

The City Council met in regular session at the hour of 8:30 a.m. in the Council Chamber, City Hall, on the day above written.

Present:	Andreas Borgeas	Councilmember
	Lee Brand	Councilmember
	Mike Dages	Councilmember
	Henry Perea	Councilmember
	Larry Westerlund	Acting Council President
	Blong Xiong	Councilmember
	Cynthia Sterling	Council President

Andy Souza, City Manager
 Bruce Rudd, Assistant City Manager
 Jim Sanchez, City Attorney
 Becky Klisch, City Clerk
 Yolanda Salazar, Assistant City Clerk

Pastor Harry Miller of the Fresno Temple Church of God in Christ gave the invocation and President Sterling led the Pledge of Allegiance.

PROCLAMATION OF "DUMP THE PUMP DAY" - COUNCILMEMBER XIONG

PROCLAMATION SUPPORTING THE CONTINUED PLANNING OF A SCHOOL OF MEDICINE AT UC MERED - MAYOR SWEARENGIN AND COUNCILMEMBER BORGEAS

The above proclamations were read and presented.

APPROVE MINUTES OF JUNE 9, 2009, AND JUNE 11, 2009:

On motion of Acting President Westerlund, seconded by Councilmember Dages, duly carried, RESOLVED, the minutes June 9, 2009, approved as submitted, and the minutes of June 11, 2009, *approved as amended*, on Page 153-187, relative to vote on Item 10:00 a.m., to show Acting President Westerlund voting "No" and not "Absent".

COUNCIL MEMBER REPORTS AND COMMENTS:

Councilmember Xiong (1) thanked the statewide organization that came to the valley and conducted a workshop on gambling and the impact of gambling; and (2) requested the City Manager prepare a formal response to the letter hand-delivered to Council requesting a feasibility study for a fire station in the Ashlan/Cornelia area.

Councilmember Dages requested an update on the Federal Transit Administration Recovery Act's list of stimulus applications stating he did not see Fresno's application included.

Councilmember Borgeas advised a memo was received from the City Attorney regarding the Governor's visit that expressed a concern with potential Brown Act complications if more than three members attend the event, whereupon City Attorney Sanchez stated his research determined the meeting was by invitation only and he felt that may not meet the "community meeting" exception which would have allowed more than three members to attend and recommended Council err on the side of caution whenever there is some uncertainty.

looking to make a change to allow up to 10% of federal stimulus funds to be used for operating costs and requested the City Manager look into the matter, with ACM Rudd responding.

Acting President Westerlund noted there was prior discussion about finding a work-around Proposition 209 regarding minority preference and stated he did not think that was right and asked that staff not spend any time on the issue as the voters spoke and were very clear in their determination. City Attorney Sanchez advised as a result of that prior discussion staff did spend a few hours on the matter and already completed a response memo and it would be coming forth as part of the final budget packet. Upon question Mr. Sanchez stated the conclusion was San Francisco's ordinance was deemed to have been beyond that allowed by Proposition 209 and San Francisco was appealing that conclusion.

Councilmember Brand requested clarification on Council's schedule this date with the Governor's visit with President Sterling stating she, along with Acting President Westerlund and President Xiong, would be attending the event and be leaving at 9:30 a.m. Discussion ensued on the meeting continuing with the four remaining members (quorum), Council recessing the meeting at 9:30, time for the lunch break and time to resume the meeting, there being items on the agenda some members want to participate in, and the intent to move the 9:30 "B" item to 2:00 p.m. due to Council members leaving at 9:30 a.m. and for citizen convenience. After discussion it was determined to recess the meeting at 9:30 a.m. and if time allowed Council would return sometime prior to noon, continue with the agenda as much as possible, break for lunch from 12:00 noon to 2:00 p.m., then resume again at 2:00 where the meeting left off.

President Sterling (1) requested a synopsis on The Edge nightclub at Granite Park and where issues with the city stood, with ACM Rudd responding/explaining issues; (2) stated at the Governor's event officials would hopefully help persuade the Governor to make a better decision about borrowing money as opposed to taking; and (3) reported she attended the Calaveras Street block party, the Mayor's Gang Prevention Initiative boxing tournament at Central East High School, was a guest speaker at the Knights conference, and welcomed the Mayor's Citizen's Academy at their first meeting this past week.

APPROVE AGENDA:

(11:00 A.M.) CONTINUED HEARING TO CONSIDER THE PLANNING COMMISSION'S APPROVAL OF CUP NO. C-09-028 RELATED TO A GROUP HOUSING USE AT 1620 E. WHITE AVENUE (**WITHDRAWN**)

Withdrawn as noted.

