

CITY COUNCIL AGENDA: DECEMBER 16, 2014

SCHEDULED MATTER

TITLE: ISSUES RELATED TO IMPLEMENTATION OF CARGO CONTAINER REGULATIONS

SOURCE: COMMUNITY DEVELOPMENT DEPARTMENT- PLANNING DIVISION

COMMENT: At the meeting of March 4, 2014, the City Council adopted Resolutions 14-2014 and 15-2014 in order to set forth provisions to accommodate various time periods for the temporary use of cargo containers associated with commercial and industrial uses, and to establish fees for processing such applications. Resolution 15-2014, in establishing fees, defined an "amnesty period" of a reduced fee amount where business owners may have previously brought to site a cargo container without permits for long term use of three or fewer containers, in order to encourage early compliance.

Although a small number of businesses had attended the March 2014 City Council meeting, and the item was the subject of an article in the Porterville Recorder, no applications had been received by September 30th. In order to remind businesses of the new requirements with adequate time to allow fees to be submitted at the reduced rate, staff coordinated a courtesy reminder effort in October. The initial step involved windshield surveys along major commercial corridors citywide. After documenting those businesses with cargo containers, approximately 65 courtesy letters were sent to the businesses advising them of the new regulations and the opportunity to comply in advance of the January 1, 2015, fee increase.

Subsequent to receiving the letters, two businesses have completed the application form (Attachment 3) and submitted the fee in order to legalize the use of their cargo containers. Conversely, a number of those businesses that received the letter were upset at the regulation as well as the fee. Further, some businesses cite prior authorization to locate and maintain the cargo containers from previous Building Officials, even though that staff did not have authority to make such approvals.

Most early approvals referenced are at least ten years old, prior to the initial resolution of ambiguity in Resolution 29-2005. Staff is of the position that those early approvals were granted in error, and, therefore, are not valid. However, staff acknowledges that to the business owners' best knowledge, they were complying with the regulations of the City. In these instances, staff is seeking direction from the City Council.

As a matter of defining the applicability of any grandfather clauses for three or fewer cargo containers, staff has recommendations as outlined below:

- If the business owner with a cargo container was issued a written letter of approval from City staff, but was not placed on the site in a manner

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consistent with Resolution 14-2014, the container may have the first five year period of a long-term temporary permit free of charge, and at the end of the five year period, compliance must be reached before a new permit would be issued.

- In the event that the business owner with a cargo container was issued a written letter of approval from City staff and was placed on a permanent foundation and meeting all conditions of Resolution 14-2014, it can be grandfathered with adequate documentation of approval in the form of a written letter by the Zoning Administrator.
- If the cargo container was referenced within or otherwise approved as part of a building permit and placed on a permanent foundation and meeting all conditions of Resolution 14-2014, it can be grandfathered by the Zoning Administrator.

Staff does not recommend providing a grandfather clause for greater than three cargo containers; of the 104 sites found during the surveys that had cargo containers, only nine locations included more than three containers.

Outside of these specific instances, all cargo containers are subject to the provisions of Resolutions 14-2014 and 15-2014.

RECOMMENDATION: That the City Council consider whether, and to what degree, previously “approved” cargo containers may remain on site and provide direction to staff accordingly.

ATTACHMENTS:

1. Resolution 14-2014
2. Resolution 15-2014
3. Cargo Container Application
4. Sample letter

RESOLUTION NO. 14 -2014

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE
ADOPTING INTERPRETATIONS OF AMBIGUITY AND
STATEMENTS OF CITY COUNCIL INTENT WITH REGARD TO
TEMPORARY (CARGO/SHIPPING CONTAINERS),
MOBILE AND PERMANENT DEVELOPMENT

WHEREAS: On October 12, 2004, and March 1, 2005, the City Council considered the status of a variety of non-standard building types including temporary buildings, long-term street vending, drive-through restaurant kiosks, etc.; and

WHEREAS: At that time, the City Council determined that the Municipal Code and the Development Ordinance allow for potential ambiguity in the interpretation of such issues as the appropriate application of the Municipal Code provisions for cargo/shipping containers for Temporary Building Permits, the Zoning Ordinance provisions for a Conditional Use Permit for Street Vending for more than five days at a single location, and the appropriate development standards to apply thereto to each; and

