

CITY OF MONTCLAIR

**AGENDA FOR CITY COUNCIL, REDEVELOPMENT AGENCY, AND
MONTCLAIR HOUSING CORPORATION MEETINGS**

To be held in the Council Chambers
5111 Benito Street, Montclair, California

December 21, 2009

7:00 p.m.

As a courtesy please silence your cell phones, pagers, and other electronic devices while the meeting is in session. Thank you.

The CC/RDA/MHC meetings are now available in audio format on the City's website at www.ci.montclair.ca.us and can be accessed the day following the meeting after 10:00 a.m.

Page No.

I. CALL TO ORDER - City Council, Redevelopment Agency, and Montclair Housing Corporation

II. INVOCATION

In keeping with our long-standing tradition of opening our Council meetings with an invocation, this City Council Meeting may include a nonsectarian invocation. Such invocations are not intended to proselytize or advance any faith or belief or to disparage any faith or belief. Neither the City nor the City Council endorse any particular religious belief or form of invocation.

III. PLEDGE OF ALLEGIANCE

IV. ROLL CALL

V. PRESENTATIONS

A Presentation of 2009 Holiday Home Decoration Contest Winners

VI. PUBLIC COMMENT

This section is intended to provide members of the public with an opportunity to comment on any subject that does not appear on this agenda. Each speaker will be afforded five minutes to address the City Council Members and Redevelopment Agency and Montclair Housing Corporation Boards of Directors. (Government Code Section 54954.3)

Under the provisions of the Brown Act, the Council/Agency/ MHC is prohibited from taking action on items not listed on the agenda.

VII. PUBLIC HEARINGS

A. Consider Adoption of Resolution No. 09-04, a Resolution of the City of Montclair Redevelopment Agency Adopting the Implementation Plan for City of Montclair Redevelopment Project Area Nos. I, II, III, IV, and V [RDA]

- B. First Reading – Consider Adoption of Ordinance No. 09-911 Deleting Chapter 10.44, Amending Chapter 7.02, and Adding Chapter 7.24 to the Montclair Municipal Code Related to Public Nuisances [CC] 8

VIII. CONSENT CALENDAR

- A. Approval of Minutes
 - 1. Minutes of Regular Joint Council/Agency/MHC Meeting of November 16, 2009
 - 2. Minutes of Regular Joint Council/Agency/MHC Meeting of December 7, 2009
- B. Administrative Reports
 - 1. Consider Receiving and Filing of Treasurer's Report [CC] 40
 - 2. Consider Approval of Warrant Register and Payroll Documentations [CC] 41
 - 3. Consider Receiving and Filing of Treasurer's Report [RDA] 42
 - 4. Consider Approval of Warrant Register [RDA] 43
 - 5. Consider Receiving and Filing of Treasurer's Report [MHC] 44
 - 6. Consider Approval of Warrant Register [MHC] 45
 - 7. Consider Approval of a Reorganization Plan for the Public Works Department [CC] 46
 - 8. Consider Approval of Filing of a Notice of Completion for the Mission Boulevard Improvement Phases 5 and 6 Project; Reduction of Faithful Performance Bond to 10 Percent; and Retention of Payment Bond for Six Months [CC]
 - Consider Release of Retention 30 Days After Recordation of Notice of Completion [CC] 50
 - 9. Consider "No Action" on Alcoholic Beverage Permit Application – 7-Eleven Store 2171 [CC] 52
- C. Agreements
 - 1. Consider Approval of Agreement No. 09-129, a Communications Site Lease Agreement with T-Mobile West Corporation Regarding Alma Hofman Park [CC] 53
 - 2. Consider Approval of Agreement No. 09-130, a Reimbursement Agreement with Montclair I MGP, LLC, Regarding Property Located on the Northeast Corner of Moreno Street and Monte Vista Avenue [CC] 57
- D. Resolutions - None

IX. PULLED CONSENT CALENDAR ITEMS

X. RESPONSE - None

XI. COMMUNICATIONS

- A. City Attorney/Agency Counsel
- B. City Manager/Executive Director
- C. Mayor/Chairman
- D. Council/Agency Board
- E. Committee Meeting Minutes *(For Informational Purposes Only)*

- 1. Minutes of the Personnel Committee Meeting of
December 7, 2009

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XII. COUNCIL/AGENCY WORKSHOP

- A. Update by Federal Legislative Advocate David Turch, David Turch and Associates

(Council/Agency may consider continuing this item to an adjourned joint meeting on Monday, January 4, 2010, at 5:45 p.m. in the City Council Chambers).

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

The next regularly scheduled City Council, Redevelopment Agency, and Montclair Housing Corporation meetings will be held on Monday, January 4, 2010, at 7:00 p.m. in the Council Chambers.

Reports, backup materials, and additional materials related to any item on this Agenda distributed to the City Council, Redevelopment Agency Board, or Montclair Housing Corporation Board after distribution of the Agenda packet are available for public inspection in the Office of the City Clerk located at 5111 Benito Street, Montclair, California, between 7:00 a.m. and 6:00 p.m., Monday through Thursday.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk at (909) 625-9415. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. (28 CFR 35.102-35.104 ADA Title II)

I, Donna M. Jackson, City Clerk, hereby certify that I posted, or caused to be posted, a copy of this Agenda not less than 72 hours prior to this meeting on the bulletin board adjacent to the south door of Montclair City Hall on December 17, 2009.

AGENDA REPORT

SUBJECT: CONSIDER ADOPTION OF RESOLUTION NO. 09-04, A RESOLUTION OF THE CITY OF MONTCLAIR REDEVELOPMENT AGENCY ADOPTING THE IMPLEMENTATION PLAN FOR CITY OF MONTCLAIR REDEVELOPMENT PROJECT AREA NOS. I, II, III, IV, AND V	DATE: December 21, 2009 SECTION: PUBLIC HEARINGS ITEM NO.: A FILE I.D.: RDA160 DEPT.: REDEVELOPMENT
BUSINESS PLAN: N/A	

REASON FOR CONSIDERATION: California Health and Safety Code Section 33490 requires that every redevelopment agency adopt, after holding a public hearing, an implementation plan for each redevelopment project area and evaluate the progress of the redevelopment project within the jurisdiction once every five years. The proposed Implementation Plan for Fiscal Year 2009-10 through 2014-15 is included in the agenda packet for consideration by the Redevelopment Agency Board of Directors.

BACKGROUND: Assembly Bill 1290 was redevelopment legislation adopted effective January 1, 1994. One of the requirements of the legislation was the adoption of an Implementation Plan for redevelopment project areas every five years. The City of Montclair Redevelopment Agency's initial Implementation Plan was adopted December 19, 1994, and subsequent Implementation Plans were adopted by the Redevelopment Agency Board of Directors on December 20, 1999, and December 20, 2004. As required pursuant to state law, staff has prepared the Implementation Plan for the next five years from Fiscal Year 2009-10 through Fiscal Year 2014-15.

The Implementation Plan contains the specific goals and objectives of the Redevelopment Agency for each project area; the specific programs, including potential projects; and estimated expenditures proposed to be made during the next five years. The document also provides an explanation of how the goals and objective, programs, and expenditures would eliminate blight within each project area. The Implementation Plan contains two separate components, which include a Redevelopment Plan Component and a Housing Component.

The Redevelopment Plan Component accomplishes the following: (1) revisits the goals, objectives, purpose, and/or intent of the Redevelopment Plans; (2) defines the Agency's strategy to achieve these goals, objectives, purpose, and/or intent; (3) presents the projects, programs, expenditures (other than those related to low- and moderate-income housing) that have been developed as a means to attain the five-year Implementation Plan goals and objectives; and (4) describes how the Implementation Plan goals and objectives, projects, programs, and expenditures will eliminate blight within the project areas.

Prepared by: <u>M. STAAIS</u>	Reviewed and Approved by:	<u>M. STAAIS</u>
Proofed by: <u>Christine Caldwell</u>	Presented by:	<u>Joe Chedoke</u>

The Housing Component of the Implementation Plan demonstrates how the Redevelopment Plan goals and objectives for housing preservation, production, and proportionality have been met in the prior ten years. The Housing Component further describes how such housing goals and objectives will be implemented in the next Implementation Plan period and how the statutory requirements for the housing fund moneys and expenditure of tax increment for housing purposes would be met.

It should be noted that the Implementation Plan is a policy statement rather than an unalterable course of action. It has been prepared to establish priorities for redevelopment activities within the Project Areas for the next five years covered by the Plan and incorporates currently known financial constraints in developing program activities to accomplish near-term revitalization efforts for the Project Areas. The Implementation Plan does not authorize specific programs or priorities. All program activities or priorities identified or suggested in the Plan must still be submitted to the Redevelopment Agency Board of Directors for approval or authorization. Furthermore, it is not the intent of the Implementation Plan to limit or restrict goals, objectives, projects, or programs. Needs of the Project Areas evolve over time. New issues and opportunities may be encountered during the course of administering the Redevelopment Plan for the Project during the next five-year period. The Implementation Plan may also be amended, if necessary, to effectuate new projects or programs.

FISCAL IMPACT: Adoption of Resolution No. 09-04 adopting the Implementation Plan would create no fiscal impact for the Redevelopment Agency. Implementation of the projects, programs, or activities discussed in the Implementation Plan would require the approval of the Redevelopment Agency Board of Directors.

RECOMMENDATION: Staff recommends the Redevelopment Agency Board of Directors adopt Resolution No. 09-04, a Resolution of the City of Montclair Redevelopment Agency adopting the Implementation Plan for City of Montclair Redevelopment Project Area Nos. I, II, III, IV, and V.

RESOLUTION NO. 09-04

**A RESOLUTION OF THE CITY OF MONTCLAIR
REDEVELOPMENT AGENCY ADOPTING THE
IMPLEMENTATION PLAN FOR REDEVELOPMENT
PROJECT AREA NO. I, REDEVELOPMENT PROJECT
AREA NO. II, REDEVELOPMENT PROJECT AREA
NO. III, REDEVELOPMENT PROJECT AREA NO. IV,
AND REDEVELOPMENT PROJECT AREA NO. V**

WHEREAS, every redevelopment agency is required, pursuant to Health and Safety Code Section 33490, to adopt every five years an implementation plan for each redevelopment project area containing the specific goals and objectives of the agency for its redevelopment projects, specific programs, potential projects, estimated expenditures proposed to be made during the next five years of such plans, and an explanation of how the foregoing will eliminate blight within the project areas (the "Implementation Plan"); and

WHEREAS, the City of Montclair Redevelopment Agency (the "Agency") adopted its original Implementation Plan for Redevelopment Project Area Nos. I, II, III, IV, and V on December 19, 1994 and subsequent Implementation Plans were adopted on December 20, 1999 and December 20, 2004; and

WHEREAS, the Agency is now required, pursuant to Health and Safety Code Section 33490, to adopt, after a noticed public hearing, an Implementation Plan for Redevelopment Project Area Nos. I, II, III, IV, and V; and

WHEREAS, the Agency has reviewed the proposed Implementation Plan as prepared by the staff of the Agency; and

WHEREAS, the Agency has made the Implementation Plan available to the public for its review, and has on December 21, 2009, held a public hearing and provided to all interested parties the opportunity to be heard concerning the Implementation Plan; and

WHEREAS, in conformity with Health and Safety Code Section 33490(d), notice of the public hearing was published pursuant to Government Code Section 6063 and posted pursuant to law.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the City of Montclair Redevelopment Agency finds and determines as follows:

Section 1. The Implementation Plan, as presented to the Agency prior to the public hearing, is hereby approved as the Implementation Plan of Redevelopment Project Area Nos. I, II, III, IV, and V.

Section 2. The Secretary of the Agency shall certify to the adoption of this Resolution, and a copy of the Implementation Plan shall be placed in the offices of the Agency.

APPROVED AND ADOPTED this XX day of XX, 2009.

Chairman

ATTEST:

Secretary

I, Donna M. Jackson, Secretary of the City of Montclair Redevelopment Agency, DO HEREBY CERTIFY that Resolution No. 09-04 was duly adopted by the Redevelopment Agency Board of Directors at a regular meeting thereof held on the XX day of XX, 2009, and that it was adopted by the following vote, to-wit:

AYES: XX
NOES: XX
ABSTAIN: XX
ABSENT: XX

Donna M. Jackson
Secretary

AGENDA REPORT

SUBJECT: CONSIDER ADOPTION OF ORDINANCE NO. 09-911 DELETING CHAPTER 10.44, AMENDING CHAPTER 7.02, AND ADDING CHAPTER 7.24 TO THE MONTCLAIR MUNICIPAL CODE RELATED TO PUBLIC NUISANCES	DATE: December 21, 2009 SECTION: PUBLIC HEARINGS ITEM NO.: B FILE I.D.: CDE010 DEPT.: FIRE
<u>FIRST READING</u>	

**BUSINESS
PLAN:** N/A

REASON FOR CONSIDERATION: The City Council is requested to consider adoption of Ordinance No. 09-911 deleting Chapter 10.44, amending Chapter 7.02, and adding Chapter 7.24 to the Montclair Municipal Code related to public nuisances.

BACKGROUND: Section VII of Article XI of the California Constitution provides that a city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws. California Government Code Section 38771 provides that a city legislative body may declare what constitutes a nuisance. California Government Code Section 38772, *et seq.*, further provides that a legislative body of a city may provide for the summary abatement of any nuisance at the expense of the person(s) creating, causing, committing, or maintaining the nuisance and by ordinance may make the expense of abatement of nuisances a lien against the property on which the nuisance is maintained and a personal obligation against the property owner.

In September 2009, the Code Enforcement Committee directed staff to examine the current Property Maintenance Ordinance and recommended changes related to the administrative procedures to correct or abate nuisance conditions on real properties within the City.

Proposed Ordinance No. 09-911 utilizes all legal means available to the City to use all regulations and administrative procedures that will promote the sound maintenance of properties and enhance the appearance, habitability, occupancy, use, and safety of all structures and premises in the City.

FISCAL IMPACT: Potential revenues from the implementation of proposed Ordinance No. 09-911 are unknown.

RECOMMENDATION: Staff recommends the City Council adopt the first reading of Ordinance No. 09-911 deleting Chapter 10.44, amending Chapter 7.02, and adding Chapter 7.24 to the Montclair Municipal Code related to public nuisances.

Prepared by: <u>T. Ost</u>	Reviewed and Approved by: <u>T. Ost</u>
Proofed by: <u>Marcie Bow</u>	Presented by: <u>Gene (The Dog)</u>

ORDINANCE NO. 09-911

**AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF MONTCLAIR REPEALING CHAPTER 10.44
AND ADDING CHAPTER 7.24 OF THE MONTCLAIR
MUNICIPAL CODE REGARDING PUBLIC NUISANCES**

WHEREAS, Section VII of Article XI of the California Constitution provides that a city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws; and

WHEREAS, California Government Code Section 38771 provides that legislative bodies of cities may declare what constitutes a nuisance; and

Whereas, California Government Code Section 38772 et seq. further provides that legislative bodies of cities may also provide for the summary abatement of any nuisance at the expense of the persons creating, causing, committing, or maintaining the nuisance, and by ordinance may make the expense of abatement of nuisances a lien against the property on which the nuisance is maintained and a person obligation against the property owner; and

Whereas, the City Council finds that nuisance conditions are offensive and/or annoying to the senses, detrimental to property values and community appearance, an obstruction or interference with the comfortable enjoyment of adjacent properties or premises (both public and private), and/or are hazardous or injurious to the health, safety, and/or welfare of the general public; and

Whereas, it is the City Council's desire to develop and utilize regulations that will promote the sound maintenance of property and enhance the appearance, habitability, occupancy, use, and safety of all structures and premises in the City; and

Whereas, the City Council wishes to refine the administrative procedures for the City's use, upon its election, to correct or abate nuisance conditions on real properties throughout the City, while still protecting the responsible parties right to due process under the law.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MONTCLAIR DOES
HEREBY ORDAIN AS FOLLOWS:**

Section I. Chapter 10.44 ("Property Appearance") of the Montclair Municipal Code is hereby repealed and deleted in its entirety.

