



February 19, 2015

**TO:** Honorable Mayor and City Council

**FROM:** Edward C. Starr, City Manager 

**SUBJECT:** WEEKLY REPORT: February 13-19, 2015

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➤ ***CITY MANAGER/ADMINISTRATIVE SERVICES DEPARTMENTS***

- Last month, I reported that Alfred Villalobos, a former CalPERS Board Member, left the Board in 1995 to become a placement agent, assisting hedge funds and other investment agencies with winning CalPERS business. Between 2005 and 2009, Villalobos received a reported \$50 million for his services. Villalobos, who was indicted in US District Court in San Francisco on corruption charges in connection with his efforts to influence the pension fund's investment decisions, reportedly committed suicide this past January, just months before his trial was scheduled to start.

The scandal surrounding Villalobos and an alleged accomplice brought discredit to the CalPERS Board of Administration with allegations of misbehavior involving two members of the Board who reportedly pressured one firm to pay \$4 million in fees to Villalobos, according to a 2011 CalPERS internal investigation. Afterward, CalPERS implemented a number of changes in its governance and ethics policies.

It is now reported that CalPERS paid two law firms more than \$7 million in the Vallejo, Stockton, and San Bernardino bankruptcies, even though there was reasonable legal doubt that the pension fund has legal standing to object to city pension cuts. The judge presiding over the Stockton bankruptcy, Judge Klein, recently ruled that CalPERS pensions can be cut in bankruptcy like other debt.

Questionable fiscal- and policy-related decisions by CalPERS should be of great concern to member cities, particularly when they are asked to absorb massive increases to their employer pension rates. Late last year,

CalPERS informed Montclair to expect a nearly \$1.6 million increase for Fiscal Year 2015-16, with additional annual increases through 2019-2020—proposed higher rates are expected to be maintained for up to 25 years. With cities throughout California still addressing the adverse affects of the Great Recession, including lethargic growth in sales and property taxes, coping with massive employee pension increases will further undermine their abilities to deliver basic services and cope with the loss of redevelopment as a tool to produce economic development.

Does CalPERS have a responsibility to defend the pension fund? Of course! But it needs to favor practical legal defenses of its fiduciary responsibilities as opposed to costly legal gambits, particularly when it lacks standing.

In the case of recent municipal bankruptcy filings, the agencies in bankruptcy actually sought to preserve employee pensions. In its bankruptcy proceedings, Vallejo did not try to cut pensions, reportedly fearing a costly legal battle threatened by CalPERS; Stockton did not want to cut pensions, leaving the CalPERS issue to bondholders; and a San Bernardino deal with CalPERS protects employee pensions.

Judge Klein was explicit in a 54-page *written ruling* that confirms pensions can be cut in bankruptcy. Specifically, Judge Klein denied CalPERS has standing in a bankruptcy case noting that, "As CalPERS does not guaranty payment of municipal pensions and has a connection with a municipality only if that municipality elects to contract with CalPERS to service its pensions, its standing to object to a municipal pension modification through chapter 9 (bankruptcy) appears to be lacking...." The judge's ruling comes after a federal judge ruled in the Detroit bankruptcy that pensions can be cut.

CalPERS argues that it's an "arm of the state," not a city-run plan like Detroit, and thus is protected under the federal bankruptcy law for cities. Judge Klein disputed the claim, ruling that Stockton has contracts with unions and CalPERS. He said the "third leg" of the triangle, the relationship between CalPERS and active and retired employees, is not a contract but a "third-party beneficiary relationship."

Judge Klein further ruled that CalPERS is, in practice, a "pass-through conduit," only owed administrative expenses. The big pension debt is owed to employees and retirees. Nothing about state structure or procedure "necessitates" CalPERS, the judge said. State law does not require that city employees have pensions; and cities can choose other pension providers: private, county, or the creation of their own system.

