PORTERVILLE CITY COUNCIL MINUTES
ADJOURNED MEETING - FEBRUARY 23, 2007
CITY HALL COUNCIL CHAMBERS
291 NORTH MAIN STREET, PORTERVILLE
FRIDAY - 1:00 P.M.

Roll Call: Council Member McCracken, Council Member Pedro Martinez, Mayor Pro Tem Felipe Martinez, Council Member Hernandez, Mayor Hamilton

Pledge of Allegiance led by Mayor Pro Tem Felipe Martinez
Invocation - a moment of silence was observed.

ORAL COMMUNICATIONS
None

SCHEDULED MATTER
1. STUDY SESSION - NOISE ORDINANCE

Recommendation: That City Council review the proposed ordinance and give direction, if any, to staff and bring the ordinance back for final adoption at a future meeting.

Acting Deputy City Manager John Lollis presented the item, and Community Development Director Brad Dunlap presented the staff report. Mr. Dunlap then introduced Mr. Bob Brown of Brown-Buntin Associates Consultants in Acoustics of Visalia.

Mr. Brown produced a sound level meter, which was passed to the Council Members for their review and experimentation. Council Member Pedro Martinez inquired as to the cost of the meter, pointing out that the proposed ordinance required event sponsors to provide their own meter and regularly monitor sound levels during events. A discussion ensued during which staff indicated that sound level meters were available at a wide range of costs, depending on the devise’s sophistication, and that staff’s meters were in the $200 range.

Mr. Dunlap spoke of a shift in noise policy, noting that the ordinance before the Council that day was actually based on an antiquated State ordinance drafted in the late 1970s. He indicated that the new noise philosophy was more user-friendly and enforceable, and advised the Council that Mr. Brown could elaborate further on the topic. Mr. Brown briefly reviewed the difference between a Noise Element and a Noise Ordinance. He stated that a Noise Element was typically a planning document setting forth established policies in an attempt to prevent new and incompatible land uses from occurring in the future. A Noise Ordinance, Mr. Brown explained, was a remedy that occurred after the fact. He stated that a Noise Ordinance regulated existing uses and provided a framework by which the City could determine whether certain noises were excessive and in violation. He added that the Noise Ordinance must have a noise standard that was both reasonable and enforceable, as well as understandable. Mr. Brown spoke in favor of maintaining consistency between the Noise Element and Noise Ordinance within a city, as well as keeping in line with the
noise standards adopted by other agencies throughout the State and Country. Mr. Brown then stated, that while he would not say that the proposed language was antiquated, it was based on the Office of Noise Control’s model ordinance that was developed in the late 1970s. He stated that language addressing noise level/performance standards was fairly complex, and that his organization advocated a more simplified version of those standards for better understanding and easier enforcement. Mr. Brown then recommended that the Council stay with the levels proposed in the draft ordinance, yet that they be simplified. He then inquired whether the Council had any observations or questions with regard to the sound level meter.

Council Member Pedro Martinez noted that when he spoke while holding the devise, his voice registered approximately 67 to 72 decibels. He noted that the proposed maximum level was 95 decibels, and inquired whether the duration of the noise was also a factor. A discussion ensued, during which Mr. Brown clarified that the level of noise registered on the meter was dependent upon the distance from the noise source. He stated, as a frame of reference, that the type of noise level that might generate 95 decibels could be a lawn mower in close proximity. Mr. Brown then spoke of the difficulty with enforcing standards with regard to vehicles playing loud music. He stated that noise ordinances were helpful in resolving issues that neighbors could not resolve on their own, and protected both the individual producing the noise and the individual exposed to the noise.

Mayor Pro Tem Felipe Martinez inquired as to how noise produced from loud Harley Davidson motorcycles would be regulated and violations enforced. It was stated that the Vehicle Code governed noises emanating from motor vehicles, and that when manufactured, vehicles were required to meet certain noise standards. Mr. Brown pointed out that it was after-market exhaust systems put on Harleys and some vehicles that often made them louder and caused problems. He stated that a local noise ordinance would only address those sources of noise that were not preempted from local control by State or Federal control. He stated that a local noise ordinance would regulate such areas as commercial and industrial activities, sound trucks, concerts in the park, etc.

Council Member Pedro Martinez voiced concern with regulating noise issues that should be guided by common sense. He then inquired as to the City’s liability, if any, in a situation in which the City allowed noise to continue at a high level, and hearing loss was asserted. City Attorney Julia Lew stated that the City would likely be able to defend its action in the event its adopted standards were reasonable and the noise fell either at or below standards considered to be safe. OSHA standards were discussed, during which Mr. Brown pointed out that an OSHA standard was a time-weighted average exposure of 90 decibels for no more than eight hours, or 95 decibels for no more than four hours, and so on.

