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(b) – Conference with Legal Counsel - Anticipated Litigation: One Case
   3- Government Code Section 54956.9(c) – Conference with Legal Counsel - Anticipated Litigation: One Case.
   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 Mayor Cameron Hamilton
Invocation

PRESENTATIONS
   Employee of the Month – Dan Holloway
   Introduction of New City Employees

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 June 5, 2007 and November 20, 2007
2. Claim – Danny Ray Henderson II
   Re: Considering rejection of a claim for $6,000 in which claimant alleges damages for false arrest, distress, loss of medicine and attorney’s fees related to claimant’s arrest by Porterville Police on May 19, 2007.
3. Authorization to Release Request for Proposal for Entrepreneurial Training Market Analysis
   Re: Considering authorization to distribute RFP to engage a consultant to perform an analysis of market and industry trends.
4. **Memorandum of Understanding - Tule River & Deer Creek Watershed “Integrated Regional Water Management Plan”**
   Re: Approving City’s participation in the Tule Integrated Regional Water Management Plan; approving expenditure of $1,000 for the City’s membership dues; and authorizing that the Public Works Director be assigned as the City’s representative.

5. **Authorization to Advertise for Bids – Olive Avenue and Holcomb Street Bus Turnout**
   Re: Approving staff’s recommended Plans and Project Manual for project with an Engineer’s estimate for total project cost of $39,569.20.

6. **Authorization to Advertise for Bids – Mathew and Westfield Storm Drain Project**
   Re: Approving staff’s recommended Plans and Project Manual for project consisting of paving, catch basin, asphalt concrete berm and connection to an existing storm drain, with a Engineer’s estimate of $18,280.

7. **Award of Contract – Well No. 29 Project (Pumping Plant)**
   Re: Awarding contract to Vulcan Construction of Fresno in the amount of $599,000 for second phase of well project consisting of the installation of a 150 HP pump, electrical system, above ground discharge piping, and other necessary items located on the north side of Henderson Avenue between the Porter Slough and Westwood Street.

8. **Award of Contract – ‘C’ Street Water Main & Miscellaneous Fire Hydrant Project**
   Re: Awarding contract to Halopoff & Sons, Inc. of Porterville in the amount of $137,180.28 for the Base Bid and Add Alternate A for the project consisting of the installation of water main and new fire hydrants on C Street between Date Avenue and Walnut Avenue; the relocation of hydrants on Porter Road and Mulberry, and a new hydrant on Walnut Avenue and B Street.

9. **Award of Contract – Traffic Signal #11 (Indiana Street & Putnam Avenue)**
   Re: Awarding contract to AC Electric Company of Visalia in the amount of $257,000 for intersection improvements and a new traffic signal.

10. **Acceptance of the Airport Water Inter-Tie Project**
    Re: Accepting project as complete from Halopoff and Sons, Inc., and authorizing the filing of the Notice of Completion, for project consisting of the installation of water mains and the extension of sewer mains.

11. **Acceptance of Appraised Value of Right of Way for Property Located at APN 269-050-055 - Big Bidness, LLC – Jaye Street Widening Project**
    Re: Authorizing staff to begin escrow for the purchase of 1,103 sq. ft. of right of way and to make payment of $22,060 to the property owner after the completion of escrow.

12. **Program Supplement to the Local Agency-State Master Agreement - Construction of the CNG Facility**
    Re: Approving Program Supplement Agreement No. M033-N to the Local-State Master Agreement No. 06-5122R, as requested by the Department of Transportation, to account for the CNG Facility Project.

13. **This Item was removed from the Agenda.**
14. **Letter of Public Convenience or Necessity/Balwinder Johal – 709 W. Olive Avenue**  
   Re: Considering approval of Letter supporting the issuance of a Type 21 off-sale of beer, wine and distilled spirits license within Census Tract No. 41.01 for the Olive Mini Mart.

15. **Amendments to Employee Pay and Benefit Plan, and Employee Retirement System**  
   Re: Rescinding Resolution No. 100-2007, and adopting a draft resolution amending the Pay and Benefit Plan and Retirement System pertaining to wages, benefits, and working conditions for the General Series Employees, represented by the Porterville City Employees Association.

16. **Amendment to the Schedule of Seasonal and Part-time Pay Rates**  
   Re: Approving a draft resolution authorizing a change to the Schedule of Wages for seasonal and part-time employees in the City’s Employee Pay and Benefit Plan.

17. **Cancellation of January 1, 2008 City Council Meeting**  
   Re: Considering cancellation of the first regular meeting in January 2008.

18. **Consideration of Support for the Formation of Tulare County Council of Cities**  
   Re: Considering support for the formation of a structured association of incorporated cities of Tulare County, and designating a representative and alternate to serve on said Council.

19. **Consideration of Support for Letter to Tulare County Board of Supervisors Concerning Proposed County Impact Fee Program**  
   Re: Considering approval of a draft letter from Tulare County Council of Cities regarding the proposed County Impact Fee Program.

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

**PUBLIC HEARINGS**

20. **Conditional Use Permit 5-2007 Modification No.1 to Allow for a Modification to the Existing Floor Plan for the Site Located at 1091 W. Olive Avenue**  
    Re: Considering CUP to allow for the modification of the existing floor plan at the Seafood Café, and extending applicant’s hours of operation on Sundays.

    Re: Considering approval of “D” Overlay for new 13,255± sq. ft. CVS Pharmacy with a drive-through to be located at the northeast corner of Henderson Avenue and Westwood Street.

22. **Conditional Use Permit 12-2007 Wireless Communications Tower (Ron James)**  
    Re: Considering CUP to allow for the construction of a 100-foot high wireless communications tower and accessories on the east side of Newcomb Street behind Fire Station No. 2.

**SCHEDULED MATTERS**

23. **Report Concerning Legality of the Adoption of Local Bidding Preferences for Award of Municipal Contracts**  
    Re: Informational report on the legality of local bidding preferences for City contracts for projects, goods and services.
24. **Renewal of Paid Telecommunication Service for Council Member Laptop Computers**

Re: Considering the selection of a wireless service provider to provide telecommunication services, and authorizing staff to negotiate with selected provider.

**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 8, 2007 at 9:00 a.m. at the Community Room of the Porterville Library, 41 West Thurman Avenue.*

*Porterville City Charter Sec. 10 states—“Except for special meetings with the legislative bodies of other political subdivisions, or informational meetings held within the community where no action is to be taken, all meetings of the council shall be held in the city hall, unless by reason of fire, flood, or other disaster, or lack of seating capacity, the city hall cannot be used for that purpose, and all meetings shall be open to the public.”

*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 Deputy City Clerk at (559) 782-7464. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting and/or provision of an appropriate alternative format of the agenda and documents in the agenda packet.
Call to Order at 6:00 p.m.

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

ORAL COMMUNICATIONS
None

CLOSED SESSION:
A. Closed Session Pursuant to:
7 – Government Code Section 54956.9(b) – Conference with Legal Counsel – Anticipated Litigation: One Case
8 – Government Code Section 54956.9(b+c) – Conference with Legal Counsel – Anticipated Litigation: Once Case

The City Manager read the Closed Session titles, and the Council then adjourned to Closed Session at 6:03 p.m.

7:00 P.M. RECONVENE OPEN SESSION

REPORT ON ANY ACTION TAKEN IN CLOSED SESSION
Deputy City Attorney Richard Bambl reported that the following action took place:
The City Council authorized and approved the sale of the 35-acre site along West Street (a portion of APN 302-110-071) to Southern California Edison Company at a price of $915,450.00; authorized and approved the Public Improvement Reimbursement Agreement for the public improvements necessary to develop the site; and, authorized the Mayor to sign all documents and agreements necessary to complete the project.

Documentation: Resolution 41-2007
Disposition: Approved.

- Brian Thoburn from Southern California Edison came forward to thank Council for the action taken, and to thank Staff for their hard work and support.

Pledge of Allegiance Led by Members of Boy Scout Troop 132.
Invocation – Moment of Silence

PRESENTATION
Employee of the Month – Glen Hall

ORAL COMMUNICATIONS
- Charles Webber, 346 N. Ohio, spoke regarding four green barrels being damaged by the refuse driver on his street, and the length of time it took to repair/replace the barrels.
- Martha Alcazar Flores, 461 N. Main Street, Chair for the Porterville Chapter of the Tulare/Kings Hispanic Chamber, invited the Council and everyone to the Mixer on June 13 hosted by the Seafood Restaurant at 1091 W. Olive Avenue from 5:30 p.m. to 7:30 p.m.
- Bob Keenan, 315 West Oak Ave., Visalia, Homebuilders Association of Tulare/Kings Counties, spoke in regards to a letter that his Association sent on May 23, 2007 to the Council requesting that the Council conduct a public hearing on the annual fee adjustment and that the effective date be sixty days instead of twenty six days.

CONSENT CALENDAR
Item No. 4 was removed for further discussion.

1. CITY COUNCIL MINUTES OF JANUARY 16, 2007; JANUARY 19, 2007; AND MAY 15, 2007

Documentation: M.O. 01-060507
Disposition: Approved

2. CLAIM- STRAWN

Recommendation: That the Council reject claim and refer the matter to the City’s insurance adjustor, and direct the City Clerk to give the claimant proper notification.

Documentation: M.O. 02-060507
Disposition: Approved
3. BUDGET ADJUSTMENTS FOR THE 2006-07 FISCAL YEAR

Recommendation: That the Council approve the proposed budget adjustment, and authorize staff to modify revenue and expenditure estimates as described in the staff report.

Documentation: M.O. 03-060507
Disposition: Approved

5. AIRPORT LEASE RENEWAL – LOT 49A

Recommendation: That the Council approve the extension of the Lease Agreement between the City of Porterville and Mr. & Mrs. Michael Wall of Porterville, Ca, for lot 49A at the Porterville Municipal Airport.

Documentation: M.O. 04-060507
Disposition: Approved

COUNCIL ACTION: MOVED by Council Member Pedro Martinez, SECONDED by Council Member Hernandez that the Council approve Item Nos. 1, 2, 3 and 5. The motion carried unanimously.

4. ANNUAL ADJUSTMENT OF FEES BY APPLICATION OF THE ENR COST INDEX

Recommendation: Consistent with agreements and previous instructions, this report is provided for information purposes. It is recommended that the City Council use this information to inform any citizens that may inquire about fee adjustments.

City Manager Longley presented the item and the staff report.

Deputy City Attorney Bambl noted that there was no need to hold a public hearing because the assessment had already been approved with an inflationary annual increase.

- Bob Kennan, 315 W. Oak Ave, came forward to speak in support of a public hearing on the matter, and to assert that a public hearing was required by law.

Mayor Hamilton suggested that the Item be tabled to the June 19, 2007 meeting, and taken to Closed Session, as well as being on the regular agenda.

PUBLIC HEARINGS

6. IRACHETE ESTATES TENTATIVE SUBDIVISION MAP (VICENTE IRACHETE)

Recommendation: That the City Council adopt a draft resolution approving Irachete Estates Tentative Subdivision Map pursuant to conditions of approval.
City Manager Longley presented the Item and Associate Planner Jose Ortiz presented the staff report.

The hearing was opened to the public at 7:29 p.m.

- Marge Balsley, R.L. Schaeffer and Associates, came forward to state that as the agent representing the applicant, she hoped that there was not an issue with the two-story residences, yet if there was, that that item be continued so that she may inform her client.

The hearing was closed to the public at 7:30 p.m.

Council Member Hernandez stated that he had been concerned about the two-story residences, but that he did not see any additional concerns.

Mayor Hamilton voiced that his only disappointment was that the road improvements were on the front end of the property only.

COUNCIL ACTION: MOVED by Council Member Pedro Martinez, SECONDED by Council Member Hernandez that the Council adopt a draft resolution approving Irachete Estates Tentative Subdivision Map pursuant to conditions of approval. The motion carried unanimously.

Disposition: Approved

7. CONDITIONAL USE PERMIT 4-2007 – PROPOSED “BRICKHOUSE BAR AND GRILL” TO BE LOCATED AT 152 NORTH HOCKETT STREET (FORMERLY THE SCHORTMAN’S CYCLERY BUILDING)

Recommendation: It is recommended that the City Council consider the draft resolution approving Conditional Use Permit 4-2007 subject to conditions of approval.

City Manager Longley presented the Item and the staff report was presented by Associate Planner Jose Ortiz.

The public hearing was opened at 7:39 p.m.

- Chris Sanders, 492 W. Kanai, came forward to speak in support of the Brickhouse Bar and Grill, provide Council with measures taken to create good neighbor relations. He requested that Council research the legitimacy of the parking fees being implemented.
- Dick Eckhoff, 197 N. Main, Downtown Porterville Association, stated he felt the project would be a good addition to downtown; expressed concerns regarding parking, and the use of the alley by the furniture and cable establishments.
- Greg Woodard, 1055 W. Morton, expressed support for the project, and voiced his concerns regarding the need for more parking.

The hearing was closed to the public at 7:48 p.m.
Council Member Pedro Martinez asked if adequate lighting had been provided, to which Mr. Dunlap assured that it was.

Council Member Hernandez asked Mr. Dunlap to break down the plans in place to address parking, to which Mr. Dunlap responded that there was a proposal in the Redevelopment Agency budget to identify funding and work on plans to renovate the parking lot. Mr. Dunlap continued, at the request of Council Member Hernandez, to update the Council and those in attendance on the status of the parking lot project at the old Singer site.

In regards to the issue of the parking fee mentioned by the applicant, Mr. Dunlap clarified that the applicant was being levied a fee for the added building square footage which resulted in the elimination of five spaces, and the additional need for five spaces, equaling ten spaces. He added that it was a one time fee.

Pursuant to the request of Council, Mr. Dunlap suggested that Condition No.22 of the Conditional Use Permit be amended to include wording that would allow the $2,500 fee to be adjusted if satisfactory evidence to the contrary was presented to the Community Development Director.

Mayor Hamilton expressed his concern in regards to the different types of ABC licenses that were being applied for, and requested that the applicant explain the need for the licenses.

- Sherri Gonzalez, address inaudible, explained that the permit would allow the catering of alcoholic beverages at special events, mostly weddings.

Council Member Hernandez received clarification on the additional licenses from staff. He was informed that the business, in addition to their catering license, would be in possession of a 47 Type license, which would allow them to serve alcohol with meals.

City Manager Longley noted that the item requires three votes.

A motion was made and seconded to approve staff’s recommendation with the amendment to Condition No. 22. At which point Community Development Director Dunlap stated that the revised Condition would now read, “[I]n lieu of providing ten (10) parking spaces, the applicant/owner shall pay a $2,500 fee per parking space prior to issuance of building permits for the expansion will be issued, unless satisfactory evidence is provided to the Community Development Director that demonstrates the prior full payment of all parking fees and assessments.”

- Chris Sanders, 492 W. Kanai, came forward to state that the parking fees had already been assessed on the property and therefore, could not be charged again.

**COUNCIL ACTION:** MOVED by Council Member Hernandez, SECONDED by Council Member Pedro Martinez that the Council approve staff’s recommendation with revision to Condition No. 22 that states, “In lieu of providing ten (10) parking spaces, the applicant/owner shall pay a $2,500 fee per parking space prior to issuance of building permits for the expansion will be issued, unless
satisfactory evidence is provided to the Community Development Director that demonstrates the prior full payment of all parking fees and assessments”.

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

Disposition: Approved

8. CONDITIONAL USE PERMIT 5-2007 – EXPANSION OF AN EXISTING RESTAURANT WITH SEPARATE BAR TO BE UTILIZED AS A NIGHTCLUB AND A BANQUET HALL INTO AN AREA PREVIOUSLY UTILIZED FOR BOWLING (1091 W. OLIVE)

Recommendation: It is recommended that the City Council adopt the draft resolution approving Conditional Use Permit 5-2007.

City Manager Longley presented the Item and Associate Planner Ortiz presented the staff report.

The hearing was opened to the public at 8:11 p.m.

- Donnette Silva-Carter, 93 N. Main Street, Porterville Chamber of Commerce, came forward to express the Chamber’s excitement about the rehabilitation of the property.
- Martha Alcazar Flores, 461 N. Main, Chair of the Porterville Chapter of the Tulare/Kings Hispanic Chamber, came forward to support the proprietors of the establishment.
- Joe (last name inaudible), 10607 Fisher St., Bakersfield, came forward in support of the item and the entertainment opportunities associated with the project.

The hearing was closed to the public at 8:15 p.m.

Council Member Hernandez stated that he was impressed with the cooperation and the efforts of the proprietors.

Council Member Pedro Martinez stated that he too was excited to see the rehabilitation of the property, but expressed concerns regarding the separating of adults from minors.

- Luis Farias, 1091 N. Olive Avenue, reassured the Council that security would be enforced inside and outside the property, and that the dance portion of the facility would be open to those 18 years and older.

Council Member Pedro Martinez asked if sufficient lighting had been provided and if it would be possible to provide alternative means of transportation in the area if necessary. Associate Planner Ortiz replied that sufficient lighting was a requirement. Mr. Dunlap stated that the Conditional Use
Permit could be reviewed, revised and even revoked if the Council felt the need to do so. A brief conversation ensued in regards to shared parking with neighboring businesses in which Associate Planner Ortiz clarified that The Seafood Café had its own parking.

Community Development Director Dunlap proposed a revision to Condition No. 1 in regards to lighting, which would read, “[T]hat the parking lot shall be lighted and maintained to the satisfaction of the Community Development Director and the Police Chief with an average of one foot candle across the surface of the parking lot.”

COUNCIL ACTION: MOVED by Council Member Pedro Martinez, SECONDED by Council Member Hernandez that the Council adopt the draft resolution approving Conditional Use Permit 5-2007, as amended revise Condition No. 1 to read, “[T]hat the parking lot shall be lighted and maintained to the satisfaction of the Community Development Director and the Police Chief with an average of one foot candle across the surface of the parking lot.”

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

Disposition: Approved

9. CONDITIONAL USE PERMIT 6-2007 – PROPOSED EXPANDED USE OF RESTAURANT TO INCLUDE A NEW SEPARATE BAR AREA AND OUTDOOR SERVICE AND SALE OF DISTILLED SPIRITS, BEER AND WINE UNDER AN ON-SALE LICENSE AT THE THREE AMIGOS RESTAURANT (FORMERLY DON RANCHOS LOCATED AT 377 S. HOWARD STREET

Recommendation: That the City Council adopt the draft resolution approving Conditional Use Permit 6-2007 subject to conditions of approval.

City Manager Longley presented the Item and Associate Planner Ortiz presented the staff report.

The hearing was opened to the public at 8:41 p.m.

- Rudy Sandoval, 13861 Ave. 320, Visalia, came forward to express the plans for his business and the ways in which he had cooperated with the City and met its requirements.
- Donnette Silva-Carter, Porterville Chamber of Commerce, 93 N. Main St., expressed the Chamber’s excitement in regards to the project and the way in which the proprietors had participated in community activities.
- Martha Alcazar Flores, 249 S. Indiana, applauded the proprietors for their contributions to the neighborhood.
Dick Eckhoff, 197 N. Main St., expressed his support for the project and the improvement efforts made by the applicants.

Skip Marquez, 5937 W. Robinwood, Visalia, shared his hopes to bring customers to the east side of town and encourage other proprietors located on the east side of town to improve their business establishments as they had.

The hearing was closed to the public at 8:50 p.m.

Council Member Hernandez stated that he was glad to see development on the east side of town, but requested more information in regards to the unfinished parking lot and lighting. He was informed by staff that the garden area would be restricted until the completion of the north parking lot.

Rudy Sandoval, 13861 Ave. 320, Visalia, came forward to state that their request was to open the garden area prior to developing the north parking lot in order to make the money necessary to develop a beautiful parking area.

Community Development Director Dunlap stated that it would be problematic to use a site that was not approved.

Mayor Pro Tem Felipe Martinez asked the proprietors to provide a time frame for the phasing that they hoped to receive, to which the applicants requested three to five years. A brief discussion then ensued in regards to obliging the applicant, in which staff noted that a precedent could be established if allowed. Mayor Hamilton agreed, but stated that the Council had the discretion to review and make decisions as needed.

Mayor Pro Tem Felipe Martinez stated that he believed five years was too long but that he would consider allowing the applicant two years to complete the north parking area. Community Development Director Dunlap provided the Council with options, and advised against approving the item as presented that evening.

Skip Marquez stated that they were not opposed to something in writing stating that they have to complete the parking lot with a two year period.

City Manager Longley and Mr. Dunlap agreed that the best way to approach the issue would be through some type of development agreement that would define what would need to be accomplished, the time frame, and the remedies.

Rudy Sandoval stated that they did not plan on opening within the next two weeks and were more than willing to work with staff on resolving the issue of the north parking lot. He then noted that they needed the approval of the Conditional Use Permit to apply for the ABC license.

COUNCIL ACTION: MOVED by Council Member Pedro Martinez, SECONDED by Mayor Pro Tem Felipe Martinez that the Council adopt the draft resolution approving Conditional Use Permit 6-2007 subject to conditions of approval;
with the understanding that staff will be working with the applicants on the issue of parking.

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

Disposition:  Approved

10.  ZONING ORDINANCE AMENDMENT 1-2007

Recommendation:  That the City Council:
1.  Approve proposed Zoning Ordinance Amendment 1-2007 and give first reading to the draft ordinance.
2.  Waive further reading of the draft ordinance, and order said ordinance to print.

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

The public hearing was opened at 9:24 p.m. and closed at 9:25 p.m. when nobody came forward.

Mayor Hamilton asked if there were any restrictions on the number of residents per households to which Mr. Dunlap answered that there were not. Mayor Hamilton expressed his concern for health and safety issues resulting from overcrowding.

Deputy City Attorney Bambl added that the right to live with family members was a fundamental right protected by the constitution, and although it might violate fire codes, there was no way to enforce it.

COUNCIL ACTION:  MOVED by Council Member Pedro Martinez, SECONDED by Mayor Pro Tem Felipe Martinez that the Council approve proposed Zoning Ordinance Amendment 1-2007 and give first reading to the draft ordinance; Waive further reading of the draft ordinance, and order said ordinance to print, being AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE AMENDING ORDINANCE NO. 1198, BEING THE ZONING ORDINANCE PERTAINING TO THE DEFINITION OF FAMILY, R-A USES IN THE SUBURBAN RESIDENTIAL ZONE, BONUS DENSITY INCENTIVES AND CONCESSIONS.

AYES:  McCracken, P. Martinez, F. Martinez, Hernandez
NOES:  Hamilton
ABSTAIN:  None
ABSENT:  None
11. WATER CONSERVATION PLAN

Recommendation: That City Council:

1. Continue with Phase II water conservation efforts.
2. Continue the Public Hearing to first meeting in July, for moving into Phase III for the months of July thru September if severe water supply shortage is projected; and
3. If severe water supply shortage is not projected, City staff will only have a Water Conservation Report for public comment during the July meeting.

City Manager Longley presented the item, and Public Works Director Rodriguez presented the staff report.

The hearing was opened to the public at 9:30 p.m.

- Gerry Quinn, 734 W. Putnam, came forward to state that she believed the City’s water made her ill and that the water needed to be tested. She claimed that she had to drink bottled water and that she did not think that she should have to pay an increase for her water if it was contaminated.

The hearing was closed to the public at 9:35 p.m.

Mayor Hamilton requested that Mr. Rodriguez address the concerns of Mrs. Quinn. Mr. Rodriguez stated the City’s water was tested on a weekly basis. He added that some chlorine was added to the water as a safeguard, and that it was possible that Mrs. Quinn may be sensitive to that, or that it could be a plumbing issue. He also clarified that the cost for water testing, if requested by an individual, was fifteen dollars.

Mayor Hamilton inquired as to the reason for the spike in water usage for 2007 as compared to 2006. City Manager Longley stated that the heat came earlier that year, and that staff could provide information to Council if requested.

A discussion ensued in regards to the effect weather patterns had on water usage. Mayor Hamilton stated that he was uncomfortable penalizing the public for an increase in water use if a major factor was the weather. City Manager Longley stated that if staff came forward with a proposal to address the increase in water usage, that there should be some options provided and not just a twenty percent increase.

COUNCIL ACTION: MOVED by Council Member McCracken, SECONDED by Council Member Hernandez that the Council continue with Phase II water conservation efforts; continue the Public Hearing to the first meeting in July, for moving into Phase III for the months of July thru September if severe
water supply shortage was projected; and if severe water supply shortage was not projected, direct City staff to only have a Water Conservation Report for public commentary during the July meeting.

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

Disposition: Approved

12. VACATE A PORTION OF PUBLIC WATER, SEWER AND STORM DRAIN FACILITIES EASEMENT RELATED TO THE DEVELOPMENT OF THE SKILLED NURSING FACILITY (SIERRA VIEW DISTRICT HOSPITAL)

Recommendation: That the City Council continue the Public Hearing until June, 19, 2007.

City Manager Longley presented the item and the staff report.

COUNCIL ACTION: MOVED by Council Member McCracken, SECONDED by Mayor Pro M.O. Tem Felipe Martinez that the Council continue the Public Hearing until June, 19, 2007.

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

Disposition: Approved

SCHEDULED MATTERS

Recommendation: That the City Council adopt the draft resolution containing findings and conditions in support of approval for “D” Overlay Site Review 3-2007.

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

Council Member Hernandez asked about the bus turnaround, which he did not see mentioned. Mr. Longley responded by stating that Public Works had conducted a survey in regards to that issue. The City Engineer responded by stating that it was his understanding that transit does not allow buses to turn around on private property, so they were trying to accommodate something on the street, but that nothing had been determined as of yet.
Mayor Hamilton asked if the new construction would be adding clinical space. He also inquired whether the basin pond behind the property was owned by the City, to which a member of staff answered that it was private property.

- Ruben Chavez, 801 W. Center St., Visalia, came forward to respond to Mayor Hamilton’s question. He stated that the renovations would result in an additional 14 to 16 exam rooms.

COUNCIL ACTION: MOVED by Mayor Pro Tem Felipe Martinez, SECONDED by Council Member Hernandez that the Council adopt the draft resolution containing findings and conditions in support of approval for “D” Overlay Site Review 3-2007.

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

Disposition: Approved

14. SOLID WASTE PROGRAM UPDATE

Recommendation: None. Informational report only.

The item was presented by City Manager Longley, and the staff report was presented by Public Works Director Rodriguez.

Mayor Pro Tem Martinez asked Mr. Rodriguez for an explanation as to the increase in costs to process green waste, to which he responded that the person that accepted the City’s green waste increased his fees.

Mayor Hamilton inquired about the diesel particulate filters. He was informed by staff that it cost $10,000 to replace each filter; the money is part of the operating budget; and they are replaced once. He also asked about the salary increases, to which he was informed that the amount was not for salary increases, but additional personnel needed to operate the transfer operation.

Disposition: Report received.

15. REQUEST FOR COUNCIL STUDY SESSION FOR GENERAL PLAN CIRCULATION CONCEPTS

Recommendation: That the City Council schedule a study session to provide direction to Staff and the Consultant on the preparation of the draft General Plan Circulation policies.

City Manager Longley presented Item and Community Development Director Dunlap presented the rationale behind this request.
The study session was scheduled for June 11, 2007 at 7:00 p.m.

Disposition: Direction given to staff.

16. REQUEST FOR COUNCIL STUDY FOR JOHNSON CONTROLS INFRASTRUCTURE AND OPERATIONAL ENHANCEMENTS PROJECT EVALUATION

Recommendation: That the Council schedule a study session no later than Friday, June 15, 2007 to consider the Johnson Controls project.

City Manager Longley presented the item, and Acting Deputy City Manager John Lollis presented the request.

City Manager Longley suggested that the study session be scheduled for July 10, 2007. The Council directed staff to have the City Manager’s secretary contact them to schedule the session.

Disposition: Direction given to staff.

17. REPORT REGARDING MORATORIUM FOR USE OF CREDIT CARDS

Recommendation: None. Informational item only.

Acting Deputy City Manager Lollis briefly summarized the report, and at the request of City Manager Longley, clarified that an extension of the moratorium may be requested if the Banking Services RFP is not implemented by July 1, 2007.

Disposition: Report provided to the Council.

18. DISPOSITION OF COUNCIL MEETING OF JULY 3, 2007

Recommendation: That the City Council set an alternative date for the July 3, 2007 Council meeting, if they choose to do so.

City Manager Longley presented the item and the staff report. After some discussion, the Council directed staff to cancel the Meeting of July 3, 2007 due to the July 4th holiday, and reschedule the meeting for July 10, 2007.

Disposition: Direction given to staff.

19. REQUEST BY COUNCIL MEMBER – NO PARKING ON LAWNS

Recommendation: None

City Manager Longley presented the item and noted that Council could give direction to prepare a draft ordinance for consideration at the next meeting.
Mayor Hamilton stated that his reason for bringing the item to the Council’s attention was a concern for ground water contamination.

The Council requested that the City Attorney prepare a draft ordinance prohibiting the parking on lawns under the Health and Safety Code.

The Council adjourned at 10:30 p.m. to a Meeting of the Porterville Redevelopment Agency.

PORTERVILLE REDEVELOPMENT AGENCY AGENDA

Roll Call: Member McCracken; Member Pedro Martinez; Vice-Chairman Felipe Martinez; Member Hernandez; Chairman Hamilton

WRITTEN COMMUNICATIONS – None

ORAL COMMUNICATIONS – None

SCHEDULED MATTER

PRA-1. REDEVELOPMENT AGENCY 2007-2008 BUDGET

Recommendation: That the Agency Board adopt the proposed 2007-2008 Redevelopment Agency budget.

City Manager Longley presented the item, and Community Development Director Dunlap presented the staff report, which included the work items and a brief overview of the Redevelopment budget.

Chairman Hamilton stated that he was impressed with the work that staff had done.

AGENCY ACTION: MOVED by Chairman Pedro Martinez, SECONDED by Chairman McCracken to adopt the proposed resolution approving the 2007-2008 Redevelopment Agency budget. The motion carried unanimously.

The Redevelopment Agency adjourned at 10:40 p.m. to a meeting of the City Council.

