

PUBLIC HEARING

SUBJECT: REQUEST FOR A CONDITIONAL USE PERMIT TO ALLOW FOR AN ON-SALE TYPE 69 (BEER, WINE AND DISTILLED SPIRITS) LICENSE FOR THE BARN THEATER LOCATED AT 42 SOUTH PLANO STREET


SOURCE: COMMUNITY DEVELOPMENT DEPARTMENT- PLANNING DIVISION

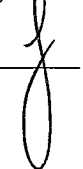
COMMENT: The applicant is requesting approval of a Conditional Use Permit (PRC 2013-009C) to allow for an on-sale Type 69 alcohol license from the Department of Alcoholic Beverage Control. This Type 69 alcohol license is specific to non-profit theater companies, and would allow sale and consumption of beer, wine and distilled spirits on the premises of the Barn Theater located at 42 South Plano Street.

BACKGROUND: On March 06, 2013, the applicant (Barn Theater Board of Directors) submitted an application to the Project Review Committee (PRC) to consider a proposal for an on-sale Type 51 (beer, wine and distilled spirits) license to serve to members and guests only, for consumption on the premises located at 42 South Plano Street (Barn Theater). During the PRC meeting, the applicant was informed that a conditional use permit would be required based on the provisions of the City's Development Ordinance, and, because the subject site is on City property, the applicants were directed by the Project Review Committee to discuss the proposal and get recommendation or direction from the Parks & Leisure Services Commission. On April 4, 2013, the Parks & Leisure Services Commission discussed the Barn Theater's request regarding the sale and consumption of beer, wine and distilled spirits, for consumption on the premises during special events and shows (indoors and outdoors). The Parks & Leisure Services Commission approved the proposal, and after a confirming vote of the Barn Theater Board of Directors, the applicant selected to continue the process of obtaining a conditional use permit for an alcoholic beverage license.

It is important to note that during the processing of the Conditional Use Permit application, staff and the applicant clarified that the proper alcoholic beverage license is a Type 69, not a Type 51. The type of license provides specific conditions from the Department of Alcoholic Beverage Control, and while Type 51 is intended for use of a Club, Type 69 is intended for use by a non-profit Theater.

The Barn Theater is a nonprofit organization that has its roots in the inventive minds of a small group of people who love the theater. Since 1952, the Barn Theater Corporation has owned the buildings on the southernmost portion of Murry Park, while the City owns the land. The organization has a long-standing commitment to theater education, establishing training programs for both children

DD  Appropriated/Funded N/A

CM 

Item No. 18

and adults and hosts special events, shows and festivals. For a number of years, the Barn Theater has sponsored the Porterville Bluegrass Buzzard Festival. This event celebrates the arrival of the turkey vultures coming through Porterville and is celebrated by serving food, desserts, beer and wine. In the past, in order to serve beer and wine, the Barn Theater applied for a one day permit from the Department of Alcoholic Beverage Control Board (ABC), and has obtained permission from the Porterville Police and Parks & Leisure Departments. The total fees for a one day permit is a little less than a yearly fee for the Type 69 (beer, wine and distilled spirits for a non-profit theater) license. With a yearly permit, the Barn Theater would be able to schedule several events without the need of applying for the daily permit, which would be less cost to the organization.

The serving of beer, wine and distilled spirits would occur in association with events only, consistent with requirements of the Business and Professions Code (§24045.7). The alcohol will be stored in the kitchen and will only be allowed to be served and consumed in the lobby and eating areas of the theater. However, during outdoor events, the consumption of alcohol will be allowed, but only in the rear of the theater as specified in Attachment 3. A condition of approval is included, which limits the hours of operation during which alcoholic beverages may be sold under the on-sale license. The Theater would be limited to sell and serve alcoholic beverages to ticketholders only during, and two hours prior to and one hour after, a bona fide theatre performance. The hours are further restricted to not earlier than 10:00 a.m. and not later than midnight Monday through Saturday and Sunday from 10:00 a.m. to 10:00 p.m.

