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

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

ORAL COMMUNICATIONS
None

CLOSED SESSION:
A. Closed Session Pursuant to:
   2 - Government Code Section 54956.9(b) - Conference with Legal Counsel - Anticipated Litigation: One Case.
   3 - Government Code Section 54956.9(a) - Conference with Legal Counsel - Existing Litigation: Porterville Citizens for Responsible Hillside Development v. City of Porterville.

7:00 P.M. RECONVENE OPEN SESSION
REPORT ON ANY ACTION TAKEN IN CLOSED SESSION
City Attorney Julia Lew reported that no action was taken.

Pledge of Allegiance Led by Council Member Stadtherr
Invocation - one individual participated.

PRESENTATIONS
Employee of the Month - Linda Clark
Kent Delpedang, representing WalMart
   • Mr. Delpedang, General Manager of WalMart Distribution Center, presented the City with a $16,000 check for the purchase of fire rescue equipment. Fire Chief Guyton accepted the check and thanked WalMart for its generosity.

ORAL COMMUNICATIONS
• Roy Rockholt, 711 El Granito, President of Helping Hands, invited everyone to the groundbreaking ceremony of Helping Hands’ new location at the east end of the Assembly of God Church, located at Olive Avenue and Third Street, to take place at 10:00 a.m. on December 14, 2005. Mr. Rockholt then thanked the Council and the Porterville Recorder for their past support of Helping Hands.
• Greg Shelton, 888 N. Williford Drive, voiced concern with Item 17, particularly the delay in receiving the farm audit and the further continuance of the current contract. Mr. Shelton then alleged the City had received less than market price for it crops, and urged opening the farm contract to competitive bid.

• Chuck Keen, 320 S. Jaye Street, voiced concerns regarding the Santa Fe Depot, stating the parking was deficient and the facility too small. He offered suggestions for increasing parking and spoke in favor of instead utilizing the Community Center on Putnam Avenue.

• Dick Eckhoff, 197 N. Main Street, informed everyone of the maiden use of the gazebo in Centennial Park; spoke in favor of Item 9, suggesting the trolley be utilized for upcoming holiday events; and spoke on Item 23, voicing concern with veering from national protocol. Mr. Eckhoff then provided the Council with information printed from www.ushistory.org pertaining to flag lowering protocol.

• Judy Keen, 320 S. Jaye Street, thanked the Council for its support of the Senior Christmas Party.

CONSENT CALENDAR

Items 8 and 10 were removed for further discussion.

1. CITY COUNCIL MINUTES FOR OCTOBER 18, 2005; AND NOVEMBER 22, 2005

Recommendation: That the City Council approve the City Council Minutes of October 18, 2005 and November 22, 2005.

Documentation: M.O. 01-120605
Disposition: Approved.

2. BUDGET ADJUSTMENT - FIRE DEPARTMENT

Recommendation: That the City Council:
1. Authorize staff to accept the $16,000 donation.
2. Authorize a budget adjustment to the Fire Department in the amount of the donation.

Documentation: M.O. 02-120605
Disposition: Approved.

3. ACCEPTANCE OF IMPROVEMENTS - WILLIAMS RANCH, PHASE ONE (BRIAN ENNIS - ENNIS HOMES)

Recommendation: That the City Council:
1. Accept the public improvements of Williams Ranch, Phase One Subdivision for maintenance;
2. Authorize the filing of the Notice of Completion; and
3. Release the payment guarantee thirty-five (35) days after recordation, provided that no liens have been filed.
4. INTENT TO VACATE PUBLIC EASEMENTS FOR ACCESS AND MAINTENANCE OF UNDERGROUND UTILITIES, SLOPES AND PAVEMENT RELATED TO THE DEVELOPMENT OF AMALENE ESTATES, PHASE I SUBDIVISION (BECHARA CONSTRUCTION)

Recommendation: That the City Council:
1. Pass a resolution of intent to vacate easements dedicated to the City of Porterville as shown on “The Ford Estates, Unit No. 1" Final Map, filed in Book 37 of Maps, at page 99 in the Office of the Tulare County Recorder; and
2. Set the Council Meeting of January 17, 2006, or as soon thereafter, as the time and place for a public meeting.

5. AMALENE ESTATES TENTATIVE SUBDIVISION MAP - EXTENSION OF TIME

Recommendation: That the City Council:
1. Adopt the draft resolution approving a two (2) year extension of time for Amalene Estates Tentative Subdivision.

6. AIRPORT LEASE LOT 12

Recommendation: That the City Council:
1. Approve the option to extend the Lease on Lot 12 pursuant to the terms and conditions of the current Lease.

7. AIRPORT LEASE LOT 33

Recommendation: That the City Council:
1. Approve the option to extend the Lease on Lot 33 pursuant to the terms and conditions of the current Lease.
9. CITY OF PORTERVILLE TROLLEY

Recommendation: That the City Council approve:
1. The Charter Service Policy for the City of Porterville;
2. The fare for the use of the trolley at $.50 per ride, effective December 1, 2005; and
3. Uses for the trolley compatible with the guidelines prepared by staff, all in an effort to accommodate the general public, alleviate traffic congestion, and abide by the regulations of the Charter Service Policy of the City of Porterville.

Documentation: M.O. 06-120605
Disposition: Approved.

COUNCIL ACTION: MOVED by Mayor Pro Tem Hamilton, SECONDED by Council Member Stadtherr that the Council approve Item Nos. 1 through 7, and 9. The motion carried unanimously.

8. AIRPORT LEASE - RESTAURANT

Recommendation: That the City Council approve the assignment of the Lease Agreement between the City of Porterville and Mr. Michel Adams to Mr. Richard A. Chilcutt, with the Agreement becoming effective on December 1, 2005, or at the close of escrow, whichever is the latest.

