CITY COUNCIL MINUTES
PORTERVILLE, CALIFORNIA
MARCH 1, 2005  6:00 P.M.

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

ORAL COMMUNICATIONS
• Dennis Townsend, a Springville resident, business address of 633 N. Westwood, requested that the Council consider the e-mail sent to the Council that day regarding Item 18.

CLOSED SESSION:
A. Closed Session Pursuant to:
   1 - Government Code Section 54956.9(b) - Conference with Legal Counsel - Anticipated Litigation: Two Cases.

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 Jim Rogers, Foothill Community Presbyterian Church

PRESENTATION
Employee of the Month - Mark Azevedo

Noting the significant number of individuals in attendance for Item 18, as a courtesy, Mayor Martinez invited those individuals who were present to speak on any issue other than Item 18 to come forward first.

ORAL COMMUNICATIONS
• Sherry McDonald, 2203 West Cricklewood Court, identified herself as a class member of Leadership Porterville 2004 and stated she had come forward to fulfill a class challenge. She then voiced support for allowing sectarian prayer and requested that the Council approve Option No. 4 in Item 18.
• Linda Morton, 617 South Plano Street, voiced opposition to the proposed annexations.
• Karen Offutt, 1910 West Fairhaven Avenue, spoke against the proposed Zone Change 7-2004.
• Greg Shelton, 888 North Williford Drive, requested that the Council remove Item 4 from the Consent Calendar stating that he had a few questions.
• Joanne Del Rio, 1971 West Fairhaven Avenue, spoke against the proposed Zone Change 7-2004.
• Dorothy Broome, 863 South Crystal Street, clarified with the Council when interested individuals could comment on items listed on the Consent Calendar.
• Russell “Buck” Fletcher, 1662 West Morton Avenue, came forward on behalf of his mother, Joanne Fletcher, and voiced “strong” opposition to the proposed annexations.
• Dennis Townsend, a Springville resident, business address of 633 North Westwood, voiced support for Option No. 4 of Item 18 and cited various U.S. Supreme Court Cases which he asserted supported his position. Mr. Townsend then presented the Council with a petition which he
indicated contained 3,709 signatures voicing support for allowing sectarian prayer during Council invocations.

- Roland Davis, a Springville resident, came forward and spoke in favor of free speech and allowing sectarian prayer as proposed in Item 18. He requested that the Council approve Option No. 4.
- Patrick Greene, 1343 West Morton Avenue, came forward and commented that he had changed his viewpoint on legislative invocations citing what he perceived to be contradictions in the California Government Code and the Court’s ruling in Rubin v. City of Burbank (2002) 101 Cal. App. 4th 1194.
- Dr. Paul Israel, 17723 Road 232, voiced agreement with Mr. Townsend’s comments and requested that the Council vote to allow sectarian prayer.
- James Handley, 361 West Oak Avenue, voiced support for sectarian prayer and requested that the Council protect the citizens’ rights of free speech.
- Elaine Harris, 1015 South Crystal, spoke in favor of allowing sectarian prayer and acknowledged troops fighting for the rights of American citizens.
- Lois Innis, West Glenn Court, voiced support for a moment of silence, noting that although the petition presented to Council that evening supposedly contained 3,709 signatures, Porterville’s population was over 40,000.
- Herb Foerster, 606 West Mulberry Avenue, voiced support for a moment of silence, noting the religious diversity in Porterville.
- Marybeth Atchison, 1061 North Patsy, voiced support for allowing sectarian prayer and requested that the Council approve Option No. 4, or in the alternative, Option No. 2.
- Peter Schalembier, Porterville resident and President of Porterville Area Ministerial Association (“PAMA”) came forward and voiced support for sectarian prayer and requested that the Council approve Option No. 4.
- Brian Mitchell, a Springville resident, came forward and voiced support for Option No. 4, commenting that the issue pertained to freedom of speech.
- John Skinner, 950 North Plano Street, voiced support for the Council approving Option No. 4 allowing sectarian prayer, and then voiced general displeasure with the ACLU.
- Dave Mast, Pastor of New Life Center, 2012 West Morton Avenue, stated he appreciated the Council and voiced support for allowing sectarian prayer.
- Misty Jones, 2250 West Putnam Court, spoke in favor of allowing sectarian prayer during invocations.
- Russell “Buck” Fletcher, 1662 West Morton Avenue, made comments in support of Porterville taking a stand against legislation that it believed was wrong.
- Desiree Hendon, 1038 San Carlos, thanked Council for its hard work and voiced support for allowing sectarian prayer during invocations.
- Craig Morgan, a Springville resident, came forward and voiced support for allowing sectarian prayer.
- Tony Mock, 1407 West Thurman, thanked Council for their hard work and requested that the Council support Option No. 4 allowing sectarian prayer during invocations, commenting that the law was on the Council’s side.
- Sidney David Pedraza, 1125 West Glen Court, voiced support for allowing sectarian prayer during invocations. Comparing the Council to the Founding Fathers of America, he requested that the Council approve Option No. 4.
- Ce Ce Townsend, a Springville resident, thanked Patrick Greene for his comments and voiced support for allowing sectarian prayer. Mrs. Townsend then requested that the Council approve Option No. 4.
- A Spanish-speaking individual came forward in support of allowing sectarian prayer during invocations. Mayor Martinez interpreted the gentleman’s comments.
- Dorothy Broome, 863 South Crystal Street, clarified with the Council that Item 18 would be addressed that evening, but whether any action would be taken was not yet known.
The Council recessed for 10 minutes.

