

**MINUTES OF THE REGULAR JOINT MEETING OF
THE MONTCLAIR CITY COUNCIL AND REDEVEL-
OPMENT AGENCY AND MONTCLAIR HOUSING
CORPORATION BOARDS HELD ON TUESDAY,
JANUARY 20, 2009, AT 7:00 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 7:00 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

Mayor/Chairman Eaton gave the Invocation.

III. PLEDGE OF ALLEGIANCE

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

IV. ROLL CALL

Deputy City Clerk Smith noted for the record that 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; Acting City Manager/Executive Director Starr; Director of Redevelopment/Public Works Staats; Director of Community Development/Agency Planner Lustro; City/Agency Engineer Hudson; City Attorney/Agency Counsel Robbins; Deputy City Clerk Smith

Absent: Council Member/Director Ruh (excused); City Manager/Executive Director McDougal (excused)

V. PRESENTATIONS - None

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. Jennifer Nessler**, Field Representative, **Assembly Member Torres's District Office**, 822 North Euclid Avenue, Suite A, Ontario, invited the City Council and public to **Assembly Member Torres's** open house on Thursday, February 5, 2009, from 5:00 to 7:00 p.m. at the 61st Assembly District Office, 822 North Euclid Avenue, Suite A, Ontario, during which **Assembly Member Torres** would field questions and address concerns about legislative issues.

B. **Mr. Keith A. Ealy**, 10741 Monte Vista Avenue, Montclair, commented as follows:

1. He advised that his counsel notified him following the January 5, 2009 regular joint meeting of being contacted by **Mr. Mark A. Easter, Best Best & Krieger LLP**, concerning conducting further negotiations to settle the disposition of **Mr. Ealy's** properties; though, unfortunately, **Mr. Easter** has not been in contact since that time regarding meeting to further negotiate the City's acquisition. He stated that his counsel received email notification from **Mr. Easter** last Friday that the City Council would be meeting in Closed Session this evening concerning this matter.
2. He complained that he was not given an opportunity at the last meeting to comment during the public hearing involving his properties after the hearing had been closed.

Mayor Eaton advised **Mr. Ealy** that public comments are not allowed once a public hearing is closed.

Mr. Ealy noted he has not been contacted by the City Council or staff in the year and a half since the City first offered to purchase his properties.

Council Member Paulitz stated that it is not proper for the City Council to discuss City business unless in Open Session at a regular meeting of the City Council at which the item is agendaized. He noted he himself does not meet with anyone privately to discuss such matters.

Mr. Ealy stated that he had been willing to answer any questions the Council might have had and to further discuss the matter even after the public hearing had closed.

Mayor Eaton told **Mr. Ealy** the Council had no questions for him after the hearing closed.

Mr. Ealy noted he is willing to provide the Council with information on this matter and has always been amenable to further discussing and negotiating the matter with the City.

Mayor Eaton deferred to City Engineer Hudson to clarify the reason the City has not communicated with **Mr. Ealy**.

City Engineer Hudson clarified that staff received correspondence from **Mr. Ealy's** counsel dated July 31, 2007, advising there was to be no further direct communication with **Mr. Ealy** on this matter and that staff was only to communicate through **Mr. Ealy's** counsel. He advised that the City's counsel has been in contact with **Mr. Ealy's** counsel on several occasions and as recently as last week. He noted staff had advised the Council at the last meeting that it would be recommending during a Closed Session this evening that additional authority be given to increase the amount of just compensation for acquisition of the subject properties.

Mr. Ealy expressed his disappointment that his counsel was not advised of tonight's Closed Session matter a week and a half ago, claiming that he has been under a tremendous amount of stress for the last two weeks because of this matter. He reiterated that he would be happy to provide the Council with additional information to assist in furthering the negotiations in this matter.

