



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

AGENDA

Monday, April 5, 2021
7:00 p.m.

Zoom Link: <https://zoom.us/j/93717150550>

Dial Number: 1-(669)-900-6833

Meeting ID: 937-1715-0550

*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 <https://www.cityofmontclair.org/public-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 by using the "raise hand" function on the Zoom meeting platform or over the phone by dialing *9. Written comments (200-word limit per agenda item, and 200-word limit for all non-agenda items combined) and requests to speak may instead be emailed to cityclerk@cityofmontclair.org.*

Audio recordings of Council meetings are available on the City's website at <https://www.cityofmontclair.org/departments/public-meetings/> 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. First Reading** — Consider Ordinance No. 21-995 Amending Section 8.36.090 of the Montclair Municipal Code to Eliminate Commercial Truck Parking on Brooks Street and Palo Verde Street [CC]

Consider Setting a Public Hearing to Consider Adoption of Ordinance No. 21-995 on Monday, April 19, 2021, at 7:00 p.m. [CC]

6

- B. Second Reading — Consider Adoption of Ordinance No. 21-997 Amending Section 2.12.020 of the Montclair Municipal Code Related to Campaign Contribution Limits in Accordance with Assembly Bill 571 [CC] 9

VIII. CONSENT CALENDAR

A. Approval of Minutes

- 1. Regular Joint Meeting — March 15, 2021 [CC/SA/MHC/MHA/MCF]

B. Administrative Reports

- 1. Consider Authorizing the City Manager to Execute a Conflict Waiver Providing that Best Best & Kreiger May Represent the City of Montclair on Various Special Counsel Matters, Including a Legal Matter Involving the City of Upland Basin Dam, While Concurrently Representing the City of Upland on Various Matters as Upland City Attorney Excluding the Upland Basin Dam Matter [CC] 13

- 2. Consider Authorizing the City Manager to Execute a Conflict Waiver Providing that Best Best & Kreiger May Represent the City of Montclair on Various Special Counsel Matters While Concurrently Representing the Local Agency Formation Commission (LAFCO) for San Bernardino County as General Counsel on a Variety of Legal Matters Including Representation of LAFCO on a Matter Involving an Application by the Monte Vista Water District on Activation of Wastewater Collection and Transmission Services That, Due to Overlapping Territory, May Involve the City of Montclair [CC] 18

- 3. Consider Approval of Warrant Register & Payroll Documentation [CC] 23

C. Agreements

- 1. Consider Approval of Agreement No. 21-16 with David Turch and Associates for Federal Legislative Advocacy and Consulting Services [CC] 24

- 2. Consider Approval of Agreement No. 21-17 with the Retail Drinking Water, Wastewater Collection, and Recycled Water Collection Service Providers within the Inland Empire Utilities Agency Service Area for the Wastewater and Recycled Water Regulatory Compliance Review Project [CC] 30
Authorize a \$3,345 Appropriation from the Contingency Fund for Agreement No. 21-17 [CC]

- 3. Consider Approval of Agreement No. 21-18 with Fehr & Peers for the Preparation of a Local Roads Safety Plan [CC] 36
Consider Authorizing a \$4,339 Appropriation from the Gas Tax Fund to Cover the 10 Percent Local Match Required in Addition to the \$40,000 Grant Award Received from the State to Fund the Agreement [CC]

- 4. Consider Approval of Agreement No. 21-19-I-104 Amending Agreement No. 20-06-I-104, an Irrevocable Annexation Agreement with Mission 42 LLC for a Multi-Unit Residential Development Project at 5553 West Mission Boulevard, Ontario (APN 1011-351-02-0000) [CC] 56

D. Resolutions

1. Consider Adoption of Resolution No. 21-3305 Denouncing Racism, Xenophobia, Violence, and Intolerance Against Members of the Asian American and Pacific Islander Communities in the United States, and Affirming the City of Montclair's Commitment to the Well-Being and Safety of Residents Regardless of Race, Religion, National Origin, Disability, Sex, Gender Expression, Age, Sexual Orientation, or Military/Veteran Status [CC] 69
2. Consider Adoption of Resolution No. 21-3306 Continuing to Declare that a Local Public Health Emergency Exists in the City of Montclair, Updating Provisions of the Declaration in Relation to COVID-19 Paid Leave and Provision of Employee Vaccination Incentives, and Continuing to Establish City Eligibility for Federal and State Funding Assistance [CC] 75

IX. PULLED CONSENT CALENDAR ITEMS

X. RESPONSE

- A. Consider Receiving and Filing the Response to Council Inquiry Regarding the Reopening of City Facilities [CC]

Consider Taking One of the Following Actions:

Adopt City Facilities Reopening Protocols and Practices as Provided for Herein and in Compliance with the City Facilities Reopening, Health and Safety Plan; or

as Requested by President Biden, Delay the Reopening of City Facilities to Thursday, April 29, 2021, or the Day After the Nation Achieves the Biden-Harris Administration's Objective to Fully Vaccinate 200 Million Americans [CC] 96

XI. COUNCIL WORKSHOP

- A. Presentation on Potential Pension and Infrastructure Bonds

(The City Council may consider continuing this item to an adjourned meeting on Monday, April 19, 2021, at 5:45 p.m.)

XII. 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)(4) Regarding Potential Litigation [CC]

Montclair v. Monte Vista Water District

- C. City Manager/Executive Director

- D. Mayor/Chairperson

1. Announcement of Vacancies on Planning Commission (2) and Community Activities Commission (3)

E. Council Members/Directors

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

1. Personnel Committee Meeting — March 15, 2021 [CC]

115

XIII. CLOSED SESSION

XIV. CLOSED SESSION ANNOUNCEMENTS

XV. ADJOURNMENT

This meeting shall be adjourned in memory of Chino City Council Member Mark Hargrove.

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, April 19, 2021, 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 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 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. 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 <https://www.cityofmontclair.org/departments/public-meetings/> and on the bulletin board adjacent to the north door of Montclair City Hall at 5111 Benito Street, Montclair, CA 91763 on Thursday, April 1, 2021.

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/93717150550>

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: 937 1715 0550

**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 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 <https://www.cityofmontclair.org/public-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 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 (<https://www.cityofmontclair.org/public-comment/>), via e-mail (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.



CITY COUNCIL AGENDA REPORT

DATE:	APRIL 5, 2021	FILE I.D.:	PKG300
SECTION:	PUBLIC HEARINGS	DEPT.:	PUBLIC WORKS
ITEM NO.:	A	PREPARER:	N. CASTILLO

SUBJECT: FIRST READING — CONSIDER ORDINANCE NO. 21-995 AMENDING SECTION 8.36.090 OF THE MONTCLAIR MUNICIPAL CODE TO ELIMINATE COMMERCIAL TRUCK PARKING ON BROOKS STREET AND PALO VERDE STREET

CONSIDER SETTING A PUBLIC HEARING TO CONSIDER ADOPTION OF ORDINANCE NO. 21-995 ON MONDAY, APRIL 19, 2021, AT 7:00 P.M.

REASON FOR CONSIDERATION: Parking restrictions and allowances for specified City streets are included in the Montclair Municipal Code in consideration of surrounding property uses, developments, and activities.

Proposed Ordinance No. 21-995 eliminating the commercial truck parking permit program on Brooks and Palo Verde streets was first introduced at the February 16, 2021 regular City Council meeting, and was referred back to the Public Works Committee to review potential alternative solutions. At its March 18th meeting, the Public Works Committee was informed of several alternate locations nearby on private property available for commercial truck parking and determined the Brooks and Palo Verde commercial truck parking permit program utilizes a disproportionately large amount of resources for the few who benefit from the program. The Committee reaffirmed its recommendation that the City Council eliminate the commercial truck parking permit program on both Brooks and Palo Verde Streets.

A copy of proposed Ordinance No. 21-995 is attached for the City Council's review and consideration.

BACKGROUND: Since the year 2000 there have been complaints from residents and businesses about trucks parking on restricted streets and parking in front of residences and businesses, blocking the view of the businesses from the street. Signs posted to restrict truck parking were somewhat effective, but the problem just migrated to other blocks. In 2006, a total ban of truck parking on City streets was presented to the Public Works Committee. During the City Council's public hearing process for the Ordinance, several residents and business owners spoke and stated they needed some place to park their trucks in the City. The issue was returned to the Public Works Committee in early 2007 and the Ordinance was modified to restrict truck parking on most streets in the City, but allowed trucks to continue parking on Brooks Street between Ramona Avenue and east of Monte Vista Avenue.

Mr. Squyres, a resident, attended the public hearings and requested consideration of additional streets for truck parking, but the Ordinance remained unchanged. Since its adoption in 2007, Mr. Squyres occasionally parked his truck at his residence and was issued a citation for parking a commercial vehicle in a residential area. In 2012, the Public Works Committee agreed to issue parking permits on an individual basis for trucks to park on Palo Verde Street between Central Avenue and Carrillo Street. The expectation was that Mr. Squyres's truck would only be parked on the street a few times a year and not every weekend, therefore it was not anticipated to be a problem.

The parking permit program on Palo Verde Street did not specify a maximum number of permits to be issued and, as an unintended consequence, the number of trucks parked on Palo Verde Street has grown over the years. This has attracted trucks to illegally park in other segments of Palo Verde where truck parking is prohibited.

The City's General Plan vision is to continue to improve safety, access, and mobility for all. The actions taken in 2006 to ban truck parking on City streets was tempered by the inclusion of Brooks Streets and Palo Verde to allow for a smooth transition to the ultimate goal of a total ban of truck parking on City streets. It has been over 15 years now and is Public Works Director/City Engineer Castillo's recommendation to remove A(4) and A(5) of Section 8.36.090 of the Montclair Municipal Code. Executive Director, Office of Public Safety/Police Chief Avels endorses the deletion as the truck parking creates safety and policing concerns. City Manager Starr endorses the deletion since it will assist with the removal of unsightly trucks that create blight in the community. All new development projects in the City must provide adequate onsite parking for their buildings' commercial truck needs. Owner-operators need to make accommodations and provide the parking for their trucks on the property. Implementing a total ban of truck parking on City streets will advance the City toward its goal of creating a public place where vehicles and pedestrians can coexist in a much more aesthetically pleasing and safe manner.

All permit holders for parking in the segment of Palo Verde Street and the business within the segment of Brooks Street have been notified by mail of the proposed Ordinance eliminating the commercial truck parking permit program.

FISCAL IMPACT: Adoption of this Ordinance would have no discernable impact to the City's General Fund.

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

1. Introduce and conduct the first reading of Ordinance No. 21-995 amending Section 8.36.090 of the Montclair Municipal Code to eliminate commercial truck parking on Brooks Street and Palo Verde Street.
2. Set a public hearing for Monday, April 19, 2021, at 7:00 p.m. to consider adoption of Ordinance No. 21-995.

ORDINANCE NO. 21-995

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR, CALIFORNIA AMENDING SECTION 8.36.090 OF CHAPTER 8.36 OF THE MONTCLAIR MUNICIPAL CODE TO PROHIBIT COMMERCIAL VEHICLE PARKING ON BROOKS STREET AND PALO VERDE STREET

WHEREAS, Chapter 8.36 of the Montclair Municipal Code currently sets forth regulations concerning stopping, standing and parking on City streets and other property in the City; and

WHEREAS, paragraphs A.4. and A.5. of Section 8.36.090 of the Montclair Municipal Code currently allow commercial vehicles having a manufacturer's gross vehicle weight rating (GVWR) of 10,000 pounds or more to park on certain areas of Brooks Street and Palo Verde Street; and

WHEREAS, it is determined to be in the best interests of the City and its residents to amend Section 8.36.090 of the Montclair Municipal Code to prohibit the parking of commercial vehicles having a GVWR of 10,000 pounds or more on Brooks Street and Palo Verde Street.

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

SECTION I. Deletion of paragraphs A.4. and A.5. from Section 8.36.090.

Section 8.36.090 of Title 8 of the Montclair Municipal Code is hereby amended by deleting paragraphs A.4. and A.5.

SECTION II. Severability.

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

SECTION III. Effective Date.

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

SECTION IV. Posting.

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

APPROVED AND ADOPTED this XX day of XX, 2021.

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. 21-995 of said City, which was introduced at a regular meeting of the City Council held on the XX day of XX, 2021, and finally passed not less than five (5) days thereafter on the XX day of XX, 2021, by the following vote, to-wit:

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

Andrea M. Phillips
City Clerk



CITY COUNCIL AGENDA REPORT

DATE:	APRIL 5, 2021	FILE I.D.:	CCK140-05
SECTION:	PUBLIC HEARINGS	DEPT.:	CITY CLERK
ITEM NO.:	B	PREPARER:	A. PHILLIPS
SUBJECT:	SECOND READING — CONSIDER ADOPTION OF ORDINANCE NO. 21-997 AMENDING SECTION 2.12.020 OF THE MONTCLAIR MUNICIPAL CODE RELATED TO CAMPAIGN CONTRIBUTION LIMITS IN ACCORDANCE WITH ASSEMBLY BILL 571		

REASON FOR CONSIDERATION: The City Council directed staff to draft an ordinance to set no limits on campaign contributions to candidates for local elective offices to avoid the state’s standard limits, enforcement, and penalties that would be imposed by Assembly Bill 571 (AB 571). The drafted Ordinance maintains local control over contribution limits and keeps with the City’s historical practice of not limiting contributions to candidates for its elective offices.

The first reading of Ordinance No. 21-997 was conducted by the City Council at its regular meeting on March 15, 2021. The City Council is now requested to consider adoption of Ordinance No. 21-997 amending Section 2.12.020 of the Montclair Municipal Code related to campaign contribution limits in accordance with Assembly Bill 571.

A copy of proposed Ordinance No. 21-997 is attached for the City Council’s review and consideration.

BACKGROUND: Effective January 1, 2021, AB 571 established default campaign contribution limits for cities and counties that have not adopted their own limits. The default limits are set at the same level as the limit on contributions from individuals to candidates for seats in the state Senate and Assembly—currently no more than \$4,900 per contributor per election. In the absence of local limits, AB 571 imposes the default limits, but preserves the ability of cities to adopt their own contribution limits (higher or lower) by resolution or ordinance.

If a city does not adopt local campaign contribution limits, the default limits of the state will apply and will be enforced by the FPPC, punishable as a misdemeanor and subject to specified penalties. A city that establishes a campaign contribution limit may adopt enforcement standards for a violation of the limit, which may include administrative, civil, or criminal penalties. The FPPC is not responsible for the administration or enforcement of a city-established campaign contribution limit.

Montclair is among the majority of cities that did not limit campaign contributions in connection with local elections prior to AB 571. At its regular meeting on March 1, 2021, the City Council discussed its options and there was consensus that Montclair had not experienced large campaign contributions by single contributors to individual candidates that would provide undue influence in its elections. The direction given to staff was to prepare a resolution or ordinance imposing no limits on campaign contributions to candidates.

FISCAL IMPACT: Adoption of this Ordinance would have no discernable impact to the City's General Fund. By setting no limits, there would be no need to adopt or enforce penalties; therefore, no enforcement costs would be incurred.

RECOMMENDATION: Staff recommends that the City Council adopt Ordinance No. 21-997 amending Section 2.12.020 of the Montclair Municipal Code related to campaign contribution limits in accordance with Assembly Bill 571.

ORDINANCE NO. 21-997

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR ADDING DEFINITIONS TO CHAPTER 2.02 AND AMENDING SECTION 2.12.020 OF THE MONTCLAIR MUNICIPAL CODE RELATED TO CAMPAIGN CONTRIBUTION LIMITS IN ACCORDANCE WITH ASSEMBLY BILL 571

WHEREAS, the California legislature enacted Assembly Bill 571, taking effect on January 1, 2021, which imposes limits on campaign contribution to candidates for local elective offices in cities that do not have such limitations established; and

WHEREAS, Government Code Section 85702.5 allows a municipality to impose limitations on campaign contribution to candidates for elective City offices; and

WHEREAS, it was determined that the City of Montclair had not historically experienced large campaign contributions by single contributors to candidates that would provide undue influence in its local elections; and

WHEREAS, imposing no limits on campaign contributions to candidates ensures the City's ability to maintain the practice of not limiting campaign contributions in its elections.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MONTCLAIR HEREBY ORDAINS AS FOLLOWS:

SECTION I. The following definitions are added to Chapter 2.02 - Definitions of the Montclair Municipal Code:

Campaign committee shall mean any person or combination of persons formed for the purpose of promoting or opposing the election, reelection, or recall of a person to an elective office who directly or indirectly receives contributions, makes independent expenditures, or makes contributions at the behest of any city candidate. A campaign committee includes any "controlled committee" within the meaning of Government Code Section 82016, any "general purpose committee" within the meaning of Government Code Section 82027.5, any "primarily formed committee" within the meaning of Government Code Section 82047.5, any "sponsored committee" within the meaning of Government Code Section 82048.7, or any political action committee.