Mayor Martinez thanked all of the individuals who had come forward to offer comments, and thanked them for being respectful.

CONSENT CALENDAR
Item No. 4 was removed.

1. CITY COUNCIL MINUTES OF FEBRUARY 8, 2005

Recommendation: That the Council approve the City Council Minutes of February 8, 2005.

Documentation: M.O. 01-030105
Disposition: Approved.

2. BUDGET ADJUSTMENTS FOR THE 2004/2005 FISCAL YEAR

Recommendation: That the City Council approve the budget adjustments of increasing the revenue estimates and appropriations in the General Fund by $1,000 to account for donation received from the Rotary Club for Literacy; and by $125,250 to account for the grant award of the Pedestrian Safety Program Grant for lighted crosswalks.

Documentation: M.O. 02-030105
Disposition: Approved.

3. AUTHORIZATION TO ACCEPT DONATED AND DISCOUNT PRICED MATERIALS AND SERVICES ARRANGED BY HOME DEPOT FOR CENTENNIAL PLAZA

Recommendation: That the City Council authorize the acceptance of donated and discount priced materials and services arranged by Home Depot for the Centennial Plaza Project in an aggregate amount of expenditure not to exceed the donated funds available.

Documentation: M.O. 03-030105
Disposition: Approved.

5. AUTHORIZATION TO ADVERTISE FOR BIDS - WATER MAIN (F ST. - GIBBONS AVE.-MAIN ST.) PROJECT

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

Documentation: M.O. 04-030105
Disposition: Approved.

6. AUTHORIZATION TO ADVERTISE FOR BIDS - PUTNAM RECONSTRUCTION PROJECT

Recommendation: That the City Council:
1. Approve the Plans and Project Manual; and
2. Authorize staff to advertise for bids on the project.
7. AUTHORIZATION TO NEGOTIATE CONTRACT FOR ON-CALL CONSULTANT FOR PREPARATION OF GRANT APPLICATIONS

Recommendation: That the City Council:
1. Authorize staff to negotiate a contract with Applied Development Economics (ADE) for on-call consulting services for feasibility studies and grant applications, with fees for services not to exceed those rates quoted in the proposal;
2. Authorize staff to negotiate a contract with the next highest ranked firm (Chabin Concepts) in the event a contract cannot be negotiated with ADE;
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.

8. ACCEPTANCE OF THE PORTER SLOUGH DITCH PIPING PROJECT

Recommendation: That the City Council:
1. Accept the Porter Slough Ditch Piping 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.

9. APPROVAL OF RELOCATION PLAN FOR PROPERTY LOCATED AT APN 245-040-017 - OWNER MANUEL A. GALVEZ - HENDERSON AVENUE STREET PROJECT

Recommendation: That the City Council approve the relocation plan for property located at APN 245-040-017.

10. RESOLUTION RESCINDING RESOLUTION NO. 3-2005, RE-AUTHORIZING THE OBJECTION TO SALE OF TAX DEFAULTED PROPERTIES, AND THE EXECUTION OF AN AGREEMENT WITH THE COUNTY OF TULARE TO PURCHASE TAX-DEFAULTED PROPERTIES WITH A REVISED EXHIBIT “A.”