(9:00 A.M. "A") APPEARANCE BY LINDA MOTSCHIEDLER, PRESIDENT OF SISTER CITIES INTERNATIONAL, REQUESTING (1) COUNCIL APPROVE NEW SISTER CITY RELATIONSHIPS WITH NIMES, FRANCE, TAISHAN, CHINA, AND A CITY IN ARMENIA, (2) REVIEW THE RELATIONSHIPS WITH THE CURRENT AND FORMER SISTER CITIES, AND (3) DISCUSS THE NEW "AMBASSADOR PROGRAM"

Request to appear withdrawn -- to be rescheduled.

(10:00 A.M.) HEARING ON PLAN AMENDMENT APPLICATION NO. A-09-02, THE AIR QUALITY UPDATE FOR THE 2025 FRESNO GENERAL PLAN, INITIATED BY THE INTERIM PLANNING & DEVELOPMENT DEPARTMENT DIRECTOR PURSUANT TO PROVISIONS OF ASSEMBLY BILL (AB) 170.

Acting President Westerlund stated the planning commission had four workshops on this matter before they voted on it and Council was being asked to consider and vote on it this day, advised he spoke with the city manager about having a workshop prior to voting to allow for additional consideration time for all, and stated this was a very significant update and requested, if there were no time constraints, that this item be heard as a workshop today or next week and have a Council vote thereafter. Brief discussion ensued with ACM Rudd, Planning Manager Unruh and City Attorney Sanchez clarifying issues and by Council consensus it was determined to open and hold the hearing this date as it was legally noticed as a hearing, have a staff presentation and receive public input, then continue Council deliberation and action to June 25, 2009 (with the time subsequently set for 10:00 a.m.).

(9:30 A.M. #2 "B") APPROVE THE 2008-2009 ANNUAL ACTION PLAN AMENDMENT FOR UTILIZATION OF \$7,100,000 OF FEDERAL NEIGHBORHOOD STABILIZATION PROGRAM FUNDS

153-197

06/18/09

Moved to 2:00 p.m. this date.

On motion of Acting President Westerlund, seconded by Councilmember Xiong, duly carried, RESOLVED, the **AGENDA** hereby approved, *as amended*, by the following vote:

Ayes : Borgeas, Brand, Dages, Perea, Westerlund, Xiong, Sterling
Noes : None
Absent : None

ADOPT CONSENT CALENDAR:

Councilmember Dages pulled Items **1-A** and **1-L**, and Acting President Westerlund pulled Item **1-I** from the Consent Calendar for separate discussion and action.

(1-B) AWARD A CONTRACT TO WYOMING NORTHSTAR, INC., IN THE AMOUNT OF \$1,153,004 FOR INSTALLATION AND INTEGRATION OF AN ADDITIONAL 15,000 GALLON LIQUID NATURAL GAS (LNG) STORAGE TANK INTO THE EXISTING LNG FUEL STATION INFRASTRUCTURE

(1-C) ADOPT CEQA NOTICE OF EXEMPTION PURSUANT TO CEQA GUIDELINES, AND AWARD A CONTACT FOR \$1,339,867 TO KELLY V. BROYLES CONSTRUCTION, INC., FOR THE INSTALLATION OF 8" AND 12" WATER MAINS IN SAN MADELE, SAN RAMON, SAN BRUNO, SAN JOSE, SCOTT, KEATS, TWAIN, TEILMAN, BARSTOW, FRUIT, AND VAGEDES AVENUES

(1-D) GRANTING THE PUBLIC WORKS DIRECTOR OR DESIGNEE THE AUTHORITY TO AMEND THE EXISTING AGREEMENT WITH BLAIR, CHURCH AND FLYNN CONSULTING ENGINEERS IN THE AMOUNT OF \$2,450 TO COMPLETE THE LANDSCAPING AND IRRIGATION DESIGN AT THE UNDER-CROSSINGS AT CLOVIS NORTH HIGH SCHOOL AND THE STATE CENTER COMMUNITY COLLEGE ON WILLOW AVENUE AS PART OF THE SUGAR PINE TRAIL COMPLETION PROJECT

(1-E) APPROVE A COOPERATIVE AGREEMENT WITH CALTRANS FOR WIDENING OF THE "O" STREET OFF-RAMP OF SOUTHBOUND STATE ROUTE 41, AND AUTHORIZE THE PUBLIC WORKS DIRECTOR OR DESIGNEE TO SIGN THE AGREEMENT ON BEHALF OF THE CITY

