CLOSED SESSION - CITY COUNCIL:

A. Closed Session Pursuant to:
   1 - Government Code § 54956.9(c) - Conference with Legal Counsel - Anticipated Litigation: One Case.

7:00 P.M. RECONVENE OPEN SESSION

REPORT ON ANY ACTION TAKEN IN CLOSED SESSION

No action to report.

Pledge of Allegiance Led by Council Member Kelly West
Invocation by Pastor John Eby, First Baptist Church

PROCLAMATION

Porterville Sheltered Workshop Appreciation Day - October 5, 2004

Gordon Ogmus, Director of Rehabilitation Services for Porterville Sheltered Workshop, came forward and accepted the Proclamation. He thanked the City of Porterville for its support and longstanding positive relationship with the Sheltered Workshop.

PRESENTATIONS

• Employee of the Month - Leon Phillips
• Certificate of Commendation - John Longley

ORAL COMMUNICATIONS

• John Eby, 1557 East Olive Street, invited Council, staff and audience members to attend the Mayor’s Prayer Breakfast to be held at 7:30 a.m. on Friday, October 8, 2004 at Grand Avenue Methodist Church.
• Mark Hillman, 620 West Olive Street, requested that he have an opportunity to speak when Item 15 was before Council.
• Dick Eckhoff, 197 North Main Street, offered comments regarding the City Manager’s recent attainment of an Airman’s Certificate.
CONSENT CALENDAR
Item 5 was removed.

1. CITY COUNCIL MINUTES OF SEPTEMBER 21, 2004
Recommendation: That the Council approve the City Council Minutes of September 21, 2004.
Documentation: Minute Order 01-100504
Disposition: Approved.

2. CLAIM - JOSIE GONZALES
Recommendation: That the Council reject said claim, and refer the matter to the City’s insurance adjustor, and direct the City Clerk to give the claimant proper notification.
Documentation: Minute Order 02-100504
Disposition: Approved.

3. CLAIM - CLAUDIA FOX
Recommendation: That the Council reject said claim, and refer the matter to the City’s insurance adjustor, and direct the City Clerk to give the claimant proper notification.
Documentation: Minute Order 03-100504
Disposition: Approved.

4. CLAIM - LIVIER PADRON
Recommendation: That the Council reject said claim, and refer the matter to the City’s insurance adjustor, and direct the City Clerk to give the claimant proper notification.
Documentation: Minute Order 04-100504
Disposition: Approved.

6. HOME INVESTMENT PARTNERSHIP PROGRAM (HOME) APPLICATION
Recommendation: That the City Council:
1. Approve the submittal of a HOME Investment Partnership Program (HOME) funding application for an amount not to exceed $1,200,000 ($1,000,000 HOME funds for the First Time Homebuyer Program and $200,000 American Dream Downpayment Initiative Funds) to the California Department of Housing and Community Development;
2. Authorize the Mayor to execute all documents pertaining to the HOME program; and
3. Authorize the Community Development Director to execute, in the name of the City of Porterville, project drawdown requests, and all other administrative documents required by the California Department of
Housing and Community Development or the U.S. Department of Housing and Urban Development for administration of the HOME program.

7. COMMUNITY DEVELOPMENT DEPARTMENT COMMITTEE ACTIVITY - REVISION OF PLANT MANAGERS MEETINGS

Recommendation: That the City Council approve modification of the Community Development committee activity to allow for quarterly meetings of the Plant Managers.

Documentation: Minute Order 05-100504
Disposition: Approved.

8. APPROVAL FOR COMMUNITY CIVIC EVENT PORTERVILLE UNIFIED SCHOOL DISTRICT BUTTERFIELD STAGE DAY - OCTOBER 22, 2004

Recommendation: That the Council approve the Community Civic Event Application and Agreement from Porterville Unified School District, subject to the Restrictions and Requirements contained in the application, agreement and Exhibit “A.”

Documentation: Minute Order 06-100504
Disposition: Approved.

9. PORTERVILLE MUNICIPAL AIRPORT RENTAL - ATMOSPHERICS, INC.

Recommendation: That the Council approve the temporary rental of a portion of Lot 7 to Atmospherics, Inc. for a rental fee of $150.00 per month, reimbursement to the City for electricity use, and compliance with the City’s policy on liability insurance.

Documentation: Minute Order 07-100504
Disposition: Approved.

