment of new regulations. She pointed to the disjointedness of the current Code and recommended clarification.

Mayor Martinez pointed out that by proceeding, Council and staff could eliminate problems in the future. He then voiced disappointment that representatives from the business community were not present to offer commentary. He stated that he supported the involvement of a committee to offer recommendations to the Council.

Council Member Hamilton commented that he did not believe that involving the business community would be advantageous in that the issue originated from citizen complaints of late evening solicitations by overzealous door to door salespeople. He contended that such activity really had no bearing on the business community, but instead on concerned residents.

City Attorney Julia Lew then confirmed that the proposed modifications would create more stringent regulations on such door to door activities. She recommended modifying the Code, and stated that the way in which it was currently organized, the Code created confusion in terms of how the various types of vending were regulated. She stated that the recommended modifications included moving the regulations for peddlers into the solicitor/canvasser section, but pointed out that more areas also needed reorganization, citing the section dealing with temporary structures as an example.

Mayor Pro Tem Irish voiced support for both regulating the time periods during which door to door vending activities would be permitted, and ensuring that non-profit organizations were not negatively impacted by the modifications which were originally intended to regulate the overzealous door to door salespeople. He stated that he had received numerous telephone calls from concerned citizens that had been solicited at their homes late at night, and asserted that such activity posed a safety issue.

Council Member Hamilton suggested that the City could proceed as the City of Citrus Heights had, in terms of setting the permitted time period for sales at the time the permit is issued to the applicant.

Ms. Lew explained the time period could be determined based on reasonable criteria, yet cautioned against liberal use of discretion based on the type of activity. She stated that an exemption could also be created for peddlers and solicitors that were selling for non-profit or charitable purposes, but warned that caution must also be given in that case, due to those illegitimate solicitations that were purportedly for charitable services, yet were actually profit-oriented. She stated she could research the possibility of placing a geographical condition on charitable organizations, but stressed that the legality of that would need to be determined.

Council Member Hamilton pointed out that Citrus Heights had an exemption clause that the City could utilize as a starting point.

City Attorney Julia Lew then reviewed the various exemptions set forth in Citrus Heights’ Code, and explained that according to its Code, Citrus Heights only regulated door to door solicitations in situations where a “no solicitation” sign was posted. She also pointed out that Citrus Heights also exempted temporary fund raising by non-profit organizations. She then stated that, in terms of form, she recommended following the Citrus Heights example, but in terms of substantive issues, Council’s direction was needed.
Mayor Pro Tem Irish questioned how the proposed permit and fee process would work.

Ms. Lew explained that staff proposed a heavier identification requirement, which would require that the applicants’ identification, and that of all the applicants’ participating employees, be displayed at all times on their person. Ms. Lew added that the following should also be required: length of service by the employee with the applicant, personal description, photograph, place of residence, statement of prior convictions, violations of municipal ordinances, nature of employment during the last preceding year, length of time for which the right to do business was desired, place where the goods were produced, nature and character of goods or services offered. She summarized that staff had proposed these more stringent requirements in order to make the applicants more accountable. She then pointed out that legitimate applicants would not be deterred by providing this background information.

Mayor Pro Tem Irish suggested that, when applicable, all state licensing information should also be required.

Ms. Lew took note of Mayor Pro Tem Irish’s suggestion, and pointed out that staff also recommended including a revocation and appeal process which would provide for the due process rights of the applicants. She then stated that the distribution of handbills was specifically excluded, as that activity dealt with Constitutional issues.

Mayor Pro Tem Irish then commented that he was in agreement with Mayor Martinez’s prior suggestion of first obtaining commentary by the business community before continuing further on this topic.

Mayor Martinez requested comments from Mr. Dick Eckhoff, Downtown Porterville Association, and Mr. Felippe Martinez.

Dick Eckhoff, Downtown Porterville Association, 197 North Main Street, came forward and questioned whether an individual or a private business could post a “No Soliciting” sign that specifically excluded non-profit organizations.

