Call to Order
Roll Call

**ORAL COMMUNICATIONS**
This is the opportunity to address the Council on any matter scheduled for Closed Session.

**CLOSED SESSION:**
A. Closed Session Pursuant to:
   2- Government Code Section 54956.9(a) – Conference with Legal Counsel – Existing Litigation: Porterville Citizens for Responsible Hillside Development v. City of Porterville (Contour Development, Inc.).
   4- Government Code § 54957 - Public Employee Performance Evaluation - Title: City Manager.

7:00 P.M. RECONVENE OPEN SESSION
**REPORT ON ANY ACTION TAKEN IN CLOSED SESSION**

Pledge of Allegiance Led By Council Member Pedro Martinez
Invocation

**PROCLAMATIONS**
PAAR Center

**PRESENTATIONS**
Employee of the Month – Jake Castellow
Introduction of New City Employees
City Manager’s Featured Projects
Eagle Mountain Air Show & Fly-In Video
Parks & Leisure Services Commission Semi-Annual Report

**ORAL COMMUNICATIONS**
This is the opportunity to address the Council on any matter of interest, whether on the agenda or not. Please address all items not scheduled for public hearing at this time.

**CONSENT CALENDAR**
All Consent Calendar Items are considered routine and will be enacted in one motion. There will be no separate discussion of these matters unless a request is made, in which event the item will be removed from the Consent Calendar.
1. Approval of City Council Minutes of February 6, 2007

2. Budget Adjustment for the 2007-08 Fiscal Year
   Re: Approving budget adjustment to account for the expenditure of $4,500 for consultant services for Airport related issues, to be funded from the 2004-2005 General Fund carry-over.

3. Claim – Anna Peterson
   Re: Considering rejection of a claim in an amount exceeding $25,000 in the jurisdiction of Tulare County Superior Court, Unlimited, for medical expenses and general damages allegedly sustained when claimant tripped and fell on a crack in the pavement on Mill Street on July 20, 2007.

4. Acceptance of the Buried Sludge Removal Project
   Re: Accepting the project from Mitch Brown Construction, Inc., consisting of the removal of buried sludge at the Wastewater Treatment Facility as complete, and authorizing the filing of the Notice of Completion.

5. Update on Jaye Street and Tule River Bridge Rehabilitation Project
   Re: Informational report on the status of the project.

6. Authorization to Amend Transportation Planning Group’s Service Agreement for the Compressed Natural Gas Facility and Design Modifications to Recycle Center
   Re: Approving an amendment to the Service Agreement regarding the CNG Facility to be located at the City’s Corporation Yard on Prospect Street, and authorizing the Mayor to sign the Amendment.

7. Airport Lease Renewals – Lots 49B and 46C
   Re: Approving the extension of the Lease Agreements between the City of Porterville and Mr. Michael Quatacker for Lots 49B and 46C at the Porterville Municipal Airport.

8. Request for Street Closure – Myers’ Thirteenth Annual Christmas Tree Memorial Service
   Re: Approving the closure of E Street, between Putnam and Cleveland, on December 6, 2007, from 5:00 p.m. to 9:00 p.m., subject to stated conditions.

9. Approval of Administrative Policy Regarding Preventing the Supplanting of General Fund and Measure H Fund Monies
   Re: Authorizing staff to proceed with the implementation of Administrative Policy II-B-1, “Preventing the Supplanting of General Fund and Measure H Fund Monies.”

A Council Meeting Recess Will Occur at 8:30 p.m., or as Close to That Time as Possible

PUBLIC HEARINGS

    Re: Receiving public commentary on report, pursuant to the provisions of SB 1307, which requires water utility agencies to prepare a special report if water quality measurements have exceeded any Public Health Goals.
11. **Vacation of Public Sanitary Sewer and Water Easements Related to the Target Store Expansion (Target Corporation)**
   Re: Authorizing the City Clerk to execute the vacation of easements, generally located in the westerly and southerly portions of the Porterville Marketplace Shopping Center on Henderson Avenue, as described in Document No. 92-011075, recorded February 18, 1992, in the Office of Tulare County Recorder.

12. **Ordinance 1735, Regulating State Video Franchise Holders**
   Re: Considering adoption and giving Second Reading to Ordinance 1735, adding Chapter 24B, Article I, Sections 24B-1 through 24B-10 to the Porterville Municipal Code Pertaining to the Regulation of State Video Franchise Holders.

**SECOND READINGS**

13. **Ordinance 1728, Adopting the 2007 California Building Code**

14. **Ordinance 1729, Adopting the 2007 California Mechanical Code**

15. **Ordinance 1730, Adopting the 2007 California Plumbing Code**

16. **Ordinance 1731, Adopting the 2007 California Electrical Code**
   Re: Giving Second Reading and adopting Ordinance 1731, amending Section 7-9 and deleting Section 7-10 of the Porterville Municipal Code, adopting the 2007 Edition of the California Electrical Code published by the California Building Standards Commission.

17. **Ordinance 1732, Adopting the 2007 California Fire Code**

18. **Ordinance 1733, Amending Section 105, Appendix A, Concerning the Legal Use of Land**

19. **Ordinance 1734, Concerning Medical Marijuana Dispensaries**
   Re: Giving Second Reading and adopting Ordinance 1734, amending Article I, Section 15-5.1 of the Porterville Municipal Code, concerning refusal to issue licenses, and adding Article VII, Sections 15-85 through 15-105, to Chapter 15, concerning medical marijuana dispensaries and other operations.
SCHEDULED MATTERS
20. Classification and Pay Adjustments for the Youth Experiencing Success After School Program Employees
   Re: Considering changes to the Classification and Pay Schedule for YES Program employees.

ORAL COMMUNICATIONS

OTHER MATTERS

CLOSED SESSION
   Any Closed Session Items not completed prior to 7:00 p.m. will be considered at this time.

ADJOURNMENT - to the meeting of December 4, 2007 at 6:00 p.m.

   It shall be the policy of the City Council to complete meetings, including closed sessions, by 11:00 p.m. unless, upon consensus, Council elects to continue past the adjournment hour.

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 Chief Deputy City Clerk at (559) 782-7442. 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.
CITY MANAGER’S FEATURED PROJECTS
FOR NOVEMBER 2007

• Centennial Plaza Commercial Building Completion
• Rails to Trails Project
• Buried Sludge Removal Project
• Repeater/Base Station Replacement
• Banking Services RFP
• Hiring Associate Planner/Planning at Full Staffing
CITY COUNCIL MINUTES
PORTERVILLE, CALIFORNIA
FEBRUARY 6, 2007, 6:00 P.M.

Call to Order: 6:00 p.m.
Roll Call: Council Member McCracken, Mayor Pro Tem F. Martinez, Council Member Hernandez, Mayor Hamilton
Absent: Council Member P. Martinez

ORAL COMMUNICATIONS
None

CLOSED SESSION:
A. Closed Session Pursuant to:
   1. Government Code Section 54956.9(a) - Conference with Legal Counsel - Existing Litigation: John Hale et al. v. City of Porterville et al.
   2. Government Code Section 54956.9(c) - Conference with Legal Counsel - Anticipated Litigation: One Case & Section 54956.9(b) - Conference with Legal Counsel - Anticipated Litigation: One Case.

7:08 P.M. RECONVENE OPEN SESSION
REPORT ON ANY ACTION TAKEN IN CLOSED SESSION
City Attorney Julia Lew reported on the following action:

 A1. Government Code Section 54956.9(a) - Conference with Legal Counsel - Existing Litigation: John Hale et al. v. City of Porterville et al.

Ms. Lew indicated that a settlement had been approved between all parties and that the agreement would be available in the near future.


Ms. Lew reported that the Council approved the Lease extension at the current rate of .073¢ per square foot.

Pledge of Allegiance Led by Mayor Pro Tem Felipe Martinez
Invocation: A Moment of Silence

PROCLAMATION
Arbor Day
PRESENTATION
   Employee of the Month - Bryan Clower
   Commendations to Ken Brown and Danny Aguirre

COUNCIL ACTION: MOVED by Council Member McCracken, SECONDED by Mayor Pro Tem Felipe Martinez that the Council add Item 29, “Consideration of an Interim Urgency Ordinance Restricting the Location of Medical Marijuana Dispensaries Pending the Adoption of Permanent Regulations Addressing that Particular Land Use” for general discussion at this meeting and continued to February 9, 2007, at a time selected by Council, for consideration of the ordinance itself.

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

Disposition: Approved

ORAL COMMUNICATIONS
• Peggy Ann Hensley, 250 N. Third St., #203, requested to have a Porterville Animal Shelter, with a spay/neuter and vaccination facility. Mrs. Henley then provided the Council with a letter and petition.
• Bruce Peterson, Director of General Services, and Dick Hatfield, Board Chair, Sierra View District Hospital, spoke in favor of Item 8.
• Boyd K. Leavitt, 457 E. Oak, requested that the Council adopt an enforceable ordinance to require that truckers have business licenses and park off the street.
• Dick Eckhoff, Chairman Porterville Auxiliary for the City of Hope, spoke of the event scheduled for February 24th at 7:00 p.m. at the Memorial Building in memory of Buck Shaffer (“In Memory of Greatness”). He indicated that Mr. Shaffer had chaired the event from 1963 until 2006 when he retired.

CONSENT CALENDAR
1. CITY COUNCIL MINUTES OF JANUARY 19, 2007
Recommendation: That the City Council approve the City Council Minutes of January 19, 2007.
Documentation: M.O. 02-020607
Disposition: Approved.

2. BUDGET ADJUSTMENTS FOR THE 2006-07 FISCAL YEAR
Recommendation: That the Council approve the budget adjustments as presented, and authorize staff to modify revenue and expenditure estimates as described on the attached schedule.
Documentation: M.O. 03-020607
Disposition: Approved

3. AUTHORIZATION TO ADVERTISE FOR BIDS – DATE AVENUE RECONSTRUCTION – ‘A’ STREET RECONSTRUCTION & STORM DRAIN
Recommendation: That the City Council:
1. Approve the Plans and Project Manual for the Date Avenue Reconstruction – ‘A’ Street Reconstruction & Storm Drain Project; and
2. Authorize staff to advertise for bids

Documentation: M.O. 04-020607
Disposition: Approved

4. AMENDMENT TO CAROLLO ENGINEERS SERVICE AGREEMENT – BURIED SLUDGE PROJECT

Recommendation: That City Council:
1. Authorize the Mayor to execute an Amendment to Carollo Engineers & Associates Service Agreement at an agreed fee of $78,000 for the services described herein; and
2. Authorize progress payments up to 100% of the fee amount and authorize a 10% contingency to cover unforeseen design efforts.

Documentation: M.O. 05-020607
Disposition: Approved

5. AMENDMENT TO NOLTE & ASSOCIATES SERVICE AGREEMENT – PLANO BRIDGE WIDENING

Recommendation: That City Council:
1. Authorize the Mayor to execute Amendment to Nolte & Associates’ Service Agreement at an agreed fee of $22,000 for the services described herein; and
2. Authorize progress payments up to 100% of the fee amount and authorize a 10% contingency to cover unforeseen design efforts.

Documentation: M.O. 06-020607
Disposition: Approved

6. AWARD OF CONTRACT – CLASS II AND CLASS III BIKEWAY PROJECT

Recommendation: That City Council:
1. Award the Class II and Class III Bikeway Project to in the amount of $81,120.80,
2. Authorize progress payments up to 90% of the contract amount; and
3. Authorize a 10% contingency to cover unforeseen construction costs.

Documentation: M.O. 07-020607
Disposition: Approved

7. ACCEPTANCE OF PROJECT – INDIANA STREET PROJECT, PUTNAM AVENUE TO OLIVE AVENUE

Recommendation: That City Council:
1. Accept the project as complete;
2. Authorize the filing of the Notice of Completion; and
3. Authorize the release of the 10% retention thirty-five (35) days after recordation, provided no stop notices have been filed.
8. RELINQUISHMENT OF PROPERTY TO SVDH LOCATED AT APN 252-272-014

Recommendation: That the City Council:
1. Authorize staff to prepare plans and specification for the abandonment of Well No. 5 in accordance with Tulare County Health Department Standards as a “Tier 2” priority project; or
2. Allow SVDH to prepare contract documents and hire a contractor to abandon Well No. 5 in accordance with Tulare County Health Standards by an agreement approved by the City Council; and
3. Authorize staff to process a Quitclaim Deed and Lot Line Adjustment relinquishing and merging the well property to larger Sierra View District Hospital property upon completion of the well abandonment.

9. REDEVELOPMENT AGENCY ANNUAL REPORT TO LEGISLATIVE BODY


10. CDBG CITIZENS’ ADVISORY AND HOUSING OPPORTUNITY COMMITTEE AND CITIZEN PARTICIPATION PLAN

Recommendation: That the City Council:
1. Adopt the 2007 Citizen Participation Plan; and
2. Appoint Pat Contreras, Linda Olmedo, Grace Munoz-Rios, Rudy Roman and John Dennis to the Citizens’ Advisory and Housing Opportunity Committee for a one-year term.

11. PORTERVILLE FIRE DEPARTMENT UNIFORM PATCHES

Recommendation: Informational report only.

12. APPROVAL OF ADMINISTERING AGENCY-FEDERAL MASTER AGREEMENT NO. 06-5122R MASTER AGREEMENT FOR CALTRANS

Recommendation: That the City Council:
1. Authorize the Mayor to sign the draft resolution approving and accepting the conditions as set forth in Administering Agency-Federal Master Agreement No. 5122R;
2. Authorize the Mayor to sign both copies of the “Master Agreement”; and
3. Direct the City Clerk to transmit the executed resolution and both copies of the “Master Agreement” to CalTrans Local Programs, District 6, Fresno office.

Documentation: Resolution 3-2007
Disposition: Approved

13. PROGRAM SUPPLEMENT TO THE LOCAL AGENCY-STATE MASTER AGREEMENT – COLLEGE AVENUE AND MAIN STREET PROJECT

Recommendation: That the City Council:
1. Approve the subject program supplement by passing a resolution authorizing the Mayor to sign the subject program supplement; and
2. Direct staff to return the signed program supplement to CalTrans.

Documentation: Resolution 4-2007
Disposition: Approved

14. COUNCIL MEMBER REQUEST TO RECONSIDER PORTERVILLE COMMERCIAL CENTER

Recommendation: Contingent upon receipt of an executed settlement agreement by all parties in a related lawsuit, that the City Council approve reconsideration and place the applications for general plan amendment, zone change and certification of the EIR in the February 20, 2007 City Council Meeting agenda, with public hearing as required by law.

Documentation: M.O. 12-020607
Disposition: Approved

15. CNG TRANSIT BUS/BUS ADVERTISING

Recommendation: That the City Council direct staff to proceed with the installation of “ad frames” on the CNG transit buses and negotiate with The Kaltoft Company to determine if advertisement prices need to be modified.

Documentation: M.O. 13-020607
Disposition: Approved

16. AIRPORT LEASE RENEWAL - LOT 30 A1-A3

Recommendation: That the Council approve the Lease Agreement between the City of Porterville and Mr. Jim Uny, owner of J. Enterprise Trust, Kernville, CA, for Lot 30-A1-A3.
17. DESIGNATION OF CITY FIRE STATIONS AS SAFE BABY SURRENDER SITES

Recommendation: That the City Council adopt the draft resolution designating the Porterville City Fire Stations at 40 W. Cleveland and 500 N. Newcomb as Safe Baby Surrender Sites.

Documentation: Resolution 5-2007
Disposition: Approved

COUNCIL ACTION: MOVED by Mayor Hamilton, SECONDED by Mayor Pro Tem Felipe Martinez that the Council approve Item Nos. 1 through 17.

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

PUBLIC HEARINGS
18. ZONING ORDINANCE AMENDMENT 2006-7 (FORMERLY 3-7004) – AN ORDINANCE AMENDING VARIOUS SIGNAGE REGULATIONS

Recommendation: That the City Council:
1. Approve the proposed Ordinance Amendment and give first reading to the draft ordinance, and
2. Waive further reading of the draft ordinance, approve Ordinance Amendment 2006-7, and order to print.

City Manager John Longley presented the item and Senior Planner Julie Boyle presented the staff report.

The public hearing opened at 7:35 p.m.

• Dick Eckhoff, 197 North Main Street, Chairman of the Downtown Porterville Association, 1) stated that the ordinance had been put together as well as possible but that there was still a problem with hanging signs downtown due to the awnings being low; 2) expressed concern that flashing lights could interfere with traffic and distract drivers, causing a hazard, but noted that they were an important advance in signage; 3) made mention to a signage problem that took place in Fresno; 4) spoke in favor of everyone following the same rules and guidelines; and 5) urged the Council to approve the ordinance.

• Avtar Singh, Owner of Subway, 134 North Main Street, expressed concern for businesses located near the highway whose signage might not be visible due to height restrictions.

The public hearing was closed at 7:40 p.m.
Council Member Hernandez thanked the Chamber and staff for all the work done on the Ordinance, and stated that he believed that it would benefit the City as a whole.

**COUNCIL ACTION:** MOVED by Mayor Pro Tem Felipe Martinez, SECONDED by Council Member McCracken that the Council waive further reading, approve Ordinance 1711, and order the ordinance to print, being AN ORDINANCE OF THE CITY OF PORTERVILLE AMENDING PORTIONS OF THE MUNICIPAL CODE AND ZONING ORDINANCE PERTAINING TO SIGNAGE RESTRICTIONS.

Ordinance 1711

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

The City Manager read the Ordinance by title only.

Disposition: Approved.

19. STATES TENTATIVE SUBDIVISION MAP (ENNIS HOMES)

Recommendation: That the City Council continue the item to the February 20, 2007 meeting.

This item was continued to February 20, 2007.

20. INITIATION OF PRELIMINARY PROCEEDINGS AND RESOLUTION OF APPLICATION FOR ANNEXATION NO. 471

Recommendation: That the City Council continue this item.

This item was continued to a future meeting, date unspecified.

**SCHEDULED MATTERS**

21. FIREWORKS PERMITS

Recommendation: That the City Council:

1. Reaffirm the current number of permits in the lottery process to ten (10); or
2. Increase the number of permits based on the current population in city limits of Porterville.

City Manager Longley presented the item and Fire Chief Garcia presented the staff report.

A discussion ensued during which the Council determined that if the number of permits was based on the City’s current population, the number of permits allowed would be between 12 and 13. City Manager Longley added that in May, the City should have a redefined population.

Council Member Hernandez spoke against increasing the number of permits, suggesting that it would be counter-productive.
City Manager Longley asked if it was the Council’s direction to have the Fire Chief present the number of permits and the population on an annual basis so as to determine if the need to increase the number of permits was necessary.

Council Member Hernandez agreed that this was something he would like to see happen.

City Attorney Lew stated that it only took one Council Member to put it on the agenda every year, so that it could be done via official policy change, or it could be raised each year by a Council Member.

**COUNCIL ACTION:** MOVED by Council Member Hernandez, SECONDED by Mayor Pro Tem Felipe Martinez that the Council confirmed 10 permits for 2007; direct the Fire Chief to submit a report, at the first meeting in February of each year, on the number of permits allowable at that time for the lottery, along with population figures.

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

Disposition: Approved

22. REQUEST FOR SPECIAL FIREWORKS PERMIT

Recommendation: That the City Council approve the request for a special fireworks permit to the Exchange Club of Porterville for calendar year 2007, give first reading to the draft ordinance, and order it to print.

City Manager John Longley presented the item and Fire Chief Garcia presented the staff report.

Mayor Hamilton asked if the club was required to spend a certain amount of the proceeds on the show, to which Chief Garcia stated he didn’t believe they reserved any carry over funds.

City Manager Longley stated that he believed they do have carry over.

**COUNCIL ACTION:** MOVED by Mayor Hamilton, SECONDED by Council Member Hernandez at the Council approve the request for a special fireworks permit to the Exchange Club of Porterville for calendar year 2007, give first reading to the draft ordinance, and order the ordinance to print, being AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE AMENDING CHAPTER 12, ARTICLE II, FIREWORKS, OF THE PORTERVILLE MUNICIPAL CODE.

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

The City Manager read the Ordinance by title only.

Disposition: Approved.
23. INTERIM FINANCIAL STATUS REPORTS AND GRANT STATUS SUMMARY

Recommendation: That the City Council accept the interim financial status reports and grants summary report as presented.

City Manager Longley presented the item, and Acting Chief Financial Officer Maria Bemis presented the staff report.

COUNCIL ACTION: MOVED by Council Member McCracken, SECONDED by Council Member Hernandez to accept staff’s recommendation.

M.O. 16-020607

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

Disposition: Approved.

24. QUARTERLY PORTFOLIO SUMMARY

Recommendation: That the City Council accept the quarterly Portfolio Summary in accordance with SB 564 and SB 866.

City Manager Longley presented the item, and Acting Chief Financial Officer Maria Bemis presented the staff report.