10. CITY OF PORTERVILLE CONFLICT OF INTEREST CODE - BIENNIAL AMENDMENT

Recommendation: That the City Council adopt the resolution approving the revised City of Porterville Conflict of Interest Code.

Documentation: Resolution 128-2004
Disposition: Approved.

11. RESOLUTION OF OPPOSITION TO PROPOSITION 68

Recommendation: That the City Council adopt the draft resolution opposing the Gaming Revenue Act of 2004.
COUNCIL ACTION: MOVED by Council Member West, SECONDED by Council Member Hamilton that Council approve Items 1 through 4 and 6 through 11. The motion carried unanimously.

5. AWARD OF CONTRACT - PORTER SLOUGH DITCH PIPING PROJECT

Recommendation: That the Council:
1. Award the Porter Slough Ditch Piping Project to Halopoff & Sons, Inc. in the amount of $255,873.70;
2. Authorize progress payments up to 90% of the contract amount; and
3. Authorize a 10% contingency to cover unforeseen construction costs.

The City Manager presented the item.

In response to Mayor Pro Tem Irish’s questions, staff estimated that the total cost for the Henderson Reconstruction project from Newcomb Avenue to Westwood Street would be in excess of $600,000, and projected December 2004 for its completion.

COUNCIL ACTION: MOVED by Mayor Pro Tem Irish, SECONDED by Council Member Stadtherr that Council award the Porter Slough Ditch Piping Project to Halopoff & Sons, Inc. in the amount of $255,873.70, authorize progress payments up to 90% of the contract amount, and authorize a 10% contingency to cover unforeseen construction costs. The motion carried unanimously.

PUBLIC HEARING

12. CONDITIONAL USE PERMIT 7-96 (MODIFICATION NO. 1) (NEW LIFE CENTER CHURCH)

Recommendation: That the Council adopt the draft resolution approving the modification to Conditional Use Permit 7-96.

The City Manager presented the item, and Director of Community Development Brad Dunlap presented the staff report.

The public hearing opened at 7:18 p.m.

Dave Mast, 1301 Jean Street, came forward and identified himself as the Pastor of New Life Center Church, the applicant. Pastor Mast spoke in favor of the proposed construction and stated that it would benefit the neighborhood and reduce the noise level at the Church.
The public hearing closed at 7:19 p.m.

In response to Council Member Hamilton’s question, staff estimated the acreage of the subject lot was approximately 2 acres, and the height of the proposed building was approximately 20 feet, with 2 windows and 2 doors planned on the north side which was immediately adjacent to the residential area. Staff explained that because the building was proposed as being set back approximately 20 feet from the property, the view, if any, into the adjacent neighbors’ yards from the windows would likely be obstructed.

Mayor Pro Tem Irish questioned how the proposed construction would reduce the current noise level at the Church.

Dave Mast, 1301 Jean Street, came forward and explained that previous complaints regarding the noise level had been attributed to a children’s playground which was currently located in the area in which the proposed building was planned. He stated that replacing this playground with a youth center would eliminate future noise.

Mayor Pro Tem Irish voiced concern regarding the close proximity of the New Life Center to the residential neighborhood. He stated that areas zoned R-1 should be protected, and pointed to the County island to the west of the Church’s property which he surmised would eventually be annexed by the City and zoned R-1. He questioned how the future residential area to the west and the existing residential area to the north would be protected from lights and noise without a masonry block wall dividing the properties.

Council Member Hamilton pointed out that most other churches throughout the City were also adjacent to residential zones and had no block walls protecting those residents.

Council Member West agreed with Council Member Hamilton.

In response to Mayor Pro Tem Irish’s question, it was explained that significant cost would be involved in relocating the proposed building site to an area in the parking lot nearest to Morton Avenue.

Mayor Pro Tem Irish then questioned the difference between this situation and the issue with St. Anne’s project, to which staff explained that the St. Anne’s project had been developed as a new property, whereas this property was not.

Pastor Dave Mast came forward and explained that the property to the west and to the north was bordered with a slatted chainlink fence. He asserted that the 1/4 inch slats in the fence obstructed light.

Council Member West made a motion that Council adopt the draft resolution approving the modification to Conditional Use Permit 7-96. Council Member Hamilton seconded the motion, at which point further discussion on the item ensued.

Mayor Pro Tem Irish voiced further concerns for protecting the adjacent residential areas from noise.