Ms. Lew responded that she believed that could be done, and that she would further research the issue.

Mr. Eckhoff then voiced concern with allowing sidewalk solicitations, and pointed out that businesses were currently required to obtain approval prior to having sidewalk sales. He pointed to various problems caused by solicitors, such as congestion of sidewalk thoroughfares, unlit street vending in the evenings, traffic problems caused by lack of parking, and unwanted solicitations in businesses. He then voiced support for the reorganization of the Code, and suggested that a Code enforcement officer was needed. He also pointed to ongoing yard sales and the need for restrictions on the frequency and duration of such sales, as well as clarification of the definition of a yard sale. Mr. Eckhoff then voiced concern with the notification process for “fixed” vending. Mr. Eckhoff also voiced support for imposing a penalty on those individuals and/or businesses caught operating without a permit.

Mayor Martinez voiced support for imposing restrictions on the time periods during which door to door sales activities could take place.

Felippe Martinez, 195 East Putnam Avenue, came forward and voiced concern over using Citrus Heights as an example in modifying Porterville’s vending regulations. He suggested that Citrus Heights was a more economically-advantaged community, and using that Code as a model would likely place unfair restrictions on some solicitations and panhandling that he asserted were culturally driven. He requested that Council take such cultural activities into consideration when imposing additional restrictions on vending activities.
Mayor Pro Tem Irish commented that Council weighed both sides of all issues before Council, and that such decisions ultimately affected both sides. He explained that Council was considering the proposed modifications for safety issues.

Council Member Hamilton commented that Council should never be asked to legislate on the basis of cultural preferences, and asserted that decisions should be made without consideration of such differences.

Mr. Martinez clarified that he did not suggest that vending should be regulated differently because of cultural differences, but rather he had merely pointed out that because of cultural differences, some individuals might not call to report violators because culturally, particular types of street vending might be more acceptable. He then pointed out that enforcement on weekends posed a problem, due to the lack of weekend staffing to handle such calls, and cited graffiti enforcement as an example.

Greg Shelton, 888 North Williford Drive, came forward and voiced opposition to Mr. Martinez’s comments regarding the necessity of considering culturally-driven differences.

Council Member West commented that he did not believe Mr. Martinez had suggested that special consideration be made due to culture, and suggested that he had merely voiced concerns with weekend enforcement.

Mayor Martinez again voiced support for obtaining commentary from the business community, and suggested that a committee review would be the best approach.

City Attorney Julia Lew clarified that the vending activity to which Mr. Martinez referred actually fell under street and push cart vending, not on panhandling. Panhandling, Ms. Lew explained, referred to begging or asking for money. She pointed out that regulations on street vending activities currently existed in the current Code, yet those regulations did not appear to be currently enforced. She then stated that part of the recommendation before Council was to move the regulations governing street vendors from its current location in the Section pertaining to business licenses to Chapter 8. She pointed out that further restrictions could be considered by Council in terms of regulating this activity, as well as other vending activities, and that staff was requesting Council’s direction.

Mayor Pro Tem Irish voiced concerns with addressing vending activities on a macro level and cited the previously controversial matter regarding ice cream trucks. He commented that at this point he would rather discuss specific issues, such as door to door sales, and then address other activities. He pointed out that concerns from citizens regarding door to door sales in the evening hours prompted this discussion.

City Manager John Longley confirmed that staff would bring a draft ordinance back to Council for its review which limited door to door activities and contained certain exemptions for non-profit organizations.

Mayor Martinez expressed support for limiting door to door activities and asserted that such regulations were needed for child safety. He also pointed out that materials left behind by door to door solicitors possibly alerted burglars to a vacant residence.

Ms. Lew clarified that commercial speech was easier to regulate than other types of speech that might be protected by the First Amendment.