ORAL COMMUNICATIONS

- Dick Eckhoff, 197 N. Main, asked for information about the leasing arrangement at the Santa Fe Depot.
- Gerry Quinn, 734 W. Putnam, requested a traffic signal at Putnam and Indiana and a crosswalk at “D” Street, across from the Police Department.

OTHER MATTERS

- Council Member Pedro Martinez asked if Downtown was having a Car Show that year, to which Mr. Eckhoff stated that they were looking into it.
• Council Member Hernandez advised the Council that he would not be present at the meeting on June 19, 2007.
• Mayor Pro Tem Felipe Martinez thanked staff and the freeze relief individuals for all of their hard work on the river and slough cleanup. He asked Mr. Lollis if CSET was involved, to which Mr. Lollis affirmatively responded, stating that the training program was working out.
• Council Member Pedro Martinez commented on the amount of activity at the airport.
• Mayor Hamilton thanked Linda Wammack for her work on the Edison Project. He also commented on the fact that crime statistics were down, and commended the Police Chief and his crew for their good work.
• Council Member Hernandez commented that the Police Department needed to work on their response times. He also spoke about the environmentally-friendly technology being utilized in Tulare County.
• Parks & Leisure Services Director Jim Perrine mentioned to the Council that a reservation was being held at the pool for the City Employee Picnic.
• Mayor Hamilton stated that the Council would make it happen on June 30th.

Council adjourned at 10:51 p.m. back to Closed Session.

CLOSED SESSION
It was reported that the following action was taken:

Item A1: The City Council authorized and approved the sale off the 1-acre site on Thunderbolt Drive (APN 302-390-004) to Blair Electronic Services, Inc. at a price of $75,000.00; and, authorized the Mayor to sign all documents and agreements necessary to complete the project.

Documentation: Resolution 47-2007
Disposition: Approved.

ADJOURNMENT
The Council adjourned at 12:10 a.m. to the meeting of June 8, 2007 at 9:30 a.m.

Georgia Hawley, Chief Deputy City Clerk
By: Luisa Herrera

Cameron Hamilton, Mayor
Call to Order at 6:00 p.m.
Roll Call: Council Member McCracken, Council Member Pedro Martinez, Mayor Pro Tem Felipe Martinez, Council Member Hernandez, Mayor Hamilton

**ORAL COMMUNICATIONS**

None

**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**

Deputy City Attorney Richard Bambl stated that no action had taken place.

Council Member McCracken was not present when the Council reconvened Open Session at 7:00 p.m. due to a family emergency. He returned to the dais during the Presentations portion of the Meeting.

Pledge of Allegiance Led By Council Member Pedro Martinez

Invocation – a moment of silence was observed.

**PROCLAMATIONS**

PAAR Center

**PRESENTATIONS**

Employee of the Month – Jake Castellow
Introduction of New City Employees
City Manager’s Featured Projects
   - Centennial Plaza Commercial Building Completion
   - Rails to Trails Project
Eagle Mountain Air Show & Fly-In Video
Parks & Leisure Services Commission Semi-Annual Report
   - Commissioner Joe Ruiz presented the report to the Council.
ORAL COMMUNICATIONS

- Greg Shelton, 888 North Williford Drive, spoke regarding ethics and made allegations that a Council Member had acted unethically with regard to accepting compensation to broker the sale of a card room license to a party, while at the same time participating in Council actions involving that party. He provided the Council with documents, and requested that the Council immediately investigate the matter, that the City Attorney inform the FPPC and request a ruling, and that all decisions on card rooms be placed on hold pending the outcome of the investigation.

- Martha Alcazar Flores, Chair of the Porterville Chapter of the Tulare/Kings Hispanic Chamber, and Owner of Frugal Fashions, 461 North Main Street, voiced concern with the need for economic development, noting the lack of employment opportunities and local shopping, particularly considering Porterville’s growth. She then offered her assistance through the Hispanic Chamber.

- Dick Eckhoff, business address of 197 North Main Street, spoke in favor of Item 9, noting the importance of keeping the process transparent.

- Rodney Martin, 146 South Villa Street, commented to the Council that he had briefly reviewed the documents circulated in the audience by Mr. Shelton. He suggested that the facts had not been properly investigated by Mr. Shelton prior to him making such fallacious statements.

CONSENT CALENDAR

Item No. 1 was removed for abstention by Council Member Pedro Martinez, and Item No. 8 was removed for further discussion.

2. BUDGET ADJUSTMENT FOR THE 2007-08 FISCAL YEAR

Recommendation: That the Council approve the proposed budget adjustment, and authorize staff to modify revenue and expenditure estimates as described in the staff report.

Documentation: M.O. 01-112007
Disposition: Approved.

3. CLAIM – ANNA PETERSON

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.

Documentation: M.O. 02-112007
Disposition: Approved.

4. ACCEPTANCE OF THE BURIED SLUDGE REMOVAL PROJECT

Recommendation: That the 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 35 days after recordation,
provided no stop notices have been filed.

Documentation:   M.O. 03-112007
Disposition:      Approved.

5. UPDATE ON JAYE STREET AND TULE RIVER BRIDGE REHABILITATION PROJECT

Recommendation:  Informational report only.

Documentation:   M.O. 04-112007
Disposition:      Approved.

6. AUTHORIZATION TO AMEND TRANSPORTATION PLANNING GROUP’S SERVICE AGREEMENT FOR THE COMPRESSED NATURAL GAS FACILITY AND DESIGN MODIFICATIONS TO RECYCLE CENTER

Recommendation:  That the 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.

Documentation:   M.O. 05-1120007
Disposition:      Approved.

7. AIRPORT LEASE RENEWALS – LOTS 49B AND 46C

Recommendation:  That the City 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.

Documentation:   M.O. 06-112007
Disposition:      Approved.

9. APPROVAL OF ADMINISTRATIVE POLICY REGARDING PREVENTING THE SUPPLANTING OF GENERAL FUND AND MEASURE H FUND MONIES

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.”
COUNCIL ACTION: MOVED by Council Member Hernandez, SECONDED by Mayor Pro Tem Felipe Martinez that the Council approve Item Nos. 2 through 7, and 9. The motion carried unanimously.

1. CITY COUNCIL MINUTES OF FEBRUARY 6, 2007

Recommendation: That the City Council approve the City Council Minutes of February 6, 2007.

COUNCIL ACTION: MOVED by Mayor Pro Tem Felipe Martinez, SECONDED by Council Member Hernandez that the Council approve the City Council Minutes of February 6, 2007.

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

Disposition: Approved.

8. REQUEST FOR STREET CLOSURE – MYERS‘ THIRTEENTH ANNUAL CHRISTMAS TREE MEMORIAL SERVICE

Recommendation: That the 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.

Council Member Pedro Martinez acknowledged Myers’ Funeral Home and thanked them for the annual event. He requested that a letter from the Council be sent to Myers thanking them.

COUNCIL ACTION: MOVED by Council Member Pedro Martinez, SECONDED by Mayor Pro Tem Felipe Martinez that the 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.

Disposition: Approved.

PUBLIC HEARINGS


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

City Manager John Longley presented the item, and called on City Engineer Mike Reed for the staff report. At Mr. Reed’s request, Field Services Manager Bryan Styles presented the report.
The public hearing opened at 7:43 p.m. and closed at 7:44 p.m. when nobody came forward.

Council Member Pedro Martinez confirmed that the City’s water complied with all required standards. He then requested that staff test the water in the pond at Murry Park. He acknowledged that this water did not fall under the auspice of the Public Health Goal Report, but suggested that because children had access to the pond, the water should be tested.

COUNCIL ACTION: MOVED by Council Member Pedro Martinez, SECONDED by Mayor Pro Tem Felipe Martinez that the Council receive the Public Health Goal Report. M.O. 10-112007 The motion carried unanimously.

Disposition: Approved.

11. VACATION OF PUBLIC SANITARY SEWER AND WATER EASEMENTS RELATED TO THE TARGET STORE EXPANSION (TARGET CORPORATION)

Recommendation: That the City Council:
1. Conduct a public hearing; and
2. Authorize the City Clerk to execute the vacation of said easements.

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

The public hearing opened at 7:46 p.m. and closed at 7:47 p.m. when nobody came forward.

COUNCIL ACTION: MOVED by Council Member Pedro Martinez, SECONDED by Mayor Pro Tem Felipe Martinez that the Council authorize the City Clerk to execute the Resolution 119-2007 vacation of said easements. The motion carried unanimously.

Disposition: Approved.

12. ORDINANCE 1735, REGULATING STATE VIDEO FRANCHISE HOLDERS

Recommendation: That the City Council:
1. Hold the scheduled public hearing and consider any public testimony concerning the proposed regulations; and
2. Adopt and give second reading to the proposed Ordinance, read by title only, and waive further reading.

City Manager Longley presented the item, and Deputy City Attorney Richard Bambl presented the staff report.

The public hearing opened at 7:50 p.m. and closed at 7:51 p.m. when nobody came forward.

COUNCIL ACTION: MOVED by Council Member Pedro Martinez, SECONDED by Mayor Pro Tem Felipe Martinez that the Council adopt the proposed Ordinance No. 1735, give Second Reading, read by title only, and waive further reading of Ordinance 1735 Ordinance 1735, being AN ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF PORTERVILLE ADDING CHAPTER 24B-1 THROUGH
24B-10 TO THE PORTERVILLE MUNICIPAL CODE PERTAINING TO
THE REGULATION OF STATE VIDEO FRANCHISE HOLDERS. The
motion carried unanimously.

City Manager Longley read by title only.

Disposition: Approved.

SECOND READINGS

13. ORDINANCE 1728, ADOPTING THE 2007 CALIFORNIA BUILDING CODE

Recommendation: That the City Council give Second Reading to Ordinance 1728, waive further
reading, and adopt said ordinance.

City Manager John Longley presented the item and the staff report.

COUNCIL ACTION: MOVED by Mayor Pro Tem Felipe Martinez, SECONDED by Council
Member Pedro Martinez that the Council give Second Reading to Ordinance 1728, waive further reading, and adopt said ordinance, being AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
Ordinance 1728 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 motion carried
unanimously.

City Manager Longley read by title only.

Disposition: Approved.

14. ORDINANCE 1729, ADOPTING THE 2007 CALIFORNIA MECHANICAL CODE

Recommendation: That the City Council give Second Reading to Ordinance 1729, waive further
reading, and adopt said ordinance.

City Manager John Longley presented the item and the staff report.

COUNCIL ACTION: MOVED by Council Member Pedro Martinez, SECONDED Mayor Pro Tem
Felipe Martinez that the Council give Second Reading to Ordinance 1729, waive further reading, and adopt said ordinance, being AN ORDINANCE OF
Ordinance 1729 THE CITY COUNCIL OF THE CITY OF PORTERVILLE AMENDING
SECTIONS 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 motion carried
unanimously.

City Manager Longley read by title only.

Disposition:  Approved.

15. ORDINANCE 1730, ADOPTING THE 2007 CALIFORNIA PLUMBING CODE

Recommendation:  That the City Council give Second Reading to Ordinance 1730, waive further reading, and adopt said ordinance.

City Manager John Longley presented the item and the staff report.

COUNCIL ACTION:  MOVED by Council Member Pedro Martinez, SECONDED Mayor Pro Tem Felipe Martinez that the Council give Second Reading to Ordinance 1730, waive further reading, and adopt said ordinance, being AN ORDINANCE OF Ordinance 1730 THE CITY COUNCIL OF THE CITY OF PORTERVILLE AMENDING SECTIONS 7-6 OF THE MUNICIPAL CODE OF THE CITY OF PORTERVILLE ADOPTING BY REFERENCE THE 2007 EDITION OF THE CALIFORNIA PLUMBING CODE PUBLISHED BY THE INTERNATIONAL CODE COUNCIL, INC. The motion carried unanimously.

City Manager Longley read by title only.

Disposition:  Approved.

16. ORDINANCE 1731, ADOPTING THE 2007 CALIFORNIA ELECTRICAL CODE

Recommendation:  That the City Council give Second Reading to Ordinance 1731, waive further reading, and adopt said ordinance.

City Manager John Longley presented the item and the staff report.

COUNCIL ACTION:  MOVED by Council Member Pedro Martinez, SECONDED Mayor Pro Tem Felipe Martinez that the Council give Second Reading to Ordinance 1731, waive further reading, and adopt said ordinance, being AN ORDINANCE OF Ordinance 1731 THE CITY COUNCIL OF THE CITY OF PORTERVILLE AMENDING SECTIONS 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 motion carried unanimously.

City Manager Longley read by title only.

Disposition:  Approved.
17. ORDINANCE 1732, ADOPTING THE 2007 CALIFORNIA FIRE CODE

Recommendation: That the City Council give Second Reading to Ordinance 1732, waive further reading, and adopt said ordinance.

City Manager John Longley presented the item and the staff report.

COUNCIL ACTION: MOVED by Council Member Pedro Martinez, SECONDED Mayor Pro Tem Felipe Martinez that the Council give Second Reading to Ordinance 1732, waive further reading, and adopt said ordinance, being AN ORDINANCE OF Ordinance 1732 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 INTERNATIONAL CODE COUNCIL, INC. The motion carried unanimously.

City Manager Longley read by title only.

Disposition: Approved.

18. ORDINANCE 1733, AMENDING SECTION 105, APPENDIX A, CONCERNING THE LEGAL USE OF LAND

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

City Manager John Longley presented the item and the staff report.

COUNCIL ACTION: MOVED by Council Member Pedro Martinez, SECONDED by Mayor Pro Tem Felipe Martinez that the Council give Second Reading to Ordinance 1733, waive further reading, and adopt said Ordinance, being 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 motion carried unanimously.

City Manager Longley read the Ordinance by title only.

Disposition: Approved.

19. ORDINANCE 1734, CONCERNING MEDICAL MARIJUANA DISPENSARIES

Recommendation: That the City Council give Second Reading to Ordinance No. 1734, waive further reading, and adopt said Ordinance.
City Manager John Longley presented the item and the staff report.

COUNCIL ACTION: MOVED by Council Member Pedro Martinez, SECONDED by Mayor Pro Tem Felipe Martinez that the Council give Second Reading to Ordinance 1734, waive further reading, and adopt said Ordinance, being AN

Ordinance 1734

City Manager Longley read the Ordinance by title only.

Disposition: Approved.

SCHEDULED MATTERS

20. CLASSIFICATION AND PAY ADJUSTMENTS FOR THE YOUTH EXPERIENCING SUCCESS AFTER SCHOOL PROGRAM EMPLOYEES

Recommendation: That the City Council:
1. Authorize the creation of the After School Assistant II/III classification and pay rates effective December 1, 2007;
2. Authorize the creation of the After School Site Supervisor classification and pay rate effective December 1, 2007;
3. Authorize 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;
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 Y.E.S. Programs.

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

• Gary Ingraham, Porterville Unified School District Director of Curriculum, spoke of the program challenges with new state and federal mandates, and of the need for the proposed classifications. He spoke in favor of the proposed classifications.

A brief discussion ensued, during which Mr. Ingraham elaborated on the program.

COUNCIL ACTION: MOVED by Mayor Pro Tem Felipe Martinez, SECONDED by Council Member Hernandez that the Council authorize the creation of the After School Assistant II/III classification and pay rates effective December 1,
M.O. 11-112007 2007; authorize the creation of the After School Site Supervisor classification and pay rate effective December 1, 2007; authorize 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; direct the Personnel Officer to establish draft position descriptions and salary classifications for Council’s approval; and direct the preparation of a budget adjustment totaling $42,000 for the two Y.E.S. Programs. The motion carried unanimously.

Disposition: Approved.

ORAL COMMUNICATIONS

• Greg Shelton, address on record, commented that the allegations he made earlier that evening were based in fact.

OTHER MATTERS

• Council Member McCracken updated the Council on his son’s condition following his surgery.
• Council Member Pedro Martinez:
  1. Spoke of the excellent test scores achieved by Monache High School students, and requested that the Council congratulate them. He inquired whether a video message from the Mayor could be made, to which staff affirmatively responded;
  2. Thanked the organization involved in the Veterans’ Day Parade, and spoke of its success; and
  3. Thanked the Police Department for their hard work during the Halloween holiday.
• Council Member Herndandez:
  1. Congratulated and thanked the Police Department for their successful handling of the recent incident near Granite Hills High School;
  2. Spoke of providing the keynote address at the Leadership Porterville Class of 2007’s graduation, and of the positive impact the program had on its class members;
  3. Spoke of his recent attendance at the Corporate Board of Boys and Girls Club Retreat and of the successful efforts to allow applicants from Porterville the opportunity to sit on the Corporate Board.
• Mayor Pro Tem Felipe Martinez thanked staff, and all those involved, in the recent Fabulous Music Jam. He spoke of the success of the event, noting the group had raised $12,000 towards the purchase of the Buck Shaffer Memorial Clock. He indicated that because of the positive feedback received on the event, a future event would likely be planned.
• Mayor Hamilton:
  1. Spoke of the success of the Fabulous Music Jam Event, and thanked everyone involved, including the Police Department for their hard work; and
  2. Suggested that a letter be sent to another agency regarding its inability to assist the Porterville Police Department during the recent incident near Granite Hills High School.
ADJOURNMENT

The Council adjourned at 8:11 p.m. to the meeting of December 4, 2007 at 6:00 p.m.

Patrice Hildreth
Acting Chief Deputy City Clerk

SEAL

Cameron Hamilton, Mayor
SUBJECT: CLAIM - DANNY RAY HENDERSON II

SOURCE: Administration

COMMENT: Mr. Danny Ray Henderson II has filed a claim against the City in an amount of $6,000 for damages. Claimant alleges he was falsely arrested on May 19, 2007, and is seeking reimbursement for distress, loss of medicine, false arrest, attorney's fees and bail costs.

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: Danny Ray Henderson II DOB: ______________________
Claimant's Address: ______________________ (Home) ______________________ (Work)
Claimant's Telephone No. (Home) ______________________ (Work) ______________________
Address where notices about claim are to be sent, if different from above: ______________________

Date of incident/accident: May 19, 2007
Date injuries, damages, or losses were discovered: ______________________
Location of incident or accident: Porterville, CA Main St + Olive St
What did entity or employee do to cause this loss, damage, or injury? Porterville Police
Rulled over, Arrested, + Jailed

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

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

What specific injuries, damages, or losses did claimant receive? Arrest, Jail time,
Bail paid, Attorney Fees, Loss of medicine, Distress

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

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)].

$ 0,000.00

How was this amount calculated (please itemize): Distress, Loss of medicine,
False arrest, False imprisonment $4,000.00,
ATTORNEY FEES $1,000.00, Bail $1,000.00

Date Signed: 10/3/07 Signature: Danny Henderson

If signed by representative:
Representative's Name ______________________ Telephone: ______________________
Address: ______________________
Relationship to Claimant ______________________
CITY COUNCIL AGENDA: DECEMBER 4, 2007

SUBJECT: AUTHORIZATION TO RELEASE REQUEST FOR PROPOSAL FOR ENTREPRENEURIAL TRAINING MARKET ANALYSIS

SOURCE: COMMUNITY DEVELOPMENT DEPARTMENT

COMMENT: On June 21, 2007, the City received a Financial Assistance Award in the amount of $150,000 from the U. S. Department of Commerce Economic Development Administration to assist in supporting services for entrepreneurs and business incubator development.

The first phase of the project is to perform an analysis of market and industry trends to identify business clusters which could be successful within the local economy and to a business incubator assessment. Staff, working with stakeholders in the project, has prepared the Request for Proposals (RFP) to engage a consultant to perform the analysis and is seeking City Council authorization to distribute the RFP.

Recommendation: That City Council authorize staff to distribute the Request for Proposal for Analysis of Market and Industry Trends for Planning of entrepreneurial Training and Business Incubator Assessment.

Attachment: Draft Request for Proposal

[Signature] Appropriated/Funded

Item No. 3
CITY OF PORTERVILLE

REQUEST FOR PROPOSALS (RFP) FOR
ANALYSIS OF MARKET AND INDUSTRY TRENDS
FOR PLANNING OF ENTREPRENEURIAL TRAINING
AND BUSINESS INCUBATOR ASSESSMENT

The City of Porterville is seeking the services of a consultant or consulting firm to prepare an analysis of market and industry trends as they can be applied in the local economy for the planning of entrepreneurial training and to determine the viability of one (or more) business incubator facilities to foster new business growth in Porterville, with site potential at the Porterville Municipal Airport, Porterville College, downtown, and other areas that may be identified within the study.

The analysis will assist the City in identifying business clusters that would fit into the three business sectors identified below in order of priority and to validate the City's position that industries within these sectors could be successful within the local economy.

1. Production/manufacturing start-up business, with an emphasis on aviation and energy related industries.
2. Light industrial, manufacturing and technology-related uses that could be attracted to the Porterville Airport Industrial Park and surrounding industrial land.
3. Office technology and service-related businesses that could be attracted to the downtown area of the City.

The analysis will also identify the viability of one (or more) incubator facilities in the Airport area to foster new business development within the business clusters acknowledged in the study. The study will also consider a second incubator in the downtown area to support office technology and service-related businesses.

The analysis is an integral part of an overall planning process for implementation of an entrepreneurial training program and planning for the diversification of the local economy. At the same time, the project will determine the interest and demand of the market for industry that will create quality jobs, with health and retirement benefits.

BACKGROUND:

The City of Porterville is located in the southeastern portion of Tulare County, in the San Joaquin Valley region of California. Located at the intersection of State Highways 190 and 65, Porterville is midway between Fresno (68 miles north) and Bakersfield (45 miles south). The City has a strong business recruitment effort and partnership with the Tulare County Economic Development Corporation, Workforce Investment Board, local agencies, organizations, and professionals in workforce development and real estate to attract new industry and commercial services to the community; however, growth in industrial and commercial sectors has not kept paces with the boon
that the community is experiencing in residential growth and construction. The City's poverty and unemployment rates are among the highest in the State, while median household income and educational attainment levels are among the lowest in the State. Land prices in the Porterville Municipal Airport area are among the lowest in California, ranging from $0.46 to $1.75 per square foot, but little activity has occurred in this area over the last ten years.

SCOPE OF CONSULTANT SERVICES:

The consultant will respond directly to the Community Development Director or his designee. It may be appropriate that a portion of the work be performed at City Hall in order to coordinate with various City departments, access City records, and to obtain other information via the Internet and telephone. A work area will be made available for use by the consultant should it be necessary.

It is important to note that the City is in the midst of updating the General Plan. The study and recommendations need to be consistent with the Economic Development Element of the General Plan. A copy of the draft Economic Development Element is attached for reference (Attachment 1).

The selected consultant will perform, but not be limited to, the following tasks:

1. **Market Analysis.** Complete a market analysis to include, but not limited to, the following information:

   1.1 Review and confirm related data from the following sources:
      a. Tulare County Economic Development Corporation
      b. California Partnership for the San Joaquin Valley – Economic Development Work Group
      c. Great Valley Center
      d. State Economic Strategy Panel

   1.2 Utilizing Dunn and Bradstreet, or comparable data, Consultant shall gather data on new business activity within the region.

   1.3 Compile background data necessary for the preparation of an analysis of market and industry trends in the three business sectors identified below in order of priority:
      a. Production/manufacturing start-up business, with an emphasis on aviation-related industries, including bio-diesel technology as it applies to aviation.
      b. Light industrial, manufacturing and technology-related uses that could be attracted to the Porterville Airport Industrial Park and surrounding industrial land, with an emphasis on energy and energy-related technology.
      c. Office technology, tourism, and service-related businesses, including software development, web-based business, and
multi-media technology that could be successful in the downtown area of the City.

1.2 Using the information from the analysis of market and industry trends, identify those business clusters that could be most successful within the local economy.

1.3 Using the information from the analysis of market and industry trends, identify entrepreneurial activities that will support and expand existing businesses within the business clusters.

1.4 Identify the viability of one or more incubator facilities in the community, with emphasis on the Airport, downtown, and college areas, to foster new business development within the business clusters acknowledged in the study. Analysis should include the following:
   1.4.1 Case studies (minimum of two case studies) of successful incubators in comparative communities
      1.4.1.1 Background
      1.4.1.2 Operational activities
   1.4.2 Size of facility recommended.
   1.4.3 Facility infrastructure requirements (water, electric, gas, telecommunications).
   1.4.4 Recommended rent/lease rates.
      1.4.4.1 Comparison between incubator and market rate
      1.4.4.2 Inclusive of training and mentor support.

2. Public Meetings. It is anticipated that one or more public meetings will be necessary to determine the business needs of the community, workforce availability, and resources for new and emerging entrepreneurs. The number and types of public meetings (open or invitational) that will be necessary to gather information shall be determined between the Consultant and an Advisory Group. Consultant shall provide a per meeting cost.

3. Coordination. Consultant will be responsible for early consultation and ongoing meetings with City staff and an Advisory Group that are involved in the project.

4. Deliverables. Consultant shall provide fifty (50) printed copies of the completed report to the City of Porterville and in electronic format compatible to City software. The City shall own the finished product.
5. **Milestones.** Consultant shall submit a timeframe, in a format acceptable to the City, for the activities identified in items 1 through 4, with milestones to assure that the project is within a reasonable period of time.

6. **Other Requirements:**

   6.1 The selected firm will be required to carry and provide certificates of insurance for, general and automobile liability insurance as follows:

<table>
<thead>
<tr>
<th>Type</th>
<th>Minimum Per Occurrence</th>
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<tbody>
<tr>
<td>General Liability</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>Automobile Liability</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>Workers Compensation</td>
<td>Statutory Limits</td>
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</tbody>
</table>

   The General Liability is to contain or be endorsed to name the City, its officers, officials, employees and agents as Additional Insured as respects liability arising out of the activities performed in connection with this contract. The coverage shall be primary and shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer’s liability. Original endorsements, signed by a person authorized to bind coverage on its behalf, shall be furnished to the City by the successful firm.

   6.2 The selected consultant/firm shall indemnify and hold harmless the City, its officers, employees and agents from and against all claims, damages, losses and expenses caused in whole or in part by any negligent act or omission of the firm, its consultants, subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts may be liable, except where caused by the active negligence, or willful misconduct by the City.

   6.3 Labor and material proposals submitted on this form shall be subject to the provisions of Section 1700, California Labor Code, as specified by Section 3700, California Labor Code, which requires Worker’s Compensation insurance to be provided by the selected consultant/firm.

   6.4 Worker’s Compensation policy(ies) are to be endorsed to include a waiver of subrogation against the City, its officers, officials, employees and agents.

   6.5 The firm and its employees are independent contractors and not employees of the City of Porterville. The firm and/or its insurers are responsible for payment of any liability arising out of worker’s compensation, unemployment, or employee benefits offered to its employees.
6.6 Insurance is to be placed with insurers with a current A.M. Best’s rating of no less than A: VII, unless otherwise acceptable to the City.

6.7 Endorsements are to be received and approved by the City before work commences.

6.8 The successful consultant/firm shall obtain a City of Porterville business license. Fee is based on gross receipts for all business transactions in the City of Porterville. For information, contact the Business License clerk at (559) 782-7457.

6.9 The City will provide a service agreement to the selected consultant.

6.10 All work performed by the consultant under this contract shall be under the ownership of the City of Porterville.

6.11 All work performed under this contract shall be researched, prepared and executed in a professional and competent manner for which the consultant will be responsible.

6.12 In accordance with City of Porterville policy, disadvantaged business enterprises (DBE), including qualified small minority and woman-owned firms, are encouraged to submit a proposal or otherwise participate in the completion of the work covered by this request. No DBE participation goals have been established for this project.

6.13 The employee(s) identified in the proposal as performing the duties under this contract shall not be replaced without the prior written approval of the Community Development Director of the City of Porterville.

Note: Firms that cannot comply with the City’s insurance requirements, as described above, should not submit a proposal. These requirements are not negotiable.

DESIRABLE QUALIFICATIONS OF THE CONSULTANT

The City is seeking a qualified consultant to provide an analysis of market and industry trends for planning entrepreneurial training and determining the feasibility of the creation of one or more business incubators. The desired consultant shall have, at a minimum, the following qualifications:

1) Extensive experience in the preparation of market analysis and feasibility studies.

2) The Consultant’s proven ability to expeditiously and accurately produce the required product in a concise and useable format.
3) The Consultant’s proven success in completing studies and analysis in a timely fashion.

CONTENTS OF STATEMENTS OF QUALIFICATIONS TO BE SUBMITTED TO CITY

Consultants/Consulting firms wishing to be considered for selection to provide the services to the City described herein should submit Statements of Qualifications in their proposals containing the following information:

1) A description, including background, size and orientation of the firm.

2) A summary of the qualifications of the firm to perform the services described herein, including, but not necessarily limited to:

1. The firm’s previous experience in preparing market analysis and feasibility studies; and
2. The firm’s previous experience in performing similar services for other agencies; and
3. The firm’s previous experience with the City of Porterville and familiarity with the community; and
4. The firm’s ability to produce the required product in a timely fashion and ability to present such reports to elected officials and the general public.

3) Prospective consultants shall describe the qualifications of all professional personnel to be assigned to this project, including a summary of similar work or studies each member has performed and a resume of each professional involved with this contract.

4) Prospective consultants shall designate by name the project planner/manager to be employed in this effort. The selected consultant shall not substitute the project planner/manager without prior approval by the Community Development Director of the City of Porterville.

The proposal shall contain the fee(s) the firm proposes to charge for the services to be provided. The fee(s) shall be in the form of an hourly rate(s) which consider all billable expenses such as mileage, materials, insurance, phones, etc. Time will be of the essence in completing the services described in relation to this project. It is anticipated that this effort may require significant staff resources at times. It is also important that when services are requested, that the consultant will return to the City for work within five (5) working days in the event a lapse in service occurs.
Four (4) copies of the proposal should be submitted by not later than 5:00 P.M., (DATE) to:

City of Porterville
Community Development Department
Attn: Linda Wammack, Development Associate
291 North Main Street
Porterville, CA 93257

The proposals must be submitted in an envelope clearly marked with the proposer’s name and “Proposal for Market Study Consultant”. The City will not consider late or incomplete proposals.