Mayor Martinez voiced concern for protecting residents from lighting from the Church. Dimensions and positioning of the proposed building on the site were then discussed.
Council Member West called for the vote.

COUNCIL ACTION: MOVED by Council Member West, SECONDED by Council Member Hamilton that Council adopt the draft resolution approving the modification to Conditional Use Permit 7-96.

Resolution 130-04

AYES: West, Hamilton, Stadtherr, Martinez
NOES: Irish
ABSTAIN: None
ABSENT: None

Disposition: Approved.

SCHEDULED MATTERS

13. TEMPORARY USE PERMIT FOR REMOTE CONTROL CAR TRACK

Recommendation: That the City Council:

1. Approve the proposed Ordinance; and
2. Give first reading to the Ordinance approving a Temporary Use Permit for the Remote Control Track.

The City Manager presented the item, and Associate Planner Randy Rouda presented the staff report.

Mr. Rouda supplemented the report by indicating that an amendment to Condition No. 1 of the proposed ordinance would be required so as to eliminate the amount of the fee. He stated that such fee would need to be determined at a public hearing and that staff’s recommendation was amended to include setting October 19, 2004 for the public hearing on that matter.

Mayor Pro Tem Irish stated that he would like to even further amend Condition No. 1 of the proposed ordinance to defer payment of such fee until the time that the installation of a fire hydrant was required.

Staff clarified that the fire hydrant installation would be required upon construction of the first permanent structure on the site.

City Attorney Julia Lew then offered further clarification regarding staff’s reference to Municipal Code Section 7-3.3. She explained that the Section had not actually been applied by staff in its analysis, but instead had been referenced only as an example to set up a parallel process through the use of an uncodified ordinance. Ms. Lew indicated that by setting up this process, the staff was establishing that the City should be reimbursed. She stated that because this process involved the establishment of a fee, due process considerations were required, such as setting the matter for a public hearing.

A copy of Municipal Code Section 7-3.3 was then provided to Council Member Hamilton, at his request.
In response to Council Member Hamilton’s question regarding the use of an ordinance versus a resolution, Ms. Lew responded that an uncodified ordinance was the best mechanism for this unique situation. She pointed out that it was staff’s contention that the proposed use fit best under “commercial recreation” and that a violation of the Zoning Ordinance already existed. She explained that although the individuals might call themselves a “club,” the determination of whether a particular use was permitted was determined by the actual activity on the property, not by the manner in which the individuals were organized. Ms. Lew stated that in order to proceed with Council’s direction to find a mechanism for allowing the remote control car activity, staff had proposed this temporary use permit. Because this was not something previously pursued, staff believed that since this approval would have a precedent setting effect, an ordinance to be the best approach. She pointed out that an uncodified ordinance would set the standard and put in place a mechanism for similar situations that might arise in the future.

In response to concerns voiced by Council Member Hamilton, Ms. Lew clarified that Municipal Code Section 7-3.3 had not actually been used, but instead was only referenced in the staff report to point to a parallel system, such as the one regulating temporary structures.

City Manager John Longley pointed out that Section 7-3.3 had been referenced in the staff report because it was the most similar process to what was being proposed in this matter. He stated that the proposed temporary use permit currently before Council was ground breaking.

Council Member Hamilton questioned the manner by which the City regulated the modular temporary structures on the Evangelical Free Church’s property, and asked why staff had made the approval process for this remote control car facility so difficult.

The City Manager responded that Section 7-3.3 governed the Evangelical Free Church structures, and explained that the approval request currently before Council was not something that had been previously addressed as it was being done out of the context of the Zoning Ordinance. He explained that staff was trying to attain reasonable control over the future use of the property on a legal basis, and in order to achieve that, staff had proposed an uncodified ordinance.

Council Member Hamilton stated that he would support staff’s recommendation, with the amendment proposed by Mayor Pro Tem Irish regarding deferment of payment of the fee.

Council Member West voiced concern over deferring the fee payment until a fire hydrant installation was required, which he surmised might likely mean never. He asserted that staff time should be accounted for.

Council Member Hamilton stated that the process should never have become so complex so as to take so much of staff’s time.

Council Member West pointed out that it was Council that had requested staff to find a mechanism for approving the applicant’s request, and that staff had merely done as directed by Council and therefore such time expended by staff should be accounted for. Council Member West voiced his disapproval of deferring the proposed fee.

