

**MINUTES OF THE REGULAR JOINT MEETING OF
THE MONTCLAIR CITY COUNCIL AND REDEVEL-
OPMENT AGENCY AND MONTCLAIR HOUSING
CORPORATION BOARDS HELD ON TUESDAY,
FEBRUARY 17, 2009, AT 7:01 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 7:01 p.m. and asked that cell phones, pagers, and other electronic devices be silenced 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

Mayor Pro Tem/Vice Chairman Dutrey 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; City Manager/Executive Director McDougal; Deputy City Manager/Director of Administrative Services Starr; Director of Redevelopment/Public Works Staats; Director of Community Development/Agency Planner Lustro; City/Agency Engineer Hudson; City Attorney/Agency Counsel Robbins; City Clerk/Agency Secretary Jackson

V. PRESENTATIONS - None

VI. PUBLIC COMMENT - None

VII. PUBLIC HEARINGS

A. Projects and Prioritization of Funding for the Fiscal Year 2009-10 Community Development Block Grant Program

Mayor Eaton declared it the time and place set for public hearing to consider projects and prioritization of funding for the Fiscal

Year 2009-10 Community Development Block Grant Program and invited comments from the public.

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 Council Member Ruh and seconded by Council Member Raft that the City Council approve the following projects and prioritization of funding for the Fiscal Year 2009-10 Community Development Block Grant Program:

Disabled-accessible ramps in the area bounded by Central and Fremont Avenues and Bandera and Kingsley Streets	\$ 20,000
Alley reconstruction between Mills and Pradera Avenues, north of Evert Street	117,452
Sidewalk construction and disabled-accessible ramps on Vernon Avenue between Holt Boulevard and Kingsley Street	72,000
Code Enforcement	40,000
Graffiti Abatement	35,870*
Montclair Golden Express	<u>8,150*</u>
TOTAL	<u>\$293,472</u>

*Total public services projects: \$44,020

Motion carried unanimously as follows:

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

B. First Reading – Adoption of Ordinance No. 09-907 Amending Chapter 7.02 and Adding Chapter 7.06 to Title 7 of the Montclair Municipal Code Adopting an Illegal Drugs, Violent Crime, and Gang-Related Crime Eviction Program

Chairman Eaton declared it the time and place set for public hearing to consider adoption of Ordinance No. 09-907 amending Chapter 7.02 and adding Chapter 7.06 to Title 7 of the Montclair Municipal Code adopting an Illegal Drugs, Violent Crime, and Gang-Related Crime Eviction Program.

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.

Council Member Ruh inquired as follows:

1. Does proposed Ordinance No. 09-907 meet the very strict state and federal guidelines regulating tenant eviction?

City Prosecutor **James C. Eckart**, Dapeer, Rosenblit & Litvak, LLP, advised that the purpose of the proposed Ordinance is to give property owners the ability to evict tenants committing violent crimes, gang-related crimes, and crimes related to illegal drugs in an effort to rid their properties of nuisances that destabilize neighborhoods. He indicated that the City would expect property owners to comply with the Ordinance, if adopted, as well as with state and federal mandates in pursuing evictions.

2. In these difficult economic times, would owners have the right to sue the City for depriving them of income related to tenant evictions under the proposed Ordinance?

City Prosecutor Eckart stated that, the proposed Ordinance notwithstanding, the City could take action against landlords for allowing criminal activity to occur/continue at their properties. Proposed Ordinance No. 09-907 would require landlords to evict tenants committing violent crimes, he added, noting the Police Department would notify landlords of such criminal activity occurring at their properties. He stated that property owners in those cases would need to take action to evict the problem tenants or face further Police action to require landlords to comply.

3. Would the Police assist landlords in the eviction process if necessary?

City Prosecutor Eckart advised that there are circumstances where local law enforcement assists in evictions, such as in cases involving court-ordered "lockouts," so those types of services would continue to be provided.

4. Would only the criminal element be removed from the rental unit and not the entire family?

City Prosecutor Eckart clarified that proposed Ordinance No. 09-907 provides for total vacation of the unit because of the severity of the subject crimes. From a practical standpoint, the City does have the ability to allow the rest of

the family to remain in a rental unit by requiring the leaseholder to file lease modifications with the landlord prohibiting the convicted felon from reoccupying the unit in question.

Council Member Ruh spoke on behalf of innocent families being displaced because of the criminal activities of an errant child or grandchild, noting such behavior on the part of one individual does not make the entire family complicit. He expressed his opinion that the City should be sensitive in such cases.