Elective offices shall mean the offices of Mayor and Council Member.

SECTION II. Section 2.12.020 of the Montclair Municipal Code is hereby amended to read as follows:

2.12.020 - General election - Elective offices, term, electronic filing of campaign disclosure statements, and no limitations on campaign contributions to candidates for elective offices.

SECTION III. Section 2.12.020 (B) of the Montclair Municipal Code is hereby amended to read as follows:

B. Elective offices. All elective offices shall be filled by the City electorate at a general municipal election, unless a vacancy is filled by appointment or special election pursuant to the Government Code.

SECTION IV. Section 2.12.020 (E) of the Montclair Municipal Code is hereby added as follows:

E. No limitations on campaign contributions to candidates for elective city offices. There shall be no limit on the monetary contributions from an individual, entity, or campaign committee to a candidate for elective office in support of his or her candidacy.

SECTION V. Severability. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this Ordinance or any part thereof is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be declared unconstitutional.

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

SECTION VII. Posting. The City Clerk shall certify to the passage of this Ordinance and cause the same to be posted pursuant to Government Code Section 36933.

APPROVED AND ADOPTED this XX day of XX, 2021.

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. 21-997 of said City, which was introduced at a regular meeting of the City Council held on the XX day of XX, 2021, and finally passed not less than five (5) days thereafter on the XX day of XX, 2021, by the following vote, to-wit:

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

Andrea M. Phillips
City Clerk



CITY COUNCIL AGENDA REPORT

DATE: APRIL 5, 2021

FILE I.D.: LEG150

SECTION: CONSENT - ADMIN. REPORTS

DEPT.: CITY MGR.

ITEM NO.: 1

PREPARER: E. STARR

SUBJECT: CONSIDER AUTHORIZING THE CITY MANAGER TO EXECUTE A CONFLICT WAIVER PROVIDING THAT BEST BEST & KREIGER MAY REPRESENT THE CITY OF MONTCLAIR ON VARIOUS SPECIAL COUNSEL MATTERS, INCLUDING A LEGAL MATTER INVOLVING THE CITY OF UPLAND BASIN DAM, WHILE CONCURRENTLY REPRESENTING THE CITY OF UPLAND ON VARIOUS MATTERS AS UPLAND CITY ATTORNEY EXCLUDING THE UPLAND BASIN DAM MATTER

REASON FOR CONSIDERATION: The City Council has responsibility for approving conflict waivers in matters of legal dispute, or authorizing the City Manager to approve the same.

A copy of the *Conflict Waiver - Representation of City of Upland* is attached as Exhibit 1.

BACKGROUND: Best Best & Krieger (BB&K) represents the City of Montclair as Special Legal Counsel on various matters. Specifically, BB&K represents the City on various land use, CEQA, environmental, and other matters as requested by the City.

BB&K also represents the City of Upland on various matters as its City Attorney. Upland has been advised of BB&K's ongoing representation of the City of Montclair on a range of matters as Special Counsel.

Most of BB&K's Special Counsel work for the City of Montclair is not expected to be adverse to Upland. There is, however, one matter in which Upland and Montclair may have conflicting interests. The matter relates to the Upland Basin Dam Project (the "Basin Matter") and BB&K's assistance to the City of Montclair in obtaining and reviewing public records related to the Basin Matter and understanding Montclair's options related thereto. BB&K is not expected to engage either Montclair or Upland in any adverse litigation related to the Basin Matter.

BB&K's representation of Montclair on the Basin Matter and its representation of Upland as City Attorney on various legal matters, excluding the Basin Matter, are unrelated. However, Rule 1.7 of the California Rules of Professional Conduct prohibits the representation of two current clients by the same law firm where there exists an adverse or potentially adverse conflict of interest without the informed written consent of the respective clients.

In order for BB&K to proceed with representation of Montclair on the Basin Matter, it is necessary for BB&K to obtain Montclair's informed written consent to proceed.

As part of the consent, Montclair agrees that BB&K may represent Upland on Upland matters, excluding the Basin Matter, while concurrently representing Montclair in the Basin Matter and possibly other matters as needed as Special Counsel.

In the event that circumstances change, or BB&K becomes aware of new information that requires client consent or new notice, each client will be notified of that fact immediately by BB&K, and continued representation will be subject to that notice and informed written consent of each client will be obtained by BB&K as necessary.

Should a further conflict of interest develop, or if the relationship should materially limit BB&K's representation of either client, BB&K may be required to terminate its representation of Montclair.

BB&K has served the City of Montclair as Special Legal Counsel for the past decade, and has been working with Montclair staff on the Basin Matter since the summer of 2019 and has developed specific knowledge through its review of public documents related to the Basin Matter. Retaining the services of BB&K will allow the City of Montclair to continue enjoying the law firm's base of knowledge and expertise developed on the Basin Matter. Therefore, in the interest of retaining BB&K's high level of knowledge and expertise on the Basin Matter, City staff asks the City Council to authorize the City Manager to sign a Conflict Waiver (attached as Exhibit 1), providing that BB&K may continue to represent the City of Montclair on the Basin Matter while concurrently representing Upland as City Attorney on a variety of matters, excluding the Basin Matter. Upland would be required to sign a similar Conflict Waiver.

The Conflict Waiver will not waive any protection the City of Montclair has with regard to attorney-client communications in Special Counsel matters, including the Basin Matter, or on any other matters in which BB&K has represented the City of Montclair. Those communications will remain confidential and are not subject to disclosure to any third party without the express consent of the City of Montclair.

FISCAL IMPACT: Except as it relates to costs for representation on the Basin Matter, approval of the Conflict of Waiver with BB&K is not expected to result in any fiscal impact on the City of Montclair General Fund.

Terminating representation by BB&K on the Basin Matter could impact attorney's fees and costs should Montclair need to hire new counsel.

RECOMMENDATION: Staff recommends the City Council authorize the City Manager to execute a Conflict Waiver providing that BB&K may represent the City of Montclair on various Special Counsel matters, including a legal matter involving the City of Upland Basin Dam, while concurrently representing the City of Upland on various matters as Upland City Attorney excluding the Upland Basin Dam matter.



BEST BEST & KRIEGER
ATTORNEYS AT LAW

Indian Wells
(760) 568-2611

Irvine
(949) 263-2600

Los Angeles
(213) 617-8100

Manhattan Beach
(310) 643-8448

Ontario
(909) 989-8584

18101 Von Karman Avenue, Suite 1000, Irvine, CA 92612
Phone: (949) 263-2600 | Fax: (949) 260-0972 | www.bbklaw.com

Riverside
(951) 686-1450

Sacramento
(916) 325-4000

San Diego
(619) 525-1300

Walnut Creek
(925) 977-3300

Washington, DC
(202) 785-0600

Alisha M. Winterswyk
(949) 263-6565
alisha.winterswyk@bbklaw.com

March 2, 2021

City of Montclair
Attn: Mr. Edward Starr, City Manager
5111 Benito Street
Montclair, CA 91763

Re: Conflict Waiver - Representation of City of Upland

Dear Mr. Starr:

As you know, Best Best & Krieger LLP (“BBK”) was recently selected to represent the City of Upland (“Upland”) on various matters as its City Attorney (the “Upland Matters”). On February 18, 2020, we sent Upland a letter informing them of BBK’s ongoing representation of the City of Montclair (“Montclair”) on a range of matters as special counsel. While we believe most of our work for Montclair is not adverse to Upland, we want to inform you about one discrete matter in which Montclair and Upland may have conflicting interests. The matter relates to the Upland Basin Dam and involves assistance with obtaining public records and understanding Montclair’s options. The matter is transactional only, and BBK would not engage either side in any adverse litigation relating to this or any matter (collectively, the “Basin Matter”). In our February 18, 2020 letter to Upland, we indicated that we would need to request Montclair’s and Upland’s informed consent in the form of a conflict waiver letter as required by our Professional Rules of Conduct. As a result, we are now seeking your informed consent.

BBK’s representation of Montclair on the Basin Matter and BBK’s representation of Upland in the Upland Matters are completely unrelated. However, the California Rules of Professional Conduct prohibit us from representing two current clients with adverse or potentially adverse interests without their informed written consent even if the separate matters are unrelated. Therefore, we write to advise you of the conflict of interest, the potential impact of our representation, and to obtain Montclair’s informed written consent to proceed.

RULES OF PROFESSIONAL CONDUCT

Rule 1.7 of the California Rules of Professional Conduct provides in pertinent part:



BEST BEST & KRIEGER 
ATTORNEYS AT LAW

City of Montclair
March 2, 2021
Page 2

- (a) A lawyer shall not, without informed written consent from each client and compliance with paragraph (d), represent a client if the representation is directly adverse to another client in the same or a separate matter.
- (b) A lawyer shall not, without informed written consent from each affected client and compliance with paragraph (d), represent a client if there is a significant risk the lawyer's representation of the client will be materially limited by the lawyer's responsibilities to or relationships with another client, a former client or a third person, or by the lawyer's own interests.
- (c) . . .
- (d) Representation is permitted under this rule only if the lawyer complies with paragraphs (a), (b), . . . and:
 - (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
 - (2) the representation is not prohibited by law; and
 - (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal.

SCOPE OF REPRESENTATION & DISCLOSURES

As part of this consent, Montclair agrees that we may represent Upland on the Upland Matters while we concurrently represent Montclair in the Basin Matter and possibly other matters as needed as their special counsel. Our representation of Montclair and Upland as described in this letter is not prohibited, but requires your consent. We do not believe our representation of Upland will impair our competency, diligence or loyalty to Montclair nor will it otherwise materially limit our representation of Montclair or impair our independent professional judgment in any way. We do not think the relationship will create any appearance of impropriety. However, these are all things you should consider before providing your informed consent as requested here.

In the event that circumstances change, or we become aware of new information that requires a new consent from Montclair and Upland, you will be notified of that fact immediately, and continued representation will be subject to the informed written consent of the involved parties. Should a further conflict of interest develop, or if the relationship should materially limit our representation of either client, we may be required to terminate our representation, which could impact your attorney's fees and costs should you need to hire new counsel at that time.



BEST BEST & KRIEGER
ATTORNEYS AT LAW

City of Montclair
March 2, 2021
Page 3

YOUR CONSENT

If you consent to the above, please sign this consent letter. This consent will not waive any protection that you may have with regard to attorney-client communications with us in the Basin Matter. Those communications will remain confidential and will not be disclosed to any third-party without your consent.

Please consider this matter carefully, and do not hesitate to contact us if you have any questions or concerns. You may wish to confer with independent legal counsel regarding this disclosure and your consent, and you should feel free to do so.

Your execution of this consent form will constitute an acknowledgment of full disclosure in compliance with the requirements of Rule 1.7 of the California Rules of Professional Conduct previously quoted in this letter, and your consent to proceeding with our representation of you.

If you have any questions, please do not hesitate to call.

Sincerely,

Alisha M. Winterswyk
of BEST BEST & KRIEGER LLP

CONSENT

By this letter, Best Best & Krieger LLP has explained the existing and/or reasonably foreseeable potential risks and conflict(s) of interest in the above-referenced matter, and has informed Montclair of the possible consequences of this representation and these conflicts. Montclair understands that it has the right to and has been encouraged to consult with independent counsel before signing this consent, and Montclair acknowledges that it has been given sufficient time to do so. Notwithstanding the foregoing, Montclair hereby consents and agrees to the matters described in this letter.

By: _____
Mr. Edward Starr, City Manager

Dated: _____



CITY COUNCIL AGENDA REPORT

DATE: APRIL 5, 2021

FILE I.D.: LEG150

SECTION: CONSENT - ADMIN. REPORTS

DEPT.: CITY MGR.

ITEM NO.: 2

PREPARER: E. STARR

SUBJECT: CONSIDER AUTHORIZING THE CITY MANAGER TO EXECUTE A CONFLICT WAIVER PROVIDING THAT BEST BEST & KREIGER MAY REPRESENT THE CITY OF MONTCLAIR ON VARIOUS SPECIAL COUNSEL MATTERS WHILE CONCURRENTLY REPRESENTING THE LOCAL AGENCY FORMATION COMMISSION (LAFCO) FOR SAN BERNARDINO COUNTY AS GENERAL COUNSEL ON A VARIETY OF LEGAL MATTERS INCLUDING REPRESENTATION OF LAFCO ON A MATTER INVOLVING AN APPLICATION BY THE MONTE VISTA WATER DISTRICT ON ACTIVATION OF WASTEWATER COLLECTION AND TRANSMISSION SERVICES THAT, DUE TO OVERLAPPING TERRITORY, MAY INVOLVE THE CITY OF MONTCLAIR

REASON FOR CONSIDERATION: The City Council has responsibility for approving conflict waivers in matters of legal dispute, or authorizing the City Manager to approve the same.

A copy of the *Conflict Waiver - Representation of Local Agency Formation Commission for San Bernardino County* is attached as Exhibit 1.

BACKGROUND: Best Best & Krieger (BB&K) represents the City of Montclair as Special Legal Counsel on various matters. Specifically, BB&K represents the City on various land use, CEQA, environmental, and other matters as requested by the City.

BB&K also represents the Local Agency Formation Commission (LAFCO) for San Bernardino County as its General Counsel on a variety of matters. LAFCO has asked BB&K to advise on an application submitted by the Monte Vista Water District (MVWD) related to activation of wastewater collection and transmission services. The application submitted by MVWD indicates that the administrative and service territory for the City of Montclair and MVWD may overlap.

If BB&K represents the City of Montclair on Special Counsel matters while concurrently representing LAFCO on the MVWD application, a potential conflict of interest arises for BB&K. Rule 1.7 of the California Rules of Professional Conduct prohibits the representation of two current clients by the same law firm where there exists an adverse or potentially adverse conflict of interest without the informed written consent of the respective clients.

BB&K is seeking to obtain Montclair's informed written consent to represent LAFCO on the MVWD application while representing the City of Montclair on Special Counsel matters. The MVWD application matter and City of Montclair Special Counsel matters are completely unrelated, and no attorney working on the MVWD application matter will be permitted to perform work for the City of Montclair on Special Counsel matters.

As part of the consent, the City of Montclair agrees that BB&K may represent LAFCO on the MVWD application matter and other unrelated matters as its General Counsel, while concurrently representing the City of Montclair on Special Counsel matters.

In the event circumstances change, or BB&K becomes aware of new information that requires client consent or new notice, each client will be notified of that fact immediately by BB&K, and continued representation will be subject to that notice and the informed written consent of each client will be obtained by BB&K as necessary.

Should an actual conflict of interest develop in the future or if the client relationship should materially limit BB&K's representation of clients, BB&K may be required to terminate its representation.

BB&K has served the City of Montclair as Special Counsel for the last decade, and has developed specific knowledge regarding City projects that require assistance and representation from Special Counsel. Retaining the services of BB&K will allow the City of Montclair to continue enjoying the law firm's base of knowledge and expertise developed on various Special Counsel matters. Therefore, in the interest of retaining BB&K's high level of knowledge and expertise on these matters, City staff asks the City Council to authorize the City Manager to sign a Conflict Waiver (attached as Exhibit 1), providing that BB&K may continue to represent the City of Montclair on Special Counsel matters while concurrently representing LAFCO as General Counsel on a variety of matters. LAFCO would be required to sign a similar Conflict Waiver.

The Conflict Waiver will not waive any protection the City of Montclair has with regard to attorney-client communications in Special Counsel matters or any other matters in which BB&K has represented the City of Montclair. Those communications will remain confidential and are not subject to disclosure to any third party without the express consent of the City of Montclair.

FISCAL IMPACT: Approval of the Conflict Waiver with BB&K is not expected to result in any fiscal impact on the City of Montclair's General Fund.

Terminating representation by BB&K as Special Counsel on various matters could impact attorney's fees and costs should Montclair need to hire new counsel.

RECOMMENDATION: Staff recommends the City Council authorize the City Manager to execute a Conflict Waiver providing that BB&K may continue to represent the City of Montclair on various Special Counsel matters while concurrently representing LAFCO for San Bernardino County as General Counsel on a variety of legal matters including representation of LAFCO on a matter involving an application by MVWD on activation of wastewater collection and transmission services that, due to overlapping territory, may involve the City of Montclair.