Council Member Stadtherr questioned if the City currently required that individuals or groups utilizing the fairgrounds for events water the parking lot for dust control.
Director of Community Development Brad Dunlap responded that the City not only required fairground users to mitigate dust through watering, but required any temporary user on any unpaved surface to do the same.

In response to Council Member Stadtherr’s question, staff confirmed that the subject property had an existing source of water.

Council Member West stated that he had personally witnessed the fairgrounds being watered down during certain events.

Mayor Martinez asked about the type of lighting the applicants planned to utilize at the facility, and suggested that the applicants should designate a certain parking area for the exclusive use of handicapped individuals.

Tim Beebe, 677 North Plano, came forward to respond to Mayor Martinez’s concerns over lighting. He stated that the track was currently only operated during daylight hours, and indicated that parking was available surrounding the entire track. Mr. Beebe confirmed that the applicants were willing to designate a certain parking area for handicapped participants. He then voiced dissatisfaction with the conditions proposed in staff’s recommendation, specifically Condition No. 1 regarding the proposed fee, Condition No. 8 regarding handicapped accessible portable sanitary facilities, and Condition No. 11 regarding the requirement of permits for all structures on the site.

Pete McCracken, 657 Village Green, came forward and stated that he believed that handicapped accessible portable sanitary facilities cost twice as much as the standard portable facilities. He then stated that he believed that restricting the applicants from charging participants while at the same time assessing a $1,255.00 fee against them seemed unfair.

Greg Shelton, 888 North Williford Drive, voiced his dissatisfaction with staff’s interpretation of the Code and its recommendation. He contended that since the subject property was zoned M-1, it automatically allowed the proposed use of a remote control car facility. Mr. Shelton then asserted that the fee of $1,255 proposed by staff was excessive, citing the lesser cost of $1020 for a tentative subdivision map. Mr. Shelton pointed out that as a Porterville resident he paid taxes to run the City bureaucracy, but then would be taxed again to compensate staff for its time on this project. Mr. Shelton also took issue with the proposed Condition regarding handicapped accessible portable sanitary facilities.

Council Member Hamilton responded that the City must require the applicants to have the handicapped accessible facilities to protect itself from potential litigation, and if the City failed to do so, it could be found negligent.

Mr. Shelton then argued that according to his interpretation of the Code, disapproval of the proposed use was not the prerogative of staff nor the Council because the M-1 zone in which the site was located allowed for the proposed use. He suggested that the City could condition the proposed use with a business license, but the conditions that staff had proposed, such as handicapped accessibility, were not allowed.

In response to Council Member Hamilton question, City Attorney Julia Lew explained that she believed that the City did in fact have the authority to place conditions regarding handicapped accessibility
 Council Member Hamilton then inquired about the triggering mechanism for the entire process before Council, to which Ms. Lew responded that the process was triggered by the Zoning Code violation of running an activity on the property which was not permitted.

Mr. Rouda further elaborated that staff asserted that the remote control car track use fell under commercial recreational usage which required a Conditional Use Permit. He explained that staff’s determination had been based on its functionality rather than whether or not participants were charged. Mr. Rouda then pointed to the analogy of a bottle club, wherein the use was essentially equivalent to an alcohol vendor, thus falling under those applicable requirements. In this case, the use was equivalent to a commercial recreational use even though no fees would be charged, thereby requiring a C.U.P. As such, the current use was in violation of the Zoning Ordinance. He then stated that staff had attempted, at Council’s request, to find a mechanism to legitimize the use, and in response to Council’s direction, staff had recommended the temporary use permit which was before Council this evening.

Mr. Shelton expressed disagreement with staff’s interpretation of the Code, and suggested that the Code did not specifically address the necessity of a C.U.P for commercial recreational use, but rather the Code was silent on that issue. He asserted that because the Code specifically included language requiring churches to obtain a C.U.P., it would follow that those uses not also specifically named would not be required to obtain a C.U.P.

City Manager John Longley clarified that staff recommended that the fee be set for public hearing at the October 19, 2004 meeting, at which time discussion on the amount and proposed deferment of said fee could take place.

In response to comments regarding the restrictions set forth in Condition No. 3 of the draft ordinance regarding charging participants, Ms. Lew clarified that as currently written, Condition No. 3 allowed for the acceptance of donations.

