

## NOTICE

### **THIS MEETING WILL BE CONDUCTED VIA WEBINAR/TELECONFERENCE. THE COUNCIL CHAMBERS WILL NOT BE OPEN TO THE PUBLIC.**

Pursuant to Executive Orders issued by Governor Newsom to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, this meeting will be conducted remotely via the ZOOM virtual meeting platform. In compliance with the Executive Orders, there will be no in-person meeting location, however the public may participate using any of the remote methods described below.

### LISTEN TO THE MEETING LIVE VIA ZOOM

Members of the public may participate in this meeting by joining the ZOOM conference via PC, Mac, iPad, iPhone, or Android device using the URL:

<https://zoom.us/j/95239872725>

### LISTEN TO THE MEETING LIVE VIA TELEPHONE

The public may participate via phone only (without a computer/smart device) by dialing the below numbers:

**Dial Number: 1-669-900-6833**

**Meeting ID: 952 3987 2725**

**ALL PARTICIPANTS WILL BE MUTED AUTOMATICALLY UPON ENTERING THE MEETING.  
THE CITY CLERK WILL UNMUTE THOSE WHO WISH TO SPEAK AT THE APPROPRIATE TIME.  
PLEASE KEEP YOURSELF ON MUTE WHEN NOT SPEAKING.**

#### **VERBAL PARTICIPATION USING ZOOM**

Please use the "Raise Hand" button to request to speak. Raised hands will only be acknowledged during the Public Hearing and Public Comment sections of the agenda and when the Meeting's presiding officer requests comments from the public.

If you want to provide public comments and are using a computer or laptop without a microphone connected or built in, you will also need to call in using the Teleconference Number and Meeting ID highlighted below, and dial your Participant ID on the phone when prompted. Your Participant ID is found in the "Phone Call" tab of the "Join Audio" settings. This option will also switch your audio over to the phone. Please do not use speaker mode and turn off your computer audio when speaking to prevent audio feedback.

#### **VERBAL PARTICIPATION OVER THE PHONE**

Please dial \*6 to mute and unmute yourself, and \*9 to "raise your hand" to request to speak. Raised hands will only be acknowledged during the Public Hearing and Public Comment sections of the agenda and when the Meeting's presiding officer requests comments from the public. Do not use speaker mode when speaking.

#### **ADA COMPLIANCE INFORMATION**

Meetings are accessible to people with disabilities. Requests in advance of the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting and the materials related to it. Individuals who need special assistance or a disability-related modification or accommodation to participate in this meeting, or who have a disability and wish to request an alternative format for the meeting materials, should contact the City Clerk at [cityclerk@cityofmontclair.org](mailto:cityclerk@cityofmontclair.org) or call (909) 625-9416. Every attempt will be made to swiftly address each request. (28 CFR 35.102-35.104 ADA Title II)

## PUBLIC COMMENT PROCEDURES

#### **MAKING VERBAL COMMENTS**

To provide verbal comments during the meeting, please visit [www.cityofmontclair.org/cc-comment](http://www.cityofmontclair.org/cc-comment) to fill out a Virtual Speaker Card to request to speak in advance. You may also call the City Clerk in advance at (909) 625-9416 to fill out the Virtual Speaker Card over the phone or e-mail your name, phone number if calling in during the meeting, and subject of comment or agenda item to [cityclerk@cityofmontclair.org](mailto:cityclerk@cityofmontclair.org) with "[Meeting Date] Virtual Speaker Card" as the subject line.

Meeting attendees who did not fill out the Virtual Speaker Card in advance will be given an opportunity to speak after those who requested to speak in advance.

#### **SUBMITTING WRITTEN COMMENTS**

Written comments (250 word limit) may be submitted prior to the meeting by filling out the Virtual Speaker Card ([www.cityofmontclair.org/cc-comment](http://www.cityofmontclair.org/cc-comment)), via e-mail ([cityclerk@cityofmontclair.org](mailto:cityclerk@cityofmontclair.org)), or via U.S. Mail (Mailing Address: City of Montclair, Attn: City Clerk, Re: [Meeting Date] Public Comment, 5111 Benito Street, Montclair, CA 91763), and will be read aloud during the meeting by the City Clerk at the appropriate time.

Please submit all requests to speak or written comments at least one hour prior to the start of the meeting. The City cannot be held responsible for U.S. Mail that does not arrive on time prior to the subject meeting.



**REGULAR JOINT MEETING OF THE  
CITY COUNCIL, SUCCESSOR AGENCY, MONTCLAIR HOUSING CORPORATION,  
MONTCLAIR HOUSING AUTHORITY, AND MONTCLAIR COMMUNITY FOUNDATION**

**AGENDA**

Monday, November 16, 2020  
7:00 p.m.

*As a courtesy, please place yourself on mute while the meeting is in session, unless speaking (Dial \*6 on the phone to toggle mute), and turn off/mute/disable all video/web cameras.*

*Persons wishing to make a public comment or speak on an agenda item, including public hearing and closed session items, are requested to complete a Virtual Speaker Card (VSC) at [www.cityofmontclair.org/cc-comment](http://www.cityofmontclair.org/cc-comment). The Mayor/Chair (or the meeting's Presiding Officer) will recognize those who have submitted a VSC at the time of the item's consideration and invite those individuals to provide comments on the item at that time. Those who did not fill out a VSC will have an opportunity to speak after those who did by using the "raise hand" function on the ZOOM meeting platform or over the phone by dialing \*9.*

*Audio recordings of the CC/SA/MHC/MHA/MCF meetings are available on the City's website at [www.cityofmontclair.org](http://www.cityofmontclair.org) and can be accessed by the end of the next business day following the meeting.*

- I. CALL TO ORDER** City Council [CC], Successor Agency Board [SA],  
Montclair Housing Corporation Board [MHC],  
Montclair Housing Authority Commission [MHA],  
Montclair Community Foundation Board [MCF]

**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 endorses any particular religious belief or form of invocation.*

**III. PLEDGE OF ALLEGIANCE**

**IV. ROLL CALL**

**V. PRESENTATIONS — None**

**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 up to five minutes to address the City Council/Boards of Directors/Commissioners. (Government Code Section 54954.3).*

*If you did not submit a Virtual Speaker Card and would like to speak on an item that is on the agenda, please request to speak during Public Comment to announce the agenda item on which you would like to comment so you may be called on to provide your comments at the time of that item's consideration.*

*Under the provisions of the Brown Act, the meeting bodies are prohibited from participating in substantial discussion of or taking action on items not listed on the agenda.*

**VII. PUBLIC HEARINGS**

- A. Consider Setting a Public Hearing for Monday, December 7, 2020, and Continuing the Review of Resolution No. 20-3285 Approving Tentative Tract Map No. 20273 to Subdivide a 6.68-Acre Site into Six Numbered Parcels and One Lettered Lot for a Public Park and Approving Precise Plan of Design No. 2017-20 and a Parking Management Plan for a Mixed-Use Project Within the Station District of the North Montclair Downtown Specific Plan to Said Public Hearing [CC]

- B. First Reading — Consider Ordinance No. 20-994 Amending Section 3.36.050 (Telephone Users Tax) of the Montclair Municipal Code to Provide Technical Clarification in Conformity with Existing Law [CC]  
Consider Setting a Public Hearing for Second Reading and Adoption of Ordinance No. 20-994 for Monday, December 7, 2020, at 7:00 p.m. [CC]

6

**VIII. CONSENT CALENDAR**

A. Approval of Minutes

- 1. Regular Joint Meeting — November 2, 2020 [CC/SA/MHC/MHA/MCF]

B. Administrative Reports

- 1. Consider Receiving and Filing of Treasurer’s Report [CC] 11
- 2. Consider Approval of Warrant Register & Payroll Documentation [CC] 12
- 3. Consider Receiving and Filing of Treasurer’s Report [SA] 13
- 4. Consider Approval of Warrant Register [SA] 14
- 5. Consider Receiving and Filing of Treasurer’s Report [MHC] 15
- 6. Consider Approval of Warrant Register [MHC] 16
- 7. Consider Receiving and Filing of Treasurer’s Report [MHA] 17
- 8. Consider Approval of Warrant Register [MHA] 18
- 9. Consider Authorizing a \$15,825 Appropriation from the Contingency Fund for Emergency Replacement of the Heating and Air Conditioning Unit at the Kids Station Facility Located at the Montclair Transcenter [CC] 19

C. Agreements

- 1. Consider Approval of Irrevocable Annexation Agreement No. 20-77-I-105 with Gerardo Zarate Chaves and Maria Miramontes for the Property Located at 11026 Roswell Avenue, Pomona (APN 1012-211-10-0000) [CC] 20
- 2. Consider Approval of Agreement No. 20-85 Amending Agreement No. 18-85 with Securitas Security Services USA, Inc. for Security Guard Services at the Montclair Transcenter [CC] 27
- 3. Consider Approval of Agreement No. 20-91 Amending Agreement No. 20-11 with Lexipol, LLC for Continued Management of the Police Department’s Policy and Procedures Manual, Law Enforcement Daily Training Bulletins (DTB), and DTB Management Services [CC]  
Consider Authorizing a \$5,669.25 Appropriation from the Prop 30/AB 109 Fund for Daily Training Bulletins and DTB Management Services [CC] 31

