SUBJECT: Discussion about Car Wash Ordinance

SOURCE: CITY MANAGER

The City Council has provided direction that the matter of the charitable car wash ordinance should be returned for discussion. Consistent with this the staff report from the December 7, 2004 consideration of the ordinance is attached as is a memorandum about the enforcement program in Killeen, Texas.

Recommendation: Provide direction for City staff on the car wash ordinance matter.

CM Pub Works Dir. Item No. 26
ORDINANCE NO. ________

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE ADDING ARTICLE VI, SECTIONS 15-70 THROUGH 15-180 TO CHAPTER 15, ENTITLED “CHARITABLE CAR WASH PERMIT PROCEDURE”

WHEREAS, the City Council of the City of Porterville has determined that there has been a proliferation of charitable car washes within the City; and

WHEREAS, due to the lack of regulation, these operations have had a detrimental effect on the city’s environment due to the wastewater run-off, and on commercial car wash operations that must abide by City regulatory wastewater discharge requirements;

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PORTERVILLE, AS FOLLOWS, TO WIT:

SECTION 1. That Article VI is hereby added to Chapter 15 of Porterville Municipal Code, as follows:

Chapter 15

Article VI

CHARITABLE CAR WASH PERMIT PROCEDURE

Sections:

Sec. 15-70 Definitions.
Sec. 15-80 Permit required for charitable car wash.
Sec. 15-90 Applications for permits.
Sec. 15-100 Issuance and form of permits.
Sec. 15-110 Term of permits.
Sec. 15-120 Nontransferability of permits.
Sec. 15-130 Manner of car wash.
Sec. 15-140 Receipts.
Sec. 15-150 Fund raising as a business.
Sec. 15-160 Revocation of permit.
Sec. 15-170 Violations.
Sec. 15-180 Car washing as a business.

Sec. 15-70 Definitions. For purposes of this chapter, the following definitions shall apply:
“Applicant” means a member of a charitable organization who applies for a car wash permit on behalf of the charitable organization.

“Charitable” means benevolent, civil, religious, educational, fraternal, patriotic, political, philanthropic or other similar purposes.

“Charitable car wash” means the request, directly or indirectly, of money, credit, property, financial assistance or other things of value, on the plea or representation that such money, credit, property, financial assistance or other things of value, or any portion thereof, will be used for a charitable or religious purpose, as those purposes are defined in this section, conducted by way of a car wash or similar service, in any place of business open to the public generally, on the city streets. “Charitable car wash,” as defined in this section, shall be deemed to have taken place when the request is made, whether or not the person making the request receives any contribution referred to in this section.

“Charitable organization” means and includes an organization which is a duly organized governmental or not-for-profit charitable, religious, civic, patriotic or community service organization; and the organization must have a Tax-exempt Identification number assigned to it.

“Contribution means and includes: food, clothing, money, property, subscriptions or pledges and donations, including those under the guise of loans of money or property.

“Member” means a person who belongs to a charitable organization who is entitled to vote, elect officers of the organization or hold office. The term “member” shall not include those persons who are granted a membership solely for making a contribution as a result of the charitable contribution.

“Permit holder” means the charitable organization who has been granted a permit pursuant to this chapter for the purpose of conducting a charitable car wash.

“Person” means any individual, firm, partnership, corporation, company, association, society, organization, church, congregation, assembly or league, and includes any trustee, receiver, assignee, agent or other similar representative thereof.

“Religious” or “religion” has the meaning established by the Supreme Court of the state or the Supreme Court of the United States.

“Residential property” means a building designed for or occupied by one or more families as a residence including single-family residences, duplexes and apartments.

Sec. 15-80 Permit required for charitable car wash.
A. It is unlawful for any person to engage, directly or indirectly, in a charitable car wash without first obtaining a valid charitable car wash permit pursuant to the provisions of this chapter.

B. The car wash permit issued under this chapter to a charitable organization must be prominently displayed at the location where the car wash is conducted and shall be removed at the completion of the car wash.

**Sec. 15-90 Applications for permits.**

A. Applications for charitable car wash permits shall be made to the finance department upon forms prescribed by the city. The application shall be declared to under penalty of perjury and filed with the finance department not less than five consecutive business days prior to the time at which the applicant wishes to conduct said car wash.

B. A nonrefundable application fee an amount to be set by resolution shall be paid by the applicant. The application fee shall be based solely upon the administrative costs in processing the application and issuing the permits.

C. Such applications shall contain the following information and documentation:

1. The full name, mailing address, principal business and telephone number of the charitable organization or institution, the names and addresses of the organization’s or institution’s principal officers and executives, and the address of the national, state and local headquarters, if any;

2. The nature of the relationship between the applicant and the permit holder, including whether the applicant is a volunteer, paid officer or employee, independent contractor or an agent of the permit holder;

3. The purpose for which the proceeds of the car wash are to be used;

4. The full name and address of the person or persons who will be in charge of conducting the car wash. The names and addresses of each individual who will actually be engaged in the car wash shall be on file at the agency/organization conducting the car wash and shall be made available to the city police department upon request at any time;

5. A short outline of the method or methods to be used in advertising the car wash, if any;

6. The time when such car wash will be held, including preferred date and hours of the day for commencement and termination of the car wash;
7. A statement to the effect that if a permit is granted, it will not be used or represented in any way as an endorsement of the charitable organization by the city or any department or officer thereof;

8. Proof evidencing that the permit holder is a bonafide charitable organization;

9. Such supplemental information requested by the finance department as the finance department may require. The finance department may require that such information be updated during the time the permit is in force if changes occur subsequent to filing of the application in the planned dates and locations for the charitable car wash.