Mayor Pro Tem Dutrey advised that the reason behind proposed Ordinance No. 09-907 was a street gang-related homicide that occurred on February 3, 2008, in the alley behind Bandera Street involving long-term residents whom the landlord had been unsuccessful in evicting. He stated that the severity of the crime compelled the Code Enforcement Committee to develop the proposed Ordinance as a means of effectively causing the eviction of troublesome tenants who are involved in similarly serious criminal activities. He emphasized that the Police Department would assist landlords to rid their properties of drug dealers and street gang members and the threats that they impose to the property owners, the neighborhoods, and the community at large.

Moved by Mayor Pro Tem Dutrey and seconded by Council Member Paulitz that Ordinance No. 09-907, entitled, "**An Ordinance of the City Council of the City of Montclair Amending Chapter 7.02 and Adding Chapter 7.06 to Title 7 of the Montclair Municipal Code Adopting an Illegal Drugs, Violent Crime, and Gang-Related Crime Eviction Program,**" be read by number and title only, further reading be waived, and this be declared its first reading.

The City Council unanimously waived the reading of the Ordinance.

First Reading of Ordinance No. 09-907 was unanimously adopted by the following vote:

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

VIII. CONSENT CALENDAR

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 February 2, 2009

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 February 2, 2009.

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 January 31, 2009.

2. Approval of City Warrant Register and Payroll Documentation

The City Council approved the City Warrant Register dated February 17, 2009, totaling \$3,116,668.95 and the Payroll Documentation dated December 21, 2008, amounting to \$762,772.98, with \$544,837.34 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 January 31, 2009.

4. Approval of Agency Warrant Register

The Redevelopment Agency Board approved the Redevelopment Agency Warrant Register dated 1.01.09-1.31.09 in the amounts of \$9,173.23 for Project I; \$682.25 for Project II; \$475,756.51 for Project III; \$87,315.94 for Project IV; \$151,564.55 for Project V, and \$68,750.93 for the Mission Boulevard Joint Redevelopment Project.

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 January 31, 2009.

6. Approval of MHC Warrant Register

The MHC Board approved the MHC Warrant Register dated 1.01.09-1.31.09 in the amount of \$96,757.24.

7. Setting a Public Hearing to Consider Approval of Tentative Tract Map No. 18728 for a Single-Lot Residential Subdivision for Condominium Purposes on .49 Acre on the South Side of Bandera Street, West of Central Avenue

The City Council set a public hearing for Monday, March 2, 2009, at 7:00 p.m. in the City Council Chambers to consider approval of Tentative Tract Map No. 18728 for a single-lot residential subdivision for condominium purposes on .49 acre on the south side of Bandera Street, west of Central Avenue.

8. Authorization to Transfer \$39,000 From the Contingency Account to Purchase Self-Contained Breathing Apparatus Replacement Components From Mine Safety Appliances Company

The City Council authorized a \$39,000 transfer from the Contingency Account to Account No. 1001-4535-52050-400 to purchase self-contained breathing apparatus replacement components from Mine Safety Appliances Company.

9. Approval of Parcel Map No. 19104 Located on the South Side of Brooks Street, East of Monte Vista Avenue

The City Council approved Parcel Map No. 19104 to subdivide into two separate parcels property located at 5113-5123 Brooks Street on the south side of Brooks Street, east of Monte Vista Avenue.

10. Approval of the Filing of a *Notice of Completion*, Reduction of *Faithful Performance Bond* to 10 Percent, and Retention of *Payment Bond* for Six Months Related to Completion of the Montclair Police Department Facility Bid Package No. 1-Site Demolition, Erosion Control, and Earthwork

Release of Retention 30 Days After Recordation of *Notice of Completion*

The City Council approved the following related to completion of the Montclair Police Department Facility Bid Package No. 1-Site Demolition, Erosion Control, and Earthwork:

- (a) Filing of a *Notice of Completion* with the Office of the San Bernardino County Recorder.
- (b) Reduction of the *Faithful Performance Bond* to 10 percent.
- (c) Retention of the *Payment Bond* for six months.

(d) Release of retention 30 days after recordation of *Notice of Completion*.