WHEREAS: On March 1, 2005, the City Council adopted Resolution 29-2005, providing an interpretation of ambiguity and statements of City Council intent with regard to temporary, mobile, and permanent development; and

WHEREAS: On November 5, 2013, and December 3, 2013, the City Council considered modifications to Resolution 29-2005 as it relates to cargo/shipping containers for nonresidential uses; and

WHEREAS: On December 3, 2013, the City Council adopted Resolution 82-2013 as it relates to cargo/shipping containers for nonresidential uses; and

WHEREAS: On February 4, 2014, the City Council considered further modifications to the use of cargo/shipping containers for nonresidential uses. Specifically, the Council directed that the Zoning Administrator would have authority to approve up to three cargo/shipping containers for a long term period, subject to compliance with the criteria defined in Resolution 82-2013 except as amended herein; and

WHEREAS: On March 4, 2014, the City Council considered the revised draft resolutions setting forth additional provisions for long term use of cargo/shipping containers as outline in the previous paragraph; and

WHEREAS: The City Council intends to provide guidance to City Staff and the development community with regard to the approved interpretation of such ambiguity in the City Code and Development Ordinance and to give an indication as to the likely standards of review and intent of City Council in considering future development proposals and provide additional clarification relative to the temporary use of cargo/shipping containers.

**ATTACHMENT
ITEM NO. **

NOW, THEREFORE, BE IT RESOLVED: That the City Council of the City of Porterville does hereby adopt statements of interpretation of ambiguity and statements of City Council intent as follows:

- 1) **Permanent Commercial Buildings:** In order to be considered a “permanent” commercial building, subject to complying with the Development Ordinance and applicable building and fire codes, and securing a building permit, a structure must be affixed to the ground through a foundation, foundation system or other similar means, except as described below. By this standard, cargo/shipping containers, catering trucks, and trailers would not be considered “permanent” commercial buildings. Modular buildings, sheds, pre-fabricated buildings, etc., may be considered to be permanent buildings provided they are affixed to foundations. Full development standards as required by City Code would apply in such cases.
- 2) **Permanent Commercial Buildings – Exception for Food Vending Booths:** Food vending booths, food or coffee kiosks, “hot-dog” stands etc. without a foundation may be considered to be “permanent” provided the following conditions are met:
 - a) The type and location of the use is permitted by the Zoning Ordinance.
 - b) The type, location, and intensity of the use are included in all calculations of site improvement requirements, including parking calculations, etc.
 - c) The development is clearly accessory to the primary use of the site, and its hours of operation are limited to those of the primary use.
 - d) The development fully complies with adopted building codes, including fire protection and the requirements of State and Local Public Health authorities.
- 3) **Permanent Commercial Buildings – Exception for Approved Temporary Buildings:** Modular and similar buildings, whether on permanent foundations or not, may be approved by the City Council as temporary buildings. Site development standards for such cases shall be determined as described below.
- 4) **Non-Standard Development as Accessory Use:** Except for on-farm produce stands and cargo/shipping containers as specifically addressed herein, non-standard development will only be approved as an accessory to standard, permanent development on the same site, or on an adjacent related site. This will help to ensure that minimum site improvements are provided for commercial uses.
- 5) **Use of Cargo/Shipping Containers as Temporary Non-Standard Development; Short Term:** Where appropriate and necessary for short term use, the Zoning Administrator may approve use of cargo/shipping containers in

Commercial and Industrial zone districts associated with an existing development for additional storage capacity subject to the following specific criteria:

- The number of containers is limited to one per business or parcel, whichever results in fewer containers per site.
- The cargo/shipping container shall not remain on site for longer than 100 days.
- The placement of the cargo/shipping container shall be such that it does not interfere with the permanent site improvements, including but not limited to, parking, loading areas, on-site circulation, and accessibility.
- The placement of the cargo/shipping container shall not encroach into required setbacks, and must not be visible from off site or public streets. .
- Use of a cargo/shipping container may be granted subject to payment of an adopted fee for a Ministerial Temporary Structure Permit. Use of cargo/shipping containers in manners not consistent with this section, may only be authorized by the City Council.

