

**CITY OF MONTCLAIR  
AGENDA FOR CITY COUNCIL, SUCCESSOR AGENCY,  
AND MONTCLAIR HOUSING CORPORATION MEETINGS,  
AND MONTCLAIR HOUSING AUTHORITY MEETINGS**

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

January 6, 2014

7:00 p.m.

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

*The CC/SA/MHC/MHA meetings are now available in audio format on the City's website at [www.ci.montclair.ca.us](http://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, Successor Agency and Montclair Housing Corporation Boards of Directors, and Montclair Housing Authority Commissioners

**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. Introduction of New Employee/Appointee/Promotee

**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, Successor Agency Board of Directors, Montclair Housing Corporation Board of Directors, and Montclair Housing Authority Commissioners. (Government Code Section 54954.3)*

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

**VII. PUBLIC HEARINGS**

- A. Second Reading - Consider Adoption of Ordinance No. 13-939 Amending Specific Chapters of Title 10 the Montclair Municipal Code Related to Adoption of the 2013 Edition of the California Fire Code and to Establish February 5, 2014, as the Effective Date of the Codes [CC]

Consider Adoption of Resolution No. 14-3014 Making Express Findings Regarding Modifications to the 2013 Edition of the California Fire Code [CC]

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- B. Second Reading - Consider Adoption of Ordinance No. 13-940 Amending Section 4.04.100 of the Montclair Municipal Code to Include Exemption of Business License Requirements for City Services, City Suppliers, and Common Carriers and to Establish March 1, 2014, as the Effective Date of the Amendment [CC]

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**VIII. CONSENT CALENDAR**

- A. Approval of Minutes - None

- B. Administrative Reports

- 1. Consider Setting a Public Hearing for January 21, 2014, to Consider Adoption of Resolution No. 14-3016 Related to a Proposed Five-Year Schedule of Maximum Monthly Rate Caps for Residential Refuse Services and Setting Refuse Rates Initially at Those Proposed to Be Effective February 1, 2014 [CC]

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- 2. Consider Setting a Public Hearing for January 21, 2014, to Consider Adoption of Resolution No. 14-3017 Related to a Proposed Five-Year Schedule of Maximum Monthly Rate Caps for Commercial Refuse Services and Setting Refuse Rates Initially at Those Proposed to Be Effective February 1, 2014 [CC]

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- C. Agreements

- 1. Consider Approval of Agreement No. 14-03, a Communications Site Lease Agreement With Los Angeles SMSA Limited Partnership (Verizon Wireless) Located at Alma Hofman Park [CC]

Consider Approval of Agreement No. 14-04, a Right-of-Entry Agreement with Verizon Wireless Related to Agreement No. 14-03 [CC]

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- D. Resolutions - None

**IX. PULLED CONSENT CALENDAR ITEMS**

- X. RESPONSE - None

**XI. COMMUNICATIONS**

A. City Attorney

1. Closed Session Pursuant to Government Code Section 54956.9(d)(1)  
Regarding Pending Litigation  
Kenneth Pollich v. Montclair

B. City Manager/Executive Director

C. Mayor/Chairman

D. Council/MHC Board

E. Committee Meeting Minutes *(for informational purposes only)*

1. Minutes of the Personnel Committee Meeting of December 16, 2013 48

**XII. COUNCIL WORKSHOP**

A. Strategic Planning Session

(Council may consider continuing this item to an adjourned meeting on Tuesday, January 14, 2014, at 4:00 p.m. at the Senior Center.)

**XIII. ADJOURNMENT OF SUCCESSOR AGENCY AND MONTCLAIR HOUSING CORPORATION BOARDS OF DIRECTORS AND MONTCLAIR HOUSING AUTHORITY COMMISSIONERS**

*(At this time, the City Council will meet in Closed Session regarding pending litigation.)*

**XIV. CLOSED SESSION ANNOUNCEMENTS**

**XV. ADJOURNMENT OF CITY COUNCIL**

*The next regularly scheduled City Council, Successor Agency Board, Montclair Housing Corporation Board, and Montclair Housing Authority Commission meetings will be held on Monday, January 21, 2014, 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, Successor Agency Board, Montclair Housing Corporation Board, and Montclair Housing Authority Commission 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 Deputy City Clerk at (909) 625-9416. 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, Yvonne L. Smith, Deputy 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 north door of Montclair City Hall on December 19, 2013.*

## AGENDA REPORT

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|--|---|
| <b>SUBJECT:</b> CONSIDER ADOPTION OF ORDINANCE<br>NO. 13-939 AMENDING SPECIFIC CHAPTERS<br>OF TITLE 10 OF THE MONTCLAIR MUNICIPAL<br>CODE RELATED TO ADOPTION OF THE 2013<br>EDITION OF THE CALIFORNIA FIRE CODE AND<br>TO ESTABLISH FEBRUARY 5, 2014, AS THE<br>EFFECTIVE DATE OF THE CODES | <b>DATE:</b> January 6, 2014<br><b>SECTION:</b> PUBLIC HEARINGS<br><b>ITEM NO.:</b> A<br><b>FILE I.D.:</b> FRD300<br><b>DEPT.:</b> FIRE |
| CONSIDER ADOPTION OF RESOLUTION<br>NO. 13-3014 MAKING EXPRESS FINDINGS<br>REGARDING MODIFICATIONS TO THE 2013<br>EDITION OF THE CALIFORNIA FIRE CODE   |   |
| <u>SECOND READING</u>  |   |

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**REASON FOR CONSIDERATION:** The City Council is requested to consider adoption of Ordinance No. 13-939 amending specific chapters of Title 10 of the Montclair Municipal Code related to adoption of the 2013 Edition of the California Fire Code and Resolution No. 13-3014 making express findings regarding modifications to the 2013 Edition of the California Fire Code and to establish February 5, 2014, as the effective date of the codes.

**BACKGROUND:** Every three years, the City adopts the latest version of the California Fire Code. The State of California has chosen to adopt the most recent version of the California Fire Code (2013 Edition), which is based on the 2012 International Fire Code and is part of the California Code of Regulations, Title 24, Part 9.

The 2013 California Fire Code merges the State's amendments with the International Fire Code. This updated version includes the most recent fire safety requirements in an effort to maintain a code that is current and useful. The California Building Standards Commission incorporates many of its regulations and amendments unique to California into the Fire Code. Ordinance No. 13-939 proposes adoption of the 2013 California Fire Code and includes local modifications to the Fire Code, which would allow the Fire Department to provide the highest level of fire and life safety services to the residents and businesses of Montclair.

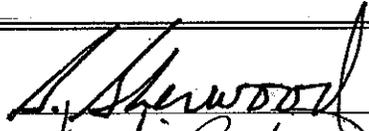
**FISCAL IMPACT:** There would be no fiscal impact associated with the City Council's adoption of proposed Ordinance No. 13-939 and Resolution No. 13-3014.

**RECOMMENDATION:** Staff recommends the City Council adopt the following and establish February 5, 2014, as the effective date of the codes:

1. Ordinance No. 13-939 amending specific chapters of Title 10 of the Montclair Municipal Code related to adoption of the 2013 Edition of the California Fire Code.
2. Resolution No. 13-3014 making express findings regarding modifications to the 2013 Edition of the California Fire Code.

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Prepared by:


Reviewed and  
Approved by:



Proofed by:

Presented by:



**ORDINANCE NO. 13-939**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR AMENDING SPECIFIED CHAPTERS OF TITLE 10 OF THE MONTCLAIR MUNICIPAL CODE AND ADOPTING BY REFERENCE THE 2013 EDITION OF THE CALIFORNIA FIRE CODE, TOGETHER WITH CERTAIN AMENDMENTS, ADDITIONS, DELETIONS, AND EXCEPTIONS INCLUDING FEES AND PENALTIES**

**THE CITY COUNCIL OF THE CITY OF MONTCLAIR DOES ORDAIN AS FOLLOWS:**

**SECTION I.** Section 10.02.010, "Definitions," of Chapter 1.02 of the Montclair Municipal Code is hereby amended to include the following revised existing definitions:

**Section 10.02.010 Definitions.**

**Fire control center** means a central location within a high-rise building for Fire Department operations and monitoring of such systems and equipment as required in this title. For the purpose of this section, fire control center also means fire command center.

**High-rise building**, in other than Group 1-2 occupancies, means every building of any type of construction or occupancy having floors used for human occupancy located more than 45 feet above the lowest floor level having building access (see California Building Code Section 403.1.2), except buildings used as hospitals as defined in Health and Safety Code Section 1250.

**SECTION II.** Article I of Chapter 10.28 of the Montclair Municipal Code is hereby repealed in its entirety and replaced with the following:

**Article I. Fire Prevention**

**Section 10.28.010 Adoption of the California Fire Code, 2013 Edition.**

- A. There is adopted by the City Council for the purpose of prescribing regulations governing conditions hazardous to life and property from fire, hazardous materials or explosion, that certain Code known as the California Fire Code, 2013 Edition, based on the 2012 International Fire Code as published by the "International Code Council," and referenced as the California Code of Regulations, Title 24, Part 9, including: Chapter 5, Sections 503 and 510.3, and Appendices A, B, C, D, E, F, G, H, I, and K, and the whole thereof, save and except such portions as are hereinafter deleted, modified, or amended by this chapter. The California Fire Code and its appendix chapters will be on file for public examination in the Office of the Fire Marshal, and the same are hereby adopted and incorporated as fully as if set out at length in this chapter, and from

the date on which the Ordinance codified in this chapter shall take effect, the provision thereof shall be controlling within the corporate limits of the City of Montclair and the jurisdiction of the Fire Department.

- B. The modifications and changes adopted in this Chapter are reasonably necessary because of local climatic, geological, and topographical conditions as set forth in Resolution No. 13-3014 attached to the Ordinance codified in this Chapter as Exhibit A and incorporated in this Chapter as though fully set forth. These facts and findings are made pursuant to Sections 17958, 17958.5, and 17958.7 of the California Health and Safety Code and the California Building Standards Commission.

**Section 10.28.020 Bureau of Fire Prevention—Established—Supervision.**

- A. The California Fire Code shall be enforced by the Office of the Fire Marshal in the Fire Department of the City, which is established and which shall be operated under the supervision of the Fire Chief or his/her designee.
- B. The Fire Chief or his/her designee shall also act as the Fire Marshal.

**Section 10.28.030 Storage of flammable or combustible liquids—Districts in which prohibited.**

- A. The limits referred to in Chapter 55, Section 5504.3.1.1 of the California Fire Code in which the storage of flammable cryogenic fluids in stationary containers outside of buildings is restricted are established as follows: The storage of flammable cryogenic fluids in stationary containers outside of buildings is prohibited.
- B. The limits referred to in Chapter 57, Section 5704.2.9.6.1 of the California Fire Code in which the storage of Class I and Class II flammable and combustible liquids in aboveground tanks outside of buildings is restricted are established as follows: The storage of Class I and Class II flammable and combustible liquids in aboveground tanks outside of buildings is prohibited.
- C. Section 5704.2.9.6.1 is amended to include the limits of storage of Class IIIA and Class IIIB combustible liquids in aboveground tanks outside of buildings is restricted and amended as follows: The storage of Class IIIA and Class IIIB liquids in aboveground tanks outside of buildings shall be limited to tanks not exceeding 500 gallons.
- D. Section 5704.2.9.6.1.1, "Location of tanks with pressures 2.5 psig or less," is amended to read as follows:

Aboveground tanks operating at pressures not exceeding 2.5 psig (17.2 kPa) for the storage of Class I, II, or

IIIA liquids shall be restricted to listed concrete vaults in industrial and manufacturing areas where, in the opinion of the Fire Marshal, aboveground tanks would not create undue hazard to nearby occupants or property. Quantities shall be limited to 1000 gallons of Class I liquid and 2000 gallons of Class II and IIIA liquids. In no case shall the aggregate of Class I and Class II liquids exceed 2500 gallons at one site.

