

**MINUTES OF THE REGULAR JOINT MEETING OF
THE MONTCLAIR CITY COUNCIL AND REDEVEL-
OPMENT AGENCY AND MONTCLAIR HOUSING
CORPORATION BOARDS HELD ON MONDAY,
SEPTEMBER 17, 2007, 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. and asked that everyone please silence their cell phones, pagers, and other electronic devices as a courtesy to others while the meeting is in session.

II. INVOCATION

Pastor Larry Enriquez, Ontario Community Christian Church, gave the Invocation.

III. PLEDGE OF ALLEGIANCE

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

IV. ROLL CALL

For the record, City Clerk/Agency Secretary Donna Jackson noted Council Member/Director Ruh is not in attendance at tonight's meeting.

Present: Mayor/Chairman Eaton; Mayor Pro Tem/Vice Chairman Dutrey; Council Members/Directors Paulitz and Raft; City Manager/Executive Director McDougal; Director of Administrative Services Starr; Director of Redevelopment/Public Works Staats; Director of Community Development/Agency Planner Clark; City/Agency Engineer Hudson; City Attorney/Agency Counsel Robbins; City Clerk/Agency Secretary Jackson

Absent: Council Member/Director Ruh (excused)

V. PRESENTATIONS

A. Introduction of New Employees

Director of Redevelopment/Public Works Staats introduced **Mr. Frank Diaz Jr.**, who was appointed to the position of Maintenance Worker for the Public Works Department Parks Division effective August 6, 2007. He noted Maintenance Worker Diaz was

previously employed by the **Bonita Unified School District**, the **City of San Dimas**, and the **Lucia Mar Unified School District** on the Central Coast.

Director of Redevelopment/Public Works Staats welcomed Maintenance Worker Diaz to the Montclair City family and Mayor Eaton presented him with a City pin.

Director of Redevelopment/Public Works Staats introduced **Mr. Scott Baldwin**, who was appointed to the position of Maintenance Worker for the Public Works Department Streets Division effective September 10, 2007. He noted Maintenance Worker Baldwin was previously employed by **Anheuser-Busch**, **Nabisco**, and the **City of Rialto**.

Director of Redevelopment/Public Works Staats welcomed Maintenance Worker Baldwin to the Montclair City family and Mayor Eaton presented him with a City pin.

B. Presentation by Ontario-Montclair School District Regarding Declining Student Enrollment

Ms. Danielle A. Calise, Assistant Superintendent, Business Services, **Ontario-Montclair School District (OMSD)**, reviewed **OMSD's** enrollment history and projections for the next few years. Advising that most revenues generated by a school district are based on average daily attendance, she reported that over the last several years through October 2007, **OMSD** has lost over four thousand students, which equates to a significant reduction of approximately \$20 million in the **District's** revenue stream. She stated that **OMSD** has devised the following to improve student enrollment and attendance:

1. Hiring outreach consultants funded through federal and state grants.
2. Advertising attendance rates at individual schools.
3. Executing a campaign to inform our community and to express to all constituents and parents of the importance of student attendance for the students themselves and the **District**.
4. Advertising in the ***Inland Valley Daily Bulletin (IVDB)*** for membership in the 7-11 Committee, a district advisory committee consisting of not fewer than 7 nor more than 11 members to advise the governing board in the development of district-wide policies and procedures governing the use or disposition of school buildings or space in school buildings that are not needed for school purposes.

Ms. Calise advised that the expected continued decline in enrollment, coupled with increasing costs for employee compensation, utilities, insurance, and so forth, has forced **OMSD** to face the potential for school closures that might become necessary considering the **District's** over four thousand student loss. She stated that one of the ways the **District** is attempting to reinvent itself is in the promotion of **OMSD** as being able to provide services not provided in neighboring districts, such as its development of four new magnet schools and remagnetizing the **Buena Vista Arts-integrated School**. She stated that in the 2008-09 school year, there will be math/science, dual immersion, and honors magnets and an alternative learning center that will focus on community day school, in-house suspension, independent study, and alternative programs for needy children.

Ms. Calise reviewed an average daily attendance chart from 1998 to 2006, which showed a slight increase in attendance last year over the prior two years, demonstrating that the District's school attendance campaign is definitely working. She noted **OMSD** is not alone in enrollment reductions, reporting that in the 2006-07 school year, over 53 percent of California counties were facing declining enrollments countywide, which equates to over 60 percent of the individual school districts in the state. She reviewed trend data on certain significant components, including average daily attendance, enrollment, home prices, and free and reduced lunch rates, being studied by **OMSD** administration to determine the reasons behind the declining enrollment, significant budget/expenditure reductions, serious layoffs, and potential school closures that have been faced by **OMSD** for the past five years.

