



August 28, 2014

TO: Honorable Mayor and City Council

FROM: Edward C. Starr, City Manager 

SUBJECT: WEEKLY REPORT: August 22-28, 2014

➤ **CITY MANAGER/ADMINISTRATIVE SERVICES DEPARTMENTS**

- The Assembly Budget Committee approved a package of budget cleanup bills last week that clarified and/or corrected various provisions in the FY 2014-15 Budget Act.

Passing multiple budget cleanup bills is customary legislative practice as the bills typically make statutory changes needed to implement the yearly budget act. This year's package contains bills making various fixes to education, health and human services, public safety, and state resources.

The budget cleanup package is now pending before the Assembly, and easy passage is expected. Additional budget cleanup bills will most likely emerge as the Legislature approaches the end-of-session August 31, 2014 deadline.

The following is a listing of budget cleanup bills pertaining to local governments.

SB 872 (Budget & Fiscal Review Committee): Budget Act of 2014

This bill makes general corrections to the FY 2014-15 Budget Act in policy areas relating to K-12 and higher education, and public safety grants.

- ✓ Makes various technical changes to several resource provisions related to CalEPA Environmental Justice Grants, SB 918 Recycled Water reversions, use of penalty revenues

for marijuana enforcement, and CPUC's California Teleconnect and Intervenor's Compensations Funds.

- ✓ Allows up to \$500,000, Waste Discharge Permit Fund civil penalties, to be used for developing an integrated plan addressing the drinking water and wastewater needs of disadvantaged communities in the Salinas Valley. While the appropriation is contained in the Budget Act, the Budget Bill language for this item was inadvertently left out.
- ✓ Clarifies grant-awarding criteria for cities with the highest rate of murder, rape, and robbery.
- ✓ Specifies that \$11.3 million, previously allocated to counties, is to be used to address the temporary increase in offenders serving a term on Post Release Community Supervision, as a result of a February 10, 2014 federal court order to increase credit earnings for certain offenders.

SB 873 (Budget & Fiscal Review Committee): Human Services

This bill makes general corrections to the FY 2014–15 Budget Act in policy areas relating to human services.

- ✓ Makes various technical changes regarding temporary managers and receiverships for facilities licensed by the Community Care Licensing (CCL) Division at the State Department of Social Services (DSS). Among related changes, provides that if the revenues are insufficient to reimburse the department for the costs of a temporary manager, the salary of the receiver, or related expenses, the unreimbursed amount shall constitute grounds for a monetary judgment in civil court and subsequent lien upon the assets of the facility or the proceeds from the sale thereof.

SB 874 (Budget & Fiscal Review Committee): Public Resources

This bill makes general corrections to the FY 2014-15 Budget Act in policy areas relating to natural resources, environmental protection, energy, and agriculture.

- ✓ Corrects various technical statutory references related to the drinking water program and provides appropriate liquidation periods as intended by the budget.
- ✓ Clarifies that specified water and wastewater projects are eligible to receive funding from the State Water Pollution Control Revolving Fund.

- ✓ Clarifies that \$10 million, previously appropriated to the Department of Housing and Community Development for housing-related drought relief, continues to be appropriated as provided in Chapter 3 of the Statutes of 2014.
- ✓ Provides a subaccount for greenhouse gas emission funding through the State Energy Conservation Assistance Account for purposes of tracking, and provides that the loans within this new subaccount may be used by state agencies, including the University of California and California State University.
- ✓ Includes an appropriation to the Natural Resources Agency for the purpose of implementing elements of the scoping plan adopted by the State Air Resources Board that was inadvertently omitted from the budget.

SB 877 (Budget & Fiscal Review Committee): Correctional Facilities: Construction

This bill makes general corrections to the FY 2014-15 Budget Act in policy areas relating to public safety.

