

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

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

December 7, 2015

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/MCF meetings are now available in audio format on the City's website at www.cityofmontclair.org 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, Montclair Housing Authority Commissioners, and Montclair Community Foundation Board of Directors

II. INVOCATION

In keeping with our long-standing tradition of opening our Council meetings with an invocation, this 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. Proclamation Honoring Retired President of Great Metro Auto Group and Founder of Metro Honda and Metro Acura, Mr. John Hawkins
- B. Introduction of New Fire Chief
- C. Introduction of New Employee

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, Montclair Housing Authority Commissioners, and Montclair Community Foundation Board of Directors. (Government Code Section 54954.3)

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

VII. PUBLIC HEARINGS

- A. First Reading – Consider Ordinance No. 15-955 Amending Chapter 11.10 of the Montclair Municipal Code Prohibiting Medical Marijuana Dispensaries, Cultivation of Marijuana, and All Commercial Medical Marijuana Uses in the City [CC] 5

VIII. CONSENT CALENDAR

- A. Approval of Minutes
 - 1. Minutes of the Regular Joint Council/Successor Agency Board/MHC Board/MHA Commission/MCF Board Meeting of November 16, 2015 [CC/SA/MHC/MHA/MCF]

- B. Administrative Reports
 - 1. Consider Montclair Housing Authority Commissioners’ Review and Acceptance of the Annual Report for Fiscal Year 2014-15 [CC] 15
 - 2. Consider Approval of Warrant Register and Payroll Documentations [CC] 19

- C. Agreements
 - 1. Consider Rejection of Bid Proposal Received from Abboud Diamond Construction, Inc., as Discussed Herein, as Being Non-Responsive to the Notice Inviting Bids [CC]

Consider Rejection of Bid Proposal Received from New Millennium Construction Services as Discussed Herein, as Being Non-Responsive to Notice Inviting Bids [CC]

Consider Award of Contract for the Human Services Recreation Building Improvement Project Phase 2 to Rasmussen Brothers Construction, Inc. [CC]

Consider Approval of Agreement No. 15-93 with Rasmussen Brothers Construction, Inc., for Construction of the Human Services Recreation Building Improvement Project Phase 2 [CC]

Consider Authorization of a \$25,000 Construction Contingency [CC] 20

- 2. Consider Approval of Agreement No. 15-94 with the City of Upland Extending the Term of Agreement No. 13-100 for Joint Sharing of Fire Department Command Staff and Expansion of Automatic and Mutual Aid Through Mutual Agreement to Vacate Service Boundaries [CC]

Consider Authorizing the City Manager to Execute All Documents on Behalf of the City of Montclair in Relation to Implementation of Agreement No. 15-94 [CC] 29

3. Consider Approval of Agreement No. 15-95 with Quach Investments, or Buyer of Property Located at 4875 Mission Boulevard, Guarantying the Undergrounding of Existing Overhead Utilities Along the Mission Boulevard and Monte Vista Avenue Frontages of this Property, Subject to Revisions and Completion of Agreement by City Attorney [CC]

Consider Authorizing City Manager or Finance Director to Release Funds from the Escrow Account to be Established Under this Agreement [CC]

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D. Resolutions

1. Consider Adoption of Resolution No. 15-3106 Amending Park Curfew Hours at MacArthur Park [CC]

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IX. PULLED CONSENT CALENDAR ITEMS

X. RESPONSE - None

XI. COMMUNICATIONS

A. City Department Reports

1. Police Department
 - a. Montclair Police Officers Association Breast Cancer Awareness Fundraiser
2. Human Services Department
 - a. Holiday Program Updates

B. City Attorney

1. Closed Session Pursuant to Government Code Section 54956.9(d)(4) Regarding Potential Litigation
1 Potential Case
2. Closed Session Pursuant to Government Code Section 54956.9(d)(1) Regarding Pending Litigation
Camou v. Montclair
3. Closed Session Pursuant to Government Code Section 54956.9(d)(1) Regarding Pending Litigation
Patton v. Montclair
4. Closed Session Pursuant to Government Code Section 54956.9(d)(1) Regarding Pending Litigation
Montclair v. Beltran

- 5. Closed Session Pursuant to Government Code Section 54957.6 Regarding Conference with Designated Labor Negotiator Edward C. Starr

Agency: City of Montclair

Employee Management

Organizations: Montclair City Confidential Employees Association
 Montclair General Employees Association
 Montclair Fire Fighters Association
 Montclair Police Officers Association

C. City Manager/Executive Director

D. Mayor/Chairman

E. Council/SA Board/MHC Board/MHA Commissioners/MCF Board

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

- 1. Minutes of the Personnel Committee Meeting of November 16, 2015 44
- 2. Minutes of the Public Works Committee Meeting of November 19, 2015 45

XII. ADJOURNMENT OF SUCCESSOR AGENCY BOARD OF DIRECTORS, MONTCLAIR HOUSING CORPORATION BOARD OF DIRECTORS, MONTCLAIR HOUSING AUTHORITY COMMISSIONERS, AND MONTCLAIR COMMUNITY FOUNDATION BOARD OF DIRECTORS

(At this time, the City Council will meet in Closed Session regarding pending and potential litigation, and labor negotiations.)

XIII. CLOSED SESSION ANNOUNCEMENTS

XIV. ADJOURNMENT OF CITY COUNCIL

The next regularly scheduled City Council, Successor Agency Board, Montclair Housing Corporation Board, Montclair Housing Authority Commission, and Montclair Community Foundation meetings will be held on Monday, December 21, 2015, 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, Montclair Housing Authority Commission, and Montclair Community Foundation Board 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 City Clerk's Office 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, Stephanie N. Hickerson, Administrative Technician, 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 3, 2015.

AGENDA REPORT

SUBJECT: CONSIDER ORDINANCE NO. 15-955 AMENDING CHAPTER 11.10 OF THE MONTCLAIR MUNICIPAL CODE PROHIBITING MEDICAL MARIJUANA DISPENSARIES, CULTIVATION OF MARIJUANA, AND ALL COMMERCIAL MEDICAL MARIJUANA USES IN THE CITY	DATE: December 7, 2015
	SECTION: PUBLIC HEARINGS
	ITEM NO.: A
	FILE I.D.: SUB100
<u>FIRST READING</u>	DEPT.: COMMUNITY DEV.

REASON FOR CONSIDERATION: Amendments to the Municipal Code require public hearing review and approval by the City Council.

BACKGROUND: On October 9, 2015, Governor Brown signed into law the Medical Marijuana Regulation and Safety Act (MMRSA). The MMRSA consists of three separate pieces of legislation – Assembly Bill 266, Assembly Bill 243, and Senate Bill 643 – establishing a statewide regulatory scheme headed by the Department of Consumer Affairs governing the cultivation, processing, testing, distribution, and transporting of medical marijuana to qualified patients. Each bill has a different function but contain overlapping, identical language regarding certain aspects of medical marijuana control. The MMRSA does not mandate the City to allow cultivation, medical marijuana dispensaries or mobile medical marijuana dispensaries.

The adoption of Ordinance No. 07-891 by the City Council in March 2007 banned the establishment of medical marijuana dispensaries within the City. With the passage of MMRSA, two areas of the new law require immediate attention by the City regarding deliveries/mobile dispensaries and cultivation.

The proposed ordinance is intended to affirm and clarify the previously approved prohibition of medical marijuana dispensaries in the City to be consistent with State law and include medical marijuana cultivation and deliveries as specifically prohibited land uses. If the proposed ordinance is adopted by the City Council, Chapter 11.10 of the Montclair Municipal Code would be amended accordingly.

Key Provisions of the MMRSA Regarding Local Control

The following provisions contained in the Medical Marijuana Regulation and Safety Act (2015) indicate the intent of law to expressly protect local licensing, zoning ordinances, and local actions taken under its constitutional police power.

- Local authority to prohibit or regulate remains intact under the new law: AB 266 (Section 19315(a)) states that nothing in the approved legislation shall be interpreted to supersede or limit existing local authority for law enforcement

Prepared by: <u></u>	Fiscal Impact Finance Review: <u></u>
Proofed by: <u></u>	Reviewed and Approved By: <u></u>

activity, enforcement of local zoning requirements or local ordinances, or enforcement of local permit or licensing requirements; and

- Deliveries allowed if not prohibited by local authority: AB 266 (Section 19340(a)) indicates that deliveries can only be made by a dispensary and in a city, county, or city and county that does not explicitly prohibit it by local ordinance; and
- Cultivation can be prohibited if ordinance is effective by March 1, 2016: AB 243 (Section 11362(b)(4)) allows a city or county to adopt land use regulations or ordinances to expressly prohibit the cultivation of marijuana provided that such regulations or ordinance are effective by March 1, 2016, after which the State becomes the sole licensing authority; and
- Dual licensing (state and local) required: SB 643 (Section 19322(a)) requires that any medical marijuana application for a state license only be issued to persons that have first obtained a license, permit, or authorization by a local jurisdiction.

Summary of Proposed Ordinance

It is the purpose and intent of proposed Ordinance No. 15-955 to promote the health, safety, and general welfare of the residents and businesses within the City of Montclair by prohibiting the cultivation and distribution of medical marijuana substances or products, which are not currently addressed by the existing ordinance. Without the changes, the City would surrender its authority to regulate medical marijuana uses within the City's corporate boundaries and allow the State to be the sole licensing authority for such uses and activities.

With the proposed ordinance, Section 11.10.030 of the Montclair Municipal Code would be amended to read as follows:

11.10.030 Prohibited uses.

A. Unlawful Uses. Uses that are unlawful under federal or state law shall not be treated as permitted uses, and shall not be determined to be similar to any uses permitted pursuant to this Title.

B. Dispensaries prohibited. No medical marijuana or cannabis dispensary as defined in Section 11.02.010 of the Montclair Municipal Code or Business & Professions Code §19300.5(n), as the same may be amended from time to time, shall be permitted in any zone within the City of Montclair. For purposes of this Section, "Dispensary" shall also include a cooperative or a mobile distribution facility. "Dispensary" shall not include the following uses: (1) a clinic licensed pursuant to Chapter 1 of Division 2 of the California Health and Safety Code; (2) a health care facility licensed pursuant to Chapter 2 of Division 2 of the California Health and Safety Code; (3) a residential care facility for persons with chronic life-threatening illnesses licensed pursuant to Chapter 3.01 of Division 2 of the California Health and Safety Code; (4) a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the California Health and Safety Code; or (5) a residential hospice or home health agency licensed pursuant to Chapter 8 of Division 2 of the California Health and Safety Code.

C. Commercial marijuana activities prohibited. Commercial cannabis activities of all types, including the cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transporting, distribution, or sale of medical cannabis or a medical cannabis product all as defined under Business & Professions Code §19300.5,

as the same may be amended from time to time, are expressly prohibited in all zones and all specific plan areas in the City of Montclair. No person shall establish, operate, conduct or allow a commercial cannabis activity anywhere within the City.

D. Deliveries of medical marijuana prohibited. To the extent not already covered by subsection C above, all deliveries of medical cannabis are expressly prohibited within the City of Montclair, including the use by a dispensary of any technology platform owned and controlled by the dispensary, or independently licensed, that enables qualified patients or primary caregivers to arrange for or facilitate the commercial transfer by a licensed dispensary of medical cannabis or medical cannabis products. No person shall conduct any deliveries that either originate or terminate within the City.