Recommendation: That the City Council adopt the resolution rescinding Resolution No. 3-2005, Re-Authorizing the Objection to Sale, and Approving a Revised Exhibit A to the Agreement with the County of Tulare for Purchase of Tax-Defaulted Properties.
11. AMENDMENTS TO EMPLOYEE PAY AND BENEFIT PLAN, EMPLOYEE BENEFIT TRUST FUND, EMPLOYEE RETIREMENT SYSTEM, AND THE PERSONNEL SYSTEM RULES AND REGULATIONS

Recommendation: That the City Council adopt the resolution amending the Employee Pay and Benefit Plan for Fiscal Years 2004-2005, 2005-2006, and 2006-2007, the Employee Benefit Trust Fund, the Employee Retirement System, and the Personnel System Rules and Regulations, and authorize the Mayor to execute these and other documents necessary to implement the provisions thereof.

Documentation: Resolution 25-2005

Disposition: Approved.

12. RENEWAL OF PERSONNEL EXAMINING SERVICES CONTRACT BETWEEN THE CITY OF PORTERVILLE AND COOPERATIVE PERSONNEL SERVICES

Recommendation: That the City Council approve the resolution authorizing renewal of a contract agreement with Cooperative Personnel Services, and authorize the City Manager or his designee to sign on behalf of the City.

Documentation: Resolution 26-2005

Disposition: Approved.

COUNCIL ACTION: MOVED by Council Member West, SECONDED by Council Member Hamilton that the Council approve Items 1 through 3, and 5 through 12.

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

4. AUTHORIZATION TO ADVERTISE FOR BIDS - LIGHTED PEDESTRIAN CROSSINGS

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

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

Mr. Rodriguez stated that he and the City Engineer had visited lighted crosswalk projects in other cities and had been informed that they were very high maintenance due to older technology. He indicated that staff was currently investigating whether crosswalks manufactured with more sophisticated technology would be viable, and if so, an amended staff report with an estimate of probable cost would be provided.

• Greg Shelton, 888 North Williford Drive, came forward and requested clarification as to the exact location of the proposed crosswalk at Henderson Avenue, indicating that he owned the adjacent property.

Mr. Rodriguez clarified that the alignment of the old railroad would be followed, until right before reaching Henderson Avenue, at which point the actual Rails to Trails would veer off the railroad, crossing Henderson on the east side of Fourth Street.
COUNCIL ACTION: MOVED by Council Member Hamilton, SECONDED by Council Member West that the Council approve the Plans and Project Manual, and authorize staff to advertise for bids on the Project.

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

Disposition: Approved.

Mayor Martinez indicated that he had received a request to hear Item 18 first, and as such, requested that staff first present that Item.

18. LEGISLATIVE INVOCATIONS

Recommendation: That the Council consider the information and options presented and, if the Council so chooses, take action. The options are as follows:

Option No. 1: Draft resolution adopting “Moment of Silence”;
Option No. 2: Draft resolution adopting policy on Legislative Invocations;
Option No. 3: Draft resolution adopting Policy of “Free Prayer”; and
Option No. 4: Draft resolution adopting [Re-establishing] Legislative Invocations

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

Ms. Lew explained that since a threat of litigation existed with that particular item, the Council had discussed the matter outside of Open Session and explained that during that discussion, an alternative solution had been brought forth. At the Council’s request, Ms. Lew then read the alternative resolution into the record:

A Resolution of the City Council of the City of Porterville Providing for Legislative Invocations

WHEREAS, the City of Porterville (“City”) is a charter city organized and existing pursuant to the Constitution of the State of California; and

WHEREAS, the Constitution of the United States, Article (I), states Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof..., and

WHEREAS, as our nation was founded on the freedom of religion and was not founded on the freedom from religion; and

WHEREAS, through time, court decisions and certain interest groups have contributed to the deterioration of those (religious) beliefs and ideals; and

WHEREAS, in Rubin v. City of Burbank (2002) 101 Cal App 4th 1194 has led to further deterioration of the original intent of the First Amendment; and