6) **Use of Cargo/Shipping Containers as Temporary Non-Standard Development; Long Term- three (3) or fewer containers:** Where appropriate and necessary for longer term use, the Zoning Administrator may approve use of cargo/shipping containers in Commercial and Industrial zone districts associated with an existing development for additional storage capacity subject to the following specific criteria:

- The number of containers allowed shall not exceed three (3) containers.
- The time period requested shall be specified by the applicant. Final expiration of the permit shall be coterminous with the permit expiration date approved by the Zoning Administrator. Extensions will not be permitted. However, the applicant may apply for another long term, administrative, permit. Failure to obtain the renewed permit could result in Code Enforcement action and associated fines.
- The placement of the cargo/shipping container shall be such that it does not interfere with the permanent site improvements, including but not limited to, parking, loading areas, on-site circulation, and accessibility.
- The placement of the cargo/shipping container shall not encroach into required setbacks, and must not be visible from off site or public streets.
- Use of a cargo/shipping container may be granted subject to payment of an adopted fee for a Zoning Administrator permit application plus an initial fee for the first site visit and an annual fee applicable upon approval. The annual fee would apply for any year or portion thereof the container continues to be stored on site.
- The Zoning Administrator may require additional conditions intended to ensure the use does not create blight.

7) **Use of Cargo/Shipping Containers as Temporary Non-Standard Development; Long Term; more than three (3) containers:** Where appropriate and necessary for longer term use, the Council may approve use of cargo/shipping

containers in Commercial and Industrial zone districts associated with an existing development for additional storage capacity subject to the following specific criteria:

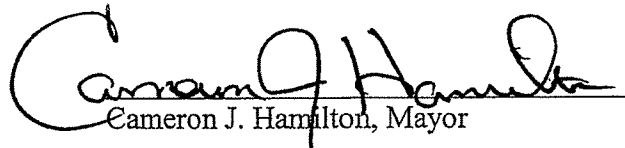
- The number of containers allowed would be determined by Council.
- The time period requested shall be specified by the applicant. Final expiration of the permit shall be coterminous with the permit expiration date approved by Council. Extensions will not be permitted. However, the applicant may apply for another long term, discretionary, permit. Failure to obtain the renewed permit could result in Code Enforcement action and associated fines.
- The placement of the cargo/shipping container shall be such that it does not interfere with the permanent site improvements, including but not limited to, parking, loading areas, on-site circulation, and accessibility.
- The placement of the cargo/shipping container shall not encroach into required setbacks, and must not be visible from off site or public streets. .
- Use of a cargo/shipping container may be granted subject to payment of an adopted fee for a Discretionary Temporary Structure Permit application with a monthly fee applicable upon approval and commencing at 100 days of use. The fee would apply for any month or portion thereof the container continues to be stored on site.
- Council may require additional conditions intended to ensure the use does not create blight.

- 8) **Time Limits Required for Non-Standard Development:** Non-standard development may be approved by the City Council as either a “Temporary Building” or a “Street Vendor” as appropriate. In all such cases, approval will be for a limited period of time. The approval period will not typically exceed the reasonable period of time necessary to secure a permanent replacement. In some cases, a reasonable period of time may be granted to allow for market testing, “proof-of-concept”, etc. Site improvement standards for such development shall be determined by the City Council on a case-by-case basis using guidelines as established below.
- 9) **Development Standards – Non-Standard Development:** All non-standard development requires approval by the City Council with appropriate Conditions of Approval. Such development may require site improvements that differ from those required for permanent development. Staff reports for such proposals should identify both the proposed site improvements and the improvements that would be required for similar, permanent development.
- 10) **Temporary Building Permits – Effect on Standards for Existing Conforming Development:** Temporary buildings may be approved only with clear time limits, and with a finding by City Council that the development is to accommodate a time of business stress or emergency or a construction project. For this reason, the City Council may authorize such uses in circumstances that would cause an existing, conforming development to become non-conforming for the duration of the use.

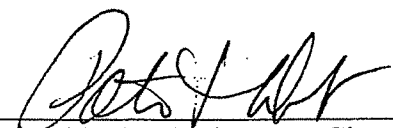
For example, a temporary modular building could be authorized to occupy required parking spaces in a commercial development. It is the intent of City Council to weigh such modifications against both the need and duration of the temporary building. Except in extraordinary cases, the City Council would not expect to authorize a permit that creates a non-conforming circumstance for a period longer than 90 days.

