

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
	Paul Caprioglio	Acting Council President
	Mike Dages	Councilmember
	Henry Perea	Councilmember
	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 Roy Mitchell of Open Door Ministries gave the invocation, and President Sterling led the Pledge of Allegiance.

PROCLAMATION OF "COVER THE UNINSURED WEEK"

Read and presented.

PRESENTATION TO THE EDISON HIGH SCHOOL BASKETBALL TEAM - PRESIDENT STERLING

Presentation made.

- PROCLAMATION OF "PINEDALE DAY" - COUNCILMEMBER BERGEAS
- PROCLAMATION OF "READ AND BEYOND DAY" - MAYOR AND COUNCIL
- PROCLAMATION OF "LADY RIDERS BASKETBALL DAY" - COUNCILMEMBERS DAGES AND PEREA
- PROCLAMATION OF "GREEK INDEPENDENCE DAY" - COUNCILMEMBER BERGEAS
- PROCLAMATION OF "FRESNO CITY COLLEGE WOMEN'S BASKETBALL DAY (2 - 0) - MAYOR AND COUNCIL
- PROCLAMATION OF "FRESNO CITY COLLEGE MEN'S BASKETBALL DAY" - MAYOR AND COUNCIL

The above proclamations were read and presented.

PRESENTATION OF THE 2009 JAY HOLLINGSWORTH SPEAS AWARD TO DIRECTOR OF AVIATION RUSSELL C. WIDMAR, AAE, FRESNO YOSEMITE INTERNATIONAL AIRPORT

Presentation made.

RESOLUTION CONGRATULATING GSD'S FLEET MANAGEMENT DIVISION FOR EARNING THE ASE BLUE SEAL OF EXCELLENCE RECOGNITION FOR THE NINTH CONSECUTIVE YEAR - MAYOR AND COUNCIL

RESOLUTION CONGRATULATING THE FIRE DEPARTMENT'S REPAIR AND MAINTENANCE SECTION FOR EARNING THE ASE BLUE SEAL OF EXCELLENCE RECOGNITION

The above resolutions were read and presented.

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RECESS - 9:52 A.M. - 10:05 A.M.

APPROVE MINUTES OF MARCH 17, 2009:

On motion of Acting President Caprioglio, seconded by Councilmember Dages, duly carried, RESOLVED, the minutes of

March 17, 2009, approved as submitted.

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**COUNCIL MEMBER REPORTS AND COMMENTS:**

Councilmember Xiong (1) thanked Ryan Jacobson for inviting him to the 4<sup>th</sup> Annual Fresno County Farm & Nutrition Day which introduced students to good health and nutrition habits; and (2) wished Councilmember Borgeas and D&CR Director Scharton well in the bartending challenge at Heroes Sports Bar for Creative Fresno.

Councilmember Dages invited all to attend/participate in the 6<sup>th</sup> Annual 'Flop Till You Drop' Texas Hold Em Poker Tournament on May 16<sup>th</sup> at Club One for charity and spoke to the success of past tournaments.

Councilmember Perea reported on his attendance at the (1) COG One Voice Trip to Sacramento with President Sterling and Councilmember Borgeas; and (2) the League of California Cities last week in Washington, DC wherein discussions occurred on what cities across the county were doing in the area of health care and advised he would be bringing forth a couple of items relating to prescription drug discounts which seem to be working well.

President Sterling (1) advised she has received a lot of communication from members of the community on the city's neighborhood stabilization program and would submit questions to the city manager for response, with City Manager Souza responding; and (2) advised she attended the Persian Music & Fire Dance this past week; held a community meeting at Frank H. Ball; attended the First Residents Luncheon hosted by Fresno West Coalition for Economic Development; participated in the Ida B. Wells event at the African American Museum where Judges Hill and Simpson were honored; participated in the Fresno County Farm & Nutrition Day attended by over 2,100 third grade students; sponsored/partnered with Tree Fresno and Common Vision and planted trees at Kirk and Columbia Elementary Schools and the African American Museum; attended the O'Neil Family celebration and made a commendation to the family for over 60 years of community service and in honor of Mother O'Neil's 80<sup>th</sup> birthday; attended and represented Council at The Reverend Chester Riggins' Funeral; attended the stimulus committee press conference; and attended the 50<sup>th</sup> anniversary of the California Fair Employment and Housing Act Luncheon and nominated Judy Rogers of "Snacks to You" which provides fair employment to the disabled.

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**APPROVE AGENDA:**

**(10:15 A.M.)** CONTINUED HEARING ON APPEAL FILED BY GARY MCDONALD ON THE TRACT MAP AND FORMER COUNCILMEMBER DUNCAN ON THE CONDITIONAL USE PERMIT APPEALING THE PLANNING COMMISSION'S DENIAL OF VESTING T.T. MAP NO. 5933/UGM, CUP NO. C-08-59, AND ENVIRONMENTAL FINDINGS, FILED BY GARY GIANNETTA ON BEHALF OF GARY MCDONALD HOMES, PROPERTY LOCATED BETWEEN N. FRIANT ROAD AND E. COPPER AVENUE WITHIN THE COPPER RIVER RANCH MASTER PLANNED COMMUNITY (Continued to May 7, 2009, at 10:00 a.m.)