D. If, while the application is pending or during the term of any permit granted, there is a change in fact, policy or method that would alter the information to be given on the application, the applicant shall notify the finance director in writing thereof prior to five p.m. the day before such change.

E. The application documents shall be available for public inspection.

Sec. 15-100   Issuance and form of permits.

A. The finance department shall issue the permit, unless it finds that:

1. Any statement made in the application is factually incorrect, and the applicant fails to correct the application after being requested to do so;

2. The applicant has not provided the information required by this chapter and fails to provide the missing information after being requested to do so;

3. The application indicates that the proposed car wash will violate any of the requirements of this chapter and the applicant fails to amend the application to indicate compliance with said section after being requested to do so.

4. The applicant has violated any of the provisions of this Article within one year of the date the application is submitted, resulting in the imposition of a fine or the revocation of a prior permit.

B. Nothing set forth in this chapter shall be construed as granting to the finance department or any other person the authority to grant, deny, suspend, revoke or renew any permit by reason of disapproval or agreement with the philosophy, opinion or belief of the applicant, permit holder or person soliciting therefor, or for any other reason not specifically provided for in this section.
C. The finance department shall either issue or deny the requested permit within two consecutive business days after the date the application is made. In the event of denial, the finance department shall give the applicant a written notice which states with specificity the reasons therefor. In the event the finance department fails to act within the time prescribed, the permit shall be deemed issued.

D. The permit, if issued, shall include the following information:

1. The name and address of the permit holder;
2. The date for which the permit is valid;
3. A statement of the charitable or religious purpose of the car wash;
4. A statement that the permit does not constitute an endorsement by the city, or any of its departments, officers or employees, of the purpose of the car wash;
5. A permit number; and
6. The signature of the finance director or his/her designee.

Sec. 15-110 Term of permits. Permits issued under this chapter shall be valid only for the date specified in the application for the car wash and as stated on the permit.

Sec. 15-120 Nontransferability of permits. No permit issued under this chapter shall be transferred or assigned, and any attempt at assignment or transfer shall be void.

Sec. 15-130 Manner of car wash.

A. Car washes held pursuant to permits under this chapter:

1. Shall take place between the hours of eight a.m. and six p.m.;
2. Shall be conducted for a one-day period only;
3. Shall not be conducted by any person under the age of sixteen years, unless supervised by an adult;
4. Shall not be conducted at any house, apartment or other dwelling nor an area zoned for residential use only;
5. Shall be conducted in an area zoned for commercial uses; and such location shall have a means of collecting the wash water and shall discharge the water to the City sewer collection system.
6. Shall use biodegradable soaps or detergents, and shall not violate any of the provisions of Chapter 25, concerning wastewater discharge.
requirements;

7. Shall have a means in place to limit waste water or runoff such as pistol grip nozzle or similar apparatus affixed to each garden hose or water source;

8. Shall not allow any person to solicit cars or other contributions from a position in or on any public right-of-way, including but not limited to sidewalks, traffic islands, driveways or the like as to endanger that individual or others;

9. Shall not be conducted at any commercial property which has held a prior car wash in the past three-month period;

10. Shall not be conducted by a charitable organization which has held a prior car wash in the past one-month period. One application per Tax-exempt Identification Number, and one permit per Tax-exempt Identification Number, will be allowed per month.

B. It is unlawful for a permit holder, as defined herein, to:

1. Persistently and importunately request any donation from any member of the public after such member of the public expresses his or her desire not to make a donation;

2. Intentionally and deliberately obstruct the free movement of any person on any street, sidewalk or other public place or any place open to the public generally;

3. Refuse to provide their name and a copy of the permit issued under this chapter, if requested by City representatives;

4. Misrepresent their identity or the identity of the charitable organization conducting the charitable car wash for which he or she is an agent;

5. Misrepresent that the charitable car wash permit issued under this chapter is an endorsement by the city, or any department or employee thereof of the charitable car wash.

Sec. 15-140 Receipts. Any person receiving money or anything of value in excess of five dollars from any contributor by means of car wash made pursuant to a permit shall, upon request, give each contributor a written receipt signed by the solicitor showing plainly the name of the permit holder and the solicitor, the permit number, the date and the amount received.

Sec. 15-150 Fund raising as a business. An organization in the business of
fund raising (seeking a profit and paying its solicitors), even if engaged by a nonprofit organization, shall be considered a “business” and must comply with this code. If such an organization is soliciting on behalf of a nonprofit organization, the nonprofit organization shall obtain a permit pursuant to this Article.

Sec. 15-160 Revocation of permit. Any violation of this chapter by applicant or permit holder shall be cause for revocation of a permit issued pursuant to this chapter. Furthermore, any organization that violates this Article shall be ineligible for the issuance of a permit for a period of one year.

Sec. 15-170 Violations. Every person who, for himself or herself, or as the agent of another, commences, engages in or conducts car wash as provided in this chapter without procuring the permit as required under this Article or who fails to comply with the conditions of this Article shall be guilty of an infraction punishable by:

1. A fine not exceeding one hundred dollars for a first violation;

2. A fine not exceeding two hundred dollars for a second violation within one year; and

3. A fine not exceeding five hundred dollars for each additional violation within one year.

Sec. 15-180 Car washing as a business. This chapter is expressly limited to charitable car washes. Any person, corporation, business or other entity who wishes to hold impromptu or temporary car washes on a for-profit basis, must comply with all city, county and state licensing or permitting requirements and do not fall within this chapter.

SECTION 2. This ordinance shall be in full force and effect thirty (30) days after its passage, adoption and approval.

ADOPTED, SIGNED AND APPROVED this ______ day of _____________, 2004.

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