

MINUTES OF THE REGULAR JOINT MEETING OF THE MONTCLAIR CITY COUNCIL AND REDEVELOPMENT AGENCY AND MONTCLAIR HOUSING CORPORATION BOARDS HELD ON MONDAY, JUNE 21, 2004, AT 6:59 P.M. IN THE CITY COUNCIL CHAMBERS, 5111 BENITO STREET, MONTCLAIR, CALIFORNIA

I. CALL TO ORDER

Mayor/Chairman Eaton called the meeting to order at 6:59 p.m.

II. INVOCATION

Pastor John Woods, Praise Christian Church, gave the Invocation.

III. PLEDGE OF ALLEGIANCE

Council Member/Director Ruh led those assembled in the Pledge.

IV. ROLL CALL

Present: Mayor/Chairman Eaton; Mayor Pro Tem/Vice Chairman Dutrey; Council Members/Directors Paulitz, Raft, and Ruh; Acting City Manager/Executive Director Clark; Director of Administrative Services Starr; Director of Redevelopment/Public Works Staats; City/Agency Engineer Hudson; City Attorney/Agency Counsel Robbins; Deputy City Clerk Smith

Absent: City Manager/Executive Director McDougal (excused)

V. PRESENTATIONS - None

VI. PUBLIC COMMENT

A. Mr. Thomas J. Fitzgerald commented as follows:.

1. He reiterated a complaint against the Montclair Police Department with regard to a past incident.
2. He noted for the record that he does not advocate violence against police officers.
3. He expressed his opinion that the "Officer Down" bronze statue commemorating the loss of law enforcement lives in service to San Bernardino County, which is located at the entrance to the **San Bernardino County Government Center**, Rancho Cucamonga, should be relocated to a more appropriate area.
4. He promised to return at future Council meetings.

B. Mr. Tom Stoudt, President, **Montclair Fire Fighters Association (MFFA) (Local 3608)**, 18930 Red Feather, Apple Valley, announced that the annual **Firefighters' Quest for Burn Survivors Rally 2004** fundraiser kicked off today in Santa Maria and will caravan to Laguna Beach. He advised that the Montclair Fire Department will join the entourage as it enters the City at approximately 2:45 p.m. on Wednesday, June 23, 2004. He reported that last year, the organization raised \$104,000 for burn survivors, adding that **MFFA** will donate to the **Firefighters' Quest for Burn Survivors Rally 2004** fundraiser when the procession arrives in Montclair.

Mr. Stoudt invited the Council, staff, and all Montclair residents to participate in the event.

Mayor Eaton thanked Mr. Stoudt for his invitation.

VII. PUBLIC HEARINGS

A. Continue Consideration of Adoption of Resolution No. 04-2516 Requesting the Local Agency Formation Commission Initiate Proceedings for Reorganization to Include City of Montclair Annexation No. 24 and Detachment From Monte Vista Fire Protection District

Mayor Eaton declared it the time and place set for public hearing to receive public testimony related to Resolution No. 04-2516, a Resolution of Initiation requesting the Local Agency Formation Commission initiate proceedings for reorganization to include City of Montclair Annexation No. 24 and detachment from Monte Vista Fire Protection District, and that this item would be continued to the regularly scheduled joint meeting of July 6, 2004.

There being no one in the audience wishing to speak, Mayor Eaton closed the public hearing and returned the matter to the City Council for its consideration.

Moved by Mayor Pro Tem Dutrey, seconded by Council Member Ruh, and carried unanimously to continue consideration of adoption of Resolution No. 04-2516 to the July 6, 2004 regular joint meeting.

VIII. CONSENT CALENDAR

Council Member Paulitz requested that Items B-1, B-2, C-4, D-2, and D-4 be removed from the Consent Calendar for comment.

Mayor Pro Tem Dutrey requested that Item B-3 be removed from the Consent Calendar for comment.

Moved by Mayor Pro Tem/Vice Chairman Dutrey, seconded by Council Member/Director Raft, and carried unanimously to approve the following Consent Items as presented:

A. Approval of Minutes

1. Minutes of Regular Joint Council/Agency/Montclair Housing Corporation Meeting of June 7, 2004

The City Council and Redevelopment Agency and Montclair Housing Corporation Boards approved the minutes of the Regular Joint City Council/Redevelopment Agency Board/Montclair Housing Corporation Board meeting of June 7, 2004.