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WHEREAS, the City Council of Porterville, California, believes that the above ruling does in fact violate the Free Speech and Free Exercise Clause of the First Amendment and furthermore, that such ruling should not be controlling with regard to the City of Porterville; and

WHEREAS, as the City Council urges all cities across this State to join in an effort to reinstate prayer without subjugation on content by passing similar resolutions;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PORTERVILLE DOES RESOLVE AS FOLLOWS:

1. That the City Council of the City of Porterville, California, does hereby recognize the rights of individual speech be it during open communications or during a time of recognized invocation;

2. That the City Council of the City of Porterville, California, will not restrict the content of invocations in any manner;

3. That the City Council will not limit invocations to the Porterville Ministerial Association, but will openly without objection welcome those of all faiths;

4. A sample agenda illustrating how the invocation will be handled is attached as Exhibit “A” to this Resolution.

This resolution was passed by the City Council of the City of Porterville at a regularly scheduled meeting thereof on the 1st day of March, 2005.

Mayor Pro Tem Irish commented that the issue was apparently very important to the City, as well as the San Joaquin Valley, as evidenced by the media in attendance. He then offered his family's long history of military service, pointing out that his entire family has supported the Constitution of this Country. He stated that if he was to err one way or the other on this subject, he would rather err on the side of freedom of speech. He added that he did not wish to tell somebody how to pray, when to pray and when not to pray, and suggested that such a decision was not for him to make.

Council Member Hamilton commented that Mayor Pro Tem Irish had just conveyed everything that he himself had been feeling in his heart and in his mind.

Mayor Martinez commented that this issue had set a direction for Porterville. He stated that as an individual who had also served his Country – as had all of the Council Members – he had served with many individuals of various faiths and different beliefs. He stated that all of these individuals had fought for the U.S. Constitution, freedom of expression and freedom of speech. He commented that he believed that all of the Council Members wanted to make sure that the citizens’ faith had not being infringed upon and that citizens were allowed to express their faith in an open forum.

COUNCIL ACTION: MOVED by Council Member Hamilton, SECONDED by Mayor Pro Tem Irish that the Council approve Option No. 5 as presented by the City Attorney.

Resolution 27-2005

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

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ABSTAIN: None
ABSENT: Stadtherr

Disposition: Approved.

The Council recessed for ten minutes.

PUBLIC HEARING

13. ZONE CHANGE 7-2004 (ENNIS) (A CHANGE OF ZONE FROM R-1 TO R-3 AND R-1 TO R-2 FOR SEPARATE PORTIONS OF 21.05± ACRES GENERALLY LOCATED AT THE SOUTHWEST CORNER OF HENDERSON AVENUE AND NEWCOMB STREET)

Recommendation: That the City Council:
1. Adopt the draft resolution approving a Negative Declaration for Zone Change 7-2004; and
2. Adopt the draft ordinance approving Zone Change 7-2004.

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

The public hearing opened at 9:10 p.m.