Section II. Chapter 7.02.010 ("Definitions") of Title 7 ("Public Peace, Morals, and Welfare") of the Montclair Municipal Code is hereby amended to include the following:

Sec. 7.02.010 Definitions.

As used in Title, the following definitions shall apply. For purposes of Chapter 7.24, these definitions shall supersede any other definitions of the same terms elsewhere in this Code.

Abandoned structure shall mean real property, or any building or structure thereon, that is vacant and is maintained in an uninhabitable condition or a condition of disrepair or deterioration as evidenced by the existence of public nuisances therein; or that is vacant and under a current notice of default and/or notice of trustee's sale, pending tax assessor's lien sale; or that is vacant and has been the subject of a foreclosure sale where title was retained by the beneficiary of a deed of trust involved in the foreclosure. Factors that may also be considered in a determination of an abandoned structure include, without limitation: present operability and functional utility; the presence of nonfunctional, broken, or missing doors or windows, such that entry therein by unauthorized persons is not deterred; the existence of real property tax delinquencies for the land upon which the structure is located; age and degree of obsolescence of the structure; and the cost of rehabilitation or repair versus its market value.

Abandoned personal property shall mean and refers to any item, object, thing, material or substance that, by its condition of damage, deterioration, disrepair, nonuse, obsolescence, or location on public real property or on private real property causes a reasonable person to conclude that the owner has permanently relinquished all right, title, claim and possession thereto or that the object, thing, material or substance cannot be used for its intended or designed purpose. Abandoned personal property may include junk and vehicles.

Abatement costs shall mean all costs, fees, and expenses, incidental or otherwise, incurred by the City in investigating and abating a public nuisance.

Attractive nuisance shall mean any condition, device, equipment, instrument, item, or machine that is unsafe, unprotected, and may prove detrimental to minors whether in a structure or in outdoor areas of developed or undeveloped real property. This includes, without limitation, any abandoned or open and accessible wells, shafts, basements, or excavations; any abandoned refrigerators and abandoned or inoperable motor vehicles; any structurally unsound fences or structures; or any lumber, trash, fences, debris, or vegetation that may prove hazardous or dangerous to inquisitive minors. An attractive nuisance shall also include pools, standing water, or excavations containing water that are unfenced or otherwise lack an adequate barrier, thereby creating a risk of drowning, or that are hazardous or unsafe because of the existence of any condition rendering such water to be clouded, unclear, or injurious to health because of, without limitation, any of the following: bacterial growth, infectious or toxic agents, algae, insect remains, animal remains, rubbish, refuse, debris, or waste of any kind.

Building shall mean any structure designed, used, or maintained for the shelter or enclosure of persons, animals, chattels, equipment, or property of any kind and shall also include structures wherein things may be grown, made, produced, kept,

handled, stored, or disposed of and all appendages, accessories, apparatus, appliances, and equipment installed as a part thereof.

City shall mean the City of Montclair.

City Manager shall mean the Montclair City Manager or designee thereof.

City personnel shall mean any Montclair City employee, representative, agent, or contractor designated by the City Manager to abate a public nuisance.

Code, Codes, and Montclair Municipal Code shall mean the Montclair Municipal Code and any code, law, or regulation incorporated therein by reference and any adopted and uncodified ordinances.

Code Enforcement fees shall mean fees imposed by the City to defray its costs of Code Enforcement actions including, but not limited to, the time and other resources of public officials expended by them in identifying, inspecting, investigating, seeking, or causing the abatement of a violation at a residential structure or property. These include, but are not limited to, site inspections; drafting reports; taking photographs; procuring other evidence; engaging in meetings, conferences, and communications with responsible persons, their agents, or representatives concerning a violation as well as with attorneys for the City at any time; and appearances before judicial officers or reviewing authorities during the pendency of a judicial proceeding and other appearances at such judicial or administrative hearings. The time and resources that public officials further expend to confirm that a residential structure remains free of public nuisances while a responsible person is on probation to a court or when a matter concerning a residential structure remains pending before a reviewing authority in an administrative action shall also constitute Code Enforcement actions. For purposes of this definition:

A. Residential structure and property shall mean and include all structures and premises that are regulated by the California State Housing Law (California Health and Safety Code Division 13, Part 1.5, Section 17910 *et seq.*) and any future amendments thereto, as well as any property within a residential zone as designated by the Montclair Zoning Ordinance. These include, but are not limited to, apartment houses, hotels, motels, and dwellings and residential buildings and structures thereto.

B. Violation shall mean and include a public nuisance as described in this Chapter or any condition, activity, or use that is caused, allowed to exist, or maintained (because of an affirmative act, inaction, or omission) by a responsible person in violation of any other provision, regulation, or requirement of this Code or any applicable county, state, or federal laws or regulations.

Code Enforcement Officer shall mean any individual employed by the City with primary enforcement authority for City Codes, or his or her duly authorized representative(s).

Commercial vehicle shall mean any vehicle of a type required to be registered under the State of California Vehicle Code used or maintained for the transportation of persons for hire, compensation, or profit or designed, used, or maintained primarily

for the transportation of property. Passenger vehicles that are not used for the transportation of persons for hire, compensation, or profit, house cars (motor homes), and vanpool vehicles are not commercial vehicles.

Compliance period shall mean the period of time and/or required schedule set forth in a Notice of Abatement and/or an Order of Abatement within which all nuisance abatement actions referenced in such Notice of Abatement and/or Order of Abatement must be completed.

Controlled substances shall mean any substance that is declared by state or federal law to be a controlled substance.

Fire hazard shall include, but shall not be limited to, any device, equipment, waste, vegetation, condition, thing, or act that is in such a condition that it increases or could cause an increase of the hazard or menace of fire to a greater degree than that customarily recognized as normal by persons in the public service regularly engaged in preventing, suppressing, or extinguishing fire or that otherwise provides a ready fuel to augment the spread and intensity of fire or explosion arising from any cause or any device, equipment, waste, vegetation, condition, thing, or act that could obstruct, delay, hinder, or interfere with or may become the cause of obstruction, delay, or hindrance of, the operations of the Fire Department or other emergency service personnel or the egress of the occupants in the event of fire.

Hazardous materials shall mean any material or substance of any kind that is declared by any federal, state, or local law, ordinance, or regulation to be composed of hazardous material.

Hearing Officer shall mean the city employee or representative appointed by the City Manager, or a designee thereof, to hear all timely appeals from a Notice of Abatement.

Incidental expenses shall include, but shall not be limited to, the actual expenses and costs of the City, such as preparation of notices, specifications, and contracts; inspection of work; costs of printing and mailings required hereunder; costs of any filing and/or recordation with the County Recorder's Office or other governmental agency; and the costs of administration and legal services.

Inoperable vehicle shall mean and include, without limitation, any vehicle that is incapable of being lawfully driven on a highway. Factors that may be used to determine this condition include, without limitation, vehicles that have a "planned non-operational" status with the California Department of Motor Vehicles, vehicles lacking a current registration, a working engine, transmission, wheels, inflated tires, doors, windshield or any other part or equipment necessary for its legal and safe operation on a highway or any other public right-of-way.

Junk shall mean and include, but is not limited to, any cast off, damaged, discarded, junked, obsolete, salvaged, scrapped, unusable, worn out, or wrecked appliance, device, equipment, furniture, fixture, furnishing, object, material, substance, tire, or thing of any kind or composition. Junk may include abandoned personal property as well as any form of debris, refuse, rubbish, trash, or waste.

Factors that may be considered in a determination that personal property is junk include, without limitation, its:

- A. Condition of damage, deterioration, disrepair, or nonuse
- B. Approximate age and degree of obsolescence
- C. Location
- D. Present operability, functional utility, and status of registration or licensing, where applicable
- E. Cost of rehabilitation or repair versus its market value

Junkyard means real property of any zoning classification on which junk is kept, maintained, placed, or stored to such a degree that it constitutes a principal use or condition on said premises. The existence of a junkyard is not a nuisance when it is an expressly permitted use in the applicable zone and it is in full compliance with all provisions of the Montclair Zoning Ordinance and all other applicable provisions of the Montclair Municipal Code as well as all future amendments and additions thereto.

Notice of Abatement shall mean a "Notice of Public Nuisance and Intention to Abate with City personnel," as described in Section 7.24.060 of this Chapter.

Order of Abatement shall mean an order issued by a Hearing Officer following an appeal of a Notice of Abatement.

Owner shall mean and include any person having legal title to, or who leases, rents, occupies, or has charge, control, or possession of any real property in the City including all persons shown as owners on the last equalized assessment roll of the San Bernardino County Assessor's Office. Owners include persons with powers of attorney, executors of estates, trustees, or who are court-appointed administrators, conservators, guardians, or receivers. An owner of personal property shall be any person who has legal title, charge, control, or possession of such property.

Person shall mean and include any individual, partnership of any kind, corporation, limited liability company, association, joint venture, or other organization, however formed, as well as trustees, heirs, executors, administrators, or assigns or any combination of such persons. "Person" also includes any public entity or agency that acts as an owner in the City.

Personal property means property that is not real property and includes, without limitation, any appliance, article, device, equipment, item, material, product, substance, or vehicle.

Public nuisance means anything that is, or likely to become, injurious or detrimental to health, safety, or welfare or is offensive to the senses or an obstruction to the free use of property so as to interfere with the comfortable enjoyment of life or property or unlawfully obstructs the free passage or use, in the customary manner, of any sidewalk, public park, square, street, or highway. All conditions hereafter

enumerated in this Chapter, or that otherwise violate or are contrary to any provision of the Montclair Municipal Code, are public nuisances by definition and declaration; and said enumerated conditions shall not, in any manner, be construed to be exclusive or exhaustive. A public nuisance shall also exist when a person fails to comply with any condition of a City approval, entitlement, license, or permit or when an activity on, or use of, real property violates, or is contrary to, any provision or requirement of the Montclair Municipal Code.

Real property or premises means any real property owned by any person and/or any building, structure, or other improvement thereon or portions thereof. "Real Property" or "premises" includes any parkway or unimproved public easement abutting or adjacent to such real property, whether or not owned by the City of Montclair.

Responsible person means any person, whether as an owner as defined in this Chapter or otherwise, that allows, causes, creates, maintains, suffers, or permits a public nuisance, or any violation of the Montclair Municipal Code or county or state law or regulation thereof, to exist or continue by any act or the omission of any act or duty. A responsible person shall also include employees, principals, joint venturers, officers, agents, and/or other persons acting in concert with, or at the direction of and/or with the knowledge and/or consent of, the owner and/or occupant of the lot, building, or structure on, or in which, a public nuisance or violation exists or existed. The actions or inactions of a responsible person's agent, employee, representative, or contractor may be attributed to that responsible person.

Structure means that which is built or constructed, an edifice, wall, fence, or building of any kind or any piece of work artificially built up or composed of parts joined together in some definite manner.

Vacant shall mean real property or any building or structure thereon that is not legally occupied. Factors that may be used, either alone or in combination, to determine whether real property, or building or structures thereon, is vacant include, but shall not be limited to, overgrown and/or dead vegetation; accumulation of newspapers, circulars, fliers, and/or mail; past due utility notices and/or disconnected utilities; accumulation of trash, junk, and/or other debris; the absence of window coverings such as curtains, blinds, and/or shutters; the absence of furnishings and/or personal items consistent with residential and/or commercial furnishings consistent with the permitted uses within the zone of the real property; and statements by neighbors, passersby, delivery agents, government employees that the property is vacant. However, the existence of such factors, either alone or in combination, may not, in and of themselves, be conclusive as to the occupation or vacancy status of such real property.

Vehicle means any device by which any person or property may be propelled, moved, or drawn upon a highway or other public right-of-way and includes all vehicles as defined by the California Vehicle Code and all future amendments thereto. "Vehicle" does not include devices (i) that are propelled exclusively by human power, such as bicycles and wheelchairs; or (ii) those that are used exclusively upon stationary rails or tracks.

Section III. Chapter 7.24 ("Public Nuisances") is hereby added to Title 7 ("Public Peace, Morals, and Welfare") of the Montclair Municipal Code to read as follows:

CHAPTER 7.24 PUBLIC NUISANCES

Part 1 – Nuisances Enumerated

Sec. 7.24.010 Findings, Purpose, and Intent.

A. Findings. The City Council finds and declares as follows:

1. Section VII of Article XI of the California Constitution provides that a city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.

2. California Government Code Section 38771 provides that legislative bodies of cities may declare what constitutes a nuisance.

3. California Government Code Section 38772 *et seq.* further provides that legislative bodies of cities may also provide for the summary abatement of any nuisance at the expense of the persons creating, causing, committing, or maintaining it and by ordinance may make the expense of abatement of nuisances a lien against the property on which the nuisance is maintained and a personal obligation against the property owner.

4. Nuisance conditions are offensive or annoying to the senses, detrimental to property values and community appearance, an obstruction or interference with the comfortable enjoyment of adjacent properties or premises (both public and private) and/or are hazardous or injurious to the health, safety, or welfare of the general public.

B. Purpose and Intent. The purpose and intent of this Chapter are as follows:

1. To define as public nuisances and violations those conditions and uses of land that are offensive or annoying to the senses, detrimental to property values and community appearance, an obstruction or interference with the comfortable enjoyment of adjacent properties or premises (both public and private), and/or are hazardous or injurious to the health, safety, or welfare of the general public.

2. To develop regulations that will promote the sound maintenance of property and enhance of conditions of appearance, habitability, occupancy, use, and safety of all structures and premises in the City.

3. To establish administrative procedures for the City's use, upon its election, to, correct or abate violations of this Chapter on real property throughout the City.

4. Nothing in this Chapter shall be deemed to prevent the City at any time from commencing an administrative, civil, or criminal proceeding to abate a public nuisance or from pursuing other means available to it under the provisions of any applicable law to correct substandard, hazardous, or nuisance conditions or deficiencies in real property in addition to or as an alternative to the proceedings set forth herein.

5. This Chapter is not the exclusive regulation of property maintenance, nor is it intended to affect or otherwise alter nuisance abatement procedures established or that may be established in other chapters of this Code. It shall be supplemental and in addition to other regulatory codes, statutes, and ordinances heretofore or hereinafter enacted by the City, State of California, or other legal entity or agency having jurisdiction.

6. This Chapter is not intended to be applied, construed, or given effect in a manner that imposes upon the City, or upon any officer or employee thereof, any duty towards persons or property within the City or outside of the City that creates a basis for civil liability for damages, except as otherwise imposed by law.

Sec. 7.24.020 Prohibited Public Nuisance Conditions.

The City Council finds and declares that it is a public nuisance and unlawful for any person to allow, cause, create, maintain, or suffer, or permit others to maintain, real property or premises in the City in such a manner that:

A. Any one or more of the following conditions are found to exist thereon:

1. Land, the topography, geology, or configuration of which, whether in natural state or as a result of grading operations, excavation or fill, causes erosion, subsidence, or surface water drainage problems of such magnitude as to be injurious or potentially injurious to the public health, safety, and welfare or to adjacent properties including, but not limited to:

(a) Accumulations of uncompacted fill over three feet in height over predominant grade and contrary to adjacent contour for any period of time.