B. Administrative Reports

4. Approval of Filing of *Notice of Completion*, Reduction of *Faithful Performance Bond* to 10 Percent, and Six-Month Retention of *Payment Bond* Related to Completion of the Kingsley Park Ball Field Lighting Replacement Project

Approval of a Loan in the Amount of \$10,313.13 From the General Fund Reserve to the Park Development Fund and a \$10,313.13 Appropriation From the Park Development Fund for the Kingsley Park Ball Field Lighting Replacement Project

The City Council approved the following actions related to completion of the Kingsley Park Ball Field Lighting Replacement Project:

- (a) The filing of a *Notice of Completion* with the Office of the San Bernardino County Recorder, reduction of the *Faithful Performance Bond* to 10 percent, and retention of the *Payment Bond* for six months.
- (b) A \$10,313.13 loan from the General Fund to the Park Development Fund and a \$10,313.13 appropriation from the Park Development Fund.

5. "No Action" on Alcoholic Beverage Permit Application - Chili's Grill & Bar

The City Council voted "No action" on the "On-Sale General" license application of Brinker Restaurant Corporation for Chili's Grill & Bar, 9393 Monte Vista Avenue, Montclair, California.

6. "No Action" on Alcoholic Beverage Permit Application - One Stop Market

The City Council voted "No action" on the "Off-Sale Beer and Wine" license application of Hamrang Azar for One Stop Market, 5093 West Mission Boulevard, Montclair, California.

7. Receiving and Filing of City Treasurer's Report

The City Council received and filed the City Treasurer's Report for the month ending May 31, 2004.

8. Approval of City Warrant Register and Payroll Documentation

The City Council approved the Warrant Register dated June 21, 2004, totaling \$989,248.94, and the Payroll Documentations dated May 2, 2004, amounting to \$523,522.59, with \$360,046.98 being the total cash disbursement, and May 16, 2004, amounting to \$500,258.32, with \$366,278.03 being the total cash disbursement.

9. Receiving and Filing of Agency Treasurer's Report

The Redevelopment Agency Board received and filed the Redevelopment Agency Treasurer's Report for the month ending May 31, 2004.

10. Approval of Agency Warrant Register

The Redevelopment Agency Board approved the Redevelopment Agency Warrant Register dated 5/01/2004-5/31/2004 in the amounts of \$1,521.53 for Project I; (\$1,098.08) for Project II; \$355,242.05 for Project III; \$12,929.43 for Project IV; and \$34,795.96 for Project V.

11. Receiving and Filing of Montclair Housing Corporation Treasurer's Report

The Montclair Housing Corporation (MHC) Board received and filed the MHC Treasurer's Report for the month ending May 31, 2004.

12. Approval of MHC Warrant Register

The MHC Board approved the MHC Warrant Register dated 5/01/2004-5/31/2004 in the amount of \$18,290.37.

C. Agreements

1. **Approval of Agreement No. 04-77-I-60, an Irrevocable Annexation Agreement With Francisco Veliz and Carmen Veliz for 11073 Roswell Avenue**

The City Council approved *Agreement No. 04-77-I-60*, an *Irrevocable Annexation Agreement* with Francisco Veliz and Carmen Veliz for emergency connection of their quadruplex at 11073 Roswell Avenue to the City Sewer System.

2. **Approval of Agreement No. 04-78 Amending Agreement No. 02-34 With San Bernardino County for Street Work on Mission Boulevard and East End Avenue**

The City Council approved *Agreement No. 04-78* amending *Agreement No. 02-34* with San Bernardino County for street work on Mission Boulevard and East End Avenue.

3. **Approval of Agreement No. 04-79 by and Between the City of Montclair, the City of Montclair Redevelopment Agency, and Mariposa Horticultural Enterprises, Inc., for Landscape and Maintenance of Median Islands, Parks, and Parkways**

The City Council approved *Agreement No. 04-79* by and between the City of Montclair, the City of Montclair Redevelopment Agency, and Mariposa Horticultural Enterprises, Inc., for landscape and maintenance of median islands, parks, and parkways.