- Jim Winton, business address of 150 West Morton Avenue, spoke in favor of proposed Zone Change 7-2004, commenting that it was consistent with the City’s General Plan. He added that in 2002, the Council had denied a Plan Amendment to Commercial, indicating that a mix of multifamily was the appropriate use for that site.
- Tony Mock, 1407 West Thurman, commented that the City had a plan for the future and that changes were necessary to accomplish that plan.
- Greg Shelton, 888 North Williford Drive, voiced support for the proposed Zone Change.
- Ben Ennis, 643 North Westwood, the applicant, indicated that he was attempting to bring the property into compliance with the General Plan and that it had been designated as multifamily since 1986. He then stated that if the Zone Change was approved, he planned on developing luxury fourplexes with garages at the site.
- Dennis Townsend, business address of 633 North Westwood, indicated that his firm had designed the units proposed for this property and that the units were luxurious. He then confirmed that he had not been contacted by anyone seeking information.
- Marge Swartzlander, 1650 Memory Lane, spoke against the proposed Zone Change and voiced general displeasure with developer Ben Ennis. She indicated that many opposed the Zone Change, and upon her cue, approximately 30-40 audience members stood up in solidarity.
- Joanne Del Rio, 1971 Fairhaven, came forward in opposition of the proposed Zone Change alleging a possible conspiracy between Mr. Winton and Mr. Ennis.
- Jerry Swartzlander, 1650 Memory Lane, came forward in opposition to the proposed Zone Change asserting that the change would detrimentally affect the value of adjacent homes.
- Wade Ferguson, 1700 Memory Lane, came forward voiced opposition to the proposed Zone Change.
- Karen Offutt, 1910 West Fairhaven Avenue, spoke against the proposed Zone Change and voiced concern with increased criminal activity.
- April Thacker, 1640 Memory Lane, voiced opposition to the proposed Zone Change, citing concerns with severe traffic congestion. She then requested that a traffic impact study be conducted.
• Ronald Clark, 1620 Memory Lane, spoke against the proposed Zone Change citing concerns with decreased property values, increased traffic, increased crime, and a drain on City services.
• Chris Thacker, 1640 Memory Lane, spoke against the proposed Zone Change, citing concerns with traffic congestion and overburdening water and sewer services.
• Joe Knitson, 686 North Belmont, voiced opposition to the proposed Zone Change.
• Daniel Hoffman, 1740 West Henderson Avenue, spoke against the proposed Zone Change, citing increased traffic congestion.
• George Anderson, 1751 West Memory Lane, voiced opposition to the proposed Zone Change, asserting a negative impact on local schools and a decrease in property values.
• John Lewis, 1740 West Memory Lane, spoke against the Zone Change, citing decreased property values.
• Ken Covain, 1690 West Memory Lane, voiced opposition to the proposed Zone Change, citing safety concerns with children due to increased traffic issues.
• Lou Wells, 1800 West Fairhaven, spoke against the proposed Zone Change citing concerns with planning regarding the impact on traffic, schools, the environment, and City services.
• Daniel Figeroa, 1790 West Memory Lane, voiced opposition to the proposed Zone Change.
• Wayne Foust, 1761 West Memory Lane, spoke against the proposed Zone Change, asserting that the project would require expansion of sewer services, for which the citizens would pay.

The public hearing closed at 10:14 p.m.

The Council recessed for 10 minutes.

Mayor Martinez stated that he resided in the neighbor behind Monache High School, although his residence was not located within 500 feet of the proposed Zone Change. He stated that he had a personal bias in the matter at hand that prevented him from participating in an objective manner, and indicated that he would like to abstain from the vote.

Upon the recommendation of City Attorney Julia Lew, Mayor Martinez recused himself from the Council Chambers.

In response to Council Member West’s question as to whether a traffic impact study had been conducted, Community Development Director Brad Dunlap indicated that the environmental document included projections for the number of vehicle trips resulting from the project. He then clarified that the multiple family development of the property had been addressed with the circulation element which called for four-lane arterials on both Newcomb Street and Henderson Avenue. Those arterials, he pointed out, were currently underway. He added that the trip generation figures in the environmental study corresponded to development at full capacity, which generally did not happen. Mr. Dunlap then confirmed that the entire site was currently zoned R-1 and had been re-designated to high density residential and medium density residential in 1986.

Council Member Hamilton voiced disappointment with the arguments put forth by the opposition. He stated that the City’s sewer system was actually well below capacity and clarified that any odor was attributed to processing, not capacity problems. In response to a question from the audience, Council Member Hamilton clarified that the City was in the process of bringing more water wells on line to address problems with the wells. He then stated that the housing element was a critical part of the proposed Zone Change, noting that City was deficient in its levels of different types of housing as mandated by the State. He stated that these requirements were factored into the planning of the City. He pointed out that, in 1986, the Planning Department had stipulated to rezoning the subject property to multiple family. Council Member Hamilton noted the anger directed at Mr. Ennis and rhetorically questioned if the opposition would have been so fervent had the proposal come from an unknown developer. Council Member Hamilton then questioned where such misinformation had come about and how the opposition had been organized.
• Chris Thacker, 1640 Memory Lane, came forward and commented that he had received a notice of the proposed Zone Change in the mail.

In response to Council Member Hamilton’s question, Mr. Dunlap explained that the Community Development Department was responsible for the preparation and distribution of the environmental reports and that Mr. Winton had not prepared any of the environmental reports.

Council Member Hamilton suggested that the Council direct the applicant and property owners to meet to discuss areas of concern. He stated that if the Zone Change was approved, the Council could require a Design Review Overlay on any project brought forward.

