PORTERVILLE CITY COUNCIL AGENDA
SPECIAL MEETING - JUNE 22, 2007
CITY HALL COUNCIL CHAMBERS
291 NORTH MAIN STREET, PORTERVILLE
FRIDAY - 3:30 P.M.

Roll Call: Council

Pledge of Allegiance led by Council Member Pedro Martinez
Invocation

ORAL COMMUNICATIONS

SCHEDULED MATTER
1. Consideration of Fireworks Permit for the Monache Band Parents Association
   Re: Consideration and review of options for the Monache Band Parents Association to sell
   fireworks.

CLOSED SESSION
2. Government Code Section 54957.6 - Conference with Labor Negotiator. Agency Negotiator:
   John Lollis. Employee Organizations: Porterville City Employees Association, Porterville
   City Firefighters Association, Porterville Police Officers Association, Police Supervisor
   Series, and Management and Confidential Series.

ORAL COMMUNICATIONS

ADJOURNMENT to the Council Meeting of June 29, 2007 at 2:30 p.m.

In compliance with the Americans with Disabilities Act and the California Ralph M. Brown Act, if
you need special assistance to participate in this meeting, or to be able to access this agenda and
documents in the agenda packet, please contact the Deputy City Clerk at (559) 782-7464. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting and/or provision of an appropriate alternative format of the agenda and documents in the agenda packet.
SUBJECT: CONSIDERATION OF FIREWORKS PERMIT FOR THE MONACHE BAND PARENTS ASSOCIATION

SOURCE: Administration

COMMENT: Mayor Hamilton has called a Special City Council Meeting for Friday, June 22, at 3:30 p.m. to review the options available to the Monache Band Parents Association (MBPA) for the sale of fireworks for the July 4, 2007 holiday.

The MBPA obtained a permit from the County of Tulare to sell fireworks at their booth at 2401 West Olive Avenue, which has historically been within the County. The MBPA had been to both the County and the City for confirmation of their proposed location prior to the commencement of selling script for their fireworks beginning in May. It was later determined that the property in question was in fact within the City limits, due to a recent annexation, and therefore under the jurisdiction of the City Council and the Porterville Fire Department regarding fireworks sales. The problem has apparently arisen due to delays in proper reporting of recent annexations. The MBPA was informed of the unfortunate situation this week, and is requesting that the City Council assist them in finding a solution.

The Council can consider the adoption of the attached draft resolution allowing a permit to be issued to the MBPA, because the City’s regulations allow up to 1 permit for every 4,000 residents. The MBPA did participate in the lottery, and would have received a permit, had the City allowed for the maximum number of permits in accordance with its regulations. If the resolution is approved, the MBPA would be required to adhere to all rules and requirements set forth in Chapter 12, Article II, in order for the Fire Chief to issue their permit to sell “safe and sane” fireworks within the City during July 1 to July 4, 2007.

RECOMMENDATION: 1) To be determined by Council; or
2) That City Council adopt the attached resolution as presented.

Attachments: Draft resolution w/attachment of Chapter 12, Article II, Fireworks

Item No.1
RESOLUTION NO. ___-2007

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE
AUTHORIZING THE FIRE CHIEF TO ISSUE A FIREWORKS PERMIT TO THE
MONACHE BAND PARENTS ASSOCIATION FOR 2007

WHEREAS, on May 1, 2001, the City Council did adopt Ordinance No. 1601 revising
Chapter 12, Article II, Fireworks, to allow for the sale of Safe and Sane Fireworks within the City
of Porterville; and

WHEREAS, the City Council has determined that, for calendar year 2007, the Monache
Band Parents Association shall be granted a permit, due to the delay in public reporting of certain
APN numbers upon annexation to the City, which resulted in the loss of the Association’s ability
to utilize their County Fireworks’ permit at the location utilized by the Association in prior years.

NOW THEREFORE BE IT RESOLVED:

For Calendar Year 2007, the following eligible organization shall be granted a permit to sell
safe and sane fireworks, in addition to the ten permits issued by the lottery pursuant to Section
12.2.5., within the City of Porterville:

The Monache Band Parents Association

This organization must adhere to all other rules and requirements set forth in Chapter 12, Article II,
in order to receive their permit.

ADOPTED this 22nd day of June, 2006.