D. Resolutions — None

**IX. PULLED CONSENT CALENDAR ITEMS**

**X. COMMUNICATIONS**

- A. Department Reports — None
- B. City Attorney
  - 1. Request for City Council to Meet in Closed Session Pursuant to Government Code §54956.9(d)(1) — Conference with Legal Counsel Regarding Pending Litigation [CC]  
*Panda Motors v. Montclair*
  - 2. Request for City Council to Meet in Closed Session Pursuant to Government Code §54956.9(d)(4) — Conference with Legal Counsel Regarding Initiation of Litigation [CC]  
*1 Potential Case*
- C. City Manager/Executive Director
  - 1. COVID-19 Update
- D. Mayor/Chairperson
- E. Council Members/Directors
- F. Committee Meeting Minutes (*for informational purposes only*) — None

**XI. CLOSED SESSION**

**XII. CLOSED SESSION ANNOUNCEMENTS**

**XIII. ADJOURNMENT**

*The next regular joint meeting of the City Council, Successor Agency Board, Montclair Housing Corporation Board, Montclair Housing Authority Commission, and Montclair Community Foundation Board will be held on Monday, December 7, 2020, at 7:00 p.m.*

*Reports, backup materials, and additional materials related to any item on this Agenda distributed to the Acting Bodies after publication of the Agenda packet are available for public inspection in in the Office of the City Clerk between 7:00 a.m. and 6:00 p.m., Monday through Thursday. Pursuant to the Governor’s Executive Orders in relation to the COVID-19 pandemic, please call the City Clerk’s Office at (909) 625-9416 or send an e-mail to [cityclerk@cityofmontclair.org](mailto:cityclerk@cityofmontclair.org) to request such review of items via e-mail.*

*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 or e-mail [cityclerk@cityofmontclair.org](mailto:cityclerk@cityofmontclair.org). Notification 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, Andrea M. Phillips, City Clerk, 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 City’s website at <http://www.cityofmontclair.org/agendas> and on the bulletin board adjacent to the north door of Montclair City Hall at 5111 Benito Street, Montclair, CA 91763 on Thursday, November 12, 2020.*



# CITY COUNCIL AGENDA REPORT

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**DATE:** NOVEMBER 16, 2020                      **FILE I.D.:** LDU350/LDU375/ENV075  
**SECTION:** PUBLIC HEARINGS                      **DEPT.:** COMMUNITY DEV.  
**ITEM NO.:** A    **PREPARER:** M. DIAZ

**SUBJECT:** CONSIDER SETTING A PUBLIC HEARING FOR MONDAY, DECEMBER 7, 2020, AND CONTINUING THE REVIEW OF RESOLUTION NO. 20-3285 APPROVING TENTATIVE TRACT MAP NO. 20273 TO SUBDIVIDE A 6.68-ACRE SITE INTO SIX NUMBERED PARCELS AND ONE LETTERED LOT FOR A PUBLIC PARK AND APPROVING PRECISE PLAN OF DESIGN NO. 2017-20 AND A PARKING MANAGEMENT PLAN FOR A MIXED-USE PROJECT WITHIN THE STATION DISTRICT OF THE NORTH MONTCLAIR DOWNTOWN SPECIFIC PLAN TO SAID PUBLIC HEARING

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**REASON FOR CONSIDERATION:** Final review authority for all subdivisions of land requests, and entitlements associated with development projects within the boundaries of the North Montclair Downtown Specific Plan (NMDSP) lies with the City Council.

On Monday, October 5, 2020, a public hearing for *The Village at Montclair* project was conducted at which time the project was presented to the City Council and public comment was received. During the hearing, the Applicant/Developer presented modifications to Condition No. 20 of proposed Resolution No. 20-3285 regarding Flex Units for City Council consideration. Since the proposed changes were significant and offered late in the day, the City Council did not have sufficient time to evaluate and make an informed decision on the matter. To provide more time to study the issue further, the item was continued to the City Council's regularly scheduled meeting date on November 2, 2020. Since the October 5, 2020, City Council meeting, staff has participated in ongoing discussions with the applicant/developer to find a mutually acceptable resolution regarding Flex Units within the project. Staff believes the discussions are moving forward but need a bit more time to finalize present discussions and make an appropriate recommendation. Staff is requesting that the City Council continue the public hearing for this item to its next regularly scheduled meeting on December 7, 2020.

**FISCAL IMPACT:** There would be no fiscal impact for the City Council to continue the matter to its next regularly scheduled meeting date.

**RECOMMENDATION:** Staff recommends the City Council set a public hearing for Monday, December 7, 2020, and continue the review of Resolution No. 20-3285 Approving Tentative Tract Map No. 20273 to subdivide a 6.68-acre site into six numbered lots and one lettered lot for a public park and approving Precise Plan of Design No. 2017-20 and a Parking Management Plan for a mixed-use project within the Station District of the North Montclair Downtown Specific Plan to said public hearing.



# CITY COUNCIL AGENDA REPORT

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**DATE:** NOVEMBER 16, 2020                      **FILE I.D.:** TAX550  
**SECTION:** PUBLIC HEARINGS                      **DEPT.:** CITY MGR.  
**ITEM NO.:** B    **PREPARER:** E. STARR  
**SUBJECT:** FIRST READING — CONSIDER ORDINANCE NO. 20-994 AMENDING SECTION 3.36.050 (TELEPHONE USERS TAX) OF THE MONTCLAIR MUNICIPAL CODE TO PROVIDE TECHNICAL CLARIFICATION IN CONFORMITY WITH EXISTING LAW

CONSIDER SETTING A PUBLIC HEARING FOR SECOND READING AND ADOPTION OF ORDINANCE NO. 20-994 FOR MONDAY, DECEMBER 7, 2020 AT 7:00 P.M.

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**REASON FOR CONSIDERATION:** As indicated in **Table 1**, below, Ordinance No. 91-702 (or Chapter 3.36 of Title 3 of the Montclair Municipal Code — the Utility Users Tax, or "UUT") was adopted by the Montclair City Council on August 5, 1991.

Utility Users Taxes are authorized under Section 37100.5 of the Government Code; are levied on the consumption of public utility services; and may be charged as a percentage of the billing for electrical, gas, cable television, water, and telephone service. Montclair does not level the Utility Users Tax on cable television service.

Utility Users Tax rates in California vary from 1 to 11 percent. The State average is 5 percent and Montclair's current rate is 3.89 percent. The Utility Users Tax was first levied on residential and business utility bills rendered on or after October 1, 1991. Montclair annually collects approximately \$2.4 million (pre-COVID-19) in UUT revenue.

Pursuant to the California Supreme Court's decision in *Santa Clara County Local Transportation Authority v. Guardino* upholding the voter approval requirements of Proposition 62, Montclair's Utility Users Tax was approved by voters at the June 2, 1998 Special Municipal Election (appearing on the ballot as "Measure D"), and again at the November 3, 1998 General Municipal Election (appearing on the ballot as "Measure M"), as indicated in **Table 1**. Measure M was put before the voters because of the successful circulation of a petition requiring a second vote on Montclair's Utility Users Tax.

Proposition 62 is a statewide statutory initiative adopted by California voters at the state's November 4, 1986 General Election requiring that all new local taxes be approved by the voters. However, the initiative was originally declared unconstitutional under a series of appellate court challenges. These case decisions include: *City of Westminster v. County of Orange* (1988), *Schopflin v. Dole* (1989), and *City of Woodlake v. Logan* (1991). The appellate courts ruled that Proposition 62 violated Article 11, Sections 9 and 11 of the State Constitution, which prohibit referenda (votes by the people) on local tax measures. The California Supreme Court refused to review these cases, letting stand the appellate court rulings that Proposition 62 was unconstitutional. In September 1995, four years after the *Woodlake* decision, the California Supreme Court, for the first time, reviewed and issued a case decision related to Proposition 62. The decision handed down in *Guardino* held that the voter approval requirements of Proposition 62 are valid. The Court found that the voter approval requirement of Proposition 62 is simply a conditional step necessary to adoption of a local government tax. Subsequent to *Guardino*, the Montclair Utility Users Tax was submitted to voters for approval.

**Table 1**, below, also demonstrates that at adoption of Ordinance No. 91-702, Montclair's Utility Users Tax rate was set at 5 percent. The City Council subsequently adopted amendments reducing the UUT rate on multiple occasions, including an amendment in February 2001 when the UUT rate was reduced from 4.63 percent to the current rate of 3.89 percent. Voter approval of the 4.74 percent rate at two separate elections means that the Utility Users Tax rate cannot be increased above the 4.74 percent rate without voter approval.

Finally, **Table 1** indicates that in October 2016, the City Council amended Section 3.36.160 of Chapter 3.36 to incorporate changes for administrative procedures related to the issuance of refunds.

