

CONTINUED PUBLIC HEARING

SUBJECT: MODIFICATION TO CARGO/SHIPPING CONTAINERS POLICY AND ADOPTION OF FEES FOR USE OF CARGO/SHIPPING CONTAINERS AS TEMPORARY STRUCTURES

SOURCE: COMMUNITY DEVELOPMENT DEPARTMENT - PLANNING DIVISION

BACKGROUND: At the meeting of January 21, 2014, the Council held a public hearing to consider fees for two separate items: photometric plan review services and use of cargo/shipping containers as temporary structures. The Council approved the fee for photometric plan review services as recommended at that meeting. However, in light of questions brought forward by members of the business community, the fees for use of cargo/shipping containers as temporary structures were not decided at that time. The public hearing was continued to the meeting of March 4, 2014, and staff was directed to provide additional information regarding the policy that allows the use, adopted by the Council as Resolution 82-2013. At the meeting of February 4, 2014, staff presented information and examples of the implementation of the policy, and the Council provided direction to adjust the policy to simplify the process for long term use of up to three cargo/shipping containers as temporary structures.

COMMENT: Pursuant to the adopted policy, Resolution 82-2013, review and approval of cargo/shipping containers, in specific applications, is allowed as follows:

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.

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ITEM NO. 16

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.

Per Council's direction from the meeting of February 4, 2014, an amended resolution is presented with this report that provides a third tier of review for temporary structures. This third tier would allow the Zoning Administrator to review and approve the long term use of up to three cargo/shipping containers, subject to the same standards and criteria that are defined for the long term use of containers in general. This has the mutual benefit of simplifying the process for the majority of users of these temporary structures, and reducing the volume of applications that the Council must consider.

Relative to the associated fees, the recommended structure is based on staff time necessary to initiate review of temporary structures and then monitor on-going compliance in these specific cases. Short term applications are evaluated by staff and considered by the Zoning Administrator for approval. The recommended short term application fee is \$296, which represents \$138 (the existing fee for Zoning Administrator permits) plus \$158 (the hourly standard rate for staff time at \$79 per hour multiplied by two). This number anticipates a level of effort consistent with other Zoning Administrator permits with added coordination between the planning, building, engineering and fire divisions/department as well as two site monitoring visits during the permit period for the short term temporary structures, up to 100 days.

The recommended long term application fee for up to three containers is similar to the short term fee in that the Zoning Administrator permit is the foundation of that fee. However, rather than a flat fee, this application is calculated by adding the \$217 Zoning Administrator permit fee that includes \$79 for an initial site visit, to a \$79 per additional visit monitoring fee that would be applied based on the term of the use in order to accommodate annual site monitoring by staff. With the application, the timeframe must be identified, and the fee would be paid up front for the requested term.

The recommended long term application fee for more than three containers is based on the current \$454 fee applicable for all temporary structures. In addition to the \$454 fee, a \$79 per visit monitoring fee would be applied based on the term of the use in order to accommodate bi-annual site monitoring by staff. The number of months for a long term temporary structure would be defined as a part of the Council's resolution of approval, thereby confirming the fee as \$454 plus \$79 for each six month period or portion thereof requested.

For both types of long term use, the fee for long term applications would be sliding, dependent upon how many months or years are requested; the fee would be calculated and assessed at the time an application is submitted. If the Council determines that an annual inspection is satisfactory for the long term use of more than three containers as well, instead of the bi-annual inspection currently proposed, then the number of inspections charged to the applicant would be reduced.

In the event that the temporary structure remains in place for a period of time longer than permitted without application by the user for additional time, Planning Division Staff would attempt to work with the applicant to gain voluntary compliance. In the event voluntary compliance is not achieved, the matter would be referred to the Code Enforcement Division, and penalties in the form of administrative citations, could be enforced in a manner consistent with Chapter 2, Article XIV of the City of Porterville Municipal Code and the user would be deemed guilty of an infraction or misdemeanor. A conviction for a misdemeanor may be punishable by a fine of not more than \$1,000, by imprisonment in the county jail not exceeding 180 days, or by both. A conviction for an infraction may result in a fine ranging from \$100 to \$1,000, depending on the number and frequency of violations. Typically, the penalty process is initiated with a Notice of Violation which establishes a timeframe by which the party must return to compliance. If voluntary compliance is not achieved, citations are issued on a repetitive basis in order to accomplish compliance.