The Barn Theater, at 42 South Plano Street, is located in Census Tract 39.01. Under the regulations of the Business and Professions Code, Census Tract 39.01 could accommodate six (6) on-sale licenses without being deemed over-concentrated. There are currently two (2) existing on-sale licenses, and, if approved, this will be the third on-sale license to exist in Census Tract 39.01, well under the number allowed. The ABC allows for a specific number of licenses per census tract, based on population. Whenever the ratio of on-sale licenses to population in a census tract exceeds the average ratio for the county, an "undue concentration" of licenses is determined to exist. According to the ABC, eleven (11) licenses currently exist in this tract, nine (9) of which are off-sale and two (2) are on-sale. Because this application will not deem on-sale licenses to be over-concentrated, a Letter of Public Convenience or Necessity is not required.

The Police Department has indicated that the Barn Theater site currently has sufficient exterior lighting to illuminate the parking lot during operating hours. In addition to the parking lot, Barn Theater patrons may congregate in an area outside of, and at the eastern side of the Theater building set aside for outdoor events. This area is represented on the Site Plan- Attachment 3, and would be fenced to enclose an area not larger than forty (40) feet by 100 feet for outdoor events. The resolution contains a condition to maintain the existing lighting in the

parking lot and the outdoor event area to allow reasonable surveillance of the site to the satisfaction of the Police Department.

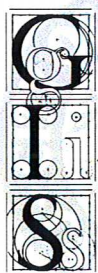
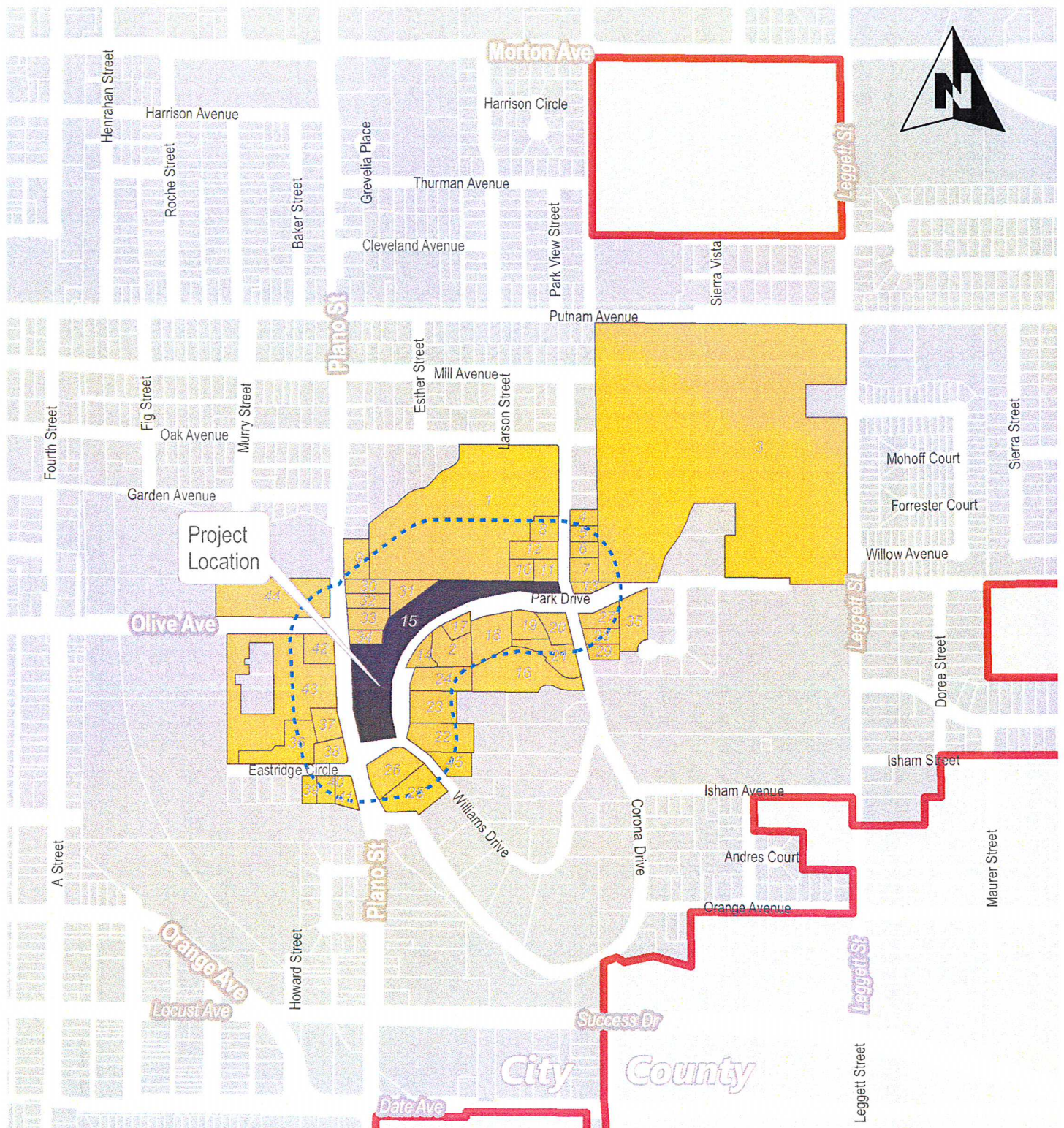
ANALYSIS: Allowing beer, wine and distilled spirits sales at the Barn Theater as conditioned will not be detrimental to the public health, safety, or welfare. It is not anticipated that this use would have a negative impact on the Barn Theater or surrounding properties. The facility is surrounded by vacant single family lots to the north, south and east with commercial retail to the west of the site with no immediately sensitive uses. Therefore, staff is proposing that there be no visible advertising of alcohol from the exterior of the facility. Conditions of approval are in place to protect the public safety and interest.