COUNCIL ACTION: MOVED by Mayor Pro Tem Felipe Martinez, SECONDED by Council Member McCracken to accept staff’s recommendation.

M.O. 17-020607

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

Disposition: Approved.

25. REQUEST BY COUNCIL MEMBER – DISCUSSION OF RESOLUTION OF SUPPORT OF THE REQUEST FOR CROSS DEPUTIZATION OF THE TULE RIVER TRIBE’S TRIBAL POLICE FORCE

Recommendation: None

City Manager John Longley presented the item.

Mayor Hamilton recognized the attendance of the Tribal Administrator and invited him to speak in regards to the item.

• Rodney Martin, Tribal Administrator for Tule River Tribal Council, 146 S. Villa, spoke about the efforts being made to further develop the tribal police force and increase public safety.
Police Chief McMillan stated that he had not yet investigated this matter and therefore did not have any statements prepared for Council at that time.

COUNCIL ACTION: MOVED by Council Member McCracken, SECONDED by Mayor Pro Tem Felipe Martinez to continue the item to the meeting of February 20, 2007.
M.O. 18-020607

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

Disposition: Continued, with direction given to staff.

26. REQUEST BY COUNCIL MEMBER – DISCUSSION OF CITY NEPOTISM RULE

Recommendation: None

City Manager John Longley presented the item.

Mayor Hamilton began Council’s discussion of this item by stating that although there are pros and cons to the Nepotism Rule, he believed that it was archaic and that the City was missing out on various opportunities as a result of it.

Council Member Hernandez agreed that the policy was out dated, but stated that he had reservations about striking the policy all together. He requested further time to evaluate the rule.

Mayor Pro Tem Felipe Martinez stated that he too needed more time to look into the matter and that perhaps the answer was to reword the rule, as opposed to striking it completely.

Council Member McCracken agreed that the Nepotism Rule did need to be looked at, but stated that he believed there would need to be policies in place to handle potential problems that would arise if the rule was abandoned. He suggested that the City Attorney review the item.

City Attorney Julia Lew stated that inquiries had been sent out and that many different cities had already responded to the inquiry with information regarding their policies. She stated that the information collected would be provided to the Council for review.

Council Member McCracken stated that he would prefer to review the information collected on his own, prior to the scheduling of any study session, and suggested continuing the item to the next meeting.

COUNCIL ACTION: MOVED by Council Member McCracken, SECONDED by Mayor Pro Tem Felipe Martinez that this item be continued to the February 20, 2007, at which time the Council will take action on the item or determine if a study session is needed.
M.O. 19-020607

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

Disposition: Approved.
27. REQUEST BY COUNCIL MEMBER – REQUEST TO CONTACT THE EMERGENCY FOOD & SHELTER PROGRAM (EFSP) REGARDING THE 2007 FUNDING ALLOCATION DISTRIBUTION FIGURES

Recommendation: None

City Manager John Longley presented the item.

Mayor Pro Tem Felipe Martinez stated that he was confused by the letter that the Porterville Coordinating Council received stating that their allocations would be reduced by 3.3715% for the Year 2007. He would like a letter sent to the EFSP asking for clarification on the amount allocated to PACC.

Council Member Pete McCracken stated that he wondered why the allocation was reduced by only 3.3715%, if the Local board only received half of what was requested.

Mayor Hamilton stated that he wished to pursue this inquiry.

The Council directed the City Manager to prepare a letter for the Mayor’s signature asking for clarification on how the amount allocated to PACC was established.

28. COUNCIL MEMBER REQUEST FOR AN AGENDA ITEM – “WORK ASSISTANCE PROGRAM FROM EMERGENCY RESERVE”

Recommendation: As directed by Council.

City Manager John Longley presented the item.

Mayor Pro Tem Felipe Martinez expressed his support for a work assistance program through the Proteus agency, stating that he believed such a program would re-energize the community and bring tax revenue to the City. He suggested that different City projects such as cleaning the river, graffiti abatement, cleaning up trails, etc. could all be projects for the work assistance program.

Council Member McCracken asked how the program was funded back in 1998.

In response to a question posed by Council Member McCracken, City Manager Longley explained that it was funded by the Community Government Block Grant monies. He stated that it was an allocation that could be set aside and used specifically for those types of projects, and that the City currently used it in the Youth Center, but that the item being discussed named a potential funding source as the Emergency Reserve.

Mr. Dunlap explained that the money for community service was currently designated to the Youth Center and was fifteen percent (15%) of the budget.

After some discussion, the Council decided that the best course would be to give staff direction to look into the different possibilities. The City Manager was directed to bring back a proposal to the Council.

Council Member Hernandez agreed with the concept of giving a hand up as opposed to a handout.
29. CONSIDERATION OF AN INTERIM URGENCY ORDINANCE RESTRICTING THE LOCATION OF MEDICAL MARIJUANA DISPENSARIES PENDING THE ADOPTION OF PERMANENT REGULATIONS ADDRESSING THAT PARTICULAR LAND USE

Recommendation: As directed by Council

This item was continued to February 9, 2007 at noon. City Attorney Julia Lew is to provide a draft interim ordinance.

Disposition: Continued.

The Council adjourned at 8:34 p.m. to a Joint Meeting of the Porterville City Council and Porterville Redevelopment Agency.

PORTERVILLE REDEVELOPMENT AGENCY AGENDA
February 6, 2007

Roll Call: Agency Member McCracken, Agency Member F. Martinez, Agency Member Hernandez, Chairman Hamilton
Absent: Agency Member P. Martinez

WRITTEN COMMUNICATIONS
None

ORAL COMMUNICATIONS
None

JOINT CITY COUNCIL/REDEVELOPMENT SCHEDULED MATTERS
February 6, 2006

PRA-1. REDEVELOPMENT AGENCY BUDGET ADJUSTMENT AND PROPOSED COMMUNITY DEVELOPMENT DEPARTMENT’S CHANGE IN THE TABLE OF ORGANIZATION AND REORGANIZATION OF THE PLANNING DIVISION

Recommendation: That the Porterville Redevelopment Agency:
1. Adopt the draft resolution providing for the amendment of the 2006-7 Porterville Redevelopment Administration and Redevelopment Housing budgets in the amount of $74,829 and $63,243 respectively; and

That City Council:
1. Adopt the draft resolution recreating the City Planner and Associate Planner, and authorize staff to implement the modifications;
2. Authorize staff to continue funding the Provisional Administrative Aide position in the Housing Division as long as CDBG/Grant Funds exist;
3. Authorize staff to begin recruitment for the City Planner, Associate Planner, Planning Technician to run simultaneously with the Senior Planner recruitment; and
4. Authorize staff to hire two (2) Senior Planners should the recruitment for City Planner, Associate Planner, and Planning Technician be unsuccessful.
City Manager Longley presented the item and Community Development Director Brad Dunlap presented the staff report.

Mayor Hamilton commented that Redevelopment is not protected under 1-A, so the new money could be lost again.

City Manager Longley stated that this was a plan intended to address the increased work load requirements resulting from the boom in building within the community and expressed his full support of the proposal.

AGENCY ACTION: MOVED by Agency Member Felipe Martinez, SECONDED by Agency Member Hernandez that the Redevelopment Agency adopt the draft resolution provided for the amendment of the 2006-7 Porterville Redevelopment Administration and Redevelopment Housing Budgets in the amount of $74,829 and $63,243, respectively.

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

COUNCIL ACTION: MOVED by Mayor Pro Tem Felipe Martinez, SECONDED by Council Member McCracken that the Council adopt the draft resolution, as amended to amend the Employee Pay and Benefit Plan, and to re-establish the classifications of City Planner at salary range 213, Associate Planner at salary range 186, and designate the Limited Term Planning Technician as a regularly funded full-time position.

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

COUNCIL ACTION: MOVED by Mayor Hamilton, SECONDED by Council Member McCracken that the Council adopt the draft resolution recreating the City Planner and Associate Planner, authorize staff to implement the modifications; authorize staff to continue funding the Provisional Administrative Aide position in the Housing Division as long as CDBG/Grant Funds exist; authorize staff to begin recruitment for the City Planner, Associate Planner, Planning Technician to run simultaneously with the Senior Planner recruitment; and authorize staff to hire two (2) Senior Planners should the recruitment for City Planner, Associate Planner, and Planning Technician be unsuccessful.
AYES: McCracken, F. Martinez, Hernandez, Hamilton
NOES: None
ABSTAIN: None
ABSENT: P. Martinez

Disposition: Approved.

PRA-2. AUTHORIZATION TO ENTER INTO A LOAN AGREEMENT BETWEEN THE CITY OF PORTERVILLE AND THE PORTERVILLE REDEVELOPMENT AGENCY

Recommendation: That the Porterville Redevelopment Agency:
1. Request a loan with the City of Porterville for the principal and interest, if any, paid to the County of Tulare to satisfy the debt due per Loan Agreement No. 18584; and
2. Authorize payment for loan document preparation, including attorney fees from the Redevelopment Agency budget; and

That the City Council:
1. Approve the Porterville Redevelopment Agency’s request for assistance to repay the County of Tulare Loan Agreement No. 18584, utilizing unallocated general fund money; and
2. Authorize payment of the principal balance of $195,00 to County of Tulare for Loan Agreement No. 18584 and ratify the request for waiver of interest on the loan as noted in Section 1(b) of the Amendment to Loan Agreement; and
3. Authorize a loan between the City of Porterville and the Porterville Redevelopment Agency for principal and interest, if any, paid to the County of Tulare to satisfy Loan Agreement No. 18584, with a term of five (5) years and an interest rate to be equivalent to the Local Agency Investment Fund rate of 5.129% as reported for the quarter ending December 31, 2006.

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

Mayor Hamilton asked why the city would want to charge itself interest if it is basically paying zero interest to the county at this time, and that if it were possible to differ interest.

City Manager Longley stated that it was possible but that the interest rate is based on what the money would be earning in interest if it remained in the general fund.

AGENCY ACTION: MOVED by Agency Member McCracken and SECONDED by Agency Member Felipe Martinez that the Agency request a loan with the City of Porterville for the principal and interest, if any, paid to the County of Tulare to satisfy the debt due per Loan Agreement No. 18584; and authorize payment for loan document preparation, including attorney fees from the Redevelopment Agency budget.
AYES: McCracken, F. Martinez, Hernandez, Hamilton
NOES: None
ABSTAIN: None
ABSENT: P. Martinez

COUNCIL ACTION: MOVED by Council Member McCracken, SECONDED by Council Member Hernandez that the Council Approve the Porterville Redevelopment Agency’s request for assistance to repay the County of Tulare Loan Agreement No. 18584, utilizing unallocated general fund money; authorize payment of the principal balance of $195,00 to County of Tulare for Loan Agreement No. 18584 and ratify the request for waiver of interest on the loan as noted in Section 1(b) of the Amendment to Loan Agreement; and authorize a loan between the City of Porterville and the Porterville Redevelopment Agency for principal and interest, if any, paid to the County of Tulare to satisfy Loan Agreement No. 18584, with a term of five (5) years and an interest rate to be equivalent to the Local Agency Investment Fund rate of 5.129% as reported for the quarter ending December 31, 2006.

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

Disposition: Approved.

The Joint City Council/Redevelopment Agency Meeting adjourned at 8:52 p.m. to a meeting of the City Council.

ORAL COMMUNICATIONS
• Dick Eckhoff, 197 N. Main Street, thanked the Council for approving the sign ordinance; thanked the Fire Department for the work on the downtown planters for Iris planting; and spoke against the nepotism policy.
• Gregg Woodard, spoke on the Blue Print meeting, and stated that it was not representative of the people in Tulare County.

OTHER MATTERS
• Council Member Hernandez spoke regarding the “Stars in the Hills” Prom scheduled for March 3, 2007 for high school students that were challenged. He stated that the event was sponsored by Rotary, and they were seeking donations of prom dresses and suits or tuxedos.
• Mayor Pro Tem F. Martinez spoke of his pride in the people of Porterville.
• Mayor Hamilton spoke on his attendance at a funeral for a soldier lost on January 25, 2007 in Baghdad, and commended the Police Department for their participation.
• Mayor Hamilton stated that there was a conference in Miami on Gang Violence this year, and asked if Council Member Hernandez or Council Member McCracken might be interested in attending.
ADJOURNMENT
The Council adjourned at 9:01 p.m. to the meeting of February 9, 2007 at 12:00 p.m.

Georgia Hawley, Chief Deputy City Clerk
By Luisa Herrera

Cameron Hamilton, Mayor
SUBJECT: BUDGET ADJUSTMENT FOR THE 2007-08 FISCAL YEAR

SOURCE: Administrative Services

COMMENT: During the course of the fiscal year, budget information becomes available that more accurately identifies revenue projections and project costs. Once known, budget modifications are necessary to complete projects and record revenues. To address budget adjustments in an orderly fashion, all adjustments will be presented as one agenda item for Council's consideration.

There is one (1) adjustment proposed for tonight's Council meeting.

Consultant Services for Airport-Related Issues Documents
There exists no current budget appropriation for these type of consultant services, necessitating a requested budget adjustment in the amount of $4,500. Funds for this proposed budget adjustment would be allocated from 2004-2005 General Fund budget carryover.

RECOMMENDATION: That the Council approve the attached budget adjustment, and authorize staff to modify revenue and expenditure estimates as described on the attached schedule.
CITY OF PORTERVILLE
Budget Adjustments

Date: November 20, 2007

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<th>FUND</th>
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<td>Airport-Related Issues Documents</td>
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Modification No: 4-07/08
SUBJECT: CLAIM - ANNA PETERSON

SOURCE: Administration

COMMENT: Ms. Anna Peterson has filed a claim against the City in an amount exceeding $25,000 in the jurisdiction of Tulare County Superior Court for medical expenses and general damages. Claimant alleges that she sustained injuries when she tripped and fell on a crack in the pavement while walking on Mill Street across the street from the Post Office on July 20, 2007.

RECOMMENDATION: After consideration and investigation, staff recommends that the Council reject said claim; refer the matter to the City's insurance adjustor; and direct the City Clerk to give the Claimant proper notification.
CLAIM AGAINST (Name of Entity: CITY OF PORTERVILLE)

Claimant's Name: Anna Peterson                              DOB: 

Claimant's Address: Porterville, Calif. 93257

Claimant's Telephone No. (Home) (Work) (559) 782-2000

Address where notices about claim are to be sent, if different from above: Same As Above

Date of incident/accident: July 20, 2007  11:17 A.M.

Date injuries, damages, or losses were discovered: "Same As Above"

Location of incident or accident: On Mill St. Across from Post Office, left of payphone.

What did entity or employee do to cause this loss, damage, or injury? Fell in broken part of road.

Cracks in pavement; City of Porterville and its Departments/Agencies responsible for repairs and maintenance.

What are the names of the entity's employees who caused this injury, damage, or loss (if known):

Names of City of Porterville's employees are unknown at this time.

What specific injuries, damages, or losses did claimant receive? Hit and scraped left knee

Scraped right foot with swelling and bruising. Medical expenses for Doctor visits, X-Rays, and medicines.

What amount of money is claimant seeking or, if the amount is in excess of $10,000, which is the appropriate court of jurisdiction. Note: If Superior and Municipal Courts are consolidated, you must represent whether it is a "limited civil case" [see Government Code 910(f)].

In excess of $25,000.00 for medical expenses, general damages. The proper court is the Unlimited Jurisdiction of the Tulare County Superior Court.

How was this amount calculated (please itemize):

Type and degree of injuries, medical expenses, pain and suffering, disability

(Use back of this form or separate sheet if necessary to answer this question in detail)

Date Signed: July 20, 2007  Signature: Anna Peterson

If signed by representative:
Representative's Name Telephone:
Address:
Relationship to Claimant:
COUNCIL AGENDA: NOVEMBER 20, 2007

SUBJECT: ACCEPTANCE OF THE BURIED SLUDGE REMOVAL PROJECT

SOURCE: Public Works Department - Engineering Division

COMMENT: Mitch Brown Construction, Inc. has completed the Buried Sludge Removal Project per plans and specifications. The project consisted of the removal of buried sludge at the Wastewater Treatment Facility and is one of the projects listed in the Cease & Desist order that must be completed as a condition for lifting the order.

City Council authorized expenditure of $182,706.04. Final construction cost is $165,378.73.

Mitch Brown Construction requests that the City accept the project as complete. Staff reviewed the work and found it acceptable.

RECOMMENDATION: That City Council:

1. Accept the project as complete;

2. Authorize the filing of the Notice of Completion; and

3. Authorize the release of the 10% retention thirty-five (35) days after recordation, provided no stop notices have been filed.

ATTACHMENT: Locator Map

P:\pub\works\Engineering\Council Items\Acceptance of Project - Buried Sludge Removal Project - 2007-11-20.doc

Dir [Signature] Appropriated/Funded [Signature] CM [Signature] Item No. 4
SUBJECT: UPDATE ON JAYE STREET AND TULE RIVER BRIDGE REHABILITATION PROJECT

SOURCE: Public Works Department - Engineering Division

COMMENT: On March 15, 2005, Council authorized the Mayor to execute a $20,000 service agreement with TRC Engineering, formerly Imbsen & Associates. The $20,000 service agreement was for the purpose of preparing a complete scope of service to widen and rehabilitate the Jaye Street and Tule River Bridge. The final appearance of the Jaye Street and Tule River Bridge will be similar to the Main Street and Tule River Bridge minus the end treatments. The March 2005 Council item also authorized the Mayor to execute a service agreement for the full design of the Jaye Street and Tule River Bridge.

Caltrans recently completed its review of the complete scope and directed that specific design items be completed before approving full release of the design funds. To initiate Phase 2 work, Caltrans approved an additional $130,000. This funding requires a 20% local match and will cover the costs to complete the following tasks:

1. Preliminary design startup
2. Records research
3. Topographic mapping
4. Geotechnical assessment
5. Alignment studies
6. Structure rehabilitation study
7. Staff/consultant meetings
8. Environmental studies
9. Progress updates

The Phase 2 Service Agreement is available in the La Barca room for Council's review. The City's local match was approved in the 2007/2008 budget and the funding source is COP and COP re-financed funds.

RECOMMENDATION: Information only
SUBJECT: AUTHORIZATION TO AMEND TRANSPORTATION PLANNING GROUP'S SERVICE AGREEMENT FOR THE COMPRESSED NATURAL GAS FACILITY AND DESIGN MODIFICATIONS TO RECYCLE CENTER

SOURCE: Public Works Department - Engineering Division

COMMENT: In 2006, the City was notified that it was the recipient of a $1,650,000 CMAQ grant to construct a Compressed Natural Gas (CNG) Facility. Approximately $100,000 of the above noted figure has been reserved for design purposes. The City must provide an 11.47% local match as a condition of the grant.

The CNG facility, more specifically, the compressors and storage tanks will be located behind the wall immediately adjacent to the Recycle Center. The “fast fill” station will be located in front (east) of the Recycle Center and the “time fill” stations will be located in the Corporation Yard equipment parking lot, which will also serve as the new transit bus parking lot.

Timing and lack of experience in this specialty design compel staff to seek the design services of Transportation Planning Group (TPG). The City has a “Transportation Consultant Service Agreement” with TPG until July 2008. TPG is currently preparing plans and specifications for the transit bus parking lot. The plans will include at least one and possibly three covered canopies. TPG is aware that the City’s newest transit buses will be CNG fueled and has researched the various firms that design CNG facilities.

TPG is uniquely qualified to design the City’s “fast fill” and “time fill” CNG facility because of their knowledge and understanding of the City’s current and future CNG needs. Staff respectfully asks that Council approve amending TPG’s current service agreement to include the necessary design modifications to the Recycle Center to accept a CNG facility and for the actual design of the City’s “time fill” and “fast fill” CNG facility.

TPG’s “Scope of Services” in the amount of $88,904 is attached for Council’s review and comment. The “Scope of Services” includes the following tasks:

1. Topography survey
2. Demolition plans
(continued next page)
3. Grading and drainage plans
4. New site plans
5. CNG plans and specifications
6. Engineer’s estimate of probable cost

Design and construction of the CNG facility was included in the 2007/2008 budget. The City’s local match will be from Gas Tax funds.

