

COUNCIL AGENDA: NOVEMBER 5, 2013

SUBJECT: REQUEST FOR DIRECTION RELATED TO USE OF CARGO/SHIPPING CONTAINERS FOR STORAGE

SOURCE: COMMUNITY DEVELOPMENT DEPARTMENT- PLANNING DIVISION



COMMENT: Over the years, the use of cargo containers, also known as shipping containers or seatrains, has increased to solve the storage needs of businesses. Cargo containers are placed around the City, typically in parking lots and drive aisles, presumably for seasonal storage for commercial uses. However, they are being kept year-round, which indicates they are likely being used to meet ongoing storage needs. A review of the policies in place for cargo containers has prompted this request for direction from the City Council.

When used for short time periods, such as the holiday season, cargo containers have been considered temporary structures and would be considered through a temporary structure permit approved by the City Council as represented in the Council's recent approval of Walmart's request. More often, staff is seeing cargo containers brought to a site for a permanent solution to a lack of on-site storage within the building. Ideally, a business or land use would expand the permanent structure to accommodate the growing need. At best, use of a cargo container on a permanent basis could be achieved by classifying the container as an accessory structure. However, the Porterville Development Ordinance, Section 301.01 discusses accessory structures, stating that they are also subject to the development and size regulations found in Chapter 300, General Site Regulations, and requires that they "shall be designed to be of similar/compatible architecture and materials as the main buildings". This requirement effectively precludes the use of cargo containers as a permanent accessory structure.

Cargo containers are not intended for permanent use on a site, and are, therefore, addressed in Chapter 7-3.3 of the Municipal Code as a temporary structure (Attachment 1). In 2005, the City Council approved Resolution 29-2005 (Attachment 2), interpreting ambiguity regarding temporary, mobile, and permanent development. Many factors were considered with this resolution, and one specifically pertained to the use of cargo/shipping containers for temporary use.

In that resolution, the Council determined that cargo containers are not a permanent commercial building, and that approval of a temporary building would require Council approval. Statement 7 of the resolution states:

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

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Item No. 21

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.

Consistent with this resolution, a few stores have requested Council approval to use cargo containers during the holiday season, which is typically October through December, to accommodate additional storage needs associated with increased sales. Although few in number, the Council has historically approved these requests as they are received.

The City Council, as well as staff, makes a concerted effort to work together with members of the retail community to find ways to accommodate seasonal storage needs as well as the City's desire to maintain a well-kept and neat appearance. While some retailers do follow proper protocol in requesting approval to use containers, there are many who do not. This creates an inequity among the retail community and results in negative impacts to existing, permanent commercial uses. It is important to note that the unapproved use of cargo containers is not limited to commercial uses; containers can be seen on residential and vacant sites as well. Even Departments of the City use cargo containers for long term functions in certain applications, including the Corporation Yard, at the Sports Park, and elsewhere for storage. The photographs attached to the report provide insight into the prevalence of cargo container usage.

Whether the initial use of the containers is authorized or not, sometimes the containers become "permanent" features of a site, and the problem seems to grow with each passing year. Without proper review, placement of cargo containers could affect parking availability, development aesthetics, on-site and off-site vehicular circulation, setback requirements, or site accessibility. In certain cases, the primary use could become out of compliance with the Development Ordinance and Municipal Code through loss of parking or a loading zone, or blocking of fire lanes.

In an effort to maintain a business-friendly focus and encourage equal treatment toward all retailers, staff requests direction from Council using one or more of the following options:

1. Maintain existing standards and the original resolution of ambiguity and continue to implement as originally approved in 2005.
2. Modify existing temporary structures standards to include additional specifics related to use of cargo containers.
3. Modify Resolution 29-2005 to allow approval at staff level where certain criteria are met related to number of containers, time frames, location of

containers, and site specific concerns related to the permanent use. Staff recommends those criteria be a single container, not longer than 100 days where the container can be located in such an area that it does not impact parking, loading, circulation, or accessibility. Defined timeframes longer than 100 days could be allowed if the container is screened or architecturally compatible with the main building.

4. Allow the unrestricted use of cargo containers provided they do not result in a deficiency in any local, state or federal regulation.

RECOMMENDATION: That the City Council provide direction to staff for use of cargo/shipping containers for storage.

ATTACHMENTS:

1. Chapter 7-3.3 of the Porterville Municipal Code
2. Resolution 29-2005
3. Photographs of examples of cargo container usage and placement in Porterville.

7-3.3: TEMPORARY STRUCTURES:

- A. For purposes of this article the word "structure" shall include any building, tent, canopy, or any other type of construction approved by the city council.

- B. Upon written application to the city council, the city council is hereby empowered to issue a permit enabling an applicant in time of stress or emergency or in conjunction with development of residential, commercial, or industrial projects, to erect, construct, maintain and utilize a temporary structure within the city of Porterville.

- C. Said permit so issued shall provide the type of construction to be permitted; the location of said structure; the size of said structure; the period of time that said structure may be utilized; and provisions that said structure shall be demolished at the termination of said permit and all other requirements and conditions deemed necessary or expedient by the city council.

- D. In the event the applicant fails to satisfy all conditions set forth by the city council in the permit, the right to construct, maintain and utilize the temporary structure may be terminated immediately by action of the city council; and, in addition thereto, a violation of the conditions of said permit is hereby declared to be unlawful.

- E. Nothing herein shall permit an applicant to make use of any structure in violation of any zoning law, ordinance or regulation of the city. (Ord. 1066 § A, 12-3-1974; Ord. 1148 § A, 7-18-1978; Ord. 1212 § A, 8-5-1980; Ord. 1295 § A, 2-7-1984; Ord. 1371 § A, 1-6-1987; Ord. 1422 § A, 11-21-1989; Ord. 1476 § 1, 7-21-1992)

RESOLUTION NO. 29-2005

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, 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: The City Council has determined that the City Code and the Zoning Ordinance allow for potential ambiguity in the interpretation of such issues as the appropriate application of the City Code provisions 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 to each; 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 Zoning Ordinance and to give an indication as to the likely standards of review and intent of City Council in considering future development proposals.

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 only to 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, 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.

**ATTACHMENT
ITEM NO. 2**

- 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, 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) **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.
- 6) **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.

- 7) **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 extra-ordinary cases, the City Council would not expect to authorize a permit that creates a non-conforming circumstance for a period longer than 90 days.

- 8) **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.


- 9) **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.

- 10) **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.


Pedro R. Martinez, 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 a resolution passed and adopted by the Council of the City of Porterville at a regular meeting of the Porterville City Council duly called and held on the 1st day of March, 2005.

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

Council:	WEST	IRISH	HAMILTON	STADTHERR	MARTINEZ
AYES:	X	X	X		X
NOES:					
ABSTAIN:					
ABSENT:				X	

JOHN LONGLEY, City Clerk


 by Patrice Hildreth, Deputy City Clerk



ATTACHMENT 3









