

SCHEDULED MATTER

SUBJECT: AMENDMENT TO CITY POLICY RELATED TO USE OF CARGO/SHIPPING CONTAINERS

SOURCE: COMMUNITY DEVELOPMENT DEPARTMENT- PLANNING DIVISION

COMMENT: At the City Council meeting of December 3, 2013, the Council approved Resolution 82-2013, which amended Resolution 29-2005 to allow use of cargo/shipping containers as temporary structures in both long-term and short-term situations. At the City Council meeting of January 21, 2014, a public hearing was held to consider adoption of fees for use of cargo/shipping containers as temporary structures. At that meeting, concerns were raised by members of the public who use cargo/shipping containers for their businesses. Concerned parties asserted that to charge a monthly fee would in short order cost more than constructing a permanent structure. Business owners stated that the cargo/shipping containers had been in place for many years, or that characteristics specific to their business location made permanent construction infeasible. Council continued the public hearing to the meeting of March 4, 2014, and asked staff to return with an analysis of the impacts of the resolution on businesses in similar situations.

ANALYSIS: Resolution 82-2013 (Attachment 1) confirms that cargo/shipping containers are not considered permanent commercial buildings, and provides a mechanism for their use, subject to either approval by the City Council or the Zoning Administrator, dependent upon the number of containers and the requested term of use. This report focuses on the long-term use of cargo/shipping containers and their approval by City Council, as the situations discussed at the Council meeting of January 21, 2014 would be subject to those criteria.

Previously existing cargo/shipping containers: Containers that have been used continuously since before adoption of the original resolution regulating the use of cargo/shipping containers (March 1, 2005) would be “grandfathered”, and not held to the criteria defined in Resolution 82-2013. In such situations, as long as the permanent site improvements are not impacted in such a way that the placement would have violated the Zoning Ordinance requirements at the time, the cargo/shipping container could remain until such time as significant modifications to the site are proposed which would trigger other site improvements.

Long-term use of cargo/shipping containers: Resolution 82-2013 does accommodate the long-term use of cargo/shipping containers at the discretion of the City Council. The number of containers and time period are not limited by the resolution allowing the Council to define terms appropriate for the proposed use in light of the site characteristics. Conditions are required to ensure that placement of the cargo/shipping containers do not interfere with permanent site improvements or

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required setbacks, and that they not be visible from the public right of way or adjacent uses.

Two examples of the current use of cargo/shipping containers are described herein to illustrate the existing language of Resolution 82-2013. The first example is a commercial use that has two cargo/shipping containers located on site. The placement of the containers is such that it is consistent with the standards of the Development Ordinance in all other ways. Specifically, the containers do not block required parking spaces, they meet the setback requirements, and they are screened from public view behind a landscaped fence. Conversely, a second example is a different commercial use which uses one cargo/shipping container. The container is placed such that six parking spaces are blocked and are not usable by the business patrons; the container is in full view of the public right of way; and it blocks visibility for drivers in the parking lot, impeding on-site circulation.

CONCLUSION: While the second example has fewer cargo/shipping containers, the location of the container results in multiple conflicts with the standards of the Development Ordinance. In addition, it has been in place longer than 100 days. The first example could be allowed in the long term through authorization by the City Council, while the second example could not be allowed. The Council is considering appropriate fees for each of the scenarios and could adopt fees according to the type and term of the proposed cargo/shipping containers.

RECOMMENDATION: That the City Council consider the examples and demonstrations of the use of cargo/shipping containers in accordance with standards contained in Resolution 82-2013.

ATTACHMENTS:

1. Resolution 82-2013
2. Photo of Example #1
3. Photo of Example #2

RESOLUTION NO. 82 -2013

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: 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: The City Council has determined that the Municipal Code and the Development Zoning 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: 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 Zoning 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.

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:** 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:

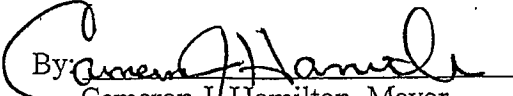
- The number of containers allowed would be determined by Council.
- The time period requested shall be specified by the applicant. Final expiration of the permit shall be coterminous with the permit expiration date approved by Council. Extensions will not be permitted. However, the applicant may apply 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.

7) **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.

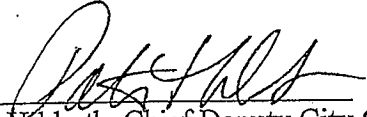
8) **Development Standards – Non-Standard Development:** All non-standard development requires approval by the City Council with appropriate Conditions of Approval. Such development may require site improvements that differ from those required for permanent development. Staff reports for such proposals should identify both the proposed site improvements and the improvements that would be required for similar, permanent development.