- E. Section 5504.2.9.6.1.2, "Location of tanks with pressures exceeding 2.5 psig," is amended to read as follows:

Aboveground tanks operating pressures exceeding 2.5 psig (17.2 kPa) or equipped with emergency venting allowing pressures to exceed 2.5 psig (17.2 kPa) for the storage of Class I, II, or IIIA liquids shall be restricted to listed concrete vaults in industrial and manufacturing areas where, in the opinion of the Fire Marshal, aboveground tanks would not create undue hazard to occupants or property. Quantities shall be limited to tanks not exceeding 1000 gallons of Class I liquid and 2000 gallons of Class II and IIIA liquids. In no case shall the aggregate of Class I and Class II liquids exceed 2500 gallons at one site.

- F. Section 5504.2.9.6.1.5, "Location of tanks for Class IIIB liquids," is amended to read as follows:

Aboveground tanks for the storage of Class IIIB liquids, excluding unstable liquids, shall be restricted to industrial and manufacturing areas where, in the opinion of the Fire Marshal, aboveground tanks would not create undue hazard to occupants or property. Quantities shall be limited to tanks not exceeding 2500 gallons. In no case shall the aggregate of Class IIIB liquids exceed 5000 gallons at one site.

**Section 10.28.040 Storage of liquefied petroleum gas restricted.**

The limits referred to in Chapter 61, Section 6104.2 of the California Fire Code, in which the storage of liquefied petroleum gas is restricted, are established as follows: Aboveground liquefied petroleum gas containers shall be limited to containers of not more than 2,000 gallons water capacity. The maximum aggregate capacity per site shall not exceed that as specified in Section 6104.2.

**Section 10.28.050 Storage of explosives and fireworks restricted.**

Chapter 56, Section 5603.1.1, "Scope," is amended to read as follows:

5603.1.1 Scope. The storage of explosives is prohibited within the jurisdiction. Exceptions: Exceptions are as outlined in Section 5603.1.1:

- (1) The Armed Forces of the United States, Coast Guard, or National Guard.
- (2) Explosives in forms prescribed by the official United States Pharmacopeia.
- (3) The possession, storage, and use of small arms ammunition when packaged in accordance with DOTn packaging requirements.
- (4) The use of explosive materials by federal, state, and local regulatory, law enforcement, and fire agencies acting in their official capacities.
- (5) Items preempted by federal regulations.

**Section 10.28.060 Amendments to the California Fire Code.**

A. Subsection 103.2 Appointment established.

Subsection 103.2 of Section 103 of Chapter 1 of the California Fire Code is hereby deleted in its entirety.

B. Subsection 103.4.2 is added to Section 103 of Chapter 1 of the California Fire Code to read as follows:

103.4.2 Liability for Costs. The expenses for the response or any action by the Montclair Fire Department that is the result of a violation of the provisions of this Code or any damage caused by malicious mischief or any action determined to be negligent requiring any assistance, corrective, or preventive action conducted by Fire Department personnel shall be a charge against the responsible person, company, or agent whose violation or action caused the Fire Department response. Expenses caused by such response or actions shall constitute a debt of such person, company, or agent. The Fire Marshal shall keep an itemized account of expenses incurred by the City in carrying out the duties hereunder and shall prepare and file a report of such expenses, as outlined in the Montclair Fire Department Policy Manual, with the City Treasurer, together with the names and addresses of those responsible. The City Treasurer shall give notice to such person, company, or agent, who shall be afforded an

opportunity to be heard regarding such charges by requesting to be heard within 15 days after the mailing of such notice. The City Treasurer shall take such reasonable and necessary action to recover such expenses from any and all responsible persons, companies, or agents.

- C. Subsection 104.10.2 is added to Section 104 of Chapter 1 of the California Fire Code to read as follows:

104.10.2 Police Powers. The Fire Marshal and members of the arson investigation unit shall have the powers of a police officer in performing their duties under this Code and as defined in Section 830.37 of the California Penal Code.

- D. Subsection 105.3.9 is added to Section 105 Chapter 1 of the California Fire Code to read as follows:

105.3.9 Conditions of Permits. Fees. The City Council of the City of Montclair shall establish, as permitted by law, standard governing fees for the issuance of permits. Said fees shall be established by Resolution.

- E. Subsection 108.1 Board of Appeals established.

Subsection 108.1 of Section 108 of Chapter 1 of the California Fire Code is hereby deleted in its entirety.

- F. Subsection 109.4 of Section 109 of Chapter 1 of the California Fire Code is amended to read as follows:

109.4 Violation penalties. Persons who shall violate a provision of this Code or shall fail to comply with any of the requirements thereof or who shall erect, install, alter, repair, or do work in violation of the approved construction documents or directive of the Fire Marshal or his/her designee, or of a permit or certificate used under provisions of this Code, shall be guilty of a misdemeanor, punishable by a fine of not more than One Thousand (1,000) dollars or by imprisonment in the City or County jail for a period not to exceed 180 days, or by both such fine and imprisonment. Each day that a violation continues after due notice has been served shall be deemed a separate offense.

- G. Subsection 315.3.3 is added to Section 315 of the California Fire Code to read as follows:

315.3.3 Mobile Home Sales Lots. The spacing between individual mobile homes located on mobile home sales lots shall not be less than ten (10) feet and not less than five (5) feet from any property line.

H. Subsection 503.2.4 of Section 503 of the California Fire Code is amended to read as follows:

503.2.4 Turning radius. The required turning radius of a fire apparatus access road or any required interior roadway of any facility or commercial or residential development shall be determined by the Fire Department.

I. Subsection 503.4.1 is added to Section 503.4 of the California Fire Code to read as follows:

503.4.1 Penalties. The parking of vehicles within a properly posted or designated fire apparatus access road may be cited or removed at the owner's expense as provided by law.

J. Subsection 903.2 of the California Fire Code is replaced to read as follows:

903.2 Where required. Approved automatic fire sprinkler systems in buildings and structures shall be required in the locations described in Sections 903.2.1 through 903.2.12 and as follows:

- (1) Every structure hereafter constructed, erected, or moved onto a property, regardless of separation walls as outlined in the California Building Code, shall have an approved automatic fire sprinkler system installed throughout therein.
- (2) Every structure, except Group R, Division 3, and Group R, Division 4 occupancies, hereafter remodeled, rebuilt, or renovated where such costs exceed fifty (50) percent of the assessed valuation as determined by the San Bernardino County Tax Assessor shall have an approved automatic fire sprinkler system installed throughout therein.
- (3) Group R, Division 3, and Group R, Division 4 occupancies, including attached Group U occupancies, where fifty (50) percent or more of the existing floor area is hereafter

added to, remodeled, rebuilt, or renovated shall have an approved automatic fire sprinkler system installed throughout therein.

Exceptions:

- (1) Spaces or areas in telecommunications buildings used exclusively for telecommunications equipment, associated electrical power distribution equipment, batteries, and standby engines, provided those spaces or areas are equipped throughout with an automatic fire alarm system and are separated from the remainder of the building by fire barriers consisting of not less than one-hour fire-resistance-rated walls and two-hour fire-resistance-rated floor/ceiling assemblies.
- (2) Automatic fire sprinkler protection for fixed guideway transit systems shall be as per Section 903.2.17.
- (3) Outdoor, detached storage facilities of 200 square feet or less.
- (4) Any work for which a building permit is not required.
- (5) Block walls.
- (6) Swimming pools and spas.
- (7) Lattice patio covers.
- (8) Reroofing.
- (9) Decks.
  - (i) Except a covered deck constructed as part of a new building or structure.
- (10) Gazebos.

K. Subsection 903.3.1 of the California Fire Code is amended to read as follows:

903.3.1 Standards. Sprinkler systems shall be designed and installed in accordance with Section 903.3.1.1, unless otherwise permitted by

Sections 903.3.1.2 and 903.3.1.3, and the following:

- (1) Every sprinkler system shall have at least one (1) fire department connection located within fifty (50) feet of a fire hydrant.

Exceptions:

- (i) Sprinkler systems complying with NFPA 13 D (latest edition).
- (ii) Sprinkler systems supplying fewer than twenty (20) heads.

- (2) Sprinkler system risers shall be located within buildings or structures.

- (3) Post indicator valves, riser control valves, or secondary control valves shall be located and installed as determined by the Montclair Fire Department.

- (4) Each fire department connection and any controlling valves shall bear a nameplate indicating occupancy name, address, or both as determined by the Fire Department.

- (5) Minimum underground pipe size shall be six (6) inches in diameter.

Exceptions:

- (i) Sprinkler systems hydraulically calculated may have an underground pipe size of a smaller diameter upon approval of the Fire Department.
- (ii) Sprinkler systems designed per NFPA 13 D (latest edition).

- (6) Minimum sprinkler system design requirements for new multioccupancy retail centers shall be as required for NFPA 13 (latest edition), ordinary hazard (group 2).

- (7) Minimum sprinkler system design requirements for new industrial "spec" buildings shall be as required for NFPA 13 (latest edition), extra hazard (group 1).

(8) NFPA 13 R (latest edition) sprinkler systems shall utilize separate underground water mains to supply the fire sprinkler system and the domestic water supply.

L. Subsection 907.1.6 is added to Section 907 of the California Fire Code to read as follows:

907.1.6 False Alarms. More than two (2) false alarms transmitted from any required or nonrequired fire alarm system in a one (1) month period of time or three (3) false alarms transmitted from any required or nonrequired fire alarm system in any two (2) month period of time shall result in an assessment of fees for services provided by the Fire Department for all subsequent false alarms in the remainder of the calendar year.

M. Subsection 1021.1.4 is added to Section 1021 of the California Fire Code to read as follows:

1021.1.4 Second Exit Required. Where the third floor and above within an individual dwelling unit, a Group R, Division 3 congregate residence, or a Group R, Division 4 occupancy exceeds 750 square feet of gross floor area, a second exit shall be provided. For the purposes of this section, the gross floor area shall include all interior and exterior walls, stairways, shafts, and courts.

**SECTION III.** Article II of Chapter 10.28 of the Montclair Municipal Code is hereby amended as follows:

#### **Article II. Permits, Reviews, and Fees**

##### **Section 10.28.100 Permits required.**

Section 10.28.100 is amended to read as follows:

10.28.100 Permits required.

Reference California Fire Code, Chapter 1, Subsection 105.1.1 of Section 105.

**SECTION IV.** Article III of Chapter 10.28 of the Montclair Municipal Code is hereby amended as follows:

#### **Article III. High-Rise Building Regulations**

##### **Section 10.28.150 Intent.**

Section 10.28.150(A) is repealed in its entirety.

Section 10.28.150(B) [now "Section 10.28.150(A)"] is amended to read as follows:

**10.28.150 Intent.**

A. If no specific standards or requirements are specified in this chapter, or contained within other applicable laws, adopted codes or ordinances, compliance with the standards of the American Insurance Association, Factory Mutual Engineering, the National Fire Protection Association, or other nationally recognized fire safety standards as are approved by the Fire Marshal and Building Official, shall be deemed prima facie evidence of compliance with this intent.

**Section 10.28.160 Scope.**

Section 10.28.160(A) is amended to read as follows:

**10.28.160 Scope.**

A. Every high-rise building 45 feet in height above the lowest floor level having building access as defined in Section 10.02.010 hereafter constructed shall conform to Section 10.28.180.

**Section 10.28.220 Exits.**

Section 10.28.220(B) is amended to read as follows:

**10.28.220 Exits.**

B. Smoke-proof enclosures may be eliminated if all enclosed stairways are pressurized pursuant to the requirements of the California Building Code.

**Section 10.28.250 Seismic considerations.**

Section 10.28.250 is amended to read as follows:

**10.28.250 Seismic considerations.**

A. Every high-rise building shall have the anchorage of the following mechanical and electrical equipment designed and installed in accordance with the California Building Code for lateral force based on ASCE 7 unless data substantiating a lesser value is furnished.

- (1) Elevator drive and suspension systems.

- (2) Standby power and lighting facilities.
- (3) Fire pumps, automatic fire extinguishing systems, and other fire protection equipment.
- (4) Air handling equipment regulated by this chapter.