Parks & Leisure Services Director Jim Perrine produced a megaphone and sounded its horn as a test of noise level. It was stated that the sound registered 85 on the sound level meter. Mr. Perrine again sounded the megaphone, at a higher level, which was stated to have registered 95 on the sound level meter. Mr. Brown pointed out that a noise of 95 decibels was loud, not merely annoying. He stated that if an individual was exposed to a noise of that level for a long period of time, it would give the individual a temporary threshold shift. A discussion ensued as to the proposed posting requirement, during which Mr. Brown noted that the Council could choose to remove the requirement without jeopardizing the effectiveness of the ordinance itself.
Council Member Pedro Martinez voiced concern with requiring event sponsors to provide sound level meters. He commented that he believed the issue of noise should be handled on a neighborly basis, from a nuisance standpoint, and voiced concern with over regulation.

Mayor Hamilton agreed with Council Member Pedro Martinez’s comments with respect to being good neighbors, but stated that unfortunately, there were those individuals who were not reasonable and good neighbors.

Mr. Perrine again sounded the megaphone at a higher frequency to test noise levels. It was determined that the sound registered above 95 decibels on the meter, and that the noise was indeed loud and annoying. A discussion ensued regarding the need to identify explicit noise standards if the ordinance was to be enforced. Mr. Brown noted there was a nuisance aspect of the proposed ordinance, as well as a performance aspect. He then suggested that the Council simplify the standards set forth in Section 18-83 and 18-84 so as to make them easier to understand and enforce.

A brief discussion next ensued regarding motor vehicles playing loud music, and of the difficulty in enforcing the Vehicle Code regulating sound from vehicles. Mayor Pro Tem Felipe Martinez commented that loud music emanating from vehicles had been the reason that the item had been brought forth in the first place, yet the Ordinance would not even address the issue. It was stated that the subject ordinance had been brought to the Council because of noise emanating from the Fairgrounds, as well as because of the requirement per the City’s CEQA review. The Porterville Fair was briefly discussed, during which it was stated that the permit issued to the Fair operators contained noise standards.

With regard to the proposed Ordinance, Mr. Dunlap indicated that language had been included which provided for a relief permit process. He stated that the Council would have the authority to approve a permit of relief in situations of undue hardship. He noted that certain conditions could be placed on the permit, and proceeded to elaborate on various circumstances that could arise and the conditions which the Council could require. Mr. Dunlap then pointed out that the provision requiring event sponsors to provide sound level meters to monitor and measure the level of sound at an event would only apply to events that were in public parks or in City facilities.

Mr. Brown recommended that the standards adopted by the Council in the Ordinance be consistent, and that the City avoid using an “ambient plus five” type of standard, noting the difficulty in determining and proving the level of “ambient.” Mr. Brown also recommended that the City make all attempts to draft both the Noise Ordinance and the Noise Element of the General Plan in a consistent manner.

In response to questions posed by Mayor Pro Tem Felipe Martinez and Mayor Hamilton, Mr. Dunlap indicated that certain areas within the City could have a higher noise threshold, such as near the Sports Complex. He stated that in the event the Fair relocated, the uses surrounding the new site would determine the noise threshold. He stated that if the Fair was surrounded by industrial or commercial uses, the threshold could be higher. City Attorney Julia Lew added that as long as the basis for making the determination was clear, the City could legally have different noise thresholds.
Mr. Dunlap then elaborated on “right to operate” notices that could be required so as to notify residents and/or potential residents of increased levels of noise in the immediate area. He cited the Red Hawk Estates Subdivision’s proximity to a race track, and Foster Farms’ proximity to a residential neighborhood as examples. Mr. Brown added that such provisions were very common, citing neighborhoods near airports and the disclosures made to residents in those neighborhoods, as well as the requirements of homeowners with regard to granting authority to operate aircraft over their properties. He stated that homeowners near airports also waived the right to sue the airport over noise.

Council Member Pedro Martinez spoke in favor of an ordinance that was not so stringent that it impeded on individuals’ rights to enjoy their lives, that recognized that the difference between city life and country life, and had a balance between the rights of those with a livelier lifestyle and those more subdued.

Chief McMillan indicated that the Police Department on average issued approximately seven to ten permits per week for outside amplification for parties, etc. He stated that during the past year, the P.D. had not revoked any of those permits for non-compliance. He stated that the P.D. did receive calls for loud music in the evening, and that the majority of offenders complied when requested to do so. Chief McMillan indicated that the proposed ordinance would provide the Community Development Department the tool it needed, but that with regard to enforcement, the P.D. already had the ability to revoke permits. He then spoke of past noise problems with the Fairgrounds.

Mr. Dunlap indicated that the Police Department generally dealt with temporary events generating noise, while the Community Development Department typically dealt with long-term permanent uses generating noise. He then went on to elaborate on the rationale behind requiring event sponsors to provide noise meters for monitoring, which he stated was to have a noise meter on site so that in the event a complaint was made, the onus would not be on the Police Officer to gauge the sound, but would rather be on the sound generator. Mr. Dunlap suggested that Parks & Leisure Services Department could have them on hand and rent them out.