- 11) **Conditional Use Permits for "Street Vending" – Effect on Standards for Existing Conforming Development** - Conditional Use Permits for "Street Vending" for periods longer than five days do not require a finding of business stress or emergency. For that reason, such uses will not be permitted to cause an existing conforming development to become non-conforming.
- 12) **Standards of Review – Non-standard Development:** It is the intent of City Council to consider the impact that proposed Temporary Building Permits and Conditional Use Permits for longer term street vending will have on other similar businesses. Such uses are intended to offer flexibility under unusual circumstances and will not be encouraged as a means to compete with businesses in permanent buildings by avoiding development standards that would otherwise apply.
- 13) **Compliance with Zoning Ordinance and City Code – Non-Standard Development:** None of the above shall be construed to permit non-standard development to violate the Zoning Ordinance or other provisions of City Code. No use may be authorized by a Temporary Building Permit or as a Conditional Use Permit for street vending that is not permitted by the underlying Zoning Classification. Such restriction includes limitations on outdoor sales where applicable.

PASSED, APPROVED AND ADOPTED this 4th day of March, 2014.


Cameron J. Hamilton, Mayor

ATTEST:
John D. Lollis, City Clerk

By: 
Patrice Hildreth, Chief Deputy City Clerk

RESOLUTION NO. 15-2014

A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF PORTERVILLE ESTABLISHING FEES FOR USE OF
CARGO/SHIPPING CONTAINERS AS TEMPORARY STRUCTURES

WHEREAS, On December 3, 2013, the City Council of the City of Porterville considered modifications to Resolution 29-2005 as it relates to cargo/shipping containers for non-residential uses; and

WHEREAS, during that meeting, the City Council adopted an amended resolution creating a provision for the use of cargo/shipping containers in two manners: as Temporary Non-Standard Development: Short Term, and as Temporary Non-Standard Development: Long Term; and

WHEREAS, the fee had not yet been determined or defined at the time of that meeting, and the City Council directed staff to return with recommended fees. Staff has since researched similar fees in other jurisdictions; and

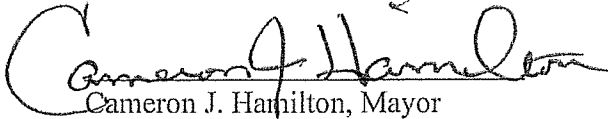
WHEREAS, on January 21, 2014, a public hearing was held to consider adoption of a fee related to said provisions. Input received resulted in a continuance of the hearing to the meeting of March 4, 2014, and additional clarification regarding implementation of the policy was brought to the Council at the meeting of February 4, 2014; and

WHEREAS, further consideration of the policy and fees were discussed at the meeting of March 4, 2014; and

WHEREAS, the proposed fee structure is based on staff time necessary to initiate review of temporary structures and then monitor on-going compliance in these specific cases as deemed necessary by the Council. The recommended fee for use of cargo containers as temporary non-standard development is as follows: Short Term = \$296, Long Term (up to three containers) = \$138 for those users receiving a permit before January 1, 2015, and \$217 after January 1, 2015, Long Term (more than three containers) = \$454 + \$79/six month period or portion thereof.

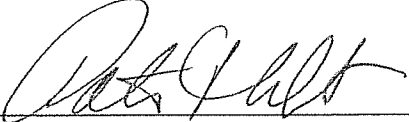
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Porterville that the fees for use of cargo containers as temporary non-standard development as permitted in accordance with Resolution 82-2013 is adopted as Short Term = \$296, Long Term (up to three containers) = \$138 for those users receiving a permit before January 1, 2015, and \$217 after January 1, 2015, Long Term (more than three containers) = \$454 + \$79/six month period or portion thereof.

PASSED, APPROVED AND ADOPTED this 4th day of March, 2014.


Cameron J. Hamilton, Mayor

ATTEST:

John D. Lollis, City Clerk

By 
Patrice Hildreth, Chief Deputy City Clerk



CITY OF PORTERVILLE

Community Development - Planning Division

Cargo Container Permit Application

Business Name: _____

Business Address: _____

Contact Person: _____ Contact Telephone/ Email: _____

Number of Containers: _____ Time Frame: _____
Date to be placed Date to be removed Number of days Already in place

Explain need for containers: _____

Will hazardous materials be stored in container(s)? Yes No

If yes, what types of hazardous materials? _____

*Site plan is required

Staff Use Only

Short Term

Approved By _____

Long Term (Less than/up to 3)

Field Checks _____

Long Term (More than 3)