BEST BEST & KRIEGER
ATTORNEYS AT LAW

Indian Wells
(760) 568-2611
Irvine
(949) 263-2600
Los Angeles
(213) 617-8100
Manhattan Beach
(310) 643-8448
Ontario
(909) 989-8584

Riverside
(951) 686-1450
Sacramento
(916) 325-4000
San Diego
(619) 525-1300
Walnut Creek
(925) 977-3300
Washington, DC
(202) 785-0600

18101 Von Karman Avenue, Suite 1000, Irvine, CA 92612
Phone: (949) 263-2600 | Fax: (949) 260-0972 | www.bbklaw.com

Alisha M. Winterswyk
(949) 263-6565
alisha.winterswyk@bbklaw.com

March 24, 2021

Mr. Edward Starr
City Manager
City of Montclair
5111 Benito Street
Montclair, CA 91763

Re: Conflict Waiver - Representation of Local Agency Formation Commission
for San Bernardino County

Dear Mr. Starr:

Best Best & Krieger, LLP (“BBK”) represents the City of Montclair (the “City”) as their Special Counsel on various matters. Specifically, BBK represents the City on various land use, CEQA, environmental, and other unrelated matters as requested (collectively, the “Special Counsel Matters”). As you may know, BBK also represents the Local Agency Formation Commission for San Bernardino County (“LAFCO”) as its General Counsel on a variety of matters. LAFCO has asked BBK to advise LAFCO on an application submitted by Monte Vista Water District (the “District”) related to the activation of wastewater collection and transmission services. The District’s proposal indicates that it may involve the City as the City’s territory overlaps with the District’s boundaries (collectively, the “Activation Matter”). BBK will not be representing the District or the City on the Activation Matter.

The Activation Matter and the Special Counsel Matters are completely unrelated. The work on the Activation Matter will not be performed by any attorney working on the Special Counsel Matters. Nonetheless, if BBK represents the City on the Special Counsel Matters while BBK concurrently represents LAFCO on the Activation Matter, this creates a potential conflict of interest for BBK. Therefore, we write to advise you of the potential conflict of interest, the impact of our representation, and to obtain your informed written consent for BBK to represent LAFCO on the Activation Matter while BBK represents the City on the Special Counsel Matters.

RULES OF PROFESSIONAL CONDUCT

Rule 1.7 of the California Rules of Professional Conduct provides in pertinent part:



BEST BEST & KRIEGER
ATTORNEYS AT LAW

Mr. Edward Starr
March 24, 2021
Page 2

- (a) A lawyer shall not, without informed written consent from each client and compliance with paragraph (d), represent a client if the representation is directly adverse to another client in the same or a separate matter.
- (b) A lawyer shall not, without informed written consent from each affected client and compliance with paragraph (d), represent a client if there is a significant risk the lawyer's representation of the client will be materially limited by the lawyer's responsibilities to or relationships with another client, a former client or a third person, or by the lawyer's own interests.
- ...
- (d) Representation is permitted under this rule only if the lawyer complies with paragraphs (a), (b), ... and:
 - (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
 - (2) the representation is not prohibited by law; and
 - (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal.

SCOPE OF REPRESENTATION & DISCLOSURES

As part of this consent, the City agrees that we may represent LAFCO on the Activation Matter and other unrelated matters as its General Counsel while we concurrently represent the City on the Special Counsel Matters.

Our representation as described in this letter is not prohibited, but requires the City's consent. We do not believe our representation of LAFCO will impair our competency, diligence or loyalty to the City nor will it otherwise materially limit our representation of the City or impair our independent professional judgment in any way. For example, we do not believe we will be tempted to favor the interests of one client over the other, nor do we think the relationship will create any appearance of impropriety. However, these are all things you should consider before signing this waiver.

In the event that circumstances change or we become aware of new information that requires client consent or new notice, each client will be notified of that fact immediately, and continued representation will be subject to that notice and the informed written consent of each client will be obtained as necessary. Should an actual conflict of interest develop in the future or if the relationship should materially limit our representation of either client, we may be required



BEST BEST & KRIEGER LLP
ATTORNEYS AT LAW

Mr. Edward Starr
March 24, 2021
Page 3

to terminate our representation, which could impact attorney's fees and costs should you need to hire new counsel at that time.

YOUR CONSENT

If you agree to the above, we need you to sign this consent letter. This consent will not waive any protection that you may have with regard to attorney-client communications with us in the Special Counsel Matters or any other matters in which BBK has represented you. Those communications will remain confidential and will not be disclosed to any third party without your consent.

Please consider this request carefully, and do not hesitate to contact me if you have any questions or concerns. You may wish to confer with independent legal counsel regarding this disclosure and your consent, and you should feel free to do so.

Your execution of this consent form will constitute an acknowledgment of full disclosure in compliance with the requirements of Rule 1.7 of the California Rules of Professional Conduct previously quoted in this letter, and your consent to proceed to the matters as described in this letter.

If you have any questions, please do not hesitate to call.

Sincerely,

Alisha M. Winterswyk
of BEST BEST & KRIEGER LLP

CONSENT

By this letter, Best Best & Krieger LLP has explained the existing and/or reasonably foreseeable potential risks and conflict(s) of interest in the above referenced matter, and has informed me of the possible consequences of this representation and these conflicts. I understand that I have the right to, and have been encouraged to, consult with independent counsel before signing this consent, and I acknowledge that I have been given sufficient time to do so. Accordingly, I hereby consent and agree to Best Best & Krieger LLP representing LAFCO in the Activation Matter while Best Best & Krieger LLP represents the City on Special Counsel Matters.

By: _____ Dated: _____
City of Montclair



CITY COUNCIL AGENDA REPORT

DATE:	APRIL 5, 2021	FILE I.D.:	FIN540
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	FINANCE
ITEM NO.:	3	PREPARER:	L. LEW/V. FLORES
SUBJECT:	CONSIDER APPROVAL OF WARRANT REGISTER AND PAYROLL DOCUMENTATION		

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

BACKGROUND: Mayor Pro Tem Ruh has examined the Warrant Register dated April 5, 2021, and the Payroll Documentation dated February 28, 2021, and recommends their approval.

FISCAL IMPACT: The Warrant Register dated April 5, 2021, totals \$1,328,890.29; and the Payroll Documentation dated February 28, 2021 totals \$571,214.59 gross, with \$395,633.92 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

DATE:	APRIL 5, 2021	FILE I.D.:	FGV125
SECTION:	CONSENT - AGREEMENTS	DEPT.:	CITY MGR.
ITEM NO.:	1	PREPARER:	M. FUENTES
SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 21-16 WITH DAVID TURCH AND ASSOCIATES FOR FEDERAL LEGISLATIVE ADVOCACY AND CONSULTING SERVICES		

REASON FOR CONSIDERATION: At its meeting of July 6, 2015, the City Council approved Agreement No. 15-56 with David Turch and Associates for Federal Legislative Advocacy Services. The first term of Agreement No. 15-56 ran from July 1, 2015 to June 30, 2017, and the second term ran from July 1, 2017 to June 30, 2020. David Turch and Associates and the City propose entering into a new Agreement for professional consulting services.

A copy of proposed Agreement No. 21-16 with David Turch and Associates is attached for City Council review and consideration.

BACKGROUND: Competition for limited federal tax dollars and discretionary revenues has complicated the task of administering local governments. It is, therefore, incumbent upon local government administrators and elected representatives to secure services that represent the interests of their respective communities. Accordingly, staff proposes entering into a new Agreement with David Turch and Associates (DTA) for federal legislative advocacy services.

Established in 1987, DTA is a successful and respected federal and legislative government relations firm providing numerous legislative, advocacy, and professional services to clients. DTA specializes in Federal Departments/Legislative Advocacy, assisting clients in securing federal funds, obtaining grants, securing amendments to legislation and federal regulations, and building support, coalitions, and partnerships with federal officials.

DTA provides services to a number of municipalities in California, Florida, Minnesota, Montana, and Oregon, and to private corporations in California, Minnesota, and Ohio.

Contractual services provided to the City by DTA include intergovernmental liaison/political analyses services and advice and counseling related to the Legislative and Executive Branches of the Federal government, including federal government-related programs and services, surface transportation and transit, economic development, homeland security, local municipal interests, public safety, education, emergency preparedness, and funding/grant opportunities.

DTA has accrued years of legislative advocacy experience including the ability to capture discretionary funds and provide ancillary services, and the ability to provide and commit resources and services necessary to meet legislative advocacy needs.

DTA has been successful in representing the interests of local municipalities and has secured funding opportunities for numerous projects on behalf of their clients. In Montclair, DTA has accomplished the following:

- Secured \$3 million for construction of the Ramona Avenue Grade Separation (\$1.5 million) and Monte Vista Avenue Grade Separation Projects, and has since sought to move the \$1.5 million designated for the Ramona Avenue GSP to the Monte Vista Avenue GSP and continues to work toward this objective.
- Working with the City, Federal legislators, and the Federal Transit Administration to secure funding for construction of the Montclair Segment of the Gold Line.
- Working with the Department of Education to secure funding for the Montclair to College Program.
- Working to secure funding through the House Community Project Funding appropriations process (earmarks) for transportation and infrastructure projects in Montclair.

Examples of DTA's work for other agencies in the local area include the following:

- Helped the City of Monrovia secure over \$4.5 million in Federal funds for the development of the Gold Line light rail extension project. Beyond assisting the Monrovia in securing Federal funds for the Gold Line light rail extension project, DTA engaged in obtaining congressional support to facilitate an agreement between Monrovia and the Gold Line Construction Authority for construction of a Gold Line maintenance facility in that city.
- Secured \$3 million in grant funds from the Commerce Department's Economic Development Administration to fund extension of water, wastewater, and road infrastructure projects for the City of Imperial.
- Secured a \$2.4 million Federal Transit Administration Clean Fuel Grant for the Riverside Transit Administration (RTA) to replace RTA's fleet of compressed natural gas buses, which were reaching the end of their useful life.

The term of proposed Agreement No. 21-16 would be for a period of one year, effective July 1, 2021, and would extend through June 30, 2022 unless modified, amended, or terminated by the written mutual consent of either the City of Montclair or DTA. Proposed Agreement No. 21-16 would automatically be renewed for a period of one additional year unless notice of intent not to renew is made by either City of Montclair or DTA, in writing, delivered to the other, thirty (30) days prior to its expiration date. Thereafter, in the absence of either termination or notice of non-renewal, proposed Agreement No. 21-16 will renew on an annual basis.

FISCAL IMPACT: Approval of proposed Agreement No. 21-16 with DTA would result in an annual cost of \$60,000 to the City's General Fund related to the delivery and provision of services included in the proposed Agreement—an increase of \$15,000 over the current annual fee of \$45,000; however, under terms of the proposed agreement, DTA would be responsible for all ordinary costs related to the provision of services. Costs for extraordinary services would have to be approved in advance by the City Council.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 21-16 a Professional Consulting Agreement between David Turch and Associates and the City of Montclair for Federal Legislative Advocacy Services.

AGREEMENT NO. 21-16

PROFESSIONAL CONSULTING AGREEMENT
BETWEEN DAVID TURCH AND ASSOCIATES AND
THE CITY OF MONTCLAIR

This is a professional services agreement between the City of Montclair, California ("Montclair") and David Turch and Associates (DTA) of Washington, D.C. Hereinafter, the term "parties" shall refer to both Montclair and DTA jointly. Whenever used in this document, the word agreement means contract; further, the words firm(s) or company(ies) mean any business entity, association, institution or government agency.

1. PURPOSE

Montclair hereby engages the services of DTA to advise, counsel and represent Montclair with, principally but not limited to, its affairs with the Legislative and Executive Branches of the Federal Government.

DTA hereby agrees to faithfully and to the best of its ability, promote and represent Montclair and its interests with, principally but not limited to, federal legislative proposals and actions, grants, budgetary earmarks, and other fiscal and legislative matters which could have a substantial impact on Montclair or the conduct of its operations.

It is further understood and expected, that from time to time, or on a continuing basis, other tasks, whether general or specific, may be requested and performed by the mutual consent of the parties. Adjustments to the compensation schedule, if any, for such other tasks shall be mutually agreed to by the parties on a case by case basis.

2. EFFECTIVE DATES

This agreement will take effect on the 1st day of July, 2021 and shall continue in full force and effect for a period of one year to its expiration on the 30th day of June, 2022 unless previously modified, amended, or canceled by the written mutual consent of the parties, or unless extended under its provisions, as provided for herein.

3. RENEWAL

This agreement will automatically be renewed for a period of one additional year unless notice of intent not to renew is made by either party, in writing, delivered to the other, thirty (30) days prior to its expiration date. Thereafter, in the absence of either termination or notice of non-renewal, this agreement will renew on an annual basis

4. TERMINATION

This agreement may be terminated at any time by either party in writing, delivered to the other, provided there is a minimum thirty (30) days written notice. Such termination shall take effect as of the end of the last calendar day of the month following the month in which such notification of termination was received.

5. COMPENSATION

a. Ordinary:

For fulfillment of the terms and conditions provided for herein, compensation from Montclair to DTA is agreed to be not more than Sixty Thousand Dollars (\$60,000) per fiscal year. Such compensation is to be paid according to the following schedule:

- 1) The first month's payment of Five Thousand Dollars (\$5,000) is to accompany this agreement.
- 2) Thereafter, each month's payment of Five Thousand Dollars (\$5,000) is agreed to be due and payable prospectively, and DTA agrees to bill Montclair monthly, such billing to be mailed on or before the first day of each calendar month. Such monthly billings to be paid by Montclair on or before the third week of each calendar month.

b. Expenses:

Montclair agrees to reimburse DTA for all extraordinary and reasonable expenses incurred on its behalf that are outside the scope of this agreement. Montclair and DTA agree that DTA shall not invoice Montclair for additional and extraordinary expenses without prior consideration and approval by Montclair, such consideration to include a schedule of fees for additional services to be provided by DTA to, and approved by, Montclair. In the event Montclair and DTA agree to additional compensation for tasks / services outside the scope of this Agreement, DTA agrees to bill Montclair monthly for such expenses, such billing to be mailed on or before the fifth day of each calendar month. Such expense statements are agreed to be paid by Montclair on or before the first day of the calendar month following such billing.

c. Obligations:

At all times during this agreement, whether during the first year or during any extension period, Montclair agrees to pay all ordinary and mutually agreed upon extraordinary and reasonable expenses as provided for under this Section, including any obligations incurred in relation to the execution of this agreement or to fulfill commitments previously made on behalf of Montclair pursuant to this agreement.

6. DISPUTES

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

7. DEFAULT

If any legal action is necessary to enforce any provision of this Agreement or for damages by reason of an alleged breach of any provisions of this Agreement, the prevailing Party shall be entitled to receive from the losing Party all attorneys' fees, costs and expenses in such amount as the courts may determine to be reasonable.

8. FAILURE TO ENFORCE

The failure of either party to insist upon strict performance of any of the terms and conditions stated herein shall not be deemed a waiver of any rights or remedies that either party may have and shall not be deemed a waiver of any subsequent breach or default in the terms and conditions herein contained.

9. ENTIRE AGREEMENT

This is the entire agreement between the parties. This contract may be modified or amended at any time by the mutual consent of the parties. Any such amendment or modification shall be in writing and become a permanent part of this agreement upon ratification by both parties. This agreement may be executed in any number of counterparts, each of which shall be an original but all of which shall together constitute one and the same instrument.

10. PROCLAMATIONS AND CERTIFICATIONS

The persons, and any of them, whose signatures are affixed to this document on behalf of their respective entities do proclaim, certify and affirm that they entered into this agreement freely in accordance with the laws of the state of California and that their signatures are genuine and that they are authorized, directed and empowered by and on behalf of their respective entities, and in its name, to execute this agreement on such terms and conditions as are stated herein. This agreement shall be binding upon Montclair and DTA and their successors and/or assigns.

11. INDEPENDENT CONTRACTOR

DTA is and shall at all time remain as to Montclair a wholly independent contractor. The personnel performing the services under this agreement on behalf of DTA shall at all times be under DTA's exclusive direction and control and shall not be construed to be employees of Montclair for any purpose, including eligibility under Public Employees Retirement Law and / or as a Montclair-paid

member of the California Public Employees Retirement System (CalPERS). No Montclair-provided employee benefits shall be available to DTA in connection with the performance of this agreement. Except for the fees paid to DTA as provided herein, Montclair shall not pay salaries, wages, or other compensation to DTA for performing services hereunder for Montclair.

12. WORKERS' COMPENSATION

DTA shall maintain workers' compensation insurance as required by the State of California or the District of Columbia, where DTA is domiciled.