(1-F) AWARD A CONTRACT TO CUMMINS WEST, INC., IN THE AMOUNT OF \$168,303.17 FOR THE PURCHASE OF EMERGENCY GENERATORS AND AUTOMATIC TRANSFER SWITCHES TO BE INSTALLED AT PUMP STATIONS 132 AND 318

(1-G) AWARD A ONE-YEAR REQUIREMENTS CONTRACT WITH PROVISIONS FOR TWO ONE-YEAR EXTENSION TO BASIC CHEMICAL SOLUTIONS, LLC IN THE AMOUNT OF \$424,588.40 TO PROVIDE FOR 475,000 GALLONS OF 12.5% SODIUM HYPOCHLORITE FOR USE AS A DISINFECTANT IN THE CITY'S WATER SUPPLY

(1-H) AWARD A CONTRACT IN THE AMOUNT OF \$475,602 TO PIPENOLOGY INC., FOR SEWER TRUNK REHABILITATION IN CALIFORNIA AND EAST AVENUES

(1-J) AWARD A CONTRACT IN THE AMOUNT OF \$1,935,672 TO INSITUFORM TECHNOLOGIES, INC., FOR SEWER TRUNK REHABILITATION IN MARKS AVENUE

(1-K) RESOLUTION NO. 2009-137 - INITIATING REZONING (PRE-ZONING) OF THIRTEEN PARCELS TOTALING APPROXIMATELY 17.26 ACRES LOCATED ON THE EAST AND WEST SIDES OF N. POLK AVENUE BETWEEN W. ASHLAN AND W. DAKOTA AVENUES

(1-M) APPROVE APPOINTMENT OF JENNIFER MARIE BLAIR TO THE COMMISSION ON THE STATUS OF WOMEN - COUNCILMEMBER BRAND

On motion of Councilmember Brand, seconded by President Sterling duly carried, RESOLVED, the above entitled **CONSENT CALENDAR** hereby adopted, by the following vote:

153-198

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Ayes : Borgeas, Brand, Dages, Perea, Westerlund, Xiong, Sterling
Noes : None
Absent : None

CONTESTED CONSENT CALENDAR:

(1-A) AWARD A CONTRACT FOR RECONSTRUCTION OF TAXIWAY B10/C10 AND DEMOLITION OF TAXIWAY B9 AT THE FRESNO YOSEMITE INTERNATIONAL AIRPORT TO GRANITE CONSTRUCTION COMPANY IN THE AMOUNT OF \$2,242,617 (ARRA-FUNDED PROJECT)

Councilmember Dages stated his concern was the letter Council received from Teichert Construction stating the City accepted a bid that was incomplete, whereupon ACM Rudd advised a contract needed to be in place in order to issue a Notice to Proceed by July 1st to receive the federal assistance. Councilmember Dages stated, as far as Teichert’s letter was concerned, that having an illegal contract in on time did not satisfy the situation and he would not support the award **(2 - 0)**. Mr. Rudd advised staff was present to provide background information whereupon President Sterling noted this matter was time sensitive and recommended laying it over to the afternoon for adequate discussion and action. ACM Rudd stated discussion on this would be time-consuming, agreed to continue it given Council’s short morning session, and confirmed this item was time-sensitive and a decision needed to be made this date. By consensus the matter was laid over to 2:00 p.m.

(1-I) AWARD A \$253,995 CONTRACT TO PIPENOLOGY INC., FOR MAPLE AVENUE TRUNK SEWER REHABILITATION

Upon question of Acting President Westerlund, Assistant Public Utilities Director Hogg explained the discrepancy between the bid price and engineer’s estimate for Items 1-I and 1-H was one was an allotment below what was appropriated in the budget and the other was what the engineer estimated the construction cost would be after the design.