City Manager John Longley presented the item.

In response to a question posed by Council Member Irish, Deputy City Manager/Airport Manager Frank Guyton indicated that the Lease was not put out for bid, but rather the current Lessee had located the Assignee. He indicated that assignment was allowed pursuant to the terms and conditions of the Lease.

COUNCIL ACTION: MOVED by Council Member Irish, SECONDED by Mayor Pro Tem Hamilton that the Council approve the assignment of the Lease Agreement between the City of Porterville and Mr. Michel Adams to Mr. Richard A. Chilcutt, with the Agreement becoming effective on December 1, 2005, or at the close of escrow, whichever is the latest. The motion carried unanimously.

Disposition: Approved.

10. IMPLEMENTATION ACTIONS FOR MEASURE H: MEASURE H SALES TAX ORDINANCE AND BOARD OF EQUALIZATION AGREEMENTS

Recommendation: That the City Council approve the enactment of the Measure H Sales Tax Measure with the following action:
1. Accept the Tulare County Registrar of Voters Official Statement of Votes Cast and Certification of Results, and adopt the draft resolution accepting the Official Canvass;

2. Reaffirm the adoption of Ordinance 1684, An Ordinance Adding Article IIA to Chapter 22 of the Porterville Municipal Code to Provide for an Additional One-half of One Percent Transactions and Use Tax to Fund Public Safety, Police and Fire Protection Services and Related Capital Projects and to Be Administered by the State Board of Equalization (“BOE”), by the Declaration of the Vote;

3. Approve two proposed agreements on behalf of the City of Porterville with the BOE by:
   a. Implementing an agreement which authorizes BOE to implement the tax and authorizes BOE to be reimbursed for costs associated with implementing the measure;
   b. Approving an ongoing administration agreement to administer and collect the sales tax; and,
   c. Adopting the draft resolution authorizing the City Manager to sign said agreements;

4. Authorize the expenses charged by the BOE for the implementation and administration of Measure "H" to be paid from current year Measure "H" proceeds to be budgeted in the Public Safety Sales Tax Fund, and the FY 2005/06 budget adjusted accordingly;

5. Direct staff to bring back to Council a detailed plan by February 7, 2006, for the promotion and selection of a Citizens’ Oversight Committee, as stated in Ordinance 1684, to be accomplished by May 1, 2006.

6. Direct Staff to prepare an informational mailer to be distributed via the utility bills thanking the citizens for their support and explaining the first and second year implementation of the program.

City Manager John Longley presented the item and staff report.

In response to a question posed by Council Member Irish, City Attorney Julia Lew clarified that the last sentence in Section 22-8.6 – Imposition of Use Tax – was language required by the State and did not grant the Council any additional authority regarding the tax.

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

Resolution 171-2005
Resolution 172-2005

Disposition: Approved.

PUBLIC HEARINGS
11. COST ALLOCATION PLAN AND USER FEE STUDY

Recommendation: That the City Council open the public hearing on the Cost Allocation Plan and User Fee Study and continue the item to the City Council Meeting of January 17, 2006.

City Manager John Longley presented the item, and Deputy City Manager Frank Guyton presented the staff report.

The public hearing was opened at 7:23 p.m.

- Greg Shelton, 888 North Williford Drive, noted that he had comments, yet would hold them if the matter was going to be continued.

Council Member Irish voiced concern with bringing the item back so quickly without the opportunity to resolve the issues and concerns of the Building Industry Association (“BIA”).

Mayor Pro Tem Hamilton moved that the Council continue the public hearing to the Meeting of January 17, 2006, with the caveat that if the BIA has remaining concerns, the matter would be further continued.

Council Member Martinez agreed with Council Member Irish’s concerns, noting the holidays.

COUNCIL ACTION: MOVED by Mayor Pro Tem Hamilton, SECONDED by Council Member Stadtherr that the Council continue the public hearing until the meeting of January 17, 2006, with the caveat that if the Building Industry Association’s concerns have not yet been resolved, the public hearing would again be continued. The motion carried unanimously.

Disposition: Continued to January 17, 2006.

12. CONSIDERATION OF RECREATION FEE ADJUSTMENTS

Recommendation: That the City Council:

1. Adopt the draft resolution setting golf course fees to be effective February 1, 2006;
2. Adopt the draft resolution setting Sports Complex parking fees to be effective January 7, 2006;
3. Provide direction on which of the three cost recovery measurement methods should be utilized for each area of recreational programs; and
4. Establish benchmarks for cost recovery by which fees should be developed for each area of recreational programs.

City Manager John Longley presented the staff report, and Parks & Leisure Services Director Jim Perrine presented the staff report.
The public hearing opened at 7:36 p.m.

• Greg Shelton, address on record, voiced support for the proposed fee adjustments for the Golf Course, noting that if labor costs were kept in check, the proposed adjustments might help achieve a positive balance in the Fund.

In response to a question posed by Mayor Pro Tem Hamilton, Mr. Perrine indicated that the projections made by the Parks & Leisure Services Commission included the nine percent Administrative Fee.

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

Council Member Irish commented that he did not object to the proposed Golf Course fee adjustments, particularly if the Men’s Club had no objections. With regard to the parking fees at the Sports Complex, Council Member Irish voiced opposition, noting that the decision to charge for parking was not the right decision. He pointed out that the City did not charge for parking at any other parks.

Mayor Pro Tem Hamilton agreed with Council Member Irish’s concerns regarding parking fees and inquired as to the annual revenue produced from the fees, which staff estimated to be approximately $20,000 annually, with $3,500 in labor and materials costs. A discussion ensued as to the history of charging for parking at the Sports Complex. Mr. Longley indicated that the concept of parking fees was an attempt to recoup some of the significant costs of operating the Complex.