SELECTION PROCEDURE:

Selection of the successful proposal shall be generally based on the information provided by the Consultant in response to the RFP and any subsequent interviews that may be conducted. An evaluation committee made up of Stakeholder representatives will base the selection on a review of the submitted proposals. The committee will:

1. Evaluate the proposals, including the experience of the firm’s team and subcontractors;
2. Evaluate the appropriateness of the team’s experience;
3. Schedule personal interviews with the top three (3) firms; and
4. Verify and interview references provided.

Note: During the initial review process, staff may schedule meetings with each firm under consideration to help clarify and discuss submissions.

The City of Porterville reserves the right to reject any and all proposals submitted and to request additional information of any applicant.

AWARD OF CONTRACT

The selected consultant shall be required to enter into a written contract with the City of Porterville as provided in Exhibit A – SAMPLE SERVICE AGREEMENT commencing with the date of contract award. Any fee increases in subsequent renewal periods will be by negotiation and agreed to, in writing, by both parties.

Any executed contract for services or agreements by and between the City and the Consultant shall be subject to formal City Council approval and ratification. This RFP and the selected consultant’s proposal, or any part thereof, may be incorporated into and made a part of the final contract.

DISPOSITION OF PROPOSALS
All proposals submitted in response to the Request for Proposal shall become the property of the City. The proposer must identify, in writing, all copyrighted material, trade secrets, or other proprietary information that it claims is exempt from disclosure under the Public Records Act, (California Government Code Sections 6250 et seq.). Any proposer claiming such an exemption must also state in the proposal that the proposer agrees to defend any action brought against the City for its refusal to disclose such material, trade secrets, or other proprietary information to any party making a request therefore. Any proposer who fails to include such a statement shall be deemed to have waived its right to an exemption from disclosure as provided by said Act.

INQUIRIES REGARDING THIS RFP

Any inquiries regarding this RFP or the project described herein should be directed to Linda Wammack, Development Associate, by calling (559) 782-7460.

Attachments: 1. General Plan Draft Economic Development Element
RESPONSE TO REQUEST FOR PROPOSALS FOR
ANALYSIS OF MARKET AND INDUSTRY TRENDS
FOR PLANNING OF ENTREPRENEURIAL TRAINING
AND BUSINESS INCUBATOR ASSESSMENT

TO: City of Porterville

FROM: ____________________________

Name/Company

______________________________
Address

______________________________
City, State, Zip Code

Telephone No. ____________________ Fax No. ____________________

Proposal Amount:

1. Preparation of an analysis of market and industry trends for planning of entrepreneurial training, including a business incubator assessment.

<table>
<thead>
<tr>
<th>Personnel (Title)</th>
<th>Hourly Rate*</th>
<th>Hours</th>
<th>Total</th>
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TOTAL $____________

*Hourly rate to consider all billable expenses such as mileage, materials, insurance, phones, etc.
Notice prior to commencing work on particular project ________ hours/days.

(Summary of qualifications, references and relevant experience must be attached.)

__________________________________________
Signature                                      Date

__________________________________________
Name and Title (Printed)
(DATE)

Subject: Request for Proposals (RFP) – Analysis of Market and Industry Trends for Planning of Entrepreneurial Training and Business Incubator Assessment.

The City of Porterville is in the process of implementing a project for entrepreneurial training, including the evaluation of one or more business incubators. The project consists of four (4) phases:

1. Analysis of market and industry trends to identify business clusters that could be successful in the local economy.
2. Develop a curriculum for entrepreneurial training.
3. Initiate a small business start-up revolving loan program.
4. Development of a marketing plan for the project.

The consulting services described in the attached RFP will be for Phase 1 – Analysis of market and industry trends to identify business clusters that could be successful in the local economy and an assessment of the viability of one or more business incubators in the community. This project is funded by a grant from the U.S. Department of Commerce, Economic Development Administration and is therefore subject to prevailing wage requirements.

If selected, the City will provide a Service Agreement stipulating the agreed upon fee. This contract is subject to a thirty (30) day written notice of cancellation by either party except that City may cancel contract upon five (5) days written notice in the event of nonperformance by consultant. Nonperformance by consultant or repeated lack of response or attention to responsibilities and/or directions and requests of City shall be considered adequate cause for termination of contract and/or withholding of funds to contractor which City must pay to third party or parties to correct deficiencies to lack of performance as determined by City.

Four (4) copies of the sealed proposals must be submitted, in accordance with the attached request by 5:00 PM, (DATE) to:

City of Porterville
Community Development Department
Attn: Linda Wammack, Development Associate
291 N. Main Street
Porterville, CA 93257

Award of contract should occur in (Month, 2008), by the City Council. Please contact Linda Wammack at (559) 782-7460 if you have any questions regarding this letter.

Sincerely,

Bradley D. Dunlap, AICP
Community Development Director
EXHIBIT A
SAMPLE SERVICE AGREEMENT
To be revised to include EDA Standard Language

DATE: [Date]

PARTIES: City of Porterville, a California municipal corporation, hereinafter referred to as "CITY"; and [Insert Consultants Name], hereinafter referred to as "CONSULTANT".

RECITALS: CITY has undertaken a project on which it is seeking assistance from CONSULTANT. Said project which will hereinafter be referred to as "project" is described as follows:

- Project Name: Analysis of Market and Industry Trends for Planning of Entrepreneurial Training and Business Incubator Assessment
- Description of Project: Preparation of an analysis of market and industry trends for the planning of entrepreneurial training and determination of the viability of one (or more) business incubator facilities to foster new business growth.

AGREEMENTS:
IN CONSIDERATION OF MUTUAL COVENANTS AND AGREEMENTS HEREINAFTER set forth the parties hereto do contract and agree as follows:

SECTION 1. CONTRACT SERVICES: CONSULTANT hereby agrees to provide the following services and materials, in a timely manner as
described in Exhibit "A", Scope of Services, in connection with the above described project.

SECTION 2. PAYMENT: In consideration for said services and materials, CITY shall pay CONSULTANT on a time and materials basis, not to exceed [Words] Dollars, ($[Numbers])(refer to attached fee schedule, if used.)

TIME OF PAYMENT: Progress payment requests shall be submitted by the 25th of each month. CONSULTANT should receive payment within 30 days of the date the bill is received.

SECTION 3. COMPLETION DATE: The services to be performed by CONSULTANT will be commenced upon execution of this agreement and all "work directives" shall be completed by [Enter Work Completion Date].

The parties agree that time is of the essence under this contract. Inasmuch as it would be difficult to ascertain the actual amount of damages sustained by delay in performance of said contract, the amount of $[Enter Per Calendar Day Amount] per calendar day shall be deducted from the contract price for liquidated damages for each calendar day beyond the completion date listed above. Said deduction will not be made if CONSULTANT submits proof in writing that delay in completion was due to a cause beyond its control.

SECTION 4. FAMILIARITY WITH PROJECT: CONSULTANT certifies and agrees that it is fully familiar with all of the details of the project
required to perform its services. CONSULTANT agrees it will not rely upon any opinions and representations of CITY unless CITY is the only available source of said information.

SECTION 5. INDEPENDENT CONTRACTOR: It is expressly understood that CONSULTANT is entering into this contract and will provide all services and materials required hereunder as an independent contractor and not as an employee of CITY. CONSULTANT specifically warrants that it will have in full force and effect, valid insurance covering:

1. (i) Full liability under worker's compensation laws of the State of California; and

(ii) Bodily injury and property damage insurance in the amount not less than One Million Dollars ($1,000,000) per occurrence; and

(iii) Errors and Omissions insurance of One Million Dollars ($1,000,000) minimum per occurrence, if deductible for Errors and Omissions insurance is Fifty Thousand Dollars ($50,000) or more, the City may require a Surety Bond for the deductible; and

(iv) Automotive liability in the amount not less than One Million Dollars ($1,000,000) per occurrence; fully protecting CITY, its elected and appointed officers, employees, agents and assigns, against all claims arising from the negligence of
CONSULTANT and any injuries to third parties, including employees of CITY and CONSULTANT. CONSULTANT agrees to indemnify, defend (at CITY'S election), and hold harmless the CITY against any claims, actions or demands against CITY, and against any damages, liabilities for personal injury or death or for loss or damage to property, or any of them arising out of negligence of CONSULTANT or any of its employees or agents.

SECTION 6. WORKMANSHIP AND MATERIALS: Every part of the work herein described shall be executed in a professional manner with competent, experienced personnel. Finished or unfinished material prepared under the agreement, prepared by CONSULTANT, shall become property of CITY. CONSULTANT hereby warrants that any materials prepared under this agreement shall be fit for the intended use contemplated by the parties.

SECTION 7. ASSIGNMENT OF CONTRACT: It is acknowledged by the parties that CITY has entered into this contract with the express understanding that CONSULTANT will perform all work. CONSULTANT shall not, without the written consent of CITY, assign, transfer or sublet any portion or part of this work, nor assign any payments to others.

SECTION 8. AFFIRMATIVE ACTION. CONSULTANT will not discriminate against any employee, or applicant for employment because of race, color, religion, gender, marital status, or national origin.
SECTION 9. CONFLICT OF INTEREST CODE: CONSULTANT agrees to comply with the regulations of CITY’S “Conflict of Interest Code”. Said code is in accordance with the requirements of the Political Reform Act of 1974.

CONSULTANT covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of service required hereunder. The term "conflict" shall include, as a minimum, the definition of a "conflict of interest" under the California Fair Political Practices Act and the City of Porterville Conflict of Interest Code, as that term is applied to consultants.

SECTION 10. TERMINATION: Either party for just cause may terminate this contract by giving seven (7) days written notice to the other party. Upon termination by CITY, CITY shall be relieved of any obligation to pay for work not completed including profit and overhead. CONSULTANT may be entitled to just and equitable compensation for satisfactory work completed, except CITY can withhold damages incurred as a result of the termination.

SECTION 11. ENTIRE CONTRACT: It is understood and agreed that this Service Agreement represents the entire Agreement between the parties. Should it be necessary to institute legal proceedings to enforce any and all of the covenants and conditions of this Agreement, the prevailing party shall be entitled to recover attorneys' fees and costs.

SECTION 12. DISPUTES; VENUE: If either party initiates an action to enforce the terms hereof or declare rights hereunder, the parties agree that
IN WITNESS WHEREOF, the parties have executed this Service Agreement on the date and year first above written.

CONSULTANT hereby waives any rights it might have to remove any such action pursuant to California Code of Civil Procedure Section 394.

the venue thereof shall be the County of Tulare, State of California.

By: Cameron Hamilton, Mayor

City of Porterville
ATTACHMENT 1

DRAFT
ECONOMIC DEVELOPMENT ELEMENT

TO BE INSERTED.
COUNCIL AGENDA: DECEMBER 4, 2007

SUBJECT: MEMORANDUM OF UNDERSTANDING – TULE RIVER & DEER CREEK WATERSHED “INTEGRATED REGIONAL WATER MANAGEMENT PLAN”

SOURCE: Public Works Department - Engineering Division


On an equally substantial note, the various water quality and regulating agencies such as the Department of Water Resources (DWR) and Department of Health Services (DHS) have indicated that public entities within and part of an integrated regional water management plan will have greater access to grants, loans, etc.

The MOU presented in this staff report includes 10 separate entities such as Lower Tule River Irrigation District, Tulare County, Porterville Irrigation District, etc. The MOU specifies that each party agree to EQUALLY share the costs to accomplish the purposes and goals identified in the MOU and that the sum of which costs shall not exceed $10,000 ($1,000 each).

The specific tasks addressed in the IRWMP are identified on the front sheet of the MOU and include but are not limited to:

1. Identify Potential Participants
2. Identify Working Group
3. Public Notice of Intent to Prepare Plan
4. Develop Governance Structure
5. Develop Ranking Methodology
6. Identify Potential Projects
7. Draft Interim/Final IRWMP

RECOMMENDATION: That the City Council:

1. Approve the attached Memorandum of Understanding to participate and become a full member of the Tule Integrated Regional Water Management Plan;

[Signature]

Item No. 4
2. Authorize the Mayor to execute the attached MOU;

3. Direct the Chief Financial Officer to execute a budget entry in the amount of $1,000 and that said amount is paid from the Water Replacement fund;

4. Direct Public Works to make payment to the Tule IRWMP when said TULE IRWMP makes a request for membership payment; and

5. Direct that the Public Works Director be assigned as the City's representative to the Tule IRWMP.

ATTACHMENT: Integrated Regional Water Management Plan MOU
MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING ("MOU"), effective this ______ day of ________________, 2007, by and between the LOWER TULE RIVER IRRIGATION DISTRICT ("Lower Tule"), the PIXLEY IRRIGATION DISTRICT ("Pixley"), the PORTERVILLE IRRIGATION DISTRICT ("Porterville ID"), the SAUCELITO IRRIGATION DISTRICT ("Saucelito"), the TEA POT DOME WATER DISTRICT ("Tea Pot Dome"), the TERRA BELLA IRRIGATION DISTRICT ("Terra Bella"), the VANDALIA IRRIGATION DISTRICT ("Vandalia"), the DEER CREEK & TULE RIVER AUTHORITY ("Authority"), the COUNTY OF TULARE ("County"), and the CITY OF Porterville ("City"), hereinafter collectively "Parties" and individually "Party", is made in light of the following:

RECITALS:

WHEREAS, both the Integrated Regional Water Management Planning Act of 2002, found in Division 6, Part 2.2 of the California Water Code, and the Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002, found in Division 26.5 of the California Water Code, authorize and encourage public entities to develop an integrated regional water management plan ("IRWMP");

WHEREAS, it is in the interest of the Parties, and the region served by the Parties, to have the water resources of each Party responsibly managed, protected and conserved to the extent feasible;

WHEREAS, the Parties desire to form a regional water management group, as defined in California Water Code §10537, to take the steps outlined in the Integrated Regional Water Management Planning Act of 2002 to determine whether to prepare an IRWMP for the TULE,

NOW, THEREFORE, it is mutually understood and agreed as follows:

Section 1: Definitions

1.1 "TULE" shall mean the area covered by the IRWMP, which will hereafter be determined by the Parties, but which it is presently contemplated shall be one of the following:

1.1.1 The area generally comprised of all of the lands on which is situated any of the following: (a) portions of the County in which is located any part of Deer Creek, Dry Creek, Yokohl Creek or Cottonwood Creek; (b) any portion of the Tule River located below Success Dam; (c) portions of the Tule River located above Success Dam; (d) the Kaweah Delta Water Conservation District; and (e) any portion of the Kaweah River located below Terminus Dam; or
1.1.2 The area generally comprised of all of the lands on which is situated any of the following: (a) portions of the County in which is located any part of Deer Creek; (b) any portion of the Tule River located below Success Dam; and (c) portions of the Tule River located above Success Dam.

1.2 "Lead Party" shall mean the Authority.

1.3 "TULE IRWMP" shall be the initial name for the IRWMP, the preparation of which is the objective of this MOU. The Parties agree that six months after the effective date of this MOU, they will vote on a permanent name for the TULE IRWMP.

Section 2: Purposes and Goals

2.1 The Parties desire to coordinate their efforts to do the following:

2.1.1 Prepare this MOU.

2.1.2 Follow the notice, hearing and other procedures outlined in California Water Code §10541, paragraphs (a) and (b), together with all other applicable law, to determine whether to prepare the TULE IRWMP.

2.1.3 Apply for and obtain a grant of funds necessary to pay the costs of preparing the TULE IRWMP.

2.1.4 Use any grant funds obtained by the Parties to timely prepare the TULE IRWMP and adopt said IRWMP, all in accordance with the provisions of California Water Code §10541, paragraphs (c) and (d), together with all other applicable law.

Section 3: Cost Sharing

3.1 Each Party agrees to pay its equal share of the costs to accomplish the purposes and goals identified above in sections 2.1.1, 2.1.2 and 2.1.3.

3.2 The Parties do not agree to share the costs of actually preparing the TULE IRWMP, but intend to use grant funds to pay for such work. If no grant funds are obtained for the preparation of the TULE IRWMP, the Parties will not perform such work, without a further written agreement regarding the costs for the same.

3.3 The Lead Party shall be the recipient of all bills incurred in connection with the work authorized by this MOU. Further, the Lead Party shall be responsible for notifying the other Parties of such bills. Each of the Parties shall pay its respective share of each bill within forty-five (45) days of notification of the same by the Lead Party. The Lead Party shall keep an accurate accounting of the bills it receives and all monies received for the payment of same. Each of the Parties shall be entitled to
inspect the records of the Lead Party with respect to the matters described in this Section 3.

Section 4: Authority of Lead Party

4.1 The Lead Party shall be authorized to prepare and publish the notice referred to in California Water Code §10541, paragraph (a). Further, the Lead Party shall have the authority to hold the public hearing described in California Water Code §10541, paragraph (b).

4.2 After the aforementioned public hearing, the Lead Party shall poll the other Parties to determine whether they are still in favor of proceeding towards the preparation of a TULE IRWMP. If all of the Parties are still in agreement with the Parties proceeding to prepare a TULE IRWMP, then Lead Party is hereby authorized to retain a consultant on behalf of the Parties to prepare the application for a grant to fund the costs of preparing the TULE IRWMP.

Section 5: General Provisions

5.1. **Term.** This MOU shall become effective on the date first above written and shall terminate one year thereafter, unless the parties have either (i) obtained the grant providing the funds necessary to pay for the costs of preparing the TULE IRWMP; or (ii) signed a written agreement extending the term of this MOU. Any Party may terminate its participation in this MOU upon 60 days notice to the remaining Parties; provided, however, any Party so terminating its participation in this MOU shall be responsible for its share of the costs incurred by the Parties through the date of said notice.

5.2 **Additional Parties.** Upon written approval of all of the Parties, other local public agencies, as defined in California Water Code §10533, may become parties to this MOU.

5.3 **Construction of Terms.** This MOU is for the sole benefit of the Parties and shall not be construed as granting rights to any person other than the Parties, or imposing obligations on a party to any person other than another Party.

5.4 **Good Faith.** Each Party shall use its best efforts and work in good faith for the expeditious completion of the purposes and goals of this MOU and the satisfactory performance of its terms.

5.5 **Rights of the Parties and Constituencies.** This MOU does not contemplate the Parties taking any action that would:

5.5.1 Adversely affect the rights of any of the Parties; or

5.5.2 Adversely affect the constituencies of any of the Parties.
5.6 **Execution.** This MOU may be executed in counterparts and the signed counterparts shall constitute a single instrument. The signatories to this MOU represent that they have the authority to sign to bind the Party for whom they are signing this MOU.

IN WITNESS WHEREOF, the Parties hereto have executed this Memorandum of Understanding to be effective as of the date first above written.

Dated: ________________  
Lower Tule River Irrigation District
By: _____________________
Title: ____________________

Dated: ________________  
Approved as to form:

__________________________________________________________
Attorney for Lower Tule River ID

Dated: ________________  
Pixley Irrigation District
By: _____________________
Title: ____________________

Dated: ________________  
Approved as to form:

__________________________________________________________
Attorney for Pixley ID

Dated: ________________  
Porterville Irrigation District
By: _____________________
Title: ____________________

Dated: ________________  
Approved as to form:

__________________________________________________________
Attorney for Porterville ID
Dated: ______________________  
Saucelito Irrigation District
By: ________________________
Title: ______________________

Dated: ______________________  
Approved as to form:

____________________________
Attorney for Saucelito ID

Dated: ______________________  
Tea Pot Dome Water District
By: ________________________
Title: ______________________

Dated: ______________________  
Approved as to form:

____________________________
Attorney for Tea Pot Dome WD

Dated: ______________________  
Terra Bella Irrigation District
By: ________________________
Title: ______________________

Dated: ______________________  
Approved as to form:

____________________________
Attorney for Terra Bella ID
Dated: ____________________________

City of Porterville
By: ________________________________
Title: ______________________________

Dated: ____________________________

Approved as to form:
__________________________________

Attorney for City of Porterville
COUNCIL AGENDA: DECEMBER 4, 2007

SUBJECT: AUTHORIZATION TO ADVERTISE FOR BIDS – OLIVE AVENUE AND HOLCOMB STREET BUS TURNOUT

SOURCE: Public Works Department - Engineering Division

COMMENT: The Plans and Project Manual have been prepared for the Olive Avenue and Holcomb Street Bus Turnout. The City of Porterville is interested in making improvements to Route 3 (East Porterville) bus stops. The Route 3, E. Olive Avenue and Holcomb Street bus stop experiences the highest use. Said bus stop is just west of Granite Hills High School adjacent to property owned by Porterville Unified School District. The bus turnout project includes removal of existing concrete improvements and installation of new concrete improvements allowing for a bus to completely pull out of the travel way to access the bus stop location. A concrete pad with two (2) bus shelters, provided by the City and installed by the contractor, will be adjacent to the back of new sidewalk. All improvements will be constructed within City right of way.

The Plans and Project Manual have been completed and are available in the La Barca Conference Room for Council’s review. The Engineer’s estimate of probable cost for construction is $34,408.00. An additional $5,161.20 is required for construction contingency (10%) and construction engineering for a total project cost of $39,569.20. Funding for this project is from FTA grant/LTF and was approved in the 2007/2008 Annual Budget for bus turnouts.

RECOMMENDATION: That City Council:

1. Approve Staff’s recommended Plans and Project Manual; and

2. Authorize staff to advertise for bids on the project.

ATTACHMENTS: Locator Map
Engineer’s Estimate

P:\pubworks\Engineering\Council Items\Authorization To Advertise for Bids - Olive Ave & Holcomb St Bus Turnout - 2007-12-04.doc

Dir Appropriated/Funded Item No. 5
## OLIVE AVE. & HOLCOMB ST. BUS TURN OUT
ENGINEER'S ESTIMATE – November 26, 2007

<table>
<thead>
<tr>
<th>ITEM</th>
<th>QTY.</th>
<th>UNIT</th>
<th>DESCRIPTION</th>
<th>UNIT PRICE</th>
<th>AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>1</td>
<td>L.S.</td>
<td>Mobilization &amp; Demobilization</td>
<td>$3,500.00</td>
<td>$3,500.00</td>
</tr>
<tr>
<td>2</td>
<td>1</td>
<td>L.S.</td>
<td>Traffic Control</td>
<td>$2,500.00</td>
<td>$2,500.00</td>
</tr>
<tr>
<td>3</td>
<td>728</td>
<td>S.F.</td>
<td>Remove Existing Concrete</td>
<td>$3.50</td>
<td>$2,548.00</td>
</tr>
<tr>
<td>4</td>
<td>668</td>
<td>S.F.</td>
<td>Modified Curb &amp; V-Gutter Including 8” Non-Expansive Fill</td>
<td>$20.00</td>
<td>$13,360.00</td>
</tr>
<tr>
<td>5</td>
<td>540</td>
<td>S.F.</td>
<td>Sidewalk Including 8” Non-Expansive Fill</td>
<td>$10.00</td>
<td>$5,400.00</td>
</tr>
<tr>
<td>6</td>
<td>20</td>
<td>L.F.</td>
<td>Curb &amp; Gutter Including 8” Non-Expansive Fill</td>
<td>$50.00</td>
<td>$1,000.00</td>
</tr>
<tr>
<td>7</td>
<td>150</td>
<td>S.F.</td>
<td>Bus Shelter Concrete Pad Including 8” Non-Expansive Fill</td>
<td>$10.00</td>
<td>$1,500.00</td>
</tr>
<tr>
<td>8</td>
<td>2</td>
<td>EA.</td>
<td>Install City Provided Bus Shelters</td>
<td>$1,000.00</td>
<td>$2,000.00</td>
</tr>
<tr>
<td>9</td>
<td>104</td>
<td>L.F.</td>
<td>2’ Pave-out per City Std. P-4</td>
<td>$25.00</td>
<td>$2,600.00</td>
</tr>
</tbody>
</table>

Sub-total $34,408.00
15% Construction Contingency, Staff Time, Testing $5,161.20

**Total Estimated Probable Cost of Project** $39,569.20

---

**ESTIMATE CERTIFIED**

Project Manager  
[Signature]  
Date: 11/26/07

City Engineer  
[Signature]  
Date: 11/26/07

Public Works Director  
[Signature]  
Date: 12/8/07

City Manager  
[Signature]  
Date: [ ]
SUBJECT: AUTHORIZATION TO ADVERTISE FOR BIDS – MATHEW AND WESTFIELD STORM DRAIN PROJECT

SOURCE: Public Works Department - Engineering Division

COMMENT: Plans and Project Manual have been prepared for the Mathew and Westfield Storm Drain Project. The project includes paving, a catch basin, asphalt concrete berm and connection to an existing storm drain line.

The Plans and Project Manual have been completed and are available in the La Barca Conference Room for Council’s review.

The estimate of probable cost for the entire project is $15,895 with $1,590 required for the construction contingency (10%). An additional $795 is required for construction management, quality control and inspection. The total estimated cost associated with the project is $18,280. An Estimate of Probable Cost is attached for Council’s review.

Funding is provided by developer impact fees and was approved in the 07/08 Annual Budget as a part of the Storm Drain Master Plan Update.

RECOMMENDATION: That City Council:

1. Approve staff’s recommended plans and project manual; and

2. Authorize staff to advertise for bids on the project.

ATTACHMENTS: Estimate of Probable Cost Locator Map

P:\pub\work\Engineering\Council Items\Authorization to Advertise for Bids - Mathew and Westfield Storm Drain Project - 2007-11-20.doc

Item No. 69
City of Porterville  
Mathew and Westfield Engineers Estimate

<table>
<thead>
<tr>
<th>ITEM NO.</th>
<th>DESCRIPTION</th>
<th>UNIT</th>
<th>QUANTITY</th>
<th>UNIT PRICE</th>
<th>TOTAL PRICE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Mobilization and Demobilization</td>
<td>LS</td>
<td>1</td>
<td>$1,500.00</td>
<td>$1,500.00</td>
</tr>
<tr>
<td>2</td>
<td>Traffic Control</td>
<td>LS</td>
<td>1</td>
<td>$800.00</td>
<td>$800.00</td>
</tr>
<tr>
<td>3</td>
<td>Clearing and Grubbing including concrete, dirt, asphalt, and regrading to create swale</td>
<td>LS</td>
<td>1</td>
<td>$1,500.00</td>
<td>$1,500.00</td>
</tr>
<tr>
<td>4</td>
<td>Install A C Berm</td>
<td>LF</td>
<td>25</td>
<td>$15.00</td>
<td>$375.00</td>
</tr>
<tr>
<td>5</td>
<td>Install Catch Basin with grate</td>
<td>EA</td>
<td>1</td>
<td>$5,000.00</td>
<td>$5,000.00</td>
</tr>
<tr>
<td>6</td>
<td>Storm Drain Connection per Detail Shown, Including 5&quot; of 15&quot; Storm Drain Lateral from Catch basin</td>
<td>LS</td>
<td>1</td>
<td>$3,000.00</td>
<td>$3,000.00</td>
</tr>
<tr>
<td>7</td>
<td>Install Paveout</td>
<td>SF</td>
<td>450</td>
<td>$5.00</td>
<td>$2,250.00</td>
</tr>
</tbody>
</table>

Subtotal $ 14,425.00  
10% Estimating Contingency $ 1,442.50  

TOTAL $ 15,867.50

Project Manager  
11/26/07  
City Engineer  
11/26/07  
Public Works Director  
11/26/07  
City Manager  
Date
SUBJECT: AUTHORIZATION TO ADVERTISE FOR BIDS – MATHEW AND WESTFIELD STORM DRAIN PROJECT

SOURCE: Public Works Department - Engineering Division

COMMENT: Plans and Project Manual have been prepared for the Mathew and Westfield Storm Drain Project. The project includes paving, a catch basin, asphalt concrete berm and connection to an existing storm drain line.

The Plans and Project Manual have been completed and are available in the La Barca Conference Room for Council's review.

The estimate of probable cost for the entire project is $15,895 with $1,590 required for the construction contingency (10%). An additional $795 is required for construction management, quality control and inspection. The total estimated cost associated with the project is $18,280. An Estimate of Probable Cost is attached for Council's review.

Funding is provided by developer impact fees and was approved in the 07/08 Annual Budget as a part of the Storm Drain Master Plan Update.

RECOMMENDATION: That City Council:

1. Approve staff's recommended plans and project manual; and

2. Authorize staff to advertise for bids on the project.

ATTACHMENTS: Estimate of Probable Cost Locator Map

Item No. 10
City of Porterville
Mathew and Westfield Engineers Estimate

<table>
<thead>
<tr>
<th>ITEM NO.</th>
<th>DESCRIPTION</th>
<th>UNIT</th>
<th>QUANTITY</th>
<th>UNIT PRICE</th>
<th>TOTAL PRICE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Mobilization and Demobilization</td>
<td>LS</td>
<td>1</td>
<td>$1,500.00</td>
<td>$1,500.00</td>
</tr>
<tr>
<td>2</td>
<td>Traffic Control</td>
<td>LS</td>
<td>1</td>
<td>$800.00</td>
<td>$800.00</td>
</tr>
<tr>
<td>3</td>
<td>Clearing and Grubbing including concrete, dirt, asphalt, and</td>
<td>LS</td>
<td>1</td>
<td>$1,500.00</td>
<td>$1,500.00</td>
</tr>
<tr>
<td></td>
<td>regrading to create swale</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Install A/C Berm</td>
<td>LF</td>
<td>25</td>
<td>$15.00</td>
<td>$375.00</td>
</tr>
<tr>
<td>5</td>
<td>Install Catch Basin with grate</td>
<td>EA</td>
<td>1</td>
<td>$5,000.00</td>
<td>$5,000.00</td>
</tr>
<tr>
<td>6</td>
<td>Storm Drain Connection per Detail Shown, Including 5&quot; of 15&quot;</td>
<td>LS</td>
<td>1</td>
<td>$3,000.00</td>
<td>$3,000.00</td>
</tr>
<tr>
<td></td>
<td>Storm Drain later from Catch basin</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Install Pavement</td>
<td>SF</td>
<td>450</td>
<td>$5.00</td>
<td>$2,250.00</td>
</tr>
</tbody>
</table>

Subtotal: $14,425.00
10% Estimating Contingency: $1,442.50

TOTAL: $15,867.50

Project Manager: [Signature] 11-26-07
Public Works Director: [Signature] 11-26-07
City Engineer: Michael R. Reed 11-26-07
City Manager: [Signature] Date
AWARD OF CONTRACT - ‘C’ STREET WATER MAIN & MISCELLANEOUS
FIRE HYDRANT PROJECT

PUBLIC WORKS DEPARTMENT - ENGINEERING DIVISION

On November 15, 2007, staff received three (3) bids for the ‘C’ Street Water Main
& Miscellaneous Fire Hydrant Project. The Base Bid includes installation of
approximately 1337 lineal feet of 8-inch water main including new fire hydrants
on ‘C’ Street between Date Avenue and Walnut Avenue. Add Alternate A
includes relocation of two existing fire hydrants, one on Porter Road south of
Tomah Avenue and one on Mulberry Avenue west of Plano Street, and a new fire
hydrant on Walnut Avenue and B Street.