Once a city contracts with CalPERS, however, two state laws sponsored by CalPERS, which do not apply to county or city retirement systems, make it difficult to leave CalPERS without entering bankruptcy:

1. One state law bars rejection of CalPERS contracts in bankruptcy. However, Judge Klein disagreed, ruling that federal law prohibits such a restriction. The judge duly noted that states cannot modify federal law. To support his ruling, Judge Klein cited a Texas law allowing a school bankruptcy if state bonds were protected—that law was overturned in federal court.
2. The other state law places a lien on the property of a city that terminates its CalPERS contract in bankruptcy, second only to wages, that enforces immediate payment of future pension obligations.

Cities considering termination of their CalPERS contract have found that on termination, CalPERS sharply escalates future pension costs by dropping its investment earnings forecast of 7.5 percent a year from a diverse portfolio to a bond-based 2.98 percent. CalPERS defends this practice as necessary because employer-employee contributions cease upon termination.

For example, Stockton's debt on unfunded liability due immediately on termination of its CalPERS contract would have jumped from \$211 million to \$1.6 billion. Judge Klein observed that the massive increase amounts to a "poison pill" if the city tried to move to another pension provider.

Judge Klein found the "poison pill" rule intolerable, stating that the threat of a CalPERS termination lien forcing a \$1.6 billion payment is a "toothless tiger" in a bankruptcy. The judge found the lien is unenforceable because federal bankruptcy law "authorizes the avoidance of liens that are not perfected or enforceable at the time of the commencement of the case"—a perspective CalPERS appears to agree with—noting the lien only takes effect in bankruptcy.

In 2013, the CalPERS Board of Directors sought to undermine the federal prohibition when it voted to sponsor legislation that would "provide CalPERS with a present lien on all assets of a contracting public agency in the amount of all obligations owed to the system." The effort, however, has thus far been unproductive and would probably be ruled a violation of federal bankruptcy law.

Judge Klein also made a decision that directly affected health care coverage for retirees. Stockton had replaced retiree health benefits valued at \$545 million with a \$5 million lump sum payment. The judge declined to block the retiree health care cut, stating ruling in an earlier 2012 decision that the bankruptcy law forbids the court to "interfere with" the property or revenues of the debtor.

The City of San Bernardino bankruptcy may prove to be a larger problem for CalPERS. San Bernardino filed an emergency bankruptcy, arguing it was needed so the City could keep making payroll. San Bernardino then took the unprecedented step of stopping payments to CalPERS for the rest of the fiscal year. Last year, however, San Bernardino reportedly resumed regular CalPERS payments, including a commitment to pay off skipped payments—\$13.5 million plus fees and interest.

Not making required payments gave CalPERS grounds to terminate its San Bernardino contract—an action that would have resulted in drastic pension cuts. However, in 1992, voters approved a union-backed state constitutional amendment, Proposition 162, that makes providing benefits to members the highest CalPERS priority. Thus, CalPERS now finds itself in a fiduciary corner: recognizing the likelihood that cities in bankruptcy can cut pensions; but CalPERS, by law, is obligated to preserve members' benefits.

CalPERS' answer to the dilemma of maintaining benefits for retirees of bankrupt cities: pass on the cost of maintaining benefits to other municipal agencies.

- The Board of Directors for the Inland Valley Humane Society & SPCA (IVHS) has recently adopted the "Getting 2 Zero" (G2Z) strategy to end the euthanasia of healthy and treatable animals in the Inland Empire.

IVHS has contracted with Inland Valley cities to provide animal care and control services for more than 66 years. Other non-profit animal welfare organizations across the country have discontinued providing animal control services, choosing to ignore many animals that need assistance. IVHS has chosen to stay committed to the welfare of all animals in the community by striving to put an end to pet overpopulation and reach Getting 2 Zero.