2. Real property, or any building or structure thereon, that is abandoned, uninhabited, or vacant for a period of more than six (6) months.

3. Buildings or other structures, or portions thereof, that are partially constructed or destroyed or allowed to remain in a state of partial construction or destruction for an unreasonable period of time. As used herein, an "unreasonable" period shall mean any portion of time exceeding the period given to a responsible person by the City for the complete abatement of this nuisance condition with all required City approvals, permits, and inspections. Factors that may be used by the City to establish a reasonable period for the complete abatement of this nuisance include, but are not limited to, the following:

(a) The degree of partial construction or destruction and the cause therefor.

(b) Whether or not this condition constitutes an attractive nuisance or if it otherwise poses or promotes a health or safety hazard to occupants of the premises, or to others.

(c) The degree of visibility, if any, of this condition from public or adjoining private real property.

(d) The scope and type of work that is needed to abate this nuisance.

(e) The promptness with which a responsible person has applied for and obtained all required City approvals and permits in order to lawfully commence the nuisance abatement actions.

(f) Whether or not a responsible person has complied with other required technical code requirements, including requesting and passing required inspections in a timely manner, while completing nuisance abatement actions.

(g) Whether or not a responsible person has applied for extensions to a technical code permit or renewed an expired permit, as well as the number of extensions and renewals that a responsible person has previously sought or obtained from the City.

(h) Whether or not a responsible person has made substantial progress, as determined by the City, in performing nuisance abatement actions under a technical code permit that has expired, or is about to expire.

(i) Whether delays in completing nuisance abatement actions under a technical code permit have occurred and the reason(s) for such delays.

4. Exterior portions of buildings or structures (including, but not limited to, roofs, balconies, decks, fences, stairs, stairways, walls, signs and fixtures), as well as sidewalks, walkways, driveways and parking areas, that have become defective, unsightly, or are maintained in a condition of dilapidation, deterioration or disrepair to such an extent as to result in, or tend to result in, a diminution in property values; or where such condition interferes with the peaceful use, possession and/or enjoyment of adjacent properties; or where such condition otherwise violates, or is contrary to, the Montclair Municipal Code, or State law.

5. Interior portions of buildings or structures (including, but not limited to attics, ceilings, walls, floors, basements, mezzanines, and common areas) that have become defective, unsightly, or are maintained in a condition of dilapidation, deterioration or disrepair to such an extent as to result in, or tend to result in, a diminution in property values, or where such condition interferes with the peaceful use, possession and/or enjoyment of properties in the vicinity, or where such condition otherwise violates, or is contrary to, the Montclair Municipal Code or State law.

6. Obstructions of any kind, cause, or form that interfere with required light or ventilation for a building or structure or that interfere with, hinder, delay, or impede ingress therein and/or egress therefrom.

7. Failure to provide and maintain adequate weather protection to structures or buildings, so as to cause or promote the existence of cracked, peeling, warped, rotted, or severely damaged paint, stucco, or other exterior covering.

8. Broken, defective, damaged, dilapidated, or missing windows, doors, or vents in a building or structure, and/or broken, defective, damaged, dilapidated, or missing screens for windows, doors, or crawl spaces in a building or structure.

9. Windows or doors that remain boarded up or sealed after ten (10) calendar days written City notice to a responsible person requesting the removal of these coverings and the installation of fully functional or operable windows or doors. City actions to board up or seal windows or doors in order to deter unauthorized entry into structures shall not relieve responsible persons from installing fully functional or operational windows or doors.

10. Any form of an attractive nuisance.

11. Abandoned personal property that is visible from public or private property.

12. Items of junk, trash, debris, or other personal property that are kept, placed, or stored inside of a structure or on exterior portions of real property that constitute a fire or safety hazard or a violation of any provision of the Montclair Municipal Code, or items of junk, trash, debris, or other personal property that are visible from public or private real property, or that are otherwise out of conformity with neighboring community standards to such an extent as to result in, or tend to result in, a diminution in property values. Notwithstanding the foregoing, the existence of a junkyard is not a nuisance when such use and the premises on which such use occurs are in full compliance with all provisions of the Montclair Zoning Ordinance (including all approvals and permits required thereby), and all other applicable provisions of the Montclair Municipal Code and any future amendments and additions thereto, as well as applicable county, state, and/or federal laws and regulations.

13. The keeping or disposing of, or the scattering or accumulating of flammable, combustible, or other materials including, but not limited to, composting, firewood, lumber, junk, trash, debris, packing boxes, pallets, plant cuttings, tree trimmings or wood chips, discarded items, or other personal property in interior or exterior areas of buildings or structures, when such items or accumulations:

(a) Render premises unsanitary or substandard as defined by the Montclair Housing Code, the State Housing Law, the Montclair Building Code, or other applicable local, state, or federal law, rule, or regulation.

(b) Violate the San Bernardino County Health Code.

(c) Cause, create, or tend to contribute to, a fire or safety hazard.

(d) Harbor, promote, or tend to contribute to, the presence of rats, vermin and/or insects.

(e) , create, or tend to contribute to, an offensive odor.

(f) Cause the premises to be out of conformity with neighboring community standards to such an extent as to result in, or tend to result in, a diminution of property values. Provided, however, that this use of land or condition shall not constitute a nuisance when expressly permitted under the applicable zone classification and the premises are in full compliance with all provisions of the Montclair Zoning Ordinance, and all other applicable provisions of the Montclair Municipal Code and any future amendments and additions thereto, as well as applicable county, state, and/or federal laws and regulations.

14. Overgrown vegetation including, but not limited to, any one of the following:

(a) Vegetation likely to harbor or promote the presence of rats, vermin and/or insects.

(b) Vegetation causing detriment to neighboring properties, or that is out of conformity with neighboring community standards to such an extent as to result in, or contribute to, a diminution of property values, including, but not limited to:

(1) Lawns with grass in excess of six inches (6") in height.

(2) Hedges, trees, lawns, plants, or other vegetation that are not maintained in a neat, orderly, and healthy manner as a result of lack of adequate mowing, grooming, trimming, pruning, fertilizing, watering, and/or replacement.

(3) Front and side yard vegetable gardens/plants visible from public streets.

(c) Vegetation that creates or promotes the existence of a fire hazard.

(d) Vegetation that overhangs or grows onto or into any public property including, but not limited to, any public alley, highway, land, sidewalk, street, or other right-of-way so as to cause an obstruction to any person or vehicle using such public property.

(e) Tree branches or other vegetation within two feet (2') of the rooftop of a structure so as to facilitate rodent or animal access thereto.

15. Dead, decayed, diseased, or hazardous trees, weeds, ground cover, and other vegetation or the absence of healthful vegetation that causes, contributes to, or promotes any one of the following conditions or consequences:

(a) An attractive nuisance

(b) A fire hazard

(c) The creation or promotion of dust or soil erosion

- (d) A diminution in property values
- (e) A detriment to public health, safety, or welfare

16. Lack of landscaped area in the front yard and corner lot side yard setback of each lot zoned A, R-1, R-2, R-3 or SL that is not covered in allowed hardscape as provided in subsection (A)(2) of this Section. All such front-yard area and setback on any improved property other than that covered in allowed hardscape shall be a landscaped area as defined herein. Exceptions to landscaped area requirements are:

- (a) Dormant plants and/or seasonal grasses
- (b) Major landscape rehabilitation of the property (not to exceed 180 consecutive days)

17. Hardscape coverage in excess of 60 percent of the front-yard area and corner lot side-yard setback on any improved property.

(a) The Director of Community Development may, upon sufficient, showing of need by the applicant, increase the front yard coverage of an impervious material to a maximum of 80 percent. In consideration of such an increase, the Director of Community Development shall be guided by a review of the size and configuration of the proposed coverage as compared with similar yards in the same vicinity. Such exception shall only be granted if necessary to provide required access improvements such as circular driveways, or to accommodate or reduce irregularly shaped lots, such as those on cul-de-sacs. Such exceptions may be granted by Administrative Adjustment under Chapter 11.76 of this title.

(b) If less than 60 percent of the front-yard area and corner lot side-yard setback on any improved property is covered in hardscape, the remainder of such front-yard area and setback shall be a landscaped area as defined herein subject to the same exceptions provided in subsections 15(a) and (b) of this section.

18. Waste containers, yard waste containers, and recycling containers that are kept, placed or stored in parking areas or front or side yards, such that said containers are visible from public streets, except when placed in approved areas for collection at times permitted and in full compliance with this Code.

(a) Waste containers, yard waste containers, and recycling containers may be placed at an approved collection location in public view no earlier than 24 hours before scheduled pickup to 10:00 p.m. on the day of scheduled pickup.

(b) Dumpsters or storage bins may be located in front yard areas when a building permit that covers excavation, construction, or demolition operations is in full force and effect or for a period not to exceed 72 hours for general cleanup of the subject property.

19. The hanging, drying, or airing of clothing or household fabrics on fences, trees, or shrubberies, or the existence of clotheslines, in front or side yards abutting a public street and that is open to view from the street.

20. Abandoned, dismantled, inoperable, or wrecked boats, campers, motorcycles, trailers, vehicles, or parts thereof, unless kept, placed, parked, or stored inside of a completely enclosed, lawfully constructed building or structure.

21. Vehicles, trailers, campers, boats, recreational vehicles, and/or other mobile equipment parked or stored for in violation of any provision of the Montclair Municipal Code, including the Montclair Zoning Ordinance.

22. Vehicles, construction equipment, or other machinery exceeding the permissible gross vehicle weight for the streets or public property upon which they are located. A nuisance also exists under this provision when a vehicle, construction equipment, or other machinery is stopped, kept, placed, parked, or stored on private real property and when such vehicle, equipment, or machinery exceeds the permissible gross vehicle weight for the streets or public property that were utilized in its placement on said private real property, except when parked, placed, or stored pursuant to a valid permit issued by the City.

23. Any equipment, machinery, or vehicle of any type or description that is designed, used, or maintained for construction-type activities that is kept, parked, placed, or stored on public or private real property except when such item is being used during excavation, construction, or demolition operations at the site where said equipment, machinery, or vehicle is located pursuant to an active permit issued by the City.

24. Maintenance of signs, or sign structures, on real property relating to uses no longer lawfully conducted or products no longer lawfully sold thereon, or signs and their structures that are in disrepair or that are otherwise in violation of, or contrary to, the Montclair Zoning Ordinance.

25. Specialty structures that have been constructed for a specific single use only, and that are unfeasible to convert to other uses, and that are abandoned, partially destroyed, or are permitted to remain in a state of partial destruction or disrepair. Such specialty structures include, but are not limited to, the following: tanks for gas or liquid(s), lateral support structures and bulkheads, utility high-voltage towers and poles, utility high-rise support structures, electronic transmitting antennas and towers, structures that support or house mechanical and utility equipment and are located above the roof lines of existing buildings, high-rise freestanding chimneys and smoke stacks, and recreational structures such as tennis courts and cabanas.

26. Any building, structure, or personal property that obstructs or encroaches on any public property including, but not limited to, any public alley, highway, land, sidewalk, street, or other right-of-way unless a valid encroachment permit has been issued authorizing said encroachment or obstruction.

27. Causing, maintaining, or permitting graffiti or other defacement of real or personal property, as defined in the Montclair Municipal Code or other

applicable State law, to be present or remain on a building, structure, or vehicle, or portion thereof, that is visible from a public right-of-way or from private real property.

28. Storage of hazardous or toxic materials or substances on real property, as so classified by any local, state or federal laws or regulations, in such a manner as to be injurious, or potentially injurious or hazardous, to the public health, safety, or welfare or to adjacent properties or that otherwise violates local, state, or federal laws or regulations.

29. Unsanitary, polluted, or unhealthful pools, ponds, standing water, or excavations containing water, whether or not they are attractive nuisances but that are nevertheless likely to harbor mosquitoes, insects, or other vectors. The likelihood of insect harborage is evidenced by any of the following conditions: water that is unclear, murky, clouded, or green; water containing bacterial growth, algae, insect larvae, insect remains, or animal remains; or bodies of water that are abandoned, neglected, unfiltered, or otherwise improperly maintained.

30. Any discharge of any substance or material other than stormwater that enters, or could possibly enter, the City's storm drain system in violation of the Montclair Municipal Code.

31. Maintenance of any tarp or similar covering on or over any graded surface or hillside, except in the following circumstances:

(a) A state of emergency has been declared by local, county, state, or federal officials directly impacting the area to be covered.

(b) Covering with a tarp performed pursuant to an active building or grading permit.

32. Maintenance of any tarp or similar covering on or over any roof of any structure, except during periods of active rainfall, or when specifically permitted under an active roofing or building permit.

33. The keeping or suffering of any animal, reptile, or insect in a manner that poses a threat, disturbance, or menace to persons or property.

34. The use, parking, or storing of any recreational vehicle as temporary or permanent living space.

35. Maintenance of premises so out of harmony or conformity with the maintenance standards of properties in the vicinity as to cause, or that tends to cause, substantial diminution of the enjoyment, use, or property values of such properties in the vicinity.

36. Any condition recognized in local or state law or in equity as constituting a public nuisance or any condition existing on real property that constitutes, or tends to constitute, blight or that is a health or safety hazard to the community or neighboring properties.

B. Any building or structure, or portion thereof, or the premises on which the same is located in which there exists any of the conditions listed in Section 17920.3 of the California Health & Safety Code and any future amendments thereto.

C. Any building or structure, or portion thereof, or the premises on which same is located in which there exists any of the conditions listed in Chapter 10 of the 1997 Uniform Housing Code as adopted by the Montclair Municipal Code.

D. Any "dangerous building" as defined by the Code for the 1997 Code for the Abatement of Dangerous Buildings as adopted by the Montclair Municipal Code.

E. Any "unsafe structure and/or equipment" as defined by the California Building Code as adopted by the Montclair Municipal Code.

F. Any building or structure used by any person to engage in acts that are prohibited pursuant to the laws of the United States or the State of California, the provisions of the Montclair Municipal Code, or any other Ordinance of this City including, but not limited to, the following acts:

1. Unlawful possession, use, manufacturing, and/or sale of controlled substances
2. Prostitution
3. Unlawful gambling

G. Any condition, use, or activity that constitutes a public nuisance as defined by Sections 3479 or 3480 of the California Civil Code and any future amendments thereto.

H. Any building, structure, or use of real property that violates or fails to comply with (i) any applicable approval, permit, license, or entitlement or condition relating thereto; (ii) any ordinance of the City, including, but not limited to any provision of this Code; or (iii) any applicable county, state, or federal law or regulation.

Sec. 7.24.030 Penalty.

A. Notwithstanding any other provision of the Montclair Municipal Code to the contrary, any person who causes, permits, suffers, or maintains a public nuisance, or any person who violates any provision of this Chapter, or who fails to comply with any obligation or requirement of this Chapter, is guilty of a misdemeanor violation punishable in accordance with Chapter 1.12 of Title 1 of this Code.

B. Each person shall be guilty of a separate offense for each and every day, or part thereof, during which a violation of this Chapter, or of any law or regulation referenced herein, is allowed, committed, continued, maintained or permitted by such person, and shall be punishable accordingly.

Part 2 - Administrative Procedures for Abatement of Nuisances

Sec. 7.24.040 Abatement of Public Nuisances.

All conditions or uses that constitute a public nuisance as defined in Part 1 of this Chapter, or that are contrary to, or in violation of, any other provision or requirement of the Montclair Municipal Code, or of any applicable County or State law or regulation thereof, which shall also constitute a public nuisance shall be abated by repair, rehabilitation, demolition, removal, or termination. The procedures for abatement in this part shall not be exclusive and shall not, in any manner, limit or restrict the City from pursuing any other remedies available at law, whether equitable, administrative, civil, or criminal or from enforcing City Codes and adopted Ordinances or from abating or causing abatement of public nuisances in any other manner provided by law.