VII. PUBLIC HEARINGS

A. **Adoption of Resolution No. 09-2781 Authorizing Recovery of Abatement Costs Incurred by the City Related to Property Owned by Mr. Juan Castro and NDEX West, LLC, and Located at 4410 El Morado Street, Montclair, California**

Mayor Eaton declared it the time and place set for public hearing to consider adoption of Resolution No. 09-2781 authorizing recovery of abatement costs incurred by the City related to property owned by Mr. Juan Castro and NDEX West, LLC, and located at 4410 El Morado Street, Montclair, California, 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 Mayor Pro Tem Dutrey and seconded by Council Member Raft that the following actions be taken:

1. That Resolution No. 09-2781, entitled, "**A Resolution of the City Council of the City of Montclair Declaring the Findings of the City Council Related to the Cost of**

Abatement Report for Property Located at 4410 El Morado Street, Montclair, California," be read by number and title only, further reading be waived, and it be declared adopted.

2. That the City Council determine that the \$547.71 reimbursement amount be paid to the City of Montclair within ten calendar days of adoption of Resolution No. 09-2781.

The City Council waived the reading of the Resolution.

Resolution No. 09-2781 was adopted and the Council determined that the \$547.71 reimbursement amount be paid to the City of Montclair within ten calendar days of adoption of Resolution No. 09-2781 by the following vote:

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

B. Adoption of Resolution No. 09-2783 Authorizing Recovery of Abatement Costs Incurred by the City Related to Property Owned by Mr. Juan Castro and NDEX West, LLC, and Located at 4410 El Morado Street, Montclair, California

Mayor Eaton declared it the time and place set for public hearing to consider adoption of Resolution No. 09-2783 authorizing recovery of abatement costs incurred by the City related to property owned by Mr. Juan Castro and NDEX West, LLC, and located at 4410 El Morado Street, Montclair, California, 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 Paulitz and seconded by Council Member Raft that the following actions be taken:

1. That Resolution No. 09-2783, entitled, "**A Resolution of the City Council of the City of Montclair Declaring the Findings of the City Council Related to the Cost of Abatement Report for Property Located at 4410 El Morado Street, Montclair, California,"** be read by number and title only, further reading be waived, and it be declared adopted.
2. That the City Council determine that the \$687.71 reimbursement amount be paid to the City of Montclair within ten calendar days of adoption of Resolution No. 09-2783.

The City Council waived the reading of the Resolution.

Resolution No. 09-2783 was adopted and the Council determined that the \$687.71 reimbursement amount be paid to the City of Montclair within ten calendar days of adoption of Resolution No. 09-2783 by the following vote:

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

VIII. CONSENT CALENDAR

Council Member Paulitz requested that Item B-7 be removed from the Consent Calendar for comment.

Mayor Pro Tem Dutrey requested that Item C-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 to approve the following Consent Items as presented:

A. Approval of Minutes

1. Minutes of Regular Joint Council/Agency/Montclair Housing Corporation Meeting of December 15, 2008

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 December 15, 2008.

2. Minutes of Regular Joint Council/Agency/Montclair Housing Corporation Meeting of January 5, 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 January 5, 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 December 31, 2008.

2. Approval of City Warrant Register and Payroll Documentations

The City Council approved the City Warrant Register dated January 20, 2009, totaling \$2,288,112.53 and the Payroll

Documentations dated October 26, 2008, amounting to \$653,630.69, with \$491,079.61 being the total cash disbursement and November 23, 2008, amounting to \$664,307.99, with \$492,714.57 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 December 31, 2008.

4. Approval of Agency Warrant Register

The Redevelopment Agency Board approved the Redevelopment Agency Warrant Register dated 12.01.08-12.31.08 in the amounts of \$2,877.90 for Project I; \$57.51 for Project II; \$36,849.02 for Project III; \$2,186.73 for Project IV; \$38,474.82 for Project V, and \$567.50 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 December 31, 2008.

6. Approval of MHC Warrant Register

The MHC Board approved the MHC Warrant Register dated 12.01.08-12.31.08 in the amount of \$36,056.64.

8. Approval of Fiscal Year 2008-09 Recommendations for the Schedule of Community Benefits Funding

The City Council approved the following recommendations for Fiscal Year 2008-09 Community Benefits funding:

FISCAL YEAR 2008-09 COMMUNITY BENEFITS ASSISTANCE PROGRAM FUNDING SCHEDULE

<i>Program</i>	<i>FY 2008-09 Recommendations</i>
Boy Scouts of America	\$ 600
Community Senior Services	1,500
House of Ruth	1,600
Inland Hospice Association	1,000
John Wooton Scholarship Foundation	1,000
Montclair Community Collaborative	1,000

Montclair Meals on Wheels	1,500
Pomona Valley Workshop	1,500
Project Sister	1,100
Visiting Nurse Association	<u>1,700</u>
TOTAL	<u>\$12,500</u>

9. 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. 4-AC Paving and Restriping Project

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. 4-AC Paving and Restriping Project:

- (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*.