In 2014, IVHS humanely euthanized 180 dogs and 467 cats from the City of Montclair. Of those humanely euthanized, 150 were healthy and/or treatable. Through proactive programs such as low-cost spaying and neutering, aggressive micro-chipping services, strong community education programs, and local legislation promoting responsible pet ownership, IVHS believes the G2Z goal can be reached. The following are a list of the principles that comprise the G2Z strategy:

## **Community Responsibility**

Each community takes responsibility for saving its own abandoned animals. Pounds and shelters inform the community of the number of animals who are abandoned and killed each year in their community and involve them in the solutions. Animal owners, breeders, pet shops, vets, dog trainers, governments, animal shelters, rescue groups, wildlife groups, teachers, students, and community groups all contribute to prevent abandonment and save existing lives.

### **90% Savable**

Saving at least 90% of all incoming animals in a given community (i.e. all healthy and treatable cats and dogs) is achievable. The managers and staff of pounds and shelters believe it and want to achieve it. They continually add and improve strategies to get closer to zero killings every year.

### **Save Healthy and Treatable Animals**

All cats and dogs are equally deserving of our utmost efforts to preserve and enhance their lives. This includes stray and unowned animals, crossbreeds, boisterous untrained adolescent dogs, timid cats, the sick, the young, the old, and those lacking the “cute” factor. Only those animals that are irremediably suffering, or with behavioral problems that have a poor prognosis for rehabilitation, should be killed.

## ➤ ***HUMAN SERVICES DEPARTMENT***

- Last Thursday, the Senior Center held a Valentine’s Day Dance. Seniors enjoyed a variety of music provided by local DJ Klash; and refreshments, including strawberry shortcake and a candy/snack buffet.

Everyone in attendance had a good time, and a photo collage of the event is shown on page 11.

- The Montclair Community Garden held their first community planning meeting on January 28, 2015, in the Senior Center. More than 60 community members were in attendance to hear about the Community Garden and the next steps for planning. The next planning meeting will take place this Saturday, February 21, 2015, at 10:00 am at the Community Garden site on the South West corner of Ramona and Palo Verde. Please join us and be a part of transforming our community, one garden at a time. Everyone is welcome to attend, and refreshments will be served. Contact Healthy Montclair for more information at (909) 625-9459 or [healthintern@cityofmontclair.org](mailto:healthintern@cityofmontclair.org).

A flyer is included on page 12.

➤ **POLICE DEPARTMENT**

- David Taylor was promoted to the position of Police Sergeant effective February 9, 2015. Last Wednesday, Dave was sworn in as the newest Police Sergeant by Chief deMoet during a General Assembly held at the Police Department. On Monday, he was introduced as a newest Sergeant during the City Council meeting. Dave is currently assigned to day shift as the Watch Commander.

Sergeant Taylor enrolled as a freshman at Montclair High School in 1981. He began his commitment to public service at the age of 16 when he was hired by the City of Montclair as a life guard and swimming instructor. He maintained employment with the City as he graduated from high school and college.

Dave began his law enforcement career with the Montclair Police Department on January 7, 1991, as an academy recruit. He graduated from the academy in May 1991, and has since been a valued member of the Department. During his 24 years with the Department, Dave has acquired a great deal of experience. In addition to many years in Patrol, Dave has also worked a variety of special assignments. He is a certified Drug Recognition Expert and, until his promotion, was a Field Training Officer. He has worked as a member of the Street Enforcement Team, and for four years, a Detective assigned to identity theft and property crimes. For over seven years Dave was assigned to the Montclair High School as a School Resource Officer. In 2012, he was selected by the Sergeants as the Montclair Police Department Officer of the Year.

Dave has dedicated 32 years of his life to the community, and looks forward to continuing his service as a Police Sergeant. Please join us in congratulating Dave on his most recent achievement.



Chief deMoet, Sergeant Taylor, Captain Avels



Mayor Eaton, Sergeant Taylor, Mrs. Eaton



Sergeant Taylor with his Father, David Taylor Sr., and Step-mother, Patsy Taylor

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

- Under Armour has been aggressively investing in high-profile endorsement deals and building up its women's business in a bid to chip away at Nike's athletic empire.

