CITY COUNCIL AGENDA
PORTERVILLE, CALIFORNIA
NOVEMBER 2, 2004 6:00 P.M.

Call to Order
Roll Call

CLOSED SESSION:
A. Closed Session Pursuant to:
   1 - Government Code § 54956.9(c) - Conference with Legal Counsel - Anticipated Litigation: Two Cases.
   7 - Government Code § 54957 - Public Employee Performance Evaluation - In Progress Review - Title: City Manager.

7:00 P.M. RECONVENE OPEN SESSION AND REPORT ON ANY ACTION TAKEN IN CLOSED SESSION

Pledge of Allegiance Led by Council Member Hamilton
Invocation by Pastor Mark Pitcher, Porterville Church of the Nazarene

PROCLAMATIONS
   “National Guard Recognition Day”
   “Robert Perez, Administrator of the Year Recognition Day”

PRESENTATION
   Employee of the Month - Becky West
ORAL COMMUNICATIONS
This is the opportunity to address the Council on any matter of interest, whether on the agenda or not. Please address all items not scheduled for public hearing at this time.

CONSENT CALENDAR
All Consent Calendar Items are considered routine and will be enacted in one motion. There will be no separate discussion of these matters unless a request is made, in which event the item will be removed from the Consent Calendar.

1. Approval of City Council Minutes of October 5, 2004; October 12, 2004; and October 19, 2004

2. Revision to Engineers Estimate of Probable Cost - Sludge Drying Bed Expansion Project
   Re: Revising estimate from $741,137 to $757,093.70 due to design and construction changes required by the Regional Water Quality Control Board.

3. Authorization to Negotiate Contract for Consultant Services for Island Annexations
   Re: Authorizing staff to negotiate with Quad Knopf for on-call services, to amend the existing on-call environmental services contract to include island annexations and to extend the expiration date to April 16, 2006; and to authorize the use of equipment replacement funds from the Public Works and Community Development Departments totaling approximately $22,000.

4. Award Contract - One-Ton Cab and Chassis Trucks
   Re: Awarding the contract to Motor City GMC in Bakersfield for two new vehicles in the amount of $38,679.92.

5. Award Contract - One-Half Ton Pickup Truck
   Re: Awarding the contract to Hoblitt Fleet Group in Woodland in the amount of $14,418.62.

6. Award Contract - Removal of Plum Orchard
   Re: Awarding the contract to San Joaquin Biomass in the amount of $8,500.00 for removal of the orchard located at Avenue 128 and Road 216.

7. Acceptance of the Nelson Building Demolition Project
   Re: Accepting as complete the project by Bowen Engineering at 296 through 308 North Main Street, authorizing the recordation of the Notice of Completion, and authorizing release of the 10% retention thirty-five days after recordation as applicable.

8. Intent to Vacate Public Vehicular Turnaround Easements Related to the Development of River Springs, Phase Three Subdivision (G.W. Homes, Inc.)
   Re: Intent to vacate easements generally located at the easterly terminuses of Date Avenue and River Springs Drive between Beverly Street and the Tule River, dedicated to City as Parcel 1 and Parcel 2 of Document No. 2000-0072322, recorded November 7, 2000 with the Tulare County Recorder; and set December 7, 2004 for the public hearing.
9. Approval for Community Civic Event Porterville Chamber of Commerce, Rotary Club of Porterville, and Downtown Porterville Association Annual Children’s Christmas Parade - November 30, 2004
   Re: Approving annual event along Main Street from 5:00 p.m. to 9:00 p.m., subject to the application restrictions.

10. Request for Street Closure - Myers’ Tenth Annual Christmas Tree Memorial Service
    Re: Approving the closure of “E” Street, between Putnam and Cleveland, on December 2, 2004, from 6:00 p.m. to 8:30 p.m.

11. This Item has been pulled.

12. Consideration of Article III, Chapter 15, Going-Out-of-Business Sale License Tax
    Re: Considering resolution suspending the collection of the Going Out of Business Sale license tax until directed by Council to reinstate it.

13. Singer Building Trade Fixtures and Improvements
    Re: Approving tenant Harriett Bessey-standel’s request to waive last month’s rent for the Singer Building, located on Oak Street between Hockett Street and Main Street, and allowing Ms. Bessey-standel to remove various fixtures.

   A Council Meeting Recess Will Occur at 8:30 p.m., or as Close to That Time as Possible

PUBLIC HEARINGS
14. Consideration of OHV Motocross Park Cost of Service and Adult Rider Fee Adjustment
    Re: Consideration of increasing the Adult Rider Fee from $10.00 to $15.00.

SCHEDULED MATTERS
15. Appointment of Park and Leisure Services Commission and Library Board Members
    Re: Appointing either Mr. Joe Ruiz or Mr. John Hardin as Commissioner of Parks and Leisure Services to serve the remaining term of Gary Weaver which will expire in October, 2005, and appointing Mr. Joe L. Moreno to the Library Board of Trustees.

16. Authorization to Negotiate Contract for Curbside Recycling Analysis
    Re: Authorizing staff to negotiate contract with Skumatz Economic Research Associates, Superior, Colorado not to exceed $20,000, or if unable, to negotiate contract with Huls Environmental Management, Covina.

17. Appeal of Decision to Enforce Regulations that Require trimming of a Hedge Located at 791 North Villa Street Facing Henderson Avenue
    Re: Consideration of appeal of decision to enforce restrictions on the height of hedges at subject property, and if not corrected by property owner, to forward matter to the City Attorney.

18. C.O.L.T. Fixed Route Bus System/Veterans’ Day Parade
Re: Consideration of modifications to or suspension of operation of Fixed Route Bus System on November 11, 2004 due to numerous street closures.

19. Consideration of Ordinance Calling Election for a Special Election for a Special Utility Users Tax for Police and Fire Services
Re: Considering a special tax measure to increase the utility users’ tax by 2%, for a total of 8%, with caps being doubled for large employers and definitions expanded to include new telecommunication services, the proceeds from which will only be used for police and fire related services.

20. Consideration of Action Regarding Mosquito Abatement in the Porterville Area
Re: Authorization to modify City Budget by an amount not to exceed $10,000 to support a joint County/City analysis regarding the establishment of a vector control district in Southeastern Tulare County or other measures to address the West Nile Virus.

21. Street Closure for Block Parties on Cul-De-Sac Streets
Re: That City Council continue with program authorizing the Chief of Police to approve street closures for organized block parties, as previously adopted by way of Resolution 95-2003.

22. Airport - “Welcome to Porterville” Sign
Re: Consideration of placing a sign at the Porterville Municipal Airport to accent the area visited by incoming pilots and tourists, with direction to staff to look further into design ideas, cost estimates, and locations at the airport for installation; and, direction to bring the issue back to Council during budget development for fiscal year 2005 / 2006.

ORAL COMMUNICATIONS

OTHER MATTERS

CLOSED SESSION

Any Closed Session Items not completed prior to 7:00 p.m. will be considered at this time.

ADJOURNMENT - to the meeting of November 9, 2004

In compliance with the Americans with Disabilities Act and the California Ralph M. Brown Act, if you need special assistance to participate in this meeting, or to be able to access this agenda and documents in the agenda packet, please contact the Deputy City Clerk at (559) 782-7442. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting and/or provision of an appropriate alternative format of the agenda and documents in the agenda packet.
CITY COUNCIL MINUTES
PORTERVILLE, CALIFORNIA
OCTOBER 5, 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 - CITY COUNCIL:

A. Closed Session Pursuant to:
   1 - Government Code § 54956.9(c) - Conference with Legal Counsel - Anticipated Litigation: One Case.

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 Kelly West
Invocation by Pastor John Eby, First Baptist Church

PROCLAMATION
Porterville Sheltered Workshop Appreciation Day - October 5, 2004

Gordon Osmus, Director of Rehabilitation Services for Porterville Sheltered Workshop, came forward and accepted the Proclamation. He thanked the City of Porterville for its support and longstanding positive relationship with the Sheltered Workshop.

PRESENTATIONS
- Employee of the Month - Leon Phillips
- Certificate of Commendation - John Longley

ORAL COMMUNICATIONS
- John Eby, 1557 East Olive Street, invited Council, staff and audience members to attend the Mayor’s Prayer Breakfast to be held at 7:30 a.m. on Friday, October 8, 2004 at Grand Avenue Methodist Church.
- Mark Hillman, 620 West Olive Street, requested that he have an opportunity to speak when Item 15 was before Council.
• Dick Eckhoff, 197 North Main Street, offered comments regarding the City Manager’s recent attainment of an Airman’s Certificate.

CONSENT CALENDAR

Item 5 was removed.

1. CITY COUNCIL MINUTES OF SEPTEMBER 21, 2004

Recommendation: That the Council approve the City Council Minutes of September 21, 2004.

Documentation: Minute Order 01-100504
Disposition: Approved.

2. CLAIM - JOSIE GONZALES

Recommendation: That the Council reject said claim, and refer the matter to the City’s insurance adjustor, and direct the City Clerk to give the claimant proper notification.

Documentation: Minute Order 02-100504
Disposition: Approved.

3. CLAIM - CLAUDIA FOX

Recommendation: That the Council reject said claim, and refer the matter to the City’s insurance adjustor, and direct the City Clerk to give the claimant proper notification.

Documentation: Minute Order 03-100504
Disposition: Approved.

4. CLAIM - LIVIER PADRON

Recommendation: That the Council reject said claim, and refer the matter to the City’s insurance adjustor, and direct the City Clerk to give the claimant proper notification.

Documentation: Minute Order 04-100504
Disposition: Approved.

6. HOME INVESTMENT PARTNERSHIP PROGRAM (HOME) APPLICATION

Recommendation: That the City Council:
1. Approve the submittal of a HOME Investment Partnership Program (HOME) funding application for an amount not to exceed $1,200,000 ($1,000,000 HOME funds for the First Time Homebuyer Program and $200,000 American Dream Downpayment Initiative Funds) to the California Department of Housing and Community Development;
2. Authorize the Mayor to execute all documents pertaining to the HOME program; and
3. Authorize the Community Development Director to execute, in the name of the City of Porterville, project drawdown requests, and all other administrative documents required by the California Department of Housing and Community Development or the U.S. Department of Housing and Urban Development for administration of the HOME program.

Documentation: Resolution 127-2004
Disposition: Approved.

7. COMMUNITY DEVELOPMENT DEPARTMENT COMMITTEE ACTIVITY - REVISION OF PLANT MANAGERS MEETINGS

Recommendation: That the City Council approve modification of the Community Development committee activity to allow for quarterly meetings of the Plant Managers.

Documentation: Minute Order 05-100504
Disposition: Approved.

8. APPROVAL FOR COMMUNITY CIVIC EVENT PORTERVILLE UNIFIED SCHOOL DISTRICT BUTTERFIELD STAGE DAY - OCTOBER 22, 2004

Recommendation: That the Council approve the Community Civic Event Application and Agreement from Porterville Unified School District, subject to the Restrictions and Requirements contained in the application, agreement and Exhibit "A."

Documentation: Minute Order 06-100504
Disposition: Approved.

9. PORTERVILLE MUNICIPAL AIRPORT RENTAL - ATMOSPHERICS, INC.

Recommendation: That the Council approve the temporary rental of a portion of Lot 7 to Atmospherics, Inc. for a rental fee of $150.00 per month, reimbursement to the City for electricity use, and compliance with the City’s policy on liability insurance.

Documentation: Minute Order 07-100504
Disposition: Approved.

10. CITY OF PORTERVILLE CONFLICT OF INTEREST CODE - BIENNIAL AMENDMENT

Recommendation: That the City Council adopt the resolution approving the revised City of Porterville Conflict of Interest Code.
11. RESOLUTION OF OPPOSITION TO PROPOSITION 68

Recommendation: That the City Council adopt the draft resolution opposing the Gaming Revenue Act of 2004.

Documentation: Resolution 129-2004
Disposition: Approved.

COUNCIL ACTION: MOVED by Council Member West, SECONDED by Council Member Hamilton that Council approve Items 1 through 4 and 6 through 11. The motion carried unanimously.

5. AWARD OF CONTRACT - PORTER SLOUGH DITCH PIPING PROJECT

Recommendation: That the Council:
1. Award the Porter Slough Ditch Piping Project to Halopoff & Sons, Inc. in the amount of $255,873.70;
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.

In response to Mayor Pro Tem Irish’s questions, staff estimated that the total cost for the Henderson Reconstruction project from Newcomb Avenue to Westwood Street would be in excess of $600,000, and projected December 2004 for its completion.

COUNCIL ACTION: MOVED by Mayor Pro Tem Irish, SECONDED by Council Member Stadtherr that Council award the Porter Slough Ditch Piping Project to Halopoff & Sons, Inc. in the amount of $255,873.70, authorize progress payments up to 90% of the contract amount, and authorize a 10% contingency to cover unforeseen construction costs. The motion carried unanimously.

Documentation: Minute Order 08-100504
Disposition: Approved.

PUBLIC HEARING

12. CONDITIONAL USE PERMIT 7-96 (MODIFICATION NO. 1) (NEW LIFE CENTER CHurch)

Recommendation: That the Council adopt the draft resolution approving the modification to Conditional Use Permit 7-96.
The City Manager presented the item, and Director of Community Development Brad Dunlap presented the staff report.

The public hearing opened at 7:18 p.m.

Dave Mast, 1301 Jean Street, came forward and identified himself as the Pastor of New Life Center Church, the applicant. Pastor Mast spoke in favor of the proposed construction and stated that it would benefit the neighborhood and reduce the noise level at the Church.

The public hearing closed at 7:19 p.m.

In response to Council Member Hamilton’s question, staff estimated the acreage of the subject lot was approximately 2 acres, and the height of the proposed building was approximately 20 feet, with 2 windows and 2 doors planned on the north side which was immediately adjacent to the residential area. Staff explained that because the building was proposed as being set back approximately 20 feet from the property, the view, if any, into the adjacent neighbors’ yards from the windows would likely be obstructed.

Mayor Pro Tem Irish questioned how the proposed construction would reduce the current noise level at the Church.

Dave Mast, 1301 Jean Street, came forward and explained that previous complaints regarding the noise level had been attributed to a children’s playground which was currently located in the area in which the proposed building was planned. He stated that replacing this playground with a youth center would eliminate future noise.

Mayor Pro Tem Irish voiced concern regarding the close proximity of the New Life Center to the residential neighborhood. He stated that areas zoned R-1 should be protected, and pointed to the County island to the west of the Church’s property which he surmised would eventually be annexed by the City and zoned R-1. He questioned how the future residential area to the west and the existing residential area to the north would be protected from lights and noise without a masonry block wall dividing the properties.

Council Member Hamilton pointed out that most other churches throughout the City were also adjacent to residential zones and had no block walls protecting those residents.

Council Member West agreed with Council Member Hamilton.

In response to Mayor Pro Tem Irish’s question, it was explained that significant cost would be involved in relocating the proposed building site to an area in the parking lot nearest to Morton Avenue.

Mayor Pro Tem Irish then questioned the difference between this situation and the issue with St. Anne’s project, to which staff explained that the St. Anne’s project had been developed as a new property, whereas this property was not.

Pastor Dave Mast came forward and explained that the property to the west and to the north was bordered with a slatted chainlink fence. He asserted that the 1/4 inch slats in the fence obstructed light.
Council Member West made a motion that Council adopt the draft resolution approving the modification to Conditional Use Permit 7-96. Council Member Hamilton seconded the motion, at which point further discussion on the item ensued.

Mayor Pro Tem Irish voiced further concerns for protecting the adjacent residential areas from noise.

Mayor Martinez voiced concern for protecting residents from lighting from the Church. Dimensions and positioning of the proposed building on the site were then discussed.

Council Member West called for the vote.

COUNCIL ACTION: MOVED by Council Member West, SECONDED by Council Member Hamilton that Council adopt the draft resolution approving the modification to Conditional Use Permit 7-96.

Resolution 130-04

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

Disposition: Approved.

SCHEDULED MATTERS

13. TEMPORARY USE PERMIT FOR REMOTE CONTROL CAR TRACK

Recommendation: That the City Council:
1. Approve the proposed Ordinance; and
2. Give first reading to the Ordinance approving a Temporary Use Permit for the Remote Control Track.

The City Manager presented the item, and Associate Planner Randy Rouda presented the staff report.

Mr. Rouda supplemented the report by indicating that an amendment to Condition No. 1 of the proposed ordinance would be required so as to eliminate the amount of the fee. He stated that such fee would need to be determined at a public hearing and that staff’s recommendation was amended to include setting October 19, 2004 for the public hearing on that matter.

Mayor Pro Tem Irish stated that he would like to even further amend Condition No. 1 of the proposed ordinance to defer payment of such fee until the time that the installation of a fire hydrant was required.

Staff clarified that the fire hydrant installation would be required upon construction of the first permanent structure on the site.

City Attorney Julia Lew then offered further clarification regarding staff’s reference to Municipal Code Section 7-3.3. She explained that the Section had not actually been applied by staff in its analysis, but instead
had been referenced only as an example to set up a parallel process through the use of an uncodified ordinance. Ms. Lew indicated that by setting up this process, the staff was establishing that the City should be reimbursed. She stated that because this process involved the establishment a fee, due process considerations were required, such as setting the matter for a public hearing.

A copy of Municipal Code Section 7-3.3 was then provided to Council Member Hamilton, at his request.

In response to Council Member Hamilton’s question regarding the use of an ordinance versus a resolution, Ms. Lew responded that an uncodified ordinance was the best mechanism for this unique situation. She pointed out that it was staff’s contention that the proposed use fit best under “commercial recreation” and that a violation of the Zoning Ordinance already existed. She explained that although the individuals might call themselves a “club,” the determination of whether a particular use was permitted was determined by the actual activity on the property, not by the manner in which the individuals were organized. Ms. Lew stated that in order to proceed with Council’s direction to find a mechanism for allowing the remote control car activity, staff had proposed this temporary use permit. Because this was not something previously pursued, staff believed that since this approval would have a precedent setting effect, an ordinance to be the best approach. She pointed out that an uncodified ordinance would set the standard and put in place a mechanism for similar situations that might arise in the future.

In response to concerns voiced by Council Member Hamilton, Ms. Lew clarified that Municipal Code Section 7-3.3 had not actually been used, but instead was only referenced in the staff report to point to a parallel system, such as the one regulating temporary structures.

City Manager John Longley pointed out that Section 7-3.3 had been referenced in the staff report because it was the most similar process to what was being proposed in this matter. He stated that the proposed temporary use permit currently before Council was ground breaking.

Council Member Hamilton questioned the manner by which the City regulated the modular temporary structures on the Evangelical Free Church’s property, and asked why staff had made the approval process for this remote control car facility so difficult.

The City Manager responded that Section 7-3.3 governed the Evangelical Free Church structures, and explained that the approval request currently before Council was not something that had been previously addressed as it was being done out of the context of the Zoning Ordinance. He explained that staff was trying to attain reasonable control over the future use of the property on a legal basis, and in order to achieve that, staff had proposed an uncodified ordinance.

Council Member Hamilton stated that he would support staff’s recommendation, with the amendment proposed by Mayor Pro Tem Irish regarding deferment of payment of the fee.

Council Member West voiced concern over deferring the fee payment until a fire hydrant installation was required, which he surmised might likely mean never. He asserted that staff time should be accounted for.

Council Member Hamilton stated that the process should never have become so complex so as to take so much of staff’s time.
Council Member West pointed out that it was Council that had requested staff to find a mechanism for approving the applicant’s request, and that staff had merely done as directed by Council and therefore such time expended by staff should be accounted for. Council Member West voiced his disapproval of deferring the proposed fee.

Council Member Stadtherr questioned if the City currently required that individuals or groups utilizing the fairgrounds for events water the parking lot for dust control.

Director of Community Development Brad Dunlap responded that the City not only required fairground users to mitigate dust through watering, but required any temporary user on any unpaved surface to do the same.

In response to Council Member Stadtherr’s question, staff confirmed that the subject property had an existing source of water.

Council Member West stated that he had personally witnessed the fairgrounds being watered down during certain events.

Mayor Martinez asked about the type of lighting the applicants planned to utilize at the facility, and suggested that the applicants should designate a certain parking area for the exclusive use of handicapped individuals.

Tim Beebe, 677 North Plano, came forward to respond to Mayor Martinez’s concerns over lighting. He stated that the track was currently only operated during daylight hours, and indicated that parking was available surrounding the entire track. Mr. Beebe confirmed that the applicants were willing to designate a certain parking area for handicapped participants. He then voiced dissatisfaction with the conditions proposed in staff’s recommendation, specifically Condition No. 1 regarding the proposed fee, Condition No. 8 regarding handicapped accessible portable sanitary facilities, and Condition No. 11 regarding the requirement of permits for all structures on the site.

Pete McCracken, 657 Village Green, came forward and stated that he believed that handicapped accessible portable sanitary facilities cost twice as much as the standard portable facilities. He then stated that he believed that restricting the applicants from charging participants while at the same time assessing a $1,255.00 fee against them seemed unfair.

Greg Shelton, 888 North Williford Drive, voiced his dissatisfaction with staff’s interpretation of the Code and its recommendation. He contended that since the subject property was zoned M-1, it automatically allowed the proposed use of a remote control car facility. Mr. Shelton then asserted that the fee of $1,255 proposed by staff was excessive, citing the lesser cost of $1020 for a tentative subdivision map. Mr. Shelton pointed out that as a Porterville resident he paid taxes to run the City bureaucracy, but then would be taxed again to compensate staff for its time on this project. Mr. Shelton also took issue with the proposed Condition regarding handicapped accessible portable sanitary facilities.
Council Member Hamilton responded that the City must require the applicants to have the handicapped accessible facilities to protect itself from potential litigation, and if the City failed to do so, it could be found negligent.

Mr. Shelton then argued that according to his interpretation of the Code, disapproval of the proposed use was not the prerogative of staff nor the Council because the M-1 zone in which the site was located allowed for the proposed use. He suggested that the City could condition the proposed use with a business license, but the conditions that staff had proposed, such as handicapped accessibility, were not allowed.

In response to Council Member Hamilton question, City Attorney Julia Lew explained that she believed that the City did in fact have the authority to place conditions regarding handicapped accessibility on Mr. Shelton’s property even though it was zone M-1, and according to the California Attorney General, since the City was in such a position, it must do so, otherwise the City could be held liable.

Council Member Hamilton then inquired about the triggering mechanism for the entire process before Council, to which Ms. Lew responded that the process was triggered by the Zoning Code violation of running an activity on the property which was not permitted.

Mr. Rouda further elaborated that staff asserted that the remote control car track use fell under commercial recreational usage which required a Conditional Use Permit. He explained that staff’s determination had been based on its functionality rather than whether or not participants were charged. Mr. Rouda then pointed to the analogy of a bottle club, wherein the use was essentially equivalent to an alcohol vendor, thus falling under those applicable requirements. In this case, the use was equivalent to a commercial recreational use even though no fees would be charged, thereby requiring a C.U.P. As such, the current use was in violation of the Zoning Ordinance. He then stated that staff had attempted, at Council’s request, to find a mechanism to legitimize the use, and in response to Council’s direction, staff had recommended the temporary use permit which was before Council this evening.

Mr. Shelton expressed disagreement with staff’s interpretation of the Code, and suggested that the Code did not specifically address the necessity of a C.U.P for commercial recreational use, but rather the Code was silent on that issue. He asserted that because the Code specifically included language requiring churches to obtain a C.U.P., it would follow that those uses not also specifically named would not be required to obtain a C.U.P.

City Manager John Longley clarified that staff recommended that the fee be set for public hearing at the October 19, 2004 meeting, at which time discussion on the amount and proposed deferment of said fee could take place.

In response to comments regarding the restrictions set forth in Condition No. 3 of the draft ordinance regarding charging participants, Ms. Lew clarified that as currently written, Condition No. 3 allowed for the acceptance of donations.

Mayor Pro Tem Irish voiced concern regarding Condition No. 3, and questioned the necessity of restricting Registration Fees. He proposed striking Registration Fees and clarified that it was his intent to disallow the participants from charging the public to participate, however, he did not intend to prohibit the organizers from collecting monies amongst themselves.
It was then agreed that "Registration Fees" would be stricken from Condition No. 3 of the draft ordinance.

In response to comments regarding the level of sound produced at 65dB—the proposed maximum level of sound proposed in Condition No. 6 of the draft Ordinance—it was pointed out that the measurement was from the property line and that 65dB was a standard and reasonable maximum volume.

For clarification, City Attorney Julia Lew then read the amendment to Condition No. 1 of the draft ordinance as follows: "The operators shall pay an amount to the City of Porterville to reimburse the City for the actual cost of processing the permit."

Council Member Hamilton then questioned if deferment of the fee would create a lien against the property.

Ms. Lew responded that Council could consider that issue when the matter returned to Council for the public hearing on October 19, 2004.

Council Member Stadtherr suggested that rather than deferring payment of a large fee which would require tracking, Council should consider an "up-front" payment of a standard fee.

Ms. Lew again reiterated that although Municipal Code Section 7-3.3 had been referenced in the staff report, that Section was not being utilized and therefore that fee was not applicable to this case.

City Manager John Longley clarified that the maximum fee sought would be $1,255 as recommended by staff in its report, however, the final determination would be Council’s discretion at the public hearing on October 19, 2004.

COUNCIL ACTION: MOVED by Council Member Hamilton, SECONDED by Council Member Stadtherr that Council approve Ordinance 1659, as amended, for first reading, and order the ordinance to print, being AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE ISSUING A PERMIT FOR TEMPORARY USE TO PERMIT THE CONTINUED OPERATION OF A REMOTE CONTROL RACE TRACK AS A HOBBY/RECREATIONAL USE, and set October 19, 2004 for a public hearing on setting the fee. The motion carried unanimously.

Disposition: Approved.

The City Manager read the Ordinance by title only.

14. CONSIDERATION OF ORDINANCE AUTHORIZING INCREASES IN UTILITY USER TAXES AND AMENDING REGULATIONS

Recommendation: That the Council:
1. Review the draft Ordinance and provide further direction; and
2. If Council wishes to go forward with the Ordinance, that it set a public hearing for the first meeting in November (November 2, 2004) and consider the finalized Ordinance for First Reading at that time.

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

Ms. Lew also advised setting forth an appeals process and a refund process, both of which were absent from the current ordinance, and suggested that the tax administrator could be given some power in making administrative rulings to help streamline any legal issues concerning the taxes. Ms. Lew then pointed out that because the proposed Ordinance included the declaration of emergency, it would require a unanimous vote of Council instead of a 4/5ths vote. She pointed out that an alternative would be to remove the emergency language so it could be done separately, but that such decision would be Council’s prerogative. Ms. Lew then reminded Council that the deadline for placing this ballot measure on the March 2005 election was December 10, 2004, with a suggested deadline from the Tulare County of November 16, 2004.