**Table 1**

<b>Date Approved</b>	<b>Ordinance / Measure</b>	<b>Authorized By</b>	<b>Description of Action</b>
08-05-1991	Ord. 91-702	City Council	Imposed a 5 percent Utility Users Tax (UUT) on electricity, gas, telephone, and water.
11-20-1995	Ord. 95-751	City Council	Adjusted UUT rate from 5 percent to 4.74 percent.
06-02-1998	Measure D	Voters	Setting the UUT rate to 4.74 percent.
11-03-1998	Measure M	Voters	Setting the UUT rate to 4.74 percent.
05-15-2000	Ord. 00-795	City Council	Adjusted UUT rate from 4.74 percent to 4.63 percent.
02-20-2001	Ord. 01-807	City Council	Adjusted UUT rate from 4.63 percent to 3.89 percent.
10-03-2016	Ord. 16-960	City Council	Updated administrative procedures related to refunding of UUT payments due to errors or overpayment.

The City Council is now asked to consider adopting Ordinance No. 20-994 amending Paragraph D of Section 3.36.050 of the Montclair Municipal Code deleting the citation of Section 4251 of the Internal Revenue Code [the Federal Excise Tax or FET] referenced for the administrative convenience of telephone service providers who billed customers on the basis of the FET tax base.

A copy of Ordinance No. 20-994 attached for City Council review and consideration.

**BACKGROUND:** The City of Montclair adopted a Utility Users Tax ("UUT") ordinance – Chapter 3.36 of the Montclair Municipal Code – in August 1991. Included in the UUT Ordinance is Subsection A of Section 3.36.050 levying a tax (the Telephone Users Tax or TUT) on the amounts paid by every person in the City using intrastate, interstate, and international telephone services by every person in the City using such services.

Subsection D. of Section 3.36.050 provides that *"Notwithstanding the provisions of subsection A of this section, the tax imposed under this section shall not be imposed upon any person for using intrastate, interstate and international telephone communication services to the extent that the amounts paid for such services are exempt from or not subject to the tax imposed under Division [2,]Part 20 of the California Revenue and Taxation Code, or the tax imposed under Section 4251 of the Internal Revenue Code [Federal Excise Tax or FET]."* Section 4251 of the Internal Revenue Code (hereafter, the "FET") is not a source of authority for imposition of Montclair's UUT.

On May 25, 2006, the United States Treasury Secretary issued Notice No. 2006-50 (hereafter, the "Rule") stating that the Internal Revenue Service (IRS) would no longer interpret the FET to apply to charges based on time only (as opposed to time and distance), or to charges for certain other bundled services.

In *Gonzalez v. City of Norwalk* (2017), the California Appeals Court held that a change in the federal interpretation of the FET did not retroactively change the meaning of a municipal code incorporation of the statute. Therefore, a subsequent amendment of the municipal ordinance to eliminate reference to the FET was declaratory of existing law and was not a tax increase requiring voter approval under Proposition 218.

In the interest of providing technical clarity that is declarative of the Rule, City staff proposes Ordinance No. 20-994 removing the citation of the FET in Subsection D of Section 3.36.050 of Chapter 3.36 of Title 3 of the Montclair Municipal Code.

Deletion of the FET from Subsection D of Section 3.36.50 the Montclair Municipal Code does not interfere with the City's authority to levy the Utility Users Tax on telephone communication services in a manner that is consistent with how it has been historically applied, levied and imposed.

**FISCAL IMPACT:** Adoption of Ordinance No. 20-994 imposes no defined impact on the City's General Fund or its collection of the TUT. Deletion of the reference to the FET does not impose a new tax and is not intended to have the effect of costing taxpayers more tax dollars.

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

1. Conduct the first reading of Ordinance No. 20-994 amending Section 3.36.050 (Telephone Users Tax) of the Montclair Municipal Code to provide technical clarification in conformity with existing law; and
2. Set a public hearing for second reading and adoption of Ordinance No. 20-994 for Monday, December 7, 2020 at 7:00 p.m.



ORDINANCE NO. 20-994

AN ORDINANCE OF THE CITY OF MONTCLAIR  
AMENDING MONTCLAIR MUNICIPAL CODE SECTION  
3.36.050 (TELEPHONE USERS TAX) TO PROVIDE  
TECHNICAL CLARIFICATION IN CONFORMITY WITH  
EXITING LAW

WHEREAS, the City of Montclair has levied a utility users tax on charges for telecommunications service (Telephone Users Tax or TUT) since 1991; and

WHEREAS, since the time of its adoption in 1991, the TUT has referred to section 4251 of the Internal Revenue Code (Federal Excise Tax, hereafter the "FET") for the administrative convenience of telephone service providers who billed customers on the basis of the FET tax base; and

WHEREAS, the FET was not a source of authority for imposition of the City's TUT; and

WHEREAS, on May 25, 2006, the United States Treasury Secretary issued Notice No. 2006-50 (hereafter, the "Rule"), announcing that the Internal Revenue Service (IRS) would no longer interpret the FET to apply to charges based on time only (as opposed to time and distance), or to charges for certain other bundled services; and

WHEREAS, the City will continue to carry out its original intent and long-standing practice of applying the TUT in a manner that is consistent with the federal interpretation of the FET that was in effect before the Rule was issued; and

WHEREAS, the City therefore desires to remove the reference to the FET in Subsection D of Section 3.36.050 of Chapter 3.36 to provide technical clarification that is declarative of existing law; and

WHEREAS, in *Gonzalez v. City of Norwalk* (2017) 17 Cal.App.5<sup>th</sup> 1295, the court held that a change in the federal interpretation of the FET did not retroactively change the meaning of a municipal code incorporation of that statute; therefore, a subsequent amendment of the ordinance to eliminate reference to the FET was declaratory of existing law and was not a tax "increase" requiring voter approval under Proposition 218.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MONTCLAIR DOES ORDAIN AS FOLLOWS:

**SECTION I.** Paragraph D of Section 3.36.050 of Chapter 3.36 of Title 3 of the Montclair Municipal Code is amended to read:

Notwithstanding the provisions of subsection A of this section, the tax imposed under this section shall not be imposed on any person for using intrastate, interstate and international telephone communication services to the extent that the amounts paid for such services are not subject to the tax imposed under Division 2, Part 20 of the California Revenue and Taxation Code.

**SECTION II.** Declaration. Because the provisions of the Montclair Municipal Code, as amended by this ordinance, do not alter the amount of the City's telephone user tax, do not expand the application of the tax, and are substantially the same as the previous provisions of the Code as they read immediately prior to the adoption of this ordinance, the amendments made by this ordinance shall be construed as continuations of the earlier provisions and not as new enactments.

**SECTION III.** Severability. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance and the application of such provision to other persons or circumstances shall not be affected thereby.

**SECTION IV.** Effective Date. This ordinance shall take effect 30 days after second reading as provided in Government Code section 36937. However, it is declaratory of existing law and makes no substantive change in the tax ordinance for the reasons stated in the recitals to this ordinance.

**SECTION V. Publication.** The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be posted pursuant to Government Code Section 36933.

**APPROVED AND ADOPTED** this XX day of XX, 2020.

\_\_\_\_\_  
Mayor

**ATTEST:**

\_\_\_\_\_  
City Clerk

I, Andrea M. Phillips, City Clerk of the City of Montclair, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 20-994 of said City, which was introduced at a regular meeting of the City Council held on the XX day of XX, 2020, and finally passed not less than five (5) days thereafter on the XX day of XX, 2020, by the following vote, to-wit:

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

\_\_\_\_\_  
Andrea M. Phillips  
City Clerk



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	NOVEMBER 16, 2020	<b>FILE I.D.:</b>	FIN520
<b>SECTION:</b>	CONSENT - ADMIN. REPORTS	<b>DEPT.:</b>	FINANCE
<b>ITEM NO.:</b>	1	<b>PREPARER:</b>	J. KULBECK
<b>SUBJECT:</b>	CONSIDER RECEIVING AND FILING OF TREASURER'S REPORT		

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**REASON FOR CONSIDERATION:** The City Council is requested to consider receiving and filing the City of Montclair Treasurer's Report for the month ending October 31, 2020.

**BACKGROUND:** Included in your agenda packet is a copy of the Treasurer's Report for the period ending October 31, 2020.

**FISCAL IMPACT:** Routine—report of City's cash and investments.

**RECOMMENDATION:** Staff recommends the City Council receive and file the Treasurer's Report for the month ending October 31, 2020.



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	NOVEMBER 16, 2020	<b>FILE I.D.:</b>	FIN540
<b>SECTION:</b>	CONSENT - ADMIN. REPORTS	<b>DEPT.:</b>	FINANCE
<b>ITEM NO.:</b>	1	<b>PREPARER:</b>	L. LEW/V. FLORES
<b>SUBJECT:</b>	CONSIDER APPROVAL OF WARRANT REGISTER AND PAYROLL DOCUMENTATION		

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

**BACKGROUND:** Mayor Pro Tem Raft has examined the Warrant Register dated November 16, 2020, and the Payroll Documentation dated October 11, 2020, and recommends their approval.

**FISCAL IMPACT:** The Warrant Register dated November 16, 2020, totals \$2,070,148.27; and the Payroll Documentation dated October 11, 2020, totals \$594,254.44 gross, with \$409,609.83 net being the total cash disbursement.