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

Approved as to Form:

Agreed to this _____ day of _____, 2021.

CITY OF MONTCLAIR

DAVID TURCH & ASSOCIATES

By: _____
Javier John Dutrey, Mayor

By: _____
David Turch, Owner

Attest:

By: _____
Andrea M. Phillips, City Clerk

Approved as to Form:

By: _____
Diane E. Robbins, City Attorney



CITY COUNCIL AGENDA REPORT

DATE: APRIL 5, 2021

FILE I.D.: SEW500

SECTION: CONSENT - AGREEMENTS

DEPT.: PUBLIC WORKS

ITEM NO.: 2

PREPARER: N. CASTILLO

SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 21-17 WITH THE RETAIL DRINKING WATER, WASTEWATER COLLECTION, AND RECYCLED WATER COLLECTION SERVICE PROVIDERS WITHIN THE INLAND EMPIRE UTILITIES AGENCY SERVICE AREA FOR THE WASTEWATER AND RECYCLED WATER REGULATORY COMPLIANCE REVIEW PROJECT

AUTHORIZE A \$3,345 APPROPRIATION FROM THE CONTINGENCY FUND FOR AGREEMENT NO. 21-17

REASON FOR CONSIDERATION: Staff is recommending that City Council approve the execution of a cost-sharing agreement with other water service providers within the Inland Empire Utility Agency's (IEUA) service area (the Cities of Chino, Chino Hills, Fontana, Montclair, Ontario, and Upland; and the Cucamonga Valley Water, Monte Vista Water, and Jurupa Community Services Districts) for the Wastewater and Recycled Water Regulatory Compliance Review Project. The City of Ontario is serving as the lead agency on this project.

A copy of proposed Agreement No. 21-17 is attached for the City Council's review and consideration.

BACKGROUND: The City of Montclair works in close partnership with other retail agencies and regional entities who are responsible for providing high-quality and low-cost water, wastewater, and recycled water services for residents and businesses to support public health, quality of life, and economic growth. Providing these services requires long-term capital project and financial planning, state and federal regulatory compliance, and partnerships with other local service providers and regional entities. The California Constitution requires that water and wastewater rates fund no more than the cost of providing service to residential and business customers.

On August 17, 2020, the City Council approved Agreement No. 20-71, a Regional Water Policy and Management Memorandum of Understanding with the water service-providing agencies within the IEUA Service area. The goal of the MOU is to improve mutually beneficial relationships between water retail agencies and our regional partners that will ensure ratepayer funds are used effectively, efficiently, and with full accountability. The MOU commits its signatories to meet regularly requirements, identify opportunities for improved regional water policy and management, and develop cost-sharing joint efforts for implementation by willing agencies.

IEUA has informed its seven sewer contracting agencies that significant infrastructure improvements are needed to meet Basin Plan objectives for total dissolved solids (TDS) and nitrogen. IEUA states that in order to maintain regulatory compliance for both its wastewater discharge permits and its recycled water recharge permits, it must build and operate advanced water treatment (AWT) plants to reduce its effluent TDS. IEUA faces TDS limits on both wastewater discharge and recycled water recharge. IEUA believes that the wastewater discharge limit will be exceeded in the near future, particularly if the

region faces another drought. IEUA has prepared cost estimates for the AWT, including the location of the treatment facilities and the final disposition of water. The Parties, through this Project, seek to further understand the actions needed to continue regulatory compliance for TDS and nitrogen, the range of options available, the timing needed to implement the options, and the justification for selected alternatives. It is the intent of the Parties to share the expense of the Project in a cost-effective way to reduce the financial burden borne by a Party's respective ratepayers. This joint effort is consistent with Regional Water Policy and Management MOU.

The project will evaluate the wastewater treatment and process improvement options that will ensure regulatory compliance for wastewater and recycled water discharge in the coming years. As entities contracting with IEUA, which treats a large portion of the region's wastewater, the Agencies are, in part, responsible for operating within both State and Federal discharge limitations. IEUA is proposing infrastructure and process improvements at its treatment facilities to meet the regulations as part of its Chino Basin Program ("CBP") plan. The project will provide a basis for the needed treatment improvements to stay in compliance, independent of IEUA's proposed CBP plan. The Agencies want to ensure that the most efficient and effective plan for meeting regulatory objectives is considered by IEUA.

FISCAL IMPACT: The Parties agree to split the cost evenly between the sewerage agencies and water agencies. Each Party's cost share is based on the respective Party's number of Equivalent Dwelling Units (EDUs) reported in Fiscal Year 2019-2020 and Meter Equivalent Units (MEUs) reported as of January 1, 2019. The cost share is determined by the total cost divided by each Party's share of MEUs and EDUs.

The City's share of Agreement No. 21-17 is \$3,345 and would be funded with an appropriation from the Contingency Fund.

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

1. Approve Agreement No. 20-17 with the retail drinking water, wastewater collection, and recycled water collection service providers within the Inland Empire Utilities Agency service area for the Wastewater and Recycled Water Regulatory Compliance Review Project.
2. Authorize a \$3,345 Appropriation from the Contingency Fund for Agreement No. 21-17.

CITY OF



ONTARIO

ONTARIO MUNICIPAL UTILITIES COMPANY

PAUL S. LEON
MAYORSCOTT OCHOA
CITY MANAGERALAN D. WAPNER
MAYOR PRO TEMSHEILA MAUTZ
CITY CLERKJIM W. BOWMAN
DEBRA DORST-PORADA
RUBEN VALENCIA
COUNCIL MEMBERSJAMES R. MILHISER
TREASURER

January 26, 2021

SCOTT BURTON
UTILITIES GENERAL MANAGER

RE: Cost-Share Agreement for the Wastewater and Recycled Water Regulatory Compliance Review Project

To Whom It May Concern,

This letter is intended to be a formal agreement in writing among the below-signed agencies (individually “Party” and collectively “Parties”) of the terms and conditions pertaining to the sharing of costs for the Wastewater and Recycled Water Regulatory Compliance Review Project (“Project”).

Inland Empire Utilities Agency (IEUA) has informed its seven sewer contracting agencies that significant infrastructure improvements are needed to meet Basin Plan objectives for total dissolved solids (TDS) and nitrogen. IEUA states that in order to maintain regulatory compliance for both its wastewater discharge permits and its recycled water recharge permits, it must build and operate advanced water treatment (AWT) plants to reduce its effluent TDS. IEUA faces TDS limits on both wastewater discharge and recycled water recharge (which is blended with imported and storm waters) but believes that the wastewater discharge limit will be exceeded in the near future, particularly if the region faces another drought. IEUA has prepared cost estimates for the AWT, including the location of the treatment facilities and the final disposition of water (which it generally assumes will be recharged rather than used directly by customers). The Parties, through this Project, seek to further understand the actions needed to continue regulatory compliance for TDS and nitrogen, the range of options available, the timing needed to implement the options, and the justification for selected alternatives. It is the intent of the Parties to share the expense of the Project in a cost-effective way to reduce the financial burden borne by a Party’s respective ratepayers. This joint effort is consistent with Regional Water Policy and Management Memorandum of Understanding (MOU) signed by certain Parties herein. Participation in the MOU is not necessary to enter into this agreement.

This letter agreement between the Parties hereto shall have the same force and effect as if a separate agreement were prepared and signed by the Parties. This letter agreement shall be in effect on (“Effective Date”).

The Parties agree to the following terms and conditions for the implementation of this Project:

1. The City of Ontario (“City” or “Project Manager”) shall serve as lead agency in implementing and managing the Project and holding consultant contracts on behalf of the Parties.
2. The City with voluntary participation by certain Parties, developed a scope of work and Request for Proposals. The City received a proposal from one consultant on November 25, 2020 for the Project. The volunteering Parties have also concluded on a selection based on a best value approach. Stetson Engineers was selected with a “Base Fee” of \$108,455.
3. The Parties agree to split the cost evenly between the sewerage agencies and water agencies. Each Party’s cost share will be based on the respective Party’s number of Equivalent Dwelling Units (EDUs) reported in Fiscal Year 2019-2020 and Meter Equivalent Units (MEUs) reported as of January 1, 2019 for the base scope given in Stetson Engineer’s Proposal and Fee Proposal, meaning the cost share shall be determined by the total cost divided by each Party’s share of MEUs and EDUs. Exhibit A displays the total cost breakdown per agency based on their respective MEU and EDU counts.
4. The total cost-sharing commitment for the Project (“Project Cost”) shall not exceed a total of \$150,000 without written approval and amendment of this Agreement. This amount represents the consultant base fee in part 2 of this Agreement and the remaining balance as a contingency to cover any unanticipated changes to the Project scope. The Parties understand that the not-to-exceed amount of \$150,000 facilitates potential necessary Project changes and associated costs without significant effort to amend this Agreement. Change orders resulting in an increase to the consultant fee above the Base Fee shall not be authorized by the Project Manager unless justification is provided to and accepted in writing by the affected Party(ies).
5. The Parties understand that the consultant fees as proposed in part 2 of this Agreement shall be shared by the participating Parties as shown in Exhibit A. However, there may be opportunities or needs for additional tasks an additional cost, which shall be justified, documented, and communicated in writing to all Parties, and agreed to pursuant to the terms of this Agreement.
6. Parties commit to achieving consensus on Project goals, consultant services, and methodologies to complete Project.
7. Parties commit to designating a staff member (“Party Representative”) to assist the Project Managers and serve as the Party’s primary contact for the purpose of implementing and reviewing the Project.
8. Parties commit to providing payment within thirty (30) days of receiving an invoice from the lead agency for their proportional share of Project costs consistent with Project Scope.
9. Parties commit to a collaborative process in implementing Project; providing timely response to all requests by Project Manager for information, data, and perspectives; Project

Manager(s) commit to timely communication to the Parties and consultant(s) for the execution of the work.

Sincerely,

Scott Burton, PE
Utilities General Manager
City of Ontario

Exhibit A
Cost Sharing Breakdown

Exhibit B
Stetson Engineers Proposal for Wastewater and Recycled Water Regulatory Compliance Review dated November 25, 2020
Stetson Engineers Fee Wastewater and Recycled Water Regulatory Compliance Review dated November 25, 2020

[Signatures on next page]

City of Chino

By: _____
Name: _____
Title: _____
Date: _____

City of Chino Hills

By: _____
Name: _____
Title: _____
Date: _____

Cucamonga Valley Water District

By: _____
Name: _____
Title: _____
Date: _____

Monte Vista Water District

By: _____
Name: _____
Title: _____
Date: _____

City of Fontana

By: _____
Name: _____
Title: _____
Date: _____

City of Montclair

By: _____
Name: _____
Title: _____
Date: _____

City of Ontario

By: _____
Name: _____
Title: _____
Date: _____

City of Upland

By: _____
Name: _____
Title: _____
Date: _____

Jurupa Community Services District

By: _____
Name: _____
Title: _____
Date: _____



CITY COUNCIL AGENDA REPORT

DATE: APRIL 5, 2021 **FILE I.D.:** PUB115
SECTION: CONSENT - AGREEMENTS **DEPT.:** PUBLIC WORKS
ITEM NO.: 3 **PREPARER:** N. CASTILLO
SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 21-18 WITH FEHR & PEERS FOR THE PREPARATION OF A LOCAL ROADS SAFETY PLAN

CONSIDER AUTHORIZING A \$4,339 APPROPRIATION FROM THE GAS TAX FUND TO COVER THE 10 PERCENT LOCAL MATCH REQUIRED IN ADDITION TO THE \$40,000 GRANT AWARD RECEIVED FROM THE STATE TO FUND THE AGREEMENT

REASON FOR CONSIDERATION: In order to complete the Local Roads Safety Plan (LRSP), a professional firm needs to be procured to perform the analytical engineering work. Professional agreements with the City require City Council Approval.

The City Council is requested to approve Agreement No. 21-18 with Fehr & Peers for the preparation of a LRSP, and to authorize a \$4,339 appropriation from the Gas Tax Fund to cover the 10 percent local match required in addition to the \$40,000 grant award received from the state to fund the Agreement.

Proposed Agreement No. 21-18 with Fehr & Peers is attached for the City Council's review and consideration.

BACKGROUND: On March 4, 2019, the City Council approved Agreement No. 19-19 with Fehr & Peers to provide consulting services for the preparation of the Systemic Safety Analysis Report (SSAR), which was completed in May of 2020. The SSAR performed collision analysis, identified safety issues on roadways, and developed a list of systemic countermeasures that can be used to prepare projects for future Highway Safety Improvement Program (HSIP) grant applications. Since the SSAR has been successfully completed, a grant application to cycle 10 of the Highway Safety Improvement Program (HSIP) has been submitted. The SSAR makes the City's grant application much more competitive and the City looks forward to receiving an award letter in the near future.

The SSAR can be equivalent to the LRSP, but the SSAR will be phased out over time. The state is encouraging local agencies to incorporate LRSP components such as collaborating with other departments within the local agency (police, public health, local officials, etc.) to enhance their safety plans. The state provided a grant opportunity to fund the LRSP. Through collaboration with Fehr & Peers, the City applied and was successful in obtaining a \$40,000 grant to further "the E's of safety work," including Education, Enforcement, and Emerging Technology. The LRSP grant provides a unique opportunity for the City to continue its proactive approach to roadway safety, building on the foundation of the SSAR.

Federal regulations require each state to have a Strategic Highway Safety Plan (SHSP). An SHSP is a statewide data-driven traffic safety plan that coordinates the efforts of a wide range of organizations to reduce traffic accident fatalities and serious injuries on all public roads. In coordination with federal, state, local, and private sector safety stakeholders, the SHSP establishes goals, objectives, and emphasis (or challenge) areas.

The SHSP addresses “the four E’s of traffic safety: Engineering, Enforcement, Education, and Emergency Services.”

While the SHSP is used as a statewide approach for improving roadway safety, a LRSP can be a means for providing local and rural road owners with an opportunity to address unique highway safety needs in their jurisdictions while contributing to the success of the SHSP. The process of preparing an LRSP creates a framework to systematically identify and analyze safety problems and recommend safety improvements. Preparing an LRSP facilitates the development of local agency partnerships and collaboration, resulting in a prioritized list of improvements and actions that can demonstrate a defined need and contribute to the statewide plan. The LRSP offers a proactive approach to addressing safety needs and demonstrates agency responsiveness to safety challenges.

For future HSIP calls-for-projects, an LRSP will be preferred or required for an agency to be eligible to apply for federal HSIP funds. Through their analytical work in the creation of the SSAR, Fehr & Peers is in a unique position to further the City of Montclair’s safety plan. Fehr & Peers is well versed with the goals, priorities, and objectives established in the SSAR, enabling them to more easily incorporate the additional components needed to create an HSIP-approved LRSP. Their institutional knowledge of the City’s accident data provides a value that could not be matched by any other firm. Accordingly, proposals from other firms were not sought, since no other firm has the institutional knowledge gained by participating in the development of the SSAR. The process to procure the agreement with Fehr & Peers is within our purchasing guidelines. The agreement is in the best interest of the City and will provide the best value. Staff recommends a new agreement with Fehr & Peers to provide professional services for the preparation of the LRSP.

FISCAL IMPACT: Agreement No. 21-18 authorizes an expenditure of up to \$44,339, comprised of \$40,000 state monies and a \$4,339 local match, which will be paid with monies from the Gas Tax Fund. The reimbursement ratio for the state funds is 90 percent. The cost associated with the Fehr & Peers contract is \$44,339.

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

1. Approve Agreement No. 21-18 with Fehr & Peers for the preparation of a Local Road Safety Plan.
2. Authorize a \$4,339 appropriation from the Gas Tax Fund to cover the 10 percent local match required in addition to the \$40,000 grant award received from the State to fund the Agreement.

CITY OF MONTCLAIR

AGREEMENT FOR CONSULTANT SERVICES

LOCAL ROADS SAFETY PLAN (LRSP)

THIS AGREEMENT is made and effective as of April 5, 2021, between the City of Montclair, a municipal corporation ("City") and Fehr & Peers, a California corporation ("Consultant"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. **TERM**

This Agreement shall commence on April 5, 2021, and shall remain and continue in effect for a period of 24 months until tasks described herein are completed, but in no event later than June 30, 2023, unless sooner terminated pursuant to the provisions of this Agreement.

2. **SERVICES**

Consultant shall perform the tasks described and set forth in Exhibit A, attached hereto and incorporated herein as though set forth in full. Consultant shall complete the tasks according to the schedule of performance which is also set forth in Exhibit A.