Ms. Calise advised that **OMSD** administration is doing everything possible and taking the necessary steps to ensure that staff is well educated and assisting in determining what cuts can be made that don't involve faculty and personnel. She encouraged the Council to stay informed by accessing the **OMSD** website at www.omsd.omsk12.ca.us/Pages/default.aspx and attend as many **OMSD** Board meetings as possible, adding that administration pledges to communicate with the City to provide information. She emphasized the importance of "providing a united front" to the public "and that you understand the magnitude of the situation that we are in" as well as "that we are not entering into this lightly by any means. School closure is absolutely the last place we want to be, but we feel that it will be the only place that we will end up going."

Mayor Eaton told **Ms. Calise** that a Council Member has applied to serve on the 7-11 Committee.

Ms. Calise advised that the **OMSD** Board would be appointing 11 members to the 7-11 Committee on September 20, 2007.

Council Member Paulitz asked if **OMSD** has done a five- or ten-year housing projection and studied the potential for a younger demographic in the community during those years.

Ms. Calise responded that administration is currently working on such a study with regional economist **John Husing** and is working with Montclair and Ontario on the building occurring in those cities. She stated that the exponential rise in housing values has priced much of these communities out of the market. Noting many students qualify for free or reduced-price lunch subsidies, she advised that while the increase in median home prices is positive, it is seriously affecting this population's ability to afford housing costs in this area.

Council Member Paulitz noted families might not wish to locate to Montclair because of the **District's** low test scores. He reiterated that the decline in enrollment could possibly be attributed to residents in this community who remain in their homes long after their children have grown and not by the high cost of homes in today's market. He suggested the **District** should base its down-sizing plan on what the demographic will be five to ten years from now.

Ms. Calise commented as follows:

1. She concurred that there is an aging demographic in the **District**, noting there is not just one answer to the decline in enrollment. She advised that the birth rate from the 1980s to the 2000s was over 25 percent and that presently it stands at around 15 percent and suggested that even though we have an aging population, the rising housing values have caused children who are leaving home to purchase homes farther east or out of state.
2. She noted the **District** is pleased with the significant improvement in test scores in the last two or three years and that this year, "we saw more growth than most of the school districts across the state of California," outpacing San Bernardino County countywide.
3. She noted future projections are also determined by kindergarten and first grade enrollment and that until those two grade levels begin to see growth, we can't project an increase in enrollment in the higher grades. She stated that for the 2007-08 school year, kindergarten enrollment was projected to be down 5 percent; in fact, it is down 9 percent; first grade enrollment was projected to be down approximately 4 percent and, instead, it rebounded 3 percent, so it is still down.

4. While the **District** is taking a number of factors into account, economists in this area are projecting it will be the 2013-14 school year before there might be an enrollment turnaround.

Council Member Paulitz suggested the District might want to keep some of the schools.

Ms. Calise concurred, advising that the **District** has no intent of selling any property at this time and that school closures would essentially result in leasing the sites to the County to provide more localized special education support and/or to a private entity.

Mayor Pro Tem Dutrey noted there are a number of variables contributing to the decline in enrollment. He expressed his appreciation of the **District's** decision not to sell any property as there will no doubt be a turnaround in enrollment in the future. He further expressed his appreciation of the **District's** presentation this evening, expressing his hope that any school closures be done equitably between the two cities served by **OMSD**. He asked if the New Model Colony development on the southeast corner of Archibald and Schaefer Avenues would be served by **OMSD** or **Mountain View School District**.

Ms. Calise responded that the majority of the project is in the **Mountain View School District**, noting that district has reduced its original eight or nine new school sites to five. She reported statistics that emphasized the fact that there are fewer children per new housing units.

Mayor Pro Tem Dutrey further inquired as follows:

1. Are there any areas of Southern California that are experiencing a growth in the student population?

Ms. Calise reported that of the four contiguous counties of Orange, Los Angeles, San Bernardino, and Riverside, San Bernardino County joined Orange and Los Angeles counties in 2006-07 in experiencing decline countywide. She advised that Riverside is still experiencing growth at the county level; however, many of its school districts located closer to the borders of Orange, Los Angeles, and San Bernardino counties are experiencing a decline.

2. What about Victorville?

Ms. Calise replied that Victorville is still experiencing growth attributable to the transit hub planned for the Victorville/Apple Valley area and the area's housing affordability.