RECOMMENDATION: That the City Council:

1. Adopt the draft resolution approving Conditional Use Permit (PRC 2013-009C) subject to conditions of approval; and
2. Authorize the Mayor to sign the Application for Conditional Use Permit.

ATTACHMENTS:

1. 300' Radius/Locator Map
2. Zoning Map
3. Floor Plan
4. Letter from the Barn Theater
5. Existing licenses in Census Tract 39.01
6. Resolution 163
7. Draft Resolution
8. Application for Conditional Use Permit

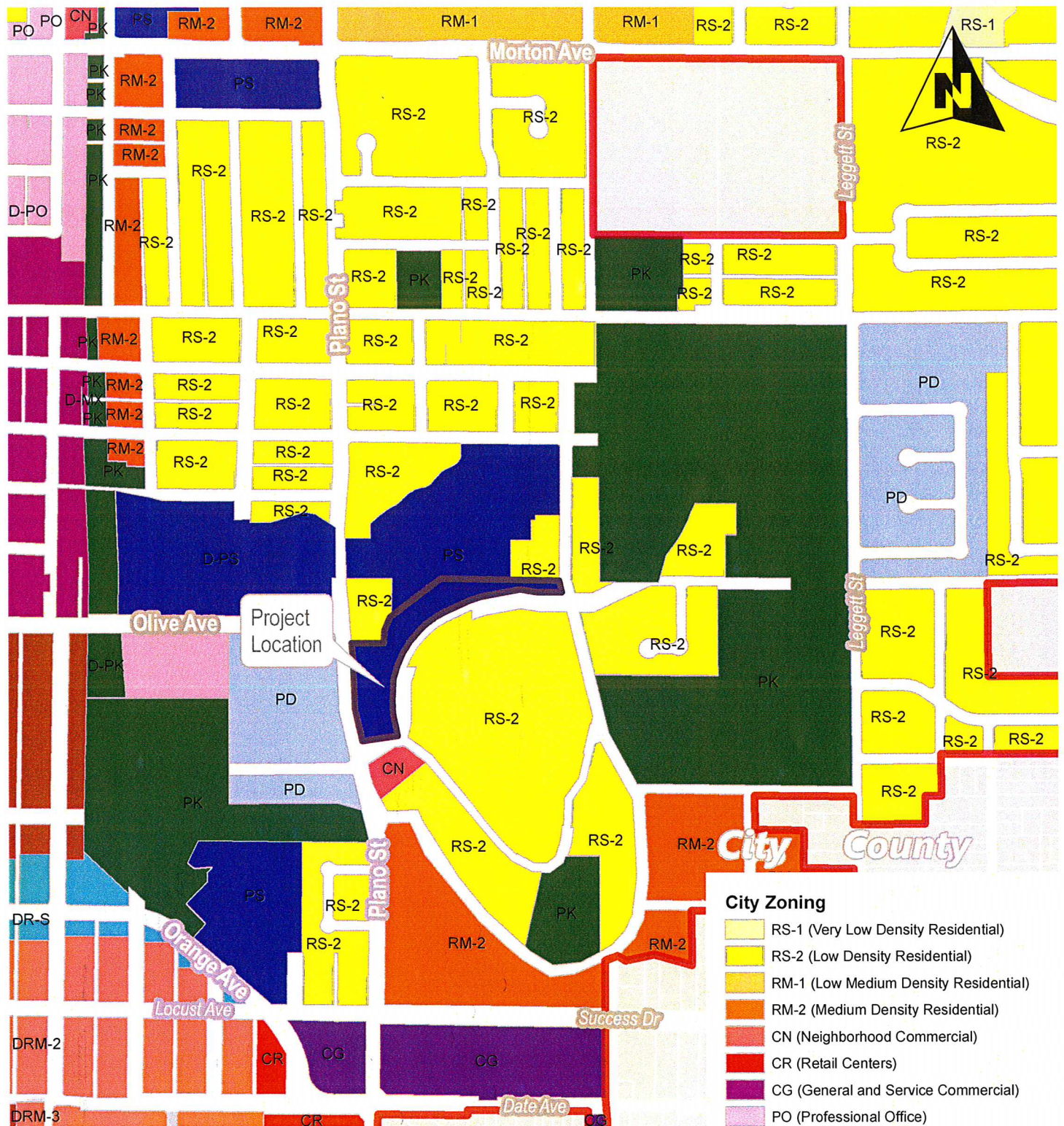


Geographic
Information
Systems

A Division of the Community Development Department

PRC 2013-009 C Barn Theatre
300' Radius Map
1" = 700 ft

ATTACHMENT
ITEM NO. 1



City Zoning

- RS-1 (Very Low Density Residential)
- RS-2 (Low Density Residential)
- RM-1 (Low Medium Density Residential)
- RM-2 (Medium Density Residential)
- CN (Neighborhood Commercial)
- CR (Retail Centers)
- CG (General and Service Commercial)
- PO (Professional Office)
- PS (Public and Semi-Public)
- PK (Parks and Public Recreation Facilities)
- PD (Planned Development)

Downtown Zoning

- DR-S (Retail-South of Olive)
- D-MX (Mixed-Use)
- DRM-2 (Medium Density Residential)
- DRM-3 (High Density Residential)
- D-PO (Professional Office)
- D-PS (Public and Semi-Public)
- D-PK (Parks and Public Recreational Facilities)



Geographic
Information
Systems

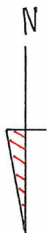
A Division of the Community Development Department

PRC 2013-009 C
Barn Theatre
Zoning Map
1" = 700 ft.
ATTACHMENT
ITEM NO. 2

Parking Lot



Barn Theatre 412 S. Plano street



TO THE CITY OF PORTERVILLE

The Porterville Barn Theater, a nonprofit organization, is applying for a Beer and Wine License.

For a number of years the Barn Theater has sponsored the Porterville Bluegrass Buzzard Festival. This event serves food and desserts and also beer and wine and celebrates the arrival of the turkey vultures coming through Porterville. We guide the vultures home by playing Bluegrass music and singing buzzard songs. This family event takes place outside in the back of the Barn Theater unless it rains. To serve beer and wine we apply for a one day permit. To do so, we must get permission of the Porterville police, and the parks department. We also must file papers with the ABC.