B. Verification of such conformance shall be substantiated by a licensed structural engineer.

**Section 10.28.280 Automatic sprinkler systems.**

Section 10.28.280(B) is amended to read as follows:

**10.28.280 Automatic sprinkler systems.**

B. In addition to the main water supply, a secondary onsite supply of water equal to the hydraulically calculated sprinkler design demand, plus 100 gallons per minute additional for the total standpipe system, shall be provided. This supply shall be automatically available if the principal supply falls, and shall have a duration of 30 minutes. The onsite supply of water as indicated above shall be maintained in a separate system from the public domestic water system, and shall conform to all applicable cross-connection requirements of the City Engineer's Office.

**Section 10.28.290 Fire control center.**

Section 10.28.290 is amended to read as follows:

**10.28.290 Fire command center.**

A. Every high-rise building in excess of 75 feet, as specified in Section 10.28.160(B), shall be provided with a fire command center located near or adjacent to the main entrance to the building or at any location approved by the Fire Marshal and Building Official. The fire command center shall be directly accessible from the outside of the building, consistent with standards developed by the Fire Marshal.

B. The fire command center shall be designed to accommodate the functional control and command personnel required to conduct an emergency activity. There shall be a minimum net floor area of 200 square feet with minimum dimension of 1 foot. This floor area shall not be encumbered upon by any walls, equipment, or other appurtenances not necessary to the function of the room.

C. The fire command center shall be separated from the remainder of the building by not less than a one-hour fire barrier, or minimum construction as required by the California Building Code, with all openings protected by assemblies having a fire-resistive rating of not less than 90 minutes or minimum construction as required by the California Building Code.

D. The fire command center shall be used to house the following equipment:

- (1) Voice communication control equipment including equipment necessary to the function of the control unit and its display and status panels.
- (2) Fire alarm and fire detection control equipment including equipment necessary to the function of the control unit and its display and status panels.
- (3) Status indicators and controls for elevators.
- (4) Air handling system status indicators and control switches.
- (5) Controls for unlocking stairway doors and status board indicating whether such doors are locked or unlocked.
- (6) Sprinkler valve supervision and water flow detector display panels.
- (7) Alarm, water flow, and trouble signals shall be annunciated by means of an audible signal and a visual display, which indicates the building, floor, zone, or other designated area from which the alarm, water flow, or trouble signal originated.
- (8) Standby power status display and controls.
- (9) A telephone connected to the public telephone system adjacent to the Fire Department communication systems. This telephone to be for express use of the Fire Department. Telephones for building occupant use shall be separate.

- (10) Intercom to exterior of fire command center to allow for verbal communication without opening the door.
- (11) Supervision indicator of the Fire Department's cabinets.
- (12) Three certified copies of the building floor plans, mechanical plans, and electrical plans.
- (13) Three copies of the Fire Department pre-plans.
- (14) Other fire protection equipment and system controls, such as the following:
  - (a) Water tank level indicators.
  - (b) Fire pump controls and status indicators.
  - (c) Fire level indicator on auxiliary generators and fire pumps.
- (15) Any other similar equipment, controls, or status indicators as deemed necessary by the Fire Marshal and Building Official.

E. Any equipment that is a status indicator shall be in the form of a graphic annunciator. The graphic annunciator shall be a line diagram of the building with the lights and activation switches in proper perspective on the diagram. The graphic annunciator shall be further keyed to the required building floor plans per floor and location on the floor.

F. As well as the graphic annunciator, an alphanumeric printout of all status indications or switch activations, along with the date and time of alarm or activation, shall be provided. This printout shall also be coded to provide the location of the activation on the building floor plans per floor and location of the floor.

G. The fire command center shall not be used for the housing of any boiler, heating unit, generator, or storage.

**Section 10.28.300 Emergency helicopter landing facility.**

Section 10.28.300 of the Montclair Municipal Code is hereby repealed in its entirety and replaced with the following:

#### 10.28.300 Emergency helicopter landing facility.

Each high-rise building, in excess of 75 feet, as specified in Section 10.28.160(B) shall incorporate an emergency helicopter landing facility located on the roof of the building in an area approved by the Fire Department in accordance to Section 412.7 of the California Building Code and the following:

- A. A landing glide slope angle determined by a ratio of eight feet horizontal distance for every one foot of vertical clearance required. Two such approaches shall be available at least 90 degrees removed from each other.
- B. A clear, unobstructed landing and takeoff area with a minimum dimension of 100 feet by 100 feet and a reinforced touchdown area having a minimum dimension of 50 feet by 50 feet.
- C. If the roof has no parapet wall, a substantial fence or safety net shall be provided around the perimeter of the roof in such a manner that it will not restrict or reduce the required landing and takeoff area.
- D. A wind-indicating device shall be provided.
- E. The roof top shall be marked by an emergency marker as required by the Fire Marshal.
- F. The roof top shall be marked with the numerical street address of the building with the numbers facing the street frontage corresponding to the address. The size of the numbers is to be three feet high and one foot wide.

#### SECTION V. 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 VI. Effective Date.**

This Ordinance shall be in full force and effect on February 5, 2014.

**SECTION VII. 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, 2014.

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Mayor

**ATTEST:**

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Deputy City Clerk

I, Yvonne L. Smith, Deputy City Clerk of the City of Montclair, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 13-939 of said City, which was introduced at a regular meeting of the City Council held on the XX day of XX, 2013, and finally passed not less than five (5) days thereafter on the XX day of XX, 2014, by the following vote, to-wit:

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

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Yvonne L. Smith  
Deputy City Clerk

**RESOLUTION NO. 13-3014**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR MAKING EXPRESS FINDINGS REGARDING MODIFICATIONS TO THE CALIFORNIA FIRE CODE, 2013 EDITION, TO COMPLY WITH STATE OF CALIFORNIA HEALTH AND SAFETY CODE SECTIONS 17922, 17958, 17958.5, AND 17958.7(a) AND THE CALIFORNIA BUILDING STANDARDS COMMISSION**

**WHEREAS**, the State of California is mandated by California Health and Safety Code Section 17922 to impose the same requirements as are contained in the most recent edition of the California Fire Code (hereinafter referred to as the Code); and

**WHEREAS**, State of California Health and Safety Code Section 17958 requires that before making any modifications or changes pursuant to Sections 17958.5 and 17958.7(a), the governing body of a City or County shall make an express finding that such modifications or changes are needed; and

**WHEREAS**, State of California Health and Safety Code Section 17958.5 permits the City of Montclair to make modifications or changes to the Code, which are reasonably necessary because of local climatic, geological, or topographical conditions; and

**WHEREAS**, State of California Health and Safety Code Section 17958.7(a) requires that the City Council of the City of Montclair, before making any modifications or changes to the Code, shall make an express finding that such modifications are reasonably necessary because of local climatic, geological, or topographical conditions; and

**WHEREAS**, the Fire Marshal has recommended that modifications and changes be made to the Code and has advised that certain such modifications and changes to the California Fire Code, 2013 Edition, are reasonably necessary because of local climatic, geological, or topographical conditions in the City of Montclair, California.

Amendments related to fire and life safety contained in the 2013 Edition of the California Fire Code as recommended by the Fire Marshal are hereby found to be reasonably necessary because of the following local conditions:

**SECTION I.**

**A. Climatic Conditions.**

1. Hot, dry Santa Ana winds are common to all areas of the City of Montclair and to San Bernardino County in general. These winds, which can reach speeds of 40 to 70 miles per hour, cause small fires to spread quickly, are a contributing factor to the high fire danger in the area, and create the need for an increased level of fire protection. This added protection will supplement the normal Fire Department response available and provide immediate protection to life and property of residential and commercial occupancies during fire occurrences.

2. San Bernardino County and the City of Montclair are located in a semiarid Mediterranean-type climate with relatively low amounts of precipitation, very low humidity levels and extremely high temperatures. These climatic conditions are conducive to the rapid spread of fire. Therefore, there exists a need for additional fire protection measures.

#### **B. Geological Conditions.**

1. San Bernardino County and the City of Montclair are located in Seismic Zone 4. There are two faults within the City of Montclair, the San Jose fault and the Cucamonga fault; three other faults are located in nearby cities. In the event of a severe earthquake, these faults present the potential for catastrophic damage including fire. Information taken from the Southern California earthquake Data Center indicates the two most recent earthquakes in this area occurred in 1988 and 1990 and were centered in Upland, California. Although these earthquakes were moderate in intensity, the 1988 earthquake measured 4.7 in magnitude and the 1990 earthquake measured a 5.4 magnitude and resulted in 38 injuries, damage to the San Antonio Dam, and triggered landslides in the Mount Baldy area. The October 17, 1989 Santa Cruz earthquake resulted in only one major San Francisco fire in the Marina District; but when combined with the 34 other fires and over 500 calls for service, the San Francisco Fire Department was taxed to its fullest capacities. The Marina fire was difficult to contain because mains supplying water to the district burst during the earthquake. If more fires had been ignited as a result of the earthquake, it would have been difficult for the Fire Department to contain them. Experts predict a major earthquake could result in our area within the next 50 years. A major earthquake could result in damage to gas and electrical services causing numerous fires. This situation creates the need for both additional fire protection measures and onsite automatic fire protection for building occupants.

#### **C. Topographical Conditions.**

1. Traffic and circulation congestion in the City of Montclair often adversely affects Fire Department response times. This condition will be exacerbated by any major disaster including any earthquake wherein damage to the City's roadways and infrastructure would occur. A major interstate highway bisects the City of Montclair; a major earthquake could result in significant damage to the interstate overcrossings, which would severely impact Fire Department response capabilities. Therefore, the additional need for automatic onsite fire protection for building occupants is needed.

2. Placement of multiple-occupancy buildings, high-density residential units, location of arterial roadways, and Fire Department staffing constraints resulting from recent revenue-limiting state legislation have made it difficult for the Fire Department to provide manpower sufficient to concentrate fire companies and personnel to control fires in high-density, multiple-story residential units. Fire Department equipment does not allow easy access to areas of buildings greater than 28 feet above the level of Fire Department vehicle access. These conditions create the need for built-in, onsite fire protection systems to protect lives and property until the arrival of firefighting apparatus.

3. The City of Montclair is experiencing an increase in population density with the increased development of multistory residential units. A National Fire Protection Association study indicates there has never been a multiple loss of life caused by fire or smoke in a building equipped with fire sprinklers. Fire sprinklers are designed to prevent the rapid spread of fire and heat, thereby preventing multiple loss of life and decreasing property damage.

## SECTION II.

Amendments to the California Fire Code, 2013 Edition, are found reasonably necessary because of local climatic, geological, and topographical conditions cited in Section 1 of this Resolution and are listed as follows:

Section 10.02.010 - Definitions

Section 10.28.010(A) and (B) - Adoption of the California Fire Code, 2013 Edition

Section 10.28.020(A) and (B) - Bureau of Fire Prevention - Established - Supervision

Section 10.28.030(A), (B), (C), (D), (E), and (F) - Storage of Flammable or Combustible Liquids - Districts in Which Prohibited

Section 10.28.040 - Storage of Liquefied Petroleum Gases - Restricted

Section 10.28.050 - Storage of Explosives and Fireworks Restricted

Section 10.28.060(A), (B), (C), (D), (E), (F), (G), (H), (I), (J), (K), (L), (M) - Amendments to California Fire Code

Section 10.28.100 - Permits Required

Section 10.28.150(A) and (B) - Intent

Section 10.28.160(A) - Scope

Section 10.28.220(B) - Exits

Section 10.28.250(A) and (B) - Seismic Conditions

Section 10.28.280(B) - Automatic Sprinkler Systems

Section 10.28.290(A), (B), (C), (D), (E), (F), and (G) - Fire Control Center

Section 10.28.300(A), (B), (C), (D), (E), and (F) - Emergency Helicopter Landing Facility

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Montclair does hereby adopt Resolution No. 13-3014 making express findings regarding modifications to the California Fire Code, 2013 Edition, to comply with State of

California Health and Safety Code Sections 17922, 17958, 17958.5, and 17958.7(a) and the California Building Standards Commission.