RECOMMENDATION: That City Council:

1. Direct the Public Works Director to prepare a formal Amendment to Transportation Planning Group’s Consultant Services Agreement that initiates a “CNG Design Service Agreement”;

2. That the CNG Service Agreement Amendment describe the scope of services necessary for the design of a “fast fill and time fill” CNG facility and that said Amendment include design modifications to the existing recycle center to accept a CNG facility;

3. That the CNG Design Agreement Amendment is not to exceed $88,904; and

4. That the Mayor be authorized to sign the CNG Design Services Agreement Amendment.

ATTACHMENTS: Locator Map
Scope of Services
November 5, 2007

Baldo Rodriguez, P.E.
Public Works Director
City of Porterville
291 N. Main Street
Porterville, CA 93257
559-782-7514

SUBJECT: PROPOSAL FOR IMPROVEMENTS TO RECYCLE CENTER
U-DRIVE ON PROSPECT STREET FOR A COMPRESSED
NATURAL GAS FILLING STATION, PORTERVILLE, CA

Dear Mr. Rodriguez:

TPG Consulting is pleased to submit the following proposal to complete the
design of a Civil Engineering improvements and Compressed Natural Gas (CNG)
components of a new proposed CNG Fueling Station at the existing recycle center
(U shaped driveway) off Prospect Street in Porterville, CA. We are confident that
our experience will provide the background needed for this effort. TPG, in team
with Fuel Solutions, Inc. (CNG designer), and James Winton & Associates
(licensed surveyor), propose to provide the design plans, specifications, and
associated cost estimates (PS&E’s) related to the following:

- Topography Survey ($2,640)
- Demolition ($5,300)
- Grading/Drainage ($7,500)
- Site ($14,000)
  - Concrete pad
  - Asphalt/base street w/ cross sections
  - Drive approaches keyed to City standards w/ radius returns for full
    size school bus
  - Remove/relocate on-site lights w/ inclusion of two or more lights
    furnished by City
  - Electrical conduit runs for lights, power source connection
  - Light foundation/peDESTAL design
- CNG Filling Station ($49,500)
  - Pumps (2 minimum)
  - Pipeline runs (and trenching) to public & private side
  - Fuel dispensers and hoses – public & private side
  - Compressors
  - Storage bottles and dryers
  - Dispenser Islands
  - Metering systems
  - Dispenser/Reader Unit (Card/Cash)
  - Electrical schematic for complete job
  - Complete specifications for CNG Filling Station
• Technical Specifications ($6,500)
  - Surveying - contractor’s responsibility
  - Concrete work
  - Asphalt & base material
  - Electrical
• Engineer’s opinion of probable construction costs ($3,500)

The design will use City standards and specifications in conjunction with the 2006 CA MUTCD, and Caltrans Standard Plans & Specifications, dated May 2006, and the Special Provisions. The layout will be drafted in ACAD format (English Units) on 1”=20’ scaled, 24”x36” sheets.

Up to 3 meetings between the City and the design team will be held to discuss schedule, the design philosophy/criteria, and proposed improvements to be reflected in the designed plan set.

TPG will provide up to 3 submittal sets of 50%, 70%, and 90% draft plans, special provisions, and an engineer’s estimate of probable construction costs for all improvements listed above. Revisions will be made from a consolidated set of comments by the City. Upon completion of the revisions, one set of reproducible final signed plans, engineer’s estimate of probable construction costs, and special provisions will be provided (Final PS&E Package) for use in the bidding and construction phases.

A final package in accordance with the scope of services defined above is therefore offered for a not to exceed price of $88,940. This estimate is good for 90 days. Should this scope be modified or any additional work be identified by the City, or otherwise, prior written authorization must be received before proceeding with work on a time and materials basis thereafter.

Thank you for the opportunity to submit this proposal. We look forward to working with you on this project and are confident that we can deliver a design package that assists you in completing the necessary improvements. If you should have any questions, or we can be of any further assistance, please feel free to contact me.

Respectfully,

Wil Buller, PE, TE, PTOE
Engineering Division Manager, VP
TPG Consulting Incorporated
wbuller@tpgconsulting.net
805-547-9498
559-739-8072
805-547-9596 (Fax)
559-739-8377 (Fax)
SUBJECT: AIRPORT LEASE RENEWALS – LOTS 49B AND 46C

SOURCE: ADMINISTRATIVE SERVICES/PURCHASING DIVISION

COMMENT: Mr. Michael Quatacker is the current leaseholder of Lots 49B and 46C at the Porterville Municipal Airport. The lease on Lot 49B expired on October 31, 2007, and the lease on Lot 46C will expire on November 30, 2007; however, the lease terms allow for options to extend both leases in five-year periods, provided the City receives a request to exercise the option 120 days prior to expiration. Paragraph 2 of the Lease Agreement (attached) further states the City’s granting of the option is discretionary, but will not be unreasonably withheld. Both leases have identical terms. We have received a request from Mr. Quatacker dated October 26, 2007, asking to continue his leases on Lots 49B and 46C. Staff recommends that Council waive the 120-day notice requirement and grant the five-year option to extend the leases to 2012.

RECOMMENDATION: That the Council approve the extension of the Lease Agreements between the City of Porterville and Mr. Michael Quatacker of Porterville for Lots 49B and 46C at the Porterville Municipal Airport.

ATTACHMENT: Locator Map
Letter from Mr. Quatacker requesting renewal
Paragraph 2 of original Lease Agreement

City of Porterville  
P.O. Box 432  
Porterville, Ca 93258  
10-26-07

Subject: Lease of hanger lot 46C,49B

This letter is our notification to you requesting renewal of our lease for hangers 46C, 49B located at Porterville Airport. The lease, which expires October 31, 2007 for lot 49B and November 30, 2007 for lot 46C, is under Michael Quatacker. Thank you for handling of this renewal.

[Signature]

Michael Quatacker
LEASE AGREEMENT
PORTERVILLE MUNICIPAL AIRPORT

THIS LEASE AGREEMENT ("Lease"), executed at Porterville, California this 1st day of December, 1992, by and between the CITY OF PORTERVILLE, a political subdivision of the State of California, hereinafter referred to as "City" and L. TRACY SAYLOR (L. Tracy Saylor), hereinafter referred to as "Lessee".

WHEREAS, City owns and operates an airport in the City of Porterville, State of California, commonly known and described as "Porterville Municipal Airport"; and

WHEREAS, It is the desire of City to utilize said airport for the general public by its development and use in providing aeronautical-related facilities and service:

NOW, THEREFORE, IT IS MUTUALLY AGREED as follows:

1. Premises:

(a) Demised Premises: City, for and in consideration of the covenants, conditions, agreements, and stipulations herein set forth, does hereby demise and lease to Lessee, and Lessee hereby hires from City, those certain premises situated in the City of Porterville, State of California, more particularly described by metes and bounds in Exhibits being attached hereto and by this reference made a part hereof.

2. Term: The term of this lease shall commence when both parties have executed the same and shall terminate on November 30, 2002. Provided Lessee is not in default with respect to any of the conditions or covenants of this lease. Lessee shall have an option to request an extension of the terms hereof
for additional periods of five (5) years, by giving written notice thereof to Lessor not less than 120 days prior to expiration of this agreement or any five year extension. Lessor is not obligated to grant any extension but such shall not be unreasonably withheld.

3. **Rental and Business Privilege Consideration:** Lessee agrees to pay to City in lawful money of the United States without deduction or offset, to the Finance Director, City of Porterville, P O Box 432, Porterville, California, 93258, or to such person or persons and at such place or places as may be designated from time to time by City, a rental rate of $.1662 per square foot per year. Inasmuch as the lease site contains approximately 3,780 square feet of land area, said rental rate will be $628.24 per year payable in advance on December 1st of each year of this lease. See Exhibit "A" attached.

At the end of each year of this lease, the rate shall be adjusted by a percentage equal to the percentage increase or decrease in the Consumer Price Index (CPI) for San Francisco in the interval between the date of execution of this Lease or the last date of rate adjustment.

4.a **Purpose:** This Lease is made for the purpose of constructing and operating an aircraft hangar to be used for the parking and storage of aircraft and other activities incidental thereto. Lessee shall not use the premises or any part thereof or permit them to be used for any purpose or purposes other than stated above. Lessee shall not do or permit any act or thing to be done upon the premises which constitutes nuisance or which may disturb the quiet enjoyment of City or any tenant of City on
SUBJECT: REQUEST FOR STREET CLOSURE - MYERS' THIRTEENTH ANNUAL CHRISTMAS TREE MEMORIAL SERVICE

SOURCE: Administrative Services/City Clerk Division

COMMENT: Richard Mendivil, Director of Myers Funeral Service and Crematory, has requested an assemblies permit for Thursday, December 6, 2007, in order to hold the lighting ceremony for Myers' Thirteenth Annual Christmas Tree Memorial Service. The ceremony will be held in front of Myers Chapel on "E" Street at 7:00 p.m. One thousand people attended the ceremony last year, and Mr. Mendivil has requested an assemblies permit for 1,500 people this year, weather permitting.

In conjunction with this ceremony, Mr. Mendivil is also requesting that Council approve the closure of "E" Street, between Putnam and Cleveland Avenues, from 5:00 p.m. to 9:00 p.m. on December 6, 2007 for the safety of those attending.

The Police Chief has approved the Assemblies Permit, which is attached. Staff is recommending that the same requirements as previous years be specified again this year, i.e., Myers to provide the necessary insurance to cover this event, together with police officers to control the crowd.

RECOMMENDATION: That the City Council approve the closure of "E" Street, between Putnam and Cleveland, on December 6, 2007, from 5:00 p.m. to 9:00 p.m., subject to the conditions specified.

2. Application for Assemblies Permit - Richard Mendivil
3. Insurance Certificate
To: Porterville City Council

We respectfully request that “E” Street be blocked off at Putnam and Cleveland Avenues the evening of Thursday, December 6th from approximately 5 to 9 P.M., for the protection and safety of those who will be attending the Thirteenth Annual Myers Christmas Tree Memorial Service.

Last December, Myers Funeral Service held their Twelfth Annual Christmas Memorial Tree Service at this location. The response from the community was overwhelming and more than we had anticipated. There were approximately 1,000 people from the local community and outlying areas attending.

Myers Funeral Service’s purpose in beginning this tradition was to give back to the community in the way of service. It allowed families a way to remember their loved ones who passed away. Many family members place ornaments on the trees, prior to the service (or after), commemorating their loved ones.

A beautiful memorial service is planned for the evening of December 6, 2007, at 7:00 P.M. at Myers Funeral Service, when the community will be invited to attend and celebrate the beginning of the season by remembering their loved ones. At the conclusion of the service, the trees will be lit and remain lit throughout December.

As this event has been so well received by the community the past twelve years, and this year’s anticipated crowd of even greater than the 1,000 that we had last year, we are requesting the “E” street be blocked off between Putnam and Cleveland Avenues, thereby assisting the protection/safety of those attending.

Enclosed, you will find an “Assemblies Permit,” signed by the Porterville Chief of Police, allowing us to have the service itself.

Thank you for your consideration of this request.

Sincerely,

Richard Mendivil  
Funeral Director

RM:dm  
Encl.
ORDINANCE NUMBER 927
Section 18-7.2

Application for ASSEMBLIES or MEETINGS on public streets, sidewalks or parks, within the City of Porterville.

This application MUST BE FILED WITHIN FOUR (4) DAYS PRIOR to the date of the assembly or meeting.

A. Myers Funeral Service & Crematory 559-784-5454
   (Name/Address) (Telephone)

B. 248 North "E" Street, Porterville, CA 93257
   (Name & Address of Organization) (Telephone)
   Richard Mendivil 559-784-5454
   (Authorized Head of Organization) (Telephone)

C. Name of Event Chairman Richard Mendivil - Memorial Christmas Tree Lighting

D. Purpose of event: Lighting of Memorial Tree and Service

E. Date & Time of Event December 6, 2007 7:00 P.M. to 9:00 P.M.

F. Number of persons 1,500 plus, if no rain

G. Location of the assembly area of event Myers Funeral Chapel Front Lawn
   248 North "E" Street, Porterville, CA

H. Security Guards required? [ ] yes [ ] no  If so, how many?

I. Plans for the assembly & dispersement of the event. Indicate times thereof 5:00 P.M. to 9:00 P.M.

J. Other information

I HEREBY AGREE TO ABIDE BY ALL PROVISIONS SET FORTH IN CITY ORDINANCE 927, SECTION 18-7.2 AND ALL OTHER APPLICABLE ORDINANCES OF THE CITY OF PORTERVILLE.

Legal signature of applicant

Richard Mendivil

Date 10/26/07 Telephone 559-784-5454

Application Approved [X] Denied [ ]

Chief of Police

10/96
# Certificate of Liability Insurance

**Producer:**
FEDERATED MUTUAL INSURANCE COMPANY  
5701 W. Tsalav Boulevard  
Glendale, AZ 85306  
Phone: 1-888-333-4949  
Home Office: Owatonna, MN 55060

**Insured:**
MYERS FUNERAL SERVICE & CREMATORY  
248 NORTH E STREET  
PORTERVILLE CA 93257

**Certification:**
This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend or alter the coverage afforded by the policies below.

## Companies Affording Coverage
- Company A: FEDERATED MUTUAL INSURANCE COMPANY OR FEDERATED SERVICE INSURANCE COMPANY
- Company B
- Company C
- Company D

## Coverages
This is to certify that the policies of insurance listed below have been issued to the insured named above for the policy period indicated, notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies. Limits shown may have been reduced by paid claims.

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## Description of Operations/Locations/Vehicles/Special Items
CHRISTMAS PROGRAM 12/09/2007

## Certificate Holder
CITY OF PORTERVILLE  
291 N MAIN  
PORTERVILLE CA 93257

## Cancellation
Should any of the above described policies be cancelled before the expiration date thereof, the issuing company will endeavor to mail 10 days written notice to the certificate holder named to the left. Failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives. Authorized Representative: [Signature]

PRESIDENT: ACORD CORPORATION 1988

ACORD 25 3/11/99
SUBJECT: APPROVAL OF ADMINISTRATIVE POLICY REGARDING PREVENTING THE SUPPLANTING OF GENERAL FUND AND MEASURE H FUND MONIES

SOURCE: Administrative Services

COMMENT: Pursuant to the Program Guidelines and Expenditure Plan defined for the administration of Measure H Fund monies as adopted by the City Council, and to prevent the erosion of General Fund support for public safety activities, the City must use General Fund base budget amounts established and approved in support of public safety, and that Measure H Fund monies cannot be utilized to supplant that commitment. In support of this Program Guideline in preventing the supplanting of General Fund and Measure H Fund monies, it is proposed by staff that the Administrative Policy presented be approved by the City Council, whereby staff employed to positions allocated under Measure H Fund monies be continually employed under such monies unless transferred or promoted to a position under separate funding allocation.

RECOMMENDATION: That the City Council approve and authorize staff to proceed with the implementation of Administrative Policy II-B-1, "Preventing the Supplanting of General Fund and Measure H Fund Monies."

ATTACHMENT: Draft Administrative Policy
I. PURPOSE: To provide an equitable policy to define how employees are financially allocated within Departments, in support of preventing the supplanting of General Fund monies with Measure H monies.

II. POLICY: Measure H Fund monies are not to supplant General Fund monies budgeted to support the program and activities of the Police, Fire, Parks & Leisure Services Departments. Accordingly, employees hired with General Fund monies within these Departments shall remain under this funding source unless the employee is promoted or reassigned to a position with a different defined funding source, and then the employee shall be financially supported within the Fund supporting the new position. Employees hired with Measure H monies within these Departments shall remain under this funding source unless promoted or reassigned, and then the promotion or reassignment shall be financially supported within the Fund supporting the position.

III. PROCEDURE: City Council approval of annual budgets for both the General Fund and Measure H Fund also approves the financial allocation of positions paid within those Funds. Employees hired to positions allocated from either General Fund or Measure H monies shall continue to be paid from such monies until promoted or reassigned to a different position with a separately-defined funding source. Such changes in position and funding source shall be submitted by the Department Head on a Payroll Transmittal Form, and authorized by the City Manager or designee.

A ledger shall be maintained defining the status of all employees retained using Measure H monies, which shall be available to the public to the extent allowed by law.
PUBLIC HEARING

SUBJECT: PUBLIC HEALTH GOAL REPORT

SOURCE: Public Works Department - Field Services Division

COMMENT: SB 1307 added new provisions to the California Health and Safety Code specifying that larger (>10,000 service connections) water utilities prepare a special report if their water quality measurements have exceeded any Public Health Goals (PHGs). Established by the Cal-EPA’s Office of Environmental Health Hazard Assessment (OEHHA), PHGs are non-enforceable standards, and no action to meet them is mandated. The law also requires that where OEHHA has not adopted a PHG for a constituent, the water suppliers are to use the maximum contaminant level goals (MCLGs) adopted by USEPA. A public hearing is required for the purpose of accepting and responding to public comment on the report.

The attached report is intended to provide information to the public in addition to the Consumer Confidence Report mailed to each customer in June. The City of Porterville’s water system complies with all of the health-based drinking water standards and maximum contaminant levels (MCLs) required by the California Department of Health Services and the USEPA.

RECOMMENDATION: That the City Council conduct a public hearing to solicit comments on the Public Health Goal Report

ATTACHMENT: City of Porterville Public Health Goal Report
CITY OF PORTERVILLE
PUBLIC HEALTH GOAL REPORT

The California Health and Safety Code Section 116470(b), (c) and (f) specifies that on July 1, 1998, and every three years thereafter, public water systems serving more than 10,000 service connections shall prepare a report intended to inform the public concerning any Public Health Goal (PHG) that is exceeded.

PHGs are set by the California Office of Environmental Health Hazard Assessment (OEHHA) which is part of Cal-EPA and are based solely on public health risk considerations. None of the practical risk-management factors that are considered by the USEPA or the California Department of Health Services (CDHS) in setting drinking water standards (MCLs) are considered in setting PHGs. These factors include analytical detection capability, treatment technology available, benefits and costs. The PHGs are not enforceable and are not required to be met by any public water system. MCLGs are the federal equivalent to PHGs.

The following constituents were detected in the city of Porterville drinking water sources at levels above the PHG, or if no PHG, above the MCLG:

Coliform Bacteria: In 2006 we collected between 62 and 77 samples each month for coliform analysis. In the months of July, October and December, 1 sample in each month was found to be positive for coliform bacteria. Follow up samples were found to have negative results.

Tetrachloroethylene (PCE): The PHG for PCE is 0.06 ppb, with a MCL of 5 ppb. Detection levels in 5 wells range from 0 to 4.0 ppb. These levels were below the MCL at all times. The category of health risk associated with PCE is that people who drink water containing PCE above the MCL throughout their lifetime could experience liver problems and may have an increased risk of getting cancer. CDHS says that "Drinking water which meets the MCL is associated with little to none of this risk and should be considered safe with respect to PCE." The numerical health risk for a PHG of .06 ppb is 1 in 1,000,000. The numerical health risk for a MCL of 5 ppb is 8 in 100,000.

A PCE treatment facility is being proposed as a future Capital Improvement project.

Lead and/or Copper: There is no MCL for Lead or Copper. Instead the 90th percentile value of all samples taken from household taps in the distribution system cannot exceed an Action Level of 15 ppb for lead, and 1300 ppb for copper. The PHG for lead is 2 ppb and the PHG for copper is 170 ppb. All of the source water samples for lead and copper in 2006 were less than the PHG. Based on samples taken from household taps in 2004, the 90th percentile value for lead was 0 ppb and 250 ppb for copper. The City of Porterville’s water system is in full compliance with the Federal and State Lead and Copper Rule. The category of health risk for lead is damage to kidneys or nervous system of humans. Numerical health risk information on lead has not been provided to OEHHA, the State agency responsible for providing that information.

Definitions:

Public Health Goals (PHG): The level of a contaminant in drinking water below which there is no known or expected risk to health. PHGs are set by the California Environmental Protection Agency.

Maximum Contaminant Level Goal (MCLG): The level of a contaminant in drinking water below which there is no known or expected risk to health. MCLGs are set by the U. S. Environmental Protection Agency.

Maximum Contaminant Level (MCL): The highest level of a contaminant that is allowed in drinking water. Primary MCLs are set as close to the PHGs (or MCLGs) as is economically and technologically possible. Secondary MCLs are set to protect the odor, taste, and appearance of drinking water.

Action Level: The concentration of which, if exceeded, triggers treatment or other requirements which a water system must follow.

ppb: Parts per billion
PUBLIC HEARING

SUBJECT: VACATION OF PUBLIC SANITARY SEWER AND WATER EASEMENTS RELATED TO THE TARGET STORE EXPANSION (Target Corporation)

SOURCE: Public Works Department – Engineering Division

COMMENT: This is the time and place set for the hearing on the proposed vacation of public sanitary sewer and water easements, all of which are described in Document No. 92-011075, recorded February 18, 1992, in the Office of the Tulare County Recorder. These easements are generally located in the westerly and southerly portions of the Porterville Marketplace Shopping Center, west of Prospect Street and south of Henderson Avenue. The easements, which cross the subject development, are necessary for the maintenance of underground pipelines associated with the Target store and other retail stores within the shopping center. The developer is seeking the vacation for the purpose of expanding their store within the existing easements. The underground utilities will be rerouted around the new building during construction. New easements have been prepared and will be recorded once the City officially vacates the existing easements.

The City has authority to vacate these easements under Section 8333, Part 3, Division 9, of the Streets and Highways Code of the State of California.