3. **PERFORMANCE**

Consultant shall perform its services exercising the same degree of care, skill, and diligence as is ordinarily possessed and exercised by professionals providing similar services, currently practicing, under similar circumstances.

4. **CITY MANAGEMENT**

City's City Manager shall represent City in all matters pertaining to the administration of this Agreement, review and approval of all products submitted by Consultant, but not including the authority to enlarge the Tasks to be Performed or change the compensation due to Consultant. City's City Manager shall be authorized to act on City's behalf and to execute all necessary documents which enlarge the Tasks to be Performed or change Consultant's compensation, subject to Section 5 hereof.

5. **PAYMENT**

(a) The City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit B, attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. This amount shall not exceed \$44,339 for the total term of the Agreement unless additional payment is approved as provided in this Agreement.

(b) Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City Manager. Consultant shall be compensated for any additional services in the amounts and in the manner as agreed to by City Manager and Consultant at the time City's written authorization is given to Consultant for the performance of said services. The City Manager may approve additional work not to exceed ten percent (10%) of the amount of the Agreement, but in no event shall total compensation exceed Ten Thousand Dollars (\$10,000.00). Any additional work in excess of this amount shall be approved by the City Council.

(c) Consultant will submit invoices monthly for actual services performed. Said invoices shall detail all costs, rates and hours for individual tasks. Invoices shall be submitted on or about the first business day of each month, or as soon thereafter as practical, for services provided in the previous month. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the City disputes any of the Consultant's fees, it shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice.

(d) Consultant agrees that, in no event shall City be required to pay to Consultant any sum in excess of ninety-five percent (95%) of the maximum payable hereunder prior to receipt by City of all final documents, together with all supplemental technical documents, as described herein acceptable in form and content to City. Final payments shall be made no later than sixty (60) days after presentation of final documents and acceptance thereof by City.

6. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE

(a) The City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the Consultant at least ten (10) days prior written notice. Upon receipt of said notice, the Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the City suspends or terminates a portion of this Agreement, such suspension or termination shall not make void or invalidate the remainder of this Agreement.

(b) In the event this Agreement is terminated pursuant to this Section, the City shall pay to Consultant on a pro-rata basis the actual value of the work performed up to the time of termination together with reimbursable expenses then due or incurred. Upon termination of the Agreement pursuant to this Section, the Consultant will submit an invoice to the City pursuant to Section 5(c).

7. DEFAULT OF CONSULTANT

(a) The Consultant's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Consultant is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating Consultant for any work performed after the date of default and can terminate this Agreement immediately by written notice to the Consultant. If such failure by the

Consultant to make progress in the performance of work hereunder arises out of causes beyond the Consultant's control, and without fault or negligence of the Consultant, it shall not be considered a default.

(b) If the City Manager or his/her delegate determines that the Consultant is in default in the performance of any of the terms or conditions of this Agreement, he/she shall cause to be served upon the Consultant a written notice of the default. The Consultant shall have ten (10) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that the Consultant fails to cure its default within such period of time, the City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

8. OWNERSHIP OF DOCUMENTS

(a) Consultant shall maintain complete and accurate records with respect to billed time, sales, costs, expenses, receipts and other such information required by City that relate to the performance of services under this Agreement. Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to the representatives of City or its designees at reasonable times to such books and records; shall give City the right to examine and audit said books and records; shall permit City to make transcripts therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

(b) Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, claims, applications, computer files, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the City and may be used, reused, or otherwise disposed of by the City without the permission of the Consultant. With respect to computer files, Consultant shall make available to the City, at the Consultant's office and upon reasonable written request by the City, the necessary computer software and hardware for purposes of accessing, compiling, transferring and printing computer files.

9. INDEMNIFICATION

(a) Indemnification for Professional Liability. When the law establishes a professional standard of care for Contractor's services, to the fullest extent permitted by law, Contractor shall indemnify, protect, defend and hold harmless City and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all losses, liabilities, damages, costs and expenses, including attorney's fees and costs to the extent same are caused by any negligent or wrongful act, error or omission of

Contractor, its officers, agents, employees or subconsultants (or any entity or individual that Contractor shall bear the legal liability thereof) in the performance of professional services under this Agreement. In no event shall the cost to defend charged to Contractor exceed Contractor's proportionate percentage of fault.

(b) Indemnification for Other than Professional Liability. Other than in the performance of professional services as specified in Section 9.(a) and to the full extent permitted by law, Contractor shall indemnify, defend and hold harmless City, and any and all of its employees, officials, and agents ("Indemnified Parties") from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses 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), where the same arise out of, are a consequence of, or are in any way attributable 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 officers, agents, employees or subconsultants of Contractor. Said indemnification shall include any claim that Contractor, or Contractor's employees or agents, are considered 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. Contractor's responsibility to indemnify, defend, and hold harmless the Indemnified Parties shall not apply to the extent the liability is due to the active negligence or willful misconduct of City or its elective or appointive boards, officers, agents and employees.

(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 as set forth above. 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 to the Indemnified Parties' benefit, any and all damages, fines, penalties, and loss or theft of property of the City arising out of or related in any way to the negligent acts or omissions or intentional misconduct of Contractor or of Contractor's officers, agents, representatives, employees, independent contractors, subcontractors or affiliated or related entities and/or its or their employees, agents and representatives, whether such actions, omissions to act, negligence or intentional conduct is or was authorized by this Agreement or not. 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. 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 to the extent caused by the 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) The obligations of Contractor under this or any other provision of this Agreement shall not be limited by the provisions of any workers' compensation act or similar act. The Contractor expressly waives any statutory immunity under such statutes or laws as to the Indemnified Parties. The Contractor's indemnity obligation set forth in this Section 9 shall not be limited by the limits of any policies of insurance required or provided by the Contractor pursuant to this Agreement.

(h) The Contractor's covenant under this Section 9 shall survive the expiration or termination of this Agreement.

10. INSURANCE

(a) Types of Required Coverages

Without limiting the indemnity provisions of the Contract, the Contractor shall procure and maintain in full force and effect during the term of the Contract, the following policies of insurance. If the existing policies do not meet the insurance requirements set forth herein, Contractor agrees to amend, supplement or endorse the policies to do so.

- (1) Commercial General Liability: Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 00 01, including products and completed operations, property damage, bodily injury, and personal & advertising injury with limits no less than \$2,000,000 per occurrence, and \$4,000,000 aggregate total bodily injury, personal injury, and property damage.
- (2) Automobile Liability Insurance: Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA

0001 covering "Any Auto" (Symbol 1), including owned, non-owned and hired autos, or the exact equivalent, with minimum limits of \$1,000,000 for bodily injury and property damage, each accident. If Contractor owns no vehicles, auto liability coverage may be provided by means of a non-owned and hired auto endorsement to the general liability policy. Automobile liability insurance and endorsements shall be kept in force at all times during the performance of this Agreement.

- (3) Workers' Compensation: Workers' Compensation Insurance, as required by the State of California and Employer's Liability Insurance with a limit of not less than \$1,000,000 each accident for bodily injury and \$1,000,000 each employee for bodily injury by disease.
- (4) Professional Liability: Professional Liability insurance with limit of not less than \$3,000,000 each claim. Covered professional services shall specifically include all work to be performed under the Agreement and delete any exclusion that may potentially affect the work to be performed.

(b) Endorsements

Insurance policies shall not be in compliance if they include any limiting provision or endorsement. The insurance policies shall contain, or be endorsed to contain, the following provisions:

(1) Commercial General Liability

Additional Insured: The City, its elected officials, officers, employees, volunteers, boards, agents and representatives shall be additional insureds with regard to liability and defense of suits or claims arising out of the work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. Coverage for the additional insureds shall apply to the fullest extent permitted by law.

Additional Insured Endorsements shall not:

- 1. Be limited to "Ongoing Operations"
- 2. Exclude "Contractual Liability"
- 3. Restrict coverage to the "Sole" liability of contractor
- 4. Exclude "Third-Party-Over Actions"
- 5. Contain any other exclusion contrary to the Agreement

Additional Insured Endorsements shall be at least as broad as ISO Forms CG 20 10 11 85; or CG 20 and 10 and CG 2037.

Primary Insurance: This insurance shall be primary and any other insurance, whether primary, excess, umbrella or contingent insurance, including deductible, or self-insurance available to the insureds added by

endorsement, shall be in excess of, and shall not contribute with, this insurance. Coverage shall be at least as broad as ISO CG 20 01 04 13.

(2) Auto Liability

Additional Insured: The City, its elected officials, officers, employees, volunteers, boards, agents, and representatives shall be additional insureds with regard to liability and defense of suits or claims arising out of the work or operations performed by or on behalf of the Contractor.

Primary Insurance: This insurance shall be primary and any other insurance whether primary, excess, umbrella or contingent insurance, including deductible, or self-insurance available to the insureds added by endorsement shall be in excess of and shall not contribute with this insurance.

(3) Workers' Compensation

Waiver of Subrogation: A waiver of subrogation stating that the insurer waives all rights of subrogation against the indemnified parties.

(c) Notice of Cancellation

Required insurance policies shall not be cancelled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

(d) Waiver of Subrogation

Required insurance coverages shall not prohibit Contractor from waiving the right of subrogation prior to a loss. Contractor shall waive all rights of subrogation against the indemnified parties and policies shall contain or be endorsed to contain such a provision. This provision applies regardless of whether the City has received a waiver of subrogation endorsement from the insurer.

(e) Evidence of Insurance

All policies, endorsements, certificates, and/or binders shall be subject to approval by the City as to form and content. These requirements are subject to amendment or waiver only if so approved in writing by the City. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15) days prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced, Contractor shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

(f) Deductible or Self-Insured Retention

Any deductible or self-insured retention must be approved in writing by the City and shall protect the indemnified parties in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention. The City may require the Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the Contractor or the City.

(g) Contractual Liability/Insurance Obligations

The insurance obligations under this Agreement shall be: (1) all the insurance coverage and/or limits carried by or available to the Contractor; or (2) the minimum insurance coverage requirements and/or limits shown in this Agreement; whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and/or minimum required limits, which are applicable to a given loss, shall be available to the City. No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of the Contractor under this Agreement.

(h) Failure to Maintain Coverage

Contractor agrees to suspend and cease all operations hereunder during such period of time as the required insurance coverage is not in effect and evidence of insurance has not been furnished to the City. The City shall have the right to withhold any payment due Contractor until Contractor has fully complied with the insurance provisions of this Contract. In addition, the City may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, City may take out the necessary insurance and pay, at Contractor's expense, the premium thereon.

In the event that the Contractor's operations are suspended for failure to maintain required insurance coverage, the Contractor shall not be entitled to an extension of time for completion of the Work because of production lost during suspension.

(i) Acceptability of Insurers

Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and authorized to do business in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law. Any other rating must be approved in writing in accordance with the City.

(j) Claims Made Policies

If coverage is written on a claims-made basis, the retroactive date on such insurance and all subsequent insurance shall coincide or precede the effective date of the initial Contractor's Agreement with the City and continuous coverage shall be maintained or an extended reporting period shall be exercised for a period of at least five (5) years from termination or expiration of this Agreement.

(k) Insurance for Subcontractors

Contractor shall be responsible for causing Subcontractors to purchase the same types and limits of insurance in compliance with the terms of this Agreement, including adding the City as an Additional Insured, providing Primary and Non-Contributory coverage and Waiver of Subrogation to the Subcontractors' policies. The Commercial General Liability Additional Insured Endorsement shall be on a form at least as good as CG 20 38 04 13.

11. INDEPENDENT CONTRACTOR

(a) Consultant is and shall at all times remain as to the City a wholly independent contractor. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control and shall not be construed to be employees of City for any purpose, including eligibility under Public Employees Retirement Law. Neither City nor any of its officers, employees, or agents shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents, except as set forth in this Agreement. Consultant shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of the City. Consultant shall not incur or have the power to incur any debt, obligation, or liability whatever against City, or bind City in any manner. Consultant shall be solely responsible and hold the City harmless for all matters relating to the payment of Consultant's employees, including compliance with Social Security withholdings and all other regulations governing such matters.

(b) No employee benefits shall be available to Consultant in connection with the performance of this Agreement. Except for the fees paid to Consultant as provided in the Agreement City shall not pay salaries, wages, or other compensation to Consultant for performing services hereunder for City. City shall not be liable for compensation or indemnification to Consultant for injury or sickness arising out of performing services hereunder.

12. LEGAL RESPONSIBILITIES

The Consultant shall keep itself informed of State and Federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its services pursuant to this Agreement. The Consultant shall at all times observe and comply with all such laws and regulations. The City, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the Consultant to comply with this Section.

13. UNDUE INFLUENCE

Consultant declares and warrants that no undue influence or pressure is used against or in concert with any officer or employee of the City of Montclair in connection with the award, terms or implementation of this Agreement, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of the City of Montclair will receive compensation, directly or indirectly, from

Consultant, or from any officer, employee or agent of Consultant, in connection with the award of this Agreement or any work to be conducted as a result of this Agreement. Violation of this Section shall be a material breach of this Agreement entitling the City to any and all remedies at law or in equity.

14. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES

No member, officer, or employee of City, or their designees or agents, and no public official who exercises authority over or responsibilities with respect to the Project during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any agreement or sub-agreement, or the proceeds thereof, for work to be performed in connection with the project performed under this Agreement.

15. RELEASE OF INFORMATION/CONFLICTS OF INTEREST

(a) All information gained by Consultant in performance of this Agreement shall be considered confidential and shall not be released by Consultant without City's prior written authorization. Consultant, its officers, employees, agents, or subconsultants, shall not without written authorization from the City Manager or unless requested by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, responses to interrogatories, or other information concerning the work performed under this Agreement or relating to any project or property located within the City. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives City notice of such court order or subpoena.

(b) Consultant shall promptly notify City should Consultant, its officers, employees, agents or subconsultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, requests for admissions, or other discovery request, court order, or subpoena from any person or party regarding this Agreement and the work performed thereunder or with respect to any project or property located within the City. City retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing, or similar proceeding. Consultant agrees to cooperate fully with City and to provide the opportunity to review any response to discovery requests provided by Consultant. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

(c) Consultant shall comply with all applicable federal, state and local Conflict of Interest laws, including the Political Reform Act (California Government Code, Section 81000, *et. seq.*) and California Government Code, Section 1090, *et. seq.* Consultant covenants that neither he/she nor any officer or principal of their firm have any interest in, or shall acquire any interest, directly or indirectly, which will conflict in any manner or degree with the performance of their services hereunder. Consultant further covenants that in the performance of this Agreement, no person having such interest shall be employed by them as an officer, employee, agent or subconsultant. Consultant further covenants that Consultant has not contracted with nor is performing any services, directly or indirectly, with any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) owning property in the City or the study area and

further covenants and agrees that Consultant and/or its subconsultants shall provide no service or enter into any agreement or agreements with a/any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) owning property in the City or the study area prior to the completion of the work under this Agreement. Further, Consultant covenants not to give or receive any compensation, monetary or otherwise, to or from the ultimate vendor(s) of services to the City as a result of the performance of this Agreement, or the services that may be procured by the City as a result of the recommendations made by the Consultant. The Consultant's covenant under this Section shall survive the termination of this Agreement.

16. NOTICES

Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by notice:

To City: Noel Castillo, City Engineer
City of Montclair
5111 Benito
Montclair, CA 91763

To Consultant: Spencer Reed, Associate
Fehr & Peers
101 Pacifica, Suite 300
Irvine, CA 92618

17. ASSIGNMENT AND SUBCONTRACTING

The Contractor shall not assign any of its rights or delegate any of its duties under this Agreement, either in whole or in part, nor any monies due hereunder, without prior written consent of the City. The City's consent to an assignment of rights under this Agreement shall not release the Contractor from any of its obligations or alter any of its obligations to be performed under this Agreement. Any attempt at assignment or delegation by the Contractor in violation of this Section 17 shall be void and of no legal effect and shall constitute grounds to terminate this Agreement for cause. The Contractor shall not subcontract any performance required under this Agreement without the City's prior written consent.

18. LICENSES

At all times during the term of this Agreement, Consultant shall have in full force and effect, all licenses required of it by law for the performance of the services described in this Agreement, including a City of Montclair business license.

19. GOVERNING LAW

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

20. ENTIRE AGREEMENT

This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

21. CONTENTS OF REQUEST FOR PROPOSALS

Not Applicable.

22. CONFIDENTIALITY

Information and materials obtained by the Consultant from City during the performance of this Agreement shall be treated as strictly confidential and shall not be used by the Consultant for any purpose other than the performance of this Agreement. Consultant's covenant under this Section shall survive the expiration or termination of this Agreement.