Mayor Pro Tem Irish voiced concern regarding Condition No. 3, and questioned the necessity of restricting Registration Fees. He proposed striking Registration Fees and clarified that it was his intent to disallow the participants from charging the public to participate, however, he did not intend to prohibit the organizers from collecting monies amongst themselves.

It was then agreed that “Registration Fees” would be stricken from Condition No. 3 of the draft ordinance.

In response to comments regarding the level of sound produced at 65dB – the proposed maximum level of sound proposed in Condition No. 6 of the draft Ordinance – it was pointed out that the measurement was from the property line and that 65dB was a standard and reasonable maximum volume.

For clarification, City Attorney Julia Lew then read the amendment to Condition No. 1 of the draft ordinance as follows: “The operators shall pay an amount to the City of Porterville to reimburse the City for the actual cost of processing the permit.”
Council Member Hamilton then questioned if deferment of the fee would create a lien against the property.

Ms. Lew responded that Council could consider that issue when the matter returned to Council for the public hearing on October 19, 2004.

Council Member Stadtherr suggested that rather than deferring payment of a large fee which would require tracking, Council should consider an “up-front” payment of a standard fee.

Ms. Lew again reiterated that although Municipal Code Section 7-3.3 had been referenced in the staff report, that Section was not being utilized and therefore that fee was not applicable to this case.

City Manager John Longley clarified that the maximum fee sought would be $1,255 as recommended by staff in its report, however, the final determination would be Council’s discretion at the public hearing on October 19, 2004.

COUNCIL ACTION: MOVED by Council Member Hamilton, SECONDED by Council Member Stadtherr that Council approve Ordinance 1659, as amended, for first reading, and order the ordinance to print, being AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE ISSUING A PERMIT FOR TEMPORARY USE TO PERMIT THE CONTINUED OPERATION OF A REMOTE CONTROL RACE TRACK AS A HOBBY/RECREATIONAL USE, and set October 19, 2004 for a public hearing on setting the fee. The motion carried unanimously.

Disposition: Approved.

The City Manager read the Ordinance by title only.

14. CONSIDERATION OF ORDINANCE AUTHORIZING INCREASES IN UTILITY USER TAXES AND AMENDING REGULATIONS

Recommendation: That the Council:
1. Review the draft Ordinance and provide further direction; and
2. If Council wishes to go forward with the Ordinance, that it set a public hearing for the first meeting in November (November 2, 2004) and consider the finalized Ordinance for First Reading at that time.

The City Manager presented the item, and City Attorney Julia Lew presented the staff report.

Ms. Lew also advised setting forth an appeals process and a refund process, both of which were absent from the current ordinance, and suggested that the tax administrator could be given some power in making administrative rulings to help streamline any legal issues concerning the taxes. Ms. Lew then pointed out that because the proposed Ordinance included the declaration of emergency, it would require a unanimous vote of Council instead of a 4/5ths vote. She pointed out that an alternative would be to remove the emergency language so it could be done separately, but that such decision would be Council’s prerogative. Ms. Lew then reminded Council that the deadline for placing this ballot measure on the
March 2005 election was December 10, 2004, with a suggested deadline from the Tulare County of November 16, 2004.

Mayor Pro Tem Irish confirmed that each percentage point of monies collected from the UTT represented approximately $500,000, and pointed out that tax revenues would increase when DSL service and Internet access were also taxed. He then voiced concern with ensuring that the monies collected were safeguarded for police and fire use only.

City Attorney Julia Lew explained that because of advancements in technology, the proposed changes most significantly pertained to the inclusion of DSL, cable, and satellite and related technologies. She then clarified that if Council pursued the tax as a general tax measure, the funds could not be legally obligated. She suggested that an advisory measure could be set forth which included language detailing how Council desired to use those funds. Ms. Lew stated that the integrity of the general tax measure process must be protected from possible legal challenges, but that she could investigate other practical means by which the Council could set out how funds of equal amounts might be used for public safety.

In response to Council Member West’s comments, Ms. Lew confirmed that any funds collected from the general tax would be placed into the general fund and no legal obligation could be created for the use of those funds. She reiterated that although she would further investigate other means by which the City could attempt to ensure that the monies collected were reserved exclusively for police and fire, those monies could never legally be obligated under a general tax measure. Ms. Lew then pointed out that the decision of whether or not to proceed as a general tax measure, or to move forward with a special tax, was Council’s decision. Ms. Lew warned that special tax measures were very difficult to pass, as special taxes required a 2/3rds vote as opposed to a simple majority, or 50% plus 1.