Staff believes that there are no problems with any reversionary rights since these easements are in favor of the City of Porterville. Vacation of these easements does not affect other agencies or other utility companies.

RECOMMENDATION: 1) Conduct a Public Hearing; and

2) Authorize the City Clerk to execute the vacation of said easements.

ATTACHMENTS: Vacation Resolution
Document No. 92-011075
Proposed Easements w/ Locator Map
RESOLUTION NO. ____________

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE ORDERING THE VACATION AND CLOSING TO PUBLIC USE OF SANITARY SEWER AND WATER EASEMENTS RELATED TO THE TARGET STORE EXPANSION (Target Corporation)

WHEREAS, by Resolution No. 109-2007, passed on October 16, 2007, the Council of the City of Porterville declared its intention to vacate and close to public use that certain public easements related to the Target Store’s development, which is situated in the Northwest quarter of Section 27, Township 21 South, Range 27 East, Mount Diablo Base and Meridian, hereinafter more particularly described, and set the hour of 7:00 p.m. on the 20th day of November, 2007, in the Council Chambers of said City as the time and place for hearing all persons objecting to the proposed vacation; and

WHEREAS, such public hearing has been held at said time and place, and there were no protests, oral or written, to such vacation;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Porterville as follows:

SECTION 1: The Council hereby finds, from all the evidence submitted, that the easements hereinafter described are unnecessary for present or prospective use, and the City Council hereby makes its order vacating public sanitary sewer and water easements, which are described in the legal description attached hereto, marked Exhibit "A" and by reference made a part hereof.

SECTION 2: The City Clerk shall certify to the passage and adoption of this resolution and it shall thereupon take effect and be in force.

ATTEST:

Cameron Hamilton, Mayor

John Longley, City Clerk

By: Patrice Hildreth, Acting Chief Deputy City Clerk
Exhibit “A”

Easements for sanitary sewer and water purposes situated in portions of Parcel Map No. 3874 filed for record in Book 39 of Parcel Maps, Page 77, Tulare County Records, and a portion of Lot 134 as shown on “Map of the Pioneer Land Company’s First Subdivision”, filed for record in Volume 1 of Maps, Pages 110 and 111, Tulare County Records, located in Section 27, Township 21 South, Range 27 East, Mount Diablo Base and Meridian, in the City of Porterville, County of Tulare, State of California, described as follows:

Parcel 1:

An easement for sanitary sewer and water purposes, situated in portions of Parcels 4 and 7 as shown on said Parcel Map No. 3874, and said Lot 134, described as follows:

COMMENCING AT the Northwest corner of Parcel 2 as shown on Parcel Map No. 1010 filed for record in Book 11 of Parcel Maps, Page 11, Tulare County Records; Thence South 0°57’48” West along the West line of said Parcel 2, a distance of 3.50 feet, to the centerline of an existing 30.00 foot wide Public Utility and Access Easement as shown on said Parcel Map No. 3874; Thence South 89°57’38” West along said centerline of existing easement, a distance of 317.00 feet, to the TRUE POINT OF BEGINNING of this description; Thence South 0°02’22” East, 94.70 feet, to the South line of said Parcel 4; Thence North 89°21’07” West along said South line of Parcel 4, a distance of 195.27 feet, to the Southwest corner of said Parcel 4; Thence North 0°45’31” East, along the West line of said Parcel 4, a distance of 18.58 feet; Thence South 89°57’38” West, 643.03 feet, to the West line of said Lot 134; Thence North 0°38’52” East along said West line of Lot 134, a distance of 895.97 feet, to the Northwest corner of said Parcel 7; Thence North 89°57’38” East along the North line of said Parcel 7, being also the South line of an 110.00 foot wide Henderson Avenue, a distance of 33.00 feet; Thence South 0°02’22” East, 705.93 feet; Thence South 40°12’33” East, 176.09 feet; Thence North 89°57’38” East, 345.67 feet; Thence South 83°08’53” East, 197.00 feet; Thence North 89°57’38” East, 108.00 feet; Thence North 42°56’58” East, 76.94 feet; Thence South 0°02’22” East, 15.00 feet, to the POINT OF BEGINNING and end of this description.
PARTNERSHIP GRANT DEED

This instrument is executed for the purpose of conveying and transferring an undivided interest in the property described below. The grantor hereby conveys and transfers to the grantee the following described real estate:

The undersigned is a duly constituted partnership, and the undersigned hereby conveys and transfers to the grantee, for the purpose indicated, the property described below.

The undersigned, a duly constituted partnership, hereby conveys and transfers to the grantee, for the purpose indicated, the property described below.

Dated: January 14, 1992

[Signature]

[Signature]

[License Number]

[License Type]

[Notary Public]

[Date]

[County]

[State]

[Address]

[City]

[County]

[State]

[Address]

[City]
EXHIBIT "A"

FACILITIES FOR ALLIATVE SEWER AND WATER PURPOSES SITUATE IN PORTION OF PARCEL MAP NO. 3874 FILED FOR RECORD IN BOOK 15 OF PARCEL MAPS, PAGE 77, TULARE COUNTY RECORDS, AND A PORTION OF LOT 124 AS SHOWN ON "MAP OF THE SQUIRES LAND COMPANY'S FIRST SUBDIVISION", FILED FOR RECORD IN VOLUME 1 OF MAPS, PAGES 110 AND 111, TULARE COUNTY RECORDS, LOCATED IN SECTION 37, TOWNSHIP 31 SOUTH, RANGE 37 EAST, MOUNT DIABLO BASE AND MERIDIAN, IN THE CITY OF PORTERVILLE, COUNTY OF TULARE, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL 1:

AN EASEMENT FOR ALLIATVE SEWER AND WATER PURPOSES SITUATE IN PORTIONS OF PARCELS 6 AND 7 AS SHOWN ON SAID PARCEL MAP NO. 3874, AND SAID LOT 124, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF PARCEL 57 AS SHOWN ON PARCEL MAP NO. 1010 FILED FOR RECORD IN BOOK 11 OF PARCEL MAPS, PAGE 11, TULARE COUNTY RECORDS; THENCE SOUTH 0°37'46" WEST ALONG THE WEST LINE OF SAID PARCEL 2 A DISTANCE OF 360.36 FEET TO THE CENTERLINE OF AN EXISTING 30.00 FOOT WIDE PUBLIC UTILITY AND ACCESS EASEMENT AS SHOWN ON SAID PARCEL MAP NO. 3874; THENCE SOUTH 0°06'20" WEST ALONG SAID CENTERLINE OF EXISTING EASEMENT A DISTANCE OF 171.90 FEET TO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE SOUTH 0°15'27" EAST 94.70 FEET TO THE SOUTH LINE OF SAID PARCEL "4"; THENCE NORTH 89°21'01" 07" WEST ALONG SAID SOUTH LINE OF PARCEL "4" A DISTANCE OF 109.27 FEET TO THE SOUTHEAST CORNER OF SAID PARCEL "4"; THENCE NORTH 0°40'32" EAST, ALONG THE WEST LINE OF SAID PARCEL "4" A DISTANCE OF 128.96 FEET; THENCE SOUTH 0°07'36" WEST 82.23 FEET TO THE WEST LINE OF SAID LOT 124; THENCE WEST 0°56'37" EAST ALONG SAID WEST LINE OF LOT 124 A DISTANCE OF 955.97 FEET TO THE NORTHWEST CORNER OF SAID PARCEL "79"; THENCE NORTH 89°27'36" EAST ALONG THE NORTH LINE OF SAID PARCEL "79"; THENCE EAST ALONG THE SOUTH LINE OF AN 110.00 FOOT WIDE HENDERSON AVENUE, A DISTANCE OF 33.00 FEET; THENCE SOUTH 0°21'23" EAST 395.96 FEET; THENCE NORTH 0°12'33" EAST 176.00 FEET; THENCE NORTH 89°51'34" EAST 245.47 FEET; THENCE SOUTH 0°55'53" EAST 187.00 FEET; THENCE NORTH 89°57'18" EAST 187.00 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL 2:

AN EASEMENT FOR WATER PURPOSES, 30.00 FEET IN WIDTH, SITUATE IN A PORTION OF PARCEL 3 AS SHOWN ON SAID PARCEL MAP NO. 3874 THE CENTERLINE DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF PARCEL 79; THENCE NORTH 89°57'36" EAST ALONG THE NORTH LINE OF SAID PARCEL "79", BEING ALSO THE SOUTH LINE OF A 110.00 FOOT WIDE HENDERSON AVENUE, A DISTANCE OF 150.00 FEET TO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE SOUTH 0°25'25" EAST 458.00 FEET TO THE WESTERN EXTENSION OF THE CENTERLINE OF AN EXISTING 30.00 FOOT WIDE PUBLIC UTILITY AND ACCESS EASEMENT AS SHOWN ON SAID PARCEL MAP NO. 3874; THENCE NORTH 0°57'36" EAST ALONG SAID WESTERN EXTENSION OF THE CENTERLINE OF EXISTING PUBLIC UTILITY AND ACCESS EASEMENT A DISTANCE OF 0.80 FEET TO THE WEST LINE OF SAID EXISTING PUBLIC UTILITY AND ACCESS EASEMENT AND THE END OF THIS DESCRIPTION.
RESOLUTION NO. 132-91

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE ACCEPTING A GRANT OF EASEMENT FROM HENDERSON-INSPECT PARTNERS, L.P.

BE IT HEREBY RESOLVED by the City Council of the City of Porterville, that the City of Porterville hereby accepts a partnership grant deed of easement from Henderson-Inspect Partners, L.P., a limited partnership, with foreclosing property situated, lying and being in the County of Tulare, State of California, as-was

Attached hereto as Exhibit "A"

BE IT FURTHER RESOLVED that said deed be recorded in the office of the Tulare County Recorder. The foregoing has been accepted by the City Council for the City of Porterville.

ATTACHED:

[Signature]
W. G. Wettaker, City Clerk
STATE OF CALIFORNIA
COUNTY OF TULARE

I, W. G. WETTAKER, the duly appointed City Clerk of the City of Porterville, do hereby certify and declare that the foregoing is a full, true and correct copy of a resolution duly and regularly passed and adopted at a regular meeting of the Porterville City Council regularly called and held on the 5th day of November, 1991.

THAT said resolution was duly passed and adopted by the following vote:

AYES: COUNCILMEMBER: Lek, Nicholson, Gibbons, Gifford, Lewitt
NOES: COUNCILMEMBER: None
ABSENT: COUNCILMEMBER: None

[Signature]
C. G. WETTAKER, City Clerk

[Signature]
Georgia Minkley, Deputy City Clerk

Description: Tulare, CA Document-Year. DocID 1992.11075 Page: 3 of 4 Order: 128629 Comment:
EXHIBIT "A"

EASEMENTS FOR SANITARY SEWER AND WATER PURVEYS SITUATE IN PORTIONS OF PARCEL MAP NO. 2874 FILED FOR RECORD IN BOOK 58 OF PARCEL MAPS, PAGE 77, TULARE COUNTY RECORDS, AND A PORTION OF LOT 124 AS SHOWN ON "MAP OF THE PIONEER LAND COMPANY'S FIRST SUBDIVISION", FILED FOR RECORD IN VOLUME 1 OF MAPS, PAGES 110 AND 111, TULARE COUNTY RECORDS, LOCATED IN SECTION 27, TOWNSHIP 31 SOUTH, RANGE 27 EAST, MOUNT DIABLO BASE AND MERIDIAN, IN THE CITY OF PORTERVILLE, COUNTY OF TULARE, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL 1:

AN EASEMENT FOR SANITARY SEWER AND WATER PURVEYS, SITUATE IN PORTIONS OF PARCELS 4 AND 7 AS SHOWN ON SAID PARCEL MAP NO. 2874, AND SAID LOT 124, DESCRIBED AS FOLLOWS:

CONCERNING AT THE NORTHWEST CORNER OF PARCEL '2' AS SHOWN ON PARCEL MAP NO. 1010 FILED FOR RECORD IN BOOK 11 OF PARCEL MAPS, PAGE 11, TULARE COUNTY RECORDS, THERE NORTH 0°27'48" WEST ALONG THE WEST LINE OF SAID PARCEL 2 A DISTANCE OF 3.10 FEET TO THE CENTRALLINE OF AN EXISTING 20.00 FOOT WIDE PUBLIC UTILITY AND ACCESS EASEMENT AS SHOWN ON SAID PARCEL MAP NO. 2874; THERE SOUTH 0°45'53" WEST ALONG SAID CENTRALLINE OF EXISTING EASEMENT A DISTANCE OF 317.05 FEET TO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION; THERE SOUTH 0°02'13" EAST 84.70 FEET TO THE SOUTH LINE OF SAID PARCEL '4'; THERE NORTH 89°51'12" WEST ALONG SAID SOUTH LINE OF PARCEL '4'; A DISTANCE OF 555.27 FEET TO THE SOUTHEAST CORNER OF SAID PARCEL '1'; THERE NORTH 0°46'32" EAST ALONG THE WEST LINE OF SAID PARCEL '1'; A DISTANCE OF 18.58 FEET; THERE SOUTH 89°54'36" WEST 845.63 FEET TO THE WEST LINE OF SAID LOT 124; THERE NORTH 0°38'34" EAST ALONG SAID WEST LINE OF LOT 124 A DISTANCE OF 875.97 FEET TO THE NORTHWEST CORNER OF SAID PARCEL '7'; THERE NORTH 0°37'30" EAST ALONG THE NORTH LINE OF SAID PARCEL '7', BEING ALSO THE NORTH LINE OF AN 110.00 FOOT WIDE PUBLIC UTILITY AVENUE, A DISTANCE OF 32.00 FEET; THERE SOUTH 0°02'22" EAST 195.95 FEET; THERE SOUTH 49°31'00" EAST 176.00 FEET; THERE NORTH 89°54'36" EAST 346.61 FEET; THERE SOUTH 89°54'36" WEST 200.00 FEET; THERE NORTH 41°26'16" WEST 78.94 FEET; THERE SOUTH 0°51'22" EAST 15.00 FEET TO THE POINT OF BEGINNING.

PARCEL 2:

AN EASEMENT FOR PUBLIC UTILITIES, 30.00 FOOT IN WIDTH, SITUATE IN A PORTION OF PARCEL '7' AS SHOWN ON SAID PARCEL MAP NO. 2874 THE CENTRELINE DESCRIBED AS FOLLOWS:

CONCERNING AT THE NORTHWEST CORNER OF PARCEL '7'; THERE NORTH 89° 87' 38" EAST ALONG THE NORTH LINE OF SAID PARCEL '7', BEING ALSO THE NORTH LINE OF 110.00 FOOT WIDE PUBLIC UTILITY AVENUE, A DISTANCE OF 150.70 FEET TO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION; THERE SOUTH 0°02'22" EAST 488.00 FEET TO THE WESTLY EXTENSION OF THE CENTRELINE OF AN EXISTING 30.00 FOOT WIDE PUBLIC UTILITY AND ACCESS EASEMENT AS SHOWN ON SAID PARCEL MAP NO. 2874; THERE SOUTH 89° 87' 38" EAST ALONG SAID WESTLY EXTENSION OF THE CENTRELINE OF EXISTING PUBLIC UTILITY AND ACCESS EASEMENT A DISTANCE OF 8.89 FEET TO THE WEST LINE OF SAID EXISTING PUBLIC UTILITY AND ACCESS EASEMENT AND THE END OF THIS DESCRIPTION.

Order: 128629 Comment:
RECORDED REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Porterville
291 N. Main Street
Porterville, CA 93258

------------------------------space above this line reserved for recording data-----------------------

GRANT OF EASEMENT

THIS GRANT OF EASEMENT is made as of the ___ day of __________, 2007, by
TARGET CORPORATION, a Minnesota corporation ("Target"), whose address is Target
Corporation, Property Development, Attn: Real Estate-Existing Stores, 1000 Nicollet Mall,
Minneapolis, Minnesota 55403, GRAND-PROSPECT PARTNERS, L.P., a California limited
partnership ("Grand Prospect"), whose address is c/o Paynter Realty & Investments, Inc.,
attention: David H. Paynter, 17671 Irvine Boulevard, Suite 204, Tustin, California, 92780, and
HENDERSON-PROSPECT PARTNERS III, L.P., a California limited partnership ("Henderson"
and together with Target and Grand Prospect, "Grantor"), whose address is c/o Paynter Realty &
Investments, Inc., attention: David H. Paynter, 17671 Irvine Boulevard, Suite 204, Tustin,
California, 92780. Target is the owner of certain real property described on Exhibit A attached
hereto and made a part hereof ("Target Property"). Grand Prospect is the fee owner of certain
real property described on Exhibit B attached hereto and made a part hereof ("Grand Prospect
Property"). Henderson is the fee owner of certain real property described on Exhibit C attached
hereto and made a part hereof ("Henderson Property" and together with the Target Property and
Grand Prospect Property, the "Grantor Property").

In consideration of One Dollar ($1.00) and other good and valuable consideration, the
receipt of which is hereby acknowledged, Grantor does hereby quitclaim unto the CITY OF
PORTERVILLE, a municipal corporation ("Grantee"), subject to the terms and conditions set
forth below, a perpetual non-exclusive easement ("Easement") for the specific purpose of
permitting Grantee the right to install, operate, maintain, repair, remove and replace certain water
and sanitary sewer facilities (collectively called the "Facilities") under the surface of that portion
of Grantor’s Property legally described on the attached Exhibit D and shown on Exhibits E-1 and
E-2 attached hereto ("Easement Area") and, together with the right of reasonable and necessary
ingress and egress to and from the Easement Area in connection with the exercise of the rights
granted herein.

By acceptance of the Easement created hereby, Grantee covenants and agrees with
Grantor as follows:

1. Reservation of Rights; Relocation. Grantor hereby reserves and retains all other
property rights in and to the Easement Area, including without limitation, the rights to (a) use the
Easement Area for any purpose whatsoever, so long as such use does not substantially and unreasonably interfere with Grantee's rights hereunder (it being expressly understood that the use of the surface of the Easement Area for vehicular traffic, pedestrian traffic, landscaping, parking and/or signage shall be deemed not to substantially interfere with Grantee's rights hereunder) and (b) locate electric, gas and water lines and other utilities in the Easement Area, so long as such improvements do not substantially and unreasonably interfere with Grantee’s permitted use of the Easement Area. Grantor further reserves and retains the right from time to time, in Grantor's sole discretion, to cause Grantee to relocate the Facilities at Grantor's expense, it being understood that if such relocation of the Facilities is to a place outside of the Easement Area, Grantee shall execute and deliver to Grantor, promptly upon request, an amendment to this instrument setting forth the revised Easement Area.

2. **Installation of Facilities.** The Facilities placed in the Easement Area shall be buried to a depth not less than 30 inches below the existing surface, and Grantee shall cause the backfill to be compacted in layers to avoid settling, voids and/or air pockets.

3. **Conduct of Work and Notification.** Any installation, maintenance, replacement, repair and/or removal of the Facilities performed by Grantee, its agents and employees shall be performed (i) at Grantee’s sole cost and expense, (ii) during months other than November, December or January (except in the event of an emergency), (iii) after thirty (30) days’ notice to the Grantor (except that in an emergency the work may be initiated after reasonable notice). In addition, Grantee, its agents and employees shall (a) promptly pay all costs and expenses associated with said work and (b) diligently complete such work as quickly as possible.

4. **Use; Maintenance.** Any use of the Easement shall be performed with care and in such manner as to cause the least interference with the surface of the Easement Area and with the use and enjoyment thereof by Grantor and others lawfully present thereon. Grantee shall maintain the Facilities in a good and safe condition, and Grantee shall install, maintain, operate, repair, replace and remove the Facilities in compliance with all applicable governmental rules, regulations and requirements.

5. **Restoration by Grantee; Removal of Facilities.** If the surface of Grantor's Property or any portion thereof, or any landscaping, curbing, pavement or other improvements thereon, shall be disturbed by installation, operation, maintenance, replacement or removal activities or other activities performed by or on behalf of Grantee in connection with the use of the Easement, said surface and improvements shall be promptly restored by Grantee to their condition just prior to such disturbance. Immediately following the performance of work by or on behalf of Grantee, Grantee shall remove from the Easement Area and surrounding land all equipment, materials and debris resulting from or used in connection with such work.

6. **Normal and Reasonable Use by Grantor.** Grantor, its successors and assigns and persons occupying or lawfully present on the Easement Area shall not be liable for damage, if any, which may be caused by normal and reasonable use of, or vehicular or pedestrian traffic over, the Easement Area, including the uses retained by Grantor in Section 1 above.

7. **Prohibition Against Liens.** Grantee shall not permit any mechanics', materialmen's or other liens to be filed against Grantor's Property or any part thereof for work or
materials furnished Grantee in connection with the Easement, and Grantee agrees to indemnify, defend and hold Grantor harmless from and against the same.