Mayor Pro Tem Irish confirmed that each percentage point of monies collected from the UTT represented approximately $500,000, and pointed out that tax revenues would increase when DSL service and Internet access were also taxed. He then voiced concern with ensuring that the monies collected were safeguarded for police and fire use only.

City Attorney Julia Lew explained that because of advancements in technology, the proposed changes most significantly pertained to the inclusion of DSL, cable, and satellite and related technologies. She then clarified that if Council pursued the tax as a general tax measure, the funds could not be legally obligated. She suggested that an advisory measure could be set forth which included language detailing how Council desired to use those funds. Ms. Lew stated that the integrity of the general tax measure process must be protected from possible legal challenges, but that she could investigate other practical means by which the Council could set out how funds of equal amounts might be used for public safety.

In response to Council Member West’s comments, Ms. Lew confirmed that any funds collected from the general tax would be placed into the general fund and no legal obligation could be created for the use of those funds. She reiterated that although she would further investigate other means by which the City could attempt to ensure that the monies collected were reserved exclusively for police and fire, those monies could never legally be obligated under a general tax measure. Ms. Lew then pointed out that the decision of whether or not to proceed as a general tax measure, or to move forward with a special tax, was Council’s decision. Ms. Lew warned that special tax measures were very difficult to pass, as special taxes required a 2/3rds vote as opposed to a simple majority, or 50% plus 1.

Council Member Stadtherr questioned why satellite television had been addressed in the proposed changes, but not satellite radio, and whether all references to “telephone” in Section 22-43 of the draft ordinance should be changed to “telecommunications.”

Ms. Lew responded that satellite radio, as well as other utilities were not added in because they simply had not been previously included. She then stated that much of the information provided in terms of the various types of new technologies had actually been provided by a tax collection consultant and that she was not
particularly knowledgeable on those technicalities. She then confirmed that “telephone” could be changed to “telecommunications.”

Referencing Section 22-44 of the proposed ordinance, Council Member Stadtherr suggested that perhaps individuals utilizing solar power might not be negatively impacted, although the impact would depend upon if the users were taxed for merely having a meter, or if the tax was based solely on the amount of electricity used.

Mayor Pro Tem Irish asked if the flat UTT had also been addressed, to which staff responded that it was proposed to be doubled.

Council Member Hamilton stated that he was supportive of bringing this measure to the citizens because he believed it was needed, however, he pointed out if it was Council’s intention to levy this tax for public safety, then that is what should be put before the people, even if that required pursuing a special tax which needed a 2/3rds vote to pass. He stated that although he understood the difficulty in passing a special tax measure, the decision should ultimately lie with the voters.

Mayor Pro Tem Irish voiced agreement with Council Member Hamilton’s comments and elaborated that the citizens were likely aware of the City’s need for additional police and fire protection. He stated that he supported moving forward with a special tax measure rather than a general tax measure.

The City Manager clarified that the City Attorney could prepare another ordinance, but that it would not include the language amending the Code to include new technologies. He explained that approval of the 2% increase in the UTT via a special tax required a 2/3rds vote, while amending the Code to include new technologies only required a simple majority vote.

Ms. Lew explained that while the special tax measure could include the expansion of technological definitions, if the measure failed to get the required 2/3rds vote, the older outdated Code would remain in effect. Ms. Lew then stated that an alternative would be to place two separate measures on the ballot, although two separate measures might create confusion to the public.

Council Member Stadtherr pointed out that advancements in creating more energy efficient appliances might actually decrease utility revenues as numbers of individuals increasingly exchange older, less energy efficient appliances for new ones. He stated that, for example, even if the population of Porterville grew by 10%, such growth did not necessarily mean that utility tax revenues would also increase by 10%. He cited the development of more energy efficient homes as another factor.

Mayor Pro Tem Irish contended that any decrease in revenues due to the expanded use of more energy efficient appliances would be likely be outweighed by the expected growth in Porterville. He stated that even with such technological advancements, revenues would increase as a direct result to population growth. Mayor Pro Tem Irish then voiced support for including the new technologies such as DSL, cable and satellite in the UTT in the tax measure.

Council Member West questioned the amount of revenue that might be collected if the new services were built into the UTT, and how staff determined the number of new police officers and firefighters the City could hire if the UTT was increased.
Deputy City Manager Darrel Pyle stated that as to the new technologies, such a determination would prove difficult at this time, and pointed to “bundled” service packages currently being offered by several service providers such as SBC. Mr. Pyle commented that one bundled service package presently on the market offered high speed DSL, television, telephone and cell phone on one bill for approximately $112 per month. He stated that such bundled service packages appeared to be a future trend.

City Manager John Longley clarified that staff had prepared a detailed cost analysis based on the additional 2% increase, but such analysis did not include the new technologies. Mr. Longley stated that according to that analysis, staff estimated that 6 to 8 new officers and firefighters could be hired.

Council Member Hamilton stated that he was in favor of pursuing a special tax versus a general tax.

Mayor Pro Tem Irish stated that he too favored pursing a special tax.

Council Member West stated that while he favored a special tax, he feared that it might not pass because of the 2/3rds vote requirement.

In response to City Attorney Julia Lew’s question, Council Member Hamilton stated that he would not support an additional general tax measure that included the technological amendments.

Mayor Pro Tem Irish agreed with Council Member Hamilton and stated that the voters should be able to decide.

Ms. Lew clarified that the Council’s vote this evening did not require a unanimous vote, however the adoption of the Ordinance would require a unanimous vote.

COUNCIL ACTION: MOVED by Council Member Hamilton, SECONDED by Mayor Pro Tem Irish that Council direct staff to proceed with drafting an Ordinance authorizing increases in Utility Users Taxes via a special tax measure.

M.O. 09-100504

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

Disposition: Approved.

Council Member Stadtherr commented that he did not believe the measure would pass and voiced concern with spending the taxpayers’ money.

Council Member Hamilton stated that the decision would lie with the voters.

Mayor Pro Tem Irish agreed with Council Member Hamilton.
City Manager John Longley clarified that in order to place the special tax measure on the election ballot, a unanimous vote would be required from Council.

The Council then took a 10 minute recess.

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

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

The City Manager presented the item and Director of Community Development Brad Dunlap presented the staff report. Mr. Dunlap presented slides reflecting examples of the various types of mobile, temporary and permanent structures to be discussed.

Mayor Martinez suggested, and staff confirmed, that further discussion could also take place at the upcoming Study Session set for October 12, 2004 regarding to the City’s itinerant, street, and peddler vending regulations.

Mark Hillman, 620 West Olive Street, came forward and identified himself as a representative for the owner of the proposed business “Udders.” Mr. Hillman presented the proposed building structure of the business, being a 10 ft by 20 ft trailer with retractable wheels, and pointed to existing ambiguities in the Code which he contended created uncertainty in how Udders developed, specifically, as a temporary structure, or as a permanent structure.

Council Member West questioned the difference between a catering trailer with retractable wheels, such as what Udders had proposed, and any other building that one could move, such as a catering truck.

Staff clarified that catering trucks were subject to regulation by the Department of Motor Vehicles and were often times driven away every evening, whereas catering trailers with retractable wheels were generally left stationary for a period of time and thus were regulated through the Building Code.

Council Member Stadtherr suggested that a distinction could also be made between catering trucks and catering trailers in terms of utility and water usage, as catering trucks were more self-contained and catering trailers required hook-ups.

In response to Mayor Martinez’s question regarding the timeline for the Udders project, Mr. Hillman came forward and stated that the owner would prefer to commence with the project as soon as possible. Mr. Hillman elaborated that the Udders concept was new for the Porterville area, and compared it to the kiosk vendor located at the entryway of Costco in Visalia.

In response to Council Member West’s comments, Mr. Dunlap clarified that staff required direction from Council as to how the City should handle these various types of structures, which he pointed out, ultimately had implications on City services, the quality of development, and regulation cross-over between the Building Code and the DMV. Mr. Dunlap then cited Walmart’s excessive use of sea trains for storage throughout its parking area as one example. He pointed out that the Udders scenario was somewhat more complex in that it involved
utility hookups for a DMV regulated structure. He added that according to staff’s interpretation of the Code, full development of the site, including a parking lot, was required. This would apply to the undeveloped lot at Porter Street and Putnam Avenue which had been proposed by Mr. Hillman as one of the potential sites for Udders.

In response to Mayor Pro Tem Irish’s question, Mr. Dunlap confirmed that, in theory, a catering trailer, such as the one proposed by Udders, could be placed in a developed lot if it did not reduce the amount of parking spaces required. Mr. Dunlap then pointed out that although Mr. Hillman had likened Udders to the kiosk outside of Costco in Visalia, the two were quite different in that the kiosk was an accessory to a very intensely developed site, whereas Udders, as proposed, was not.

Mayor Pro Tem Irish commented that he had seen many similar building structures utilized by businesses around the country, and that staff and Council must set forth some guidelines.

Mayor Martinez then proposed that the matter be continued for further discussion during the Study Session set for October 12, 2004.

City Manager John Longley clarified that the staff report would be carried forward until October 12, 2004.

Disposition: Continued.

16. UPDATED REPORT ON FIREWORKS

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

The City Manager presented the item and Fire Chief Frank Guyton presented the staff report.

In response to Council Member Hamilton’s question, Chief Guyton clarified that the Fire Department’s primary focus during the fireworks season was to check for potential roof fires in locations where illegal fireworks had been reported, rather than focus its resources towards enforcement relating to the use of illegal fireworks.

Council Member Hamilton questioned if the closing of County Stations 19 and 20 would have any impact on the City next year, to which Chief Guyton responded that he did not believe those closures would impact the City.

In response to Mayor Pro Tem Irish’s question, staff confirmed that approximately 11 groups were permitted to sell fireworks in the City.

Mayor Martinez asked whether staff was aware of any fireworks stands that had been set up in County islands.

Chief Guyton responded that he had viewed several located in both County islands throughout the City and in County areas bordering the City. He elaborated that Tulare County’s policy was to issue an unlimited number of permits for fireworks stands, and stated that in the past a “gentlemen’s” agreement existed between
the County and City, but that agreement had no longer been enforced. He pointed out that the Tulare County Board of Supervisors was aware of the situation.

Mayor Pro Tem Irish suggested that the Joint Powers Agreement recently executed could perhaps be a mechanism between the County and City for regulating the sales in the future.

17. RIVERWALK MARKETPLACE COMMERCIAL CENTER ENVIRONMENTAL PROCESS UPDATE

Recommendation: Presented for informational purposes only. No action is recommended.

The City Manager John Longley informed Council that he resided within 500 feet of the proposed use and therefore according to City policy, he asked that he be dismissed from the discussion. Mr. Longley then excused himself from the Council Chambers.

Deputy City Manager Darrel Pyle presented the item, and Director of Community Development Brad Dunlap presented the staff report.

In response to Council Member Hamilton’s question, staff confirmed that economic blight had been a component of the environmental impact report.

The City Attorney explained that current case law required the consideration of economic blight in the environmental process, and stated that she would further research any applicable new cases.

Mr. Pyle clarified that staff was currently in the process of reviewing all comments received from the participants and such comments would be evaluated based on the legal requirements as to what could and could not be included in the final environmental document.

Mr. Dunlap added to Mr. Pyle’s comments by stating that staff had actually completed a cursory review of all comments and noted that none addressed issues not already included in the process.

In response to Mayor Pro Tem Irish’s comments regarding the importance of considering both short and long term effects, Mr. Dunlap explained that the evaluation was very complex and generally looked to the impact on existing businesses that could be attributed to the opening of the shopping center. He cited the creation of blight through abandoned and vacant buildings as an example. This effect, he pointed out, generally took some time. Mr. Dunlap then pointed out that in the analysis staff also expected to find a sales tax leakage caused by residents of Porterville and the surrounding areas leaving the area to shop. He also pointed Walmart’s ultimate decision to either remain open or to close as another factor.

ORAL COMMUNICATIONS

- Greg Shelton, 888 North Williford Street, requested that Council direct staff to draft a letter detailing the City’s position regarding the remote control car track. Council suggested that Mr. Shelton should initially draft a letter to the City requesting such information. (Mr. Shelton delivered said letter to the City Manager at the conclusion of the meeting.)
• Dick Eckhoff, 197 North Main Street, requested that the City stay in contact with the Downtown Porterville Association regarding the Riverwalk Marketplace development and Item No. 15 regarding the categorization of various structures. Mr. Eckhoff then voiced support for Council’s decision to proceed with the UTT increase via a special tax measure vs. a general tax measure, and voiced concern over protecting those general funds allocated for police and fire.
• Fellipe Martinez, 195 West Putnam, thanked Public Works Director Baldo Rodriguez for meeting with the merchants affected by the Orange Avenue Reconstruction Project. Mr. Martinez then stated that the proposed Riverwalk Marketplace development might not be as economically beneficial to the City as was suggested.

OTHER MATTERS
• Council Member West voiced concern over the lack of a designated group to promote the special tax measure for the UTT increase. The City Attorney clarified that the Council Members could endorse and approve the measure, but that public funds could not be utilized. Ms. Lew stated that she would provide a memorandum to Council that details the limitations on Council Members in supporting ballot measures.
• Mayor Pro Tem Irish voiced support for Council’s decision to move forward with the special tax measure, and stated that he had full confidence in the voters to do the right thing.

ADJOURNMENT
The Council adjourned at 9:33 p.m. to the meeting of October 12, 2004

Patrice Hildreth, Deputy City Clerk

SEAL

Pedro R. Martinez, Mayor
PORTERVILLE CITY COUNCIL MINUTES
ADJOURNED MEETING - OCTOBER 12, 2004
CITY HALL COUNCIL CHAMBERS
6:00 P.M.

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. Bellevue 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 lied 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 equatibility 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 Stachtner 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

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Pedro R. Martinez, Mayor
CITY COUNCIL MINUTES
PORTERVILLE, CALIFORNIA
OCTOBER 19, 2004 6:00 P.M.

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

CLOSED SESSION:
A. Closed Session Pursuant to:
   5 - Government Code § 54956.9 - Conference with Legal Counsel- Existing Litigation. Name of Case: City of Porterville v. Schellhase, Case No. 03-207816, Tulare County.

City Attorney Julia Lew noted for the record that a typo existed in Item No. 3. Ms. Lew stated the address of the property should be corrected to read “2169 Henderson West Henderson Avenue” instead of “2248 West Henderson Avenue.”

Council recessed to Closed Session at 6:04 p.m.

7:00 P.M. RECONVENE OPEN SESSION
AND REPORT ON ANY ACTION TAKEN IN CLOSED SESSION

4 - GOVERNMENT CODE SECTION 54956.8 – CONFERENCE WITH REAL PROPERTY NEGOTIATORS/PROPERTY: APN 245-020-027. AGENCY NEGOTIATOR: BRAD DUNLAP. NEGOTIATING PARTIES: CITY OF PORTERVILLE AND GUIDO AND JOYCE LOMBARDI. UNDER NEGOTIATION: ACQUISITION OF RIGHT OF WAY.

City Attorney Julia Lew reported that Council had approved the counter offer made by Mr. Lombardi in the amount of $29,301.79 and approved the Resolution accepting a Grant Deed in fee for public street and underground utility purposes from Guido Lombardi.

Documentation: Resolution No. 131-2004
Disposition: Approved.

Pledge of Allegiance Led by Mayor Pro Tem Ron Irish
Invocation by Pastor Jim Rogers, Foothill Presbyterian Church
PRESENTATION
City Manager’s Featured Projects
  • Parking Lot Completion at Heritage Center
  • Laser Fiche Software Installation

ORAL COMMUNICATIONS
  • Boyd K. Leavitt, 457 East Oak Street, voiced opposition to the proposed curbside recycling program. He voiced concerns regarding whether or not participation in the program would be required, fees of the program which he asserted might be too costly for economically-disadvantaged citizens, and the affect the program might have on existing recycling businesses and their employees.
  • Patrick Green, 1343 West Morton Avenue, came forward and invited Council, staff and audience members to an event being held on Monday, October 25, 2004 at 5:00 p.m. at the Porterville Library regarding domestic violence and the Battered Woman Syndrome. He voiced appreciation for Council Member Stadtherr’s monetary contribution which paid for the rental of the room.
  • Dan Watson, 1574 West Roby, voiced opposition to the proposed Beverly Glenn development citing concerns with traffic congestion.

CONSENT CALENDAR
Items 1 and 12 were removed.

2. BUDGET ADJUSTMENTS FOR THE 2004-05 FISCAL YEAR

Recommendation: That the Council approve the budget adjustments and authorize staff to modify revenue and expenditure estimates as described on the schedule attached to the staff report.

Documentation: Minute Order 01-101904
Disposition: Approved.

3. AUTHORIZATION TO ADVERTISE FOR BIDS - TRAFFIC SIGNAL #7

Recommendation: That the Council:
  1. Approve the Plans and Project Manual; and
  2. Authorize staff to advertise for bids on the project.

Documentation: Minute Order 02-101904
Disposition: Approved.

4. ACCEPTANCE OF THE PORTERVILLE HERITAGE CENTER PHASE 1 - PARKING LOTS

Recommendation: That, upon completion and approval by the Public Works Director of the outstanding items, City Council:
  1. Authorize the Public Works Director to accept the Porterville Heritage Center Phase I as complete;
  2. Authorize the filing of the Notice of Completion; and
  3. Authorize the release of the 10% retention thirty-five (35) days after recordation, provided no stop notices have been filed.
5. ACCEPTANCE OF IMPROVEMENTS - ORCHARD RIDGE PHASE EIGHT AND NINE (DAVID HATCH - CENTEX HOMES)

Recommendation: That the Council:
1. Accept the public improvements of Orchard Ridge, Phase Eight and Nine Subdivisions for maintenance;
2. Authorize the filing of the Notice of Completion; and
3. Release the payment guarantee thirty-five (35) days after recordation, provided no liens have been filed.

6. BUSINESS RECOGNITION PROGRAM

Recommendation: That the Council approve the Business Recognition Program and First Friday Coffee event.

7. APPROVAL FOR COMMUNITY CIVIC EVENT - BARN THEATER ANTIQUE AND COLLECTIBLES SALE, NOV. 6, 2004

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

8. APPROVAL FOR COMMUNITY CIVIC EVENT - VETERANS’ HOMECOMING COMMITTEE - VETERANS’ DAY PARADE - NOVEMBER 11, 2004

Recommendation: That the Council approve the Community Civic Event Application and Agreement submitted by the Veterans’ Homecoming Committee, subject to the stated requirements contained in Exhibit “A.”

9. AUTHORIZATION FOR INVESTMENT WITH STATE BANK OF INDIA (CALIFORNIA)

Recommendation: That the Council approve the Resolution authorizing the investment with State Bank of India (California).
10. REAPPOINTMENT OF LIBRARY BOARD MEMBERS AND ANNOUNCING VACANCIES ON THE LIBRARY BOARD AND THE PARKS AND LEISURE SERVICES COMMISSION

Recommendation: That the City Council:
1. Reappoint Vicky Trueblood and Hector T. Villicana to the Porterville Public Library Board of Trustees;
2. Announce the vacancies on the Library Board of Trustees and the Parks and Leisure Services Commission; and
3. Set November 2, 2004 as the time for Council appointment to fill these positions.

Documentation: Minute Order 08-101904
Disposition: Approved.

11. AGREEMENT FOR SERVICES WITH PORTERVILLE COLLEGE AND THE KERN COMMUNITY COLLEGE DISTRICT

Recommendation: That the Council:
1. Approve the Physical Fitness Training and Fitness Testing Agreement with Porterville College and the Kern Community College District; and
2. Authorize the Mayor to execute the same on behalf of the City of Porterville.

Documentation: Minute Order 09-101904
Disposition: Approved.

COUNCIL ACTION: MOVED by Mayor Pro Tem Irish, SECONDED by Council Member Hamilton that Council approve Items 2 through 11 and carry over Item Nos. 1 and 12 until the November 2, 2004 Council Meeting.

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

Disposition: Approved.

1. APPROVAL OF CITY COUNCIL MINUTES OF OCTOBER 5, 2004

Disposition: Continued.

12. C.O.L.T. FIXED ROUTE BUS SYSTEM/VETERANS’ DAY PARADE

Recommendation: That Council approve the temporary suspension of the Fixed Route Bus System during its normal operating hours on Thursday, November 11, 2004.

Disposition: Continued.
PUBLIC HEARINGS
13. CONSTRUCTION OF CONCRETE IMPROVEMENTS ON SEVERAL STREET PROJECTS

Recommendation: That the City Council:
   1. Take public comments, concerns and questions;
   2. Authorize staff to start the construction of the stated concrete improvements for the herein listed projects; and
   3. Authorize staff to schedule a Public Hearing prior to the establishment of a fee for the concrete improvements, in accordance with the Mitigation Fee Act, upon completion of each project.

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

The public hearing opened at 7:19 p.m.

Greg Shelton, 888 North Williford Drive, came forward to compliment staff on the progress of the project, particularly on Williford Drive. He questioned whether the development fee would create a lien which would then be recorded and therefore appear on a title report.

City Attorney Julia Lew clarified that a general notice of the reimbursement fee would be recorded rather than a lien against the property. She explained that the fees were actually “development” fees that would not be due or payable until the property was developed. She indicated that the threshold for the development was $15,000 and it would be triggered when a building permit was pulled at that amount. Any parcel map or subdivision application, she stated, would also trigger the fee. She then reiterated that a lien would not be created, and stated that the general notice to which she referred would actually be even more general than the one detailed in the staff report. Ms. Lew indicated that she was currently working with the Tulare County Recorder and Chicago Title to clear the proposed language so as to avoid clouding any title. She stated that a statement would be recorded that states: “The City of Porterville will post certain fees and charges for concrete and other improvements constructed by the City upon further development of certain parcels. Please check with the City concerning the development fees that may be applicable.” She pointed out that this statement would show up on any piece of property in Porterville and provide a trigger to check with the City to determine whether any fees on a particular property were owed. Ms. Lew then again emphasized that the statement would not create a lien or cloud on title.

Council Member Hamilton clarified that the $15,000 valuation was not limited to only one project, but could be a few different projects over the period of two years.

City Attorney Julia Lew confirmed that the $15,000 figure was cumulative.

Mr. Shelton confirmed with the City Attorney that even if he were to sell a property, the reimbursement fee would not be due until the new owner triggered the fee.

Russell “Buck” Fletcher, 862 North Williford Drive, requested completion of the project.

The Public Hearing closed at 7:24 p.m.

Mayor Pro Tem Irish requested that the slide depicting the work on Milo Street be shown, and voiced concern regarding the area on the map immediately northeast of Charles Lane. He questioned whether the
difference in the width of the Milo Street shown on that area of the map created a situation similar to the situation created on North Prospect and Mulberry in which traffic flow was funneled into a smaller area. He pointed out that traffic would increase due to the development of new school district building in the immediate area, and requested clarification from staff as to what was being done at that exact area shown on the map.

City Engineer Mike Reed explained that the area south of La Vida on Milo Street would be at collector width, which consisted of 40 feet of pavement between curb face to curb face. He indicated that the area on the map to which Mayor Pro Tem Irish referred depicted a transition of 40 feet of pavement to 40 feet of pavement, which was only an off-set, not a decrease in the width of the street. He stated that the map depicted only a transition or alignment in the road. He explained that the transition would occur from the west to the east, but that the width of Milo Street from Pioneer Avenue to Westfield Avenue would be the same.

COUNCIL ACTION: MOVED by Council Member Hamilton, SECONDED by Mayor Pro Tem Irish that Council authorize staff to start the construction of the stated concrete improvement for the listed projects and to schedule a public hearing prior to the establishment of a fee for the concrete improvements, in accordance with the Mitigation Fee Act, upon completion of each project.

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

Disposition: Approved.

14. BEVERLY GLENN TENTATIVE SUBDIVISION MAP (MOHAMMAD DAVARIFAR)

Recommendation: That the Council:
1. Adopt the draft resolution approving the Negative Declaration for Beverly Glenn Tentative Subdivision Map; and
2. Adopt the draft resolution approving Beverly Glenn Tentative Subdivision Map.

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

The public hearing opened at 7:33 p.m.

Jim Winton, 150 West Morton Avenue, came forward on behalf of the applicant, Nader Development. He stated that since the first hearing on August 17, 2004, the developer had made modifications to the map which consisted of an adjustment of some of the lot sizes in order to provide the "no-build" easement surrounding the Elderberry bush. The adjustments allowed for the easement to affect one single lot. He then explained that the applicant had dedicated the necessary right of way for the improvement of Lotus Street on the west boundary of the subdivision, so that it could be developed with Phase I of River Springs. He stated that the developer had also dedicated the right of way on the east boundary of the property for half of Beverly Street so that it could be fully improved with Phase II of River Springs. He then pointed out that the developer had paid his share of those street improvements along those frontages, as well as his share of the sewer, water, sewer laterals and the water laterals, and to the extent that the applicant could, participated with the improvement of the two bordering streets.
Lisa Watson, 1354 West Date, voiced opposition to the proposed development due to constraints on accessways to the adjacent neighborhoods. She pointed to an increased presence of diesel trucks related to current development, and voiced concern with the effects of such large equipment as it related to the safety of children, as well as to the excessive wear and tear on yards and limited roadways. Ms. Watson asserted that residents were paying for poor City planning.

Dan Watson, 1574 West Roby, came forward and voiced opposition to the proposed development due to constraints on accessways to the adjacent neighborhoods. Mr. Watson pointed to the portion of Beverly Street that was gated off and surmised that Beverly would likely never be developed through. He then pointed out that the large equipment had already damaged the roads in the neighborhood and posed a safety concern on current roadways.

The public hearing closed at 7:39 p.m.

Mayor Pro Tem Irish asked for clarification on Condition No. 13 of the proposed resolution.

Community Development Director Brad Dunlap explained that No. 13 of the resolution required the developer to complete landscaping and lighting improvement plans for common areas prior to final approval of the subdivision. He stated that Condition No. 13 primarily pertained to street lighting.

Mayor Pro Tem Irish commented that both sides of the proposed development could be seen. He stated that if Council had the ability to have designed that area from the start, it would have been designed differently. He stated that the situation had evolved slowly, which incrementally created the traffic flow problem, and pointed out that the future continuation of Newcomb Street would relieve some of the impact on the neighborhood. Mayor Pro Tem Irish then voiced support for requiring the inclusion of a small neighborhood park in future subdivision developments. He stated that this development was the perfect example of how a park would have benefitted the neighborhood. He then stated that the developer had overcome numerous hurdles, and that he did not believe the impact on the neighborhood would be eliminated if the project was not approved. He then suggested that the large trucks would disappear once the development had been completed.