On motion of Acting President Westerlund, seconded by Councilmember Dages, duly carried, **RESOLVED**, the above entitled contract awarded to Pipenology, Inc. as recommended, by the following vote:

Ayes : Borgeas, Brand, Dages, Perea, Westerlund, Xiong, Sterling
Noes : None
Absent : None

(1-L) APPROVE A MEMORANDUM OF UNDERSTANDING WITH THE FRESNO COUNTY ECONOMIC OPPORTUNITIES COMMISSION (EOC) FOR A YOUTH NUTRITIONAL ASSISTANCE PROGRAM

Councilmember Dages noted Page 1 of the staff report states the agreement was contingent upon available and allocated funding in ANY fiscal year, and the Fiscal Impact on Page 2 indicates funding has been included in the Department’s FY 2010 proposed budget, added he had a problem with the word “any” as he took that to mean the contract could be funded again in any fiscal year with unallocated funds, and clarified he was not opposed to the program but his concern was the wording leaves the contract open-ended, with ACM Rudd and PARCS Director Cooper stating that was not the intent and clarified issues. Acting President Westerlund further clarified the issue and action being requested, and spoke to the termination clause on Page 2 of the MOU and upon his recommendation City Attorney Sanchez agreed language should be changed under EFFECTIVENESS, DURATION AND TERMINATION, 2nd paragraph, 5th sentence, changing the word “and” before (iv) to “or”.

On motion of Acting President Westerlund, seconded by Councilmember Brand, duly carried, **RESOLVED**, the above entitled MOU with the EOC to provide a nutrition assistance program for youth during out of school periods throughout the year hereby approved, and **BE IT FURTHER RESOLVED**, Page 2 of the MOU amended as stated above changing the word “and” to “or”, by the following vote:

Ayes : Borgeas, Brand, Dages, Perea, Westerlund, Xiong, Sterling
Noes : None
Absent : None

RECESS - 9:30 A.M. - 11:29 A.M.

The City Council recessed at 9:30 a.m. and President Sterling, Acting President Westerlund and Councilmember Xiong attended the Governor’s budget presentation at the Tower Theater with Mayor Swearingin.

(9:00 A.M. “B”) UNSCHEDULED ORAL COMMUNICATIONS:

Reyes Garza, 412 F Street, spoke to the need to help the homeless and the mentally ill.

Acting President Westerlund thanked President Sterling for her strong question posed to Governor Schwarzenegger at his budget presentation.

**(9:30 A.M. #1) HEARING TO CONSIDER THE VACATION OF N. MILLBROOK AVENUE NORTH OF COPPER AVENUE
1. RESOLUTION NO. 2009-138 - ORDERING THE VACATION OF N. MILLBROOK NORTH OF COPPER AVENUE**

President Sterling announced the time had arrived to consider the issue and opened the hearing. Senior Engineering Technician Polsgrove gave a brief overview of the issue and recommended approval, all as contained in the staff report as submitted.

Upon call, no one wished to be heard and President Sterling closed the hearing.

On motion of Councilmember Brand, seconded by Councilmember Perea, duly carried, RESOLVED, the above entitled Resolution No. 2009-138 hereby adopted, by the following vote:

Ayes : Borgeas, Brand, Dages, Perea, Westerlund, Xiong, Sterling
Noes : None
Absent : None

**(9:30 A.M. #2 “A”) APPROVE A PROFESSIONAL SERVICES AGREEMENT WITH MARK THOMAS & COMPANY, INC., IN THE AMOUNT OF \$1,818,084, TO COMPLETE THE CALTRANS “PROJECT APPROVAL/ENVIRONMENTAL DOCUMENT” (“PA/ED”) PHASE FOR THE VETERANS BOULEVARD INTERCHANGE AND GRADE SEPARATION PROJECT
1. RESOLUTION NO. 2009-139 - 90TH AMENDMENT TO AAR 2008-162 APPROPRIATING \$110,000 FOR ENGINEERING CONSULTING SERVICES ON THE VETERANS BOULEVARD CAPITAL PROJECT**

Capital Project Manager Johnson and Assistant Public Works Director Mozier reviewed the issue, all as contained in the staff report as submitted.

Councilmember Borgeas stated this was an expected stage of the environmental process and spoke to a concern that was brought to his attention on the possible closure of Grantland Avenue, whereupon Traffic Engineer Jones and Mr. Mozier responded to his questions and/or clarified issues relative to whether the city had taken a position on keeping Grantland open, what persuasive authority the city might create to inform Caltrans of the desire to keep Grantland open, how Grantland and the Herndon interchange would remain open, the slip ramp closure for signal installation being a different issue/project not tied to Veterans Boulevard, how long the environmental process will take, and if this was a Measure C Tier 1 project. A motion and second was made to approve staff’s recommendation.