Council Member West explained that a Design Review Overlay, or “D” Overlay, provided the maximum protection to the adjoining properties to ensure development compatibility among permitted uses in transitional zones. He stated that it also allowed the Council to work with the developer as to building orientation, site design, set backs, building elevation, window sizes, locations, and other design issues that may affect land use relationships. He stated that the “D” Overlay offered good protection for adjacent property owners.

Mayor Pro Tem Irish stated that he understood that the property owners needed some assurances for protection against what they perceived to be “low income” or undesirable design elements such a two story buildings. He then relayed personal experience with a similar situation near his residence, and stated that the result was a compromise. He stated that he believed a compromise would also be necessary here.

COUNCIL ACTION: MOVED by Council Member West, SECONDED by Council Member Hamilton that the Council adopt the draft resolution approving a Negative Declaration for Resolution 28-2005 Zone Change 7-2004.

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

Council Member West moved to approve the Ordinance, as amended to include a Design Review Overlay. Council Member Hamilton seconded the motion.

A discussion then ensued regarding the “D” Overlay process and traffic at the intersection of Henderson Avenue and Newcomb Street. It was noted that that particular intersection could accommodate up to 25,000 vehicle trips per day, which was more than the proposed project would generate.

City Manager John Longley added that the impact on schools had been analyzed as a part of the environmental document. He stated that he believed those findings to be consistent with other environmental analyses conducted.

Mr. Dunlap confirmed that staff had followed standard methodology in the preparation of the environmental report.

Mayor Pro Tem Irish commented that the Council was cognizant of the fact that growth impacted all of the City’s streets.

COUNCIL ACTION: MOVED by Council Member West, SECONDED by Council Member Hamilton that the Council adopt the ordinance, being AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE APPROVING ZONE CHANGE
Ordinance 1665

7-2004 BEING A CHANGE OF ZONE FROM R-1 (ONE FAMILY RESIDENTIAL) TO R-2 (FOUR FAMILY RESIDENTIAL) WITH A DESIGN REVIEW OVERLAY AND R-1 (ONE FAMILY RESIDENTIAL) TO R-3 (MULTIPLE FAMILY RESIDENTIAL) WITH A DESIGN REVIEW OVERLAY FOR THE VACANT 21.05± ACRE SITE LOCATED GENERALLY AT THE SOUTHWEST CORNER OF HENDERSON AVENUE AND NEWCOMB STREET.

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

City Manager John Longley read the Ordinance by title only.

M.O. 10-030105

MOVED by Council Member Hamilton, SECONDED by Mayor Pro Tem Irish that the Council waive further reading and order the Ordinance to print.

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

At Council’s request, Mr. Dunlap explained that the Zone Change represented a typical planning scenario for phasing in development densities in relationship to arterials which involved tapering back to less intense uses the further away from those intense arterials roadways. He stated that this scenario was a common land use pattern which was replicated throughout the City, and even throughout the country.

Mayor Martinez returned to the Council Chambers and informed the audience that the Council would be available after the meeting to answer any questions they might have.

Disposition: Approved.

SECOND READINGS

14. ORDINANCE 1661, CONCERNING THE USE OF SKATEBOARDS

Recommendation: That the Council give Second Reading to Ordinance 1661, waive further reading, and adopt said Ordinance.

The City Manager presented that item and the staff report.

COUNCIL ACTION: MOVED by Council Member Hamilton, SECONDED by Mayor Pro Tem Irish that the Council give Second Reading to Ordinance 1661, waive further reading, and adopt said Ordinance, being AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE DELETING SECTION 20-1.1 OF CHAPTER 20, OF ARTICLE 1, OF THE PORTERVILLE MUNICIPAL CODE, AND ADDING CHAPTER 18, ARTICLE IV, CONCERNING THE USE OF SKATEBOARDS.

AYES: West, Irish, Hamilton, Martinez
NOES: None
ABSTAIN: None
ABSENT: Stadtherr
The City Manager read the Ordinance by title only.

Disposition: Approved.

15. ORDINANCE 1662, PEDDLERS, SOLICITORS AND CANVASSERS (DOOR-TO-DOOR SALES)

Recommendation: That the Council give Second Reading to Ordinance 1662, waive further reading, and adopt said Ordinance.

The City Manager presented the item and the staff report.