5. **Redevelopment Agency Board of Directors' Approval of Agreement Nos. 04-85 Through 04-88, Rehabilitation Grant Agreements by and Between the City of Montclair Redevelopment Agency and Exterior Housing Improvement Program (E-HIP) Participants**

The Redevelopment Agency Board approved *Agreement Nos. 04-85 through 04-88, Rehabilitation Grant Agreements* by and between the City of Montclair Redevelopment Agency and the four E-HIP participants listed on Exhibit A to the agenda report on this item.

D. Resolutions

1. **Redevelopment Agency Board of Directors' Adoption of Resolution No. 04-03, a Resolution of the City of Montclair Redevelopment Agency Authorizing Expenditure of Redevelopment Agency Funds for Graffiti Abatement**

The Redevelopment Agency Board of Directors adopted Resolution No. 04-03, a Resolution of the City of Montclair Redevelopment Agency authorizing expenditure of Redevelopment Agency funds for graffiti abatement.

City Council Approval of Agreement Nos. 04-81, 04-82, 04-83, and 04-84 Approving Promissory Notes 04-2, 04-3, 04-4, and 04-5, Respectively, Between the City of Montclair Redevelopment Agency and the City of Montclair

The City Council approved *Agreement Nos. 04-81, 04-82, 04-83, and 04-84* approving *Promissory Notes 04-2, 04-3, 04-4, and 04-5*, respectively, between the City of Montclair Redevelopment Agency and the City of Montclair.

Redevelopment Agency Board of Directors' Approval of Agreement Nos. 04-81, 04-82, 04-83, and 04-84 Approving

Promissory Notes 04-2, 04-3, 04-4, and 04-5, Respectively, Between the City of Montclair Redevelopment Agency and the City of Montclair

The Redevelopment Agency Board of Directors approved *Agreement Nos. 04-81, 04-82, 04-83, and 04-84* approving *Promissory Notes 04-2, 04-3, 04-4, and 04-5*, respectively, between the City of Montclair Redevelopment Agency and the City of Montclair.

Redevelopment Agency Board of Directors' Adoption of Resolution No. 04-04 Adopting the Fiscal Year 2004-05 Budget for the City of Montclair Redevelopment Agency

The Redevelopment Agency Board of Directors adopted Resolution No. 04-04 adopting the Fiscal Year 2004-05 Budget for the City of Montclair Redevelopment Agency.

Montclair Housing Corporation Board of Directors' Adoption of Resolution No. 04-01 Adopting the Fiscal Year 2004-05 Budget for the Montclair Housing Corporation

The Montclair Housing Corporation Board of Directors adopted Resolution No. 04-01 adopting the Fiscal Year 2004-05 Budget for the Montclair Housing Corporation.

3. Adoption of Resolution Nos. 04-2521 and 04-2522 Related to the General Municipal Election to be Held on Tuesday, November 2, 2004

The City Council adopted Resolution Nos. 04-2521 and 04-2522 related to the General Municipal Election to be held on Tuesday, November 2, 2004.

IX. PULLED CONSENT CALENDAR ITEMS

B. Administrative Reports

1. Setting a Public Hearing to Consider Adoption of Ordinance No. 04-843 Repealing Montclair Municipal Code Subsections 8.36.030(b) and 8.36.160(a) Related to the Parking of Private Vehicles for Sale on a Public Roadway or Private Properties That Are Not the Residences of the Vehicle Owners

Council Member Paulitz inquired as follows:

- (a) What court levels made the decisions in the cases of *Burkow v. City of Los Angeles* and *People v. Moon*?

City Attorney Robbins responded that the decisions in both cases regarding the constitutionality of ordinances restricting the rights of individuals in their exercise of free speech rights by parking vehicles for sale either on public roadways or private property were made at the trial court level and upheld in appellate court.

Council Member Paulitz advised that the appellate court does not necessarily have final adjudication in this matter.

- (b) Are the majority of California cities abiding by these rulings? Why not continue current practices?

Acting City Manager Clark indicated that though he is not familiar with other cities' policies regarding individuals

parking vehicles for sale, he would presume they would be abiding by the court decisions because municipal codes restricting such practice conflict with federal and state laws and could be contested and thrown out in court.