23. DISCRIMINATION

The Consultant agrees that no person shall be excluded from employment in the performance of this Agreement on grounds of race, creed, color, sex, age, marital status, or place of national origin. In this connection, the Consultant agrees to comply with all County, State and Federal laws relating to equal employment opportunity rights.

24. EFFECT OF PARTIAL INVALIDITY

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

25. CLAIMS AGAINST CITY

Contractor must comply with the claim procedures set forth in Government Code sections 900, *et. seq.*, and/or Montclair Municipal Code, Chapter 1.16, as applicable, prior to filing any lawsuit against the City. Such claims and any subsequent lawsuit based upon the claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Contractor. If no such claim is submitted, or if any prerequisite

contractual requirements are not otherwise satisfied as specified herein, Contractor shall be barred from bringing and maintaining a valid lawsuit against the City.

26. AUTHORITY TO EXECUTE THIS AGREEMENT

The person or persons executing this Agreement on behalf of Consultant warrants and represents that he/she has the authority to execute this Agreement on behalf of the Consultant and has the authority to bind Consultant to the performance of its obligations hereunder.

27. NO THIRD PARTY BENEFICIARIES

This Agreement is made solely for the benefit of the Parties to this Agreement and their respective successors and assigns, and no other person or entity may have or acquire a right by virtue of this Agreement.

28. COST OF LITIGATION

If any legal action is necessary to enforce any provision of this Agreement or for damages by reason of an alleged breach of any provisions of this Agreement (whether in contract, tort or both), the prevailing Party shall be entitled to receive from the losing Party all attorneys' fees, costs and expenses in such amount as the courts may determine to be reasonable. In awarding the cost of litigation, the court shall not be bound by any court fee schedule, but shall, if it is in the interest of justice to do so, award the full amount of costs, expenses and attorneys' fees paid or incurred in good faith.

29. AUTHORITY TO EXECUTE THIS AGREEMENT

The person or persons executing this Agreement on behalf of Contractor warrants and represents that he/she has the authority to execute this Agreement on behalf of the Consultant and has the authority to bind Consultant to the performance of its obligations hereunder.

30. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be the original, and all of which together shall constitute one and the same instrument.

(Signatures on Following Page)

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

CITY OF MONTCLAIR

Fehr & Peers

By: _____
Javier John Dutrey, Mayor

By: _____
Spencer Reed, Associate

Attest:

By: _____
Andrea M. Phillips, City Clerk

By: _____

Approved as to Form:

By: _____
Diane E. Robbins, City Attorney

Attachments:

- EXHIBIT A – Fehr & Peers Methodology & Work Plan (3 pages)
- EXHIBIT B – Fehr & Peers Budget – Montclair Local Roadway Safety Plan (1 page)

LRSP Methodology & Work Plan

Montclair's procurement of the LRSP grant provides a unique opportunity for the City to continue its proactive approach to roadway safety, building on the foundation of the Systemic Safety Analysis Report, completed last year. The LRSP can provide Montclair with the opportunity to accomplish the following:

- Incorporate recently available collision data to identify new and emerging safety trends
- Build a culture of safety and safety champions within Montclair
- Identify specific recommendations related to education and enforcement that complement engineering recommendations from the SSAR
- Incorporate the Safe System framework and new Caltrans Strategic Highway Safety Plan priorities (adopted since the completion of the SSAR), ensuring alignment with future Caltrans HSIP funding priorities
- Help Montclair prepare for the 2022 HSIP cycle

Task 1 Safety Stakeholder Group

Task 1.1 – Stakeholder Group and Meetings

Fehr & Peers will work with the City to establish a stakeholder group for the LRSP that represents FHWA's four E's of safety: **Education**, such as the School District; **Enforcement**, such as the Montclair Police and **Emergency Services**, such as the Montclair Fire Department; and **Engineering** staff from the City. Additional stakeholders could include other City staff and representatives from outside agencies like Metrolink, Omnitrans, community-based organizations, and representatives of neighborhood groups.

Fehr & Peers will hold stakeholder interviews with each of the representatives described above. These conversations will focus on findings from the crash data analysis process, discussing stakeholders' priorities, and understanding important local context related to safety issues.

The second opportunity for stakeholder input will be a meeting focused on gathering stakeholder feedback on countermeasure strategies, proposed projects, and the draft Local Roadway Safety Plan. If in-person meetings are not possible due to ongoing public health concerns and restrictions, Fehr & Peers is well-positioned to use online collaboration tools to facilitate engaging and collaborative stakeholder meetings.

Task 1.2 – Safety Vision Statement, Goals & Objectives

Based on stakeholder interviews, Fehr & Peers will work with City staff to develop a vision statement and set of goals and objectives for the plan. As part of the final plan, each goal will align with an emphasis area, set of strategies, and options for evaluation.

Deliverables for Task 1:

- Plan vision and goals
- Stakeholder interviews
- Stakeholder meeting

Task 2 Update SSAR Safety Analysis

Task 2.1 – Review of Current Efforts

Fehr & Peers will review the City's General Plan, Active Transportation Plan, and additional relevant planning documents, policies, or programs related to current safety efforts. Fehr & Peers will review existing City resources and maintenance programs that address traffic safety needs to determine areas for improvement. Fehr & Peers will summarize existing safety efforts as a chapter in the final LRSP.

Task 2.2 – Collision Analysis Update

Fehr & Peers will use 2018 and 2019 TIMS collision data to update our systemic data analysis to identify if new hot spot locations or systemic trends are present within the dataset. Fehr & Peers will also incorporate 2020 data for fatal or severe injury collisions that may be available from the Montclair Police Department. Fehr & Peers will produce up to four additional maps and four additional figures to illustrate new trends.

Deliverables for Task 2:

- Review of current efforts draft chapter
- Collision analysis update summary, including maps and figures

Task 3 Develop Safety Strategies

Task 3.1 Enforcement, Education, Emergency Services & Emerging Technology Strategies

Fehr & Peers will build on the discussion of these topics in the SSAR to make specific strategy recommendations relevant to Montclair's key collision types. Recommendations will be made based on City staff and stakeholder input, efficacy research from resources such as the NHTSA *Countermeasures that Work* report, and resources necessary for strategy implementation. This information will be compiled into a strategy toolbox that will mirror the format of the engineering countermeasure toolbox in the SSAR.

Task 3.2 Engineering Strategies

In addition to specific emergency services, enforcement, and education strategies, Fehr & Peers will develop detailed engineering recommendations for up to three new hot spot locations and one new collision type. The deliverables for these locations will be based on the engineering recommendation deliverables included in the SSAR, with updates to match new HSIP requirements. For each engineering recommendation location, Fehr & Peers will provide:

- Collision summary
- Cost estimate and benefit/cost ratio
- Conceptual design

Montclair may choose to focus on strategic project locations, such as the San Antonio Creek project, or locations with new fatal or severe injury collisions, such as San Bernardino Street, for these new engineering recommendations.

Task 3.3 Prioritize Projects for HSIP Competitiveness

Acknowledging evolving HSIP requirements and the increasingly competitive landscape, Fehr & Peers will refine prior SSAR recommendations, using updated collision data (such as new collisions on Ramona

Avenue), to maximize B/C ratios for competitiveness under HSIP. Fehr & Peers will deliver a prioritized project list, based on updated B/C ratios for **all SSAR and new LRSP projects**, as well as refined project scopes for previously recommended SSAR projects. Fehr & Peers will also provide a prioritized list of SRTS projects, based on a qualitative assessment of the SRTS final plan.

Deliverables for Task 3:

- Enforcement, education, emergency services and emerging technology strategy toolbox
- Engineering strategies cutsheets

Task 4 LRSP Development

Task 4.1 Evaluation and Implementation Strategies

Fehr & Peers will collaborate with City staff to develop strategies for implementing safety measures included in the toolbox and a means to monitor safety outcomes to evaluate which measures are most effective. The strategies will consider not only engineering safety measures but also the other “E’s” of traffic safety, such as opportunities for local partnerships, public outreach, and emerging technology. We will identify how safety strategies can be implemented into existing programs, such as street maintenance and repair and CIP, and what additional resources or strategic partnerships can contribute to cultivating a citywide culture of transportation safety. The implementation program developed will identify:

- Strategies and tools for monitoring performance, including monitoring process and MOEs
- Potential funding sources for specific projects
- Agency roles and responsibilities for implementation of the plan
- Potential updates and funding opportunities for the City, such as the street maintenance program and CIP program

Task 4.2 Draft and Final LRSP Development

Fehr & Peers will prepare a Draft and Final Local Roadway Safety Plan to document the findings of previous tasks, including a discussion on the state of the current city systems and planning efforts, data analysis methods and results, emphasis areas, countermeasures and strategies, and goals and objectives. The final LRSP will incorporate the new Caltrans Strategic Highway Safety Plan priorities, ensuring alignment with future Caltrans HSIP funding priorities:

- Integrate Equity
- Implement a Safe System Approach
- Double Down on What Works
- Accelerate Advanced Technology

The Final LRSP will also include an implementation program for the City to follow to update the LRSP as projects are completed and new data becomes available. The Final Local Roadway Safety Plan will be submitted after one round of consolidated comments from City staff and the stakeholder group.

Deliverables for Task 4:

- Draft and Final LRSP

Fehr & Peers Budget
Montclair Local Roadway Safety Plan

Tasks	Steve Brown Principal \$107,00 \$324	Emily Finkel PM \$49,04 \$149	Claude Strayer Project Engineer \$53,85 \$163	Rachel Om Project Planner \$35,58 \$108	Matt Benjamin Technical Expert \$88,94 \$270	Melody Wu Graphics \$38,46 \$117	Sandra Hyatt Admin \$39,90 \$121	Total Hours	Labor
Task 1	Safety Stakeholder Group								
1.1 Stakeholder Group and Meetings	4	8	0	8	4	0	2	26	\$4,671
1.2 Safety Vision Statement, Goals & Objectives	2	6	0	2	0	0	2	12	\$1,999
Task 1 Safety Stakeholder Group - Subtotal	6	14	0	10	4	0	4	38	\$6,670
Task 2	Update SSAR Safety Analysis								
2.1 Review of Current Efforts	0	4	0	4	2	0	0	10	\$1,566
2.2 Collision Analysis Update	0	4	0	12	0	4	0	20	\$2,356
Task 2 Update SSAR Safety Analysis - Subtotal	0	8	0	16	2	4	0	30	\$3,922
Task 3	Develop Safety Strategies								
3.1 Enforcement, Education, Emergency Services & Emerging Technology Strategies	2	20	0	8	8	2	0	40	\$6,877
3.2 Engineering Strategies	4	6	20	4	8	4	0	46	\$8,512
3.3 Prioritize Projects for HSIP Competitiveness	2	4	2	2	0	0	0	10	\$1,786
Task 3 Develop Safety Strategies - Subtotal	8	30	22	14	16	6	0	96	\$17,175
Task 4	LRSP Development								
4.1 Evaluation and Implementation Strategies	4	8	0	2	2	0	4	20	\$3,727
4.2 Draft and Final LRSP Development	8	16	4	16	8	24	4	80	\$12,795
Task 4 LRSP Development - Subtotal	12	24	4	18	10	24	8	100	\$16,522
Task Labor Subtotal (Actual Cost Plus Fixed Fee)	26	76	26	58	32	34	12	264	\$44,289
Direct Costs (Mileage)									\$50
Total Cost (Actual Cost Plus Fixed Fee)									\$44,339



CITY COUNCIL AGENDA REPORT

DATE:	APRIL 5, 2021	FILE I.D.:	SEW080
SECTION:	CONSENT - AGREEMENTS	DEPT.:	COMMUNITY DEV.
ITEM NO.:	4	PREPARER:	M. DIAZ
SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 21-19-I-104 AMENDING AGREEMENT NO. 20-06-I-104, AN IRREVOCABLE ANNEXATION AGREEMENT WITH MISSION 42 LLC FOR A MULTI-UNIT RESIDENTIAL DEVELOPMENT PROJECT AT 5553 WEST MISSION BOULEVARD, ONTARIO (APN 1011-351-02-0000)		

REASON FOR CONSIDERATION: Mission 42 LLC (Crestwood Communities) requested an amendment to Irrevocable Annexation Agreement No. 20-06-I-104. Irrevocable Annexation Agreements, and any amendments thereto, are subject to City Council review and approval.

Copies of the proposed Amendment Agreement No. 21-19-I-104 with Mission 42 LLC and original Agreement No. 20-06-I-104 are attached for the City Council's review and consideration.

BACKGROUND: On February 3, 2020, Mission 42 LLC (Crestwood Communities) obtained City approval of an Irrevocable Annexation Agreement (IAA) to allow its residential development project (Tract Map No. 20267) within the City's Sphere of Influence (SOI) to connect to the sewer line maintained by the City of Montclair in Howard Street. The development project consists of 40 detached condominiums and two (2) single family residences (located on Bel Air Avenue). In 2020, the developer completed the installation of a new eight inch diameter sewer line from the project site to Howard Street. In addition, the two single family residences on Bel Air Avenue have been recently completed. Construction of the remaining condominiums is continuing with an expected completion later this year.

Agreement No. 20-06-I-104 requires Crestwood Communities to pay monthly sewer charges beginning on February 3, 2020, the date the Agreement was approved. In this case, there is a considerable period of time between the date of the Agreement and the time when the properties actually begin to receive sewer services. Crestwood Communities has submitted payment of the charges under protest, believing there should be no charges while the project is under construction and no sewer services are being received. Crestwood Communities has requested an amendment to the IAA to remove the requirement that it pay for sewer services prior to the time of connection to the sewer and the receipt of sewer service. The proposed amendment, drafted by the City Attorney, would be to Paragraph 4 of Agreement No. 20-06-I-104 and states as follows:

4. Owner shall pay all fees and charges and make all deposits required by the City to connect to and use the sewer, and Owner agrees to be bound by all City ordinances, rules, and regulations with respect to the sewer system. Owner agrees to pay monthly sewer charges beginning on the date that Owner connects to the sewer and begins receiving sewer services.

If approved by the City Council, the Agreement would be amended as described above, with sewer service charges being collected at the time each unit is sold and the new homeowners begin to utilize the sewer service provided by the City. Further, the payment made by Crestwood Communities would be refunded.

FISCAL IMPACT: Approval of the proposed amendment to the original Irrevocable Annexation Agreement would result in the refund of \$11,995.20 in sewer fees incurred since the agreement's approval, and the loss of any future fees that would have been incurred and collected by the City prior to active sewer service to the development. Under the amended Agreement, collection of sewer fees is expected to begin in the ensuing months as the residential units become available and are purchased by new owners.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 21-19-I-104 amending Agreement No. 20-06-I-104, an Irrevocable Annexation Agreement with Mission 42 LLC for a multi-unit residential development project at 5553 West Mission Boulevard, Ontario (APN 1011-351-02-0000).

AGREEMENT NO. 21-19-I-104
AMENDMENT TO AGREEMENT NO. 20-06-I-104
WITH
MISSION 42 LLC
AMENDING THE IRREVOCABLE AGREEMENT TO ANNEX TO THE
CITY OF MONTCLAIR

This agreement is made effective this _____ day of April 2021, by and between the CITY OF MONTCLAIR, a municipal corporation hereinafter designated as "City," and MISSION 42, LLC, a California limited liability company, hereinafter designated as "Owner," and collectively designated as the "Parties."

RECITALS

WHEREAS, Parties previously entered into Agreement No. 20-06-I-104 on February 3, 2020, wherein Owner gave irrevocable consent to annex to City the real property located at 5553 West Mission Boulevard at such time that annexation proceedings take place; and

WHEREAS, Agreement No. 20-06-I-104 requires Owner to pay monthly sewer charges beginning on February 3, 2020; and

WHEREAS, Owner is not yet connected to City's sewer and is not yet receiving sewer service from City; and

WHEREAS, Parties desire to amend Agreement No. 20-06-I-104 to provide that Owner is not required to pay monthly sewer charges until Owner is connected to the City's sewer and is receiving sewer service from the City,

AGREEMENT

NOW, THEREFORE, IT IS AGREED by and between City and Owner that Paragraph 4 of Agreement No. 20-06-I-104 shall be amended to state as follows:

4. Owner shall pay all fees and charges and make all deposits required by the City to connect to and use the sewer, and Owner agrees to be bound by all City ordinances, rules, and regulations with respect to the sewer system. Owner agrees to pay monthly sewer charges beginning on the date that Owner connects to the sewer and begins receiving sewer services.