Mitigation Factors _____

Requirements for Use of Cargo/Shipping Containers

Use of Cargo/Shipping Containers as Temporary Non-Standard Development; Short Term: Where appropriate and necessary for short term use, the Zoning Administrator may approve of cargo/shipping containers in Commercial and Industrial zone districts associated with an existing development for additional storage capacity subject to the following specific criteria:

- The number of containers is limited to one per business or parcel, whichever results in fewer containers per site.
- The cargo/shipping container shall not remain on site for longer than 100 days.
- The placement of the cargo/shipping container shall be such that it does not interfere with the permanent site improvements, including but not limited to, parking loading areas, on-site circulation, and accessibility.
- The placement of the cargo/shipping container shall not encroach into required setbacks, and must not be visible from off site or public streets.
- Use of a cargo/shipping container may be granted subject to payment of an adopted fee for a Ministerial Temporary Structure Permit. Use of cargo/shipping containers in manners not consistent with this section, may only be authorized by the City Council.

Use of Cargo/Shipping Containers as Temporary Non- Standard Development; Long Term- three (3) of fewer containers: Where appropriate and necessary for longer term use, the Zoning Administrator may approve use of cargo/shipping containers in Commercial and Industrial zone districts associated with an existing development for additional storage capacity subject to the following specific criteria:

- The number of containers allowed shall not exceed three (3) containers.
- The time period requested shall be specified by the applicant. Final expiration of the permit shall be coterminous with the permit expiration date approved by the Zoning Administrator. Extensions will not be permitted. However, the applicant may apply for another long term, administrative, permit. Failure to obtain the renewed permit could result in Code Enforcement action and associated fines.
- The placement of the cargo/shipping container shall be such that it does not interfere with the permanent site improvements, including but not limited to, parking loading areas, on-site circulation, and accessibility.
- The placement of the cargo/shipping container shall not encroach into required setbacks, and must not be visible from off site or public streets.
- Use of a cargo/shipping container may be granted subject to payment of an adopted fee for a Zoning Administrator permit application plus an initial fee for the first site visit and an annual fee applicable upon approval. The annual fee would apply for any year or portion thereof the container continues to be stored on site.
- The Zoning Administrator may require additional conditions intended to ensure the use does not create blight.

Use of Cargo/Shipping Containers as Temporary Non-Standard Development; Long Term; more than three (3) container: Where appropriate and necessary for longer term use, the Council may approve use of cargo/shipping containers in Commercial and Industrial zone districts associated with an existing development for additional storage capacity subject to the following specific criteria:

- The number of containers allowed would be determined by Council.
- The time period requested shall be specified by the applicant. Final expiration of the permit shall be coterminous with the permit expiration date approved by Council. Extensions will not be permitted. However, the applicant may apply for another long term, discretionary, permit. Failure to obtain the renewed permit could result in Code Enforcement action and associated fines.
- The placement of the cargo/shipping container shall be such that it does not interfere with the permanent site improvements, including but not limited to, parking loading areas, on-site circulation, and accessibility.
- The placement of the cargo/shipping container shall not encroach into required setbacks, and must not be visible from off site or public streets.
- Use of Cargo/shipping container may be granted subject to payment of an adopted fee for a Discretionary Temporary Structure Permit application with a monthly fee applicable upon approval and commencing at 100 days of use. The fee would apply for any month or portion thereof the container continues to be stored on site.
- Council may require additional conditions intended to ensure the use does not create blight.

In accordance to resolution 15-2014, the fees are as follows; Short Term = \$296, Long Term (up to three containers) = \$138 for those receiving the permit before January 1, 2015, and \$217 after January 1, 2015, Long Term (more than three containers) = \$454 + \$79/six month period or portion thereof.

October 27, 2014

Name of Business
Business Owner
Address
Porterville, CA 93257

Dear Business Owner,

Porterville is a community that strives for well-kept residential, business and industrial areas. In order to promote a higher quality of life the City has adopted resolutions pertaining to cargo/shipping containers as temporary structures. Resolution #14-2014 outlined the manner in which cargo containers may be used by businesses. Resolution #15-2014 established fees for use of cargo containers as temporary structures. Together, these resolutions, adopted March 4, 2014, intend to reduce permanent use of temporary structures by requiring a permit to use such structures and payment of a one-time fee. This is a courtesy notice to advise that after January 1, 2015, the City will begin enforcing this rule.