C. Agreements

1. Approval of *Agreement No. 09-02* With Mt. San Antonio Community College District to Provide a Comprehensive Fitness Program for the Fire Department

The City Council approved *Agreement No. 09-02* with Mt. San Antonio Community College District to provide a comprehensive fitness program for the Fire Department.

2. Approval of *Agreement No. 09-03* Amending *Agreement No. 07-125* with L.D. King, Inc., for Construction Engineering and Support Services for the Ramona Avenue/Union Pacific Railroad Grade Separation Project

The City Council approved *Agreement No. 09-03* with L.D. King, Inc., for construction engineering and support services for the Ramona Avenue/Union Pacific Railroad Grade Separation Project.

4. **Approval of Agreement No. 09-05, a Purchase and Sale Agreement by and Between the City of Montclair Redevelopment Agency and Mr. and Mrs. Antonio Gutierrez for the Single-Family Residence Located at 4113 Kingsley Street**

Authorization for a \$338,000 Appropriation From the Low-to Moderate-Income Housing Fund for Acquisition and Closing Costs

The Redevelopment Agency Board took the following actions:

- (a) Approved *Agreement No. 09-05, a Purchase and Sale Agreement* by and between the City of Montclair Redevelopment Agency and Mr. and Mrs. Antonio Gutierrez for the single-family residence located at 4113 Kingsley Street.
 - (b) Authorized a \$338,000 appropriation from the Low- to Moderate-Income Housing Fund for acquisition and closing costs.
5. **Approval of Agreement No. 09-07 With Cost Recovery Systems, Inc., for State-Mandated Reimbursement Claiming Services**

The City Council approved *Agreement No. 09-07* with Cost Recovery Systems, Inc., for state-mandated reimbursement claiming services.

D. Resolutions - None

IX. PULLED CONSENT CALENDAR ITEMS

B. Administrative Reports

7. **Approval of Formation of the Montclair Community Foundation, a California Nonprofit Public-Benefit Corporation and the Proposed Bylaws**

Council Member Paulitz noted the City has already established the Montclair Community Collaborative (MCC), so what would be the purpose of establishing another nonprofit City entity.

Acting City Manager Starr advised that the proposed Montclair Community Foundation (MCF) would be established as a Section 501(c)(3) nonprofit for channeling, raising, and administering private capital, which the MCC is unable to do, for programs administered by the Human Services Division. By capturing donations from charitable groups, the Human Services Division can diversify its programs and provide greater enhanced services, he added.

Council Member Paulitz asked for further clarification of the difference between the MCC and the proposed MCF.

Acting City Manager Starr noted the MCC is not currently operating as a charity under the amended Internal Revenue Code of 1986 Section 501(c)(3) with all the privileges afforded to nonprofit organizations. He advised that establishing the MCF with a Section 501(c)(3) status would enable the Human Services Division to expand and secure additional funding for different types of programs.

Council Member Paulitz asked if the MCF Board of Directors would be self-perpetuating and who would elect/appoint the members of the Board.

Acting City Manager Starr replied that the MCF Board of Directors is defined in the proposed Bylaws for the organization.

Assistant Director of Human Services Richter clarified that the City Council would serve as the MCF Board of Directors.

Council Member Paulitz thanked Assistant Director of Human Services Richter for the clarification.

Moved by Council Member Paulitz, seconded by Council Member Raft, and carried that the City Council approve the formation of the Montclair Community Foundation, a California nonprofit public-benefit corporation, and the bylaws for the new entity.