E. Cultivation of marijuana prohibited. Cultivation of cannabis for commercial or non-commercial purposes, including cultivation by a qualified patient or a primary caregiver, is expressly prohibited in all zones and all specific plan areas in the City of Montclair. No person, including a qualified patient or primary caregiver, shall cultivate any amount of cannabis in the City, even for medical purposes. Cultivation shall include any activity involving the planting, growing, harvesting, drying, curing, grading or trimming of cannabis.

F. Intent. This Section is meant to prohibit all medical marijuana or commercial cannabis activities for which a State license is required. Accordingly, the City shall not issue any permit, license or other entitlement for any activity for which a State license is required under the Medical Marijuana Regulation and Safety Act.

Summary of Related Legislation and Court Cases

- In 1996, the voters of the State of California approved Proposition 215, the Compassionate Use Act of 1996 ("the Act"). The Act decriminalized the use of marijuana for medical purposes under State law.
- In 2004, Gov. Gray Davis signed SB 420, the Medical Marijuana Protection Act (MMP), which established an identification card system for medical marijuana patients as codified in Health and Safety Code §11362.5, et seq.
- The United States Supreme Court decision in *Gonzales v. Raich* (June 6, 2005), declares that Congress, under the Commerce clause of the United States Constitution, has the authority and, under the CSA, power to prohibit local cultivation and use of marijuana even though it would be in compliance with California law.
- In 2013, the California Supreme Court ruled unanimously in the City of Riverside v. Inland Empire Patients Health & Wellness Ctr., Inc., 56 Cal.4th 729 (2013), that the Compassionate Use Act of 1996 and the Medical Marijuana Act (Health & Safety Code §11362.7) do not preempt local ordinances that completely prohibit medical marijuana dispensaries within a local jurisdiction's borders. Additionally, in Maral v. City of Live Oak (2013) 221 Cal.App.4th 975, the Court of Appeal held that "there is no right – and certainly no constitutional right – to cultivate medical marijuana..." The Court in Maral affirmed the ability of a local governmental entity to prohibit the cultivation of marijuana under its land use authority.
- On October 9, 2015, the Governor signed into law the Medical Marijuana Regulation and Safety Act (MMRSA) comprised of three pieces of legislation – Assembly Bill 266, Assembly 243, and Senate Bill 643.
- AB 266 (Section 19315(a)) specifically states that nothing in the approved legislation shall be interpreted to supersede or limit existing local authority for law

enforcement activity, enforcement of local zoning requirements or local ordinances, or enforcement of local permit or licensing requirements.

ANALYSIS: Staff believes the proposed ordinance to affirm the current prohibition of medical marijuana dispensaries, including the added provisions to prohibit the cultivation and delivery of medical marijuana substances or products within the City is appropriate. Since the passage of Proposition 215 in 1996, medical marijuana dispensary uses have been the source of much controversy for counties and cities seeking to prohibit and/or regulate their operations. The City of Montclair has avoided much of the adverse impacts associated with this use in large part because dispensaries are not a permitted use to begin with. Fortunately, the MMRSA retains the right of local jurisdiction authorities to determine what uses of land are appropriate within its borders.

In cities where medical marijuana dispensaries are allowed, evidence shows that they are often targets for violent crime as well as fronts for drug traffickers and money laundering for organized crime. Anecdotal evidence suggests that medical marijuana dispensaries are subject to significantly higher incidences of burglaries and robberies at a site than other businesses, including robberies of patrons leaving the dispensaries, loitering and nuisance activities in and around the sites, and persons without medical need attempting to purchase marijuana at the sites.

Although dispensaries have been prohibited in Montclair since 2007, approximately 10–12 illegal dispensaries have been set up since that time at various locations within the City. In each case, the dispensary was opened in a surreptitious manner. In a few cases, dispensaries opened under false pretenses by describing themselves as another type of business, suggesting that provision of medical marijuana to qualified patients was not their top priority or focus.

Medical marijuana dispensaries also pose a number of other impacts to adjacent properties and uses. Usually the City becomes aware of an illegal dispensary when a complaint is received or unusual activity is noticed by City staff. When investigated further, staff typically observes the following: inordinately high numbers of vehicles and pedestrians entering and leaving a site, various parking violations, strong odors, the presence of intimidating security personnel guarding doors, and unpermitted building modifications.

With regard to cultivation of medical marijuana, staff believes the prohibition is necessary to be consistent with the prohibition of dispensaries. Many of the same adverse characteristics surrounding dispensaries would also be potential issues if the cultivation of marijuana was to be permitted. Given the high cash value of marijuana and its products being an attractive target for theft and trespassing, other criminal activity is highly probable whether marijuana is cultivated outdoors or within an enclosed structure/building. As such, the level of security utilized by these businesses would also be a concern. Some of the security measures that would likely be utilized to protect cultivation operations include the use of armed security guards, cameras, walls/fences, etc. Except for some banks, most, if not all, other businesses within the City do not require such extensive security measures.

Other potential issues include the high use of energy and, in particular, water needed to grow marijuana plants. According to the Mendocino County *Press Democrat*, "Researchers estimate each plant consumes 6 gallons of water a day...over the average

150-day growing cycle for outdoor plants (Apr. 16, 2014)." The high use of water is an important factor to consider given the water conservation measures being mandated to address California's current drought and expected climate change impacts.

Conclusion

The secondary effects associated with the operation of dispensaries, along with cultivation and distribution of medical marijuana substances and products would adversely impact the health, safety, and welfare of the City's residents and businesses. Citywide prohibition is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, high water usage, malodorous smells and indoor electrical fire hazards that may result from such activities. Further, as recognized by the Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, marijuana cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that surrounding homes or businesses may be negatively impacted by nuisance activity such as loitering or crime. Adopting the proposed ordinance would reinforce the City's ability to maintain local control and determine for the purposes of public health and safety, the appropriate types of land uses allowed with the City's jurisdiction.

At its meeting on November 23, 2015, the Planning Commission unanimously recommended City Council adoption of Ordinance No. 15-955.

FISCAL IMPACT: There would be no fiscal impact to the City's General Fund as a result of adoption and implementation of Ordinance No. 15-955.

RECOMMENDATION: Staff recommends the City Council adopt the first reading of Ordinance No. 15-955 amending Chapter 11.10 of the Montclair Municipal Code prohibiting medical marijuana dispensaries, cultivation of marijuana and all commercial medical marijuana uses in the City.

ORDINANCE NO. 15-955

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR, CALIFORNIA AMENDING SECTION 11.10.030 OF THE MONTCLAIR MUNICIPAL CODE PROHIBITING MEDICAL MARIJUANA DISPENSARIES, CULTIVATION OF MARIJUANA AND ALL COMMERCIAL MEDICAL MARIJUANA USES IN THE CITY

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

SECTION 1. Findings and Purpose. The City Council finds and declares as follows:

A. In 1996, the voters of the State of California approved Proposition 215 (codified as California Health and Safety Code §11362.5 and entitled "The Compassionate Use Act of 1996" or "CUA").

B. The intent of Proposition 215 was to enable persons who are in need of marijuana for medical purposes to use it without fear of criminal prosecution under limited, specified circumstances. The proposition further provides that "nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of marijuana for non-medical purposes." The ballot arguments supporting Proposition 215 expressly acknowledged that "Proposition 215 does not allow unlimited quantities of marijuana to be grown anywhere."

C. In 2004, the Legislature enacted Senate Bill 420 (codified as California Health & Safety Code §11362.7 et seq. and referred to as the "Medical Marijuana Program" or "MMP") to clarify the scope of Proposition 215 and to provide qualifying patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes with a limited defense to certain specified State criminal statutes. Assembly Bill 2650 (2010) and Assembly Bill 1300 (2011) amended the Medical Marijuana Program to expressly recognize the authority of counties and cities to "[a]dopt local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective" and to civilly and criminally enforce such ordinances.

D. On March 5, 2007, the Montclair City Council unanimously adopted Ordinance No. 07-891 to prohibit medical marijuana dispensaries within any zone within the corporate boundaries of the City of Montclair.

E. In City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc. (2013) 56 Cal.4th 729, the California Supreme Court held that "[n]othing in the CUA or the MMP expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land..." Additionally, in Maral v. City of Live Oak (2013) 221 Cal.App.4th 975, the Court of Appeal held that "there is no right - and certainly no constitutional right - to cultivate medical marijuana..." The Court in

Maral affirmed the ability of a local governmental entity to prohibit the cultivation of marijuana under its land use authority.

F. The Federal Controlled Substances Act, 21 U.S.C. §801 et seq., classifies marijuana as a Schedule 1 Drug, which is defined as a drug or other substance that has a high potential for abuse, that has no currently accepted medical use in treatment in the United States, and that has not been accepted as safe for use under medical supervision. The Federal Controlled Substances Act makes it unlawful under federal law for any person to cultivate, manufacture, distribute or dispense, or possess with intent to manufacture, distribute or dispense, marijuana. The Federal Controlled Substances Act contains no exemption for medical purposes, although there is recent case law that raises a question as to whether the Federal Government may enforce the Act where medical marijuana is allowed.

G. On October 9, 2015, Governor Brown signed three bills into law (AB 266, AB 243, and SB 643), which collectively are known as the Medical Marijuana Regulation and Safety Act (hereafter “MMRSA”). The MMRSA set up a State licensing scheme for commercial medical marijuana uses while protecting local control by requiring that all such businesses must have a local license or permit to operate in addition to a State license. The MMRSA allows the City to completely prohibit commercial medical marijuana activities.

H. The City Council finds that commercial medical marijuana activities, as well as cultivation for personal medical use as allowed by the CUA and MMP, can adversely affect the health, safety, and well-being of City residents. Citywide prohibition is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, high water usage, malodorous smells and indoor electrical fire hazards that may result from such activities. Further, as recognized by the Attorney General’s August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, marijuana cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that surrounding homes or businesses may be negatively impacted by nuisance activity such as loitering or crime.

I. The limited immunity from specified state marijuana laws provided by the Compassionate Use Act and Medical Marijuana Program does not confer a land use right or the right to create or maintain a public nuisance.

J. The MMRSA contains language that requires the City to prohibit cultivation uses by March 1, 2016 either expressly or otherwise under the principles of permissive zoning, or the State will become the sole licensing authority. The MMRSA also contains language that requires delivery services to be expressly prohibited by local ordinance, if the City wishes to do so. The MMRSA is silent as to how the City must prohibit other type of commercial medical marijuana activities.

K. While the City Council believes that cultivation and all commercial medical marijuana uses are prohibited under the City’s permissive zoning regulations, it desires to enact this ordinance to expressly make clear that all such uses are prohibited in all zones throughout the City.

L. This Ordinance is consistent with the City's General Plan and each element thereof.

M. The Planning Commission held a duly noticed public hearing on November 23, 2015 at which time it considered all evidence presented, both written and oral and at the end of the hearing voted to adopt a resolution recommending that the City Council adopt this Ordinance.

N. The City Council held a duly noticed public hearing on this Ordinance on December 7, 2015, at which time it considered all evidence presented, both written and oral.