**BE IT FURTHER RESOLVED** that a copy of this Resolution shall be forwarded to the California Department of Housing and Community Development, Division of Codes and Standards.

**BE IT FURTHER RESOLVED** that a copy of this Resolution shall be incorporated into and filed with Ordinance No. 13-939.

**APPROVED AND ADOPTED** this XX day of XX, 2014.

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Mayor

**ATTEST:**

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Deputy City Clerk

I, Yvonne L. Smith, Deputy City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 13-3014 was duly adopted by the City Council of said city and was approved by the Mayor of said city at a regular meeting of said City Council held on the XX day of XX, 2014, and that it was adopted by the following vote, to-wit:

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

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Yvonne L. Smith  
Deputy City Clerk

## AGENDA REPORT

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| <b>SUBJECT:</b> CONSIDER ADOPTION OF ORDINANCE<br>NO. 13-940 AMENDING SECTION 4.04.100<br>OF THE MONTCLAIR MUNICIPAL CODE TO<br>INCLUDE EXEMPTION OF BUSINESS LICENSE<br>REQUIREMENTS FOR CITY SERVICES, CITY<br>SUPPLIERS, AND COMMON CARRIERS AND<br>TO ESTABLISH MARCH 1, 2014, AS THE<br>EFFECTIVE DATE OF THE AMENDMENT | <b>DATE:</b> January 6, 2014<br><b>SECTION:</b> PUBLIC HEARINGS<br><b>ITEM NO.:</b> B<br><b>FILE I.D.:</b> FLPT100<br><b>DEPT.:</b> ADMIN. SVCS. |
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SECOND READING

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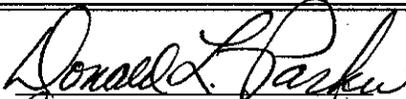
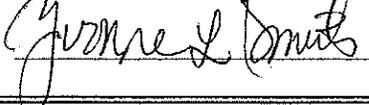
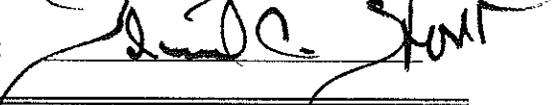
**REASON FOR CONSIDERATION:** The City Council is requested to consider adoption of the first reading of Ordinance No. 13-940 amending Section 4.04.100 of the Montclair Municipal Code to include exemption of business license requirements for City services, City suppliers, and common carriers.

A copy of proposed Ordinance No. 13-940 is attached for the City Council's review and consideration.

**BACKGROUND:** The Montclair Municipal Code requires all individuals and companies doing business within the City to obtain a City business license with some limited exceptions. There have been instances, however, in which additional exceptions to having a business license are warranted and would be in the best interest of the City. These are as follows:

1. When services are being provided in connection with City contracts, such as event vendors (food, supplies, etc.) or event entertainers, etc. To require these entities to have a business license increases their cost of operations, and that could also increase the costs of those services to the City. Since increased cost of City-purchased services offsets the benefits from the business license this only results in additional staff time and effort to process the licenses with limited, if any financial gain. Also, going through the process of obtaining a business license may prevent the City from obtaining services from vendors not wanting the additional administrative burden. Most entities that have larger contracts to provide services or products to the City have business licenses, and it is smaller ones that would find these requirements burdensome. To avoid a blanket exemption for City services, it is, therefore, recommended that an annual dollar limit of \$5,000 be established for City contracts that are being exempted from the City's business license requirements.
  
2. Under City construction contracts, delivery of products to City jobsites occurs by subcontractors or common carriers that are utilized by the prime contractor. The prime contractor has a City business license; however, to require that all of their subcontractors or delivery companies also have business licenses would impose a substantial burden upon the prime contractor and could cause these entities to not

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

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wish to do business with the City. Therefore, it is recommended that a supplier delivering materials in connection with a City contract and of use on a City project be exempted from the City's business license requirements.

3. Common carrier deliveries are made to Montclair residents even though the shipper is not located within the City. Most of these likely originate over the Internet, and the products should be coming from worldwide manufacturers, etc. Existing business license requirements do not grant an exemption for such, and our ability to regulate these is beyond our capability. Therefore, it is recommended that common carriers be exempted from the City's business license requirements.

**FISCAL IMPACT:** Unknown but not expected to be significant

**RECOMMENDATION:** Staff recommends the City Council adopt Ordinance No. 13-940 amending Section 4.04.100 of the Montclair Municipal Code to include exemptions of business license requirements for City services, City suppliers, and common carriers and to establish March 1, 2014, as the effective date of the amendment.

**ORDINANCE NO. 13-940**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR AMENDING SECTION 4.04.100 OF THE MONTCLAIR MUNICIPAL CODE TO INCLUDE EXEMPTION OF BUSINESS LICENSE REQUIREMENTS FOR CITY SERVICES, CITY SUPPLIERS, AND COMMON CARRIERS**

**THE CITY COUNCIL OF THE CITY OF MONTCLAIR DOES ORDAIN AS FOLLOWS:**

**SECTION I.** Section 4.04.100 ("Mandatory Exemptions") of Chapter 4.04 ("Business License Provisions Generally") of Title 4 ("Business Taxes, Licenses, and Regulations") of the Montclair Municipal Code is hereby amended by adding the following exemptions:

E. City Services. No license fee shall be required of any vendor performing services to the City in which the aggregate value of all City payments to the vendor during the calendar year is Five Thousand Dollars (\$5,000) or less and the vendor is engaged in no other business within the City. If the vendor is engaged in other business within the City, the vendor shall be required to obtain a license. Additionally, a supplier delivering materials in connection with a contract with the City and for use on a City project is not required to obtain a business license unless otherwise provided in the contract.

F. Delivery by common carrier. A seller located outside the City merely delivering goods into the City by means of common carrier is not required to obtain a business license provided it engages in no other business activities in or with the City. If a seller performs other business activities in the City in addition to delivering goods by common carrier, the seller must obtain a business license.

**SECTION II. 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 III. Effective Date.**

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

**SECTION IV. 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, 2014.

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Mayor

**ATTEST:**

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Deputy City Clerk

I, Yvonne L. Smith, Deputy City Clerk of the City of Montclair, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 13-940 of said City, which was introduced at a regular meeting of the City Council held on the XX day of XX, 2013, and finally passed not less than five (5) days thereafter on the XX day of XX, 2014, by the following vote, to-wit:

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

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Yvonne L. Smith  
Deputy City Clerk

## AGENDA REPORT

**SUBJECT:** CONSIDER SETTING A PUBLIC HEARING FOR JANUARY 21, 2014, TO CONSIDER ADOPTION OF RESOLUTION NO. 14-3016 RELATED TO A PROPOSED FIVE-YEAR SCHEDULE OF MAXIMUM MONTHLY RATE CAPS FOR RESIDENTIAL REFUSE SERVICES AND SETTING REFUSE RATES INITIALLY AT THOSE PROPOSED TO BE EFFECTIVE FEBRUARY 1, 2014.

**DATE:** January 6, 2014  
**SECTION:** ADMIN. REPORTS  
**ITEM NO.:** 1  
**FILE I.D.:** REF285  
**DEPT.:** ADMIN. SVCS.

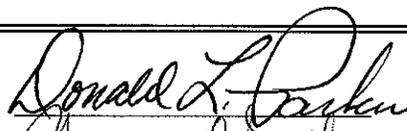
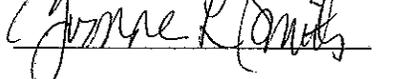
**REASON FOR CONSIDERATION:** The City Council is requested to consider setting a public hearing to consider adoption of Resolution No. 14-3016 related to a proposed five-year schedule of maximum monthly rate caps for residential refuse services and setting refuse rates initially at those proposed to be effective February 1, 2014.

**BACKGROUND:** The City has reached its maximum authorization related to adjusting rates for residential refuse services, and future adjustment cannot be made without conducting a Proposition 218 protest hearing. Since Burrtec Waste Industries, Inc., the City's solid waste hauler, is requesting and is authorized annual rate adjustments pursuant to the terms of the existing franchise agreement between the City and Burrtec, that process has been done; and a Proposition 218 protest hearing is scheduled for January 21, 2014. In the event that a majority protest of property owners and ratepayers against the proposed maximum rate caps for residential refuse services is not recorded, this public hearing would be conducted to consider setting initial residential refuse rates and future rate caps as proposed in the Proposition 218 process.

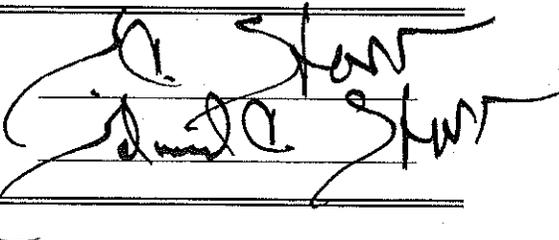
**FISCAL IMPACT:** The cost to publish a Notice of Public Hearing in the *Inland Valley Daily Bulletin* related to proposed Resolution No. 14-3016 should not exceed \$400.

**RECOMMENDATION:** Staff recommends the City Council set a public hearing for Tuesday, January 21, 2014, at 7:00 p.m. in the City Council Chambers to consider adoption of Resolution No. 14-3016 setting a proposed five-year schedule of maximum monthly residential refuse services and initially setting residential refuse rates at those proposed to be effective February 1, 2014.

Prepared by:

Reviewed and  
Approved by:



Proofed by:

Presented by:

RESOLUTION NO. 14-3016

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR SETTING A PROPOSED FIVE-YEAR SCHEDULE OF RESIDENTIAL MAXIMUM MONTHLY RATE CAPS FOR REFUSE SERVICES AND SETTING REFUSE RATES INITIALLY AT THOSE PROPOSED TO BE EFFECTIVE FEBRUARY 1, 2014

**WHEREAS**, Article XIID, Section 6(a) of the State Constitution (Proposition 218), passed by the voters of California on November 5, 1996, requires municipalities to give detailed written notice to the owners of parcels upon which proposed water-, refuse-, and/or sewer-related fees or charges are to be applied; and

**WHEREAS**, on July 24, 2006, the California Supreme Court published its decision on *Bighorn-Desert View Water Agency v. Beringson*, addressing the property-related fee provisions of Proposition 218, and concluding that in relation to water-, refuse-, and sewer-related services where the rates for such services are set by a government agency, such charges are "property-related" fees subject to the public hearing requirements of Proposition 218; and

**WHEREAS**, Proposition 218 requires that a public hearing shall be conducted not less than 45 days after the mailing of such notice of a public hearing on property-related fee adjustments; and

**WHEREAS**, if written protests against a proposed property-related fee or charge are presented by a majority of owners of the property owners and ratepayers, the fee adjustment shall not be implemented; and

**WHEREAS**, if a majority protest is not received from property owners and ratepayers, the proposed rate cap shall go into; and

**WHEREAS**, Chapter 6.16 of the Montclair Municipal Code establishes a mandatory refuse collection program and a process for the collection of service fees related thereto; and

**WHEREAS**, the City has reached its maximum authorization related to adjusting rates for residential refuse services, and future adjustment cannot be made without conducting a Proposition 218 protest hearing; and

**WHEREAS**, Burrtec Waste Industries, Inc., the City's solid waste hauler, is requesting and is authorized annual rate adjustments pursuant to the terms of the existing franchise agreement between the City and Burrtec; and

**WHEREAS**, the City's General Fund now shares a significant responsibility for supporting the residential refuse programs and that without proposed Proposition 218 rate cap increases and the annual fee-related increases associated therewith, the fiscal viability of the residential refuse programs are jeopardized.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Montclair hereby establishes the maximum caps for residential refuse services below

and that such caps for 2015 through 2018 represent a maximum limit, not an immediate rate adjustment, and that reaching the limit of the proposed caps is not expected to occur for approximately five years:

| <i>Residential</i>         |                         |                        |                        |                        |                        |
|----------------------------|-------------------------|------------------------|------------------------|------------------------|------------------------|
| <i>Service/Size/Pickup</i> | <i>Effective Dates</i>  |                        |                        |                        |                        |
|                            | <i>February 1, 2014</i> | <i>January 1, 2015</i> | <i>January 1, 2016</i> | <i>January 1, 2017</i> | <i>January 1, 2018</i> |
| Household Rate             | \$ 26.88                | \$ 28.22               | \$ 29.63               | \$ 32.00               | \$ 33.60               |
| Bin 1.5/Frequency 1        | \$ 93.80                | \$ 98.49               | \$ 103.41              | \$ 108.58              | \$ 114.01              |

**BE IT FURTHER RESOLVED** that such caps are subject to the Proposition 218 notification process which has been performed and a public hearing is set on or about Monday, January 21, 2014, at 7:00 p.m., in the Montclair Council Chambers to provide property owners and ratepayers an opportunity to protest proposed maximum rate caps for residential refuse services in accordance with the requirements of Proposition 218.