8. **Indemnification.** To the extent permitted by applicable law, Grantee shall indemnify, defend and hold harmless Grantor from and against any and all claims, demands, losses, damages, costs and expenses (including but not limited to court costs, penalties and reasonable attorneys' fees), judgments, liabilities and causes of action of any nature whatsoever resulting from or relating to the use or occupancy of the Easement Area by Grantee or arising in any manner out of the acts or omissions of Grantee or its agents or employees or any other persons acting under Grantee's direction or control in connection with the Easement or with the use or occupancy of the Easement Area. The indemnity obligations set forth in Sections 7 and 8 of this Grant of Easement shall survive any termination of the Easement.

9. **No Representations or Warranties; Subject to Encumbrances.** Grantee agrees that it is accepting the Easement without any warranty or representation regarding the Easement or the Easement Area, and subject to all valid and existing licenses, leases, grants, exceptions, encumbrances, title defects, matters of record, reservations and conditions affecting Grantor's Property and/or affecting access thereto.

10. **Condemnation.** Grantee shall not claim or declare any fee interest in and to the Easement Area, and in the event of eminent domain proceedings or settlement pursuant thereto, Grantee shall make no claim against the award or compensation accruing out of or resulting from such event, save and except any payment made to Grantee for damage to the Facilities or with respect to removing or relocating the same.

11. **Taxes.** Grantee agrees to assume and pay all taxes, assessments and other charges, if any, which may be levied, assessed or asserted against the Facilities within the Easement Area.

12. **Attorneys' Fees.** If either party brings an action at law or in equity to enforce or interpret this Agreement, the prevailing party in such action shall be entitled to recover reasonable attorneys' fees and court costs for all stages of litigation, including, but not limited to, appellate proceedings, in addition to any other remedy granted.

13. **Successors and Assigns.** The terms "Grantor" and "Grantee", wherever used in this instrument, are intended in each instance to include the successors and assigns of Grantor as the owner of the Easement Area, and Grantee as the owner of the Facilities; provided however, that any liability or obligation of Grantor as to future events shall terminate upon the transfer of ownership of the Easement Area.

14. **Miscellaneous.** This Agreement shall be governed by and construed in accordance with the laws of the State or Commonwealth in which the Grantor's Property is located. This Agreement shall not be construed strictly for or against either Grantor or Grantee. This Agreement may be signed in counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one instrument. All notices to Grantor shall be delivered in writing at the address noted in the recitals or such other address as is provided by Grantor.
SIGNATURE PAGE
FOR
GRANT OF EASEMENT
BY
TARGET CORPORATION,
GRAND PROSPECT PARTNERS, L.P.
AND
HENDERSON-PROSPECT PARTNERS III, L.P.

IN WITNESS WHEREOF, Target has executed this instrument as of the date first above written.

TARGET CORPORATION,
a Minnesota corporation

By: ____________________________
Scott Nelson
Sr. Vice President
Its: ____________________________
Target Corporation

STATE OF MINNESOTA )
) ss.
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this 1st day of
October 2007, by Scott Nelson, the Sr. V.P.
of TARGET CORPORATION, a Minnesota corporation, on behalf of said corporation.

ELIZABETH A. MANKEY
NOTARY PUBLIC-MINNESOTA
My Commission Expires Jan. 31, 2009

Notary Public

4
SIGNATURE PAGE
FOR
GRANT OF EASEMENT
BY
TARGET CORPORATION,
GRAND PROSPECT PARTNERS, L.P.
AND
HENDERSON-PROSPECT PARTNERS III, L.P.

IN WITNESS WHEREOF, Grand Prospect has executed this instrument as of the date first above written.

GRAND PROSPECT PARTNERS, L.P.,
a California limited partnership

By: ____________________________
    Its: Managing General Partner

STATE OF ____________ )
COUNTY OF ____________ )SS

On _______26____, 2007, before me, Cami C. Burnstine, a notary public in and for said County and State, personally appeared David H. Payne, the Managing General Partner of Grand Prospect Partners, L.P., a California limited partnership, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the entity upon behalf of which the person acted executed the instrument.

Witness my hand and official seal

Cami C. Burnstine
Notary Public
My Commission Expires: April 26, 2008
SIGNATURE PAGE
FOR
GRANT OF EASEMENT
BY
TARGET CORPORATION,
GRAND PROSPECT PARTNERS, L.P.
AND
HENDERSON-PROSPECT PARTNERS III, L.P.

IN WITNESS WHEREOF, Henderson-Prospect Partners III, L.P. has executed and delivered this instrument as of the date first above written.

HENDERSON-PROSPECT PARTNERS III, L.P.,
a California limited partnership

By:

By: ________________________________

Its: ________________________________

STATE OF _________________________ )

SS
COUNTY OF _________________________ )

On _________________________ 2007, before me, _________________________, a notary public in and for said County and State, personally appeared _________________________, the _________________________ of Henderson-Prospect Partners III, L.P., a California limited partnership, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the entity upon behalf of which the person acted executed the instrument.

Witness my hand and official seal _________________________

_______________________________

Notary Public
My Commission Expires: _________________________
ACKNOWLEDGEMENT
OF
GRANT OF EASEMENT
BY
TARGET CORPORATION,
GRAND PROSPECT PARTNERS, L.P.
AND
HENDERSON-PROSPECT PARTNERS III, L.P.

THIS IS TO CERTIFY, That pursuant to the authority conferred by City of Porterville, Ordinance No. 1590, adopted February 20, 2001, the undersigned, on behalf of the public and City Council of the City of Porterville consents to the acceptance for public purposes the real property described in the within easement and consents to the recordation thereof.

IN WITNESS WHEREOF, I have hereunto set my hand this ______ day of ____________________, 2007

________________________________________
Michael K. Reed, PLS #7514, City Engineer

STATE OF CALIFORNIA    
)   SS
COUNTY OF TULARE     

On __________, 2007, before me, __________________________________________, a notary public in and for said County and State, personally appeared ____________________________, the __________________________ of the City of Porterville, a __________________________ corporation, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the entity upon behalf of which the person acted executed the instrument.

Witness my hand and official seal

________________________________________
Notary Public
My Commission Expires: ____________________

This Instrument was Prepared By:
Target Corporation Property Development
Attn: Real Estate-Existing Stores
1000 Nicollet Mall
Minneapolis, Minnesota 55403
EXHIBIT A

Legal Description of Target Property

PARCEL 1 OF PARCEL MAP 3874, IN THE CITY OF PORTERVILLE, COUNTY OF TULARE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 39, PAGE 77, OF PARCEL MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN#251-350-018
EXHIBIT B

Legal Description of Grand Prospect Property

PARCEL 1

PARCEL 2 AS SHOWN ON THAT CERTAIN LOT LINE ADJUSTMENT MAP ATTACHED AS EXHIBIT "A" TO RESOLUTION 203, LOT LINE ADJUSTMENT 8-91, RECORDED OCTOBER 29, 1991 AS INSTRUMENT NO. 74396, TULARE COUNTY RECORDS BEING AN ADJUSTMENT OF LOT LINES BETWEEN PARCELS 1, 2, 3, 4, 7 AND THE REMAINDER OF PARCEL MAP 3874, RECORDED IN BOOK 39 OF PARCEL MAPS, PAGE 77, TULARE COUNTY RECORDS, IN THE CITY OF PERTERVILLE, COUNTY OF TULARE, STATE OF CALIFORNIA, AND AS MORE FULLY DESCRIBED ON EXHIBIT "B" OF SAID RESOLUTION 203, LOT LINE ADJUSTMENT 8-91.

APN: 251-350-019

PARCEL 2

ALL THAT CERTAIN REAL PROPERTY SITUATE IN A PORTION OF LOT 134 AS SHOWN ON "MAP OF THE PIONEER LAND COMPANY'S FIRST SUBDIVISION" ACCORDING TO THE MAP THEREOF RECORDED IN BOOK 1 PAGES 110 AND 111 OF MAPS, TULARE COUNTY RECORDS, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF PARCEL 7 AS SHOWN ON PARCEL MAP NO. 3874, ACCORDING TO THE MAP THEREOF RECORDED IN BOOK 39 PAGE 77 OF PARCEL MAPS, TULARE COUNTY RECORDS, SAID POINT BEING ON THE WEST LINE OF SAID LOT 134; THENCE SOUTH 0°38'52" WEST ALONG SAID WEST LINE OF LOT 134 A DISTANCE OF 895.97 FEET TO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE CONTINUING SOUTH 0°38'52" WEST ALONG SAID WEST LINE OF LOT 134 A DISTANCE OF 345.79 FEET TO THE NORTH LINE OF A 50.00 FOOT WIDE GRAND AVENUE; THENCE SOUTH 89°58'25" EAST ALONG SAID NORTH LINE OF GRAND AVENUE A DISTANCE OF 662.36 FEET TO THE EAST LINE OF SAID LOT 134; THENCE NORTH 0°45'31" EAST ALONG SAID EAST LINE OF LOT 134 A DISTANCE OF 346.56 FEET; THENCE SOUTH 89°57'38" WEST 663.03 FEET TO THE POINT OF BEGINNING.

APN: 251-350-016
EXHIBIT C

Legal Description of the Henderson Property

PARCEL 7 OF PARCEL MAP 3874, IN THE CITY OF PORTERVILLE, COUNTY OF TULARE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 39, PAGE 77, OF PARCEL MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN#251-350-017
Exhibit D

Legal Description of Easement Area

Sewer and Water Easement

That portion of Parcel 4, 7 and the Remainder of Parcel Map No. 3874 in the City of Porterville, County of Tulare, State of California per map recorded in Book 39, page 77 of Parcel Maps in the Office of the County Recorder of said County also being a portion of Lot 134 of Pioneer Land Company’s First Subdivision per map recorded in Book 3, page 34 of Maps in the Office of the County Recorder of said County, described as follows:

Beginning at a point in the North line of said Parcel 7, said point being North 89°57'38" East, 13.00 feet of the Northwest corner of said Parcel 7, said point also being in the South right of way of Henderson Avenue (110 feet wide);

Thence, South 00°38'52" West, 789.21 feet parallel with the West line of said Parcel 7, also being the West line of said Lot 134;

Thence, South 21°43'36" East, 94.81 feet;

Thence, North 89°47'03" East, 20.83 feet;

Thence, South 14°52'32" East, 121.73 feet;

Thence, North 89°57'38" East, 538.46 feet;

Thence, North 00°02'22" West, 93.35 feet;

Thence, South 89°59'56" East, 156.65 feet;

Thence, North 42°31'36" East, 90.83 feet;

Thence, South 89°57'33" East, 20.13 feet to a point in the East line of said Parcel 4;

Thence, North 00°02'22" West, 20.00 feet along said East line of Parcel 4;

Thence, North 89°57'33" West, 28.45 feet;

Thence, South 42°31'36" West, 75.63 feet;

Thence, North 87°12'31" West, 178.84 feet;

Thence, South 00°02'22" East, 113.28 feet;

Thence, South 89°57'38" West, 489.43 feet;

Thence, North 00°02'22" West, 108.91 feet;

Thence, South 88°47'03" West, 52.56 feet;

Thence, North 14°52'32" West, 166.06 feet;

Thence, North 00°38'52" East, 706.19 feet to a point in the North line of said Parcel 7 and in said South right of way of Henderson Avenue;

Thence, South 89°57'38" West, 20.00 feet to the point of beginning.
EXHIBIT E-2

Sewer and Water Easement Plat
PUBLIC HEARING

TITLE: ORDINANCE 1735, REGULATING STATE VIDEO FRANCHISE HOLDERS

SOURCE: CITY ATTORNEY

COMMENT: This ordinance is for the purpose of establishing the City’s rights and responsibilities with regard to State cable franchise holders under a new State law AB 2987 also known as the Digital Infrastructure and Video Competition Act (DIVCA). The ordinance covers issues such as franchise fees and public programming fees, and the City’s ability to audit business records.

The purpose of DIVCA is to promote cable and video service competition in California by establishing a State franchise process. The new law applies to all video service which is defined as video programming cable and open video system services provided through facilities located at least in part in the public rights of way without regard to delivery technology. By obtaining a State franchise the franchise holder obtains the right to operate in any City identified in its franchise agreement and to use the City’s rights of way in exchange for paying franchise fees. Although the City can no longer enter into local franchise agreements with the providers, the City retains certain rights and responsibilities with regard to cable and video operators.

The City is entitled to collect a franchise fee in the amount of 5% of gross revenues. Additionally, the City may collect a fee of 1% of gross revenues to support Public Educational and Governmental Access channels (PEG) and to receive capacity on the network for public access programming under certain conditions. The City may also examine business records to ensure compliance with the franchise and PEG fees, require compliance with State and federal environmental laws, require that it serve as the lead agency for environmental review, enforce violations of customer service standards, and establish a schedule of penalties for such violations. The City may also enact reasonable regulations regarding the installation and placement of surface mounted utility facilities in City streets and rights of way, and additional regulations, guidelines, and standards will be presented at a subsequent meeting.

The franchise fee will be due and payable on a quarterly basis and subject to a late payment charge. The City may use the revenue from the franchise fee for any lawful purpose. The PEG fees are for the purpose of supporting capital purposes related to public educational and governmental programming.
The holder of a State video service franchise is required to comply with specific customer service standards including the Cable Television and Video Provider Customer Service and Information Act Gov’t Code section 53054 et seq; California Penal Code Section 637.5; and the privacy standards in section 631 of the Federal Cable Act 47 U.S.C. Section 551 et seq. The City is required by DIVCA to enforce these standards and to establish a schedule of monetary penalties for violations. Any fines collected for customer service standard violations are split between the City and the Digital Divide Account.

The City must permit the holder of a State franchise to install and maintain a network within public rights of way under the same time place and manner regulations that apply to telephone companies under applicable State and federal law. DIVCA specifically provides that one of its purposes is to protect local government revenues and control of public rights of way Public Utilities Code section 5810 2 D. As noted above, this office is working with the Public Works Department on the development of construction guidelines and standards, and these will be brought forth for the Council’s consideration at a subsequent meeting.

There is one existing cable franchise in Porterville. Charter Communications currently operates under the terms of a franchise agreement with the City which is expected to expire on December 31, 2007. Beginning January 1, 2008, the incumbent operator has the option to terminate the City franchise agreement and replace it with a State franchise or to continue operating under the City franchise agreement until it expires. This office understands that Charter Communications is gearing up to apply for a State franchise and that Notice of said application could be coming any day.

The City Council approved and gave first reading of the proposed regulations on November 6, 2007, and scheduled the public hearing for this meeting. A copy of the proposed ordinance has been provided to Charter Communications.

RECOMMENDATION: That the City Council:

1) Hold the scheduled public hearing and consider any public testimony concerning the proposed regulations;
2) Adopt and give second reading to the attached proposed Ordinance, reading by title only and waiving any further reading.

ATTACHMENTS: Ordinance No. 1735, An Ordinance of the City Council of the City of Porterville Adding Chapter 24B, Article I, Sections 24B-1 through 24B-10 to the Porterville Municipal Code Pertaining to the Regulation of State Video Franchise Holders
ORDINANCE NO. 1735

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE ADDING CHAPTER 24B, ARTICLE I, SECTIONS 24B-1 THROUGH 24B-10 TO THE PORTERVILLE MUNICIPAL CODE PERTAINING TO THE REGULATION OF STATE VIDEO FRANCHISE HOLDERS

WHEREAS a new State law the Digital Infrastructure and Video Competition Act of 2006 AS 2987 went into effect January 1 2007;

WHEREAS under the new State law the State of California shall have sole franchising authority for new video service providers within the City;

WHEREAS although the City of Porterville will not be the franchising authority for video service providers the City continues to have certain rights and responsibilities with respect to the State franchise holders;

WHEREAS AB 2987 requires that local agencies establish their rights and responsibilities with regard to the State franchise holders by enacting local ordinances;

WHEREAS the City of Porterville shall receive a fee of 5 of gross revenues of each State video franchise holder which operates within the City of Porterville for use of the public rights of way;

WHEREAS the City of Porterville shall receive an additional fee of 1 of gross revenues of each State video franchise holder which operates within the City of Porterville for Public Educational and Government PEG purposes;

WHEREAS the City of Porterville may audit the business records of a State video franchisee once annually to ensure compliance with the payment of the franchise and PEG fees; and

WHEREAS the City of Porterville will retain authority without change over the City's current cable franchisees until such time as they no longer hold a City franchise or are no longer operating under a current or expired City franchise;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PORTERVILLE DO ORDAIN, AS FOLLOWS:

SECTION 1: Chapter 24B, Article I, Sections _____ through _____, of the Porterville Municipal Code is hereby added as follows:
Chapter 24b
VIDEO SERVICE/UTILITIES

Article I
REGULATION OF STATE VIDEO FRANCHISE HOLDERS

Sections:
24B-1 Purpose and Authority
24B-2 Defined Terms and Phrases
24B-3 State Video Franchise, PEG Fees, and PEG Channels
24B-4 Authority to Examine Business Records
24B-5 Customer Service Penalties
24B-6 City Response to State Video Franchise Applications
24B-8 Construction Standards
24B-9 Environmental Review
24B-10 Severability

24B-1 Purpose and Authority. This Chapter is designed to regulate video service providers holding State video franchises and operating within the City. As of January 1, 2007, the State of California will have the sole authority to grant State video franchises pursuant to the Digital Infrastructure and Video Competition Act of 2006 Act. Pursuant to the Act the City of Porterville shall receive a franchise fee and shall receive a fee for public educational and government PEG purposes from all State video franchise holders operating within the City. Additionally the City will acquire the responsibility to establish and enforce penalties consistent with State law against all State video franchise holders operating within the City for violations of customer service standards however the Act grants all authority to adopt customer service standards to the State. The Act leaves unchanged the City’s authority to regulate the City’s current cable franchise and the cable franchise currently in effect until such time as the cable franchisee no longer holds a City franchise or is no longer operating under a current or expired City franchise.

24B-2 Defined Terms and Phrases.

(A) Unless otherwise expressly set forth in this section or elsewhere in this Article, the definitions of the terms herein shall have the same meaning as defined in the California Public Utilities Code Section 5830, and as otherwise defined in the Digital Infrastructure and Video Competition Act of 2006, as amended. For the purposes of this chapter, the words, terms, phrases, and abbreviations have the meanings set forth below. When not inconsistent with the context, words used in the present tense include the future tense, and words in the singular include the plural number. Unless otherwise
expressly stated, words, terms, phrases, and abbreviations not defined in this Section either directly or by reference to State law will be given their meaning as used in Title 47 of the United States Code, as amended, and, if not defined in that Code, their meaning as used in Title 47 of the Code of Federal Regulations.

(B) “Affiliate” means, when used in relation to any person, another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person.

(C) “Cable system operator” or “cable operator” means any person or group of persons:

(1) Who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in that cable system; or

(2) Who otherwise controls or is responsible for, through any arrangement, the management and operation of that cable system.

(D) “CFR” means the Code of Federal Regulations. Thus, the citation of “47 CFR 80.1” refers to Title 47, part 80, section 1, of the Code of Federal Regulations.

(E) “City Manager” means the City Manager of the City of Porterville, or the City Manager’s designee.


(G) “FCC” or “Federal Communications Commission” means the federal administrative agency, or any lawful successor, that is authorized to regulate cable and telecommunications services and cable and telecommunications service providers on a national level.

(H) “Franchise fee” means any fee or assessment of any kind that is authorized by state or federal law to be imposed by the City on a Grantee as compensation in the nature of rent for the Grantee’s use of the public rights-of-way. The term “franchise fee” does not include:

(1) Any tax, fee or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their services, but not including a tax, fee or assessment which is unduly discriminatory against cable operators or cable subscribers);

(2) Capital costs that are required by the franchise to be incurred by a Grantee for public, educational, or governmental access facilities;
(3) Requirements or charges that are incidental to the award or enforcement of the franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or

(4) Any fee imposed under Title 17, United States Code.

(I) “Franchise service area” or “service area” means the entire geographical area of that City as it is now constituted, or may in the future be constituted, unless otherwise specified in the ordinance or resolution granting a franchise, or in a franchise agreement.

(J) “Gross Revenue” shall be defined in accordance to California Public Utilities Code Section 5860 subdivision (d).

(K) “Person” means an individual, partnership, limited liability company, association, joint stock company, trust, corporation or governmental entity.

(L) “Public, educational or government access facilities,” “PEG access facilities,” or “PEG access” means the total of the following:

(1) Channel capacity designated for noncommercial public, educational, or government use; and

(2) Facilities and equipment for the use of that channel capacity.

(M) “Subscriber” or “customer” or “consumer” means any person who pays for or lawfully receives Cable or Video Services provided by cable operator or video services provider by means of the Cable System or Video System.

(N) “Street” or “public right-of-way” means each of the following that has been dedicated to the public and maintained under public authority or by others and is located within the City limits: streets, roadways, highways, avenues, lanes, alleys, sidewalks, easements, rights-of-way and similar public property that the City from time to time authorizes within the definition of a street.