Mayor Pro Tem Dutrey thanked **Ms. Calise** for the information.

Mayor Eaton and Council Member Paulitz thanked **Ms. Calise** for her comprehensive presentation.

C. Presentation by Monte Vista Water District General Manager Mark N. Kinsey on Water Supply Issues

Monte Vista Water District (MVWD) General Manager **Mark N. Kinsey** advised that Southern California is potentially facing significant water-supply challenges and that locally, last winter was the driest on record, resulting in the Sierra Mountain snow pack containing two-thirds less water than normal. In addition, he noted the fairly large increase in retail demand and reported the uncertainties of State Water Project operations (from which the **District** derives 50 percent of its water supply) as a result of potential legal and regulatory constraints.

Mr. Kinsey reported on the following three topics:

1. Current state water-supply conditions brought on by simultaneous drought conditions in Northern and Southern California and the Colorado River basin, a weather phenomenon that occurs once every hundred years. Additionally, there are challenges related to environmental concerns of preserving the fragile San Joaquin-Sacramento River delta ecosystem that might cause a 30 percent reduction in water distribution. As a whole, we're OK this year; however, if the drought cycle continues for one or two more years, challenges will increase for the state.
2. How **MVWD** is responding to the water shortage. The **District** is on the downhill side of building eight new ground-water-production facilities that will significantly increase our water-supply capacity, having invested \$30 million over the last eight years in the project. Utilizing local resources allows us the flexibility to take advantage of imported water supplies when they are plentiful and available, then allows us to shift away from those sources during periods of drought. We're expecting that next year we may be looking at a fairly significant four or five thousand acre-foot (30 percent) cutback in imported water supply, enough water to serve thirty to forty thousand persons.

The **District** has a twofold plan to offset the impending water shortage. Our recycled water-distribution program will be on board by summer 2008, and our **Watch the Water** campaign was formally implemented last month to influence customer behavior by encouraging a more efficient and wise use of water. That which we can cut back today will provide a benefit to us tomorrow, and a statewide campaign to reduce demand this year will make water resources available

to us next year. The **Watch the Water** campaign includes the following multimedia advertising: water-conservation information on the **MVWD** website www.mvwd.org or at www.bewaterwise.com and in the **MVWD** newsletter and tip sheets being attached to the **Montclair Chamber of Commerce** newsletter and available at tonight's meeting. The goal is that if everybody collectively thinks about how they use water, they will naturally reduce consumption.

3. Opportunities for working together to resolve this issue. The **District** is moving forward with design and construction of recycled water laterals with the aggressive goal of all city, park, and school grounds using recycled water for irrigation by the summer of 2008. We are working collaboratively on customer education to not waste water but use it wisely. **MVWD** is evaluating the opportunity to work through the Inland Empire Landscaping Alliance to develop demonstration programs in which **MVWD** and the **Chino Basin Water Conservation District** jointly show ways to landscape facilities and homes in a way that's attractive and that minimizes unnecessary usage, either by the type of irrigation system or by the plants used.

Mr. Kinsey advised that if we get a lot of rainfall, the problem would resolve; otherwise, we will start seeing cutbacks for our agency. Because of our investments in local facilities, we believe we are in good shape to respond to that potential shortage in the production of local groundwater to meet demand, he added.

Mayor Eaton inquired as to the size of the delta smelt.

Mr. Kinsey responded that they are typically two to three inches long. He noted the delta smelt are an indicator of the health of the entire San Joaquin-Sacramento River delta ecosystem and are representative of a much larger decline in native delta fisheries including striped bass, longfin smelt, threadfin shad, and others, although the State Water Project, the federal Central Valley Project, farmers, and others contend that the pumps account for just 5 to 15 percent of the causes affecting the smelt population. Other factors having greater impacts on the smelt numbers include the loss of food supplies and introduction of foreign plant and fish species into the Delta, dramatically altering the smelt's environment and putting it at risk; criminal toxic chemical dumping into the Delta has killed fish; sewage is impacting the health of the Delta; and lack of fish screens on the pumps is impacting the health of the smelt.

Mayor Eaton noted the work the **District** has been doing on building new wells. He asked how deep the new wells are.

Mr. Kinsey advised that regionally, the Chino Basin Groundwater Project has been recharging stormwater, imported water from Northern California, and high-quality recycled water into the Chino Basin ground aquifer since March 2005, resulting in significant water-quality improvements in addition to improving the reliability of local water supplies. He noted recovery groundwater levels have increased from 50 to 100 feet and that there has been an improvement in water quality. He stated that pumps are set in wells anywhere from 400 to 500 feet deep, advising that the Richton Street/Monte Vista Avenue site, the deepest well in the **District**, is 1420 feet deep and has a 28-inch diameter case; and the pump will be set 750 feet deep, the benefit being good yield and very high quality water.