Sec. 7.24.050 Continuing Obligation of Responsible Persons to Abatement a Public Nuisance.

A. No person shall allow, cause, create, permit, suffer, or maintain a public nuisance to exist on their premises. If public nuisances do arise or occur, responsible persons shall promptly abate them by repair, rehabilitation, demolition, repair, removal or termination with all required City approvals, permits, and inspections, when applicable.

B. The Cit may exercise its administrative, civil/injunctive and criminal remedies, or any one or combination of these remedies, to compel responsible persons to abate a public nuisance when, in its judgment, such persons have not completed nuisance abatement actions in a timely or proper manner, or when responsible persons have failed to prevent an occurrence or recurrence of a public nuisance.

Sec. 7.24.060 Notice of Public Nuisance and Intention to Abate with City Personnel.

A. Whenever a code enforcement officer or other public official determines that City Personnel may need to abate a public nuisance, he or she shall serve a written "Notice of Public Nuisance and Intention to Abate with City Personnel" on the responsible person(s) that contains the following provisions:

1. The address of the real property on which the nuisance condition(s) exist(s).
2. A description of the nuisance condition(s).
3. A reference to the law describing or prohibiting the nuisance condition(s).
4. A brief description of the required corrective action(s).
5. A compliance period in which to complete the nuisance abatement actions (with all required City approvals, permits, and inspections, when applicable).
6. The period and manner in which a responsible person may contest the Notice of Abatement as set forth in Section 7.24.090 of this Chapter. No such right

shall exist when the City is not seeking to establish the right to abate a public nuisance with City forces or contract agents.

7. A statement that the City may record a Declaration of Substandard Property with the San Bernardino County Recorder's Office against the premises if the public nuisance is not fully abated or corrected (with all required approvals, permits and inspections), as determined by the City, within the compliance period specified in the Notice, provided that a timely appeal therefrom has not been made.

B. The procedure in Subsection A shall not apply to public nuisances constituting an imminent hazard. In such instances, the provisions in Section 7.24.160 ("Emergency Action to Abate an Imminent Hazard") of this Chapter shall be followed.

C. The City's election to issue a Notice of Abatement pursuant to this Section shall not excuse responsible persons from their continuing obligation to abate a public nuisance in accordance with all applicable laws, regulations, and legal requirements. Furthermore, the issuance of a Notice of Abatement shall **not** obligate the City to abate a public nuisance.

Sec. 7.24.070 Additional Requirements For Demolition of Buildings or Structures.

A. The City shall provide responsible persons with a reasonable period to elect between options of repair, rehabilitation, or demolition, as well as a reasonable period of time to complete any of these options, before City Personnel abate a public nuisance by demolishing a building or structure pursuant to Part 2 of this Chapter.

B. The City shall serve a Notice of Abatement on all secured lien holders of record with the San Bernardino County Recorder's Office in the event abatement actions include demolition of a building or structure.

C. Notwithstanding the provisions of Section 7.24.110 of this Chapter, entry onto any real property to abate a public nuisance by demolition of a building or structure, excepting in cases involving an imminent hazard, shall be pursuant to a warrant or other order issued by a court of competent jurisdiction.

D. The provisions of this Section shall not apply if demolition is required to address an imminent hazard. In such situation, the provisions of Section 7.24.160 ("Emergency Action to Abate an Imminent Hazard") shall apply.

Sec. 7.24.080 Service of Notice.

A. Except as otherwise expressly required by a provision of this Chapter, any notice required by this Chapter may be served by personal delivery to any responsible person or by first class mail with receipt confirmation. The date of service shall be the date it is personally delivered or placed in a U.S. Postal Service receptacle. Failure of any responsible person to receive a properly addressed Notice of Abatement by mail shall not invalidate any action or proceeding pursuant to this Chapter.

B. Except as otherwise expressly required by a provision of this Chapter, any notice issued to an owner of real property shall be sent to the mailing address on the last equalized assessment roll of the San Bernardino County Assessor's Office. Failure of any owner to receive a properly addressed notice by mail shall not invalidate any action or proceeding pursuant to this Chapter.

Sec. 7.24.090 Right of Appeal From a Notice of Abatement.

A. A responsible person may contest a Notice of Abatement by filing a written request for an appeal with the City Clerk's Office (located at 5111 Benito Street, Montclair) within ten (10) calendar days of service of the Notice of Abatement. No fee shall be due for the filing of an appeal.

B. A written request for an appeal shall contain the following information:

1. Name, address, and telephone number of each responsible party who is appealing the Notice of Abatement (hereinafter, "appellant").
2. Address and description of real property upon which the City intends to enter and abate a public nuisance.
3. Date of Notice of Abatement being appealed.
4. Specific action or decision being appealed.
5. Grounds for appeal in sufficient detail to enable the Hearing Officer to understand the nature of the controversy.
6. The signature of at least one appellant.

C. Failure of the City Clerk to receive a timely appeal constitutes a waiver of the right to contest a Notice of Abatement. In this event, the Notice of Abatement is final and binding.

D. The provisions of this Section only apply to instances where the City has elected to establish the right, but not the obligation, to abate public nuisances with City Personnel. In no event does this Chapter limit the right of City officials to issue alternative written or oral notices of code violations to responsible persons or to cause the abatement of public nuisances in a different manner, including without limitation, by court orders arising from the City's exercise of its criminal or civil remedies. In such instances, a responsible person shall receive a right to hearing and other due process rights through the court process.

Sec.7.24.100 Sample Notice of Abatement.

A. The Notice of Abatement shall be written in a form that is substantially consistent with the following:

Notice of Public Nuisance(s) and Intention to Abate With City Personnel
("Notice of Abatement")

(Date)

_____ [Responsible Person(s)]
_____ [Mailing Address]
_____ [City, State, and ZIP Code]

Re: Real Property at _____, Montclair, California
San Bernardino County Assessor's Parcel No.: _____
Legal description (Optional): _____

NOTICE IS HEREBY GIVEN that the following public nuisance conditions or activities exist on the premises described above:

(1) (Describe condition or activities) _____
_____ in violation of Montclair Municipal Code (*as well as County and State laws, if applicable*) Section(s) _____.

(a) Required corrective action(s): _____
_____ (with all required permits, approvals, and inspections).

(b) Required completion date: _____
_____ [Repeat Items 1(a-b) for each additional public nuisance to be included in this Notice.]

The foregoing public nuisance conditions are subject to abatement by repair, rehabilitation, demolition, removal, or termination.

PLEASE TAKE FURTHER NOTICE that you may appeal this Notice of Abatement by filing an appeal on a City approved form with the City Clerk's office (located at 5111 Benito Street, Montclair) within ten (10) calendar days of service of this notice. No fee shall be due for the filing of an appeal. Failure of the City Clerk to receive a timely appeal constitutes a waiver of your right to any further administrative appeal and renders the Notice of Abatement final and binding. A written request for an appeal shall contain the following information:

1. Name, address, and telephone number of each responsible party who is appealing the Notice of Abatement (hereinafter, "appellant"), as well as relationship of appellant to the public nuisance described in the Notice of Abatement.
2. Address and description of real property upon which the City intends to enter and abate a public nuisance.
3. Date of Notice of Abatement being appealed.
4. Specific action or decision being appealed.

5. Grounds for appeal in sufficient detail to enable the Hearing Officer to understand the nature of the controversy.

6. The signature of at least one appellant.

Following appeal in the case of a final decision by the City, judicial review of this decision is subject to the provisions and time limits set forth in California Code of Civil Procedure Sections 1094.6 *et seq.*

PLEASE TAKE FURTHER NOTICE that if the public nuisance violations are not abated within the time specified and a timely appeal is not made, such nuisance may be abated by City employees, representatives, or contract agents (hereafter "City Personnel") in the manner stated in this Notice of Abatement. On such occasions, all costs of the abatement including, but not limited to, those stated in Chapter 7.24 of the Montclair Municipal Code shall be assessed against the responsible person(s) and/or the subject property as a lien, or as a special assessment, or as otherwise allowed by law.

PLEASE TAKE FURTHER NOTICE that the City may record a Notice of Substandard Property with the San Bernardino County Recorder's Office against the premises if the public nuisance is not fully abated or corrected (with all required approvals, permits, and inspections), as determined by the City, in the manner and time set forth in this Notice of Abatement and provided that a timely appeal therefrom has not been made.

PLEASE TAKE FURTHER NOTICE that, in the event of abatement by City Personnel, all buildings, structures, and/or personal property constituting a public nuisance may be removed from the subject premises or from public property and destroyed or disposed of, without regard to its actual or salvage value.

Dated this _____ day of _____, 20____.

Public Official (*Name and Title*)

(End of Form)
.....

A Notice of Abatement shall be deemed in substantial compliance with this subsection regardless of form if all substantive information is contained in such Notice of Abatement.

Sec. 7.24.110 Consequence for an Untimely Appeal.

A. If a timely appeal is not received by the City Clerk, the right to appeal is waived and the Notice of Abatement is final and binding. In such instances, the City may, without any administrative hearing, cause the abatement with City personnel of any or all of the nuisance conditions or activities stated in the Notice of Abatement.

Entry onto private real property that is both improved and occupied shall, excepting instances of an imminent hazard, be pursuant to a warrant from a court of competent jurisdiction. The City shall follow the procedures stated in this Chapter for recovery of all abatement costs, fees, and expenses (incidental or otherwise).

B. Nothing contained in this Chapter shall obligate the City to undertake abatement actions pursuant to a Notice of Abatement, whether or not there is a timely appeal.

Sec. 7.24.120 Abatement by Responsible Person Prior to Hearing.

A. Any responsible person shall have the right to abate a nuisance in accordance with the Notice of Abatement at his or her own expense, provided all corrective actions are completed with all required City permits, approvals, and inspections, prior to the date the matter is set for a hearing.

B. A hearing shall be cancelled if all nuisance conditions or activities are, as determined by the City, fully and lawfully abated prior thereto.

Sec. 7.24.130 Review by Hearing Officer.

A. Any responsible person who contests a Notice of Abatement shall, subject to filing a timely appeal, obtain review thereof before a hearing officer. The administrative appeal shall be scheduled no later than sixty (60) calendar days, and no sooner than ten (10) calendar days, after receipt of a timely filed request for appeal. The appellants listed on the written request for an appeal shall be notified in writing of the date, time, and location of the hearing at least ten (10) calendar days prior to the date of the hearing.

B. Any request by an appellant to continue a hearing must be submitted to the City Clerk in writing no later than two (2) business days before the date scheduled for the hearing. The hearing officer may continue a hearing for good cause or on his/her own motion; however, in no event may the hearing be continued for more than thirty (30) calendar days without stipulation by all parties.

C. At the place and time set forth in the notification of appeal hearing, the hearing officer shall hear and consider the testimony of the appealing person(s), the issuing officer, and/or their witnesses, as well as any documentary evidence presented by these persons concerning the alleged public nuisance(s).

D. Appeal hearings are informal, and formal rules of evidence and discovery do not apply. The City bears the burden of proof to establish a nuisance exists by a preponderance of evidence. The issuance of a Notice of Abatement shall constitute prima facie evidence of the violation and the Code Enforcement Officer who issued the Notice of Abatement is not required to participate in the appeal hearing. The appellant and the enforcement officer issuing the Notice as well as all other responsible persons shall have the opportunity to present evidence and to present and cross examine witnesses. The appellant and the enforcement officer issuing the Notice of Abatement, or other responsible persons, may represent himself/herself/themselves or be represented by anyone of his/her/their choice. The appellant, or other interested

persons, may bring an interpreter to the hearing at his/her/their sole expense. The City may, at its discretion, record the hearing by stenographer or court reporter, audio recording, or video recording.

E. If the appellant fails, or other responsible persons fail, to appear, or to otherwise submit any admissible evidence demonstrating the nonexistence of the alleged nuisance(s), the hearing officer shall cancel the hearing and send a notice thereof to the responsible person(s) by first class mail to the address(es) stated on the appeal form. A cancellation of a hearing because of nonappearance of the appellant shall constitute the appellant's waiver of the right to appeal. In such instances, the Notice of Abatement is final and binding.

Sec. 7.24.140 Decision of Hearing Officer; Order of Abatement.

A. Not later than fifteen (15) calendar days following conclusion of the hearing, the hearing officer shall determine if any nuisance condition exists at the subject property. If the hearing officer determines that each nuisance condition described in the Notice of Abatement is nonexistent, the Notice of Abatement shall be deemed cancelled. If the hearing officer determines that one or more of the nuisance conditions described in the Notice of Abatement exists, he/she shall issue a written Order of Abatement that shall contain the following:

1. A finding and description of each nuisance condition existing at the subject property
2. The name of each person responsible for a nuisance condition or conditions at the subject property, as well as the name of any person who is not responsible therefor.
3. The required corrective action and a compliance period for each unabated nuisance condition.
4. Any other finding, determination, or requirement that is relevant or related to the subject matter of the appeal.
5. The following statement: "The decision of the Hearing Officer is final and binding. Judicial review of this decision is subject to the provisions and time limits set forth in California Code of Civil Procedure Sections 1094.6 *et seq.*"

B. Notwithstanding the provisions of Chapter 1.08 of this Code, the decision of the Hearing Officer is final and conclusive; and the responsible person shall not be entitled to appeal the determination of the hearing officer to the City Manager (if the Hearing Officer were someone other than the City Manager), Planning Commission, or City Council.

C. A copy of the decision shall be served by first class mail with receipt confirmation on each responsible person to whom the Notice of Abatement was issued. If the property owner is not an appellant, a copy of the Order of Abatement shall also be served on the owner by first class mail to the address shown on the last equalized

assessment roll. Failure of a person to receive a properly addressed decision shall not invalidate any action or proceeding by the City pursuant to this Chapter.

D. The failure of any responsible person to comply with an Order of Abatement by completing each of the requisite corrective actions in the manner and time set forth in the Order of Abatement constitutes a misdemeanor offense.

Sec. 7.24.150 Abatement of Nuisance by Responsible Persons Prior to City Abatement Actions.

A. Any responsible person shall have the right to fully abate a nuisance in accordance with the Hearing Officer's decision prior to the date of entry of City personnel upon the subject real property, provided that all corrective actions are completed with all required City permits, approvals and inspections, prior to said entry date. In such instances, all administrative proceedings shall be cancelled, with the exception of the City's right to seek recovery of its incurred incidental expenses, Code Enforcement Fees, and Attorney's Fees as provided by and pursuant to the provisions of this Chapter.

B. Once the City enters a subject real property to abate a public nuisance, it shall have the right to complete this action.

C. It is unlawful and a misdemeanor for any person to obstruct, impede, or interfere with City personnel in the performance of any act that is carried out to abate a public nuisance.

D. All buildings, structures, and/or personal property that is removed by City personnel from premises in the abatement of a nuisance shall be lawfully disposed of or destroyed without regard to its actual or salvage value, if any.

Sec. 7.24.160 Emergency Action to Abate an Imminent Hazard.

A. Notwithstanding any provision of the Montclair Municipal Code to the contrary, the Police Chief, the Fire Chief, or the Building Official, or any of their designees, may cause a public nuisance to be summarily abated if it is determined that the nuisance creates an imminent hazard to a person or persons, or to other real or personal property.