The Engineer’s estimate of probable cost for the entire project is $154,535. The
low bid is 11.2% below the Engineer’s estimate. An additional $20,577.04 is
required for construction contingency (10%), staff time and construction
engineering for a total project cost of $157,757.32. Funding for the project is
approved in the 2007/2008 Annual Budget under Deficient Fire Flow and
Miscellaneous Water Projects and the funding source is water reserve.

The bids are as follows:

<table>
<thead>
<tr>
<th>Contractor</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Halopoff &amp; Sons, Inc.</td>
<td>$137,180.28</td>
</tr>
<tr>
<td>Porterville, CA</td>
<td></td>
</tr>
<tr>
<td>Montes Pacific Engineering</td>
<td>$159,882.00</td>
</tr>
<tr>
<td>Oxnard, CA</td>
<td></td>
</tr>
<tr>
<td>ConCastCo, Inc.</td>
<td>$161,950.00</td>
</tr>
<tr>
<td>Bakersfield, CA</td>
<td></td>
</tr>
</tbody>
</table>

Staff has found the low bid acceptable.

RECOMMENDATION: That City Council:

1. Award the ‘C’ Street Water Main & Miscellaneous Fire
   Hydrant Project Base Bid and Add Alternate A to Halopoff
   & Sons, Inc. in the amount of $137,180.28; and

2. Authorize progress payments up to 90% of the contract
   amount; and

3. Authorize a 10% contingency to cover unforeseen
   construction costs.

ATTACHMENT: Locator Map

P:\pubworks\Engineering\Council Items\Award of Contract - C St Water Main & Misc FH Project - 2007-12-04.doc

Appropriated/Funded CM Item No. 8
SUBJECT: AWARD OF CONTRACT – TRAFFIC SIGNAL #11
(INDIANA STREET & PUTNAM AVENUE)

SOURCE: Public Works Department - Engineering Division

COMMENT: On November 15, 2007, staff received two (2) bids for Traffic Signal #11 at the intersection of Indiana Street and Putnam Avenue. The project includes intersection improvements and the construction of a new traffic signal.

Due to the amount of intersection improvements included in this project the Notice Inviting Sealed Bids required a Class A, General Engineering or a combination of both Class C-12, Earthwork and Paving and C-10, Electrical Contractor, State of California Contractor’s license. The low bidder does not possess the proper licenses required by the Notice Inviting Sealed Bids; therefore staff must recommend the project be awarded to the second bidder. Both bids are below the Engineer’s Estimate of probable cost.

The Engineer’s estimate of probable cost for the entire project is $264,690. The second and only responsible bid is 2.9% below the Engineer’s estimate. An additional $38,550 is required for construction contingency (10%), staff time and construction engineering for a total project cost of $295,550. Funding for the project is approved in the 2007/2008 Annual Budget under Indiana-Putnam Traffic Signal and the funding source is local transportation and work force housing funds.

The bids are as follows:

<table>
<thead>
<tr>
<th>Contractor</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Loop Electric, Inc.</td>
<td>$246,697.00</td>
</tr>
<tr>
<td>Bakersfield, CA</td>
<td></td>
</tr>
<tr>
<td>AC Electric Company</td>
<td>$257,000.00</td>
</tr>
<tr>
<td>Visalia, CA</td>
<td></td>
</tr>
</tbody>
</table>

Staff has found the second bid acceptable.

RECOMMENDATION: That City Council:

1. Award the Traffic Signal #11 project to AC Electric Company in the amount of $257,000.00;

2. Authorize progress payments up to 90% of the contract amount; and

3. Authorize a 10% contingency to cover unforeseen construction costs.

ATTACHMENT: Locator Map

Dir  Appropriated/Funded  Item No. 9
SUBJECT: ACCEPTANCE OF THE AIRPORT WATER INTER-TIE PROJECT

SOURCE: Public Works Department - Engineering Division

COMMENT: Halopoff and Sons, Inc. has completed the Airport Water Inter-Tie Project per plans and specifications. The project consisted of the installation of water mains that interconnected the City's Central Pressure Zone to the City's isolated Airport Water System. In addition, the project consisted of the extension of sewer mains in order to incorporate the Sewer Master Plan for this area.

City Council authorized expenditure of $3,525,188. Final construction cost is $2,937,568.48.

Halopoff and Sons, Inc. 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:\pubworks\Engineering\Council Items\Acceptance of Project - Airport Water Inter-tie Project - 2007-12-04.doc
SUBJECT: ACCEPTANCE OF APPRAISED VALUE OF RIGHT OF WAY FOR PROPERTY LOCATED AT APN 269-050-055 – BIG BIDNESS, LLC – JAYE STREET WIDENING PROJECT

SOURCE: PUBLIC WORKS DEPARTMENT

COMMENT: Big Bidness, a Limited Liability Company, owners of property located at APN 269-050-055, has accepted the appraised value of $22,060.00 for the 1,103 square feet of right-of-way needed for the Jaye Street Widening Project.

The City recently had the property appraised by Tim Simon, MAI, a Certified General Real Estate Appraiser. The appraisal came in at $22,060.00 for the 1,103 square feet of property needed for the project. This appraisal is available in the Community Development Department for your review.

RECOMMENDATION: That City Council:

1. Authorize staff to begin escrow, with the City paying escrow fees;
2. Authorize staff to make payment to Big Bidness, LLC in the amount of $22,060.00 after completion of escrow;
3. Authorize the Mayor to sign all necessary documents; and
4. Authorize staff to record all documents with the County Recorder.

ATTACHMENTS:

1. Right-Of-Way Take Map
2. Resolution
RESOLUTION NO. ________________

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE
ACCEPTING A GRANT DEED IN FEE FOR REAL PROPERTY FROM
BIG BIDNESS, LLC

BE IT RESOLVED by the City Council of the City of Porterville, that the City of Porterville
hereby accepts a Grant Deed in fee from Big Bidness, LLC for real property, in the City of
Porterville, County of Tulare, State of California, to-wit:

See Exhibit “A” and “B” attached hereto and made a part thereof.

BE IT FURTHER RESOLVED that the purchase price of $22,060.00 is hereby approved with
the City to open escrow account, pay the normal and customary escrow fees, authorize Mayor to
sign all necessary documents, and said deed to be recorded in the office of the Tulare County
Recorder. The forgoing has been accepted by the City Council for the City of Porterville.

________________________________________
Cameron Hamilton, Mayor

ATTEST:

John Longley, City Clerk

______________________________
Patrice Hildreth, Acting Chief Deputy City Clerk
EXHIBIT “A”

LEGAL DESCRIPTION
RIGHT-OF-WAY DEDICATION

A portion of Parcel 1 of Parcel Map No. 4494 as recorded in Book 45 at Page 99 of the Official Records of Tulare County, California being more particularly described as follows:

Commencing at the North Quarter Corner of Section 2, Township 22 South, Range 27 East, Mount Diablo Base and Meridian;

Thence, along the east line of the Northwest Quarter of said Section 2, South 00°26’41” West, a distance of 36.72 feet to a point on the southerly Right-of-Way line of State Highway 190;

Thence, along said southerly Right-of-Way line, South 76°22’36” East, a distance of 41.08 feet to the most westerly northwest corner of said Parcel 1, said corner being located at the intersection of the southerly Right-of-Way line of State Highway 190 and the easterly right-of-way line of Jaye Street, said point also being the POINT OF BEGINNING;

Thence, along the northwesterly line of said Parcel 1 and the southerly Right-of-Way line of State Highway 190, North 45°29’44” East, a distance of 9.89 feet to a line parallel with and 47.00 feet east of, as measured normal to, the east line of the Northwest Quarter of said Section 2, said east line also being the centerline of Jaye Street;

Thence, leaving said northwesterly line of Parcel 1 and said southerly line of State Highway 190, along said parallel line, South 00°26’41” West, a distance of 112.37 feet to a point of curvature;

Thence, southwesterly 32.40 feet along a curve to the right, having a radius of 80.00 feet, through a central angle of 23°12’27” and having a chord bearing and distance of South 12°02’55 W”, 32.18 feet to a point of compound curvature;

Thence, southwesterly 15.72 feet along a curve to the right, having a radius of 70.00 feet, through a central angle of 12°51’49” and having a chord bearing and distance of South 17°13’14” West, 15.68 feet to a point on the existing easterly Right-of-Way line of Jaye Street and the westerly line of said Parcel 1;

Thence, along said easterly Right-of-Way line and said westerly line, North 00°26’41” East, a distance of 54.44 feet;
Thence, continuing along said easterly and westerly lines, South 89°27’44” East, a distance of 4.00 feet;

Thence, continuing along said easterly and westerly lines, North 00°26’41” East, a distance of 97.49 feet to the POINT OF BEGINNING.

The above described parcel contains 1,103 square feet or 0.0253 acres, more or less.

Basis of Bearings: The east line of the Northwest Quarter of said Section 2 is taken to bear South 00°26’41” West based on California State Plane Grid bearings for Zone 4, NAD83 which is based on a field survey tied to the north line of the Northwest Quarter of said Section 2 as shown on the Record of Survey recorded in Book 21 of Licensed Surveys at Page 68. All distances are ground distances.

[Stamp]

11/14/06
SUBJECT: PROGRAM SUPPLEMENT TO THE LOCAL AGENCY-STATE MASTER AGREEMENT – CONSTRUCTION OF THE CNG FACILITY

SOURCE: Public Works Department - Engineering Division

COMMENT: The Department of Transportation has submitted Program Supplement Agreement Number M033-N, and requests that the City execute said agreement. The executed agreement becomes a part of the Local-State Master Agreement No. 06-5122R.

The Program Supplement attached is for the construction of the CNG facility. Said agreement describes the special covenants with which the City must comply.

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.

ATTACHMENTS: Program Supplement Agreement No. M033-N
Resolution

P:\PUB\WORKS\ENGINEERING\COUNCIL ITEMS\PROGRAM SUPPLEMENT TO THE LOCAL AGENCY-STATE MASTER AGREEMENT - CNG FACILITY CONSTRUCTION - 2007-12-04.DOC

Dir Appropriated/Funded CM Item No.
RESOLUTION NO._______

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE AUTHORIZING THE MAYOR TO SIGN PROGRAM SUPPLEMENT NO. M033-N TO ADMINISTER THE AGENCY-STATE AGREEMENT FOR FEDERAL-AID PROJECTS NO. 06-5122R

BE IT RESOLVED by the City Council of the City of Porterville that the Mayor is hereby authorized to execute the document known as Program Supplement No. M033-N to Local Agency-State Master Agreement No. 06-5122R, for the construction of the CNG facility.

ADOPTED this 4th day of December, 2007.

______________________________
Cameron Hamilton, Mayor

ATTEST:

John Longley, City Clerk

______________________________
By Patrice Hildreth, Acting Chief Deputy City Clerk
This Program Supplement hereby incorporates the Administering Agency-State Agreement for Federal Aid which was entered into between the Administering Agency and the State on 02/20/07 and is subject to all the terms and conditions thereof. This Program Supplement is executed in accordance with Article I of the aforementioned Master Agreement under authority of Resolution No. (See copy attached).

The Administering Agency further stipulates that as a condition to the payment by State of any funds derived from sources noted below obligated to this project, the Administering Agency accepts and will comply with the Special covenants or Remarks setforth on the following pages.

**PROJECT LOCATION:**
city of porterville corporation yard

**TYPE OF WORK:** Equipment Purchase: Construct CNG fueling station

<table>
<thead>
<tr>
<th>Estimated Cost</th>
<th>Federal Funds</th>
<th>Matching Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>$100,000.00</td>
<td>$78,000.00</td>
<td></td>
</tr>
<tr>
<td>$22,000.00</td>
<td>$0.00</td>
<td>$0.00</td>
</tr>
</tbody>
</table>

CITY OF PORTERVILLE

By __________________________

Date __________________________

Attest __________________________

Title __________________________

STATE OF CALIFORNIA

Department of Transportation

By __________________________

Chief, Office of Project Implementation
Division of Local Assistance

Date __________________________

I hereby certify upon my personal knowledge that budgeted funds are available for this encumbrance:

Accounting Officer __________________________ Date 11.14.07 $78,000.00

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Statutes</th>
<th>Item</th>
<th>Year</th>
<th>Program</th>
<th>BC</th>
<th>Category</th>
<th>Fund Source</th>
<th>AMOUNT</th>
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<tr>
<td>47</td>
<td>2006</td>
<td>2660-102-890</td>
<td>2006-2007</td>
<td>20.30.010.820</td>
<td>C</td>
<td>262040</td>
<td>892-F</td>
<td>78,000.00</td>
</tr>
</tbody>
</table>
SPECIAL COVENANTS OR REMARKS

1. The ADMINISTERING AGENCY will advertise, award and administer this project in accordance with the current published Local Assistance Procedures Manual.

2. Award information shall be submitted by the ADMINISTERING AGENCY to the District Local Assistance Engineer within 60 days after the project contract award. A copy of the award package shall also be included with the submittal of the ADMINISTERING AGENCY's first invoice for the construction contract to:
   Department of Transportation
   Division of Accounting
   Local Programs Accounting Branch, MS #33
   P. O. Box 942874
   Sacramento, CA 94274-0001.

   Failure to do so will cause a delay in the State processing invoices for the construction phase. Please refer to Section 15.7 "Award Package" of the Local Assistance Procedures Manual.

3. ADMINISTERING AGENCY agrees that it will only proceed with work authorized for specific phase(s) with an "Authorization to Proceed" and will not proceed with future phase(s) of this project prior to receiving an "Authorization to Proceed" from the STATE for that phase(s) unless no further State or Federal funds are needed for those future phase(s).

4. Any State and Federal funds that may have been encumbered for this project are only available for disbursement for a period of five (5) years and seven (7) years, respectively, from the start of the fiscal year(s) that those funds were appropriated within the State Budget Act. All project funds not liquidated within these periods will revert unless an executed Cooperative Work Agreement extending these dates is requested and is approved by the California Department of Finance per Government Code Section 16304. The exact date of each fund reversion will be reflected in the approved finance letter(s) issued for this project.

   Notwithstanding the unliquidated sums of project specific State and Federal funding remaining and available to fund project work, any invoice for reimbursement that is not submitted to the Department on or before 60 days after that applicable fixed fund....
SPECIAL COVENANTS OR REMARKS

reversion date will not be paid from that fiscal year's encumbered funds because all of these unexpended funds will be irrevocably reverted by the Department's Division of Accounting on that date.

Pursuant to a directive from the State Controller's Office and the Department of Finance, the last date to submit invoices for reimbursed work in each fiscal year is May 15th in order for payment to be made out of those then current appropriations. Project work performed and invoiced after May 15th will be reimbursed only out of available funding that might be encumbered in the subsequent fiscal year, and then only when those funds are actually allocated and encumbered as authorized by the California Transportation Commission and the Department's Accounting Office.

5. ADMINISTERING AGENCY agrees, as a minimum, to submit invoices at least once every six months commencing after the funds are encumbered for each phase by the execution of this Project Program Supplement Agreement, or by STATE's approval of an applicable Finance Letter. STATE reserves the right to suspend future authorizations/obligations, and invoice payments for any on-going or future federal-aid project by ADMINISTERING AGENCY if PROJECT costs have not been invoiced by ADMINISTERING AGENCY for a six-month period.

If no costs have been invoiced for a six-month period, ADMINISTERING AGENCY agrees to submit for each phase a written explanation of the absence of PROJECT activity along with target billing date and target billing amount.

ADMINISTERING AGENCY agrees to submit the final report documents that collectively constitute a "Report of Expenditures" within one hundred eighty (180) days of PROJECT completion. Failure of ADMINISTERING AGENCY to submit a "Final Report of Expenditures" within 180 days of PROJECT completion will result in STATE imposing sanctions upon ADMINISTERING AGENCY in accordance with the current Local Assistance Procedures Manual.
CITY COUNCIL AGENDA - DECEMBER 4, 2007

THIS ITEM HAS BEEN REMOVED FROM THE AGENDA.

Item No. 13
TITLE: LETTER OF PUBLIC CONVENIENCE OR NECESSITY/BALWINDE JOHAL - 709 W. OLIVE AVENUE

SOURCE: COMMUNITY DEVELOPMENT DEPARTMENT - PLANNING DIVISION

COMMENT: Mr. Balwinder Johal, owner of the Olive Mini Mart located at 709 West Olive Avenue, is requesting City Council approval of a Letter of Public Convenience or Necessity as required by the Alcoholic Beverage Control Board (ABC). This is required since the applicant is requesting an upgrade from a Type 20 off-sale of beer and wine license to a Type 21 off-sale of beer, wine and distilled spirits license.

On October 19, 2004, the City Council approved a Letter of Public Convenience or Necessity to allow for the off-sale of beer and wine at this location.

Pursuant to Section 2100 D of the Porterville Zoning Ordinance, the subject site is not located within 600 linear feet of the nearest property line of any sensitive use as defined in this section, and therefore, does not require a conditional use permit.

Under the regulations of the Business and Professions Code, applicants for off-sale alcoholic beverage licenses must secure a determination from the City Council that the business serves a public convenience or necessity, if the issuance of the license would result in, or contribute to, an “undue concentration” of licenses within a census tract.

The determination “undue concentration” is based on the average ratio of licenses to population for all census tracts in the county. As many census tracts are primarily residential, with no licenses, the comparison causes most commercial areas to be defined as over concentrated.

The Olive Mini Mart is within Census Tract No. 41.01 which currently has nine (9) off-sale licenses. Based on the Census Tract population to license ratios, established by the Business and Professions Code, any license in excess of eight (8) constitutes an “undue concentration” and requires a Letter of Public Convenience or Necessity from the City Council. Census Tract 41.01 currently has seven (7) Type 20 off-sell beer and wine licenses and two (2) Type 21 off-sell beer, wine and distilled spirits licenses. As such, this approval would not add an additional license but would change the mix of licenses to six (6) Type 20, and three (3) Type 21.
RECOMMENDATION: It is recommended that:

1. The City Council approve a letter (draft included as Attachment No. 5) supporting the issuance of a Type 21 off-sale of beer, wine and distilled spirits license within Census Tract No. 41.01 for the Olive Mini Mart, located at 709 West Olive Avenue.

2. Authorize the mayor to sign said letter.

ATTACHMENTS:

1. Letter of Request for City Council approval of a Letter of Convenience and Necessity
2. Locator Map
3. Census Tract 41.01 Map
4. Business and Professional Code Section 23958
5. Draft Letter
To: City of Porterville  
291 N. Main St.  
Porterville, CA 93257

From: Public Convenience for  
Olive Mini Mart  
709 West Olive Avenue  
Porterville, CA 93257

Dear City Council,

Olive Mini Mart requests the City Council to consider the following information regarding an upgrade from Type 20 Beer and Wine License to Type 21 Liquor License.

Many customers come in everyday in hopes to find liquor at the premises, but they return empty handed. The establishment of a Type 21 Liquor License will not only benefit the business, but will also serve as an economical asset to the community and contribute tax revenues to local economy.

Olive Mini Mart, located on the south side of Olive Avenue, provides service to several blocks located on that side of the Avenue. Being located on the south side allows patrons to walk to the store without the need to cross the busy four-lane traffic. We feel this is a very important safety factor for the location of this market and as well as for alcohol consumers. The closest convenience store located on the south side of Olive Avenue is approximately one half mile in either direction.

Thus, the establishment of liquor at the premises will prevent future accidents, since customers will not need to get behind the wheel and/or cross the street to obtain liquor.

Thank-you for your consideration and assistance in this matter.

Sincerely,

Balwinder Johal  
Proprietor Olive Mini Mart
23958.4. (a) For purposes of Section 23958, "undue concentration" means the case in which the applicant premises for an original or premises-to-premises transfer of any retail license are located in an area where any of the following conditions exist:

(1) The applicant premises are located in a crime reporting district that has a 20 percent greater number of reported crimes, as defined in subdivision (c), than the average number of reported crimes as determined from all crime reporting districts within the jurisdiction of the local law enforcement agency.

(2) As to on-sale retail license applications, the ratio of on-sale retail licenses to population in the census tract or census division in which the applicant premises are located exceeds the ratio of on-sale retail licenses to population in the county in which the applicant premises are located.

(3) As to off-sale retail license applications, the ratio of off-sale retail licenses to population in the census tract or census division in which the applicant premises are located exceeds the ratio of off-sale retail licenses to population in the county in which the applicant premises are located.

(b) Notwithstanding Section 23958, the department may issue a license as follows:

(1) With respect to a nonretail license, a retail on-sale bona fide eating place license, a retail license issued for a hotel, motel, or other lodging establishment, as defined in subdivision (b) of Section 25503.16, a retail license issued in conjunction with a beer manufacturer's license, or a winegrower's license, if the applicant shows that public convenience or necessity would be served by the issuance.

(2) With respect to any other license, if the local governing body of the area in which the applicant premises are located, or its designated subordinate officer or body, determines within 90 days of notification of a completed application that public convenience or necessity would be served by the issuance. The 90-day period shall commence upon receipt by the local governing body of (A) notification by the department of an application for licensure, or (B) a completed application according to local requirements, if any, whichever is later.

If the local governing body, or its designated subordinate officer or body, does not make a determination within the 90-day period, then the department may issue a license if the applicant shows the department that public convenience or necessity would be served by the issuance. In making its determination, the department shall not attribute any weight to the failure of the local governing body, or its designated subordinate officer or body, to make a determination regarding public convenience or necessity within the 90-day period.

(c) For purposes of this section, the following definitions shall apply:

(1) "Reporting districts" means geographical areas within the boundaries of a single governmental entity (city or the unincorporated area of a county) that are identified by the local law enforcement agency in the compilation and maintenance of statistical information on reported crimes and arrests.
(2) "Reported crimes" means the most recent yearly compilation by the local law enforcement agency of reported offenses of criminal homicide, forcible rape, robbery, aggravated assault, burglary, larceny theft, and motor vehicle theft, combined with all arrests for other crimes, both felonies and misdemeanors, except traffic citations.

(3) "Population within the census tract or census division" means the population as determined by the most recent United States decennial or special census. The population determination shall not operate to prevent an applicant from establishing that an increase of resident population has occurred within the census tract or census division.

(4) "Population in the county" shall be determined by the annual population estimate for California counties published by the Population Research Unit of the Department of Finance.

(5) "Retail licenses" shall include the following:

(A) Off-sale retail licenses: Type 20 (off-sale beer and wine) and Type 21 (off-sale general).

(B) On-sale retail licenses: All retail on-sale licenses, except Type 43 (on-sale beer and wine for train), Type 44 (on-sale beer and wine for fishing party boat), Type 45 (on-sale beer and wine for boat), Type 46 (on-sale beer and wine for airplane), Type 53 (on-sale general for train and sleeping car), Type 54 (on-sale general for boat), Type 55 (on-sale general for airplane), Type 56 (on-sale general for vessels of more than 1,000 tons burden), and Type 62 (on-sale general bona fide public eating place intermittent dockside license for vessels of more than 15,000 tons displacement).

(6) A "premises to premises transfer" refers to each license being separate and distinct, and transferable upon approval of the department.

(d) For purposes of this section, the number of retail licenses in the county shall be determined by the most recent yearly retail license count published by the department in its Procedure Manual.

(e) The enactment of this section shall not affect any existing rights of any holder of a retail license issued prior to April 29, 1992, whose premises were destroyed or rendered unusable as a result of the civil disturbances occurring in Los Angeles from April 29 to May 2, 1992, to reopen and operate those licensed premises.

(f) This section shall not apply if the premises have been licensed and operated with the same type license within 90 days of the application.
December 5, 2007

California Alcoholic Beverage
Control Board
Fresno District Office
3640 East Ashlan
Fresno, CA 93726

Attention: Joyce Knodel

RE: Olive Mini Mart - 709 West Olive Avenue

Dear Ms. Knodel:

The City Council of the City of Porterville has voted to approve submittal of this letter regarding the public convenience or necessity to be served to allow for an upgrade from a Type 20 off-sale of beer and wine license to a Type 21 off-sale of beer, wine and distilled spirits license for the Olive Mini Mart located at 709 West Olive Avenue.

The upgrade of the Type 20 off-sale beer and wine license to a Type 21 off-sale beer, wine and distilled spirits license represents a viable economic asset to the community which will contribute tax revenues to the local economy. The majority of the alcohol sales from the mini mart are to be in small quantities in conjunction with the purchase of food and other supplies. Furthermore, there are several blocks of residences also located on the south side of West Olive Avenue. Being located on the south side allows patrons to walk to the store without the need to cross the busy four lane thoroughfare.

For these reasons, the City Council of the City of Porterville supports the issuance of the Type 21 off-sale license for beer, wine and distilled spirits for the Olive Mini Mart, located at 709 West Olive Avenue.

Sincerely,

__________________________
Cameron Hamilton, Mayor

BF:bf
COUNCIL AGENDA – December 4, 2007

SUBJECT: AMENDMENTS TO EMPLOYEE PAY AND BENEFIT PLAN, AND EMPLOYEE RETIREMENT SYSTEM

SOURCE: Administrative Services/Human Resources

COMMENT: On October 16, 2007, City Council adopted Resolution No. 100-2000 amending the Employee Pay and Benefit Plan for Fiscal Years 2007-08 and 2008-09, and the Employee Retirement System covering General Series Employees represented by the Porterville City Employees Association (PCEA) contingent upon approval by the General Series employee group. Subsequent to that Council meeting, City representatives met with representatives of the PCEA at which time PCEA did not grant its approval. City representatives have now concluded the continued Meet and Confer Sessions on matters within the scope and purview of the Meyers-Milias-Brown Act, and a revised written Memorandum of Understanding (MOU) has been executed. The protracted M.O.U. (Two-year Agreement) covers matters pertaining to wages, benefits and working conditions.

City Council acceptance and approval of an executed M.O.U. is most commonly demonstrated by Council authorization to change or amend, when applicable, those documents as are necessarily known to implement the points of agreement contained in the M.O.U.

RECOMMENDATION: That the City Council rescind Resolution No. 100-2000 and adopt the attached resolution amending the Employee Pay and Benefit Plan for Fiscal Years 2007-08 and 2008-09, and the Employee Retirement System, and authorize the Mayor to execute these and other documents necessary to implement the provisions thereof.

ATTACHMENT: Draft Resolution

DCM Appropriated/Funded CM Item No. 15
RESOLUTION NO. ___ -2007

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE AMENDING THE EMPLOYEE PAY AND BENEFIT PLAN, AND THE EMPLOYEE RETIREMENT SYSTEM

WHEREAS: The City Council has determined and reiterated that an Employee Pay and Benefit Plan, Classification Plan, Personnel System Rules and Regulations, Health Plan, and Retirement Plan are essential for the proper administration of the City’s affairs, including employee recruitment and retention, and for proper supervision of City Employees; and

WHEREAS: The City Council recognizes the necessity of amending and/or changing the contents of such plans and regulations from time to time, and of executing instruments to implement and to keep the provisions thereof current, and to maintain the relevancy of same; and,

WHEREAS: There has been concurrence on a Memorandum of Understanding with the Porterville City Employees’ Association for Fiscal Years 2007-08 and 2008-09, covering provisions to amend the Employee Pay and Benefit Plan, and the Employee Retirement System, as they relate to employees holding positions represented by such recognized employee organization.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Porterville that the Employee Pay and Benefit Plan and the Employee Retirement System, for employees holding positions designated in the General Series are hereby amended as follows:

I. **EMPLOYEE PAY AND BENEFIT PLAN.**

A. **COST OF LIVING INCREASE.**

The Employee Pay and Benefit Plan, Section II, A., Position Pay Plan Schedule, shall be amended to increase the base pay for all General Series employees as follows:

- Effective 09-01-07: 4%
- Effective 07-01-08: 2%
- Effective 01-01-09: 2%
B. SALARY ADJUSTMENTS.

In addition to the cost of living increases as stated above, the Employee Pay and Benefit Plan, Section II, A, Position Pay Plan Schedule, shall be amended to adjust the salaries of certain classifications within the General Series employee group as follows:

Effective 01-01-08: Communications Dispatcher and Senior Communications Dispatcher classifications shall receive a 5% salary adjustment as noted on Exhibit A, attached hereto, and made a part hereof, as though set forth herein.

Effective 04-01-08: Specified certified classifications shall receive salary adjustments as noted on Exhibit A, attached hereto, and made a part hereof, as though set forth herein.

Effective 09-01-08: Specified other classifications shall receive salary adjustments as noted on Exhibit B, attached hereto, and made a part hereof, as though set forth herein.

II. CALIFORNIA PUBLIC EMPLOYEES RETIREMENT SYSTEM (CalPERS)

Effective 12-01-07, the employee’s 8% share of the monthly CalPERS contribution shall be converted to salary for all General Series employees, providing said employees participate in paying the employee’s pre-taxed monthly retirement contribution of 8% on the same date as the salary conversion.