Continued as noted.

**(11:00 A.M. #1)** SPECIAL JOINT MEETING WITH THE JOINT POWERS FINANCING AUTHORITY (JPFA) REGARDING ISSUANCE AND SALE OF LEASE REVENUE BONDS FOR POLICE AND FIRE MASTER LEASE PROJECTS (Continue to March 31, 2009, at 10:30 a.m.)

Continued as noted.

**(1-C)** AWARD A CONSTRUCTION CONTRACT IN THE AMOUNT OF \$1,188,600 TO DURHAM CONSTRUCTION CO., INC., FOR PHASE I RENOVATIONS OF EXISTING FIRE STATION NOS. 3 AND 4

Removed from the agenda by staff.

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

Ayes : Borgeas, Brand, Caprioglio, Dages, Perea, Xiong, Sterling

Noes : None  
Absent : None

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**ADOPT CONSENT CALENDAR:**

Barbara Hunt stated Consent Calendar items needed to be identified separately for the public's benefit and spoke in general to various consent items.

**(1-A) RESOLUTION NO. 2009-59 - DEDICATING CERTAIN CITY-OWNED PROPERTY FOR PUBLIC STREET PURPOSES AT PUMP STATION NO. 132 LOCATED AT THE SOUTHWEST CORNER OF SERENA AND HAYSTON AVENUES**

**(1-B) APPROVE THE SALE OF TWO REMNANT PARCELS OF AN ABANDONED WELL SITE NEAR OLIVE AND BLYTHE AVENUES TO THE ADJACENT PROPERTY OWNER FOR A TOTAL PRICE OF \$2.00, AND AUTHORIZE THE PUBLIC WORKS DIRECTOR OR DESIGNEE TO EXECUTE THE AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY AND RELATED GRANT DEEDS TO COMPLETE THE DISPOSAL OF REMNANT PARCELS TO ADJACENT PROPERTY OWNERS GLEN AND HELEN BLUE, TRUSTEES OF THE BLUE FAMILY TRUST**

**(1-D) APPROVE REQUEST OF AMERICAN PAVING COMPANY TO SUBSTITUTE SIGNAL TECHNOLOGIES, INC., WITH LOOP ELECTRIC, INC., FOR THE ELECTRICAL PORTION OF THE BLACKSTONE AND DAYTON AVENUES CAPITAL IMPROVEMENT PROJECT**

**(1-E) RESOLUTION NO. 2009-60 - AUTHORIZING SUBMISSION OF APPLICATIONS FOR AND ACCEPTANCE OF GRANT FUNDS FROM THE CALTRANS TRANSPORTATION PLANNING GRANTS FY 2009-2010 - ENVIRONMENTAL JUSTICE: CONTEXT-SENSITIVE PLANNING GRANT, AND AUTHORIZE THE EXECUTION OF DOCUMENTS BY THE PUBLIC WORKS DIRECTOR**

**(1-F) APPROVE AMENDMENT TO THE AGREEMENT WITH SMITH IWANAGA MILHOUS ARCHITECTS FOR A TOTAL FEE OF \$5,000 FOR ADDITIONAL ARCHITECTURAL SERVICES FOR RE-DESIGN OF THE PROPOSED CONCRETE RANGE WALLS TO TILT-UP CONCRETE WALLS IN PHASE I REGIONAL PUBLIC SAFETY TRAINING VILLAGE, AND AUTHORIZE THE PUBLIC WORKS DIRECTOR OR DESIGNEE TO SIGN THE AMENDED AGREEMENT**

**(1-G) RESOLUTION NO. 2009-61 - AUTHORIZING CITY OF FRESNO PARTICIPATION AS A CO-APPLICANT WITH THE COUNTY OF FRESNO AND THE FIG GARDEN HOMEOWNERS ASSOCIATION FOR SUBMITTAL OF A COMMUNITY-BASED TRANSPORTATION PLANNING GRANT OF UP TO \$300,000 TO CALTRANS FOR AN "OLD FIG GARDEN COMMUNITY TRANSPORTATION AND LAND USE PLAN", AND AUTHORIZE THE PLANNING & DEVELOPMENT DIRECTOR OR DESIGNEE TO EXECUTE AND SUBMIT ALL DOCUMENTS NECESSARY TO CARRY OUT THE PURPOSE SPECIFIED IN THE APPLICATIONS AND THE PROJECT, ALL SUBJECT TO PRIOR CITY ATTORNEY APPROVAL AS TO FORM**

**(1-H) AWARD A CONTRACT IN THE AMOUNT OF \$59,516 TO TRI-SIGNAL INTEGRATION, INC., TO DESIGN, FURNISH AND INSTALL AN ADDRESSABLE FIRE ALARM DETECTION SYSTEM AT THE TED C. WILLS COMMUNITY CENTER**

**(1-I) APPROVE AND AUTHORIZE THE CHIEF INFORMATION OFFICER TO ENTER INTO AN APPLICATION SERVICE PROVIDER AGREEMENT WITH SUNGARD PUBLIC SECTOR, INC., FOR SUNGARD HTE SOFTWARE APPLICATIONS WITH A START-UP FEE OF \$20,681 AND ESTIMATED IMPLEMENTATION EXPENSES OF \$3,000 ONSITE SUPPORT**

**(1-J) AWARD A ONE-YEAR REQUIREMENTS CONTRACT, WITH PROVISIONS FOR TWO (2) ONE-YEAR EXTENSIONS, TO GENERAL PETROLEUM CORP. IN THE AMOUNT OF \$456,145.41 FOR MOTOR OILS AND LUBRICANTS**

**(1-K) RESOLUTION NO. 2009-62 - 72<sup>ND</sup> AMENDMENT TO AAR 08-162 APPROPRIATING \$4,900 IN THE PARCS DEPARTMENT FROM A DONATION FROM CHUKCHANSI GOLD RESORT AND CASINO TO PURCHASE SUPPLIES AND AWARDS FOR THE 3<sup>RD</sup> ANNUAL MAYOR'S CUP COED SOFTBALL TOURNAMENT**

**(1-L) APPROVE REAPPOINTMENT OF RODNEY ASHLEY TO THE FRESNO-MADERA AREA AGENCY ON AGING -**

MAYOR'S OFFICE

**(1-M) RESOLUTION NO. 2009-63** - APPROVING THE REALLOCATION OF \$50,000 IN THE GENERAL CITY PURPOSE DEPARTMENT FOR CONSULTANT SERVICES FOR THE PUBLIC SAFETY JOINT POWERS AUTHORITY

**(1-N) RESOLUTION NO. 2009-64** - AMENDING THE FY 2009 GANN LIMIT WHICH SELECTS THE PER CAPITA PERSONAL INCOME AND COUNTY POPULATION AS THE FACTORS TO BE USED IN CALCULATING THE FY 2009 APPROPRIATIONS LIMIT

**(1-O) RESOLUTION NO. 2009-65** - AUTHORIZING SUBMITTAL OF A PROPOSITION 1C INFILL INFRASTRUCTURE GRANT PROGRAM JOINT APPLICATION IN THE AMOUNT OF \$3,006,433 TO THE CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT FOR THE TRANSIT VILLAGE PROJECT, AND AUTHORIZE THE INTERIM PLANNING & DEVELOPMENT DIRECTOR TO SIGN ALL NECESSARY DOCUMENTS FOR PARTICIPATION IN THE PROGRAM SUBJECT TO REVIEW BY THE CITY ATTORNEY'S OFFICE

**(1-P) BILL NO. B-11 - ORDINANCE NO. 2009-11** - REPEALING AND ADDING SECTIONS TO THE FRESNO MUNICIPAL CODE RELATING TO FLOOD PLAIN BUILDING REGULATIONS

**(1-Q) BILL NO. B-12 - ORDINANCE NO. 2009-12** - AMENDING SECTIONS AND SUBSECTIONS OF THE FRESNO MUNICIPAL CODE RELATING TO CARD ROOM PERMIT REGULATIONS (UPDATING REQUIREMENTS)

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

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

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**(9:00 A.M.) PUBLIC COMMENT - UNSCHEDULED COMMUNICATIONS:**

Barbara Hunt, 2475 S. Walnut, spoke to God's work and everyone being God's children.

Daniel Corrigan, 10326 N. Baird, advised of a letter he received from the Utilities Division wherein they want to retro-bill him \$300 for a data-entry error made by Utilities stating that was unfair **(3 - 0)** and further explained. President Sterling and City Manager Souza stated staff would contact Mr. Corrigan.

Paula Savino, 7449 N. Mansionette Dr., spoke to animal abuse and the homeless.

\*\* A visiting class from Bullard Talent was recognized and welcomed.

Reyes Garza spoke to problems the mentally ill and homeless face, and stated they were human beings and the problems needed to be addressed.

Alex Correa, FCEA business agent, spoke to hardworking city employees in their various positions performing different functions and asked Council to remember they were more than that and were people and stakeholders with a vested interest in the city, and invited Council and everyone else to visit their tent outside City Hall to learn more about who they are and to have a hot dog and soft drink.

153-82

3/24/09

Marla Allen noted she emailed council about the Independent Police Auditor issue; stated she was a survivor of a violent crime, she had a 26% disability and was diagnosed with Post Traumatic Stress Disorder, and if it had not been for the police should would not be standing here today; and spoke to her interest in the city and her family history.

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**(9:30 A.M. "A") ACTIONS PERTAINING TO THE CREATION OF AN OFFICE OF INDEPENDENT REVIEW (OIR)**

1. **RESOLUTION NO. 2009-66 - ESTABLISHING AN OFFICE OF INDEPENDENT REVIEW**
2. **RESOLUTION NO. 2009-67 - 9<sup>TH</sup> AMENDMENT TO SALARY RES. 2008-165 ESTABLISHING THE POSITIONS OF INDEPENDENT REVIEWER (IR) AND COMMUNITY OUTREACH SPECIALIST**
3. **RESOLUTION NO. 2009-68 - 5<sup>TH</sup> AMENDMENT TO THE PAR 2008-163 ESTABLISHING THE NUMBER OF POSITIONS AUTHORIZED IN THE VARIOUS DEPARTMENTS AND OFFICES OF THE CITY FOR FY 2009 (ADDING TWO (2) POSITIONS TO THE CITY MANAGER'S OFFICE FOR THE OIR)**

Councilmember Dages called for, and a Moment of Silence was observed, for the four Oakland police officers who were killed in the line of duty on Saturday.

Chief Dyer elaborated on the difficult and dangerous job of a police officer, on the issue of scrutiny/review of law enforcement, on the amount of authority officers have, on the issue of trust and how it must be earned by officer actions and a department that is open and transparent, on what the department has done to be more transparent, on how the Office of Independent Review (OIR) was needed and how it would be one more step to enhance transparency and trust, on the responsibilities of the Independent Reviewer (IR), and on concerns/issues he has heard about this proposal and his response to those concerns/issues; stated he had no doubt the OIR would be a benefit to the city and this was the right time, the right proposal and the right model; thanked Mayor Swearingin for being so inclusive in a number of areas and allowing the proposal to be developed in the manner it did; and concluded stating he believed one could support the OIR while at the same supporting Fresno's police officers and himself.

Mayor Swearingin thanked Chief Dyer for his comments, Council and the public for their time and attention spent on this issue, involved staff for their hard work and for being responsive, and the public again for stepping up and providing input which she stated played an important part in developing this proposal; stated she did not think there was a more important policy item the city would face in the next four years than this one; stated the main reason she supported this policy was it would provide for transparency and accountability and elaborated; addressed some general objections she has heard including there being plenty of oversight already, cost, this not stopping complaints, liability, and undermining law enforcement; referenced a letter that was part of the record from Capt. Steve Clark of the Santa Cruz police department, who was also a former president of a police officer's association, stating he was initially skeptical of any police oversight system but had developed an appreciation for how their IPA helped to improve their professionalism and subsequently their standing in the community; noted FPOA President Jacky Parks, who was opposed to this proposal, acknowledged at a community forum that the proposal was not a bad product and was not intrusive in the lives of police officers and added she appreciated Mr. Parks' acknowledgment that a proposal was crafted that did not undermine the role of law enforcement; addressed some of the specific concerns that have been raised including the IR reporting to the city manager and if that was independent enough, if the OIR would be strong enough, inclusion of a sunset clause, how to prevent this office from becoming another bureaucracy, and how it will be known if the OIR is working; and concluded by identifying some of the organizations and individuals in the community who were supportive of this proposal and urged Council's support.

Speaking to the issue were: Barbara Hunt, opposed to the OIR (**4 - 0**); and Dr. Randy White, 264 N. Van Ness; Ellie Bluestein, 486 W. San Ramon, Central California Criminal Justice Committee; Phil Skei; Steve Santos, 4453 E. Swift; Gloria Hernandez, 3232 E. Hedges; Artie Padilla; Cynthia Downing, Fresno Citizens for Good Government; Kurt Maddon, Fresno Business Council; Al Smith, CEO of the Greater Fresno Area Chamber of Commerce; Pete Weber; Beneto Ramirez, who submitted a petition into the record containing signatures of at least 125 residents in support; Jose Luis Barraza, 4243 E. Thomas; and Mike Prandini, Building Industry Association (BIA), who all spoke in support of the OIR.

Bill Trollinger, Vice President of the Fresno Police Officers Association (FPOA), 994 N. Van Ness, along with FPOA representatives Mike Cavalero and Kurt Poole, all spoke in opposition stating the proposal needed refining and elaborated on their concerns. Brian King, 1190 S. Winery, CEO of Fresno Street Saints, spoke in support (**5 - 0**). Robert Arnt and Laurie Grove, representing the FPOA, both spoke in opposition and expressed their concerns. Rebecca Rangel, 130 E. Harvard, spoke in support. Jacky Parks, President of the FPOA spoke in opposition and expressed his concerns. Continued speakers in support of the OIR were: Bill Simon, 4902 N. Ninth Street; Leonel Flores, 2531 S. Jackson; Chris Vincent; Warren Zimmerly; and Darius Assemi.

Chief Dyer and City Attorney Sanchez responded at length to numerous questions and comments of Councilmember Perea relative to the department's evolution to transparency/the OIR being the next step/and what the next step would be if the OIR does not work, if Chief Dyer saw this as a final stage of transparency, the function/duties of the IR, what the process was if Council disagrees with the IR's policy recommendations/changes, process if Council agrees with recommended changes, a provision in the proposal stating "no unauthorized investigations" and who can authorize investigations, what the primary function would be of the IR, how the IR would be limited in reviewing closed/completed cases, when a complainant can interact with the IR, how the current complaint process is different from that being proposed, if a complainant will now be able to get information from a "more believable" source, liability issues and if the OIR had the potential to reduce liability, if the IR would have the same access to information as those in the chain of command if this proposal were under the City Council, and if would just take some extra steps for the IR to work under a City

Council scenario. Councilmember Perea stated if the key word was transparency in the department he felt that transparency needed to go all the way up and also felt the buck stopped at elected officials on many issues, and stated he was open to trying to find some kind of compromise on this issue, he felt the proposal had some good points and framework, and if Council were to move forward on this IR should report to the City Council as council members were the ones being held accountable at the end of the day – every day, elaborating throughout.

**(6 - 0)** Councilmember Brand spoke to the recent alleged misconduct, our dangerous city, and the dangerous job of police officers; stated when this process started two months ago he had serious reservations about the entire concept but he saw a process of good government, good policy-making, and excellent collaboration; spoke to his support and the proposal's key issues for him; stated he appreciated all the input and emphasized no matter how much this is debated a perfect model will never be found; stated this needed to be moved forward this day and added if it is moved forward it could still be modified as this model was not etched in stone; and stated he saw this proposal as a defining moment in the city's history, it would bridge the gap in the tale of two cities, it would restore the public's trust in the police department, and it would enhance government transparency and made a motion to approve staff's recommendation, which motion was seconded by Councilmember Borgeas.

Councilmember Borgeas spoke to his and his office's research, meetings, and/or work with experts, the Mayor, other Council members, the city attorney's office, the FPOA, and community organizations to understand the merits of this proposal; commended Mayor Swearingin for her comprehensive efforts to solicit, contemplate and include stakeholder interest and concerns; stated this proposal would eliminate many of the concerns generated by the previous proposals and explained; stated he still had some specific concerns that can only be addressed in the drafting and implementing phases of the OIR, specifically the potential for legal exposure; asked that the city attorney be intimately involved in the implementation to insure the city's liability and exposure are kept to a minimum; stated his support was conditional on the OIR being created and executed in full accordance with all relevant laws; stated this was an on-going process and encouraged stakeholders and staff to invest sufficient resources to make this a viable creation if it passes; and stated the OIR would be reviewed in two years with a vote taken in four years on whether the OIR is in the best interest of the city.

City Manager Souza responded to comments of Councilmember Perea relative to the IR reporting to the City Council and upon his questions Mr. Sanchez confirmed the IR would have the ability to share specific personnel actions with the City Council with a Charter amendment and Council would not have the ability to instruct the police chief on specific points of action. Mr. Souza continued elaborating further on the issue.

Acting President Caprioglio stated this was a very difficult decision for him and thanked everyone involved in this process for their input; stated the issue was implementation and not whether one supported this concept or not; explained some of the issues that were of concern to him and how they were adequately answered/addressed and appropriate adjustments made; advised a poll showed a majority of his constituents were supportive of this proposal and added the endorsements of several entities were important to him as they were a true cross section of the community; stated a six month review was a critical component and if the OIR does not meet benchmarks Council had the option to try to remedy the situation in a timely manner and if that did not work they could disband the OIR with five votes or not fund the position any longer with four votes; and stated after weighing all these considerations he would lend his support to this proposal.

Councilmember Dages stated the police department has always had his trust and spoke to how officer involvement in the community was so very important and how it builds trust; spoke to his police ride-along experience and the unknown situations officers face every day; stated he felt the department had transparency; stated he had a real difficult time with the community being worried about a police auditor when serious crimes were occurring; and stated he would not support the proposal as now was not the time for an auditor, departments were being asked to cut back, and \$360,000 was not neutral.

153-84

3/24/09

Mr. Sanchez acknowledged a letter submitted this date to Council from the law firm of RLS (Rains Lucia Stern, PC) on behalf of the FPOA and placed some points on the record that he felt were critical for Council's consideration relative to RLS's request that the City meet and confer on the OIR proposal.

President Sterling thanked the Mayor, staff and the community for all their work, input and participation, and especially thanked Council stating their voice was important each and every time they speak.

On motion of Councilmember Brand, seconded by Councilmember Borgeas, duly carried, RESOLVED, the above entitled

Resolution Nos. 2009-66, 2009-67 and 2009-68 hereby adopted, by the following vote:

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

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**LUNCH RECESS - 1:02 P.M. - 2:04 P.M.**

**(9:15 A.M. "A") DIRECT STAFF TO RETURN WITH A PROPOSAL TO ESTABLISH SPECIAL DISTRICTS FOR A HOMEOWNER ENERGY EFFICIENCY UPGRADE LOAN PROGRAM REPAID THROUGH PROPERTY TAX BILLS - COUNCILMEMBER PEREA**

Councilmember Perea reviewed the issue, all as contained in his report to Council as submitted, and made a motion to direct staff as outlined above, which motion was seconded by Councilmember Borgeas. Upon Councilmember Perea's request, Interim Planning & Development Director Bergthold expanded further on AB 811, the program, and financing.

Barbara Hunt spoke to the issue and expressed her support.

City Manager Souza spoke further to the issue stating this was a proven concept and financing mechanism and the challenge would be making sure programs are identified that truly create a sustainable community, stated in concept and in principle staff was supportive of the AB 811 approach and it would now be a matter of working with the EECBG money coming out of the federal stimulus and tying everything together to come up with a comprehensive program, and advised staff expected to return within the next 60 days with a program and specifics.

Mr. Bergthold and Mr. Souza responded to questions and/or comments of Councilmembers Brand, Xiong and President Sterling relative to whether this program would also apply to commercial and multi-family properties, this being an innovative financing instrument that will not only serve individuals but also the city--particularly on water conservation, the comprehensive plan and what staff was looking at, how/when the city could take advantage of AB 811, if a certain percentage of the property tax would be applied to this, and this being a good proposal. President Sterling thanked Councilmember Perea for his leadership.

On motion of Councilmember Perea, seconded by Councilmember Borgeas, duly carried, RESOLVED, staff directed to return with a proposal to establish special districts for a Homeowner Energy Efficiency Upgrade Loan Program repaid through property tax bills, by the following vote:

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

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**(9:15 A.M. "B") RESOLUTION NO. 2009-69 - ESTABLISHING A POLICY REGARDING COUNCIL REQUESTS FOR INFORMATION, as amended, calling for a review of the process in six (6) months - COUNCILMEMBERS BORGEAS, CAPRIOGLIO AND PEREA**

**153-85**

**3/24/09**

Councilmember Borgeas stated although only his name was shown above associated with this item he was one of three bringing this matter forth, with the other two being Acting President Caprioglio and Councilmember Perea, and deferred opening comments to Acting President Caprioglio as the first name on their report to Council. Acting President Caprioglio introduced the item stating this resolution would confirm the cooperation between the executive and legislative branches of city government, this was consistent with a magazine comment that Mayor Swearingin "was bringing fresh ideas and a new approach to Fresno", and this was an effort to continuing the ever-revolving on-going process, and urged Council's support and made a motion to approve, which motion was seconded by Councilmember Perea and subsequently amended to call for a review of the process in six months.

Councilmember Borgeas added the intent of this was for council members to know when material would be forthcoming and also to create some sort of common policy to be able to incorporate when information might be received into the overall timetable in terms of bringing issues forward, deliberating, and conducting research; stated the one meaningful provision was the 5-day provision

to provide information or for the city manager to provide an explanation on the reason for a delay; clarified there were no penalties for non-compliance, this would not change the role or function of the city manager's office, and this was in the purview of Council's legislative authority; and stated it was important that Council have a guiding procedure to rely on and encouraged Council to think about what this was and also be respectful of what it was not. Councilmember Perea stated it was well known that Council and staff were under a tremendous amount of pressure every day from constituents, the media and community members to access information; stated he does not ask for information unless he really needs it to make a decision on an issue before Council or to provide information to a constituent and added it was tough to tell a constituent after a week or more that he does not have the information and/or is still waiting for it; and stated this resolution was not brought forth to "slam" anyone or "poke a finger in anyone's eye" but was to express what the realities were of what it takes for council members to do their job and do it effectively and timely.

**(7 - 0)** Barbara Hunt spoke to the issue and in support.

City Manager Souza stated he respected Acting President Caprioglio's perspective but was not sure the mayor's quote about 'fresh ideas and a new approach' translated into what was at issue here; stated he agreed with the importance of communication and information but was somewhat disappointed that not one council member raised this as an issue to him if it had risen to the level of needing a policy; spoke to the leanness of the organization, staff continuing to do more with less, and staff's commitment to continuing to improve but stated it was tough to improve something that no one tells you is a problem; spoke to the Mayor's establishment of a director of government affairs and advised one of the roles of that position when filled would be to continue to work on coordination between Council offices and the administration; stated he had a concern that no one in his office or the mayor's office knew a thing about this until it showed upon the agenda; noted the Charter covered specific duties of the mayor and one duty was to provide a liaison between administrative services and the Council but Mayor Swearingin did not have that opportunity nor was she given that opportunity; stated the mayor also had the authority to appoint and remove the chief administrative officer (CAO) and exercise control over the CAO and stated if Council was not getting the information that was something the mayor would hold him accountable for; advised last evening Councilmember Borgeas met with the mayor and discussed the resolution and after that meeting he and the mayor offered what they felt were reasonable changes/amendments but the decision was made not to include those; advised of the changes/amendments that were proposed and stated there were unintended consequences of the policy as written and explained; asked Council to delay action on this resolution until the administration can sit down and work with the makers of the resolution to make some changes to better reflect the desired policy desire and come back collectively with a the desired policy resolution that does not end up impeding the city's business or result in unintended consequences.

Councilmember Brand questioned if this would also have to be done for the Redevelopment Agency if passed, and stated this was a major departure from what was done in the past and he wanted to see this policy evaluated in six months, and upon his question Councilmember Borgeas stated he was supportive of the amendment and it was an appropriate one as this would be a work in progress. City Attorney Sanchez responded briefly to questions of Councilmember Borgeas relative to Mr. Souza's comments on the mayor's duties and if this resolution as drafted would unfairly impede on that. Councilmember Borgeas clarified Council was only asking that information be provided within five days or that an explanation be given for a delay and he did not see that as a impediment to the flow of information, spoke to Administrative Order 6-4 that states all correspondence, other than form letters, directed to city departments shall be answered within three working days of receipt and stated what Council was proposing was not unreasonable, and apologized for not consulting in advance adding that was something they would learn from.

Upon question of President Sterling the motion-makers agreed to the amendment offered by Councilmember Brand.

**153-86**

**3/24/09**

Relative to Councilmember Brand's earlier question Councilmember Xiong clarified the Redevelopment Agency was under the authority of the City Council and not the administration so there was a difference on how they choose to communicate, and upon his questions President Sterling and Council Analyst Jones stated this issue had not been raised with them. Councilmember Xiong stated he appreciated what was trying to be achieved here but the process and how members went about this concerned him, upon his question Mr. Souza stated he did not receive any communication at all in any form, and stated he supported Mr. Souza's recommendation to lay this matter over to have some discussions and reach an agreement.

Councilmember Dages stated he was not going to comment but had ask what was wrong with the current process and if someone was having difficulty getting information. Councilmember Perea responded and as an example cited a request he made for information one month ago today on fund balances that were in the negative and stated although he got the information he did not get it from staff and stated that was just one example on why he felt this resolution would help. Councilmember Perea added Councilmember Brand's amendment was a good one because it would give Council a chance to determine if Council was being realistic in the amount of requests being made and if they were impeding the city manager's job. Mr. Souza stated Councilmember

Perea was correct but there was more to the story, stated if the information was mission-critical he would have expected a phone call 5-6 days later, noted the minutes showed the request was for "general fund" balances in the negative and stated there were none as the general fund was a singular fund, and stated there was some misunderstanding on staff's part as to what the request was which could have been clarified but was not. Councilmember Dages stated he has experienced no problems at all getting information under former city manager Hobbs or Mr. Souza; stated a lot of requests are made by Council, members can get information, and acknowledged they may need to follow up sometimes; and presented questions relative to whether the city manager had to abide by this resolution legally, who requests/requires the city manager to sit on the dais with Council, and if Council did not have direct authority over the city manager, with Mr. Sanchez responding. Councilmember Dages stated he was surprised that after just a couple of months there was a problem and he would not support this. Councilmember Perea responded to Mr. Souza's comments stating he would not ask for information in the first place if he did not feel it was important, stated this discussion was going sideways and the point of this entire conversation was being missed, and stressed Council members served as the liaison between the administration and their constituents and urged Council to support this stating it was a fair and balanced measure with a safeguard in place. Mr. Souza apologized if it was felt his comment implied the request was not important, acknowledged staff has dropped the ball on some requests as they were human and this was a busy organization, and stated he felt this resolution was inviting some unintended consequences and again explained, and stated he felt issues could be worked out if the opportunity is given to sit down and talk through issues.

Acting President Caprioglio apologized for not following protocol and not including Mr. Souza in the initial conversation, stated communication was at issue and the small five day time frame with flexibility should allow everyone to communicate, and urged support stating this policy would work. Councilmember Borgeas added there would be some tweaking ahead and a natural evolution to this as the amount of work that can/can not be accommodated is gauged, stated Council was simply hoping for communication, and elaborated further on A.O. 6-4 and treating all requests equally. Mr. Souza stated there was a significant difference between Council requests and a correspondence back to constituents and stated although Councilmember Borgeas was trying to make his case he respectfully disagreed with him and the significant magnitude of the request that was being asked for in this resolution. Upon question of Councilmember Xiong Mr. Sanchez stated this item was a proposed legislative policy and as such the mayor did have veto authority.

President Sterling agreed with Councilmember Xiong stating this would not apply to the RDA and after serving as chair and vice chair stated she did not believe there was this problem with the RDA; stated she has also made requests -- both on and off the dais -- that were not responded to and added one caused great confusion with a constituent and explained; spoke in support of this policy stating it would set parameters; upon her questions Mr. Sanchez clarified the Council Analyst could assist council members with information-gathering and conveying information but could not engage in deliberations/vote counting; and expressed her support for a review of the policy in six months and requested council members be respectful of talking to the city manager before bringing policy issues forth in the future. Councilmember Xiong stated if this policy passes he will want to know how to communicate with the city manager effectively, with Mr. Souza stating the process would be different from now, there would be another layer of bureaucracy, and something would have to be figured out and put in place, possibly another administrative order.

On motion of Acting President Caprioglio, seconded by Councilmember Perea, duly carried, RESOLVED, the above entitled Resolution No. 2009-69 hereby adopted, as amended, adding a provision to review the process in six (6)months, by the following vote:

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

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153-87

3/24/09

Councilmember Brand left the meeting for a brief period at 3:10 p.m.

**(10:00 A.M.) HEARING TO CONSIDER THE VACATION OF A PORTION OF THE "M" - "N" ALLEY SOUTHEAST OF LOS ANGELES STREET**

**1. RESOLUTION NO. 2009-70 - ORDERING THE VACATION OF THE ABOVE**

President Sterling announced the time had arrived to consider the issue, opened the hearing, and upon her question Senior Engineering Technician Polsgrove advised the staff report as submitted was complete and there was no new information to add.

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

On motion of President Sterling, seconded by Councilmember Dages, duly carried, RESOLVED, the above entitled Resolution No. 2009-70 hereby adopted, by the following vote:

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

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**(10:45 A.M.) HEARING ON REZONE APPLICATION NO. R-08-29 AND ENVIRONMENTAL FINDINGS FILED BY R.J. HILL COMPANY, NORTHEAST CORNER OF S. ARMSTRONG AND THE E. CALIFORNIA AVENUE ALIGNMENT**  
**1. CONSIDER AND ADOPT ENVIRONMENTAL ASSESSMENT (E.A.) NO. R-08-29/T-5913, A DETERMINATION OF THE INITIAL STUDY TO FILE A FINDING OF CONFORMITY TO THE GENERAL PLAN MEIR**  
**2. BILL NO. B-13 - ORDINANCE NO. 2009-13 - AMENDING THE OFFICIAL ZONE MAP TO REZONE FROM AE-20/UGM TO R-1/UGM**

President Sterling announced the time had arrived to consider the issue, opened the hearing, and upon her question Planner Braun advised the staff report as submitted was complete and there was no new information to add.

Gary Giannetta, representing the applicant, stated they were in compliance with all plans and policies and requested Council's support.

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

**(8 - 0)** On motion of Councilmember Dages, seconded by Acting President Caprioglio, duly carried, RESOLVED, the subject E.A. hereby adopted, and the above entitled Bill No. B-13 adopted as Ordinance No. 2009-13, by the following vote:

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

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The City Council recessed at 3:13 p.m. and convened in joint session with the Redevelopment Agency. Councilmember Brand returned to the meeting.

**(2:00 P.M.) JOINT MEETING WITH THE REDEVELOPMENT AGENCY**

APPROVE AGENCY MINUTES OF MARCH 17, 2009

On motion of Councilmember Dages, seconded by President Sterling, duly carried, RESOLVED, the Agency minutes of March 17, 2009, approved as submitted.

**(‘A’) ACTIONS PERTAINING TO PROPOSITION 1C INFILL INFRASTRUCTURE GRANT PROGRAM**

- 1. AGENCY RESOLUTION NO. 1737 - AUTHORIZING APPLICATION FOR AND ACCEPTANCE OF PROPOSITION 1C INFILL INFRASTRUCTURE GRANT PROGRAM FUNDING FROM THE STATE DEPARTMENT OF HOUSING & COMMUNITY DEVELOPMENT FOR THE SEQUOIA VILLAGE PROJECT, AND EXECUTION OF DOCUMENTS**
- 2. AGENCY RESOLUTION NO. 1738 - AUTHORIZING APPLICATION FOR AND ACCEPTANCE OF PROPOSITION 1C INFILL INFRASTRUCTURE GRANT PROGRAM FUNDING FROM THE STATE DEPARTMENT OF HOUSING & COMMUNITY DEVELOPMENT FOR THE CHINATOWN LOFTS PROJECT, AND EXECUTION OF DOCUMENTS**
- 3. COUNCIL RESOLUTION NO. 2009-71 - IN SUPPORT OF PROPOSITION 1C INFILL INFRASTRUCTURE GRANT PROGRAM APPLICATION TO THE STATE HCD DEPARTMENT FOR THE SEQUOIA VILLAGE PROJECT**
- 4. COUNCIL RESOLUTION NO. 2009-72 - IN SUPPORT OF PROPOSITION 1C INFILL INFRASTRUCTURE GRANT PROGRAM APPLICATION TO THE STATE HCD DEPARTMENT FOR THE CHINATOWN LOFTS PROJECT**

City Attorney Sanchez and Executive Director Murphey introduced and gave a brief overview of the issue, all as contained in the staff report as submitted.

On motion of Councilmember Perea, seconded by Councilmember Brand, duly carried, RESOLVED, the above entitled

Agency Resolution Nos. 1737 and 1738 and Council Resolution Nos. 2009-71 and 2009-72 hereby adopted, by the following vote:

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

**(“B”) JOINT RESOLUTION NO. 2009-73/1739 - IN SUPPORT OF A PROPOSITION 1C INFILL INFRASTRUCTURE GRANT PROGRAM APPLICATION TO THE STATE OF CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT FOR THE TERRY’S HOUSE PROJECT**

Upon question of Chair Xiong, Executive Director Murphey advised the staff report was complete and there was no new information to add.

On motion of Councilmember Perea, seconded by Councilmember Brand, duly carried, RESOLVED, the above entitled Joint Resolution No. 2009-73/1739 hereby adopted, by the following vote:

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

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**(11:00 A.M. #3) REGULAR AND JOINT CLOSED SESSION - CONFERENCE WITH LEGAL COUNSEL:**

**(‘A’) CITY COUNCIL - ANTICIPATED LITIGATION - SIGNIFICANT EXPOSURE TO LITIGATION:**

- 1. GLEN BEATY V. COF**
- 2. COF V. FRESNO HOCKEY CLUB, LLC (POTENTIAL LITIGATION); COF V. FRESNO BASEBALL CLUB, LLC**

**(‘B’) JOINT COUNCIL/REDEVELOPMENT AGENCY - EXISTING LITIGATION - CASE NAME: HERITAGE FRESNO, ET AL. V. COF, ET AL**

The City Council met in regular and joint closed session in Room 2125 at the hour of 3:17 to consider the above matters.

**CLOSED SESSION ANNOUNCEMENT**

In the matter of Item ‘B’, Heritage Fresno, the City Council authorized settlement in the amount of \$100,000 for attorney fees on a vote of 6-0 with Councilmember Dages absent.

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**153-89**

**3/24/09**

**ADJOURNMENT**

There being no further business to bring before the City Council, the hour of 3:52 p.m. having arrived and hearing no objection, President Sterling declared the meeting adjourned.

*Approved* on the 31st day of March, 2009.

\_\_\_\_\_/s/\_\_\_\_\_  
Cynthia Sterling, Council President

ATTEST \_\_\_\_\_/s/\_\_\_\_\_  
Yolanda Salazar, Assistant City Clerk

153-90

3/24/09