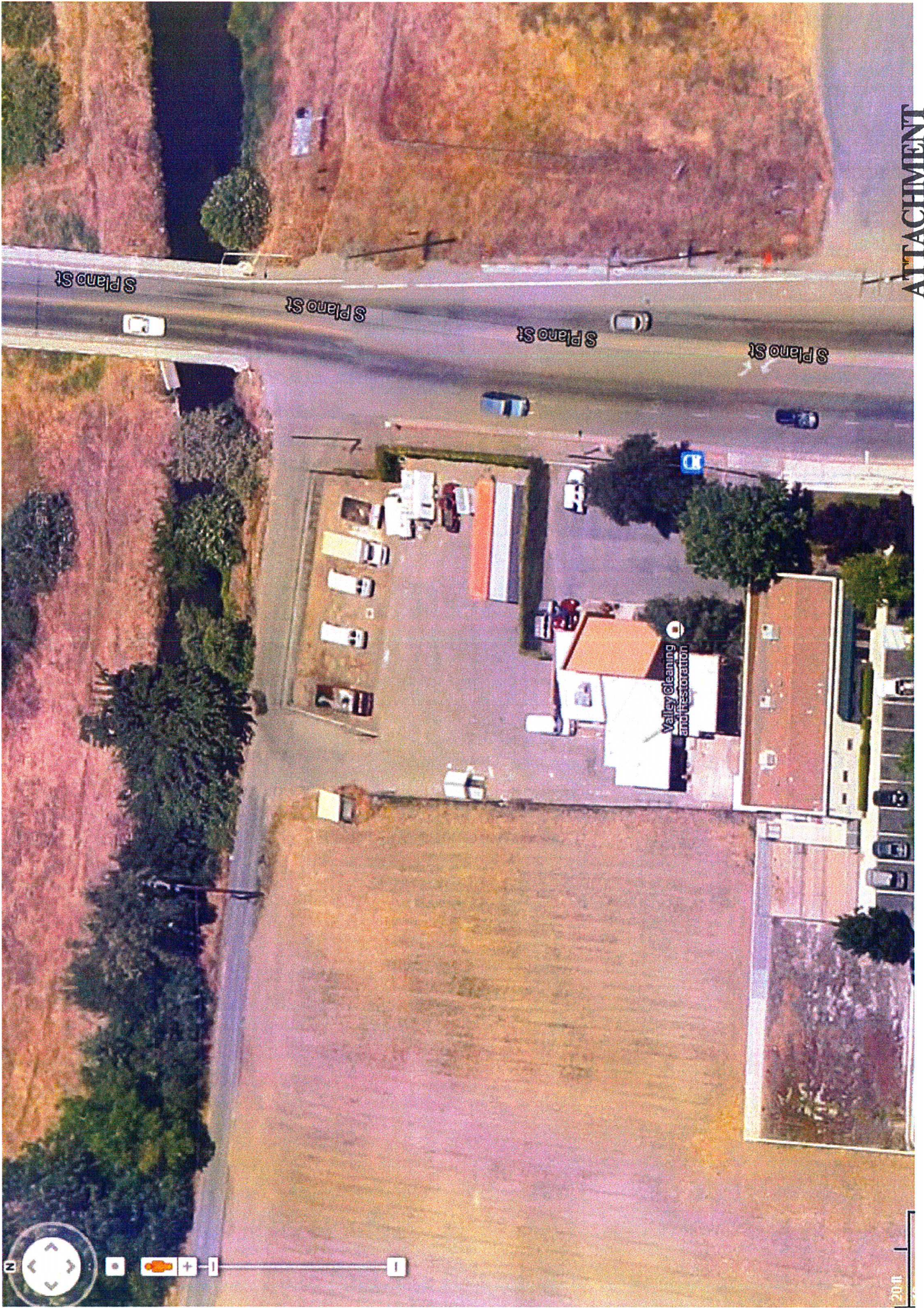
- 9) **Temporary Building Permits – Effect on Standards for Existing Conforming Development:** Temporary buildings may be approved only with clear time limits, and with a finding by City Council that the development is to accommodate a time of business stress or emergency or a construction project. For 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.
- 10) **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.
- 11) **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.
- 12) **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 3rd day of December, 2013.

By: 
Cameron J. Hamilton, Mayor

ATTEST:
John D. Lollis, City Clerk

By: 
Patrice Hildreth, Chief Deputy City Clerk



ATTACHMENT
ITEM NO. 2



**ATTACHMENT
ITEM NO. 3**