- ✓ Repeals duplicative provision passed to authorize \$500,000,000 in revenue bonds, notes, or bond anticipation notes to finance the acquisition, design, and construction of the approved adult local criminal justice facilities and establishes the procedures for approving and funding these projects.
 - ✓ Appropriates \$5,000 from the General Fund to the Board of State and Community Corrections for purposes of administering the bond financing program for adult local criminal justice facilities.
 - ✓ Contains an appropriation allowing this bill to take effect immediately upon enactment.
- Last week, by a 7 to 5 vote, the California Public Employees' Retirement System (CalPERS), which oversees the state's \$300 billion public employee pension pool, voted to effectively override provisions of the Public Employee Pension Reform Act (PEPRA) of 2013—a law Governor Brown called "sweeping bipartisan pension reform."

Under new guidelines approved by CalPERS for employees hired on or after January 1, 2013, 99 types of supplemental pay categories will now count toward calculating state and local government pensions, including higher compensation paid to an employee temporarily acting in a higher position. Critics argue that the Board's action will produce spiking, which

was supposedly stopped by adoption of PEPRA in 2012. CalPERS has not issued an estimate of the cost of the new regulations.

Based on terms in the statute, construed according to their ordinary meaning, PEPRA does appear to prohibit treating a number of specific and general categories of special pay as pensionable, including ad hoc payments (compensation for a specific purpose) made to a member:

Section 7522.34(a) states:

"Pensionable compensation" of a new member of any public retirement system means the normal monthly rate of pay or base pay of the member paid in cash to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal working hours, pursuant to publicly available pay schedules, subject to the limitations of subdivision (c)....

(c) Notwithstanding any other law, "pensionable compensation" of a new member does not include the following:

(3) Any one-time or ad hoc payment made to a member.

CalPERS apparently went against PEPRA's governing pay rules for new hires by voting in 99 special payment categories that can be used to raise pensions. While some of the changes may make sense, the resurrection of spiking has become a point of controversy.

Governor Brown, who calls the Board's decision a "bad move," contributed to the decision when he objected solely to elimination of "temporary promotion pay" from the list of 99 special pay categories. Brown argued that the "temporary upgrade" to a higher-paying job should not yield a higher pension because PEPRA prohibits higher pensions for "ad hoc" short-term positions for a specific purpose. The Governor's failure to ask for a full analysis of the special pay list to remove any other instances of "ad hoc" compensation appeared to affirm the intent of the CalPERS Board to keep the special pay list intact.

The CalPERS Board, in rejecting the Governor's plea, approved the entire list of 99 special pays, arguing Proposition 162 (1992) gives CalPERS and other public pension boards complete control of their funds and administration. CalPERS Board members note that PEPRA lists pay that cannot be used to calculate pensions, including sick leave; vacation time; overtime; bonuses; and allowances for housing, uniforms, and vehicles. However, the bill is unclear on other forms of pensionable pay. Board

members also argue the new change applies only to persons hired on or after January 1, 2013, leaving time for the Legislature to correct the regulations if they are determined wrong. However, legal analysts indicate the Board's action could prohibit retroactive change, stating it would be in conflict with existing legal interpretation that prohibits lessening a current employee's benefits.

State Controller John Chiang has also entered the fray, stating his office will soon complete an audit of CalPERS' spiking controls—the audit was initiated last year.

Assembly Member Marc Levine (San Rafael), author of AB 116, which takes effect January 1, 2015, requiring financial training for all CalPERS Board members, is expressing his concern with the Board's ability to make sound financial decisions. Assembly Member Levine authored AB 116 after he learned there is no requirement for CalPERS Board members to have any financial training or demonstrated financial knowledge that would equip them to "wisely" administer the nation's largest public pension fund.

Governor Brown has directed his staff to evaluate alternatives to reverse the Board's decision, including the following:

1. Sue to reverse the decision—however, a lawsuit would likely take several years to work through the court system
2. Governor to use his rule-making power to soften the decision; however, organized labor, which supported the Board's action, can be expected to sue to enforce the interpretation of CalPERS' Board of Directors
3. Call the Legislature into a special session to consider a new pension bill—the likely outcome; the Governor can, however, anticipate resistance from members of his own party.

