CONTINUED PUBLIC HEARING


SOURCE: CITY ATTORNEY

COMMENT: At the June 20, 2006, City Council Meeting, the City Council adopted Resolution No. 84-2006, setting forth its intent to disestablish the Business Improvement Area of the City and proposing to dispose of the assets acquired with the revenues of the assessments levied within the District. The Resolution scheduled the public hearing and consideration of an ordinance disestablishing the District for the July 18, 2006, City Council Meeting. Public Notice of the procedures and the hearing was given in accordance with the Resolution of Intent, consistent with applicable law. On July 18, 2006, the City Council opened the public hearing and took public testimony concerning whether the District should be disestablished. After deliberating the issues, the Council requested that the City conduct an advisory election, via ballots mailed to the business owners within the District, in order to obtain additional information from those who pay the District assessment. Consequently, on July 20, 2006, the City Clerk mailed out ballots to each business owner in the District. The business owners were instructed to either mail or personally deliver the ballots to City Hall, so that the ballots would be received no later than the close of the continued public hearing on the matter at this meeting.

Upon holding the continued public hearing at the established time, and receiving any additional ballots, objections, or other testimony, the City Council may thereafter approve and give first reading to the attached ordinance disestablishing the area unless a majority of the assessed business owners protest such disestablishment.

RECOMMENDATION: It is requested that the City Council proceed as follows:

1. Hold the continued public hearing concerning the Ordinance to Disestablish the Business Improvement Area of the City of Porterville.

Item No. 18
2. If a majority of the assessed businesses have not protested the disestablishment, the Council may approve and give first reading to the attached Ordinance Disestablishing the Business Improvement Area of the City of Porterville, Proposing to Dispose of Assets Acquired with the Revenues of Assessments Levied within the Business Improvement District, and Repealing Chapter 15, Article IV, “Business Improvement Area,” Sections 15-31 through 15-39, in their Entirety; OR

3. If a majority of the assessed businesses have not protested the disestablishment, notwithstanding this the Council may opt to continue the assessments and keep the District in place or direct that other modifications be initiated, OR

4. If a majority of the assessed businesses do protest the disestablishment, the City Council should take no further action on the proposed disestablishment.

ATTACHMENT:
1. Ordinance No. 1702, An Ordinance Disestablishing the Business Improvement Area of the City of Porterville, Proposing to Dispose of Assets Acquired with the Revenues of Assessments Levied within the Business Improvement District, and Repealing Chapter 15, Article IV, “Business Improvement Area,” Sections 15-31 through 15-39, in their Entirety
ORDINANCE NO. 1702


WHEREAS, the Business Improvement Area of Porterville was established in 1987, in accordance with the Parking and Business Improvement Area Law of 1979, for the purposes of promotion of business activities in the District area, promotion of public events to take place on or in public places in the area, decoration of public places within the area, and the furnishing of music in public places in the area; and

WHEREAS, over the years, various business owners who are located within the District and pay assessments have voiced concerns with regard to the effectiveness of the Business Improvement Area/District; and

WHEREAS, disestablishment of the Business Improvement Area/District is governed by local City regulations and California Streets and Highways Code Sections 36515, 36550, and 36551; and

WHEREAS, in accordance with applicable law, on June 20, 2006, the City Council adopted Resolution No. 84-2006, a Resolution of the City Council of the City of Porterville Resolving the Intent to Disestablish the Business Improvement Area of the City of Porterville and Proposing to Dispose of Assets Acquired with the Revenues of Assessments Levied within the Business Improvement District, and said Resolution set the public hearing for consideration of an ordinance disestablishing the District, to be held during the regularly scheduled City Council Meeting on Tuesday, July 18, 2006, 7:00 p.m. or as soon thereafter as the matter can be heard; and

WHEREAS, the above-referenced public hearing was duly noticed and held, and continued to and concluded on August 1, 2006; and

WHEREAS, at the hearing the City Council heard all protests and received evidence for and against the proposed action and ruled upon all protests, and at the conclusion of the public hearing no majority protest was received opposing the disestablishment of the District;

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

SECTION 1. That the Porterville Business Area and District is hereby disestablished. Any assets that have been acquired with the revenues of the assessments levied within the Business Improvement District Area shall be disposed of in accordance with the City’s surplus property procedures. Any remaining revenues, or proceeds of any sales of the assets shall be refunded to the assessed business owners in the same manner as the assessments are calculated.

SECTION 3. Pursuant to California Streets and Highways Code Section 36551, Notice of disestablishment of the area shall be published once in a newspaper of general circulation in the City, not later than 15 days after the ordinance disestablishing the area is adopted.