Council Member Irish reiterated his concerns regarding charging, citing the projected maintenance costs of the Skate Park.

Council Member Martinez questioned whether other means were available to recoup costs at the Sports Complex, suggesting increasing user fee costs. A discussion ensued as to options available, during which staff noted that the participant fee could be increased, yet parking fees impacted everyone, and participant fees only impacted local teams because visiting teams were not charged.

Mayor West commented that the Sports Complex was the only City park at which parking was not allowed on the street, and stated that he believed this to be the main reason why a parking fee had been established.

COUNCIL ACTION: MOVED by Mayor Pro Tem Hamilton, SECONDED by Council Member Irish that the Council adopt the draft resolution setting golf course fees to be Resolution 173-2005 effective February 1, 2006. The motion carried unanimously.

Mayor Pro Tem Hamilton moved that the Council direct staff to take no action on increasing the parking fees at the Sports Complex, and look toward possibly eliminating the parking fees altogether.

Council Member Stadtherr seconded Mayor Pro Tem Hamilton’s motion.

Council Member Irish suggested that Mayor Pro Tem Hamilton amend his motion to specifically set a time frame of ninety days to consider either increasing or eliminating the parking fees, so as to have the matter decided prior to the summer season.
COUNCIL ACTION: MOVED by Mayor Pro Tem Hamilton, SECONDED by Council Member Stadtherr that the Council direct staff to take no action on increasing the parking fees at the Sports Complex, and that, within ninety days, the Council consider whether to increase or eliminate the parking fees at the Sports Complex. The motion carried unanimously.

Mayor Pro Tem Hamilton next questioned the inclusion of the YES program in the analysis, confirming with staff that it was not a fee-based program, but rather a program supported entirely by grant funds. A discussion resulted as to various program costs, during which staff clarified that the City did not separately track personnel costs related to each individual Special Program, but instead tracked all Special Programs as a whole.

Mr. Perrine requested that the Council consider and direct staff accordingly as to the cost recovery percentage rate that staff should seek for each of the overall program areas, and recommended departmental-level tracking. He stated that once the Council determined the cost recovery rates for each program area, staff could then review each sub-program and set fees accordingly in order to achieve those recovery rates.

Mayor Pro Tem Hamilton commented that he would like to have more time to review the item.

Council Member Martinez confirmed that if the Council sought a recovery rate of 50%, the fees for the programs would likely need to be increased, some slightly, some more significantly.

Council Member Irish inquired why the item had been submitted to the Council without a Parks & Leisure Services Commission recommendation, to which Mr. Longley responded that the item was to have gone to the Commission, yet the matter had been specifically scheduled for presentation to the Council on that evening, and that staff had adhered to that schedule. It was added that the Commission had discussed at length the OHV Park Fees, and upon being informed of the Council’s desire to pursue 100% cost recovery, had opted to move on to other items. The Council was then requested to reaffirm that direction and provide some guidance to the Commission in some of the other areas.

Mayor Pro Tem Hamilton confirmed that the overall budget would be affected by the fees, and suggested that the matter be sent to the Parks & Leisure Services Commission for consideration. The Council concurred. Mayor Pro Tem Hamilton then suggested that the programs be broken out in greater detail.

Disposition: Golf Course fee adjustments approved; direction provided to staff.

13. THIS ITEM IS BEING CONSIDERED AS A PART OF ITEM NO. 11.

14. INTERIM URGENCY ORDINANCE PROHIBITING CONSTRUCTION, OPERATION AND MAINTENANCE OF WIRELESS COMMUNICATIONS TOWERS

Recommendation: That the City Council:
1. Hold a public hearing and adopt the draft Interim Urgency Ordinance Prohibiting the Use of Residentially Zoned Land for Construction, Operation, and Maintenance of New Towers for Wireless Communications; and

2. Consider the option to expand the land use limitation to include the area within 300 feet of residentially zoned properties.

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

Council Member Irish confirmed with staff the proposed radius of 300 feet was set by statute and that the Council had discretion in amending that distance.

The public hearing opened at 8:02 p.m.

• Dick Eckhoff, address on record, questioned the radius capabilities of communications towers. Staff responded that a one mile radius was common, however the height of the antenna played a role.

The public hearing closed at 8:05 p.m.

Council Member Irish commented that he believed that a 300 foot radius was not enough, and suggested the radius be increased to 1,200 feet.

Council Member Martinez agreed with Council Member Irish’s suggestion.

City Attorney Julia Lew confirmed with staff and the Council that since the Ordinance was an Interim Urgency Ordinance, more flexibility and discretion was therefore allowed.

Council Member Stadtherr commented on the appropriateness of perhaps being over-restrictive in the temporary Ordinance.

Mayor West agreed with Council Member Stadtherr’s comments.

Ms. Lew clarified that the Council so chose to increase the prohibition area from 300 feet to 1,200 feet, the language “and/or all areas within a 1,200 foot radius of residentially-zoned property” would be added to Section 3 and the last paragraph of Section 4 of the draft Ordinance as follows: (Underlining added for emphasis.)

Section 3:
The City of Porterville does further herewith find and determine that allowing the use of residentially zoned land and/or all areas within a 1,200 foot radius of residentially-zoned property for the purpose of constructing, maintaining and operating a new wireless communication tower prior to the adoption of procedures concerning the zoning and
regulation of wireless communications towers will result in that threat to public health, safety or welfare being exacerbated.