Council Member Raft asked if **MVWD** has mailed the **Watch the Water** tip sheet to all its customers.

Mr. Kinsey replied that water-usage tips to maximize water savings indoors and out and rebate and water-saving device information were included in the **MVWD** newsletter recently mailed to all customers.

Mayor Pro Tem Dutrey noted if drought conditions continue to persist, either the state or each individual water district could declare a state of emergency.

Mr. Kinsey responded that the **District** drafted an emergency ordinance in the early 1990s and, thankfully, has never had to adopt it. He stated it is **MVWD's** goal and responsibility to meet the water-supply needs of the **District's** customers.

Mayor Pro Tem Dutrey inquired as to the outcome of **MVWD** declaring a state of emergency.

Mr. Kinsey advised that there are four different emergency stages and that each stage has different levels of expected cutback.

With the steady growth in population and new development in the region, Mayor Pro Tem Dutrey postulated that water conservation efforts are here to stay whether or not we receive the average rainfall.

Mr. Kinsey concurred, noting we are embarking on an era of having to become less reliant on imported water supply sources and more so on local water supplies including expanding the use of recycled water.

Mayor Pro Tem Dutrey thanked **Mr. Kinsey** for his presentation and recognized **MVWD** Board Vice President **Maynard Lenhart** who is in the audience this evening.

Council Member Paulitz inquired as follows:

1. Does **MVWD** serve the City of Chino Hills?

Mr. Kinsey answered, "Yes."

2. Is it possible that further development in Chino Hills could be stopped or curtailed if the **District** tells the **City of Chino Hills** it lacks sufficient resources for the new development?

Mr. Kinsey responded that his goal is to never be in the position of having insufficient water resources to meet demand. He stated that Chino Hills is similar to Montclair in approaching buildout and is probably in the neighborhood of having room for just 2000 more dwelling units. He emphasized that **MVWD** is a service organization and, as such, is obligated to meet the demand, whatever it may be. He expressed his hope that the infrastructure investments that have been made will allow **MVWD** to balance the periods of shortage with the periods of surplus.

3. Does **MVWD** have any lawn-watering recommendations?

Mr. Kinsey advised that **MVWD** suggests watering cycles be reduced by one to three minutes, that watering be done once a day, and that one day out of the cycle be eliminated.

4. Are you aware of a sophisticated system that automatically reduces the amount of irrigation based on soil testing?

Mr. Kinsey advised that there are two such systems: one is an extensometer that measures pore pressure (below-the-ground soil pore pressure) that signals how dry soil is and that initiates an irrigation cycle if needed, and the other is a smart timer that actually communicates with satellites to adjust irrigation cycles based on weather conditions.

Council Member Paulitz thanked **Mr. Kinsey** for the information.

Mayor Eaton thanked **Mr. Kinsey** for his comprehensive report.

VI. PUBLIC COMMENT

Mayor/Chairman Eaton advised those audience members desiring to address the Council and Redevelopment Agency/Montclair Housing Corporation Boards to submit a *Speaker Information Card*, and they would be afforded five minutes each to speak on topics that do not appear on tonight's agenda. He added that pursuant to the provisions of the **Ralph M. Brown Act**, the City Council and Agency and MHC

Boards are prohibited from taking action on items not listed on the agenda.

- A. **Ms. Elizabeth A. Allerton**, 6384 East Avenue, Etiwanda, cited a recent *IVDB* article regarding two pedestrians who were struck in a crosswalk near the Kingsley Street/Lehigh Avenue intersection. She questioned why the Montclair Police Department failed to arrest the motorist in this incident, though his vehicle was impounded. She asked if "Montclair is a sanctuary city and won't arrest and deport illegal aliens."

Mayor Eaton thanked **Ms. Allerton** for her comments.

- B. **Mr. Raymond Herrera**, P.O. Box 403275, Hesperia, identified himself as the national rally spokesperson for **The Minuteman Project, Inc.**, founded by **Mr. James Gilcrest**, and commented on the Kingsley Street incident as follows:

1. Speaking metaphorically, he compared the actions of the Montclair Police Department to the supposed complacent nature of the ostrich.
2. He expressed his opinion that the federal government has failed on the issue of illegal immigrants in this country and that the Montclair Police Department likewise failed on this same issue by allowing the motorist to leave the scene of the accident.
3. Predicting the motorist would cause similar accidents in other cities, he asked "Where does the City of Montclair stand?" and "Where do you hold your head?"