B. Prior to abating a nuisance that creates an imminent hazard, the City Manager shall attempt to notify a responsible person by telephone or in writing of the imminent hazard and request its abatement by said person; provided however, that the City Manager may dispense with any attempt at prior notification of a responsible person if, in the sole discretion of the City Manager, the nature or severity of the hazard justifies such inaction. If notice has been so given, but, in the sole discretion of the City Manager, the responsible person(s) fail(s) to take immediate and meaningful steps to abate the imminent hazard, the City may abate the nuisance with City personnel without further notice, and charge the costs and fees thereof to the responsible person(s).

C. Within ten (10) business days following emergency action of City personnel to abate an imminent hazard, the City shall serve any responsible person with a Notice of Emergency Abatement by City personnel of an Imminent Hazard by first class mail. Notice to a property owner shall be mailed to the mailing address set forth in the last equalized assessment roll of the San Bernardino County Assessor's Office. Failure of any responsible person to receive a properly addressed Notice of Emergency Abatement by City personnel of an Imminent Hazard by mail shall not invalidate any action or proceeding pursuant to this Chapter.

D. A Notice of Emergency Abatement by City personnel of an Imminent Hazard shall contain the following provisions:

1. The name of all known responsible persons who are being served with the Notice of Emergency Abatement by City personnel of an Imminent Hazard and the address of the real property on which the imminent hazard was present.

2. A brief description of the condition(s) and reasons why it constitutes an imminent hazard.

3. A brief description of the law prohibiting or pertaining to the imminent hazard.

4. A brief description of the actions City personnel took to abate the imminent hazard.

E. Omission of any of the foregoing provisions in a Notice of Emergency Abatement by City personnel of an Imminent Hazard, whether in whole or in part, or the failure of a responsible person to receive this document, or the failure of the City to issue this document in a timely fashion, shall not render it defective or render any proceeding or action pursuant to this Chapter invalid.

F. Emergency abatement of an imminent hazard by City personnel shall not preclude the City from recording a Declaration of Substandard Property in accordance with the provisions of Section 7.24.220 of this Chapter, if conditions thereafter remain at the premises that constitute a violation of law or a public nuisance.

G. The City shall be entitled to recover its fees and costs (incidental or otherwise) for the abatement of an imminent hazard. In such instances, the City shall follow the procedures set forth in this Chapter.

Sec. 7.24.170 Combination of Notices.

The notices that are authorized by this Chapter may be combined in the discretion of the City.

Sec. 7.24.180 Establishment of Costs of Abatement.

A. The City shall keep an accounting of the Abatement Costs.

B. The City shall serve a Statement of Abatement Costs on the responsible persons within ninety (90) calendar days of the City's completion of nuisance abatement actions. Service of this statement may be made in the manner provided for in Section 7.24.080 of this Chapter.

C. Unless a timely contest of the Statement of Abatement Costs is filed, a responsible person shall tender the Abatement Costs in U.S. currency to the City within thirty (30) calendar days of the date of service of the Statement of Abatement Costs.

D. A responsible person has the right to contest a Statement of Abatement Costs by filing a written request for contest with the City Clerk's Office (located at 5111 Benito Street, Montclair) within ten (10) calendar days of service of the Statement of Abatement Costs.

1. A written request for contest shall contain the following information:

(a) Name, address, telephone number, and signature of each responsible person who is contesting the Statement of Abatement Costs.

(b) Address and description of the real property upon which the City abated a public nuisance.

(c) Date of the Statement of Abatement Costs being appealed.

(d) Description of the specific Abatement Cost being contested, and a statement of the grounds for contest in sufficient detail to enable the City Manager to understand the nature of the controversy.

2. No fee shall be due for the filing of a request for contest.

E. Failure of the City Clerk to receive a timely appeal request for contest constitutes a waiver of the right to contest a Statement of Abatement Costs. In this event, the Statement of Abatement Costs is final and binding, and the City may proceed to collect its Abatement Costs as contained in a final Statement of Abatement Costs in any manner allowed by law.

F. If a timely request for contest is received by the City Clerk, a hearing shall be set before the City Manager no later than sixty (60) calendar days, and no sooner than ten (10) calendar days, of receipt of the request for contest. A notice of the date, time and location of the hearing shall be served on all responsible persons who contested the Statement of Abatement Costs by first class mail to the address(es) stated on the request form at least ten (10) calendar days prior to the hearing. Failure of a person requesting a contest to receive a properly addressed notice shall not invalidate any action or proceeding by the City pursuant to this Chapter.

G. Any request by an appellant to continue a hearing must be submitted to the City Clerk in writing no later than five (5) business days before the date scheduled for the hearing. The City Manager may continue a hearing for good cause or on his or her own motion; however, in no event may the hearing be continued for more sixty (60) calendar days without stipulation by all parties.

H. At the time and place fixed for receiving and considering the request to contest the Statement of Abatement Costs, the City Manager shall hear and pass upon the evidence submitted by City Personnel, together with any objections or protests raised by responsible persons liable for said costs. Testimony and evidence shall be limited to issues related to the abatement costs, and no person shall be permitted to present evidence or testimony challenging the existence of a public nuisance or manner of abatement as described in the Notice of Abatement. Thereupon, the City Manager may make such revision, correction or modification to the statement as it may deem just, after which the statement, as it is submitted, or as revised, corrected or modified, shall be confirmed. The hearing may be continued from time to time.

I. Notwithstanding the provisions of Chapter 1.08 or any other provision of this Code, the decision of the City Manager is final and binding, and a responsible person shall not be entitled to a hearing before the Planning Commission or the City Council.

J. The City Clerk shall cause a confirmed Statement of Abatement Costs to be served upon all persons who contested the original statement by first class mail to the address(es) stated on the request form. The City Clerk shall cause a confirmed Statement of Abatement Costs to be served on the owner of the property on which City personnel abated a public nuisance by first class mail to the address shown on the last equalized assessment roll (irrespective of whether the owner contested the Statement of Abatement Costs). This document shall also contain the following statement: "The decision of the City Manager is final and binding. Judicial review of the this decision is subject to the provisions and time limits set forth in California Code of Civil Procedure Sections 1094.6 *et seq.*"

K. Failure of a person to receive a properly addressed confirmed statement shall not invalidate any action or proceeding by the City pursuant to this Chapter.

L. A responsible person shall tender the Abatement Costs in U.S. Currency to the City within thirty (30) calendar days of the date of service of the confirmed Statement of Abatement Costs. The Abatement Costs (as contained in an uncontested Statement on Abatement Costs or in a confirmed Statement of Abatement Costs) shall constitute a civil debt against the responsible party(ies) and may be collected by the City in any manner authorized by law.

Sec. 7.24.190 Collection of Abatement Costs by Special Assessment.

A. The City may cause a special assessment to be made upon real property upon which a public nuisance was abated pursuant to California Government Code, Section 38773.5, and future amendments thereto, in the event a Statement of Abatement Costs or a confirmed Statement of Abatement Costs is not paid in a timely manner.

B. A Notice of Special Assessment shall be sent to the owner(s) of the subject real property by certified mail at the time the assessment is the imposed that shall contain the following recitals:

The property may be sold after three years by the tax collector for unpaid delinquent assessments. The tax collector's power of sale shall not be affected by the failure of the property owner to receive notice. The assessment may be collected at the same time and in the same manner as ordinary municipal taxes are collected, and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for ordinary municipal taxes. All laws applicable to the levy, collection, and enforcement of municipal taxes shall be applicable to the special assessment. However, if any real property to which the cost of abatement relates has been transferred or conveyed to a bona fide purchaser for value, or if a lien of a bona fide encumbrance for value has been created and attaches thereon prior to the date on which the first installment of the taxes would become delinquent, then the cost of abatement shall not result in a lien against the real property but instead shall be transferred to the unsecured roll for collection.

C. The City Attorney or City Prosecutor shall establish the Notice of Special Assessment form for use, or consideration by, the Tax Collector in collecting a special assessment.

D. The Notice of Special Assessment shall be entitled to recordation with the San Bernardino County Recorder's Office.

E. The amount of a Special Assessment shall also constitute a personal obligation of the property owners of land upon which the nuisance was abated.

Sec. 7.24.200 Collection of Costs of Abatement by Nuisance Abatement Lien.

A. As an alternative to the procedure contained in Section 7.24.190 of this Chapter, the City may cause a nuisance abatement lien to be recorded upon real property upon which a public nuisance was abated pursuant to California Government Code, Section 38773.1, and future amendments thereto, in the event a Statement of Abatement Costs or a confirmed Statement of Abatement Costs is not paid in a timely manner.

B. A lien shall not be recorded prior to serving the owner of record of the parcel of land on which the public nuisance is maintained, with a notice. This document shall be served in the same manner as a summons in a civil action in accordance with Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure. If the owner of record, after diligent search cannot be found, the notice may be served by posting a copy thereof in a conspicuous place upon the property for a period of ten (10) days and publication thereof in a newspaper of general circulation published in San Bernardino County pursuant to Section 6062 of the California Government Code.

C. The nuisance abatement lien shall be recorded in the San Bernardino County Recorder's office in the County in which the parcel of land is located and from the date of recording shall have the force, effect, and priority of a judgment lien.

D. A nuisance abatement lien authorized by this Section shall specify the

amount of the lien for the City of Montclair, the name of the City department on whose behalf the lien is imposed, the date of the abatement actions, the street address, legal description and assessor's parcel number of the parcel on which the lien is imposed, and the name and address of the recorded owner of the parcel.

E. In the event that the lien is discharged, released, or satisfied, through either payment or foreclosure, notice of the discharge containing the information specified in Subsection (D) shall be recorded by the City. A nuisance abatement lien and the release of the lien shall be indexed in the grantor-grantee index.

F. A nuisance abatement lien may be foreclosed by an action brought by the City for a money judgment.

G. The City may recover from the property owner any costs incurred regarding the processing and recording of the lien and providing notice to the property owner as part of its foreclosure action to enforce the lien.

H. The amount of a Nuisance Abatement Lien shall also constitute a personal obligation of the property owners of land upon which the nuisance was abated.

Sec. 7.24.210 Triple the Costs of Abatement.

Pursuant to California Government Code Section 38773.7 (or any subsequent amendment thereto), upon entry of a second or subsequent civil or criminal judgment within a two (2) year period finding that an owner of property is responsible for a public nuisance except for public nuisance conditions abated pursuant to California Health and Safety Code Section 17980 ("State Housing Law"), the court may order that person to pay triple the costs of the abatement.

Part 3 - Recordation, Enforcement and Attorney's Fees

Sec. 7.24.220 Recordation of Substandard Notice.

A. Notwithstanding any provision of the Montclair Municipal Code to the contrary, if the City determines that any property, building or structure, or any part thereof, is in violation of any provision of the Montclair Municipal Code and said violation has not been fully abated or corrected, as determined by the City, in the manner and time provided in a written notice to a responsible person, then the City, in its sole discretion, may record a "Declaration of Substandard Property" with the San Bernardino County Recorder's Office against said premises. As used herein, "fully abated or corrected" includes the procurement of all required City and/or County approvals, permits, licenses and the passage of all required inspections.

B. A Declaration of Substandard Property may be recorded after service of a Notice to Abate provided that: (i) the Notice to Abate contained this disclosure, (ii) the public nuisance was not, as determined by the City, fully abated or corrected in the manner and time specified in the Notice to Abate, and, (iii) either a timely and proper appeal of the Notice to Abate was not made or, in any instance where a Notice to Abate was timely appealed, the Notice to Abate is upheld by the reviewing administrative authority.

C. The City may record a Declaration of Substandard Property without the issuance of a "Notice to Abate", provided that a written notice of violation or a written notice of correction to a responsible person previously disclosed that a Declaration of Substandard Property might be recorded against a property if a violation is not fully abated or corrected in the manner and time delineated in said notice.

D. The form that constitutes a Declaration of Substandard Property shall be approved by the City Attorney or the City Prosecutor.

E. The City shall record a Notice of Rescission of Substandard Property with the San Bernardino County Recorder's Office within ten (10) business days of its determination that a violation or a public nuisance has been fully abated or corrected.

F. The City shall cause copies of recorded Declaration of Substandard Property and Notice of Rescission of Substandard Property to be served on all persons having an ownership interest in the subject real property as shown in the last equalized assessment roll of the San Bernardino County Assessor's Office. Notwithstanding any provision of the Montclair Municipal Code, service thereof shall be by first class mail. Failure of any person to receive such notices shall not invalidate any action or proceeding pursuant to this Chapter.

Sec. 7.24.230 Code Enforcement Fees.

A. Pursuant to California Health and Safety Code Section 17951, and any successor statute thereto, responsible persons, who cause, allow, permit, suffer, or maintain a violation in, or upon, residential properties, shall be charged fees (hereafter "Code Enforcement Fees") by the City to defray its costs of code enforcement actions, as hereafter defined. Such fees shall not exceed the amount reasonably required to achieve this objective and are chargeable whether the City's Code Enforcement actions occur in the absence of formal administrative or judicial proceedings, as well as prior to, during, or subsequent to, the initiation of such proceedings.

B. The amount(s) or rate(s) of Code Enforcement Fees for City Personnel time and other resources that are used for Code Enforcement actions shall be established and may thereafter be amended by Resolution by the City Council.

C. The City Manager, or a designee thereof, is authorized to adopt regulations for the uniform imposition of Code Enforcement Fees and for related administrative actions pertaining to such fees.

D. The fees imposed pursuant to this Section shall be in addition to any other fees or charges that responsible persons may owe in accordance with any other provision of the this Code or that are imposed pursuant to county, state, or federal laws or regulations.

E. Code Enforcement Fees shall be recoverable in conjunction with any civil, administrative, or criminal action to abate, cause the abatement or cessation of, or otherwise remove a violation or a public nuisance.

F. Failure to pay Code Enforcement Fees shall constitute a debt that is collectible in any manner allowed by law.

Sec. 7.24.240 Recovery of Attorney's Fees.

A. A prevailing party in any administrative, civil or equitable judicial action to abate, or cause the abatement of a public nuisance as defined in this Chapter, or in any appeal or other judicial action arising therefrom, may recover reasonable attorney's fees in accordance with the following subsections:

1. Attorney's fees are not recoverable by any person as a prevailing party unless the City Manager, or a designee thereof or an attorney for and on behalf of the City, elects in writing to seek recovery of the City's attorney's fees at the initiation of that individual action or proceeding. Failure to make such an election precludes any entitlement to, or award of, attorney's fees in favor of any person or the City.

2. The City is the prevailing party when an administrative or judicial determination is made or affirmed by which a person is found to be responsible for one or more conditions or activities that constitute a public nuisance. A person is the prevailing party only when a final administrative or judicial determination completely absolves that person of responsibility for all conditions or activities that were alleged, in that action or proceeding, to constitute a public nuisance. An administrative or judicial determination that results in findings of responsibility and nonresponsibility on the part of a person for conditions or activities that were alleged in that action or proceeding to constitute a public nuisance, shall nevertheless result in the City being the prevailing party.

B. Provided that the City has made an election to seek attorney's fees, an award of attorney's fees to a person shall not exceed the amount of reasonable attorney's fees incurred by the City in that action or proceeding.

Sec. 7.24.250 Applicability of Other Laws.

A. This Chapter does not exclusively regulate the conditions and use of property within the City. This Chapter shall supplement other provisions of this Code and other statutes, ordinances or regulations now existing or subsequently enacted by the City, the State or any other entity or agency having jurisdiction.

B. The procedures for abatement set forth in this Chapter are not exclusive and are in addition to any other provisions set forth in this Code or by state law for the abatement of public nuisances.

Section IV. Severability.

If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this Ordinance or any part thereof is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof, irrespective of

the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be declared unconstitutional.

Section V. Effective Date.

This Ordinance shall be in full force and effect thirty (30) days after passage.