______________________________
Cameron Hamilton, Mayor

ATTEST:

______________________________
Georgia Hawley, Chief Deputy City Clerk
ARTICLE II. FIREWORKS

Sec. 12.2.1. Definitions.
For the purposes of this chapter, definitions shall have the respective meaning ascribed to them in Sections 12500 et seq. of the Health and Safety Code of the State of California, and unless otherwise apparent from the context, certain words and phrases used in this chapter are defined as follows:

(a) “Fireworks” shall mean any combustible or explosive composition, or any substance or combination of substances, or device prepared for the purpose of producing a visible or an audible effect by combustion, explosion, deflagration or detonation, and shall include blank cartridges, toy pistols, toy cannons, toy canes or toy guns in which explosives are used, firecrackers, torpedoes, skyrockets, Roman candles, Daygo bombs, sparklers or other devices of like construction and any devices containing any explosive or flammable compound, or any tablet or other device containing an explosive substance; except that the term “fireworks” shall not include any auto flares, paper caps containing not in excess of an average of twenty-five one hundredths (0.25) of a grain of explosive content per cap and toy pistols, toy canes, toy guns or other devices for use of such caps, the sale and use of which shall be permitted at all times.

(b) “Dangerous fireworks” shall mean any fireworks specified as such in the State Fireworks Law, Sections 12500 et seq. of the Health and Safety Code of the State, and such other fireworks as may be determined to be dangerous by the State Fire Marshal.

(c) “Safe and sane fireworks” shall mean and include any fireworks not designated as “dangerous fireworks”, except that, in any case, only end fuses may be used. The California State Fire Marshal’s Seal of Registration shall be applied to all classified fireworks and pyrotechnic devices by a licensed manufacturer, importer, exporter or wholesaler and shall indicate the classification assigned by the State Fire Marshal.

(d) “Eligible organization” shall mean an organization which has met all of the following criteria for a continuous period of not less than one full year preceding submittal of an application for the permit required by this chapter (and which continues to do so thereafter):

   (1) The organization must be duly organized not-for-profit charitable, religious, civic, patriotic or community service organization;
   (2) The organization must be headquartered within and clearly affiliated or identified with Porterville;
   (3) The organization must be one which provides direct and regular community services and benefits to the citizens of the City; and
   (4) The organization must hold its regularly scheduled meetings within the City.
   (5) Must maintain a bonafide membership of at least 20 members.
   (d) The organization must have a Tax Exempt Identification number assigned to them;
   (7) One application per Tax Exempt I.D. number will be allowed; and
   (8) One permit per Tax Exempt number will be allowed.(Ord. No. 1650, § 2, 4-6-04)

(e) “Stand” shall mean any building, counter, or other structure of a temporary nature used in the sale or offering for sale of fireworks pursuant to a permit duly issued.

(f) “City” shall mean the City of Porterville.

12.2.2. Sales of Fireworks: Permits Required.
(a) It shall be unlawful for any person to sell or offer for sale any dangerous fireworks in the City.
(b) It shall be unlawful for any person to sell or offer for sale any “safe and sane” fireworks in the City without first obtaining a permit therefor.

12.2.3. Public displays of fireworks

The Fire Chief shall have power to adopt reasonable rules and regulations for the granting of permits for supervised public displays of fireworks by a jurisdiction, fair associations, amusement parks, other organizations or for use of fireworks by artisans in pursuit of their trade. Every such use or display shall be handled by a competent operator approved by the Fire Chief and shall be of such character and so located, discharged or fired so as, in the opinion of the Fire Chief after proper investigation, not to be hazardous to property or endanger any person. Said rules and regulations are as follows:

(a) Applications for permits shall be made in writing at least ten (10) days in advance of the date of the display. After such privilege shall be granted, sale, possession, use and distribution of fireworks for such display shall be lawful for that purpose only. No permit granted hereunder shall be transferable.

(b) Bond for Fireworks Display Required. The permittee shall furnish a bond or certificate of insurance in an amount deemed adequate by the City’s Risk Manager for the payment of all damages which may be caused either to a person or persons or to property by reason of the permitted display and arising from any acts of the permittee, his agents, employees or subcontractors.

(c) Disposal of Unfired Fireworks. Any fireworks that remain unfired after the display is concluded shall be immediately disposed of in a way safe for the particular type of fireworks remaining.