Mayor Eaton thanked **Mr. Herrera** for his comments.

- C. **Ms. Robin Hridston, The Minuteman Project, Inc.**, commented on the Kingsley Street incident as follows:

1. She expressed her opinion that the reason "the public is so outraged" is that the victims were hit while in the crosswalk and the motorist, though his vehicle was impounded, was allowed to leave the scene of the accident.
2. She cited **California Vehicle Code** Section 14602.6(a)(1), which is entered into the record as follows:

§ 14602.6 Driving without a license, while privilege suspended or revoked, or while privilege is restricted and vehicle is not equipped with interlock device; arrest; seizure and impoundment of

vehicle; notice to owner; storage hearing; release of vehicle; liability of impounding agency

(a)(1) Whenever a peace officer determines that a person was driving a vehicle while his or her driving privilege was suspended or revoked, driving a vehicle while his or her driving privilege is restricted pursuant to Section 13352 or 23575 and the vehicle is not equipped with a functioning certified interlock device, or driving a vehicle without ever having been issued a driver's license, the peace officer may either immediately arrest that person and cause the removal and seizure of that vehicle or, if the vehicle is involved in a traffic collision, cause the removal and seizure of the vehicle without the necessity of arresting the person in accordance with Chapter 10 (commencing with Section 22650) of Division 11. A vehicle so impounded shall be impounded for 30 days.

3. She suggested the City hold a press conference on behalf of the victims to inform the public that unlicensed drivers will be not allowed to operate motor vehicles in the City of Montclair.
4. She further suggested parents of students attending **Ontario-Montclair School District** might consider having their children attend schools in cities where such incidents would not be allowed to happen.
5. She noted she and other **Minuteman Project** members would be meeting with **State Senator Bob Dutton** related to his drafting legislation clearly stating that unlicensed drivers involved in serious accidents that injure others shall be taken into custody, adding that such should have been the case in this incident.

Mayor Eaton thanked **Ms. Hridston** for her comments.

Council Member Paulitz stated that during Section XI, "Communications," Subsection D, "City Council/Agency Board," he would be requesting reports on the September 10, 2007 Kingsley Street incident and the City's policy, if any, on crimes committed by illegal immigrants. He noted being appalled when he read about the incident in the newspaper and discussed engineering improvements that could be made at the Kingsley Street/Lehigh Avenue intersection.

- D. **Mr. Daryl L. Vollrath**, 1950 South Oaks Avenue, Ontario, gave the Council and City Attorney Robbins copies of a September 14, 2007 *IVDB Letter to the Editor* and his written remarks that

he proceeded to read concerning the Kingsley Street incident. **Mr. Vollrath** essentially complained about the purported hazardous conditions present at the Kingsley Street/Lehigh Avenue intersection and offered suggestions to correct those conditions to ensure the safety of **Lehigh Elementary School** students and pedestrians using the crosswalk just west of the intersection.

- E. **Ms. Cheryl Burns, The Minuteman Project, Inc.**, gave the Council copies of excerpts from the **California Driver Handbook 2007** and the **California Department of Motor Vehicles (DMV)** website www.dmv.ca.gov and identified herself as a member of **The Minuteman Project**. She stated she will be commenting tonight on the Kingsley Street incident. She cited the following excerpt from the **California Driver Handbook** chapter entitled, "Laws and Rules of the Road," under the section entitled, "Maximum Speed Limit," which is entered into the record as follows:

Driving faster than the posted speed limit, or than is safe for current conditions, on any road is dangerous and illegal.

Ms. Burns cited the following excerpt from the www.dmv.ca.gov section entitled, "Driver's License and Identification (ID) card Information, under the subsection entitled, "How to apply for a driver's license if you are over 18," which is entered into the record as follows:

If you take a job here or become a resident, you must get a California driver's license within 10 days.

Ms. Burns advised that there are ten steps to follow to obtain a California driver's license and that California does not recognize international driving permits. She noted one's driver's license could be suspended for failure to pay child support and that a negligent operator has to pay a license reissue fee to **DMV** and fines to the court, file proof of financial responsibility, and complete a negligent operator probationary period without incurring a traffic violation before his/her driving privileges are reinstated. She stated that **Mr. Alonzo Garcia** "should have been arrested" for driving without a license, being uninsured, and for striking the two pedestrians in the school crosswalk. She noted one of the individuals injured in the accident was also an illegal immigrant.