Last Paragraph of Section 4:
All of which give rise to a need to complete the study, within a reasonable time, of the potential and appropriate City zoning procedures and policies for approving the use of land for the purpose of constructing and operating a wireless communications tower, and in order to protect the public safety, health or welfare it is necessary to prohibit the use of residentially zoned land and/or all areas within a 1,200 foot radius of residentially-zoned property for the purpose of constructing and operating a wireless communications tower until such time as said study is completed and the City Council has determined, what new and additional, if any, procedures and policies are necessary and appropriate to put in place.

Council Member Irish confirmed with staff that the separation requirement would be changed, but the noticing requirement would remain the same.

COUNCIL ACTION: MOVED by Council Member Irish, SECONDED by Council Member Martinez that the Council adopt the Interim Urgency Ordinance Prohibiting Ordinance 1685 the Use of Residentially Zoned Land for Construction, Operation, and Maintenance of New Towers for Wireless Communications, as amended to increase prohibition from 300 feet from residential land to 1,200 feet. The motion carried unanimously.

Disposition: Approved, as amended.

15. AIRPORT WATER INTER-TIE AND WELL SYSTEM IMPROVEMENTS PROJECT

Recommendation: That the City Council adopt the draft resolution approving the Mitigated Negative Declaration for the Airport Water Inter-tie and Well System Improvements Project.

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

The public hearing opened at 8:11 p.m. and closed at 8:12 p.m. when nobody came forward.

Mayor Pro Tem Hamilton voiced support for approving staff’s recommendation.

COUNCIL ACTION: MOVED by Mayor Pro Tem Hamilton, SECONDED by Council Member Martinez that the Council adopt the draft resolution approving the Mitigated Negative Declaration for the Airport Water Inter-tie and Well System Improvements Project. The motion carried unanimously.
Disposition: Approved.

The Council recessed for five minutes.

16. REAFFIRMATION OF THE DISADVANTAGED BUSINESS ENTERPRISE PROGRAM (DBE)

Recommendation: That the City Council:
1. Open the public hearing;
2. Take testimony and written comments; and
3. Direct staff to consider the comments, finalize the revised DBE Program and submit the program to Caltrans for approval.

City Manager John Longley presented the item and called upon City Engineer Mike Reed for the staff report.

The public hearing opened at 8:27 p.m. and closed at 8:28 p.m. when nobody came forward.

Mayor Pro Tem Hamilton questioned the role of Caltrans in the program, which Mr. Reed attributed to the involvement of federal highway funds.

A discussion then ensued as to the language pertaining to “race-neutral” and “race conscious” in Section IV-DBE Program Updates, page 2 of the Program document attached to the staff report. City Attorney Julia Lewis indicated that the language was included as a way in which to encourage the participation of minorities. She indicated that while such participation was not mandated, specific goals did need to be set.

COUNCIL ACTION: MOVED by Council Member Stadtherr, SECONDED by Mayor Pro Tem Hamilton that the Council finalize the revised DBE Program and submit the Program to Caltrans for approval. The motion carried unanimously.

Disposition: Approved.

SCHEDULED MATTERS

17. REPORT ABOUT AUDIT OF FARM OPERATION

Recommendation: That the Council direct staff to schedule a Study Session for 5:00 p.m. on December 20, 2005 before the next regular meeting to discuss with the City Auditor his review of financial accounts regarding the Farm Operation.

The City Manager presented the item and the staff report.

A discussion ensued as to what had been provided by the Auditor, which was indicated to be a letter with attached schedules. Mr. Longley stated that he did not believe the audit document to be responsive. He added that the Council and the Auditor should meet directly, pointing out that the Auditor worked for the Council.
Council Member Stadtherr indicated that he would be available for the proposed Study Session on December 20, 2005.

Council Member Martinez also stated that he too would make arrangements to be available.

Mayor Pro Tem Hamilton moved that the Council direct staff to proceed with an RFP for the Farm Management Agreement.

Council Member Irish seconded the motion.

Mayor West spoke against moving forward with an RFP when the Council had yet to see the audit.

Mayor Pro Tem Hamilton voiced frustration with the delay and the process, and a discussion ensued thereafter regarding how proceeding with a RFP might affect the farming operation. Mr. Longley warned that initiating a RFP might refocus needed efforts away from the operation of the farm. He indicated that a significant amount of staff time – approximately 400 to 500 hours – had been spent on reviewing the operation’s financial documents and that staff was confident with its findings and recommended course of action. A discussion ensued as to whether the initial figures were accurate or not.

At Mr. Longley’s suggestion and the Mayor’s request, Mr. John Baker, Waste Water Treatment Facility Superintendent, came forward to address Mayor Pro Tem Hamilton’s comment that he had been told that the initial figures provided to the Council had been made up. Mr. Baker provided a review of the method employed to verify the figures, and indicated the numbers were accurate.

In response to Mr. Baker’s comments, Mayor Pro Tem Hamilton pointed out that because of the recent extensive financial analysis conducted, a RFP could be easily drafted. Mr. Baker countered that continuing with the current contract for its remaining term of 18 months would be beneficial in that additional financial data would be provided, which would allow for a target bid rate. He added that currently, only data on a very good year and a very bad year existed, and that additional data would be beneficial.

Mayor Pro Tem Hamilton confirmed with Mr. Longley that proceeding with a RFP when the current contract expired would be appropriate. A discussion at length ensued as to the nuances of the City’s farming operation, and to the differences in proceeding the RFP at the present time versus initiating it at the contract’s expiration. Mayor Pro Tem Hamilton commented that without obtaining bids, it was impossible to determine whether land was being put into production at the lowest cost to the City. In response, Mr. Baker proceeded to elaborate on the level of research conducted on other similar custom farming operations.