BE IT FURTHER AGREED by and between City and Owner that except as modified above, all other terms and provisions of Agreement 20-06-I-104 shall remain in full force and effect.

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

CITY OF MONTCLAIR, CALIFORNIA

MISSION 42 LLC

By: _____
Javier John Dutrey, Mayor

By: _____
Terence S. Kent, Vice President

Attest: _____
Andrea Phillips, City Clerk

Date: _____

Date: _____

Approved
As to
Form: _____
Diane E. Robbins, City Attorney

Recording Requested by:

Michael Diaz
City of Montclair

When Recorded Mail To:

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



Electronically
Recorded in Official Records
County of San Bernardino

Bob Dutton
Assessor-Recorder-County Clerk

DOC# 2020-0137918

04/21/2020
03:52 PM
SAN

Titles: 1 Pages: 9

H6313

Fees	\$0.00
Taxes	\$0.00
CA SB2 Fee	0.00
Total	\$0.00

This space for Recorder's use only

FREE RECORDING PURSUANT TO GOVERNMENT CODE §27383

AGREEMENT

(Agreement No. 20-06-I-104)

AGREEMENT NO. 20-06-I-104

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

Mission 42 LLC
5553 West Mission Boulevard
Ontario, CA 91762

This agreement is entered into this 3rd day of February, 2020, between Mission 42, LLC hereinafter referred to as "Owner," and the City of Montclair, hereinafter referred to as "City."

WHEREAS, Owner is the legal property owner of the real property located at 5553 West Mission Boulevard, referenced by San Bernardino County Tax Assessor Parcel Number (APN) 1011-351-02, shown as Exhibit "A" attached, and is further described as follows:

LOT 2 AND THE EAST 10 FEET OF LOT 1, IN BLOCK 19 OF MONTE VISTA TRACT NO. 2, COUNT OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT IN BOOK 16 OF MAPS, PAGE 33 RECORDS OF SAID COUNTY.

EXCEPT THE NORTH 15 FEET THEREOF.

WHEREAS, the subject property is 4.7 acres in size, and is located on the south side of Mission Boulevard (approximately 300 feet east of Vernon Avenue), within the unincorporated area of San Bernardino County that is a part of the Sphere of Influence of the City of Montclair; and

WHEREAS, the subject property is undeveloped/vacant; and

WHEREAS, on December 17, 2019, the County of San Bernardino approved Tentative Tract Map No. 20267 to allow the owner/developer to subdivide the site and develop a multi-unit residential project consisting of 40 detached condominiums and two (2) single family residences; and

WHEREAS, the Owner desires to connect the proposed multi-unit residential development generally described above for the existing property at the above-described address to the sanitary sewer system in Howard Street, which is owned and maintained by the City of Montclair as shown as Exhibit "B"; 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, Owner desires to annex to the City of Montclair; and

WHEREAS, the City intends to pursue annexation of Owner's property plus other property, but said annexation will cause delay, which would create a substantial hardship for Owner 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 Owner of the land and his 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 Owner to the various hearings required for the annexation. Said cooperation does not include, however, any obligation on behalf of the Owner 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 Howard Street, 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.

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 buildings and/or structures 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 owner 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 themselves, their heirs, successors, and assigns, and said agreement shall be irrevocable without the prior written consent of both parties hereto.

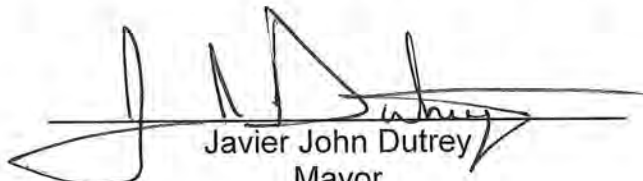
8. The benefit and responsibilities to the subject property shall inure to the benefit and responsibilities of subsequent owners, their heirs, successors, and assigns; and the agreements, conditions, and covenants contained herein shall be binding upon them and upon the land.

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

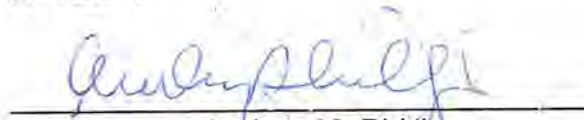

Javier John Dutrey
Mayor
2-4-2020
Date

OWNER:

MISSION 42 LLC


Terence S. Kent
Vice President
2-5-2020
Date

ATTEST:

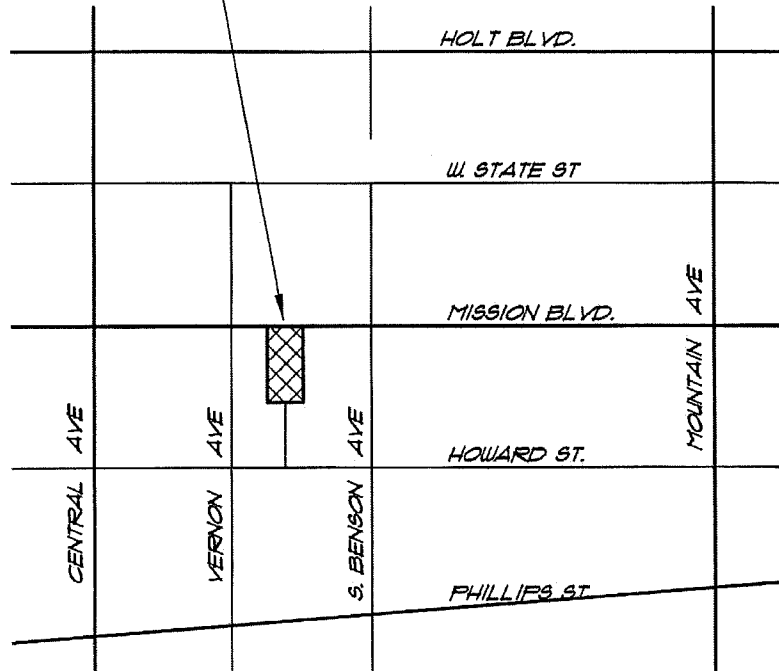

Andrea M. Phillips
City Clerk

APPROVED AS TO FORM:


Diane E. Robbins
City Attorney

EXHIBIT A

PROJECT SITE:
5333 MISSION BLVD,
ONTARIO / MONTCLAIR



NORTH
N.T.S.

07.18.19

Crestwood Communities
510 W. Citrus Edge Street
Glendora, CA 91740 - (626) 914-1943

Vicinity Map
Tract 20267 - 5553 Mission Blvd.

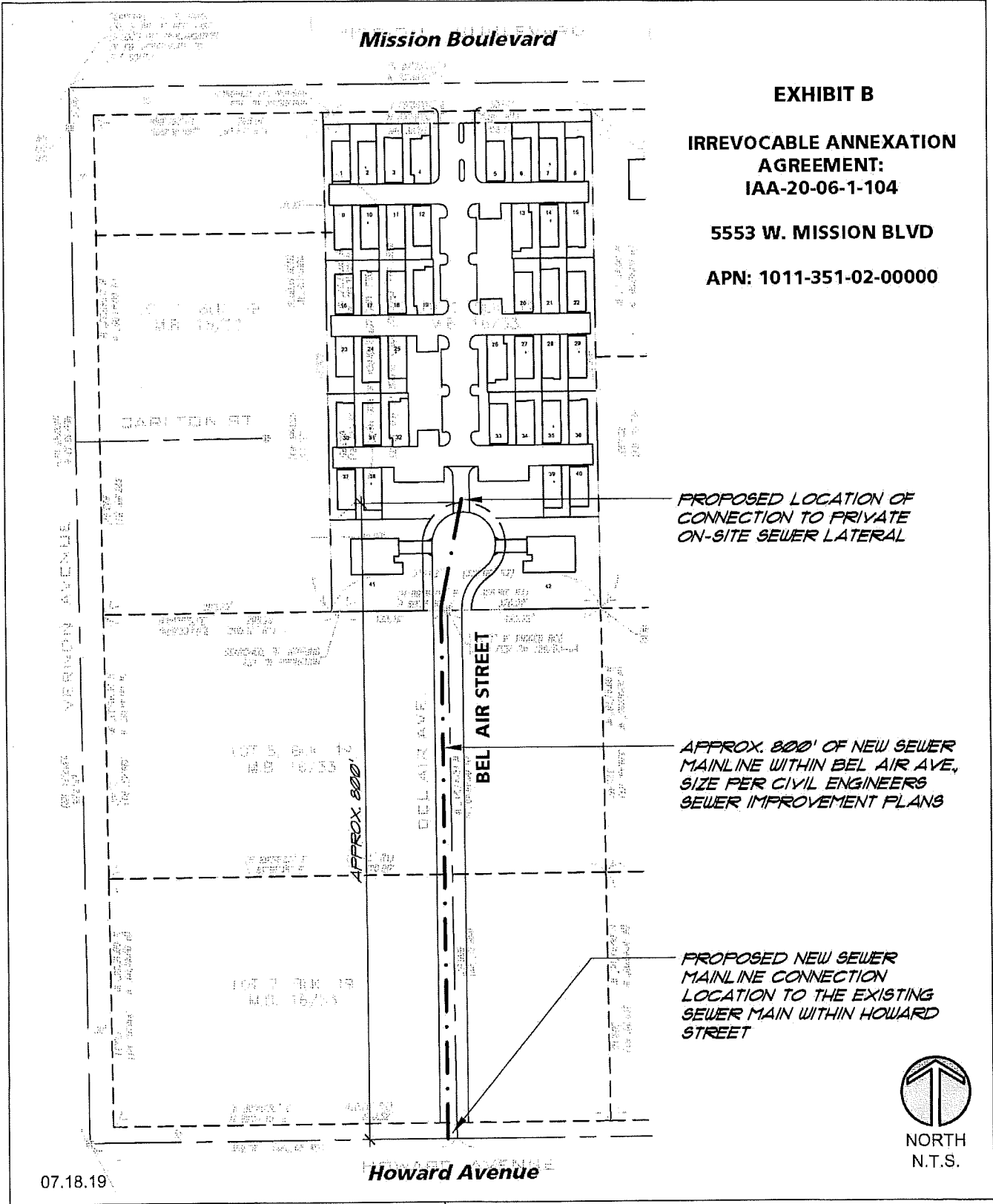


EXHIBIT B

**IRREVOCABLE ANNEXATION AGREEMENT:
IAA-20-06-1-104**

5553 W. MISSION BLVD

APN: 1011-351-02-00000

PROPOSED LOCATION OF CONNECTION TO PRIVATE ON-SITE SEWER LATERAL

APPROX. 800' OF NEW SEWER MAINLINE WITHIN BEL AIR AVE, SIZE PER CIVIL ENGINEERS SEWER IMPROVEMENT PLANS

PROPOSED NEW SEWER MAINLINE CONNECTION LOCATION TO THE EXISTING SEWER MAIN WITHIN HOWARD STREET



07.18.19

Crestwood Communities
510 W. Citrus Edge Street
Glendora, CA 91740 - (626) 914-1943

Proposed Sewer Annexation Site plan
Tract 20267 - 5553 Mission Blvd.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

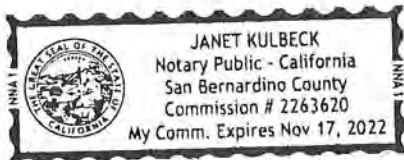
State of California

County of San Bernardino }

On February 4, 2020 before me, Janet Kulbeck, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Javier John Dutrey and Andrea M Phillips
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is~~/are subscribed to the within instrument and acknowledged to me that ~~he~~/she/they executed the same in ~~his~~/her/their authorized capacity(ies), and that by ~~his~~/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal and/or Stamp Above

Signature Janet Kulbeck
Signature of Notary Public

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

Corporate Officer – Title(s): _____

Partner – Limited General

Individual Attorney in Fact

Trustee Guardian of Conservator

Other: _____

Signer is Representing: _____

Signer's Name: _____

Corporate Officer – Title(s): _____

Partner – Limited General

Individual Attorney in Fact

Trustee Guardian of Conservator

Other: _____

Signer is Representing: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of San Bernardino

On February 5, 2020 before me, CATHY GRAVES, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Terence S. Kent
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Cathy Graves
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document 5553 Mission
Title or Type of Document: IR AG to ANNEX Document Date: _____
Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

A notary or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN BERNARDINO)

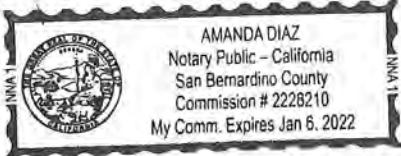
On February 6, 2020, before me, Amanda Diaz, a Notary Public, personally appeared Diane E. Robbins, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument, the person or entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Amanda Diaz
NOTARY PUBLIC

(SEAL)





CITY COUNCIL AGENDA REPORT

DATE:	APRIL 5, 2021	FILE I.D.:	CYC320
SECTION:	CONSENT - RESOLUTIONS	DEPT.:	CITY MGR.
ITEM NO.:	1	PREPARER:	E. STARR
SUBJECT:	CONSIDER ADOPTION OF RESOLUTION NO. 21-3305 DENOUNCING RACISM, XENOPHOBIA, VIOLENCE, AND INTOLERANCE AGAINST MEMBERS OF THE ASIAN AMERICAN AND PACIFIC ISLANDER COMMUNITIES IN THE UNITED STATES, AND AFFIRMING THE CITY OF MONTCLAIR'S COMMITMENT TO THE WELL-BEING AND SAFETY OF RESIDENTS REGARDLESS OF RACE, RELIGION, NATIONAL ORIGIN, DISABILITY, SEX, GENDER EXPRESSION, AGE, SEXUAL ORIENTATION, OR MILITARY/VETERAN STATUS		

REASON FOR CONSIDERATION: The City Council has authority to adopt Resolutions that state positions, including condemnation against acts of racism, xenophobia, violence, and intolerance.

BACKGROUND: Since the outbreak of the coronavirus pandemic (COVID-19) in the United States in February 2020, the County has seen a dramatic increase in reported hate crimes, racial profiling, micro-aggression, targeted violence, cultural stereotyping and stigmatizing, and inflammatory rhetoric directed at members of the Asian American and Pacific Islander (AAPI) community.

"Stop AAPI Hate," a national coalition aimed at addressing anti-Asian discrimination amid the coronavirus pandemic, has documented over 2,800 hate incidents targeting AAPI community members in the United States.

The Stop AAPI Hate data is supported by the Federal Bureau of Investigation (FBI). Between March 19, 2020 and December 31, 2020, the FBI reports that there have been approximately 2,800 firsthand accounts of hate crimes against AAPI from 47 U.S. States (including California) and the District of Columbia.

Data from both the FBI and Stop AAPI Hate report the following:

1. Race has been cited as the primary reason for discrimination, making up over 90 percent of incidents.
2. Available crime data demonstrates that approximately 38 percent of AAPI businesses have been the top targets of discrimination incidents;
3. AAPI youth under 20 years of age make up approximately 14 percent of hate crime victims; and
4. AAPI elderly over 60 years of age make up approximately 8 percent of hate crime victims.

One recent act of violence against AAPI community members that gained national attention occurred on March 16, 2021, when a 21-year old male suspect killed 8 people at three Atlanta, Georgia-area massage parlors—6 of the female victims were of Asian descent.

These acts of violence, discrimination, cultural stereotyping, and anti-AAPI rhetoric are generating fear among AAPI community members, and places many of them at risk for retaliation and other forms of cultural backlash.

Through its consideration of Resolution No. 21-3305, the Montclair City Council acknowledges the multiple harms and trauma caused by acts of violence, discrimination, cultural stereotyping, anti-Asian legislation, and anti-AAPI rhetoric that have existed, and that exist against the AAPI community and other communities of all backgrounds that are often-times marginalized within the American social, judicial, cultural, medical, economic, educational, and legislative systems.

Resolution No. 21-3305 also denotes that the Montclair City Council is honored and privileged to represent a community that is diverse in its cultural and demographic character—a community that serves as home and place of business/employment to people of many different backgrounds, including AAPI community members.

The City Council's firm commitment to supporting fair and equal treatment and access is reflected in House of Representatives Resolution No. 908, adopted on September 17, 2020, a nonbinding resolution condemning acts of hatred and discrimination against the AAPI community, and calling on "all public officials to condemn and denounce any and all anti-Asian sentiment in any form."