In response to Council Member Stadtherr’s question regarding advertisements placed on vehicle windshields in parking lots, Ms. Lew responded that she would research the extent to which the City could limit such activity, but pointed out that other cities had attempted to regulate it through no littering laws, yet that approach had not been successful.
City Manager John Longley clarified that Council’s direction was for the City Attorney to prepare a draft ordinance regarding door to door activity and bring it back to Council as a scheduled item. He then clarified that a separate second draft ordinance addressing penalties for non-permitted or non-licensed vending activities would also be prepared and brought back to Council.

Ms. Lew clarified that she would research the extent to which the City could impose penalties for violators, and confirmed that she would draft the ordinance with the strictest language and penalties allowable.

Mayor Pro Tem Irish clarified that the intent of the Council was to penalize those individuals and/or businesses that operated without complying with the permit regulations.

Mayor Martinez again suggested that the other types of vending activities be taken to a committee.

City Manager John Longley suggested that the matter could be referred to a standing committee, rather than forming a new committee. It was decided that staff would determine which committee would be most appropriate.

City Attorney Julia Lew then confirmed that the draft ordinances pertaining to door to door activities and penalties would be brought back to Council after the first of the year.

Staff pointed out for Council’s information that the sign ordinance item was also scheduled to be brought back at the first meeting in January 2005, which Council acknowledged.

Disposition:  Continued.

3. INTERPRETATION OF AMBIGUITY - MOBILE, TEMPORARY AND PERMANENT STRUCTURES

Recommendation:  That the Council review and discuss the information provided and provide additional direction to staff.

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

Mr. Dunlap clarified that the first question posed by staff in its report for Council’s consideration – regarding the circumstances under which site improvements should be required – pertained to both temporary and permanent structures. He pointed out that the building structure proposed by Udders, being a trailer with retractable wheels, could be categorized as a mobile, temporary or permanent structure, and that such clarification by Council was needed.

Mayor Pro Tem Irish proposed setting time limits on temporary structures, such as 180 days, after which the owner would be required to apply for a renewal if he or she desired to continue to utilize the structure. He stated that some type of requirements regarding improvements should also be triggered after 180 days. He then voiced concern with individuals potentially circumventing the system by moving the temporary structure only to avoid triggering the improvements, then returning the structure to the property. He suggested that one permit could be allowed for every two-year period. He pointed to the strawberry stands located throughout the City and suggested that such operators should be required to remove the structures during the off-season.

Council Member West commented that in the case of Udders, water and utility hook-ups would be required.
Mark Hillman, 620 West Olive Avenue, came forward to speak as a representative for the owner of Udders. He explained that during the Project Review, the owner had agreed to site improvements consisting of paving and landscaping, but that the owner objected to paying the water and sewer, drainage, and transportation fees, which he estimated to be approximately $20,000. Mr. Hillman then pointed out that a catering truck required a Conditional Use Permit only. He paralleled that scenario with the proposed site that was already developed. He stated that on the developed site, site improvements were not an issue. Instead, he asserted, the issue lay with confusion in the Code as to how the structure should be categorized. He pointed to various inconsistencies with regard to the requirements of various structures, and requested clarification so the owner could determine the most efficient way to proceed with development.

Mayor Pro Tem Irish asked Mr. Hillman whether the proposed structure was temporary or permanent, to which Mr. Hillman responded that such decision would depend on whether the location was successful or not. He then cited the kiosk at Costco in Visalia as a parallel to what Udders was trying to achieve.

Mayor Pro Tem Irish requested that staff include both lenient and strict ordinances amongst the sample ordinances that were to be made available to Council.

Council Member West commented that once the proposed Udders’ structure had been placed onto a foundation and its wheels retracted, the structure would become fixed and permanent. He then questioned the difference between Udders and Java Express – the drive-thru coffee house located next to Perko’s Restaurant on Henderson Avenue – which might not have a restroom.