Ms. Burns asked if the Council is concerned about the City's being sued for allowing **Mr. Garcia** to continue to drive without a license. As the Council took oaths when elected to uphold the **Constitu-**

tions of the United States and California, she advised that **California Penal Code** Section 834(b) and (c) indicate there is a responsibility by every law enforcement agency in California to fully cooperate with the **U.S. Citizenship and Immigration Services** and **U.S. Immigration and Customs Enforcement (ICE)**.

Ms. Burns stated that "illegal aliens have human rights. They do not have American citizenship, they do not have civil rights, and they certainly don't have the right to live in lawlessness within our country of laws."

- F. **Mr. Gerry Nance**, 2306 East Commonwealth, Fullerton, identified himself as a member of **The Minuteman Project, Inc.**, and commented as follows:
1. Concerning the Kingsley Street incident, he asked how **Mr. Garcia** was determined to be an illegal immigrant.
 2. He emphasized the need for a traffic signal at the Kingsley Street/Lehigh Avenue intersection.
 3. He cited **U.S. Constitution** Article 4, Section 4, concerning the federal government's protection of each of the states against invasion. He further cited Amendment 14 of the **Constitution** that provides for citizenship rights and for equal protection of the laws.
 4. He generally spoke on the issues of school attendance and the current water shortage.

City Manager McDougal expressed his appreciation for the speakers' sharing their views with the Council and public. He advised that some of the speakers have met with Police Captain Keith Jones on the Kingsley Street incident and that staff has responded to all emails on this subject, noting some of the correspondents expressed their gratitude for staff's doing so. He stated that staff would be happy to follow up on Council Member Paulitz's request in this matter.

VII. PUBLIC HEARINGS - None

VIII. CONSENT CALENDAR

Mayor Eaton requested that item No. B-7 be removed from the Consent Calendar for comment.

Moved by Council Member/Director Paulitz, seconded by Council Member/Director Raft, and carried unanimously to approve the following Consent Items as presented:

A. Approval of Minutes

1. Approval of Regular Joint Council/Agency/Montclair Housing Corporation/Montclair Financing Authority Meeting of August 20, 2007

The City Council and Redevelopment Agency/Montclair Housing Corporation/Montclair Financing Authority Boards approved the minutes of the Regular Joint City Council/Redevelopment Agency Board/Montclair Housing Corporation Board/Montclair Financing Authority Board meeting of August 20, 2007.

2. Approval of Regular Joint Council/Agency/Montclair Housing Corporation Meeting of September 4, 2007

The City Council and Redevelopment Agency/Montclair Housing Corporation Boards approved the minutes of the Regular Joint City Council/Redevelopment Agency Board/Montclair Housing Corporation Board meeting of September 4, 2007.

B. Administrative Reports

1. Receiving and Filing of City Treasurer's Report

The City Council received and filed the City Treasurer's Report for the month ending August 31, 2007.

2. Approval of City Warrant Register and Payroll Documentation

The City Council approved the City Warrant Register dated September 17, 2007, totaling \$1,223,980.17 and the Payroll Documentation dated July 22, 2007, amounting to \$651,178.78, with \$454,274.28 being the total cash disbursement.

3. 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 August 31, 2007.

4. Approval of Agency Warrant Register

The Redevelopment Agency Board approved the Redevelopment Agency Warrant Register dated 8.01.07-8.31.07 in the amounts of \$8,703.06 for Project I; \$223.43 for Project II; \$671,399.34 for Project III; \$67,187.91 for Project IV; and \$177,163.56 for Project V.

5. 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 August 31, 2007.

6. Approval of MHC Warrant Register

The MHC Board approved the MHC Warrant Register dated 8.01.07-8.31.07 in the amount of \$97,559.11.

C. Agreements

1. Approval of Agreement No. 07-93 With the California Department of Transportation Division of Rail Amending Agreement No. 04-46 for Funding the Ramona Avenue/Union Pacific Railroad Grade Separation Project

The City Council approved *Agreement No. 07-93* with the California Department of Transportation Division of Rail amending *Agreement No. 04-46* for funding the Ramona Avenue/Union Pacific Railroad Grade Separation Project.

D. Resolutions

1. Adoption of Resolution No. 07-2711 Approving the Relocation Plan for the Proposed Montclair Senior Housing Project and Making Certain Other Findings in Connection Therewith

The City Council adopted Resolution No. 07-2711 approving the Relocation Plan for the proposed Montclair Senior Housing Project and making certain other findings in connection therewith.

