

CITY COUNCIL AGENDA: JANUARY 20, 2015

CONSENT CALENDAR

TITLE: IMPLEMENTATION OF CARGO CONTAINER REGULATIONS

SOURCE: COMMUNITY DEVELOPMENT DEPARTMENT- PLANNING DIVISION

COMMENT: At the meeting of December 16, 2014, the City Council considered adding flexibility to the existing resolution regulating cargo containers. At that meeting, the Council directed staff to amend the previously adopted resolutions to incorporate grandfathering clauses for pre-existing containers, and to extend the period during which a reduced fee is accepted for Long Term up to three containers.

As a matter of defining the applicability of any grandfather clauses for three or fewer cargo containers, the following grandfather clauses were recommended for incorporation into an amended resolution:

- If the cargo container was issued a written letter of approval from City staff, but was not placed on the site in a manner 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 cargo container was issued a written letter of approval from City staff and was placed on a permanent foundation and meets 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 meets 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. Outside of these specific instances, all cargo containers are subject to the provisions of Resolutions 14-2014 and 15-2014.

The period during which a reduced fee is accepted for Long Term up to three containers will be extended from January 1, 2015, to February 1, 2015. Both amended resolutions are attached for formal approval.

RECOMMENDATION: That the City Council approve the revised resolutions as verbally amended at the meeting of December 16, 2014.

ATTACHMENTS: 1. Draft Policy Resolution  
2. Draft Fee Resolution

DD JB Funded/Approp N/A CM J Item No 16

RESOLUTION NO. \_\_\_\_\_

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 outlined in the previous paragraph; and

WHEREAS: on December 16, 2014, the City Council defined situations in which pre-existing cargo containers might be allowed to obtain the first five-year temporary term with no fee; 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

**ATTACHMENT NO. 1**

and intent of City Council in considering future development proposals and provide additional clarification relative to the temporary use of cargo/shipping containers.

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.
- In the following situations, the Zoning Administrator may issue a permit for up to five years of temporary use of cargo containers:

- If the cargo container was issued a written letter of approval from City staff, but was not placed on the site in a manner consistent with this resolution, the business may have the first five year period of a long term temporary permit free of charge, in the form of a written letter by the Zoning Administrator. At the end of the five year period, compliance must be reached before a new permit would be issued.
- In the event that the cargo container was issued a written letter of approval from City staff and was placed on a permanent foundation and meeting all conditions of this resolution, the business may have the first five year period of a long term temporary permit free of charge, 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 this resolution, the container may have the first five year period of a long term temporary permit free of charge, with adequate documentation of approval, in the form of a written letter by the Zoning Administrator.

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.
- In the following situations, the Council may issue a permit for up to five years of temporary use of cargo containers:

- If the cargo container was issued a written letter of approval from City staff, but was not placed on the site in a manner consistent with this resolution, the business may have the first five year period of a long term temporary permit free of charge, in the form of a written letter by the Council. At the end of the five year period, compliance must be reached before a new permit would be issued.
  - In the event that the cargo container was issued a written letter of approval from City staff and was placed on a permanent foundation and meeting all conditions of this resolution, the business may have the first five year period of a long term temporary permit free of charge, with adequate documentation of approval, in the form of a written letter by the Council.
  - 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 this resolution, the container may have the first five year period of a long term temporary permit free of charge, with adequate documentation of approval, in the form of a written letter by the Council.
- 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 20<sup>th</sup> day of January, 2015

By: \_\_\_\_\_  
Milt Stowe, Mayor

ATTEST:  
John D. Lollis, City Clerk

By: \_\_\_\_\_  
Patrice Hildreth, Chief Deputy City Clerk

RESOLUTION NO. \_\_\_\_\_

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; and

WHEREAS: On December 16, 2014, the City Council extended the date by which a reduced fee of \$138 could be paid to obtain a permit for Long Term (up to three containers) from January 1, 2015 to February 1, 2015.

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 February 1, 2015, and \$217 after February 1, 2015, Long Term (more than three containers) = \$454 + \$79/six month period or portion thereof.



PASSED, APPROVED AND ADOPTED this 20<sup>th</sup> day of January, 2015.

\_\_\_\_\_  
Milt Stowe, Mayor

ATTEST:  
John D. Lollis, City Clerk

By \_\_\_\_\_  
Patrice Hildreth, Chief Deputy City Clerk