**BE IT FURTHER RESOLVED** that such maximum caps are subject to majority written protest by property owners and ratepayers at a public hearing conducted pursuant to Proposition 218 and that such maximum rate caps shall not be effective unless and until such caps are subject to the Proposition 218 notification and hearing process and a majority protest of property owners and ratepayers is not received.

**BE IT FURTHER RESOLVED** that in the event that a majority protest of property owners and ratepayers against the proposed maximum rate caps for residential refuse services is not recorded, residential refuse rates shall be initially set as indicated under the February 1, 2014 column above and such future rate caps shall be effective for the dates indicated above.

**BE IT FINALLY RESOLVED** that rate adjustments up to the proposed maximum rate caps for refuse services effective in 2015 through 2018 shall require City Council approval, either by Resolution or Ordinance, prior to implementation.

**APPROVED AND ADOPTED** this XX day of XX, 2014.

\_\_\_\_\_  
Mayor

**ATTEST:**

\_\_\_\_\_  
Deputy City Clerk

I, Yvonne L. Smith, Deputy City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 14-3016 was duly adopted by the City Council of said city and was approved by the Mayor of said city at a regular meeting of said City Council held on the XX day of XX, 2014, and that it was adopted by the following vote, to-wit:

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

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Yvonne L. Smith  
Deputy City Clerk

## AGENDA REPORT

**SUBJECT:** CONSIDER SETTING A PUBLIC HEARING FOR JANUARY 21, 2014; TO CONSIDER ADOPTION OF RESOLUTION NO. 14-3017 RELATED TO A PROPOSED FIVE-YEAR SCHEDULE OF MAXIMUM MONTHLY RATE CAPS FOR COMMERCIAL REFUSE SERVICES AND SETTING REFUSE RATES INITIALLY AT THOSE PROPOSED TO BE EFFECTIVE FEBRUARY 1, 2014

**DATE:** January 6, 2014  
**SECTION:** ADMIN. REPORTS  
**ITEM NO.:** 2  
**FILE I.D.:** REF285  
**DEPT.:** ADMIN. SVCS.

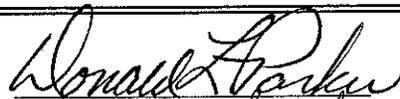
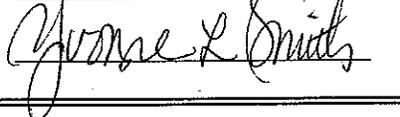
**REASON FOR CONSIDERATION:** The City Council is requested to consider setting a public hearing for Tuesday, January 21, 2014, to consider adoption of Resolution No. 14-3017 related to a proposed five-year schedule of maximum monthly rate caps for commercial refuse services and setting refuse rates initially at those proposed to be effective February 1, 2014.

**BACKGROUND:** The City has reached its maximum authorization related to adjusting rates for commercial refuse services, and future adjustment cannot be made without conducting a Proposition 218 protest hearing. Since Burrtec Waste Industries, Inc., the City's solid waste hauler, is requesting and is authorized annual rate adjustments pursuant to the terms of the existing franchise agreement between the City and Burrtec, that process has been done; and a Proposition 218 protest hearing is scheduled for January 21, 2014. In the event that a majority protest of property owners and ratepayers against the proposed maximum rate caps for commercial refuse services is not recorded, this public hearing would be conducted to consider setting initial commercial refuse rates and future rate caps as proposed in the Proposition 218 process.

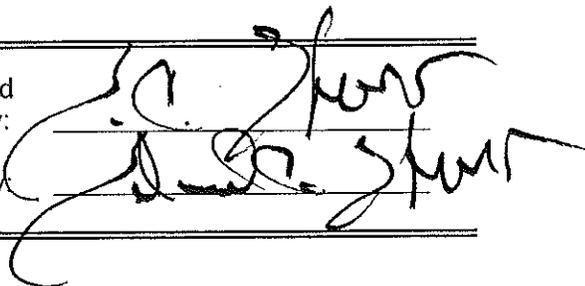
**FISCAL IMPACT:** The cost to publish a Notice of Public Hearing in the *Inland Valley Daily Bulletin* related to proposed Resolution No. 14-3017 should not exceed \$400.

**RECOMMENDATION:** Staff recommends the City Council set a public hearing for Tuesday, January 21, 2014, at 7:00 p.m. in the City Council Chambers to consider adoption of Resolution No. 14-3017 setting a proposed five-year schedule of maximum monthly commercial refuse services and initially setting commercial refuse rates at those proposed to be effective February 1, 2014.

Prepared by:

Reviewed and  
Approved by:



Proofed by:

Presented by:

**RESOLUTION NO. 14-3017**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR SETTING A PROPOSED FIVE-YEAR SCHEDULE OF COMMERCIAL MAXIMUM MONTHLY RATE CAPS FOR REFUSE SERVICES AND SETTING REFUSE RATES INITIALLY AT THOSE PROPOSED TO BE EFFECTIVE FEBRUARY 1, 2014**

**WHEREAS**, Article XIID, Section 6(a) of the State Constitution (Proposition 218), passed by the voters of California on November 5, 1996, requires municipalities to give detailed written notice to the owners of parcels upon which proposed water-, refuse-, and/or sewer-related fees or charges are to be applied; and

**WHEREAS**, on July 24, 2006, the California Supreme Court published its decision on *Bighorn-Desert View Water Agency v. Beringson*, addressing the property-related fee provisions of Proposition 218, and concluding that in relation to water-, refuse-, and sewer-related services where the rates for such services are set by a government agency, such charges are "property-related" fees subject to the public hearing requirements of Proposition 218; and

**WHEREAS**, Proposition 218 requires that a public hearing shall be conducted not less than 45 days after the mailing of such notice of a public hearing on property-related fee adjustments; and

**WHEREAS**, if written protests against a proposed property-related fee or charge are presented by a majority of owners of the property owners and ratepayers, the fee adjustment shall not be implemented; and

**WHEREAS**, if a majority protest is not received from property owners and ratepayers, the proposed rate cap shall go into; and

**WHEREAS**, Chapter 6.16 of the Montclair Municipal Code establishes a mandatory refuse collection program and a process for the collection of service fees related thereto; and

**WHEREAS**, the City has reached its maximum authorization related to adjusting rates for commercial refuse services, and future adjustment cannot be made without conducting a Proposition 218 protest hearing; and

**WHEREAS**, Burrtec Waste Industries, Inc., the City's solid waste hauler, is requesting and is authorized annual rate adjustments pursuant to the terms of the existing franchise agreement between the City and Burrtec; and

**WHEREAS**, the City's General Fund now shares a significant responsibility for supporting the commercial refuse programs and that without proposed Proposition 218 rate cap increases and the annual fee-related increases associated therewith, the fiscal viability of the commercial refuse programs are jeopardized.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Montclair does hereby establish the maximum caps for commercial refuse services

contained in **Table 1** attached as **Appendix 1**; that such caps for 2015 through 2018 represent a maximum limit, not an immediate rate adjustment; and that reaching the limit of the proposed caps is not expected to occur for approximately five years.

**BE IT FURTHER RESOLVED** that such caps are subject to the Proposition 218 notification process, which has been performed, and a public hearing is set on or about Monday, January 21, 2014, at 7:00 p.m. in the Montclair Council Chambers to provide property owners and ratepayers an opportunity to protest proposed maximum rate caps for commercial refuse services in accordance with the requirements of Proposition 218.

**BE IT FURTHER RESOLVED** that such maximum caps are subject to majority written protest by property owners and ratepayers at a public hearing conducted pursuant to Proposition 218 and that such maximum rate caps shall not be effective unless and until such caps are subject to the Proposition 218 notification and hearing process and a majority protest of property owners and ratepayers is not received.

**BE IT FURTHER RESOLVED** that in the event that a majority protest of property owners and ratepayers against the proposed maximum rate caps for commercial refuse services is not recorded, commercial refuse rates shall be initially set as indicated under the February 1, 2014 column contained in **Table 1** attached as **Appendix 1**; and such future rate caps shall be effective for the dates indicated also as contained in **Table 1** attached as **Appendix 1**.

**BE IT FINALLY RESOLVED** that rate adjustments up to the proposed maximum rate caps for refuse services effective in 2015 through 2018 shall require City Council approval, either by Resolution or Ordinance, prior to implementation.

**APPROVED AND ADOPTED** this XX day of XX, 2014.

\_\_\_\_\_  
Mayor

**ATTEST:**

\_\_\_\_\_  
Deputy City Clerk

I, Yvonne L. Smith, Deputy City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 14-3017 was duly adopted by the City Council of said city and was approved by the Mayor of said city at a regular meeting of said City Council held on the XX day of XX, 2014, and that it was adopted by the following vote, to-wit:

