



April 10, 2014

TO: Honorable Mayor and City Council

FROM: Edward C. Starr, City Manager 

SUBJECT: WEEKLY REPORT: April 4-10, 2014

➤ **CITY MANAGER/ADMINISTRATIVE SERVICES DEPARTMENTS**

- Last week, the State Assembly approved House Resolution No. 29 (Gomez) *Pledges Affecting Future Legislation Notice of Opposition*. Introduced by Assembly Member Jimmy Gomez, House Resolution No. 29 requires that State Assembly Members take a pledge opposing outsourcing of public services and assets.

House Resolution No. 29, in its resolved clauses, has State Assembly Members oppose outsourcing of public services and assets; has legislators take a pledge that would potentially restrict their votes on future legislation regarding outsourcing; and intends to introduce and advocate for responsible outsourcing legislation in future years.

According to Assembly Member Gomez, "HR 29 simply seeks to affirm the Assembly's opposition to the outsourcing of public services and assets. HR 29 also provides support for plans that reduce outsourcing, restore transparency and accountability to the provision of state services, and empowers public sector workers to deliver cost-effective, high-quality services for the state's taxpayers."

While the public certainly has a right to transparency, high-quality government services, and cost-effectiveness in relation to outsourcing, House Resolution No. 29 undermines the democratic process and our representative form of government by requiring that legislators take a position prior to making informed decisions about the specific impacts of legislation.

Local governments have a long history of addressing service delivery challenges with creativity, self-reliance, and innovation. Since the early 1800's, California cities have contracted out services in order to address unique local challenges, limited budgets, and limited expertise. In particular, the Great Recession has placed great strains on cities and their ability to provide a full range of services for their residents. This has further been compounded by recent state take-aways, including the loss of redevelopment agencies and expanding pension and retiree health care obligations.

Further limiting the ability to consider alternative methods of providing services after objective review does a grave disservice to our communities and to local control. This builds upon existing constitutional limitations on local agencies to raise additional revenue. Thus, local agencies are in no position to have their flexibility further curtailed.

City employees provide the majority of services offered by cities throughout the state, while other services—such as refuse collection, construction, and specialized services—are provided on a contract basis.

- Last week, the California Court of Appeal issued a decision that may promise some relief to public agencies responding to requests under the California Public Records Act (PRA). In *City of San Jose v. Superior Court* (March 27, 2014), the Court found the PRA does not require public agencies to produce communications sent or received by public officials and employees on their exclusively private electronic devices using their private accounts.

In 2009, plaintiff Smith presented the City of San Jose with a PRA request for communications regarding a development project for the city. Specifically, Smith sought voicemails, emails, or texts sent or received on personal electronic devices used by the mayor, city council members, and staff. The city agreed to produce records stored on its servers and those transmitted to or from private devices using city accounts, but did not produce communications from the individuals' personal electronic accounts that were stored solely on personal devices or servers.

Smith filed a successful action for declaratory relief in Superior Court, which found that the city was required to produce the requested communications, notwithstanding the fact that the communications were not directly accessible by the city because they had been sent from and received on private devices using private accounts.

On appeal, the Court addressed the issue whether private communications, which were not stored on city servers and not directly accessible by the city, are public records under the PRA (Government Code section 6250 *et seq.*). The Court held that the requested records were not public records, agreeing with the city and the League of California Cities that the PRA's reach is limited to records that are "prepared, owned, used, or retained" by the public agencies that are the subject of the Act. While the Court acknowledged concerns that city employees and officials could conduct business out of public review by using personal accounts and personal devices, the Court said that was an issue to be addressed by the Legislature.

The Court of Appeal reaffirmed that the PRA only applies to writings that are "prepared, owned, used, or retained by any state or local agency" and held that communications sent to/received by public employees and officials on exclusively private devices using private accounts are not public records. However, the public meeting requirements of the Brown Act can still apply, and private records may still be discoverable in civil or criminal litigation or as the result of other court action.

The City of San Jose did produce records sent from/received on private devices that were stored on the City's servers. Thus, it remains possible that some seemingly "private" communications may still be subject to disclosure. For instance, if a council member uses a personal laptop to log into a city network to send/receive emails, then a private email sent from the council member's Gmail account and stored on city servers would potentially be subject to disclosure under the Act.

PRA requests continue to raise complicated legal questions regarding whether records are public records and/or exempt from disclosure; further, failure to timely comply with the PRA can result in an order to disclose records, as well as an order to pay attorney's fees. For these reasons, the City will continue to rely on the opinion of the City Attorney when responding to PRA requests.

➤ **COMMUNITY DEVELOPMENT DEPARTMENT**

- No new information to report.

➤ **FIRE DEPARTMENT**

- Yesterday, the Fire Department permanently removed a 1987 Emergency One Stratosphere 55-foot Teleboom Quint (Unit No. 44-87) from service. This apparatus was purchased from the San Diego Fire Equipment Company, Inc., in June 1987 and placed into front-line service. In January 2000, the Fire Department purchased a new Renegade triple-

combination pumper from KME Fire Apparatus, and Unit No. 44-87 was placed into reserve status. While in reserve status, Unit No. 44-87 was placed into front-line service countless times to provide relief for Medic Engine 151 or 152 while either of these engines was out-of-service for repairs, maintenance, or assigned to a strike team.

Unit No. 44-87 served the City of Montclair well and proved to be a valuable fire apparatus during its service life, but it is no longer useful for front-line service because of its age and constant need for repairs. During the last few days, many Fire Department members have reminisced about experiences they had aboard Unit No. 44-87. One City staff member even recalled seeing this unit at Monte Vista Elementary School and Firefighters were spraying water from the aerial ladder so children could play in the water.