City Attorney Robbins noted the City of Los Angeles no longer enforces its ordinance because of the court decision in its case.

Council Member Paulitz suggested the City not enforce its Ordinance as opposed to appealing it, particularly since the matter has not received final adjudication.

Acting City Manager Clark indicated that information on other cities' policies can be provided should this item be set for public hearing.

Moved by Council Member Paulitz and seconded by Council Member Ruh that the City Council set a public hearing for Tuesday, July 6, 2004, at 7:00 p.m. in the City Council Chambers to consider adoption of Ordinance No. 04-843 repealing Montclair Municipal Code Subsections 8.36.030(b) and 8.36.160(a) related to the parking of private vehicles for sale on a public roadway or private properties that are not the residences of the vehicle owners.*

Council Member Ruh spoke in support of repealing existing law restricting the private sales of vehicles on roadways and private property, noting the law could be reinstated should the lower courts' decisions be overturned in a higher court. He expressed his opinion that it is best to err on the sides of both the U.S. Constitution and the California Constitution.

Mayor Pro Tem Dutrey expressed his uncertainty on this item and stated he would like to review the court documents in both cases. He questioned whether an individual would be permitted to conduct commercial sales of vehicles on roadways or at his residence should existing law be repealed.

Council Member Raft advised that an individual would only be allowed to sell a certain number of vehicles in one setting; otherwise, the individual would be required to obtain a dealer's license. She inquired if an individual would be permitted to park a vehicle for sale on residential streets.

Council Member Ruh advised that streets are public rights-of-way, so such use would be permitted.

City Attorney Robbins noted that certainly property owners could have parking restricted on the street fronting their residences.

*Motion carried unanimously as follows:

AYES: Ruh, Raft, Paulitz, Dutrey, Eaton
NOES: None
ABSTAIN: None
ABSENT: None

2. **Setting a Public Hearing to Consider Adoption of Ordinance No. 04-849 Adding Chapter 3.30 to Title 3 of the Montclair Municipal Code Related to Imposing a Transactions and Use Tax to be Administered by the State Board of Equalization**

Council Member Paulitz received clarification that the public hearing on this item is proposed to be scheduled for Tuesday, July 6, 2004, that the proposed retail transactions and use tax at a rate of one quarter of 1 percent is essentially a sales tax, and that it would be considered by the voters.

Moved by Council Member Paulitz and seconded by Mayor Pro Tem Dutrey that the City Council set a public hearing for Tuesday, July 6, 2004, at 7:00 p.m. in the City Council Chambers to consider adoption of Ordinance No. 04-849 adding Chapter 3.30 to Title 3 of the Montclair Municipal Code related to imposing a transactions and use tax to be administered by the State Board of Equalization.

Mayor Pro Tem Dutrey noted receiving earlier clarification that the main purpose of the proposed excise tax is to assist in funding the new Police facility and youth and senior centers that are proposed. He expressed his disappointment that the agenda report on this item was not more specific as to the reason for the proposed tax. He suggested the agenda report for the proposed public hearing include such details.

Director of Administrative Services Starr responded that he understands Mayor Pro Tem Dutrey's concerns and that the public hearing agenda report would thoroughly address the issues behind proposing a transactions and use tax. He advised that the primary purpose behind this proposal is to address the potential shortfall should the Governor's proposal to divert a portion of cities' vehicle license fee, sales tax, and property tax revenues based on a predetermined formula over the next two years take place, in addition to the consequences of the Economic Recovery Act that will divert 25 percent of local government's annual sales tax revenues to the State Treasury beginning next month.

Mayor Pro Tem Dutrey noted an earlier City survey of residents indicated they would support the proposed tax to assist in financing the new Police facility and youth and senior centers.

*Motion carried unanimously as follows:

AYES: Ruh, Raft, Paulitz, Dutrey, Eaton
NOES: None
ABSTAIN: None
ABSENT: None

3. Approval of the Accounts Receivable Write-Off Schedule as the Schedule of Uncollectible Accounts

Authorizing the Administrative Services Department to Reduce the Accounts Receivable Account and the Allowance for Doubtful Accounts by \$107,843.30

Mayor Pro Tem Dutrey requested clarification on the nature of an invoice dated 8/20/2002 for \$88,576.53 listed on the "Accounts Receivable Write-Off Schedule - 2004" attachment to the agenda report.