ENVIRONMENTAL REVIEW: The adoption of the proposed fees does not meet the definition of "Project" pursuant to §21065 of the California Environmental Quality Act (California Public Resources Code).

RECOMMENDATION:

That the City Council:

1. Adopt the Resolution amending the policy related to use of cargo/shipping containers as temporary structures; and
2. Resume the continued public hearing and adopt the Resolution establishing fees for use of cargo/shipping containers as temporary structures.

ATTACHMENTS:

1. Draft Resolution amending the policy related to use cargo/shipping containers as temporary structures
2. Draft Resolution establishing fees for use of cargo/shipping containers as temporary structures
3. Staff Report of January 21, 2014
4. Staff Report of February 4, 2014

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 outline in the previous paragraph; 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 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.

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.

- 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 4th day of March, 2014.

By: _____
Cameron J. Hamilton, 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, 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. 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) = \$217 + \$79/year or portion thereof, Long Term (more than three containers) = \$454 + \$79/six month period or portion thereof.

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

PASSED, APPROVED AND ADOPTED this 4th day of March, 2014.

Cameron J. Hamilton, Mayor

ATTEST:

John D. Lollis, City Clerk

By _____
Patrice Hildreth, Chief Deputy City Clerk

ATTACHMENT
ITEM NO. 2

CITY COUNCIL AGENDA: JANUARY 21, 2014

PUBLIC HEARING

SUBJECT: ADOPTION OF FEES FOR PHOTOMETRIC PLANS AND TEMPORARY STRUCTURES

SOURCE: COMMUNITY DEVELOPMENT DEPARTMENT - PLANNING DIVISION

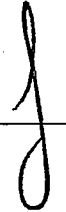
BACKGROUND: At the City Council meeting of November 19, 2013, staff identified the need to follow up with an item for City Council's consideration regarding the review of photometric (i.e. site lighting) plans. At the meeting of December 3, 2013, the Council directed staff to schedule a public hearing to consider adoption of a fee for photometric plan review services as an optional service to applicants. At that same meeting, the Council adopted Resolution 82-2013, amending Resolution 29-2005 as it pertains to use of cargo/shipping containers as a temporary structure. With the adoption of Resolution 82-2013, staff was tasked with developing fees specific to the short term and long term temporary use of cargo/shipping containers. These two fees are unrelated in topic, but due to the concurrent timing and procedural requirements, they have been brought together for consideration in a single public hearing. The fees are presented with separate resolutions for individual adoption if so desired by the City Council.

COMMENT: Photometric Plan Fee-

Photometry is the science of the measurement of light, in terms of its perceived brightness to the human eye. The 2030 Porterville General Plan identified implementation policy LU-I-25 "Establish buffering requirements and performance standards intended to minimize harmful effects of excessive noise, light, glare, and other adverse environmental impacts." Section 300.07 Lighting and Illumination of the Porterville Development Ordinance provides standards for the use of outdoor artificial light that may have a detrimental effect on the environment. As building permits have been submitted, staff has requested photometric plans to identify the location of light sources and the resulting distribution of light.

A few members of the Porterville Development Ordinance Committee (Committee) identified issues with providing photometric plans on small scale projects. Staff has researched and tested software programs, and has estimated that the time required to provide this service is approximately two to three hours, dependent upon the size of the project. Staff would limit the size of qualified projects to two (2) acres. Projects larger than that have increased potential for complexities beyond the capacity of the proposed software. The software would cost the City approximately \$100 annually, which would be absorbed into the departmental operating budget. Staff is proposing that, at the applicant's request, the City may provide the task of generating these photometric plans, for a fee based on staff time required.

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ITEM NO. 14

**ATTACHMENT
ITEM NO. 3**

In 2006, the Council adopted an hourly rate for staff time of \$79 per hour for "General Research in excess of 30 minutes". Using that rate, and estimating two to three hours for the average project, an appropriate fee for preparation of a photometric plan would be \$158. This fee amount was also discussed with the Committee and was concurred with by the Committee.

Use of Cargo/Shipping Containers as Temporary Non-Standard Development Fees-

At the meeting of December 3, 2013, 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. Such review and approval of cargo/shipping containers, in specific applications, is allowed as follows:

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.

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.