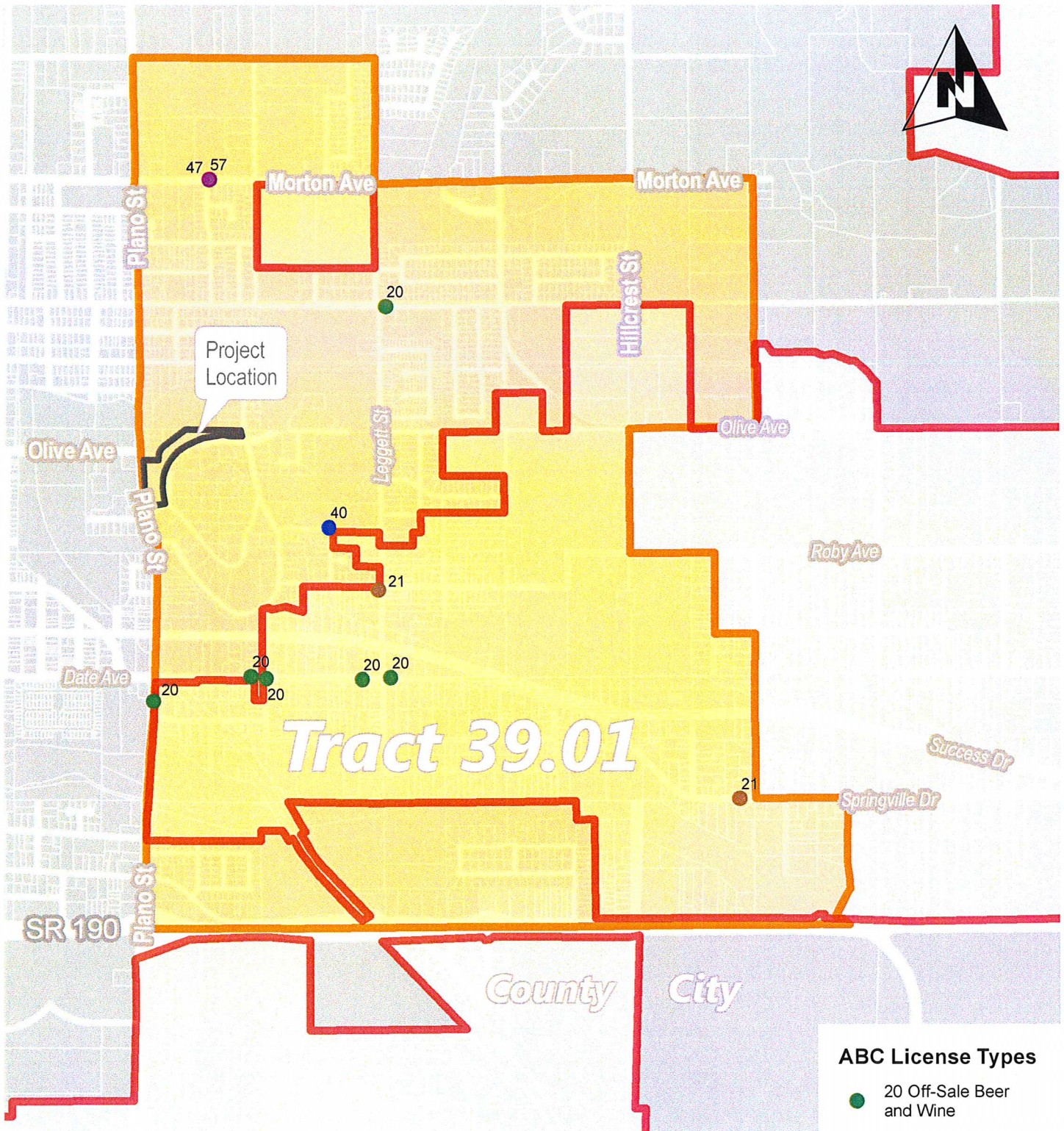
The total of fees for a one day permit is a little less than a yearly fee for a beer and wine license from ABC. With a yearly permit, we could schedule several events, including an outdoor summer Melodrama and regular theater events, without the need to apply for a daily permit and at less cost to us.