SECTION 2. Authority. This ordinance is adopted pursuant to the authority granted by the California Constitution and State law, including but not limited to Article XI, Section 7 of the California Constitution, the Compassionate Use Act, the Medical Marijuana Program, and The Medical Marijuana Regulation and Safety Act.

SECTION 3. Section 11.10.030 of the Montclair Municipal Code is hereby repealed and replaced in its entirety as follows:

11.10.030 Prohibited uses.

A. Unlawful Uses. Uses that are unlawful under federal or state law shall not be treated as permitted uses, and shall not be determined to be similar to any uses permitted pursuant to this Title.

B. Dispensaries prohibited. No medical marijuana or cannabis dispensary as defined in Section 11.02.010 of the Montclair Municipal Code or Business & Professions Code §19300.5(n), as the same may be amended from time to time, shall be permitted in any zone within the City of Montclair. For purposes of this Section, "Dispensary" shall also include a cooperative or a mobile distribution facility. "Dispensary" shall not include the following uses: (1) a clinic licensed pursuant to Chapter 1 of Division 2 of the California Health and Safety Code; (2) a health care facility licensed pursuant to Chapter 2 of Division 2 of the California Health and Safety Code; (3) a residential care facility for persons with chronic life-threatening illnesses licensed pursuant to Chapter 3.01 of Division 2 of the California Health and Safety Code; (4) a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the California Health and Safety Code; or (5) a residential hospice or home health agency licensed pursuant to Chapter 8 of Division 2 of the California Health and Safety Code.

C. Commercial marijuana activities prohibited. Commercial cannabis activities of all types, including the cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transporting, distribution, or sale of medical cannabis or a medical cannabis product all as defined under Business & Professions Code §19300.5, as the same may be amended from time to time, are expressly prohibited in all zones and all specific plan areas in the City of Montclair. No person shall establish, operate, conduct or allow a commercial cannabis activity anywhere within the City.

D. Deliveries of medical marijuana prohibited. To the extent not already covered by subsection C above, all deliveries of medical cannabis are expressly prohibited within the City of Montclair, including the use by a dispensary of any technology

platform owned and controlled by the dispensary, or independently licensed, that enables qualified patients or primary caregivers to arrange for or facilitate the commercial transfer by a licensed dispensary of medical cannabis or medical cannabis products. No person shall conduct any deliveries that either originate or terminate within the City.

E. Cultivation of marijuana prohibited. Cultivation of cannabis for commercial or non-commercial purposes, including cultivation by a qualified patient or a primary caregiver, is expressly prohibited in all zones and all specific plan areas in the City of Montclair. No person, including a qualified patient or primary caregiver, shall cultivate any amount of cannabis in the City, even for medical purposes. Cultivation shall include any activity involving the planting, growing, harvesting, drying, curing, grading or trimming of cannabis.

F. Intent. This Section is meant to prohibit all medical marijuana or commercial cannabis activities for which a State license is required. Accordingly, the City shall not issue any permit, license or other entitlement for any activity for which a State license is required under the Medical Marijuana Regulation and Safety Act.

SECTION 4. Nothing in this Ordinance shall be interpreted to mean that the City's permissive zoning scheme allows any other use not specifically listed therein.

SECTION 5. CEQA. This ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15305, which exempts minor alterations in land use limitations in areas with an average slope of less than 20% that do not result in any changes in land use or density, and Section 15061(b)(3), which is the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment and CEQA does not apply where it can be seen with certainty that there is no possibility that the activity may have a significant effect on the environment. The City's permissive zoning provisions already prohibits all uses that are being expressly prohibited by this ordinance. Therefore, this ordinance has no impact on the physical environment as it will not result in any changes.

SECTION 6. If any section, subsection, subdivision, sentence, clause, phrase or portion of this Ordinance, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 7. To the extent the provisions of the Montclair Municipal Code as amended by this Ordinance are substantially the same as the provisions of that Code as they read immediately prior to the adoption of this Ordinance, then those provisions shall be construed as continuations of the earlier provisions and not as new enactments.

SECTION 8. This Ordinance shall be in full force and effect thirty (30) days after passage.

SECTION 9. 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, 2015.

Mayor

ATTEST:

Deputy City Clerk

I, Andrea M. Phillips, Deputy City Clerk of the City of Montclair, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 15-955 of said City, which was introduced at a regular meeting of the City Council held on the XX day of XX, 2015, and finally passed not less than five (5) days thereafter on the XX day of XX, 2015, by the following vote, to-wit:

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

Andrea M. Phillips
Deputy City Clerk

AGENDA REPORT

SUBJECT: CONSIDER MONTCLAIR HOUSING AUTHORITY COMMISSIONERS' REVIEW AND ACCEPTANCE OF THE ANNUAL REPORT FOR FISCAL YEAR 2014-15

DATE: December 7, 2015

SECTION: ADMIN. REPORTS

ITEM NO.: 1

FILE I.D.: MHA030

DEPT.: MHA

REASON FOR CONSIDERATION: The Montclair Housing Authority (MHA) is required to conduct an annual meeting in December to report its activities for the preceding fiscal year.

A copy of the MHA Annual Report for Fiscal Year 2014-15 is attached for the MHA Commissioners' consideration.

BACKGROUND: The Montclair Housing Authority was created by the City Council on July 18, 2011. The City Council designated itself Commissioners of the MHA and designated certain City officials to serve as officers of MHA. The City Manager is the Executive Director of MHA.

The MHA financial statements for the Fiscal Year ending June 30, 2015, are included in the MHA Annual Report for Fiscal Year 2014-15. Total assets for MHA are \$20,411,196. The balance includes the value of real property owned by MHA, moneys due from the Montclair Housing Corporation for loans originally made by the former Montclair Redevelopment Agency, and Residual Loan Receivables. A residual receipt is the repayment of moneys borrowed from the former Montclair Redevelopment Agency to carry out a variety of housing programs.

FISCAL IMPACT: There would be no cost associated with the MHA Commissioners' acceptance of the Annual Report.

RECOMMENDATION: The Montclair Housing Authority Commissioners are requested to review and accept the Montclair Housing Authority Annual Report for Fiscal Year 2014-15.

Prepared by: Christine S. Caldwell Fiscal Impact Finance Review: Donald L. Parker

Proofed by: Stephanie Hick Reviewed and Approved By: Marilyn Staats

**Montclair Housing Authority
Annual Report
Fiscal Year 2014-15**

Montclair Housing Authority

Paul M. Eaton, Chair
Carolyn Raft, Vice Chair
Bill Ruh, Commissioner
J. John Dutrey, Commissioner
Trisha Martinez, Commissioner

Officers

Edward C. Starr, Executive Director
Marilyn J. Staats, Assistant Executive Director
Donald L. Parker, Finance Officer
Andrea M. Phillips, Housing Authority Secretary

In accordance with Section 34328 of the Health and Safety Code of the State of California, below are financial statements for the Montclair Housing Authority (Successor Housing Entity for the City of Montclair Redevelopment Agency) for the Fiscal Year Ended June 30, 2015:

Montclair Housing Authority
Balance Sheet
For the Year Ended June 30, 2015

Assets	
Cash in Bank	\$ 311,516
Due from Montclair Housing Corporation	5,358,772
Residual Receipt Loan Receivable	2,599,908
Land and Multifamily Housings Units	<u>12,141,000</u>
 Total Assets	 <u><u>\$ 20,411,196</u></u>
 Liabilities and Fund Balance	
<u>Liabilities</u>	
Accounts Payable	<u>\$ 262</u>
 <u>Fund Balance</u>	
Nonspendable - Unavailable	\$ 20,099,680
Restricted for Housing	<u>311,254</u>
Total Fund Balance	<u>\$ 20,410,934</u>
 Total Liabilities and Fund Balance	 <u><u>\$ 20,411,196</u></u>

Montclair Housing Authority
Statement of Revenues, Expenditures
and Changes in Fund Balance
For the Year Ended June 30, 2015

<u>Revenues</u>	
Loan Repayments	\$ 7,252
Property Tax Refunds	<u>27,135</u>
Total Revenues	<u>34,387</u>
 <u>Expenditures</u>	
Legal Costs	<u>8,674</u>
Total Expenditures	<u>8,674</u>
Excess of Revenues Over (Under) Expenditures	25,713
 <u>Fund Balances</u>	
Beginning of Fiscal Year	<u>20,385,221</u>
End of Fiscal Year	<u><u>\$ 20,410,934</u></u>

AGENDA REPORT

SUBJECT: CONSIDER APPROVAL OF WARRANT REGISTER AND PAYROLL DOCUMENTATIONS **DATE:** December 7, 2015
SECTION: ADMIN. REPORTS
ITEM NO.: 2
FILE I.D.: FIN540
DEPT.: ADMIN. SVCS.

REASON FOR CONSIDERATION: The City Council is requested to consider approval of the Warrant Register and Payroll Documentations.

BACKGROUND: Mayor Pro Tem Raft has examined the Warrant Register dated December 7, 2015, and the Payroll Documentations dated November 15, 2015, and November 29, 2015, and recommends their approval.

FISCAL IMPACT: The Warrant Register dated December 7, 2015, totals \$1,884,255.20. The Payroll Documentation dated November 15, 2015, totals \$542,540.76 gross, with \$381,942.05 net being the total cash disbursement. The Payroll Documentation dated November 29, 2015, totals \$525,330.76 gross, with \$388,119.46 net being the total cash disbursement.

RECOMMENDATION: Staff recommends the City Council approve the above referenced Warrant Register and Payroll Documentations.

Prepared by:		Fiscal Impact Finance Review:	
Proofed by:		Reviewed and Approved By:	

AGENDA REPORT

<p>SUBJECT: CONSIDER REJECTION OF BID PROPOSAL RECEIVED FROM ABOUD DIAMOND CONSTRUCTION, INC., AS DISCUSSED HEREIN, AS BEING NON-RESPONSIVE TO THE NOTICE INVITING BIDS</p> <p>CONSIDER REJECTION OF BID PROPOSAL RECEIVED FROM NEW MILLENNIUM CONSTRUCTION SERVICES AS DISCUSSED HEREIN, AS BEING NON-RESPONSIVE TO NOTICE INVITING BIDS</p> <p>CONSIDER AWARD OF CONTRACT FOR THE HUMAN SERVICES RECREATION BUILDING IMPROVEMENT PROJECT PHASE 2 TO RASMUSSEN BROTHERS CONSTRUCTION, INC.</p> <p>CONSIDER APPROVAL OF AGREEMENT NO. 15-93 WITH RASMUSSEN BROTHERS CONSTRUCTION, INC., FOR CONSTRUCTION OF THE HUMAN SERVICES RECREATION BUILDING IMPROVEMENT PROJECT PHASE 2</p> <p>CONSIDER AUTHORIZATION OF A \$25,000 CONSTRUCTION CONTINGENCY</p>	<p>DATE: December 7, 2015</p> <p>SECTION: AGREEMENTS</p> <p>ITEM NO.: 1</p> <p>FILE I.D.: CVC060</p> <p>DEPT.: PUBLIC WORKS</p>
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REASON FOR CONSIDERATION: Rejection of bid proposals, awards of contracts, and agreements with the City require City Council approval.