Speaking to the issue were: Tom Lang, Executive Director of Aquarius Aquarium Institute, 5541 Columbia Drive N., who stated some changes occurred since the PSR (project study report) began and his concern was Herndon and Shaw Avenue improvements would be neglected as Veterans moves forward and added there was going be more traffic at Herndon than what the PSR states, and submitted his written comments into the record; and Attorney Richard Harriman, speaking on behalf of himself and Valley Advocates, 191 W. Shaw, #205B, who stated his purpose was to protect the public interest early in the review process to maintain the integrity and transparency of (1) the federal, state and local environmental review process, and (2) the Measure C funding process and administration/implementation of the 2025 General Plan and further elaborated.

Acting President Westerlund presented questions relative to funding source for the \$110K, if dollars were not Measure C match funds, if funds were part of the contract, the scope of work and if the interchange will be able to accommodate high speed rail, outstanding considerations and need for answers prior to preparing drawings/specifications, stakeholder meetings/how the Fresno Arts Council was a stakeholder group, and the initial environmental study and how a mitigated negative declaration could be pre-determined, with Mr. Mozier, ACM Rudd and City Attorney Sanchez responding and clarifying throughout.

Upon the request and question of Councilmember Borgeas, Mr. Mozier responded to Mr. Harriman’s comments and concerns

(3 - 0), and Mr. Harriman clarified he was here in both a personal and professional capacity. Councilmember Borgeas offered himself as a resource to Mr. Harriman and Mr. Lang for any questions/concerns they may have. Mr. Mozier and Mr. Rudd responded briefly to questions of Councilmember Xiong and clarified issues relative to legal noticing requirements being exceeded, the outreach that will be conducted for the PA/ED, and tie-ins with Measure C and COG.

On motion of Councilmember Borgeas, seconded by Councilmember Brand, duly carried, RESOLVED, the subject professional services agreement with Mark Thomas & Company, Inc., as outlined above hereby approved, the Public Works Director or designee authorized to execute the agreement on behalf of the City, and the above entitled Resolution No. 2009-139 hereby adopted, by the following vote:

Ayes : Borgeas, Brand, Dages, Perea, Westerlund, Xiong, Sterling
Noes : None
Absent : None

LUNCH RECESS - 12:10 A.M. - 2:00 P.M.

CLOSED SESSION - CONFERENCE WITH LEGAL COUNSEL:

(‘A’) ANTICIPATED LITIGATION - SIGNIFICANT EXPOSURE TO LITIGATION: PINEDALE COUNTY WATER DISTRICT V. CITY OF FRESNO, ET AL.

The City Council met in closed session in Room 2125 at the hour of 2:00 p.m. to consider the above matter and reconvened in regular open session at 2:53 p.m.

CONTESTED CONSENT CALENDAR - CONTINUED:

(1-A) AWARD A CONTRACT FOR RECONSTRUCTION OF TAXIWAY B10/C10 AND DEMOLITION OF TAXIWAY B9 AT THE FRESNO YOSEMITE INTERNATIONAL AIRPORT TO GRANITE CONSTRUCTION COMPANY IN THE AMOUNT OF \$2,242,617 (ARRA-FUNDED PROJECT) *(Continued from earlier in the meeting)*

Councilmember Dages reiterated his concern was the letter from Teichert claiming an incomplete bid, questioned why Granite was allowed to make it to the bidding process and be recommended for award if their bid was incomplete, and noted there was not that much of a dollar difference between the two bidders but again stressed the bottom line was why Granite was allowed to bid if they did not follow the process. Aviation Director Widmar and Purchasing Manager McDonald explained process issues, Granite’s clerical error and their decision to let their bid stand at the lower amount, staff’s determination that the procedure was consistent with Purchasing’s past practice, appeal process and issues, subsequent meeting and discussion with Teichert on their letter, and staff’s recommendation to award to Granite. Councilmember Dages presented questions/comments/concern relative to staff’s explanation of conditions and what Teichert was basing their concern on, if a blank was considered to be non-responsive or a zero, if this matter was time sensitive, concern with Council being placed in a do-or-die position, Council having no choice but to award to Granite so funding is not lost, and Teichert now being unable to appeal, with Teichert Vice President Keith Jolly and Mr. McDonald responding throughout.

Speaking to the issue were: Todd Hill, Granite Construction, 2716 S. Granite Ct., who stated Teichert’s appeal should be rejected because it was late, expanded on issues that transpired, and spoke in support of staff’s recommendation stating Granite was the lowest responsible bidder, the city had the right to waive an irregularity provided it does not provide an unfair advantage to a bidder, and Granite was the low bidder and after the discrepancy was addressed it was still the lowest; and Barbara Hunt, 2475 S. Walnut, who spoke to the need to follow process.

