



CITY OF MONTCLAIR

Montclair Civic Center
5111 Benito Street
Montclair, CA 91763

April 11, 2013

TO: Honorable Mayor and City Council

FROM: Edward C. Starr, City Manager

SUBJECT: CITY MANAGER'S WEEKLY REPORT: April 8-11, 2013

➤ **CITY MANAGER/ADMINISTRATIVE SERVICES DEPARTMENTS**

- Last month, in *Humane Society of the United States v. Superior Court of Yolo County (Regents of the University of California)*, the California Supreme Court reaffirmed the right to deny the release of documents relating to academic research under the "catch-all" exemption of the California Public Records Act (CPRA). Under the catch-all exemption, a court balances whether the public interest is better served by releasing or withholding documents.

In the case, the Humane Society of the United States sued to obtain records from the University of California Regents relating to research leading to a published study by the University's Agricultural Issues Center. The Regents objected to releasing the records, claiming they consisted of preliminary data, pre-publication thoughts, conversations, and informal exchanges of ideas among researchers. The Regents argued the public interest would be better served by allowing researchers to continue engaging in informal discussions and brainstorming without public disclosure of their discourse.

The Regents claimed the withheld documents were exempt from disclosure under three provisions: Government Code section 6255, a catch-all exemption balancing public interest in disclosure against public interest in nondisclosure; Government Code section 6254, subdivision (a), which provides a balancing test for preliminary drafts or memoranda not retained in the ordinary course of business; and Government Code section 6254, subdivision (k), which relates to documents privileged as "official

information" under Evidence Code section 1040. The Regents claimed a public interest in preserving the privacy of documents, asserting exemption under "the deliberative process privilege," the "official information privilege," and "the researcher's privilege."

The California Supreme Court agreed with the Regents, noting "disclosure of pre-publication research communications would fundamentally impair the academic research process to the detriment of the public that benefits from the studies produced by that research." By concurring with the Regents, the Court also reaffirmed the use of Government Code sections 6254 and 6255, which allow public agencies to withhold records when, on the facts of a particular case, the public interest served by nondisclosure clearly outweighs the public interest served by disclosure of the record.

This case is particularly noteworthy because of the Court's extensive discussion of the balancing test used in the catch-all exception under the CPRA. The Court emphasized that use of the balancing test is on a case-by-case basis; however, the burden of proof as to this exemption is on the party arguing against disclosure. The Court's decision also further indicates its willingness to give leeway to government agencies claiming a legitimate reason for withholding release of pre-publication documents, notes, and supportive materials important to strategic development.

The decision of the California Supreme Court in *Humane Society of the United States v. Superior Court of Yolo County (Regents of the University of California)* adds to numerous other court cases that have upheld the government's right to refuse to release public records when the public interest in nondisclosure clearly outweighed the public interest in disclosure, such as in *Times Mirror Co. v. Superior Court* (1991), *Rogers v. Superior Court* (1993), *Wilson v. Superior Court* (1996), and *City of San Jose v. Superior Court* (1999).

As the California Supreme Court has stated, this provision contemplates a case-by-case balancing process, with the burden of proof on the proponent of nondisclosure to demonstrate a clear overbalance on the side of confidentiality.

- In a recent case involving the California Environmental Quality Act (CEQA), a state appellate court upheld a city's decision to exempt from environmental review a residential development because it was consistent with a broader specific plan that already had a certified environmental impact report (EIR).

The court, in upholding the City of Dublin's use of the exemption under Government Code Section 65457, took a reasonable and flexible approach to its interpretation of the law in *Concerned Dublin Citizens v. City of Dublin*.

Plaintiffs challenged the city's use of the exemption for a residential-only development within the Eastern Dublin Specific Plan. That plan called for a mixed-use transit center under a previously certified EIR. Plaintiffs alleged that replacing retail uses with residential ones created an inconsistency that nullified the CEQA exemption.