III. POTENTIAL RECOGNITION OF NON-SWORN PUBLIC SAFETY SUPPORT UNIT.

It is the understanding of the City that there may be a petition for recognition by non-sworn Public Safety Support Unit employees, and the City would be receptive to this petition. Should such recognition occur, the salaries and benefits for the second year of this MOU, i.e., from July 1, 2008 through June 30, 2009, shall become null and void for those employees holding positions recognized by the non-sworn Public Safety Support Unit.

BE IT FURTHER RESOLVED that the Mayor of the City of Porterville is hereby authorized to execute those documents as are necessary to implement the provisions hereof.

________________________________________
Cameron Hamilton, Mayor

Attest:

________________________________________
Patrice Hildreth, Acting Chief Deputy City Clerk
EXHIBIT A

CITY OF PORTERVILLE
Classification Adjustments: 2007-2008
GENERAL SERIES

<table>
<thead>
<tr>
<th>Classification</th>
<th>Increase</th>
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<tbody>
<tr>
<td>Building Inspector I</td>
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<tr>
<td>Building Inspector II</td>
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</tr>
<tr>
<td>Communications Dispatcher</td>
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<tr>
<td>Communications Dispatcher, Senior</td>
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</tr>
<tr>
<td>Electrician/Instrument Technician</td>
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<td>Field Services Worker II</td>
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<td>Field Services Worker III</td>
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<td>Laboratory Attendant (Assistant)</td>
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<td>Laboratory Technician III</td>
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<td>Mechanic I</td>
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<tr>
<td>Meter Reader</td>
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<tr>
<td>Parks Maintenance Worker II</td>
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<td>Parks Maintenance Worker III</td>
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<tr>
<td>Records Clerk</td>
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<tr>
<td>Records Clerk, Senior</td>
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<tr>
<td><em>Water Utility Worker I</em></td>
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<tr>
<td><em>Water Utility Worker II</em></td>
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<td><em>Water Utility Worker III</em></td>
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<tr>
<td>WWTF Operator I</td>
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* Classification change for Field Services Workers in the Water/Sewer Sections
## CITY OF PORTERVILLE
### Classification Adjustments: 2008-2009
#### GENERAL SERIES

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<th>Classification</th>
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<tr>
<td>Account Clerk I</td>
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<td>Clerical Assistant I</td>
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<td>Clerical Assistant Trainee</td>
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<tr>
<td>Engineering Specialist III</td>
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<tr>
<td>Leisure Services Coordinator</td>
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<td>Library Assistant</td>
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<td>Parks Maintenance Worker I</td>
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<tr>
<td>Public Works Inspector</td>
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</table>
SUBJECT: AMENDMENT TO THE SCHEDULE OF SEASONAL AND PART-TIME PAY RATES

SOURCE: Administrative Services

COMMENT: At the November 20, 2007 meeting of the City Council, and in support of the YES after-school program administered in collaboration with the Porterville Unified School District, the Council approved proposed changes to the schedule of Seasonal and Part-Time Pay Rates, including the creation of the part-time positions of After School Assistant II and After School Assistant III, as well as After School Site Supervisor.

To effect these changes, the enclosed proposed draft Resolution has been prepared for the Council’s consideration and approval.

RECOMMENDATION: That the City Council:

1. Adopt the attached draft Resolution authorizing a change to the Schedule of Wages for Seasonal and Part-Time Employees of the City’s Employee Pay and Benefit Plan; and

2. Authorize the Mayor to execute these and other documents necessary to implement the provisions hereof.

ATTACHMENT: Draft Resolution

Item No. 16
RESOLUTION NO. ___ - 2007

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE APPROVING AN AMENDMENT TO THE SEASONAL AND PART-TIME PAY RATES

WHEREAS, the City Council of the City of Porterville has established a Schedule of Wages for Seasonal and Part-Time Employees; and

WHEREAS, it is proposed to amend the Fiscal Year 2007-08 Schedule to include the position classifications of After School Assistant II ($8.90 - $10.30), After School Assistant III ($10.82 - $16.78), and After School Site Supervisor ($16.78 - $21.42); and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Porterville does hereby approve the revised Schedule of Wages for Seasonal and Part-Time Employees, attached hereto and incorporated herein by this reference as Exhibit “A”, effective December 1, 2007.

BE IT FURTHER RESOLVED that the Mayor of the City of Porterville is hereby authorized to execute those documents as are necessary to implement the provisions hereof.

________________________________________
Cameron Hamilton, Mayor

ATTEST:

John Longley, City Clerk

________________________________________
Patrice Hildreth, Acting Chief Deputy City Clerk
CITY OF PORTERVILLE

SEASONAL AND PART-TIME PAY RATES

2007-2008 FISCAL YEAR

<table>
<thead>
<tr>
<th>Position</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>After School Assistant II</td>
<td>$ 8.90 - $10.30/hr.</td>
</tr>
<tr>
<td>After School Assistant III</td>
<td>$10.82 - $16.78/hr.</td>
</tr>
<tr>
<td>After School Site Supervisor</td>
<td>$16.78 - $21.42/hr.</td>
</tr>
<tr>
<td>Assistant Zalud House Curator</td>
<td>$ 7.50 - $ 9.75/hr.</td>
</tr>
<tr>
<td>Clerical (Part-Time)</td>
<td>$ 7.50 - $ 9.75/hr.</td>
</tr>
<tr>
<td>Library Aide</td>
<td>$ 7.50 - $ 8.75/hr.</td>
</tr>
<tr>
<td>Lifeguard (Senior Lifesaving)</td>
<td>$ 7.50 - $ 9.25/hr.</td>
</tr>
<tr>
<td>Lifeguard (WSI)</td>
<td>$ 7.75 - $10.25/hr.</td>
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<tr>
<td>Maintenance Aide (Seasonal)</td>
<td>$ 7.50 - $10.25/hr.</td>
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<tr>
<td>Pool Cashier</td>
<td>$ 7.50 - $ 9.25/hr.</td>
</tr>
<tr>
<td>Pool Manager</td>
<td>$ 8.25 - $12.75/hr.</td>
</tr>
<tr>
<td>Pool Manager Assistant</td>
<td>$ 7.75 - $11.75/hr.</td>
</tr>
<tr>
<td>Recreation Leader I</td>
<td>$ 7.50 - $ 8.25/hr.</td>
</tr>
<tr>
<td>Recreation Leader II</td>
<td>$ 7.75 - $ 9.75/hr.</td>
</tr>
<tr>
<td>Recreation Leader III</td>
<td>$ 9.75 - $14.75/hr.</td>
</tr>
</tbody>
</table>

**Recreation Specialist .................................................. Percentage or Flat Rate

Reserve Firefighter .................................................... $ 7.50 - $ 8.75/hr.

Sports Official/Umpire or Referee (Youth) ......................... $ 7.50 - $20.75/game

Sports Official/Umpire or Referee (Adult) .......................... $ 7.50 - $35.75/game

Student Intern ........................................................... $ 7.50 - $10.75/hr.

***Off-Highway Vehicle Coordinator ......................... $10.75 - $14.75/hr.

***Off-Highway Vehicle Assistant Coordinator ............... $ 8.75 - $11.75/hr.


**Pay to be determined by number of students enrolled and fees charged for self-supporting classes and activities.

***Funded by the State of California Off-Highway Vehicle Division Grant.
SUBJECT: CANCELLATION OF JANUARY 1, 2008 COUNCIL MEETING

SOURCE: Administration

COMMENT: The City Council has cancelled the first Council meeting in January for the past four years due to State budgetary activity, increased staff workloads, effects of the hiring freeze, and efforts to conform to the vacation and administrative leave policy by Directors and key personnel. This item is again being presented should the Council wish to consider canceling the first regular meeting in January, which falls on January 1, 2008. Any action taken at this meeting regarding the January 1st meeting would allow for the notification of any interested parties and the timely scheduling of items for Council consideration.

If the January 1st meeting is not held, the next regularly scheduled meeting would be January 15, 2008. However, should a necessity arise, a special meeting could be conducted to expedite any item which might require immediate action.

RECOMMENDATION: That the City Council cancel the January 1, 2008 Council Meeting.

Item No. 17
CONSIDERATION OF SUPPORT FOR THE FORMATION OF TULARE COUNTY COUNCIL OF CITIES

Beginning in the month of August 2007 at the invitation of the City of Porterville, council and city manager representatives from the incorporated cities of Tulare County have been meeting on a monthly basis to facilitate a discussion concerning what issues are being encountered by the individual cities. With the recognition that a number of the issues are shared in common amongst the cities, it has become the interest of the representatives of the cities that the association of the cities possess a defined level of structure and purpose.

At the October 16, 2007 meeting of the City Council, the Council considered and approved the support in the formation of a structured association of the incorporated cities of Tulare County. In response to the interest of the cities to define the organization, the proposed Council of Cities is presented for the Council's consideration for support.

The Tulare County Council of Cities would continue to meet monthly in each of the member cities on a rotational basis, and that each city council designate one of its members to serve as its representative (as well as an alternate) to the Council of Cities, allowing the opportunity as well for at least one other council member to attend the monthly meetings. The city managers from each of the cities would serve as support staff to the Council.

RECOMMENDATION: That the City Council:

1. Consider support for the formation of the Tulare County Council of Cities; and

2. Select a member of the Council to serve as the City of Porterville representative to the Council of Cities, as well as an alternate.

ATTACHMENT: Council of Cities “Statement of Purpose”
COUNCIL OF CITIES
STATEMENT OF PURPOSE

A series of meetings was held in which representatives from the incorporated cities were invited to participate in discussion of issues of common concern. After three such meetings, it was determined that a course of action would be established to bring solutions to regional issues affecting all the Cities in Tulare County.

The first step identified in establishing a framework in which the Cities could work effectively, efficiency, and cooperatively in developing solutions to regional issues was the formation of the Council of Cities (Council).

The Council shall be comprised of one elected official to serve as the representative from each city, and one elected official to serve as an alternate. This makeup is to provide for uniform representation and efficiency in the conduct of the business of the Council. The City Managers from each city will serve as support staff to the Council.

The Council shall meet once a month. The cities shall all participate in hosting these meetings in each of their respective cities to minimize the burden to any single agency. Agendas will be developed to ensure efficient and productive meetings, recognizing the value of time for the elected officials. Meetings are to be designed to run no more than one hour and thirty minutes per month.

The second step identified was to establish the method by which the Council would communicate its thoughts, strategies, concerns, and ideas to the Citizens, Boards, and Commissions through which the cities conduct municipal business. To accomplish this task, the Council shall appoint one of its representatives to serve as Chair. The Chair will have the primary responsibility of attending appropriate Board and Commission meetings to ensure views of the cities are taken into consideration on regional issues.

The nature of issues to be addressed by the Council of Cities may include, but is not limited to the following:

<table>
<thead>
<tr>
<th>Regional Blue Print efforts</th>
<th>Public safety concerns</th>
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<td>Regional planning</td>
<td>Service delivery</td>
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<td>Land use matters</td>
<td>Resource allocation</td>
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<td>Air quality</td>
<td>Transportation</td>
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<td>Water quality</td>
<td>Training opportunities</td>
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<tr>
<td>Water availability</td>
<td>Emergency preparedness</td>
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By participating in the Council of Cities, the cities recognize the benefits of working cooperatively to promote fairness and support for the delivery of municipal services.
SUBJECT: CONSIDERATION OF SUPPORT FOR LETTER TO TULARE COUNTY BOARD OF SUPERVISORS CONCERNING PROPOSED COUNTY IMPACT FEE PROGRAM

SOURCE: Administration

COMMENT: Enclosed, please find a final draft of a letter collaboratively developed by the city representatives for the association of cities relative to the proposed County Impact Fee Program. It is the intent of the cities representatives that this letter be approved by the city council of each incorporated city in Tulare County, then be addressed and presented by cities representatives to each individual County Board of Supervisor at one of their meetings in January 2008.

RECOMMENDATION: That the City Council consider the draft letter concerning the proposed County Impact Fee Program, and authorize the Mayor to sign the letter.

ATTACHMENT: Draft Letter
December 4, 2007

Allen Ishida
Chairman, Board of Supervisors
County of Tulare
Administration Building
2800 W. Burrel Avenue
Visalia, CA 93291

Dear Chairman Ishida:

Please accept this letter as a correspondence of general comments and expression of concerns of the incorporated cities of Tulare County relative to the Tulare County Draft Public Facilities Impact Fees Study. County staff committed months ago that a meeting would be scheduled whereby City and County staff persons could meet in a collaborative forum to address the Study. However, to date no such meeting has been convened, nor has there been any indication that such a meeting is planned. Given the magnitude of a County impact fee program with potential implementation with cities, the lack of responsiveness is unsettling.

The general comments and concerns of the cities generally fall within several areas: 1) the seemingly inequitable fee distribution between the incorporated and unincorporated areas of Tulare County; 2) the incorrect premise of the fee study that city development impacts County infrastructure and not vice versa; 3) the belief that asking cities to impose impact fees is premature due to the County’s General Plan Update, Facility Assessment Study, and Capital Improvement Program are currently being prepared and that fees should not be considered until these efforts are completed; 4) the need for collaboration and evaluation with the cities as to the methodology, timing and application of the fee program; and 5) the similar need to engage private sector interests who will pay the majority of the impact fees.

The study states that the County provides services, in varying degrees, to both incorporated and unincorporated areas and that impact fees just on unincorporated growth would yield insufficient revenue to fund the entirety of the facilities needed to serve new development. Consequently, the County must rely on the cities to impose fees on the County’s behalf if the full cost of needed County facilities is to be recovered. Following is a summary of the estimated annual Development Impact Fee revenues as per the study:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Total Estimated Annual Fees (County-wide)</td>
<td>$8,412,937</td>
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<tr>
<td>Incorporated Areas</td>
<td>$7,687,210 (91.40%)</td>
</tr>
<tr>
<td>Unincorporated Areas</td>
<td>$ 725,727 (8.60%)</td>
</tr>
</tbody>
</table>

Note: Total County Population 414,600
Incorporated Population 262,900 (63.40%)
Unincorporated Population 151,700 (36.60%)

(Study used January 2006 population figures)
These calculations indicate that incorporated areas would be paying over ninety percent (90%) of the annual impact fee revenues, more than ten times the amount generated by unincorporated areas. The study also states that cities are only providing services within their own city limits, which is faulty in its premise because many cities are currently providing substantial services to County residents, including water, sewer, roads, and parks. Furthermore, County residents traverse into the cities for employment, medical and professional services, education opportunities, entertainment and recreation, governmental services and other necessities, and in doing so, all significantly impacting local infrastructure facilities.

Consideration of County impact fees is premature because the County’s General Plan Update, Facility Assessment Study, and Capital Improvement Program are not complete. The County is still updating its General Plan, which is impetus for implementing impact fees. The study states also that the County should maintain a Capital Improvements Program to plan for future infrastructure needs, and identify fee revenue with specific projects. The Capital Improvement Program should be completed before considering any impact fees, not only to help determine accuracy of fees but to also identify where facilities will be located. Accordingly, there needs to be some mechanism to ensure that fees generated by development in an area are directed to improvements in the area of origin (such as zones of benefit). This issue will be of critical interest to cities, who will expect that fees generated in individual cities will be spent on projects benefiting their areas.

The study consistently states that upon the completion of the County’s ongoing facility needs assessment, fees should be updated to reflect new information when it becomes available. In fact, the facility needs assessment should be completed before the adoption of any impact fees. The facility needs assessment should be completed after the County’s General Plan update and before the adoption of any impact fees so that the impact of County proposed public facility fees can be evaluated by the cities.

To generate support of the County’s effort toward impact fees, the County should have engaged the cities from the very beginning so that city staffs and councils could have understood both the methodology and timing of the fee program, as well as the actual needs of the County for establishing the impact fees. The County should undertake collaborative measures now to engage the cities in the proposed impact fees if the interest is to achieve a mutually acceptable County Impact Fee Program.
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<th>Mayor</th>
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<td>City of Dinuba</td>
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<td>Mayor</td>
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<td>City of Farmersville</td>
<td>City of Lindsay</td>
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<td>City of Porterville</td>
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<td>Mayor</td>
<td>Mayor</td>
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<td>City of Visalia</td>
<td>City of Woodlake</td>
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</table>
PUBLIC HEARING

TITLE:  CONDITIONAL USE PERMIT 5-2007 MODIFICATION NO 1 TO ALLOW FOR A MODIFICATION TO THE EXISTING FLOOR PLAN FOR THE SITE LOCATED AT 1091 W. OLIVE AVENUE

SOURCE:  COMMUNITY DEVELOPMENT DEPARTMENT - PLANNING DIVISION

HISTORY:  On June 5, 2007 the Porterville City Council by Resolution 44-2007 approved Conditional Use Permit 5-2007 which allowed for the expansion of an existing restaurant (Seafood Café), with a separate bar to be utilized as a nightclub after restaurant hours (phase one). The second phase of the project proposed a banquet facility/dancehall in the area previously utilized for bowling. As part of the second phase the building will undergo an exterior remodel. The restaurant currently operates and serves beer, wine and distilled spirits under an on-sale license in conjunction with the serving of meals. The approved hours of operation are as follows:

Monday through Thursday - 10:00 a.m. to 2:00 a.m.
Friday and Saturday - 10:00 a.m. to 2:00 a.m.
Sunday - 10:00 a.m. to 8:00 p.m.

COMMENT:  The applicant is now requesting approval of a modification to the existing floor plan which would close off a portion of the restaurant area to be utilized as a multi-purpose room. The proposed room, approximately 274± square feet, is located next to the entrance to the restaurant. Depending on the type of use and proposed square feet of the room, the California Building Code 2001 allows for a maximum occupancy of 11 to 24 people.

The applicant has indicated that the multi-purpose room may be used for a future card room. Approval of that use would be subject to Chapter 15 of the Municipal Code and Regulations of the Bureau of Gambling Control Commission and is not associated with the approval of this modification.

Additionally, the applicant has requested additional hours of operation for the restaurant, bar area and nightclub for Sundays. The original approval was from 10:00 a.m. to 8:00 p.m. The request for the additional hours of operation now proposed for Sundays are from 10:00 a.m. to 2:00 a.m.

[Signature]

DD: Appropriated/Funded  CM:  ITEM NO. 20
Pursuant to Section 15301 Class 1 (Existing Facilities) of the California Environmental Quality Act (CEQA), the proposed project is categorically exempt.

RECOMMENDATION: It is recommended that the City Council adopt the draft resolution approving Conditional Use Permit 5-2007 Modification No. 1 subject to conditions of approval.

ATTACHMENT:

1. Complete Staff Report
CITY COUNCIL AGENDA: DECEMBER 4, 2007

PUBLIC HEARING - STAFF REPORT

TITLE: CONDITIONAL USE PERMIT 5-2007 MODIFICATION NO. 1

APPLICANTS: Luis Farias
1091 W. Olive Ave.
Porterville, CA 93257

HISTORY: On June 5, 2007 the Porterville City Council by Resolution 44-2007 approved Conditional Use Permit 5-2007 which allowed for the expansion of an existing restaurant (Seafood Café), with a separate bar to be utilized as a nightclub after the restaurant hours (phase one). The second phase of the project proposed a banquet facility/dancehall in the area previously utilized for bowling. As part of the second phase the building will undergo an exterior remodel. The restaurant currently operates and serves beer, wine and distilled spirits under an on-sale license in conjunction with the serving of meals. The approved hours of operation are as follows:

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Friday and Saturday - 10:00 a.m. to 2:00 a.m.
Sunday - 10:00 a.m. to 8:00 p.m.

COMMENT: The applicant is now requesting approval of a modification to the existing floor plan which would close off a portion of the restaurant area to be utilized as a multi-purpose room. The proposed room, approximately 274± square feet, is located next to the entrance to the restaurant. Depending on the type of use and proposed square feet of the room, the California Building Code 2001 allows for a maximum occupancy of 11 to 24 people.

The applicant has indicated that the multi-purpose room may be used for a future card room. Approval of that use would be subject to Chapter 15 of the Municipal Code and Regulations of the Bureau of Gambling Control Commission and is not associated with the approval of this modification.

Additionally, the applicant has requested additional hours of operation for the restaurant, bar area and nightclub for Sundays. The original approval was from 10:00 a.m. to 8:00 p.m. The request for the additional hours of operation now proposed for Sundays are from 10:00 a.m. to 2:00 a.m.

GENERAL PLAN AND LAND USE/ZONE DESIGNATION:

The site is designated for Heavy Commercial uses and is zoned C-3 (Heavy Commercial).
SURROUNDING AREA ZONING AND LAND USE:

NORTH: City C-3 - Existing business
SOUTH: County – Low Density Residential
EAST: City C-3 – Along Olive Avenue frontage there is an existing businesses behind and also adjacent there is County residential along the rear of the property
WEST: City C-3 – Along Olive Avenue frontage there is an existing businesses behind and also adjacent there is County residential along the rear of the property

STAFF ANALYSIS: All conditions outlined in City Council Resolution No. 44-2007 will remain in full force and effect. Any proposed use of the multi-purpose room regarding gaming activates will be subject to the regulations outlined in 15-20(Regulations) of the Bureau of Gambling Control Commission and is not a part of approval of this modification.

ALTERNATIVES TO THE PROJECT AND THEIR EFFECT:

1. No project. Denial of the proposed modification would allow the applicant to continue with the existing uses at the restaurant to including live entertainment absent the use of a portion of the restaurant be utilized for a multi-purpose room.

2. Approve the project. Approval of the request would result in the applicant to continue with the existing uses at the restaurant with the addition of the multi-purpose room.

ENVIRONMENTAL: The project is Categorically Exempt pursuant to Section 15301, Class 1 of the CEQA Guidelines - (Existing Facilities).


RECOMMENDATION: It is recommended that the City Council adopt the draft resolution approving Conditional Use Permit 5-2007 Modification No. 1 subject to conditions of approval.

ATTACHMENTS:

1. Locator map
2. Application
3. City Council Resolution 44-2007
4. Originally approved plans for Conditional Use Permit 5-2007
5. Notice of Exemption
6. Draft Resolution to include Exhibit “A”
CONDITIONAL USE PERMIT
NO.#5–2007 MODIFICATION NO.#1

OLIVE AVE.

PROSPECT

MAYN

ROBY

COBB

CLOVERLEAF

STATE HWY. 65

SUBJECT SITE

COUNTY

ATTACHMENT NO. 1
CITY OF PORTERVILLE

APPLICATION FOR CONDITIONAL USE PERMIT

NOTE: The basic purpose of the Conditional Use Permit Article 29 of The City Zoning Ordinance is to assure that the design and subsequent operation of a conditional use will be reviewed in order to carry out the purposes of the Ordinance and to protect the public health, safety and welfare, due to the unique and special characteristics of such uses.

PROJECT NAME: The Seafood Cafe and El Reventon nightclub
Amend existing Conditional Use Permit #5-2007

NAME, MAILING ADDRESS AND TELEPHONE NUMBER OF PROPERTY OWNER(S):
El Reventon LLC (Luis Farias, Graciela Farias, Salvador Farias)
1091 west olive Ave Porterville CA 93257

NAME, MAILING ADDRESS AND TELEPHONE NUMBER OF APPLICANT/CONTACT PERSON:
Luis Farias (818) 625-6067
901 Helen way Bakersfield CA 93307

PROJECT ADDRESS AND NEAREST CROSS STREETS:
1091 west olive Ave Porterville CA 93257
To the west south mason to the east Cobb

The applicant requests a Conditional Use Permit to use the above described property for the following purposes:
patron dancing, restaurant, live entertainment
nightclub and cardroom.

Date of most recent sale of property: November 11, 2005

If applicant is the lessee, give date property was leased:

List below the original deed restrictions pertaining to the type of improvements permitted:

Date said restrictions expire:

(Please attach a copy of original printed restrictions in answer to this question. Properly underline those features controlling the type and class of uses permitted).
A Plot Plan and 300’ radius property owners map, and corresponding mailing list are attached and made a part of this application. (See detailed instructions on Page 4 of this form).

1. State how the proposed use will not be materially detrimental to the public welfare or pose injury to property or improvements in such vicinity and zone in which the use is proposed.

There will be no hazardous materials used in this project and enough security officers to cover all areas.

2. Principal requirements of intended use (Please answer the following statements as completely as possible).

(a) Total number of people that the building can accommodate at one time, or grounds if the use is not conducted in the building at one time (Occupancy Capacity).

295

(b) Total number of employees that will work on the property.

Between 15 - 25 phase 1

and 25 - 35 for phase 2 and 3

(c) Total number of off-street parking spaces provided or planned.

There will be about 200 for final phase.

Now there are around 100

(d) Maximum height of buildings or structures.

Existing height of 18 feet

(e) If the application is not intended to be for a permanent conditional use, state the length of time for which it is requested.

not available
We, the undersigned OWNERS of ADJACENT PROPERTY as shown upon the map attached to the application, hereby certify that we have read the foregoing petition and agree that the fact stated correctly and completely present the conditions surrounding the property involved in the application, and believe the application SHOULD BE GRANTED. (Add additional sheets where necessary. These signatures are desirable but not required).

<table>
<thead>
<tr>
<th>No. on Map</th>
<th>Name</th>
<th>Address</th>
<th>APN</th>
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OWNERS DECLARATION

STATE OF CALIFORNIA     )   )  ss
COUNTY OF TULARE       )

I, Louis Farías, being duly sworn, declare and say that I am the owner of part (or all) of the property involved and that this application has been prepared in compliance with the requirements of the Porterville City Council as printed herein and that the foregoing information thoroughly and completely, to the best of my ability, presents the argument in behalf of the application except as to the matters stated to be on my information and belief.

I declare under penalty of perjury that the foregoing is true and correct, executed at Porterville, CA this 01 day of November, 2004.

Telephone (512) 635-6017

Signed

Mailing Address 901 Helen Way, Bakersfield, CA 93307

This is to certify that the foregoing application has been inspected by me and found to be complete and acceptable for filing with the Porterville City Council.

Received ___________________________ Date

Receipt No. ____________

By ________________________________
RESOLUTION NO. 44-2007

A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF PORTERVILLE CONTAINING FINDINGS AND CONDITIONS IN
SUPPORT OF APPROVAL OF CONDITIONAL USE PERMIT 5-2007 TO
ALLOW THE EXPANSION OF AN EXISTING RESTAURANT WITH LIVE
ENTERTAINMENT AND BANQUET FACILITY/DANCEHALL WITH
SEPARATE BAR AREAS INTO A PREVIOUSLY UTILIZED BOWLING AREA
(FORMERLY OLIVE BOWL) TO BE LOCATED AT 1091 W. OLIVE AVENUE

WHEREAS: The City Council of the City of Porterville at its regularly scheduled meeting
of June 5, 2007, conducted a public hearing to consider Conditional Use Permit 5-2007. The applicants
are requesting approval of a Conditional Use Permit to allow the expansion of an existing restaurant
with a separate bar to be utilized as a restaurant/nightclub with live entertainment (phase one). Phase
two consists of a banquet facility/dancehall with separate bar areas to occupy the area previously utilized
for bowling (phase two). The project is located at 1091 W. Olive Avenue (formerly the Olive Bowl) in a C-3 Zone.

WHEREAS: The City Council received testimony from all interested parties relative to
said Conditional Use Permit; and

WHEREAS: The City Council made the following findings:

1. That pursuant to Section 15323, Class 23, - (Normal Operations of Facilities for Public
Gatherings) of the California Environmental Quality Act Guidelines, the Conditional
Use Permit to allow the sale of beer, wine and distilled spirits under an on-sale license
in conjunction with an existing restaurant is Categorically Exempt.

2. That Section 2100 B-2 of the Porterville Zoning Ordinance requires approval of a
Conditional Use Permit for new establishments proposing to sell alcoholic beverages
under an on-sale license in conjunction with the serving of meals.

3. That the proposed project is consistent with the General Plan.

The General Plan designates the site as General Commercial as supported by the C-3
(Heavy Commercial) Zoning and allows for the proposed use.

4. That the design and operation of the proposed project are consistent with the General
Plan.

The proposed use is allowed in the C-3 Zone subject to the approval of a Conditional
Use Permit.
5. That the proposed location of the project and the conditions under which it will be operated or maintained will not be detrimental to the public health, safety, welfare, or materially injurious to properties or improvements in the vicinity.

Conditions of approval are included to ensure adequate development standards are met.

6. That the standards of population density, site area, dimensions, site coverage, yard spaces, height of structures, distance between structures, off-street parking facilities, and landscaped areas will produce an environment of stable and desirable character consistent with the objectives of the Zoning Ordinance.

7. That the proposed sale of alcoholic beverages (beer, wine and distilled spirits) under an on-sale license in conjunction with a restaurant with a separate bar area is allowed in the C-3 Zone subject to the approval of a Conditional Use Permit.

NOW, THEREFORE, BE IT RESOLVED: That the City Council of the City of Porterville does hereby approve Conditional Use Permit 5-2007 subject to the following conditions:

1. Parking lot lighting shall be provided with an average of one foot-candle across the surface of the parking lot.

2. Parking ¼ seats and 1/50 sq. ft. of dance floor. 165 spaces required.

3. Provide vehicle barrier between developed and undeveloped portions of site to the satisfaction of the City Engineer and Zoning Administrator.

4. A masonry block wall is required around the entire site separating non-residential from the residential zoned property.

5. Hours of Operation:
   Monday through Thursday - 10:00 a.m. to 2:00 a.m.
   Friday and Saturday - 10:00 a.m. to 2:00 a.m.
   Sunday - 10:00 a.m. to 8:00 p.m.


7. The developer/applicant shall pay all applicable fees according to the Municipal Code and State law. The developer/applicant is hereby notified that you have the right to pay fees,
dedications, reservations or other exactions, under protest, pursuant to Government Code Section 66020(a). You have 90 days from the date fees are paid to file a written protest.

8. The developer/applicant shall follow Appendix Chapter 33 of the California Building Code including provision of a grading and drainage plan signed by a licensed civil engineer or architect. The developer/applicant shall comply with City Retaining Wall Standards (adopted by City Council January 3, 1989) at lot lines where such standards are applicable. The grading plan shall include the rehabilitation of the existing parking lot and the parking lot expansion necessary to meet parking requirements.