153-201

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At the invitation of Acting President Westerlund Mr. Widmar commented additionally stating it was not staff’s intention to paint Council into a corner by seeking additional stimulus money, apologized for the short time frame, and gave an in-depth explanation of how this matter got to this point. Acting President Westerlund stated there was no need to apologize as Council was paid to make decisions, noted Teichert was very recently awarded a \$9 million airport contract, stated it was easy to throw out the word “illegal” but there were strict state regulations with bids, added past policy was not at issue and what was at issue was Teichert missing the appeal deadline and losing out, and stated this was a clean bid to him, upon his question Mr. Widmar stated he agreed with that position, and Acting President Westerlund made a motion to approve staff’s recommendation, which was seconded by Councilmember Brand.

City Manager Souza spoke to Teichert’s letter referencing the third paragraph which stated “at the request of the Airport,

Teichert did not protest this bid for fear of jeopardizing the Airport's funding" and expressed his strong concern, stressed the integrity of city staff was at stake, and upon his questions Mr. Widmar stated he spoke with his staff about that and staff insisted that never took place, and Mr. Jolly stated there was no demand by city staff but there was a request to not protest. Mr. Souza stressed this issue had to be resolved and he could not have Council deliberate an issue with an allegation that his staff requested someone to not protest a bid because of timing. Mr. Jolly spoke further to why Teichert purposely did not protest within the timeline and clarified his issue of concern was Purchasing's interpretation of a blank being a zero. Airports Planning Manager Michael further clarified issues and stated staff made all players aware of the tight deadlines associated with this project and advised in a meeting Teichert asked about protesting while the appeal period was still active and was told they had that right.

Mr. Sanchez stated there were some risks associated with the process that was being followed here; advised Council's options were (1) to deem Granite and their bid omission a minor irregularity and award to Granite, (2) by-pass the Granite bid as non-responsive and award to Teichert, or (3) direct staff to notice the award to Teichert, allow Granite the opportunity to appeal, and then come back for the final award which would take some time; stated his office would normally recommend that staff go back and take a closer look at the matter because of the level of risk associated with each option and the factual questions on the process and added his opinion was this was not a clean process and there was some ambiguity; and recommended, by Council recognizing there is a funding issue at risk and deciding to proceed this date, that they approve either option 1 or 2.

Extensive discussion continued. Mr. Sanchez, Mr. McDonald, Mr. Michael and Mr. Souza responded to questions and comments of Councilmember Perea and/or clarified issues relative to whether Mr. Sanchez believed the process both companies went through up to this point was not a clean process, trust in staff and their recommendation but hesitation with moving forward, process being everything with the city to maintain credibility, preference to delay action and have the city attorney take a closer look at the issue, if blanks being considered a zero was practice or written down in policy, need for official written policy, why Mr. Michael felt the need to remind both bidders of the time sensitivity, staff's statement that a request to not protest did not occur, **(4 - 0)** standard operating procedure being known by all parties, and "the knife cutting both ways". Acting President Westerlund stressed Teichert had a legal right to appeal no matter what staff may or may not have said, emphasized these were two large, sophisticated companies and for one to not appeal and then turn around and appeal to the political process was not right, added the policy not being flagged from a legal standpoint bothered him a lot and now with this issue stressed policy needed to be in writing in case this happens again, stated the big picture of stimulus money for a needed project was being missed here, clarified even if the blank had been filled in the bid still would have been the lowest, and stressed there was no undercurrent or anything unseemly going on here, this was a hyper-bureaucratic maze, and amended his motion to approve staff's recommendation with the acknowledgment that this was a minor irregularity and consistent with past practice and called for the vote. Upon question Acting President Westerlund withdrew his call for the vote to allow for continued discussion. Mr. Widmar, Mr. Sanchez and Mr. Rudd responded to questions of Councilmember Xiong relative to deadlines and need to take action this date, amount of federal funds at stake if action is delayed, options available to Council, the city attorney's concern, levels of risk, if the \$2.75 million would be lost with a legal challenge, if a legal challenge would kill the project, if the city manager felt comfortable moving forward, cost for litigation, need to balance the loss of funds and the needs of the community, and total economic impact with the loss of the funding.