12.2.4. Number of permits limited/Pre-Application

The maximum number of permits to sell “safe and sane fireworks” which may be issued pursuant to this chapter during any one calendar year shall not exceed one (1) permit for each four thousand (4000) residents of the City, or major fraction thereof, based on the most recent population figure as determined by the Federal Decennial Census and updated annually by the California State Department of Finance. If the number of pre-applications received up to and including the last day for making applications pursuant to this chapter exceeds the number of permits to be issued for the City, the Fire Chief shall thereafter supervise a public drawing to determine an order of priority for each pre-application. All applicants will be assigned a number in the order in which the pre-application is received and applicants for permits will be notified of date and time of drawing. Pre-applications can be obtained at the Fire Department between January 15 and March 15 each year. The drawing will be held between March 16 and March 31 each year. With the exception that the application time lines for the Calendar Year 2001 shall be set by separate resolution.

12.2.5. Sales of Safe and Sane Fireworks; Applications for Permits

Permits to sell “safe and sane” fireworks shall be issued by the Fire Chief. Application packets for a permit will be furnished to eligible organizations whose number has been drawn. Each organization must meet all the applicable requirements set forth in the Application for Permits section and the Permit Issuance section.

(a) Any eligible organization desiring to sell safe and sane fireworks in the City of Porterville shall obtain and return an application during the period commencing on the first business day of April and ending on the last business day of April each year at the Fire Department.

(b) Such applications shall be signed by a bona fide officer of the eligible organization, wherein the officer, on behalf of the organization and its agents, shall agree to abide by State laws and administrative regulations and all the stipulations of this Code and the permit if permission to operate a fireworks stand shall be granted to the organization.

(c) Completed applications shall be returned to the Fire Department no later than 5:00 p.m. on the last business day of April each year. Any
eligible organization making an application for such permit to sell “safe and sane” fireworks that fails to return the completed application prior to 5:00 p.m. on the last regular business day in April shall not be issued a permit to sell “safe and sane” fireworks.

12.2.6. Permit Issuance Based on Drawing Selections
(a) All eligible organizations shall obtain and submit to the Fire Department the following forms supplied by the Fire Department. Forms will be supplied to those organizations whose drawn assigned number is sequentially within the total number of permits to be issued. All other applicants will be placed on a waiting list in the sequence of their drawn assigned number. If an applicant does not satisfy the requirements of this Section within the time periods identified in this Section, the next drawn assigned number on the waiting list will be notified and provided with the following paperwork.
(1) The property owner’s release form signed by the property owner authorizing permission to erect a fireworks stand on his property;
(2) The fireworks storage form indicating where the fireworks will be stored when not in the approved stand;
(3) The State Fire Marshal’s license to sell safe and sane fireworks;
(4) A copy of the temporary seller’s permit issued by the State Board of Equalization; and
   (1) The certificate of insurance required by Section 12.2.14. of this chapter.
   (2) A statement of organization eligibility.
   (3) A site plan indicating location of stand, distance to nearest building, ingress, egress, parking, etc.
(b) These forms must be returned to the Fire Department between the first working day of April and the last business day of April.
(c) No permit issued or authorized shall be transferrable or assignable.
(d) When all the application requirements have been completed and the fireworks stand location has been approved, the Fire Department shall authorize the erection of a fireworks stand. Each qualified organization shall pay to the Administrative Services Director or designee a permit fee amount as listed in the Master Administrative Fee Schedule amended from time to time by resolution of the City Council. This fee will include a refundable cleanup deposit. Each permit shall be for only one stand per eligible organization and shall be forwarded to the Fire Department for delivery as set forth in subsection (e) of this section.
(e) Permits will be effective only when issued by the Fire Department after the final inspection of the stand shows compliance with all the requirements of this chapter.

12.2.7. Period of Discharge
“Safe and sane fireworks”, as defined by Section 12529 of the California Health and Safety Code, as amended (“Fireworks”), may be discharged within the City limits of the City of Porterville (“City”) during the period beginning at 12:00 noon on July 1 and ending at 11:59 p.m. on July 4 of any year.

12.2.8. Prohibitions on Discharge
It shall be unlawful for any person to ignite, explode, project, or otherwise fire or use, or permit the ignition, explosion or projection of any fireworks upon, over, or onto the private property of another, or to ignite, explode, project, or otherwise fire or make use of any fireworks within fifteen (15') feet of any residence, dwelling or other structure, fields or river area.