The appellate court disagreed, first holding that while the specific plan envisioned a mixed-use center, not every site within that center was required to be mixed use on its own; a residential-only development could still be consistent with a mixed-use specific plan. The court also held that, because the project added 100 units to a particular portion of the specific plan, but also removed 100 units from another portion, the overall project did not result in a substantial change to the specific plan. Accordingly, the court found the CEQA exemption was appropriate.

Plaintiffs also alleged greenhouse gas thresholds recently adopted by the region's air quality regulating agency constituted new information requiring supplemental review. The court again disagreed, noting potential effects of greenhouse gases were known at EIR certification and air quality impacts were properly considered; further, the new thresholds were not new information requiring a supplemental EIR.

The decision may have significance as development occurs within the North Montclair Downtown Specific Plan area.

➤ **COMMUNITY DEVELOPMENT DEPARTMENT**

- Yesterday the Senior Nutrition Program celebrated March and April birthdays at the Community Center. Themed "Easter Eggstravaganza," more than 230 seniors enjoyed a lunch of ham with all the trimmings, plus cake and ice cream for dessert. They colored eggs and participated in Easter bonnet and coloring contests and winners received special prizes.
- Last Saturday, all-star boys and girls Division A (7th and 8th grades) teams from the City's Youth Basketball League participated in the Southern California Municipal Athletic Federation regional tournament.

The boys' team played its games in Pasadena and was coached by volunteer Bill Blades. Mr. Blades is also the men's varsity basketball coach at Montclair High School. The girls' team played its games in South Gate and was coached by volunteer Jerrell Wilkerson. The boys' team lost both of its games with no more than a six-point difference, while the girls' team (with only five players) placed fourth in the tournament and received medals.

➤ **POLICE DEPARTMENT**

- In February 2009, Officers responded to a call for a safety check in the 4800 block of Moreno Street. Upon arrival, after knocking on the door, the responding Police Officers were fired upon through the windows and door of the residence. The suspect, Adrian Bonadie, eventually surrendered after a stand-off and was arrested. Inside the residence, Officers found two adults, the suspect's parents, shot and killed.

In February 2012, the suspect was found not guilty by insanity for the murder of his parents and guilty of attempted murder on our Police Officers. On April 4, 2013, Adrian was sentenced to 110 years in a state mental health facility for killing his parents. If, eventually, he is found sane, Adrian will go to prison where he will serve up to 102 years for the attempted murder on our Police Officers.

- This past Saturday, I attended an awards ceremony at the Police Department, held to honor its seven Reserve Officers: Ron Foss, Frankie Fonseca, Scott Stephenson, Randy Ortiz, Joseph Kuskie, Keith Dow, and Nicholas Lopez. City Council Members present were Mayor Paul Eaton, Mayor Pro Tem Bill Ruh, and Carolyn Raft and John Dutrey. We were pleasantly surprised to have Congresswoman Gloria Negrete McLeod and Assemblymember Norma Torres join us and present certificates to the honorees.

Chief Keith Jones presented the 2012 Reserve Officer of the Year award to Randy Ortiz, a Reserve Officer since July 2003. Randy exemplifies the highest standards of professionalism, loyalty, commitment, and dedication to the organization. On February 13, 2012, Randy completed Level I training as a Reserve Officer—a milestone—because a Level I Reserve Officer receives the same level of academy and field training as a full-time peace officer.

Randy also received the "500 Hour Award" for volunteering an incredible 505 hours in 2012 (in addition to his regular full-time employment).

Captain Mike deMoet presented awards to Reserve Captain Ron Foss and Reserve Sergeant Frankie Fonseca for Outstanding Police Work. Ron has been a Reserve Officer with Montclair for 32 years, and Frankie, 29 years. On Christmas Eve, while conducting a weekend traffic detail at Montclair Plaza, they heard a dispatch about a suspect who had just fled Best Buy and was wanted on fraudulent credit card purchases. They located the suspect and arrested him on felony charges.

Combined, our Reserve Officers volunteered 3,289 hours in 2012. They made 5 felony arrests, 16 miscellaneous arrests, 20 warrant arrests, and issued 597 citations.

Chief Jones also recognized Police Chaplain Vicki Brobeck for nine years of volunteer service.