Councilmember Brand commented on the issue stating there were two experienced companies here who have both been awarded contracts in the past, stated from his own business experience there will never be a perfect process as there will always be challenges, stated the loss of federal funds was a high risk and Council needed to move forward, and stated he hoped Granite and Teichert, who do a lot of work for the city, could move on for the sake of the community adding there will be a lot more work in the future. Councilmember Borgeas presented questions and comments relative to whether Council was making a determination as to the fitness of the bids, the motion on the floor, the experienced companies and adequate time to protest, if the funding process would stop in its tracks if staff's recommendation is approved and there is subsequent litigation, midstream litigation/it ultimately being found the proper process was followed/if the funding risk was at the early stage or mid-stage, and support for the motion as there was ample time to protest and make an inquiry into the fitness of the bid. Widmar and Mr. Sanchez responded throughout.

153-202

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Councilmember Dages stated he had fully intended to oppose this but good points were brought up by all, stated he wholeheartedly agreed with Councilmember Xiong that the people could not lose and stated they would be the ones to lose, stated he would support the motion and added he hoped Teichert would go on about their lives and bid on other projects in the future, and stated he did not want to see federal funds and jobs lost. President Sterling requested both companies do the right thing in the future and follow processes, thanked staff for their work and requested policy be placed in writing, stated Council would not indulge in this type of activity on the consent calendar as there was too much at stake, and spoke to the importance of doing the right thing and stated Council was prepared to defend all their actions.

On motion of Acting President Westerlund, seconded by Councilmember Brand, duly carried, RESOLVED, Granite Construction Company and their bid omission hereby deemed a minor irregularity and the above entitled contract awarded to Granite as

recommended, by the following vote:

Ayes : Borgeas, Brand, Dages, Perea, Westerlund, Xiong, Sterling
Noes : None
Absent : None

(9:30 A.M. #2 “B”) APPROVE THE FY 2008-2009 ANNUAL ACTION PLAN AMENDMENT FOR UTILIZATION OF \$7,100,000 OF FEDERAL NEIGHBORHOOD STABILIZATION PROGRAM FUNDS

Interim Housing Manager Cazares reviewed the issue, all as contained in the staff report as submitted.

Speaking in support of staff’s recommendation and/or to the issue were: Nathan Magsig, Executive Director of CURE; Barbara Hunt; and Russell Appling.

Councilmember Brand advised he was part of the selection committee and commended staff, and stated to be successful the developers will have to cluster homes and spoke to the process, challenges, the need to be patient, and his hope that all can work together and do what is best for the entire city. Ms. Cazares responded to questions and comments of Councilmember Perea relative to number of homes expected to be built, how funds will be utilized, how equity will be determined in the focus area/neighborhoods, when target areas will be decided upon, and his intent to provide input on areas requiring serious attention and needing to be included. Councilmember Xiong stated it was going to be tough to be equitable and urged staff to be proactive and keep Council members engaged. **(5 - 0)** Ms. Cazares and Developer Mason responded to questions of Acting President Westerlund relative to the real estate market, the market change and diminishing supply of bank-owned/foreclosed homes for rehabilitation, and how the developers envision being a player in the market/how they plan to do their work. President Sterling stated this was a great project and thanked staff and the developers and a motion and second was made to approve staff’s recommendation. City Attorney Sanchez noted the issue of the disclosure process came up with the cooperation task force and advised the disclosure was signed and submitted.

On motion of Councilmember Brand, seconded by Councilmember Dages, duly carried, RESOLVED, four awards of Neighborhood Stabilization Program (NSP) funds, totaling \$7,100,000, to the City of Fresno Housing Authority in the amount of \$5 million, to the Coalition for Urban Renewal Excellence (CURE) in the amount of \$800,000, to the City of Fresno Redevelopment Agency in the amount of \$800,000, and to 2M Development Corporation in the amount of \$500,000, for the purchase and rehabilitation of homes or residential properties that have been foreclosed upon or abandoned in order to sell or rent such homes and properties hereby approved; the FY 2008-09 Annual Action Plan amendment authorizing the changes to the NSP allocation and identifying the selected sub-contractors adopted; and the City Manager authorized to sign all required implementing and contractual documents as approved as to form the City Attorney, by the following vote:

Ayes : Borgeas, Brand, Dages, Perea, Westerlund, Xiong, Sterling
Noes : None
Absent : None