12.2.9. Time Period for Sale
“Safe and sane fireworks” may be sold within the City limits of the City of Porterville during the period beginning 12:noon on June 28 and ending at 10:00 p.m. on July 4. The hours of operation of any stand shall be limited to 9:00 a.m. to 10:00 p.m. daily during the days identified in this Chapter, except that hours of operation of any stand on June 28 shall commence at 12:00 p.m. (Ord. No. 1650, § 3, 4-6-04)
12.2.10. Prohibitions
   (a) The manufacture of fireworks is prohibited within the jurisdiction.
   (b) No person shall possess, sell, delivery, deal in, use, explode or fire, or cause to be used, exploded or fired, any form of fireworks designated as “dangerous fireworks” by Section 12505 of the Health and Safety Code of the State of California.
   (c) The possession, sale, delivery, dealing in, use, exploding or firing of any form of fireworks designated as “safe and sane fireworks” by Section 12529 of the Health and Safety Code of the State of California is expressly prohibited, except as limited by this Chapter.
   (i) No person other than a member (or their spouse) of the organization or a volunteer who is associated with the organization having a permit shall be permitted to sell or otherwise participate in the sale of fireworks. At least one individual participating in the sale of fireworks in a stand must have attended a safety meeting provided by the Fire Department. A maximum of one member for every 4 lineal feet of stand (i.e., if the stand is 32 ft. long, 32 divided by 4 equals 8 members allowed in the stand) is permitted within the stand at any one time, and all persons selling fireworks must be at least 18 years old.
   (j) No sleeping inside the fireworks stand will be permitted at any time.
   (k) No person shall use or handle fireworks while under the influence of intoxicating liquids or narcotics. Alcohol and narcotics are prohibited within the fireworks stand.
   (l) All electrical/spark producing appliances (fans, coolers, air conditioners, etc.) are prohibited inside the fireworks stands.

12.2.11. Regulations
    It shall be unlawful for any eligible organization to which a permit has been issued:
    (a) To operate in violation of State of California Title 19, Chapter 6, regulating the storage, transportation, sale and use of fireworks;
    (b) To obtain or use more than one permit for one stand per year.
    (c) To fail to clear all flammable or burnable materials within thirty (30’) feet from any fireworks stand and to maintain such conditions during the period prescribed for the sale of fireworks;
    (d) To allow smoking within twenty-five (25’) feet of any such business location or stand or to fail to post “No Smoking” signs with such wording in red letters not less than four (4”) inches in height on a white background on all sides of any such stand;
    (e) To fail to have immediately available within the stand a certified fire extinguisher or other fire extinguishing device of a type approved by the Fire Department;
    (f) To sell fireworks earlier than noon on June 28 or later than 10:00 p.m. on July 4;
    (g) To fail to dismantle and remove any stand or structure of any nature where fireworks were sold as of 5:00 p.m. July 8;
    (h) To sell fireworks to persons under 16 years of age.

12.2.12. Fireworks Stands – Requirements
    All retail sales of “safe and sane fireworks” shall be permitted only from within a temporary fireworks stand and sales from any other building or structure is prohibited. Temporary stands shall be subject to the following provisions:
    (a) No fireworks stand shall be located within twenty-five (25’) feet of any other building nor within one hundred (100’) feet of a gasoline pump;
    (b) No stand shall have a floor area in excess of four hundred (400) square feet. The width and length of each stand shall be a maximum of ten (10) feet by forty (40) feet, respectively.
    (c) Each stand must have at least two exits located on separate walls. Fireworks stands with only 3 sides and open from the back will not require exits.
(d) Each stand shall keep easily accessible a minimum of 1 two-and-one-half (2-1/2) gallon water pressure type fire extinguisher and one 2A10BC rated dry chemical fire extinguisher and each shall be in good working order and bear a current inspection sticker. Extinguishers must be of a type approved for such use by the Porterville Fire Department.

(e) All stands must be constructed of solid wood or metal.

(f) After hours, stands must be properly secured or a security guard must be provided to patrol the premise.

(g) All unsold stock and accompanying litter shall be removed from the location by 5:00 p.m. July 5.

(h) Fireworks stand may be brought to the site one week prior to June 28 and must be dismantled and removed by 5:00 p.m. July 8.

(i) Temporary lighting may be installed in the fireworks stands. Approved temporary lights must have a guard protecting the bulb/fixture and all wiring and fixtures must be three-wire and grounded.

(j) Primary power to the temporary lighting may be by means of on-site commercial power in a fixed facility or by means of an on-site portable generator. Either source of primary power must be located at least 25 feet from the fireworks stand. Location of portable generators must be approved by Fire Department.

(k) Fuel for portable generators is not allowed to be kept on the premises.

(l) No switches, electrical receptacles (plug-ins) are permitted in the stand.

(m) Extension cords to the stand are to be heavy duty, minimum of 15 amp capacity, and protected from vehicular damage. Romex is not an acceptable extension cord.