The Baltimore-based company recently announced a deal with boxing legend Muhammad Ali.

The deal comes just days after the company signed NBA All-Star Stephen Curry and announced the launch of its biggest global brand campaign to date, which will feature ads starring Curry and actor Jamie Foxx.

Under Armour's investments appear to be working. The company's sales increased 32% to \$3.08 billion in 2014, compared to the previous year. Under Armour also recently surpassed Adidas to become the second biggest sportswear brand in the US by sales behind competitor Nike.

Best known for its performance wear, Under Armour has grown rapidly over the last 18 years expanding sales into several international markets. When it was founded in 1996, it had \$17,000 in revenue. This year Under Armour is expected to bring in \$3.76 billion, which is still only a fraction of Nike's sales; Nike's sales totaled \$27.8 billion in fiscal year 2014.

While Under Armour's market share is comparably much smaller than Nike, the company is confident that it can become a much more formidable opponent.

As part of the company's attempt to garner more market share, Under Armour has been increasing its investments in endorsement deals, an area where Nike has always excelled.

In addition to Curry and Ali, Under Armour also recently signed deals with supermodel Gisele Bundchen and ballerina Misty Copeland shortly after launching its largest-ever global women's marketing campaign. Early last year, Under Armour scored the biggest equipment deal in college sports.

The company recently lost a bid for basketball star Kevin Durant to Nike, but Under Armour CEO Kevin Plank said he was not deterred by the failure and seeks to continue the company's plans for expansion both in the US and abroad.

ECS:snh

*"The best thing to hold onto in life is each other."  
~ Audrey Hepburn*

## FEBRUARY 2015



19	Safety Committee Meeting City Hall Conference Room	9:00 a.m.
19	Public Works Committee Meeting City Hall Conference Room	4:00 p.m.
21	Montclair Community Garden Planning Meeting Community Garden Site Southwest Corner of Ramona Avenue and Palo Verde Street	10:00 a.m.
23	Planning Commission Meeting Council Chambers	7:00 p.m.
24	City Manager's Staff Meeting City Hall Conference Room	9:00 a.m.
25	Montclair Farmer's Market Montclair Town Center	4:00 – 7:00 p.m.

## MARCH 2015

		
2	Adjourned City Council Meeting Council Chambers	5:45 p.m.
2	City Council Meeting Council Chambers	7:00 p.m.
4	Montclair Farmer's Market Montclair Town Center	4:00 – 7:00 p.m.
4	Community Action Committee Meeting Council Chambers	7:00 p.m.
9	Planning Commission Meeting Council Chambers	7:00 p.m.
10	City Manager's Staff Meeting City Hall Conference Room	9:00 a.m.
11	Montclair Farmer's Market Montclair Town Center	4:00 – 7:00 p.m.
16	Code Enforcement/Public Safety Committee Meeting City Hall Conference Room	6:00 p.m.
16	City Council Meeting Council Chambers	7:00 p.m.
18	Montclair Farmer's Market Montclair Town Center	4:00 – 7:00 p.m.
19	Safety Committee Meeting City Hall Conference Room	9:00 a.m.
23	Planning Commission Meeting Council Chambers	7:00 p.m.
25	Montclair Farmer's Market Montclair Town Center	4:00 – 7:00 p.m.
31	City Manager's Staff Meeting City Hall Conference Room	9:00 a.m.

# Senior Center Valentine's Day Dance



MONTCLAIR

# Community Garden

**Saturday, February 21**

**10 AM ★ Community Garden Site**

*(South West corner of Ramona and Palo Verde)*

**Healthy Montclair will begin planning the first  
Community Garden in the City of Montclair!**

Please join us and be a part of transforming our community one garden at a time.  
Everyone is welcome to attend. Refreshments will be served.

Contact Healthy Montclair for more information  
(909) 625-9459 or [healthintern@cityofmontclair.org](mailto:healthintern@cityofmontclair.org).



Made possible by an investment from First 5 San Bernardino