BACKGROUND: The City Council, at its meeting of September 21, 2015, authorized staff to advertise for bid proposals for construction of the Human Services/Recreation Building Improvement Project Phase 2. The project is intended to remodel and expand the existing fitness center. The room is currently not in compliance with the requirements of Americans with Disabilities Act (ADA), nor is it adequate in size to house modern exercise equipment for handicapped patrons. The project will nearly triple the current size of the fitness center and allow for such equipment. The expansion of the fitness center, which eliminates the old Starlight Patio Stage area, will include new flooring, ceiling, lighting, storefront windows, and a new air conditioning unit.

On Thursday, October 29, 2015, the City Clerk received and opened seven bid proposals for construction of the Human Services/Recreation Building Improvement Project Phase 2. The bid results are shown on the following page.

Prepared by:		Fiscal Impact Finance Review:	
Proofed by:		Reviewed and Approved By:	

<i>Bidder</i>	<i>Bid Amount</i>
Abboud Diamond Construction, Inc.	\$234,500.00
New Millennium Construction Services	\$245,890.00
Rasmussen Brothers Construction, Inc.	\$250,400.00
Thomco Construction, Inc.	\$253,215.00
Harik Construction, Inc.	\$294,000.00
Dalke & Sons Construction, Inc.	\$244,480.00
Marjani Builders, Inc.	\$349,000.00
<i>Engineer's Estimate</i>	<i>\$350,000.00</i>

Following the bid opening, staff received two formal protests regarding the apparent low bid received from Abboud Diamond Construction, Inc. The protests were based on a failure to list a specialty roofing subcontractor (Tremco certified) and various minor errors. The minor errors were considered insignificant and could be dismissed. However, failure to list a subcontractor is considered significant.

City projects are governed by the Standard Specifications for Public Works Construction, commonly referred to as the "*Greenbook*." Under Section 2-3.1(a)(b) of the *Greenbook*, Abboud Diamond Construction, Inc., could self-perform the roofing work, if qualified, or hire a subcontractor without naming him if the amount of that subcontract does not exceed ½ of 1% of the contractor's total bid proposal. In this case, ½ of 1% is approximately \$1,170.

Abboud Diamond Construction, Inc., is not a Tremco certified contractor. Abboud Diamond Construction, Inc., was able to provide a bid proposal from a qualified roofer. However, the proposal exceeded \$4,700. The failure to list a subcontractor or produce a contract cost below the \$1,170 threshold violates the *Greenbook* requirements and renders the bid proposal from Abboud Diamond Construction, Inc., non-responsive.

Staff also received a protest regarding the second low bidder, New Millennium Construction Services. The basis of the protest was twofold: failure to submit an adequate bid bond and placing qualifications, restrictions, and exceptions on the bid.

The Public Contract Code and the City's bid documents both require bidders to secure their bids with one of several types of guarantees, one of which is a bid bond of at least 10%. New Millennium Construction Services submitted a bid proposal of \$245,890. Therefore the bid bond should have been \$24,589. The bid bond submitted included wording similar to "Not to exceed" \$20,000. Therefore, the bid is considered non-responsive.

It was also found that New Millennium Construction Services attached exceptions with its bid proposal, such as objecting to some of the warranty requirements and excluding certain items of work from its proposal. New Millennium Construction Services was able to submit a lower bid by not bidding on all the required work, a second reason for considering the bid as non-responsive.

Although no protests for the third apparent low bidder, Rasmussen Brothers Construction, Inc., were received, staff still fully reviewed its bid proposal. Staff found that Rasmussen Brothers Construction, Inc., also failed to list a subcontractor for the specialty roofing work and is also not qualified to self perform the work. Unlike Abboud Diamond Construction, Inc., however, Rasmussen Brothers Construction, Inc.,

acknowledged that although it had not listed a Tremco certified roofer in its list of subcontractors, it did intend to subcontract that work. Rasmussen Brothers Construction, Inc., provided a copy of a bid proposal from a certified Tremco roofer in the amount of \$949, less than ½ of 1% of its total bid. Therefore, it was not necessary to include the subcontractor in the list of subcontractors. Rasmussen Brothers Construction, Inc., included all other required documents.

Rasmussen Brothers Construction, Inc., is deemed the lowest responsible, responsive bidder for the project. Rasmussen Brothers Construction, Inc., has performed work in the City before and is known to have the personnel, equipment, and job experience necessary to complete this contract in accordance with the plans and specifications.

FISCAL IMPACT: The project is fully funded through the Community Development Block Grant (CDBG) program. Available CDBG funds for the project are \$350,000, well over the combined award amount of \$250,400 and the \$25,000 construction contingency, totaling \$300,400.

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

1. Reject bid proposal received from Abboud Diamond Construction, Inc., as discussed herein as being non responsive to the Notice Inviting Bids.
2. Reject bid proposal received from New Millennium Construction Services as discussed herein as being non responsive to the Notice Inviting Bids.
3. Award contract for the Human Services Recreation Building Improvement Project Phase 2 to Rasmussen Brothers Construction, Inc.
4. Approve Agreement No. 15-93 with Rasmussen Brothers Construction, Inc., for construction of the Human Services Recreation Building Improvement Project Phase 2.
5. Authorize a \$25,000 construction contingency.

AGREEMENT 15-93

KNOW ALL MEN BY THESE PRESENTS: That the following Agreement is made and entered into as of the date executed by the City Clerk and the Mayor, by and between **Rasmussen Brothers Construction, Inc, a CORPORATION**, hereinafter referred to as "CONTRACTOR" and the CITY OF MONTCLAIR, hereinafter referred to as "CITY."

A. Recitals.

- (i) Pursuant to Notice Inviting Sealed Bids or Proposals, bids were received, publicly opened, and declared on the date specified in said notice.
- (ii) CITY did accept the bid of CONTRACTOR.
- (iii) CITY has authorized the City Clerk and Mayor to enter into a written contract with CONTRACTOR for furnishing labor, equipment, and material for the construction of:

HUMAN SERVICES/RECREATION BUILDING IMPROVEMENT PROJECT PHASE 2 A COMMUNITY DEVELOPMENT BLOCK GRANT PROJECT

"PROJECT" hereinafter.

B. Resolution.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, it is agreed:

1. GENERAL SCOPE OF WORK: CONTRACTOR shall furnish all necessary labor, tools, materials, appliances, and equipment for and do all work contemplated and embraced for the PROJECT. Said PROJECT to be performed in accordance with specifications and standards on file in the Office of the City Engineer and in accordance with bid prices hereinafter mentioned and in accordance with the instructions of the Engineer.
2. INCORPORATED DOCUMENTS TO BE CONSIDERED COMPLEMENTARY: The aforesaid specifications are incorporated herein by reference thereto and made a part hereof with like force and effect as if all of said documents were set forth in full herein. Said documents, the Notice Inviting Bids, the Instructions to Bidders, the Proposal and any City-issued addenda, together with this written Agreement, shall constitute the contract between the parties. This contract is intended to require a complete and finished piece of work and anything necessary to complete the work properly and in accordance with the law and lawful governmental regulations shall be performed by the CONTRACTOR whether set out specifically in the contract or not. Should it be ascertained that any inconsistency exists between the aforesaid documents and this written Agreement, the provisions of this written Agreement shall control.
3. TERMS OF CONTRACT: The CONTRACTOR agrees to execute the contract within ten (10) calendar days from the date of notice of award of the contract and to complete his portion of PROJECT within the time specified in the Special Provisions. CONTRACTOR agrees further to the assessment of liquidated damages in the amount specified in the Special Provisions or the Standard Specifications, whichever is higher, for

AGREEMENT

each calendar day PROJECT remains incomplete beyond the expiration of the completion date. CITY may deduct the amount thereof from any moneys due or that may become due the CONTRACTOR under this contract. Progress payments made after the scheduled date of completion shall not constitute a waiver of liquidated damages.

4. GOVERNING LAW: The City and Contractor understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court with jurisdiction over the City of Montclair.

5. INSURANCE: The CONTRACTOR shall not commence work under this contract until he has obtained all insurance required hereunder in a company or companies acceptable to CITY nor shall the CONTRACTOR allow any subcontractor to commence work on his subcontract until all insurance required of the subcontractor has been obtained. The CONTRACTOR shall, at all times during the term of this Agreement, maintain and keep in full force and effect, the following policies of insurance with minimum limits as indicated below and issued by insurers with A.M. Best ratings of no less than A-: VI:

Commercial general liability at least as broad as ISO CG 0001 (per occurrence)	1,000,000
(general aggregate)	2,000,000
Commercial auto liability at least as broad as ISO CA 0001 (per accident)	1,000,000
Professional Liability (per claim and aggregate)	1,000,000
Worker's Compensation	Statutory

A. For all operations of the CONTRACTOR or any subcontractor in performing the work provided for herein, insurance with the following minimum limits and coverage:

- (1) Public Liability – Bodily Injury (not auto) \$1,000,000 each person; \$2,000,000 each accident.
- (2) Public Liability – Property Damage (not auto) \$500,000 each accident; \$1,000,000 aggregate.
- (3) Contractor's Protective – Bodily Injury \$1,000,000 each person; \$2,000,000 each accident.
- (4) Contractor's Protective – Property Damage \$500,000 each accident; \$1,000,000 aggregate.
- (5) Automobile – Bodily Injury \$1,000,000 each person; \$2,000,000 each accident.
- (6) Automobile – Property Damage \$500,000 each accident.

B. All insurance required by this section shall apply on a primary basis. Contractor agrees that it will not cancel or reduce said insurance coverage. Contractor agrees that if it does not keep the aforesaid insurance in full force and effect City may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, City may take out the necessary insurance and pay, at Contractors expense, the premium thereon.

AGREEMENT

C. Auto liability insurance shall cover owned, nonowned and hired autos. If Contractor owns no vehicles, auto liability coverage may be provided by means of a nonowned and hired auto endorsement to the general liability policy.

D. At all times during the term of this Agreement, Contractor shall maintain on file with City a certificate of insurance, in a form acceptable to City showing that the aforesaid policies are in effect in the required amounts. The general liability and automobile policies shall contain or be endorsed to contain a provision including the Indemnified Parties as additional insureds. Consultant shall promptly file with City such certificate or certificates and endorsements if applicable. Coverage for the additional insureds shall apply to the fullest extent permitted by law. Additional Insured Endorsements shall not

1. Exclude "Contractual Liability"
2. Restrict coverage to the "Sole" liability of Contractor
3. Exclude "Third-Party-Over Actions"
4. Contain any other exclusion contrary to the Contract

E. No Policy required by this section shall prohibit Contractor from waiving any right of recovery prior to loss. Contractor hereby waives such right with regard to the Indemnified Parties.

Compensation Insurance: Before beginning work, the CONTRACTOR shall furnish to the Engineer a policy of insurance or proper endorsement as proof that he has taken out full compensation insurance for all persons whom he may employ directly or through subcontractors in carrying out the work specified herein, in accordance with the laws of the State of California. Such insurance shall be maintained in full force and effect during the period covered by this contract.

