

CITY COUNCIL AGENDA: DECEMBER 2, 2014

PUBLIC HEARING

TITLE: MODIFICATIONS TO THE MUNICIPAL CODE RELATED TO MOBILE BUSINESSES, FARMER'S MARKETS AND YARD SALES

SOURCE: COMMUNITY DEVELOPMENT DEPARTMENT - PLANNING DIVISION

COMMENT: The Porterville Municipal Code includes various regulations addressing businesses and the locations and methods in which they operate. Over the last few years, the City Council has reviewed those sections of the Municipal Code related to non-standard businesses activities, such as yard sales and itinerant vendors. The ordinance amendments proposed at this time are in response to past Council direction as well as a recent increase in requests by members of the public. The proposed revisions address three distinct, but inter-related topics: mobile businesses, farmer's markets, and yard sales.


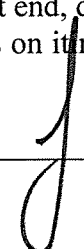
Business licenses are issued by the City of Porterville for four distinct business models:

1. The business operates fully within the city limits, in a building authorized for commercial uses.
2. The business operates outside the city limits, but provides services within the city limits.
3. The business is an itinerant vendor as defined in Chapter 15 of the Municipal Code, and sells goods within the city limits for not more than ninety days unless otherwise excluded.
4. The business is a street vendor or peddler, subject to specific additional business regulations as defined in Chapter 15 of the Municipal Code.

The ordinance amendments proposed herein for Mobile Businesses and Farmer's Markets would accommodate two specific and atypical business models, promoting local businesses by allowing them to legally operate within the city limits.

Mobile Businesses:

As the general economy improves after the Great Recession, staff has noted an increase in the number of applicants for new business licenses and home occupation permits where the business activity is a mobile service rather than activities based in the home. In earlier discussions about itinerant vending in November 2011, the City Council had expressed interest in encouraging new locally based businesses while protecting the investment made by more traditional "brick and mortar" businesses. To that end, discussion had focused on additional regulations, fees, and/or enforcement activities on itinerant vendors. However,

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more recent inquiries relate not to vendors coming in from out of town for a short period, but businesses based in city limits that do not have a storefront.

One such inquiry relates to a service-related mobile business where the business owner maintains an office within the home, but the activities occur at the home of the client. Considering the number of services that occur intermittently in the home, it is reasonable that some businesses would have no need for a store front. The Development Ordinance does have provisions for these business models to some extent with the allowance of “offices for personal services such as janitorial service, gardening service, office services, etc.,” but not all businesses meet the definition of personal services. Personal services are defined within the Development Ordinance as recurrently needed services of a personal nature. The proposed language would allow service-oriented businesses to use a home occupation permit to obtain a business license where the services occur at the client’s location, subject to conditions identified in Section 301.09 - Home Occupations, of the Development Ordinance.

Farmer’s Markets:

Since the last consideration by the Council of itinerant vendors, multiple individuals have approached staff with the concept of developing a for-profit farmer’s market that would coordinate other itinerant vendors for sale of food, food products, plants, and arts & crafts with a specific event. The Development Ordinance was drafted with the intent to support such a business, and Farmer’s Markets (interchangeable with “Swap Meet” or “Flea Market” in Chapter 21 of the Municipal Code) are allowed within certain zone districts subject to a Conditional Use Permit. Section 15-1 of the Municipal Code defines itinerant vendors as follows:

ITINERANT VENDOR OR ITINERANT MERCHANT: All persons, both principal and agent, who engage in a temporary or transient business in the city, selling or offering to sell goods, wares or merchandise or any other thing of value, with the intention of conducting such business for a period of less than ninety (90) days, and who for the purpose of such business hires, leases or occupies any room, doorway, vacant lot, building or other place, for the exhibition for sale of goods, wares, merchandise or other thing of value. If any such place, occupied or used for such business, is rented or leased for a period of less than ninety (90) days, such fact shall be presumptive evidence that the business carried on therein is a transient business; and any person so engaged shall not be relieved from the provisions of this section or from payment of the license taxes herein provided for such business, by reason of any temporary association with local dealer, trader, merchant or auctioneer.

It goes on to exempt from the definition of itinerant vendor certain merchants as follows:

The provisions of this definition shall not apply to commercial travelers or selling agents, selling their goods exclusively to merchants, dealers or traders, whether selling for present or future delivery, by sample or otherwise, nor to peddlers, as the

same is defined in this chapter, nor to persons selling fruit, vegetables, eggs, butter or other farm or ranch products of their own farm or dairy, exclusively.