In response to Council Member West’s question, Mr. Dunlap explained staff’s position on the Udders’ approval process. He stated that if staff were to receive a request from Udders for approval for a catering truck – via a Conditional Use Permit – which was to remain stationary in any one location for a period of time, staff would recommend to Council that full site improvements be required. He asserted that while Mr. Hillman had compared Udders’ proposed development to the kiosk at Costco in Visalia, Udders was an entirely different situation. He pointed out that the kiosk to which Mr. Hillman referred was connected to Costco, an approximate 100,000 sq. ft retail space with full site improvements and all impact fees paid, and emphasized that the kiosk was ancillary and deminimus in the overall operation of Costco. In this case, Mr. Dunlap pointed out, the Udders project consisted of two proposals on individual sites with no other developments on those sites. He explained that Udders would be the sole use of the property versus being ancillary to a much more intense use for which all impact fees had been paid. He stated that the City, per Code, would have to require that Udders met all developmental aspects, which would include a 400 sq. ft. loading zone. He further explained that if the project was to be approved via a C.U.P., that C.U.P. would run with the land. He pointed out that the City would have no guarantee that the owner would continue to operate the Udders business. He then referred to a letter that staff had received from an adjacent business which indicated that Udders’ customers could utilize its restroom facilities. Mr. Dunlap pointed out that often times such arrangements ultimately prove ineffectual. As such, he stated that staff would instead propose a deed restriction that would absolutely guarantee such an arrangement. He summarized that proceeding in this fashion was extremely problematic and suggested that if the Udders project had been proposed on currently developed site, such as the kiosk adjacent to Perko’s Restaurant, it would have created a different situation. He then pointed out that Udders representatives had proposed hooking up to all of the utilities, but did not want to pay the impact fees. He then reminded Council of Mr. Eckhoff’s numerous comments regarding equatability between businesses that actually pay all of the overhead versus those whom do not pay, be it intentionally or otherwise. He stated that from a planning standpoint, the Udders project provided a big challenge in approving a proposal consisting of a business operating out of a catering truck that would remain stationary on a permanent site, when everyone else would be required to build. Mr. Dunlap asserted that this type of situation did an injustice to the City. He stated that if approved, the project owners would enjoy the provision of services for police and fire, yet would not pay the impact fees, and concluded that equity issues existed in this proposal. He then summarized that staff would make a recommendation requiring full compliance with the Code.
Council Member West then questioned if staff was aware of any other fixed catering truck currently operating within the City limits, and cited a catering truck located near Olive Street Elementary School.

Mr. Dunlap responded that he was not aware of any other fixed catering trucks without wheels that were attached to the ground. He explained that the catering truck at El Gallito, to which Council Member West referred, predated staff. He stated that despite being informed by several sources about the existence of a C.U.P., all attempts by staff to locate said C.U.P. had proved unsuccessful.

Mr. Hillman offered that this project created an interesting situation for the City.

Council Member Stadtherr commented generally on the challenges of regulating.

Council Member Hamilton stated that the City should consider the project through the determination of its use, and pointed out that if the trailer was to be set down, it would no longer be mobile. He then stated that because this type of project appeared to be increasing in popularity, the Udders proposal provided Council with an opportunity to discuss and determine how to handle similar proposals in the future. Council Member Hamilton then clarified with Mr. Hillman that the site proposed by Udders on Porter Street actually consisted of only a portion of the whole undeveloped lot, which portion Udders would lease from the owner of the property.

In response to Council Member Hamilton’s question, Mr. Hillman stated that there was a certain amount of urgency in moving the project forward. He stated that a problem currently existed and that problem needed to be resolved. He proposed that the resolution be somewhere in the middle. Mr. Hillman then suggested that revenue would be created for two vacant sites in the City, and pointed out that the process had begun in the middle of August. He then clarified that one of the proposed locations would be required to go to design review, and the other location was pending because clarification on the structure was needed before the process could continue.

Council Member Hamilton questioned if the Udders project could proceed on one of the proposed locations.

Mr. Hillman responded that if Udders proceeded as a permanent structure, the project could proceed, but pointed out that such change in structure categorization would significantly change the requirements.

Council Member Hamilton stated that as an individual, he did not see any ambiguity in defining whether a structure was temporary or permanent solely on the basis of the structure having retractable wheels. He suggested that the use should instead be the determining factor.