F. In accordance with the provisions of §3700 of the California Labor Code, every contractor shall secure the payment of compensation to his employees. CONTRACTOR, prior to commencing work, shall sign and file with CITY a certification as follows:

I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the work of this Agreement."

G. The policy of insurance provided for in subparagraph A. shall contain an endorsement which:

- (1) Waives all right of subrogation against all persons and entities specified in subparagraph 4.H.(2) hereof to be listed as additional insureds in the policy of insurance provided for in paragraph A. by reason of any claim arising out of or connected with the operations of CONTRACTOR or any subcontractor in performing the work provided for herein;

AGREEMENT

- (2) Provides it shall not be canceled or altered without thirty (30) days' written notice thereof given to CITY by registered mail.

H. Each such policy of insurance provided for in paragraph A. shall:

- (1) Be issued by an insurance company approved in writing by CITY, which is qualified to do business in the State of California;
- (2) Name as additional insureds the CITY, its officers, agents and employees, and any other parties specified in the bid documents to be so included;
- (3) Specify it acts as primary insurance and that no insurance held or owned by the designated additional insureds shall be called upon to cover a loss under said policy;
- (4) Contain a clause substantially in the following words:

"It is hereby understood and agreed that this policy may not be canceled nor the amount of the coverage thereof reduced until thirty (30) days after receipt by CITY of a written notice of such cancellation or reduction of coverage as evidenced by receipt of a registered letter."

- (5) Otherwise be in form satisfactory to CITY.

I. The CONTRACTOR shall at the time of the execution of the contract present the original policies of insurance required in paragraph A., hereof, or present an endorsement of the insurance company, showing the issuance of such insurance, and the additional insureds and other provisions required herein.

6. CONTRACTOR'S LIABILITY: The City of Montclair and its respective officers, agents and employees shall not be answerable or accountable in any manner for any loss or damage that may happen to the project or any part thereof, or for any of the materials or other things used or employed in performing the project; or for injury or damage to any person or persons, either workmen, employees of the CONTRACTOR or his subcontractors or the public, whatsoever arising out of or in connection with the performance of the project. The CONTRACTOR shall be responsible for any damage or injury to any person or property resulting from defects or obstructions or from any cause whatsoever, except the sole negligence or willful misconduct of CITY, its employees, servants, or independent contractors who are directly responsible to CITY during the progress of the project or at any time before its completion and final acceptance.

The CONTRACTOR will indemnify CITY against and will hold and save CITY harmless from any and all actions, claims, damages to persons or property, penalties, obligations, or liabilities that may be asserted or claimed by any person, firm, entity, corporation, political subdivision, or other organization arising out of or in connection with the work, operation, or activities of the CONTRACTOR, his agents, employees, subcontractors, or invitees provided for herein, whether or not there is concurrent passive or active negligence on the part of CITY, but excluding such actions, claims, damages to persons or property, penalties, obligations, or liabilities arising from the sole negligence or willful

AGREEMENT

misconduct of CITY, its employees, servants, or independent contractors who are directly responsible to CITY, and in connection therewith:

- a. The CONTRACTOR will defend any action or actions filed in connection with any of said claims, damages, penalties, obligations, or liabilities and will pay all costs and expenses, including attorneys' fees incurred in connection therewith.
- b. The CONTRACTOR will promptly pay any judgment or award rendered against the CONTRACTOR or CITY covering such claims, damages, penalties, obligations, and liabilities arising out of or in connection with such work, operations, or activities of the CONTRACTOR hereunder or reasonable settlement in lieu of judgment or award, and the CONTRACTOR agrees to save and hold the CITY harmless therefrom.
- c. In the event CITY is made a party to any action or proceeding filed or prosecuted against the CONTRACTOR for damages or other claims arising out of or in connection with the project, operation, or activities of the CONTRACTOR hereunder, the CONTRACTOR agrees to pay to CITY any and all costs and expenses incurred by CITY in such action or proceeding together with reasonable attorneys' fees.

Money due to the CONTRACTOR under and by virtue of the contract, as shall be considered necessary by CITY, may be retained by CITY until disposition has been made of such actions or claims for damage as aforesaid.

7. NONDISCRIMINATION: No discrimination shall be made in the employment of persons upon public works because of the race, color, sex, sexual preference, sexual orientation, or religion of such persons, and every contractor for public works violating this section is subject to all the penalties imposed for a violation of Division 2, Part 7, Chapter 1 of the Labor Code in accordance with the provisions of § 1735 of said Code.

8. INELIGIBLE SUBCONTRACTORS: The CONTRACTOR shall be prohibited from performing work on this project with a subcontractor who is ineligible to perform on the project pursuant to § 1777.1 and § 1777.7 of the Labor Code.

9. CONTRACT PRICE AND PAYMENT: CITY shall pay to the CONTRACTOR for furnishing the material and doing the prescribed work the unit prices set forth in accordance with CONTRACTOR's Proposal dated **October 28, 2015**.

10. ATTORNEYS' FEES: In the event that any action or proceeding is brought by either party to enforce any term or provision of this Agreement, the prevailing party shall recover its reasonable attorneys' fees and costs incurred with respect thereto.

11. EFFECT OF PARTIAL INVALIDITY

If any term or provision of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement and any application of the terms shall remain valid and enforceable under this Agreement or California law.

AGREEMENT

IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly executed with all the formalities required by law on the respective dates set forth opposite their signatures.

CONTRACTOR

Rasmussen Brothers Construction, Inc.
40441 Gavilan Mountain Rd.
Fallbrook, CA 92028

CITY

CITY OF MONTCLAIR, CALIFORNIA
5111 Benito Street
Montclair, CA 91763

Name Title

Paul M. Eaton
Mayor

Date _____

Date _____

ATTEST:

Name

Andrea M. Phillips
Deputy City Clerk

Title

Date _____

APPROVED AS TO FORM:

Diane E. Robbins
City Attorney

AGENDA REPORT

SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 15-94 WITH THE CITY OF UPLAND EXTENDING THE TERM OF AGREEMENT NO. 13-100 FOR JOINT SHARING OF FIRE DEPARTMENT COMMAND STAFF AND EXPANSION OF AUTOMATIC AND MUTUAL AID THROUGH MUTUAL AGREEMENT TO VACATE SERVICE BOUNDARIES

DATE: December 7, 2015
SECTION: AGREEMENTS
ITEM NO.: 2
FILE I.D.: FRD060
DEPT.: CITY MGR.

CONSIDER AUTHORIZING THE CITY MANAGER TO EXECUTE ALL DOCUMENTS ON BEHALF OF THE CITY OF MONTCLAIR IN RELATION TO IMPLEMENTATION OF AGREEMENT NO. 15-94

REASON FOR CONSIDERATION: On December 16, 2013, the City Council approved Agreement No. 13-100, a Memorandum of Understanding between the Cities of Montclair and Upland for joint sharing of Fire Department command staff and expansion of automatic and mutual aid through mutual agreement to vacate service boundaries. This Agreement set into action a two-year pilot program that is intended to determine the feasibility and practicality of combining Fire Department command/administrative structures into one single structure under direction of a jointly designated Fire Chief.

On May 4, 2015, the City Council approved Agreement No. 15-27 amending Agreement No. 13-100 to include expansion of shared-cost positions to include nonsafety administrative personnel and a reformulation in the proportionate formula for shared costs for the Fire Chief position.

In order to fully implement all aspects of the two-year pilot program and continue the phased approach towards full implementation of combining Fire Department command/administrative structures into one single structure under direction of a jointly designated Fire Chief, City staff proposes amending Agreement No. 13-100 extending the term of the two-year pilot program.

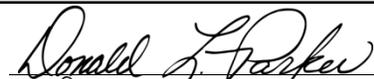
A copy of proposed Agreement No. 15-94 is attached for the City Council's review and consideration.

BACKGROUND: At the November 3, 2014 City Council Meeting, the City Council was provided with a presentation from former retired Fire Chief Richard Mayhew discussing the challenges and obstacles, as well as rewards, faced during the first year of the Joint Sharing of Fire Department Command Staff and Expansion of Automatic and Mutual Aid. Former retired Fire Chief Mayhew reviewed with the City Council the goals and

Prepared by:



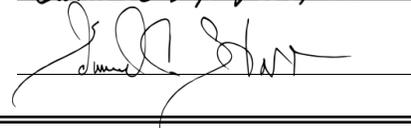
Fiscal Impact
Finance Review:



Proofed by:



Reviewed and
Approved By:



objectives of the pilot program, discussed the phased approach toward full implementation, and provided an overview of each phase.

The City Council directed City staff to continue with the phased approach for the full implementation of the pilot program

IMPLEMENTATION OF PHASES ONE, TWO, THREE, AND FOUR

Phase One: Command Staff Sharing. During the first phase of the program, the Montclair and Upland Fire Departments respectively implemented the intent of Agreement No. 13-100 by providing fire protection and emergency medical services under the direction of a unified command structure.

The purpose of *Phase One* was for Montclair and Upland to:

- Share designated fire command staff in order to reduce administrative costs, expand resources and enhance service quality;
- Eliminate duplication of administrative costs and duplicative requirements for specialized equipment; and
- Allow both cities to share in economic savings related to reduction of management and administrative staffing.

Command staff sharing was implemented on January 1, 2014, as part of *Phase One* of the Joint Sharing of Fire Department Command Staff and Expansion of Automatic and Mutual Aid plan.

Phase Two: Suspension of Service Boundaries. During the second phase of the program, the Cities of Montclair and Upland jointly entered into an agreement with Consolidated Fire Agencies of San Bernardino County (CONFIRE) for joint provision of dispatch services.

The purpose of *Phase Two* was for Montclair and Upland to:

- Suspend service boundaries for the delivery of fire protection and emergency medical services;
- Implement joint dispatching and communication of services;
- Reduce the requirement for personnel in specified service classifications; and
- Enhance training environments and mutual cooperation.

The transition to CONFIRE was pivotal for both agencies because it provided access to Automatic Vehicle Location (AVL) software, which allows dispatchers to know where fire units are located in real time via a satellite surveillance system. The use of AVL made it possible for the boundary drop concept to be fully implemented. The suspension of service boundaries has achieved equilateral sharing of resources and expanded the capacity of both agencies to provide superior service.

Suspension of service boundaries and joint dispatch service were implemented on

June 23, 2014, as part of *Phase Two* of the Joint Sharing of Fire Department Command Staff and Expansion of Automatic and Mutual Aid Plan.

Phase Three: Integration of Training and Policy Manuals. During the third phase of the program, the Montclair and Upland Fire Departments began working towards the creation of joint Policy and Training Manuals to be implemented by both agencies.

The intent of creating joint Policy and Training Manuals is to streamline procedures and eliminate procedural inconsistencies that may affect the cohesion of both agencies. Currently, the majority of the training standards have been developed helping to synchronize methods of operation for both agencies. The remaining standards are currently in the review process.

The integration of policy manuals is considered by City staff from both Montclair and Upland to be a long term goal and objective.

The joint Policy and Training Manuals are being developed utilizing a committee comprised of members of City staff from both Montclair and Upland. The committee meets regularly, develops draft policies, and provides policy recommendations to the Fire Chief.

At this time, *Phase Three* has yet to be fully completed, and City staff from both Montclair and Upland are continuing their efforts to develop joint Policy and Training Manuals.