While we are sad to see this unit go, we are excited that the City has purchased a new 2014 type-1 pumper from KME Fire Apparatus utilizing funds from a Fiscal Year 2012 Assistance to Firefighters Grant. The new unit is being outfitted to go into front-line service by April 30. When the new unit goes into service, it will be the front-line engine responding out of Fire Station No. 152. The current Medic Engine 152 will become the Department's reserve unit.

Featured on Page 8 is a bit of history on Unit No. 44-87.

- At Monday's City Council meeting, Fire Chief Rick Mayhew introduced and congratulated Chris Jackson, Brian Brambila, and Narek Babayan on their February promotions.

Brian and Chris were promoted to Fire Captain and Narek was promoted to Fire Engineer. Congratulations to all!

Photos are included on Page 9.

➤ **HUMAN SERVICES DEPARTMENT**

- The City's Easter Eggstravaganza and Pancake Breakfast will be held on Saturday, April 19 from 9 a.m. to 11 a.m. at the Montclair Community Center and adjacent Starlite Patio. The event will include games, activities, Easter eggs, and candy for children ten years and younger. Children are invited to bring their own baskets from home to win candy-filled eggs as game prizes. The Easter Bunny will arrive via fire engine and will be available for photos (\$3 per photo or \$1 to take your own photo).

The pancake breakfast, offered for \$3 per breakfast, will include pancakes, sausage, orange juice, and coffee.

The Easter Eggstravaganza and Pancake Breakfast are sponsored by the City of Montclair, Montclair Kiwanis Club, Montclair Fire Fighter's Association, Montclair Police Officer's Association, and Montclair-Ontario Junior Women's Club.

For additional information, call (909) 625-9479.

➤ ***POLICE DEPARTMENT***

- On Monday, Chief Mike deMoet joined Sheriff John McMahon and San Bernardino County police chiefs at a National Crime Victims' Rights Week Memorial.

National Crime Victims' Rights Week is observed this year from April 6 to April 12 and is a time to honor crime victims, the surviving families of homicide victims, and those who work directly to assist victims of crime. This year's theme is "30 Years Restoring the Balance of Justice" and celebrates three decades of extraordinary progress made on behalf of millions of victims since the passage of the Victims of Crime Act.

The memorial was held at the San Bernardino County Government Center Rotunda.

➤ ***PUBLIC WORKS DEPARTMENT***

- Over the past two weeks, Public Works Department staff has been called out after hours to respond to damages caused by people suspected of driving under the influence.

One driver drove south on Monte Vista Avenue and was observed (by Battalion Chief Bob Crouch) hitting the traffic signal pole at the northwest corner of Monte Vista Avenue and Arrow Highway, which just happens to be right in front of the Montclair Police Department. He then continued south another half-mile and took out 30 feet of chain link fence and three support poles at the I-10 Freeway. This fencing was installed about 15 years ago to better separate pedestrians and vehicular traffic under the freeway.

About a week later, another driver suspected of driving under the influence was proceeding westbound on Richton Street from Central Avenue and continued westbound through the Monte Vista Avenue intersection. Richton Street stops about 200 feet beyond Monte Vista Avenue, but the driver didn't. Instead, he continued westbound, went through some fencing and shrubs, and ended up at the bottom of the San Antonio Flood Channel, which belongs to the U.S. Army Corps of Engineers.

Luckily, no one was seriously injured in either incident. Public Works crews were called out to both incidents to clean up and secure the areas until permanent repairs could be made.

- On April 6 at Chino Airport, Cal Aero Aviation Country Club, Redeemer Lutheran Girl Scout Troop 10154, and the Chino Veterans of Foreign War, Black Sheep Squadron Post 11546, held their 5th Annual US Flag Retirement Ceremony.

The City of Montclair participates by holding on to all of our retired flags so they can be retired every year, properly, and with the respect and honor they deserve.

I would like to thank all participants for taking responsibility to this great Country of ours by retiring our US flags. In total, 59 US flags, one California flag, and one Montclair flag were retired.

In the past, other organizations, such as the Boy Scouts of America and the Veterans of Foreign Wars, have assisted with this American honor.

Our appreciation goes to all of these organizations for expressing pride and respect in what the US flag represents. God Bless the USA!

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

- No new information to report.

ECS:spa

"I have found the paradox, that if you love until it hurts, there can be no more hurt, only more love."

~ Mother Teresa

APRIL 2014



14	Planning Commission Meeting - Canceled	
15	City Manager's Staff Meeting City Hall Conference Room	9:00 a.m.
17	Safety Committee Meeting City Hall Conference Room	9:00 a.m.
17	Public Works Committee Meeting City Hall Conference Room	2:00 p.m.
19	Easter Eggstravaganza Montclair Community Center and Starlite Theater	9:00 a.m. - 11:00 a.m.
20	Easter Sunday	
21	Code Enforcement Committee Meeting City Hall Conference Room	6:00 p.m.
21	City Council Meeting Council Chambers	7:00 p.m.
22	Earth Day	
22	Online to College Celebration City Hall Lobby	6:00 p.m.
24	Strategic Planning Session Montclair Senior Center	4:00 p.m. - 8:00 p.m.
28	Planning Commission Meeting Council Chambers	7:00 p.m.
29	City Manager's Staff Meeting City Hall Conference Room	9:00 a.m.

Farewell to Unit No. 44-87



You served our City well!

Fire Department Congratulates Three of Their Own



(l to r) Acting Deputy Fire Chief Steve Jackson, Captain Brian Brambila, Captain Chris Jackson, Chief Rick Mayhew, and Engineer Narek Babayan



Captain Brian Brambila



Engineer Narek Babayan



Captain Chris Jackson