



September 22, 2016

TO: Honorable Mayor and City Council

FROM: Edward C. Starr, City Manager 

SUBJECT: CITY MANAGER'S WEEKLY REPORT: September 16-22, 2016

CITY MANAGER/ADMINISTRATIVE SERVICES DEPARTMENTS

- California is one of a dozen states that adheres to what has become known as the "California rule," related to protection of public employee pension benefits. Effectively, the California Rule, which has been built on a series of judicial decisions starting as early as 1955, states that the pension offered at time of hire becomes a vested right protected by contract law; and the benefit cannot be reduced unless offset by a new benefit of comparable value. The pension can, however, be increased, even retroactively for past work, as happened in California under SB 400 (1999), when many cities and counties migrated to the more expensive 3 percent @ 50 retirement formula for safety members.

Now, in a decision issued this past August in *Marin Association of Public Employees v. Marin County Employees' Retirement Association*, the California First District Court of Appeal has ruled that the Legislature can reduce public employee retirement benefits for workers who are still on the job. Writing for the [Court of Appeal, Justice Richman wrote](#), "While a public employee does have a 'vested right' to a pension, that right is only to a 'reasonable' pension, not an immutable entitlement to the most optimal formula of calculating the pension. And the Legislature may, prior to the employee's retirement, alter the formula, thereby reducing the anticipated pension. So long as the Legislature's modifications do not deprive the employee of a reasonable pension, there is no constitutional violation." The court failed to define what "reasonable" means—a failure likely to lead to additional lawsuits.

The judge cites several court rulings in the past that conclude cuts in pensions earned by current workers are allowed to give the pension system the flexibility needed to adjust to changing conditions and preserve reasonable pensions in the future.

The decision by the court upholds provisions of the Public Employee Pension Reform Act of 2012 (PEPRA) that affect 20 county-level pension systems across California, limiting the pay items that could be counted as compensation when calculating public employees' pensions. The California Public Employees Retirement System (CalPERS) expects PEPRA to save \$29 billion to \$38 billion over 30 years, not a major impact on a current CalPERS shortfall or "unfunded liability" of \$139 billion.

According to Federal Reserve Board data, as indicated in the following table, state and local pensions across the nation currently have \$1.8 trillion less than needed to cover benefits owed in the decades ahead.

State and Local Governments' Debt to Pension Fund Grows

Shortfalls increased by investment losses suffered during the 2008 credit-market crisis



Source: Federal Reserve Board

Bloomberg

Some of the court rulings cited in the appeal court's decision allowed changes in retirement ages, reductions of maximum possible pensions, repeals of cost-of-living adjustments, changes in required service years, pensions reduced from two-thirds to one-half of salary, and a reasonable increase in pension contributions. "Thus," Richman wrote, "short of actual abolition, a radical reduction of benefits, or a fiscally unjustifiable increase in employee contributions, the guiding principle is that "the governing body may make reasonable modifications and changes before the pension becomes payable and that until that time the employee does not have a right to any fixed or definite benefits but only to a substantial or reasonable pension." In effect, so long as modifications do not deprive an employee of a "reasonable" pension, there is no constitutional violation, the three-justice panel concluded.

The unanimous decision by the court rejects widely held assumptions that benefits cannot be reduced once employees start working. That constraint has hindered attempts statewide to meaningfully stem soaring taxpayer costs for pensions.

The ruling came in a suit by Marin County employee unions contending their vested rights were violated by PEPRA provisions that prevent pension boosts from unused vacation and leave, bonuses, terminal pay, and other premium pay components. Under PEPRA, these "anti-spiking" provisions apply to current workers. The major

part of PEPRA, however, including lower pension formulas and a cap, only apply to new employees hired on and after January 1, 2013.

The union claimed that under the California rule, historical pension spiking could not be stopped unless employees' losses were offset by comparable new compensation. The union also argued that such factors are considered part of workers' regular pay and that the county violated the California rule.

Pension reformers are already suggesting the appellate court decision will allow alteration of underlying pension formulas statewide. For example, keep higher formulas in place for past years, but roll back to lower formulas for employees' future years of work, thereby reducing pension accruals for future labor to more affordable levels. Until the *Marin* decision, the California rule has always blocked formulaic changes that lowered pension accruals for vested workers. Essentially, workers' pension formulas can be increased during their working years but never decreased. In questioning the legal foundation of the California rule, reformers have argued in the past for the state Supreme Court to revisit the issue. The *Marin* case is now expected to be the catalyst for a revisit.