Council Member Irish confirmed that only three of the Council Members – Council Member Martinez, Mayor Pro Tem Hamilton and Mayor West – had toured the operation. He suggested that he and Council Member Stadtherr first tour the farm before the Council proceeded with taking any action.
COUNCIL ACTION: MOVED by Mayor Pro Tem Hamilton, SECONDED by Council Member Irish that the Council direct staff to issue a RFP for the Farming Agreement.

M.O. 11-120605
AYES: Hamilton
NOES: Martinez, Stadtherr, West
ABSTAIN: Irish
ABSENT: None

M.O. 12-120605 MOVED by Council Member Stadtherr, SECONDED by Mayor West that the Council direct staff to schedule a Study Session for 5:00 p.m. on December 20, 2005 before the next regular meeting to discuss with the City Auditor his review of financial accounts regarding the Farm Operation; with direction to provide Council Members Irish and Stadtherr the opportunity to tour the operation prior to said Study Session.

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

Disposition: Study Session scheduled for December 20, 2005 at 5:00 p.m.

18. CONSIDERATION OF A REVISED PROPERTY TAX REVENUE SHARING AGREEMENT

Recommendation: That the City Council consider the three options listed below, and direct staff on the preferred course of action.

Option No. 1: Take no action and allow the annexations to move forward under the 1979 agreement. This would result in less than $5,000 in property tax revenue being delivered to the City in the first year, and would grow at a rate of approximately 3% annually.

Option No. 2: Approve the modification to the agreement adopted by the Council in July of 2004. This would result in approximately $57,500 in property tax revenue to the City in the first year, growing at a rate of approximately 3% annually.

Option No. 3: Continue to negotiate with the County.

The City Manager presented the item and the staff report.

COUNCIL ACTION: MOVED by Council Member Stadtherr, SECONDED by Mayor Pro Tem Hamilton that the Council approve Option No. 2, approving the modification to the agreement adopted by the Council in July 2004, which would result in approximately $57,500 in property tax revenue to the City in the first year,
growing at a rate of approximately 3% annually. The motion carried unanimously.

Disposition: Option No. 2 approved.

19. AUTHORIZATION TO DISCUSS “OWNERSHIP” OF THE INDIANA STREET AND SCRANTON AVENUE PROJECT WITH TULARE COUNTY

Recommendation: That the City Council authorize the Public Works Director to:

1. Meet with Tulare County Public Works for the purpose of determining whether the City can take over all aspects of the Indiana/Scranton Project; and
2. Prepare a staff report for Council’s consideration that addresses the project’s current design and environmental status and identifies funding requirements and agency obligations related to said funding requirements.

City Manager John Longley presented the item, and City Engineer Mike Reed presented the staff report.

In response to questions posed by Council Member Irish, a discussion ensued as to the impetus of the project, the original plans for funding, and the staffing shortages at the County which might jeopardize the progress. Mr. Reed commented that while the City was also short-staffed in its Engineering Division, staff recognized the importance of the project and sought to ensure its completion.

COUNCIL ACTION: MOVED by Mayor Pro Tem Hamilton, SECONDED by Council Member Irish that the Council authorize the Public Works Director to (1) meet with Tulare County Public Works for the purpose of determining whether the City can take over all aspects of the Indiana/Scranton Project; and (2) prepare a staff report for Council’s consideration that addresses the project’s current design and environmental status and identifies funding requirements and agency obligations related to said funding requirements. The motion carried unanimously.

Disposition: Approved.

20. HILLSIDE DEVELOPMENT ORDINANCE UPDATE STATUS REPORT

Recommendation: That the City Council consider the following option and direct the City Attorney and staff accordingly:

Option No. 1: Move forward with the hiring of TRG Land, Inc. to prepare a Hillside Development Ordinance and allocate $122,000 for the project (this includes a 10% contingency, but no allocation of funds for staff time). If this is the Council’s desire, funding
needs need to be appropriated to contract with the firm. Options available to fund the effort are as follows:

a. Delay the ordinance development effort until next fiscal year to determine if monies are available within the 2006/2007 budget.

b. Move forward with the ordinance and borrow funds from the equipment replacement fund and establish a repayment schedule.

c. It would appear that any other option would result in a General Fund deficit for the Fiscal Year 2005/2006.

Option No. 2: Direct the City Attorney and Staff to meet with the consultant to modify the scope of work and reduce the overall cost and time of the project. To keep with the objectives of ordinance development and the Council’s schedule, there will likely be minor changes.

Option No. 3: Direct the City Attorney to solicit other proposals from consultants to prepare a hillside development ordinance.

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

Council Member Irish noted that the Council’s desire had been to expedite the drafting of the Ordinance. A discussion ensued as to funding options and sources for reimbursement, in the event funds were borrowed from the Equipment Replacement Fund.

Mayor Pro Tem Hamilton inquired as to the amount of carryover in the departmental budgets, to which staff indicated there was generally none.

Council Member Stadtherr suggested that a fee – applicable only to those residences affected by the Hillside Development Ordinance – be established. A discussion ensued as to the possibility of establishing such a fee, the revenue from which could be used to reimburse the Equipment Replacement Fund. It was suggested that the fee could be imposed during the map process. Mr. Longley indicated that any fee imposition would take some thought, and that it could be brought back to the Council, possibly by the next Council Meeting.

Council Member Irish clarified with City Attorney Julia Lew how the proposed fee would be established. A discussion ensued regarding at which point in the process the fee would prove most effective, such as at the map stage or the development stage.

Mayor West confirmed with staff that seven percent had been extensively discussed as the grade at which a lot would be considered to be “hillside.” He then commented that few lots would likely qualify as “hillside” thereby limiting the amount of revenue generated by a hillside fee if such a fee only affected those particular lots. It was stated that more consideration needed to be given on how such a fee would be developed. Mayor West then voiced concern with approving the item when no source for reimbursing the Equipment Replacement Fund had been identified.
Mayor Pro Tem Hamilton pointed out that staff had proposed three options.