**RECOMMENDATION:** Staff recommends the City Council approve the above-referenced Warrant Register and Payroll Documentation.



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	NOVEMBER 16, 2020	<b>FILE I.D.:</b>	FIN510
<b>SECTION:</b>	CONSENT - ADMIN. REPORTS	<b>DEPT.:</b>	SA
<b>ITEM NO.:</b>	3	<b>PREPARER:</b>	C. RAMIREZ
<b>SUBJECT:</b>	CONSIDER RECEIVING AND FILING OF TREASURER'S REPORT		

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**REASON FOR CONSIDERATION:** City Council acting as Successor to the Redevelopment Agency Board of Directors is requested to consider receiving and filing the Successor to the Redevelopment Agency Treasurer's Report for the month ending October 31, 2020, pursuant to state law.

**BACKGROUND:** Included in your agenda packet is a copy of the Successor to the Redevelopment Agency Treasurer's Report for the period ending October 31, 2020.

**FISCAL IMPACT:** Routine—report of the Agency's cash.

**RECOMMENDATION:** Staff recommends the City Council acting as Successor to the Redevelopment Agency Board of Directors receive and file the Successor to the Redevelopment Agency Treasurer's Report for the month ending October 31, 2020.



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	NOVEMBER 16, 2020	<b>FILE I.D.:</b>	FIN530
<b>SECTION:</b>	CONSENT - ADMIN. REPORTS	<b>DEPT.:</b>	SA
<b>ITEM NO.:</b>	4	<b>PREPARER:</b>	C. RAMIREZ
<b>SUBJECT:</b>	CONSIDER APPROVAL OF WARRANT REGISTER		

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**REASON FOR CONSIDERATION:** The City Council acting as Successor to the Redevelopment Agency Board of Directors is requested to consider receiving and filing the Successor to the Redevelopment Agency Warrant Register for the month ending October 31, 2020, pursuant to state law.

**BACKGROUND:** Vice Chairperson Raft has examined the Successor to the Redevelopment Agency Warrant Register dated 10.01.20-10.31.20 in the amounts of \$10,471.11 for the Combined Operating Fund; \$0.00 for the Redevelopment Obligation Retirement Funds and finds it to be in order.

**FISCAL IMPACT:** Routine—report of Agency's obligations.

**RECOMMENDATION:** Vice Chairperson Raft recommends the City Council as Successor to the Redevelopment Agency Board of Directors approve the Successor to the Redevelopment Agency Warrant Register for the period ending October 31, 2020.



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	NOVEMBER 16, 2020	<b>FILE I.D.:</b>	FIN525
<b>SECTION:</b>	CONSENT - ADMIN. REPORTS	<b>DEPT.:</b>	MHC
<b>ITEM NO.:</b>	5	<b>PREPARER:</b>	C. RAMIREZ
<b>SUBJECT:</b>	CONSIDER RECEIVING AND FILING OF TREASURER'S REPORT		

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**REASON FOR CONSIDERATION:** Montclair Housing Corporation Board of Directors is requested to receive and file the Montclair Housing Corporation Treasurer's Report for the month ending October 31, 2020, pursuant to state law.

**BACKGROUND:** Included in your agenda packet is a copy of the Treasurer's Report for the period ending October 31, 2020.

**FISCAL IMPACT:** Routine—report of the Montclair Housing Corporation's cash and investments.

**RECOMMENDATION:** Staff recommends the Montclair Housing Corporation Board of Directors receive and file the Treasurer's Report for the month ending October 31, 2020.



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	NOVEMBER 16, 2020	<b>FILE I.D.:</b>	FIN545
<b>SECTION:</b>	CONSENT - ADMIN. REPORTS	<b>DEPT.:</b>	MHC
<b>ITEM NO.:</b>	6	<b>PREPARER:</b>	C. RAMIREZ
<b>SUBJECT:</b>	CONSIDER APPROVAL OF WARRANT REGISTER		

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**REASON FOR CONSIDERATION:** The Montclair Housing Corporation Board of Directors is requested to consider receiving and filing the Warrant Register for the month ending October 31, 2020, pursuant to state law.

**BACKGROUND:** Vice Chairperson Raft has examined the Warrant Register dated 10.01.20-10.31.20 in the amount of \$50,234.20 for the Montclair Housing Corporation and finds it to be in order.

**FISCAL IMPACT:** Routine—report of Montclair Housing Corporation's obligations.

**RECOMMENDATION:** Vice Chairperson Raft recommends the Montclair Housing Corporation Board of Directors approve the Warrant Register for the period ending October 31, 2020.





# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	NOVEMBER 16, 2020	<b>FILE I.D.:</b>	FIN525
<b>SECTION:</b>	CONSENT - ADMIN. REPORTS	<b>DEPT.:</b>	MHA
<b>ITEM NO.:</b>	7	<b>PREPARER:</b>	C. RAMIREZ
<b>SUBJECT:</b>	CONSIDER RECEIVING AND FILING OF TREASURER'S REPORT		

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**REASON FOR CONSIDERATION:** The Montclair Housing Authority Board of Directors is requested to receive and file the Montclair Housing Authority Treasurer's Report for the month ending October 31, 2020, pursuant to state law.

**BACKGROUND:** Included in your agenda packet is a copy of the Treasurer's Report for the period ending October 31, 2020.

**FISCAL IMPACT:** Routine—report of Montclair Housing Authority's obligations.

**RECOMMENDATION:** Staff recommends the Montclair Housing Authority Board of Directors receive and file the Treasurer's Report for the month ending October 31, 2020.



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	NOVEMBER 16, 2020	<b>FILE I.D.:</b>	FIN545
<b>SECTION:</b>	CONSENT - ADMIN. REPORTS	<b>DEPT.:</b>	MHA
<b>ITEM NO.:</b>	8	<b>PREPARER:</b>	C. RAMIREZ
<b>SUBJECT:</b>	CONSIDER APPROVAL OF WARRANT REGISTER		

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**REASON FOR CONSIDERATION:** The Montclair Housing Authority Board of Directors is requested to consider receiving and filing the Warrant Register for the month ending October 31, 2020, pursuant to state law.

**BACKGROUND:** Vice Chairperson Raft has examined the Warrant Register dated 10.01.20-10.31.20 in the amount of \$0.00 for the Montclair Housing Authority and finds it to be in order.

**FISCAL IMPACT:** Routine—report of Montclair Housing Authority's obligations.

**RECOMMENDATION:** Vice Chairperson Raft recommends the Montclair Housing Authority Board of Directors approve the Warrant Register for the period ending October 31, 2020.



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	NOVEMBER 16, 2020	<b>FILE I.D.:</b>	FIN245
<b>SECTION:</b>	CONSENT - ADMIN. REPORTS	<b>DEPT.:</b>	PUBLIC WORKS
<b>ITEM NO.:</b>	9	<b>PREPARER:</b>	M. PARADIS
<b>SUBJECT:</b>	CONSIDER AUTHORIZING A \$15,825 APPROPRIATION FROM THE CONTINGENCY FUND FOR EMERGENCY REPLACEMENT OF THE HEATING AND AIR CONDITIONING UNIT AT THE KIDS STATION FACILITY LOCATED AT THE MONTCLAIR TRANSCENTER		

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**REASON FOR CONSIDERATION:** Due to an emergency replacement of the heating and air conditioning unit that was required for the Kids Station facility being used for COVID-19 testing, the City Council is requested to consider authorizing a \$15,825 appropriation from the Contingency Fund to cover the cost of the replacement.

**BACKGROUND:** The air conditioning unit at the Kids Station facility was malfunctioning during the months of September and October 2020. After replacing the main circuit board, condenser fan motor, and high pressure switch, the unit was still freezing up and cycling off. The Kids Station facility is currently being utilized by the County of San Bernardino as a COVID-19 testing site, and the dependability of the air conditioner was an issue as the samples require a minimum room temperature, which was not being met during the summer heat waves. It was determined the air conditioning unit needed to be replaced on an emergency basis.

**FISCAL IMPACT:** The cost to replace the air conditioning unit was \$15,825. The City Council's authorization of an appropriation from the Contingency Fund would cover the expense of the replacement.

**RECOMMENDATION:** Staff recommends the City Council authorize a \$15,825 appropriation from the Contingency Fund for the emergency replacement of the heating and air conditioning unit at the Kids Station facility located at the Montclair Transcenter.



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	NOVEMBER 16, 2020	<b>FILE I.D.:</b>	SEW080
<b>SECTION:</b>	CONSENT - AGREEMENTS	<b>DEPT.:</b>	COMMUNITY DEV.
<b>ITEM NO.:</b>	1	<b>PREPARER:</b>	Y. NEMETH
<b>SUBJECT:</b>	CONSIDER APPROVAL OF IRREVOCABLE ANNEXATION AGREEMENT NO. 20-77-I-105 WITH GERARDO ZARATE CHAVES AND MARIA MIRAMONTES FOR THE PROPERTY LOCATED AT 11026 ROSWELL AVENUE, POMONA (APN 1012-211-10-0000)		

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**REASON FOR CONSIDERATION:** Property owners Gerardo Zarate Chaves and Maria Miramontes have requested to annex their home at 11026 Roswell Avenue to the City's sewer system, which requires they enter into an Irrevocable Annexation Agreement with the City. Irrevocable Annexation Agreements are subject to City Council review and approval.