Council Member Stadtherr questioned why satellite television had been addressed in the proposed changes, but not satellite radio, and whether all references to “telephone” in Section 22-43 of the draft ordinance should be changed to “telecommunications.”

Ms. Lew responded that satellite radio, as well as other utilities were not added in because they simply had not been previously included. She then stated that much of the information provided in terms of the various types of new technologies had actually been provided by a tax collection consultant and that she was not particularly knowledgeable on those technicalities. She then confirmed that “telephone” could be changed to “telecommunications.”

Referencing Section 22-44 of the proposed ordinance, Council Member Stadtherr suggested that perhaps individuals utilizing solar power might not be negatively impacted, although the impact would depend upon if the users were taxed for merely having a meter, or if the tax was based solely on the amount of electricity used.

Mayor Pro Tem Irish asked if the flat UTT had also been addressed, to which staff responded that it was proposed to be doubled.

Council Member Hamilton stated that he was supportive of bringing this measure to the citizens because he believed it was needed, however, he pointed out if it was Council’s intention to levy this tax for public safety, then that is what should be put before the people, even if that required pursuing a special
tax which needed a 2/3rds vote to pass. He stated that although he understood the difficulty in passing a special tax measure, the decision should ultimately lie with the voters.

Mayor Pro Tem Irish voiced agreement with Council Member Hamilton’s comments and elaborated that the citizens were likely aware of the City’s need for additional police and fire protection. He stated that he supported moving forward with a special tax measure rather than a general tax measure.

The City Manager clarified that the City Attorney could prepare another ordinance, but that it would not include the language amending the Code to include new technologies. He explained that approval of the 2% increase in the UTT via a special tax required a 2/3rds vote, while amending the Code to include new technologies only required a simple majority vote.

Ms. Lew explained that while the special tax measure could include the expansion of technological definitions, if the measure failed to get the required 2/3rds vote, the older outdated Code would remain in effect. Ms. Lew then stated that an alternative would be to place two separate measures on the ballot, although two separate measures might create confusion to the public.

Council Member Stadtherr pointed out that advancements in creating more energy efficient appliances might actually decrease utility revenues as numbers of individuals increasingly exchange older, less energy efficient appliances for new ones. He stated that, for example, even if the population of Porterville grew by 10%, such growth did not necessarily mean that utility tax revenues would also increase by 10%. He cited the development of more energy efficient homes as another factor.

Mayor Pro Tem Irish contended that any decrease in revenues due to the expanded use of more energy efficient appliances would be likely be outweighed by the expected growth in Porterville. He stated that even with such technological advancements, revenues would increase as a direct result to population growth. Mayor Pro Tem Irish then voiced support for including the new technologies such as DSL, cable and satellite in the UTT in the tax measure.

Council Member West questioned the amount of revenue that might be collected if the new services were built into the UTT, and how staff determined the number of new police officers and firefighters the City could hire if the UTT was increased.

Deputy City Manager Darrel Pyle stated that as to the new technologies, such a determination would prove difficult at this time, and pointed to “bundled” service packages currently being offered by several service providers such as SBC. Mr. Pyle commented that one bundled service package presently on the market offered high speed DSL, television, telephone and cell phone on one bill for approximately $112 per month. He stated that such bundled service packages appeared to be a future trend.

City Manager John Longley clarified that staff had prepared a detailed cost analysis based on the additional 2% increase, but such analysis did not include the new technologies. Mr. Longley stated that according to that analysis, staff estimated that 6 to 8 new officers and firefighters could be hired.

Council Member Hamilton stated that he was in favor of pursuing a special tax versus a general tax.

Mayor Pro Tem Irish stated that he too favored pursing a special tax.
Council Member West stated that while he favored a special tax, he feared that it might not pass because of the 2/3rds vote requirement.

In response to City Attorney Julia Lew’s question, Council Member Hamilton stated that he would not support an additional general tax measure that included the technological amendments.

Mayor Pro Tem Irish agreed with Council Member Hamilton and stated that the voters should be able to decide.

Ms. Lew clarified that the Council’s vote this evening did not require a unanimous vote, however the adoption of the Ordinance would require a unanimous vote.