Acting City Manager Clark clarified the invoice is for the California Department of Transportation's share of funding for the I-10 Freeway widening at Central Avenue and sound-attenuation wall projects that the agency has declined to pay.

Moved by Mayor Pro Tem Dutrey, seconded by Council Member Paulitz, and carried unanimously that the City Council take the following actions:

- (a) Approve the Accounts Receivable Write-Off schedule as the schedule of uncollectible accounts.
- (b) Authorized the Administrative Services Department to reduce the General Accounts Receivable Account and the Allowance for Doubtful Accounts by \$107,843.30.

C. Agreements

4. Approval of Agreement No. 04-80 With West Coast Arborists for Tree-Maintenance Services

Council Member Paulitz requested clarification on the units of measurement used to determine tree and stump removal and stump-only removal fees.

Public Works Superintendent Orioli responded that a tree's height and diameter would be used to calculate the fee.

Moved by Council Member Paulitz, seconded by Council Member Raft, and carried unanimously that the City Council approve *Agreement No. 04-80* with West Coast Arborists for tree-maintenance services.

D. Resolutions

2. Adoption of Resolution No. 04-2519 Establishing an Appropriations Limit for Fiscal Year 2004-05 Pursuant to Article 13-B of the California Constitution and to Section 7910 of the Government Code

Council Member Paulitz clarified for the benefit of the public that when Proposition 13 was approved by the voters in 1978 and the subsequent decisions made by both the Legislature and the public to eliminate local subventions and initiate cuts in motor vehicle in-lieu tax revenues in the 1980s, the intent was to restrict the amount of revenues cities were allowed to receive in terms of population and income growth. He noted the absurdity of the City's proposed appropriations limit for Fiscal Year 2004-05 being adjusted to \$145,499,246, pursuant to change in population factors, in view of the fact that the Council recently conceptually approved a City budget for next fiscal year of approximately \$31 million and can be described as "the law of unintended consequences." Accordingly, he suggested Article 13B of the California Constitution and Government Code Section 7910 "limiting" cities' appropriations budgets should be repealed.

Moved by Council Member Paulitz and seconded by Council Member Raft that Resolution No. 04-2519, entitled "**A Resolution of the City Council of the City of Montclair Establishing an Appropriations Limit for Fiscal Year 2004-05 Pursuant to Article 13-B of the California Constitution and to Section 7910 of the Government Code,**" be read by number and title only, further reading be waived, and it be considered adopted.

The City Council unanimously waived the reading of the Resolution.

Resolution No. 04-2519 was unanimously adopted by the following vote:

AYES: Ruh, Raft, Paulitz, Dutrey, Eaton
 NOES: None
 ABSTAIN: None
 ABSENT: None

4. **Adoption of Resolution No. 04-2523 Adopting the City of Montclair Fiscal Year 2004-05 Annual Budget**

Council Member Paulitz received clarification that information related to the total estimated revenue budget, including transfers-in, and the total appropriations budget, including transfers-out, was contained in the Combined Sources & Uses Statement, Fiscal Year 2004-05, in the City of Montclair Fiscal Year 2004-05 Preliminary Budget.

Moved by Council Member Paulitz and seconded by Mayor Pro Tem Dutrey that Resolution No. 04-2523, entitled "**A Resolution of the City Council of the City of Montclair Adopting the Fiscal Year 2004-05 Budget,**" be read by number and title only, further reading be waived, and it be considered adopted.

The City Council unanimously waived the reading of the Resolution.

Resolution No. 04-2523 was unanimously adopted by the following vote:

AYES: Ruh, Raft, Paulitz, Dutrey, Eaton
NOES: None
ABSTAIN: None
ABSENT: None

X. **RESPONSE** - None

XI. **COMMUNICATIONS**

A. **City Attorney/Agency Counsel**

1. **Closed Session Pursuant to Section 54957 of the Government Code**

Public Employee Performance Evaluation

City Manager/Executive Director

Moved by Council Member/Director Paulitz, seconded by Council Member/Director Raft, and carried unanimously to continue this item to an adjourned joint meeting on Tuesday, July 6, 2004, at 5:00 p.m. in the City Hall Conference Room, 5111 Benito Street, Montclair, California.