Mayor Pro Tem Felipe Martinez spoke in favor of the ordinance, without requiring event sponsors to provide a noise meter.

Council Member Pedro Martinez voiced concern with the penalties proposed in the ordinance, inquiring whether the penalties were consistent with other crimes. City Attorney Julia Lew stated that the language could be revised to make the offense a “wobbler.” She stated a wobbler violation was one that started out as a misdemeanor, but provided the discretion to reduce it to an infraction.

Council Member McCracken spoke of a situation in which a noise complaint had been made to the Police Department, and the responding officer indicated that in the event he was called out a third time, the subject sound equipment would be temporarily held as evidence. He commented on the effectiveness of the warning and inquired whether it should be considered. City Attorney Julia Lew indicated that the law already provided the ability for officers to take possession of
property for evidentiary purposes, yet suggested that it might not be feasible to do so. She stated that an administrative hearing might first need to take place prior to holding the property. A discussion ensued during which it was stated that taking possession of sound equipment should only be done in extreme cases. Ms. Lew indicated that she could add language in the ordinance explicitly authorizing the temporary seizure of sound equipment, but pointed out that the officers already had that authority per statute. It was requested to include language indicating that sound equipment “may” be held as evidence.

Council Member Hernandez spoke in favor of giving the ordinance some teeth.

A discussion next ensued as to the how acceptable noise levels varied between different times of day. Mr. Dunlap indicated that the ordinance currently identified “Daytime – 7:00 a.m. to 10:00 p.m.” as the more noise tolerable period; and “Nighttime – 10:00 p.m. to 7:00 a.m.” as the time during which acceptable noise levels were reduced. He noted there were exemptions to those stated standards in Section 18-85. Mr. Brown then elaborated on the history of the designation of “Daytime” and “Nighttime” time frames.

In response to a question with regard to the calibration of sound level meters, Mr. Brown indicated that he had never known of a situation in which a sound level meter had been intentionally manipulated to provide an inaccurate level.

A discussion ensued as to the requirement of event sponsors to provide a sound level meter. Ms. Lew recommended that, from an enforcement standpoint, either the event sponsor be designated as the individual required to provide the meter, or that said requirement be removed altogether. The Council concurred that the onus of providing a sound level meter should not be placed on the event sponsor, and directed staff to remove the requirement altogether.

Council Member Pedro Martinez inquired whether the pitch of the sound affected how the noise registered on the sound level meter. A discussion ensued, during which Mr. Brown elaborated on the technical nuances of how sound meters registered noise levels, indicating that pitch was taken into account. With regard to refuse vehicles and street sweepers, Mr. Dunlap clarified that those uses, as well as emergency vehicles, would be exempt from the noise ordinance. He noted that the timeframes for distinguishing acceptable noise levels for maintenance on residential properties was 6:00 a.m. to 9:00 p.m. on weekdays, and 7:00 a.m. to 9:00 p.m. on weekends. A brief discussion ensued as to how early City street sweepers and refuse vehicles began operating, and whether those City operations should be explicitly included in the exemptions. It was decided to add them as an exemption category of “utility maintenance,” which would include refuse collection and street sweeping.

Mayor Pro Tem Felipe Martinez again inquired as to policies for special disclosure requirements for noise producers located in close proximity to residential areas. Mr. Dunlap indicated that said policies would be addressed within the Noise Element of the General Plan.

Council Member Pedro Martinez noted that the language setting forth a standard based on “ambient plus five” should also be removed, as was recommended by Mr. Brown. The Council
agreed. A discussion ensued as to the Noise Level Standards as set forth in the proposed ordinance. In response to concerns of Council Member Martinez that the proposed sound level maximums were too low, Mr. Perrine again demonstrated sounding the megaphone from a greater distance. It was decided to take a ten minute recess so as to allow for a demonstration of the megaphone outside.

The Council recessed for ten minutes.

Mr. Brown acknowledged the concerns raised by Council Member Pedro Martinez with regard to the sound levels. He stated that the proposed levels were based on levels that had been adopted in many other cities, such as the City of Fresno, and stated that there was precedence as to the reasonable nature of the proposed levels. He stated that raising a base level by five decibels would triple the acoustic energy, noting that five decibels was likely a bigger change in noise than the Council might think it would be. He then cautioned over making significant changes to the levels, noting that the maximum levels were quite loud.

Mayor Pro Tem Felipe Martinez indicated that personally, he did not have a problem with the proposed standards, and that his concerns had been addressed.

Council Member Hernandez spoke in favor of the ordinance having teeth to deal with situations in which officers had to again return to a scene after one or two previous warnings. It was stated that staff had already been given the direction to include language in that regard.