The recommended fee structure is based on staff time necessary to initiate review of temporary structures and then monitor on-going compliance in these specific cases. Short term applications would be reviewed by the Zoning Administrator. Along that line, the short term application fee recommended is \$296, which represents \$138 (the existing fee for Zoning Administrator permits) plus \$158 (the hourly standard rate for staff time [\$79] multiplied by two). This number anticipates a level of effort consistent with other Zoning Administrator permits and two site monitoring efforts during the permit period for the short term temporary structures, up to 100 days.

The long term application fee recommended is based on the current \$454 fee applicable for all temporary structures. However, in addition to the \$454 fee, a \$79 monthly fee would be applied in order to accommodate monthly site monitoring by staff. The fee for long term applications would be sliding, dependent on how many months are requested; the fee would be calculated and assessed at the time an application is submitted. The number of months for a long term temporary structure would be defined as a part of the Council's resolution of approval, thereby confirming the fee.

In the event that the temporary structure remains in place for a period of time longer than permitted without application by the user for additional time, Planning Division Staff would attempt to work with the applicant to gain voluntary compliance. In the event voluntary compliance is not achieved, the matter would be referred to the Code Enforcement Division, and penalties in the form of administrative citations could be enforced in a manner consistent with Chapter 2, Article XIV of the City of Porterville Municipal Code and the user would be deemed guilty of an infraction or misdemeanor. A conviction for a misdemeanor may be punishable by a fine of not more than \$1,000, by imprisonment in the county jail not exceeding 180 days, or by both. A conviction for an infraction may result in a fine ranging from \$100 to \$1,000, depending on the number and frequency of violations. Typically, the penalty process is initiated with a Notice of Violation which establishes a timeframe by which the party must return to compliance. If voluntary compliance is not achieved, citations are issued on a repetitive basis in order to accomplish compliance.

ENVIRONMENTAL REVIEW: The adoption of the proposed fees does not meet the definition of "Project" pursuant to §21065 of the California Environmental Quality Act (California Public Resources Code).

RECOMMENDATION: That the City Council:

1. Adopt the Resolution establishing a fee for the optional service of preparing photometric plans; and
2. Adopt the Resolution establishing fees for use of cargo containers as temporary structures.

ATTACHMENTS:

1. Draft Resolution establishing a fee for the optional service of preparing photometric plans
2. Draft Resolution establishing fees for use of cargo containers as temporary structures

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF PORTERVILLE ADOPTING A FEE FOR STAFF TO PROVIDE THE
OPTIONAL SERVICE OF PREPARING PHOTOMETRIC PLANS

WHEREAS, on November 19, 2013, the City Council of the City of Porterville adopted Ordinance 1801, a comprehensive amendment to the Development Ordinance. At that time, staff identified the need to follow up with an item for City Council's consideration regarding the review of photometric (i.e. site lighting) plans; and

WHEREAS, Section 300.07 of the Porterville Development Ordinance sets forth requirements related to lighting and illumination with the purpose of minimizing outdoor artificial light; and

WHEREAS, the method by which compliance with the development standards can be confirmed is the preparation of a photometric plan. Such plans are often prepared free of charge by the contractor providing the lighting units, but not always for smaller projects. In those cases where the project is smaller, or where multiple vendors may be used to provide lights for a proposed project, an electrical engineer would be contracted to prepare a photometric plan, often at high cost; and

WHEREAS, staff has researched and found a software that could be used to prepare photometric plans if certain project specific information is made available by the applicant. The software cost is de minimis and is therefore not calculated into the fee, and estimated staff time for an average project less than two acres in size is approximately two hours; and

WHEREAS, on January 21, 2014, the City Council reviewed the Photometric Plan fee and determined that a fee of \$158 is justifiable given the amount of technical effort put forth to provide the service.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Porterville that the fee for optional staff preparation of a site photometric plan as required by Section 300.07 of the Porterville Development Ordinance is adopted as \$158 per photometric plan.

PASSED, APPROVED AND ADOPTED this 21st day of January, 2014.

Cameron J. Hamilton, Mayor

ATTEST:

John D. Lollis, City Clerk

By _____
Patrice Hildreth, Chief Deputy City Clerk

**ATTACHMENT
ITEM NO. 1**

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF PORTERVILLE ESTABLISHING FEES FOR USE OF CARGO
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, 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. The recommended fee for use of cargo containers as temporary non-standard development is as follows: Short Term = \$296, Long Term = \$454 + \$79/month.

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 = \$454 + \$79/month.

PASSED, APPROVED AND ADOPTED this 21st day of January, 2014.