11. Approval of the Filing of a *Notice of Completion*, Reduction of *Faithful Performance Bond* to 10 Percent, and Retention of *Payment Bond* for Six Months Related to Completion of the Montclair Police Department Facility Bid Package No. 14-Flooring and Base

Release of Retention 30 Days After Recordation of *Notice of Completion*

The City Council approved the following related to completion of the Montclair Police Department Facility Bid Package No. 14-Flooring and Base:

- (a) Filing of a *Notice of Completion* with the Office of the San Bernardino County Recorder.
- (b) Reduction of the *Faithful Performance Bond* to 10 percent.
- (c) Retention of the *Payment Bond* for six months.
- (d) Release of retention 30 days after recordation of *Notice of Completion*.

12. "No Action" on Alcoholic Beverage Permit Application – Olive Garden Italian Restaurant

The City Council took "No action" on the "On-Sale General" license application of Ms. E. Charlene Abney, Vice President, and Ms. Colleen M. Hunter, Assistant Secretary, N and D Restaurants, Inc., for Olive Garden Italian Restaurant, 9251 Monte Vista Avenue, Montclair, California.

13. "No Action" on Alcoholic Beverage Permit Application – Red Lobster

The City Council took "No action" on the "On-Sale General" license application of Ms. E. Charlene Abney, Vice President, and Ms. Colleen M. Hunter, Assistant Secretary, N and D Restaurants, Inc., for Red Lobster, 9345 Monte Vista Avenue, Montclair, California.

C. Agreements

1. Approval of *Agreement No. 08-113-I-84*, an Irrevocable Annexation Agreement With Bitetti Family Limited Partnership for 4030 Grand Avenue

The City Council approved *Agreement No. 08-113-I-84*, an *Irrevocable Annexation Agreement* with Bitetti Family Limited Partnership for connection of the business located at 4030 Grand Avenue to the Inland Empire Utilities Agency sewer system.

2. Approval of Agreement No. 09-13 With L. D. King, Inc., for \$23,000 for Engineering and Design Services for the Widening of Fremont Avenue Between Phillips Boulevard and Tract No. 17422

Authorization for City Manager to Amend Agreement Scope of Services as May Be Necessary for a Total Increase Not to Exceed \$5,000

Authorization for a \$25,000 Appropriation From the Gas Tax Fund to Pay for the Contract as Well as Any Additional Design Services that Might Be Required

The City Council took the following actions:

- (a) Approved *Agreement No. 09-13* with L. D. King, Inc., for engineering and design services for the widening of Fremont Avenue between Phillips Boulevard and Tract No. 17422.
 - (b) Authorized the City Manager to amend the Agreement Scope of Services as may be necessary for a total increase not to exceed \$5,000.
 - (c) Authorized a \$25,000 appropriation from the Gas Tax Fund to pay the contract fee as well as any additional design services that might be required.
- 3. Approval of Agreement No. 09-16 Amending Agreement No. 08-02 With the Ontario-Montclair School District to Provide After-School Programs**

The City Council approved *Agreement No. 09-16* amending *Agreement No. 08-02* with the Ontario-Montclair School District to provide after-school programs.

D. Resolutions

1. Adoption of Resolution No. 09-2785 Authorizing Mayor Eaton to Sign the Right-of-Way Certification for the Mission Boulevard Corridor Improvement Project

The City Council adopted Resolution No. 09-2785 authorizing Mayor Eaton to sign the right-of-way certification for the Mission Boulevard Corridor Improvement Project.

2. **Adoption of Resolution No. 09-2786 Recognizing the Green Valley Initiative and Endorsing Participation as a Green Valley Jurisdiction**

The City Council adopted Resolution No. 09-2786 recognizing the Green Valley Initiative and endorsing participation as a Green Valley Jurisdiction.

IX. **PULLED CONSENT CALENDAR ITEMS - None**

X. **RESPONSE - None**

XI. **COMMUNICATIONS**

A. **City Attorney/Agency Counsel**

1. **Closed Session Pursuant to Section 54956.9 of the Government Code Regarding Pending Litigation**

Gurolla v. City of Montclair

City Attorney Robbins requested an emergency Closed Session on the above matter pursuant to Government Code Section 54956.9 because of the immediate nature of the case, advising that the plaintiff, **Mr. Gurolla**, made an offer last Friday to settle the matter prior to an impending trial. She stated that the Council could find that this item came to the Council's attention after the agenda was posted and vote to add a Closed Session to the agenda at this time by means of a two-thirds majority vote.