SECTION 4. 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 __________, 2006.

________________________________________________________
Cameron Hamilton, Mayor

ATTEST:
John Longley, City Clerk

By: Georgia Hawley, Chief Deputy City Clerk
Sec. 15-31. Authority.

This article is adopted pursuant to the “Parking and Business Improvements Area Law of 1979,” being Section 36500 et seq. of the California Streets and Highways Code, and Resolution of Intention No. 51-87, adopted by the city council on May 19, 1987, and titled “A Resolution of the City Council of the City of Porterville, California, Declaring its Intentions To Establish a Business Improvement Area in the Central Business District Area of the City of Porterville, To Provide for the Levying of Assessments and Charges on Specified Business Conducted Within Such Area, Classifying Various Businesses for Such Purposes, Describing the Boundaries of the Proposed Area, the Authorized Uses To Which the Proposed Revenues Shall Be Put, the Rate of Such Charges, Fixing the Time and Place of a Hearing To Be Held by the City Council To Consider the Establishment of Such an Area, and Directing the Giving of Notice of Such Hearing.” Such resolution was published and mailed as provided by law, and hearings thereon were held by the city council at its regular meeting on June 16, 1987, at which time all persons desiring to be heard, and all objections made or filed, were fully heard. The city council duly concluded the hearing on June 16, 1987, and determined that protests objecting to the formation of the area have not been made by a majority of the businesses within the area and that such protests are overruled and denied. The city council hereby finds that the businesses and improvement area, in the opinion of the city council, will be benefitted by the expenditure of the funds raised by the charges proposed to be levied. (Ord. No. 1383, § 1(1), 7-7-87)

Sec. 15-32. Area established; description.

(a) There is hereby established a business improvement area which shall be known as the “Business Improvement Area of the City of Porterville,” herein referred to as the “area” for brevity and convenience. The description of the area is as follows:

All that property within the boundaries of the following described lines:

Beginning at the intersection of the north right-of-way line of Olive Avenue with the east line of the Southern Pacific Railroad property, said line being fifty (50) feet east of the center of the main track; thence northerly along said line parallel to said main track two thousand seven hundred eighty (2,780) feet more or less to its intersection with the south right-of-way line of Morton Avenue; thence easterly along the south right-of-way of Morton one thousand sixty (1,060) feet more or less to its intersection with the west right-of-way line of Second Street; thence southerly nine hundred (900) feet more or less to its intersection with the south right of-way line of Cleveland Avenue; thence easterly along said south right-of-way line, one hundred seventy (170) feet more or less to the west line of an alley; thence southerly along the west line of the alley one thousand eight hundred ninety (1,890) feet more or less to its intersection with the north right-of-way
line of Olive Avenue; thence west along said right-of-way line, one thousand two
hundred thirty (1,230) feet more or less back to the point of beginning.

(b) The businesses located in the area shall be subject to any future amendments to
the “Parking and Business Improvement Area Law of 1979” (commencing with Section 36500
of the Streets and Highways Code). (Ord. No. 1383, § 1(2), 7-7-87)

Sec. 15-33. Authorized uses of additional revenue.
The authorized uses to which the additional revenue shall be put are as follows:

(1) The general promotion of business activities in the area.

(2) Promotion of public events which are to take place on or in public places in the
area.

(3) Decoration of any public place in the area.

(4) Furnishing of music in any public place in the area. (Ord. No. 1383, § 1(3), 7-7-
87)

Sec. 15-34. Levy of charge in addition to business license tax.
There is hereby imposed a charge for the purposes authorized in section 15-33, which
charge is in addition to the ordinary business license tax as it is imposed upon businesses
conducting their activities within the area by chapter 15 of the Porterville City Code. Such
additional charge is imposed at the rates set forth in section 15-35 for the specified business
classifications regardless of whether the business is taxed upon a flat rate or other basis under the
provisions of chapter 15 of the Porterville City Code. (Ord. No. 1383, § 1(4), 7-7-87)

Sec. 15-35. Classification of businesses and charges imposed.
(a) Businesses classified; determination of charge. The businesses conducted in the
area are classified as follows so as to promote the equitable imposition of the additional charge
hereunder in relation to the relative benefits to be derived. The charge shall be as follows:
Charges totaling an amount (not to exceed five hundred dollars ($500.00) semi-annually) equal
to one hundred (100) percent of the amount paid to the city for a business license shall be paid
by each business having a business license within the area of benefit.