Mr. Hillman questioned the difference between a company selling coffee products and a company selling tacos out of a catering truck. He asserted that both structures were on wheels, the difference being the catering truck was driveable, and the trailer was not.

Mayor Martinez commented that the difference was found in the restriction of only being allowed on a particular site for five days out of a month. Mayor Martinez suggested that if the Udders’ applicants were willing to move the structure in compliance with the Code, then he did not see a problem with the project proceeding as a catering truck. However, he pointed out, it did not appear that the applicants wished to meet those requirements, which thereby necessitated categorizing the structure as permanent.

Council Member West pointed out that a catering truck did not use City services.

Mr. Hillman suggested that catering truck operators likely subversively used City services.
Mayor Martinez pointed out that Mr. Hillman’s assertions were merely assumptions.

Mayor Pro Tem Irish stated that Mr. Hillman’s comments regarding the permanency of the structure being dependent upon the success of the location indicated to him that the structure was in fact permanent. He stated that if approval as a temporary structure was granted, the City would be giving up improvements, which he believed was the wrong way to proceed. He stated that this project was yet another exception that perhaps needed to be considered by the Council, such as in the case of the remote control car facility. He then commented that if the Udders applicants did not wish to relocate the structure in five days, the structure was permanent. He asserted that one category needed to be applied and that the applicants could not have it both ways.

Council Member Hamilton agreed with Mayor Pro Tem Irish’s comments but suggested that because this case involved only a 10 ft. x 20 ft. structure, the fee requirements should be discussed. He then, however, stated that he did not believe that the actual Code needed to be changed.

Mayor Pro Tem Irish questioned how the City would put forth such changes, and suggested that determining fee requirements based on square footage might pose problems in the future. He pointed out that any condition placed on the particular operation would actually run with the property.

Council Member Hamilton suggested that perhaps only some of the requirements could be determined by square footage, such as the requirement for a loading zone.

Council Member Hamilton and Mayor Pro Tem Irish both agreed that these types of issues needed to be addressed.

Council Member West questioned how modular units on church and school properties were handled.

Mr. Dunlap responded that such approvals were granted for defined periods of time, such as in the case of the temporary modular structures at Porterville Evangelical Free Church. He stated that if staff had determined that the Church had not been making progress on the permanent structure, staff would voice concerns to Council and recommend that Council not re-approve the temporary structures. He then pointed out that in that case, site improvements were not required, as the structures had direct access via a paved parking lot. Mr. Dunlap further elaborated that the Church’s modular units had not been positioned in a field that could only be accessed by driving across undeveloped land, but instead the structures were positioned in a portion of the site that had already improved.

Greg Shelton, 888 North Williford Drive, stated that while he understood staff’s position with respect to the Udder’s project, he warned of pricing businesses out the Porterville market. He then voiced concern regarding restrictions on sea trains and cargo containers, and asserted that imposing restrictions on businesses utilizing such containers, or requiring improvements, may jeopardize such businesses’ ability to continue to operate. He then questioned the extent to which the City would attempt to regulate containers, and cited trailers and/or fifth wheels used for storing and hauling ATVs, as one example. Mr. Shelton then stated that while he understood the City’s need to regulate situations that might be “eyesores,” he cautioned about proceeding carefully.

Dick Eckhoff, 197 North Main Street, voiced concern with partial development, and questioned if the fees were to be pro-rated, how the balance would eventually be collected. He hypothesized that if an individual developed a small portion of a lot and paid a small fee relative to the size of the development, could that developer then return to develop the remainder of the site without any requirement of paying any additional fees. He then questioned that if an individual was allowed to connect to an existing hook-up, could a shopping center then be developed at the site. Mr. Eckhoff then asked what would become of the structures left behind, such as sidewalk, foundation and/or flower beds, once Udders moved. He then commented on the use of sea trains,
voiced concern over the use of them in parking lots, and pointed out that many were not properly maintained. He suggested that the City could specify the allowable areas for sea trains, such as areas that were not readily visible to main thoroughfares, or perhaps require the use of screening to obstruct the view.