In response to Council Member Hamilton’s question, Public Works Director Baldo Rodriguez stated that the gate on Beverly Street had not been opened up at the request of the Fire Department.

City Engineer Mike Reed explained that Beverly Street consisted of one south-bound lane of traffic. He stated that if the gate were to be opened, both north-bound and south-bound traffic would conflict with each other, thereby posing a safety issue. He stated that the gate was currently set up for emergency access by fire, police or ambulatory services only.

Council Member Hamilton questioned whether the citizens who reside behind the gate had access through the gate, and if not, how those residents could gain access through the gate in the event of an emergency. He then commented that he believed gating off the access from residents was a bad idea, and that the gate should be opened.

City Engineer Mike Reed stated that the residents’ access was via Newcomb Street.

Council Member Hamilton then stated that while he had concerns with the closure of the gate on Beverly Street, Council was currently considering the approval of the development. He commented that the land rights of the developer should be considered and that the developer had met all of the zoning requirements. He stated that the developer had a right to develop the land that he had purchased, and that he supported approving the proposed subdivision. As to the gate closure on Beverly Street, Council Member Hamilton voiced concern with
the residents not having access through the gate in the event of an emergency. He stated that he would like to discuss that issue at a future Council meeting.

Mayor Pro Tem Irish questioned why Beverly Street could not be made into a one-way street. He pointed out that residents living near Date and Beverly currently had limited access, and asserted that if Beverly were to be opened up to south-bound one-way traffic, those residents would have better access then they currently had.

Council Member Hamilton pointed out that residences on Beverly Street would be affected, and suggested that the real issue pertained to individuals parking on Beverly Street.

Mr. Reed stated that if the City could prevent parking along Beverly, a one-way thoroughfare could be generated. He explained that the road currently supported one-way traffic, with nine homes that generate travel in one direction. He stated that conflict seldom arose with nine residents, however, if the roadway was to opened up to approximately 181 homes, the potential for conflict would drastically increase.

Mayor Pro Tem Irish stated that in fairness to the developer, Council should consider the approval of the development and then address the street issue at a later time.

City Manager John Longley clarified that a staff report would be prepared and added to the Agenda for the second meeting in November.

Council Member Hamilton confirmed with City Attorney Julia Lew that the action required to open Beverly Street back up to traffic would depend on how the street was closed.

Mr. Rodriguez indicated that he would need to research the manner in which the street was closed and report back to Council. He pointed out that opening the street up to one-way traffic sounded like a good idea, but warned that some individuals might be used to having access in both directions. He then pointed to a culvert slightly north that also restricted traffic, which would also be addressed in the staff report.

Mr. Dunlap indicated that the closure might have been a mitigation measure for the River Springs project, which might make opening the street a more complicated process.

City Attorney Julia Lew pointed out that only three Council Member were currently present, and that per the City Charter, three affirmative votes would be required to pass a resolution and/or an ordinance that evening.

Mayor Martinez questioned if the City had a method for monitoring the safety issues that were identified by Mr. Watson and Ms. Watson, to which Mr. Longley responded that such monitoring was a part of the normal process.

COUNCIL ACTION: MOVED by Council Member Hamilton, SECONDED by Mayor Pro Tem Irish that Council adopt the draft resolution approving the Negative Declaration for Beverly Glenn Tentative Subdivision Map.

AYES: Irish, Hamilton, Martinez
NOES: None
ABSTAIN: None
ABSENT: West, Stadtherr
MOVED by Council Member Hamilton, SECONDED by Mayor Pro Tem Irish that Council adopt the draft resolution approving Beverly Glenn Tentative Subdivision Map.

Resolution 134-2004

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

Disposition: Approved.

City Manager John Longley confirmed that the issue regarding the gate on Beverly Street will be an agenda item at the second meeting in November.

Mayor Pro Tem Irish stated that he would like to meet with the individuals who spoke in opposition to the development (Lisa Watson and Dan Watson), as well as any other interested residents, to find some solution to the current situation.

15. RANCH VICTORIA TENTATIVE SUBDIVISION MAP (DARYL NICHOLSON)

Recommendation: That the Council:
1. Adopt the draft resolution approving the Negative Declaration for Ranch Victoria Tentative Subdivision Map; and
2. Adopt the draft resolution approving Ranch Victoria Tentative Subdivision Map.

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

The public hearing opened at 7:55 p.m.

Donna Shamley, Roberts Engineering, 342 North Second Street, came forward and stated she was present to answer any questions that the Council might have pertaining to the proposed subdivision.

The public hearing closed at 7:56 p.m.

Council Member Hamilton voiced support for the project and stated he had waited a long time for the development of that particular property. He then confirmed with staff that the homes on the lots along Putnam would face Putnam Avenue, and that the homes on the lots immediately north would face Cleveland Avenue. Council Member Hamilton then stated that he wished that the development would have been completed in one phase, and questioned how the existing residence fronting Morton Avenue was going to be handled.

Mr. Dunlap responded that the parcel map accommodated that existing house which was shown as parcel 4 on the map. He indicated that the existing house on Morton would remain.

Mayor Martinez questioned why rolling curb had been included in the proposed development plans, to which City Manager John Longley indicated that the proposed rolling curb tied into existing rolling curb along that particular frontage.
In response to Mayor Pro Tem Irish’s question, Mr. Dunlap explained that curb, gutter and sidewalk would be developed along the Morton Avenue frontage, and added that north of Lot 1, a bus turn-out lane would also be included. He confirmed that the curb in that particular area would not be a roll curb, but would be instead a “ barrier” curb. He then explained that the City had a standard for transitioning from roll curb to barrier curb. He stated that the developer had not indicated that he intended to use roll curb, but the map merely pointed out that roll curb currently existed in that particular area on Putnam Avenue.

In response to Mayor Pro Tem Irish’s question, Mr. Dunlap explained that a landscape maintenance district was not necessary for this particular project due to the positioning of the homes in the proposed development.

Larry Long, 192 West School Avenue, came forward and asked if Putnam Avenue would eventually be widened, to which staff confirmed that it would be.

Mayor Martinez asked about the proposed 15 gallon street tree per lot and per corner. He questioned who selected the tree type and who paid for the trees.

Parks and Leisure Services Director Jim Perrine stated that the trees must be selected from the street tree list adopted by the City, and that the developer had the option of purchasing and planting the trees themselves, or paying those funds to the City. He stated that if the trees were purchased by the City, through an arrangement the City had with a local nursery, the new property owners would be notified that a free tree was due them, and they would then be requested to select the tree. He explained that arrangements would then be made to plant the tree.

Mayor Martinez then voiced concern with the positioning of the planted trees, which he stated were often times planted in too close of proximity to homes and/or streets.

Mr. Perrine explained that the decision of where to plant trees would lie either with developer and/or the property owner.

**COUNCIL ACTION:** MOVED by Council Member Hamilton, SECONDED by Mayor Pro Tem Irish that Council adopt the draft resolution approving the Negative Declaration for Ranch Victoria Tentative Subdivision Map.

**Resolution 135-2004**

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

**MOVED by Council Member Hamilton, SECONDED by Mayor Pro Tem Irish that Council adopt the draft resolution approving Ranch Victoria Tentative Subdivision Map.**

**Resolution 136-2004**

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

Disposition: Approved.
16. SET FEE FOR TEMPORARY USE PERMIT FOR REMOTE CONTROL CAR TRACK AND 2ND READING OF ORDINANCE NO. 1659 APPROVING SAID PERMIT

Recommendation: That the Council:
1. Adopt the draft resolution approving the Negative Declaration for Ranch Victoria Tentative Subdivision Map; and
2. Adopt the draft resolution approving Ranch Victoria Tentative Subdivision Map.

The City Manager introduced the item, and Associate Planner Randy Rouda presented the staff report.

The public hearing opened at 8:06 p.m.

Greg Shelton, 888 North Williford Drive, voiced appreciation for concessions made by staff in the approval process of this project. He then pointed to a clerical error regarding the inclusion of “for any purpose” in Condition No. 3 of the proposed ordinance. He stated that he believed that Council had decided that the club could charge dues and/or registration fees. Mr. Shelton then commented that he would prefer that the operators be allowed to offer concessions as a convenience to participants, but that prohibiting concessions would not be a deal breaker. He then voiced concern regarding Condition No. 9 regarding the requirement for the installation of a fire hydrant, and questioned whether this requirement was per City Code. He stated that he had no problem if the Code required it. He then voiced concern for the fee amount proposed by staff and questioned if the deferment of the fee would create a lien against the property, or if it would only affect the operators.

City Attorney Julia Lew clarified that the operators of the facility were only subject to the fee, and that it would not create a lien against the property.

The public hearing closed at 8:09 p.m.

Council Member Hamilton commented on Condition No. 7 which required the operators to provide handicapped-accessible portable sanitary facilities, and questioned whether the track was close enough in proximity to Mr. Beebe’s shop, Action Hobby, so as to allow participants to utilize the business’ restroom instead of requiring handicapped-accessible facilities on site.

Tim Beebe, 677 North Plano, responded that the operators had decided researched the acquisition of the portable facilities and had decided to proceed with having them on site.

Council Member Hamilton commented that he was happy with the ordinance, but stated that he believed that the permit fee as proposed was somewhat excessive. He then pointed out that this situation involved more than a typical permit, but that he favored deferment of the fee.

In response to Mayor Pro Tem Irish’s question, City Attorney Julia Lew clarified that the permit was temporary, but the ordinance was not.

Mayor Pro Tem Irish stated that he approved of the ordinance with the exception of Condition No. 3, specifically, the language “for any purpose.” He proposed that “for any purpose” be stricken from Condition No. 3. He stated that Council had previously agreed that dues and fees could be charged amongst the club members and pointed out that if any abuse occurred, Council would be able to address that situation when and if the item came back to Council for renewal.
City Attorney Julia Lew clarified that “for any purpose” could be stricken as a clerical error, but if Council wished to strike the entire sentence, then the ordinance would need to be brought back.

Mayor Martinez stated that he would like to see the matter move forward. He stated that he checked the record as to what had been discussed regarding handicapped parking. He requested that there be an understanding that the operators provide a designated parking space for handicapped individuals. He pointed out that this would not be a requirement, but instead he requested that the operators voluntarily comply.

Mr. Shelton stated that handicapped individuals would absolutely be welcomed and accommodated and that such individuals could at any time request a parking space.

Mayor Martinez pointed out that often times handicapped individuals would not ask due to past negative experiences, or because he or she may not wish to impose on the operators. He then pointed out that remote control car racing was likely an activity in which many handicapped individuals would like to participate. Mayor Martinez then mentioned the proposed time of operation, and pointed out that if Council received any complaints, the time could be revised next year. He requested that the operators abide by the times of operations.

Mr. Shelton stated that the operators would use blue chalk or blue paint to designate a certain area for handicapped parking. He then stated that the operators had already begun to address various items proposed by Council and had in fact already hung a sign on the property outlining the various conditions. Mr. Shelton then requested that he or Mr. Beebe be contacted should Council ever receive any complaints. He stated that it was the operators’ intent to be good neighbors.

**COUNCIL ACTION:** MOVED by Council Member Hamilton, SECONDED by Mayor Pro Tem Irish that Council give Second Reading to Ordinance No. 1659, as amended to strike “for any purpose” from Condition No. 3, and waiving further reading, adopt said ordinance, as amended, being AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE ISSUING A PERMIT FOR TEMPORARY USE TO PERMIT THE CONTINUED OPERATION OF A REMOTE CONTROL RACE TRACK AS A HOBBY/RECREATIONAL USE.

**Votes:**

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

Council Member Hamilton moved to adopt the fee for services in the amount of $700.00.

City Manager John Longley confirmed that the Council Member Hamilton’s motion included deferment of said fee to the time the installation of the fire hydrant was required.

Mayor Pro Tem Irish then clarified with staff that the fee would only affect the operators, and that the fee would not create a lien on the real property.

**COUNCIL ACTION:** MOVED by Council Member Hamilton, SECONDED by Mayor Pro Tem Irish that Council adopt the fee for services in the amount of $700.00, payment of which will be deferred until such time as the fire hydrant installation is required on the subject property.

Disposition: Approved.
Mayor Martinez stated that per staff’s request, Council would now discuss an item that was to be heard during Other Matters.

City Manager John Longley stated that an Adjourned Regular Meeting had been scheduled for October 26, 2004 for discussion on the Success Reservoir with the Army Corps of Engineers. Staff had understood that because a quorum would not likely be available for that meeting, staff had moved toward cancellation of that meeting. He stated that staff had been contacted by several individuals who had asked that such cancellation be reconsidered. Mr. Longley then requested direction from the Council.

Mayor Martinez stated that he would be available for the October 26, 2004 meeting.

Council Member Hamilton stated that he too would be available on October 26, 2004.

Mayor Pro Tem Irish stated that his plans had changed, and that he would now also be available for the meeting.

City Manager John Longley confirmed that the evening’s meeting would then be adjourned to the meeting of October 26, 2004 at 6:00 p.m.

In response to Council Member Hamilton’s question, City Attorney Julia Lew clarified that while the meeting was set up to be an informational meeting, it was still a City Council meeting and that conceivably the Council could take action if an agenda item permitted it.

SCHEDULED MATTERS

17. LETTER OF PUBLIC CONVENIENCE & NECESSITY/BALWININDER KAUR JOHAL - 709 W. OLIVE AVE.

Recommendation: That the Council approve the draft letter supporting the issuance of a Type 20 off-sale of beer and wine license within Census Tract no. 41.01 for the Olive Mini Mart, to be located at 709 West Olive Avenue.

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

Mayor Martinez invited comments from the audience.

Mark Hillman, Hillman Building Design, 620 West Olive Avenue, came forward on behalf of the applicants. He stated that the applicants were seeking to utilize a blighted vacant building, and if approved, would be providing a service to a residential area that lacked such service. Mr. Hillman noted that a void existed from the Olive Bowl east to Main Street. He stated that the Census Tract indicated that no such businesses currently provided services in that particular area, and that the surrounding residential areas would benefit. Mr. Hillman then stated that as a business owner on Olive Avenue, he supported the project. He then informed Council that he would be available to answer any questions they might have.

Mayor Pro Tem Irish asked the applicants if they would rather reschedule the item until such time as all Member of the Council were present. He pointed out that a unanimous vote of the three present members would be required for the item to pass.

City Attorney Julia Lew clarified that since a resolution or ordinance was not being considered, a two to one vote was all that would be required to pass the item.
The Council took a ten minute recess.

Mr. Hillman came forward and indicated that the applicants would like Council to continue its consideration of the item that evening. He pointed out that all of the residents in the immediate area had been informed of the request, and none had opposed it, which Mr. Hillman asserted should assist Council in its decision. He also pointed out that having the business on the south side of Olive Avenue would benefit the residents and allow safe access from the neighborhood south of Olive Avenue so as to eliminate the need of crossing Olive Avenue.

Council Member Hamilton questioned if the proposed location abutted residential property, and what type of fence was currently in place between those properties. He also questioned why the project had not been required to include a concrete wall.

Mr. Dunlap responded that if the property were to be developed today, a concrete wall would have been one of the requirements. However, Mr. Dunlap explained, since a Conditional Use Permit is not required in this case, only a Letter of Public Convenience and Necessity was required.

Council Member Hamilton then commented that at the time the alcohol ordinance was revised, Council had considered requiring Conditional Use Permits on all permits. He then confirmed with staff that Conditional Use Permits were not currently required, and stated that Council should have placed such a condition on all permits. Council Member Hamilton then questioned whether the applicants were going to install gas pumps.

Mr. Hillman responded that the applicants were not considering gas pumps at that time, as the property did not allow for easy ingress and egress. He also noted that such a proposition was quite costly. Mr. Hillman then provided a historical overview of the property. He indicated that in 1998, a permit had been pulled for the construction of a metal building. He pointed out that if lack of a block wall had been an issue, it would have been addressed at that time. He then stated in 1997, another permit had been pulled for the storefront renovations, which allowed yet another opportunity for the requirement of a block wall, and still none had been required. He emphasized that the applicants were only seeking a Letter of Public Convenience and Necessity. He stated that the back portion of the property would be utilized for storage, and pointed out that most of the traffic would be in the front of the property, away from the residential area.

Council Member Hamilton questioned where the loading would take place for the property.

Mr. Hillman responded that the loading would occur at the large roll-up door on the east end of the structure, and suggested that large forty-foot trucks generally did not service those types of convenience stores. He stated that deliveries would likely be made by smaller trucks.

Mayor Martinez stated he did not want to see the store use excessive amounts of signage.

**COUNCIL ACTION:**

MOVED by Council Member Hamilton, SECONDED by Mayor Pro Tem Irish that Council approve the draft letter supporting the issuance of a Type 20 off-sale of beer and wine license within Census Tract No. 41.01 for the Olive Mini Mart, to be located at 709 West Olive Avenue.

**AYES:** Irish, Hamilton, Martinez

**NOES:** None

**ABSTAIN:** None

**ABSENT:** West, Stadtherr
18. THIS ITEM HAS BEEN REMOVED.

19. CONSIDERATION OF "WEEKEND" CAR WASH ORDINANCE

Recommendation: That Council provide direction to staff.

City Manager John Longley presented the item and the staff report.

Council Member Hamilton commented that he had requested that the matter be put on the Agenda due to concerns from citizens regarding the tremendous amount of unregulated car washes throughout the City. He pointed out that many of those car washes were using the City's storm drains, and that often times the car washes were not only operated on the weekends, but also during the week. He stated that the City had been working hard on bringing the licensed carwashes into compliance, two of which recently had been brought into compliance. Council Member Hamilton stated that personally, as a businessman, he welcomed competition as long as the playing field was fair. He then requested comments from the other Council Members.

Mayor Pro Tem Irish stated that he would like to see language included that provided for a penalty for operating without a permit, such as revoking or restricting the applicants' ability to pull another permit for a one year period.

City Attorney Julia Lew indicated that such language could be included in the enforcement provisions of such an ordinance.

Council Member Hamilton stated that the licensed car wash owners did not wish to eliminate those non-profit car washes, and asserted that regulating the car washes would open up an avenue in which the non-profit organizations could work with the commercial car wash owners. He pointed out that in this event, the City's storm drains would be properly utilized, and the car wash organizers would have a site in which to conduct their car washes.

Mayor Pro Tem Irish stated that he would also like to include a provision that required the applicant to show proof that the organization is legally structured as a "501" non-profit organization.

Council Member Hamilton voiced concern for that requirement and questioned whether organizations, such as cheerleading squads, were actually technically organized as 501s.

Mayor Martinez pointed out school bands were also likely not structured as 501 organizations.

Ms. Lew suggested that different areas of the City Code might provide language that could be used to include organizations other than those structured as 501(c)(3)s. She stated that an equivalent definition from other areas of the Code might be applied to this area.

Mayor Pro Tem Irish confirmed that two different factors of "weekend" car washes would be regulated – the group and the location. He then pointed out that the applicants must also be accountable, and warned of applicant organizations changing their name so as to avoid the regulations.

Council Member Hamilton added that the time should also be regulated. He then stated that some individuals would always attempt to circumvent the system.
City Attorney Julia Lew pointed out that the same concern arose in the context of the fireworks booths, because one organization under different names and subsidiaries attempted to obtain more than one permit. She indicated that she would research what the City could do to prevent that from happening in this case.

Mayor Pro Tem Irish voiced support for expediting the regulations, and cautioned over delaying the item for another year. He pointed out that the item had been debated for a great deal of time.

Council Member Hamilton suggested that a draft ordinance could be brought back to Council at the next meeting.

City Manager John Longley requested that the item be brought back at the second meeting in November due to the large Agenda already set for the November 2, 2004 meeting.

Mayor Pro Tem Irish indicated that he did not oppose the item being brought back in January 2005. He pointed out that many organizations would likely not hold car washes during the cold winter months. He then stated that he would prefer the item be finished no later than mid-January.

Council Member Hamilton stated that organizations held car washes on his lot every weekend, rain or shine. He then asked staff if the item could be done by the second week in November.

City Manager John Longley confirmed that staff could have the draft ordinance for Council’s review at the second meeting in November. He stated that staff’s only concern pertained to the full Agenda for the November 2nd meeting.

Mayor Martinez voiced concern for limiting or restricting the opportunity for many of the non-profit organizations to raise much-needed funds. He stated that he understood that the item was worthy of discussion, but pointed out that many of the organizations that would be negatively affected provided a service to the community and depended on those funds made from car washes. He then acknowledged that there were those individuals and organizations that took advantage of the situation. He stated there were other issues that also needed to be addressed and pointed to safety issues regarding individuals advertising the car washes standing in locations such as medians. Mayor Martinez then voiced a concern over the proposed time period for allowing car washes, and pointed to summer versus winter daylight hours. He stated that he would like to continue discussion on the matter until such time when all of the Council Members were present. He stated that since most, if not all, of the Council Members participated in non-profit organizations, he believed all Council Members should have the ability to offer input. He then stated that he did not believe that bringing the item back so quickly would be beneficial, and warned that the organizations negatively impacted might not have the opportunity to come before the Council to address the issues. He stated that he did not want to pass the ordinance only to receive negative commentary from individuals after the fact. He stated that he would prefer to make certain the public had been informed of the issue so that the public could comment.

Mayor Pro Tem Irish pointed out that a reporter from the Porterville Recorder was present and was likely making a note of the item for publication.

Council Member Hamilton stated that the PAAR Home currently conducted car washes on his lot, and pointed out that that organization was not in compliance with the existing ordinance, which provided for the full containment of the water runoff. He stated that all of the car washes conducted by Victory Outreach, PAAR House, and/or the high schools were all utilizing the City’s storm drains and were currently not in compliance. Council Member Hamilton then questioned why additional time was needed, and pointed out that the only way in which those organization could comply with the existing Code was to build a car wash.
Mayor Martinez then questioned why Council should pass an ordinance that the City could not even enforce, and suggested that staff's time would be wasted. He stated that staff's time was valuable and best invested into other areas.

Mayor Pro Tem Irish asserted that this issue had been going on since 1995 or 1996, and although Mayor Martinez made a valid point, perhaps the City should start waiving fees because everyone could not be regulated and those regulations enforced on an equal basis. He stated that perhaps the City should waive the fees on the legitimate car washes, since those same fees were not imposed on the other car washes.

Mayor Martinez stated that he believed a distinction must be made between what Council called "legitimate," or a licensed business, and the non-profit organizations that were raising funds. He voiced concern with calling those non-profit organizations "illegitimate." He stated that such reference questioned the legitimacy of those non-profit organizations.

Mayor Pro Tem Irish clarified that his reference to "legitimate" was meant to refer to those organizations that were processing their waste in accordance with the City Code, such as paying all of the required fees and utilizing traps at additional expense to that operator. He stated that if the Mayor had been right in that the proposed regulations on car washes by non-profit organizations could not be enforced, then the City should perhaps also stop enforcing the requirements of the licensed car washes. He stated that the licensed car wash operators were currently required to incur the added costs to ensure compliance with the Code, yet the non-profit operations were not. Mayor Pro Tem Irish questioned the equatability of such requirements.

Mayor Martinez pointed out that non-profit car washes were generally not conducted from commercial properties that had held a car wash within the past few months. He hypothesized that such non-profit organizations could be holding car washes in such a manner and in areas where the water was not running off into the City's sources. He stated that in that event, the proposed restrictions would not benefit the City, but would eliminate that organization's ability to raise funds. He stated that was familiar with some locations that were utilized by non-profit organizations for car washes and that those locations did not pose a threat to the City. He then questioned whether car washes held on school properties negatively impacted the City.

City Manager John Longley stated that issue of car washes held on school properties was an issue that was defined in the staff report. He indicated that staff had preliminarily reviewed it and believed that those car washes were subject to City regulation, but that City Attorney Julia Lew would review the matter.

Council Member Hamilton stated that the Mayor brought up valid concerns with respect to protecting charitable organizations, and that protecting those organizations had been addressed by having them work with the commercial car wash operators to use the commercial facilities. He stated that this allowed for the reclamation of water.

Mayor Martinez then questioned whether conservation was the primary issue in proceeding.

Council Member Hamilton responded that conservation was part of the decision, but also pointed to the promotion of fair competition.

Mayor Martinez asserted that charitable organizations raising funds for non-profit use were not competing with businesses who operated for profit. He stated that the situation would be different if the charitable organizations were charging a fee, but asserted that such organizations instead requested donations.

Mayor Pro Tem Irish stated that he understood the point Mayor Martinez was making, but that he believed Council was getting side-tracked from the primary issue. He stated that the result from the wasted
water was the same whether the waste resulted from a commercial car wash that lacked the required sand trap or from a charitable car wash. He stated that if 10 or 15 non-profit organizations held a car wash every weekend, that situation equated to the operation of an illegal car all of the time, because the results were the same. He contended that the wasted water was untreated and was going where the City did not want it to go. Mayor Pro Tem Irish asserted that this was the issue. He then questioned why the City charged commercial operations such extreme fees if there was no impact.

Mayor Martinez agreed that there were issues that needed to be addressed by Council, but voiced opposition to expediting the item. He stated that he would like the public to have the opportunity to comment, particularly those organizations that would be affected. He then suggested that the item be discussed during the joint meeting between the Council and the schools. He stated that the City could inform the schools that Council would be discussing the matter at a date in the future and provide them with the opportunity to participate. He stated that the ability for many school clubs to raise funds would be negatively affected if Council proceeded. He then pointed out that many of the young individuals that donate their time at car washes to raise funds for non-profit uses could be doing other things that could cost the City money. He then asserted that those organizations needed some method for raising funds, and stated that the public should be given the opportunity to come before the Council regarding the proposed changes.

Council Member Hamilton responded that the public would have such an opportunity as adoption of the ordinance would require a public hearing.

In response to Mayor Martinez's question, City Manager John Longley stated that Council had suggested staff present the draft ordinance at the second meeting in November. Mr. Longley pointed out that the ordinance would be in draft form for Council's input.

City Attorney Julia Lew explained that since the ordinance would be in a rough draft format, she recommended that Council should not proceed with first reading at that time. She pointed out that currently, Council only had a sample ordinance from Delano with which to work, and that numerous adjustments would be needed to draft an ordinance for Porterville.

Mayor Pro Tem Irish stated that supported moving forward in an effort to create a balance between the commercial operations and the non-profit operations.

COUNCIL ACTION: MOVED by Mayor Pro Tem Irish, SECONDED by Council Member Hamilton that Council direct staff to prepare and bring back to Council on November 16, 2004 a draft ordinance regulating weekend car washes.

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

Disposition: Approved.

20. CONSIDERATION OF OHV PARK FEE ADJUSTMENT

Recommendation: That Council define direction for staff.