- A new proposal for calculating cross-border sales taxes are in the discussion stage in Congress, after House Judiciary Committee Chairman Goodlatte introduced a new legal framework for tax sales after years of unproductive legislative and industry debate on the issue at the national level.

Currently, online sellers collect sales taxes on cross-border sales only if they have a presence in the state they're shipping to; but Goodlatte's plan would have sales taxed according to the tax base of the retailer and the tax rate in the state to which they're shipping to. For example, a California-based e-retailer shipping to New York would apply California's rules for taxing and New York's tax rate.

Alaska, Montana, New Hampshire, Delaware and Oregon do not charge sales tax, and it is not yet clear how a new national sales tax approach would affect these states. The five states have opposed the taxing of e-commerce sales.

A different approach that emerged in Congress last decade, and more recently under its current iteration three years ago, the *Marketplace Fairness Act of 2013*, letting state governments tax goods shipped into their states by out-of-state sellers is simpler and more straightforward.

The *Marketplace Fairness Act* authorizes each member state under the Streamlined Sales and Use Tax Agreement (the multi-state agreement for the administration and collection of sales and use taxes adopted on November 12, 2002) to require all sellers not qualifying for a small-seller exception (applicable to sellers with annual gross receipts in total U.S. remote sales not exceeding \$1 million) to collect and remit sales and use taxes with respect to remote sales under provisions of the agreement, but only if the agreement includes minimum simplification requirements relating to the administration of the tax, audits, and streamlined filing. The bill defines "remote sale" as a sale of goods or services into a state in which the seller would not legally be required to pay, collect, or remit state or local sales and use

taxes unless provided by the act. Many brick-and-mortar retailers argue that a sales tax on e-commerce is fairer to them from a competitive point of view. However, the legislation has languished.

Predictably, some large brick-and-mortar retailers are for the new proposal (considering it better than nothing), while just as predictably, e-commerce retailers are largely against it, except for Amazon. The online giant long ago stopped fighting sales taxes levied on online sellers, and has argued in favor of a national plan for some time.

The current debate may rekindle interest in passing the *Marketplace Fairness Act*, since many in Congress do not want to get behind the Goodlatte proposal. In the meantime, the states of Alabama and South Dakota are suing to try to get the U.S. Supreme Court to overrule the 1992 court ruling that put the current in-state requirement in place.

- Earlier this month, in a powerful demonstration of the federal government's commitment to transit, the Federal Transit Administration (FTA) announced a \$1.04 billion federal grant agreement with the San Diego Association of Governments (SanDAG) to extend existing Blue Line Trolley service from downtown San Diego to the growing University City area. The extension would improve access to employment hubs and numerous educational and medical facilities north of downtown, making it easier for people to travel throughout the city.

"The Obama Administration is committed to investing in transportation projects that improve mobility and provide ladders of opportunity for residents," said U.S. Transportation Secretary Anthony Foxx. "San Diego's Trolley extension will do just that by helping thousands of transit riders to access employment, education, healthcare, and other important services."

The 10.92-mile light rail extension, referred to in San Diego as the Mid-Coast Trolley, will serve major activity centers such as Old Town, Mission Bay Park, the Department of Veterans Affairs Medical Center, UC San Diego, and Westfield UTC shopping center. Officials estimate the project will serve 24,600 transit trips every weekday, with service anticipated to start in 2021.

With the signing of the federal grant agreement, FTA is committing a total of \$1.04 billion through its Capital Investment Grant (CIG) Program to the \$2.17 billion Mid-Coast Corridor Transit Project. In addition to the \$100 million that will be awarded with the signing of the grant agreement, the remaining federal funds will be provided over the course of 10 years on an annual payment schedule, subject to congressional approval during the annual appropriations process.

The CIG Program is the nation's primary grant program for funding major transit capital investments. Projects accepted into the highly competitive program must go through a multi-year, multi-step process, according to requirements in law in order to be eligible for and receive program funds.