Section VI. Posting.

The City Clerk shall certify to the passage of this Ordinance and cause the same to be posted pursuant to Government Code Section 36933.

APPROVED AND ADOPTED this XX day of XX, 2010.

Mayor

ATTEST:

City Clerk

I, Donna M. Jackson, City Clerk of the City of Montclair, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 09-911 of said City, which was introduced at a regular meeting of the City Council held on the XX day of XX, 2009, and finally passed not less than five (5) days thereafter on the XX day of XX, 2010, by the following vote, to-wit:

AYES: XX
NOES: XX
ABSTAIN: XX
ABSENT: XX

Donna M. Jackson
City Clerk

AGENDA REPORT

SUBJECT: CONSIDER RECEIVING AND FILING OF
TREASURER'S REPORT

DATE: December 21, 2009

SECTION: ADMIN. REPORTS

ITEM NO.: 1

**BUSINESS
PLAN:** N/A

FILE I.D.: FIN520

DEPT.: ADMIN. SVCS.

REASON FOR CONSIDERATION: State law requires the City Council to receive and file the Treasurer's Report.

BACKGROUND: Included in your agenda is a copy of the Treasurer's Report for the period ending November 30, 2009.

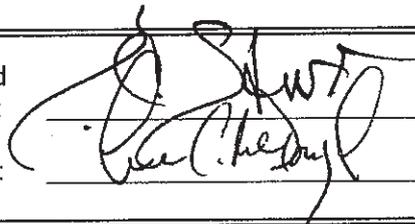
FISCAL IMPACT: Routine—report of City's cash and investments.

RECOMMENDATION: Staff recommends the City Council receive and file the Treasurer's Report for the month ending November 30, 2009.

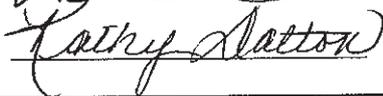
Prepared by:



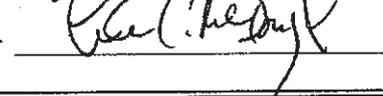
Reviewed and
Approved by:



Proofed by:



Presented by:



AGENDA REPORT

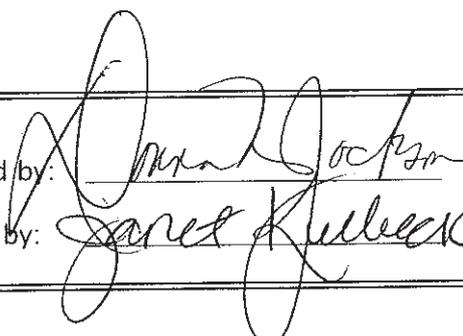
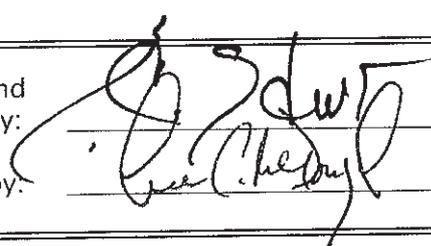
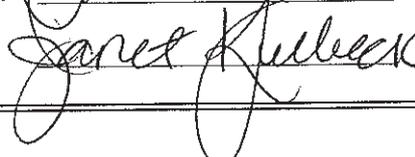
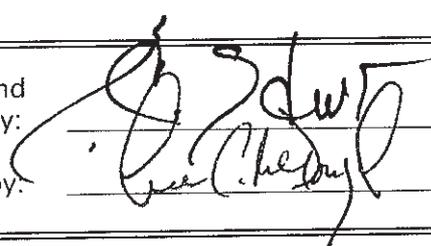
SUBJECT: CONSIDER APPROVAL OF WARRANT REGISTER AND PAYROLL DOCUMENTATIONS	DATE: December 21, 2009
	SECTION: ADMIN. REPORT
	ITEM NO.: 2
BUSINESS PLAN: N/A	FILE I.D.: FIN540
	DEPT.: ADMIN. SVCS.

REASON FOR CONSIDERATION: The City Council is requested to consider approval of the Warrant Register and Payroll Documentations.

BACKGROUND: Mayor Pro Tem Dutrey has examined the Warrant Register dated December 21, 2009, and Payroll Documentations dated December 21, 2009, finds them to be in order and recommends their approval.

FISCAL IMPACT: The Warrant Register dated December 21, 2009, totals \$303,668.61. The Payroll Documentation dated October 11, 2009, totals \$596,395.67, with \$441,007.22 being the total cash disbursement. The Payroll Documentation dated October 25, 2009, totals \$615,994.24, with \$454,476.63 being the total cash disbursement.

RECOMMENDATION: Staff recommends the above-referenced Warrant Register and Payroll Documentations be approved as presented.

Prepared by: 	Reviewed and Approved by: 
Proofed by: 	Presented by: 

AGENDA REPORT

SUBJECT: CONSIDER RECEIVING AND FILING OF
TREASURER'S REPORT

DATE: December 21, 2009

SECTION: ADMIN. REPORTS

ITEM NO.: 3

FILE I.D.: FIN510

BUSINESS

PLAN: N/A

DEPT.: REDEVELOPMENT

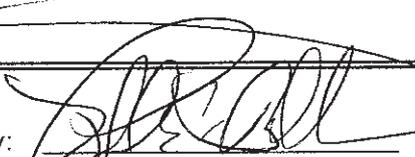
REASON FOR CONSIDERATION: State law requires the Agency Board of Directors to receive and file the Treasurer's Report.

BACKGROUND: Included in your agenda is a copy of the Treasurer's Report for the period ending November 30, 2009.

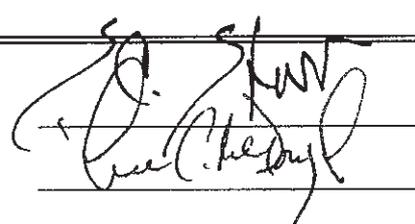
FISCAL IMPACT: Routine—report of the Agency's cash and investments.

RECOMMENDATION: Staff recommends the Agency Board of Directors receive and file the Treasurer's Report for the month ending November 30, 2009.

Prepared by:



Reviewed and
Approved by:



Proofed by:



Presented by:

AGENDA REPORT

SUBJECT:	CONSIDER APPROVAL OF WARRANT REGISTER	DATE:	December 21, 2009
		SECTION:	ADMIN. REPORTS
		ITEM NO.:	4
BUSINESS PLAN:	N/A	FILE I.D.:	FIN530
		DEPT.:	REDEVELOPMENT

REASON FOR CONSIDERATION: State law requires the Agency Board of Directors to receive and file the Warrant Register.

BACKGROUND: Vice Chairman Dutrey has examined the Warrant Register dated 11/01/09 - 11/30/09 in the amounts of \$3,603.04 for Project I; \$203.15 for Project II; \$69,855.79 for Project III; \$224,643.05 for Project IV; \$550,439.69 for Project V; and \$0.00 for Mission Boulevard Joint Redevelopment Project and finds it to be in order.

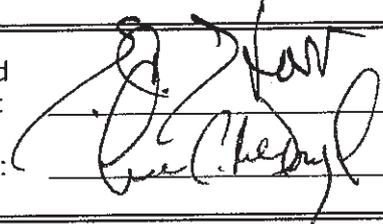
FISCAL IMPACT: Routine—report of Agency's obligations.

RECOMMENDATION: Vice Chairman Dutrey recommends approval of the Warrant Register for the period ending November 30, 2009.

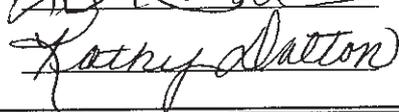
Prepared by:



Reviewed and
Approved by:



Proofed by:



Presented by:

AGENDA REPORT

SUBJECT: CONSIDER RECEIVING AND FILING OF
TREASURER'S REPORT

DATE: December 21, 2009

SECTION: ADMIN. REPORTS

ITEM NO.: 5

**BUSINESS
PLAN:** N/A

FILE I.D.: FIN525

DEPT.: MHC

REASON FOR CONSIDERATION: State law requires the Montclair Housing Corporation Board of Directors to receive and file the Treasurer's Report.

BACKGROUND: Included in your agenda is a copy of the Treasurer's Report for the period ending November 30, 2009.

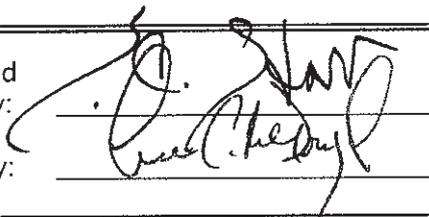
FISCAL IMPACT: Routine—report of the Montclair Housing Corporation's cash and investments.

RECOMMENDATION: Staff recommends the Montclair Housing Corporation Board of Directors receive and file the Treasurer's Report for the month ending November 30, 2009.

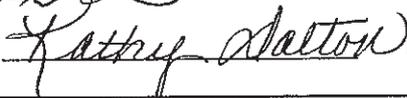
Prepared by:



Reviewed and
Approved by:



Proofed by:



Presented by:

AGENDA REPORT

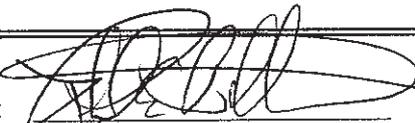
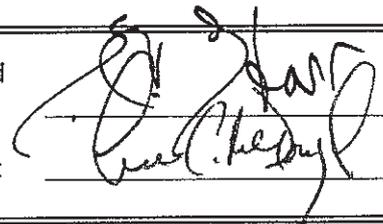
SUBJECT: CONSIDER APPROVAL OF WARRANT REGISTER	DATE: December 21, 2009
	SECTION: ADMIN. REPORTS
	ITEM NO.: 6
BUSINESS PLAN: N/A	FILE I.D.: FIN545
	DEPT.: MHC

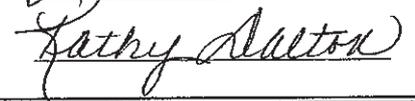
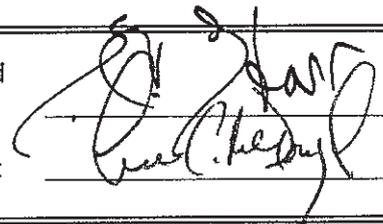
REASON FOR CONSIDERATION: State law requires the Montclair Housing Corporation Board of Directors to receive and file the Warrant Register.

BACKGROUND: Vice Chairman Dutrey has examined the Warrant Register dated 11/01/09 - 11/30/09 in the amount of \$43,976.10 for the Montclair Housing Corporation and finds it to be in order.

FISCAL IMPACT: Routine—report of Montclair Housing Corporation's obligations.

RECOMMENDATION: Vice Chairman Dutrey recommends approval of the Warrant Register for the period ending November 30, 2009.

Prepared by:		Reviewed and Approved by:	
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Proofed by:		Presented by:	
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AGENDA REPORT

SUBJECT: CONSIDER APPROVAL OF A REORGANIZATION PLAN FOR THE PUBLIC WORKS DEPARTMENT	DATE: December 21, 2009
	SECTION: ADMIN. REPORTS
	ITEM NO.: 7
BUSINESS PLAN: N/A	FILE I.D.: PUB275
	DEPT.: PUBLIC WORKS

REASON FOR CONSIDERATION: With the impending retirement of Public Works Superintendent Mario Orioli on December 30, 2009, staff is requesting City Council approval to implement certain organizational changes in the Public Works Department. The organizational changes are proposed to decrease personnel costs requiring reassignment of certain personnel and functional responsibilities.

BACKGROUND: The adopted Public Works Department Budget for Fiscal Year 2009-10 contained appropriations for 38.75 full-time employees and 3 part-time employees. Exhibit A is the organization chart represented in the Fiscal Year 2009-10 Budget. This chart also represents the basic organization of the current Department with several minor exceptions. These exceptions include the following:

- By the beginning of the 2009-10 fiscal year, one full-time Custodian position became vacant and the part-time Mechanic Aide position was vacated. These positions were not filled.
- During the 2009-10 fiscal year, the position of Secretary became vacant and was replaced by a part-time Administrative Specialist.
- The position of Senior Intern (Sewer Fund) was moved from the Public Works Department to the Montclair Housing Corporation.

As indicated, the incumbent Public Works Superintendent is scheduled to retire on December 30, 2009. With the impending retirement of Public Works Superintendent Orioli, staff is proposing certain organizational changes to produce cost savings. However, these changes will necessitate restructuring of duties within the Department. Exhibit B depicts the proposed reorganizational changes. These changes include the following:

- The position of full-time Custodian and part-time Mechanic Aide would remain vacant. The position of Senior Intern would remain assigned to the Montclair Housing Corporation.

Prepared by: <u>M. STAAS</u>	Reviewed and Approved by:	<u>M. STAAS</u>
Proofed by: <u>Christine P. Waldman</u>	Presented by:	<u>Joe Chedoke</u>

- The position of Secretary would remain replaced by a part-time Administrative Specialist.
- The management position of Assistant Public Works Superintendent would be eliminated. The incumbent Assistant Public Works Superintendent would be promoted to the position of Public Works Superintendent.
- The management position of Building Maintenance Supervisor would be reclassified to the management position of Facilities and Grounds Superintendent. The Building Maintenance Supervisor is currently responsible for the maintenance and mechanical systems of all City buildings. With this reclassification, the City building maintenance functions, maintenance of mechanical systems of City buildings, and City parks maintenance would become the responsibility of the Facilities and Grounds Superintendent. The salary for this position would be tied to the position of Public Works Superintendent.
- The position of part-time Custodian would remain unfilled. The Human Services Division has received grant funding for a full-time Custodian position to be utilized at facilities used by the Human Services Division. This position would assume the duties of the part-time Custodian. The grant-funded position is not shown on Exhibit B.
- For purposes of allocating funds, the position titled National Pollution Discharge Elimination System (NPDES) Coordinator would be changed to NPDES/Environmental Compliance Inspector. In addition, the two NPDES/Environmental Compliance Inspectors would be placed in the Engineering Division.