The League of California Cities supports the Brown Administration, and urges CalPERS to narrow the scope of pensionable compensation and review the extra pay items to see if they still serve a public service. The League also points out that hundreds of California cities are still in financial distress and facing six years of increasing CalPERS rates.

➤ **FIRE DEPARTMENT**

- On Monday, Fire Chief Rick Mayhew welcomed three new Firefighter/Paramedics on the first day of their two-week Recruit Orientation Academy (ROA). Upland and Montclair Fire Departments are jointly conducting the academy.

Once the ROA is completed, Jordan Burchett and Michael Hernandez will start their assignments with Montclair Fire Department, and Joseph Armendariz will begin his assignment with Upland Fire Department.

Montclair Fire Captain Chris Jackson and Upland Fire Captain Joe Barna are overseeing the training. Instruction in various sections is being conducted by Suppression and EMS personnel from both departments.

➤ **HUMAN SERVICES DEPARTMENT**

- Yesterday, the Senior Center held its monthly birthday party at the Community Center. More than 260 seniors attended the "luau," received leis, and enjoyed Hawaiian food and entertainment.

A photo collage is included on Page 10.

- On Tuesday, the Senior Center hosted a presentation on pruning. Special guest speaker Cynthia Robinson, a horticulturist and garden consultant with the Incredible Edible Community Garden, shared important pruning tips. The avid gardeners in attendance were excited to learn new techniques.

Photos are shared on Page 11.

- The L.A. County Fair opens tomorrow at Fairplex in Pomona and runs through Sunday, September 28. The Fair is open on Labor Day, but is closed subsequent Mondays and Tuesdays, and also on Wednesday, September 3.

City employees and the community may again purchase discounted Fair tickets from the Recreation and Senior Centers. Tickets are good any day the Fair is open. Adult tickets are \$11 and child tickets (6 to 12 years of age) are \$6. Children 5 and under are free. Tickets must be purchased with cash only.

Montclair Day at the Fair is Wednesday, September 10. The day's activities will include a parade featuring Montclair groups and a special ceremony for Montclair's Community Heroes, Leonardo Benitez (youth), Ruth Bonillas (adult), and Dee Connelly (senior). Coupons for \$5 admission to the Fair on Montclair Day are available at the Senior Center, Recreation Center, and City Hall. These tickets must be purchased in advance online or at any admission gate with the Montclair Day flyer.

The Montclair Golden Express will provide free transportation for those 18 years of age and older on Montclair Day only, beginning at 11 a.m. To make reservations, call the Senior Center at (909) 625-9483. For more information on discounted Fair tickets, call the Recreation Center at (909) 625-9479.

POLICE DEPARTMENT

- Chief Mike deMoet attended funeral services for Los Angeles County Sheriff's Department Lieutenant Pat Libertone on August 22 at St. Paul the Apostle Catholic Church in Chino Hills. Pat previously served as a Police Cadet and a Reserve Police Officer with Montclair Police Department from 1979 to 1982.

Lieutenant Libertone suffered a fatal heart attack on August 12 while making a traffic stop of a reckless driver who had cut him off in the Riverside area. He spoke to the driver briefly and was walking back to his vehicle when he collapsed on the sidewalk. An off-duty paramedic who witnessed the incident immediately began offering aid, but was unable to revive him..

Lieutenant Libertone had served with the Los Angeles County Sheriff's Department for 31 years and was most recently assigned to the Fraud and Cyber Crimes Bureau. He is survived by his wife, Sherise, and six children.