(b) Determination of type or class of business to be made by purchasing agent. The
determination of the type or class of business or businesses a charge payer is engaged in or about
to engage in shall be an administrative function of the purchasing agent or designee of the city in
accordance with chapter 15 of the Code of the city.

(c) Change in classification; investigation. In cases where a charge payer believes he
is placed in the wrong business or class of business or businesses, he may apply in writing to the
purchasing agent for a change in his classification, setting forth in full his reason for requesting
such change. The purchasing agent shall conduct an investigation and shall thereupon render his
decision in writing as to the proper classification or classifications.
Appeal to Administrative Services Manager or designee by charge payer. If the charge payer is aggrieved by the purchasing agent's decision, he shall have the right to appeal to the Administrative Services Manager or designee. The appeal shall be filed with the Administrative Services Manager or designee within ten (10) days of the date of the purchasing agent's decision, and shall be heard by the Administrative Services Manager or designee within thirty (30) days thereafter. The charge payer shall be given at least seven (7) days' notice of the hearing by the Administrative Services Manager or designee. (Ord. No. 1383, § 1(5), 7-7-87; Ord. No. 1614, § 1, 9-17-02)

Sec. 15-36. Exemption; voluntary contribution.
Any business, person or institution located in the area, which is exempt from the payment of the ordinary business operations tax of the city by reason of the provisions of the laws of the United States or the city or by reason of the provisions of the United States or California Constitution, is not to be charged under this proceeding but may make a voluntary contribution to the city. Such contribution shall be used for the purposes provided in this article. (Ord. No. 1383, § 1(6), 7-7-87)

Cross reference—Exemptions to license tax, § 15-6.

Sec. 15-37. Modification or disestablishment of area.
(a) Generally; resolution. The city council, by ordinance, may modify the provisions of this article hereby proposed, and may disestablish the area, after adopting a resolution of intention to such effect. Such resolution shall describe the proposed change or changes, or indicate that it is proposed to disestablish the area, and shall state the time and the place of a hearing to be held by the city council to consider the proposed action.

(b) Petition by majority of businesses; filing date. If a majority of the businesses in the area file a petition with the city clerk requesting the council to adopt a resolution of intention to modify or disestablish the area, the council shall adopt such resolution and act upon it as hereinafter provided. Signatures on such petitions shall be those of a duly authorized representative of businesses in the area; and the petition shall be filed with the city clerk within six (6) weeks of the date on which the first signature was affixed.

(c) Publication and mailing of resolution. The city clerk shall cause such resolution to be published at least once in the official newspaper of the city, and shall also mail a complete copy thereof, postage prepaid, to each business in the area, or, if it is proposed to enlarge the boundaries of the area, to each business in the area as it is proposed to be enlarged, such publication and mailing shall be completed at least fifteen (15) days prior to the date of the hearing.

(d) Modification of article provisions, protest by area businesses. In the event the resolution proposes to modify any of the provisions of this article, including changes in the existing charges or in the existing boundaries of the area, such proceedings shall terminate if protest is made by a majority of the businesses in the area, or in the area as it is proposed to be enlarged, provided that the city council may modify the boundaries or charges as specified in Streets and Highways Code Sections 36526 through 36540.

(e) Disestablishment procedures. In the event the resolution proposes disestablishment of the area, the city council shall disestablish the area in accordance with provisions of the Parking and Business Improvement Area Law of 1979, unless at such hearing, protest against disestablishment is made by a majority of the businesses in the area.
(f) Hearing by council. At the hearing, the city council shall hear all protests and receive evidence for and against the proposed action and shall rule upon all protests. The council's determination in this regard shall be final. The council may continue the hearing from time to time. (Ord. No. 1383, § 1(7), 7-7-87; Ord. 1537, § B52, 8-6-96)

Sec. 15-38. Administration.

The council may provide for the administration of the area's activities by entering into a contract with an entity that, in the opinion of the city council, will have the capability of representing the interests of the businesses in the area, whose general objectives will be consistent with the purposes of this article, and who will provide the resources to effectively achieve those objectives. However, in such event the city council shall reserve onto itself sole discretion as to how the revenue derived from the charges hereunder shall be used within the scope of the authorized purposes. (Ord. No. 1383, § 1(8), 7-7-87)

Sec. 15-39. Payment of charge; effective date; fund.

(a) Generally. The collection of the charges imposed hereunder shall be at the same time and in the same manner as the general business license tax under chapter 15 of the City's Code commencing January 1, 1988.

(b) Business improvement area fund created. A special fund is hereby created, known as the “business improvement area fund,” and the charges imposed by this article shall be deposited in such fund. (Ord. No. 1383, § 1(9), 7-7-87)