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

\_\_\_\_\_  
Yvonne L. Smith  
Deputy City Clerk

Table 1  
Maximum Proposed Monthly Refuse Rates

Appendix 1

| <b>Commercial</b>                 |                         |                        |                        |                        |                        |
|-----------------------------------|-------------------------|------------------------|------------------------|------------------------|------------------------|
| <i>Service/Size/Pickup</i>        | <i>Effective Dates</i>  |                        |                        |                        |                        |
|                                   | <i>February 1, 2014</i> | <i>January 1, 2015</i> | <i>January 1, 2016</i> | <i>January 1, 2017</i> | <i>January 1, 2018</i> |
| <b>Multifamily Commercial:</b>    |                         |                        |                        |                        |                        |
| Alleyway Service Per Unit         | \$ 32.94                | \$ 34.59               | \$ 36.32               | \$ 38.14               | \$ 40.05               |
| Bin 1.5/Frequency 1               | \$ 104.13               | \$ 109.34              | \$ 114.81              | \$ 120.55              | \$ 126.58              |
| Bin 1.5/Frequency 2               | \$ 194.69               | \$ 204.42              | \$ 214.64              | \$ 225.37              | \$ 236.64              |
| Bin 1.5/Frequency 3               | \$ 285.68               | \$ 299.96              | \$ 314.96              | \$ 330.71              | \$ 347.25              |
| Bin 2.0/Frequency 1               | \$ 121.51               | \$ 127.59              | \$ 133.97              | \$ 140.67              | \$ 147.70              |
| Bin 2.0/Frequency 2               | \$ 220.50               | \$ 231.53              | \$ 243.11              | \$ 255.27              | \$ 268.03              |
| Bin 2.0/Frequency 3               | \$ 321.43               | \$ 337.50              | \$ 354.38              | \$ 372.10              | \$ 390.71              |
| Bin 3.0/Frequency 1               | \$ 171.73               | \$ 180.32              | \$ 189.34              | \$ 198.81              | \$ 208.75              |
| Bin 3.0/Frequency 2               | \$ 290.25               | \$ 304.76              | \$ 320.00              | \$ 336.00              | \$ 352.80              |
| Bin 3.0/Frequency 3               | \$ 411.02               | \$ 431.57              | \$ 453.15              | \$ 475.81              | \$ 499.60              |
| Bin 3.0/Frequency 4               | \$ 531.81               | \$ 558.40              | \$ 586.32              | \$ 615.64              | \$ 646.42              |
| Bin 3.0/Frequency 5               | \$ 652.58               | \$ 685.21              | \$ 719.47              | \$ 755.44              | \$ 793.21              |
| Bin 3.0/Frequency 6               | \$ 773.38               | \$ 812.05              | \$ 852.65              | \$ 895.28              | \$ 940.04              |
| <b>Commercial with Recycling:</b> |                         |                        |                        |                        |                        |
| Bin 1.5/Frequency 1               | \$ 100.37               | \$ 105.39              | \$ 110.66              | \$ 116.19              | \$ 122.00              |
| Bin 1.5/Frequency 2               | \$ 186.83               | \$ 196.17              | \$ 205.98              | \$ 216.28              | \$ 227.09              |
| Bin 1.5/Frequency 3               | \$ 275.23               | \$ 288.99              | \$ 303.44              | \$ 318.61              | \$ 334.54              |
| Bin 2.0/Frequency 1               | \$ 116.91               | \$ 122.76              | \$ 128.90              | \$ 135.35              | \$ 142.12              |
| Bin 2.0/Frequency 2               | \$ 211.72               | \$ 222.31              | \$ 233.43              | \$ 245.10              | \$ 257.36              |
| Bin 2.0/Frequency 3               | \$ 308.05               | \$ 323.45              | \$ 339.62              | \$ 356.60              | \$ 374.43              |
| Bin 3.0/Frequency 1               | \$ 165.04               | \$ 173.29              | \$ 181.95              | \$ 191.05              | \$ 200.60              |
| Bin 3.0/Frequency 2               | \$ 276.87               | \$ 290.71              | \$ 305.25              | \$ 320.51              | \$ 336.54              |
| Bin 3.0/Frequency 3               | \$ 390.54               | \$ 410.07              | \$ 430.57              | \$ 452.10              | \$ 474.71              |
| Bin 3.0/Frequency 4               | \$ 504.64               | \$ 529.87              | \$ 556.36              | \$ 584.18              | \$ 613.39              |
| Bin 3.0/Frequency 5               | \$ 618.72               | \$ 649.66              | \$ 682.14              | \$ 716.25              | \$ 752.06              |
| Bin 3.0/Frequency 6               | \$ 732.83               | \$ 769.47              | \$ 807.94              | \$ 848.34              | \$ 890.76              |
| <b>Commercial Greenwaste:</b>     |                         |                        |                        |                        |                        |
| Bin 3.0/Frequency 1               | \$ 154.59               | \$ 162.32              | \$ 170.44              | \$ 178.96              | \$ 187.91              |
| Bin 3.0/Frequency 2               | \$ 260.48               | \$ 273.50              | \$ 287.18              | \$ 301.54              | \$ 316.62              |
| Bin 3.0/Frequency 3               | \$ 366.39               | \$ 384.71              | \$ 403.95              | \$ 424.15              | \$ 445.36              |
| Bin 3.0/Frequency 4               | \$ 472.27               | \$ 495.88              | \$ 520.67              | \$ 546.70              | \$ 574.04              |
| Bin 3.0/Frequency 5               | \$ 578.16               | \$ 607.07              | \$ 637.42              | \$ 669.29              | \$ 702.75              |
| Bin 3.0/Frequency 6               | \$ 684.06               | \$ 718.26              | \$ 754.17              | \$ 791.88              | \$ 831.47              |

Table 1 (Continued)  
Maximum Proposed Monthly Refuse Rates

Appendix 1

| <b>Commercial</b>                      |                         |                        |                        |                        |                        |
|--|-------------------------|------------------------|------------------------|------------------------|------------------------|
| <i>Service/Size/Pickup</i>             | <i>Effective Dates</i>  |                        |                        |                        |                        |
|  | <i>February 1, 2014</i> | <i>January 1, 2015</i> | <i>January 1, 2016</i> | <i>January 1, 2017</i> | <i>January 1, 2018</i> |
| <b>Commercial Compacted:</b>           |                         |                        |                        |                        |                        |
| Bin 3.0/Frequency 1                    | \$ 225.06               | \$ 236.31              | \$ 248.13              | \$ 260.54              | \$ 273.57              |
| Bin 3.0/Frequency 2                    | \$ 401.43               | \$ 421.50              | \$ 442.58              | \$ 464.71              | \$ 487.95              |
| Bin 3.0/Frequency 3                    | \$ 577.80               | \$ 606.69              | \$ 637.02              | \$ 668.87              | \$ 702.31              |
| Bin 3.0/Frequency 4                    | \$ 754.17               | \$ 791.88              | \$ 831.47              | \$ 873.04              | \$ 916.69              |
| Bin 3.0/Frequency 5                    | \$ 930.54               | \$ 977.07              | \$ 1,025.92            | \$ 1,077.22            | \$ 1,131.08            |
| Bin 3.0/Frequency 6                    | \$ 1,106.92             | \$ 1,162.27            | \$ 1,220.38            | \$ 1,281.40            | \$ 1,345.47            |
| Bin 4.0/Frequency 3                    | \$ 766.98               | \$ 805.33              | \$ 845.60              | \$ 887.88              | \$ 932.27              |
| <b>Commercial Temporary:</b>           |                         |                        |                        |                        |                        |
| Bin 3.0/Frequency 7                    | \$ 92.18                | \$ 96.79               | \$ 101.63              | \$ 106.71              | \$ 112.05              |
| <b>Commercial Permanent Roll- Off:</b> |                         |                        |                        |                        |                        |
| Bin 40/Frequency 6                     | \$ 411.02               | \$ 431.57              | \$ 453.15              | \$ 475.81              | \$ 499.60              |
| Bin 25/Frequency 8                     | \$ 494.62               | \$ 519.35              | \$ 545.32              | \$ 572.59              | \$ 601.22              |
| Bin 10/Frequency 8                     | \$ 494.62               | \$ 519.35              | \$ 545.32              | \$ 572.59              | \$ 601.22              |
| Bin 40 Comp/Frequency 8                | \$ 494.62               | \$ 519.35              | \$ 545.32              | \$ 572.59              | \$ 601.22              |
| <b>Commercial Temporary Roll- Off:</b> |                         |                        |                        |                        |                        |
| Bin 40/Frequency 6                     | \$ 433.03               | \$ 454.68              | \$ 477.41              | \$ 501.28              | \$ 526.34              |
| Bin 25/Frequency 8                     | \$ 523.96               | \$ 550.16              | \$ 577.67              | \$ 606.55              | \$ 636.88              |
| Bin 10/Frequency 8                     | \$ 523.97               | \$ 550.17              | \$ 577.68              | \$ 606.56              | \$ 636.89              |
| Bin 40 Comp/Frequency 8                | \$ 523.97               | \$ 550.17              | \$ 577.68              | \$ 606.56              | \$ 636.89              |
| <b>Commercial Recycling Roll- Off:</b> |                         |                        |                        |                        |                        |
| Bin 40/Frequency 6                     | \$ 160.22               | \$ 168.23              | \$ 176.64              | \$ 185.47              | \$ 194.74              |
| Bin 25/Frequency 8                     | \$ 160.22               | \$ 168.23              | \$ 176.64              | \$ 185.47              | \$ 194.74              |
| Bin 10/Frequency 8                     | \$ 160.22               | \$ 168.23              | \$ 176.64              | \$ 185.47              | \$ 194.74              |
| Bin 40 Comp/Frequency 8                | \$ 160.22               | \$ 168.23              | \$ 176.64              | \$ 185.47              | \$ 194.74              |
| <b>Commercial Extra Services:</b>      |                         |                        |                        |                        |                        |
| Extra Pickup                           | \$ 41.12                | \$ 43.18               | \$ 45.34               | \$ 47.61               | \$ 49.99               |
| Locking Container                      | \$ 6.24                 | \$ 6.55                | \$ 6.88                | \$ 7.22                | \$ 7.58                |
| Steam Cleaning (Compactors)            | \$ 85.13                | \$ 89.39               | \$ 93.86               | \$ 98.55               | \$ 103.48              |
| Bulky Item Trip Fee                    | \$ 39.73                | \$ 41.72               | \$ 43.81               | \$ 46.00               | \$ 48.30               |
| Bulky Item Fee (each item)             | \$ 11.35                | \$ 11.92               | \$ 12.52               | \$ 13.15               | \$ 13.81               |
| Relocation Fee (Roll- Off)             | \$ 85.13                | \$ 89.39               | \$ 93.86               | \$ 98.55               | \$ 103.48              |
| Rental Fee (per day)                   | \$ 22.90                | \$ 24.05               | \$ 25.25               | \$ 26.51               | \$ 27.84               |

## AGENDA REPORT

**SUBJECT:** CONSIDER APPROVAL OF AGREEMENT NO. 14-03, A COMMUNICATIONS SITE LEASE AGREEMENT WITH LOS ANGELES SMSA LIMITED PARTNERSHIP (VERIZON WIRELESS) LOCATED AT ALMA HOFMAN PARK

CONSIDER APPROVAL OF AGREEMENT NO. 14-04, A RIGHT-OF-ENTRY AGREEMENT WITH VERIZON WIRELESS RELATED TO AGREEMENT NO. 14-03

**DATE:** January 6, 2014

**SECTION:** AGREEMENTS

**ITEM NO.:** 1

**FILE I.D.:** PRK350

**DEPT.:** ADMIN. SVCS.

**REASON FOR CONSIDERATION:** Los Angeles SMSA Limited Partnership, "Verizon Wireless," would like to collocate on the wireless telecommunications monopine located at Alma Hofman Park. In order to proceed with collocating on the monopine, Verizon Wireless would need to lease space from the City for an equipment enclosure. Proposed Agreement No. 14-03 details the terms of an agreement between Verizon Wireless and the City for lease of space to construct the equipment enclosure. Proposed Agreement No. 14-04 is a Right-of-Entry Agreement allowing Verizon Wireless to perform an environment site assessment prior to construction of the proposed equipment enclosure.

Copies of proposed Agreement Nos. 14-03 and 14-04 are included in the agenda packet for the City Council's review and consideration.

**BACKGROUND:** On December 21, 2009, the City Council approved Lease Agreement No. 09-129 with T-Mobile West Corporation for construction of a cellular antenna at Alma Hofman Park. T-Mobile West Corporation constructed a 70-foot evergreen pine tree (monopine) at the Park that would be capable of becoming a collocation for up to three telecommunication carriers. The monopine is located behind the Skate Park, and the support equipment for up to two telecommunication carriers is located west of the monopine. The Planning Commission approved and granted a Conditional Use Permit (CUP), Precise Plan of Design (PPD), and a Variance for the height of the monopine on August 24, 2009.

In order to collocate an additional telecommunications carrier on the monopine it would be necessary for the City to lease additional space for support equipment to accommodate another carrier. Verizon Wireless has approached the City requesting to lease 549 square feet for support equipment so it could install antenna panels on the existing monopine. The site proposed for lease to Verizon Wireless is located in the southeast corner of the parking lot behind the Youth Center. The corner space would consume no more than two existing parking spaces. This lot is exclusively used for parking City-owned vehicles and vehicles of certain City employees. Access to the ground equipment for Verizon Wireless would be taken from the park side of the existing masonry wall via a new gate that would

Prepared by:

*M. STAATS*

Reviewed and Approved by:

*M. STAATS*

Proofed by:

*S.C. SPUNT*

Presented by:

*[Signature]*

be constructed. On September 9, 2013, the Planning Commission approved an amendment to the CUP for the monopine to allow Verizon Wireless to occupy the proposed location. A copy of the staff report supplied to the Planning Commission is attached as Exhibit A and a map of the proposed site for the equipment enclosure is attached as Exhibit B.