The regulations, as currently written, would allow fruits, vegetables, eggs, and cheese at such an event, but would limit the supplemental sort of items available at many farmer's markets. For example, it is not uncommon to find a farmer's market that sells jams & jellies, cut flowers, live plants (either ornamental or edible), grilled corn, or homemade arts & crafts when sold by the artist or craftsperson at the event. Staff has drafted the following text for consideration that would expand the exclusions within the definition of Itinerant Vendors in Chapter 15:

The provisions of this definition shall not apply to commercial travelers or selling agents, selling their goods exclusively to merchants, dealers or traders, whether selling for present or future delivery, by sample or otherwise, nor to peddlers, as the same is defined in this chapter. Further, the provisions of this definition shall not apply ~~nor~~ to persons selling fruit, vegetables, eggs, butter or other farm or ranch products of their own farm or dairy, exclusively, nor shall it apply to food products defined as "cottage foods" pursuant to the Health and Safety Code, live plants or plant cuttings, or homemade arts or crafts when such items are offered for sale by the preparer at a coordinated Farmer's Market or similar event approved through the City.

By including these types of vendors in the exempting provision, such vendors could be allowed at a future Farmer's Market under the umbrella of the business license obtained by the Farmer's Market operator. If the proposed language modification is not approved, a vendor of these specific types would be limited to ninety days of participation at the market, according to the current restrictions within Chapter 15 of the Municipal Code.

To provide clarity, the definition of "Flea Market" or "Swap Meet" in Chapter 15 would also be amended to add "Farmer's Market" as referenced in Chapter 21.

FLEA MARKET OR SWAP MEET: Any collection of two (2) or more vendors gathered together in a common area segregated by spaces, booths or other designated selling locations for the purpose of selling, offering to sell, bartering, or offering to barter, or any combination thereof, goods, wares, merchandise or articles of value. This definition shall be liberally construed so as to apply to any activity commonly known and referred to as a flea market, ~~or~~ swap meet, or farmer's market.

Yard Sales:

Earlier this year, an increased number of code enforcement actions related to a proliferation of yard sale signs resulted in the discovery of perpetual yard sales. As a result of concerns voiced by the public, the Council directed staff to look into increasing the number of yard sales allowed per year, and address the issue of yard sale signage. Staff has developed a new standard related to signage, which was the initial issue. The following language is

proposed to be added to Section 301.21 - Temporary Uses (Chapter 21 - Development Ordinance):

- (b) (3). One sign not exceeding two feet by two feet in size may be posted on the property where the sale is being held during the duration of the sale only. No signs regarding such sale shall be posted on any property other than where the sale is held.

The California Board of Equalization (BOE) requires a person to obtain a seller's permit if yard sales events are three or greater in a 12-month period. Staff is of the opinion that more than four yard sales per year would significantly detract from the residential quality of a neighborhood and is effectively a commercial enterprise, which should be conducted in a commercially zoned district or at an event coordinated for such activities such as the Porterville swap meet. To establish a permit process that accommodates more than two yard sales per year, staff recommends the best way to maintain compliance with the BOE is to use the City's existing business license permit process, supplemented by a home occupation permit. Section 301.09, Home Occupations, of the Development Ordinance would be amended to specify conditions related to additional yard sales as follows:

- (p) More than two yard sales per year, but not more than four yard sales per year, may be permitted subject to issuance of a business license and a home occupation permit subject to the following standards:
 - (1) A Seller's Permit must be obtained through the State Board of Equalization prior to the date of the third yard sale.
 - (2) The sales events must be compliant with the provisions of Section 301.21, Temporary Uses, of this Chapter.

Additionally, Section 301.21(b) - Temporary Uses, would be further amended to read:

- (1) Garage sales are limited to no more two (2) events for no more than three (3) consecutive days in any six (6) month period.

Section 18-8.2: Sale of Personal Property from Residential Premises of the Municipal Code would be amended as follows:

18-8.2 B. Time And Place of Sale: Only two (2) such sales may be conducted at a particular place in any six (6) month period. No sale shall continue more than three (3) days. Sales shall be conducted between the hours of eight o'clock (8:00) A.M. and eight o'clock (8:00) P.M. only.

ENVIRONMENTAL: The proposed ordinance serves to provide greater clarity to uses as identified in the Porterville 2030 General Plan, and the proposed ordinance is an implementation measure of the policies, goals and objectives of the Plan. The Environmental Coordinator made a determination on the basis of substantial evidence that no additional environmental review is necessary beyond the environmental review already considered for the General Plan and the Development Ordinance.

RECOMMENDATION: That the City Council:

1. Approve the proposed ordinance for the Development Code and Municipal Code and give first reading to the draft ordinance; and
2. Waive further reading and order the Ordinance to print.