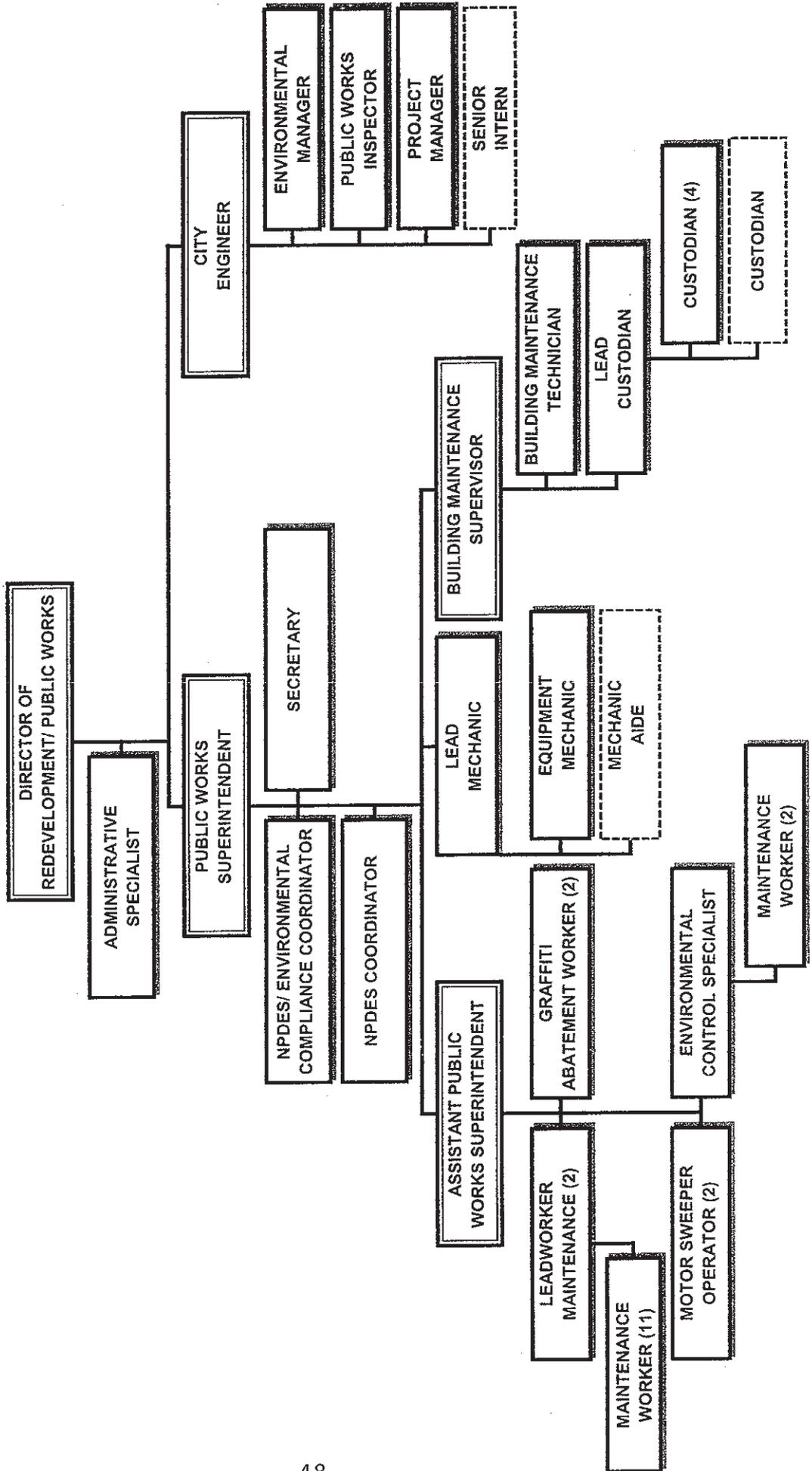
If approved by the City Council, the reorganization of the Public Works Department would become effective on January 4, 2010.

FISCAL IMPACT: The salary and benefits associated with the Public Works Superintendent, Assistant Public Works Superintendent, Building Maintenance Superintendent, Secretary, and part-time Custodian position, shown in Exhibit A, would cost the organization approximately \$219,300 for the remainder of Fiscal Year 2009-10 (January 1 through June 30). The costs associated with the proposed reorganization of the Public Works Department shown on Exhibit B for the six months remaining in the 2009-10 fiscal year are estimated to be \$126,900. Therefore, a six-month savings of approximately \$92,400 would be achieved by the reorganization for the remainder of the current fiscal year.

Annual E-step salary and benefit costs associated with maintaining the current administrative structure in the Public Works Department as depicted in Exhibit A would be approximately \$442,400. Looking long term, the E-step salary and benefit costs for the restructured department shown in Exhibit B would be \$305,000. The annual saving is expected to be \$137,400.

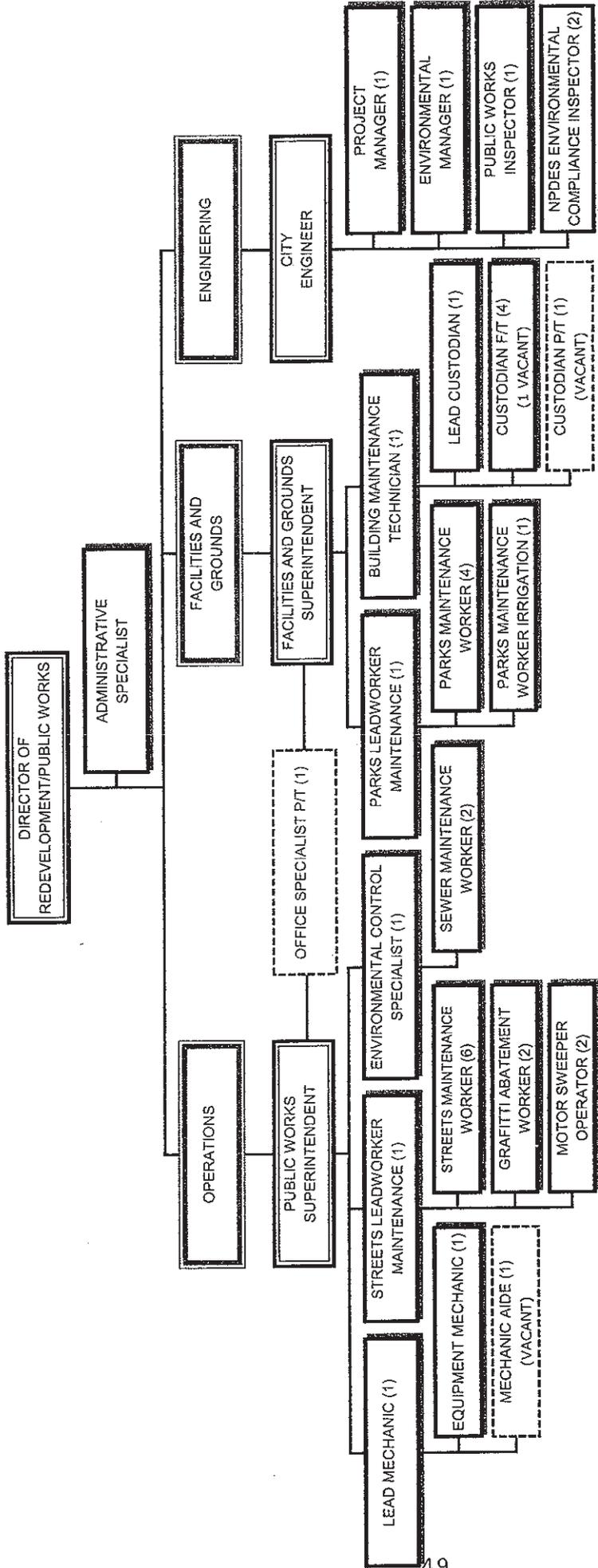
RECOMMENDATION: Staff recommends the City Council approve the reorganization plan for the Public Works Department.

PUBLIC WORKS DEPARTMENT



PUBLIC WORKS DEPARTMENT

Exhibit B



bAGENDA REPORT

SUBJECT: CONSIDER APPROVAL OF FILING OF A NOTICE OF COMPLETION FOR THE MISSION BOULEVARD IMPROVEMENT PHASES 5 AND 6 PROJECT; REDUCTION OF FAITHFUL PERFORMANCE BOND TO 10 PERCENT; AND RETENTION OF PAYMENT BOND FOR SIX MONTHS

CONSIDER RELEASE OF RETENTION 30 DAYS AFTER RECORDATION OF NOTICE OF COMPLETION

DATE: December 21, 2009

SECTION: ADMIN. REPORTS

ITEM NO.: 8

FILE I.D.: SSP301

DEPT.: PUBLIC WORKS

BUSINESS

PLAN: N/A

REASON FOR CONSIDERATION: State law requires Notices of Completion to be recorded with the County Recorder upon acceptance of a public works project. Notices of Completion require City Council approval.

BACKGROUND: On September 15, 2008, All American Asphalt, Inc., was awarded a contract for the Mission Boulevard Improvement Phases 5 and 6 Project and entered into Agreement No. 08-96 with the City. All work required pursuant to Agreement No. 08-96 has been satisfactorily completed. Work included new median islands; landscaping and irrigation; pavement reconstruction; curb, gutter, and sidewalk construction; installation of a new traffic signal and intersection enhancements at the Fremont Avenue intersection; and restriping.

FISCAL IMPACT: During the course of construction, it was necessary to adjust a few quantities as well as modify the project Scope of Services through construction change orders. The changes ultimately increased the total construction cost from the awarded amount of \$2,310,631.00 to the final cost of \$2,455,938.26, a \$145,307.26 increase.

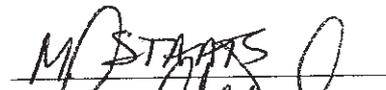
RECOMMENDATION: Staff recommends the City Council take the following actions related to completion of the Mission Boulevard Improvement Phases 5 and 6 Project:

1. Approve the filing of a Notice of Completion with the Office of the San Bernardino County Recorder.
2. Reduce the Faithful Performance Bond to 10 percent.
3. Retain the Payment Bond for six months.
4. Release retention 30 days after recordation of Notice of Completion.

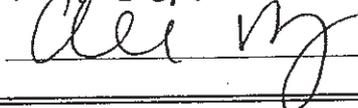
Prepared by:



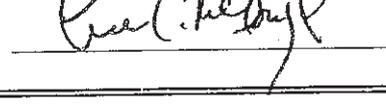
Reviewed and
Approved by:



Proofed by:



Presented by:



RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Montclair, City Clerk's Office
5111 Benito Street/P. O. Box 2308
Montclair, CA 91763

APN NO. : N/A

(Space above this line for Recorder's Use)

NOTICE OF COMPLETION

NOTICE is hereby given that:

The undersigned is the owner of an interest of estate in the hereinafter described property, the nature of which said interest or estate is: fee

The full name and address of the undersigned is Michael C. Hudson, City Engineer
City of Montclair
5111 Benito Street
Montclair, CA 91763

The work was completed on that certain work known as Mission Boulevard Improvement Phases 5-6
Project

for the undersigned City of Montclair, a Municipal Corporation, on the 21st day of December, 2009

The City accepted the job on the 17th day of December, 2009

The Contractor on said job was All American Asphalt
400 E. Sixth Street
P.O. Box 2229
Corona, Ca. 92878-2229

The improvement consisted of Street Improvements

The property upon which said work of improvement was completed is described as: 5500 Mission Blvd.

VERIFICATION

I, the undersigned, say that I am agent for the owner of the aforesaid interest or estate in the property described in the above notice.

I have read the foregoing notice and know and understand the contents thereof, and the facts stated herein are true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: _____ at 5111 Benito Street, Montclair, California

City Engineer, City of Montclair

AGENDA REPORT

SUBJECT: CONSIDER "NO ACTION" ON ALCOHOLIC BEVERAGE PERMIT APPLICATION - 7-ELEVEN STORE 2171

DATE: December 21, 2009

SECTION: ADMIN. REPORTS

ITEM NO.: 9

BUSINESS PLAN: N/A

FILE I.D.: FLP025

DEPT.: ADMIN. SVCS.

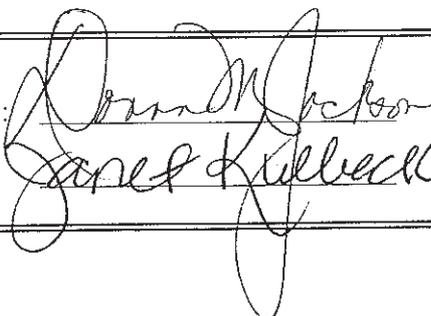
REASON FOR CONSIDERATION: Applications for Alcoholic Beverage Licenses are routinely presented to the City Council for review.

BACKGROUND: 7-Eleven, Inc., and H. Hare, Inc., have applied for an "Off-Sale Beer and Wine" license for 7-Eleven Store 2171, 4875 Mission Boulevard, Units Q & R, Montclair, California.

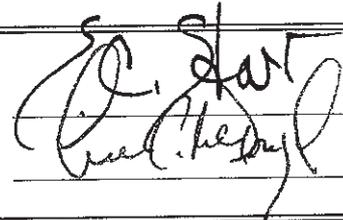
FISCAL IMPACT: No fiscal impact

RECOMMENDATION: Staff recommends the City Council take "No action" on the California Department of Alcoholic Beverage Control Application for Alcoholic Beverage License(s) for 7-Eleven Store 2171, 4875 Mission Boulevard, Units Q & R, Montclair, California.

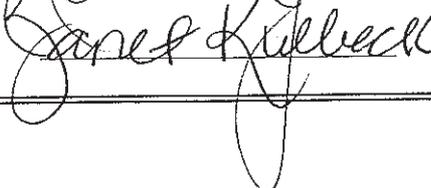
Prepared by:



Reviewed and Approved by:



Proofed by:



Presented by:

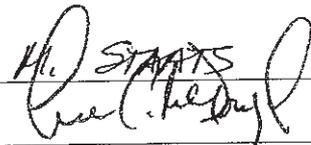
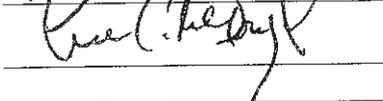
AGENDA REPORT

SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 09-129, A COMMUNICATIONS SITE LEASE AGREEMENT WITH T-MOBILE WEST CORPORATION REGARDING ALMA HOFMAN PARK	DATE: December 21, 2009 SECTION: AGREEMENTS ITEM NO.: 1 FILE I.D.: COM075 DEPT.: PUBLIC WORKS
BUSINESS PLAN: N/A	

REASON FOR CONSIDERATION: T-Mobile West Corporation (T-Mobile) is requesting the City of Montclair consider lease of a portion of Alma Hofman Park for the purpose of constructing a cellular antenna with appurtenant equipment. Alma Hofman Park is located at 5201 Benito Street. The cellular antenna would be sited behind the skateboard park facility, and the support equipment would be situated immediately to the west of the antenna in a used planter area directly behind the walls enclosing the parking lot of the Youth Center. A location of the site of the cellular antenna and equipment is shown on Exhibit A. The project has obtained entitlements.

Staff and the City Attorney have developed a lease agreement between T-Mobile and the City for consideration by the City Council. Proposed Communications Site Lease Agreement No. 09-129 is included in the agenda packet for review and deliberation.

BACKGROUND: T-Mobile requested that the City of Montclair consider lease of a portion of Alma Hofman Park for a cellular antenna to improve its cellular telephone coverage. On May 21, 2009, the City Council Public Works Committee did not object to the concept of leasing a small amount of space to T-Mobile for a cellular antenna. Therefore, T-Mobile submitted an application to the Planning Division for construction of a telecommunication facility designed to resemble an evergreen pine tree (monopine). The monopine would provide service for T-Mobile and another carrier that would collocate on the faux pine. The monopine would be 70 feet high, and the ground area to be occupied by the monopine structure would be approximately 460 square feet. The support equipment west of the monopine would consume approximately 330 square feet. The equipment consists of five radio cabinets, emergency generator receptacles, lights, and utility stub-ups connecting the equipment with the antennas via underground lines. The existing block walls and a new wrought-iron enclosure would provide security, screening, and separation of the equipment from park users and skaters at the skate park. Access to the equipment area would be from the park side of the wall via existing walkways and through a new gate cut into the wall. The Planning Commission approved and granted a Conditional Use Permit (CUP), Precise Plan of Design (PPD), and a Variance for height of the monopine on August 24, 2009. A copy of the staff report to the Planning Commission is included in the agenda packet for review.