(O) “Telecommunications” means the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.

(P) “Telecommunications equipment” means equipment, other than customer premises equipment, used by a telecommunications service provider to provide telecommunications service, including software that is integral to that equipment.
(Q) “Telecommunications service” means the offering of telecommunications directory to the public for a fee, or to such classes of users as to be effectively available directly to the public, regardless of the equipment or facilities that are used.

(R) “Telecommunications service provider” means any provider of telecommunications service.


(T) “Video programming provider” means any person or group of persons who has the right under the federal copyright laws to select and to contract for the carriage of specific video programming on a cable system or an open video system.

(U) “Video service provider” means any person, company, or service that provides one or more channels of video programming to a residence, including a home, multi-family dwelling complex, congregate-living complex, condominium, apartment or mobile home, where some fee is paid for that service, whether directly or as included in dues or rental charges, and whether or not public rights-of-way are used in the delivery of that video programming. A “video provider” includes, without limitation, providers of cable television service, open video system service, master antenna television, satellite master antenna providers, direct broadcast satellite, multipoint distribution services and other providers of video programming, whatever their technology.

24B-3 State Video Franchise, PEG Fees, and PEG Channels.

(A) For any State video franchise holder operating within the boundaries of the City of Porterville there shall be a fee paid to the City equal to 5% of the gross revenue of that State video franchise holder.

(B) PEG FEE: A separate fee of 1% of Gross Revenues shall be assessed on all state franchise holders that use the public rights-of-way, including all local franchisees and all holders of state franchises as consistent with state or federal law. The PEG Fee shall be paid quarterly, to be received by the City not later than 45 days after the close of each quarter of Holder’s fiscal year.

(1) On a quarterly basis, Holder shall provide the City a complete and accurate statement verified by a financial officer of Holder indicating Gross Revenues for the past quarter, listing every revenue source, and depicting gross revenue computations.

(2) A video service provider subject to this section may recover the amount of any fee by billing a recovery fee as a separate line item on the regular bill of each Subscriber.

(C) CHANNEL DESIGNATION: All video service providers that use the public rights-of-way shall designate sufficient amount of capacity on its network to allow the
carriage of at least three public, educational, or governmental (PEG) access channels. For the purposes of this section, a PEG access channel is deemed activated if it is being utilized for PEG access programming within the city for at least eight hours per day. PEG access channels shall be for the exclusive use of the City or its designees to provide public, educational, or governmental channels.

(1) Advertising, underwriting, or sponsorship recognition may be carried on the PEG access channels for the purpose of funding PEG-related activities.

(2) The PEG access channels shall all be carried on the basic service tier of Holder.

(3) To the extent feasible, the PEG access channels shall not be separated numerically from other channels carried on the basic service tier and the channel numbers for the PEG access channels shall be the same channel numbers used by the incumbent cable operator unless prohibited by federal law.

(4) After the initial designation of PEG access channel numbers, the channel numbers shall not be changed without the prior written consent of the City unless the change is required by federal law.

(5) Each PEG access channel shall be capable of carrying a National Television System Committee (NTSC) television signal.

(6) Requests by the City for additional channel capacity will be made in accordance to PUC Section §5870.

(D) INTERCONNECTION. Where technically feasible, a state video franchise holder and incumbent cable operator shall negotiate in good faith to interconnect their networks for the purpose of providing PEG access channel programming. Interconnection may be accomplished by direct cable, microwave link, satellite, or other reasonable method of connection. State video franchise holders and incumbent cable operators shall provide interconnection of the PEG access channels on reasonable terms and conditions and may not withhold the interconnection. If a state video franchise holder and an incumbent cable operator cannot reach a mutually acceptable interconnection agreement, the City may require the incumbent cable operator to allow the state video franchise holder to interconnect its network with the incumbent’s network at a technically feasible point on the holder’s network as identified by the holder. If no technically feasible point for interconnection is available, the state video franchise holder shall make an interconnection available to the channel originator and shall provide the facilities necessary for the interconnection. The cost of any interconnection shall be borne by the state video franchise holder requesting the interconnection unless otherwise agreed to by the parties.

(E) EMERGENCY ALERT SYSTEM AND EMERGENCY Overrides. A state video franchise holder must comply with the Emergency Alert System requirements of the Federal Communications Commission in order that emergency messages may be
distributed over the holder’s network. Provisions in City-issued franchises authorizing the City to provide local emergency notifications shall remain in effect, and shall apply to all state video franchise holders in the City for the duration of the City-issued franchise, or until the term of the franchise would have expired had it not been terminated pursuant to subdivision (m) of Section 5840 of the California Public Utilities Code, or until January 1, 2009, whichever is later.

(F) Gross Revenue, for the purpose of this entire Section, shall have the definition set forth in California Public Utilities Code Section 5860.

24B-4 Authority to Examine Business Records. Not more than once annually, the City Manager or his or her designee may examine the business records of a holder of a State video franchise to ensure compliance with Section 24B-3, under the terms and conditions set forth in the Act.

24B-5 Customer Service Standards and Penalties. The Holder of a State video franchise shall comply with all applicable State and federal customer service and protection standards pertaining to the provision of video service.

(A) Unless the customer protection and customer service obligations of a Video Provider are specified in a Franchise with the City, a Video Provider must comply with all applicable provisions of the Cable Television and Video Customer Service and Information Act (Government Code §§ 53054, et seq.), and the Video Customer Service Act (Government Code §§ 53088, et seq.).

(B) All Video Providers that are operating in the City on the effective date of this Chapter, or that intend to operate in the City after the effective date of this Chapter, and are not required under applicable law to operate under a Franchise, license, lease, or similar written agreement with the City, must register with the City. The registration form must include or be accompanied by the following:

1. The Video Provider's name, address, and local telephone numbers.
2. The names of the officers of the Video Provider.
3. A copy of the Video Provider's written policies and procedures relating to customer service standards and the handling of customer complaints, as required by California Government Code §§ 53054, et seq. These customer service standards must include, without limitation, standards regarding the following:
   (a) Installation, disconnection, service and repair obligations, employee identification, and service call response time and scheduling.
   (b) Customer telephone and office hours.
   (c) Procedures for billing, charges, refunds, and credits.
(d) Procedures for termination of service.

(e) Notice of the deletion of a programming service, the changing of channel assignments, or an increase in rates.

(f) Complaint procedures and procedures for bill dispute resolution.

(g) The Video Provider's written acknowledgement of its obligation under California Government Code section 53055.1 to provide to new customers a notice describing the customer service standards specified above in subparagraphs (a) through (f) at the time of installation or when service is initiated. The notice must also include, in addition to all of the information described above in subparagraphs (a) through (f), all of the following:

(i) A listing of the services offered by the Video Provider that clearly describes all levels of service and the rates for each level of service.

(ii) The telephone number or numbers through which customers may subscribe to, change, or terminate service, request customer service, or seek general or billing information.

(iii) A description of the rights and remedies that the Video Provider may make available to its customers if the Video Provider does not materially meet its customer service standards.

(h) The Video Provider's written commitment to distribute annually to its employees and customers, and to the City, a notice describing the customer service standards specified above in subparagraphs (a) through (f). This annual notice must include the report of the Video Provider on its performance in meeting its customer service standards, as required by California Government Code section 53055.2.

(4) Unless a Video Provider is exempt under federal law from its payment, a registration fee in an amount established by resolution of the City Council to cover the reasonable costs incurred by the City in reviewing and processing the registration form.

(5) In addition to the registration fee specified above in subsection (4), the written commitment of the Video Provider to pay to the City, when due, all costs and expenses reasonably incurred by the City in resolving any disputes between the Video Provider and its Subscribers, which dispute resolution is mandated by California Government Code section 53088.2(o).

(C) The customer service obligations imposed upon Video Providers by the Video Customer Service Act (California Government Code §§53088 et seq.) consist of the following:
(1) Every Video Provider must render reasonably efficient service, make repairs promptly, and interrupt service only as necessary.

(2) All Video Provider personnel contacting Subscribers or potential Subscribers outside the office of the provider must be clearly identified as associated with the Video Provider.

(3) At the time of installation, and annually thereafter, all Video Providers must provide to all customers a written notice of the programming offered, the prices for that programming, the provider's installation and customer service policies, and the name, address, and telephone number of the City's office that is designated for receiving complaints.

(4) All Video Providers must have knowledgeable, qualified company representatives available to respond to customer telephone inquiries Monday through Friday, excluding holidays, during normal business hours.

(5) All Video Providers must provide to customers a toll-free or local telephone number for installation, service, and complaint calls. These calls must be answered promptly by the Video Providers.

(6) All Video Providers must render bills that are accurate and understandable.

(7) All Video Providers must respond promptly to a complete outage in a customer's service. The response must occur within 24 hours of the reporting of such outage to the provider, except in those situations beyond the reasonable control of the Video Provider. A Video Provider will be deemed to respond to a complete outage when a company representative arrives at the outage location within 24 hours and begins to resolve the problem.

(8) All Video Providers must provide a minimum of 30 days' written notice before increasing rates or deleting channels. All Video Providers must make every reasonable effort to submit the notice to the City in advance of the distribution to customers. The 30-day notice is waived if the increases in rates or deletion of channels are outside the control of the Video Provider. In those cases, the Video Provider must make reasonable efforts to provide customers with as much notice as possible.

(9) Every Video Provider must allow every residential customer who pays his or her bill directly to the Video Provider at least 15 days from the date the bill for services is mailed to the customer, to pay the listed charges unless otherwise agreed to pursuant to a residential rental agreement establishing tenancy. Customer payments must be posted promptly. No Video Provider may terminate residential service for nonpayment of a delinquent account unless the Video Provider furnishes notice of the delinquency and impending termination at least 15 days prior to the proposed termination. The notice must be mailed, postage prepaid, to the customer to whom the service is billed. Notice must not
be mailed until the 16th day after the date the bill for services was mailed to the customer. The notice of delinquency and impending termination may be part of a billing statement. No Video Provider may assess a late fee any earlier than the 22nd day after the bill for service has been mailed.

(10) Every notice of termination of service pursuant to the preceding subsection 9 must include all of the following information:

(a) The name and address of the customer whose account is delinquent.

(b) The amount of the delinquency.

(c) The date by which payment is required in order to avoid termination of service.

(d) The telephone number of a representative of the Video Provider who can provide additional information and handle complaints or initiate an investigation concerning the service and charges in question.

(11) Service may only be terminated on days in which the customer can reach a representative of the Video Provider either in Person or by telephone.

(12) Any service terminated without good cause must be restored without charge for the service restoration. Good cause includes, but is not limited to, failure to pay, payment by check for which there are insufficient funds, theft of service, abuse of equipment or system personnel, or other similar Subscriber actions.

(13) All Video Providers must issue requested refund checks promptly, but no later than 45 days following the resolution of any dispute, and following the return of the equipment supplied by the Video Provider, if service is terminated.

(14) All Video Providers must issue security or customer deposit refund checks promptly, but no later than 45 days following the termination of service, less any deductions permitted by law.

(15) Video providers must not disclose the name and address of a Subscriber for commercial gain to be used in mailing lists or for other commercial purposes not reasonably related to the conduct of the businesses of the Video Providers or their Affiliates, unless the Video Providers have provided to the Subscriber a notice, separate or included in any other customer notice, that clearly and conspicuously describes the Subscriber's ability to prohibit the disclosure. Video providers must provide an address and telephone number for a local Subscriber to use without toll charge to prevent disclosure of the Subscriber's name and address.
(D) Penalties for Noncompliance

(1) Purpose. The purpose of this paragraph (D) is to authorize the imposition of monetary penalties for the violation of the customer service standards established by this Section 7759. The imposition of penalties authorized by this paragraph (D) will not prevent the City or any other affected party from exercising any other remedy to the extent permitted by law, including but not limited to any judicial remedy as provided below in subsection (2)(d).

(2) Administration and Appeals.

(a) The City Manager or the City Manager’s designee is authorized to administer this paragraph (D). Decisions by the City Manager to assess monetary penalties against the holder must be in writing and must contain findings supporting the decisions. Decisions by the City Manager are final, unless appealed by the holder or aggrieved party.

(b) A State video franchise holder may appeal a penalty assessed by the City Manager to the City Council within 30 days of the initial assessment. The City Council shall hear all evidence and relevant testimony and may uphold modify or vacate the penalty. The City Council’s decision on the imposition of a penalty shall be final.

(c) Schedule of Penalties. The following schedule of penalties shall apply to State Franchise Holders, in the event of a violation of any requirement or obligation established by applicable law:

(i) For the first occurrence of a violation, a monetary penalty of $500 shall be imposed for each day the violation remains in effect, not to exceed $1,500 for each violation.

(ii) For a second violation of the same nature within 12 months, a monetary penalty of $1,000 shall be imposed for each day the violation remains in effect, not to exceed $3,000 for each violation.

(iii) For a third or further violation of the same nature within 12 months, a monetary penalty of $2,500 shall be imposed for each day the violation remains in effect, not to exceed $7,500 for each violation.

(iv) The maximum penalties referenced above may be increased by any additional amount authorized by state law.

(d) Judicial Remedy. This paragraph does not preclude any affected party from pursuing any judicial remedy available to that party without regard to this paragraph.
(e) Notice of Violation. The City must give the Holder written notice of any alleged violation of the consumer service standards and allow the Holder at least 30 days from receipt of the notice to remedy the specified violation.

(f) Assessment of Monetary Penalties.

(i) If a violation has not been corrected or cured by Holder within the time specified by the City, the monetary penalties specified above in subparagraph (c) may be assessed from the date of delivery to Holder of the City’s written notice of violation.

(ii) In assessing monetary penalties under this paragraph, the City Manager or the City Council, as applicable, may take into account the nature, circumstances, extent and gravity of the violation and, with respect to the Holder, the degree of culpability, any history of prior violations, and such other matters as may be relevant. If warranted under the circumstances, the monetary penalty to be assessed may be less than the maximum penalty amount specified above in subparagraph (c).

(E) Additional Consumer Protection and Service Standards

(1) In addition to the consumer protection and service standards that are specified above in paragraphs (a) through (h) of subparagraph (B)(3) of this section, the franchise agreement with a Holder may require compliance with the following:

(a) Federal statutes, and the rules, regulations, and orders of the Federal Communications Commission, including the following:

(i) The provisions of Section 76.309(c) of Chapter 47 of the Code of Federal Regulations, as it now exists or may later be amended.

(ii) The provisions of Section 76.630 of Chapter 47 of the Code of Federal Regulations, as it now exists or may later be amended.

(iii) The provisions of Section 551 of Chapter 47, United States Code, as it now exists or may later be amended.


(vi) The provisions of California Civil Code Section 1722(b)(1)-(6) relating to service or repair transactions between cable television companies and their subscribers.
(vii) The provisions of California Penal Code Section 637.5 relating to subscribers’ rights to privacy protection.

(2) The City may, in its discretion, incorporate in a franchise agreement those customer service and protection standards referenced above in this paragraph (E)(1) that are the most stringent, and that afford the greatest protection to consumers. These standards will apply, to the extent authorized by law, to all video, voice, and data services that are provided by the Holder to its subscribers within the franchise service area.

(F) A State Franchise Holder and any Franchisee, upon request by the City, shall prepare quarterly reports showing compliance customer service standards for telephone response performance. Such reports will be due to the City within 45 days from the end of each calendar quarter. The report should detail customer call center performance within all call centers serving the City showing data tracked and aggregated for the entire market area served by the call centers. The report shall include:

1. Calls offered to Interactive Voice Router (IVR);
2. Calls handled within IVR;
3. Percentage of calls handled within IVR;
4. Calls offered to agents;
5. Calls handled within 30 seconds;
6. Service level or percentage of calls answered within 30 seconds;
7. Number of abandoned calls;
8. Percentage of calls abandoned;
9. Average speed to answer a call;
10. Number of calls reaching a busy signal;
11. Percentage of busy calls as a function of total calls.

24B-6 City Response to State Video Franchise Applications. Applicants for State video franchises within the boundaries of the City of Porterville must concurrently provide complete copies to the City of any application or amendments to applications filed with the Public Utilities Commission. One complete copy must be provided to the City Manager. Within 30 days of receipt the City Manager will provide any appropriate comments to the PUC regarding an application or an amendment to an application for a State video franchise.
24B-7 Development Review for Facilities in Streets and Public Rights of Way. Prior to construction or alteration of any facilities in on over under upon across and along the public streets and rights of way within the City of Porterville, a State video franchise holder shall for each facility submit plans and drawings to the Community Development and/or Public Works Directors for review pursuant to the City’s applicable regulations. For purposes of this section facilities includes wires cables conductors ducts conduits vaults manholes amplifiers appliances pedestals attachments and other property and equipment as are necessary and appurtenant to the operation of the video service system.

24B-8 Construction Standards. All applicable construction standards as set forth in the City regulations shall apply to State video service franchise holders constructing or altering any facilities within the City.

24B-9 Environmental Review. The City of Porterville shall serve as the lead agency for any environmental review that is required for construction or alteration of facilities by a State video service franchise holder within the City of Porterville and may impose conditions to mitigate environmental impacts of the applicant’s use of the public rights of way that may be required by the California Environmental Quality Act Division 13 commencing with Section 21000 of the Public Resources Code.

24B-10 Severability. This Chapter and the various parts thereof are hereby declared to be severable. Should any section of this Chapter be declared by a court of competent jurisdiction to be unconstitutional or invalid for any reason such decision shall not affect the validity of the Chapter as a whole or any portion thereof other than the section so declared to be unconstitutional or invalid.

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

ATTEST:

John Longley, City Clerk

By: Patrice Hildreth, Acting Chief Deputy

Cameron Hamilton, Mayor
SUBJECT: SECOND READING – ORDINANCE 1728, ADOPTING THE 2007 CALIFORNIA BUILDING CODE

SOURCE: ADMINISTRATION/CITY CLERK DIVISION

COMMENT: Ordinance 1728, amending Sections 7-1, 7-2, and 7-3.4 of the Municipal Code of the City of Porterville and adopting by reference the 2007 Edition of the California Building Code, along with designated Appendices, and the 2007 Edition of the California Energy Code Published by the International Code Council, Inc., was given First Reading on November 6, 2007, and has been printed.

RECOMMENDATION: That the Council give Second Reading to Ordinance No. 1728, waive further reading, and adopt said Ordinance.

Attachment: Ordinance No. 1728

Item No. 13
ORDINANCE NO. 1728

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE
AMENDING SECTIONS 7-1, 7-2, AND 7-3.4 OF THE
MUNICIPAL CODE OF THE CITY OF PORTERVILLE
AND ADOPTING BY REFERENCE
THE 2007 EDITION OF THE CALIFORNIA BUILDING CODE
ALONG WITH DESIGNATED APPENDICES AND
THE 2007 EDITION OF THE CALIFORNIA ENERGY CODE
PUBLISHED BY THE INTERNATIONAL CODE COUNCIL, INC.

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

SECTION A. The following sections of the Municipal Code of the City of
Porterville are hereby amended to read as follows:

Section 7-1—Adoption of the 2007 Edition of the California Building Code Part 1;

That certain code in book form to which more particular reference is herein made,
regulating the construction, erection, alteration, repair, removal, demolition, conversion,
equipment, use, height, area and maintenance of buildings in the City of Porterville,
together with the amendments thereof, herein specifically set forth, together with the
penalty for violation herein set forth to be known as the Building Code compiled by and
adopted by the International Code Council, Inc., together with the following appendix
Chapters 1, B, C, G, H, I, J; the entire Chapter of California Part 8 Historical Building
with Appendix A1 and Reference Standards 21-4, 21-6, 21-7, 21-8, 21-13; and the 2007
California Existing Building Code Part 10, thereto is hereby adopted and enacted by the
Council of the City of Porterville, to all intents and purposes and to the same effect as if
each and every sentence, paragraph, word and clause in said code mentioned are referred
to herein or therein were fully and specifically set forth herein, with the exception of the
penalty provision thereof.

Section 7-2 Copies of Building Code Filed in City Clerk’s Office:
Reference is hereby made to one (1) copy of said California Building Code, 2007
Edition compiled by and adopted by the International Conference of Building Officials,
heretofore filed in the office of the Building Official of the City of Porterville and said California Building Code is by reference adopted herein as provided by law.

Section 7-3.4. Penalty for Violation:

It shall be unlawful for any person, firm or corporation to enlarge, alter, repair, move, improve, remove, convert, or equip, use, occupy or maintain any building or structure in the City of Porterville, or cause the same to be done contrary to or in violation of the provisions of this article or of the building code above adopted by reference, together with the amendments thereto; and any person, firm or corporation violating any of the provisions of this article or of said building code, as amended, shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violations of the provisions of this article or of the California Building Code, 2007 Edition, is committed or permitted; and upon conviction of any such violation, such person shall be punished as set forth in Chapter 2, Article 14 of the Porterville Municipal Code.