Locally, the CIG Program, in conjunction with state cap-and-trade, demonstrates an alternative opportunity to fund the Gold Line extension from Azusa to Montclair if Measure M, in Los Angeles County, fails to receive the necessary two-thirds support of voters this November 8. Measure M, a half-cent sales tax increase that would continue indefinitely to fund a major expansion of the county's transit network, would generate at least \$860 million annually for various transportation and transit projects, including extension of the Gold Line to Claremont. The half-cent tax would double to one cent in 2039 to replace the revenue lost when Measure R, another half-cent sales tax for Los Angeles County transportation projects, expires. The one-cent tax would then continue indefinitely.

COMMUNITY DEVELOPMENT DEPARTMENT/ECONOMIC DEVELOPMENT

- There's a new car wash coming to Montclair! The vacant lot on the southeast corner of Dale Street and Ramona Avenue will be the home for the new, automated Baja Car Wash facility. It will feature a distinctive modern design and has been submitted for plan check review.

The drive-thru car wash is designed to provide a speedy wash, wax, and dry. Vacuums are also available for customer use. The Baja Car Wash system is focused on providing a fast, functional, and efficient car wash.



- Target is focusing heavily on its omnichannel strategy to engage shoppers across mediums ahead of the holiday season, with a focus on click and collect.

The company's e-commerce sales still make up a miniscule portion of its total business, but Target is looking to leverage its physical presence to engage shoppers digitally without relying only on home delivery orders. Omnichannel approaches could be the key to driving sales growth for brick-and-mortars during this year's holiday shopping season as consumers turn to e-commerce.

Target's new developments will likely help store staff handle increased traffic during the holiday season.

- **Target is adding dedicated in-store space to click and collect.** Target will be adding new customer service counters dedicated to click and collect orders in 70 stores over the next month. This will significantly remove friction from the click and collect experience, while increasing flexibility of its fulfillment options ahead of the busy holiday shopping season.
- **Target is also looking to smaller-format stores to help with e-commerce.** Target's CEO is hoping to open hundreds of smaller flex-format Target stores, with plans for 9 openings this year and at least 16 in 2017. In addition to selling regionalized inventory, these stores also operate as collection points for click and collect, without the increased cost of investing in a larger building.

Target's overall omnichannel push will be key during the holiday season. During Quarter 2 in 2016, Target reported e-commerce sales growth in the "mid-teens." However, comparable sales dropped 1.1 percent year-over-year (YoY).

As the holiday season approaches, many shoppers are likely planning on turning to e-commerce. Online sales during November and December are expected to grow just over 13 percent YoY, according to a report released by eMarketer. But because of weather disruptions and shopper deadlines for gift-giving, creating dedicated in-store sections and expanding the number of collection points for click and collect will serve as a boon for Target this holiday season. Looking forward, traditional retailers should focus on omnichannel strategies for the holidays in order to maximize in-store productivity while simultaneously supporting online shopping growth during this high-volume period.

Click and collect is a fulfillment option that lets shoppers place an online order and pick it up at a store.

HUMAN SERVICES DEPARTMENT

- Yesterday, the Montclair Community Collaborative Mental Health Center held an open house to celebrate its new location at the Family Resource Center, located at the corner of Central Avenue and Benito Street. Director of Human Services Marcia Richter, Ontario-Montclair School District Board Member Michael C. Flores, and several employees from the Human Services Department and Ontario-Montclair School District attended the event.

Counseling interns will utilize the Center to provide mental health services to students in the Ontario-Montclair School District.

Pictures taken at the event are included on Page 12.

- Montclair Day at the Fair is happening today. Those that live or work in Montclair can get into the Fair for only \$5 with the coupon offered on Page 13. Montclair Day tickets can also be purchased online (instructions are on the coupon).

Today's activities will include a parade featuring the Fire, Police, and Public Works Departments; the Senior Center; and Youth Center; and a special ceremony for Montclair's Community Heroes: Frank Corsaro (Senior Community Hero), Abel Benitez (Adult Community Hero), and Erin Alegria (Youth Community Hero).

City employees and the community may again purchase discount Fair tickets from the Recreation Center. Tickets are good any day the Fair is open. Adult tickets are \$12 and child tickets (6-12 years old) are \$6. Children 5 and under are free. Tickets must be purchased with cash. The Fair closes this Sunday, September 25.