The City Council is requested to consider the terms and conditions of proposed Communications Site Lease Agreement No. 14-03 with Verizon Wireless. The most salient terms of proposed Agreement No. 14-03 include the following points:

- The term of the Lease Agreement would be five years commencing on the date Verizon Wireless commences installation of the equipment. The term of the Lease could be extended for four additional periods of five years. The Lease is contingent upon the lease with T-Mobile West Corporation. If the T-Mobile lease is terminated, the Agreement with Verizon Wireless would also be terminated.
- The Lease Agreement would automatically be extended upon its expiration unless Verizon Wireless 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 \$17,400. Each year the consideration would increase by 3 percent of the annualized consideration.
- Within 30 days of the commencement of the Lease, Verizon Wireless would pay the City a fee of \$7,500 to cover the cost of legal expenses and a reimbursement cost for the installation of conduit installed on the premises by the City.
- Should Verizon Wireless choose not to renew its lease, default, or choose to terminate the Agreement pursuant to the terms of the Agreement, Verizon Wireless would have the responsibility to remove the antenna, equipment, footings, and foundations within 90 days of termination of the Agreement at its sole cost and expense. Should the Lessee fail to remove the facilities from the land within 30 days of the expiration of the Lease or within 90 days following the Lease termination, the Lessee would be responsible for payment of the then-current rent amount equal to 150 percent of the then-current rent.
- Utility costs associated with the equipment enclosure would be the responsibility of Verizon Wireless.
- Verizon Wireless would have the right to enter the park property for construction purposes and to maintain the facility upon its completion. Verizon Wireless would have access without notice to site for maintenance on a 24-hour per day basis. The City would grant Verizon Wireless a nonexclusive easement for vehicular and pedestrian ingress and egress to its facility for such purpose. However, should the City be sponsoring an event in Alma Hofman Park, the Lessee would only be granted access to the site in the event of an emergency.
- Verizon Wireless would be responsible for payment of any taxes attributable to its facilities.

- Verizon Wireless would be responsible for repair and maintenance of their facilities. All graffiti and defacement must be removed from the antenna or equipment facilities within five business days of receipt of notice from the City.
- Verizon Wireless would be responsible for providing the City with the appropriate indemnification and insurance.

Agreement No. 14-04 is a Right-of-Entry between the City and Verizon Wireless. The Right-of-Entry Agreement provides City authorization to Verizon Wireless to enter the City property where the equipment enclosure would be located. Verizon Wireless would conduct an environmental site assessment including soils testing and structural analysis for equipment to be placed in the equipment enclosure. The environmental site assessment would be conducted prior to construction of the equipment enclosure.

**FISCAL IMPACT:** Approval of proposed Communications Site lease Agreement No. 14-03 with Verizon Wireless would provide the City with annual revenue of \$17,400. A 4 percent increase to the annual consideration would be provided on the anniversary of the commencement of the Lease Agreement. The City would receive a one-time payment of \$7,500 to cover incurred legal costs and reimburse the City for the cost of conduit previously placed by the City. Approval of proposed Right-of-Entry Agreement No. 14-04 would not impose a fiscal impact on the City.

The site to be leased by Verizon Wireless in the southeast corner of the parking lot behind the Youth Center will cause the City to lose no more than two parking spaces.

**RECOMMENDATION:** Staff recommends the City Council take the following actions:

- Approve Agreement No. 14-03, a Communications Site Lease Agreement with Los Angeles SMSA Limited Partnership (Verizon Wireless) located at Alma Hofman Park.
- Approve Agreement No. 14-04, a Right-of-Entry Agreement with Verizon Wireless related to Agreement No. 14-03.

## Report on Item Number 6.b

### CASE NUMBER 2009-11 'B'

|                             |                                       |
|-----------------------------|---------------------------------------|
| APPLICATION TYPE(S)         | Conditional Use Permit Amendment      |
| NAME OF APPLICANT           | Verizon Wireless / City of Montclair  |
| LOCATION OF PROPERTY        | 5201 Benito Street                    |
| GENERAL PLAN DESIGNATION    | Neighborhood Park                     |
| ZONING DESIGNATION          | R-1 (Single-Family Residential)       |
| EXISTING LAND USE           | Alma Hofman Park                      |
| ENVIRONMENTAL DETERMINATION | Categorical Exemption – Section 15303 |
| PROJECT PLANNER             | Silvia Gutiérrez                      |

### Project Description

Verizon Wireless is requesting approval to amend a previously-approved Conditional Use Permit (CUP) to allow the co-location of its antennas on an existing 70-foot-high wireless telecommunications facility/structure at Alma Hofman Park. The new antennas proposed to be added to the structure for Verizon Wireless are intended to improve cell phone coverage for its customers in the area.

The existing wireless telecommunications facility/structure was installed in 2009 and is designed to resemble an evergreen pine tree (also referred as "monopine"). Currently, T-Mobile has approval for its antennas to be placed on and operate from the existing monopine and related ground equipment. The existing monopine is located south of the skate park entrance and is set back approximately 135 feet from the south curb of Benito Street. No change to the immediate ground area beneath the monopine structure is proposed.

A total of twelve (12) new antenna panels divided into 3 sectors (4 panels each) and one parabolic dish will be installed on the existing monopine for the new carrier. The antenna panels will be mounted approximately 50 feet high and the parabolic dish at 45 feet. The ground mounted support equipment for the new Verizon Wireless antennas will be in a new enclosure area at the southeast corner of the adjacent parking lot behind the Youth Center. The proposed equipment lease area would be approximately 21' by 26' (546 square feet). Plans for the project are included in the Commission packets for reference. Verizon has also provided photo simulations to demonstrate how the antennas would appear (Exhibit "A").

### Background

- On August 24, 2009, the Planning Commission approved Case No. 2009-11 granting a Conditional Use Permit, Precise Plan of Design and Variance to allow the

subject wireless telecommunications facility at Alma Hofman Park. The area occupied by the monopine structure itself measured 22' X 22' for a total of 454 square feet. Ground mounted support equipment and electrical connections were contained in a small adjacent secured area.

- Co-location of wireless carriers at existing sites is encouraged by the City's ordinance regulating wireless telecommunications facilities. Wherever feasible, carriers would be allowed and encouraged to co-locate in order to improve service to the area without the expense and impact of building numerous cell facilities for each individual carrier throughout the community.
- The Federal Telecommunications Act of 1996 precludes local governments from banning cellular transmission sites based on health concerns about the dangers of exposure to radiofrequency radiation (RFR) and electromagnetic frequency (EMF). This is due to inconclusive evidence about the health risk of exposure to RFR and EMF. Cities and counties retain discretion over design and location of the sites but cannot exclude them. Therefore, the Planning Commission is reminded that it cannot consider any environmental effects of emissions that otherwise comply with FCC regulations, including purported impacts upon health or alleged interference with television reception, in its decision to approve or deny the project.
- The Montclair Municipal Code permits wireless telecommunications facilities subject to the approval of a Conditional Use Permit (CUP) Amendment pursuant to Chapter 11.73 (Wireless Telecommunications Facilities) for expansions to lease area. The wireless ordinance provides policies and direction, clarifies existing codes, and sets forth reasonable criteria, development standards and standardized conditions of approval upon which staff is using to evaluate this application.

### **Planning Division Comments**

As previously indicated, the purpose for the proposed co-location on the existing wireless telecommunications facility is to improve service capacity and reception for Verizon customers in this area of the City. Demand for antenna co-location on existing cell towers is driven by the number of subscribers and by the addition of text, photo and video messaging services to the communications system. Service propagation maps prepared by the applicant indicate a large area of weak service in the central area of the City that would be significantly remedied by the proposed antennas.

According to Verizon representatives, the subject facility location is one of the very few available areas in this portion of the City where a co-location could be allowed in accordance with City's Wireless Telecommunications Ordinance. As such, the applicant is desirous of obtaining approval so that its customers can enjoy the benefits of upgraded 4 Long Term Evolution (LTE) Service.

Before building permits can be obtained to install the new antennas on the wireless communications facility at Alma Hofman Park, Verizon would be required to obtain

separate City Council approval of a License and Lease Agreement with the City of Montclair.

### Conditional Use Permit Amendment

The proposed co-location of antennas for Verizon Wireless on the existing wireless telecommunications facility can be adequately accommodated with little to no impact on the appearance or operation of the existing facility. At 70 feet in overall height, the existing monopine structure is of sufficient height to allow the proposed installation of antennas for the new carrier. The height of the monopine structure remains unchanged and with specific conditions the new antennas can be satisfactorily integrated into the faux foliage of the "tree."

As for the use of the existing park land there would be no impact. The co-location does not require the use of more land area of the park, remove or alter any existing landscaping, or make any significant physical changes to the land area beneath the existing monopine. All ground-mounted equipment used to support the new antennas would be integrated into a secure area in a little-used corner of the adjacent parking lot south of the Youth Center that is not available to the public for parking. The site would be unstaffed and would require only general maintenance approximately once a month. Access to the ground equipment for the new carrier would be from the park side of the existing masonry wall via a new gate and would not require any City personnel to be present when maintenance is performed.

Moreover, the proposed addition of a new carrier to the existing wireless telecommunications facility meets the same criteria used to establish the facility in 2009. Since the new proposal utilizes the existing support structure (i.e., monopine) the setback distances from adjacent residences on the west and south sides of the public park remain unchanged, and there is no change in height that would conflict with the variance granted for height when the structure was originally approved.

### Appearance

The design of the proposed co-location is anticipated to integrate well into the existing monopine and is appropriate for the park setting in which it would be located. The monopine design provides "camouflage" for the antennas to mitigate potential visual impacts of the structure to the greatest extent possible. The existing tree was largely successful in being integrated into the existing park setting and appearing like a tree.

The applicant is aware of the City's desire to see that both the existing and new antennas are effectively integrated (i.e., "camouflaged") into the overall form and appearance of the faux tree and maintained as such at all times. Conditions addressing these issues have been included in the resolution prepared for this project.

## Conditional Use Permit Findings

- A. The proposed co-location of antennas on the existing wireless telecommunications facility is essential or desirable to the public convenience and public welfare in that such facilities promote universal access to telecommunications services for all Montclair citizens, businesses, visitors and commuters traveling through the City. In addition, the proposed co-location of antennas at the facility will expand the capability of an additional provider to continue to operate and provide communications service in the event of a major power outage that may cause traditional telephone service to be rendered inoperable.
- B. The proposed co-location of antennas on the existing wireless telecommunications facility would not create hazards that would be considered detrimental to the public health, safety, and welfare, or injurious to the neighborhood based on the data and conclusions contained in the staff report. The existing antenna structure is located in a public park of sufficient size to allow its full integration within the general context of the site without significant impact to the use of the park by the public. Moreover, staff finds that the location and physical features of the existing monopine, which is a stealth tower designed to look like an evergreen tree, and its associated equipment provide the best degree of both aesthetic and environmental protection pertaining to on-site and surrounding uses and public areas. Lastly, all necessary building permits will be required to ensure that the facility is properly constructed and inspected. In sum, no threats to public health or safety have been identified for this proposal.
- C. That the proposed co-location of antennas on the existing wireless telecommunications facility at the proposed location conforms to good zoning practice. In accordance with the City's wireless ordinance and other applicable portions of the Zoning Code, the existing wireless communication facility is located in a public park, meets required setbacks, and was granted a variance for the overall height of the support structure. The CUP amendment sought by the applicant would not require or result in a change to any of these site characteristics. In addition, all associated support equipment for the new wireless carrier will be installed in a screened, secure portion of the adjacent parking lot behind the Youth Center. With the careful integration of the new antennas as required by conditions of approval, the co-location should not result in any significant or discernible change in the appearance of the existing monopine structure or of Alma Hofman Park.
- D. That such use in such location is not contrary to the objectives of any part of the adopted General Plan, which encourage compliance with Federal law, increased emergency preparedness, enhancement of public convenience and communication, and projects which meet community design objectives and attempt to reasonably minimize undesirable aesthetic effects on adjacent properties.