Phase Four: Expansion of Shared-cost Positions to include Nonsafety Administrative Personnel. In order to implement the fourth phase of the program, the Montclair and Upland City Councils elected to amend Agreement No. 13-100, expanding the shared-cost positions to include nonsafety administrative personnel.

Agreement No. 13-100 included provisions that allow for the expansion of shared-cost services and staff-sharing to include nonsafety administrative personnel; however, there was no specific language in Agreement No. 13-100 that indicated which nonsafety administrative personnel would be included under such provisions. As such, City staff recommended amending Agreement No. 13-100 in order to specify which nonsafety administrative positions would be included in the shared-cost component of the pilot program. The two nonsafety administrative personnel included under the shared-cost and staff-sharing provisions are:

- Emergency Services Coordinator/Administrative Services Officer; and
- Senior Administrative Assistant

Furthermore, as part of the Amendment, City staff recommended a reformulation of the proportionate formula for shared-costs for the Fire Chief position, and adjusting the functional areas assigned to the Deputy Fire Chief positions.

The purpose of *Phase Four* was for Montclair and Upland to:

- Expand the scope of shared-cost and shared staff positions to allow for nonsafety administrative personnel to be included in the staff sharing concept in order to reduce administrative costs, expand resources, and enhance service

quality; and

- Expand the shared-cost and shared staff positions to include the Emergency Services Coordinator/Administrative Services Officer and Senior Administrative Assistant; and
- Adjust the shared cost formula for the Fire Chief position in order to reflect a more balanced approach towards costs considering the time spent by the Fire Chief between both agencies in the course of his work; and
- Adjust the functional areas assigned to each Deputy Fire Chief position in order to maximize the resources of each agency and the expertise of each incumbent.

Expansion of shared-cost positions to include nonsafety administrative personnel, a reformulation of the proportionate formulas for shared costs for the Fire Chief position, and adjusting the functional areas assigned to the Deputy Fire Chief Positions were implemented on May 5, 2015, as part of *Phase Four* of the Joint Sharing of Fire Department Command Staff and Expansion of Automatic and Mutual Aid plan.

PROPOSED AMENDMENT TO EXTEND TERM OF PILOT PROGRAM

Agreement No. 13-100 is set to expire on December 31, 2015 and includes provisions that allow for the extension of the term of the two-year pilot program. The following includes the two provisions of Agreement No. 13-100 that allow for an extension of terms.

- ***Section I. Term. Subsection D. Extension of Pilot Program:*** Montclair and Upland, by mutual agreement of their respective City Councils, may extend Agreement No. 15-27 to continue the original two-year pilot program for an additional period of time to be determined by both Parties not to exceed an additional two years; and
- ***Section I. Term. Subsection E. Extension of Agreement:*** Montclair and Upland, by mutual agreement of their respective City Councils, may exit the pilot program and extend the terms of Agreement No. 15-27 for a three-year period with provision for successive two-year extensions thereafter.

Subsection D. Extension of Pilot Program was included in the Agreement in order to allow for further examination of the feasibility and practicality of the pilot program, in the event that all phases of the pilot program were not implemented during its initial two-year period. **Subsection E. Extension of Agreement** was included in the Agreement in the event that Montclair and Upland, by mutual agreement of their respective City Councils, elected to move beyond the pilot program and extend the terms of the Agreement with subsequent automatic renewals.

It should be noted that with the retirement of former Fire Chief Mayhew on July 18, 2015, City staff, from both Montclair and Upland, elected to cease moving forward with additional phases of the pilot program until a new Fire Chief could be chosen. The temporary suspension of additional phases was conducted in order to allow the new Fire Chief an opportunity to review the pilot program and make recommendations regarding future additional phases.

Given the temporary suspension of additional phases of the pilot program and the status of existing phases, City staff is recommending an amendment to Agreement No.

13-100 extending the term of the two-year pilot program for an additional two years. This extension of the two-year pilot program would allow for the full implementation of existing phases, implementation of possible future phases, and the continuation of cost saving mechanisms.

FISCAL IMPACT: In Fiscal Year 2009-10, the Montclair City Council allocated approximately \$5,674,065 for Fire Department operations, including \$5,124,159 for wages and benefits. For Fiscal Year 2014-15, the Montclair City Council allocated approximately \$4,106,681 for Fire Department operations, including \$ 3,497,249 for wages and benefits.

In order to calculate a cost savings from the implementation of the pilot program a cost saving analysis was conducted for positions affected by the staff and cost sharing provisions of the pilot program. To compensate for irregularities in costs associated with the preparation of the pilot program that were observed in Fiscal Years 11-12 and 13-14, City staff elected to compare Fiscal Year 2009-10 and Fiscal Year 2014-15 Fire Department expenditures for the analysis.

The following positions were included in the analysis Fire Chief, Deputy Fire Chief, Battalion Chief, Fire Captain, Emergency Services Coordinator/Administrative Services Officer, Fire Engineer, Firefighter, and Administrative Specialist. In order to provide a more accurate portrait of cost savings the analysis only looked at actual wages, overtime, and stipends. Furthermore, the analysis also looked at cost savings related to the migration to CONFIRE for the provision of dispatch services.

Implementation of the staff and cost sharing provisions of Agreement No. 13-100 and Agreement No. 15-27, as well as the migration to CONFIRE for dispatch services, has resulted in an approximate cost savings of roughly \$416,000, when comparing Fiscal Year 2009-10 and Fiscal Year 2014-15 Fire Department expenditures. Personnel related savings was roughly \$408,427 and service cost savings related to the migration to CONFIRE was roughly \$7,700.

Adoption of proposed Agreement No. 15-94 would allow the City to extend the terms of the current pilot program allowing for continued fiscal and operational efficiencies within the Montclair and Upland fire services. Furthermore, it would allow for a continued effort at implementing cost saving mechanisms outlined in the pilot program.

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

1. Approve Agreement No. 15-94 extending the term of Agreement No. 13-100 between the cities of Montclair and Upland for the joint sharing of command staff and expansion of automatic and mutual aid through mutual agreement to vacate service boundaries.
2. Authorize the City Manager to execute all documents on behalf of the City of Montclair in relation to implementation of Agreement No. 15-94.

**SECOND AMENDMENT TO MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITIES OF MONTCLAIR AND UPLAND
FOR JOINT SHARING OF FIRE DEPARTMENT COMMAND STAFF
AND EXPANSION OF AUTOMATIC AND MUTUAL AID THROUGH MUTUAL
AGREEMENT TO VACATE SERVICE BOUNDARIES**

THIS AGREEMENT ("Second Amendment") amending Agreement No. 13-100 ("Agreement"), a Memorandum of Understanding Between the Cities of Montclair and Upland for Joint Sharing of Fire Department Command Staff and Expansion of Automatic and Mutual Aid Through Mutual Agreement to Vacate Service Boundaries, is entered into as of this _____ day of _____, 2015, by and between the CITY OF MONTCLAIR, a municipal corporation, hereinafter referred to as "Montclair," and the CITY OF UPLAND, a municipal corporation, hereinafter referred to as "Upland." Montclair and Upland may be referred to in this Agreement individually as "Montclair" or "Upland" and jointly as "Cities" or "Parties."

WITNESSETH:

WHEREAS, Montclair and Upland previously entered into a Joint Sharing of Fire Department Command Staff and Expansion of Automatic and Mutual Aid Through Mutual Agreement to Vacate Service Boundaries effective January 1, 2014, for the provision of providing all-risk fire services, as stipulated in Agreement No. 13-100 entitled a "Memorandum of Understanding Between the Cities of Montclair and Upland for Joint Sharing of Fire Department Command Staff and Expansion of Automatic and Mutual Aid Through Mutual Agreement to Vacate Service Boundaries" dated in December of 2013 ("Agreement"); and

WHEREAS, Montclair and Upland previously desired to amend certain terms of Agreement No. 13-100 in order to include the expansion of shared-cost positions to include nonsafety administrative personnel and a reformulation in the proportionate

formula for shared costs for the Fire Chief position, as stipulated in Agreement No. 15-27 entitled the “First Amendment to Memorandum of Understanding Between the Cities of Montclair and Upland for Joint Sharing of Fire Department Command Staff and Expansion of Automatic and Mutual Aid Through Mutual Agreement to Vacate Service Boundaries” dated in May of 2015 (“First Amendment”); and

WHEREAS, the Parties desire to amend certain terms of the Agreement as set forth in this Amendment.

NOW, THEREFORE, in consideration of the mutual covenants contained in Agreement No. 13-100 and Agreement No. 15-27, the Parties agree to the following revisions:

Section I. Term.

The first paragraph of Section I. Term of the Agreement is hereby replaced in its entirety with the following:

Term. The term of this Agreement shall be from January 1, 2016 through December 31, 2017, unless mutually extended or sooner terminated as provided herein.

PROVISIONS OF AGREEMENT. All other terms, conditions, and provisions of the Agreement and First Amendment, to the extent not modified with this Second Amendment, shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the dates set forth below.

CITY OF UPLAND

Dated: _____

By: _____

Ray Musser
Mayor

Attest:

Dated: _____

By: _____

Jeannette Vagnozzi,
City Clerk

Approved as to Form:

Dated: _____

By: _____

Kimberly Hall Barlow
City Attorney

CITY OF MONTCLAIR

Dated: _____

By: _____

Paul M. Eaton
Mayor

Attest:

Dated: _____

By: _____

Andrea M. Phillips
Deputy City Clerk

Approved as to Form:

Dated: _____

By: _____

Diane E. Robbins
City Attorney

AGENDA REPORT

SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 15-95 WITH QUACH INVESTMENTS, OR BUYER OF PROPERTY LOCATED AT 4875 MISSION BOULEVARD, GUARANTYING THE UNDERGROUNDING OF EXISTING OVERHEAD UTILITIES ALONG THE MISSION BOULEVARD AND MONTE VISTA AVENUE FRONTAGES OF THIS PROPERTY, SUBJECT TO REVISIONS AND COMPLETION OF AGREEMENT BY CITY ATTORNEY

DATE: December 7, 2015

SECTION: AGREEMENTS

ITEM NO.: 3

FILE I.D.: LDU600

DEPT.: PUBLIC WORKS

CONSIDER AUTHORIZING CITY MANAGER OR FINANCE DIRECTOR TO RELEASE FUNDS FROM THE ESCROW ACCOUNT TO BE ESTABLISHED UNDER THIS AGREEMENT

REASON FOR CONSIDERATION: Agreements with the City of Montclair require City Council approval.

BACKGROUND: Development of the property located at the southwest corner of Mission Boulevard and Monte Vista Avenue, addressed as 4875 Mission Boulevard, was presented to the Planning Commission with a recommendation for approval on February 13, 2007. One of the conditions of approval addressed utility undergrounding along Mission Boulevard and Monte Vista Avenue within the property frontage. The developer, Quach Investments, completed the undergrounding of electrical lines, but not Verizon, AT&T, or Time Warner communication lines. The developer was granted occupancy of the completed development after submitting evidence that the utility undergrounding invoices submitted by the remaining utility companies had been paid. However, they had not been paid.