Moved by Council Member Paulitz, seconded by Council Member Raft, and carried unanimously that the Council finds that the City Attorney received an offer from the plaintiff to settle the *Gurolla v. City of Montclair* case after the agenda for tonight's meeting was posted and votes to add a Closed Session to the agenda to discuss this matter this evening.

B. **City Manager/Executive Director - No comments**

C. **Mayor/Chairman**

1. Mayor/Chairman Eaton noted his attendance at recent regular **San Bernardino Associated Governments, Metrolink, and Omnitrans** Board and Committee meetings.

D. **City Council/Agency Board**

1. Mayor Pro Tem/Vice Chairman Dutrey commented as follows:

- (a) He noted he will be unable attend the March 2, 2009 regular joint meeting.
- (b) He recognized the three Montclair Police Officers who responded to the double homicide two weeks ago at the residence on Moreno Street. He noted he was relieved to learn that two of the Officers suffered only minor injuries during the incident.
- (c) He noted the City Council reviewed the status of the budget at midyear earlier this evening and, because of revenue shortages, approved a number of personnel cost reductions to reduce the current fiscal year budget by 10 percent. He noted that though a small city like Montclair as well as other cities and counties in California are able to balance their budgets without actually raising revenue, that is not something the state can accomplish without both spending reductions and revenue increases. He noted the seriousness of the state's dysfunctional finances that will take much reform to improve government efficiency.

2. Council Member/Director Ruh commented as follows:

- (a) Because of the continuing downturn in the economy, he suggested it might be beneficial to the public for the City to consider one-year extensions for development plans, Conditional Use Permits, and variances that are set to expire.

At 7:26 p.m., City Manager/Executive Director McDougal left the dais.*

- (b) He noted the majority of the Legislature is standing firm on spending reductions as opposed to revenue increases to close California's \$42 billion budget deficit through Fiscal Year 2010. He reported the following proposed budget plan: \$15.1 billion in state spending reductions, \$14.4 billion in temporary tax increases, and \$11.4 billion in borrowing. He stated that elimination of all state employees would trim \$24 billion from the budget but would result in the release of 160,000 convicted felons from prison. He added that to eliminate the remaining budget deficit balance of \$16 billion, all state services, including health care; social services; grants for the needy, aged, blind, and disabled; road construction projects; and state institutions would have to cease. He emphasized that much of the overspending results from state ballot initiatives that become mandates for various projects approved by the voters. He advised that voters will be

asked to consider a number of ballot initiatives related to the budget at a special election in May 2009 including approval of a spending cap, approval to shift money from accounts for mental health and child development programs to pay for low-income child-development programs and other children's programs for five years, and approval of a plan to sell bonds based on future lottery proceeds.

Council Member Ruh suggested that those with better ideas on how to balance the state budget should contact their state representatives.

- (c) He noted his attendance at former Police Chief Thompson's retirement celebration on February 5, 2009, at which **Mr. Thompson** was recognized with certificates from **Fourth District Supervisor Ovitt, Senator McLeod, Assembly Member Torres,** and **Representative Dreier** for his fine work in the community.
- (d) He noted his attendance earlier in the evening of February 5, 2009, at **Assembly Member Torres's** Open House held at her district office in Ontario. He noted she was very well received at the event, though there were some derogatory comments made about the office sign containing former **Assembly Member Soto's** name. He expressed his opinion that **Assembly Member Torres** is being fiscally prudent by not spending the money to change it until the state budget is approved.

*Mayor/Chairman Eaton advised that City Manager/Executive Director McDougal had to attend a Montclair Youth Basketball League meeting.

E. Committee Meeting Minutes

1. Minutes of Personnel Committee Meeting of February 2, 2009

The City Council received and filed the Personnel Committee meeting minutes of February 2, 2009, for informational purposes.

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

At 7:34 p.m., Chairman Eaton adjourned the Redevelopment Agency and Montclair Housing Corporation Boards of Directors.

At 7:34 p.m., the City Council went into Closed Session regarding pending litigation pursuant to Government Code Section 54956.9.

XIII. CLOSED SESSION ANNOUNCEMENTS

At 7:47 p.m., the City Council returned from Closed Session. Mayor Eaton announced the City Council met in Closed Session regarding pending litigation, information was received and direction given to staff, and no further announcements on this matter would be made at this time.

XIV. ADJOURNMENT OF CITY COUNCIL

At 7:48 p.m., Mayor Eaton adjourned the City Council.

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

Yvonne L. Smith
Transcribing Secretary