## **Wireless Telecommunications Facility Findings**

Staff further finds the proposed co-location of new antennas on the existing wireless telecommunications facility to be consistent with Chapter 11.73 of the Montclair Municipal Code, and believes the necessary findings for allowing the establishment of such a facility can be made as follows:

- A. There is adequate space on the property for the wireless telecommunications facility without conflicting with existing buildings or other improvements on the property, reducing required parking or landscaping, or otherwise compromising applicable development standards. Alma Hofman Park is approximately 3.95 acres in size and developed in a manner that will easily accommodate the project without significant impact. The proposed co-location on the existing wireless telecommunications facility does not require additional ground area of the park and does not eliminate existing landscaping.
- B. The design and placement of the co-location of additional antennas to serve a new carrier on an existing wireless telecommunications facility will not adversely impact the use of the property, buildings and structures located on the property or the surrounding area or neighborhood. The proposed co-location on the existing monopine is designed to take advantage of an already approved support structure and will not restrict any existing park activities. Ground-mounted support equipment will be located behind existing block walls and away from the view of the public visiting the park, on the street, or from neighboring properties.
- C. The co-location of antennas on the existing wireless telecommunications facility, as proposed, is consistent with the provisions of Chapter 11.73 and complies with all other applicable requirements of Title 11 of the Montclair Municipal Code. The facility will not emit excessive noise, vibration, traffic or other disturbance that would have a substantial adverse effect on abutting property or uses located on these properties. Moreover, the existing wireless telecommunications facility meets distance requirements from adjacent residential properties and the required setbacks of the underlying district. The proposed changes to the appearance of the monopine will not adversely affect the appearance of the surrounding area.

## **Public Notice**

This item was advertised as a public hearing in the Inland Valley Daily Bulletin newspaper on August 30, 2013. Public hearing notices were also mailed to property owners within a 300-foot radius of the exterior boundaries of the project site in accordance with State law for consideration of this discretionary zoning entitlement. At the time the staff report was completed, staff had not received any comments or correspondence from the public regarding this application.

## Environmental Assessment

The proposed project involves installation of small, new structures on a developed site. As such, staff has determined that this project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA), pursuant to Section 15303 of the CEQA Guidelines (Class 3 – New Construction or Conversion of Small Structures).

## Planning Division Recommendation

Staff recommends that the Planning Commission take the following action(s):

1. Move that, based upon evidence submitted, the project is deemed exempt from the requirements of the California Environmental Quality Act (CEQA). Further, the project qualifies as a Class 3 Exemption under State CEQA Guidelines Section 15303.
2. Move to approve a Conditional Use Permit Amendment under Case No. 2009-11 'B' to allow co-location of antennas and expansion of the lease area at an existing wireless telecommunications facility at Alma Hofman Park, 5201 Benito Street, per the submitted plans, as described in the staff report, and required findings subject to the conditions in the attached Resolution.

Respectfully Submitted,

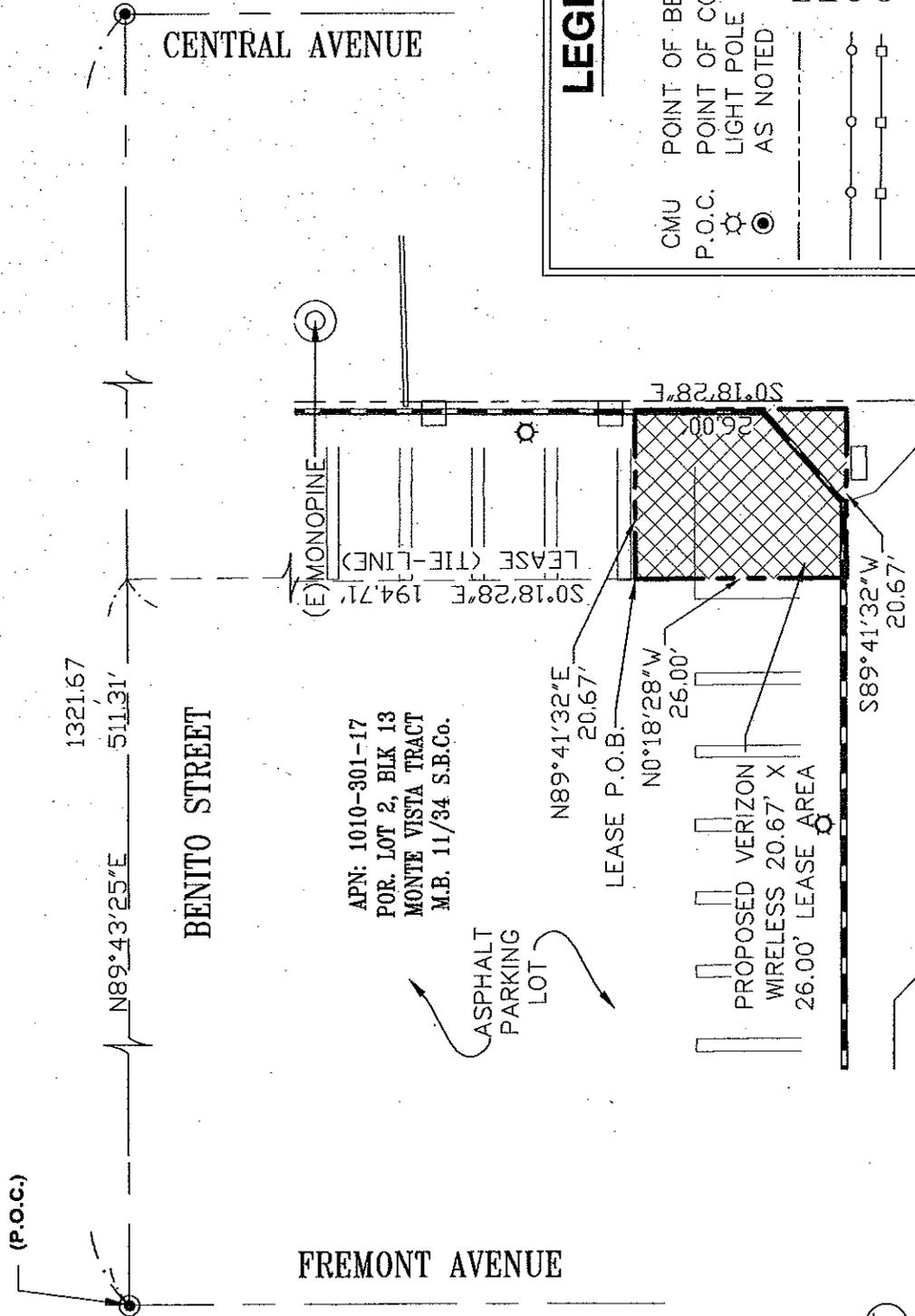
Michael Diaz  
City Planner

SG/lb

Attachments: Draft Resolution of Approval for Case No. 2009-11 'B'

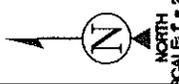
c: James Rogers, Planner, Smartlink, LLC for Verizon, 18301 Von Karman Avenue, Suite 910,  
Irvine, CA 92612  
Marilyn J. Staats, Deputy City Manager/Executive Director, Office of Economic Development  
Michael C. Hudson, P.E., Public Works Director/City Engineer  
Merry L. Westerlin, C.B.O., Building Official

**EASEMENT EXHIBIT**  
 A PORTION OF LOT 2 OF MONTE VISTA TRACT,  
 BOOK 11, PAGE 34, RECORDS OF SAN  
 BERNARDINO COUNTY, STATE OF CALIFORNIA.



APN: 1010-301-17  
 POR. LOT 2, BLK 13  
 MONTE VISTA TRACT  
 M.B. 11/34 S.B.Co.

|   |  |                               |                      |  |  |                           |
|---|--|-------------------------------|----------------------|--|--|---------------------------|
| AMBIT CONSULTING, LLC<br>428 MAIN STREET #102<br>HUNTINGTON BEACH, CA 92648 |  | DESIGNED<br>DRAWN<br>APPROVED | BY<br>MF<br>MF<br>MF | DATE<br>11/07/13<br>11/07/13<br>11/07/13 | RICHTON HOFMAN PARK<br>5201 BENITO STREET<br>MONTCLAIR, CALIFORNIA 91763 | EXHIBIT B<br>SHEET 2 OF 2 |
|---|--|-------------------------------|----------------------|--|--|---------------------------|



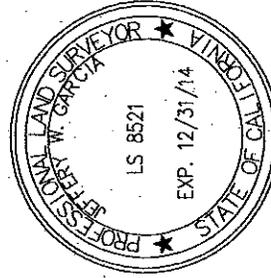
**EASEMENT EXHIBIT**

A PORTION OF LOT 2 OF MONTE VISTA TRACT,  
 BOOK 11, PAGE 34, RECORDS OF SAN  
 BERNARDINO COUNTY, STATE OF CALIFORNIA.

LEASE AREA LEGAL DESCRIPTION

A PORTION OF LOT 2 OF MONTE VISTA TRACT, IN BOOK 11, PAGE 34, OF RECORDS OF SAN BERNARDINO COUNTY, STATE OF CALIFORNIA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:  
 COMMENCING AT THE APPARENT CENTERLINE INTERSECTION OF BENITO STREET & FREMONT AVENUE AS SHOWN ON SAID MONTE VISTA TRACT, FROM WHICH THE APPARENT CENTERLINE INTERSECTIONS OF BENITO STREET & CENTRAL AVENUE BEAR NORTH 89°43'25" EAST, A DISTANCE OF 1321.67 FEET; THENCE NORTH 89°43'25" EAST ALONG THE CENTERLINE OF SAID BENITO STREET, A DISTANCE OF 511.31 FEET; THENCE DEPARTING SAID CENTERLINE SOUTH 00°18'28" EAST, A DISTANCE OF 194.71 FEET TO THE POINT OF BEGINNING; THENCE NORTH 89°41'32" EAST A DISTANCE OF 20.67 FEET; THENCE SOUTH 00°18'28" EAST, A DISTANCE OF 26.00 FEET; THENCE SOUTH 89°41'32" WEST, A DISTANCE OF 20.67 FEET; THENCE NORTH 00°18'28" WEST A DISTANCE OF 26.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 538 SQ. FT. MORE OR LESS



*[Handwritten Signature]*

|   |   |  |          |    |          |  |           |   |
|---|---|--|----------|----|----------|--|-----------|---|
|  | AMBIT CONSULTING, LLC<br>428 MAIN STREET #102<br>HUNTINGTON BEACH, CA 92648 |  | DESIGNED | BY | DATE     | RICHTON HOFMAN PARK<br>5201 BENITO STREET<br>MONTCLAIR, CALIFORNIA 91763 | EXHIBIT A |   |
|   |   |  | DRAWN    | MF | 11/07/13 |  | SHEET     | 1 |
|   |   |  | APPROVED | MF | 11/07/13 |  | OF        | 2 |

**MINUTES OF THE MEETING OF THE MONTCLAIR  
PERSONNEL COMMITTEE HELD ON MONDAY,  
DECEMBER 16, 2013, AT 8:54 P.M. IN THE CITY  
ADMINISTRATIVE OFFICES, 5111 BENITO STREET,  
MONTCLAIR, CALIFORNIA**

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**I. CALL TO ORDER**

Mayor Pro Tem Ruh called the meeting to order at 8:54 p.m.

**II. ROLL CALL**

Present: Mayor Pro Tem Ruh; Council Member Raft; and City Manager Starr

**III. APPROVAL OF MINUTES**

**A. Minutes of the Regular Personnel Committee Meeting of December 2, 2013.**

Moved by City Manager Starr, seconded by Council Member Raft, and carried unanimously to approve the minutes of the Personnel Committee meeting of December 2, 2013.

**IV. PUBLIC COMMENT - None**

**V. CLOSED SESSION**

At 8:55 p.m., the Personnel Committee went into Closed Session regarding personnel matters related to appointments, resignations/terminations, and evaluations of employee performance.

At 9:29 p.m., the Personnel Committee returned from Closed Session. Mayor Pro Tem Ruh stated that no announcements would be made at this time.

**VI. ADJOURNMENT**

At 9:29 p.m., Mayor Pro Tem Ruh adjourned the Personnel Committee.

Submitted for Personnel Committee approval,



Edward C. Starr  
City Manager