Prepared by: <u>M. STAATS</u>	Reviewed and Approved by:	
Proofed by: <u>Christine J. Valdovinos</u>	Presented by:	

With the Planning Commission's approval of the cellular antenna proposal, the City Council is requested to consider the terms and conditions of a Communications Site Lease Agreement with T-Mobile. The most salient terms of proposed Communications Site Lease Agreement No. 09-129 include the following points:

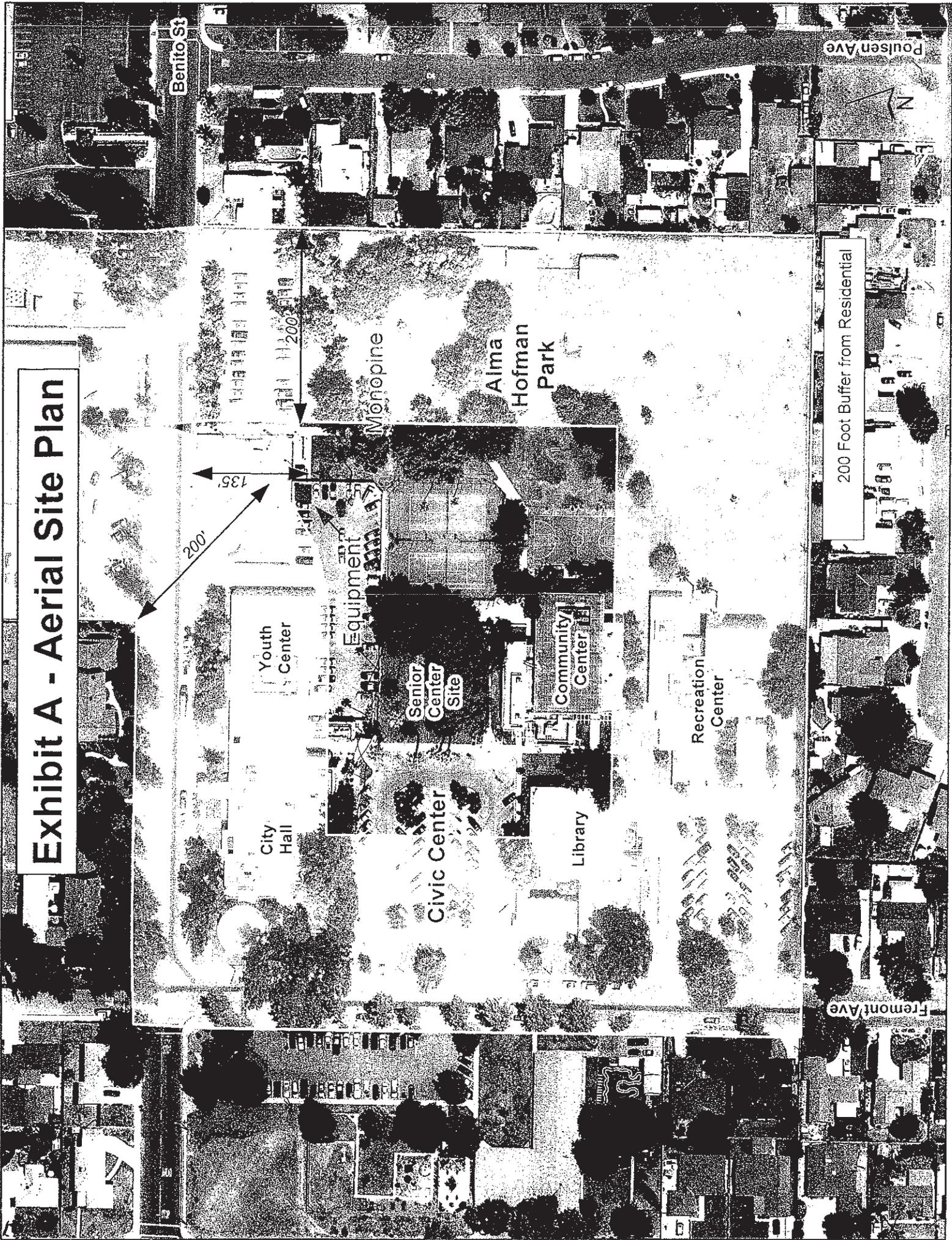
- The term of the Lease Agreement would be five years commencing on the date T-Mobile would begin construction. The term of the lease could be extended for five additional periods of five years.
- The Lease Agreement would automatically be extended upon its expiration unless T-Mobile notifies the City of its intent to terminate the Lease prior to the expiration of the term.
- The annual consideration for the use of the park property would be \$24,000. Each year, the consideration would increase by 4 percent of the annualized consideration.
- Within 20 days of the commencement of the lease, T-Mobile would pay the City a one-time fee of \$15,000.
- Should T-Mobile choose not to renew its lease, default, or choose to terminate the Agreement pursuant to the terms of the Agreement, T-Mobile would have the responsibility to remove the antenna, equipment, footings, and foundations within 30 days of termination of the Agreement at its sole cost and expense. A performance bond would be posted and maintained pursuant to the terms of the CUP as insurance that money would be available to the City for removal of the cellular antenna if T-Mobile fails to act for any reason.
- Utility costs associated with the cellular antenna would be the responsibility of T-Mobile.
- T-Mobile would have the right to enter the park property for construction purposes and to maintain the facility upon its completion. T-Mobile would have access without notice to site for maintenance on a 24-hour per day basis. The City would grant T-Mobile a nonexclusive easement for vehicular and pedestrian ingress and egress to its facility for such purpose.
- T-Mobile would have the right to add additional telecommunications equipment and/or operators of telecommunications systems to the site upon written approval of the City. T-Mobile would pay the City one-half of all rents or license fees actually received by T-Mobile from any third-party agreements unless such third party leases additional ground from the City. In this case, the City would enter into a ground lease with such third party.
- T-Mobile would be responsible for payment of any taxes attributable to its facilities.
- T-Mobile would be responsible for repair and maintenance of its facilities. All graffiti and defacement must be removed from the antenna or equipment facilities within three business days of receipt of notice from the City. The City would remain responsible for the landscape around the monopine because the area around the monopine would not be fenced. It would appear to be integrated with other landscape material at the park.

- T-Mobile would be responsible for providing the City with the appropriate indemnification and insurance.

FISCAL IMPACT: Approval of proposed Communications Site Lease Agreement No. 09-129 with T-Mobile would provide the City with annual revenue of \$24,000. A 4 percent increase to the annual consideration would be provided on the anniversary date of the commencement of the Lease Agreement. The City would also receive a one-time payment of \$15,000 upon commencement of the Lease. If another cellular company locates its facilities on the monopine, the City would be eligible to receive one half of the rent from that company if it locates its equipment within the area leased by T-Mobile. If another cellular company needs more space for equipment, a ground lease would need to be negotiated with the City.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 09-129, a Communications Site Lease Agreement with T-Mobile West Corporation regarding Alma Hofman Park.

Exhibit A - Aerial Site Plan



Benito St

Poulsen Ave



200'

135'

Monopine

Alma Hofman Park

Youth Center

Equipment

Civic Center

Senior Center Site

Library

Community Center

Recreation Center

Fremont Ave

200 Foot Buffer from Residential

AGENDA REPORT

SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 09-130, A REIMBURSEMENT AGREEMENT WITH MONTCLAIR I MGP, LLC, REGARDING PROPERTY LOCATED ON THE NORTHEAST CORNER OF MORENO STREET AND MONTE VISTA AVENUE	DATE: December 21, 2009
BUSINESS PLAN: STRATEGIC PRIORITY NO. 1	SECTION: AGREEMENTS
	ITEM NO.: 2
	FILE I.D.: LDU460
	DEPT.: ADMIN. SVCS./ PUBLIC WORKS

REASON FOR CONSIDERATION: Montclair I MGP, LLC, is the owner of property located on the northeast corner of Moreno Street and Monte Vista Avenue. The property is located within the boundaries of the North Montclair Downtown Specific Plan. Pursuant to the Specific Plan, the property owner has submitted applications for various discretionary land use approvals for the development of the property. Montclair I MGP, LLC, would be required to develop a public park and public streets as a part of the Specific Plan requirements. In order to facilitate review of this project, staff finds itself in need of the expertise of consultants and special legal counsel. Given the current economic situation, the City does not have the financial resources to retain such expertise. Therefore, staff has requested that Montclair I MGP, LLC, enter into a Reimbursement Agreement, whereby the developer would provide the City with a deposit of funds to offset consultant and legal fees associated with review of the proposed development. Proposed Agreement No. 09-130 is included in the agenda packet for the Council's review and consideration.

Approval of this Agreement will satisfy a portion of Strategic Priority No. 1 as contained in the City of Montclair "Business Plan."

BACKGROUND: The City Council adopted the North Montclair Downtown Specific Plan on May 16, 2006. The intent of the Specific Plan was to encourage pedestrian, transit-oriented mixed-use development. The North Montclair Downtown Plan also included areas for parks and other public open space. The Specific Plan requires public parks and open space in order to allow access by the entire community and give the area the quality of a city center. However, as a land use document, the Specific Plan did not provide guidance on how the City should deal with legal, environmental, and maintenance issues involved with build-out of the Specific Plan.

The proposed project submitted for review by Montclair I MGP, LLC, would be located on the former Sam's Club site. The proposed development would include 385 multifamily residential units; approximately 770 parking spaces for residents, with at least one space per unit being located adjacent to the related unit and the other space for such unit located elsewhere on the property; and development of a one-acre public park. In order to facilitate review of this proposed project, staff finds it necessary to seek the expertise

Prepared by: <u>M. STAATS</u>	Reviewed and Approved by:	<u>M. STAATS</u>
Proofed by: <u>W. J. Caldwell</u>	Presented by:	<u>W. J. Caldwell</u>

of outside consultants that may include legal, environmental, planning, and engineering experts.

As a condition of the City's completion of the project-review process, Montclair I MGP, LLC, has agreed to reimburse the City for consultants' costs and expenses related to the City's project-review process. Proposed Agreement No. 09-130 contains the terms of the developer's reimbursement of City's incurred consultant costs. A synopsis of the proposed Agreement includes the following points:

- The City would retain the services of certain consultants and have the right to amend the scope of work. The consultants would be contractors exclusively of the City and not of the developer. The work product produced by the consultants, which would be subject to reimbursement by the developer, would be photocopied for the information of the developers unless that work would be considered privileged or confidential under law.
- As a part of the review process of the proposed development, the City would retain the services of David Taussig & Associates regarding formation of a Community Facilities District to pay for items such as parks and street maintenance; Best, Best & Krieger, LLP, regarding legal services; and Albert Grover & Associates regarding traffic engineering. If the City would choose to retain additional consultants, it would be required to inform the developer. The developer would have five days to review and approve or disapprove the retention of such consultants. In the event the developer objected to the retention of the consultants, the City and developer would communicate to resolve any objections. If the parties were unable to resolve objections and the City retained the disputed party, the developer would have the sole and exclusive right to terminate the Agreement and would reimburse the City for all costs incurred to the date of termination.
- The City has estimated the aggregate cost for all consultants to be \$150,000. By January 6, 2010, the developer would be required to submit the sum of \$75,000 to the City. This amount would be held by the City in a separate account as the "Project Deposit Account." When consultants invoice the City for fees, costs, and expenditures associated with the project, they would concurrently provide a duplicate invoice to the developer. The developer would have five days to approve or disapprove the invoice. In the event the developer disputes an invoice, the City and developer would communicate to resolve the objections. If the parties were unable to resolve the objections and the City pays the invoice, the developer could take action to terminate the Agreement and would reimburse the City for all costs incurred to the date of termination. When the developer's deposit drops below \$15,000, the City would make a written demand to the developer to replenish the deposit to the \$75,000 amount.
- The City would not exceed the estimated \$150,000 of costs without first informing the developer in writing regarding the need for additional services. The City would be required to provide the developer with appropriate documentation of the reason for the excess costs so the developer may reasonably evaluate such costs. The City would also be required to inform the developer in writing prior to amending the scope of work for any consultant service and the estimated cost thereof. Once the City provides such notice to the developer, the developer would be obligated to pay the excess cost in the same manner as the estimated costs. However, if the developer objects to the excess costs, the developer must provide the City with a written objection no later than five days after receipt of the City's written notice. The City

and developer would communicate in an attempt to resolve the objection. If the parties were unable to resolve the objection, the developer would have the sole and exclusive right to terminate the Agreement and reimburse the City for all costs incurred to the date of termination.

- The City would be required to maintain accurate records of invoices received from, and payments made to, the consultants. The City would be required to provide a payment summary to the developer within a reasonable time upon request.
- Nothing in the Agreement would be deemed to require approval or conditional approval of any or all land use entitlements sought by the developers from the Planning Commission or City Council.
- The term of the Agreement would commence on the date the Agreement is approved by the City Council and would terminate when all services required for the project from the consultants were completed to the satisfaction of the City. The developer's obligation to reimburse the City would survive the termination of the Agreement.
- The City would be able to terminate the Agreement prior to the terms set forth above, without cost or liability, upon 30 days written notice to the developer in the event the developer fails to satisfy any material obligation of the Agreement or fails to prosecute its applications for the project. The developer would be able to terminate the Agreement upon 30 days prior written notice provided that the developer gives the City written notice withdrawing its application for the project and the developer would be obligated to satisfy all of its obligations under the Agreement through the effective date of the termination.
- The Agreement would not be assignable by either party without the prior written consent of the other party.

FISCAL IMPACT: Through proposed Reimbursement Agreement No. 09-130, the City would be able to retain legal and consulting services related to the City's review of the development project submitted by Montclair I MGP, LLC. The developer would provide the funds to the City for such needed legal and consulting services. At this time, the estimated cost to the developer would not exceed \$150,000.

In proposing the Reimbursement Agreement, staff is attempting to ensure that the City's planning and legal fees related to the North Montclair Downtown Plan development remain revenue neutral to the General Fund. Furthermore, in expending the funds on planning and legal fees now, staff hopes to ensure that development and maintenance costs related to public facilities within the North Montclair Downtown Plan area also largely remain revenue neutral.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 09-130, a Reimbursement Agreement with Montclair I MGP, LLC, regarding property located on the northeast corner of Moreno Street and Monte Vista Avenue.

**MINUTES OF THE MEETING OF THE MONTCLAIR
PERSONNEL COMMITTEE HELD ON MONDAY,
DECEMBER 7, 2009, AT 7:31 P.M. IN THE CITY
ADMINISTRATIVE OFFICES, 5111 BENITO STREET,
MONTCLAIR, CALIFORNIA**

I. CALL TO ORDER

Mayor Eaton called the meeting to order at 7:31 p.m.

II. ROLL CALL

Present: Mayor Eaton; Mayor Pro Tem Dutrey; City Manager McDougal;
and Deputy City Manager/Director of Administrative
Services Starr

III. APPROVAL OF MINUTES

**A. Minutes of the Regular Personnel Committee Meeting of
November 16, 2009.**

Moved by Deputy City Manager/Administrative Services Director
Starr, seconded by Mayor Pro Tem Dutrey, and carried
unanimously to approve the minutes of the Personnel Committee
meeting of November 16, 2009.

IV. PUBLIC COMMENT - None

V. CLOSED SESSION

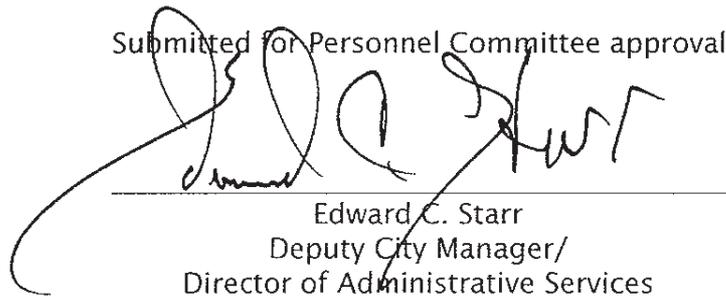
At 7:32 p.m., the Personnel Committee went into Closed Session
regarding personnel matters related to appointments, resignations/
terminations, and evaluations of employee performance.

At 7:53 p.m., the Personnel Committee returned from Closed Session.
Mayor Eaton stated that no announcements would be made at this time.

VI. ADJOURNMENT

At 7:53 p.m., Mayor Eaton adjourned the Personnel Committee.

Submitted for Personnel Committee approval,



Edward C. Starr
Deputy City Manager/
Director of Administrative Services