SECTION B. That Ordinance No. 1616 of the City of Porterville is hereby repealed.

SECTION C. This Ordinance shall be in full force and in effect on January 1, 2008.

\[Signature\]

Cameron Hamilton, Mayor

ATTEST:

John Longley, City Clerk

\[Signature\]

By: Patrice Hildreth, Acting Chief Deputy
SUBJECT: SECOND READING – ORDINANCE 1729, ADOPTING THE 2007 CALIFORNIA MECHANICAL CODE

SOURCE: ADMINISTRATION/CITY CLERK DIVISION

COMMENT: Ordinance No. 1729, amending Section 7-4 of the Porterville Municipal Code adopting by reference the 2007 Edition of the California Mechanical Code published by the International Code Council, Inc., was given First Reading on November 6, 2007, and has been printed.

RECOMMENDATION: That the Council give Second Reading to Ordinance No. 1729, waive further reading, and adopt said Ordinance.

Attachment: Ordinance No. 1729

Item No. 14
ORDINANCE NO. 1729

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE
AMENDING SECTION 7-4 OF THE MUNICIPAL CODE OF
THE CITY OF PORTERVILLE ADOPTING BY REFERENCE
THE 2007 EDITION OF THE CALIFORNIA MECHANICAL CODE
PUBLISHED BY THE INTERNATIONAL CODE COUNCIL, INC.

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

SECTION A. The following section of the Municipal Code of the City of
Porterville is hereby amended to read as follows:

Section 7-4 Adoption of the 2007 Edition of the California Mechanical Code,
Title 24, Part 4 and Appendix Chapter 1, Appendix A, and Appendix B:

That certain code in book form to which more particular reference is hereinafter
made regulating the installation and maintenance of heating, ventilating cooling and
refrigeration systems, to be known and referred to as the California Mechanical Code is
hereby adopted and enacted by the Council of the City of Porterville as an ordinance of
the City of Porterville, to all intents and purposes and to the same effect as if each and
every sentence, comma, paragraph, word, phrase, and clause in said code mentioned or
referred to therein or herein were and each thereof was fully and specifically set forth
herein.

Reference is hereby made to one (1) copy of the 2007 Edition of the California
Mechanical Code published by the International Code Council, Inc. filed with the
Building Official of the City of Porterville and said code is by reference adopted herein
as provided by law.

SECTION B. That Ordinance No.1618 of the Municipal Code of the City of
Porterville is hereby repealed.
SECTION C. This Ordinance shall be in full force and in effect on January 1, 2008.

________________________________________
Cameron Hamilton, Mayor

ATTEST:

John Longley, City Clerk

By: Patrice Hildreth, Acting Chief Deputy
SUBJECT: SECOND READING – ORDINANCE 1730, ADOPTING THE 2007 CALIFORNIA PLUMBING CODE

SOURCE: ADMINISTRATION/CITY CLERK DIVISION

COMMENT: Ordinance No. 1730, amending Section 7-6 of the Porterville Municipal Code adopting by reference the 2007 Edition of the California Plumbing Code published by the International Code Council, Inc., was given First Reading on November 6, 2007, and has been printed.

RECOMMENDATION: That the Council give Second Reading to Ordinance No. 1730, waive further reading, and adopt said Ordinance.

Attachment: Ordinance No. 1730

Item No. 15
ORDINANCE NO. 1730


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

SECTION A. That Section 7-6 of the Municipal Code of the City of Porterville is amended to read as follows:

That certain code in book form to which more particular reference is hereinafter made, regulating the business of plumbing, and the installation of plumbing fixtures and appliances, to be known and referred to as the California Plumbing Code, is hereby adopted and enacted by the Council of the City of Porterville as an ordinance of the City of Porterville, to all intents and purposes and to the same effect as if each and every sentence, comma, paragraph, work, phrase, and clause in said code mentioned or referred to therein or herein were and each thereof was fully and specifically set forth herein.

Reference is hereby made to (1) copy of the 2007 Edition of the California Plumbing Code, published by the International Code Council, Inc. filed with the Building Official of the City of Porterville and said code is by reference adopted herein as provided by law.

SECTION B. That Ordinance No. 1617 of the Municipal Code of the City of Porterville is hereby repealed.
SECTION C. This Ordinance shall be in full force and in effect on January 1, 2008.

____________________________________
Cameron Hamilton, Mayor

ATTEST:

John Longley, City Clerk

____________________________________
By: Patrice Hildreth, Acting Chief Deputy
SUBJECT: SECOND READING – ORDINANCE 1731, ADOPTING THE 2007 CALIFORNIA ELECTRICAL CODE

SOURCE: ADMINISTRATION/CITY CLERK DIVISION

COMMENT: Ordinance No. 1731, amending Section 7-98 and deleting Section 7-10 of the Porterville Municipal Code and adopting by reference the 2007 Edition of the California Electrical Code published by the California Building Standards Commission, was given First Reading on November 6, 2007, and has been printed.

RECOMMENDATION: That the Council give Second Reading to Ordinance No. 1731, waive further reading, and adopt said Ordinance.

Attachment: Ordinance No. 1731

Item No. 16
ORDINANCE NO. 1731

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE
AMENDING SECTION 7-9 AND DELETING SECTION 7-10 OF THE
MUNICIPAL CODE OF THE CITY OF PORTERVILLE
AND ADOPTING BY REFERENCE
THE 2007 EDITION OF THE CALIFORNIA ELECTRICAL CODE
PUBLISHED BY THE CALIFORNIA BUILDING STANDARDS COMMISSION

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

SECTION A. That Section 7-9 of the Municipal Code of the City of Porterville is
hereby amended to read as follows:

Section 7-9 Adoption of the 2007 Edition California Electrical Code
Reference is hereby made to one (1) copy of the 2007 Edition California
Electrical Code, published by the California Building Standards Commission filed in the
office of the Building Official of the City of Porterville, and such code, to wit: the 2007
Edition of the California Electrical Code published by the California Building Standards
Commission, as aforesaid now on file with the Building Official of the City of
Porterville, is hereby adopted by reference as the Electrical Code of the City.

SECTION B. That Ordinance No. 1619 of the Municipal Code of the City of
Porterville is hereby repealed.

SECTION C. This Ordinance shall be in full force and in effect on January 1,
2008.

__________________________
Cameron Hamilton, Mayor

ATTEST:
John Longley, City Clerk

__________________________
By: Patrice Hildreth, Acting Chief Deputy
SUBJECT: SECOND READING – ORDINANCE 1732, ADOPTING THE 2007 CALIFORNIA FIRE CODE

SOURCE: ADMINISTRATION/CITY CLERK DIVISION

COMMENT: Ordinance No. 1732, amending Chapter 12 of the Porterville Municipal Code and adopting by reference the 2007 Edition of the California Fire Code, along with designated appendices, published by the International Code Council, Inc., was given First Reading on November 6, 2007, and has been printed.

RECOMMENDATION: That the Council give Second Reading to Ordinance No. 1732, waive further reading, and adopt said Ordinance.

Attachment: Ordinance No. 1732

Item No. 17
ORDINANCE NO. 1732

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE
AMENDING CHAPTER 12 OF THE
MUNICIPAL CODE OF THE CITY OF PORTERVILLE
AND ADOPTING BY REFERENCE
EXCEPT AS OTHERWISE PROVIDED IN THIS ARTICLE
THE 2007 EDITION OF THE CALIFORNIA FIRE CODE
ALONG WITH DESIGNATED APPENDICES
PUBLISHED BY THE INTERNATION CODE COUNCIL, INC.

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

SECTION A. That Chapter 12, Fire Prevention, Section 12.1.1, of the Municipal
Code of the City of Porterville is hereby amended to read as follows:

Section 12-1.1: Uniform Fire Code Adopted; Filing of Copies:
There is hereby adopted by the Council of the City of Porterville for the purpose
of prescribing regulations governing conditions hazardous to life and property from fire
or explosion, that certain code known as the California Fire Code, published by the
International Code Council, Inc. being particularly the 2007 Edition thereof together with
the following appendices thereto, and the California fire Code Standards are hereby
amended and changed as follows:

Adoption of Appendices; Appendix Chapter 1, Chapter 4, Appendix A, Appendix
B, Appendix C, Appendix D as amended by this Code, Appendix E, Appendix F,
Appendix G and Appendix H.

307.4.2, 307.5, of Chapter 3 are hereby deleted.

(2) Section 508.1 Exceptions 1, 2, of Chapter 5 are hereby deleted.

(3) Section 903.3.1.2 of Chapter 9, shall read as follows: NFPA 13R
Sprinkler Systems. Where allowed in buildings of Group R, up to and including two
stories in height, automatic sprinkler systems may be installed throughout, in accordance
with NFPA 13R when allowed by the Fire Authority.
(4) Sections 105.1.1 of Appendix Chapter 1, is amended to read as follows: 105.1.1 Permits. Where required by this code may be required and obtained from the fire code official.

(5) Section D 103.6 of Appendix D, is amended to read as follows: D 103.6 Signs. Where required by the fire code official, fire apparatus access roads shall be marked with permanent FIRE LANE signs complying with California Vehicle Code Section 22500.1.

(6) Section D106 of Appendix D is hereby deleted.

(7) The exception to Section D104.2 of Appendix D is deleted.

(8) Exceptions 1 & 2 of Section D107.1 of Appendix D are deleted.

(9) The exception of Section B105.2 of Appendix B shall be amended as follows: Exception: A reduction in required fire-flow of up to 50 percent, as approved, is allowed when the building is provided with an approved automatic sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.1.2.

(10) Section 106.6.30 of Appendix 1 is deleted.

(11) Section 307.1.1 is amended to read as follows: Prohibited opening burning. Opening burning of household rubbish and warming fires is prohibited.

One copy has been and now is filed in the office of the fire marshal of the City of Porterville and the same hereby adopted with the amendments herein set forth and incorporated as fully as if at length herein and provisions thereto shall be controlling within the limits of the City of Porterville.

SECTION B. Section 7-9 of the Municipal Code of the City of Porterville is hereby amended as follows:

(1) Section 901.5 of Chapter 9 is amended to read as follows: Fire protection systems shall be tested in accordance with the requirements of this code and the California Fire Code. When required, the test shall be conducted in the presence of the fire official.

(2) Exception to Section 901.6.3 of Chapter 9 is amended to read as follows: When approved by the fire official, on-site monitoring at a constantly attended
location shall be permitted provided that notifications to the fire department will be equal to those provided by an approved supervising station.

(3) Section 903.1.1.2 of Chapter 9 shall read as follows: NFPA 13R Sprinkler Systems. Where allowed in buildings of Group R, up to and including two stories in height, automatic sprinkler systems may be installed throughout, in accordance with NFPA 13R when allowed by the Fire Authority.

SECTION C. This Ordinance shall be in full force and in effect on January 1, 2008.

________________________________
Cameron Hamilton, Mayor

ATTEST:
John Longley, City Clerk

________________________________
By: Patrice Hildreth, Acting Chief Deputy
SUBJECT: SECOND READING – ORDINANCE 1733, AMENDING SECTION 105 OF ARTICLE I, APPENDIX A, ZONING, OF THE PORTERVILLE MUNICIPAL CODE

SOURCE: ADMINISTRATION/CITY CLERK DIVISION

COMMENT: Ordinance No. 1733, amending Section 105 of Article I, Appendix A, Zoning, of the Porterville Municipal Code relating to the legal use of land, was given First Reading on November 6, 2007, and has been printed.

RECOMMENDATION: That the Council give Second Reading to Ordinance No. 1733, waive further reading, and adopt said Ordinance.

Attachment: Ordinance No. 1733

Item No. 18
ORDINANCE NO. 1733

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE AMENDING SECTION 105 OF ARTICLE I, APPENDIX A (ZONING) OF THE PORTERVILLE MUNICIPAL CODE RELATING TO THE LEGAL USE OF LAND

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

Section 1. Section 105 of Article I of Appendix A (Zoning) of the Porterville Municipal Code is hereby amended to read as follows:

105: LEGAL USE OF LAND: No use of land, under this Zoning Ordinance, shall be permitted within the City limits if such use shall be in violation of any local, state or federal laws. No building or land shall be used for any purpose, and no building or structure shall be erected, reconstructed or structurally altered in any manner, except in conformity with the regulations applicable to the zone in which the same is located and as otherwise provided in this ordinance.

Section 2. All other provisions of Article I of Appendix A (Zoning) shall remain in full force and effect.

Section 3. This ordinance shall be in full force and effect thirty (30) days from and after its publication and passage.

Cameron Hamilton, Mayor

ATTEST:

John Longley, City Clerk

By: Patrice Hildreth, Acting Chief Deputy
SUBJECT: SECOND READING – ORDINANCE 1734, CONCERNING MEDICAL MARIJUANA DISPENSARIES

SOURCE: ADMINISTRATION/CITY CLERK DIVISION

COMMENT: Ordinance No. 1734, amending Article I, Section 15-5.1 of the Porterville Municipal Code, concerning refusal to issue licenses, and adding Article VII, Sections 15-85 through 15-105, to Chapter 15 of the Porterville Municipal Code, concerning medical marijuana dispensaries and other operations, was given First Reading on November 6, 2007, and has been printed.

RECOMMENDATION: That the Council give Second Reading to Ordinance No. 1734, waive further reading, and adopt said Ordinance.

Attachment: Ordinance No. 1734
ORDINANCE NO.1734


WHEREAS, state and federal laws concerning the issue of medical marijuana dispensaries are in direct conflict; and

WHEREAS, the City finds that it is in the best interest of the community to deny business licenses to applicants desiring to open a medical marijuana dispensary within city limits, at least until such time as the issuance of such a license would not be in direct conflict with federal law; and

WHEREAS, the City desires to have a section in place in its municipal code, which governs medical marijuana dispensaries, in the event federal law is modified to permit such activities.

BE IT ORDAINED by the Council of the City of Porterville as follows:

SECTION 1. The Porterville Municipal Code, Chapter 15, Article I, Section 15-5.1 is hereby amended as follows:

15-5.1: REFUSAL TO ISSUE LICENSE

A. Nothing in this Section shall be deemed to prevent the city council from refusing to grant to any person a license to carry on and conduct any business in the city, when it shall appear to the city council that such business is, or is reasonably certain to be, carried on in such manner as to be unlawful, immoral or a menace to the health, safety, peace or general welfare of the people of the city, or that the applicant is not a fit or proper person to carry on such business, or of such character and reputation as to render it reasonably certain that such business will be carried on by the applicant in an illegal or immoral manner, or in such manner as to constitute a menace to the health, safety, morals, peace or general welfare of the people of the city, or that the applicant has theretofore been convicted of any crime in connection with, or while engaged in the operation of a similar business in the city, or has been convicted of any crime affecting the moral character of such applicant.

B. Inasmuch as the city council shall refuse to issue a business license to any applicant where it is apparent that the issuance of such license would allow for the practice, operation or carrying out of any activity that conflicts with any local, state or federal law, and whereas the concept of medical marijuana dispensaries, which are defined by the California Compassionate Use Act of 1996 and SB 420, directly conflict with federal marijuana laws, all applications for
medical marijuana dispensaries shall be denied. Should federal marijuana laws, at any time, be altered or amended to accommodate for the operation of medical dispensaries, Section 15-17 of this Municipal Code shall govern such licenses, but only to the extent that it conforms with all applicable local, state and federal laws.

SECTION 2. Article VII, Sections 15-85 through 15-105, is hereby added to Section 15 of the Porterville Municipal Code to read as follows:

ARTICLE VII. MEDICAL MARIJUANA DISPENSARIES

Section:
15-85 Purpose and Intent
15-86 Definitions
15-87 Enforcement of Article
15-88 Medical Marijuana Business Permit Required
15-89 Applications
15-90 Term, Renewals and Fees
15-91 Notifications
15-92 Investigation and Action on Applications
15-93 Grounds for Denial of Permit
15-94 Appeal from Denial
15-95 Suspension or Revocation of Permit
15-96 Judicial Review
15-97 Effect of Denial or Revocation
15-98 Operating Requirements
15-99 Zoning and Development Standards
15-100 Minors
15-101 Display of Permit
15-102 Transfer of Permits
15-103 Violation of Article: Enforcement
15-104 Severability
15-105 Existing Medical Marijuana dispensaries; Time Limit for Filing Application for Permit

15-85. Purpose and Intent; Effective Date. It is the purpose and intent of this ordinance to provide direction concerning medical marijuana dispensaries, in the event federal law is altered to accommodate the legal operation of such, in a manner that will promote the health, safety, and general welfare of the residents and businesses within the city. It is not the intent nor effect of this ordinance to restrict or deny qualified patients access to marijuana for medical purpose as intended by the passage of the Compassionate Use Act of 1996 and SB 420 in 2004. Neither is it the intent nor effect of this ordinance to condone or legitimize the use of marijuana. This Article shall not go into effect unless and until and only to the extent federal law changes to permit the legal operation of medical marijuana dispensaries and/or cooperatives.

15-86. Definitions. All definitions set forth in Health & Safety Code sections 11362.5 and 11362.7 et seq., as may be amended, including but not limited to the terms "attending physician", 
“person with an identification card”, “serious medical conditions”, shall apply under this Ordinance in addition to the definitions set for as follows:

“Applicant” means a person who is required to file an application for a permit under this section, including an individual owner, managing partner, officer of a corporation, or any other operator, manager, employee or agent of a Medical Marijuana Business.

“City Manager” means the City Manager holding office in the City of Porterville or his or her designee.

“Medical Marijuana” is defined in strict accordance with California Health and Safety Code sections 11362.5, and 11362.7 et seq.

“Medical Marijuana Dispensary” means any facility or location, whether fixed or mobile, where medical marijuana is made available to, distributed by, or distributed to one or more of the following: (1) a qualified patient, (2) a person with an identification card, or (3) a primary caregiver. All three of these terms are defined in strict accordance with California Health and Safety Code sections 11362.5, and 11362.7 et seq. Unless otherwise regulated by this Code or applicable law, a “medical marijuana dispensary” shall not include the following uses: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code, a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code, a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code, a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code, a residential hospice, or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code, as long as any such use complies strictly with applicable law including, but not limited to, Health and Safety Code sections 11362.5, and 11362.7 et seq.

“Medical Marijuana Businesses” means any Medical Marijuana Dispensary; any cultivation and/or processing of medical marijuana operations by primary caregivers for three or more qualified patients or persons with identification cards; or collective or cooperative cultivation operations.

“Cultivation of Medical Marijuana” means the growing of medical marijuana for medical purposes as defined in strict accordance with California Health and Safety Code sections 11362.5, and 11362.7 et seq.

“Collective or Cooperative Cultivation” means the association with California of qualified patients, persons with valid identification cards, and designated primary caregivers to cultivate marijuana for medical purposes as defined in strict accordance with California Health and Safety Code sections 11362.5, and 11362.7 et seq.

“Processing of Medical Marijuana” means the harvesting of marijuana or the use of any process or equipment, including but not limited to dehydrators or humidifiers, that may be necessary to convert raw marijuana plants or plant parts into a consumable product.
"Permittee" means the person to whom a Medical Marijuana Business permit is issued.

"Written Recommendation" shall have the same definition as California Health and Safety Code section 11362.7 et seq., and as may be amended.

15-87. Enforcement of Article The City Manager of the City of Porterville or his/her designee shall have the responsibility and duty of enforcement of this Article.

15-88. Medical Marijuana Business Permit Required

A. It shall be unlawful for any person to engage in, conduct or carry on, or to permit to be engaged in, conducted or carried on, in or upon any premises in the City of Porterville the operation of a Medical Marijuana Business unless the person first obtains and continues to maintain in full force and effect a Medical Marijuana Business permit from the City of Porterville as herein required.

B. A Medical Marijuana Business shall also be required to apply for and maintain a general City of Porterville business license as a prerequisite to obtaining a permit pursuant to the terms hereof.

C. The total number of permitted medical marijuana dispensaries shall be limited to one dispensary per 25,000 city population. Population shall be determined by the Federal Census Bureau or State Department of Finance. The standard of one dispensary per 25,000 city population may be deviated from upon the submittal of evidence that additional dispensaries are needed to serve the city. Any such evidence shall be approved by the City Council.