POLICE DEPARTMENT

- Police Officers Douglas Griffith and Raquel Guzman were introduced at Monday's City Council meeting. Both Officers were hired on August 22.



Pictured L-R: Captain Jason Reed, Officer Douglas Griffith, Chief Robert Avels, Officer Raquel Guzman, and Lieutenant Brandon Kumanski

- Yesterday, the Police Department held a swearing-in ceremony for Officer Anthony del Rio. Anthony graduated from San Bernardino County Sheriff's Department Academy on September 8, as a Police Trainee. His effective date as Police Officer was September 19.



Welcome aboard, Anthony!

- Upland Police Department held a Fallen Officer Memorial Ceremony and Open House on Saturday. Chief Robert Avels and Lieutenant Brandon Kumanski attended the ceremony to witness the unveiling of the Upland Fallen Officer Memorial, honoring Officer Ernest R. Dark. The bronze fallen officer statue, as pictured below, sits in front of a granite memorial wall.



ECS:spa

"Autumn is a second spring when every leaf is a flower."

~ Albert Camus

SEPTEMBER 2016



22	First day of fall	
22	Montclair Day at the Fair	
26	Planning Commission Meeting Council Chambers	7:00 p.m.
27	City Manager's Staff Meeting City Hall Conference Room	9:00 a.m.



October Happenings

3	City Council Workshop – Audit Responsibilities and Process, Council Chambers	5:45 p.m.
3	City Council Meeting Council Chambers	7:00 p.m.
5	State of the City Community Center	11:30 a.m.
5	Community Action Committee Meeting Council Chambers	7:00 p.m.
10	Planning Commission Meeting Council Chambers	7:00 p.m.
11	City Manager’s Staff Meeting City Hall Conference Room	9:00 a.m.
17	Real Estate Committee Meeting City Hall Conference Room	5:30 p.m.
17	Code Enforcement/Public Safety Committee Meeting City Hall Conference Room	6:15 p.m.
17	City Council Meeting Council Chambers	7:00 p.m.
19	Safety Committee Meeting City Hall Conference Room	10:30 a.m.
20	Public Works Committee Meeting City Hall Conference Room	4:00 p.m.
24	Planning Commission Meeting Council Chambers	7:00 p.m.
31	Halloween	

Montclair Community Collaborative Mental Health Center Open House



Wednesday, September 21, 2016



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DARE TO FAIR



**MONTCLAIR
DAY AT THE FAIR**

THURSDAY, SEPT. 22

Exclusive offer: \$5 admission



MONTCLAIR DAY
presented by Wells Fargo

Two ways to purchase tickets

1. Go to LACountyFair.com/buytickets. Enter the quantity of Community Day Admission tickets. Use promo code: **montclair**
2. Present this discount coupon at any LA County Fair admission gate, Thursday, Sept. 22, 2016



\$5 Admission

\$5 admission with online purchase using promo code, or at LA County Fair gates by submitting this bar coded coupon, valid Thursday, Sept. 22, 2016 only. Not valid with any other offers. No cash value.

ATTRACTIONS:

JURASSIC PLANET*
Prehistoric creatures have defied extinction, making the Fair their new home. See (and hear) dozens of dinosaurs roaming the hillside in search of their next meal.

OUR BODY: THE UNIVERSE WITHIN*
Get up close and personal with the mysteries of human anatomy in this exhibition featuring real bodies.

LET THE GAMES BEGIN
Discover the who, what, when & where of the origins of each of the "Big Six" American Sports: Baseball, Football, Basketball, Soccer, Hockey & Golf.

CARNIVAL
Get the adrenaline pumping with 70 exciting rides and 40 fun-filled family games.

FOOD
Indulge in everything ooey, gooey, covered-in-chocolate and on-a-stick.

THE FARM
Head to The Farm for the best agri-tainment and animal encounters.

WINE, SPIRITS & BEER MARKETPLACE
Learn to taste like a pro with wine education classes and samplings of winners from the Los Angeles International Wine, Spirits & Beer Competitions.

**Nominal admission fee for ages 6 and older.*

Community Days at the Fair presented by Wells Fargo