(10:00 A.M.) HEARING TO CONSIDER ADOPTION OF PLAN AMENDMENT APPLICATION NO. A-09-02 - THE AIR QUALITY UPDATE FOR THE 2025 FRESNO GENERAL PLAN, INITIATED BY THE INTERIM PLANNING & DEVELOPMENT DIRECTOR PURSUANT TO PROVISIONS OF ASSEMBLY BILL (AB) 170. THE PLANNING COMMISSION ON JUNE 3, 2009, CONSIDERED THIS PROJECT AND ITS ENVIRONMENTAL ASSESSMENT AND RECOMMENDED APPROVAL OF THE PROPOSED MITIGATED NEGATIVE DECLARATION AND THE PLAN AMENDMENT

153-203

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- 1. CONSIDER AND ADOPT MITIGATED NEGATIVE DECLARATION AND AMENDMENT TO THE 2025 FRESNO GENERAL PLAN MEIR MITIGATION MEASURE CHECKLIST FOR E.A. NO. A-09-02**
- 2. RESOLUTION - APPROVING PLAN AMENDMENT APPLICATION NO. A-09-02**

President Sterling announced the time had arrived to consider the issue and opened the hearing.

Planning Manager Unruh thanked Planner Brock and other planning and city-wide staff who participated in the effort to improve air quality, and gave an in-depth PowerPoint presentation which included Recommended Actions, AB 170 (Reyes), AB 170 Requirements, Process to Update City of Fresno Air Quality Policies for AB Compliance, AB 32 Global Warming Solutions Act, Atmospheric Emission & Global Climate Change, Greenhouse Gas Emissions, AB 32 Requirements, SB 97 CEQA Changes, Attorney

General's Office Active Role, Fresno's Share/What the City of Fresno is Doing, Efforts to Reduce Greenhouse Gasses, P.A. A-09-02 Framework & Content, Background Information, Objectives & Policies, Supplemental Information, Informational Attachments to the Update to Satisfy AB 170 Requirements, Municipal Code Provisions, Environment Assessment for P.A. A-09-02, New MEIR Measures, San Joaquin Valley Air Pollution Control District Review, and Planning Commission Actions.

President Sterling clarified public testimony would be taken and the public hearing would be closed and continued to June 25th for Council deliberation and action.

Richard Harriman, asthma sufferer, representing himself and Valley Advocates, 191 W. Shaw #205B, requested two mitigation measures be inserted on Page 50 of the draft mitigation measures and read them into the record, stated if changes are not made there will be three procedural defects and explained, and requested the two mitigation measures be included for next week. Planner Brock responded at length to Mr. Harriman's comments/suggestions. Continued speakers were Barbara Hunt, 2475 S. Walnut, and Russell Appling.

Upon call, no one else wished to be heard and President Sterling closed the public hearing.

Acting President Westerlund requested staff provide written responses to the objections laid out by Mr. Harriman so the information can be included as part of the record for next week, and stated it was his understanding the MEIR had a five year window and asked staff to address that issue.

President Sterling continued the hearing to June 25, 2009, at 10:00 a.m. for Council deliberation and action, and upon her question City Attorney Sanchez clarified the public testimony was closed and stated the hearing should be reopened on June 25th if any new information comes up based upon council deliberation or otherwise.

(11:00 A.M.) CONTINUED HEARING TO CONSIDER THE PLANNING COMMISSION'S APPROVAL OF CUP NO. C-09-028 RELATED TO A GROUP HOUSING USE AT 1620 E. WHITE AVENUE (WITHDRAWN)

President Sterling noted this was withdrawn earlier (during approval of the agenda) and stated an email was received from Mike Wells of Central Fresno Weed and Seed and advised she addressed a letter to residents of the community on the CUP and why she withdrew it and further advised she would be responding to Mr. Well's information concerning policies and procedures so these types of homes are not located in just one specific area, mainly in District 3.

RECESS - 5:03 P.M. - 5:10 P.M.

(2:00 P.M.) CONTINUED CONSIDERATION OF THE FY 2010 ANNUAL CITY AND REDEVELOPMENT AGENCY BUDGETS

MAYOR'S OFFICE:

Mayor Chief of Staff White stated the major change this year was the consolidation of the City Manager and Mayor Office budgets into one budget as over the years the two offices tended to share resources, and spoke to FY 2010 Highlights, the Office of Independent Review (**6 - 0**), Expenditures, Positions, and the Four Budget Cornerstones/Foundations.

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06/18/09

Barbara Hunt, 2475 S. Walnut, and Russell Appling spoke to the issue.

President Sterling thanked Ms. White for her presentation and there was no further discussion.

CITY COUNCIL:

Budget Director Smith stated there were no significant changes from prior years relative to how the budget was formatted and advised she was available to answer any questions.