(Ord. No. 1650, § 4, 4-6-04)

12.2.13.  Fireworks Stands - Locations

The adequacy and suitability of firework stand locations shall be pre-approved by the Fire Chief. In no instance shall any firework stand be located within a residential area.

12.2.14.  Certificates of Insurance

Prior to the issuance of a permit, the eligible organization shall procure a certificate of insurance acceptable to the City. The certificate shall name the City of Porterville, its officers, agents, employees and volunteers as "additional insured". The certificate shall evidence coverage in an amount determined by the City's Risk Manager, providing, however, the amount shall not be less than One Million ($1,000,000.00) Dollars combined bodily injury and property damage for each occurrence, and the deductible, if any, shall not be greater than one thousand ($1,000.00) dollars. The certificate shall specify the time, location, and dates to be covered by the policy. The certificate shall be provided to the Fire Department no later than 5:00 p.m. on the last regular business day in April of the subject year or at such other time as the Chief of the Fire Department may allow.

12.2.15.  State Fireworks Law

The provisions of this chapter shall be construed so as not to conflict with the State Fireworks Law.

12.2.16.  Revocation of Permits

Any violation of this chapter or other City laws, or the terms and conditions of the permit, or State laws or administrative regulations, or safety rules of the Fire Department shall be grounds for the immediate revocation of the permit. All officers, agents, and employees of the eligible organization shall be responsible for compliance with all the provisions of this chapter.

12.2.17.  Non-Issuance of Permits

The final decision to issue permits shall rest with the Fire Chief. In cases such as civil unrest, severe drought conditions, or any other such situation deemed to be harmful or to have the possibility of creating an extreme hazard to persons and/or property the Fire Chief shall be the final authority in granting permits for fireworks sales. The right to refuse permits to applicants who have violated the regulations in this chapter in previous years shall also rest with the Fire Chief.
Sec 12.2.18. Seizure of fireworks
The Fire Chief shall have the authority to seize, take, remove, or cause to be removed at the expense of the owner, all stocks of fireworks offered or exposed for sale, stored, or held in violation of this chapter.

12.2.19. Exceptions
Nothing in this chapter shall be construed as prohibiting the use of torpedoes, flares, or fuses by railroads or other transportation agencies for signal purposes of illumination; or the sale or use of blank cartridges for ceremonial purposes, athletic, or sports events or military ceremonials or demonstrations; or the sale, discharge or display of fireworks by permittees having a permit as herein provided; or the use and display of fireworks of whatever nature by any person engaged in the production of motion pictures, theatricals, or operas when such use and display is a necessary part of such production; or the transportation of fireworks through the City in regular course, and in original packages or containers from any point outside of the City to any other point outside the City.

Sec. 12.2.20. Violations; penalties.
Persons violating this chapter shall be deemed guilty of a misdemeanor, and if convicted, may be punished by a fine not to exceed five hundred ($500) dollars or by imprisonment in the county jail for a period not exceeding thirty (30) days, or by both fine and imprisonment.
(Ord. No. 1330, 5-7-85; Ord. 1568, 1-19-99; Ord. 1601, 5-01-01)

ARTICLE III. WEEDS, RUBBISH, LITTER, TIRE AND HAZARD ABATEMENT

12.3.1. Definitions.
For purposes of this chapter, certain words and phrases are defined and certain provisions are to be construed as herein set forth, unless it shall be apparent from the context that a different meaning is intended:

"Abate" means to repair or replace, remove, destroy or otherwise remedy the condition in question by such means and in such a manner and to such an extent as the Enforcement Officer in his/her judgment shall determine is necessary in the interest of the general health, safety and welfare of the community.

"Abatement standards" means those minimum requirements set forth by the enforcement officer by which property shall be abated and maintained in order to comply with Section 12.3.4.

"Enforcement Officer" means the Chief of the Fire Department of the City and shall include any official or officials in the Fire Department duly appointed by said Chief or the City Manager to administer the provisions of this chapter.

"Premises" means any building, lot or parcel of real estate or land or portion of land, whether improved or unimproved, including adjacent sidewalks, parking strips and alleys.

"Responsible person" means the owner of any premises and/or any agent, lessee or other person occupying or having charge or control of the same.

"Rubbish" is waste material including, but not limited to, garbage, waste paper and debris from construction or demolition.

"Weeds" means all undesired plants of rank or profuse growth growing upon streets, alleys, sidewalks or private property in the City and including, but not limited to, any of the following: