

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	Acting Council President
	Mike Dages	Councilmember
	Henry Perea	Councilmember
	Cynthia Sterling	Councilmember
	Blong Xiong	Councilmember
	Larry Westerlund	Council President

Mark Scott, City Manager
 Jim Sanchez, City Attorney
 Rebecca Klisch, City Clerk
 Yolanda Salazar, Assistant City Clerk

Jon Parker, President of the Fresno North Stake Church of Jesus Christ of Latter-Day Saints, gave the invocation, and President Westerlund led the Pledge of Allegiance.

RESOLUTION OF COMMENDATION TO ADRIANA IGNACIO FOR SAVING HERSELF AND HER FAMILY FROM A BURNING STRUCTURE

Read and presented.

PROCLAMATION OF “20TH ANNIVERSARY OF AMERICANS WITH DISABILITIES ACT (ADA)”

Read and presented.

RECOGNITION OF FISHMAN, LARSEN, GOLDRING & ZIETLER FOR THEIR DONATION BENEFITTING THE CITIZENS ACADEMY

Recognition made.

PRESENTATION OF A \$21,000 CHECK FROM PG&E TO THE CITY OF FRESNO FOR THE 2010 COOLING CENTER OPERATIONS

Presentation made.

PRESENTATION OF P.R.I.D.E. TEAM CERTIFICATES FOR THE SUMMER QUARTER

Employees being honored were Jose Rivera of the Airports Department; Michael Vigilia of the City Attorney’s Office; Olga Grinko and Howard Lacy of the DARM Department; Gilbert Elizondo of the Finance Department; Joe Barcelos, Mariano Caro and Sean Johnson of the Fire Department; Alma Torres of the General Services Department; Mark Holden of the Information Services Department; Karen Norris of the Personnel Services Department; Annie Rini of the One Call Center/City Clerk/Mayor/City Council/City Manager Offices; Edgar Ville-Sandoval, James Beebe, Joe Sacca and Chris Serrano of the Police Department; Tom Kruez, Jose Ramos and Rick Selleck of the Public Utilities Department; Pete Caldwell, Randall Morrison and Norman Mirelez of the Public Works Department; and Rosemary Murrieta, Kinzea Thompson and Dean Huss of the Transportation Department/FAX. A reception for the employees was held immediately following.

RECESS – 9:23 A.M. – 9:35 A.M.

APPROVE MINUTES OF JUNE 17, 21, 24 and 25, 2010

On motion of Councilmember Xiong, seconded by Acting President Brand, duly carried, RESOLVED, the minutes of June 17, 2010, *approved as corrected*, by Acting President Brand, on Page 155-198, "Council Member Reports and Comments", changing the name Elizabeth *Egan* to Elizabeth *Laval*; and the minutes of June 21, 24 and 25, 2010, approved as submitted.

COUNCIL MEMBER REPORTS AND COMMENTS:

Acting President Brand thanked public works and police motor unit staff for all their work on the closing of Friant Road between Shepherd and Audubon.

Councilmember Dages (1) reiterated a request to have three dead trees at Mosqueda Center cut down; (2) submitted written material to the city manager from a meeting his district containing "some pretty poor answers" to some road improvements; and (3) advised he was receiving complaints from seniors on bus service and the lack of room/seats and requested staff look into the number of people who are having to stand.

President Westerlund (1) thanked public works and Redevelopment Agency staff for the Clovis Avenue resurfacing project stating it looked great; (2) advised next week there would be a proclamation on Breast Feeding Awareness Week to publicize the benefit of breastfeeding; and (3) and requested feedback/thoughts/concern from council members on having a joint workshop with the planning commission in September on the updating of the general plan and added the planning commission already held a workshop and council would be having one itself.

APPROVE AGENDA:

(2:00 P.M.) HEARING ON PLAN AMENDMENT APPLICATION NO. A-09-009 AND ENVIRONMENTAL FINDINGS, FILED BY DARM DIRECTOR JOHN DUGAN, TO AMEND POLICY E-1-o OF THE 2025 GENERAL PLAN RELATING TO SIDEWALK REQUIREMENTS ON PRIVATE RESIDENTIAL STREETS

#1 CONSIDER AND ADOPT FINDING OF A MITIGATED NEGATIVE DECLARATION FOR E.A. NO. A-09-009 DATED APRIL 30, 2010

#2 RESOLUTION - AMENDING GENERAL PLAN POLICY E-1-o RELATING TO SIDEWALK REQUIREMENTS ON PRIVATE RESIDENTIAL STREETS

President Westerlund advised he received a request by the Building Industry Association to delay this matter as they want to work on the issue and made a motion to continue the hearing to August 26th at 2:00 pm., which motion was seconded by Acting President Brand.

(1-H) APPROVE A LICENSE AGREEMENT WITH WOODWARD SHAKESPEARE FESTIVAL FOR SEASONAL USE OF SPACE COMMONLY KNOWN AS 'THE 13 ACRES' WITHIN WOODWARD REGIONAL PARK FOR THE PURPOSE OF STAGING, REHEARSING AND PERFORMING LIVE THEATER, DANCE, ART, MUSIC AND OTHER CULTURAL PRODUCTIONS

Removed from the agenda by staff/to be rescheduled.

SCHEDULED COMMUNICATION: APPEARANCE BY MATTHEW FORD REQUESTING COUNCIL ADOPT A RESOLUTION CONDEMNING THE ILLEGAL OCCUPYING OF PALESTINIAN LAND

Request to appear withdrawn.

(1-M) ACTIONS RELATING TO THE BLACKSTONE AVENUE OVERLAY PROJECT FROM OLIVE TO BELMONT AVENUES

#1 ADOPT FINDING OF A CEQA CATGORICAL EXEMPTION

#2 AWARD A CONTRACT TO DAVE CHRISTIAN CONSTRUCTION COMPANY IN THE AMOUNT OF \$281,544.61

City Clerk Klisch advised staff would be adding a statement into the record for Item 1-M during "Adopt Consent Calendar".

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

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

ADOPT CONSENT CALENDAR:

Councilmember Borgeas recused himself from the vote on the WIB appointment in Item **1-A** as his wife works for the Workforce Investment Board.

Councilmember Sterling recused herself from the vote on Item **1-B**.

**** (1-M) ACTIONS RELATING TO THE BLACKSTONE AVENUE OVERLAY PROJECT FROM OLIVE TO BELMONT AVENUES**

#1 ADOPT FINDING OF A CEQA CATEGORICAL EXEMPTION

#2 AWARD A CONTRACT TO DAVE CHRISTIAN CONSTRUCTION COMPANY IN THE AMOUNT OF \$281,544.61

Purchasing Manager McDonald read additional information into the record that came up after the item was submitted relating to the determination that the low-bidder, Western Paving, was non-responsive for failing to submit a complete bid proposal per the specifications. So noted and accepted.

(1-A) APPROVE THE RE-APPOINTMENTS OF JAIME HOLT AND RAMA KANT DAWAR TO THE PLANNING COMMISSION – MAYOR SWEARENGIN

(1-C) RESOLUTION NO. 2010-145 - 4TH AMENDMENT TO AAR 2010-138 APPROPRIATING \$339,400 FROM THE 2010 BYRNE JUSTICE ASSISTANCE GRANT (JAG) PROGRAM INTO THE POLICE DEPARTMENT BUDGET

(1-D) RESOLUTION NO. 2010-146 - 3RD AMENDMENT TO AAR 2010-138 APPROPRIATING \$215,600 FROM THE CALIFORNIA EMERGENCY MANAGEMENT AGENCY (CALEMA), GANG REDUCTION, INTERVENTION AND PREVENTION (CALGRIP) PROGRAM, INTO THE POLICE DEPARTMENT BUDGET FOR FRESNO'S GANG ERADICATION INITIATIVE

(1-E) AUTHORIZE ACCEPTANCE OF GRANT FUNDING FROM THE STATE OF CALIFORNIA DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

#1 RESOLUTION NO. 2010-147 - 2ND AMENDMENT TO AAR 2010-138 APPROPRIATING \$75,000 INTO THE POLICE DEPARTMENT BUDGET FOR OPERATIONS RELATED TO ALCOHOL USE

(1-F) RESOLUTION NO. 2010-148- -1ST AMENDMENT TO AAR 2010-138 APPROPRIATING \$246,900 FROM THE CALIFORNIA EMERGENCY MANAGEMENT AGENCY THROUGH THE BUREAU OF JUSTICE ADMINISTRATION'S JUSTICE ASSISTANCE GRANT PROGRAM, INTO THE POLICE BUDGET FOR THE ANTI-HUMAN TRAFFICKING TASK FORCE PROJECT

(1-G) RESOLUTION NO. 2010-149 - 1ST AMENDMENT TO SALARY RES. 2010-141 REINSTATING THE CLASSIFICATION OF PROSTITUTION ABATEMENT AND RECOVERY PROGRAM SPECIALIST IN EXHIBIT 3/UNIT 3, NON-SUPERVISORY WHITE COLLAR (FCEA) EMPLOYEES

(1-I) RESOLUTION NO. 2010-150 - 5TH AMENDMENT TO AAR 2010-138 APPROPRIATING \$21,000 INTO THE GENERAL FUND FROM PACIFIC GAS & ELECTRIC (PG&E) FOR THE OPERATION OF SUMMER COOLING CENTERS THROUGHOUT THE CITY

(1-J) RESOLUTION NO. 2010-151 - 6TH AMENDMENT TO AAR 2010-138 APROPRIATING \$100,000 FROM A GRANT RECEIVED FROM THE CHILDREN AND FAMILIES COMMISSION OF FRESNO COUNTY INTO THE PARCS DEPARTMENT BUDGET FOR CONSTRUCTION OF A PLAY STRUCTURE AT QUIGLEY PARK

(1-K) ADOPT RESOLUTION OF INTENTION NO. 1083-D TO VACATE OF A PORTION OF E. DIVISADERO STREET NORTHEAST OF "G" STREET AND SETTING THE REQUIRED PUBLIC HEARING FOR AUGUST 26, 2010,

(1-L) REJECT ALL BIDS RECEIVED FOR CONSTRUCTION OF THE "O" STREET OFF-RAMP WIDENING FROM SOUTHBOUND ROUTE 41 DUE TO INCONSISTENCIES CONTAINED WITHIN THE BID SPECIFICATIONS REGARDING DBE REQUIREMENTS AND DOCUMENTATION

**** (1-M) ACTIONS RELATING TO THE BLACKSTONE AVENUE OVERLAY PROJECT FROM OLIVE TO BELMONT AVENUES, *including added language***

#1 ADOPT FINDING OF A CEQA CATGORICAL EXEMPTION

#2 AWARD A CONTRACT TO DAVE CHRISTIAN CONSTRUCTION COMPANY IN THE AMOUNT OF \$281,544.61

(1-N) RESOLUTION NO. 2010-152 - 7TH AMENDMENT TO AAR 2010-138 APROPRIATING \$3,600 DONATED BY FISHMAN, LARSEN, GOLDRING & ZIETLER INTO THE CITY MANAGER BUDGET FOR COSTS ASSOCIATED WITH THE CITIZENS ACADEMY

(1-O) RESOLUTION NO. 2010-153 - DECLARING THE RESULTS OF THE JUNE 8, 2010, CONSOLIDATED DIRECT PRIMARY ELECTION

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

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

(1-A) APPROVE APPOINTMENT OF ARIC OLSON TO THE FRESNO REGIONAL WORKFORCE INVESTMENT BOARD – MAYOR SWEARENGIN

On motion of Councilmember Xiong, seconded by Acting President Brand, duly carried, RESOLVED, Item **1-A** hereby approved, by the following vote:

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

(1-B) AUTHORIZE THE DIRECTOR OF TRANSPORTATION TO ENTER INTO AN EXTENSION OF THE CURRENT HANDY RIDE LEASE AGREEMENT

On motion of Councilmember Xiong, seconded by Acting President Brand, duly carried, RESOLVED, Item **1-B** hereby approved, by the following vote:

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

RECESS – 9:50 A.M. – 10:09 A.M.

(10:00 A.M.) HEARING ON PROPOSED ANNUAL ASSESSMENTS FOR LANDSCAPING AND LIGHTING MAINTENANCE DISTRICT (LLMD) NO. 1

#1 RESOLUTION NO. 2010-154 - CONFIRMING THE DIAGRAM AND ASSESSMENT AND LEVYING THE ANNUAL ASSESSMENTS

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

City Engineer Mozier reviewed the item and recommended approval, all as contained in the staff report as submitted.

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

On motion of Councilmember Dages, seconded by Acting President Brand, duly carried, RESOLVED, the above entitled Resolution No. 2010-154 hereby adopted, by the following vote

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

RECESS – 10:12 A.M. – 10:15 A.M.

(10:15 A.M.) HEARING TO CONSIDER PUBLIC USE AND NECESSITY FOR THE PARTIAL ACQUISITION OF A PUBLIC STREET EASEMENT TO CONSTRUCT THE PEACH AVENUE WIDENING PROJECT BETWEEN BELMONT AVENUE AND KINGS CANYON ROAD, INCLUDING AN ADA-COMPLIANT CURB RAMP, PROPERTY LOCATED AT THE SOUTHEAST CORNER OF E. TULARE AND S. PEACH AVENUES

#1 RESOLUTION NO. 2010-155 - DETERMINING THAT PUBLIC INTEREST AND NECESSITY REQUIRE THE PARTIAL ACQUISITION OF APN 463-100-41, OWNED BY GET-N-GO, A CALIFORNIA GENERAL PARTNERSHIP, AND AUTHORIZING EMINENT DOMAIN PROCEEDINGS FOR PUBLIC USE AND PURPOSE

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

Supervising Real Estate Agent Hansen and Senior Real Estate Agent Joaquin introduced and reviewed the item, all as contained in the staff report as submitted, expanded on the transaction at issue and stated although staff felt this case could be settled with the property owner council was being asked to adopt the resolution to give the city attorney the option to litigate at a future date if necessary, and read into the record four critical points to be addressed.

Property owner Andy Chihkara, 5210 E. Tulare, clarified he was supportive of this project but had concerns with the taking of two feet of his property on Peach Avenue and explained, submitting photos to illustrate.

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

Councilmember Dages thanked staff for keeping him informed during the project adding he welcomed that, and stated he has been following this project since the beginning, Peach was a treacherous road for children traveling up and down, he was sensitive to the situation with the property owner but the bottom line was safety of the children going to and from school, and made a motion to approve staff's recommendation, which motion was seconded by Acting President Brand.

Mr. Hansen, City Engineer Mozier and Mr. Chihkara responded to questions/comments/concerns of Councilmember Xiong and/or clarified issues relative to whether the situation with Mr. Chihkara could be resolved or if there was a stalemate/impasse, number of other properties remaining, where the property owner got the assumptions of what he could be impacted with, property owner plan for improvements/upgrades, if the taking of two feet was the only outstanding issue, **(3 – 0)** ramifications of shifting two feet to the west as suggested by Mr. Chihkara, Mr. Chihkara's concerns and fears/if they could be mitigated/if there was some misunderstanding on his part, if the new impacts/CUP/site plan-type issue that would result from shifting to the west has been discussed/explained to Mr. Chihkara, time sensitivity of this matter, and the resolution of necessity just being a tool for the city attorney and not an intent to go to court. Councilmember Xiong acknowledged the need for the acquisition but stated impacts to property and business owners were also important and added he was not sure he liked last minute issues due to timeframes becoming an entire project issue and placed on him.

On motion of Councilmember Dages, seconded by Acting President Brand, duly carried, RESOLVED, the above entitled Resolution No. 2010-155 hereby adopted, by the following vote

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

(10:30 a.m. #1-A) CONSIDER APPROVAL OF THE “LABOR MANAGEMENT ACT” POLICY RELATING TO CITY LABOR RELATIONS PROCESS – ACTING PRESIDENT BRAND

#1 RESOLUTION NO. 2010-156 - ESTABLISHING A POLICY ENTITLED “LABOR MANAGEMENT ACT” PRESERVING MANAGEMENT RIGHTS ON EMPLOYEE LAYOFFS AND IMPROVING LABOR PRACTICES, AS AMENDED

Councilmember Brand thanked City Attorney Sanchez, Deputy City Attorney Saghatelian, ACM Rudd, City Manager Scott, Retirement Administrator McDivitt, Councilmembers Borgeas and Xiong, and Mayor Swarengin for their assistance in putting the Act (LMA) together, stated this proposal would codify and enhance the City’s labor practices and policies, prohibit the City from bargaining away no-layoff clauses in labor agreements, and clearly define and offer complete transparency to the public of the entire labor relations process, gave an in-depth review of the issue, background, and the LMA, expanding on written information on key provisions submitted throughout his presentation, and made a motion to adopt the resolution, which motion was seconded by Councilmember Borgeas. Upon the request of Acting President Brand Retirement Administrator McDivitt expanded further on the issue from a pension perspective including the pension system obligation and enhancements.

Speaking in support of the resolution were: Sandy Forbes and Ryan Forbes, 1262 E. Rosemont; Robert Morrissey, 412 F Street; Wendy Bellar, 1434 N. Thorne; Ron Drionie, 5904 N. Pinedale; Frances Murray, 736 W. Pico; and Charlie Waters. Barbara Hunt spoke to public input and issues related to the LMA **(4 - 0)**. Jerry Smith, President of the Firefighters Association, and Rich Cabral, representing the fire management group, spoke in opposition to the LMA. Cindy Barbanell, 7166 N. Fruit; and Kerri Ginis with the Chamber of Commerce, spoke in support. Jacky Parks, FPOA President, representing the basic and management units, spoke in opposition; John Waara spoke in support; Damon Kurtz, FPOA, spoke in opposition; Russell Appling, homeless, spoke off-subject; Marina Magdaleno, business representative for Operating Engineers Local 39, spoke in opposition; Martha Kolstad, 1447 W. San Ramon, spoke in support; and Rick Steitz, Amalgamated Transit Union (ATU), spoke in opposition.

LUNCH RECESS – 12:02 P.M. – 1:31 P.M.

Councilmember Borgeas stated the LMA was not declaring war against labor, the LMA was more internal in its orientation as it would allow council to have access to information along with transparency of that information, he respected the role of the bargaining units but felt some areas of the bargaining process should not be treated as a “sacred cow”, and stressed everything must be on the table and be open and transparent; spoke to one of the documents submitted by Acting President Brand drafted by Mr. McDivitt and stated numbers in the document were of great concern to him; and presented numerous questions, comments and concerns relative to the numbers provided by Mr. McDivitt and need for a clear explanation **(5 - 0)**, the MMBA (Brown Act) and California Labor Law, and a document received from a labor attorney with his findings of potentially illegal articles in the LMA, with City Manager Scott, Mr. McDivitt, Acting President Brand and City Attorney Sanchez responding throughout and/or clarifying issues.

Councilmember Xiong stated the policy issue being discussed between council and management and the transparency issue were the important pieces to him and explained, thanked Acting President Brand for bringing this forth and spoke to past discussions on the issue, and stated two issues in the LMA of concern to him were (1) the no-contact rule during negotiations stressing he wanted and needed information from both sides to ask important questions and make informed decisions, and (2) the super-majority vote stating that was an extra burden and extremely hard to get, elaborating on the two issues and presenting questions, with Mr. Sanchez responding.

Councilmember Perea thanked Acting President Brand for bringing this matter forth; upon his request Labor Relations Manager Phillips explained the labor negotiation process; and Mr. Scott and Mr. Phillips responded to his questions relative to time line from when negotiations start to when matters are presented to the council, how long Mr. Phillips has been a city negotiator, Mr. Phillips’ prior experience, and the Fresno Bee editorial on the LMA and issues and staff’s response to the editorial **(6 - 0)**.

Councilmember Perea thanked staff for the responses on the editorial stating it was important for the public to know that the City does not go into negotiations “blind with labor unions slapping the city negotiating team around” and that the City does have access to expert staff on the legal and financial sides. Relative to the LMA Councilmember Perea stated he had some ideas and suggestions which he felt would make the LMA workable to at least get to the intent, referenced council comments that this Act would improve internal labor relations and set internal rules and transparency and stated he felt council needed to move forward on those two points, and offered an amendment to the motion on the floor, and upon his question Acting President Brand stated he would not accept the amendment. Councilmember Perea then made his amendment into a motion to adopt the LMA, excluding Articles 2, 4, 5 and 16, and refining Article 11 to allow written communication to elected officials through the city manager during the negotiation process, stating that would remove the argument that council was setting pre-condition bargaining on the dais and keep the integrity of transparency and the ability of council (and the public) to have access to appropriate information which everyone was saying they wanted. The motion was seconded by Councilmember Sterling and subsequently amended excluding the elimination of Article 16.

Councilmember Dages noted since 2009 council has been in closed session on labor issues over nineteen times and clarified those matters were not rubber-stamped and he was not aware of anything that has been rubber-stamped; relative to comments on council members’ making mistakes in the past stated mistakes have been made way back to eternity if one were to check; stated he saw no issue with transparency, especially now with the new administration; and presented questions/comments/concerns relative to whether most of the LMA articles were already policy, the letters threatening lawsuits and how a lawsuit would hold up in court if the LMA were approved, if layoffs were a give and take process, if MOU terms were negotiable, cost for the city negotiating committee, cost to defend a lawsuit, confusion with transparency concerns/closed session process/when issues are made public/MOUs being available on the city’s website, no-furlough clauses and exchanges, and concern/non-support of the emergency clause and the super-majority vote. Councilmember Dages stated he felt the transparency issue was blown out of proportion, acknowledged Acting President Brand’s work but stated some changes were needed, and encouraged council to look at Councilmember Perea’s recommendations adding tweaking of the LMA would not jeopardize it.

Councilmember Sterling also thanked Acting President Brand for putting the LMA together and added if it were not for the difficult financial situation the city was in council would not be looking at this, referenced the comparison report submitted and spoke to the negotiation process/information/flow, and upon her question Mr. Sanchez stated there have been occasions where council has been informed of negotiations and some where they have not, the ability to notify council early on in the process has always there, under the FMC the authority to negotiate is delegated to the city manager who has staff that carries the negotiation out, and under state law council has the final approval right of the MOUs. Relative to speaker comments hoping council will not make decisions based on special interests/affiliations Councilmember Sterling clarified as a person involved in other outside endeavors she was not being directed and has not received endorsements of any kind from FPOA, ATU or Local 39 and any decision she makes is based on what she feels is best for her constituents and where she would like to go in the area of transparency. Councilmember Sterling continued and advised her areas of concern with the LMA were contained in Councilmember Perea’s motion; stated labor unions have always had the ability to negotiate with the city as they, too, are employees; spoke to the minimal information flow in the past and council making decisions based only on the information was provided; spoke to the no-contact law and possible refinement; stated a lawsuit would become a cost prohibitive situation and spoke to the need to not trigger any type of challenge; spoke to the need to now look at enhancements and areas that were not looked at before; and stated she was inclined to support Councilmember Perea’s motion but would support a 1-2 week delay so Acting President Brand and involved staff/parties could meet and rework the LMA to come to some resolution as everyone wanted the transparency and information flow.

President Westerlund stated he did not believe meet & confer was in any way implicated here, upon his question Mr. Scott confirmed the City was bargaining with only one unit, the Airport Public Safety Supervisors, at this time, and upon his request Acting President Brand accepted an amendment to the motion to exempt the Airport group from the provisions of the Act through conclusion of contract negotiation. President Westerlund stated the LMA would set an internal policy for council on the management side of the equation, the no-contact/no-discussion clause was a misnomer as there was already a clause in the FMC but added there was a need for education and enforcement, the FPOA basic contract was a great deal of concern to him, spoke to information shared from closed sessions in the past and that being the genesis of council receiving information in closed session and not before (7 – 0), spoke to the need to be fair to employees yet still answer to the taxpayers and not pay more than the City can afford, and spoke to transparency stating a number of different issues were being confused with it and to the no-contact clause, expanding on each issue throughout. Upon question, Acting President Brand accepted President Westerlund’s friendly amendment on Article 2, layoffs, to clarify the layoff provision would be a one year provision even though the contract could go longer. President Westerlund spoke further to the legal letter received relative to Article 4/MOU terms, the fiscal emergency clause, and the super-majority vote, with clarifications made by Acting President Brand.

Acting President Brand stated this had been a good debate and thanked everyone for their input, and addressed comments/questions and clarified issues relative to the cost of a legal challenge, the labor negotiating committee, the major change in transparency, and his rationale for the super-majority vote. Upon question, Councilmember Xiong stated the super-majority vote was more of a policy/philosophical issue for him as he felt it hindered council as policy-makers to lead and explained. Acting President Brand stated if that provision were to be taken out it would not have any material effect on the LMA and questioned if Councilmember Xiong wanted to make an amendment, whereupon Councilmember Xiong made a friendly amendment to eliminate Article 16, the super-majority provision, which was accepted by Acting President Brand.

A motion of Councilmember Perea, seconded by Councilmember Sterling, to adopt the Resolution, as amended, deleting Articles 2, 4 and 5, and refining Article 11 to allow written communication to elected officials through the city manager during the negotiation process failed, by the following vote:

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

On motion of Acting President Brand, seconded by Councilmember Borgeas, duly carried, RESOLVED, the above entitled Resolution No. 2010-156 hereby adopted, as amended, (1) exempting the Airport Public Safety Supervisors group from the provisions of the LMA through the conclusion of their contract negotiation period, (2) clarifying language in Article 2 to state the layoff provision shall be a one-year provision, and (3) eliminating Article 16, the super-majority vote, by the following vote

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

(10:30 a.m. #1-B) REQUEST COUNCIL DIRECT THE CITY ATTORNEY’S OFFICE TO DEVELOP AN ORDINANCE REQUIRING THE LICENSING OF TOBACCO RETAILERS – COUNCILMEMBER DAGES

Councilmember Dages stated there was a lot of illegal sales of tobacco to the under aged which was frightening and inappropriate and he felt this ordinance would protect the children, noted a sample ordinance from the city of Sacramento was included in council’s packet (with City Attorney Sanchez advising that ordinance was challenged and was upheld and it was his position there was a legal basis for the city to move forward with an ordinance similar to Sacramento), advised Fresno county wanted to do something similar and he wanted to parallel the city’s ordinance with the county’s so that someone across the street does not have different rules, spoke to other communities who have ordinances and stated information shows that sales to minors have decreased significantly in those communities, and stated there would be a license fee to be determined by council and he wanted the revenue go towards tobacco sale violations.

Susan Pearman of the American Lung Association and chair of the Fresno County Tobacco Free Coalition, acknowledged coalition members and impact advisory board members in attendance, and along with Dr. Edward Moreno, Fresno County Public Health Officer, expanded further on the issue including use of license revenue, enforcement, research showing decreased youth smoking rates with licensing, the state’s efforts to curtail tobacco use in general, the need to protect children, and the risks/medical conditions associated with smoking.

Councilmember Dages made a motion to direct staff as outlined, which motion was seconded by Councilmember Sterling.

Speaking in support of the issue/motion were: Leila Gholamrezaei, 3215 E. Ashcroft; Mai Yang, 190 N. Willow, representing Stop Tobacco Access to Kids Enforcement Program; Edward Boyle, 7393 N. Mansionette Drive; Jodi McEdward, respiratory therapist/tobacco treatment counselor/American Lung Association volunteer, 1879 Fillmore, Madera; Veronica Carrasco, 4948 N. Arthur; and Barbara Hunt, 2475 S. Walnut.

(8 – 0) Councilmember Sterling thanked Councilmember Dages, Ms. Pearman and the delegation for their advocacy, commented on the issue and expressed her support, and commended the involved youth for their commitment. Councilmember Xiong concurred this was an important issue but stated the business community also needed representation, and spoke to the importance of engaging the business community in the process and the license fee cost citing impacts to small businesses. Mr. Sanchez stated staff would circulate the draft ordinance to constituent groups, seek comments, and report back.

President Westerlund acknowledged this was an important issue and clarified he was not in favor of child use of tobacco, concurred the first line of defense was concerned and involved parents and not a law, stated he had some real concerns with this and would not be supportive as this was already a heavily regulated area, and stated two-thirds of businesses are doing the right thing and he would have looked more favorably upon a program that goes after the violating one-third without taxing the other two-thirds.

On motion of Councilmember Dages, seconded by Councilmember Sterling, duly carried, RESOLVED, the City Attorney's office directed to develop and return with an ordinance requiring the licensing of tobacco retailers, by the following vote

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

(10:30 a.m. #2) COUNCIL COMMUNICATIONS AND ASSIGNMENTS

#1 COUNCIL OF GOVERNMENTS (COG) - SWEARENGIN, XIONG-EX-OFFICIO/ALTERNATE
COUNCIL SUB-COMMITTEE TASK FORCE FOR WATER (WATER TASK FORCE) - BORGEAS, BRAND, STERLING
FINANCIAL AUDIT COMMITTEE - BORGEAS, BRAND, XIONG
FRESNO AREA WORKFORCE INVESTMENT CORPORATION - WESTERLUND
FRESNO COUNTY COUNCIL OF GOVERNMENT'S RAIL CONSOLIDATION COMMITTEE - XIONG
FRESNO COUNTY TRANSPORTATION AUTHORITY - SWEARENGIN, BORGEAS
FRESNO REGIONAL WORKFORCE INVESTMENT BOARD - WESTERLUND
FRESNO COUNTY ZOO AUTHORITY - SWEARENGIN, WESTERLUND-ALTERNATE
FRESNO-MADERA AREA AGENCY ON AGING BOARD - STERLING
JOINT POWERS FINANCING AUTHORITY - WESTERLUND
LEADERSHIP COUNCIL ON ENDING HOMELESSNESS – SWEARENGIN, STERLING, XIONG
PUBLIC SAFETY JOINT POWERS AUTHORITY - SWEARENGIN, WESTERLUND
SAN JOAQUIN RIVER CONSERVANCY BOARD - SWEARENGIN, BRAND-ALTERNATE
THE ASSOCIATION FOR THE BEAUTIFICATION OF HIGHWAY 99 - STERLING
UPPER KINGS BASIN INTEGRATED REGIONAL WATER MANAGEMENT JPA - BORGEAS
PENSION REFORM TASK FORCE - BORGEAS, BRAND, XIONG

#2 ECONOMIC DEVELOPMENT CORPORATION SERVING FRESNO COUNTY – BORGEAS, EX-OFFICIO
FRESNO CITY & COUNTY CONVENTION & VISITORS BUREAU – SWEARENGIN, STERLING
LEAGUE OF CALIFORNIA CITIES (ANNUAL MEETING) – SWEARENGIN, BORGEAS-ALTERNATE

#3 CITY COUNCIL APPOINTMENTS, REAPPOINTMENTS, REMOVALS TO/FROM CITY AND NON-CITY BOARDS AND COMMISSIONS

Laid over to July 29, 2010.

(2:30 P.M. 'A') APPROVE AGREEMENTS FOR RECREATIONAL PROGRAMMING AT THREE NEIGHBORHOOD CENTERS

#1 APPROVE A 3-YEAR AGREEMENT WITH READING AND BEYOND FOR LEAD AGENCY RESPONSIBILITY AT EINSTEIN PARK NEIGHBORHOOD CENTER

#2 APPROVE A 3-YEAR AGREEMENT WITH FIRST BAPTIST CHURCH FOR LEAD AGENCY RESPONSIBILITY AT LAFAYETTE PARK NEIGHBORHOOD CENTER

#3 APPROVE A 3-YEAR AGREEMENT WITH UNITED ONE PRODUCTIONS FOR LEAD AGENCY RESPONSIBILITY AT MARY ELLA BROWN NEIGHBORHOOD CENTER

City Manager Scott stated this was a very exciting project and a situation where staff was taking a negative situation and trying to turn it into a positive one, stated the agreements were with organizations representing some of the best citizens in the community, spoke to the background of the issue, the RFP process and the phenomenal responses received, and commended PARCS Director Cooper and his staff for their attitude and openness to this process in these difficult budget times.

PARCS Director Cooper stated this would put Fresno on the map as calls were coming in from other communities and there was national interest, and expanded further on the issue and the community organizations involved stating they will go far beyond what the city can do.

Speaking in support of the issue were: Judy Rogers, Executive Director of United One Productions, who also acknowledged her team members in attendance; Michael DeJuarez, Director of Programming for Cornerstone Community Care, who submitted and read into the record a letter from Cornerstone Pastor Jim Franklin stating his support for this collaboration; and Barbara Hunt.

Councilmember Sterling advised she had a happy conflict with United One Productions and would recuse herself from that vote, and spoke in support of the issue and commended the organizations for their spirit and stepping up and staff for their work. Councilmember Sterling made a motion to approve #1 and #2, which motion was seconded by Councilmember Dages. Councilmember Xiong also thanked the organizations for stepping up, and relative to Quigley Park in his district requested he be engaged early on with the organizations that are interested in doing service there due to his experience in working with non-profits. Upon question of Councilmember Borgeas Mr. Cooper confirmed Pinedale was in the next round and organizations were already holding meetings.

On motion of Councilmember Sterling, seconded by Councilmember Dages, duly carried, RESOLVED, the subject agreements for lead agency operation of a neighborhood center with Reading and Beyond for Einstein Neighborhood Center and First Baptist Church for Lafayette Neighborhood Center hereby approved, by the following vote:

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

Councilmember Sterling recused herself due to a conflict of interest and left the meeting at 4:37 p.m.

On motion of Councilmember Xiong, seconded by Acting Councilmember Dages, duly carried, RESOLVED, the subject agreement for lead agency operation of a neighborhood center with United One Productions for Mary Ella Brown Neighborhood Center hereby approved, by the following vote:

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

(2:35 P.M.) JOINT MEETING WITH THE REDEVELOPMENT AGENCY

The City Council recessed at 4:37 p.m. and convened in joint session with the Redevelopment Agency. Councilmember Sterling returned to the meeting.

APPROVE AGENCY MINUTES OF JUNE 17, 21 and 24, 2010

On motion of President Westerlund, seconded by Acting President Brand, duly carried, RESOLVED, the Agency minutes of June 17, 21 and 24, 2010, approved as submitted.

(‘A’) CONSIDER PROPOSED AMENDMENTS TO THE MERGER NO. 1 REDEVELOPMENT PLANS COMPRISED OF THE CENTRAL BUSINESS DISTRICT, CHINATOWN EXPANDED, CONVENTION CENTER, FULTON, JEFFERSON, MARIPOSA, SOUTH VAN NESS INDUSTRIAL, WEST FRESNO I, AND WEST FRESNO II PROJECT AREAS (CONSTITUENT PROJECT AREAS) – “MERGER 1 PROJECT” (*Note – Public Hearing conducted and closed at the June 24, 2010, joint meeting)

- #1 COUNCIL RESOLUTION NO. 2010-157 - ADOPTING FINDINGS IN RESPONSE TO WRITTEN OBJECTIONS TO THE PROPOSED 2010 MERGER NO. 1 PLAN AMENDMENTS**
- #2 JOINT COUNCIL/AGENCY RESOLUTION NO. 2010-158/1758 - CERTIFYING FINAL SUBSEQUENT ENVIRONMENTAL IMPACT REPORT PREPARED FOR THE FRESNO MERGER NO. 1 REDEVELOPMENT PLAN AMENDMENTS PROJECT**
- #3 AGENCY RESOLUTION NO. 1759 - FINDINGS PURSUANT TO CRL REGARDING CONFORMANCE OF THE CITY HOUSING ELEMENT, FINANCIAL AUDITING REQUIREMENTS, AND LOW AND MODERATE INCOME HOUSING FUND EXPENDITURE REQUIREMENTS FOR THE CONSTITUENT PROJECT AREAS**
- #4 BILL NO. B-23 - ORDINANCE NO. 2010-25 - ADOPTING AN AMENDMENT TO THE CENTRAL BUSINESS DISTRICT PROJECT ONE URBAN RENEWAL PLAN (*Council action*)**
- #5 BILL NO. B-24 - ORDINANCE NO. 2010-26 - ADOPTING AN AMENDMENT TO THE CHINATOWN EXPANDED COMMUNITY REDEVELOPMENT PROJECT (*Council action*)**
- #6 BILL NO. B-25 - ORDINANCE NO. 2010-27 - ADOPTING AN AMENDMENT TO THE CONVENTION CENTER REDEVELOPMENT PLAN (*Council action*)**
- #7 BILL NO. B-26 - ORDINANCE NO. 2010-28 - ADOPTING AN AMENDMENT TO THE FULTON REDEVELOPMENT PROJECT (*Council action*)**
- #8 BILL NO. B-27 - ORDINANCE NO. 2010-29 - ADOPTING AN AMENDMENT TO THE JEFFERSON AREA PROJECT (*Council action*)**
- #9 BILL NO. B-28 - ORDINANCE NO. 2010-30 - ADOPTING AN AMENDMENT TO THE MARIPOSA REDEVELOPMENT PLAN (*Council action*)**
- #10 BILL NO. B-29 - ORDINANCE NO. 2010-31 - ADOPTING AN AMENDMENT TO THE SOUTH VAN NESS REDEVELOPMENT PROJECT (*Council action*)**
- #11 BILL NO. B-30 - ORDINANCE NO. 2010-32 - ADOPTING AN AMENDMENT TO THE WEST FRESNO ONE REDEVELOPMENT PLAN (*Council action*)**
- #12 BILL NO. B-31 - ORDINANCE NO. 2010-33 - ADOPTING AN AMENDMENT TO THE WEST FRESNO TWO REDEVELOPMENT PLAN (*Council action*)**

Chair Brand read a statement into the record clarifying on June 24th a public hearing was held, public comment was received, and the public hearing was closed and although the public hearing would not be reopened public comment would be allowed this date limited to staff's responses on the oral and written objections made on June 24th.

Redevelopment Consultant Freeman reviewed the issue including what transpired at the June 24th public hearing and three letters of objection in council's packets, noted a technical correction would be made to the nine ordinances bills in Attachment D changing the date to reflect today's date, and covered issues to be addressed as required by redevelopment law.

Barbara Hunt spoke to the issue.

Upon call, no one else wished to be heard and Chair Brand closed public comment.

Chair Brand noted he requested staff to return with statistics on eminent domain and advised of the 13,000 parcels in the entire redevelopment areas, and over a period of 13 years, there were only 13 eminent domains and stated it was safe to say property owners could sleep safe at night without worrying about their property being taken.

President Westerlund stated having reviewed the documents submitted and the responses it appeared questions and concerns were addressed to some level of degree and he was comfortable with the hearing the joint bodies have had thus far and the actions to be taken for the merger and the amendments.

#1 - On motion of Councilmember Dages, seconded by Councilmember Sterling, duly carried, RESOLVED, the above entitled Resolution No. 2010-157 hereby adopted, by the following vote:

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

#2 - On motion of Councilmember/Member Sterling, seconded by Chair/Acting President Brand, duly carried, RESOLVED, the above entitled Joint Resolution No. 2010-158/1758 hereby adopted, by the following vote:

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

#3 - On motion of Member Westerlund, seconded by Member Sterling, duly carried, RESOLVED, the above entitled Agency Resolution No. 1759 hereby adopted, by the following vote:

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

#4 - #12 - On motion of Councilmember Sterling, seconded by Acting President Brand, duly carried, RESOLVED, the above entitled Bill Nos. B-23 through 31 introduced and adopted as Ordinance Nos. 2010-25 through 33, by the following vote:

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

The joint bodies adjourned their meeting at 4:48 p.m. and the City Council reconvened in regular session.

SCHEDULED COMMUNICATION:

#2 APPEARANCE BY CHARLOTTE KAMINSKI TO DISCUSS THE DEPARTMENT OF TRANSPORTATION (FAX)

Appearance made with Ms. Kaminski advising of her documented disabilities and speaking to problems she, and others, have experienced, while riding the bus including denied access. City Manager Scott stated he would speak with Ms. Kaminski at the conclusion of the meeting.

UNSCHEDULED COMMUNICATIONS:

Barbara Hunt, 2475 S. Walnut, (1) commended FAX bus drivers; (2) expressed concern with council members going to sleep/not doing their work/needing to take a cut in salary; and (3) spoke to information availability.

Sherry Smith, 4727 W. Swift, spoke to the importance of distances to medical facilities and to the area west of Freeway 99 including continued growth and the need for a small emergency medical center and a fire station.

ADJOURNMENT

There being no further business to bring before the City Council, the hour of 5:00 p.m. having arrived and hearing no objection, President Westerlund declared the meeting adjourned.

Approved on the ____29th____ day of ____July____, 2010.

_____/s/_____
Larry Westerlund, Council President

ATTEST: _____/s/_____
Yolanda Salazar, Assistant City Clerk