In response to Council Member Hamilton’s question of whether a “D” Overlay was more or less restrictive, Mr. Dunlap responded that it was more restrictive relative to the fact that it provided the City the authority to guide the design and address sensitive relationships between the project and residential areas or with other types of buildings. He continued that “D” Overlays provided the Council with the authority to approve the project from a design/aesthetics layout and usage standpoint. He stated that if a project’s square footage totaled less than 5,000, the requirement of additional parking was not triggered, but the project was not exempted from the “D” Overlay requirements. He pointed out that this provided the City with design authority with respect to aesthetics, building placement, and parking lot layout and landscaping, because of the relationship of the project with surrounding uses and the project’s appearance from the street.

Council Member Hamilton then questioned if a “D” Overlay could be applied to the Udders project to help the it move forward.

Mr. Dunlap responded that in order to be flexible, from the standpoint of allowing concessions in the Code to address the type of use or to adapt the Code to a particular use, a planned development application would be applicable. He stated that this would allow Council to tailor the standards for a particular use.

Mayor Pro Tem Irish requested that staff provide sample ordinances from other cities for Council’s review. He then specifically requested that such samples include how various cities have handled temporary structures and sea trains.

In response to Mayor Pro Tem Irish’s question, staff estimated that WalMart was currently utilizing approximately 30 to 40 sea trains which were positioned throughout its parking lot. Mr. Dunlap stated that each sea train was 320 sq. ft., which provided for a huge amount of extra square footage that was not currently regulated by the City.

Council Member Hamilton pointed out that the amount of parking lot square footage that WalMart had been required to develop had been dependent upon the square footage of the building. Currently, Council Member Hamilton concluded, WalMart had diminished that parking area and had added square footage to their building without paying any additional impact fees.

Mr. Dunlap confirmed that staff, in an effort to eliminate similar situations in the future, had begun to address such issues at the on-set of a project.

City Manager John Longley confirmed that the sample ordinances from various cities would be made available to Council, rather than being distributed in Council’s Agenda packets.

Council Member Hamilton referred to the questions set forth in the staff report and indicated that in response to question No. 2, a concern did exist. He then stated that the response to question No. 3 was questionable.

Mayor Martinez indicated that he would prefer to wait to find out how other cities had handled these types of situations.

Council Member West agreed with Mayor Martinez.
Council Member Stadtherr stated that he believed that the impact fees, such as those relating to sewer and water, should be commensurate with the actual impact, and cited the Udders proposal which consisted of a fairly small structure of 10 feet by 20 feet.

Mayor Pro Tem Irish pointed out that a fairly small business could also generate large amounts of business and traffic.

Mr. Dunlap explained that the impact fees, except for storm drain and water fees, were structured to take into account the size of the structure. The transportation impact fees were based on a per 1,000 sq. ft. basis. He pointed out that since the proposed Udder’s structure was only 200 sq. ft., those impact fees would be minimal. He then stated that anywhere in the City, due to the Business Incentive Zone, a fee payment plan for impact fees was available. He explained that the plan allowed the applicant to pay all of the impact fees at zero percent interest over a five year period. He stated that this program made a tremendous difference as to up front overhead. Mr. Dunlap then commented that he had not seen the calculation resulting in $20,000 in estimated fees to which Mr. Hillman referred, so he could not speak to how those fees were calculated. He stated that when considering fees, staff took into account the actual wastewater discharge and use, not just the overall blanket commercial concept.

Mayor Pro Tem Irish made a general comment that the issue was confusing.

Council Member West stated that he did not see a difference between a small business and a large business, in that each had one toilet and one kitchen. He asserted that the only difference was the square footage of the buildings.

Council Member Stadtherr stated that his concern lied with what factors were considered by staff in determining the fee structure, such as in the comparison of Perkos Restaurant and the Java Hut kiosk. He then stated that he was satisfied with staff’s explanation as to what factors impacted the fees.