City Manager John Longley recommended that the Council direct staff to proceed, noting that if other funding options were identified in the future, those options could be brought to the Council and substituted in place of the currently proposed plan.

COUNCIL ACTION: MOVED by Council Member Stadtherr, SECONDED by Council Member Irish that the Council direct staff to move forward with the hiring of TRG Land, Inc. to prepare a Hillside Development Ordinance and allocate M.O. 15-120605 $122,000 for the project (which includes a 10% contingency, but no allocation for staff time); fund the effort by borrowing funds from the equipment replacement fund; and establish a repayment schedule from a source to be determined at a later date. The motion carried unanimously.

Mayor Pro Tem Hamilton suggested a time period of six months to determine a funding source.

Disposition: Option No. 1(b) approved.

21. CONSIDERATION OF DRAFT ORDINANCE REPEALING CITY CODE SECTION 19-5, EX-OFFICIO MEMBERS ON THE PARKS AND LEISURE SERVICES COMMISSION

Recommendation: That the City Council consider the request of the Porterville Unified School District Superintendent, and if appropriate, approve the first reading of the draft ordinance, being an Ordinance of the City Council of the City of Porterville Amending Chapter 19, Article 1, of the City Code of the City of Porterville by Repealing Section 9-5, Ex-Officio Members.

The City Manager presented the item, and Parks & Leisure Services Director Jim Perrine presented the staff report.

Mayor Pro Tem Hamilton indicated that Dr. Snavely, Superintendent of Porterville Unified School District, had inquired whether the Charter would allow the District a voting seat on the Parks & Leisure Services Commission. City Attorney Julia Lew confirmed that Commission membership was governed solely by ordinance and not by Charter. Mayor Pro Tem Hamilton then voiced support for adding a voting seat on the Commission for a representative of the Porterville Unified School District (“PUSD”).

Council Member Irish pointed out that there were other school districts. A discussion ensued as to possibly adding one seat for each district. It was stated that the other districts might not wish to participate.

Mayor Pro Tem Hamilton noted that at the present time only PUSD had evinced an interest, and if the other districts voiced interest in also participating, the matter could be brought back before the Council. It was then noted that PUSD had already appointed Cathy Capone as its representative.
City Attorney Julia Lew offered clarification of the appropriate process to add a voting seat on the Commission for PUSD.

COUNCIL ACTION: MOVED by Mayor Pro Tem Hamilton, SECONDED by Council Member Stadtherr that the Council direct staff to bring back to the Council a draft ordinance adding a voting seat on the Parks & Leisure Services Commission for a representative of Porterville Unified School District. The motion carried unanimously.

Disposition: Direction provided to the Council.

22. CONSIDERATION OF PROPOSED LEGISLATIVE PROGRAMS FOR THE CITY OF PORTERVILLE

Recommendation: That the City Council consider legislative proposals to be presented to the Assemblyman Bill Maze, including:

1) Request expansion of AB 1280;
2) Request Enterprise Zone legislation permitting a second 5-year extension; and
3) Propose other legislation.

City Manager John Longley presented the item and the staff report, which included a review of the legislative priorities identified by the Council for 2005. Mr. Longley added that in addition to the items recommended in the staff report, support for AB1602 regarding vehicle license fee legislation should also be included.

Mayor Pro Tem Hamilton proposed that Highway 65 also be included, noting that while the legislators might not be able to carry a bill, they might be able to promote the issue in the budgetary process.

Council Member Irish agreed that Highway 65 should be included, adding that it should also be advocated in all correspondence with State agencies.

Council Member Stadtherr voiced support for also including ongoing support for both the CDF Fire Attack Base and island annexations.

Mr. Longley clarified the Council’s direction thus far to be to identify the following as priorities via a letter to Assemblyman Maze: 1) Expansion of AB 1280; 2) Enterprise Zone legislation permitting a second 5-year extension; 3) Support for Highway 65; 4) Support for CDF Fire Attack Base in the budgetary process; and 5) Extension of the period for island annexations.

COUNCIL ACTION: MOVED by Council Member Stadtherr, SECONDED by Mayor Pro Tem Hamilton that the Council approve staff’s recommendation, as amended to also include support for Highway 65; support for CDF Fire Attack Base in the budgeting process; and extension of time period beyond 2007 for island annexations. The motion carried unanimously.
23. CONSIDERATION OF FLAG LOWERING POLICY

Recommendation: That the City Council approve the policy as presented.

City Manager John Longley presented the item and noted the legitimacy of the comments that evening pertaining to National policy on flying the U.S. flag at half mast. He requested that the Council continue the matter so as to provide the opportunity to conduct further research.

Mayor Pro Tem Hamilton agreed with the City Manager’s suggestion. He noted his preference was to abide by National policy and suggested establishing a City flag which could be lowered for appropriate times.

Council Member Irish agreed that a City flag should be pursued and would be more appropriate for lowering.

Council Member Stadtherr voiced support for directing staff to re-write the item and bring it back to the Council for consideration. The Council concurred.

Disposition: Continued.

The Council recessed for five minutes.

24. REPORT ON IMPLEMENTATION OF LICENSE AGREEMENT FOR OPERATION OF SENIOR CITIZEN PROGRAMS AT THE SANTA FE DEPOT

Recommendation: That the City Council accept the report.

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

Council Member Irish indicated that he had requested that the item be placed on the agenda. He referenced a letter from the County to the City of which he had just become aware. He suggested that there must be some validity to the issues raised, and requested that Mr. Longley read the letter into the record.