C. Agreements

3. **Approval of Agreement No. 09-04, the Second Amendment to Agreement No. 05-143, a Lease Agreement by and Between the City of Montclair Redevelopment Agency and Ontario Nissan, Inc., Regarding Property Located at 8752 Monte Vista Avenue**

Vice Chairman Dutrey requested that staff include in proposed *Agreement No. 09-04* that the suspension of the rent would remain in effect for the remainder of the five-year term of the *Lease Agreement*, at which time the Agency would negotiate with Ontario Nissan, Inc., for further suspension of the rent payments prior to exercising each of the three options to extend the term of the *Lease Agreement*.

Agency Attorney Robbins received clarification from Vice Chairman Dutrey concerning his proposed amendment and confirmed with Vice Chairman Dutrey that his proposal amendment would be subject to approval of the attorneys for both parties.

Acting Executive Director Starr clarified that proposed *Agreement No. 09-04* would be amended to require renegotiation of the suspension of the rent payments prior to automatic extension of each of the three options for five-year extensions provided, however, that sales for the dealership have not improved to the point of compliance with the formula set forth in the revision; i.e., sales tax generated reaches or exceeds 90 percent of the average quarterly generated for two consecutive quarters for Fiscal Years 2005 and 2006.

Moved by Vice Chairman Dutrey, seconded by Director Paulitz, and carried that the Redevelopment Agency Board approve *Agreement No. 09-04* (as amended), the *Second Amendment to Agreement No. 05-143*, a *Lease Agreement* by and between the City of Montclair Redevelopment Agency and Ontario Nissan, Inc., regarding property located at 8752 Monte Vista Avenue.

X. RESPONSE - None

XI. COMMUNICATIONS

A. City Attorney/Agency Counsel

1. Closed Session Pursuant to Section 54956.8 of the Government Code Regarding Real Property Negotiations

<i>Property</i>	
<i>Assessor's Parcel No.</i>	<i>Address</i>
1011-301-04	10751 Monte Vista Avenue, Montclair
1011-301-05	" " " "

Negotiating Parties: City of Montclair and Keith Allen Ealy

Negotiators: Director of Redevelopment/Public Works Staats and City Engineer Hudson

Under Negotiation: Recommendations Regarding Acquisition of Fee Title on Subject Properties in Conjunction With the Monte Vista Avenue/Union Pacific Grade Separation Project

2. Closed Session Pursuant to Section 54956.8 of the Government Code Regarding Real Property Negotiations

Property: 10307 Mills Avenue, Montclair, California

*Negotiating City of Montclair Redevelopment Agency,
Parties: Montclair Housing Partners, L.P., and Len's
Market*

*Negotiators: Director of Redevelopment/Public Works Staats,
Assistant Director of Redevelopment Caldwell,
Mr. Alfredo Izmajtovich, Vice President of
Acquisitions, National Community Renaissance
of California; and Mr. Chris Choe, Owner, Len's
Market*

*Under Recommendations Regarding Purchase Price of
Negotiation: Lease Interest*

City Attorney/Agency Counsel Robbins requested a Closed Session pursuant to Government Code Section 54956.8 regarding real property negotiations on the above two matters.

B. Acting City Manager/Executive Director

1. Acting City Manager/Executive Director Starr stated that it has been an exciting day in our nation's history, advising that we all join in sending **President Barack Obama** and the entire American nation our best wishes and good fortune over the next four years of the President's first term in office.

C. Mayor/Chairman

1. Mayor/Chairman Eaton commented as follows:
 - (a) He noted his attendance at recent regular **San Bernardino Associated Governments, Metrolink, and Omnitrans** Board and Committee meetings.
 - (b) He noted Mayor Pro Tem Dutrey and he worked with Code Enforcement Division on a C.A.U.T.I.O.N. cleanup last Saturday in the alleyway between the 4700 and 4800 blocks of San Bernardino and Harvard Streets and the 9600 block of Helena Avenue. He noted Council Member Raft stopped by during the day to pitch in and assist in the cleanup efforts. He stated that the group was very productive and successful in painting garage doors, trimming trees, removing weeds, and ridding the alleyways of trash and debris while having "a good time doing it."

D. City Council/Agency Board

1. Council Member/Director Paulitz asked when the Midyear Budget Review would be held.

Acting City Manager Starr replied that the Midyear Budget Review would be held at an adjourned meeting scheduled for Tuesday, February 17, 2009, at 5:45 p.m.