All our events are family oriented and are monitored. We have discussed the issue with ABC and, with the permission of the City of Porterville, they have no quarrel with issuing a permit.

Thank you for considering our permit.

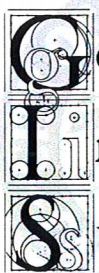
Barn Theater Board of Directors:

**ATTACHMENT
ITEM NO. 4**



ABC License Types

- 20 Off-Sale Beer and Wine
- 21 Off-Sale General
- 40 On-Sale Beer
- 47 On-Sale General (for Bona Fide Public Eating Place)
- 57 Special On-Sale General
- Project Location
- City Limits
- Census Tract 39.01



A Division of the Community Development Department

PRC 2013-009 C
Barn Theatre
Census Tract 39.01
ABC License Map
1" = 1,500 ft.

ATTACHMENT
ITEM NO. 5

RESOLUTION NO. 163

BEFORE THE PORTERVILLE PLANNING COMMISSION

In the Matter of
Conditional Use Permit No. 2-65
Barn Theatre, Incorporated

MOVED by Commissioner Hastings, seconded by Commissioner Purcelli, that
the following resolution be adopted:

WHEREAS: An application has been filed by Barn Theatre, Incorporated,
42 South Grevilla Street, Porterville, California, for a conditional use
permit in order to add dressing rooms and indoor assembly area to the
existing building which is in an R-1 zone.

WHEREAS: The Porterville Planning Commission acting as the Board of
Zoning Adjustment held a public hearing on the proposal at City Hall,
291 North Main Street, Porterville, California on August 11, 1965 at
7:30 P.M. at which time no testimony was received against the matter.

WHEREAS: The Board finds as follows:

1. The land belongs to the city; the buildings belong to
the Barn Theatre Corporation.
2. The city has provided for curb and gutter improvements
adjacent to the Barn Theatre in their 1965-66 budget.

THEREFORE BE IT RESOLVED: That the Planning Commission adopt Resolution
No. 163 granting a Conditional Use Permit to the Barn Theatre Corporation.

MOTION CARRIED.

DATE: August 11, 1965

Almeta Wells
Almeta Wells, Secretary

ATTEST:

Roy Burger
Roy Burger, CHAIRMAN
PORTERVILLE PLANNING COMMISSION

ATTACHMENT
ITEM NO. 6

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE
CONTAINING FINDINGS AND CONDITIONS IN SUPPORT OF
CONDITIONAL USE PERMIT (PRC 2013-009C) TO ALLOW FOR AN ON-SALE TYPE 69
(BEER, WINE AND DISTILLED SPIRITS AT A NON-PROFIT THEATER COMPANY)
LICENSE FOR THE BARN THEATER LOCATED AT 42 SOUTH PLANO STREET

WHEREAS: The Porterville Planning Commission at their regularly scheduled meeting of August 11, 1965, approved Conditional Use Permit 2-65 with Resolution No.163; and

WHEREAS: The Porterville Planning Commission findings for Resolution No. 163 shall remain in effect; and

WHEREAS: The City Council of the City of Porterville, at its regular scheduled meeting of June 4, 2013, conducted a public hearing to consider Conditional Use Permit (PRC 2013-009C), to allow for an on-sale type 69 (beer, wine and distilled spirits at a non-profit theater company) license for the Barn Theater located at 42 South Plano Street; and

WHEREAS: A Conditional Use Permit is required pursuant to the City of Porterville Development Ordinance Section 301.03; and

WHEREAS: The City Council of the City of Porterville received testimony from all interested parties related to the requested alcohol license; and

WHEREAS: The City Council made the following findings:

1. That the proposed project will advance the goals and objectives of and is consistent with the policies of the General Plan and any other applicable plan that the City has adopted.

The proposed on-sale Type 69 (beer, wine and distilled spirits at a non-profit theater company) license would suit the purpose of the Barn Theater by providing an extra venue of entertainment that will not be detrimental to the public health, safety, or welfare.