IX. PULLED CONSENT CALENDAR ITEMS

B. Administrative Reports

7. Acceptance of an Easement for Street and Related Purposes for the Monte Vista Avenue/Union Pacific Railroad Grade Separation Project

City Engineer Hudson noted this item pertains to securing a right-of-way easement required for the Ramona Avenue/Union Pacific Railroad Grade Separation Project. As indicated in the agenda report, he stated that one of the conditions of escrow

for the property owners' sale of his property to another party is that the right-of-way necessary for the Ramona Avenue/Union Pacific Railroad Grade Separation Project be dedicated by the current owners, accepted by the City, and recorded prior to close of escrow. He stated that along with minor agreed-upon changes to property identification, there is a negotiated reduction in the amount of right-of-way to be acquired, with an offer on the table of \$457,665 that is expected to be accepted. He noted this amount is a significant reduction in the \$550,000 compensation cap indicated in the agenda report.

Moved by Mayor Eaton, seconded by Council Member Paulitz, and carried unanimously that the City Council accept an easement located on the west side of Monte Vista Avenue north of Fire Station No. 2 (Assessor's Parcel No. 1012-111-04) for street right-of-way and related purposes for the Monte Vista Avenue/Union Pacific Railroad Grade Separation Project, as amended.

X. RESPONSE

A. Amending the Existing Noise Ordinance

Mayor Pro Tem Dutrey expressed his appreciation to staff for presenting this item. He noted the concern he brought up at the last meeting relates to an abundance of late night backyard parties taking place in the community involving loud live music or disc jockey-type entertainment. He asked that the Police Department report on this item.

Police Captain Keith Jones reported that a noise complaint to the Police Department is prioritized as a "Level 3" call and that Levels 1 and 2 calls are crimes in progress and take precedence over Level 3 calls. He cited **California Penal Code** Title 11, "Public Peace," Section 415, "Fighting: noise: offensive words," Subsection (2), which is entered into the record as follows:

§ 415. Fighting: noise: offensive words

Any of the following persons shall be punished by imprisonment in the county jail for a period of not more than 90 days, a fine of not more than four hundred dollars (\$400), or both such imprisonment and fine:

(2) Any person who maliciously and willfully disturbs another person by loud and unreasonable noise.

Captain Jones stated that in order for Police Officers to follow up on a noise complaint, a victim of a noise disturbance must be willing to register a formal complaint for an arrest to be made. He indicated that the Police Department's first objective is to gain voluntary compliance to noise violations by issuing *Disturbance of the Peace – First Response Warning* notices to the responsible parties, warning them that if Officers need to return, they'll be charged \$50 service fees. He reported that since 2005, the Police Department has collected service fees in eight separate incidents.

Captain Jones cited an excerpt from Ordinance No. 92-706-A Section 5-4.02, "Excessive Noise Unlawful," which is entered into the record as follows:

SECTION 5-4.02. EXCESSIVE NOISE UNLAWFUL.

...it shall also be unlawful for any person to willfully make or continue, or cause to be made or continued, any loud, unnecessary, or unusual noise which disturbs the peace or quiet of any neighborhood or which causes discomfort or annoyance to any reasonable person residing in the area...

Captain Jones reiterated that in order for Police Officers to follow up on a noise complaint, a victim of a noise disturbance must be willing to register a formal complaint for an arrest to be made. He cited an excerpt from Ordinance No. 92-706-A Section 5-4.11, "Noises Prohibited," which is entered into the record as follows:

SECTION 5-4.11. NOISES PROHIBITED.

The following acts are declared to be loud, disturbing and unnecessary noises in violation of this Chapter, but said enumeration shall not be deemed to be exclusive, namely:

(a) ...It shall be unlawful for any person to play, use, operate, or permit to be played, used or operated any radio, television set, musical instrument, phonograph, stereophonic equipment, jukebox, or other machine or device for producing, reproducing or amplifying sound when audible at a distance of fifty feet or more from the sound and/or when audible within any other residence or establishment.

Captain Jones advised that this section of the Noise Ordinance is cited most often in abating noise violations and that since January 2006, six citations for violations of the Noise Ordinance have been issued.

Council Member Raft noted she received a complaint from a resident about construction noise beginning at 6:30 a.m.

Captain Jones advised that the Noise Ordinance regulates maximum residential/nonresidential noise levels based on decibel measurement and time of day.

Council Member Raft received clarification on the Police Department's excessive noise enforcement measures and procedures. She asked if the Police Department receives any complaints about construction noise.

Captain Jones replied that Code Enforcement typically responds to construction noise complaints.