**BACKGROUND:** The proposed Irrevocable Annexation Agreement is a request by the property owners of the subject parcel located in the unincorporated San Bernardino County territory to connect their single-family residence to the sanitary sewer system owned and maintained by the City of Montclair. The reason for the connection request relates to the failing condition of the existing septic system on the site. A City sewer line is present and available in the adjacent Roswell Avenue roadway (see Exhibit A). The subject site is approximately 39,468 square feet (0.90-acre) in size and zoned by the County of San Bernardino as "Community - Industrial (IC)." The property includes an 819 square foot main residence, a shed, a gazebo, and an unpermitted carport (472 square feet) and room addition (199 square feet). The remainder of the site is undeveloped, but used for outdoor storage. Given the County's zoning designation, the County has deemed the existing residence to be legal non-conforming and may remain pursuant to the County's regulations (Exhibit B). The property owners have also been working with the County to permit the minor, but unpermitted, structures. Staff has confirmed that the County will approve the unpermitted structures.

Due to health and safety concerns, City staff recommends City Council approval for the proposed Agreement to allow a sewer connection of the existing single-family home. The proposed sewer connection request is consistent with the City's policies and requirements. In exchange, the Agreement would require annexation of the property to the City when feasible at a future date. If approved by the City Council, staff will forward Agreement No. 20-77-I-105 to the Local Agency Formation Commission (LAFCO) for review and approval. Following City Council and LAFCO approvals, the Agreement is recorded against the property and becomes binding on future owners, heirs, successors, or assigns.

**FISCAL IMPACT:** The proposed Agreement would pose no fiscal impact to the City's General Fund.

**RECOMMENDATION:** Staff recommends the City Council approve Irrevocable Annexation Agreement No. 20-77-I-105 with Gerardo Zarate Chaves and Maria Miramontes for the property located at 11026 Roswell Avenue, Pomona (APN 1012-211-10-0000).

**Recording Requested by:**

Michael Diaz  
City of Montclair

**When Recorded Mail To:**

Michael Diaz, Director of  
Community Development  
City of Montclair  
5111 Benito Street, P.O. Box 2308  
Montclair, CA 91763

**This Space for Recorder's Use Only**

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**FREE RECORDING PURSUANT TO GOVERNMENT CODE §27383**

**AGREEMENT NO. 20-77-I-105  
AN IRREVOCABLE AGREEMENT TO ANNEX  
TO THE CITY OF MONTCLAIR**

**Gerardo Zarate Chaves and Maria Miramontes  
11026 Roswell Avenue  
Pomona, CA 91766**

**APN: 1012-211-10-0000**

**AGREEMENT NO. 20-77-I-105**

**AN IRREVOCABLE AGREEMENT TO ANNEX  
TO THE CITY OF MONTCLAIR**

Gerardo Zarate Chaves and Maria Miramontes  
11026 Roswell Avenue, Pomona, CA 91766

APN: 1012-211-10-0000

This agreement is entered into this \_\_\_\_ day of November, 2020, between Gerardo Zarate Chaves and Maria Miramontes, hereinafter referred to as "Owners," and the City of Montclair, hereinafter referred to as "City."

**WHEREAS**, Owners are the legal property owners of the real property located at 11026 Roswell Avenue, comprised of a single-family residence referenced by San Bernardino County Tax Assessor Parcel Numbers (APN) 1012-211-10-0000, shown as Exhibit "A" attached, and is further described as follows:

Lot 6, Pomona Home Acres, in the County of San Bernardino, State of California, as per map recorded in Book 25, Page 1, of Maps, in the office of the County Recorder of said County.

Except that portion conveyed to the San Bernardino County Flood Control District by deed recorded February 14, 1956, in Book 3857, Page 136, Official Records.

**WHEREAS**, the subject property is approximately 0.91 acres in total size, and located within unincorporated San Bernardino County and the Sphere of Influence of the City of Montclair; and

**WHEREAS**, on Lot 6 currently exists a legal, nonconforming single family dwelling unit, approximately 812 square feet in size, with a carport, shed, and gazebo. The existing single family home and associated structures were constructed in 1920; and

**WHEREAS**, the said lot owned by the property owners, is within the County of San Bernardino's land use zoning designation as Commercial Industrial (IC) that does not allow single family dwellings. However, the County of San Bernardino issued a Rebuild Letter dated May 5, 2015 authorizing the existing single family residence to remain for the length of the useful life of the structure as a legal nonconforming use pursuant to Chapter 84.17.040 (c) of the San Bernardino County Development Code; and

**WHEREAS**, the Owners obtained permits from the County of San Bernardino to permit and enlarge the existing single family residence, carport, shed, and gazebo located on Lot 6 (Assessor Parcel 1012-211-10-0000); and

**WHEREAS**, the Owners desire to connect the existing single family residential unit as described above to the sanitary sewer system in the Roswell Avenue roadway, which is owned and maintained by the City of Montclair; and

**WHEREAS**, the City is willing to allow a connection to said sanitary sewer system if a request is made at the earliest possible time to annex to the City of Montclair; and

**WHEREAS**, Owners desire to annex to the City of Montclair; and

**WHEREAS**, the City intends to pursue annexation of Owners' property, but said annexation would cause a delay in connecting to said sewer line, which would create a substantial hardship for Owners of said property; and,

**WHEREAS**, the agreements, conditions, and covenants contained herein are made for the direct benefit of the land subject to this Agreement and described herein and shall create an equitable servitude upon the land and operate as a covenant running with the land for the benefit of the Owners of the land and his/her heirs, successors, and assigns.

**NOW, THEREFORE**, the parties do agree as follows:

1. Owners do hereby give irrevocable consent to annex to the City of Montclair at such time as the annexation may be properly approved through appropriate legal proceedings, and Owners do further agree to provide all reasonable cooperation and assistance to the City in the annexation proceedings. Said cooperation is contemplated to include signing any applications of consent prepared by the City, and submitting any evidence reasonably within the control of the Owners to the various hearings required for the annexation. Said cooperation does not include, however, any obligation on behalf of the Owners to institute any litigation of judicial proceeding whatsoever to force annexation to the City.
2. The City of Montclair does hereby agree to allow a connection of said property to the sewer line owned by the City of Montclair, which is located in Roswell Avenue, at such time as all applicable permits have been obtained and associated fees have been paid.
3. Owners agree to pay such annexation fees and costs and other municipal charges as would ordinarily be charged in the annexation of property to the City. Said fees shall be payable when the same becomes due and payable. (In some circumstances, these fees may be borne by the City.)
4. Owners shall pay all fees and charges and make all deposits required by the City to connect to and use the sewer, and Owners agree to be bound by all City ordinances, rules, and regulations with respect to the sewer system. Owners agree to pay monthly sewer charges beginning on the date this agreement is approved by the City Council.
5. Owners shall be responsible for the maintenance and repair of the sewer lateral from the building, and/or structure to which the sewer lateral is connected to the public sewer main in the street or City easement. This responsibility includes both the portion of the sewer lateral on private property and the portion located beneath the

sidewalk and street up to the point where the lateral connects to the public sanitary sewer main. Property owners' responsibilities include maintenance and repair of the lateral, overflow cleanup, and damages to sewer main and/or pavement. The City **may** respond and take corrective action in the event of a sewage overflow from a lateral where there is an immediate threat to health or safety. However, the property owners shall be responsible for all costs incurred by the City.

6. Owners shall install any and all future improvements upon said property to the City's standards, except that the County standard(s) shall apply when more restrictive than the City standard(s).

7. Owners shall execute this agreement on behalf of himself, herself, his/her heirs, successors, and assigns, and said agreement shall be irrevocable without the prior written consent of both parties hereto.

8. The benefit and responsibilities to the subject property shall inure to the benefit and responsibilities of subsequent owners, their heirs, successors, and assigns; and the agreements, conditions, and covenants contained herein shall be binding upon them and upon the land.

9. This agreement shall be recorded with the Office of the Recorder of the County of San Bernardino.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed the day and year first above written.