ATTACHMENTS: Draft Ordinance

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE
AMENDING CHAPTER 21, SECTION 301.09 OF THE PORTERVILLE MUNICIPAL CODE
CONCERNING MOBILE BUSINESSES, AMENDING CHAPTER 15, SECTION 15-1 OF
THE PORTERVILLE MUNICIPAL CODE CONCERNING DEFINITIONS OF ITINERANT
VENDORS, AND AMENDING CHAPTER 21, SECTION 301.21 OF THE PORTERVILLE
MUNICIPAL CODE CONCERNING YARD SALE SIGNAGE

WHEREAS, the City Council has reviewed the current limitations on atypical business models and found that accommodations could be made that would encourage development and growth of local businesses without compromising the success of existing businesses in the city; and

WHEREAS, the City Council finds that complaints of excessive signage advertising yard sales may be reduced if specific parameters were clearly defined for residents throughout the city; and

WHEREAS, Pursuant to State and local environmental regulations, the proposed ordinance amendments serve to provide greater clarity to uses as identified in the Porterville 2030 General Plan, and the proposed ordinance is an implementation measure of the policies, goals and objectives of the Plan. The Environmental Coordinator made a determination on the basis of substantial evidence that no additional environmental review is necessary beyond the environmental review already considered for the General Plan and the Development Ordinance.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PORTERVILLE DOES HEREBY ORDAIN as follows:

SECTION 1. The Porterville Municipal Code, Chapter 21, Series 300, Chapter 301.09 is hereby amended as follows:

Home occupations that are carried on by an occupant of a dwelling unit for gainful employment, are clearly incidental and subordinate to the use of the structure for dwelling purposes and that do not change the residential character of the primary use, are allowed and shall be operated in compliance with the following standards. Home occupations are subject to zoning conformance approval pursuant to Chapter 602, "Zoning Conformance Review".

(a) Permitted Uses: Home occupations generally include, but are limited to the following uses:

- (1) Professional offices.
- (2) Offices for personal services such as janitorial service, gardening service, office services, etc.
- (3) Dressmaking, millinery, and other home sewing work.

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- (4) Handicrafts such as weaving, leatherwork, and other arts and crafts.
- (5) Instructional classes, not exceeding two (2) students at one time.
- (6) Internet sales, mail order or direct sales provided no merchandise is sold on the premises.
- (7) Cottage food operations.

(b) Prohibited Uses: The following uses are not permitted as a home occupation:

- (1) The repair, reconditioning, servicing or manufacture of any internal combustion or diesel engine or of any motor vehicle, including automobiles, trucks, motorcycles, or boats.
- (2) Repair, fix it or plumbing shops.
- (3) Uses that entail the harboring, training, raising, or grooming of dogs, cats or other animals, on the premises.
- (4) Uses that entail food handling, processing or packing, other than specialized minor cooking or baking.
- (5) Healing arts.
- (6) Spiritual advisory service (fortune telling).

(c) The residential use remains the primary activity on the property.

(d) No sign shall be publicly displayed on the premises relating to the home occupation or product thereof.

(e) No person not residing on the premises may be employed at the site of the home occupation.

(f) Sale of goods on the premises shall be limited to the products of the home occupations, and no other merchandise or goods shall be sold, kept or displayed for the purposes of sale on the premises.

(g) The home occupation shall not attract or generate excessive auto or foot traffic, require additional off street parking spaces, involve the use of commercial vehicles for delivery of materials or supplies to or from the premises, or exceed six (6) patrons or customers for any calendar day.

(h) No use of materials, mechanical equipment, utilities, or community facilities beyond that normal to the use of the property for residential purposes shall be permitted.