9. The developer/applicant shall have a registered Civil Engineer or Land Surveyor prepare and submit a Lot Line Adjustment that will reconfigure property lines to meet the requirements of all applicable codes. The following information is required at the time of submittal:

   a. Three copies of a Map and Legal Descriptions.

   b. Adequate title information (deed, etc.) to verify current ownership and the method of creation of the effected parcels.

   c. The Lot Line Adjustment shall be approved prior to the issuance of a building permit.

10. The developer/applicant shall construct and/or repair street, curb, gutter, sidewalk, etc. along the full frontage of the parcel except where they exist and are in good condition in the opinion of the City Engineer (Ord. No. 1306). Sidewalk along Olive Avenue shall be 9.5 feet in width.

11. The developer/applicant shall construct drainage facilities as required to serve the property (Ord. No. 1306). Staff is requesting that the parking lot be designed to convey water to the City drainage system without crossing driveways.

12. Basements shall be in place that allow for mutual ingress, egress and maintenance of the parking lot.

13. Basement shall be in place that allow for mutual use of sewer and water, if applicable.

14. The developer/applicant shall move existing utility structures (For example, poles, splice boxes, vaults, etc.) to a position that provides a minimum of four feet (4') of clear space in the sidewalk area and a minimum of two feet (2') of clear space from the curb face to the structure, unless they are below grade (Title 24 OSA).

15. The developer/applicant shall design and improve the parking lot in conformance with Section 2206 and 2211 (Exhibit A) of the Zoning Ordinance.

16. The developer/applicant shall, under City inspection, remove all existing abandoned and unnecessary items, to the satisfaction of the City Engineer, before the issuance of a
certificate of occupancy (For example, foundations, septic tanks, irrigation pipes, etc.).

17. The developer/applicant shall abandon existing wells, if any, after first getting an abandonment permit from the County Department of Environmental Health, and providing the City Engineer with proof of compliance with County regulations before performing any grading or issuance of the building permit, whichever comes first. Complying with the City's “backflow” prevention ordinance (Resolution No. 9615) is an acceptable alternative to the abandonment requirement.

18. The developer/applicant shall assure compliance with applicable San Joaquin Valley Unified Air Pollution Control District Rules (e.g., Numbers 8010, 8020 and 8030), regarding fugitive dust, as well as Section 7-8, Project Site Maintenance of the Standard Specifications. The developer/applicant shall provide a street sweeper as necessary to comply.

19. The developer/applicant shall comply with Ordinance No. 1636 regarding Waste Water Discharge requirements and shall complete and submit the following:

20. Wastewater Discharge Permit Application, Part “A”,

21. If monitoring is required, based on the responses to questions in Part “A” of the Wastewater Discharge Permit, then the developer/applicant shall complete and submit the remainder of the application along with the Permit Fee, and provide monitoring facilities to allow inspection, sampling, and flow measurement of the flows in the sewer and drainage system.

22. The developer/applicant shall construct the pipe connecting to on-site fire hydrants to City water main standards and shall provide easements for maintenance to the on-site water mains.

23. The developer/applicant is hereby notified that the installation of an additional water meter, servicing the irrigation system would be beneficial for monitoring actual water usage. The City will monitor actual water usage for one year and will bill the owner the impact fees based on the actual water usage.

24. The developer/applicant shall comply with the City standard for “backflow” prevention pursuant to Resolution No. 9615.

25. The developer/applicant shall install a refuse container enclosure according to City standards. Enclosure location to be approved by City prior to issuance of building permit. Enclosure should be oriented for direct stab pick up. The developer/applicant shall also sign a waiver of liability for refuse truck damage to the parking lot if the refuse container location requires refuse trucks to travel on the parking lot.

26. A minimum five (5) foot wide screen-planting strip shall be provided and permanently maintained adjacent to any property line separating a parking area from a public street.
27. A minimum of 5% of parking lot and driveway areas are to be landscaped with live plant materials. The parking lot and driveway areas are to be shaded with trees planted on the property at a minimum ratio of one tree per 8 parking spaces distributed throughout the paved area. Parking lot tree wells are recommended to be a minimum of twenty (20) square-feet in size.

28. The owner/applicant shall install 2 tree wells within the sidewalk area between the driveways along Olive Avenue, and provide and maintain city-approved street trees. The selection of planting locations, and performance of canopy maintenance for street trees shall be conducted in manners to minimize vehicular sight safety conflicts.

29. The owner/applicant is to install trees, approved as City Street Trees, along all public roadway frontages of the property. The number of trees to be planted including those in sidewalk tree wells shall be equivalent to a minimum of one tree per 35 feet of roadway frontage. The trees are to be a minimum of #15 size specimens incorporated into the designated landscape areas. Root barriers are required for all trees planted within ten feet of public sidewalks. The selection of planting locations, and performance of canopy maintenance for the trees shall be conducted to minimize vehicular sight safety conflicts.

30. The owner/applicant shall provide an automatic irrigation system for all landscape planting, including trees and right of way planting. All landscaping shall be installed prior to occupancy and be permanently maintained by the owner/applicant in a healthy and vigorous growing condition, and cleanly appearance. Concrete mow strips shall be installed at the base of all fencing adjoining or crossing tufted-landscaping.

31. The project must comply with latest applicable codes.

32. The proposed restaurant/night club is considered an A-2.1 occupancy. Upon submittal of a permit the following will be required:

33. Submit three (3) complete sets of plans, signed by a licensed Architect or Engineer, to include two (2) sets of energy calculations and structural calculations.

34. Compliance with access laws (both State and Federal) is required.

35. School Development fees and all other City fees are due at the time of building permit issuance.

36. The developer/applicant shall pay all applicable fees according to the Municipal Code and State Law.

37. Building is required to be fully protected by a fire sprinkler system as per Building and Fire codes.
38. Food handling businesses require review and approval from the Tulare County Health Department prior to issue of said building permit. Your proposal also requires a grease interceptor for restaurants.

39. Plan check fees are required at the time of building permit submittal.

40. Seismic review and upgrades as per Building codes will be required.

41. Signs require a separate permit.

42. Based on the occupancy classification, a fire alarm and an automatic sprinkler system may be required.

43. When a sprinkler system is required all valves controlling the water supply for automatic sprinkler systems and water-flow switches on all sprinkler systems shall be electrically monitored where the number of sprinklers are:
   
   a. Twenty or more in Group I Divisions 1.1 and 1.2 occupancies.
   
   b. One hundred or more in all other occupancies.

44. Submit two (2) complete sets of sprinkler and fire alarm plans to the Fire Department for review prior to installation.

45. For automatic sprinkler systems, underground plans must be submitted and approved prior to submittal of the above ground plans. A hydrant will be required within 50 feet of the Fire Department connection.

46. When any portion of the building to be protected is in excess of 150 feet from a water supply on a public street, there shall be installed on-site fire hydrants capable of supplying the required fire flow.

47. Depending on the location of the existing fire hydrant(s), additional fire hydrants may be required. All hydrants must be in place and accepted by the Fire Department prior to any combustibles being brought onto the site.

48. The City will test and maintain all fire hydrants in the City whether on private property or not. An "easement" is required from the owner.

49. Fire hydrant spacing shall be as follows:
   
   a. In Commercial development, one hydrant shall be installed at 300-foot intervals.

50. Access roads shall be provided for every facility, building or portion of a building, when any portion of the facility or portion of an exterior wall is located more than 150 feet from a fire apparatus access as measured by an approved route around the exterior of the building.
51. Project must meet minimum fire flow requirements per the table in Appendix III-A & III-B of the California Fire Code.

52. Areas identified as “Fire Lanes” must be identified as such by red painted curbs and identified per requirements set forth in the California Vehicle Code Section 22500.1.

53. A Knox box will be required. An application may be obtained from the Fire Department.

54. Additional requirements for compliance with the Uniform Fire Code may be added at the time of building permit review when more information regarding the building type and use are provided.

55. Comply with plans and colors and mats

56. Provide security as identified:
   
   a. Phase One of the project, the applicant is allowed a max capacity of 295± patrons, and plans on employing 10± people for the restaurant and nightclub with an additional 7-10 for security

   b. Phase Two of the project, it is anticipated that there will be 20 employees directly related to providing restaurant/banquet service and 15-20 security employees for special functions.

   
   Cameron Hamilton, Mayor

   ATTEST:

   John Longley, City Clerk

   By Georgia Hawley, Chief Deputy City Clerk
STATE OF CALIFORNIA  )
CITY OF PORTERVILLE  )  SS
COUNTY OF TULARE    )

I, JOHN LONGLEY, 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 by the Council of the City of Porterville at a regular meeting of the Porterville City Council regularly called and held on the 5th day of June, 2007.

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

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

JOHN LONGLEY, City Clerk

by Georgia Haskley, Chief Deputy
NOTICE OF EXEMPTION

TO: Office of Planning and Research
1400 Tenth Street, Room 121
Sacramento, CA 95814

FROM: City of Porterville
291 N. Main Street
Porterville, California 93258

Tulare County Clerk
County Civic Center
Visalia, CA 93291

Luis Farias
1091 West Olive Avenue
Porterville, CA 93257

Conditional Use Permit 5-2007 Modification No. 1
Project Title

1091 West Olive Avenue.
Project Location (Specific)

City of Porterville
Tulare County
Project Location (City)
Project Location (County)

Conditional Use Permit 5-2007 Modification No. 1 to all for the modification to the existing floor plan to enclose
approximately 274± square feet of an existing restaurant into a multi-purpose room.
Description of Nature, Purpose, and Beneficiaries of Project

City of Porterville
Name of Public Agency Approving Project

Luis Farias, 1091 W. Olive Avenue, Porterville CA 93257
Person or Agency Carrying Out Project

Exempt Status: (Check One)

Ministerial (Section 15073)
Declared Emergency (Section 15071 (a)
Emergency Project (Section 15071 (b) and (c)
X Categorical Exemption. State type and section number: 15301 Class 1

Existing Facilities:
Reasons why project is exempt

Bradley D. Dunlap, AICP, Community Development Director

Contact Person

If Filed by Applicant:

1. Attached certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the project?
   Yes:_______ No:_______

Date Received for filing:________________ Signature

City Planner__________________
Title

U:NoticeExemptCUP5-2007MOD#1

ATTACHMENT
ITEM NO. 5
RESOLUTION NO.________

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE CONTAINING FINDINGS AND CONDITIONS IN SUPPORT OF APPROVAL OF CONDITIONAL USE PERMIT 5-2007 MODIFICATION NO. 1 TO ALLOW FOR A MODIFICATION TO THE EXISTING FLOOR PLAN FOR THE SITE LOCATED AT 1091 W. OLIVE AVENUE

WHEREAS: On June 5, 2007 the Porterville City Council by Resolution 44-2007 approved Conditional Use Permit 5-2007 which allowed for the expansion of an existing restaurant (Seafood Café), with a separate bar to be utilized as a nightclub after the restaurant hours (phase one). The second phase of the project proposed a banquet facility/dancehall in the area previously utilized for bowling. As part of the second phase the building will undergo an exterior remodel. The restaurant currently operates and serves beer, wine and distilled spirits under an on-sale license in conjunction with the serving of meals.

WHEREAS: The City Council of the City of Porterville at its regularly scheduled meeting of December 4, 2007, conducted a public hearing to consider a request to allow for a modification to the existing floor plan which proposes to close off a portion of the restaurant area to be utilized as a multi-purpose room and to extend the hours of operation on Sundays,

WHEREAS: The room, approximately 274± square feet will be located next to the entrance to the restaurant. Depending on the type of use and considering the footage of the room, the California Building Code 2001 allows for a maximum occupancy of 11 to 24 people;

WHEREAS: The applicant has requested additional hours of operation for the restaurant, bar area and nightclub areas for Sundays. The original approval was from 10:00 a.m. to 8:00 p.m on Sundays. The request for the additional hours of operation now proposed for Sundays are from 10:00 a.m. to 2:00 a.m.;

WHEREAS: The applicant has indicated that the multi-purpose room may be used for a future card room. Approval of that use would be subject to Chapter 15 of the Municipal Code and Regulations of the Bureau of Gambling Control Commission and is not associated with the approval of this modification.

WHEREAS: The City Council received testimony from all interested parties relative to said Conditional Use Permit; and

...ATTACHMENT
ITEM NO. 10
WHEREAS: The City Council made the following findings:

1. The project is Categorically Exempt pursuant to Section 15301, Class 1 of the CEQA Guidelines - (Existing Facilities).

2. That the proposed project is consistent with the General Plan.

   The General Plan designates the site as General Commercial as supported by the C-3 (Heavy Commercial) Zoning and allows for the proposed use.

3. That the design and operation of the proposed project are consistent with the General Plan.

   The proposed use is allowed in the C-3 Zone and has an approved Conditional Use Permit.

4. That the proposed location of the project and the conditions under which it will be operated or maintained will not be detrimental to the public health, safety, welfare, or materially injurious to properties or improvements in the vicinity.

   Conditions of approval addressed in City Council Resolution 44-2007 were included to ensure adequate development standards were met.

5. That the standards of population density, site area, dimensions, site coverage, yard spaces, height of structures, distance between structures, off-street parking facilities, and landscaped areas will produce an environment of stable and desirable character consistent with the objectives of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED: That the City Council of the City of Porterville does hereby approve Conditional Use Permit 5-2007 Modification No. 1 subject to the following conditions:

1. All conditions outlined in City Council Resolution No. 44-2007 will remain in full force and effect except as modified herein.

2. Hours of Operation shall be as follows:
   Monday through Thursday - 10:00 a.m. to 2:00 a.m.
   Friday and Saturday - 10:00 a.m. to 2:00 a.m.
   Sunday - 10:00 a.m. to 2:00 a.m.
3. The subject modification will be developed in accordance with the interior plan labeled Exhibit “A”.

__________________________________________________________
Cameron Hamilton, Mayor

ATTEST:

John Longley, City Clerk

By _______________________________________________________
    Patrice Hildreth, Acting Chief Deputy City Clerk
EL REVENTION Night Club-Restaurant Card Room

Proposed Room Exclusions

Building TR
SUBJECT: DESIGN REVIEW (D) OVERLAY 8-2007 (CVS PHARMACY)

SOURCE: COMMUNITY DEVELOPMENT DEPARTMENT - PLANNING DIVISION

COMMENT: The applicant is requesting approval of Design Review (D) Overlay 8-2007 to facilitate the development of a new 13,225± square foot CVS Pharmacy with a drive-through. The project is being proposed at the north east corner of Henderson Avenue and Westwood Street.

The pharmacy itself, is an allowed use in the C-1 (D) Zone. The project lies in Census Tract 35, which currently has 5 other alcohol licenses. Ten (10) licenses are allowed before the area is deemed impacted or over concentrated by the Department of Alcohol and Beverage Control.

The colors and finish of the proposed building will be that of a Metromont stone (similar to brick but larger) finish in terra cotta with pale yellow inset plaster panels. The building will also incorporate soft clay, beige and red tones accenting rooftops, signage, awnings and lattice work. The angled, or corner, building entrance will add a modern architectural feature, as will the drive-through of the proposed pharmacy. Additionally, landscaping areas will be constructed throughout the parking lot and adjacent to the building. As designed the project will integrate well into the project area.

The surrounding uses include residential uses, a veterinary clinic to the north and vacant land to the west as well as a Masonic Lodge.

The proposed pharmacy requires approval of a Design Review (D) Overlay by the City Council. The D-Overlay project is Categorically Exempt pursuant to “In-fill Development” Section 15332 Class 32 of the CEQA Guidelines.

RECOMMENDATION: That the City Council:

1. Approve Design Overlay Site Review 8-2007 subject to conditions of approval.

ATTACHMENTS:

Complete Staff Report
STAFF REPORT

TITLE: DESIGN REVIEW SITE OVERLAY 8-2007 (CVS PHARMACY)

OWNER/APPLICANT: Ben Ennis
643 N. Westwood Street
Porterville, CA 93257

REPRESENTATIVE: Bill McDermott
Armstrong Development
2377 Gold Meadow Way Suite 100
Gold River, CA 95670

PROJECT LOCATION: Northeast corner of Westwood Street and Henderson Avenue

SPECIFIC REQUEST:

The applicant is requesting approval of Design Review (D) Overlay 8-2007 to facilitate the development of a new 13,225± square foot CVS Pharmacy with a drive-through. The project is being proposed at the northeast corner of Henderson Avenue and Westwood Street.

PROJECT DETAILS:

The site selected for a proposed CVS Pharmacy with a drive-through. The pharmacy will also provide the sale of alcohol but does not require additional approvals for the sale of beer and wine or distilled spirits, as it is an allowed use consistent with the C-1 (D) Zone and General Plan. The Pharmacy itself, is an allowed use in the C-1 (D) Zone. The project lies in Tract 35, which currently has 5 other alcohol licenses. Ten (10) licenses are allowed in each tract area before the area is deemed over concentrated by the Department of Alcohol and Beverage Control. Once an area is over-concentrated, an approving letter of public convenience and necessity is required from the local governing body to be submitted to the ABC for new off-sale licenses. The project utilizes portions of the surrounding parcel for access and therefore the applicant and adjacent property owner have signed a reciprocal ingress/egress agreement (Attachment 4) and are in the process of recording the agreement for access on the south side of the property, to the north of the site along Henderson Avenue and along the West side of the property, to the east of the site along Westwood Street.

The colors and finish of the proposed building will be that of a Metromont stone (similar to brick but larger) finish in terra cotta with pale yellow inset plaster panels. The building will also incorporate soft clay, beige and red tones accenting rooftops, signage, awnings and lattice work. The angled, or corner, building entrance will add a modern architectural feature, as will the drive-through of the proposed pharmacy. Additionally, landscaping areas will be constructed throughout the parking lot and adjacent to the building. As designed the project will integrate well into the project area.
The design of the building and parking lot has been designed in effort to make the building entrance as close to Henderson Avenue as possible. The parking lot has also been specifically designed with crosswalks and additional landscaping making the it inviting and pedestrian friendly. The design and architecture of the building and the incorporated landscaping assist in blending the development with the adjacent veterinary clinic and the primarily residential area.

Initially staff worked with the developer to locate the building at the corner of Westwood Street and Henderson Avenue planning for future development of the intersection. The intent behind locating a building closer to the street is that when future development occurs, a consistent design can be implemented bringing buildings and landscaping closer to the street. This design prevents an intersection where at each corner a large open parking field is found. It is staffs opinion that this design takes away from the neighborhood commercial concept and creates a shopping center theme which is inappropriate and not the intent of a neighborhood commercial design. The developer felt that their building as designed would not function. The entrance to the building is on the opposite side of the building to the pharmacy drive-through, loading and delivery area. The developer felt that locating the building at the corner of the intersection would be too problematic.

STAFF ANALYSIS:

The CVS store’s required parking demand of 66 parking stalls has been met and exceeds the required number of spaces with a total of 76 plus the additional two vehicles that can counted in the drive through pharmacy. The proposed building design, required landscape, loading and parking have required creative design and negotiation between City Staff and the developer to incorporate a design that transitioned well and was consistent with the area Zoning and General Plan.

SURROUNDING LAND USES AND ZONING:

NORTH – City - C-1 (Neighborhood Commercial) Design Review Overlay - Veterinary Facility and residential uses further to the north.
EAST – City - C-1 (Neighborhood Commercial) Assemble uses – Vacant land and Masonic Lodge
WEST – City - R-1 (One Family Residential Zone) Residential uses – Single family homes
SOUTH – City - R-1 (One Family Residential Zone) Residential uses – Single family homes

GENERAL PLAN DESIGNATION AND ZONING:

The subject site is designated General Commercial by the City’s General Plan and Zoned C-1 (D) Neighborhood Commercial with Design Review Overlay.

ENVIRONMENTAL:

The D-Overlay project is Categorically Exempt pursuant to “In-fill Development” Section 15332 Class 32 of the CEQA Guidelines.

RECOMMENDATION: That the City Council:

1. Approve Design Overlay Site Review 8-2007 subject to conditions of approvals.

ATTACHMENTS:

1. Site Plan Landscaping Plan, Elevation Plan (Exhibit “A”),
2. Notice of Exemption
3. D-Overlay Site Review Application
4. Ingress/Egress Agreement
5. Draft Resolution
NOTICE OF EXEMPTION

TO: ______ Office of Planning and Research
1400 Tenth Street, Room 121
Sacramento, CA 95814

X Tulare County Clerk
County Civic Center
Visalia, CA 93291

FROM: City of Porterville
291 North Main Street
Porterville, CA 93257

Ben Kimball, City Planner
291 N. Main Street
Porterville, CA 93257

Design (D) Review Overlay 8-2007 (CVS Pharmacy)
Project Title

Northeast Corner of Henderson Avenue and Westwood Street
Project Location (Specific)

City of Porterville Tulare
Project Location (City) Project Location (County)

Design Review Overlay 8-2007 to allow construction of new CVS Pharmacy with a drive-through.

Description of Nature, Purpose, and Beneficiaries of Project

City of Porterville
Name of Public Agency Approving Project

Jose Ortiz, Associate Planner, City of Porterville
Name of Person or Agency Carrying Out Project

Exempt Status: (Check One)

_____ Ministerial (Section 15073)

_____ Declared Emergency (Section 15071 (a) )

_____ Emergency Project (Section 15071 (b) and (c) )

_____ Categorical Exemption. State type and section number: “In-fill Development" Section 15332 Class 32

X _____ “In-fill Development Exemption” – 15332 Class 32

The project is characterized as in-fill development meeting the conditions described in section 15332 Class 32 Project is not subject to CEQA.

Reasons why project is exempt

Ben Kimball, City Planner
Contact Person

If Filed by Applicant:
1. Attached certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the project? Yes ______ No ______

Signature: ________________________________

City Planner

ITEM NO. 2
291 N. Main St., Porterville, CA 93257 Phone (559) 782-7460 Fax (559) 781-6437
APPLICATION FOR DESIGN REVIEW APPROVAL  D-OVERLAY

NOTE: The basic purpose of the supplemental "D" zone as described in Article 8 of The City Zoning Ordinance is to assure that the design and development of property will be performed giving maximum protection to the surrounding community while allowing for alternative development standards if necessary due to the unique and special characteristics of the property.

Permit Number __________________________ Resolution Number ______________________

CHECK ALL BEING APPLIED FOR:
☐ Conditional Use Permit
☒ Building Permit
☐ Grading/Development Plan
☐ Other ________________________________

Project Name: CVS/PHARMACY W HENDERSON  W WESTWOOD, PORTERVILLE

Name of Applicant/Agent: ARMSTRONG DEVELOPMENT Telephone: (916) 526-2704

Address of Applicant/Agent: 2377 GOLD MEADOW WAY SUITE 100, GAD RIVER, CA 95470

Name of Property Owner: BEN ENSIS Telephone: _____________________________

Address of Owner: 43 N. WESTWOOD ST, PORTERVILLE, CA 93257

Project Location (address, cross street): HENDERSON & WESTWOOD

Assessors Parcel Number(s): 245-040-034, 033

The applicant requests Design Review Approval using the above described property for the following purposes:

Drive-Thru and 24 hour use

Date of most recent sale of property: 9/4/2003

If applicant is the lessee, give date property was leased: PROSPECTED DATE TBD

List below the original deed restrictions pertaining to the type of improvements permitted.

None known

Date said restrictions expire: N/A

(Please attach a copy of original printed restrictions in answer to this question. Properly underline those features controlling the type and class of uses permitted).
1. State how the proposed use will not be materially detrimental to the public welfare or pose injury to property or improvements in such vicinity and zone in which the use is proposed. The CVS/Pharmacy is a consumer valued store which provides health and beauty aid to household goods and pharmaceutical products to the community. Currently the CVS/Pharmacy is a permitted use within the city zoning. Also during construction CVS will follow all federal, state and local building requirements.

2. Principal requirements of intended use (Please answer the following statements as completely as possible).
   (a) Total number of people that the building can accommodate at one time, or grounds if the use is not conducted in the building at one time (Occupancy Capacity).
      244 PEOPLE
   (b) Total number of employees that will work on the property.
      25-30 EMPLOYEES
   (c) Total number of off-street parking spaces provided or planned.
      76 PARKING STALLS
   (d) Maximum height of buildings or structures.
      27' 1/2" BUILDING HEIGHT

3. State how the design of the project does not comply with the any codes and ordinances.
   N/A

I declare under penalty of perjury that the foregoing is true and correct, executed at

Porterville on this 30th day of October, 2007.

Telephone (559) 782-6000 x2

Signed

Mailing Address

This is to certify that the foregoing application has been inspected by me and found to be complete and acceptable for filing with the Porterville City Council.

Received Date

Receipt No.

By

2
WHEN RECORDED, RETURN TO:

GARFIELD BEACH CVS, L.L.C.,
One CVS Drive
Woonsocket, Rhode Island 02895
Attn: Kristine L. Donabedian, Esq.
Store No. 35; Porterville, CA

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RECIPECAL EASEMENT AGREEMENT

THIS RECIPECAL EASEMENT AGREEMENT ("Easement") is dated as of ____________, 2007, by and between David G. Imbach and Stephanie D. Imbach, husband and wife, each as to an undivided one-fourth interest; and John H. Roan and Marcela S. Roan, husband and wife, each as to an undivided one-fourth interest (collectively "Owner") and Garfield Beach CVS, L.L.C., a California limited liability company ("CVS").

RECITALS

A. Owner owns real property located in the City of Porterville, County of Tulare, State of California, as described in Exhibit "A" attached hereto and incorporated herein by this reference ("Parcel 1").

B. CVS is the tenant of a certain parcel of land located in the City of Porterville, County of Tulare, State of California, as described in Exhibit "B" attached hereto and incorporated herein by this reference ("Parcel 2").

C. The parties desire to create reciprocal easements for ingress and egress over, upon and across Parcels 1 and 2.

EASEMENT

1. Reciprocal Easements for Ingress and Egress. Owner hereby grants and conveys to CVS the non-exclusive right in common with others to utilize the driveways, access ways, sidewalks, walkways, exits, entrances, and other paved areas, as same may exist from time to time on Parcel 1, for the use and benefit of CVS and CVS' employees, agents, customers, invitees and licensees, for purposes of pedestrian and vehicular ingress and egress, but not for parking.

   CVS hereby grants and conveys to Owner the non-exclusive right in common with others, during the term of that certain ground lease dated May 2, 2007, by and between Ennis Commercial Properties, LLC and CVS and any extensions thereof, to use the driveways, access ways, sidewalks, walkways, exits, entrances, and other paved areas, as same may exist from time
to time on Parcel 2, for the use and benefit of Owner and Owner's employees, customers, agents, invitees and licensees, for purposes of pedestrian and vehicular ingress and egress, but not for parking.

2. **Waterline Easement.** Owner hereby grants and conveys to CVS the perpetual, appurtenant easements, rights and privileges for the installation, connection, maintenance, repair and replacement of subsurface water lines, facilities and conduits ("Waterline Facilities") in those areas of the Parcel 1 identified as "Waterline Easement" (the "Waterline Easement Areas") on the site plan entitled "Site Plan, ______________" which was prepared by __________________________, and dated ______________ (the "Site Plan"). A copy of the Site Plan is attached to and made a part hereof as Exhibit "C".

3. **Barriers.** Neither party shall unreasonably prevent, hinder or interfere in any way with the free flow and passage of vehicular and pedestrian traffic to and from Parcel 1 and Parcel 2. The parties hereto acknowledge that the flow and passage of vehicular and pedestrian traffic to and from Parcel 1 and 2 may be disrupted for limited periods of time for periods of repair, restoration, reconstruction, or to prevent a public taking through condemnation or other means of public acquisition.

4. **Compliance with Law and Indemnification.** Owner and CVS covenant and agree, with respect to their respective parcels, to comply with all laws, rules, regulations and requirements of all public authorities, and to indemnify, defend and hold each other harmless against all claims, demands, loss, damage, liabilities and expenses and all suits, actions and judgments (including but not limited to costs and attorney's fees) arising out of or in any way related to Owner's or CVS' failure to maintain its respective parcel in a safe condition. Owner and CVS shall give prompt and timely notice of any claim made or suit or action commenced against the other party which in any way would result in indemnification under this Easement.

5. **Maintenance, Expenses and Taxes.** Owner and CVS covenant and agree to maintain in good condition and repair driveways, access ways, sidewalks, walkways, exits, entrances, and other paved areas on their respective parcels, and to pay all expenses incurred in connection therewith, including the payment of all real estate taxes and assessments, subject only to the right to defer payment in a manner provided by law, and/or in connection with a bona fide contest of such tax or assessment, so long as the rights of the other party shall not be jeopardized by the deferring of payment.

6. **Covenants Running with Land.** The rights contained within this Easement shall run with Parcels 1 and 2 and shall inure to and be for the benefit of Owner and CVS, their successors and assigns, and the tenants, subtenants, licensees, concessionaires, mortgagees in possession, customers and business invitees of the parties.

7. **Warranty of Title and Quiet Enjoyment.** Owner warrants that it has marketable fee simple title to Parcel 1. Owner shall defend, indemnify and hold CVS harmless from and against all claims, losses, liabilities and expenses incurred by CVS as a result of breach of the foregoing warranty.
8. **Attorneys Fees.** In the event that either party brings an action to enforce its rights hereunder, the prevailing party in such action shall be entitled to receive all costs and reasonable attorney's fees in addition to any damages to which it is due by reason of such action.

9. **Notices.** All notices required or permitted herein shall be in writing and shall be effective on the earlier to occur of actual receipt if delivered by hand or overnight courier which provides a receipt, or three (3) days after the date on which such notice is mailed in any United States Post Office, by certified or registered mail, postage prepaid, return receipt requested, to Owner __________________________________________, or to CVS, One CVS Drive, Woonsocket, Rhode Island 02895, Attention: Property Administration, Store No. 35, or to such other addresses as the parties may designate in writing from time to time.
IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the
day and year first above written.