CITY:  
**CITY OF MONTCLAIR, CALIFORNIA**

OWNER(S):  
**GERARDO ZARATE CHAVES  
AND MARIA MIRAMONTES**

\_\_\_\_\_  
Javier John Dutrey, Mayor

\_\_\_\_\_  
Gerardo Zarate Chaves

**ATTEST:**

\_\_\_\_\_  
Andrea M. Phillips, City Clerk

\_\_\_\_\_  
Maria Miramontes, also known as  
Maria De Los Angeles Miramontes Romero

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

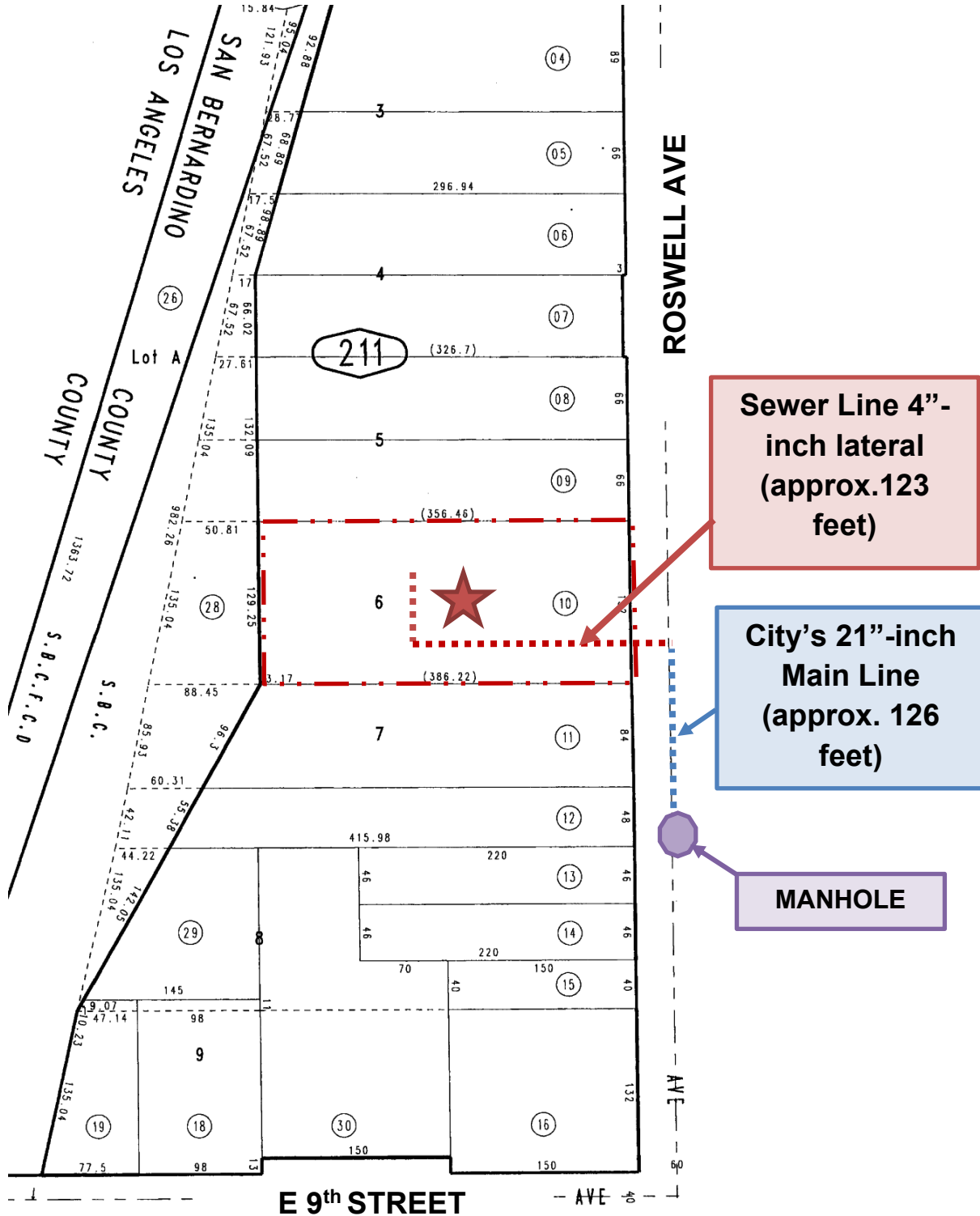
**APPROVED AS TO FORM:**

\_\_\_\_\_  
Diane E. Robbins, City Attorney



Irrevocable Annexation  
Agreement No. 20-77-I-105

Exhibit A





# EXHIBIT B

## Land Use Services Department Planning

Tom Hudson  
Director

May 5, 2015

Deborah Tolan  
10982 Kadota Ave.  
Pomona, CA 91766

**RE: PROFESSIONAL CONSULTATION FOR A REBUILD LETTER FOR THE PROPERTY LOCATED AT 11026 ROSWELL AVENUE, ONTARIO 91766; 4<sup>TH</sup> SUPERVISORIAL DISTRICT; APN: 1012-211-10; PROJECT NO. P201500192**

Dear Applicant,

This letter is in response to your request for a Rebuild Letter for the property listed above. The subject property is located within the Community Industrial (IC) land use zoning designation. Under the current standards of the San Bernardino County Development Code, new single family dwellings are not allowed in the IC land use zoning designation. However, the single family residence is allowed to remain for the length of the useful life of the structure as a legal-nonconforming use.

Pursuant to Chapter 84.17.040 (c) of the San Bernardino County Development Code, if the structure were damaged or substantially destroyed by a natural or man-made catastrophe, the dwelling could be rebuilt provided the cost of reconstruction, repairing or rebuilding does not exceed 75% of the replacement value structure. The structure must be of similar type, description and size as the previous construction and must comply with building codes. Interpretation of Development Code Chapter 84.17.040 generally assumes that the value of the remaining building foundation and existing accessory structures would be at least 25% of the value of the primary structure. Under this interpretation, the residential structure can be completely reconstructed, repaired or rebuilt.

If you have any questions regarding this letter, I may be reached at (909) 387-4739 or by email at [Suzanne.Peterson@lus.sbcounty.gov](mailto:Suzanne.Peterson@lus.sbcounty.gov).

Sincerely,

Suzanne Peterson  
SP/dp/cks

### BOARD OF SUPERVISORS

ROBERT A. LOVINGOOD  
Vice Chairman, First District

JANICE RUTHERFORD  
Second District

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CURT HAGMAN  
Fourth District

JOSIE GONZALEZ  
Fifth District

GREGORY C. DEVEREAUX  
Chief Executive Officer



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	NOVEMBER 16, 2020	<b>FILE I.D.:</b>	PDT175/PDT545
<b>SECTION:</b>	CONSENT - AGREEMENTS	<b>DEPT.:</b>	POLICE
<b>ITEM NO.:</b>	2	<b>PREPARER:</b>	M. BUTLER
<b>SUBJECT:</b>	CONSIDER APPROVAL OF AGREEMENT NO. 20-85 AMENDING AGREEMENT NO. 18-85 WITH SECURITAS SECURITY SERVICES USA, INC. FOR SECURITY GUARD SERVICES AT THE MONTCLAIR TRANSCENTER		

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**REASON FOR CONSIDERATION:** The City Council is requested to consider approval of Agreement No. 20-85 with Securitas Security Services USA, Inc., for security guard services at the Montclair Transcenter. Said Agreement would amend prior Agreement No. 18-85 to incorporate a rate increase imposed by the company, along with an attachment that replaces Section 9 of the original agreement with Securitas Security Services USA, Inc.

Agreement No. 20-85 is attached for the City Council's review and consideration.

**BACKGROUND:** The City currently provides security services for the Montclair Transcenter as specified in its agreement with the San Bernardino County Transportation Authority. The City began utilizing the services of Securitas Security Services USA, Inc. to provide these services in January 2018 under the initial contract, Agreement No. 17-92. Agreement No. 18-85, effective December 28, 2018, amended this agreement to incorporate an increase in the hourly rate for security guard services. Securitas Security Services USA, Inc. has notified Police Department staff of its intent to increase the hourly rate again by \$2.28 effective January 1, 2021. The adjustment would result in an hourly billing rate of \$25.43.

The company has indicated that in order to maintain its workforce, it must stay ahead of the state-mandated minimum wage rate to effectively compete against other part-time employers for recruitment and retention of qualified guards.

**FISCAL IMPACT:** Included in the Fiscal Year 2020-21 Budget is \$153,000 in Special Contract Services Account No. 1001-4426-52450-400 for security guard services at the Montclair Transcenter. Staff intends to address any shortfalls in this account at midyear.

**RECOMMENDATION:** Staff recommends the City Council approve Agreement No. 20-85 amending Agreement No. 18-85 with Securitas Security Services USA, Inc. for security guard services at the Montclair Transcenter.



**ADDENDUM/AMENDMENT/RENEWAL**  
**to Agreement for Security Services, dated January 18, 2018 (the "Agreement"), Between**  
**City of Montclair ("Client")**  
**and Securitas Security Services USA, Inc. ("Company")**

**Effective Date: January 1, 2021**

As of the Effective Date of this Addendum/Amendment/Renewal, the Agreement is modified as follows; except as specifically modified by this Addendum/Amendment/Renewal, all terms of the Agreement remain in full force.

- 1. Current Rate: \$23.15 Regular Officers  
New Rate: \$25.43 Regular Officers

\*\*Sick Time be billed back as incurred effective 12/27/2019

- 2. Attachment A is made part of this Addendum/Amendment/Renewal.

City of Montclair

Securitas Security Services USA, Inc.