2. 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 herein to ensure adequate development standards are met. Further, all land owners within the City of Porterville are held to performance standards identified in Chapter 307 of the Development Ordinance. Specifically, Section 307.03 of the Ordinance states "Land or buildings shall not be used or occupied in a manner creating any dangerous, injurious, or noxious fire, explosive, or other hazard; noise, vibration, smoke, dust, odor, or form of air pollution; heat, cold, dampness, electrical or other

disturbance; glare, refuse, or wastes; or other substances, conditions, or elements which would substantially adversely affect the surrounding area.”

3. Pursuant to “General Rule” Exemption Code 15061 (b) (3) of CEQA guidelines the project as proposed is categorically exempt.

The activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. This activity can be seen with certainty that there is no possibility to have a significant effect on the environment.

4. The subject site is located in Census Tract 39.01 which allows a maximum of six (6) on-sale licenses. Currently, there are two (2) on-sale licenses issued. Under the regulations of the Business and Professions Code, whenever the ratio of off-sale licenses to population in a census tract exceeds the average ratio for the county, an “undue concentration” of licenses is determined to exist. According to the ABC, eleven (11) licenses currently exist in tract 39.01, nine (9) of which are off-sale and two (2) are on-sale. Because this application will not deem the on-sale licenses to be over-concentrated, a Letter of Public Convenience or Necessity is not required.

NOW, THEREFORE, BE IT RESOLVED: That the City Council of the City of Porterville does hereby approve Conditional Use Permit (PRC 2013-009C) subject to the following conditions:

1. The uses shall be consistent with Exhibit A- Site Plan, attached hereto.
2. At all times, the facility shall be operated and maintained to comply with applicable Local, State, and Federal laws and regulations.
3. The developer/applicant shall keep the beer, wine and distilled spirits in a secure place with access only available to the Board of Directors and staff, and in all other ways shall comply with Exhibit “A”. Any future changes in operation which substantially alters the condition or nature of the subject site will require approval by the City Council if such modification involves expansion, relocation, or change in accessibility to the conditioned uses.
4. Outdoor events shall continue to require approval of a Community Civic Event permit per Municipal Code standards.
5. Lighting in the outdoor seating area shall be provided to the satisfaction of the Police Chief and Zoning Administrator.
6. The outdoor consumption area as represented on the plan shall not exceed forty (40) feet in width by 100 feet in length, and shall be enclosed with temporary fencing to the satisfaction of the Police Chief and Zoning Administrator.

7. The applicant shall maintain the security lighting on the parking lot in a manner to allow reasonable surveillance of the area to the satisfaction of the Police Department and Zoning Administrator.
8. The applicant shall operate the establishment in such a manner as to preserve the public safety, health and welfare, to prevent the use from becoming a nuisance and operate the business in compliance with all laws, ordinances and regulations regarding the sale of alcohol. In the event that this or any other condition of approval is violated, the City Council may modify or revoke the conditional use permit as provided in Section 601.10 of the Porterville Development Ordinance.
9. The elements of the conditional use permit approving on-site alcohol sales will be subject to modification or revocation if the on-sale license is sanctioned by the State of California.
10. The entire site shall be permanently maintained free of accumulated dirt and litter and in an otherwise neat and attractive manner.
11. There will be no visible advertising of alcohol from the exterior of the facility.
12. The hours of operation during which alcoholic beverages may be sold and served under the on-sale license shall be limited to only during, and two hours prior to and one hour after, a bona fide theatre performance. The hours are further restricted to not earlier than 10:00 a.m. and not later than midnight Monday through Saturday and Sunday from 10:00 a.m. to 10:00 p.m.
13. Alcoholic beverages may be sold and served to ticketholders only.
14. The conditional use permit shall become null and void if not undertaken actively and continuously pursued within two (2) years.

PASSED, APPROVED AND ADOPTED this 4th day of June, 2013.