OWNER

By: ________________________
Name: DAVID G. IMBAECH
Title: owner
Date: 11/5/07

CVS

Garfield Beach CVS, L.L.C.,
a California limited liability company

By: ________________________
Name: ________________________
Title: ________________________
Date: ________________________

STATE OF ________________________

______________________, ss.

On this ______ day of __________, ________, before me, the undersigned notary public, personally appeared __________, proved to me through satisfactory evidence of identification which was: [] personally known to me to have the identity claimed; or [] examination of _______ driver's license, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose as __________ and authorized signatory of _____________________________.

______________________ (official signature and seal of notary)
My Commission Expires: ________________________
STATE OF ________________

____________________, ss.

On this _____ day of __________, __________, before me, the undersigned notary public, personally appeared ________________, proved to me through satisfactory evidence of identification which was: [ ] personally known to me to have the identity claimed; or [ ] examination of _______ driver’s license, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose as __________ and authorized signatory of _______________________.

____________________ (official signature and seal of notary)
My Commission Expires: ____________________________
CONSENT AND SUBORDINATION

The undersigned is currently the lienholder of the beneficiary of a certain Deed of Trust filed against the Property on October 6, 1995, as Instrument/File No. 95-066971 ("Deed of Trust"). The undersigned hereby expressly consents to, and subordinates the Deed of Trust and beneficial interest thereunder to the foregoing Easement.

California Ranch Col.,
a limited Partnership, as to an undivided 54.54 interest

By: ____________________________
Its: ____________________________

Evelyn J. Merrill, a widow as to an undivided 22.73% interest

Marilyn Fasani, a married woman as her sole and separate
as to an undivided 22.73% interest

STATE OF ________________________

____________________, ss.

On this _____ day of __________, __________, before me, the undersigned notary public, personally appeared ________________, proved to me through satisfactory evidence of identification which was: [ ] personally known to me to have the identity claimed; or [ ] examination of ______ driver's license, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose as __________ and authorized signatory of _____________________________.

________________________________________ (official signature and seal of notary)

My Commission Expires: ______________________________

STATE OF ________________________

____________________, ss.

On this _____ day of __________, __________, before me, the undersigned notary public, personally appeared ________________, proved to me through satisfactory evidence of identification which was: [ ] personally known to me to have the identity claimed; or [ ] examination of ______ driver's license, to be the person whose name is signed on the preceding
or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose as __________ and authorized signatory of _________________.

_________________________ (official signature and seal of notary)
My Commission Expires: ________________________________

STATE OF ________________

_________________________, ss.

On this _____ day of __________, __________, before me, the undersigned notary public, personally appeared ________________, proved to me through satisfactory evidence of identification which was: [ ] personally known to me to have the identity claimed; or [ ] examination of ______ driver's license, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose as __________ and authorized signatory of _________________.

_________________________ (official signature and seal of notary)
My Commission Expires: ________________________________
CONSENT AND SUBORDINATION

The undersigned is currently the lienholder of the beneficiary of a certain Deed of Trust filed against the Property on January 3, 2000, as Instrument/File No. 2000-0000013 ("Deed of Trust"). The undersigned hereby expressly consents to, and subordinates the Deed of Trust and beneficial interest thereunder to the foregoing Easement.

Richard H. Merrill

Barbara L. Merrill

STATE OF Idaho
Bannock County, ss.

On this 16th day of Nov., 2007, before me, the undersigned notary public, personally appeared Richard H. Merrill, proved to me through satisfactory evidence of identification which was: [ ] personally known to me to have the identity claimed; or [ ] examination of his driver's license, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose as __________ and authorized signatory of __________________—.

[Signature]
(official signature and seal of notary)
My Commission Expires: 02/27/2012

STATE OF Idaho
Bannock County, ss.

On this 16th day of Nov., 2007, before me, the undersigned notary public, personally appeared Barbara L. Merrill, proved to me through satisfactory evidence of identification which was: [ ] personally known to me to have the identity claimed; or [ ] examination of her driver's license, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose as __________ and authorized signatory of __________________—.

[Signature]
(official signature and seal of notary)
My Commission Expires: 02/27/2012
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of TULARE

On NOV 9, 2007, before me, TAMMY LYNN HICKS, NOTARY PUBLIC

personally appeared DAVID G. IMBACH and MARILENE S. ROAS

☐ personally known to me
☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) are subscribed to the within instrument and acknowledged to me that before they executed the same in their authorized capacity(ies), and that by their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document
Title or Type of Document: ________________________________

Document Date: ________________________________ Number of Pages: __________________

Signer(s) Other Than Named Above: ________________________________

Capacity(ies) Claimed by Signer(s)

Signer’s Name: ________________________________
☐ Individual
☐ Corporate Officer — Title(s):
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: ________________________________

Signer is Representing: ________________________________

Signer’s Name: ________________________________
☐ Individual
☐ Corporate Officer — Title(s):
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: ________________________________

Signer is Representing: ________________________________
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of Tulare

On Nov 6, 2007, before me, Tammy Lynn Hicks, Notary Public
personally appeared Stephanie O. Mingas and

Name(s) of Signer(s)

☐ personally known to me

☑ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Tammy Lynn Hicks
Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document
Title or Type of Document: ____________________________

Document Date: ____________________________ Number of Pages: __________

Signer(s) Other Than Named Above: ____________________________

Capacity(ies) Claimed by Signer(s)

Signer's Name: ____________________________

☐ Individual
☐ Corporate Officer — Title(s): ____________________________
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: ____________________________

Signer Is Representing: ____________________________

Signer's Name: ____________________________

☐ Individual
☐ Corporate Officer — Title(s): ____________________________
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: ____________________________

Signer Is Representing: ____________________________
RESOLUTION NO. __________

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE CONTAINING FINDINGS IN SUPPORT OF APPROVAL FOR "D" Overlay Site Review to allow the construction of the CVS Pharmacy with a drive-through located at northeast corner of Henderson Avenue and Westwood Street

WHEREAS: The City Council at its regularly scheduled meeting of December 4, 2007, reviewed "D" Overlay Site Review 8-2007 to facilitate construction of a new CVS Pharmacy with a drive-through at the northeast corner of Henderson Avenue and Westwood Street; and

WHEREAS: Pursuant to Article 18 (Supplemental "D" – Design Review Overlay Zone) of the Porterville Ordinance, the City Council made the following findings:

1. That the proposed project is consistent with the General Plan (designated as General Commercial) and Zoning and Land use for the site (zoned C-1 (D) Neighborhood Commercial).
2. That the design and architectural features of the project are compatible with that of surrounding uses. The building is located near Henderson Avenue with the entrance angle oriented. The landscaping and pedestrian accesses have been designed for appeal, convenience and ease of access. The colors and tones of materials used are neutral and blend and transition well with the surrounding uses.
3. That the site area, dimensions, site coverage, yard spaces, height of structures, distance between structures, off-street parking facilities, and landscaping areas either meet or exceed the minimum requirements which will produce an environment of stable and desirable character consistent with the objectives of the Zoning Ordinance.

WHEREAS: That the construction of the new CVS Pharmacy building will not create significant environmental impacts.

WHEREAS: Pursuant to Section 15332 Class 32 (Infill-Development), the proposed project is categorically exempt from the CEQA Guidelines. A Notice of Exemption was prepared in accordance with the California Environmental Quality Act.

WHEREAS: That the City Council is the decision-making body for the project.

NOW, THEREFORE, BE IT RESOLVED: That the Porterville City Council does hereby approve "D" Overlay Site Review 8-2007 under the "D" Zone regulations subject to the following conditions:

1. That the subject site will be developed and maintained in accordance with the design shown on the attached Exhibits A and B.
2. Based on the required parking of 1 per every 200 square feet of gross floor area, a total of 66 parking spaces is required. The site plan indicates that 76 have been provided.
3. A reciprocal ingress and egress from Westwood Street and Henderson Avenue on the improved roadways for the property owner to the north must be recorded prior to the issuance of a building permit.

4. The outdoor advertising of alcoholic beverages is prohibited.

5. Any significant change to the project will require a modification to the “D-Overlay”.

6. The building and parking lot lighting will be directed downward and shielded to reduce light and glare from the adjoining subdivision to the south.

7. Pedestrian walkways with a minimum of 50% shading are to be provided to link Henderson Avenue and Westwood Street public sidewalks to the building entrance. Lattice work along the west and south walls of the building will require live planting materials to be permanently planted to cover said lattice work, and be maintained with the rest of the required landscaping.

8. All mechanical equipment will be required to be screened from public view in a manner architecturally compatible with the building.


10. The developer/applicant shall pay all applicable fees according to the Municipal Code and State law. The developer/applicant is hereby notified that you have the right to pay fees, dedications, reservations or other exactions, under protest, pursuant to Government Code Section 66020(a). You have 90 days from the date fees are paid to file a written protest.

11. The developer/applicant shall follow Appendix Chapter 33 of the California Building Code including provision of a grading and drainage plan signed by a licensed civil engineer or architect. The developer/applicant shall comply with City Retaining Wall Standards (adopted by City Council January 3, 1989) at lot lines where such standards are applicable.

12. Developer/applicant shall provide a Soils Report in conformance with Chapter 18 of the California Building Code. The Soils Report shall include R-Value testing, expansion indexes, etc required for the construction of public improvements.

13. The developer/applicant shall construct and/or repair street, curb, gutter, sidewalk, etc. along the full frontage of the parcel except where they exist and are in good condition in the opinion of the City Engineer (Ord. No. 1306).
14. The developer/applicant shall install an additional sidewalk necessary to comply with City Standards (9.5 feet wide) along the full frontage of the proposed development.

15. The developer/applicant shall install an alley approach per City Standard Plan C-5 or street intersection returns per City Standard Plan C-7 for all driveways utilized for accessing the site.

16. The developer/applicant is hereby notified that the property is subject to $12,631 development fees per Resolution No. 111-2006. The fee is associated with the construction of concrete improvements along Henderson Avenue by City.

17. The developer/applicant shall construct drainage facilities as required to serve the property (Ord. No. 1306). Staff is requesting that the parking lot be designed to convey water to the City drainage system without crossing driveways.

18. Easements shall be in place that allows for mutual ingress, egress and maintenance of the parking lot.

19. Easement shall be in place that allow for mutual use of sewer and water, if applicable.

20. The developer/applicant shall have a registered Civil Engineer or Land Surveyor prepare and submit a Lot Line Adjustment that will reconfigure property lines to meet the requirements of all applicable codes. The following information is required at the time of submittal:

   a. Three copies of a Map and Legal Descriptions

   b. Processing fee in the amount of $616.

   c. Adequate title information (deed, etc.) to verify current ownership and the method of creation of the effected parcels.

21. The Lot Line Adjustment shall be approved prior to the issuance of a building permit.

22. The developer/applicant shall dedicate right-of-way for a street width that matches the ultimate width in the adopted Land Use and Circulation Element and/or the width established by the City Council, and dedication of required property for disabled ramp(s).

23. The developer/applicant shall move existing utility structures (For example, poles, splice boxes, vaults, etc.) to a position that provides a minimum of four feet (4') of clear space in the sidewalk area and a minimum of two feet (2') of clear space from the curb face to the structure, unless they are below grade (Title 24 OSA).

24. The developer/applicant shall provide street lights on Marbelite poles following Southern California Edison Company specifications, as approved by the City Engineer. Do not use wood poles without prior written approval of the City Engineer. One 16000 lumen street lights shall be installed at the northwest corner of the property.
25. The developer/applicant shall design and improve the parking lot in conformance with Section 2206 and 2211 (Exhibit A) of the Zoning Ordinance.

26. The developer/applicant shall, under City inspection, remove all existing abandoned and unnecessary items, to the satisfaction of the City Engineer, before the issuance of a certificate of occupancy (For example, foundations, septic tanks, irrigation pipes, etc.).

27. The developer/applicant shall abandon existing wells, if any, after first getting an abandonment permit from the County Department of Environmental Health, and providing the City Engineer with proof of compliance with County regulations before performing any grading or issuance of the building permit, whichever comes first. The existing well may remain in service if proper backflow prevention is installed pursuant to Resolution No. 9615.

28. The developer/applicant shall assure compliance with applicable San Joaquin Valley Unified Air Pollution Control District Rules (e.g., Numbers 8010, 8020 and 8030), regarding fugitive dust, as well as Section 7-8, Project Site Maintenance of the Standard Specifications. The developer/applicant shall provide a street sweeper as necessary to comply.

29. The developer/applicant shall comply with Ordinance No. 1636 regarding Waste Water Discharge requirements and shall complete and submit the following:

Wastewater Discharge Permit Application, Part “A”; and

If monitoring is required, based on the responses to questions in Part “A” of the Wastewater Discharge Permit, then the developer/applicant shall complete and submit the remainder of the application along with the Permit Fee, and provide monitoring facilities to allow inspection, sampling, and flow measurement of the flows in the sewer and drainage system.

30. The developer/applicant shall install a refuse container enclosure to City standards. Enclosure location to be approved by City prior to issuance of building permit. The developer/applicant shall also sign a waiver of liability for refused truck damage to the parking lot if the refuse container location requires refuse trucks to travel on the parking lot. The enclosure should be oriented for direct pick up. Developer is encouraged to install an enclosure that would accommodate a solid waste and recyclable container for collection.

31. The developer/applicant shall construct the pipe connecting to on-site fire hydrants to City water main standards and shall provide easements for maintenance to the on-site water mains.

32. The developer/applicant is hereby notified that the installation of an additional water meter, servicing the irrigation system would be beneficial for monitoring actual water
usage. The City will monitor actual water usage for one year and will bill the owner the impact fees based on the actual water usage.

33. The developer/applicant shall comply with City standard for “backflow” prevention pursuant to Resolution No. 9615.

34. A minimum five (5) foot wide screen-planting strip shall be provided and permanently maintained adjacent to any property line separating a parking area from a public street.

35. A minimum of 5% of parking lot and driveway areas are to be landscaped with live plant materials. The parking lot and driveway areas are to be shaded with trees planted on the property at a minimum ratio of one tree per 8 parking spaces distributed throughout the paved area. Parking lot tree wells are recommended to be a minimum of twenty (20) square-feet in size.

36. The owner/applicant shall install tree wells within the sidewalk area and provide and maintain city-approved street trees along Westwood and Henderson. The selection of planting locations, and performance of canopy maintenance for street trees shall be conducted in manners to minimize vehicular sight safety conflicts.

37. The owner/applicant is to install trees, approved as City Street Trees, along all public roadway frontages of the property. The number of trees to be planted, inclusive of sidewalk tree well plantings, shall be equivalent to a minimum of one tree per 35 feet of roadway frontage. The trees are to be a minimum of #15 size specimens incorporated into the designated landscape areas. Root barriers are required for all trees planted within ten feet of public sidewalks. The selection of interspersed planting locations, and performance of canopy maintenance for the trees shall be conducted to minimize vehicular sight safety conflicts.

38. The owner/applicant shall provide an automatic irrigation system for all landscape planting, including trees and right of way planting. All landscaping shall be installed prior to occupancy and be permanently maintained by the owner/applicant in a healthy and vigorous growing condition, and cleanly appearance.

39. Bicycle racks shall be provided on the project site and be approved by the Community Development Director.

40. The trash enclosure, loading dock, and compactor area shall be architecturally screened from public right-of-way views. The landscape planting area adjacent to this area is to be extended westerly to soften and aesthetically enhance the architectural screening of this maintenance area.

42. Submit three (3) complete sets of plans, signed by a licensed Architect or Engineer, to include two (2) sets of energy calculations and structural calculations.

43. Compliance with access laws (both State and Federal) is required.
Compliance with all applicable codes is required.

Plan check fees are required at the time of building permit submittal.

Soils compaction test may be required.

School Development fees and all other City fees are due at the time of building permit issuance.

Approval from the Tulare County Health Department prior to issuance of the building permit.

Restrooms and main entrance must comply with ADA access laws.

All construction offices, storage containers, etc. for temporary use must receive City Council approval.

Signs require separate permit and shall conform to City zoning standards for signs.

The developer/applicant shall pay all fees according to the Municipal Code and State Law.

The project must comply with latest applicable codes.

Based on the occupancy classification, a fire alarm and/or an automatic sprinkler system may be required.

When a sprinkler system is required all valves controlling the water supply for automatic sprinkler systems and water-flow switches on all sprinkler systems shall be electrically monitored where the number of sprinklers are:

a. Twenty or more in Group I Divisions 1.1 and 1.2 occupancies.
b. One hundred or more in all other occupancies.

Submit three (3) complete sets of sprinkler and/or fire alarm plans to the Fire Department for review prior to installation.

For automatic sprinkler systems, underground plans must be submitted and approved prior to submittal of the above ground plans. A hydrant will be required within 50 feet of the Fire Department connection.

When any portion of the building to be protected is in excess of 150 feet from a water supply on a public street, there shall be installed on-site fire hydrants capable of supplying the required fire flow.
59. Depending on the location of the existing fire hydrant(s), additional fire hydrants may be required. All hydrants must be in place and accepted by the Fire Department prior to any combustibles being brought onto the site.

60. The City will test and maintain all fire hydrants in the City whether on private property or not. An "easement" is required from the owner.

61. Fire hydrant spacing shall be as follows:
   In Commercial development, one hydrant shall be installed at 300-foot intervals.

62. Access roads shall be provided for every facility, building or portion of a building, when any portion of the facility or portion of an exterior wall is located more than 150 feet from a fire apparatus access as measured by an approved route around the exterior of the building.

63. All dead-end access roads in excess of 150 feet must be provided with an approved turn-around complying with City Standards.

64. Project must meet minimum fire flow requirements per the table in Appendix III-A & III-B of the California Fire Code. Fire flow for this project as proposed would be 1625 GPM.

65. Areas identified as "Fire Lanes" must be identified as such by red painted curbs and identified per requirements set forth in the California Vehicle Code Section 22500.1.

66. A Knox box may be required. An application may be obtained from the Fire Department.

______________________________
Cameron Hamilton, Mayor

ATTEST:

John Longley, City Clerk

By: _____________________________
Patrice Hildreth, Acting Chief Deputy City Clerk
CITY COUNCIL AGENDA: DECEMBER 4, 2007

PUBLIC HEARING

SUBJECT: CONDITIONAL USE PERMIT 12-2007
WIRELESS COMMUNICATIONS TOWER (RON JAMES)

SOURCE: COMMUNITY DEVELOPMENT DEPARTMENT - PLANNING DIVISION

COMMENT: Conditional Use Permit 12-2007 proposes to allow for the construction of a 100-foot high wireless communications tower and accessories related to operation. The subject site is located on the east side of Newcomb Street, north of Morton Avenue behind Fire Station No. 2.

On June 20, 2006, the Porterville City Council amended Zoning Ordinance 2626, by Ordinance 1700. In brief, wireless communications towers to be located in a commercial zone cannot be any higher than 100 feet and no closer than 300 feet to a residentially zoned area. The attached site plan indicates that the 30’x90’ lease area is outside of the 300-foot radius from the residentially zoned area located to the west and south. Staff has determined that the project meets the distance criteria defined by the recently adopted Wireless Telecommunications Ordinance (1700).

Section 2103 A-11 of the Porterville Zoning Ordinance allows for radio or television transmitters and receivers subject to a Conditional Use Permit.

Pursuant to Section 15332, Class 32 (Construction of in-fill Development) of the California Environmental Quality Act (CEQA) the project is categorically exempt.

RECOMMENDATION: That the City Council:

1. Adopt the Draft Resolution approving Conditional Use Permit 12-2007 subject to conditions of approval.

ATTACHMENT:

1. Complete Staff Report
CITY COUNCIL AGENDA: DECEMBER 4, 2007

PUBLIC HEARING - STAFF REPORT

TITLE: CONDITIONAL USE PERMIT 12-2007

APPLICANT: Mr. Ron James
29620 Butterfield Way
Tehachapi, CA 93561

SPECIFIC REQUEST: Conditional Use Permit 12-2007 to allow for the construction of a 100-foot high wireless communications tower. The subject site is located on the east side of Newcomb Street, north of Morton Avenue behind Fire Station No. 2, in the OA (Open Area) Zone.

PROJECT DETAILS: Verizon will construct the 100-foot high monopole consistent with co-location by other wireless carriers to be located within the described ground lease area. T-Mobile is ready to be a co-location tenant at the site. Verizon will be sublessee to the co-location by other wireless careers.

The proposed overall lease area is 30’x90’ which will accommodate Verizon Wireless, T-Mobile and space for a potential third co-location tenant. Verizon Wireless will occupy an approximate 30’x50’ area and the sublease to T-Mobile will be approximately 15’x30’. Therefore, the remaining available area will be approximately 25’x30’.

The Verizon Wireless portion of the lease area will include the following:

* A 100-foot high monopole (roughly 3 feet in diameter at the base and approximately 1 foot at the top.

* A 12’x20’x10’ (high) equipment building mounted on a concrete pad with the same dimensions.

* A 60 KW emergency standby generator, on a concrete pad measuring approximately 5’x10’ with an integrated 210 gallon above ground diesel fuel tank.

* Twelve (12) 8-foot long panel antennas mounted at the top of the monopole in three sectors of four antennas each and two (2) 6 inch GPS antennas mounted to the equipment building. T-Mobile will require twelve (12) 52 inch long panel antennas mounted below those of Verizon Wireless in a three (3) sector configuration.

* The T-Mobile portion of the lease area will include three (3) outdoor equipment cabinets, each measuring approximately 4 &1/2 feet wide by 3-foot deep. An additional two (2) utility cabinets measuring approximately 3-foot wide by 1 foot deep will be mounted on “H” frames. All cabinets are to be placed on an approximately 10’x16’ concrete pad. The cabinets will not exceed 6 feet in height. A six inch GPS antenna is to be mounted on a utility “H” frame.
The lease area will be enclosed, using the City’s existing south boundary fence on one side and a similar new cyclone fence on the other three sides.

The access route to the site is planned to be either from the City’s existing drive approach utilized by the Fire Department, or a more direct route with a new curb cut on Newcomb. The applicant will work with the Fire Department, Public Works and the Department of Parks and Leisure on a preferred option.

On June 20, 2006, the Porterville City Council amended Zoning Ordinance 2626, by Ordinance 1700. In brief, wireless communications towers to be located in a commercial zone cannot be any higher than 100 feet and no closer than 300 feet to a residentially zoned area. The attached site plan indicates that the 30’x90’ lease area is outside of the 300-foot radius from the residentially zoned area located to the west and south. Staff has determined that the project meets the distance criteria defined by the recently adopted Wireless Tower Ordinance.

Section 2103 A-11 of the Porterville Zoning Ordinance allows for radio or television transmitters and receivers subject to a Conditional Use Permit.

GENERAL PLAN AND ZONING: The General Plan designates the site as Public and Quasi/Public. The subject site is zoned City OA (Open Area)

SURROUNDING ZONING AND LAND USE:
North: City OA- Fire Station No. 2 parking area and training site.
South: City OA- Porter Slough, portion of Veteran’s Park and Morton Avenue.
West: City OA- Portion of Veteran’s Park and Newcomb Street.
East: City OA- City Corporation Yard.

STAFF ANALYSIS: The electrical cabinets will be enclosed behind a cyclone fence and will not be visible to public view. Slats or other approved view obscuring material will be incorporated within the fence. The proposed location of the tower will be less obtrusive than it would be if placed in an area more saturated with residentially uses. Additionally, the existing trees and shrubbery in this area allows for a buffer from visual view. The pole and all associated flush mounted antennas shall be non-reflective, with a treatment color designed to diminish the visual impact on the skyline.

Section 2103 A-11 of the Porterville Zoning Ordinance allows for radio or television transmitters and receivers subject to a Conditional Use Permit. Staff has also determined that the project meets the distance criteria defined by the recently adopted Wireless Tower Ordinance.

ALTERNATIVES TO THE PROJECT AND THEIR EFFECT:
1. No project. Denial of the proposed use permit would not allow the applicant to construct the tower at this location.
2. Approve the project. Approval of the request would result in the applicant being conditionally allowed to construct the tower and associated equipment on this site.
ENVIRONMENTAL: This project is Categorically Exempt pursuant to Section 15332, Class 32 of the CEQA Guidelines - construction of in-fill development. Under the Permit Streamlining Act (Section 65950 of the Government Code), the City has 60 days from the date the project was accepted as complete to reach a determination regarding this project.

DATE ACCEPTED AS COMPLETE: November 15, 2007

RECOMMENDATION: That the City Council:

1. Adopt the Draft Resolution approving Conditional Use Permit 12-2007 subject to conditions of approval.

ATTACHMENTS:
1. Locator map
2. Application for Conditional Use Permit
3. Ordinance 1700- An Ordinance to regulate construction, operation, and maintenance of wireless communications towers.
4. Notice of Exemption
CITY OF PORTERVILLE

APPLICATION FOR CONDITIONAL USE PERMIT

NOTE: The basic purpose of the Conditional Use Permit Article 29 of The City Zoning Ordinance is to assure that the design and subsequent operation of a conditional use will be reviewed in order to carry out the purposes of the Ordinance and to protect the public health, safety and welfare, due to the unique and special characteristics of such uses.

PROJECT NAME: VERNON WIRELESS WEST PORTERVILLE SITE

NAME, MAILING ADDRESS AND TELEPHONE NUMBER OF PROPERTY OWNER(S):
CITY OF PORTERVILLE ATTN: SUSAN PERKINS
251 N. MAIN ST PORTERVILLE, CA 93257
PH: (559) 782-7451

NAME, MAILING ADDRESS AND TELEPHONE NUMBER OF APPLICANT/CONTACT PERSON:
VERIZON WIRELESS, BRY RIDGE COMMUNICATIONS, INC.
ATTN: RON JAMES 29626 BUTTERFIELD WAY TEHACHAPI, CA 93561
PH: (661) 557-0565

PROJECT ADDRESS AND NEAREST CROSS STREETS:
500 NEWCOMB STREET (FIRE STATION #2)
NEAREST CROSS STREET IS MORTON AVE.

The applicant requests a Conditional Use Permit to use the above described property for the following purposes:
WIRELESS COMMUNICATIONS FACILITY
DETAILS ARE INCLUDED WITH ACCOMPANYING MATERIALS

Date of most recent sale of property: UNKNOWN

If applicant is the lessee, give date property was leased: PENDING WITH CITY OF PORTERVILLE

List below the original deed restrictions pertaining to the type of improvements permitted.
NONE KNOWN

Date said restrictions expire: N/A

(Please attach a copy of original printed restrictions in answer to this question. Properly underline those features controlling the type and class of uses permitted.)
A Plot Plan and 300' radius property owners map, and corresponding mailing list are attached and made a part of this application. (See detailed instructions on Page 4 of this form).

1. State how the proposed use will not be materially detrimental to the public welfare or pose injury to property or improvements in such vicinity and zone in which the use is proposed.

   AT ALL TIMES, THE FACILITY WILL BE OPERATED AND MAINTAINED TO COMPLY WITH FEDERAL, STATE LAWS, AS WELL AS THE CITY OF PORTERVILLE ZONING ORDINANCE AND BUILDING CODES AND OTHER LAWS AND ORDINANCES.

2. Principal requirements of intended use (Please answer the following statements as completely as possible).

   (a) Total number of people that the building can accommodate at one time, or grounds if the use is not conducted in the building at one time (Occupancy Capacity).

      NO HUMAN OCCUPANCY EXCEPT DURING CONSTRUCTION AND AS REQUIRED FOR MAINTENANCE AND REPAIRS.

   (b) Total number of employees that will work on the property.

      NO EMPLOYEES TO BE STATIONED AT THIS FACILITY

   (c) Total number of off-street parking spaces provided or planned.

      TWO WITHIN FACILITY COMPUND

   (d) Maximum height of buildings or structures.

      COMMUNICATIONS TOWER 100 FT AGL

   (e) If the application is not intended to be for a permanent conditional use, state the length of time for which it is requested.

      N/A
We, the undersigned OWNERS of ADJACENT PROPERTY as shown upon the map attached to the application, hereby certify that we have read the foregoing petition and agree that the fact stated correctly and completely present the conditions surrounding the property involved in the application, and believe the application SHOULD BE GRANTED. (Add additional sheets where necessary. These signatures are desirable but not required).

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OWNER'S DECLARATION

STATE OF CALIFORNIA  )
COUNTY OF TULARE  )

I, Ron James, being duly sworn, declare and say that I am the owner of part (or all) of the property involved and that this application has been prepared in compliance with the requirements of the Porterville City Council as printed herein and that the foregoing information thoroughly and completely, to the best of my ability, presents the argument in behalf of the application except as to the matters stated to be on my information and belief.

I declare under penalty of perjury that the foregoing is true and correct, executed at Porterville, CA this 13 day of Nov, 2007.

Telephone (661) 557-0565
Signed Ron Jones
Mailing Address 29620 Butterfield WY Tehachapi, Ca 93561

This is to certify that the foregoing application has been inspected by me and found to be complete and acceptable for filing with the Porterville City Council.

Received Date

By
ORDINANCE NO. 1700

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE
APPROVING ORDINANCE TO REGULATE CONSTRUCTION, OPERATION
AND MAINTENANCE OF WIRELESS COMMUNICATIONS TOWERS

WHEREAS: The City Council of the City of Porterville at its regularly scheduled
meeting of June 20, 2006, conducted a public hearing to consider a General Amendment of
Zoning Ordinance 2626 adding provisions to Articles 26 of the Zoning Ordinance of the City
of Porterville; and

WHEREAS: The proposed General Amendment of the Zoning Ordinance will
establish provisions for the construction and operation and maintenance of wireless
telecommunications towers and antennas.

WHEREAS: The City of Porterville (the “City”) has received or expects to receive
requests to site wireless telecommunications towers and antennas within the City; and

WHEREAS: The Porterville City Council finds that it is in the public interest to permit
the siting of wireless telecommunications towers and antennas within the City’s boundaries; and

WHEREAS: It is the intent of the City Council to protect and promote the public
health, safety, general welfare and quality of life within the City by regulating the siting of
wireless telecommunications towers and antennas, while preserving the rights of wireless
telecommunications providers; and

WHEREAS: It is the intent of the City Council to establish guidelines for the
governance of wireless telecommunications facilities which recognize the unique land use
distribution, topography, and aesthetics of the community; and

WHEREAS: Public Hearings have been held before the City Council, pursuant to the
Planning and Zoning Law of the State of California and the Municipal Code of the City; and

WHEREAS: Development of wireless telecommunications facilities is consistent with
the goals, objectives, and strategies of the General Plan because they promote a balance
of public facilities and the provision of services and amenities to the community; and

WHEREAS: Pursuant to State and local environmental regulations, it has been
determined that the regulations encompassed in this Ordinance are exempt from the
California Environmental Quality Act, and as a general rule, a Notice of Exemption is filed.