Cameron J. Hamilton, Mayor

ATTEST:

John D. Lollis, City Clerk

By _____
Patrice Hildreth, Chief Deputy City Clerk

ATTACHMENT
ITEM NO. 2

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.

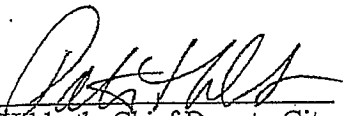
8) **Development Standards – Non-Standard Development:** All non-standard development requires approval by the City Council with appropriate Conditions of Approval. Such development may require site improvements that differ from those required for permanent development. Staff reports for such proposals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

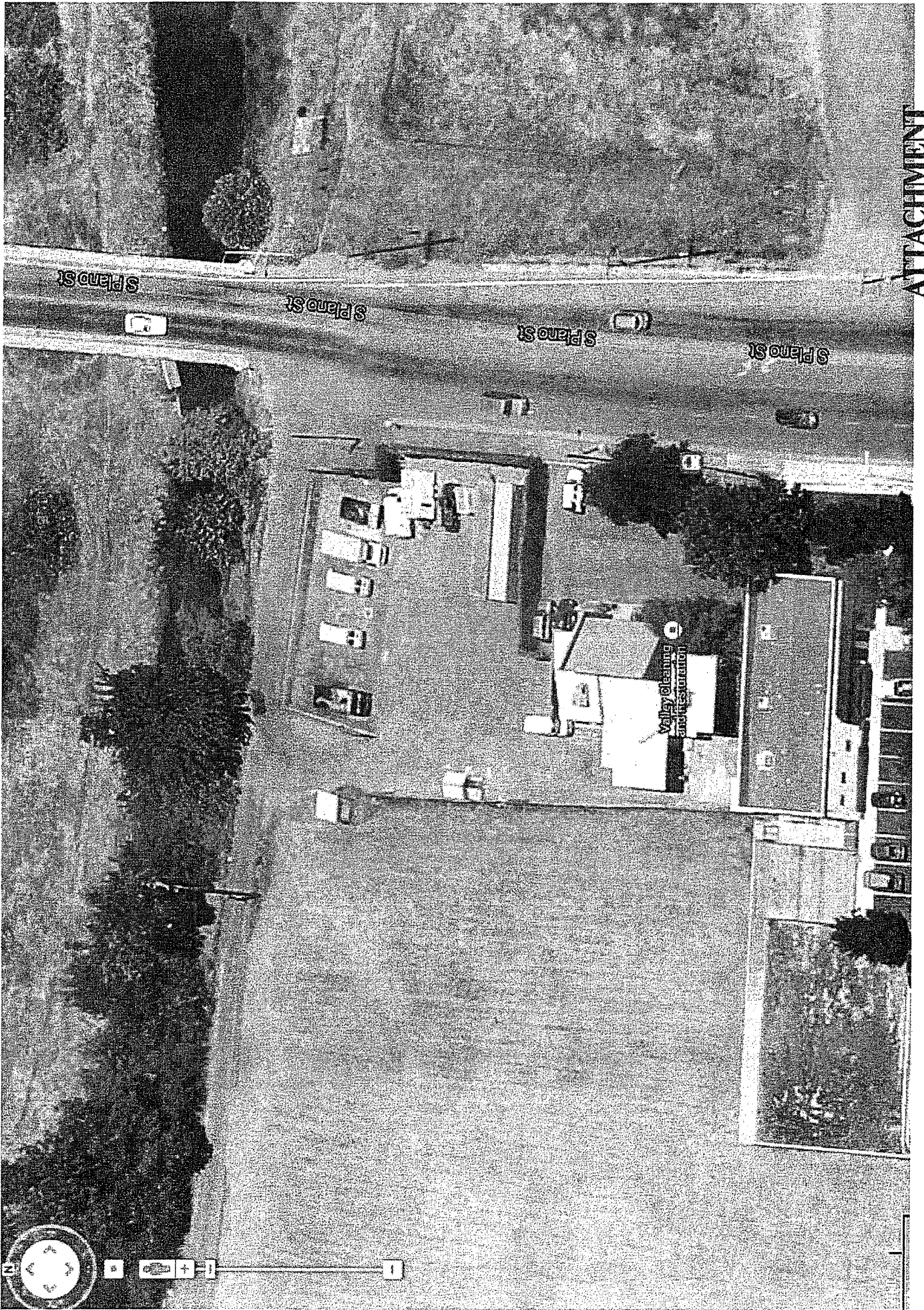
- 9) **Temporary Building Permits – Effect on Standards for Existing Conforming Development:** Temporary buildings may be approved only with clear time limits, and with a finding by City Council that the development is to accommodate a time of business stress or emergency or a construction project. For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