Staff has been working to resolve this issue since 2009, but without success until recently. Quach Investments had requested relief from the undergrounding requirement, or deferral of the work until such time as cash flow generated from the completed development could pay for the remaining work. On two separate occasions, the City Council heard an appeal from Quach Investments to overturn staff's denial of relief from the condition, and both times the denial was upheld.

Quach Investments is now in escrow to sell the property. The buyer would like to see the undergrounding issue resolved, preferably with Quach Investments completing the work. Based on the proposed sale price of the property, which has not been disclosed, sufficient funds should be available to complete this work. Quach Investments had previously attempted to obtain a bond guarantying performance of the remaining work, but was unsuccessful. The attached agreement had previously been prepared for that purposed.

Prepared by:  Fiscal Impact Finance Review: 

Proofed by:  Reviewed and Approved By: 

The details of the agreement are still being worked out, but the intent is that funds from the sale of the property would be put in an escrow account with funds being released to the three utility companies upon presentation of invoices from those utility companies to the escrow company. The funds would be released upon approval of the buyer, the seller, and the City. Upon receipt of the funds by each utility company and payment of outstanding fees owed to the City by Quach Investments, staff will release for occupancy five remaining units.

The attached agreement is incomplete and is still being developed. However, the buyer wishes to close escrow by December 11, 2015, and needs to have this agreement executed as a condition of escrow. Therefore, time is of the essence. It is also unclear at this time whether the agreement will be with Quach Investments, the seller, or another party, the buyer. The Council is asked to approve the agreement subject to revisions and completion by the City Attorney, at which time the agreement will be executed by both parties.

FISCAL IMPACT: The agreement has no negative fiscal impact to the City. Should the seller or buyer fail to honor the terms of the agreement, the City would not be obligated to complete the remaining undergrounding work. The likelihood that the work would not be completed is remote since funds for that work would be deposited in escrow with those funds only being released by the City's authority. The fiscal impact is potentially and likely positive with the completion of leasing the remaining units in the center and generating additional sales tax.

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

1. Approve Agreement No. 15-95 with Quach Investments, or buyer of property located at 4875 Mission Boulevard, an agreement guarantying the undergrounding of existing overhead utilities along the Mission Boulevard and Monte Vista Avenue frontages of this property, subject to revisions and completion of agreement by City Attorney.
2. Authorize City Manager or Finance Director to release funds from the escrow account to be established under this agreement.

UTILITY UNDERGROUNDING AGREEMENT

This Utility Undergrounding Agreement is made and entered into as of this _____ day of _____, 2015, by and between the City of Montclair, a municipal corporation, hereinafter designated as "City," and Quach Investments, hereinafter designated as "Owner."

WHEREAS, Owner is the owner of Property located within the City of Montclair at 4875 Monte Vista Avenue; and

WHEREAS, conditions of development for Property require Owner to underground all utilities along the Mission Boulevard and Monte Vista Avenue frontages of Property; and

WHEREAS, Southern California Edison undergrounding work has already been completed to the City's satisfaction, except for the removal of poles; and

WHEREAS, Verizon, AT&T, and Time Warner, owners of the overhead utilities along the Mission Boulevard and Monte Vista Avenue frontages of Property, have prepared or will prepare plans for the undergrounding work required of Owner for compliance with conditions of development of Property; and

WHEREAS, the cost of the complete undergrounding work is estimated at \$380,958, including 10% contingency, and

WHEREAS, Owner has requested that utility undergrounding work be deferred as herein provided.

NOW, THEREFORE, IT IS AGREED by and between City and Owner as follows:

1. City consents to the deferral of payment for the utility undergrounding as required by the conditions of approval of 4875 Mission Boulevard to a target date of June 30, 2016, with all work being completed as scheduled by Verizon, AT&T, and Time Warner companies.
2. Owner shall deposit into an escrow account by December 15, 2015, (hereinafter referred to as "Utility Escrow") the sum of \$346,326 + 10% (\$34,632) = \$380,958 distributed as follows:
 - a) Verizon—\$162,909
 - b) AT&T—\$92,000
 - c) Time Warner Cable—\$91,417
3. Owner's payment of the \$380,958 shall be paid by Good News Escrow, funds derived from the conclusion of the sale of the property. Any amounts remaining in escrow at the conclusion of all work relating to the undergrounding of the utilities shall be refunded to Owner immediately upon notification to escrow. No other party shall have any rights to these funds for any reason whatsoever.

4. Upon execution of agreement, furnishing of escrow deposit, and payment of any outstanding City fees, including Building Division fees currently estimated at \$5,627.25, City agrees to accept submittal of tenant improvement plans for any remaining unoccupied units of Property; issue building permits for said units upon approval of tenant improvement plans; and, upon satisfactory completion of tenant improvements, issue certificates of occupancy.

Severability: If any clause, sentence, or other portion of this agreement becomes illegal, null, or void for any reason, the remaining portions will remain in full force and effect.

Release: The City hereby releases Owner from any and all obligations relating to development, construction, Conditional Use Requirements, any other outstanding work required by the City known or unknown from the date of this Agreement. With the exception of any of their respective rights and obligations created pursuant to this Agreement, upon execution of this Agreement each party to this Agreement hereby mutually releases and discharges the other, its predecessors, successors and assigns and their respective officers, directors, employees, other representatives and shareholders, from any and all claims, demands, causes of action, obligations, and liabilities of every kind and nature whatsoever which each had, or claims to have had, or transactions, events or circumstances occurring prior to the date of execution of this Agreement, limited to the facts, circumstances, and claims which are the subject of this Action. It is further understood and agreed that each party hereby waives and all rights under Section 1542 of the Civil Code of the state of California, which reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE WHICH, IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

Attorneys Fees: In the event any legal proceeding is instituted to enforce any term or provision of this agreement, the prevailing party in said legal proceeding shall be entitled to recover attorney's fees, costs, and legal expenses from the opposing party in an amount determined by the court to be reasonable.

Governing Law: This agreement shall be governed by and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the undersigned have caused this agreement to be executed this _____ day of _____, 2015.

CITY OF MONTCLAIR

OWNER

A municipal corporation

By: _____
Paul M. Eaton, Mayor

By: _____

By: _____
Andrea M. Phillips, Deputy City Clerk

By: _____

Approved as to form:

By: _____
Diane Robbins, City Attorney

AGENDA REPORT

SUBJECT: CONSIDER ADOPTION OF RESOLUTION
NO. 15-3106 AMENDING PARK CURFEW
HOURS AT MACARTHUR PARK

DATE: December 7, 2015

SECTION: RESOLUTIONS

ITEM NO.: 1

FILE I.D.: PRK350

DEPT.: PUBLIC WORKS

REASON FOR CONSIDERATION: Section 9.12.160 of the Montclair Municipal Code requires that Montclair parks be closed between the hours of 10:00 p.m. and 5:00 a.m., but does allow modification of these hours if posted at any park. Resolution No. 15-3106 will amend park hours for MacArthur Park only. The City Council is requested to consider adopting Resolution No. 15-3106.

BACKGROUND: At the July 20, 2015, City Council meeting, a Montclair resident spoke during public comments about his concern over inappropriate activities taking place in MacArthur Park during the evening hours. The speaker requested that the City Council consider changing the evening closure hours of MacArthur Park. Following the meeting, City Council requested that staff look into the matter.

Public Works Director/City Engineer, Mike Hudson prepared a survey requesting the assistance of surrounding residents to respond by mail or through the city website. The survey presented the following options:

- Leave closure hours as they are: 5 a.m. to 10 p.m.
- Close park at 8 p.m.
- Change park hours to be opened from dawn to dusk
- Or, other

Of the 102 surveys mailed out, 22 residents responded. The majority of voters preferred that the park be closed from 8 p.m. to 5 a.m., daily.

Results of the survey were presented to the Public Works Committee at the September 17, 2015, meeting. The Committee recommended that the hours for MacArthur Park be modified in accordance with the desire of the majority of those residents responding to the survey.

FISCAL IMPACT: The cost to post signage at MacArthur Park with the new park hours will be no more than \$500.

RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 15-3106, amending park curfew hours at MacArthur Park.

Prepared by:



Fiscal Impact
Finance Review:



Proofed by:



Reviewed and
Approved By:



RESOLUTION NO. 15-3106

**A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF MONTCLAIR CHANGING THE
PARK CURFEW HOURS AT MACARTHUR
PARK**

WHEREAS, the hours for Montclair City parks are determined by Section 9.12.160 of the Montclair Municipal Code; and

WHEREAS, Section 9.12.160 of the Montclair Municipal Code states that Montclair City parks be closed between the hours of 5 a.m. and 10 p.m. unless otherwise posted; and

WHEREAS, area residents have expressed an interest in changing the curfew hours at MacArthur Park; and

WHEREAS, the City conducted a survey of area residents to determine their preference for MacArthur Park hours; and

WHEREAS, the survey results indicate that the majority of area residents prefer MacArthur Park to be closed from 8 p.m. to 5 a.m., daily.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Montclair does hereby adopt Resolution No. 15-3106, modifying the park curfew hours at MacArthur Park to be closed from 8 p.m. to 5 a.m. daily.

APPROVED AND ADOPTED this XX day of XX, 2015.

Mayor

ATTEST:

Deputy City Clerk

I, Andrea M. Phillips, Deputy City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 15-3106 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, 2015, and that it was adopted by the following vote, to-wit:

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

Andrea M. Phillips
Deputy City Clerk

**MINUTES OF THE MEETING OF THE MONTCLAIR
PERSONNEL COMMITTEE HELD ON MONDAY,
NOVEMBER 16, 2015, AT 8:22 P.M. IN THE CITY
ADMINISTRATIVE OFFICES, 5111 BENITO STREET,
MONTCLAIR, CALIFORNIA**

I. CALL TO ORDER

Mayor Pro Tem Raft called the meeting to order at 8:22 p.m.

II. ROLL CALL

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

III. APPROVAL OF MINUTES

A. Minutes of the Regular Personnel Committee Meeting of November 2, 2015.

Moved by City Manager Starr, seconded by Mayor Pro Tem Raft, and carried unanimously to approve the minutes of the Personnel Committee meeting of November 2, 2015.

IV. PUBLIC COMMENT - None

V. CLOSED SESSION

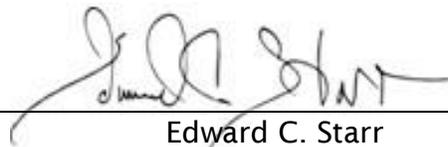
At 8:23 p.m., the Personnel Committee went into Closed Session regarding personnel matters related to appointments, resignations/terminations, and evaluations of employee performance.

At 8:45 p.m., the Personnel Committee returned from Closed Session. Mayor Pro Tem Raft stated that no announcements would be made at this time.

VI. ADJOURNMENT

At 8:45 p.m., Mayor Pro Tem Raft adjourned the Personnel Committee.

Submitted for Personnel Committee approval,



Edward C. Starr
City Manager

**MINUTES OF THE REGULAR MEETING OF THE PUBLIC
WORKS COMMITTEE HELD ON THURSDAY, NOVEMBER 19,
2015, AT 4:00 P.M. IN THE CITY MANAGER CONFERENCE
ROOM, 5111 BENITO STREET, MONTCLAIR, CALIFORNIA**

I. CALL TO ORDER

Chair Raft called the meeting to order at 4:00 p.m.