- (i) Storage related to the home occupation shall be confined to the dwelling or accessory building.
- (j) No dwelling or accessory buildings shall be built, altered, finished, or decorated externally for the purposes of conducting the home occupation in such a manner as to change the residential character and appearance of the dwelling, or in such a manner as to cause the structure to be reasonably recognized as a place where a home occupation is conducted.
- (k) No garage or accessory building shall be altered or used in such a manner that would reduce the number of covered parking spaces required in the district in which it is located.
- (l) Not more than one vehicle of not more than one ton capacity used in connection with the home occupation shall be kept on the site. Any trailer, wheeled equipment, or any vehicle displaying or advertising the home occupation shall not be visible from off the premises.
- (m) The home occupation shall not involve the use of power equipment on the premises using motors exceeding one horsepower combined capacity.
- (n) No equipment or process shall be used which creates noise, vibration, glare, fumes, odor, or electrical interference detectable to the normal senses off the lot if the occupation is conducted in a single-family detached residence, or outside the dwelling unit if conducted in other than a single-family detached residence. No equipment or process shall be used which creates visual or audible electrical interference in any radio or television receiver off the premises, or causes fluctuations in line voltage off the premises.
- (o) Service oriented mobile businesses that provide services at the location of a client may function as a home based business, where compliant with all other provisions of this section and subject to the following standards:
 - (1) No business activities other than office activities occur on the premises. A client may not come to the home of the business to use the mobile unit.
 - (2) The primary business activity involves provision of services that by their nature are intermittent and convenient to be provided at the home or business of the client. Examples include: mobile notary, personal services, minor vehicle repair not involving engines as prohibited above (windshield repair or battery replacement), computer maintenance and repair.
 - (3) Sale of goods is permitted only as an accessory to the service oriented use, such as sale of a windshield when it is replaced, or a new hard-drive when it is required and installed as a part of a computer repair.
- (p) More than two yard sales per year, but not more than four yard sales per year, may be permitted subject to issuance of a business license and a home occupation permit subject to the following standards:

- (1) A Seller's Permit must be obtained through the State Board of Equalization prior to the date of the third yard sale.
- (2) The sales events must be compliant with the provisions of Section 301.21 of this Chapter.

SECTION 2. The Porterville Municipal Code, Chapter 15, Article I, Section 15-1 is hereby amended as follows:

ITINERANT VENDOR OR ITINERANT MERCHANT: All persons, both principal and agent, who engage in a temporary or transient business in the city, selling or offering to sell goods, wares or merchandise or any other thing of value, with the intention of conducting such business for a period of less than ninety (90) days, and who for the purpose of such business hires, leases or occupies any room, doorway, vacant lot, building or other place, for the exhibition for sale of goods, wares, merchandise or other thing of value. If any such place, occupied or used for such business, is rented or leased for a period of less than ninety (90) days, such fact shall be presumptive evidence that the business carried on therein is a transient business; and any person so engaged shall not be relieved from the provisions of this section or from payment of the license taxes herein provided for such business, by reason of any temporary association with local dealer, trader, merchant or auctioneer.

The provisions of this definition shall not apply to commercial travelers or selling agents, selling their goods exclusively to merchants, dealers or traders, whether selling for present or future delivery, by sample or otherwise, nor to peddlers, as the same is defined in this chapter. Further, the provisions of this definition shall not apply to persons selling fruit, vegetables, eggs, butter or other farm or ranch products of their own farm or dairy, exclusively, nor shall it apply to food products defined as "cottage foods" pursuant to the Health and Safety Code, live plants or plant cuttings, or homemade arts or crafts when such items are offered for sale by the preparer at a coordinated Farmer's Market or similar event approved through the City.

FLEA MARKET OR SWAP MEET: Any collection of two (2) or more vendors gathered together in a common area segregated by spaces, booths or other designated selling locations for the purpose of selling, offering to sell, bartering, or offering to barter, or any combination thereof, goods, wares, merchandise or articles of value. This definition shall be liberally construed so as to apply to any activity commonly known and referred to as a flea market, swap meet, or farmer's market.

SECTION 3. The Porterville Municipal Code, Chapter 21, Series 300, Chapter 301.21 is hereby amended as follows:

301.21: TEMPORARY USES

(b) Garage Sales: A garage or yard sale may be permitted on any developed lot in an R district, in accordance with Section 18-8.2 of the Municipal Code and the following standards:

- (1) Garage sales are limited to no more than three (3) consecutive days in any six (6) month period.

(2) All merchandise to be sold shall be displayed on a private lot and not within the public right of way.

(3) One sign not exceeding two feet by two feet in size may be posted on the property where the sale is being held during the duration of the sale only. No signs regarding such sale shall be posted on any property other than where the sale is held.

SECTION 4. The Porterville Municipal Code, Chapter 18, Article 8.2 is hereby amended as follows:

18-8.2 Sale of Personal Property from Residential Premises

B. Time And Place of Sale: Only two (2) such sales may be conducted at a particular place in any six (6) month period. No sale shall continue more than three (3) days. Sales shall be conducted between the hours of eight o'clock (8:00) A.M. and eight o'clock (8:00) P.M. only.

SECTION 5. This ordinance shall be in full force and effect not sooner than thirty days from and after the ordinance's publication and passage.

PASSED, APPROVED AND ADOPTED this ____ day of December, 2014.

By: _____
Milt Stowe, Mayor

ATTEST:
John D. Lollis, City Clerk

By: _____
Patrice Hildreth, Chief Deputy City Clerk