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: Javier John Dutrey

Name: \_\_\_\_\_

Title: Mayor

Title: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Andrea Phillips, City Clerk

**ATTACHMENT A**

Section 9 of Agreement 17-92 is replaced with the following:

**9. INDEMNIFICATION**

a) Defense, Indemnity and Hold Harmless. Contractor shall defend, indemnify and hold harmless the City, its present and former officers, directors, employees, agents, volunteers, mayor, staff, boards, committee and representatives, as broadly interpreted (collectively, the "Indemnified Parties"), of and from all claims, suits, demands, obligations, losses damages, sums or any other matters, threatened or presently asserted, including but not limited to all legal fees, costs of defense and litigation expenses (including legal fees, expert fees and any other costs or fees, including those of adverse parties imposed on or sought against the Indemnified Parties), arising directly or indirectly out of any liability or claim of loss or liability for personal injury, bodily injury to persons, contractual liability, errors or omissions, breach, failure to perform, damage to or loss of property, or any other loss, damage, injury or other claim of any kind or nature arising out of the work to be performed by Contractor herein, to the extent they are caused by or arise out of the negligent acts or negligent omissions, or intentional misconduct of Contractor, including its subcontractors, employees, agents and other persons or entities performing work for Contractor.

(b) Contractual Indemnity. To the fullest extent permitted under California law, Contractor shall contractually indemnify, defend and hold harmless the Indemnified Parties from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses, amounts for good faith settlement, or costs of any kind, whether actual, alleged or threatened, including attorney's fees and costs, court costs, interest, defense costs, and expert witness fees and costs), arising out of or related to, in whole or in part, the performance of this Agreement by Contractor or by any individual or entity for which Contractor is legally liable, including but not limited to Contractor's officers, agents, independent contractors, subcontractors or affiliated or related entities and/or its or their employees, agents and representatives, to the extent they are caused by or arise out of all negligent acts or negligent omissions, or intentional misconduct of Contractor, including its subcontractors, employees, agents and other persons or entities performing work for Contractor. Indemnification shall include any claim that Contractor or Contractor's employees or agents, are or may be considered and treated to be employees of the City or are entitled to any employee benefits from City, including but not limited to those available under Public Employees Retirement Law. The obligation to indemnify, defend and hold harmless the Indemnified Parties shall apply to all liability as defined above regardless of whether the Indemnified Parties were or are alleged to have been negligent, except that it shall not apply to claims arising from the sole negligence or willful intentional misconduct of the Indemnified Parties. Contractor's obligation to defend the Indemnified Parties is not contingent upon there being an acknowledgement of or determination of the merit of any claims, liability, demands, causes of action, suits, losses, expenses, errors, omissions and/or costs.

(c) Subcontractors and Indemnification. Contractor agrees to and shall obtain executed indemnity agreements in favor of the Indemnified Parties with provisions identical to those set forth from each and every Subcontractor, Sub consultant or other person or entity involved by, for, with, or on behalf of Contractor in the performance of any aspect of this Agreement. In the event Contractor fails to obtain such indemnity obligations, Contractor shall be fully responsible for each and every Subcontractor, Subconsultant or other person or entity in terms of defense, indemnity and hold harmless obligations in favor of the Indemnified Parties. This obligation to indemnify and defend the Indemnified Parties is binding on the successors, assigns or heirs of Contractor and shall survive the full performance or termination of this Agreement. These indemnification provisions are independent of and shall not in any way be limited or superseded by the insurance requirements and insurance-related provisions of this Agreement.

(d) City Lost or Damaged Property – Theft. Contractor further agrees to pay or cause to be paid for the Indemnified Parties' benefit for any and all damage, fines or penalties, or loss or theft to the property of the City to the extent they arise out of the negligent acts or negligent omissions, or intentional misconduct of Contractor or of Contractor's officers, agents, independent contractors, subcontractors or affiliated or related entities and/or its or their employees, agents and representatives. City assumes no responsibility whatsoever for any property placed on the premises of City. Contractor further agrees to waive all rights of subrogation against the Indemnified Parties.

(e) Non-Waiver and Non-Exhaustion of City's Further Rights and Remedies. No aspect of this provision shall in any way limit or effect the rights of the Indemnified Parties against the Contractor under the terms of this Agreement or otherwise. The indemnification provisions shall apply regardless of whether this Agreement is executed after Contractor begins the work and shall extend to claims arising after this Agreement is performed or terminated, including a dispute as to the termination of Contractor. The indemnity obligations of Contractor shall continue until it is determined by final judgment that the claim against the City and any Indemnified Parties is determined by final judgment and after exhaustion of any rights of appeal. Further, no aspect of this provision shall impact the City's rights to contribution from Contractor, or for the City to dispute Contractor's refusal to defend and indemnify City.

(f) Limitations on Scope of Indemnity. Notwithstanding the foregoing, Contractor shall not be responsible for indemnification for claims or losses caused by the sole negligence or intentional wrongdoing of Indemnified Parties. Further, the indemnity provided shall be interpreted as broadly as permitted under California law and as to agreements between parties and shall if required be reformed to be consistent with those laws to protect and save this provision for the protection of the Indemnified Parties.

(g) Limitations on Liability. Notwithstanding anything to the contrary, in no event will either party's liability exceed \$10 million.



# CITY COUNCIL AGENDA REPORT

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**DATE:** NOVEMBER 16, 2020                      **FILE I.D.:** PDT175  
**SECTION:** CONSENT - AGREEMENTS                      **DEPT.:** POLICE  
**ITEM NO.:** 3    **PREPARER:** M. BUTLER

**SUBJECT:** CONSIDER APPROVAL OF AGREEMENT NO. 20-91 AMENDING AGREEMENT NO. 20-11 WITH LEXIPOL, LLC FOR CONTINUED MANAGEMENT OF THE POLICE DEPARTMENT'S POLICY AND PROCEDURES MANUAL, LAW ENFORCEMENT DAILY TRAINING BULLETINS (DTB), AND DTB MANAGEMENT SERVICES

CONSIDER AUTHORIZING A \$5,669.25 APPROPRIATION FROM THE PROP 30/AB 109 FUND FOR DAILY TRAINING BULLETINS AND DTB MANAGEMENT SERVICES

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**REASON FOR CONSIDERATION:** The City Council is requested to consider approval of Agreement No. 20-91 amending Agreement No. 20-11 with Lexipol, LLC for continued management of the Police Department's Policy and Procedures Manual, Law Enforcement Daily Training Bulletins, and Daily Training Bulletin management services, and to authorize a \$5,669.25 appropriation from the Prop 30/AB 109 Fund for Daily Training Bulletins and Training Bulletin management services.

A copy of proposed Agreement No. 20-91 is attached for the City Council's review and consideration.

**BACKGROUND:** The Police Department has utilized Lexipol, LLC for continued management of the Police Department's Policy and Procedures Manual for over 10 years. Lexipol provides fully developed, state-specific policies researched and written by subject-matter experts and vetted by attorneys. These policies are based on nationwide standards and best practices while also incorporating state and federal laws and regulations where appropriate. Lexipol's legal and content development teams follow a rigorous multi-step process to evaluate thousands of legislative changes annually and ensure changes are made to the Police Department's Policy Manual commensurate with the changes. This service is utilized in the continual updating of the Department's over 750-page Policy and Procedures Manual. Command Staff monitors updates to the Policy Manual recommended by Lexipol, analyzes the updates for applicability, customizes the updates if necessary, and issues the new updated Policy Manual through a Knowledge Management System (KMS) computer program. The KMS pushes updates to members of the Police Department online, in which members log in, review updates to the Policy Manual, and electronically accept the updates by the assigned deadline.

Beginning in January 2020, Lexipol, LLC started providing an additional training program through Daily Training Bulletins (DTB). The DTB program is designed by the team of public safety lawyers and policy experts employed by Lexipol, LLC to continually monitor national and California-specific policy changes. The DTBs are utilized as a daily training exercise by employees of the Police Department to reinforce the understanding of policies and help minimize risk and increase the effectiveness of service to the community. They are designed to help personnel learn and apply Policy content through two-minute online training exercises, which are scenario-based that tie Department Policy to real-world applications. These training exercises can be completed via computers or from smartphones, tablets, or other mobile devices such as the Mobile Data Computers installed in the Police vehicles. Upon completion of the training

bulletins, a report shows completion by the agency member and the topic instructed. Command Staff has determined DTBs to be an effective tool to assist with application of proper Policy and service to the community and would like to continue this service.

In addition to the DTB program, Lexipol, LLC offered its Daily Training Bulletin Management service free for one year. This service customizes the DTB scenarios based on the customizations of the Policy Manual made by Command Staff during the Policy update process. This service analyzes DTB master content compared to Montclair Police Department's customized policies, adapts monthly DTB packages to fit the parameters of the Department's Policy content, issues the monthly DTB training packages, and customizes the DTB completion reports as well as agency-specific year-end data analysis. Without DTB Management service, these procedures would have to be completed by a member of Command Staff. After one year, staff has found this service to be a vital component of the DTB program and would like to continue the service.

DTB Management service will expire on December 31, 2020; however, both the policy manual update subscription and DTB subscription will expire on March 31, 2021. Therefore, to align subscriptions, Agreement No. 20-91 includes all three services through December 31, 2021. Lexipol's proposal includes a pro-rated subscription for policy manual updates and DTBs from April 1, 2021, to December 31, 2021, and a regular rate for DTB Management from January 1, 2021, through December 31, 2021.