II. ROLL CALL

Present: Chair Raft; Committee Member Eaton; City Manager Starr; Deputy City Manager/Director of Economic Development Staats; Office of Public Safety/Police Chief deMoet; Public Works Director/City Engineer Hudson; Public Works Superintendent Mendez; and Facilities and Grounds Superintendent McGehee.

Absent: Director of Community Development Lustro

Also Present: Michael Diaz City Planner and Joseph Rosales NPDES Environmental Compliance Inspector

III. APPROVAL OF MINUTES

The Public Works Committee approved the minutes of the Public Works Committee Meeting of October 15, 2015.

IV. PUBLIC COMMENT

None.

V. PUBLIC WORKS DEPT. UPDATES/ITEMS

A. OPERATIONS

A summary of Operations activities for the past month was included with the agenda. There were no questions or issues with the report.

B. FACILITIES AND GROUNDS

1. A summary of Facilities and Grounds activities for the past month was included with the agenda. There were no questions or issues with the report.

2. PODOCARPUS TREES INSPECTION (ADD ON)

The City hired an arborist to determine why the podocarpus trees in the patio area near the Senior Center are dying. Soil samples and leaf samples were taken to identify the disease. The report came in today and the disease affecting the podocarpus trees around the Senior Center also appears to be affecting the large olive tree on the east side of the Library. Part of the olive tree

was determined to be unsafe with one tree trunk being completely dead. There is no cure for this particular tree disease and it is recommended by West Coast Arborist to remove the olive tree. The podocarpus trees on the north side of the Senior Center show root rot. This area contains many electrical and drain lines under the trees roots. West Coast Arborist recommended removing the dead trees and dying trees that contained over 60% of dead tissue. The trees will not recover and most trees on the north side of the Senior Center will be removed. In the future, the City can replant additional trees in this area that have a smaller root structure.

C. ENGINEERING DIVISION ITEMS

1. ART ASSOCIATED WITH STORM DRAIN INLETS AND CATCH BASINS

NPDES Environmental Compliance Inspector Joseph Rosales propose a project that would involve educating the public with the use of art on storm drain inlets and catch basins. The mural art project is intended to educate the public about the importance to keep storm drains clean. Litter and trash on surface streets enters the municipal storm drain then proceeds to local waterways. City Staff recommended contacting and involving Montclair High School students in the art department for the mural design. If the High School is interested, City employees would ask for ten sketches and the City would select the top three. Those designs could be painted at selected locations throughout the City. Four located that were proposed for the murals are a catch basin located in the Costco parking lot, the headwalls in the infiltration basin at the Paseos Park, the catch basin located on Ramona Avenue by the entrance to Tiki Drive-Inn, and the catch basin on the northeast corner of Benito Street and Fremont Avenue. These locations have a high volume of pedestrian presence.

Deputy City Manager/Director of Economic Development Staats recommended asking the property owners' permission before placing the art murals at specified locations. City Manager Starr stated that if this project moves forward, he would like a limited number of art murals placed throughout the City. City Staff would like to see how the public reacts and accepts the murals. If the murals are placed in high traffic areas, drivers may be distracted by the large design and not be focused and cause an accident. Committee Members recommends placing the murals near schools or a park where high pedestrian traffic and children are present. NPDES Environmental Compliance Inspector Joseph Rosales will look into placing the murals in different locations and inform the Committee with future results.

2. CONSIDERATION OF ADDITIONAL DRIVE APPROACH

One month ago, Ramona Elementary School's Principal made Public Works Director/City Engineer Hudson aware of a traffic issue associated with the school. A meeting was held at Ramona Elementary School with two police officers, 12 parents of students, a few teachers, the principal, and Montclair Public Works Director to discuss the current issues.

The school has received complaints associated with the drop off and pick up of students in the parking lot on Howard Street and Essex Avenue. Traffic flow is also an issue, drivers have been seen double parking, and children are crossing Howard Street illegally. A new drive approach modification at the Essex Park Parking lot was discussed in order to improve the circulation of traffic flow.

Public Works Staff recommended adding one new driveway onto Howard Street from the Essex parking lot with a one way exit only. A total of 60 parking spaces are currently available and the City's proposal will eliminate one parking space. An estimated cost for construction is \$15,000 with no commitments made to the School District by the City. Public Works Director/City Engineer Hudson only committed to presenting this proposal to the Public Works Committee.

Committee Member Eaton asked if this work could be constructed in-house. Public Works Staff concurred with a yes and with the cost to be estimated at a few hundred dollars for materials only. New signage will also be updated and installed. Clair Raft asked if the school has traffic monitors. Yes, Ramona Elementary School has staff that monitors the morning and afternoon when the majority of students are arriving and departing to help regulate the traffic flow, stop double parking, and for safety precautions. Without Police Officers present, drivers are not obeying the signage and regulations. Public Works Director/City Engineer Hudson believes adding the drive approach with an exit only will help the traffic flow and be the best solution.

VI. POLICE DEPARTMENT UPDATES/ITEMS

A. DISCUSSION ON ADDING STOP SIGNS IN THE 9600 BLOCK OF BEL AIR AVENUE

A complaint was made to Council Member Ruh via email from a resident named Barry Rowley who lives at 5500 Bel Air Avenue. He claims that due to the volume of traffic flow, the City should place more stop signs in his neighborhood. Mr. Rowley did not request any changes on the speed limit. Office of Public Safety/Police Chief deMoet called back the resident twice and left voicemails with no response. The Police Department had motor officers perform traffic

enforcement with no noticed issues with speed limits but noticed that traffic increase with drivers associated with drop off/pick up time with Vernon Middle School. Public Works Director/City Engineer Hudson conducted a survey of this area as well as looked into the accident history and determined no valid warrant for adding additional stop signs.

VII. COMMUNITY DEVELOPMENT DEPARTMENT PROJECT UPDATES/ITEMS

A. MONTE VISTA WATER DISTRICT BUILDING EXPANSION (ADD ON)

Michael Diaz City Planner and Deputy City Manager/Director of Economic Development Staats met on the 18th with the architect for the future Monte Vista Water District building expansion. The City was presented with the design plans to expand the facility building at the Central Avenue office. New office space will be added and the board room will be relocated to the first floor. A new shop building will be built to store heavy equipment. The designs are at the beginning stage and Monte Vista Water District will update the City on progress in the future.

B. MONTCLAIR SHOPPES 9303-9407 CENTRAL AVENUE UPDATE

The third building from the left is 90% complete, the middle building is 60% complete with the stucco currently being processed, and the north building is being framed. Construction work is also on-going for the entrance way with the signal revision and updates. Due to a power interruption and signal construction at 9:15 am the traffic signals on Central Avenue were placed on flash and full power was restored at 9:50 am. Edison informed Public Works Staff that due to the signal construction this power outage will reoccur on the 19th or 20th for roughly one hour, but all other power service will be fully operational.

C. ARROW STATION UPDATE (ADD ON)

Michael Diaz City Planner stated that the model home is complete and opened for viewing.

VIII. CAPITAL PROJECT UPDATES

Public Works Director/City Engineer Hudson reported the status of the following capital improvement projects:

A. MONTE VISTA AVENUE/UPRR GRADE SEPARATION PROJECT

A meeting is scheduled for Monday the 23rd with Public Works Staff and the Union Pacific Rail Road Company to complete an agreement for the construction and maintenance of this project. This project is on track and San Bernardino Associated Governments (SANDBAG) will choose a contractor by January of 2016 with Board Members approval. At this time a legal notice to proceed for plan checking and designs will be preformed. Plans will be presented to the City around February

to March of 2016 for the right-of-way certification which requires Council action. Council will also be required to submit a request for allocations of funds prior to April 1st to receive monies from the state for this project. Committee Members will be updates at future Public Works meetings.

B. RECREATION BUILDING REMODEL-PHASE TWO WEIGHT ROOM

This project went out to bid three weeks ago. The City had eight to ten bidders. The number one lowest bidder had a few minor errors with the bid being invalid due to the company failing to list a sub-contractor for the root penetration construction on the bid sheet. The second lowest bidding company could not product the 10% bid bond amount that is required by the City. The third lowest bidder was Rasmussen Bros Construction which the City has previous experience and no issues on past projects from the Reeder Ranch to the Recreation Building Phase 1. A notice of completion was approved by Council on November 16th.

C. CENTRAL AVENUE/SAN BERNARDINO STREET TRAFFIC SIGNAL UPGRADE

Construction has begun with an unrelated signal issue. A signal was resting on a green light on Central Avenue and cross traffic was not receiving a red light. Public Works Director/City Engineer Hudson viewed a two minute pause without a green light for the east/west bound traffic on his computer monitor. Public Works Staff then met at the signal light and placed the signal on flash. A technician came out to correct the issue and it was determined to be a program error that was entered into the system the previous day. The signals were shortly operating normally.

D. REEDER RANCH

This project is compete and a notice of completion was presented at the November 16th Council Meeting.

E. GOLD LINE

A presentation was made at the Gold Line Technical Committee Meeting on November 12th. Phase 2A construction was turned over to Metrolink and revenue service will begin on March 5th of 2016. The construction work was complete by Foothill Transit Constructors with minor issues to be resolved. City Manager Starr will be attending a work shop in Pasadena on November 27th that is sponsored by Cal State Transportation Division for the Cap and Trade application process.

IX. OTHER ITEMS

A. HOLT BOULEVARD SAN ANTONIO WASH CLEAN UP (ADD ON)

The Public Works Department has had multiple issues with homeless individuals residing under the Holt Boulevard bridge at the San Antonio Wash. Multiple departments have had related issues with clean up of large debris, ceasing of fires, and safety concerns. These issues continue with no permanent solution. The Public Works Department has placed fence, block walls, metal, steel, and rebar that has all been ripped or torn down. Public Works Superintendent Mendez suggests an engineer determine the appropriate material that can be filled under the bridge, possibly dirt or concrete at a grade level.

B. PROPERTY AT HOLT BOULEVARD AND CENTRAL AVENUE (ADD ON)

A developer has shown interested in the parcel lot located on Holt Boulevard and Central Avenue behind the Carl's Jr. Restaurant located at 5295 Holt Boulevard. City Staff has conducted a survey to determine if this parcel of land is worth developing. One requirement is to extend Brooks Street from the present terminus to Central Avenue. Public Works Director/City Engineer Hudson presented two alternatives to achieve this road connection. Extend Brooks Street to the reverse curve in order to align the street with the existing frontage road intersection. This proposed option is estimated at \$300,000 with the developer being financially responsible. Option two is to extend Brooks Street straight thru to Central Avenue. No impact on the development or industrial buildings but the frontage road will have to be moved back 100 feet to be aligned from the Holt Boulevard intersection. This cost is much greater at \$1.5 million and not financially feasible. The next step will be to present this survey study to the Real Estate Committee.

X. ADJOURNMENT

The next meeting of the Public Works Committee will be at 4:00 p.m. on December 17th, 2015, if there are items that need to be discussed.

At 5:12 p.m., Chair Raft adjourned the meeting.

Submitted for Public Works Committee approval,



Cenica Leonard
Transcribing Secretary