COUNCIL ACTION: MOVED by Council Member Hamilton, SECONDED by Mayor Pro Tem Irish that Council direct staff to proceed with drafting an Ordinance authorizing increases in Utility Users Taxes via a special tax measure.

M.O. 09-100504

AYES: West, Irish, Hamilton
NOES: Stadtherr, Martinez
ABSTAIN: None.
ABSENT: None.

Disposition: Approved.

Council Member Stadtherr commented that he did not believe the measure would pass and voiced concern with spending the taxpayers’ money.

Council Member Hamilton stated that the decision would lie with the voters.

Mayor Pro Tem Irish agreed with Council Member Hamilton.

City Manager John Longley clarified that in order to place the special tax measure on the election ballot, a unanimous vote would be required from Council.

The Council then took a 10 minute recess.

15. INTERPRETATION OF AMBIGUITY - MOBILE, TEMPORARY AND PERMANENT STRUCTURES

Recommendation: That the City Council review and discuss the information provided and provide additional direction to staff.

The City Manager presented the item and Director of Community Development Brad Dunlap presented the staff report. Mr. Dunlap presented slides reflecting examples of the various types of mobile, temporary and permanent structures to be discussed.
Mayor Martinez suggested, and staff confirmed, that further discussion could also take place at the upcoming Study Session set for October 12, 2004 regarding to the City’s itinerant, street, and peddler vending regulations.

Mark Hillman, 620 West Olive Street, came forward and identified himself as a representative for the owner of the proposed business “Udders.” Mr. Hillman presented the proposed building structure of the business, being a 10 ft by 20 ft trailer with retractable wheels, and pointed to existing ambiguities in the Code which he contended created uncertainty in how Udders developed, specifically, as a temporary structure, or as a permanent structure.

Council Member West questioned the difference between a catering trailer with retractable wheels, such as what Udders had proposed, and any other building that one could move, such as a catering truck.

Staff clarified that catering trucks were subject to regulation by the Department of Motor Vehicles and were often times driven away every evening, whereas catering trailers with retractable wheels were generally left stationary for a period of time and thus were regulated through the Building Code.

Council Member Stadtherr suggested that a distinction could also be made between catering trucks and catering trailers in terms of utility and water usage, as catering trucks were more self-contained and catering trailers required hook-ups.

In response to Mayor Martinez’s question regarding the timeline for the Udders project, Mr. Hillman came forward and stated that the owner would prefer to commence with the project as soon as possible. Mr. Hillman elaborated that the Udders concept was new for the Porterville area, and compared it to the kiosk vendor located at the entryway of Costco in Visalia.

In response to Council Member West’s comments, Mr. Dunlap clarified that staff required direction from Council as to how the City should handle these various types of structures, which he pointed out, ultimately had implications on City services, the quality of development, and regulation cross-over between the Building Code and the DMV. Mr. Dunlap then cited WalMart’s excessive use of sea trains for storage throughout its parking area as one example. He pointed out that the Udders scenario was somewhat more complex in that it involved utility hookups for a DMV regulated structure. He added that according to staff’s interpretation of the Code, full development of the site, including a parking lot, was required. This would apply to the undeveloped lot at Porter Street and Putnam Avenue which had been proposed by Mr. Hillman as one of the potential sites for Udders.

In response to Mayor Pro Tem Irish’s question, Mr. Dunlap confirmed that, in theory, a catering trailer, such as the one proposed by Udders, could be placed in a developed lot if it did not reduce the amount of parking spaces required. Mr. Dunlap then pointed out that although Mr. Hillman had likened Udders to the kiosk outside of Costco in Visalia, the two were quite different in that the kiosk was an accessory to a very intensely developed site, whereas Udders, as proposed, was not.

Mayor Pro Tem Irish commented that he had seen many similar building structures utilized by businesses around the country, and that staff and Council must set forth some guidelines.

Mayor Martinez then proposed that the matter be continued for further discussion during the Study Session set for October 12, 2004.
City Manager John Longley clarified that the staff report would be carried forward until October 12, 2004.

Disposition: Continued.

16. UPDATED REPORT ON FIREWORKS

Recommendation: That Council review and discuss the information provided and offer direction to staff.

The City Manager presented the item and Fire Chief Frank Guyton presented the staff report.