Mayor Pro Tem Dutrey described incidents involving noise violations that occurred during his Police Department ride-alongs. He stated that residents sometimes do not realize the effect the loud music at their parties is having on their neighbors. He noted in his discussion earlier with City Attorney Robbins she suggested some sections of the Noise Ordinance need to be updated. He expressed his opinion that the Council needs to revisit the Ordinance. He suggested this item be referred to the Code Enforcement Committee for further consideration and that the Fire and Police Departments and City Attorney attend the Code Enforcement Committee meeting on this issue. He indicated that the Council could consider the Committee's recommendations at a future meeting.

Moved by Mayor Pro Tem Dutrey, seconded by Mayor Eaton, and carried unanimously to refer this item to the November 19, 2007 Code Enforcement Committee meeting.

XI. COMMUNICATIONS

A. City Attorney/Agency Counsel - No comments

B. City Manager/Executive Director

1. City Manager/Executive Director McDougal thanked attending **Montclair High School (MHS)** students for observing the City's policy on decorum at public meetings.

C. Mayor/Chairman

1. Mayor/Chairman Eaton commented as follows:
 - (a) He noted his attendance at recent **Metrolink** and **Omni-trans** committee meetings.
 - (b) He noted he enjoyed attending "Montclair Day at the L.A. County Fair" last Wednesday, which featured a presentation to recognize Montclair's two Community Heroes.

D. City Council/Agency Board

1. Council Member/Director Paulitz commented as follows:
 - (a) He requested reports on the September 10, 2007, Kingsley Street incident and on the City's policy, if any, on crimes committed by illegal immigrants.
 - (b) Concerning a shooting fatality that occurred on August 23, 2007, he pointed out that it was the first time in about thirty years he was not notified of the incident prior to reading about it in the City Manager's Weekly Report.
 - (c) He asked for clarification on **MVWD's** new well on the west side of Monte Vista Avenue north of the **Metrolink** railroad tracks that was drilled on a portion of property purchased from the Redevelopment Agency.

Director of Community Development Clark advised that **MVWD** is preparing to put in the pump and activate the well and has agreed to the Precise Plan of Design for the site. He noted staff has given **MVWD** some suggestions on a landscape plan pursuant to the North Montclair Downtown Specific Plan.

2. Council Member/Director Raft concurred with Council Member Paulitz that the Council be provided with the full details of the Kingsley Street accident and the City's policy on crimes committed by illegal immigrants.
3. Mayor Pro Tem/Vice Chairman Dutrey commented as follows:
 - (a) He concurred with Council Members/Directors Paulitz and Raft on the need for a report to Council on the Kingsley Street accident and the City's policy on crimes committed by illegal immigrants.

- (b) He recognized the Detectives who last Tuesday arrested the murder suspect involved in the August 23, 2007 shooting.
- (c) He noted he enjoyed attending the "Montclair Day at the L.A. County Fair" Community Hero presentation in recognition of Montclair's two Community Heroes, **Mr. Kenneth Jones** for his contributions as an **OPARC** employee and **Ms. Thailin Gavilanes** for her volunteer work at the Montclair Medical Clinic.
- (d) He noted he is looking forward to **General Growth Properties'** update on the **Montclair Plaza** remodel at the Council/Agency adjourned joint meeting in two weeks.

E. Committee Meeting Minutes

1. Minutes of Personnel Committee Meeting of September 4, 2007

The City Council received and filed the Personnel Committee meeting minutes of September 4, 2007, for informational purposes.

XII. COUNCIL/AGENCY WORKSHOP

A. Update on Montclair Plaza Remodel by General Growth Properties Vice President of Development Ron Malnar

Moved by Mayor Pro Tem/Vice Chairman Dutrey, seconded by Council Member/Director Paulitz, and carried unanimously to continue this item to an adjourned joint meeting on Monday, October 1, 2007, at 5:45 p.m. in the City Council Chambers.

Mayor Eaton commented as follows:

- ✓ He told tonight's speakers that a full report on the Kingsley Street accident will be forthcoming in October. He thanked all audience members present at tonight's meeting and stated, "I understand your concern, and we'll be looking into it."
- ✓ He told attending **MHS** students to present their attendance forms to any Council Member or staff person for signature once the meeting is adjourned.

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

At 8:30 p.m., Mayor/Chairman Eaton adjourned the City Council and Redevelopment Agency Board of Directors to Monday, October 1, 2007, at 5:45 p.m. in the City Council Chambers.

At 8:30 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
Transcribing Secretary