COUNCIL ACTION: MOVED by Council Member Hamilton, SECONDED by Mayor Pro Tem Irish that the Council give Second Reading to Ordinance 1662, waive further reading, and adopt said Ordinance, being AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE REPEALING CHAPTER 8 OF THE PORTERVILLE MUNICIPAL CODE IN ITS ENTIRETY AND REPLACING IT WITH NEW PROVISIONS OF CHAPTER 8 CONCERNING PEDDLERS, SOLICITORS AND CANVASSERS (DOOR-TO-DOOR SALES).

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

The City Manager read the Ordinance by title only.

Disposition: Approved.

16. ORDINANCE 1663, PARKING-COMMERCIAL VEHICLES IN RESIDENTIAL DISTRICTS

Recommendation: That the Council give Second Reading to Ordinance 1663, waive further reading, and adopt said Ordinance.

The City Manager presented the item and the staff report.

COUNCIL ACTION: MOVED by Council Member Hamilton, SECONDED by Mayor Pro Tem Irish that the Council give Second Reading to Ordinance 1663, waive further reading, and adopt said Ordinance, being AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE AMENDING CHAPTER 17, ARTICLE XI, SECTION 17-11.7, PARKING - COMMERCIAL VEHICLES IN RESIDENTIAL DISTRICTS, OF THE CODE OF THE CITY OF PORTERVILLE.

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

The City Manager read the Ordinance by title only.

Disposition: Approved.
17. ORDINANCE 1664, SPECIAL FIREWORKS PERMIT

Recommendation: That the Council give Second Reading to Ordinance 1664, waive further reading, and adopt said Ordinance.

The City Manager presented the item and the staff report.

COUNCIL ACTION: MOVED by Council Member Hamilton, SECONDED by Mayor Pro Tem Irish that the Council give Second Reading to Ordinance 1664, waive further reading, and adopt said Ordinance, BEING AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE AMENDING CHAPTER 12, ARTICLE II, FIREWORKS, OF THE PORTERVILLE MUNICIPAL CODE.

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

The City Manager read the Ordinance by title only.

Disposition: Approved.

SCHEDULED MATTERS

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

Recommendation: That the City Council adopt the proposed resolution of ambiguity and statements of City Council intent with regard to mobile, temporary, and permanent structures.

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

Mr. Dunlap pointed out that the proposed resolution addressed temporary storage buildings, modular units, and sea trains, and clarified that unless a particular structure had been subject to the Building Code, no property taxes would be assessed.

Mayor Pro Tem Irish questioned how the City could fairly and consistently address situations in which temporary storage facilities were utilized on a more permanent basis, as was being done by WalMart.

Mr. Dunlap indicated that the proposed resolution established a precedent for how the City would handle such situations in the future, adding that staff had approached resolving those situations on a site development basis.

Council Member Hamilton commented that because the City’s impact fees were paid on a square footage basis, those businesses who utilized sea trains excessively were “short-changing” the City.

Mayor Pro Tem Irish commented that he also believed that some of the storage facilities utilizing temporary storage were also not paying their fair share to the City.
COUNCIL ACTION: MOVED by Mayor Pro Tem Irish, SECONDED by Council Member West that the Council adopt the proposed resolution of ambiguity and statements of City Council intent with regard to mobile, temporary, and permanent structures.

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

Disposition: Approved.

ORAL COMMUNICATIONS

Dennis Townsend, address on record, voiced concern with the resolution passed that evening regarding Item 18, specifically Exhibit “A.” He commented that moving the time for the invocation to a time before the call to order had not been discussed, yet on Exhibit “A,” the time for the invocation had been moved. Mr. Townsend asserted that prior to its approval, nobody had been privy to the contents of Exhibit “A,” except for Council and staff. He warned that Council had violated the Brown Act and asserted that the Council’s actions appeared to be a “bait and switch.” He then urged the Council to clarify its intent and to immediately correct, prior to adjournment, any misinterpretation as to the resolution.

At Council’s direction, City Attorney Julia Lew responded that it was her understanding that the sample agenda attached to the resolution as Exhibit “A” was the attachment which had been discussed by Council. She added that the resolution and attachment had been put together very quickly and that there had been no intent to misconstrue the Council’s action. She then noted that regardless of what the Council decided to do, Exhibit “A” required revision with respect to the reference to 7:00 as being the time for conclusion of the invocation segment. Ms. Lew then stated that the Council should explicitly put the attachment on the record, which she explained, could be done at that time. She added that if the Council was concerned with the public misinterpreting what had taken place, she suggested waiting until the next meeting so the public could be noticed.