Council Member Hamilton suggested that the matter could be handled with a “D” Overlay. He then warned that this type of business was gaining in popularity.

Mayor Pro Tem Irish stated that he believed Council could find flexibility and a standard with which all involved parties could live, but that Council needed to find that flexibility.

Council Member Hamilton voiced concern with “slicing” up the undeveloped proposed site by Udders wherein only a small portion would be developed.

Mayor Martinez stated that he supported full site development over a period of time. He stated that if the business was to be successful, the operators would want to continue with development.

Council Member Hamilton pointed out that the undeveloped site was actually a leased property. He stated that the property owner would be making income off the lease and might not wish to further develop the property. He commented that the cost of development of that leased site should not be the responsibility of Udders.

Mayor Pro Tem Irish questioned what incentive Udders would have to fully develop the site if the venture was successful. He contended that no incentive would exist at that particular location, as the business would already be successful. The owner may desire to grow the business, but likely at another location.

Council Member Stadtherr suggested that the business could expand in that location and become even more successful.
Council Member West questioned if the “D” Overlay would be too restrictive for the proposed Udders project.

Mr. Dunlap responded that one of the two proposed locations for Udders actually required a “D” Overlay. He explained that if Council desired to be less restrictive than what was required per the Code, then the planned development was a more appropriate tool to achieve that goal. It would allow for the setting of development standards for a particular project. He stated that the “D” Overlay allowed staff to go beyond what was required by the Code to address sensitive relationships and design.

Mayor Pro Tem Irish asked for direction from staff for flexibility, without creating excessive work and analysis.

Council Member Hamilton pointed out that he would like staff to address some particular issues that could offer some flexibility, such as the loading zone requirement.

Mayor Martinez agreed with Council Member Hamilton.

Disposition: Continued.

The City Manager then read for the record the Closed Session Items to be discussed, after which it was agreed that the Oral Communications portion of the meeting would take place prior to recessing to Closed Session.

**ORAL COMMUNICATIONS**

- Greg Shelton, 888 North Williford Drive, expressed concern with regulation or prohibition of sea trains on private property for private use.
- Dick Eckhoff, Downtown Porterville Association, 197 N. Main Street, voiced concern over the City’s ability to enforce the proposed regulations of vendors, particularly on weekends, and voiced general concerns for safety and lack of accountability for non-stationary vendors.

The City Attorney Julia Lew clarified that the Code allowed for discretion in not allowing a license, but that Council had requested that another option be added which would allow for an option of charging more for that license, or allow the assessment of a penalty for operating without said license as an option. She clarified that she was not planning on removing the discretion to simply not allow it.

- Russell “Buck” Fletcher, 862 North Williford Drive, voiced concern over a limousine for hire parked in a City parking lot which might create an unfair advantage over other operators.

Staff clarified that the limousine owner’s business had been negatively affected by the Orange Avenue project and that the City had granted the owner approval to park his limousine in the City lot.

Mayor Pro Tem Irish commented that staff had followed Council’s direction by assisting those businesses affected by the reconstruction project. He voiced support for staff’s remedy in allowing the vehicle to be parked in the City lot.

- Fellipe Martinez, 195 East Putnam Avenue, voiced concern with possible restrictions on the use of sea trains, particularly for the temporary sale of fireworks.

Council pointed out that a sea train utilized for the temporary use of fireworks would be handled as a temporary structure.
Council Member Hamilton stated that due to the excessive use of illegal fireworks last season, the City might choose not to allow the sale of legal fireworks next season.

Mayor Martinez stated that he believed a problem existed with some recycling trailers located in convenience store lots, and pointed to scattered debris.

The Council recessed at 8:11 p.m. to Closed Session.

CLOSED SESSION


   No action to report.

ADJOURNMENT

The Council adjourned at 9:15 p.m. to the meeting of October 19, 2004.

_____________________________________________________
Patrice Hildreth, Deputy City Clerk

SEAL

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Pedro R. Martinez, Mayor