2. Council Member/Director Raft concurred with Acting City Manager Starr regarding the historical nature of **President Obama's** inauguration today. She stated that we all join in sending our blessings and prayers to **President Obama** and his family, expressing her hope "that everything goes well for him and his family" and that "he can help us all out."

Mayor Eaton noted he enjoyed watching the historical inauguration ceremony.

3. Mayor Pro Tem/Vice Chairman Dutrey commented as follows:
 - (a) He noted the significance of **President Obama's** inauguration today as the first African-American United States President being that his aunt, who is in her late 70s and resides in France, stayed up all night with his uncle to watch the ceremony. He noted this was probably the first U.S. Presidential inauguration they have ever watched, which exemplifies the significance of this country's leadership throughout the world. He stated that, obviously, we all wish our new President success in mitigating the current economic crisis.
 - (b) He asked that tonight's meeting be adjourned in memory of Montclair's first Postmaster **Mr. Anthony L. "Tony" Zangri**, who sadly passed away December 30, 2008. He noted **Mr. Zangri**, who participated in the senior lunch program and was a member of **Our Lady of Lourdes Catholic Church** in Montclair, was a "great man who will be sorely missed."
 - (c) He noted the C.A.U.T.I.O.N. cleanup was very successful because of Mayor Eaton's skill in operating the backhoe on Saturday.
 - (d) He spoke in support of the Council's action this evening to establish the Montclair Community Foundation, noting the success of similar foundations in other cities' including the **City of Upland**, which has several.
 - (e) He called for the immediate resignation of **San Bernardino County** Assessor **Bill Postmus**, who was arrested last week on suspicion of possession of methamphetamine and associated paraphernalia, on behalf of all the honest, hardworking county employees and taxpayers. Noting he endorsed **Mr. Postmus** during his campaign for office two years ago, thinking he would

reform the Assessor's office, Mayor Pro Tem Dutrey stated, "It would be a sad day if this County had to spend millions of dollars to investigate and impeach him to remove him from office." He added that "for an elected official to be addicted to methamphetamine, a very serious and dangerous drug, and obviously in this county, especially in the high desert, where there are a lot of methamphetamine labs, that's wrong. He doesn't have the responsibility to continue in office. He needs to take care of his personal life first before he might be eligible to continue as an elected official in the future."

Mayor Eaton, Council Member Raft, and Council Member Paulitz supported Mayor Pro Tem Dutrey in calling for the resignation of **Mr. Postmus**.

E. Committee Meeting Minutes

1. Minutes of Public Works Committee Meeting of November 20, 2008

The City Council received and filed the Public Works Committee meeting minutes of November 20, 2008, for informational purposes.

2. Minutes of Personnel Committee Meeting of January 5, 2009

The City Council received and filed the Personnel Committee meeting minutes of January 5, 2009, for informational purposes.

XII. ADJOURNMENT OF MONTCLAIR HOUSING CORPORATION BOARD OF DIRECTORS

At 7:25 p.m., Mayor/Chairman Eaton adjourned the Montclair Housing Corporation Board of Directors in memory of **Mr. Tony Zangri**, Montclair's first Postmaster.

At 7:25 p.m., the City Council and Redevelopment Agency Board went into Closed Session regarding real property negotiations pursuant to Government Code Section 54956.8.

XIII. CLOSED SESSION ANNOUNCEMENTS

At 7:58 p.m., the City Council returned from Closed Session. Mayor Eaton announced the City Council met in Closed Session regarding real property negotiations, information was received and direction given to staff, and no further announcements on this matter would be made at this time.

At 7:58 p.m., the Redevelopment Agency Board returned from Closed Session. Chairman Eaton announced the Redevelopment Agency Board met in Closed Session regarding real property negotiations, information was received and direction given to City staff, and no further announcements on this matter would be made at this time.

XIV. ADJOURNMENT OF CITY COUNCIL AND REDEVELOPMENT AGENCY BOARD OF DIRECTORS

At 7:59 p.m., Mayor/Chairman Eaton adjourned the City Council and Redevelopment Agency Board of Directors in memory of **Mr. Tony Zangri**, Montclair's first Postmaster.

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

Yvonne L. Smith
Deputy City Clerk