**FISCAL IMPACT:** Due to the City's state of fiscal urgency related to the COVID-19 pandemic, staff did not budget for a subsequent term of DTBs or DTB Management in the Fiscal Year 2020-21 Budget as planned. If authorized by the City Council, costs associated with Agreement No. 20-91 would total \$10,369.25 and be paid as follows:

- Included in the Police Department's Fiscal Year 2020-21 Budget in Special Contract Services is \$4,700 from the SB 509 Fund (1143-4421-52450-400-00000) for policy and procedural manual updates. This would be used to pay a portion of the pro-rated annual subscription (\$7,469.25) from April 1, 2021, to December 31, 2021, for policy and procedural manual updates and DTBs. The remaining balance of \$2,769.25 would require an appropriation and expenditure from the Prop 30/AB 109 Fund 1141.
- Funding for DTB Management from January 1, 2021, to December 31, 2021, would require an appropriation and expenditure from the Prop 30/AB 109 Fund 1141 in the amount of \$2,900.

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

1. Approve Agreement No. 20-91 amending Agreement No. 20-11 with Lexipol, LLC for continued management of the Police Department's Policy and Procedures Manual, Law Enforcement Daily Training Bulletins (DTB), and DTB Management.
2. Authorize a \$5,669.25 appropriation from the Prop 30/AB 109 Fund for DTBs and DTB management services.





# SOLUTIONS PROPOSAL



**PREPARED FOR:**

Montclair Police Department

**PREPARED BY:**

Theresa Furman  
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## Executive Summary

Public safety agencies today face challenges of keeping personnel safe, reducing risk and maintaining a positive reputation. Add to that the dynamically changing legislative landscape and evolving best practices, and even the most progressive, forward-thinking agencies can struggle to keep up.

That is why Lexipol is pleased to present the Montclair Police Department with a proposal for a customized policy management, update and training solution.

Our program is designed to save you time and money while protecting your personnel and your community. Our team of public safety attorneys and policy experts continually monitor national and California-specific policy changes. We then use these updates to help provide the content and training your department needs to minimize risk and effectively serve your community.

### **AGENCY GOALS**

The Montclair Police Department is looking for a way to access comprehensive policies to limit agency risk and enhance personnel safety. By using Lexipol, you will achieve peace of mind knowing your policies are up-to-date and constitutionally sound. The incorporated policy training component reinforces your staff's understanding of policies and provides individual training acknowledgement.

Once you have high-quality policies in place, you want to be sure your personnel use them. The Lexipol program offers online access to your agency's policies through a web-based platform and mobile app. This flexibility allows your personnel to easily reference policies and complete training in the field. Using Lexipol's program will provide the Montclair Police Department with:

- Policies that reflect up-to-date industry standards and best practices
- Content specific to the laws and practices of California
- Daily scenario-based training that reinforces your agency's policies
- Timely updates in response to new legislation and case law

### **THE LEXIPOL ADVANTAGE**

Lexipol was founded by public safety experts who saw a need for a better, safer way to run a public safety agency. Since the company launch in 2003, Lexipol has grown to form an entire risk management solution for public safety and local government. In addition to providing policy solutions to 3,500 public safety agencies across the United States, we offer services such as online training, grants and an electronic policy management platform, as well as the digital communities Police1, FireRescue1, Corrections1, EMS1 and Gov1. We are proud to serve more than 2 million first responders and 8,100 agencies and municipalities.

Lexipol is the only company with public safety professionals, attorneys and subject matter experts working together to provide essential policies and policy management tools, from continuous updates to mobile access to daily training. Our legal and content development teams follow a rigorous multi-step process to evaluate content for new policies and policy updates, reviewing thousands of pieces of legislation each year.

Agencies that use our policy solutions have clear, effective policy manuals that reflect the true values and philosophy of their agency as well as constitutionally sound practices that protect civil rights and community safety. Benefits of using the Lexipol system include enhanced accountability and compliance with policy, which in turn leads to a reductions of financial, legal and physical risks. Lexipol customers also reduce time spent developing and maintaining policy, providing an increased ability to focus resources on other agency priorities. We look forward to working with the Montclair Police Department to realize these same benefits.

## Scope of Services

### Policy Manual

Constitutionally sound, up-to-date policies are the foundation for consistent, safe public safety operations and are key to reducing risk and enhancing personnel and community safety. Lexipol's comprehensive policy manual covers all aspects of your agency's operations.

- More than 155 policies researched and written by public safety attorneys and subject matter experts
- Policies based on State and federal laws and regulations as well as nationwide best practices
- Content customized to reflect your agency's terminology and structure

### Daily Training Bulletins (DTBs)

Even the best policy manual lacks effectiveness if it's not backed by training. Lexipol's Daily Training Bulletins are designed to help your personnel learn and apply your agency's policy content through 2-minute training exercises.

- Scenario-based training ties policy to real-world applications
- Understanding and retention of policy content is improved via a singular focus on one distinct aspect of the policy
- Each Daily Training Bulletin concludes with a question that confirms the user understood the training objective
- Daily Training Bulletins can be completed via computers or from smartphones, tablets or other mobile devices
- Reports show completion of Daily Training Bulletins by agency member and topic

### Policy Updates

Lexipol's legal and content development teams continuously review state and federal laws and regulations, court decisions and evolving best practices. When needed, we create new and updated policies and provide them to your agency, making it simple and efficient to keep your policy content up to date.

- Updates delivered to you through Lexipol's web-based content delivery platform
- Changes presented in side-by-side comparison against existing policy so you can easily identify modifications/improvements
- Your agency can accept, reject or customize each update

### Web-Based Delivery Platform and Mobile App (Knowledge Management System)

Lexipol's online content delivery platform, called KMS, provides secure storage and easy access to all your policy and training content, and our KMS mobile app facilitates staff use of policies and training completion.

- Ability to edit and customize content to reflect your agency's mission and philosophy
- Efficient distribution of policies, updates and training to staff
- Archival and easy retrieval of all versions of your agency's policy manual
- Mobile app provides in-the-field access to policy and training materials

### Reports

Lexipol's Knowledge Management System provides intuitive reporting capabilities and easy-to-read reports that enhance command staff meetings and strategic planning.

- Track and report when your personnel have acknowledged policies and policy updates
- Produce reports showing completion of Daily Training Bulletins
- Sort reports by agency member, topic and other subgroups (e.g., shift, assignment)
- Reduce the time your supervisors spend verifying policy acknowledgement and training completion

### Daily Training Bulletin Management

For public safety agencies, training is an essential component to limit liability and enhance personnel safety. But customizing and issuing training bulletins can take away from other operational demands. Lexipol's Daily Training Bulletin Management Service does it for you, helping you maximize the value and applicability of the Daily Training Bulletins for your agency and deliver timely training.

- Analysis of how Daily Training Bulletin master content compares to agency-modified policies
- Adaptation of monthly Daily Training Bulletin packages to fit the parameters of your agency's policy content
- Monthly issuance of Daily Training Bulletin packages
- Customized Daily Training Bulletin completion reports, as well as agency-specific year-end data analysis

# Proposal

Prepared By: Theresa Furman  
 Phone: (949) 313-6583  
 Email: tfurman@lexipol.com

**Quote #:** Q-12909-1  
**Date:** 10/21/2020  
**Valid Through:** 1/19/2021

## Overview

Lexipol is America’s leading source of state-specific policy and training solutions that reduce risk, lower litigation costs and improve personnel safety in public safety agencies. The services proposed below are designed to guide your agency in providing up-to-date, legally defensible policy and training content to your personnel.

### Annual Subscription Pro-Rated to Align with DTB Management

QTY	DESCRIPTION	UNIT PRICE	EXTENDED
1	Annual Law Enforcement Policy Manual & Daily Training Bulletins (Start: 4/1/2021 End: 12/31/2021)	USD 7,469.25	USD 7,469.25
	<b>Subscription Line Items Total</b>		<b>USD 7,469.25</b>
			<b>USD 7,469.25</b>
<b>Annual Subscription Pro-Rated to Align with DTB Management TOTAL:</b>			<b>USD 7,469.25</b>

### DTB Management

QTY	DESCRIPTION	UNIT PRICE	EXTENDED
1	Annual Law Enforcement Daily Training Bulletin Management (Start: 1/1/2021 End: 12/31/2021)	USD 2,900.00	USD 2,900.00
	<b>Subscription Line Items Total</b>		<b>USD 2,900.00</b>
			<b>USD 2,900.00</b>
<b>DTB Management TOTAL:</b>			<b>USD 2,900.00</b>

\*Law Enforcement Policy pricing is based on 54 Law Enforcement Sworn Officers.

The foregoing pricing has been prorated for the benefit of Agency and Agency therefore agrees that they will waive the right to cancel this agreement until the end of the first renewal period.

This Agreement is an amendment to Agreement No. 17-38 dated June 19,2017, and made effective April 1, 2017, by and between Lexipol, LLC, a Delaware limited liability company ("Lexipol") and the City of Montclair Police Department ("Agency").

**CITY OF MONTCLAIR**

**LEXIPOL**

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Javier John Dutrey  
Mayor

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Name:  
Title:

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Date

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Date

**ATTEST:**

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Andrea M. Phillips  
City Clerk

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Name:  
Title:

**APPROVED AS TO FORM:**

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Diane E. Robbins  
City Attorney