➤ ***PUBLIC WORKS DEPARTMENT***

- Before Leadworker Jeff "Buck" Flanders retired last December, he and Maintenance Workers Alex Cardona, Kirk Haymore, and Tommy Sierra had rebuilt one of two staircases that serve the baseball tower at Saratoga Park. Both staircases had been severely damaged from dry rot and termite infestation. With one staircase replaced, the other was removed due to safety concerns. Replacement of the second staircase could not be completed before Buck retired.

Although Buck had been enjoying his retirement for the past seven months, Public Works Superintendent Xavier Mendez persuaded him to return on a part-time basis to not only complete the remaining staircase, but undertake other work for which his talents are especially suited. Buck's return on August 11 allowed his replacement, Leadworker Alex Cardona, to focus on actual street repairs in the City.

Assisting Buck with the staircase replacement project is recently hired Building Specialist Matthew Paradis.

Please join me in welcoming back Jeff Flanders.

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

- Burger King Worldwide Inc. confirmed Tuesday its deal to acquire Tim Hortons Inc., the 4,546-unit Canadian coffee-and-doughnut chain based in Oakville, Ontario, for a purchase price of \$11.4 billion. Tim Hortons, named after the hockey player who founded it, is Canada's largest publicly traded restaurant chain. The quick-service concept sells premium coffee, hot and cold specialty drinks, fresh baked goods, grilled sandwiches, and soups.

The combined corporations would be the world's third-largest fast food restaurant company, with approximately \$22 billion in system-wide sales and more than 18,000 units in 100 countries.

The acquisition deal is structured as a tax inversion, and Burger King, which operates 13,000 units, would move its headquarters from Florida to Canada. Canada's federal corporate tax rate is 15 percent, compared with 35 percent in the U.S. However, Burger King Chief Executive Daniel Schwartz, who will become group CEO of the new company, insists the burger chain would continue to pay federal, state, and local taxes, and the company's tax rate would not be a meaningful change.

A key driver in the acquisition discussion was the potential to leverage Burger King's worldwide footprint and experience in global development to accelerate Tim Hortons' growth in international markets, according to a press release. Mr. Schwartz said, "Our combined size, international footprint, and industry-leading growth trajectory will deliver superb value and opportunity for both Burger King and Tim Hortons shareholders, our dedicated employees, strong franchises, and partners."

Each brand would continue to operate independently while benefiting from shared corporate services, global scale, and reach. With the completion of the deal, Burger King's largest shareholder, 3G Capital, would hold the majority of shares in the new company on a pro forma basis, while the remainder will be held by existing shareholders of Tim Hortons and Burger King.

The partnership with Burger King would mark Tim Hortons' second such arrangement with an American burger chain. In 1995, Wendy's acquired Tim Hortons. Activist investors forced Wendy's to spin off the brand in 2006.

ECS:spa

There is precious little hope to be got out of whatever keeps us industrious, but there is a chance for us whenever we cease work and become stargazers.

~ H. M. Tomlinson

SEPTEMBER 2014



01	Labor Day – City Hall Closed	
02	City Council Workshop – Monte Vista Water District Presentation, Council Chambers	5:45 p.m.
02	City Council Meeting Council Chambers	7:00 p.m.
03	Community Action Committee Meeting Council Chambers	7:00 p.m.
08	Planning Commission Meeting Council Chambers	7:00 p.m.
09	City Manager’s Staff Meeting City Hall Conference Room	9:00 a.m.
10	Montclair Day at the Fair	
10	Oversight Board Meeting Council Chambers	6:00 p.m.
15	Code Enforcement Committee Meeting City Hall Conference Room	6:00 p.m.
15	City Council Meeting Council Chambers	7:00 p.m.
18	Safety Committee Meeting City Hall Conference Room	9:00 a.m.
18	Public Works Committee Meeting City Hall Conference Room	2:00 p.m.
22	Planning Commission Meeting Council Chambers	7:00 p.m.
23	Autumn Begins	
30	City Manager’s Staff Meeting City Hall Conference Room	9:00 a.m.

Senior Center August Birthday Party

Aloha!



Senior Center Pruning Presentation

