



## CITY OF MONTCLAIR

Montclair Civic Center  
5111 Benito Street  
Montclair, CA 91763

February 21, 2013

**TO:** Honorable Mayor and City Council

**FROM:** Edward C. Starr, City Manager

**SUBJECT:** CITY MANAGER'S WEEKLY REPORT: February 15-21, 2013

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### ➤ **CITY MANAGER/ADMINISTRATIVE SERVICES DEPARTMENTS**

- Earlier this month, in a favorable ruling for local governments, the California Supreme Court, in a 6-0 decision, ruled even if discrimination plays a role in an employee's termination, an employer would not be liable for back pay or other compensation (including emotional distress and punitive damages) if the employee would have been dismissed anyway for poor performance.

In the past, employees could receive compensation, including back pay and damages, and win reinstatement if they could prove discrimination was "a motivating factor" in a termination.

Now, to establish liability in a "mixed motive" employment discrimination case, the employee must show unlawful discrimination was a substantial factor motivating the adverse employment decision, the Court ruled in *Harris v. City of Santa Monica*. However, the employer would then get the chance to argue performance alone would have resulted in the worker's termination.

The decision overturned a jury award to a Santa Monica bus driver who was fired after revealing she was pregnant. The City had contended the bus driver would have been fired regardless of her pregnancy because she had two accidents and failed twice to report to work on schedule.

The court did say employers would still have to pay a litigant's attorney fees if a jury finds illegal bias was involved, and the employee may be entitled to declaratory and injunctive relief—actions that "reaffirm the plaintiff's equal

standing among coworkers and community" and condemn discriminatory employment policies and practices.

The ruling will make it much more difficult for workers to prevail in discrimination cases. A plaintiff's lawyer, however, may be motivated to pursue a discrimination charge because of the potential for earning attorney's fees, even though the client may receive little or nothing.

➤ **COMMUNITY DEVELOPMENT DEPARTMENT**

- The City will host a free drug awareness workshop on Tuesday, February 26 at 7 p.m. at the Montclair Youth Center. The workshop will be presented by the Institute for Public Strategies and is intended for parents of teenagers and/or anyone who needs information on the topic.

The workshop will consist of an overview of common synthetic drugs known as "spice and bath salts," the symptoms and dangers of synthetic drug use, and how the products are marketed and sold. A Montclair Police Officer will be present to answer questions related to the topic, and refreshments will be provided by the Montclair-Ontario Junior Women's Club.

For more information on the workshop, please call (909) 625-9484.

➤ **POLICE DEPARTMENT**

- Officer Christian Shaw was welcomed to the Montclair Police Department on February 11. He was sworn in to duty by Chief Keith Jones in a ceremony attended by his family members and peers.

Christian graduated from the San Bernardino County Sheriff's Department Basic Academy in December 2012.

Welcome, Christian, to the City of Montclair! A photo of Officer Shaw is included on Page 6.

➤ **FIRE DEPARTMENT**

The Fire Department has begun its annual "Match Safety" demonstrations in first grade classrooms at Montclair schools. On February 15, Captain David Pohl, Engineer Mike VanFossen, and Firefighter/Paramedic Stan Boehm provided demonstrations to approximately 120 first grade students at Ramona Elementary School. Also, the students were able to see a fire engine up close and actually use a fire hose.

Later that day, the crew spoke to two second grade classes at career day regarding the role of a fire fighter.

Match Safety demonstrations include "Stop, Drop and Roll"; Exit Drill in The Home, which stresses the importance of staying below the smoke when exiting a burning building; the importance of smoke detectors in the home; and a discussion on matches as a tool, not a toy.

➤ **PUBLIC WORKS DEPARTMENT**

- The Metro Gold Line Foothill Extension Construction Authority announced earlier this week that design and construction are progressing well for Phase 2A of the Gold Line extension from Pasadena through Azusa. A bridge spanning the eastbound lanes of the I-210 Freeway in Arcadia was completed and turned over to Foothill Transit Constructors (FTC), a Kiewit Parsons Joint Venture team, in December 2012. FTC has made significant progress on design for the 11.5-mile, light-rail extension.

The project delivery method is a design-build contract where the contractor hired to perform the construction is also responsible for the design of the work. The majority of design packages have been approved for construction, and all packages are on schedule to be substantially complete by next month. Significant construction has already started, including demolition of existing bridges, modifications to other bridges, construction of new bridges, and construction of new "at-grade" crossings.

As construction has started in earnest, street closures and other impactful activities have also begun. To keep the communities updated, the Construction Authority is sending periodic construction notices via e-mail to those that sign up. If you would like to sign up for construction e-notices, you may do so at [www.foothillextension.org](http://www.foothillextension.org).

The Construction Authority has also published the Final Environmental Impact Report for the proposed 12.6-mile Foothill Extension from Azusa to Montclair, Phase 2B. The Final EIR was released last week and includes responses to comments received on the Draft EIR, published in August 2012, as well as updates to the report itself. The Final EIR is posted on the Construction Authority website, [www.foothillextension.org](http://www.foothillextension.org). A copy is also available to review in the Community Development Department.

The Construction Authority Board of Directors will consider certification of the Final EIR and project approval at its upcoming meeting on Wednesday, February 27. With the completion of the state environmental process, the Construction Authority will begin the federal environmental process in order to qualify for federal funding. The federal process is expected to be completed in mid 2016. Assuming funding will be available for design and construction, that process will begin at that time, and construction should be completed to Montclair by mid 2020.

➤ **SUCCESSOR REDEVELOPMENT AGENCY/MONTCLAIR HOUSING CORPORATION**

- Within the retail industry, reports have been swirling around that J. C. Penney Co. executives might be about to announce a new round of layoffs at the company headquarters. Some retail analysts are questioning whether another round of store closings is not far behind. J. C. Penney reported that in the third quarter of 2012, which ended October 27, same-store sales declined 26.1 percent while total sales fell 26.6 percent. Results for the all-important Christmas quarter have not yet been released, but same-store sales are rumored to be down 30 percent for the period. Department stores as a group posted a 4.5 percent increase in same-store sales in December, including a 4.1 percent increase at Macy's and a 3.4 percent increase at Kohl's.

Given its performance, analysts say it is difficult to imagine how J. C. Penney might continue to operate its massive store portfolio, according to Howard Davidowitz, chairman of Davidowitz & Associates, Inc., a New York City-based retail consulting and investment banking firm. As of January 2012, the company had 1,102 stores in the U.S. and Puerto Rico. Mr. Davidowitz says, "You can't be down 30 percent comp—what it means is half your stores are now losing money. They are going to have to close a massive number of stores."

Other analysts feel closing hundreds of J. C. Penney stores in 2013 would be a bold prediction, but many industry insiders admit they are expecting some store closings from the retailer this year or in 2014. Paul Swinand, an analyst for the online publication, *Morningstar*, admits he would not be shocked to see some stores closing this year. Mr. Swinand indicates, "From expiring leases to falling shopper traffic, there are plenty of reasons for retailers in the shrinking department store sector to trim their real estate holdings. At the very least, landlords should be prepared for conversations about rent concessions."

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*"The income tax has made more liars out of the American people than golf has."  
~ Will Rogers*

# FEBRUARY 2013



25	Planning Commission Meeting Council Chambers	7:00 p.m.
26	City Manager's Staff Meeting City Hall Conference Room	9:00 a.m.
26	City Council Workshop – Consideration of Fire Protection Service Proposals Council Chambers	6:00 p.m.



Officer Christian Shaw pictured with his father