A discussion ensued as to the standards as set forth in the proposed ordinance. Mr. Dunlap indicated that staff recommended eliminating the categories, and include only an average level and a maximum noise level. Council Member Pedro Martinez requested that the average level be increased by five decibels, making the average noise level 55 decibels in the Daytime, and 50 decibels in the Nighttime. The Council concurred.

The Council thanked Mr. Brown for his time.

2. COUNCILMAN HERNANDEZ TRIP TO MIAMI, FLORIDA FOR THE UNITED STATES CONFERENCE OF MAYORS SUMMIT ON AT-RISK YOUTH

Recommendation: That the Council authorize the travel of Council Member Hernandez to Miami, Florida, for the United States Conference of Mayor

Acting Deputy City Manager John Lollis presented the item and the staff report.

Mayor Hamilton spoke in favor and voiced his interest in obtaining information that could be implemented in Porterville.

Council Member Pedro Martinez suggested that Council Member Hernandez also be granted the authorization to purchase with the City credit card any materials he deemed beneficial to the City. A discussion ensued as to whether a maximum amount should be identified, during which the
Council decided give Council Member Hernandez the discretion to determine how much money needed to be spent.

COUNCIL ACTION: MOVED by Mayor Pro Tem Felipe Martinez, SECONDED by Council Member McCracken that the Council authorize the travel of Council Member Hernandez to Miami, Florida, for the United States Conference of Mayors, and to also authorize Council Member Hernandez to purchase materials he deems to be relevant.

AYES: McCracken, P. Martinez, F. Martinez, Hamilton
NOES: None
ABSTAIN: Hernandez
ABSENT: None

Disposition: Approved, as amended.

ORAL COMMUNICATIONS
None

OTHER MATTERS
• Mayor Pro Tem Felipe Martinez requested that the Council, in possible coordination with the schools, recognize the high school teams that had qualified for the play-offs. A brief discussion ensued during which the importance of recognizing those students was emphasized. It was decided that Mr. Lollis would research whether a presentation at an upcoming student assembly, or the like, would be possible. It was suggested that perhaps the bands also be recognized.

• Council Member Pedro Martinez stated that he had submitted some names of wrestlers from Alta Vista that qualified for the State Championships for which he would like Certificates of Accomplishments prepared.

• Council Member Hernandez indicated that he wished to re-visit the Farming Operation Contract. He stated that he still had some concerns over the item and that he would like to re-visit the contract awarded to Mr. Nuckols. He indicated that he would also like clarification as to the Cease and Desist Order, suggesting that perhaps the Contract should be extended to coincide with the Cease and Desist Order’s life. He requested further dialog take place on the item.

A discussion ensued, during which Mayor Hamilton suggested that information be provided to Council Member Hernandez prior to placing the item back on the Agenda. City Attorney Julia Lew clarified that there had not been an award of a contract, but that a current contract had been extended versus proceeding with a Request for Proposals. She stated that it was her understanding that there was still pending negotiations as to the terms of the extension. Council Member Hernandez reiterated his desire to obtain further information on the Cease and Desist Order and of his desire to adjust the contract to coincide with the life of the Order, and then proceed with an RFP after the expiration of that term. He stated that he wished he would have conveyed that sentiment during the deliberations of the item at the previous meeting. City Attorney indicated that
the item would be brought back to the Council anyway. A discussion ensued as to potential litigation surrounding the issue, during which the City Attorney clarified what would qualify as sufficient notice of potential litigation so as to move the discussion into Closed Session. It was determined that the item could be brought back for discussion under Closed Session.

Mayor Hamilton suggested that Council Member Hernandez meet with Ms. Lew to go over the Cease and Desist Order prior to bringing the item back on the Agenda. He then voiced his distress over the situation and indicated that he was currently compiling information that he would distribute to the Council.

Council Member McCracken clarified with the City Attorney that the Council could decide to reconsider an item up until such time as somebody had already relied upon the Council’s initial decision. Ms. Lew commented that Mr. Nuckols would likely not have any expectations related to the Council’s recent vote until his contract actually expired, which she recalled would occur near the year end. It was pointed out that the terms had not yet been negotiated on the contract extension. A brief discussion ensued as to certain provisions of the contract.

Mayor Hamilton requested that an objective review of the Cease and Desist Order take place with Council Member Hernandez. The Council concurred that Council Member Hernandez first meet with the City Attorney to review the Cease and Desist Order prior to the item being placed on the Agenda.

• Council Member Pedro Martinez requested that congratulatory letters be sent to the individuals who won awards the previous day.

ADJOURNMENT
The Council adjourned at 2:50 p.m. to the Council Meeting of March 6, 2007.

Patrice Hildreth, Deputy City Clerk

SEAL

Cameron Hamilton, Mayor