In response to Council Member Hamilton’s question, Chief Guyton clarified that the Fire Department’s primary focus during the fireworks season was to check for potential roof fires in locations where illegal fireworks had been reported, rather than focus its resources towards enforcement relating to the use of illegal fireworks.

Council Member Hamilton questioned if the closing of County Stations 19 and 20 would have any impact on the City next year, to which Chief Guyton responded that he did not believe those closures would impact the City.

In response to Mayor Pro Tem Irish’s question, staff confirmed that approximately 11 groups were permitted to sell fireworks in the City.

Mayor Martinez asked whether staff was aware of any fireworks stands that had been set up in County islands.

Chief Guyton responded that he had viewed several located in both County islands throughout the City and in County areas bordering the City. He elaborated that Tulare County’s policy was to issue an unlimited number of permits for fireworks stands, and stated that in the past a “gentlemen’s” agreement existed between the County and City, but that agreement had no longer been enforced. He pointed out that the Tulare County Board of Supervisors was aware of the situation.

Mayor Pro Tem Irish suggested that the Joint Powers Agreement recently executed could perhaps be a mechanism between the County and City for regulating the sales in the future.

17. RIVERWALK MARKETPLACE COMMERCIAL CENTER ENVIRONMENTAL PROCESS UPDATE

Recommendation: Presented for informational purposes only. No action is recommended.

The City Manager John Longley informed Council that he resided within 500 feet of the proposed use and therefore according to City policy, he asked that he be dismissed from the discussion. Mr. Longley then excused himself from the Council Chambers.

Deputy City Manager Darrel Pyle presented the item, and Director of Community Development Brad Dunlap presented the staff report.
In response to Council Member Hamilton’s question, staff confirmed that economic blight had been a component of the environmental impact report.

The City Attorney explained that current case law required the consideration of economic blight in the environmental process, and stated that she would further research any applicable new cases.

Mr. Pyle clarified that staff was currently in the process of reviewing all comments received from the participants and such comments would be evaluated based on the legal requirements as to what could and could not be included in the final environmental document.

Mr. Dunlap added to Mr. Pyle’s comments by stating that staff had actually completed a cursory review of all comments and noted that none addressed issues not already included in the process.

In response to Mayor Pro Tem Irish’s comments regarding the importance of considering both short and long term effects, Mr. Dunlap explained that the evaluation was very complex and generally looked to the impact on existing businesses that could be attributed to the opening of the shopping center. He cited the creation of blight through abandoned and vacant buildings as an example. This effect, he pointed out, generally took some time. Mr. Dunlap then pointed out that in the analysis staff also expected to find a sales tax leakage caused by residents of Porterville and the surrounding areas leaving the area to shop. He also pointed WalMart’s ultimate decision to either remain open or to close as another factor.

**ORAL COMMUNICATIONS**

- Greg Shelton, 888 North Williford Street, requested that Council direct staff to draft a letter detailing the City’s position regarding the remote control car track. Council suggested that Mr. Shelton should initially draft a letter to the City requesting such information. (Mr. Shelton delivered said letter to the City Manager at the conclusion of the meeting.)
- Dick Eckhoff, 197 North Main Street, requested that the City stay in contact with the Downtown Porterville Association regarding the Riverwalk Marketplace development and Item No. 15 regarding the categorization of various structures. Mr. Eckhoff then voiced support for Council’s decision to proceed with the UTT increase via a special tax measure vs. a general tax measure, and voiced concern over protecting those general funds allocated for police and fire.
- Fellipe Martinez, 195 West Putnam, thanked Public Works Director Baldo Rodriguez for meeting with the merchants affected by the Orange Avenue Reconstruction Project. Mr. Martinez then stated that the proposed Riverwalk Marketplace development might not be as economically beneficial to the City as was suggested.

**OTHER MATTERS**

- Council Member West voiced concern over the lack of a designated group to promote the special tax measure for the UTT increase. The City Attorney clarified that the Council Members could endorse and approve the measure, but that public funds could not be utilized. Ms. Lew stated that she would provide a memorandum to Council that details the limitations on Council Members in supporting ballot measures.
- Mayor Pro Tem Irish voiced support for Council’s decision to move forward with the special tax measure, and stated that he had full confidence in the voters to do the right thing.

**ADJOURNMENT**

The Council adjourned at 9:33 p.m. to the meeting of October 12, 2004.