The City Manager presented the item and requested direction from Council.
Council Member Hamilton stated that he had requested that the item be added to the Agenda. He indicated that the motocross track in Porterville was considered to be one of the top ten tracks in California, but that a problem existed in keeping up with the maintenance due to under-staffing. He then confirmed with staff that the facility operated with a part-time supervisor and a volunteer part-time assistant. He stated that he had been informed that if the City were to raise the fee from $10 to $15 for “play” days, the City would be able to afford a full-time employee. He stated that staff had informed him that a certain process would need to be followed in order to increase the fee, but he believed that since the fee pertained to a recreational use, that process would not be applicable. He stated that all other parks were currently charging $15 to $25 fees, and that the Porterville park staff often received comments regarding the low fee. Council Member Hamilton then voiced support for bringing the item back to Council to raise the fee to $15. He then indicated that an individual who was knowledgeable on the topic was present in the audience to answer any questions the Council may have.

Mayor Martinez questioned whether raising the fee would provide the funds necessary to hire a full-time employee at the park.

Council Member Hamilton stated that according to the numbers that had been provided him, raising the fee would provide sufficient funds, and suggested that perhaps the Director of Parks and Leisure Services Jim Perrine could best answer that question.

City Manager John Longley stated that the answer was yes and no. Mr. Longley explained that if Council looked at a three-year average, the numbers would indicate that raising the fee would provide enough funds; however, if looked only at this year, the answer would be no. He stated that there was some loss on the track this year, but over a period of time, such as three years, the average indicated there would be enough money. At this point, hiring a full-time employee at the park would require a subsidy.

In response to Mayor Martinez’s question, Council Member Hamilton confirmed that an increase in the hours of operation was not being proposed. He then questioned whether the loss at the track could be attributed to the decrease in fees charged to promoters. He stated that previously, at staff’s recommendation, the contract fee charged by the City to sponsors had been lowered from approximately $1,200 to $700 or $800. He questioned whether that change had caused the track to now lose money.

Mr. Perrine responded that he was unaware if that had any impact on the loss, but did note that the track did not have the aggressive promotion as the track had a few years ago. He stated that he could not speak to exact costs.

City Manager John Longley stated that staff was not readily prepared to answer Council’s questions, as the item had been placed on the Agenda in an ad hoc manner. He stated that staff had been attempting to respond to questions out of context, and normally, staff would follow a process by which it would prepare a report and bring that report back to Council.

Mayor Martinez stated he was in agreement with staff bringing a report back for discussion.

Council Member Hamilton stated that he had wanted to bring the item to Council’s attention. He then suggested that staff speak with the individuals and participants at the park for their input.

City Manager John Longley confirmed with Council that staff would prepare a staff report on the item, and present it to Council at the next meeting.

Disposition: Continued.
21. WATER CONSERVATION PLAN PHASE II, WATER SYSTEM STATUS

Recommendation: That the Council:
1. Authorize returning to Phase I of the Water Conservation Plan; and
2. Bring the issue back to Council in April 2005 for re-evaluation.

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

Council Member Hamilton questioned if any of the City pumps were lowered during the past year in order to collect more water, to which staff responded that no pumps were lowered.

COUNCIL ACTION: MOVED by Mayor Pro Tem Irish, SECONDED by Council Member Hamilton that Council authorize returning to Phase I of the Water Conservation Plan, and bring the item back to Council in April 2005 for re-evaluation.

M.O. 14-101904

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

Disposition: Approved.

22. STATUS REPORT ON ESTABLISHING A YOUTH CONGRESS

Recommendation: That Council receive the status report and, if appropriate, provide further direction to staff.

City Manager John Longley presented the item, and Director of Parks and Leisure Services Jim Perrine presented the staff report.

Mayor Martinez requested that the item be included in the meeting between the City and the schools. He then stated that he had stopped by the meeting, and that he was pleased with staff’s work with the Youth Congress.

Mayor Pro Tem Irish requested that the Police Cadets also be represented.

Council Member Hamilton requested that staff provide him with a copy of the Youth Congress’ schedule so he may attend an upcoming meeting.

23. QUARTERLY PORTFOLIO SUMMARY

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

City Manager John Longley presented that item, and Chief Financial Officer Susan Slayton presented the staff report.

Council voiced a general satisfaction with the performance of the portfolio.
COUNCIL ACTION: MOVED by Council Member Hamilton, SECONDED by Mayor Pro Tem Irish that Council accept the quarterly Portfolio Summary in accordance with SB 564 and SB 866.

M.O. 15-101904

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

Disposition: Approved.

24. INTERIM FINANCIAL STATUS REPORT

Recommendation: That Council accept the interim financial status reports as presented.

City Manager John Longley introduced the item, and Chief Financial Officer Susan Slayton presented the staff report.

COUNCIL ACTION: MOVED by Council Member Hamilton, SECONDED by Mayor Pro Tem Irish that Council accept the interim financial status reports.

M.O. 16-101904

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

Disposition: Approved.

ORAL COMMUNICATIONS

None.

OTHER MATTERS

None.

ADJOURNMENT

Council adjourned at 9:23 p.m. to the meeting of October 26, 2004, 6:00 p.m.

______________________________________________
Patrice Hildreth, Deputy City Clerk

SEAL

______________________________________________
Pedro R. Martinez, Mayor
SUBJECT: REVISION TO ENGINEERS ESTIMATE OF PROBABLE COST - SLUDGE DRYING BED EXPANSION PROJECT

SOURCE: Public Works Department - Engineering Division

COMMENT: The plans and project manual were prepared for the Sludge Drying Bed Expansion Project. The authorization to advertise for bids was approved at the August 17, 2004 council meeting.

Due to design and construction changes required by the Regional Water Quality Control Board, the Engineers Estimate of Probable Cost changed from $741,137 to $757,093.70. The revised Engineers Estimate of Probable Cost is attached for reference.

Funding from the Wastewater Treatment Facility Capital Reserve was approved in the 2004/2005 Annual Budget and will be reimbursed through the CIEDB loan.

RECOMMENDATION: That the City Council:

1. Approve the revised Engineers Estimate of Probable Cost.

ATTACHMENT: Engineers Estimate of Probable Cost

Y:\Engineering\Project Files\Jason Huckleberry\Sludge Beds\Estimated\Revision of Estimated Cost - Sludge Drying Beds.wpd
### SLUDGE DRYING BED EXPANSION PROJECT

#### ESTIMATE OF PROBABLE COST

<table>
<thead>
<tr>
<th>Quantity</th>
<th>Unit</th>
<th>Item</th>
<th>Unit Price</th>
<th>Extension Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>LS</td>
<td>Clearing and Grubbing</td>
<td>$3,500.00</td>
<td>$3,500.00</td>
</tr>
<tr>
<td>26,308</td>
<td>CY</td>
<td>Excavation</td>
<td>$3.00</td>
<td>$78,924.00</td>
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<tr>
<td>8,842</td>
<td>CY</td>
<td>Compacted Subgrade</td>
<td>$4.00</td>
<td>$35,368.00</td>
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<tr>
<td>10,662</td>
<td>CY</td>
<td>Compacted Soil Cement Liner</td>
<td>$30.00</td>
<td>$319,860.00</td>
</tr>
<tr>
<td>1</td>
<td>LS</td>
<td>Test Cell w/ Synthetic Liner System Complete</td>
<td>$190,000.00</td>
<td>$190,000.00</td>
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<tr>
<td>1,141</td>
<td>LF</td>
<td>Chain Link Fencing</td>
<td>$15.00</td>
<td>$17,115.00</td>
</tr>
<tr>
<td>1</td>
<td>EA</td>
<td>22ft Chain Link Double Gate</td>
<td>$1,500.00</td>
<td>$1,500.00</td>
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<tr>
<td>4</td>
<td>EA</td>
<td>Discharge Outlets</td>
<td>$8,000.00</td>
<td>$32,000.00</td>
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<tr>
<td>1</td>
<td>LS</td>
<td>All Other Items Necessary</td>
<td>$10,000.00</td>
<td>$10,000.00</td>
</tr>
</tbody>
</table>

Baseline Construction Estimate  $688,267.00  
10% Estimate Contingency  $68,826.70  
Total Estimate of Probable Cost  $757,093.70

Certification:
- **Project Manager**: [Signature]  10-18-04  
- **Public Works Director**: [Signature]  10/25/04  
- **City Engineer**: [Signature]  10/23/04  
- **City Manager**: [Signature]  Date
SUBJECT: AUTHORIZATION TO NEGOTIATE CONTRACT FOR CONSULTANT SERVICES FOR ISLAND ANNEXATIONS

SOURCE: COMMUNITY DEVELOPMENT DEPARTMENT

COMMENT: On August 17, 2004, the City Council authorized Staff to solicit proposals from prospective consultants to assist the City in its efforts to annex the remaining unincorporated county islands. There are currently 18± islands that would qualify under the island annexation act and recent legislation (SB 1266). Staff has scheduled a meeting with the LAFCo staff to discuss the implication of SB 1266 on peninsulas around the perimeter of the incorporated city. The attached exhibit indicates the significant number of islands and peninsulas that affect the city relative to provision of public services and the construction of new public works projects that require close coordination with the County.

On August 24, 2004, Staff distributed the request for proposals (RFP) to five local engineers and consultants. One response was received. Quad Knopf is already under contract to provide on-call environmental services for the City. The on-call environmental consulting contract was entered into on April 16, 2003, and covers a two year period, which is due to expire on April 16, 2005.

In an effort to streamline processes, Staff is requesting that the Council approve an amendment to the existing on-call consulting services contract to include island annexation work, and to extend the expiration of the contract to April 16, 2006. Extending the contract will also hold the fees consistent for an additional year of service. As a reminder, the on-call services are utilized when there is a designated funding source for a capital project or program and/or when a private developer wishes to utilize the streamlined services to initiate preparation of environmental documents much earlier than could be achieved by staff or by soliciting individual proposals from other consultants.

Also on August 17, 2004, the City Council authorized the use of approximately $30,000 in vehicle replacement from Community Development. In addition to those funds already designated for this effort, Staff is requesting that remaining funds from copier replacement totaling approximately $22,000 also be allocated to this effort. The funds were derived from equipment replacement depreciation for copiers in the Public Works and Community Development Departments. Since the copiers in the City are currently at the beginning of a five (5) year lease, the funds are not needed for the original purpose. Allocation of the additional funds will bring the total to approximately $52,000. Considering LAFCo application fees and consultant services, Staff anticipates being able to annex approximately 4 to 5 islands. Staff's focus is on those areas that will be beneficial to construct City sponsored public works projects. Additional islands would be considered in the event additional funding sources are identified.
RECOMMENDATION: That the City Council:

1. Authorize Staff to negotiate with Quad Knopf for on-call Island Annexation services;
2. Authorize the amendment of the existing on-call environmental services contract to include island annexations and extend the expiration date to April 16, 2006;
3. Authorize the use of equipment replacement funds from the Public Works and Community Development Departments totaling approximately $22,000 in this effort; and
4. Authorize the Mayor to sign all necessary documents to facilitate this process.

ATTACHMENT: Exhibit of County Islands and Peninsulas
**SUBJECT:** AWARD CONTRACT - ONE-TON CAB & CHASSIS TRUCKS

**SOURCE:** Administrative Services/Purchasing

**COMMENT:** Staff solicited bids for two (2) new one-ton cab & chassis trucks with dual rear wheels for the Sewer and Water Departments. In response to solicitation, six (6) bids were received as follows:

<table>
<thead>
<tr>
<th>Bidder</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Motor City GMC</td>
<td>$38,679.92</td>
</tr>
<tr>
<td>Bakersfield, CA</td>
<td></td>
</tr>
<tr>
<td>Century Chevrolet</td>
<td>$38,885.10</td>
</tr>
<tr>
<td>Woodland, CA</td>
<td></td>
</tr>
<tr>
<td>Hoblitt Fleet Group</td>
<td>$41,091.32</td>
</tr>
<tr>
<td>Woodland, CA</td>
<td></td>
</tr>
<tr>
<td>Melrose Ford</td>
<td>$41,326.99</td>
</tr>
<tr>
<td>Oakland, CA</td>
<td></td>
</tr>
<tr>
<td>Jim Burke Ford</td>
<td>$41,368.87</td>
</tr>
<tr>
<td>Bakersfield, CA</td>
<td></td>
</tr>
<tr>
<td>Clevenger Ford</td>
<td>$42,551.78</td>
</tr>
<tr>
<td>Porterville, CA</td>
<td></td>
</tr>
</tbody>
</table>

Staff has reviewed the bids and finds the low bidder to be responsive to the specifications. Funds for the purchase of the vehicle have been appropriated in the Water and Sewer Departments’ Equipment Replacement Funds.

**RECOMMENDATION:** That Council award the contract for two (2) new one-ton cab & chassis trucks to Motor City GMC of Bakersfield, CA, in the amount of $38,679.92. Further, that Council authorize payment upon satisfactory delivery of the equipment.

D.D. Appropriated/Funded C.M. Item No. 4
GMC Sierra 3500 Reg Cab 161.5" WB, 84.9" CA WT TC36403

VEHICLE DETAILS

STANDARD EQUIPMENT - TC36403 Reg Cab 161.5" WB, 84.9" CA WT

EXTERIOR

- Paint, solid
- Bumper, front, chrome (Includes Gray lower with Work Truck and Base Models.)
- Air dam, Gray
- Wheel flares, front only (See Color and Trim section for available colors.)
- Grille, Gray surround
- Headlamps, dual halogen composite, includes flash-to-pass feature and automatic lamp control
- Lamps, amber roof marker
- Lamps, dual cargo area lamps
- Daytime running lamps, includes automatic exterior lamp control
- Mirrors, outside rearview, foldaway, manual, Black, adjustable
- Glass, Solar-Ray light tinted, all windows
- Wipers, intermittent, front, wet-arm with pulse washers
SUBJECT: AWARD CONTRACT - ONE-HALF TON PICKUP TRUCK

SOURCE: Administrative Services/Purchasing

COMMENT: Staff solicited bids for a new one-half ton pickup truck for the Water Department. In response to solicitation, six (6) bids were received as follows:

<table>
<thead>
<tr>
<th>Bidder</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hoblitt Fleet Group</td>
<td>$14,418.62</td>
</tr>
<tr>
<td>Woodland, CA</td>
<td></td>
</tr>
<tr>
<td>Melrose Ford</td>
<td>$14,425.07</td>
</tr>
<tr>
<td>Oakland, CA</td>
<td></td>
</tr>
<tr>
<td>Century Chevrolet</td>
<td>$14,457.98</td>
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<tr>
<td>Woodland, CA</td>
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<tr>
<td>Motor City GMC</td>
<td>$14,911.68</td>
</tr>
<tr>
<td>Bakersfield, CA</td>
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</tr>
<tr>
<td>Clevenger Ford</td>
<td>$15,209.97</td>
</tr>
<tr>
<td>Porterville, CA</td>
<td></td>
</tr>
<tr>
<td>Jim Burke Ford</td>
<td>$15,438.22</td>
</tr>
<tr>
<td>Bakersfield, CA</td>
<td></td>
</tr>
</tbody>
</table>

Staff has reviewed the bids and finds the low bidder to be responsive to the specifications. Funds for the purchase of the vehicle have been appropriated in the Water Department’s Equipment Replacement Fund.

RECOMMENDATION: That Council award the contract for one (1) new one-half ton pickup truck to Hoblitt Fleet Group of Woodland, CA, in the amount of $14,418.62. Further, that Council authorize payment upon satisfactory delivery of the equipment.
SUBJECT: AWARD CONTRACT - REMOVAL OF PLUM ORCHARD

SOURCE: Administrative Services Department - Purchasing Division

COMMENT: Staff solicited proposals for the removal of a plum orchard on 30 acres of City-owned property located at Avenue 128 and Road 216 in Porterville. Since plums cannot be irrigated with waste water from the City’s Wastewater Treatment Facility, the plums need to be removed to accommodate leveling and conversion to a fodder crop. These additional 30 acres will increase our acreage under irrigation to 445 acres. Our minimum acreage needed for irrigation to meet the requirements of the Cease and Desist Order issued by the Regional Water Quality Control Board is 530 acres.

Three Proposals were received as follows:

San Joaquin Biomass $ 8,500.00
Delano, CA

Wilson Ag $ 9,000.00
Shafter, CA

Sierra Industries, Inc. $ 10,500.00
Visalia, CA

Staff has reviewed the lowest proposal and finds it meets the City’s requirements. The contractor will provide certificates of insurance evidencing General Liability insurance and statutory limits of Workers’ Compensation. Funds for the project are appropriated in the Sewer Operating Budget.

RECOMMENDATION:

That Council award a contract to San Joaquin Biomass of Delano, CA, for the removal of the plum orchard in the amount of $8,500. Further, that Council authorize payment for said work upon satisfactory completion.

D.D. Appropriated/Funded C.M. Item No. 6
SUBJECT: ACCEPTANCE OF THE NELSON BUILDING DEMOLITION PROJECT

SOURCE: Public Works Department - Engineering Division

COMMENT: Bowen Engineering has completed the demolition of the Nelson Building per plans and specifications. The project consisted of the demolition and removal of the building located at 296 through 308 N. Main Street.

City Council authorized expenditure of $140,800. Final construction cost is $131,906.

Bowen Engineering requests that the City accept the project as complete. Staff reviewed the work and found it acceptable.

RECOMMENDATION: That City Council:

1. Accept the project as complete;

2. Authorize the filing of the Notice of Completion; and

3. Authorize the release of the 10% retention thirty-five (35) days after recordation, provided no stop notices have been filed.

ATTACHMENT: Locator Map

BSR Y:\Engineering\Council Items\Acceptance of the Nelson Building Demolition wpd

[Signatures]

Dir Appropriated/Funded CM Item No. 7
SUBJECT: INTENT TO VACATE PUBLIC VEHICULAR TURNAROUND EASEMENTS RELATED TO THE DEVELOPMENT OF RIVER SPRINGS, PHASE THREE SUBDIVISION (G.W. HOMES, INC.)

SOURCE: Public Works Department - Engineering Division

COMMENT: The City has received a request to vacate some of the vehicular turnaround easements described in Document No. 2000-0072322, recorded November 7, 2000, in the Office of the Tulare County Recorder. These easements were necessary for the orderly development of the prior phase of the River Springs Subdivision, which is west of and adjacent to this third phase. These easements are no longer needed due to the construction of the public improvements for River Springs, Phase Three Subdivision, currently under construction. The City has authority to vacate these easements under Section 8320, Part 3, Division 9 of the Streets and Highways Code of the State of California.

Staff believes that there are no problems with any reversionary rights since these easements are in favor of the City of Porterville. Abandonment of these easements do not affect other agencies or other utility companies. The need for additional public utility easements will be addressed during the processing of the Final Map for River Springs, Phase Three Subdivision.

RECOMMENDATION: That City Council:

1. Pass a Resolution of Intent to Vacate easements dedicated to the City of Porterville as Parcel 1 and Parcel 2 of Document No, 2000-0072322, recorded November 7, 2000, in the Office of the Tulare County Recorder; and

2. Set the Council Meeting of December 7, 2004, as the time and place for a public hearing.

ATTACHMENT: Resolution Document No. 2000-0072322 w/ Locator Map
RESOLUTION NO. ______-2004

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE
OF INTENTION TO VACATE AND CLOSE TO PUBLIC USE, EASEMENTS DEDICATED
AS PARCEL 1 AND 2 OF DOCUMENT NO. 2000-0072322

SECTION 1: The Council of the City of Porterville, California, pursuant to Division 9, Part 3,
Section 8320, of Streets and Highways Code of the State of California, does hereby resolve as follows,
to-wit:

That it is the intention of the Council of the City of Porterville to vacate, abandon, and close to
public use that certain public vehicular turnaround easements in the City of Porterville, County of
Tulare, State of California, and known generally as easements necessary for the orderly development
River Springs, Phase Two Subdivision, of which easements are located at the easterly terminuses of
Date Avenue and River Springs Drive between Beverly Street and the Tule River.

SECTION 2: A map or plan of said public easements intended to be vacated, abandoned and
closed to public use is on file in the office of the City Clerk of the City of Porterville, reference to which
is hereby made.

SECTION 3: That the public convenience and necessity requires the reservation of easements
and rights of way for structures enumerated, if any, in Section 8340 of the California Streets and
Highways Code.

SECTION 4: Notice is further given that on Tuesday, the 7th day of December, 2004, at 7:00
p.m., or as soon thereafter as the matter can be heard, in the Council Chambers in the City Hall in the
City of Porterville, at 291 North Main Street, is hereby fixed for the time and place for hearing any
objections to the vacation, abandonment and closing to public use of said easements way.

______________________________
Pedro R. Martinez, Mayor

ATTEST:

John Longley, City Clerk

______________________________
By: Georgia Hawley, Chief Deputy Clerk
Grant of Easement

THE UNDERSIGNED GRANTOR(s) DECLARE(s)

DOCUMENTARY TRANSFER TAX IS $__________

[ ] _____ unincorporated area  [ ] City of __________________________
[ ] Parcel No. ________  [ ] computed on full value of interest or property conveyed, or
[ ] _______  [ ] computed on full value less value of liens or encumbrances remaining at time of sale, and

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

GW HOMES, INC., an Oklahoma Corporation

hereby GRANTS to  City of Porterville, a Municipal Corporation

the following described real property in the City of Porterville

County of Tulare, State of California:

See Exhibit "A" attached hereto and made a part hereof.

Dated:  9-25-00

STATE OF CALIFORNIA
COUNTY OF Tulare S.S.
On September 25, 2000 before me,
Vickie Schulz
a Notary Public in and for said County and State, personally appeared
Gregory Lee Woodard
personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature  Vickie Schulz

GW HOMES, INC.

BY:  

Greg Woodard, President

VICKIE SCHULZ
Commission # 1232760
Notary Public - California
Tulare County

- This area for official notarial seal -
EXHIBIT “A”

Easements for a temporary vehicular turnaround, over, across and within those portions of the Southwest quarter of Section 34, Township 21 South, Range 27 East, Mount Diablo Base and Meridian, in the City of Porterville, County of Tulare, State of California, described as follows:

Parcel 1

Beginning at the Southeast corner of Lot 83 of River Springs, Phase Two, per map recorded in Book __38__, page __83__, of Maps in the office of the County Recorder of said County;

Thence, Easterly, Southerly and Westerly along a 45 foot radius curve concave to the West through a central angle of 269°10'12", an arc distance of 211.41 feet to the Northeast corner of Lot 82 of said River Springs, Phase Two;

Thence, North 38°30'09" West, 64.10 feet to the point of beginning.

Parcel 2

Beginning at the Southeasterly corner of Lot 66 of River Springs, Phase Two, per map recorded in Book __38__, page __83__, of Maps in the office of the County Recorder of said County;

Thence, South 17°50'57" East, 50.00 feet;

Thence, North 72°09'03" East, 44.72 feet;

Thence, Easterly, Northerly and Westerly along a 45 foot radius curve, concave to the Southwest, through a central angle of 263°37'14", an arc distance of 207.05 feet to the point of beginning.

Parcel 3

Beginning at the Southwest corner of Lot 63 of River Springs, Phase Two, per map recorded in Book __38__, page __83__, of Maps in the office of the County Recorder of said County;

Thence, South 72°09'03" West, 30.00 feet;

Thence, South 17°50'57" East, 50.00 feet;

Thence, North 72°09'03" East, 30.00 feet;
Thence, North 17°50'57" West, 50.00 feet to the point of beginning.

Parcel 4

Beginning at the Southeast corner of Lot 56 of River Springs, Phase Two, per map recorded in Book ____, page ____, of Maps in the office of the County Recorder of said County;

Thence, South 0°06'41" West, 30.00 feet;

Thence, North 87°58'17" East, 50.03 feet;

Thence, North 0°06'41" East, 30.00 feet to the Southwest corner of Lot 57 of said River Springs, Phase Two;

Thence, South 87°58'17" West, 50.03 feet to the point of beginning.
RESOLUTION NO. 118-2000

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE ACCEPTING A GRANT DEED OF EASEMENT FROM GW HOMES, INC.

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of Porterville, that the City of Porterville hereby accepts a Grant Deed of easement from GW Homes, Inc., an Oklahoma Corporation, for the following described property in the City of Porterville, County of Tulare, State of California, described as follows:

See Exhibit "A" Attached hereto and made a Part hereof.

BE IT FURTHER RESOLVED that said deed be recorded in the office of the Tulare County Recorder. The foregoing has been accepted by the City Council for the City of Porterville.

Virginia R. Gurrola, Mayor

ATTEST:

C. G. Huffaker, City City Clerk

STATE OF CALIFORNIA)
( SS
COUNTY OF TULARE )

I, C. G. HUFFAKER, the duly appointed City Clerk of the City of Porterville, do hereby certify and declare that the foregoing is a full, true and correct copy of a resolution duly and regularly passed and adopted at a Special meeting of the Porterville City Council called and held on the 22nd day of September, 2000.

THAT said resolution was duly passed and adopted by the following vote:

AYES: COUNCILMEN: Irish, Wilson, Leavitt, Gurrola
NOES: COUNCILMEN: None
ABSENT: COUNCILMEN: Woods
ABSTAIN: COUNCILMEN: None

C. G. HUFFAKER, City Clerk

By Georgia Hawley, Deputy City Clerk
EXHIBIT "A"

Easements for a temporary vehicular turnaround, over, across and within those portions of the Southwest quarter of Section 34, Township 21 South, Range 27 East, Mount Diablo Base and Meridian, in the City of Porterville, County of Tulare, State of California, described as follows:

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Beginning at the Southeast corner of Lot 83 of River Springs, Phase Two, per map recorded in Book 38, page 83, of Maps in the office of the County Recorder of said County;

Thence, Easterly, Southerly and Westerly along a 45 foot radius curve concave to the West through a central angle of 269°10'12", an arc distance of 211.41 feet to the Northeast corner of Lot 82 of said River Springs, Phase Two;

Thence, North 38°30'09" West, 64.10 feet to the point of beginning.

Parcel 2

Beginning at the Southeasterly corner of Lot 66 of River Springs, Phase Two, per map recorded in Book 38, page 83, of Maps in the office of the County Recorder of said County;

Thence, South 17°50'57" East, 50.00 feet;

Thence, North 72°09'03" East, 44.72 feet;

Thence, Easterly, Northerly and Westerly along a 45 foot radius curve, concave to the Southwest, through a central angle of 263°37'14", an arc distance of 207.05 feet to the point of beginning.