NOW, THEREFORE, BE IT ORDAINED: That the City Council of the City of
Porterville does hereby adopt Ordinance No. 1700 amending Zoning Ordinance Section
2626 as follows:

ATTACHMENT

ITEM NO. 3
SECTION 2626: Article 26 is hereby amended as follows:

ARTICLE TWENTY-SIX

SECTION 2626: Construction, Operation and Maintenance of New Towers for Wireless Communications

A. Purpose and Intent

1. To permit the siting, construction, operation and maintenance of wireless telecommunications towers and antennas within the City’s boundaries.

2. To protect and promote the public health, safety, general welfare and quality of life within the City by regulating the siting of wireless telecommunications towers and antennas, while preserving the rights of wireless telecommunications providers.

3. To establish guidelines for the governance of wireless telecommunications facilities which recognize the unique land use distribution, topography, and aesthetics of the community.

B. Definitions.

The words used in this ordinance have the meaning set forth below:

1. "Alternative tower structure" means man-made trees, water towers, clock towers, light poles and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers.

2. "Antenna" means any exterior transmitting or receiving device mounted on a tower, building or structure and used in communications that radiate or capture electromagnetic waves, digital signals, analog signals, radio frequencies (excluding radar signals), wireless telecommunications signals or other commercial signals. "Antenna" shall not include any non-commercial satellite dish antenna utilized for amateur radio, citizens band radio, television, AM/FM, public safety broadcasting, or short-wave radio reception purposes.

3. "Backhaul network" means the lines that connect a provider’s towers/cell sites to one or more cellular telephone switching offices, and/or long distance providers, or the public switched telephone network.

4. "Building-mounted" means an antenna mounted to the side or facade of a building, or to the side of another structure such as a water tank, church
steeples, freestanding sign, utility tower, light pole, similar structure, or penthouse but not to include the roof of any structure.

5. "Cellular" means analog or digital wireless telecommunication technology that is based on a system of interconnected neighboring cell sites.

6. "Co-located" means the locating of wireless telecommunication equipment from more than one provider on a particular telecommunication facility.

7. "FAA" means the Federal Aviation Administration.


9. "Ground-mounted" means equipment mounted to a pole, monopole, tower, or other freestanding structure specifically constructed for the purpose of supporting an antenna.

10. "Height" means, when referring to a tower or other related structure, the distance measured from the finished grade of the parcel to the highest point on the tower or other structure, including the base pad and any antenna.

11. "Major wireless telecommunication facility" means a wireless telecommunication that is ground- or roof-mounted or mounted in or on any public property including the public right of way.

12. "Monopole" means a structure composed of a single spire, pole, or tower used to support antennas or related equipment.

13. "Mounted" means to be attached or supported.


15. "Penthouse" An architectural feature or structure not exceeding 14 feet in height designed to compliment and locate on the roof of a building used for the purpose of sheltering mechanical equipment or telecommunications facilities.

16. "Personal communication service" means digital low-power, high frequency commercial wireless radio communication technology that has the capacity for multiple communication services and the routing of calls to individuals, regardless of location.

17. "Pre-existing towers and pre-existing antenna" means any tower or antenna for which a building permit or conditional use permit has been
properly issued prior to the effective date of this Ordinance, including permitted towers or antennas that have not yet been constructed so long as such approval is current and not expired.

18. "Roof-mounted" means to be mounted above the eave line or parapet of a building.

19. "Stealth facility" means any wireless telecommunication facility which is designed to blend into the surrounding environment, typically one that is located architecturally within a building or other concealing structure, and shall include any concealed antenna.

20. "Temporary wireless telecommunication facility" means a wireless telecommunication facility that is kept portable or mobile and deployed while a permanent facility is under construction.

21. "Tower" means any structure that is designed and constructed primarily for the purpose of supporting one or more antennas for telephone, radio and similar communications purposes, including self-supporting lattice towers, guyed towers, or monopole towers (excluding telephone poles). The term includes radio and television towers, alternative towers structures, and the like. The term includes the structure and any support thereof.

22. "Wireless telecommunication facility" means a facility consisting of any commercial antenna, monopole, microwave dish, and or other related equipment necessary to the transmission and/or reception of cellular, personal communication service, and/or data radio communications, and which has been granted a Certificate of Public Convenience and Necessity, or a wireless registration number by the California Public Utilities Commission, or otherwise provides wireless communication services to the public.

C. Design Standards of "Wireless Telecommunications Facilities":

The purpose of this Section is to establish general guidelines for the siting of wireless telecommunications towers and antennas as follows:

1. Protect residential areas and land uses from potential adverse impacts of towers and antennas;

2. Encourage the location of towers in non-residential areas;

3. Minimize the total number of towers throughout the community;
4. Encourage the joint use of new and existing tower sites as a primary option rather than construction of single-use towers;

5. Encourage users of towers and antennas to locate them, to the extent possible in areas where the overall impact on the community is minimal, now and in the future; to configure them in a way that minimizes the adverse visual impact of the towers and antennas through careful design, siting, landscape screening, and innovative camouflaging techniques;

6. Enhance the ability of providers of wireless telecommunications services to provide such services to the community quickly, effectively and efficiently;

7. Consider the public health and safety of wireless telecommunication towers;

8. Avoid potential damage to adjacent properties from tower failure through engineering and careful siting of tower structures;

9. Retain local control and responsibility over the use of the public right of way to protect citizens and enhance the quality of their lives;

10. Create and preserve telecommunication facilities that will serve as an important and effective part of the City's emergency response network;

11. Promote fair and effective wireless telecommunication services and ensure that a broad range of competitive telecommunications services with high quality telecommunications infrastructure are available to serve the community.

D. Applicability.

1. **New Towers and Antennas:** All new towers or antennas shall be subject to Section 2626, except as provided herein.

2. **Consistent with Applicable Laws:** This Section shall apply, to the fullest extent allowed by and consistent with applicable Federal, State, and California Public Utility laws and regulations, to all new wireless towers and facilities, including towers and antennas proposed to be located on private or public property, as well as proposed to be located in, along, or across the public right of way.

3. **Inventory of Existing Sites.** Each applicant for an antenna and/or tower shall provide to the Community Development Director an inventory of its existing towers, antennas, or sites approved for towers or antennas, that are either within the City limits or urban area boundary (UAB), including specific information about the location, height, and design of each tower. The
Community Development Director may share such information with other applicants applying for administrative approvals or Conditional Use Permits under this Section or other organizations seeking to locate antennas within the jurisdiction of the City, provided, however, that the Community Development Director is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.

4. **Amateur Radio Station Operators/Receive Only Antennas**: This Section shall not govern any tower, or the installation of any antenna, that is under the height limitation of the relevant zone and is owned and operated by a federally-licensed amateur radio station operator, or is used exclusively for receive only antennas.

5. **Pre-existing Towers or Antennas**: Pre-existing towers and pre-existing antennas shall not be required to meet the requirements of this Section.

E. **General Requirements**

1. **State or Federal Requirements**. All towers and antennas must meet or exceed current standards and regulations of the FCC, the FAA, and any other agency of the State or Federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, then the owners of the towers and antennas governed by this Section shall bring such towers and antennas into compliance with such revised standards and regulations within six (6) months of the effective date of such standards and regulations, unless a different compliance schedule is mandated by the controlling State or Federal agency. Failure to bring towers and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the tower or antenna at the owner's expense.

2. **Building Codes and Safety Standards**. To ensure the structural integrity of towers, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable State or local building codes and the applicable standards for towers that are published by the Electronic Industries Association, as amended from time to time. If, upon inspection, the City concludes that a tower fails to comply with such codes and standards and constitute a danger to persons or property, then upon notice being provided to the owner of the tower, the owner shall have thirty (30) days to bring such tower into compliance with such standards. Failure to bring such tower into compliance within said thirty (30) days shall constitute grounds for the removal of the tower or antenna at the owner's expense.

3. **Measurement**. For the purposes of this Section, all distances shall be measured in a straight line without regard to intervening structures, from the
nearest point of the proposed major wireless telecommunication facility to the nearest point of another major wireless telecommunication facility. For purposes of measurement, tower setbacks and separation distances shall be calculated and applied to facilities located in the City irrespective of municipal and County jurisdictional boundaries.

4. **Not Essential Services.** Towers and antennas shall be regulated and permitted pursuant to this Section and shall not be regulated or permitted as essential services, public utilities, or private utilities.

5. **Franchises:** Owners and/or operators of towers or antennas shall certify that all franchises required by law for the construction and/or operation of a wireless telecommunication system in the City have been obtained and shall file a copy of all required franchises with the Community Development Director.

6. **Public Notice:** For purposes of this Section, any permitted use, Conditional Use Permit request, variance request, or appeal of an administratively approved use or special use shall require public notice to all a property owners of properties that are located within a 300 foot radius around the project site, in addition to any notice otherwise required by state law or the Municipal Code.

7. **Multiple Antenna/Tower Plan:** The City encourages the users of towers and antennas to submit a single application for approval of multiple towers and/or antenna sites. Applications for multiple sites shall be given priority in the review process, in compliance with the Permit Streamlining Act.

F. **General Screening and Site Selection Guidelines**

1. Stealth facilities and concealed antennas are preferred and shall be approved administratively by the Zoning Administrator. Facilities that are not stealth must be approved through the Conditional Use Permit process by City Council. To receive administrative approval a tower must show concealment elements to the satisfaction of the Zoning Administrator. Facilities that are not stealth must close mount all panel antennas.

2. Wireless telecommunication facilities shall be located where the existing topography, vegetation, building or other structures provide the greatest amount of screening. Where insufficient screening exists, applicants shall provide screening satisfactory to the Community Development Director, or as otherwise required through the approval of a CUP or Variance.

3. Ground-mounted wireless telecommunication facilities shall be located only in close proximity to existing above-ground utilities, such as permanent
electrical towers, light poles, trees of comparable heights, and in areas where they will not detract from the appearance of the City.

4. Wireless telecommunication facilities shall be located in the following order of preference:
   a. Integrated into building/structure design (stealth sites) co-located with other major wireless telecommunication facilities;
   b. On existing structures such as buildings, communication towers, or utility facilities not subject to the City's franchise agreements;
   c. On existing signal, power, light or similar kinds of permanent poles;
   d. In industrial land use districts (at least 300' from Residentially Zoned Property).
   e. In commercial land use districts (at least 300' from Residentially Zoned Property).
   f. Not permitted on residentially zoned property or within a three hundred (300') foot radius of any residentially zoned property.

G. General Development Requirements.

The following standards apply to all telecommunications facilities:

1. Maximum height. No antenna shall exceed one hundred feet (100') in height.

2. Setbacks.
   a. Telecommunications facilities and accessory structures in compliance with height restrictions shall comply with the required building setbacks for the zoning district in which the facility is located, however, in no instance shall the facility (including antennae and equipment) be located closer than five (5') feet of any property line.
   b. Antennae exceeding the maximum height limit will require a variance.
   c. Telecommunications facilities shall not be located within the required front-yard area of any parcel.
3. Required separation.
   
a. A facility shall not be located within a three hundred (300') foot radius of any residentially zoned property unless designed as a stealth facility (i.e. penthouse, attached accessory building) and approved by the zoning administrator. See attached map.
   
b. A facility shall not be located within a one thousand foot (1,000') radius of any other co-locatable telecommunications facility, measured from the base of tower to base of tower. Inability to co-locate must be proven by applicant based on credible information. See attached map.
   
c. Reduction in required facility separation. A reduction in the required separation between telecommunications facilities may be granted as a part of the Conditional Use Permit approval where technical evidence has been provided to substantiate the following findings:
      
i. The granting of the reduction will not substantially impair the intent and purpose of this title or the goals, policies, and objectives of the adopted General Plan; and
      
ii. The reduction is not requested exclusively on the basis of economic hardship to the applicant; and
      
iii. The reduction is necessary and essential to providing the applicant's wireless service based on the technical constraints and the lack of other available appropriately zoned land outside the radius; and
      
iv. Evidence has been submitted to the satisfaction of the City demonstrating that co-location on existing tower structures is not available or is not technically feasible. Evidence may include a written statement from the service provider with the existing facility that collocation is not feasible.

4. Design criteria.

All Telecommunications Facilities shall:

a. Utilize state of the art stealth technology as appropriate to the site and type of facility. Where no stealth technology is proposed for the site, a detailed analysis as to why stealth technology is physically and technically infeasible for the project shall be submitted with the application.
b. Antennae and support structures, where utilized, must be monopole type.

c. Monopole support structures shall not exceed four (4') feet in diameter unless technical evidence is provided showing that a larger diameter is necessary to attain the proposed tower height and that the proposed tower height is necessary.

d. Wireless telecommunications facility support structures and antennae must be painted a non-glossy color so as to minimize visual impacts from surrounding properties. Specific color is subject to City review based on a visual analysis of the particular site.

e. Accessory structures must be designed and screened accordingly and shall be subject to City review based on a visual analysis of the particular site and surrounding properties.

f. Support structures and site area for wireless telecommunications antennae shall be designed and of adequate size to allow at least one additional wireless service provider to co-locate on the structure.

g. Towers shall not be artificially lighted unless required by the FAA or other applicable authority. All objects affecting navigable airspace must comply with Federal Aviation Regulation Section 77 and must be in conformance with the current land use designations for land within one mile of the runway.

h. For the protection of emergency response personnel, each telecommunications facility shall have an on-site emergency “kill switch” to de-energize all RF-related circuitry/componetry at the site. For collocation facilities, a single “kill switch” shall be installed that will de-energize all carriers at the facility in the event of an emergency.

i. All proposed fencing shall be decorative and compatible with the adjacent buildings and properties within the surrounding area and shall be designed to limit graffiti.

5. Signage.

A permanent, weather-proof identification sign, approximately sixteen inches (16") by thirty-two inches (32") in size, must be placed on the gate of the fence surrounding the facility or, if there is no fence, on the facility itself. The sign must identify the facility operator(s), provide the operator’s address, and specify a twenty-four (24) hour telephone number at which the operator can be reached so as to facilitate emergency services.

a. Landscaping must be provided to screen the facility from surrounding properties or right-of-ways.

b. All landscaping shall be installed with an irrigation system equipped with an automatic timer.

c. Street trees and other landscaping may be required for telecommunications facilities proposed on parcels lacking street frontage landscaping.

d. Landscaping must include re-vegetation of any cut or fill slopes.

e. Where possible, existing plants and trees should be used to the full extent possible for screening of the facility.

f. Where deemed appropriate by the Community Development Director, a landscape plan shall be required for the entire parcel and lease area.


a. Backup generators shall only be operated during power outages and for testing and maintenance purposes. Testing and maintenance shall only take place on weekdays between the hours of 8:00 a.m. and 7:00 p.m.

b. Traffic shall be limited to no more than one round-trip per day on an average annual basis once construction is complete, except for emergency maintenance.

H. Severability

If any section, subsection, subdivision, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, subdivision, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses or phrases be declared unconstitutional.
I. Repealer

Any ordinance(s) or part(s) thereof in conflict with the provisions of this Ordinance are hereby repealed to the extent of such conflict.

Effective Date and Publication.

This Ordinance shall take effect thirty (30) days following its adoption and shall, prior to expiration of fifteen (15) days after its adoption, be published in the manner prescribed by law and/or posted in at least three (3) public places as designated by resolution of the City Council.

PASSED, APPROVED, AND ADOPTED this \( \frac{5}{12} \) day of July, 2006.

Cameron J. Hamilton, Mayor

ATTEST:

John Longley, City Clerk

By Patrice Hildreth, Deputy City Clerk
STATE OF CALIFORNIA  )
CITY OF PORTERVILLE    )  (SS)
COUNTY OF TULARE     )

I, JOHN LONGLEY, the duly qualified City Clerk of the City of Porterville do hereby certify:

THAT the foregoing ordinance is a true and correct copy of Ordinance No. 1700, passed and adopted by the Council of the City of Porterville at a regular meeting held on the 5th day of July, 2006, that said ordinance has been duly published pursuant to law, and that by the terms and provisions of the Charter of the City of Porterville, said ordinance to become effective on August 4, 2006, at which time said ordinance is deemed to be in full force and effect.

THAT said ordinance was introduced by Council and the same was duly passed and adopted by the following vote:

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<th>F. Martinez</th>
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JOHN LONGLEY, City Clerk

By: Patrice Hildreth, Deputy City Clerk
NOTICE OF EXEMPTION

TO: Office of Planning and Research
    1400 Tenth Street, Room 121
    Sacramento, CA 95814

FROM: City of Porterville
      291 N. Main Street
      Porterville, California 93258

Tulare County Clerk
County Civic Center
Visalia, CA 93291

Ron James
Ridge Communications, Inc.
29620 Butterfield Way
Tehachapi, CA 93561

Conditional Use Permit 12-2007
Project Title

The rear of Fire Station No. 2 located on the east side of Newcomb Street and north of Morton Avenue.
Project Location (Specific)

City of Porterville
Tulare County
Project Location (City)
Project Location (County)

Conditional Use Permit 12-2007 to allow for the installation of a 100+ foot high wireless communication tower. proposes to allow for the placement of a 100-foot high wireless communication tower. Pursuant to Section 2103 A-9 of the Zoning Ordinance, radio or television transmitters and receivers are allowed subject to a conditional use permit.
Description of Nature, Purpose, and Beneficiaries of Project

City of Porterville
Name of Public Agency Approving Project

Ron James, Ridge Communications, Inc., 29620 Butterfield Way, Tehachapi, CA 93561
Person or Agency Carrying Out Project

Exempt Status: (Check One)

_________ Ministerial (Section 15073)
_________ Declared Emergency (Section 15071 (a))
_________ Emergency Project (Section 15071 (b) and (c))
_________ Categorical Exemption. State type and section number: 15332, Class 32

Construction of in-fill development
Reasons why project is exempt

Bradley D. Dunlap, AICP, Community Development Director
Contact Person

If Filed by Applicant:

1. Attached certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the project?
   Yes: ______ No: ______

Date Received for filing: ____________
Signature ____________________________

City Planner ________________________
Title ________________________________

U/NoticeExemptCUP12-2007

ATTACHMENT
ITEM NO. 4
RESOLUTION NO.________

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE CONTAINING FINDINGS IN SUPPORT OF CONDITIONAL USE PERMIT 12-2007 TO ALLOW THE CONSTRUCTION OF A 100-FOOT HIGH WIRELESS COMMUNICATIONS TOWER AND RELATED EQUIPMENT IN THE OA (OPEN AREA) ZONE FOR THAT SITE LOCATED ON THE EAST SIDE OF NEWCOMB STREET, NORTH OF MORTON AVENUE BEHIND FIRE STATION NO. 2

WHEREAS: The City Council of the City of Porterville at its regularly scheduled meeting of December 4, 2007, conducted a public hearing to consider Conditional Use Permit 12-2007, being a request to allow the construction of a 100-foot high wireless communications tower and related equipment in the OA (Open Area) Zone for that site located on the east side of Newcomb Street, north of Morton Avenue behind Fire Station No. 2 in the OA (Open Area) Zone.

WHEREAS: On June 20, 2006, the Porterville City Council amended Zoning Ordinance 2626, by Ordinance 1700. In brief, wireless communications towers to be located in a commercial zone cannot be any higher than 100 feet or any closer than 300 feet of a residentially zoned area. Staff has determined that the project meets the distance criteria defined by the recently adopted Wireless Communications Ordinance.

WHEREAS: The City Council made the following findings with respect to the subject project:

1. The General Plan designates the subject site as Public and Quasi/Public.

   The subject site is zoned OA (Open Area) which is supported by the General Plan. The proposed use is allowed pursuant to approval of a Conditional Use Permit.

2. That the site is physically suitable for the type of development proposed.

   The 30'x90' lease site has soil that is not highly expansive and therefore will not create any barriers to the project as proposed.
3. That the design of the project or the proposed improvements are not likely to cause substantial environmental damage.

The site is developed with improved parking, a fire training area and fire station to the north and Porter Slough to the south. The remaining area is dirt and absent of any vegetation.

Staff is aware that an elderberry shrub exists on the outside of the west fence line adjacent to the oleanders located south of the fire station. The bush is approximately eight (8) feet in height. One of the stems was an inch in diameter. No bore holes were observed.

The location of the shrub is 70± feet northwest of the westerly most portion of the lease area. Implementation of the Conservation Guidelines for the Valley Elderberry Longhorn Beetle (USFWS 1999), including strict avoidance of any work within the 20-foot drip line of the elderberry shrub will be required.

4. That the proposed location of the project and the conditions under which it will be operated and maintained will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.

The proposed project will not generate any liquid or solid waste and there is no need for water or sewage services at the site.

5. That the standard of population density, site area dimensions, site coverage, yard spaces, height of structures, distance between structures, off-street parking facilities, and landscaped areas will produce an environment of stable and desirable character consistent with the objectives of the Zoning Ordinance.

Section 2103 A-11 of the Porterville Zoning Ordinance allows for radio or television transmitters and receivers subject to a Conditional Use Permit. Additionally, conditions of approval will ensure adequate development standards are met.

NOW, THEREFORE, BE IT RESOLVED: That the City Council of the City of Porterville does hereby approve Conditional Use Permit 12-2007, subject to the following conditions:

1. Upon submittal of a building permit the following will be required:

   a. Submit three (3) complete sets of plans, signed by a licensed Architect or Engineer, to include structural calculations.

   b. Compliance with all applicable codes is required.

   c. Plan check fees are required at the time of building permit issuance.
d. Pay all other fees at time of permit issuance.

e. Soils compaction test may be required.

2. The electrical cabinets will be required to be enclosed behind a view obscuring cyclone fence and may not be visible to public view.

3. That the pole and all associated antennas shall be non-reflective, with a treatment color designed to diminish the visual impact on the skyline.

4. That a FAA clearance form will be required to be submitted at the time of building permit submittal.

5. The developer/applicant shall pay all applicable fees in accordance with the Municipal Code and State law. Fees are subject to change annually. The developer/applicant is hereby notified that you have the right to pay fees, dedications, reservations or other exactions, under protest, pursuant to Government Code Section 66020(a). You have 90 days from the date fees are paid to file a written protest.

6. Use of the tower and related facilities shall not be permitted to interfere with existing communications. The developer/applicant should be aware that 2.4 MHz and 5.8 GHz facilities are currently in use in the vicinity.

7. If underground electric and/or communications lines are located in the vicinity of Fire Station No. 2, the developer/applicant will likely be required to install conduit (minimum two inch diameter) for use by the City of Porterville.

8. The facility shall be designed, constructed and operated and maintained in compliance with all provisions of State law, Federal law, FCC regulations, the City of Porterville Zoning Ordinance, Municipal Code, and adopted City Standards and Specifications.

9. Comply with FCC regulation, specifically to avoid conflicts with the Burton School District and City of Porterville communication frequencies.

10. The tower shall not encroach into the Waste Water Treatment Facility area.

11. Applicants shall provide an underground service(s) to tower from the nearest power source. Easements shall be executed before the commencement of any work.

12. The developer/applicant shall pay all applicable fees according to the Municipal Code and State Law.

13. That the one (1) unused antenna location which would be available for co-location by future service provider on the proposed tower will not require any future approval by the City Council.
14. The applicant will be required to work with the Fire Department, Public Works and the Department of Parks and Leisure on a preferred option to the access route to the site.

15. Prior to any construction, a signed lease agreement between the applicant/developer and the City of Porterville will be required.

16. The development of the proposed antenna and related improvements shall conform to the approved plans attached as Exhibit “A”.

17. The Conditional Use Permit shall become null and void at the expiration of the term thereof, or if not undertaken and actively and continuously pursued within the time specified in the permit or within one (1) year if no time is specified therein.

____________________________
Cameron Hamilton, Mayor

ATTEST:

John Longley, City Clerk

By __________________________________________
    Patrice Hildreth, Acting Chief Deputy City Clerk
REPORT CONCERNING LEGALITY OF THE ADOPTION OF LOCAL
BIDDING PREFERENCES FOR AWARD OF MUNICIPAL CONTRACTS

CITY ATTORNEY

This report is provided in response to a request that this office review the status of the law concerning local bidding preferences for City contracts for projects, goods and services. The City's Charter, state law, and federal law govern with regard to this issue. In sum, an ordinance granting local bidding preferences of no more than 5% can be authorized for certain contracts with the City, only if certain conditions are met. If the conditions (described below) are not met, and adequate findings are not made prior to adoption of such a program, the City's program could be open to legal challenge.

As a Charter City, the issue of competitive bidding is one of "home rule." Therefore this is the starting point for review. Section 61 provides that the City must award all contracts for "public projects" to the lowest responsible bidder. Public projects are defined as projects for the erection, improvement and repair of public buildings and works, work in or about streams, embankments, street sewer work (excluding maintenance or repair), the furnishing of any supplies or materials for such projects and works, and the furnishing of supplies or materials for street, sewer, or water lines maintenance and repair. With regard to the projects and work addressed in this section, the City cannot adopt a local bidding preference without proposing a Charter Amendment for adoption by its citizens. The 9th Circuit has held that imposing such a program without amending the Charter would result in a violation of the Charter provision requiring that contracts be awarded to the "lowest responsible bidder." (Associated General Contractors of California, Inc. et al. v. City and County of San Francisco (9th Cir. 1987) 813 F.2d 922.) Any proposed amendment would be subject to the conditions described below.

With regard to contracts not subject to Section 61 of the Charter, the City may adopt local bidding preferences only if certain conditions are met. Section 54 of the City's Charter provides that all general laws of the State not in conflict with the Charter or any ordinance adopted by the City are applicable to the City. With regard to contracts for supplies and services not otherwise covered by Section 61, City follows its purchasing ordinance/polices. For contracts for equipment and goods not subject to Section 61, the City's current policies have imposed competitive bidding for amounts exceeding $5,000. However, the 9th Circuit has determined that a City may amend its policies/ordinance to allow for a local bidding preference of 5% or less without violating the equal protection clause of the 14th Amendment if the City can
demonstrate that 1) local businesses are at a competitive disadvantage with businesses from other areas because of the higher administrative costs of doing business in the City (e.g. higher taxes, higher rents, higher wages and benefits for labor, higher insurance rates, etc.); 2) the public interest would be best served by encouraging businesses to locate and remain in the City through a minimal “good faith” preference to local businesses; and 3) the City has made it relatively easy for “foreign” businesses to qualify for the local preference (in the subject case foreign businesses could become local by acquiring fixed offices or distribution points within the City and paying permit and license fees – in other words by making themselves subject to the those local “disadvantages” they would then be eligible for the local preference as well). (813 F.2d at 943.) While these particular conditions/requirements are not set in stone, the 9th Circuit explicitly held that it takes a combination of both overall benefit to the City and express disadvantages imposed on local businesses, in order to justify a local bidding preference.

In the event the City Council wishes to pursue the adoption of a local preference, City staff and this office would need to investigate whether such findings could be made for the City of Porterville in order to justify a preference, and would then need to review the City’s ordinances and policies to determine what regulatory amendments would be necessary. If a local preference provision is pursued, it should be adopted by ordinance. Furthermore, as noted above, any local preference for contracts covered by Section 61 would require a Charter Amendment.

RECOMMENDATION: That the City Council considers this report and provide any further direction.
COUNCIL AGENDA: December 4, 2007

SUBJECT: RENEWAL OF PAID TELECOMMUNICATION SERVICE FOR COUNCIL MEMBER LAPTOP COMPUTERS

SOURCE: Administrative Services

COMMENT: As a component to the issuance of laptop computers to members of City Council, the City also provides paid telecommunication services. The wireless service provides Council Members with access to e-mail communications and the Internet in an effort to improve the efficiency of conducting City business. The two (2)-year service contract with Clearwire is up for renewal at the end of December 2007. Clearwire has provided the wireless service over the past two years for $40.23 per month. The new contract proposal from Clearwire to the City reflects a slight increase to $42.35 per month for the same service.

It would be appropriate at this time to consider other wireless service providers to determine the best and most cost effective solution currently available. The top four wireless service providers for consideration are: 1) Verizon; 2) Sprint; 3) AT&T; and 4) Clearwire. There are advantages and disadvantages with each of the wireless service providers. Staff has provided the attached spreadsheet outlining their respective products, equipment costs, speeds, coverage and monthly service fees.

RECOMMENDATION:

That the City Council:

1. Select a wireless service provider to provide telecommunication services for Council Members laptop computers; and

2. Authorize Staff to negotiate a service contract with the selected wireless provider.

ATTACHMENTS: Wireless Service Provider Analysis

D.D. Appropriated/Funded C.M. Item No. 24
# Wireless Analysis

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<td>no, w/2yr contract</td>
</tr>
<tr>
<td>Coverage</td>
<td>CA and National</td>
<td>CA and National</td>
<td>CA and National</td>
<td>Local</td>
</tr>
<tr>
<td>Roaming Charges</td>
<td>no</td>
<td>no</td>
<td>no</td>
<td>no</td>
</tr>
<tr>
<td>Monthly</td>
<td>$50.39</td>
<td>$49.95</td>
<td>$44.96 (59.95 - 25% disc)</td>
<td>$42.35 current CPE Modern $87.00 PC card $95.00 Both</td>
</tr>
</tbody>
</table>

**Rep:** Denece Alisio (559) 246-1000
denece.alisio@verizonwireless.com

**Rep:** Lisa Schonauer (661) 852-2914
cell: (661) 201-5379
lisaschonauer@sprint.com

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**Rep:** Jeremiah Munoz
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* if billed directly to city
**if service is canceled within 30 days equipment must be returned and potential fees accessed
***Theoretical peak