15-89. Applications

A. The applicant for a Medical Marijuana Business permit shall submit to the City Manager or designee an application for a permit. The application shall be made under penalty of perjury and shall include the following information:

1. The full name, present address, and telephone number of the applicant;

2. The address to which notice of action on the application is to be mailed;

3. Previous addresses for the past five (5) years immediately prior to the present address of the applicant;

4. Written proof that the applicant is over the age of eighteen (18) years of age.

5. Applicant’s height, weight, color of eyes and hair;

6. An identification photograph of the applicant;
7. All business, occupation, or employment of the applicant for the five years immediately preceding the date of the application;

8. The business license history of the applicant, including whether such person, in previously operating in this or another city, county or state under a license has had such license revoked or suspended, the reason therefore, and the business or activity or occupation subsequent to such action of suspension or revocation;

9. The name or names of the person or persons having the management or supervision of applicant's business;

10. Whether the person or persons having the management or supervision of applicant's business have been convicted of a crime(s), the nature of such offense(s), and the sentence(s) received therefore;

11. The name of all employees, independent contractors, and other persons who will work at the proposed Medical Marijuana Business;

12. The proposed security arrangements for ensuring the safety of persons, safe and secure storage of the marijuana, and to protect the premises from theft which shall be kept confidential and not disclosed to the public as the public interest is served in preserving the confidentiality of such security arrangements;

13. A sketch or diagram showing the interior configuration of the premises, including a statement of the total floor area occupied by the proposed Medical Marijuana Business. The sketch or diagram need not be professionally prepared, but must be drawn with marked dimensions of the interior of the premises;

14. A current and accurate straight-line drawing depicting the building and/or the portion thereof to be occupied by the proposed Medical Marijuana Business;

15. Authorization for the City of Porterville, its agents and employees to seek verification of the information contained within the application;

16. A statement In writing by the applicant that he or she certifies under penalty of perjury that all the information contained in the application is true and correct; and

B. If the applicant has completed the application improperly, or if the application is incomplete, the City Manager or designee shall within ten (10) days of receipt of the original application, notify the applicant of such fact.

C. The fact that an applicant possesses other types of state or City permits or licenses does not exempt the applicant from the requirement of obtaining a Medical Marijuana Business permit.
15-90. Term, Renewals and Fees
A. Unless otherwise suspended or revoked, a Medical Marijuana Business permit shall expire one (1) year following its issuance. An operator of a Medical Marijuana Business may re-apply for a permit for subsequent year(s).

B. Every application for a permit or renewal shall be accompanied by a nonrefundable fee, as established by resolution adopted by the City Council from time to time. This application or renewal fee shall not include fingerprinting, photographing or background check costs and shall be in addition to any other business license fee or permit fee imposed by this code or other governmental agencies.

15-91. Notifications  Within ten (10) calendar days of filing an application for a Medical Marijuana Business permit, the applicant shall provide the City Manager or designee with proof that all residents and property owners within 300 feet of the proposed premises have been notified in writing by U.S. mail of the applicant's intent to open such a business and filing of such application.

15-92. Investigation and Action on Application  After the background checks and investigation are complete, and in no case later than forty-five (45) days after receipt of a completed application, the City Manager or designee shall determine whether to issue the Medical Marijuana Business permit. The City Manager or designee may grant the permit subject to conditions he or she deems reasonable under the circumstances to protect the public health, safety and welfare of the community. The City Manager or designee shall cause a written notice of his or her decision to issue or deny a permit to be delivered in person or mailed to the applicant by certified U.S. mail, postage prepaid, return receipt requested.

15-93. Grounds for Denial of Permit  The grounds for denial of a permit shall be one or more of the following:

A. The business or conduct of the business at a particular location is prohibited by any local or state law, statute, rule or regulation.

B. The applicant has violated any local or state law, statute, rule or regulation relating to medical marijuana business.

C. The applicant has knowingly made a false statement of material fact or has knowingly omitted to state a material fact in the application for a permit.

D. The applicant, his or her agent or employees, or any person who is exercising managerial authority on behalf of the applicant has been convicted of a felony or of a misdemeanor involving moral turpitude, or has engaged in misconduct related to the qualifications, functions or duties of a permittee. A conviction within the meaning of this article means a plea or verdict of guilty or a conviction following a plea of nolo contendere.
E. The applicant has engaged in unlawful, fraudulent, unfair, or deceptive business acts or practices.

F. The applicant has committed any act, which, if done by a permittee, would be grounds for suspension or revocations of a permit.

G. An applicant is under eighteen (18) years of age.

H. The Medical Marijuana Business does not comply with the ordinance standards of the City of Porterville Municipal Code or the development standards set forth in this Article.

I. The required application or renewal fees have not been paid.

15-94. Appeal from Denial

A. An applicant aggrieved by the decision of the City Manager or designee to deny a permit may appeal such decision to the City Council by filing a written notice with the City Clerk within ten (10) calendar days of service of the written notice of decision. If an appeal is not taken within such time, the City Manager’s decision shall be final.

B. Upon filing of a timely appeal, the permit application shall be scheduled by the City Clerk for a public hearing within forty-five (45) calendar days.

C. Notice of the hearing shall be given by the posting of notice on the premises where the activity is to be conducted for a period of not less than five (5) working days prior to the date of the hearing. In addition, a copy of the notice of hearing shall be mailed to the applicant at least five (5) working days in advance of the hearing. The City Council may give such additional notice of hearing as it deems appropriate in a particular case.

D. Following public hearing, the City Council may grant the permit subject to such conditions as it deems reasonable under the circumstances to protect the public health, safety, and welfare of the community or it may deny the issuance of the permit for any of the grounds specified in this Article. The decision of the City Council shall be final.

15-95. Suspension or Revocation of Permit

A. The City Manager or designee may suspend or revoke a permit when the permittee or the permittee’s agent or employee has committed any one or more of the following acts:

1. Any act which would be considered a ground for denial of the permit in the first instance.

2. Violates any other provision of this Article or any local or State law, statute, rule or regulation relating to his or her permitted activity.
3. Engages in or permits misconduct substantially related to the qualification, functions or duties of the permittee.

4. Conducts the permitted business in a manner contrary to the health, safety, or welfare of the public.

5. Fails to take reasonable measures to control the establishment’s patrons’ conduct resulting in disturbances, vandalism, or crowd control problems occurring inside of or outside the premises, traffic control problems, or creation of a public or private nuisance, or obstruction of the business operation of another business.

6. Violates or fails to comply with the terms and conditions or the permit.

B. Prior to suspension or revocation, the City Manager or designee shall conduct a hearing. Written notice of the time and place of such hearing shall be served upon the permittee at least five (5) working days prior to the date set for such hearing. The notice shall contain a brief statement of the grounds to be relied upon for revoking or suspending the permit. Notice may be given either by personal delivery to the permittee or by certified U.S. Mail, postage prepaid, addressed to the permittee at his or her address as it appears in his application for the permit.

C. If any permittee or person acting under the authority of a permittee is convicted of a public offense in any court for the violation of any law which relates to his or her permit, the City Manager or designee may immediately revoke the permit without any further action, other than giving notice of revocation to the permittee. In this circumstance, during the pendency of any appeal to the City Council, the permit shall not remain in effect.

D. Any permittee aggrieved by the decision of the City Manager or designee in suspending or revoking a permit may, within ten (10) calendar days, appeal to the City Council by filing a written notice with the City Clerk. Unless otherwise stated in this Article, during the pendency of the appeal to the Council, the permit shall remain in effect. If such appeal is not taken within ten (10) days, the decision of the City Manager or designee shall be final. If an appeal is timely filed, the appeal shall be held in accordance with the procedures for considering an appeal of the denial of a permit. The City Council may suspend or revoke the permit for any of the grounds specified in this Article. The City Council’s decision shall be final.

15-96. Judicial Review Judicial review of a final decision made under this Article may be had by filing a petition for a writ of mandate with the superior court in accordance with the provision of the California Code of Civil Procedure section 1094.5. Any such petition shall be filed within ninety (90) days after the day the decision becomes final as provided in California Code of Civil Procedure section 1094.6, which shall be applicable for such actions.

15-97. Effect of Denial or Revocation When the City Manager or designee has denied or revoked a permit and the time for appeal to the City Council has elapsed, or if after appeal to the City Council, the decision of the City Manager or designee has been affirmed by the City Council, no new application for a permit shall be accepted from the applicant and no permit shall
be issued to such person or to any corporation in which he or she shall have any beneficial interest for a period of one (1) year after the action denying or revoking the permit.

15-98. Operating Requirements  A Medical Marijuana Business, once permitted by the City Manager or Designee, shall meet the following operating standards for the duration of the use:

A. A Medical Marijuana Business shall be open for business only between the hours of 8:00 a.m. and 8:00 p.m. on any particular day.

B. A Medical Marijuana Business shall maintain a current register of the names of all employees employed by the Business.

C. A Medical Marijuana Business shall maintain a current register of all qualified patients, persons with identification cards and primary caregivers to whom it provides or distributes medical marijuana. Once documented the qualified patients, persons with identification cards and primary caregivers shall be "registered" patrons of the Business. The Business's register shall be subject to periodic inspection to ensure compliance with the state law. The Business shall further maintain records of all patients and primary caregivers using the identification card number only when issued by the county, or its agent, pursuant to California Health and Safety Code section 11362.7 et seq., so as to protect the confidentiality of the cardholders, or a copy of the written recommendation from a physician stating the need for medical marijuana.

D. A Medical Marijuana Business shall post a sign, either at the building entrance or inside at the entrance, with a notice indicating that persons under the age of eighteen (18) years are precluded from entering the premises unless they are a qualified patient and they are in the presence of their parent or guardian.

E. A Medical Marijuana Dispensary may not possess more than eight (8) ounces of dried marijuana per registered qualified patient or primary caregiver on the premises. However, if a qualified patient or primary caregiver has a doctor's recommendation that this quantity does not meet the qualified patient's medical needs, the dispensary may increase the amount of dried marijuana per the doctor's recommendation, the dispensary may not possess an amount of marijuana in excess of the registered patient's needs.

F. No marijuana shall be smoked, ingested or otherwise consumed on the premises of the Business. The term "premises" includes the actual building, as well as any accessory structures, parking areas, or other immediate surroundings. The building entrance to a Medical Marijuana Business shall be clearly and legibly posted with a notice indicating that smoking, ingesting or consuming marijuana on the premises or in the vicinity of the Business is prohibited.

G. Any cultivation of medical marijuana or processing of medical marijuana conducted by the Business shall at all times occur in a secure, locked, and fully enclosed structure. No Medical Marijuana Business may cultivate or process more than 99 marijuana plants, whether mature or immature.
H. No Medical Marijuana Business shall hold or maintain a license from the State Department of Alcohol Beverage Control to sell alcoholic beverages, or operate a business that sells alcoholic beverages. In addition, alcohol shall not be provided, stored, kept, located, sold, dispensed, or used on the premises of the Business.

I. No Medical Marijuana Business shall conduct or engage in the commercial sale of any product, good or service. The term “commercial sale” does not include the provision of medical marijuana on terms and conditions consistent with this Article and the Compassionate Use Act of 1996, and any amendments thereto.

J. A Medical Marijuana Business shall provide adequate security on the premises, including lighting and alarms, to ensure the safety of persons and to protect the premises from theft.

K. A Medical Marijuana Business shall provide litter removal services once during each day of operation on and in front of the premises and, if necessary, on public sidewalks within one hundred (100) feet of the premises.

L. A Medical Marijuana Business shall not cultivate, distribute or sell medical marijuana for a profit. A Business may receive compensation for its actual expenses, including reasonable compensation for service provided, or for payment of out-of-pocket expenses incurred in providing those services. However, any such Business must pay applicable sales tax on such sales or services and maintain the applicable seller’s permit or similar permit from the State Franchise Tax Board or other applicable agency.

M. A Medical Marijuana Business shall meet all the operating criteria for the dispensing of medical marijuana as required pursuant to California Health and Safety Code sections 11362.5 and 11362.7 et seq.

N. Each Medical Marijuana Business shall allow the City Manager or designee to have access to the Business’s books, records, accounts, and any and all data relevant to its activities for the purposes of conducting an audit or examination. Books, records, accounts, and any and all relevant data shall be produced no later than 24 hours after receipt of the City Manager’s written request(s).

O. The Medical Marijuana Business shall meet any specific additional operating procedures and measures as may be imposed as conditions of approval by the City Manager or designee to ensure that operations of the Business is consistent with protection of the health, safety and welfare of the community, qualified patients and primary caregivers, and will not adversely affect surrounding uses.

P. The building in which the Medical Marijuana Business is located shall comply with all applicable local, state and federal rules, regulations and laws including, but not limited to, building codes and the Americans with Disability Act, as certified by the Building Official of the City.
Q. Any marijuana provided by a Medical Marijuana Business for the purpose of consumption by the recipient shall be contained in a package that includes, in a conspicuous location, the following warning: “Smoking may be hazardous to the health of the consumer, and smoking by pregnant women may result in fetal injury, premature birth and low birth weight. Further, ingestion of marijuana in any form may be hazardous to the health of the consumer and may impair the judgment of the consumer.”

R. A Medical Marijuana Business that provides marijuana in the form of food or other comestibles shall obtain and maintain the appropriate licenses from the County Health Department for the provisions of food or other comestibles.

S. A Medical Marijuana Business shall provide to the City Manager or designee, upon request, written evidence to the City Manager or designee's reasonable satisfaction, that the Business is not engaged in interstate commerce.

T. No Medical Marijuana Business shall sell or display any drug paraphernalia as defined in California Health and Safety Code section 11364, et seq., or any implement that may be used to administer, use, consume, smoke or ingest medical marijuana.

Failure to comply with any of the above operating requirements shall result in the revocation of any permit issued.
15-99. Zoning and Development Standards Failure to comply with any of the above operating requirements shall result in the revocation of any permit issued.

15-100. Minors

A. It shall be unlawful for any permittee, operator, or other person in charge of any Medical Marijuana Business to employ any person who is not at least eighteen (18) years of age.

B. Persons under the age of eighteen (18) years shall not be allowed on the premises of a Medical Marijuana Business unless they are a qualified patient and they are in the presence of their parent or guardian.

15-101. Display of Permit Every Medical Marijuana Business shall display at all times during business hours the permit issued pursuant to the provisions of this Article in a conspicuous place so that the same may be readily seen by all persons entering the Medical Marijuana Business.

15-102. Transfer of Permits

A. A permittee shall not operate a Medical Marijuana Business under the authority of a Medical Marijuana Business permit at any place other that the address of the Medical Marijuana Business stated in the application for the permit.

B. A permittee shall not transfer ownership or control of a Medical Marijuana Business permit to another person unless and until the transferee obtains an amendment to the permit from the City Manager or designee stating that the transferee is now the permittee. Such an amendment may be obtained only if the transferee files an application with the City Manager or designee in accordance with this Article and accompanies the application with the transfer fee in an amount set by the resolution of the City Council, and the City Manager determines that the transferee would be entitled to the issuance of an original permit.

C. No permit may be transferred when the City Manager or designee has notified the permittee that the permit has been or may be suspended or revoked.

D. Any attempt to transfer a permit either directly or indirectly in violation of this Article is hereby declared void, and the permit shall be deemed revoked.

15-103. Violations of Article: Enforcement

A. Any person that violates any provision of this Article shall be guilty of a separate offense for each and every day during any portion of which any such person commits, continues, permits, or causes a violation thereof, and shall be penalized accordingly.
B. Any use of condition caused or permitted to exist in violation of any of the provisions of this Article shall be and is hereby declared a public nuisance and may be summarily abated by the City pursuant to the City of Porterville Municipal Code.

C. Any person who violates, causes, or permits another person to violate any provision of this Article commits a misdemeanor.

D. The violation of any provisions of this Article shall be and is hereby declared to be contrary to the public interest and shall, at the discretion of City, create a cause of action for injunctive relief.

E. In addition to the civil remedies and criminal penalties set forth above, any person that violates the provisions of this Article may be subject to administrative remedies as set forth by City ordinance.

15-104. Severability The provisions of this Article are hereby declared to be severable. If any provision, clause, word, sentence, or paragraph of this Article or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this Article.

15-105. Existing Medical Marijuana Dispensaries Time Limit for Filing Application for Permit The continued operation of a Medical Marijuana Business in existence before the effective date of this Article without having applied for a permit obtained pursuant to the provisions of this Article for more than ninety (90) days after the effective date of this Article shall constitute a violation of this Article.

SECTION 3. This Ordinance shall be in full force and effect thirty (30) days from and after its publication and passage.

______________________________
Cameron Hamilton, Mayor

ATTEST:

John Longley, City Clerk

______________________________
By: Patrice Hildreth, Acting Chief Deputy
SUBJECT: CLASSIFICATION AND PAY ADJUSTMENTS FOR THE YOUTH EXPERIENCING SUCCESS AFTER SCHOOL PROGRAM EMPLOYEES

SOURCE: PARKS AND LEISURE SERVICES DEPARTMENT

COMMENT: The Parks & Leisure Services Department provides staffing services for the operation of the Youth Experiencing Success (Y.E.S.) after school program conducted by the Porterville Unified School District (PUSD). This partnership program has been in place for many years and is funded through grants obtained by PUSD with the City being fully reimbursed for direct cost plus an administrative fee of 3.04%. The City employs approximately 88 persons for this program.

To better meet the funding requirements PUSD has asked the City to modify the classifications and pay of the employees furnished to the program. The classification adjustments amount to increasing the minimum education and proficiency requirements to be in line with other classified employees of PUSD. The pay adjustments are requested to provide incentives to current employees to fulfill the education and proficiency requirements, and to bring the compensation more in line with similar positions at PUSD. Many of the employees recently obtained the minimum required education levels, or have passed the equivalent proficiency test. PUSD is offering ongoing training and proficiency testing services for the remaining employees through the Porterville Adult School in hopes that all employees will achieve the new minimum requirements.

The attached table summarizes the current positions, pay and responsibilities along with the proposed new positions, pay and new qualifications. The proposed hourly pay rates include consideration to the new minimum wage rate to be effective January 1, 2008. It is estimated that the budgetary impact will be an increase of $42,000 in unbudgeted expense for the balance of the current fiscal year and $116,000 increase to the current budget for next fiscal year. This will be offset by revenue from reimbursements provided by PUSD. Staff suggests that an administrative charge of 5% would be more appropriate and should be included as a part of the program adjustments. PUSD also requests that the City anticipate their request for additional wage increases to be effective at the beginning of the 2009-2010 school-year and annually thereafter.
RECOMMENDATION:  That the City Council authorizes:
1. The creation of the After School Assistant II/III classification and pay rates effective December 1, 2007; and
2. The creation of the After School Site Supervisor classification and pay rate effective December 1, 2007; and
3. The assessment of a 5% administrative charge to PUSD for the direct City expenses effective December 1, 2007 related to the Y.E.S. Program; and
4. Direct the Personnel Officer to establish draft position descriptions and salary classifications for Council’s approval; and
5. Direct the preparation of a budget adjustment totaling $42,000 for the two YES Programs.

ATTACHMENTS:  PUSD letter requesting classification & pay adjustments Y.E.S. Program classification and pay scale adjustment summary table
November 14, 2007

Mr. Jim Perrine
Parks and Leisure Services Director
CITY OF PORTERVILLE
291 North Main Street
Porterville, California 93257

Dear Mr. Perrine:

During the past year, our agencies have discussed the necessity to adjust the compensation for those persons employed by City of Porterville who contract to provide services for the Youth Experiencing Success (YES) Program at 13 sites within the Porterville Unified School. This partnership currently provide safe and supervised after school care for approximately 1300 students from grades 1 through 8 on a daily basis.

Several changes have been necessary since the original partnership for the After School program began in 1999. The partnership was originally formed to provide funding for formative education in academic skills, creative and enrichment activities, and recreational activities to provide young people of Porterville. Safe after school activities in positive atmospheres are designed to prevent juvenile crime and improve academic performance.

Since the inception of the program, there has only been one pay adjustment for those employees which was a minimum wage increase just last year. Our agencies have collaborative noted the need for significant payroll changes as the requirements for after school personnel have significantly changed. Now partially funded with federal funds, the After School personnel must meet No Child Left Behind requirements. These requirements mean that previous acceptable educational levels of a high school diploma not longer are valid. The requirement for an After School employee is now an AA degree or college units, or passage of an equivalent ELA and Math test. New programs have also emerged in neighboring communities that have significantly higher salary schedules. With these factors in mind our agencies are addressing the issues.

1. Employees who directly serve students (Recreational Leaders/After School Assistants) must now meet the new educational requirements of an AA or equivalent.
2. Our agencies must revise the salary offerings for all employees in order to attract and retain the most highly qualified assistants for our community’s youth. We must remain competitive with other agencies.
3. A reasonable system of advancement on the salary schedule to provide retention for employees that we are mutually training to serve youth is necessary.

As the funding agency, Porterville Unified will continue to reimburse the City of Porterville for all direct expenses of salary, benefits, fingerprinting, and related employment costs. Further administrative indirect costs not to exceed 5% of the direct employee expenditures will be paid, as provided by program legislation. Finally, cost for necessary program clerical support may also be billed to the program.

By continuing the decade of After School partnership with these important updates, the children of Porterville will continue to be provided with safe and competent after school activities.

Respectfully,

Gary Ingram
Director of Curriculum
## Y.E.S. Program Proficiency Incentive Program

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