Parcel 3

Beginning at the Southwest corner of Lot 63 of River Springs, Phase Two, per map recorded in Book 38, page 83, of Maps in the office of the County Recorder of said County;

Thence, South 72°09'03" West, 30.00 feet;

Thence, South 17°50'57" East, 50.00 feet;

Thence, North 72°09'03" East, 30.00 feet;
Thence, North 17°50'57" West, 50.00 feet to the point of beginning.

Parcel 4

Beginning at the Southeast corner of Lot 56 of River Springs, Phase Two, per map recorded in Book 38, page 83, of Maps in the office of the County Recorder of said County;

Thence, South 0°06'41" West, 30.00 feet;

Thence, North 87°58'17" East, 50.03 feet;

Thence, North 0°06'41" East, 30.00 feet to the Southwest corner of Lot 57 of said River Springs, Phase Two;

Thence, South 87°58'17" West, 50.03 feet to the point of beginning.
SUBJECT: APPROVAL FOR COMMUNITY CIVIC EVENT
PORTERVILLE CHAMBER OF COMMERCE, ROTARY CLUB OF PORTERVILLE, AND DOWNTOWN PORTERVILLE ASSOCIATION
ANNUAL CHILDREN'S CHRISTMAS PARADE - NOVEMBER 30, 2004
SOURCE: Administrative Services Department - Finance Division

COMMENT: The Porterville Chamber of Commerce, Rotary Club of Porterville, and Downtown Porterville Association are requesting approval to hold the annual Children's Christmas Parade along Main Street on Tuesday, November 30, 2004, from 5:00 p.m. to 9:00 p.m. This application is being submitted under the Community Civic Event Ordinance No. 1326, as amended. The following closures are requested:

STREETS (5:00 p.m. - 9:00 p.m.):
- Main Street from Danner Avenue to Olive Avenue;
- Morton Avenue from Hockett Street to Second Street;
- Harrison Avenue from Hockett Street to Second Street;
- Thurman Avenue from Hockett Street to Second Street;
- Putnam Avenue from Hockett Street to Second Street;
- Oak Avenue from Hockett Street to Second Street;
- Garden Avenue from Hockett Street to Second Street;
- Second Street from Olive Avenue to Oak Avenue;
- Olive Avenue from Hockett Street to Second Street;
- Cleveland Avenue from Hockett Street to Second Street (see comments on attached map);
- School Avenue, Bellevue Avenue and North Avenue from Main Street to 150' on east side; and
- Doris Avenue from Main Street to Division Street.

SIDEWALKS (5:00 p.m. - 9:00 p.m.):
- Main Street from Danner Avenue to Olive Avenue; and
- Olive Avenue from Main Street to Second Street.

PARKING SPACES (3:30 p.m. - 9:00 p.m.):
- Main Street in front of City Hall.

This application has been routed according to the ordinance regulations and has been reviewed by all departments involved. The requirements are listed on the attached copy of the Application, Agreement and Exhibit "A."

DD Appropriated/Funded CM Item No. 9
The closure of Main Street at 5:00 p.m. will require the early closure of the Fixed Route Transit System at 4:30 p.m., instead of the usual 6:00 p.m., on November 30, 2004. Staff is requesting that Council authorize the change in schedule for the Fixed Route system only.

Early closure of the parking spaces in front of City Hall (requested from 3:30 p.m. to 5:00 p.m. for placement of the judges' stand) will adversely affect City Hall patrons. Tuesdays are water turn-off days, and citizens utilize those spaces until 5:00 p.m. to come into City Hall's Finance Department and pay their utility bills. This conflict was resolved last year by placing the judges stand at the north end of City Hall along Main St.

RECOMMENDATION: That Council:

1. Approve the Community Civic Event application from the Porterville Chamber of Commerce, Rotary Club of Porterville, and Downtown Porterville Association subject to the Restrictions and Requirements contained in the Application, Agreement, and Exhibit "A" of the Community Civic Event Application;

2. Authorize the temporary suspension of the Fixed Route Transit System from 4:30 p.m. to 6:00 p.m. on November 30, 2004;

3. Restrict the closure of parking spaces in front of City Hall from 3:30 p.m. to 5:00 p.m., to those at the north end of City Hall along Main St.

CITY OF PORTERVILLE
APPLICATION AND AGREEMENT FOR A PERMIT TO HOLD A
COMMUNITY CIVIC EVENT OR OTHER ACTIVITY TO BE HELD ON PUBLIC PROPERTY

Application date:  Oct 11, 2004  Event date:  Nov 30, 2004

Name of Event:  Annual Children's Christmas Parade

Sponsoring organization:  Rotary Club of Porterville, Chamber of Commerce, PHONE # 781-2502
Address:  Downtown Porterville Association, Inc.
93 N. Main St., Porterville, CA 93257

Authorized representative:  Donnette Silva Carter  PHONE # 781-2502
Address:  93 N. Main St., Porterville, CA 93257

Event chairperson:  Zach Young  PHONE # 781-3033

Location of event (location map must be attached):  Main Street, downtown parade route, and adjacent streets

Type of event/method of operation:  Children's Christmas Parade, assembly, parade route, and disbursement

Nonprofit status determination:  on file

City services requested (any fees associated with these services will be billed separately):

- Barricades (quantity):  
- Street sweeping:  Yes  No
- Police protection:  Yes  No
- Refuse pickup:  Yes  No
- Other:

Parks facility application required:  Yes  No
Assembly permit required:  Yes  No

STAFF COMMENTS (list special requirements or conditions for event):

Approve  Deny

Bus Lic Spvr  
Pub Works Dir  
Comm Dev Dir  
Field Svcs Mgr  
Fire Chief  
Parks Dir  
Police Chief  
Risk Manager  

1 of 4
CITY OF PORTERVILLE

APPLICATION AND AGREEMENT FOR A PERMIT TO HOLD A COMMUNITY CIVIC EVENT OR OTHER ACTIVITY TO BE HELD ON PUBLIC PROPERTY

Authorization: This permit must be submitted 30 days PRIOR to the date of the event in order to obtain City Council approval.

City Code requirements:

At least 48" must remain clear on sidewalks for pedestrian traffic.
Do not block any entrance to or exit from buildings.
Area must be accessible to emergency and safety personnel and vehicles.
Electrical cords must be approved and installation checked by the Fire Department.

Liability insurance: The sponsoring organization/applicant agrees to provide and keep in force during the term of this permit a policy of liability and property damage insurance against liability for personal injury, including accidental death, as well as liability for property damage which may arise in any way during the term of this permit. The City of Porterville shall be named as additional insured. The amounts of such insurance and any additional requirements are listed in Exhibit "A."

Alcohol liability insurance: Organization/Applicant will obtain an alcohol permit if any alcoholic beverages are to be served. The insurance policy shall be endorsed to include full liquor liability in an amount not less than one million dollars ($1,000,000) per occurrence. The City of Porterville shall be named as additional insured against all claims arising out of or in connection with the issuance of this permit or the operation of the permittee, his/her agents or representatives pursuant the permit. Claims-made policies are not acceptable.

Health permit: Organization/Applicant will obtain or ensure that all participants obtain a health permit(s) from the County of Tulare Department of Health if any food is to be served in connection with this Community Civic Event.

First aid station: Organization/Applicant will establish a first aid station to provide basic emergency care, such as ice/hot packs, bandages, and compresses.

Agreement: The sponsoring organization/applicant agrees to comply with all provisions of the Community Civic Event Ordinance 1326, as amended, and the terms and conditions set forth by City Council and stated in Exhibit "A." The sponsoring organization/applicant agrees, during the term of this permit, to secure and hold the City free and harmless from all loss, liability, and claims for damages, costs and charges of any kind of character arising out of, relating to, or in any way connected with his/her performance of this permit. Said agreement to hold harmless shall include and extend to any injury to any person or persons, or property of the kind whatsoever and to whomever belonging, including, but not limited to, said organization/applicant, and shall not be liable to the City for any injury to persons or property which may result solely or primarily from the action or non-action of the City or its directors, officers, or employees.

(Name of organization)  (Signature)  (Date)
CITY OF PORTERVILLE

VENDOR/PARTICIPANT LIST IN CONNECTION WITH THE APPLICATION AND AGREEMENT FOR A PERMIT TO HOLD A COMMUNITY CIVIC EVENT OR OTHER ACTIVITY TO BE HELD ON PUBLIC PROPERTY

Name of event: Annual Children's Christmas Parade

Sponsoring organization: Rotary Club of Porterville, Porterville Chamber of Commerce, Downtown Porterville Association, City

Location: Main Street Event date: Nov. 30, 2004

List all firms, individuals, organizations, etc., that will engage in selling at or participate in the above-named event. NO PERMIT WILL ISSUED WITHOUT THIS INFORMATION. This form should be completed at the time of application, but must be submitted one week prior to the event.

<table>
<thead>
<tr>
<th>Vendor name</th>
<th>Address</th>
<th>Telephone</th>
<th>Type of Activity</th>
</tr>
</thead>
<tbody>
<tr>
<td>DPA to provide upon vendor sign-up</td>
<td></td>
<td></td>
<td>Food Booths</td>
</tr>
<tr>
<td>Product Vendor</td>
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</tr>
</tbody>
</table>
CITY OF PORTERVILLE

REQUEST FOR STREET CLOSURES AND PUBLIC PROPERTY USAGE IN CONNECTION WITH THE
APPLICATION AND AGREEMENT FOR A PERMIT TO HOLD A COMMUNITY CIVIC EVENT OR OTHER
ACTIVITY TO BE HELD ON PUBLIC PROPERTY

Name of event: Annual Children's Christmas Parade

Sponsoring organization: Rotary Club of Porterville, Porterville Chamber of Commerce,
Downtown Porterville Association

Event date: Nov. 30, 2004

Hours: 5:00 - 9:00 pm - streets closed
3:00 - 5:00 pm - parking spaces in front of City Hall and Chamber of Commerce

ATTACH MAP MARKING AREAS TO BE CLOSED OR USED

<table>
<thead>
<tr>
<th>Street Name</th>
<th>From</th>
<th>To</th>
<th>Activity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Main Street</td>
<td>Danner Ave.</td>
<td>Olive Ave.</td>
<td>Parade Route &amp; Assembly</td>
</tr>
<tr>
<td>Olive Ave</td>
<td>Hockett St</td>
<td>Second St.</td>
<td>Parade Route</td>
</tr>
<tr>
<td>Market, Harrison, Thomas Hockett St</td>
<td>Second St.</td>
<td>&quot;</td>
<td>&quot;</td>
</tr>
<tr>
<td>Cleveland, Nuttie, Oak</td>
<td>&quot;</td>
<td>&quot;</td>
<td>&quot;</td>
</tr>
<tr>
<td>Second St.</td>
<td>Olive Ave</td>
<td>Oak Ave.</td>
<td>&quot;</td>
</tr>
<tr>
<td>Garden Ave, Mill Ave</td>
<td>Main St.</td>
<td>Second</td>
<td>Parade Disbursement</td>
</tr>
<tr>
<td>School Bellview</td>
<td>Main St.</td>
<td>&quot;</td>
<td>&quot;</td>
</tr>
<tr>
<td>Sidewalks &amp; Lots</td>
<td>From</td>
<td>Division of west side</td>
<td>Parade Assembly</td>
</tr>
<tr>
<td>Main St.</td>
<td>Danner</td>
<td>Olive</td>
<td>View Parade and Assembly Area</td>
</tr>
<tr>
<td>Olive Ave</td>
<td>Main St.</td>
<td>Second St.</td>
<td>&quot;</td>
</tr>
</tbody>
</table>

Parking lots and spaces

Location

Activity

Main St. City Hall and Chamber of Commerce Placement of Judges' Stand and Announcers
Also
Main St.
and Side
streets from
Morton to
Danner

Children's Christmas Parade
REQUIREMENTS FOR COMMUNITY CIVIC EVENT

PORTERVILLE CHAMBER OF COMMERCE, ROTARY CLUB OF PORTERVILLE, AND DOWNTOWN PORTERVILLE ASSOCIATION

ANNUAL CHILDREN’S CHRISTMAS PARADE

NOVEMBER 30, 2004

Business License Supervisor:  
    K. Maxwell

Watch for vendor list.

Public Works Director:  
    B. Rodriguez

No comments.

Community Development Director:  
    B. Dunlap

Obtain C.C. & RDA approval for use of city and Agency owned property.

Field Services Manager:  
    B. Styles

City will close street and barricade.

Fire Chief:  
    F. Guyton

No comments.

Parks and Leisure Services Director:  
    J. Perrine

Please stay out of planters.

Police Chief:  
    S. Rodriguez

Refer to attached conditions/requirements.

Risk Manager:  
    D. Pyle

See attached.
REQUIREMENTS FOR COMMUNITY CIVIC EVENT

Sponsors: Porterville Chamber of Commerce, Rotary Club of Porterville, and Downtown Porterville Association

Event: Annual Children's Christmas Parade

Event Chairman: Zach Young

Location: Main Street

Date of Event: November 30, 2004

Time of Event: 5:00 p.m. to 9:00 p.m.

RISK MANAGEMENT: Conditions of Approval

That the Porterville Chamber of Commerce provide a Certificate of Commercial General Liability Insurance Coverage evidencing coverage of not less than $1,000,000 per occurrence, and having the appropriate Endorsement naming the City of Porterville, its Officers, Employees, Agents and Volunteers as “Additional Insured” against all claims arising from, or in connection with, the Permittee’s operation and sponsorship of the aforementioned Community Civic Event.

a. Said Certificate of Insurance shall be an original (fax and xerographic copies not acceptable), the Certificate shall be signed by an agent authorized to bind insurance coverage with the carrier, and the deductible, if any, shall not be greater than $1,000.

b. Said insurance shall be primary to the insurance held by the City of Porterville, be with a company having an A.M. Best Rating of no less that A:VII, and the insurance company must be an “admitted” insurer in the State of California.
Conditions/Requirements for Children’s Christmas Parade

➢ City Council approval is required for such street closures.

➢ Ensure adequate barricades/barriers are used to warn motorists of non-access and prevent vehicle access to those designated areas.

➢ Children’s Christmas Parade Committee should meet with street vendors to coordinate rules regarding their activities, such as:

   ▪ Staying off the parade route and crossing in front of floats or groups
   ▪ Shall not sell silly string, snap caps or party poppers
   ▪ Ensure each vendor has properly obtained a City business license

➢ Food vendors should be situated where they minimally block the sidewalk.

➢ Food vendors should provide inspection certificates from the Tulare County Health Department to members of the Children’s Christmas Parade Committee, to ensure safe food products.

➢ Throwing candy from vehicles, floats, or any parade entry is prohibited. This results in children scampering to catch or find candy in a crowded environment, and causes others to run out into the street. This practice creates significant and unnecessary risk for parade goers. All registered parade entrants should be informed of this prohibition and efforts taken to cease this practice.

Silver Rodriguez
Chief of Police
SUBJECT: REQUEST FOR STREET CLOSURE - MYERS' 10TH ANNUAL CHRISTMAS TREE MEMORIAL SERVICE

SOURCE: Administrative Services/City Clerk Division

COMMENT: Richard Mendivil, Director of Myers Funeral Service and Crematory, has requested an assemblies permit for December 2, 2004, in order to hold the lighting ceremony for Myers' Tenth Annual Christmas Tree Memorial Service. The ceremony will be held in front of Myers Chapel on "E" Street at 7:00 p.m. One thousand people attended the ceremony last year, and Mr. Mendivil has requested an assemblies permit for 1,000 people again this year.

In conjunction with this ceremony, Mr. Mendivil is also requesting that Council approve the closure of "E" Street, between Putnam and Cleveland Avenues, from 6:00 p.m. to 8:30 p.m. on December 2, 2004 for the safety of those attending.

The Police Chief has approved the Assemblies Permit, which is attached. Staff is recommending that the same requirements as previous years be specified again this year, i.e., Myers to provide the necessary insurance to cover this event, together with police officers to control the crowd, at a total cost to Myers not to exceed $500.00, notwithstanding insurance costs.

RECOMMENDATION: That the City Council approve the closure of "E" Street, between Putnam and Cleveland, on December 2, 2004, from 6:00 p.m. to 8:30 p.m. subject to the conditions specified.

ATTACHMENTS: 1. Richard Mendivil Letter dated October 8, 2004
2. Application for Assemblies Permit - Richard Mendivil
3. Insurance Certificate

Item No. 10
October 8, 2004

To: Porterville City Council

We respectfully request that “E” Street be blocked off at Putnam and Cleveland Avenues the evening of Thursday, December 2nd from approximately 5-9 P.M., for the protection and safety of those who will be attending the Myers Christmas Tree Memorial Service.

Last December, Myers Funeral Service held their Ninth Annual Christmas Tree Memorial Tree Service at this location. The response from the community was overwhelming and more than even we had anticipated. There were approximately 1,000 people from the local community and outlying areas attending.

Myers Funeral Service’s purpose in beginning this tradition was to give back to the community in the way of service. It allowed families a way to remember their loved ones who passed away. Many family members place ornaments on the trees, prior to the service, (or after), commemorating their loved ones.

A beautiful memorial service is planned for the evening of December 2, 2004, at 7:00 P.M. at Myers Funeral Service, when the community will be invited to attend and celebrate the beginning of the season by remembering their loved ones. At the conclusion of the service, the trees will be lit and remain lit throughout December.

As this event was so well received by the community the past nine years, and this years anticipated crowd of even greater than the 1,000 that we had last year, we are requesting the “E” street by blocked off between Putnam and Cleveland Avenues; thereby assisting the protection/safety of those attending.

Enclosed, you will find an “Assemblies Permit”, signed by the Porterville Chief of Police, allowing us to have the service itself.

Thank you for your consideration of the request.

Sincerely,

[Signature]

Richard Mendivil
Manager

RM:at
Encl.
ORDINANCE NUMBER 927
Section 18-7.2

Application for ASSEMBLIES or MEETINGS on public streets, sidewalks or parks, within the City of Porterville.

This application MUST BE FILED WITHIN FOUR (4) DAYS PRIOR to the date of the assembly or meeting.

A. ____________________________________________________________________________
   (Name/Address) __________________________ (Telephone) __________________________

B. ____________________________________________________________________________
   Myers Funeral Service & crematory, 248 N. "E" St. (559) 784-5454
   (Name & Address of Organization) __________________________ (Telephone) ________
   Richard Mendivil (559) 784-5454
   (Authorized Head of Organization) __________________________ (Telephone) ________

C. Name of Event Chairman __________________________ Tillie Berrones-Padron

D. Purpose of event: __________________________ Memorial service for families in the community that
   have lost loved ones.

E. Date & Time of Event __________________________ December 2, 2004 at 7:00 P.M.

F. Number of persons __________________________ expecting 1,000

G. Location of the assembly area of event __________________________ Myers Funeral Service & Crematory
   248 N. "E" St.

H. Security Guards required? [ ] yes [X] no If so, how many? __________

I. Plans for the assembly & dispersement of the event. Indicate times thereof beginning 6:00 P.M. ending 8:30 P.M.

J. Other information __________________________ Following the same procedure of the past nine years.

I HEREBY AGREE TO ABIDE BY ALL PROVISIONS SET FORTH IN CITY ORDINANCE 927,
SECTION 18-7.2 AND ALL OTHER APPLICABLE ORDINANCES OF THE CITY OF
PORTERVILLE.

Legal signature of applicant __________________________

Date __________________________ Telephone (559) 784-5454

Application Approved [X] Denied [ ]

Chief of Police __________________________

10/96
**ACORD™ CERTIFICATE OF LIABILITY INSURANCE**

**PRODUCER**
Driver Alliant Insurance
1301 Dove Street, Suite 200
Newport Beach, CA 92660

**INSURED**
Myers Funeral Service & Crematory
248 N. "E" Street
Porterville, CA 93257

**INSCRIBERS AFFORDING COVERAGE**
INSURER A: Safeco
INSURER B: Allstate Insurance
INSURER C: Clarendon National Ins. Co/KRM
INSURER D:
INSURER E:

**COVERAGE**
The policies of insurance listed below have been issued to the insured named above for the policy period indicated. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies. Aggregate limits shown may have been reduced by paid claims.

<table>
<thead>
<tr>
<th>TYPE OF INSURANCE</th>
<th>POLICY NUMBER</th>
<th>POLICY EFFECTIVE DATE (MM/DD/YYYY)</th>
<th>POLICY EXPIRATION DATE (MM/DD/YYYY)</th>
<th>LIMITS</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>A</strong> General Liability</td>
<td>02BP1078862</td>
<td>08/20/04</td>
<td>08/20/05</td>
<td>EACH OCCURRENCE $1,000,000</td>
</tr>
</tbody>
</table>

- Damage to premises in which occupied or used by insured $0
- Med Exp (Any one person) $10,000
- General Aggregate $2,000,000
- Products - Commodity $1,000,000

| **B** Automobile Liability | 046687907 | 08/27/04 | 08/27/05 | Combined Single Limit (Ea accident) $1,000,000 |

- Bodily injury (Per person) $0
- Bodily injury (Per accident) $0
- Property damage (Per accident) $0

| **C** Excess/Umbrella Liability | 01CT01807820 | 08/20/04 | 08/20/05 | EACH OCCURRENCE $2,000,000 |

- Aggregate $2,000,000
- Retention 0

| **D** Workers Compensation and Employers' Liability | 01KR0029014 | 09/30/04 | 09/30/05 | WC Statutory Limits $1,000,000 |

- E.L. Each Accident $1,000,000
- E.L. Disease - E.A. Employee $1,000,000
- E.L. Disease - Policy Limit $1,000,000

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS**
RE: Christmas Program 12/02/2004
*10 Day Notice of Cancellation for Non-Payment of Premium*

**CERTIFICATE HOLDER**
City of Porterville
291 N. Main
Porterville, CA 93257

**CANCELLATION**
Should any of the above described policies be cancelled before the expiration date thereof, the issuing insurer will endeavor to mail a 30 days written notice to the certificate holder named to the left, but failure to do so shall impose no obligation or liability of any kind upon the insurer, its agents or representatives.

Authorized Representative
[Signature]

© ACORD CORPORATION 1998
IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.
THIS ITEM HAS BEEN REMOVED FROM THE AGENDA.
SUBJECT: CONSIDERATION OF ARTICLE III, CHAPTER 15, GOING OUT OF BUSINESS SALE LICENSE TAX

SOURCE: Administrative Services

COMMENT: During the Council Meeting of September 07, 2004, the City Council discussed a component of Business License Ordinance regarding “Going out of Business Sales.” Article III, Section 15-25.1 does require a license to be obtained by any person before selling or offering to sell any goods at a sale to be advertised or held out by means to be a going-out-of-business sale, or a removal-of-business sale. The license tax as currently provided for in the Code is $50.00 for the first 45 days, and $100 for an additional 45 days.

Based on Council discussions, and the lack of activity regarding this particular element of the code, staff has prepared a draft resolution that will suspend the collection of the Going out of Business Sale license tax until Council takes future action reinstating the license tax.

RECOMMENDATION: That the Council approve the attached resolution suspending the collection of the Going out of Business Sale license tax until directed by Council to reinstate it.

ATTACHMENT: Draft Resolution

Item No. 12
RESOLUTION NO.________

A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF PORTERVILLE SUSPENDING THE COLLECTION
OF THE GOING OUT OF BUSINESS SALE LICENSE TAX INDEFINITELY

WHEREAS, the City Council of the City of Porterville has reviewed Article III, Chapter 15-25 of the City Code, and

WHEREAS, the concept of charging a Going out of Business Sale License Tax was discussed at the City Council Meeting of September 7, 2004, and

WHEREAS, the City Council has determined it to be in the best interest of the Community to discontinue the collection of the Going out of Business Sale License Tax, and

WHEREAS, no comments were received from the audience in support of the continuation of the collection of the Going out of Business Sale License Tax,

NOW BE IT HEREBY RESOLVED by the City Council of the City of Porterville that the Going out of Business Sale License Tax of $50.00 for the first forty-five day period, and $100.00 for an additional forty-five day period is suspended until such a time that the Council directs the matter to be brought back for further consideration, effective December 1, 2004.

______________________________
Pedro R. Martinez, Mayor

ATTEST:

JOHN LONGLEY, City Clerk

By ____________________________

Georgia Hawley, Chief Deputy City Clerk
SUBJECT: SINGER BUILDING TRADE FIXTURES AND IMPROVEMENTS

SOURCE: Administration

COMMENT: As the Council is aware, the City is planning to demolish the Singer building and will complete the construction of the remaining parking lot area, together with a streetscape improvement project connecting the Transit Center with Main Street. Once the City's FY 2004/05 Section 5307 grant application containing this project has been approved, the City will be proceeding towards the actual demolition of the building, which is now anticipated for late spring, 2005.

The last remaining tenant of the Singer Building is Harriett Bessey-Standel, the owner of Creative Ceramics. Ms. Standel has requested permission to remove the following trade fixtures, the majority of which she installed to accommodate her business. Since the City has plans to demolish the building, it is Staff's recommendation that Ms. Standel's request be approved by the City Council:

1. 220 wiring, together with plugs and new breaker;
2. Ventilation system and hood (over kilns);
3. Wood partitions and shelves on walls;
4. The counters in the bus ticket office;
5. Windows;
6. One heater;
7. One swamp cooler.

Ms. Standel is also requesting that the City honor her rental agreement with the previous owner wherein she paid first and last months' rent. Therefore, she is requesting that her last month's rent to the City of Porterville for the month of November, 2004, be waived.

RECOMMENDATION: That the City Council approve the following be granted to Harriett Bessey-Standel:

1. The last month's rent to the City of Porterville for the month of November, 2004, be waived;
2. 220 wiring, together with plugs and new breaker;
3. Ventilation system and hood (over kilns);

DD Appropriated/Funded CM Item No. 13
4. Wood partitions and shelves on walls;
5. The counters in the bus ticket office;
6. Windows;
7. One heater;
8. One swamp cooler.
PUBLIC HEARING

SUBJECT: CONSIDERATION OF OHV MOTOCROSS PARK COST OF SERVICE AND ADULT RIDER FEE ADJUSTMENTS

SOURCE: Parks & Leisure Services Department

COMMENT: At the last City Council meeting direction was given to schedule, for the next meeting, a review of a potential increase in the adult rider fee from $10.00 to $15.00 at the OHV Park. To implement the direction, a public hearing has been scheduled for this agenda item.

It is understood that the increase in fee would increase revenue to the facility by approximately $15,000 annually based upon the rider activity over the past year. Potentially, this revenue could be used to cover any deficit that the operation of the facility may generate, reduce the reliance on State grant funds for operations revenue, or it could be used to cover the cost of a full-time employee.

The issues presented by the proposed adjustment in the adult rider fee are:

1. Should a fee be increased in advance of the fee analysis which is underway and should be completed in April, 2005? The fee analysis provides the necessary study to justify the level of the fee and the amount of City subsidy to the facility. The legal requirements for the establishment of fees are outlined in a memorandum from the City Attorney which has been attached to this report.

2. What target percentage of the total OHV Park revenue should the adult rider fee represent? Adult rider fees comprised 43% and 59% respectively of the total revenue for the last two years. Other revenue sources include State grant funding, youth rider fees, race contract revenue, and spectator fees.

3. Should a new position be added to the facility outside of the context of the hiring freeze? In general, some frozen positions are considered for restoration during the Council’s periodic hiring freeze review. During this period of the current fiscal year, adding full-time positions has not been proposed.

4. If staffing levels for rider safety should be considered, should other organizational arrangements be considered before making any final decision? Other organizational arrangements could include contracting the OHV Park’s maintenance and track preparation, reorganizing Parks and Leisure Services Department resources to perform the work, or reorganizing Parks & Leisure Services Department and Airport resources to perform the work.

COUNCIL AGENDA: November 2, 2004

ITEM NO.: 14

Dir. Approp./Funded C.M.
5. Should race promotion be given increased emphasis to maximize the advantage gained from increased fees? The previous race promoter, Central Valley Racing, conducted twelve races during the 2003-04 year. They did not request renewal of the contract for the current year and no other race promoters have recently pursued interest in utilization of the facility for races. Approaches to address promotion of racing at the OHV facility include making the operations and race promotion as a component of contracted services included with maintenance and track preparation, recruit and contract solely for a race promoter, place a higher priority on race promotion and marketing of the OHV facility as a staff activity.

Current OHV Park rider fees were last adjusted in July, 1998. The specified cost for service to be recovered through the OHV fees was, a 25% match for State OHV Grant, plus $21,000 for overhead expenses. The fee is $10.00 for adult riders, and $5.00 for those riders 17 years and under. A spectator fee of $2.00 per person is also charged. These fees, along with any race event proceeds, are the sources of locally generated revenue to support the facility. State grant funds are sought each year to supplement local revenue. The amount of revenue from grant funds and fees can be compared to the expenditures for the facility to derive a yearly balance generated by the facility. The most recent three years, along with the current projection for this year, are summarized below:

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Grant Revenue</th>
<th>Fee Revenue</th>
<th>Total Revenue</th>
<th>Total Expenditure</th>
<th>Yearly Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001-2002</td>
<td>$49,000</td>
<td>$47,069</td>
<td>$96,069</td>
<td>$131,482</td>
<td>($35,413)</td>
</tr>
<tr>
<td>2002-2003</td>
<td>$90,143</td>
<td>$90,862</td>
<td>$181,005</td>
<td>$106,743</td>
<td>$74,262</td>
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<tr>
<td>2003-2004</td>
<td>$67,000</td>
<td>$53,736</td>
<td>$120,736</td>
<td>$119,385</td>
<td>$1,351</td>
</tr>
<tr>
<td>2004-05 (estimate)</td>
<td>$62,000</td>
<td>$35,000</td>
<td>$97,000</td>
<td>$107,513*</td>
<td>($10,513)</td>
</tr>
</tbody>
</table>

* includes $15,513 of unused 2002-03 grant funds, to be returned to the State.

RECOMMENDATION: Council define direction for City staff after conducting the public hearing to receive public comment.

ATTACHMENTS: Draft Resolution Adjusting the OHV Motocross Park Cost for Service and Adult Rider Fee
Memorandum from City Attorney
Resolution No. 87-98, Adopting Certain Fees and Charges
RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF PORTERVILLE ADJUSTING THE
OHV MOTOCROSS PARK COST FOR SERVICE
AND ADULT RIDER FEE

WHEREAS, the cost for service to be recovered from participant and spectator fees at the Porterville OHV Cycle Park has previously been established as, a 25% match for grant funds together with $21,000 for City overhead expenses; and

WHEREAS, the overhead expense portion of the cost for service will be changed with modifications to the manner of operation and maintenance of the facility.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Porterville as follows:

1. The cost for service to be recovered from participant and spectator fees at the OHV Cycle Park shall be, a 25% match for grant funding plus $36,000 for overhead expenses.
2. The adult rider fee shall be adjusted to $15.00

PASSED AND ADOPTED, at a regular meeting of the Porterville City Council by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

Pedro R. Martinez, Mayor

ATTEST:
John Longley, City Manager

By: Georgia Hawley, Deputy City Clerk
MCCORMICK KABOT JENNER & LEW
MEMORANDUM

TO: Jim Perrine
FROM: Julia Lew
DATE: October 27, 2004
SUBJ: Calculation of Fees for Use and Services

Fees, rates and charges are defined statutorily in a number of ways. Often the terms are synonymous; however “rates” and “charges” are often used to refer to ongoing monetary exactions for use of a revenue-producing enterprise (e.g. parking lots, garbage disposal service), while “fees” generally refer to exactions for the costs of provided a particular service (e.g. water and sewer connection and service fees).

Cities have the authority to impose fees, charges, and rates under their police power authority pursuant to the California Constitution, Article XI, Section 7. A City may operate, maintain, repair or manage all or any part of a revenue-producing enterprise, and may prescribe, revise, and collect charges for the services, facilities, or water furnished by the enterprise. [See California Government Code §§ 54342, 54344.] A fee may not exceed the estimated reasonable cost of providing the service or facility for which the fee is charged, and fee exceeding such cost may be considered a special tax. [See Carlsbad Mun. Water Dist. V. QLC Corp., (1992) 2 Cal.App. 4th 479, 485. ] Fees, rates and charges must be reasonable, fair and equitable and must be proportionately representative of the costs incurred by the City. It is proper and reasonable to take into account incidental consequences that may be likely to subject the public to cost, as well as the expense of direct regulation. [See United Business Commission v. City of San Diego (1979) 91 Cal.App.3d 156, 165. ]

Please feel free to contact me if you have any questions.
RESOLUTION NO. 87-98

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE ADOPTING CERTAIN FEES AND CHARGES FOR THE CITY OF PORTERVILLE

BE IT HEREBY RESOLVED by the City Council of the City of Porterville that the following Fees and Charges for the City of Porterville are hereby adopted:

<table>
<thead>
<tr>
<th>Fee Title</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adult Ballfield Rental</td>
<td>$10.00 per hour</td>
</tr>
<tr>
<td>Cycle Park</td>
<td>$10.00 per adult rider</td>
</tr>
<tr>
<td></td>
<td>$5.00 per youth rider</td>
</tr>
<tr>
<td></td>
<td>$2.00 per spectator</td>
</tr>
<tr>
<td>Picnic Pavilion Rental Fees</td>
<td>$20.00 per use</td>
</tr>
<tr>
<td>Zalud House Admission</td>
<td>$2.00 per adult</td>
</tr>
<tr>
<td>Subdivision Street Tree Planting</td>
<td>Actual cost</td>
</tr>
<tr>
<td>Park Rental Fee for Commercial Use</td>
<td>$25.00 per use</td>
</tr>
</tbody>
</table>

Dated this 21st day of July 1998.

Judith A. Gibbons, Mayor

ATTEST:

C. G. Huffaker, City Clerk
SUBJECT: APPOINTMENT OF PARKS & LEISURE SERVICES COMMISSION
LIBRARY BOARD MEMBERS

SOURCE: Department of Parks & Leisure Services

COMMENTS: Pursuant to the direction of the City Council at their October 19 meeting, directing
announcement of the vacancies on the Parks and Leisure Services Commission
and the Library Board of Trustees, staff has been searching for individuals with
dedication and a willingness to serve. To date we have had two people express
a desire to serve in the capacity of Parks and Leisure Services Commissioner.
Staff is attaching a statement of willingness to serve from Mr. Joe Ruiz, 1385
North Lotas Way and Mr. John Hardin, 454 Balmoral. Both candidates live
within the City limits and qualify to serve.

Mr. Joe L. Moreno, 1421 W. Pamela Circle has been the only respondent for the
Library Board of Trustees. Should City Council decide to appoint Mr. Moreno
there will be one vacancy remaining on the Board.

RECOMMENDATION: That the City Council appoint at their discretion either Mr. Joe Ruiz
or Mr. John Hardin as Commissioner to serve the remaining term of
Gary Weaver which will expire in October of 2005. Staff is also
requesting the appointment of Mr. Joe L. Moreno as a member of the
Board of Trustees.

ATTACHMENTS: Joe Ruiz/Statement of Interest
John Hardin/Statement of Interest
Joe L. Moreno/Statement of Interest

ITEM NO.: 15
Subject: Parks & Rec Board
From: John Hardin <jshardin@ocsnet.net>
To: jperrine@ci.porterville.ca.us

Jim
I would be interested in serving on your Parks & Rec. Board.
Officially put my name in the hat.
Thanks
John Hardin
Subject: Interest

Date: Fri, 08 Oct 2004 11:03:08 -0700

From: "Joe Ruiz" <jruizjr@bankofthesierra.com>

To: <mstowe@ci.porterville.ca.us>

I understand the City or Porterville, Parks and Recreation Department has a position open for the Board. Please include my name as a candidate. Thanking you in advance. JR

**

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Subject: Nomination to City Library Board
From: joemore@webtv.net (Joe L Moreno)
Date: Thu, 21 Oct 2004 09:20:18 -0700
To: jperrine@ci.porterville.ca.us

Jim Perrine, Director
Parks and Leisure Services

This memorandum is to confirm and express my interest in being appointed
as a member to the Library Board of the City of Porterville. I am a past member of the Library Board. I was nominated by then Mayor Aubrey Lumley and appointed by the City Council.

As a native of Porterville I have always taken an active approach to be involved in community activities. Presently, I serve on the Tulare County Health and Human Services Advisory Council as its chairperson.

Also active in AARP, other governmental committees and several organizations and clubs.

I look upon this opportunity as another way to give back to the community that gave much to me as a youth and adult. As a retired State of California Hospital Administrator volunteering keeps me active and involved.

I would accept the appointment if the City Council deems it appropriate to appoint me.

Thank you for your consideration.

Respectfully submitted,
Joe L. Moreno
1421 W. Pamela Circle
Porterville, CA 93257
Phone: (559) 781-3736
**SUBJECT:** AUTHORIZATION TO NEGOTIATE CONTRACT FOR CURBSIDE RECYCLING ANALYSIS

**SOURCE:** Public Works Department - Field Services Division

**COMMENT:** On August 20, 2004, staff received two proposals for professional services for the analysis of a curbside recycling program. The proposals were rated in accordance with the revised and adopted "Policy for Selecting Professional Services." On October 14, 2004, council and staff interviewed both firms and the results were as follows:

<table>
<thead>
<tr>
<th>RANK</th>
<th>FIRM</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Skumatz Economic Research Associates (SERA)</td>
</tr>
<tr>
<td></td>
<td>Superior, CO</td>
</tr>
<tr>
<td>2.</td>
<td>Huls Environmental Management</td>
</tr>
<tr>
<td></td>
<td>Covina, CA</td>
</tr>
</tbody>
</table>

Funding is from the Solid Waste Fund.

**RECOMMENDATION:** That the City Council:

1. Authorize staff to negotiate a contract with SERA for curbside recycling analysis and related services, not to exceed $20,000;

2. Authorize staff to negotiate a contract with the next highest ranked firm (Huls Environmental Management) in the event a contract cannot be negotiated with SERA, not to exceed $20,000;

3. Authorize the Mayor to sign all contract documents; and

4. Authorize staff to make payments up to 100% upon satisfactory completion of the work.
SCHEDULED MATTER

TITLE: APPEAL OF DECISION TO ENFORCE REGULATIONS THAT REQUIRE TRIMMING OF A HEDGE LOCATED AT 791 NORTH VILLA STREET FACING HENDERSON AVENUE

SOURCE: COMMUNITY DEVELOPMENT DEPARTMENT - PLANNING DIVISION

COMMENT: A complaint was previously submitted to the Public Works Director and the City Engineer regarding a hedge located at 791 N. Villa Street facing Henderson Avenue (southwest corner of Villa Street and Henderson Avenue). The complaint alleged that the hedge was causing a site visibility problem. As a result of the inspection conducted by the Engineering Division it was determined that, since the intersection is controlled by traffic lights, no site traffic hazard existed.

On September 1, 2004, the complaint was turned over to the Planning Division. City staff observed a hedge approximately 6-7 feet high along a portion of the east side of the property facing Villa Street and the full length of the front yard facing Henderson Avenue and along the driveway leading from Henderson Avenue to the apartments at the location of 791 N. Villa Street. Additionally, a major utility pole and a traffic control box for the traffic lights are located at this corner.

Section 2610 A - Trees, plants, etc., of the Porterville Zoning Ordinance states the following:

Trees, plants, shrubs or flowers may be maintained in any required front, side or rear yard, provided that hedges shall comply with Section 2611 of the Porterville Zoning Ordinance.

Section 2611 - Fences, walls, hedges, etc., of the Porterville Zoning Ordinance states the following:

A. Anywhere within any required yard or along any side lot line, the following hedges may be maintained:

1. Open or lattice type fences, or hedges, not exceeding four (4) feet in height;

2. Other type fences and solid walls, not exceeding forty-two (42) inches in height.
B. A fence or wall, not more than six (6) feet in height, or a hedge maintained so as not to exceed six (6) feet in height, may be located along the side or rear lot lines, provided that such fence, wall or hedge does not extend into the required front yard.

Front and rear yards are determined by the narrowest portions of the lot. The lot located at 791 N. Villa Street has the narrowest portion of the lot facing Henderson Avenue. So the Henderson Avenue frontage is the front yard. The Villa Street frontage is defined as the side yard even though the apartment doors face Villa Street.

The apartments are located in the R-2(S) Zone. The front yard setback is 20 feet. The apartments are located approximately 20 feet south of the front property line. As such, the hedges are located within the front yard setback.

On October 6, 2004, a certified letter was sent to the owner of the property, informing them of the violation. On October 12, 2004, the owner of the property submitted a letter of response to the Planning Division asking the City Council for relief from enforcement. The property owner cited privacy and noise concerns with regard to frontage on Henderson Avenue.

STAFF ANALYSIS: As noted by the property owner, the hedge appears to provide increased privacy and to screen light and glare from the building. While the hedge is not a sufficient barrier to reduce actual noise levels, it may reduce the perception of noise by screening traffic from view.

For consistency with Zoning Ordinance Standards, staff recommends that the City Council uphold Staff’s efforts to pursue enforcement. The configuration of the subject site is unusual but is not unique. A determination to suspend enforcement action as the property owner requests could set a precedent which could be used by other properties throughout the City that front on major streets. Not all of those cases would be at signalized intersections.

ALTERNATIVES:

1. Uphold Staff’s determination to enforce. Staff would continue to work with the applicant to achieve compliance; and

2. Uphold Staff’s determination to enforce but stay action for 60 days to allow the property owner to apply for a Zone Variance.

RECOMMENDATION: Staff recommends that the City Council uphold Staff’s determination to enforce the restrictions on the height of hedges on the subject property and direct Staff to work with the Property Owner to correct the violation within 21 days and to forward the matter to the City Attorney for further action if the matter is not resolved.
ATTACHMENTS:

1. Letter dated October 6, 2004 sent to the property owner
2. Response letter Dated October 12, 2004 from the property owner
3. Photos of the subject sight
October 6, 2004

Ms. Velma Rather
791 N. Villa Street
Porterville, CA 93257

Dear Ms. Rather,

The Planning Division has received a complaint regarding a hedge located in the front yard (facing Henderson Avenue) of 791 N. Villa Street. The complaint alleged that the hedge is too tall and that it may cause a site visibility problem for oncoming traffic headed east on Henderson Avenue. City records indicate that you are the owner of the property.

Due to this complaint, City staff conducted an investigation on September 1, 2004. City staff observed hedge approximately 6-7 feet high along a portion of the east side of the property facing Villa Street and the full length of the front yard facing Henderson Avenue and along the driveway leading from Henderson Avenue to the apartments at the location of 791 N. Villa Street.

Section 2610 A - Trees, plants, etc., of the Porterville Zoning Ordinance states the following:

Trees, plants, shrubs or flowers may be maintained in any required front, side or rear yard, provided that hedges shall comply with Section 2611 of the Porterville Zoning Ordinance.

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A. Anywhere within any required yard or along any side lot line, the following hedges may be maintained:

1. Open or lattice type fences, or hedges, not exceeding four (4) feet in height;

2. Other type fences and solid walls, not exceeding forty-two (42) inches in height.

B. A fence or wall, not more than six (6) feet in height, or a hedge maintained so as not to exceed six (6) feet in height, may be located along the side or rear lot lines, provided that such fence, wall or hedge does not extend into the required front yard.
Front and rear yards are determined by the narrowest portions of the lot. The lot located at 791 N. Villa Street has the narrowest portion of the lot facing Henderson Avenue. So the Henderson Avenue frontage is the front yard. The Villa Street frontage is defined as the side yard even though the Apartment doors face Villa Street.

The apartments are located in the R-2(S) Zone. The front yard setback is 20 feet. The apartments are located approximately 20 feet south of the front property line. The hedges located on the Henderson frontage, including the hedge located along the driveway leading to the apartments from Henderson Avenue are located in the front yard setback. The hedge along Villa Street, extending north of the apartments is also in the front yard setback.

On receipt of this certified letter, please contact Mr. Randy Rouda, Associate Planner (782-7460) as to your intent to correct the violation.

Your immediate attention and cooperation in this matter is appreciated.

Respectfully,

Bubba Frasher, Assistant Planner

CC: Bradley D. Dunlap, Community Development Director
Randy Rouda, Associate Planner
Reference: Letter from B. Frasher, dated 10-6-04, To: Ms. Rather,  
Subject: Complaint Regarding a Hedge

Dear Council Members:

My husband has contacted Mr. Frasher concerning the complaint for clarification as to the action required. This information has not yet been provided.

The safety of automobile traffic rounding the corner from Henderson to Villa is more than acceptable for automobiles making a right turn as can be seen on the enclosed photographs. Autos turning left from Villa to Henderson are not in jeopardy because a stop light controls their left hand turn into Henderson.

There have been no accidents regarding cars turning right from Henderson onto Villa since this layout was established in 1973. The same is true for traffic turning left from Villa onto Henderson since the installation of traffic signals.

There is a health reason for maintaining the hedge. Since the traffic lights were installed the sound level of the traffic has increased significantly as has the engine emissions. The hedge acts as a barrier to slightly diminish the effects of these hazards. Note that there are two bedroom windows behind the hedges; one on Henderson and the other on Villa. Did your Environmental Impact Assessment address this situation prior to installing the traffic lights?

I am requesting the Council to provide whatever authorization is necessary to permit me to retain the hedge barrier in its existing configuration. Please place me on the agenda of the next City Council meeting to discuss this matter. Also, please disclose the name of the individual who filed the complaint inasmuch as it is public information.

Thank you for considering this matter which is very important to me personally.

Sincerely,

Velma Rather Olle

Enclosures:
  Sheet containing four photographs
  Letter referenced above
Copies to:
  City Manager
  Mr. Frasher
CITY COUNCIL AGENDA: November 2, 2004

SUBJECT: C.O.L.T. FIXED ROUTE BUS SYSTEM/VETERANS’ DAY PARADE

SOURCE: ADMINISTRATION

COMMENT: At the October 19 City Council meeting, the Council pulled this item from the Consent Calendar and asked for options other than temporarily suspending the Fixed Route Bus System on Thursday, November 11, 2004.

Issues:

• As a result of the Veterans’ Day Parade, Main Street, from Henderson Avenue to Orange Avenue will be closed; which also blocks access across Main Street at Morton Avenue, Olive Avenue, Henderson Avenue, and Orange Avenue, which is also closed due to construction.

• Four of the six fixed bus routes require access to Main Street to complete portions of their routes, or to provide access to the east side of town to access Routes 3, 4 and 5.

• During occasional closures of Hockett Street, Putnam Avenue, or a portion of Main Street, fixed route has been able to continue operation through a minor deviation of one of its routes.

• With all of the main access roads to the east side of town being blocked prior to and during the parade, this does not lend itself to an easy accommodation to access routes.

• Major deviations will be required to complete at least a portion of each of the four routes; but by utilizing major deviations, additional time will be needed to run the routes, and not all of the scheduled bus stops will be able to be accessed.

• We have a fixed route bus system – each bus stop is accessed every thirty minutes. The public is aware of these bus stops; and if the fixed route system is operational, they will be expecting a pick-up or drop-off at these fixed stops. Staff anticipates the possibility of confusion and public complaints when regular stops are not being accessed.

Appropriated/Funded

Item No. 18
• When deviating from a fixed bus route, fixed bus stops are no longer fixed – it will require streets being used that are not a normal part of the route, bus drivers will be traveling streets and accessing locations they are not familiar with, and extensive education for the public will be required to eliminate confusion.

• Since the inception of fixed route in July, 1997, the City’s policy has been to temporarily suspend fixed route service during major parade scheduled-days – staff has never received a complaint regarding the temporary closure of fixed route service because the temporary closure is communicated to the regular passengers, and they are accustomed to the closures as a result of major parades.

• Demand-Response service is, and always has been, operational on Veterans’ Day, so public transportation options are available.

Options:

1. Temporarily suspend the fixed route bus service on November 11, 2004, with the normal holiday operational hours continuing for Demand-Response (9:00 a.m. to 6:00 p.m.);

2. Temporarily suspend the fixed route bus service on November 11, 2004, until 1:00 p.m., at which time it will begin operation until 5:00 p.m.;

3. Operate only Routes 1 and 6 during the morning, which would provide passengers with some access to the west side of town. Route 1 travels west on Olive Avenue to Westwood Street, then travels east on Morton Avenue and accesses areas along Putnam Avenue adjacent to Sierra View District Hospital, connecting again on Morton Avenue to D Street, and back to the Transit Center. Route 6 travels west on Putnam Avenue to Sierra View District Hospital, south on Jaye Street to Highway 190, west on Highway 190 to the Family Healthcare Network, and then returns to the transit center by way of Jaye Street, Orange Avenue and D Street, all on the west side of Main Street. Keeping in mind, the only two routes being able to transfer are Routes 1 and 6. The four remaining routes would then begin operations at 1:00 p.m.

4. If maintaining fixed route during major parades becomes an issue, direct staff to develop a special events schedule which would alter the existing fixed routes, operate on one-hour headways rather than 30 minute headways; develop a brochure, and arrange for distribution to the public to make them aware of the temporary changes in fixed
route service. This could not be accomplished in time for Veterans Day, November 11, but could be in place prior to Cinco de Mayo.

RECOMMENDATION: To be determined by the City Council.

ATTACHMENT: Fixed Route Bus Schedule
SUBJECT: Consideration of Ordinance Calling Election for A Special Utility Users’ Tax for Police and Fire Services

SOURCE: CITY MANAGER

The Council has directed that a draft ordinance be prepared which would increase the utility users’ tax by 2%. The proposed measure would call for a special tax requiring a 2/3rds vote of the People. By the measure, the monies could not be used for any purpose other than police and fire. The measure may be placed on the ballot by a majority vote (3 affirmative votes) of the City Council. The general tax measure, requiring a majority vote of the People which the Council decided against pursuing would require the unanimous vote of the Council to place the measure on the ballot at other than the election of the governing body.

Draft of Measure to Be Presented to Electorate: The City Attorney has prepared at the Council’s direction a draft of a special tax measure to be placed before the electorate. This draft provides:

- The utility users’ tax will be increased by 2% for a total tax of 8%.
- Caps for large employers will be doubled to $1,000, $2,000 & $3,000 per utility, per year.
- The tax may only be increased by a 2/3rds vote.
- The proceeds from the 2% increase may only be used for police and fire related services.
- The measure includes the expansion in definitions to clarify the entire tax for new telecommunications services and satellite services. Anything new would be considered part of the special tax with its limitations.

Proceeds of Tax/New Positions: By the estimate which has been attached, the measure would raise about $958,333 in additional revenue per fiscal year. This would provide for the hiring of 7 new police officers and 7 new fire fighters. If the measure passes, the City would have 51 police officers and 33 fire fighters.
Fire staffing is predominately based upon geographical requirements. As we expand along the East-West axis of the City and lengthen the service area, there are additional requirements for fire staffing. Also, for large fires the County has provided coverage which should diminish with reduced staffing at the County’s Olive Street and Doyle Colony stations.

Police staffing is driven by geography and population. If the staffing should increase to 51, the relative coverage of the department in comparison to other agencies is outlined below:

<table>
<thead>
<tr>
<th>AGENCY</th>
<th>Population</th>
<th>Sworn Police Personnel</th>
<th>Sworn per Thousand Population</th>
</tr>
</thead>
<tbody>
<tr>
<td>Porterville (proposed)</td>
<td>43,150</td>
<td>51</td>
<td>1.18</td>
</tr>
<tr>
<td>Visalia</td>
<td>102,684</td>
<td>119</td>
<td>1.16</td>
</tr>
<tr>
<td>Tulare</td>
<td>47,696</td>
<td>50</td>
<td>1.05</td>
</tr>
<tr>
<td>Porterville (current)</td>
<td>43,150</td>
<td>44</td>
<td>1.02</td>
</tr>
<tr>
<td>Delano</td>
<td>43,200</td>
<td>42</td>
<td>0.97</td>
</tr>
<tr>
<td>Hanford</td>
<td>46,315</td>
<td>50</td>
<td>0.93</td>
</tr>
</tbody>
</table>

As can be seen from the analysis, the proposed increase in staffing brings Porterville closer to the staffing numbers of other agencies and provides the public safety margin needed for secure, orderly growth. As has been previously reported, fire staffing has not increased since 1992 and police staffing has only increased by a couple of officers though there has been significant growth in the City itself during the same period.

**Recommended Preliminaries to Placing Matter on Ballot:** The Council has determined to pursue a special tax requiring a 2/3rds vote. The measure may be placed on the ballot with a majority (3 vote) action of the City Council. Once the measure is before the People, achieving 2/3rds vote has proven daunting in many communities. Therefore, it is beneficial to perform preliminary reviews prior to placing the matter on the ballot.

Attached, the Council will find a summary case study from Visalia and their successful effort to pass an increase in sales tax to support public safety. A key component of their effort was polling in advance to define the public’s perspective on the measure.

**Processing Final Dates to Place Measure on Ballot:** If the Council wishes to place the measure before the electorate, the following target and final dates have been computed

<table>
<thead>
<tr>
<th>Election of:</th>
<th>Target for Processing Completion</th>
<th>Final Process Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>March 8, 2005</td>
<td>November 8, 2004</td>
<td>December 10, 2005</td>
</tr>
<tr>
<td>June 7, 2005</td>
<td>February 7, 2005</td>
<td>March 11, 2005</td>
</tr>
<tr>
<td>November 8, 2005</td>
<td>July 11, 2005</td>
<td>August 12, 2005</td>
</tr>
</tbody>
</table>
Considerations for Action: With the Council’s determination to pursue a special tax, it becomes very important to fully understand the public’s perception of the potential measure. The proven manner to accomplish this is polling prior to placing the measure on the ballot. This can be paid for with City funds. It is suggested that obtaining this information is prudent. A summary of a cost proposal and time-line is being obtained and will be provided to the City Council before the meeting when it has been received.

Though it may be a tight time-frame, the Council may wish to act in February of 2005 to place the measure on the June 7, 2005 ballot. If the measure is approved in June of 2005, the Council would know the status of this funding, prior to final budget consideration which would normally occur on the June 21, 2005 City Council meeting. The Council could also anticipate in the Budget potentially $50,000 in expense to place the measure before the Public.

If the measure is placed on the ballot for the June 5th election consideration should be given to whether there is sufficient time for the organization of the campaign to occur through public and community groups.

RECOMMENDATION:

1. Provide direction for any modifications in the draft measure for an increase in utility users’ tax to support police and fire.

2. Authorize the City Manager to expend monies (to be defined in amount) of reallocated or non-anticipated new revenues to retain an organization to poll on the likely results of the proposed increase in the utility users’ tax measure.

3. Establish the June 7, 2005 election as the likely time when the measure will be placed before the Public.
Cost Estimates for Utility Users' Tax
Hiring of Police & Fire Personnel

<table>
<thead>
<tr>
<th>Per City of Porterville Budget</th>
<th>$2,875,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual Utility Users Tax=</td>
<td></td>
</tr>
<tr>
<td>Increase in Rate = 2.00%</td>
<td>$958,333</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th># of Additional Personnel</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Police Officer Cost TOTAL</td>
<td>$69,604</td>
</tr>
<tr>
<td>#</td>
<td>7</td>
</tr>
<tr>
<td>Firefighter Cost TOTAL</td>
<td>$60,580</td>
</tr>
<tr>
<td>#</td>
<td>7</td>
</tr>
</tbody>
</table>

Balance $47,047
October 28, 2004

Case Study on Measure "T" 1/4% Sales Tax Measure in Visalia

Recent history identified the City of Visalia’s Measure "T" Public Safety Sales Tax as the most current example of a successful special tax campaign. This measure appeared on the March 2004 ballot, and passed by the narrowest of margins. In this case, the measure received 13,822 yes votes, and 6,882 no votes, passing by 66.76%.

The Visalia City Council concluded that a new source of revenue was needed to provide increased Police and Fire protection in their growing jurisdiction, amid increasing threats on General Fund revenue from the State of California. Several options were considered, however; the retail strength of the City reflected a large percentage of sales tax dollars collected were being paid from non-residents. This element appeared to be a key selling point in achieving the two-thirds majority vote needed for the special tax.

The City of Visalia hired the consulting firm of Lew and Edwards to handle substantial portions of the campaign effort. One of the initial elements was to conduct city-wide polling to determine the likelihood of passing the measure as a special tax. The polling was conducted by the firm of John Fairbanks, as arranged by Lew and Edwards. The fee for the polling was $25,000. One of the most important issues identified through the polling process was a need to reduce the scope of the identified special use tax. The initial measure was drafted to include a component of new revenues set aside for Parks and Recreation. The polling showed that the Parks and Recreation element actually reduced the likelihood of the measure passing. Issues regarding the timing of what ballot to place the measure on and the scope of community support were also considered. The analysis of the polling indicated that the measure would pass by a very small margin, and proved accurate within one-tenth of one percent.

The efforts undertaken by the Council, Staff, and the Consulting firm proved successful in this case. The final cost incurred for the consultants in this project was in excess of $100,000. The process from conception to ballot was approximately three years. This time table was extraordinarily lengthy based on the need for State Legislative authority to initiate a sales tax measure, should it be voter approved. The amount of staff time involved was not tracked, but was most substantial in the year preceding the election.

Porterville Staff contacted the polling firm of John Fairbanks to receive an initial estimate to conduct polling services for a utility user’s tax measure. This contact identified the fact that the firm of John Fairbanks is the firm hired by the League of California Cities to poll the State population regarding the passage of Proposition 1A, and that the firm was also hired by the Kern Community College District to poll regarding the passage of School Bonds. Mr. Fairbanks described a detailed poll that would provide the Council with information regarding the likelihood of passing a special
tax as proposed, as well as the likelihood of passing variations of this measure, including a general tax, or other tax measure options. Mr. Fairbanks provided a cost not to exceed $25,000.00 for this comprehensive service.
ORDINANCE NO. __________


THE CITY COUNCIL OF THE CITY OF PORTERVILLE DOES ORDAIN AS FOLLOWS:

Section 1. Findings

A. The City Council of the City of Porterville finds that the State Budget crisis and its impact upon the City of Porterville and its services, combined with a significant level of residential growth, has made the preservation of staffing and service levels a challenge for the City, particularly with regard to public safety services.

B. City staffing levels, particularly with regard to public safety services, have not been maintained consistent with City growth based upon population, and City staff have determined that an addition of fourteen (14) public safety positions, seven (7) police and seven (7) fire, would re-establish efficacious sworn staffing.

C. The City of Porterville therefore proposes to increase and extend Utility User Taxes (UUT) as follows and as set forth in greater detail below:

1) Two percent (2%) increase concerning existing utility services already taxed;

2) Extension of UUT to certain additional utilities not previously charged, for a total tax of eight percent (8%); and

3) Increase in the maximum amounts for manufacturers (applicable to all utility user taxes, excluding video services user taxes) of the taxes for a twelve month period as follows:

<table>
<thead>
<tr>
<th>Existing Maximum</th>
<th>Proposed Maximum</th>
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<tbody>
<tr>
<td>0-600 employees</td>
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<tr>
<td>$500.00</td>
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<td>$1,500.00</td>
<td>$3,000.00</td>
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</table>
Upon approval by the Council and the people of the City of Porterville in accordance with applicable law, the City intends to use the funds from these increases and extensions for police and fire public safety and related purposes.

D. The City of Porterville proposes these increases as a Special Tax measure, and will use the funds solely for police and fire, and public safety related purposes.

Section 2. Special Tax

A. The taxes imposed under this chapter shall be used solely for the purposes set forth above, and shall be a Special Tax. The revenues from the fund may be placed into the City’s General Fund or placed in a special fund; however the funds shall be required to be used solely for the purposes set forth above.

B. The City of Porterville, a Charter City, is authorized to impose this Special Tax as an increase/extension of its Utility User Taxes pursuant to its home rule authority under the California Constitution, Article XI, Section 5, and pursuant to Article XIII A, Section 4, Article XIII C, Section 2(d), and California Government Code Sections 50077, 53722, and 53724, upon submission to the electorate and approval by a two-thirds vote of the voters voting in an election on the issue.

Section 3. Tax Authorized -- Tax rate.

A. There is imposed a special tax of 2% of all utility charges made for utility services, with regard to current utility users already taxed pursuant to the City’s existing regulations (telephone users, electricity users, water users, gas users, and cable television users). There is imposed a special tax of 8% of all utility services charges on certain utility users not previously charged pursuant to the City’s regulations and more particularly described in the Amendments to the City’s regulations set forth below. With regard to manufacturers, there is imposed a special tax (via the net increase on the existing maximums to be charged) per fiscal year in the following amounts:

- 0-600 employees.............. $500.00
- 601-1,000...................... 1,000.00
- over 1,000 ..................... 1,500.00

B. The taxes imposed by this section shall be operative on ______________ 2005.

Section 4. Amendments to Chapter 22, Article V of the Porterville Municipal Code, subject to the approval of a majority of qualified voters.

A. Subject to the approval of a two-thirds majority of qualified voters at a regularly scheduled election, this Ordinance is adopted to amend Article V of Chapter 22 of the Porterville Municipal Code.
B. SECTION 22-42 IS AMENDED AS FOLLOWS:

22-42. Definitions.

Except where the context otherwise requires, the definitions given in this section govern the construction of this article.

(a) Person. "Person" shall mean any domestic or foreign corporation, firm association, syndicate, joint stock company, partnership of and kind, joint venture, club, Massachusetts business or common law trust, society, individual, or municipal corporation.

(b) City. "City" shall mean the City of Porterville.

(c) Telephone corporation; Electrical corporation, gas corporation, water corporation, and cable television corporation. "Telephone corporation," "Electrical corporation," "gas corporation," "water corporation," and "cable television corporation" shall have the same meanings as defined in Sections 234, 218, 222, 241, and 215.5, respectively, of the Public Utilities Code of the State of California, as said sections existed on January 1, 1969 July 1, 2004. "Electrical corporation," and "water corporation," shall be construed to include any municipality or franchised agency engaged in the selling or supplying of electrical power or water to a service user.

(d) Tax administrator. "Tax administrator" shall mean the director of finance of the City of Porterville.

(e) Service supplier. "Service supplier" shall mean a person required to collect and remit a tax imposed by this article.

(f) Service user. "Service user" shall mean a person required to pay a tax imposed by this article.

(g) Month. "Month shall mean calendar month.

(h) Charges for Mobile Telecommunications Services. "Charges for Mobile Telecommunications Services" has the same meaning and usage as set forth in the Mobile Telecommunications Sourcing Act (4 U.S.C. Sections 116 and 124) and the regulations thereunder.

(i) Mobile Telecommunications Service. "Mobile Telecommunications Service" has the same meaning and usage as set forth in the Mobile Telecommunications Sourcing Act (4 U.S.C. Section 124) and the regulations thereunder.

(j) Telephone Communications Services. "Telephone Communications Services" shall include "communications services" as defined in 26 U.S.C. Sections 4251 and 4252, and the regulations thereunder, and shall include teletypewriter exchange and similar data services, and any service that is capable of transmitting telephonic quality communications
[including the use of Internet Protocol (IP) or other similar means], whether provided by analog, digital, electronic, radio or similar means through "interconnected service" with the "public switched network" [as these terms are commonly used in the Federal Communications Act and the regulations of the Federal Communications Commission -- see 47 U.S.C. Section 332(d)] or over digital networks by which communications with a substantial portion of the public is available (e.g., voice over internet protocol or VoIP) and whether such transmission occurs by wire, tele typewriter, cable, cable modem or digital subscriber line (DSL), internet, fiber-optic, light wave, laser, microwave, switching facilities, satellite, radio wave [including but not limited to, mobile telecommunications service, cellular service, commercial mobile service and commercial mobile radio service (see 47 U.S.C. Section 332(d)(1) and Part 20.3 of Title 47 of the Code of Federal Regulations), personal communications service (PCS), specialized mobile radio (SMR), and other similar services regardless of radio spectrum used], or any other similar facilities, and whether charge for such service are based on time, distance, or any other basis.

(k) Video Service Supplier. "Video Service Supplier" means any person, company, or service which provides one or more channels of video programming, including any communications that are ancillary, necessary, or common to the use and enjoyment of the video programming, to or from an address in the City, including to or from a business, home, condominium or apartment, where some fee is paid, whether directly or included in dues or rental charges for that programming or communications. A "video service supplier" includes, but is not limited to, multichannel video programming distributors (as defined in 47 U.S.C. Section 522(13); open video systems (OVS) suppliers; suppliers of cable television; master antenna television; satellite master antenna television; multichannel multipoint distribution services (MMDS); direct broadcast satellite to the extent federal law permits taxation of its video services, now or in the future; and other suppliers of video programming or communications (including two-way communications), whatever their technology.

(l) Video Services. "Video Services" means any and all services related to the providing of video programming (including origination programming), including any communications that are ancillary, necessary or common to the use or enjoyment or the video programming, regardless of the content of such video programming or communications.

C. SECTION 22-43 IS HEREBY AMENDED AS FOLLOWS:

22-43. Telephone Telecommunications Services users tax.

(a) There is hereby imposed a tax upon every person in the city, other than a telephone corporation, using telecommunications services, including interstate, intrastate and international telephone communication services in the city. The tax imposed by this article shall be at a rate as fixed by resolution of the city council of eight percent (8%) of all charges made for such telephone communication services and shall be paid by the person paying for such services. If the billing address of the service user is different from the service address, the service address of the service user shall be used for purposes of
imposing the tax, regardless of where the telephone communication service may originate, terminate, or pass through. Charges for mobile telecommunications services are subject to taxation under this Article if the customer’s place of primary use is in the City, regardless of where the mobile telecommunications service may originate, terminate, or pass through.

(b) As used in this section, the term “charges” shall not include charges for services paid for by inserting coins in coin-operated telephones except that where such coin-operated telephone service is furnished for a guaranteed amount, the amounts paid under such guarantee plus any fixed monthly or other periodic charge shall be included in the base for computing the amount of tax due. nor shall the term “telephone communication services” include land mobile services or maritime services as defined in Section 2.1 of Title 47 of the Code of Federal Regulations, as such section existed on January 1, 1969. The term “charges” shall include the value of any other services, credits, property or every kind or nature, or other consideration provided by the service user in exchange for the telephone communication services. The term “charges” shall also include charges to a service user by a hotel or motel for telephone communications services used in the City when such charges are incidental to the right of occupancy in such hotel or motel. The collection of the tax from the service user shall be the responsibility of the hotel or motel owner.

(c) Notwithstanding the provisions of subsection (a), the tax imposed under this section shall not be imposed upon any person for using intrastate telephone communication services to the extent that the amounts paid for such services are exempt from or not subject to the tax imposed by Section 4251 of Title 26 of the United States Code, as such section existed on January 1, 1969; without regard to subsection (b) thereof.

(d) The maximum annual telephone users tax for the twelve (12) month period beginning July 1, and ending June 30 of the next succeeding year for manufacturers shall be as follows:

<table>
<thead>
<tr>
<th>Number of employees</th>
<th>Amount</th>
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<tbody>
<tr>
<td>0 to 600 employees</td>
<td>$1,000.00</td>
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<td>over 1,000 employees</td>
<td>3,000.00</td>
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</table>

(d) To prevent actual multi-jurisdictional taxation of telephone communication services subject to tax under this section, any service user, upon proof to the Tax Administrator that the service user has previously paid the same tax in another state or city on such telephone communication service, shall be allowed a credit against the tax imposed to the extent of the amount of such tax legally imposed in such other state or city, provided, however, the amount of credit shall not exceed the tax owed to the City under this section.

(e) The Tax Administrator, from time to time, may issue and disseminate to telephone communications Service Suppliers which are subject to the tax collection requirements of this Article, and administrative ruling. If an administrative ruling is adopted
pursuant to this subsection (e) and Section 22-58 of this Article, it shall not constitute an "extension" or "increase" of the tax imposed pursuant to this Article. The administrative ruling may identify those Telephone Communication Services that are subject to the tax of subsection (a) above, and/or identify the sourcing of such services for tax administration purposes. The administrative ruling may address an interpretation or clarification of any of the following:

(1) the definition, interpretation, or application of substantial nexus by a court of competent jurisdiction or by preemptive state or federal law, for purposes of taxation;

(2) the sourcing of taxable transactions based upon industry custom and practice, which furthers administrative efficiency and minimizes multijurisdictional taxation; or

(3) the definition, interpretation, or application of the federal excise tax rules, regulations, and laws pertaining to "communications services" (26 U.S.C. Sections 4251, 4252, and 4253) by the Internal Revenue Service, or by a state or local agency that assumes an interpretative role of those rules, regulations, and laws in the event that the federal excise tax on "communications services" is repealed.

(f) The tax on telephone communication services imposed by this section shall be collected from the service user by the service supplier. The amount of the tax collected in one (1) month shall be remitted to the Tax Administrator and must be received by the Tax Administrator on or before the ______ day of the following month.

D. SECTION 22-44 IS HEREBY AMENDED AS FOLLOWS:

22-44. Electricity Users Tax.

(a) There is hereby imposed a tax upon every person in the City using electrical energy. The tax imposed by this section shall be at the rate as fixed by resolution of the city council of eight percent (8%) of the charges made for such electricity, and for any supplemental services or other associated activities directly related and/or necessary for the provision of electricity to the end-user, which are provided by a service supplier or non-utility supplier to a service user, and shall be paid by the person paying for such energy. "Charges," as used in this section, shall include charges made for (1) metered energy, and (2) minimum charges for service, including customer charges, service charges, demand charges, standby charges, and annual and monthly charges. As used in this section, the term "charges" shall apply to all services, components and items that are: i) necessary or common to the receipt, use and enjoyment of electric service; or ii) currently, or historically have been, included in a single or bundled rate for electric service by a local distribution company to a class of retail customers. If the billing address of the service user is different from the service address, the service address of the service user shall be used for purposes of imposing the tax. The term "charges" shall include the value of any other
services, credits, property or every kind or nature, or other consideration provided by the service user in exchange for the electricity or services related to the provision of such electricity. The term “charges” shall include, but is not limited to, the following charges:

(1) energy charges;

(2) distribution and transmission charges;

(3) metering charges;

(4) stand-by, reserves, firming, ramping, voltage support, regulation, emergency, or other similar charges for supplemental services.

(5) customer charges, service establishment or reestablishment charges, demand charges, fuel or other cost adjustments, power exchange charges, independent system operator (ISO) charges, stranded investment or competitive transition charges (CTC), public purpose program charges, nuclear decommissioning charges, trust transfer amounts (bond financing charges), franchise fee, franchise surcharge, annual, and monthly charges, and other charges, fees and surcharges which are necessary to or common for the receipt, use and enjoyment of electric service; and

(6) charges, fees, or surcharges for electricity services or programs, which are mandated by the California Public Utilities Commission, or the Federal Energy Regulatory Commission, whether or not such charges, fees, or surcharges appear on a bundled or line item basis on the customer billing.

(b) As used in this section, the term “using electrical energy” shall not be construed to mean the storage of such energy by a person in a battery owned or possessed by him for use in an automobile or other machinery or device apart from the premises upon which the energy was received, provided however, that the term shall include the receiving of such energy for the purpose of using it in the charging of batteries. The term shall not include electricity used in water pumping by water corporations; nor shall the term include the mere receiving of such energy by an electrical corporation at a point within the city for resale.

(c) The maximum annual electricity users tax for the twelve (12) month period beginning July 1, and ending June 30 of the next succeeding year for manufacturers shall be as follows:

<table>
<thead>
<tr>
<th>Number of employees</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 to 600 employees</td>
<td>$1,000.00</td>
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<td>2,000.00</td>
</tr>
<tr>
<td>over 1,000 employees</td>
<td>3,000.00</td>
</tr>
</tbody>
</table>
(d) The Tax Administrator, from time to time, may survey the electric service suppliers to identify the various unbundled billing components of electric retail service that they commonly provide to residential and commercial/industrial customers in the City, and the charges therefor, including those items that are mandated by state or federal regulatory agencies as a condition of providing such electric service. The Tax Administrator, thereafter, may issue and disseminate to such electric service suppliers an administrative ruling (pursuant to Section 22-58) identifying those components and items which are: 1) necessary or common to the receipt, use or enjoyment of electric service; or 2) currently, or historically have been, included in a single or bundled rate for electric service by a local distribution company to a class of retail customers. Charges for such components and items shall be subject to the tax of subsection (a) above.

(e) The tax on electricity provided by self-production or by a non-utility supplier, or an electric utility no under the jurisdiction of this Article, shall be collected and remitted as set forth in Section 22-49. All other taxes on charges for electricity imposed by this section shall be collected from the service user by the electric service supplier or its billing agent. The amount of the tax collected in one month shall be remitted to the Tax Administrator on or before the ___ day of the following month or, at the option of the person required to collect or remit the tax, such person shall remit an estimated amount of the tax measured by the tax billed in the previous month or upon the payment pattern of the service user, which must be received by the Tax Administrator on or before the ___ day of the following month, provided that the service user shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) days following each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent tax bill that becomes due.

E. SECTION 22-45 IS HEREBY AMENDED AS FOLLOWS:


(a) There is hereby imposed a tax upon every person in the city using gas which is delivered through mains or pipes. The tax imposed by this section shall be at the rate as fixed by resolution of the city council of eight percent (8%) of the charges made for such gas, including all services related to storage, transportation, and delivery of such gas, and shall be paid by the person paying for such gas. If the billing address of the service user is different from the service address, the service address of the service user shall be used for purposes of imposing the tax.

(b) As used in this section, the term charges shall apply to all services, components and items for gas service that are I) necessary or common to the receipt, use and enjoyment of gas service; or ii) currently, or historically have been, included in a single or bundled rate for gas service by a local distribution company to a class of retail customers. The term “charges” shall include the value of any other services, credits, property or every kind or nature, or other consideration provided by the service user in exchange for the gas or services related to the provision of such gas. The term “charges” shall include, but is not limited to, the following charges:
(1) the commodity charges for purchased gas, or the cost of gas owned by the service user (including the actual costs attributed to drilling, production, lifting, storage, gathering, trunk line, pipeline, and other operating costs associated with the production and delivery of such gas), which is delivered through a gas pipeline distribution system;

(2) gas transportation charges (including interstate charges to the extent not included in commodity charges);

(3) storage charges; provided, however, that the service supplier shall not be required to apply the tax to any charges for gas storage services when the service supplier cannot, as a practical matter, determine the jurisdiction where such storage gas it ultimately used; but it shall be the obligation of the service user to self-collect the amount of tax not applied to any charge for gas storage by the service supplier and to remit the tax to the appropriate jurisdiction;

(4) capacity or demand charges, service establishment or reestablishment charges, transition charges, customer charges, marketing charges, administrative charges, minimum charges, annual and monthly charges, and any other charges which are necessary or common to the receipt, use and enjoyment of gas service; and

(5) charges, fees, or surcharges for gas services or programs, which are mandated by the California Public Utilities Commission or the Federal Energy Regulatory Commission, whether such charges, fees, or surcharges appear on a bundled or line item basis on the customer billing.

(b) There shall be excluded from the base on which the tax imposed in this section is computed (1) charges made for gas which is to be resold and delivered through mains or pipes; (2) charges made for gas to be used in the generation of electrical energy by an electrical corporation; (3) charges made for gas used in water pumping by water corporations; and (4) charges made by a gas public utility for gas used and consumed in the conduct of the business of gas public utilities.

(c) The maximum annual gas users tax for the twelve (12) month period beginning July 1, and ending June 30 of the next succeeding year for manufacturers shall be as follows:

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<thead>
<tr>
<th>Number of employees</th>
<th>Amount</th>
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<tbody>
<tr>
<td>0 to 600 employees</td>
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<td>over 1,000 employees</td>
<td>3,000.00</td>
</tr>
</tbody>
</table>

(e) The Tax Administrator, from time to time, may survey the gas service suppliers to identify the various unbundled billing components of gas retail service that they commonly provide to residential and commercial/industrial customers in the City, and the charges, therefor, including those items that are mandated by state or federal regulatory
agencies as a condition of providing such gas service. The Tax Administrator, thereafter, may issue and disseminate to such gas service suppliers and administrative ruling (pursuant to Section 22-58) identifying those components and items which are 1) necessary or common to the receipt, use or enjoyment of gas service; or 2) currently, or historically have been, included in a single or bundled rate for gas service by a local distribution company to a class of retail customers. Charges for such components and items shall be subject to the tax of subsection (a) above.

(f) The tax on gas provided by self-production or by a non-utility supplier shall be collected and remitted in the manner set forth in Section 22-49. All other taxes on charges for gas imposed by this section shall be collected from the service user by the gas service supplier or its billing agent. The amount of tax collected in one month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator on or before the _____ day of the following month; or, at the option of the person required to collect or remit the tax, such person shall remit an estimated amount of tax measured by the tax billed in previous month or upon the payment pattern of the service user, which must be received by the Tax Administrator or on before the _____ day of the following month, provided that the service user shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) days following each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent tax bill that becomes due.

F. SECTION 22-46 IS HEREBY AMENDED AS FOLLOWS:

22-46. Water Users Tax.

(a) There is hereby imposed a tax upon every person in the city using water which is delivered through mains or pipes a pipeline distribution system. The tax imposed by this section shall be at the rate as fixed by resolution of the city council of eight percent (8%) of the charges made for such water, and shall be paid by the person paying for such water. If the billing address of the service user is different from the service address, the service address of the service user shall be used for purposes of imposing the tax.

(b) As used in this section, the term “charges” shall apply to all services, components and items that are 1) necessary for or common to the receipt, use or enjoyment of water service; or ii) currently are or historically have been included in a single or bundled rate for water service by a local distribution company to a class of retail customers. The term “charges” shall include the value of any other services, credits, property or every kind or nature, or other consideration provided by the service user in exchange for the water or services related to the provision of such water. The term “charges shall include, but is not limited to, the following charges:

(1) water commodity charges (potable and non-potable);

(2) distribution or transmission charges;

(3) metering charges;
(4) customer charges, late charges, service establishment or reestablishment charges, franchise fees, franchise surcharges, annual and monthly charges, and other charges, fees, and surcharges which are necessary for or common to the receipt, use or enjoyment of water service; and,

(5) charges, fees, or surcharges for water services or programs, which are mandated by a water district or a state or federal agency, whether or not such charges, fees, or surcharges appear on a bundled or line item basis on the customer billing.

(b) There shall be excluded from the base on which the tax imposed in this section is computed charges made for water which is resold and delivered through mains or pipes; and charges made by a municipal water department, public utility or county or municipal water district for water used and consumed by such department, utility or district in the conduct of the business of such department, utility or district.

(c) The maximum annual water users tax for the twelve (12) month period beginning July 1, and ending June 30, of the next succeeding year for manufacturers shall be as follows:

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<tr>
<th>Number of employees</th>
<th>Amount</th>
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<tbody>
<tr>
<td>0 to 600 employees</td>
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<td>over 1,000 employees</td>
<td>3,000.00</td>
</tr>
</tbody>
</table>

(d) The Tax Administrator, from time to time, may survey the water service suppliers in the City to identify the various unbundled billing components of water retail service that they commonly provide to residential and commercial/industrial customers in the City, and the charges therefor, including those items that are mandated by a water district or a state or federal regulatory agency as a condition of providing such water service. The Tax Administrator, thereafter, may issue and disseminate to such water service suppliers an administrative ruling (pursuant to Section 22-58) identifying those components and items which are: 1) necessary or common to the receipt, use or enjoyment of water service; or 2) currently, or historically have been, included in a single or bundled rate for water service by a local distribution company to a class of retail customers. Charges for such components and items shall be subject to the tax of subsection (a) above.

(e) The tax on water provided by self-production or by a non-utility supplier shall be collected and remitted as set forth in Section 22-49. All other taxes on charges for water imposed by this section shall be collected from the service user by the water service supplier or its billing agent. The amount of the tax collected in one month shall be remitted to the Tax Administrator on or before the ___ day of the following month or, at the option of the person required to collect or remit the tax, such person shall remit an estimated amount of the tax measured by the tax billed in the previous month or upon the payment pattern of the service user, which must be received by the Tax Administrator on or before the ___ day of the following month, provided that the service user shall submit an adjusted
payment or request for credit, as appropriate, within sixty (60) days following each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent tax bill that becomes due.