Mr. Townsend reiterated his earlier comments and urged the Council to revise Exhibit “A,” prior to adjournment that evening, to return the time of the invocation to its original place. He added that the resolution passed that evening referred to a “Legislative Invocation,” which happen during the time the Council was in session, not before, which is why it was called “legislative.”

Mayor Pro Tem Irish stated that he did not wish to hastily react to Mr. Townsend’s assertions and then voiced support for bringing the matter back to Council in two weeks.

City Attorney Julia Lew explained that she did not think the Council was in violation of the Brown Act because the option presented was consistent with the resolution that passed and that the attachment had been referenced at the time the resolution was read into the record.

Council Member Hamilton suggested that the Council consider its intent with the resolution.

Mayor Pro Tem Irish stated that his intent had been to support freedom of speech.

Council Member West stated that he understood that the Council had been attempting to provide everybody the same equal rights of free speech, and not to restrict speech.

Mayor Martinez commented that he thought that the location of the invocation had been addressed so that during the Oral Communications segment of the meeting, anyone could come forward and say whatever they wished. He suggested that the item could be brought back to Council.
Council Member Hamilton responded that the Council did not need to bring the item back, but rather the Council could address the matter at that time. He commented that Mr. Townsend had made a great point as to the nature of legislative invocations, and questioned whether the Council could remove No. 4 altogether.

City Attorney Julia Lew clarified that specific reference to Exhibit A had been made in the record as, “A sample agenda illustrating how the invocation will be handled is attached as Exhibit A to this resolution.” She then explained that the Council had several options, such as rescinding No. 4 in the Resolution, or clarifying what No. 4 would look like.

- Tony Mock, address on record, voiced concern with Exhibit “A” and stated that the perception of the audience was that the invocation had remained as a legislative invocation.
- Sidney David Pedraza, address on record, voiced concern with the Council approving a resolution that had not been made available to the public prior to its vote which, he asserted, denied the public the opportunity to voice any concerns.
- An individual came forward and commented that it appeared that the City Attorney had attempted to limit the Council’s liability by changing the time of the invocation.

Council Member Hamilton stated that the City Attorney advised but did not make policy. He pointed out that two of the options considered that evening had language stating “in lieu of legislative invocations,” and two had language stating “providing for legislative invocations.” He stated that Mr. Townsend made a very good point in that legislative invocations occurred during open session.

At the Council’s request, Ms. Lew explained that options available to Council that evening.

18. LEGISLATIVE INVOCATIONS

COUNCIL ACTION: MOVED by Council Member Hamilton, SECONDED by Council Member West that the Council rescind Resolution 27-2005, adopted on March 1, 2005, being a Resolution of the City Council of the City of Porterville Providing for Legislative Invocations.

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

Resolution 31-2005 MOVED by Council Member Hamilton, SECONDED by Council Member West that the Council approve Option No. 5, a Resolution of the City Council of the City of Porterville Providing for Legislative Invocations, amended to strike No. 4.

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

- Roland Davis, a Springville resident, clarified with the Council that its understanding of a “legislative invocation” was that the invocation actually occurred during a legislative meeting.
- Dennis Townsend, address on record, came forward and commended the Council for taking action to rectify the situation.
- Roland Davis pointed out that because most of the press had already left, many of the articles might be inaccurate.
OTHER MATTERS

- Mayor Martinez requested that the draft ordinance regarding charitable car washes be brought back for consideration.
- Mayor Pro Tem Irish clarified with staff that consideration of appointments to the Parks & Leisure Services Commission would be brought to Council on March 15, 2005.

Parks and Leisure Services Director Jim Perrine clarified that all individuals who evinced an interest in participating on the Parks and Leisure Services Commission had been advised to contact the City Clerk’s office and submit their name and information.

ADJOURNMENT

The Council adjourned at 11:29 p.m. to the meeting of March 15, 2005 at 6:00 p.m.

__________________________________________
Patrice Hildreth, Deputy City Clerk

SEAL

__________________________________________
Pedro R. Martinez, Mayor