By: _____
Virginia R. Gurrola, Mayor

ATTEST:

John D. Lollis, City Clerk

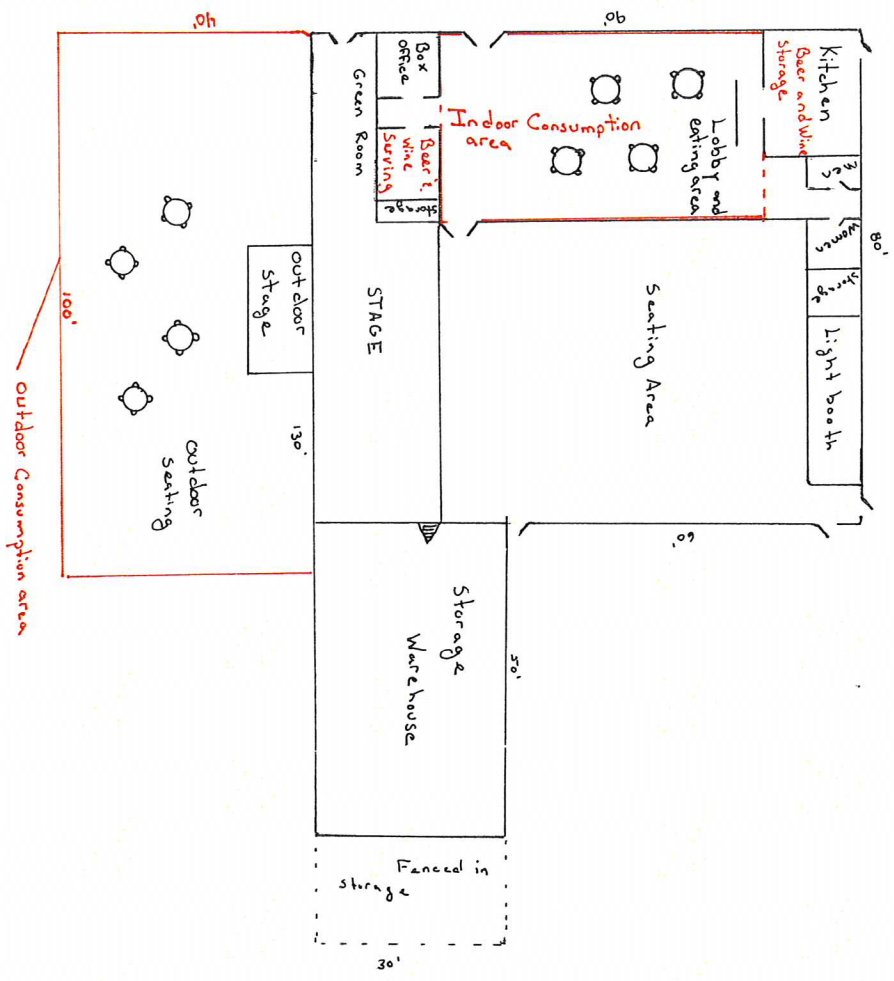
By _____
Patrice Hildreth, Chief Deputy City Clerk

PLANO STREET

sign

Barn Theatre 49 S. Plano street

Parking Lot





CITY OF PORTERVILLE

APPLICATION FOR CONDITIONAL USE PERMIT

NOTE: The basic purpose of the Conditional Use Permit Chapter 605 of The Porterville Development 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: Porterville Barn Theater

Beer, wine, and distilled spirits (Type 51) License

NAME, MAILING ADDRESS AND TELEPHONE NUMBER OF PROPERTY OWNER(S):

City of Porterville

NAME, MAILING ADDRESS AND TELEPHONE NUMBER OF APPLICANT /CONTACT PERSON:

Ralph Bourne 78 N. Corona Dr.
Porterville, CA 93257 559-781-2229

PROJECT ADDRESS AND NEAREST CROSS STREETS:

42 So. Plano

The applicant requests a Conditional Use Permit to use the above described property for the following purposes:

Beer, wine, and distilled spirits sales during
special events

Date of most recent sale of property: 11/A

If applicant is the lessee, give date property was leased: 5 year lease / city of Porterville
2011

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.

Use is consistent with present use

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).

275

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

Volunteers

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

80

- (d) Maximum height of buildings or structures.

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

[illegible]

STATE OF CALIFORNIA)
) ss
COUNTY OF TULARE)

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

Mailing Address_____

By _____