

**MINUTES OF THE ADJOURNED MEETING OF
THE MONTCLAIR CITY COUNCIL HELD ON
TUESDAY, FEBRUARY 12, 2013, AT 6:00 P.M. IN
THE CITY COUNCIL CHAMBERS, 5111 BENITO
STREET, MONTCLAIR, CALIFORNIA**

I. CALL TO ORDER

Mayor Pro Tem Ruh called the meeting to order at 6:00 p.m.

II. ROLL CALL

Present: Mayor Pro Tem Ruh; Council Members Paulitz, Raft, and Dutrey; City Manager Starr; Deputy City Manager/Office of Economic Development Executive Director Staats; Director of Community Development Lustro; Director of Public Works Hudson; Finance Director Parker; Deputy City Clerk Smith

Absent: Mayor Eaton (excused)

III. PUBLIC COMMENT - None

IV. MIDYEAR BUDGET REVIEW

A. Review of the City's Fiscal Operations and Approval of Proposed Changes to the Fiscal Year 2012-13 Budget

Mayor Pro Tem Ruh stated that Finance Director Parker would be reviewing the proposed changes to the budget.

Finance Director Parker reported the status of the City's financial operations at midyear and discussed specific changes to the City's Estimated Revenue and Appropriations budgets. He highlighted General Fund revenue/expenditure trends and the fiscal impacts of potential budget changes including the following:

Allocation of \$81,700 to the Police Department from the General Fund for increased investigation and patrol costs.

Allocation of \$311,612 for increased overtime costs in the Fire Department; in addition, reallocation of \$311,612 of personnel-related savings in the amount of \$311,612 to fund these costs and an additional \$54,000 of personnel-related savings be utilized to fund that amount of additional patrol costs in the Police Department.

Allocation of \$57,400 from the General Fund to cover increased vehicle maintenance, janitorial services, and street repair costs in the Public Works Department.

Allocation of \$265,000 from the General Fund to cover City Attorney legal service costs—it should be noted the City is exploring reimbursement of such costs with our insurance carrier; and if that reimbursement occurs, this allocation would not be required.

Finance Director Parker presented suggestions for revisions to the Estimated Revenue budget (increase by \$185,243) and the Appropriations budget (increase spending authority by \$350,100 in the General Fund). He noted approval of both the revised

Appropriations and Estimated Revenue budgets would have a negative budgetary impact to the General Fund of \$164,857 and that funding to this effect would come from the Contingency Fund or other General Fund reserves should actual results require such utilization.

Referencing *Table 1 - General Fund Analysis*, Council Member Paulitz inquired as follows:

1. Why is the \$2,570,251 Fiscal Year 2012-13 six months actual sales tax so low compared to the Fiscal Year 2012-13 proposed revised amount of \$10,747,602?

Finance Director Parker answered, "Sales tax is a similar situation as the property tax. The tax lags three months behind when it is actually collected. The collections shown on Table 1 are only through the quarter ending in September 2012. We will not receive the second quarter sales tax revenues, including the proceeds from Black Friday, until about the end of the month. Tax revenue receipts typically lag two months behind the months in which they are actually collected."

2. Do we anticipate an increase or decrease in that amount?

Finance Director Parker answered, "The City's tax consultant **HdL Companies** has indicated that our sales tax is pretty much flat—a very slight increase is what the firm is projecting for the year. So far, the collections we have received thus far this year are consistent with prior years. The sales tax receipts for the second quarter are predicted to be substantially more, and we are hoping they will bring us closer to the proposed revised amount for this fiscal year."

3. When will second quarter information be available?

Finance Director Parker reiterated that second quarter figures will likely be received by the end of the month.

Council Member Paulitz stated, "I would like to see those numbers to make sure the amount plus the first quarter sales tax receipts measure up to at least half of the projected total for the year because sales tax is our biggest revenue source. If that falls down, then we will be in trouble. Thank you."

Council Member Dutrey thanked staff for including *Table 3 - Statement of General Fund Expenditures* with the agenda report. He requested that the "Budget" and "Actual" percentages be included in the table in the future for ease in noting what has changed.

Finance Director Parker asked, "Just on the total amounts?"

Council Member Dutrey answered, "Yes." He inquired as to the number of open Police Officer positions at the Police Department.

City Manager Starr asked, "Do you mean positions open through attrition?"

Council Member Dutrey asked for the number of open funded Police Officer positions.

City Manager Starr advised Council Member Dutrey that the City is hiring Police Officers at this time and deferred to Executive Director of Public Safety Jones to respond, noting the City just filled two Police Officer positions and is in the process of interviewing possible candidates for two vacancies.

Council Member Dutrey asked, "So there are two funded vacancies at the moment?"

Executive Director of Public Safety Jones answered, "Yes."

Council Member Dutrey asked if the funding for the two openings is reflected somewhere in the Police Department budget.

City Manager Starr noted the injuries on duty play more of a role in the shortage in the Police Department budget than overtime.

Council Member Dutrey stated he is aware of the many injuries on duty. He asked if the savings from the vacancies is factored into the Police Department budget.

Finance Director Parker answered, "Not directly. The Police Department budget request for additional overtime was primarily handled through the savings in the Fire Department. He noted he did not specifically address the potential savings in the Police Department budget, advising that there could also potentially be savings in other departments as well. When the actuals come in at the end of the year and they are less than what was budgeted, those savings potentially would roll forward into the available fund balance, which is what we use to say, 'This is what our reserves are and what is available going into the next cycle.'"