Let's hear it for our volunteers!

➤ ***FIRE DEPARTMENT***

- The Fire Department has two new interns from Mt. Sac's Work Experience Fire Science Program, John Brandt and Garrett Pelletier. As part of the collage program, they are required to intern with public agencies and private businesses and volunteer a minimum of 120 hours per semester while receiving one unit for every 60 hours they work. Learning objectives are set at the beginning of the semester for each intern, and they write a paper about their internships at the end of the semester.

While volunteering at Montclair Fire Department, John and Garrett will update computerized preplans, perform station and apparatus maintenance, observe at occupancy and/or fire inspections, and perform miscellaneous special projects. While assisting on-duty personnel, they have the opportunity to be present at emergency incidents and observe the daily activities of a fire fighter.

The Fire Department welcomes the opportunity to mentor John and Garrett in their quest to become future fire fighters.

PUBLIC WORKS DEPARTMENT

- Did you ever wonder what happens to all of the old, used, and tattered United States of America Flags in our Country? They are "retired" in special flag-burning ceremonies performed by organizations such as The Boy Scouts of America, The Girl Scouts of the U.S.A., and Veterans of Foreign Wars.

Girl Scouts Troop 10154 held its annual flag retirement ceremony on April 7 at Chino Airport, along with the Chino Veterans of Foreign War, Black Sheep Squadron Post 11546. Seventy-six U.S. flags and one California flag for the City of Montclair were retired.

I would like to thank the Girl Scouts for respecting our country's flags by retiring them properly, and for taking pride in what Old Glory represents. "God Bless America!"

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

- On April 5, National Community Renaissance (National CORE) successfully completed the purchase from the Montclair Housing Authority of the property located at 4113 Kingsley Street. The Montclair Housing Authority acts as the successor housing agency to the former City of Montclair Redevelopment Agency (RDA).

The property was acquired by National CORE for the construction of an 18-unit affordable housing project for the physically disabled. National CORE also pulled the building permits for the project on April 3.

This project was ready for approval by the City Council and Redevelopment Agency Board of Directors on July 5, 2011. However, on June 28, 2011, the Governor signed legislation dissolving redevelopment agencies. This action put construction of the special needs housing project on hold for over a year. The former RDA could no longer continue its financial participation in development of the project. National CORE had to seek alternate financing, which was found in the form of tax credits. In addition, Successor Agency staff spent over six months attempting to convince the Department of Finance the property was a housing asset despite the fact that the property had been purchased with Housing Funds monies, National CORE held a valid Purchase Option on the site to construct an affordable housing project, and the property already held entitlements for construction of the special needs housing project.

Finally, in December 2012, the Department of Finance reversed its decision and declared the property a housing asset. This action came just in time as National CORE needed to submit documentation to the federal Department of Housing and Urban Development (HUD) showing it had site control of the property. The other source of funding for the project will come in the form of a HUD Section 811 loan.

The City and Montclair Housing Authority are looking forward to the upcoming construction of this long-awaited housing project.

ECS:spa

*"Do not take life too seriously. You will never get out of it alive."
~ Elbert Hubbard*

APRIL 2013



15	Code Enforcement Committee Meeting City Hall Conference Room	6:00 p.m.
15	Volunteer of the Year Awards Reception City Hall West Lobby	6:00 p.m.
15	City Council Meeting Council Chambers	7:00 p.m.
16	SBPEA Membership Appreciation Day Alma Hoffman Park	11:30 a.m. - 1:00 p.m.
18	Safety Committee Meeting City Hall Conference Room	9:00 a.m.
18	Public Works Committee Meeting City Hall Conference Room	2:00 p.m.
21	National Volunteer Week – April 21-27, 2013	
22	Earth Day	
22	Planning Commission Meeting Council Chambers	7:00 p.m.
23	Human Services Division's 32nd Annual Volunteer Recognition Dinner, Montclair Community Center	5:00 p.m. - 7:00 p.m.
30	City Manager's Staff Meeting City Hall Conference Room	9:00 a.m.