Mr. Longley read the letter of November 8, 2005 from Mr. John M. Davis, Director of the Kings/Tulare Area Agency on Aging, to Mr. Longley, as follows:

November 8, 2005

John Longley, City Manager
City of Porterville
291 North Main Street
Porterville, CA 93257
Dear Mr. Longley:

This letter is to follow up on our brief conversation on November 3, 2005 regarding issues that have arisen at the Santa Fe Senior Center.

Kelly West has been coming into the Santa Fe Senior Center on a daily basis and inspecting the nutrition space. It has been reported that Mr. West has addressed the seniors and staff in a way that has been interpreted as intimidating and unfriendly. The seniors are reporting that they feel uncomfortable and unwelcome when he addresses them.

Mr. West has been adamant to the participants and staff of the Senior Nutrition Program that they not park in the front of the building on Mondays and Wednesdays during the Senior Council’s bingo game. He facilitated having signs installed in the front of the building indicating that the front parking was for bingo only and has insisted the seniors visiting the site for the Nutrition Program and the volunteers to move their vehicles. In addition, Mr. West advised the seniors that he had just paid $400 to have the floor waxed and they could not move the chairs around because they were marking the floor.

More recently, on Monday, November 7, Mr. West arrived at the site and called the Nutrition Site Manager, Aimee Murphy, into a private meeting with him and Mr. Miltz to discuss the parking issues and to discuss issues around the bingo programs. They informed her that an article had appeared in the paper that morning; they felt one of the Senior Nutrition Program participants had something to do with the article’s appearance in the paper, and they wanted to know if Ms. Murphy had witnessed the argument between Mr. West and the participant the previous week. Ms. Murphy indicated that she had not witnessed any discussion, as she had been out ill the previous week. They then indicated that they would like to meet with the participant regarding this issue. The participant involved is on vacation this week and is unavailable. The problem with all of this, of course, is that Mr. West is directly interfering with staff, clients, and the program.

In addition, Mr. West and Mr. Miltz requested that the meal program be closed on either Mondays or Wednesdays to accommodate their existing bingo program. They then inquired about bingo that the Senior Nutrition participants occasionally play at the site. They advised the Nutrition Site Manager that the Senior Nutrition Program would need to shut down their bingo games. In counter indication to Mr. West’s remarks and being asked to reduce our hours of operation and meals service, our indication was that seniors want us to increase our days of service.
And finally, Mr. West is refusing to allow staff to put any holes in the walls to hang a bulletin board, which the program utilizes to post notifications required by law.

We would like to re-establish an appropriate chain for Mr. West to express his concerns. It would be most effective if Mr. West would relay any concerns he has through John Hughes, Program Manager for K/T AAA at 730-2553, ext. 343, who will be able to evaluate the issues and develop a proper resolution. Or alternatively, and perhaps more appropriately, he might inform the City of his concerns. Under no circumstances should he be directing or intimidating staff during hours of operation.

These concerns are only brief examples of a much larger problem that is resulting in ill-will and resentment between Mr. West, the Porterville Senior Council seniors, and the seniors participating in the Senior Nutrition Program. Without his interventions, things would proceed better, in my view, and issues would be resolved.

We will continue to chronicle issues as they appear and bring them to your attention.

Sincerely,
John M. Davis, Director
Director
cc: Supervisor Jim Maples

Council Member Irish commented that he believed that Mayor West’s concurrent service on both the City Council and the Senior Council created a muddled situation. He commented that while supposedly no conflict of interest existed, he believed that a conflict did exist, and suggested that Mr. West ought to make a choice between the two. He then voice disapproval of the Mr. West’s alleged misuse of his authority as Mayor.

Mayor West noted that neither Council Member Irish, Mr. Davis, nor Mr. Maples had been present during the events in question, and suggested that Council Member Irish should have personally investigated the matter. He then denied any wrongdoing, and disagreed that a conflict of interest existed, noting his abstention on pertinent items on both Councils.

At Mayor West’s request, City Attorney Julia Lew commented that Mayor West could serve on both Councils without a financial conflict of interest, however appearance issues existed and therefore Mayor West had been advised to abstain from both decision making processes. She then noted that common law bias issues were always present.

Mayor Pro Tem Hamilton voiced concerns with the handling of the situation, particularly with not being informed earlier. He then inquired as to the involvement of Mr. Davis of the Kings/Tulare Area Agency on Aging (“AAA”). It was stated that Mr. Davis visited the site on occasion and that Mr.
Longley had met with him at the Santa Fe Depot on November 3, 2005. The discussion then shifted to the November 7, 2005 meeting between Mayor West, Chief of Parks & Leisure Services Operations Milt Stowe and Nutrition Site Manager Aimee Murphy.

Mayor West stated that he had asked Ms. Murphy if she had any knowledge of the parking lot incident and that Mr. Stowe had nothing to do with the matter. He then spoke of the incident itself. A discussion ensued as to the impetus of Mr. Stowe’s involvement, during which Mr. Longley informed the Council that Mr. Stowe was regularly at the site in the course of his job and the meeting was likely an impromptu conversation. Mr. Perrine added that Mr. Stowe had visited the site at his request so as to ascertain, with the Nutrition Site Manager, whether or not certain ongoing activities were AAA-organized activities, or not, such as bingo. A dialog commenced on the requirements of holding bingo games, and whether or not the two bingo games being held at the Santa Fe Depot had permits to operate. It was determined that the smaller bingo game operation did not have a permit, and was therefore not allowed. It was then stated that the Senior Council’s permit had expired in June 2004 and had only just recently – the previous Friday – been renewed. It was stated that upon the discovery of the expiration, staff had, in the normal course of business, notified the Senior Council of its expired permit.