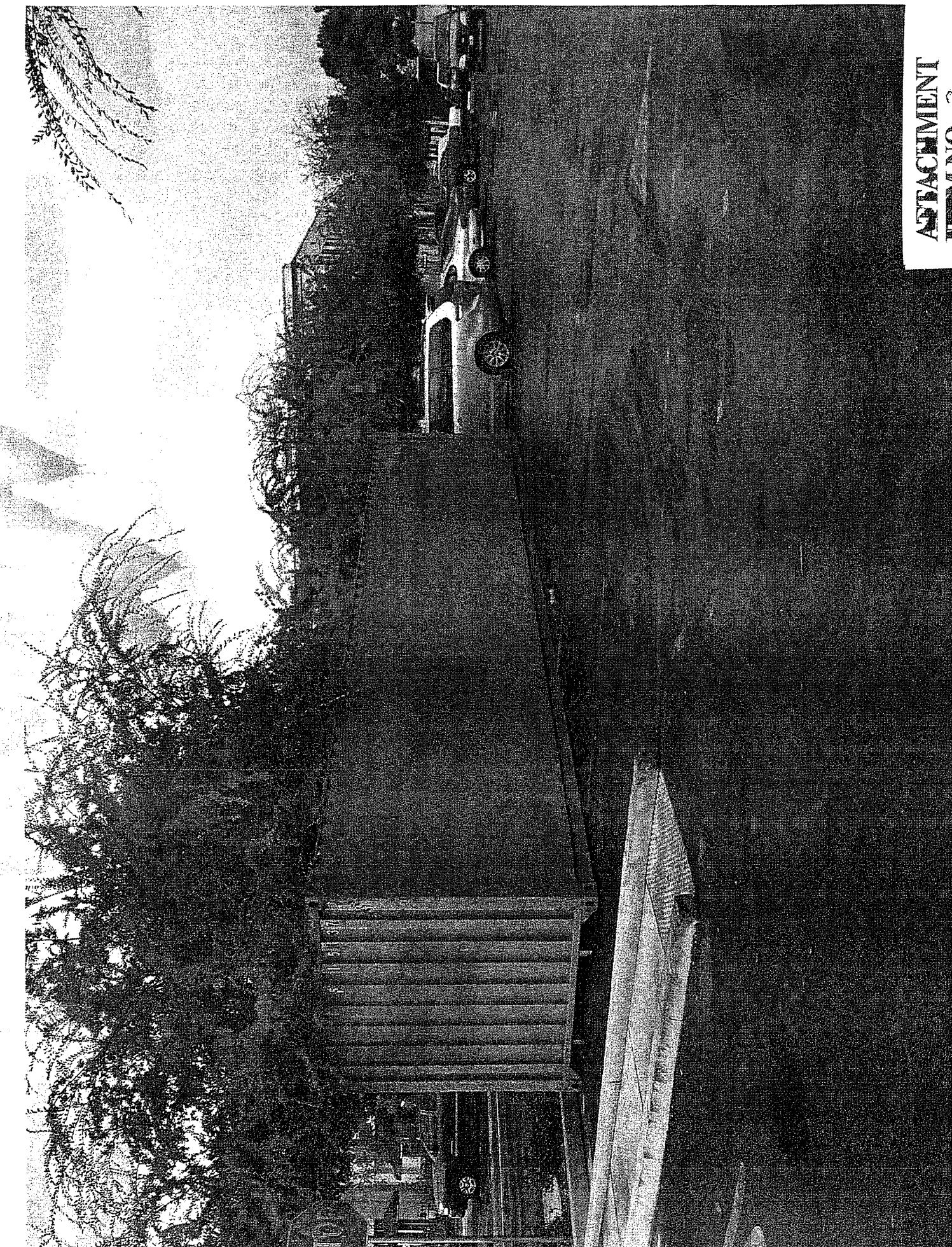
By: 
Cameron J. Hamilton, Mayor

ATTEST:
John D. Lollis, City Clerk

By: 
Patrice Hildreth, Chief Deputy City Clerk



ATTACHMENT
ITEM NO. 2



**ATTACHMENT
ITEM NO. 3**