G. SECTION 22-47 IS HEREBY AMENDED AS FOLLOWS:

22-47. Cable Television Video Users Tax.

(a) There is hereby imposed a tax upon every person in the city using cable television video services in the City from a video service supplier. The tax imposed by this section shall be at a rate as fixed by resolution of the city council of eight percent (8%) of the charges made for such video services and shall be paid by the person paying for such service. If the billing address of the service user is different from the service address, the service address of the service user shall be used for purposes of imposing the tax.

(b) As used in this section, the term “charges” shall apply to all services, components and items that are: (i) necessary for or common to the receipt, use or enjoyment of video service; or (ii) currently are or historically have been included in a single or bundled rate for video service by a local video service supplier to a class of retail customers. The term “charges” shall include the value of any other services, credits, property or every kind or nature, or other consideration provided by the service user in exchange for the video services. The term “charges” shall include, but is not limited to, the following charges:

1. franchise fees and access fees (PEG), whether designated on the customer’s bill or not;

2. initial installation of equipment necessary for provision and receipt of video services;

3. late fees, collection fees, bad debt recoveries, and return check fees;

4. activation fees, reactivation fees, and reconnection fees;

5. all programming services (e.g. basic services, premium services, audio services, video games, pay-per-view services, video on demand, and electronic program guide services);

6. equipment leases (e.g. converters, remote devices); and

7. service calls, service protection plans, name changes, changes of services, and special services.

(c) The Tax Administrator, from time to time, may survey the video service suppliers in the City to identify the various components of video service that are being offered to customers within the City, and the charges therefor. The Tax Administrator, thereafter,
may issue and disseminate to such video service suppliers an administrative ruling (pursuant to Section 22-58) identifying those components 1) that are necessary or common to the receipt, use or enjoyment of video service; or 2) which currently are or historically have been included in a bundled rate for video service by a local distribution company. Charges for such components and items shall be subject to the tax of subsection (a) above.

(d) The tax imposed by this section shall be collected from the service user by the video service supplier, its billing agent, or a reseller of such services. In the case of video service, the service user shall be deemed to be the purchaser of the bulk video service (e.g. and apartment owner), unless such service is resold to individual users, in which case the service user shall be the ultimate purchaser of the video service. The amount of tax collected in one (1) month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator on or before the ___ day of the following month.

H. SECTION 22-48 IS HEREBY AMENDED AS FOLLOWS:

22-48. Exemptions from article.

(a) Nothing in this article shall be construed as imposing a tax upon any person if imposition of such tax upon that person would be in violation of the Constitution of the United States or the Constitution of the State of California.

(b) The City Council may reduce the percentage rate of the tax for any utility service that is subject to the tax of this Article. The City Council may specify a period of time after which the exception shall automatically by repealed.

(c) Upon establishment of an exception by the City Council pursuant to this section, the City Council may subsequently take action to repeal or modify the exception; provided, however, in no event shall any action taken by City Council cause the percentage rate of the tax to exceed the percentage rates set forth in this Article without voter approval in accordance with all applicable legal requirements.

(d) Any actions taken by the City Council pursuant to this section to either establish an exception to the imposition of taxes or repeal or modify an exception shall not constitute an “extension” or “increase” of the tax imposed by this Article, provided that the action taken by the City Council does not cause the percentage rate of the tax to exceed the percentage rates set forth in this Article (as authorized by California Constitution Article XIIIIC, Section 2(d), and California Government Code Section 53750(h)(2)).

(e) Except as otherwise provided by state or federal law, or as approved in writing by the Tax administrator, if one or more non-taxable items are bundled or aggregated together with one or more taxable items (as provided for by this Article) under a single charge on a service user's bill, the entire single charge shall be deemed taxable (e.g. aggregating internet access service with voice service under a single charge).
(f) For the purposes of imposing a tax or establishing a duty to collect and remit a tax under this Article, "substantial nexus" and "minimum contacts" shall be construed broadly in favor of the imposition, collection, and/or remittance of the utility users tax to the fullest extent permitted by state and federal law, and as it may change from time to time by judicial interpretation or by statutory enactment.

(g) Any service user that is exempt from the tax imposed by this Chapter pursuant to this Section shall file an application with the Tax Administrator for an exemption; provided, however, this requirement shall not apply to a service user that is a state or federal agency or subdivision with a commonly recognized name, or is a service user of telephone communication services that has received a federal excise tax exemption certificate for such service. Said application shall be made upon a form approved by the Tax Administrator and shall state those facts, declared under penalty of perjury, which qualify the applicant for an exemption, and shall include the names of all utility service suppliers serving that service user. If deemed exempt by the Tax Administrator, such service user shall give the Tax Administrator timely written notice of any change in utility service suppliers so that the Tax Administrator can properly notify the new utility service supplier of the service user's tax exempt status. A service user that fails to comply with this section shall not be entitled to a refund of utility users taxes collected and remitted to the Tax Administrator from such service user as a result of such non-compliance. Upon request of the Tax Administrator, a service supplier or non-utility supplier, or their billing agents, shall provide a list of names and addresses of those customers which, according to their billing records, are deemed exempt from utility users tax. A telephone communication service supplier shall, upon request of the Tax Administrator, provide a copy of the federal exemption certificate for each customer within the City that is served by such service supplier.

I. SECTION 22-49 IS HEREBY AMENDED AS FOLLOWS:

22-49 Collection of tax.

(a) Every person receiving payment of charges from a service user shall collect the amount of tax imposed by this article from the service user.

(b) The tax shall be collected at the same time as and along with the collection of charges made in accordance with the regular billing practice of the service supplier.

(c) The duty to collect tax from a service user shall commence with the beginning of the first regular billing period applicable to that person which starts on or after the effective date of this article. Where a person receives more than one (1) billing, one or more being for different periods than another, the duty to collect shall arise separately for each billing period.

(d) If a service supplier's regular billing practice includes the collection of charges from property owners, and tenants are the ultimate end user of the service, the service supplier shall collect the tax from the property owners. The property owner may collect the
tax from the ultimate end user. This same requirement shall apply to any other person similarly charged by the service supplier for services used by a different ultimate end user.

e) Where the amount paid by a service user to a service supplier is less than the full amount of the charge and tax which was accrued for the billing period, a proportionate share of both the charge and the tax shall be deemed to have been paid. In those cases where a service user has notified the service supplier of refusal to pay the tax imposed on said charges, Section 22-51 shall apply.

f) Any service user subject to the tax imposed by Sections 22-44, 22-45, or 22-46 hereof, which produces gas, electricity, or water for self-use, or which receives gas, electricity, or water directly from a non-utility supplier, or which otherwise is not having the full tax due on the use of gas, electricity, or water in the City that is directly billed and collected by the service supplier or its billing agent, shall report said fact to the Tax Administrator within thirty (30) days of such use. In lieu of paying said actual tax, the service user may, at its option, remit to the Tax Administrator within thirty (30) days of such use an estimated amount of tax measured by the tax billed in the previous month, or upon the pattern payment of similar customers of the service supplier using similar amounts of gas, electricity, or water provided that service user shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) days following each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent tax bill that becomes due. The Tax Administrator may require said service user to identify its non-utility supplier and provide, subject to audit, invoices, books of account, or other satisfactory evidence documenting the quantity of gas, electricity, or water used and the cost or price thereof. If the service user is unable to provide such satisfactory evidence, or, if the administrative cost of calculating the tax, in the opinion of the City, is excessive, the City may determine the tax by applying the tax rate to the equivalent charges the service user would have incurred if the gas, electricity or water used had been provided by the service supplier, which is the primary supplier of gas, electricity, or water within the City. Rate schedules for this purpose shall be available from the City.

J. SECTION 22-50 IS HEREBY AMENDED AS FOLLOWS:

22-50 Reporting and Remitting.

Each service supplier shall, on or before the 20th of each month, make a return to the Tax Administrator, on forms provided by him, stating the amount of taxes billed by the service supplier during the preceding month. At the time the return is filed, the full amount of the tax collected shall be remitted to the Tax Administrator. The Tax Administrator is authorized to require such further information as he deems necessary to properly determine if the tax here imposed is being levied and collected in accordance with this article. Returns and remittances are due immediately upon cessation of business for any reason. Pursuant to California Revenue and Tax Code Section 7284.6, the Tax Administrator, and its agents, shall maintain such filing returns as confidential information exempt from disclosure provisions of the California Public Records Act.
J. SECTION 22-52 IS HEREBY AMENDED AS FOLLOWS:

22-52 Actions to Collect.

Any tax required to be paid by a service user under the provisions of this article shall be deemed a debt owed by the service user to the City. Any such tax collected from a service user which has not been remitted to the Tax Administrator shall be deemed a debt owed to the City by the person required to collect and remit. Any person owing money to the City under the provisions of this article shall be liable to in an action brought in the name of the City for the recovery of such amount, including penalties and interest provided for in this Article, along with any collection costs incurred by the City as a result of the person’s noncompliance with this Article, including, but not limited to, reasonable attorney’s fees and court costs. Any tax required to be collected by a service supplier or owed by a service user is an unsecured priority excise tax obligation under 11 U.S.C. Section 507(a)(8)(C).

K. SECTION 22-55 IS HEREBY REPEALED AND REPLACED WITH A NEW SECTION 22-55, AS FOLLOWS:

22-55. Records.

a) It shall be the duty of every person required to collect and/or remit to the City any tax imposed by this Article to keep and preserve, for a period of at least three (3) years, all records as may be necessary to determine the amount of such tax as he/she may have been liable for the collection of and remittance to the Tax Administrator, which records the Tax Administrator shall have the right to inspect at a reasonable time.

b) The City may issue an administrative subpoena to compel a person to deliver, to the Tax Administrator, copies of all records deemed necessary by the Tax Administrator to establish compliance with this Article, including the delivery of records in a common electronic format on readily available media if such records are kept electronically by the person in the usual and ordinary course of business. As an alternative to delivering the subpoenaed records to the Tax Administrator on or before the due date provided in the subpoena, such person may provide access to such records outside the City on or before the due date, provided that such person shall reimburse the City for all reasonable travel expenses incurred by the City to inspect those records, including travel, lodging, meals and other similar expenses, but excluding the normal salary or hourly wages of those person designated by the City to conduct the inspection.

c) The Tax Administrator is authorized to execute a non-disclosure agreement approved by the City Attorney to protect the confidentiality of customer information pursuant to California Revenue and Tax Code Sections 7284.6 and 7284.7. The Tax Administrator may request from a person providing transportation services of gas or electricity service users within the City a list of the names and addresses, and other pertinent information, of its transportation customers within the City pursuant to California Public Utilities Code Section 6354(e).
d) If a service supplier uses a billing agent or billing aggregator to bill, collect, and/or remit the tax, the service supplier shall i) provide to the Tax Administrator the name, address and telephone number of each billing agent and billing aggregator currently authorized by the service supplier to bill, collect, and/or remit the tax to the City; and ii) upon request of the Tax Administrator, deliver, or effect the delivery of, any information or records in the possession of such billing agent or billing aggregator that, in the opinion of the Tax Administrator, is necessary to verify the proper application, calculation, collection and/or remittance of such tax to the City.

e) If any person subject to record-keeping under this section unreasonably denies the Tax Administrator access to such records, or fails to produce the information requested in an administrative subpoena within the time specified, then the Tax Administrator may impose a penalty of $500 on such person for each day following: i) the initial date that the person refuses to provide such access; or ii) the due date for production of records as set forth in the administrative subpoena. This penalty shall be in addition to any other penalty imposed under this Article.

L. SECTION 22-57 IS HEREBY AMENDED AS FOLLOWS:

22-57. Date taxes imposed.

The taxes imposed by this article shall become imposed as of July 1, 1970 __________, or at the beginning of the first regular billing period thereafter which would not include service prior to July 1, 1970: ________________.

M. SECTION 22-58 IS HEREBY ADDED AS FOLLOWS:

22-58 Additional powers and duties of the Tax Administrator.

a) The Tax Administrator shall have the power and the duty, and is hereby directed, to enforce each and all of the provisions of this Article.

b) The Tax Administrator may adopt administrative rules and regulations that are consistent with provisions of this Article for the purpose for interpreting, clarifying, carrying out and enforcing the payment, collection and remittance of the taxes herein imposed.

1) An administrative ruling may include any of the following:

i) the definition, interpretation, or application of rulings by courts of competent jurisdiction, or of state or federal legislation or administrative rulings, for purposes of taxation;

ii) the definition, interpretation, or application of industry custom and practice, particularly related to determining: A) the services necessary or common to the receipt, use or enjoyment of each utility service, or
B) the services currently, or historically, included in a single or bundled rate for each utility service.

2) A copy of such administrative rules and regulations shall be on file in the Tax Administrator’s office.

3) The adoption of an administrative ruling by the Tax Administrator pursuant to this subsection (b) shall not constitute an “extension” or “increase” of the tax imposed by this Article, provided that the administrative ruling does not cause the percentage rate of the tax to exceed percentage rates set forth in this Article (as authorized by California Constitution Article XIIIC, Section 2(d), and California Government Code Section 53750(h)(2)).

c) Upon a proper showing of good cause, the Tax Administrator may make administrative agreements, with appropriate conditions, to vary from the strict requirements of this Article for the purpose of 1) conforming to the billing procedures of a particular service supplier (or service user subject to 22-49 of this Article) so long as said agreements result in the collection of the tax in conformance with the general purpose and scope of this Article; or 2) avoiding a hardship where the administrative costs of collection and remittance greatly outweigh the tax benefit. A copy of each such agreement shall be on file in the Tax Administrator’s office, and are voidable by the Tax Administrator or the City at any time.

d) The Tax Administrator may conduct an audit, to ensure proper compliance with the requirements of this Article, of any person required to collect and/or remit a tax pursuant to this Article. The Tax Administrator shall notify said person of the initiation of an audit in writing. In the absence of fraud or other intentional misconduct, the audit period of review shall not exceed a period of three (3) years next preceding the date of receipt of the written notice by said person from the Tax Administrator. Upon completion of the audit, the Tax Administrator may make a deficiency determination for all taxes, penalties, and interest owed and not paid, as evidenced by information provided by such person to the Tax Administrator. If said person is unable or unwilling to provide sufficient records to enable the Tax Administrator to verify compliance with this Article, the Tax Administrator is authorized to make a reasonable estimate of the deficiency. Said reasonable estimate shall be entitled to rebuttable presumption of correctness.

e) Upon receipt of a written request of a taxpayer, and for good cause, the Tax Administrator may extend the time for filing any statement required pursuant to this Article for a period of not to exceed forty-five (45) days, provided that the time for filing the required statement has not already passed when the request is received. No penalty for delinquent payment shall accrue by reason of such extension. Interest shall accrue during said extension at the rate of three-quarters of one percent (3/4 %) per month, prorated for any portion thereof.

f) The Tax Administrator shall determine the eligibility of any person who asserts a right to exemption from, or a refund of, the tax imposed by this Article.
g) Notwithstanding any provision in this Article to the contrary, the Tax Administrator may waive any penalty or interest imposed upon a person required to collect and/or remit for failure to collect the tax imposed by this Article if the non-collection occurred in good faith. In determining whether the non-collection was in good faith, the Tax Administrator shall take into consideration industry practice or other precedence.

N. SECTION 22-59 IS HEREBY ADDED AS FOLLOWS:

22-59. Appeals.

a) The provisions of this section apply to any decision (other than a decision relating to a refund pursuant to Section 22-56 of this Article), deficiency determination, assessment, or administrative ruling of the Tax Administrator. Any person aggrieved by any decision (other than a decision relating to a refund pursuant to Section 22-56 of this Article), deficiency determination, assessment, or administrative ruling of the Tax Administrator, shall be required to comply with the appeals procedure of this section. Compliance with this section shall be a prerequisite to a suit thereon. (See California Government Code Section 935(b).) Nothing herein shall permit the filing of a claim or action on behalf of a class or group of taxpayers.

b) If any person is aggrieved by any decision (other than a decision relating to a refund pursuant to Section 22-56 of this Article), deficiency determination, assessment, or administrative ruling of the Tax Administrator; he or she may appeal to the City Manager by filing a notice of appeal with the City Clerk within fourteen (14) days of the date of the decision, deficiency determination, assessment, or administrative ruling of the Tax Administrator which aggrieved the service user or service supplier.

c) The matter shall be scheduled for hearing before a hearing officer selected by the City Manager, no more than thirty (30) days from the receipt of the appeal. The appellant shall be served with notice of the time and place of the hearing, as well as any relevant materials, at least five (5) calendar days prior to the hearing. The hearing may be continued from time to time upon mutual consent. At the time of the hearing, the appealing party, the Tax Administrator, and any other interested person may present such relevant evidence as he or she may have relating to the determination from which the appeal is taken.

d) Based upon the submission of such evidence and the review of the City’s files, the hearing officer shall issue a written notice and order upholding, modifying or reversing the determination from which the appeal is taken. The notice shall be given within fourteen (14) days after the conclusion of the hearing and shall state the reasons for the decision. The notice shall specify that the decision is final and that any petition for judicial review shall be filed within ninety (90) days from the date of the decision in accordance with Code of Civil Procedure Section 1094.6. If the City Manager fails or refuses to act on a refund claim within the fourteen (14) day period, the claim shall be deemed to have been rejected by the City Manager on the fourteenth (14th) day.
e) All notices under this section may be sent by regular mail, postage prepaid, and shall be deemed received on the third calendar day following the date of mailing, as established by a proof of mailing.

O. SECTION 22-60 IS HEREBY ADDED AS FOLLOWS:

22-60 No injunction/Writ of Mandate.

No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action, or proceeding in any court against this City or against any officer of the City to prevent or enjoin the collection under this Article of any tax or any amount of tax required to be collected and/or remitted.

P. SECTION 22-61 IS HEREBY ADDED AS FOLLOWS:

22-61 Remedies Cumulative.

All remedies and penalties prescribed by this Article or which are available under any other provision of law or equity, including but not limited to the California False Claims Act (California Government Code Section 12650 et seq.) and the California Unfair Practices Act (California Business and Professions Code Section 17070 et seq.), are cumulative. The use of one or more remedies by the City shall not bar the use of any other remedy for the purpose of enforcing the provisions of this Article.

Q. SECTION 22-62 IS HEREBY ADDED AS FOLLOWS:

22-62 Notice of Changes to Ordinance.

If a tax under this Article is added, repealed, increased, reduced, or the tax base is changed, the Tax Administrator shall follow the notice requirements of California Public Utilities Code Section 799. Prior to the effective date of the ordinance change, the service supplier shall provide the Tax Administrator with a copy of any written procedures describing the information that the service supplier needs to implement the ordinance change. If the service supplier fails to provide such written instructions, the Tax Administrator, or his or her agent, shall send, by first class mail, a copy of the ordinance change to all collectors and remitters of the City's utility users taxes according to the latest payment records of the Tax Administrator.

R. SECTION 22-63 IS HEREBY ADDED AS FOLLOWS:

22-63 Severability.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Article or any part thereof is for any reason held to be invalid, unlawful or unconstitutional, such decision, and the decision not to enforce such, shall not affect the validity of the remaining portion of this Article or any part thereof. The City Council hereby declares that
it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared invalid, unlawful or unconstitutional.

S. SECTION 22-64 IS HEREBY ADDED AS FOLLOWS:

22-64 Future Amendment to Cited Statute.

Unless specifically provided otherwise, any reference to a state or federal statute in this Article shall mean such statute as it may be amended from time to time.

Section 5. Publication

A summary of this Ordinance shall be published and a certified copy of the full text posted in the office of the City Clerk at least three days before the City Council meeting at which the proposed Ordinance is to be adopted.

Section 6. Election

If a two-thirds majority of the voters voting thereon approve the aforesaid Amendments, they shall become effective ten (10) days after the results of the election are declared by the City Council.

PASSED, ADOPTED AND APPROVED this _____ day of ____________________, 200__.

____________________________________
President of the Council and  
Ex Officio Mayor of the City of Porterville

ATTEST:  

____________________________________
Chief Deputy City Clerk and Clerk of the  
Council of the City of Porterville
SUBJECT: Consideration of Action Regarding Mosquito Abatement in the Porterville Area

SOURCE: CITY MANAGER

Consistent with direction provided by the Council regarding mosquito/vector abatement, the City Manager has met with representatives of the County and has discussed the matter with a representative of Lindsay. Southeastern Tulare County is not now covered by a mosquito abatement district. Several members of the public have contacted the City to indicate their concern because of the possible impacts from mosquito borne West Nile Virus.

The City Manager suggests writing to the Country Administrative Officer asking that the City/County J.P.A. be implemented for a joint analysis of the need to join an existing Vector District or to form a new one for Southeastern Tulare County or to take any other action to address the concern about West Nile Virus. The analysis should include:

- A definition of the actual problem and its potential impact relative to other public health issues in Tulare County.
- What is the specific responsibility of the City, County and other agencies to address the issue.
- What are the options for remedy? What are the costs of the options? What are the initial costs such as further analysis and the cost for election?

The City Manager of Lindsay will be contacted and offered the opportunity to participate on a proportional cost basis.

The letter to the County to activate the joint project provision of the County/City J.P.A. will recommend that the cost be borne equally and that it cannot exceed the $20,000 limit defined in the J.P.A. document for joint activities between the County Administrator and City Manager.

The City of Porterville is providing information through the utility billing to its utility customers outlining protection measures against the mosquito that may carry the West Nile Virus.

RECOMMENDATION:

Authorize the modification of the City Budget by an amount not to exceed $10,000 to support a joint County/City analysis regarding the establishment of a vector control district in Southeastern Tulare County or other measures to address the issue of West Nile Virus. This money should be from “new” unanticipated sources or from the reallocation of currently budgeted monies.

Item No. 20
SUBJECT: STREET CLOSURE FOR BLOCK PARTIES ON CUL-DE-SAC STREETS

SOURCE: Police Department

COMMENT: At the July 1, 2003, City Council meeting, council approved by way of resolution, the designation of the Chief of Police with the authority to approve street closures for organized block parties on cul-de-sac streets. The designation of a public officer to approve such street closures is authorized pursuant to California Vehicle Code Section 21101(e).

Since that time, the police department has received and approved only two applications for a street closure to conduct a block party. The review process and compliance with the conditions/requirements imposed were completed in a timely manner. As fall sets in and cooler temperatures arrive, few if any more applications for block parties are expected.

RECOMMENDATION: That City Council continue with the program as previously adopted.

ATTACHMENT: Resolution 95-2003
RESOLUTION NO. 95-2003

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE PROVIDING FOR THE DESIGNATION OF THE CHIEF OF POLICE AS THE PUBLIC OFFICER AUTHORIZED TO APPROVE STREET CLOSURES FOR BLOCK PARTIES ON CUL-DE-SAC STREETS AND SETTING CONDITIONS AND REQUIREMENTS FOR SUCH CLOSURES

WHEREAS, state law allows local authorities to designate a public officer to approve street closures for the purpose of conducting celebrations, holidays, or other special events and the closure is necessary for the safety and protection of persons attending such an event; and

WHEREAS, there is an interest and desire to expedite and simply the process for obtaining approval to close a cul-de-sac street for the purpose of conducting a block party by community residents.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF PORTERVILLE that the Chief of Police is hereby designated as the public officer authorized to approve street closures for block parties on cul-de-sac streets; however, other street closures on main/arterial streets continue to require Council approval.

BE IT FURTHER RESOLVED THAT proposed street closures for block parties on cul-de-sac streets shall be subject to the following:

1. Requests for block parties/street closures shall be submitted at least five days prior to the date of the event, and the request shall be made on an Application for Assemblies permit to the Police Department; and

2. Organizers shall contact one adult resident in each household in the affected cul-de-sac to obtain signatures indicating either “yes (approve)”, “no (object)”, “no opinion” or “decline to respond” on a petition involving at least 80% of the affected residences, indicating their opinion for the proposed cul-de-sac block party and shall present this completed petition along with the Application for Assemblies; and
3. Organizers shall provide Type 3 barricades that must be properly placed to close the street and warn motorists of the block party in progress, and these barricades may be rented from local vendors; and

4. Alcohol consumption by participants on said streets is strictly prohibited; and

5. A monitor/responsible person shall be designated to create an opening in the barricades in the event an emergency vehicle needs entry (police, fire, ambulance); and

6. Coordinators/participants must clean the street of any and all debris, litter or trash, resulting from the block party to the satisfaction of the Police Chief or his designee, and trash shall not be left on the street for the street sweeper or other city crews to clean up; and

7. Music shall not be played at such a volume as to disturb the peace and good order of the surrounding neighborhoods and shall cease by 9:00 p.m. Monday through Thursday, and 10:00 p.m. Friday through Sunday; and

8. WHEREAS, violation(s) of any condition contained in this resolution may result in the imposition of penalties up to and including a moratorium of 18 (eighteen) months on street closure for cul-de-sac block-party activity;

PASSED, APPROVED AND ADOPTED this 15th day of July, 2003.

PORTERVILLE CITY COUNCIL

Richard M. Stadtherr, Mayor

ATTEST:

John Longley, City Clerk

by Georgia Hawley, Deputy City Clerk
STATE OF CALIFORNIA  )
CITY OF PORTERVILLE    )    SS
COUNTY OF TULARE      )

I, JOHN LONGLEY, the duly appointed City Clerk of the City of Porterville do hereby certify and declare that the foregoing is a full, true and correct copy of Resolution No. 95-2003 passed and adopted by the Council of the City of Porterville at a regular meeting of the Porterville City Council duly called and held on the 15th day of July, 2003.

THAT said resolution was duly passed adopted by the following vote:

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JOHN LONGLEY, City Clerk

By: Georgia Hawley, Deputy City Clerk
SUBJECT: Airport - “Welcome to Porterville” Sign

SOURCE: Fire Department/Airport

COMMENT: A request has been made to look into placing a “Welcome to Porterville” sign at the Porterville Municipal Airport. This sign would be designed to accent the area visited by incoming pilots and tourists.

A wooden engraved sign can be made by Mountain Home Conservation Camp at a cost of approximately $20 a square foot.

Staff estimates a sign can be designed by staff, constructed by Mountain Home Conservation Camp, and installed for less than $1,000.

REQUEST FOR COUNCIL ACTION:

1. Direct staff to look further into design ideas, cost estimates, and locations at the airport for installation; and,

2. Direct staff to bring the issue back to Council during budget development for fiscal year 2005 / 2006.

ATTACHMENTS: None