B. **Acting City Manager/Executive Director**

1. Acting City Manager/Executive Director Clark reminded the Council/Agency Board of an adjourned joint meeting on Wednesday, July 7, 2004, at 5:00 p.m. in the Conference Room South, at which representatives of the **Government Finance Officers Association** would join the Council and staff in enhancing the City of Montclair Business Plan for Fiscal Year 2004-05.

C. **Mayor/Chairman**

1. **Announcement of Community Action Committee Reappointments and Appointment**

Mayor Eaton advised there was a total of three applicants for the three vacancies on the Community Action Committee (CAC) and the interview process was, therefore, waived. He announced that with Council concurrence, he would be pleased to reappoint CAC Members Mary Fondario and

Charlene Kusick and appoint **Mr. Rudy Murrieta** to the CAC for four-year terms ending June 30, 2008.

Moved by Mayor Pro Tem Dutrey, seconded by Council Member Paulitz, and carried unanimously to reappoint CAC Members Mary Fondario and Charlene Kusick and appoint **Mr. Rudy Murrieta** to the CAC for four-year terms ending June 30, 2008.

D. City Council/Agency Board

1. Council Member/Director Paulitz suggested **Mr. Fitzgerald's** issue be further addressed by staff.

Police Chief Thompson advised that **Mr. Fitzgerald's** issue was resolved several years ago, though he continues to dispute the matter.

2. Council Member/Director Raft wished everyone a happy, enjoyable, and safe **Fourth of July**.
3. Mayor Pro Tem/Vice Chairman Dutrey likewise wished everyone a happy **Fourth of July**.

4. Council Member/Director Ruh commented as follows:

(a) He noted he was unable to attend the Fire Department's Dine and Dash event on Sunday, June 13, 2004, because he returned from Sacramento late that day.

(b) He noted learning from a number of legislators while in Sacramento that local governments are individually asking for the repeal of **Proposition 13**, one of the few safeguards in place that is an effective property-acquisition value system for California homeowners. He noted that California has not experienced the massive numbers of tax sales that have occurred elsewhere in the country primarily because of the passage of the measure. He suggested local governments should exercise caution regarding this important legislation.

(c) He noted signing the **Reagan family's** condolence book while in Sacramento and watching with others in his hotel lobby the funeral services for **President Reagan**, adding that it says a lot about our country that the diverse group all sang along to "God Bless America" during the services to honor a President who did so much for this country. He stated that the tribute was a lasting testament to the spirit of the American people.

(d) He noted a recent article in the *Claremont Courier* related to ratepayers' efforts at reducing water consumption to lower their bills, in which the following guidelines were given to reduce consumption to help with soaring costs:

- (1) Require new properties be landscaped with a mixture of local flora as well as some grass.
- (2) Create incentives for people to relandscape their properties, addressing the need to conserve water.
- (3) Offer workshops for homeowners to learn about local vegetation as landscape possibilities.
- (4) Distribute plants to homeowners at reduced cost to encourage people to acquire them.

He advised that "it is incumbent on all of us to do what we can to conserve water" and that "every resident needs to do what they can to cultivate drought-tolerant landscaping using low-water-use plantings."

E. Committee Meeting Minutes

1. Minutes of Personnel Committee Meeting of June 7, 2004

The City Council received and filed the Personnel Committee meeting minutes of June 7, 2004, for informational purposes.

XII. ADJOURNMENT OF CITY COUNCIL AND REDEVELOPMENT AGENCY AND MONTCLAIR HOUSING CORPORATION BOARDS OF DIRECTORS

At 7:39 p.m., Mayor/Chairman Eaton adjourned the City Council and Redevelopment Agency Board of Directors to Tuesday, July 6, 2004, at 5:00 p.m. in the City Hall Conference Room.

At 7:39 p.m., Chairman Eaton adjourned the Montclair Housing Corporation Board of Directors.

Submitted for City Council/Redevelopment Agency Board/Montclair Housing Corporation Board approval,

Yvonne L. Smith
Deputy City Clerk