The City of Porterville Community Development Department has noticed that there is/are container(s) on the property identified above. The Cargo Containers can be used under two (2) manners: as Temporary Non- Standard Development: Short Term, and as Temporary Non-Standard Development: Long Term. Both require permits and payment of a fee. The language from the resolution defining the terms is included below.

Please note that after January 1, 2015, the fee for Use of Cargo Containers as Temporary Non-Standard Development: Long Term- three (3) or fewer containers will increase from \$138 to \$217.

Use of Cargo Containers as Temporary Non-Standard Development; Short Term: In areas where it is appropriate and necessary for short term use the Zoning Administrator may approve the use of the cargo containers in Commercial and Industrial zoned districts affiliated with current and existing development for additional storage purposes which are subject to the following criteria:

- There is only one (1) container limited per business or parcel.
- The container cannot be located on the site for more than 100 days.
- The container shall be stationed in an area that does not interfere with permanent site improvements, which include and are not limited to, parking, loading areas, on-site circulation, and accessibility.
- The location of the container may not interfere with required setbacks and cannot be visible from off site and/or public street view.

ATTACHMENT NO. 4

- The use of a container may be granted in accordance with a payment of an adopted fee for a Ministerial Temporary Structure Permit. The use of the containers that are not consistent with this section can only be approved by City Council.

Use of Cargo Containers as Temporary Non- Standard Development; Long Term- three (3) or fewer containers: Where it may be appropriate and necessary for longer terms of use, the Zoning Administrator may approve the use of cargo containers in Commercial and Industrial Zone districts associated with current and existing development for additional storage area are subject to the following criteria:

- The maximum amount of containers is three (3).
- The applicant will need to be specific on the time period being requested. The final expiration of the permit will be concurrent with the permit expiration date that is approved by the Zoning Administrator. Extensions for this permit are not allowed, nonetheless the applicant can apply for another long term, administrative, permit. Code Enforcement action and associated fines will directly result in failure to obtain a renewed permit.
- The container shall be stationed in an area that it does not interfere with permanent site improvements, which include and are not limited to, parking, loading areas, on-site circulation, and accessibility.
- The location of the container may not interfere with required setbacks and cannot be visible from off site and/or public street view.
- The use of the container may be granted in accordance with a payment of an adopted fee for a Zoning Administrator permit application plus an initial fee for the site visit and an annual fee that is applicable upon approval. The annual fee will apply for any year or portion of the year that the container continues to be stored on the site.
- The Zoning Administrator can require additional terms and conditions which are purely intended for the prevention of blight.

Use of Cargo/Shipping Containers as Temporary Non-Standard Development; Long Term; more than three (3) containers: In areas where it is appropriate and necessary for longer term use, the City Council may approve the use of cargo containers in Commercial and Industrial zone districts that are affiliated with current and existing development for additional storage area are subject to the following specific criteria:

- The City Council will determine the number of containers that will be allowed.
- The applicant will need to be specific on the time period being requested. The final expiration of the permit will be concurrent with the permit expiration date that is approved by the Zoning Administrator. Extensions for this permit are not allowed, nonetheless the applicant can apply for another long term, discretionary, permit. Code Enforcement action and associated fines will directly result in failure to obtain a renewed permit.
- The container shall be stationed in an area that it does not interfere with permanent site improvements, which include and are not limited to, parking, loading areas, on-site circulation, and accessibility.

- The location of the container may not interfere with required setbacks and cannot be visible from off site and/or public street view.
- The use of the containers may be granted upon payment of an adopted fee for a Discretionary Temporary Structure Permit application along with a monthly fee that will be applicable upon the approval and commencing at 100 days of the use. The fee is applicable for any month or portion of month that the containers are stored on the site.
- The City Council can require additional terms and conditions which are purely intended for the prevention of blight.

The Community Development Department is requesting that you please contact the Planning Division at your earliest convenience prior to January 1, 2015 at 559-782-7460, by email at planning@ci.porterville.ca.us, or in person at 291 North Main Street in Porterville to discuss the matter and arrange for the obtainment of the permit before enforcement is initiated. Copies of the resolutions are available from the City using the same contact information above. It is the responsibility of all of us to maintain a friendly, pleasant and safe environment in the City of Porterville and we would greatly appreciate your cooperation in resolving this matter.

Respectfully,

Julie Phillips, AICP
Community Development Manager