An individual from the audience requested permission to speak, which the Council denied.

Mayor Pro Tem Hamilton requested further explanation as to Mr. Davis’s comment pertaining to a request to change the Nutrition Program’s days of operation. Mr. Longley and Mr. Perrine both indicated staff was unaware of any such request. Mayor Pro Tem Hamilton asserted that a discrepancy existed.

Council Member Stadtherr commented that while the concerns raised were valid, he suggested that the interested parties be allowed to handle the situation, unless another problem arose.

In response to a question posed by Mayor Pro Tem Hamilton, Mr. Longley indicated that he had been the one, at a problem solving session, to suggest that parking placards be installed at the site. A discussion next ensued regarding the details of that problem solving session, which pursuant to staff’s recollection, included Mayor West, Mr. Longley and Mr. Perrine.

Council Member Irish reiterated his concerns for Mayor West serving on both Councils. He then pointed to staff’s likely feeling of obligation to immediately respond to requests of Mayor West, not Senior Council Vice-President West. In response, Mr. Longley clarified that staff’s interest had always been in preserving the Program, and that all efforts had been made in that regard. He attributed the issues to the transition rather than to personal involvements, and warned that there might be more issues ahead. Mr. Longley then explained his handling of the letter from Mr. Davis, indicating that the letter had been addressed to him and that he had worked to address the issues raised. He added that his response letter to Mr. Davis had been a follow-up as to the problem solving sessions.

Mayor West requested that Mr. Keen be allowed to come forward and address the Council, which was denied.

Mayor Pro Tem Hamilton commented that the issue did not pertain to Mr. West as an individual, but rather to what a Council Member could or could not do. He then voiced concerns with problems
occurring at the Santa Fe Depot, and asserted that those problems were being swept under the table. A
dialog next resulted regarding the Santa Fe Depot as to which party – the Senior Council or the City –
had authority over the facility, and which party paid the rent and utilities. During that discussion, staff
and Mayor Pro Tem Hamilton disagreed as to which party had control, with Mayor Pro Tem Hamilton
understanding it to be the City, and Mr. Longley interpreting the Lease to give the authority to the Senior
Council. The discussion then focused on the utility bills and whether or not the City’s stipend covered
the costs.

In response to a question regarding the effects of Council Member involvement on staff posed
by Council Member Irish, Mr. Longley stated that while it might be easier on projects without Council
Member involvement, the fact was that Council Members were involved in Community activities.

Mayor Pro Tem Hamilton reiterated his concerns with what he perceived to be Mayor West’s
misuse of his authority as Mayor, to which Mayor West rebutted the allegations and invited Mayor Pro
Tem Hamilton to personally visit the program. A debate as to the issues ensued.

Council Member Martinez commented that when the position of Mayor was used to further one’s
own objectives, there was a problem. He asserted that when serving as Mayor, one is always perceived
in that capacity. He then voiced displeasure with the Mayor’s alleged actions, commenting that the
Council had worked very hard in developing its relationship with the County. He next voiced disapproval
of utilizing staff time for one’s personal objectives. Council Member Martinez then commented that he
personally knew Mr. Davis to be a man of integrity and had also known Mayor West to speak with a
forked tongue.

Mayor West accepted Council Member Martinez’s comments, and stated that he had no apologies
to make.

Council Member Irish voiced concern with the “no parking” signs recently installed at the Santa
Fe Depot and suggested that the Council direct staff to remove those parking placards, so as to first
consult with AAA to determine their parking needs.

COUNCIL ACTION:

M.O. 18-120605

MOVED by Council Member Irish, SECONDED by Council Member
Martinez that the Council direct staff to remove the recently installed
parking placards at the Santa Fe Depot, so as to consult with
representatives of Kings/Tulare Area Agency on Aging to determine their
parking needs.

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

Council Member Irish clarified his motion for staff and then suggested that in the event of future
issues, Mayor West not get involved and instead have the Senior Council President contact the City
Council directly.
Disposition: Direction provided to staff.

**ORAL COMMUNICATIONS**

- Ben Harvey, 99 S. Ohio, Senior Council Executive Committee Member, came forward and spoke of lost revenue due to parking problems at the Santa Fe Depot; informed the Council of Mayor West’s recusal on all Senior Council/City items; spoke against renewing the contract with the Area’s Agency on Aging (“AAA”), and voiced support for setting forth all contract details in writing.

- Greg Shelton, address on record, voiced concern with Item 20, particularly the $122,000 fee for a consultant to write the Hillside Ordinance, and suggested instead that the Ordinance be prepared in-house. He then voiced concern with comments made by staff regarding the farming operation being “in the black,” and contrasted the City’s farming operation to another local operation.

- Roy Rockholt, address on record, President of the Senior Council, commented that during his frequent visits to the Santa Fe Depot he had never been informed of any major problems, suggesting that something had been made of nothing.

- Dick Eckhoff, address on record, spoke generally of the accomplishments of both the Senior Council and the AAA, and suggested a more-clearly defined agreement to resolve issues.

**OTHER MATTERS**

- Mayor Pro Tem Hamilton clarified that the issue that evening had been to address Mayor West’s mis-use of his authority as Mayor.

- Council Member Martinez requested that the Council, by either letter or proclamation, recognize Soccer Coach Nuno on his 500 wins.

- Mayor West commented that he had done nothing wrong with the Council or the Senior Council. He then suggested that other Council Members personally visit the Santa Fe Depot.

**ADJOURNMENT**

The Council adjourned at 10:57 p.m. to the meeting of December 20, 2005.

______________________________
Patrice Hildreth, Deputy City Clerk

SEAL

______________________________
Kelly West, Mayor