Council Member Dutrey expressed his understanding that the savings from the vacancies could also be used for Police Department overtime.

City Manager Starr stated, "Well, they could; and if we need to do that in the future, we certainly could tap that as a resource. Usually [the savings] would just come back into the General Fund the following year because it is unexpended moneys. The only reason we chose to use the personnel expenditures this year is because, in fact, the majority of the overtime generated in the Fire Department is related directly to the fact that we have retained a number of vacancies in the Fire Department because of the current ongoing process related to the potential of outsourcing fire-related services. The vendors have asked that we maintain those vacancies in the short term until they have an opportunity to decide to look at what they want to do. With all that money available, the funds are being used to offset the cost of overtime increases in the Fire Department; and there was sufficient capital left over to fund the overtime in the Police Department as well."

Council Member Dutrey inquired as to the amount of available reserves effective July 2012.

City Manager Starr advised that at the beginning of July 2012, available reserves totaled \$4.3 million.

Council Member Dutrey expressed his opinion that the proposed negative budgetary impact to the General Fund of \$164,857 will certainly affect the City's unreserved General Fund balance, though "we will just have to wait and see what is rolled back into the General Fund at the end of the fiscal year." He inquired if staff remains comfortable with reserves at the current \$4.3 million level.

City Manager Starr answered, "Yes, and we do not anticipate that we will actually have to use reserves to balance the budget in the end. We believe that there will be additional revenues coming in that will address the deficit that is being presented this evening."

Council Member Dutrey asked if the residual property tax revenues resulting from the loss of redevelopment are reflected in the proposed budget adjustments.

City Manager Starr answered, "No, they are not. We have not accounted for them midyear—they will be accounted for next fiscal year."

Council Member Dutrey commented that the information will be available at the end of this fiscal year including Due Diligence Review payments.

Finance Director Parker stated, "Yes, it will include the City's share of the Due Diligence Review payments that would occur plus any property taxes that would be allocated as a result of Recognized Obligation Payment Schedule additional residual amounts."

Council Member Dutrey stated, "OK, but they are not included in the report this evening but will be included at the end of the fiscal year."

Moved by Council Member Paulitz and seconded by Council Member Raft to receive and file the City's Midyear Budget Review report and to approve the changes suggested therein to the City of Montclair Fiscal Year 2012-13 Budget.

Motion carried as follows:

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

City Manager Starr stated, "We appreciate the City Council working with staff for the last couple of difficult years that we have had. We believe that we have turned the corner and the City is no longer faced with the adverse impacts of the Great Recession. We have addressed them, but we are at a stagnant position right now. There is not a lot of growth; and as we continue to experience new impacts on the organization, we have to maintain vigilance as we address each one of those issues.

"Certainly, you approved tonight the funding of an additional \$265,000 for legal expenses for the first six months of this fiscal year. The City realized about \$310,000 in legal expense costs related to dealing with just one law firm. Unfortunately, this is a law firm that has filed a number of lawsuits against the City over the course of the last two years. We have realized approximately \$1 million in legal defense funds related to dealing with this one law firm. I anticipate that that will continue; so unfortunately, as we do realize some minimal growth in our revenues, we have to expect and anticipate that a good portion of that will continue to go to defending the City against the efforts of this law firm to attack the organization from a number of fronts.

"I anticipate that the one particular case that is presented in the budget—the **Ghia Patton Cunningham** lawsuit that this law firm is a part of—the City is in a precarious situation relative to that particular case at this time. **Zurich Insurance Group**, the insurance carrier on record for this particular lawsuit, is attempting to fight the City on its responsibility related to picking up coverage on this particular matter. The City is above its self-insured retention fund of \$200,000, so anything above that normally the insurance carrier would pick up. That is not the case right now. The organization has to pick up that amount, which is why we asked for the additional funding this evening. Unfortunately, if the City loses this particular matter, the impact on the organization could be quite significant—upwards of \$1 million if this insurance carrier refuses to provide the necessary coverage. As I indicated, we are resisting the carrier's efforts to renege on its responsibility and will continue to deal with them in this regard; but we have to maintain vigilance and make sure that we have the funds necessary to continue to fight that law firm.

"This administration and this City Council are not going to be held hostage by the tactics of this law firm. They usually attack

municipalities in an effort to force them to settle and not take matters to court. This organization will not settle with this law firm. We are in the right on literally every case that we have dealt with in relation to this law firm. It is not going to be our practice to settle with this law firm. We will engage them. We will engage them in court if that is what it takes; and the organization, if it has to pick up the legal costs related to this challenge, this organization will respond to that. Unfortunately, the impact is on services, supplies, capital outlay, and personnel costs; but that is the cost of doing business with this law firm. We will maintain our vigilance in that regard."

Mayor Pro Tem Ruh thanked City Manager Starr for his comments.

V. ADJOURNMENT

At 6:29 p.m., Mayor Pro Tem Ruh adjourned the City Council to Saturday, February 16, 2013, at 9:00 a.m. in the Civic Center south parking lot for a bus tour of the California Department of Forestry and Fire Protection as well as the San Bernardino County Fire Department headquarters.

Submitted for City Council approval,

Yvonne L. Smith
Deputy City Clerk