In keeping with its tradition of opposing discriminatory treatment, the Montclair City Council, by its adoption of Resolution No. 21-3305, resolves to:

- Denounce xenophobia and anti-AAPI sentiment, and condemn harmful rhetoric and violent acts arising due to the fears of the COVID-19 pandemic.
- Continue protecting all residents of Montclair, including those who are targets of hate, violence, and discrimination.
- Continue providing fair and equal access and treatment to all residents, visitors, and members of the Montclair business community.
- Call on Montclair residents and the business community to join in bringing attention to, and addressing the harms of, discrimination and aggression against specific communities, and denounce hate in all of its virulent forms.
- Join cities, counties, and states across the country in affirming the United States' commitment to the safety, equality, and well-being of all of its citizens, non-citizens, and visitors, including those with AAPI ancestry.
- Encourage partnerships with community-based organizations, advocacy groups, and officials and agencies across San Bernardino County and in State government to protect AAPI residents, and to curb hate acts targeting other groups including, but not limited to, people of all races, religions, national origin, disability, sex, gender expression, age, sexual orientation, or military/veteran status.
- Call upon local governments across the United States to:
 - Adopt similar commitments to reaffirm their solidarity with AAPI communities and people of all races, religions, national origins, disability status, sex, gender expression, age, sexual orientation, or military/veteran status;

- Commit to combating hate, intolerance, prejudice, discrimination, and violence in all its forms; and
- Promote equal and fair access and treatment, and improve health equity.

FISCAL IMPACT: Adoption of Resolution No. 21-3305 is not anticipated to produce any impact on the City's General Fund.

RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 21-3305 denouncing racism, xenophobia, violence, and intolerance against members of the Asian American and Pacific Islander communities in the United States, and affirming the City of Montclair's commitment to the well-being and safety of residents regardless of race, religion, national origin, disability, sex, gender expression, age, sexual orientation, or military/veteran status.

RESOLUTION NO. 21-3305

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR DENOUNCING RACISM, XENOPHOBIA, VIOLENCE, AND INTOLERANCE AGAINST MEMBERS OF THE ASIAN AMERICAN AND PACIFIC ISLANDER COMMUNITIES IN THE UNITED STATES, AND AFFIRMING THE CITY OF MONTCLAIR'S COMMITMENT TO THE WELL-BEING AND SAFETY OF ALL RESIDENTS REGARDLESS OF RACE, RELIGION, NATIONAL ORIGIN, DISABILITY, SEX, GENDER EXPRESSION, AGE, SEXUAL ORIENTATION, OR MILITARY/VETERAN STATUS

WHEREAS, the City of Montclair is committed to inclusion and advancing equity and justice for all people regardless of race, religion, national origin, disability, sex, gender expression, age, sexual orientation, or military/veteran status; and

WHEREAS, an estimated 23 million Asian Americans and Pacific Islanders (AAPI) account for an estimated 7 percent of the total U.S population, including approximately 14.3 percent of the California population and approximately 10.47 percent of the City of Montclair's population; and

WHEREAS, members of the various AAPI communities in the United States add greatly to the diversity and cultural heritage of the American nation; and

WHEREAS, diversity within AAPI communities is reflected by multiple ethnicities, languages and dialects, wide-ranging socioeconomic and educational characteristics, and distinct immigration patterns; and

WHEREAS, there are more than 2 million AAPI-owned business in the United States, each functioning as a vital component of the nation's total commerce; and

WHEREAS, youth drawn from the various AAPI communities are a growing part of the nation's expanding educational system, representing approximately 5 percent of the public high school student population and 17.6 percent of university undergraduate admissions; and

WHEREAS, throughout their history as immigrants in, and citizens of, the United States, AAPI community members have been confronted by significant acts of intolerance, including the following:

1. The [Anti-Coolie Act](#) of 1862, which sought to protect American laborers by imposing a monthly tax on Chinese immigrants seeking to do business in California;
2. The [Page Act of 1875](#), which strengthened the ban against Asian laborers by imposing a fine of up to \$2,000 and maximum jail sentence of one year upon anyone who tried to bring a person from China, Japan or any East Asian country to the United States for the purpose of holding them to a term of service;
3. The [Chinese Exclusion Act](#) of 1882, which attempted to stop all Chinese immigration into the United States for ten years, with exceptions for diplomats, teachers, students, merchants, and travelers — the law was later renewed and strengthened in 1892 by the [Geary Act](#), and was finally repealed by the [Magnuson Act](#) in December 1943;
4. The [Immigration Act of 1924](#), which effectively banned all immigration from Asia and set immigration quotas from other countries outside the Western Hemisphere with the intent of preserving the "ideal of U.S. homogeneity" — the Act's provisions were not to be revised until the [Immigration and Nationality Act of 1952](#), and ultimately replaced by the [Immigration and Nationality Act of 1965](#);
5. [Executive Order 9066](#), which allowed regional military commanders to designate "military areas" from which "any or all persons may be excluded, resulting in the internment of Japanese-Americans and some people of German or Italian ancestry during WWII; and

WHEREAS, during the current COVID-19 pandemic, the United States has seen a dramatic increase in reported hate crimes, racial profiling, micro-aggression, targeted violence, cultural stereotyping, cultural stigmatizing, and inflammatory rhetoric directed at AAPI community members; and

WHEREAS, since March 2020, "Stop AAPI Hate", a national coalition aimed at addressing anti-Asian discrimination amid the coronavirus pandemic has documented over 2,800 hate incidents targeting AAPI communities members in the United States, with many of these anti-Asian incidents occurring in California; and

WHEREAS, between March 19, 2020, and December 31, 2020, the Federal Bureau of Investigation (FBI) reports that there have been approximately 2,800 firsthand accounts of AAPI hate crimes from 47 U.S. states (including California) and the District of Columbia; and

WHEREAS, during the above timeframe:

1. Race has been cited as the primary reason for discrimination, making up over 90 percent of incidents;
2. Available crime data demonstrates that approximately 38 percent of AAPI businesses have been the top targets of discrimination incidents;
3. AAPI youth under 20 years of age make up approximately 14 percent of hate crime victims;
4. AAPI elderly over 60 years of age make up approximately 8 percent of hate crime victims; and

WHEREAS, the most recent act of violence against AAPI community members occurred on March 16, 2021, when a 21-year old male suspect killed 8 people at three Atlanta, Georgia-area massage parlors – 6 of the female victims were of Asian descent; and

WHEREAS, these acts of violence, discrimination, cultural stereotyping, and anti-AAPI rhetoric are generating fear among AAPI community members, and places many of them at risk for retaliation and other forms of cultural backlash; and

WHEREAS, the Montclair City Council acknowledges the multiple harms and trauma caused by acts of violence, discrimination, cultural stereotyping, anti-Asian legislation, and anti-AAPI rhetoric that have existed, and that exist against the AAPI and other communities of all backgrounds that are often-times marginalized within the American social, judicial, cultural, medical, economic, educational, and legislative systems; and

WHEREAS, the Montclair City Council is honored and privileged to represent a community that is diverse in its cultural and demographic character – a community that serves as home to people of many different backgrounds, including AAPI community members; and

WHEREAS, on September 17, 2020, in response to anti-AAPI sentiment, the U.S. House of Representatives passed House Resolution No. 908, a nonbinding resolution condemning acts of hatred and discrimination against the AAPI community; and

WHEREAS, the resolution calls on "all public officials to condemn and denounce any and all anti-Asian sentiment in any form".

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Montclair:

1. Denounces xenophobia and anti-AAPI sentiment, and condemns harmful rhetoric and violent acts arising due to the fears of the COVID-19 pandemic.
2. Will continue protecting all residents of Montclair, including those who are targets of hate, violence, and discrimination.
3. Will continue providing fair and equal access and treatment to all residents, visitors, and members of the Montclair business community.

4. Calls on Montclair residents and the business community to join in bringing attention to, and addressing the harms of, discrimination and aggression against specific communities, and denouncing hate in all of its virulent forms.
5. Joins cities, counties, and states across the country in affirming the United States' commitment to the safety, equality, and well-being of all of its citizens, non-citizens, and visitors, including those with AAPI ancestry.
6. Encourages partnerships with community-based organizations, advocacy groups, and officials and agencies across San Bernardino County and in State government to protect AAPI residents, and to curb hate acts targeting other groups including, but not limited to, people of all races, religion, color, national origin, disability, sex, gender expression, age, sexual orientation, or military/veteran status.
7. Calls upon local governments across the United States to:
 - a. Adopt similar commitments to reaffirm their solidarity with AAPI communities and people of all races, religion, color, national origin, disability, sex, gender expression, age, sexual orientation, or military/veteran status;
 - b. Commit to combating hate, intolerance, prejudice, discrimination, and violence in all its forms; and
 - c. Promote equal and fair access and treatment, and improve health equity.

BE IT FINALLY RESOLVED that this resolution shall become effective immediately upon passage and adoption.

APPROVED AND ADOPTED this XX day of XX, 2021.

Mayor

ATTEST:

City Clerk

I, Andrea M. Phillips, City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 21-3305 was duly adopted by the City Council of said city and was approved by the Mayor of said city at a regular meeting of said City Council held on the XX day of XX, 2021, and that it was adopted by the following vote, to-wit:

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

Andrea M. Phillips
City Clerk



CITY COUNCIL AGENDA REPORT

DATE:	APRIL 5, 2021	FILE I.D.:	CYC243/COV100
SECTION:	CONSENT - RESOLUTIONS	DEPT.:	ADMIN. SVCS.
ITEM NO.:	2	PREPARER:	J. HAMILTON

SUBJECT: CONSIDER ADOPTION OF RESOLUTION NO. 21-3306 CONTINUING TO DECLARE THAT A LOCAL PUBLIC HEALTH EMERGENCY EXISTS IN THE CITY OF MONTCLAIR, UPDATING PROVISIONS OF THE DECLARATION IN RELATION TO COVID-19 PAID LEAVE AND PROVISION OF EMPLOYEE VACCINATION INCENTIVES, AND CONTINUING TO ESTABLISH CITY ELIGIBILITY FOR FEDERAL AND STATE FUNDING ASSISTANCE

REASON FOR CONSIDERATION: On December 31, 2020, the Family First Coronavirus Response Act (FFCRA), an Act of the United States Congress, expired, which eliminated, *inter alia*, certain leave provisions for employees infected with the coronavirus. On March 16, 2020, the City Council adopted Resolution No. 20-3263, which declared a local public health emergency and established the City's eligibility for federal and state funding assistance. Included as part of Resolution No. 20-3263 was Paragraph 24, which provided some additional protections for employees infected with the coronavirus.

On January 19, 2021, in the absence of state or federal law providing COVID-19-related leave for employees, the City Council adopted Resolution No. 21-3299, which continued to declare that a local public health emergency existed in the City of Montclair, continued to established the City's eligibility for federal and state funding, and provided for updated leave policies for employees infected with the coronavirus retroactively effective to January 1, 2021. However, on March 19, 2021, Governor Newsom signed into law Senate Bill No. 95, which provides for paid COVID-19-related leave retroactive to January 1, 2021.

The City Council is requested to consider adoption of Resolution No. 21-3306, which continues to declare that a local public health emergency exists in the City of Montclair, continues to establish the City's eligibility for federal and state funding, but modifies Paragraph 24 to update the City's COVID-19-related leave policies to be consistent with federal and/or state law and to provide a reward and/or incentive to employees to get the COVID-19 vaccination.

A copy of proposed Resolution No. 21-3306 is attached for City Council's review and consideration.

BACKGROUND: On March 16, 2020, the City Council adopted Resolution No. 20-3263, which declared that a local public health emergency exists in the City of Montclair, and that by proclaiming the local public health emergency established that the City of Montclair was eligible for federal and state funding assistance.

As part of Resolution No. 20-3263, the City Council directed the City Manager, as Director of Emergency Services, to consider and act on 37 separate items of interest regarding the coronavirus pandemic. The item identified in Paragraph 24 directed the City Manager to provide up to 120-hours of paid administrative leave to employees but required employees first to exhaust all of their personal earned leave, such as sick leave and vacation leave.

Two days after the City Council adopted Resolution No. 20-3263, on March 18, 2020, President Donald Trump signed into law the Family First Coronavirus Response Act (FFCRA), which became effective on April 2, 2020. The FFCRA required an employer with fewer than 500 employees to provide up to 80 hours of Emergency Paid Sick Leave for full-time employees, and part-time employees may take up to the amount of hours they work in an average two-week period. These provisions applied when such employees have verified COVID-19 infections, have been ordered to quarantine, or were advised by their doctor to self-quarantine. The FFCRA established December 31, 2020 as the date the law expires.

On December 21, 2020, Congress passed the Consolidated Appropriations Act of 2021, which included Coronavirus Stimulus & Relief, and on December 27, 2020, President Trump signed this legislation into law. The law did not mandate the extension of FFCRA, but permitted participating employers to extend the provisions voluntarily and, in doing so, participating employers would receive federal tax credits for that extension through March 31, 2021. Because the City of Montclair does not pay federal tax, the extension of FFCRA does not provide the City any benefit.

Instead, on January 19, 2021, the City Council adopted Resolution No. 21-3299, which continued to declare that a local public health emergency exists in the City of Montclair, and continued to proclaim the local public health emergency, establishing that the City of Montclair was eligible for federal and state funding assistance. As part of Resolution No. 21-3299, the City Council directed the City Manager, as Director of Emergency Services, to implement the updated provisions of Paragraph 24, which continued to provide full-time employees with up to 120-hours of paid COVID-19-related administrative leave (part-time employees would receive an amount based on the average of hours worked over a three-week period), provide consideration for up to an additional 80-hours of paid administrative leave in extraordinary circumstances, and to deny or limit the amount of paid COVID-19-related administrative leave to an employee who violates the City's COVID-19 policies, negligently exposes him- or herself to the virus causing the COVID-19 infection, and/or fails to take necessary steps scientifically proven to mitigate a person's chances or ability to become infected.

Beginning late last year, the United States and California experienced a surge in coronavirus cases and deaths from approximately November 10, 2020, when California had more than 18,000 COVID-19-related deaths and the United States had over 225,000 deaths, to February 22, 2021, when California had more than 50,000 COVID-19-related deaths, and the United States had more than 500,000 deaths. However, according to a February 25, 2021 Harvard University study, the current vaccines appear to be effective enough to end the pandemic, despite growing concerns that more infectious COVID-19 variants would severely blunt the effectiveness of the current vaccines. The Harvard University study stated that at least 60 percent of the population must be vaccinated to create herd immunity; however, the goal should be much higher than that to reach widespread herd immunity. In fact, by March 1, 2021, California's positivity rate set a record low at 2.3 percent and continued to drop thereafter and, by March 15, 2021, was at 1.9 percent.

On March 11, 2021, President Biden signed into law the American Rescue Plan Act of 2021, a \$1.9 trillion economic stimulus package intended to speed up the United States' recovery from the economic and health effects of the coronavirus pandemic; however, the Act only provided a limited extension to the FFCRA: an employer may voluntarily provide the FFCRA leave provisions and get federal tax credits through October 1, 2021.

As the statewide vaccination rollout program continued to demonstrate how effective the vaccinations are to eliminate or mitigate the ability for a person to become infected with the coronavirus, on March 14, 2021, San Bernardino County advanced from the state's purple tier to the less-restrictive red tier allowing for more businesses to open.

On March 19, 2021, Governor Newsom signed into law SB 95, codified as California Labor Code §§ 248.2 & 248.3, which provides for up to 80 hours of COVID-19 Supplemental Paid Sick Leave for matters related to COVID-19 symptoms or sickness (this number is adjusted higher for fire department shift personnel or lower for part-time personnel pursuant to statute), obtaining or feeling the effects of the coronavirus vaccine, providing care to another with COVID-19, or providing childcare when a school or daycare is shut down due to COVID-19 on the premises. SB 95 is applied retroactively to January 1, 2021, permits any COVID-19-related paid administrative leave provided to an employee pursuant to local law to be counted towards the total number of COVID-19 Supplemental Paid Sick Leave as authorized by California Labor Code § 248.3(c), and is effective until September 30, 2021, unless extended by another legislative action.

On March 22, 2021, the Centers for Disease Control and Prevention (CDC) stated that the COVID-19 vaccine is safe and effective, with more than 126 million doses administered in the United States from December 4, 2020 to March 22, 2021. During that time, through the CDC's Vaccine Adverse Reporting System, there have been 2,216 reported, but unverified, deaths among vaccinated people (0.0018% of all vaccinated), but there is no indication that any of these deaths are related or linked to the coronavirus vaccine.

On March 25, 2021, Governor Newsom expanded vaccine eligibility to people ages 50 and older on April 1, 2021, and to people 16 and older on April 15, 2021. According to the California Department of Public Health, on March 29, 2021, 17,356,911 total doses of vaccine have been administered in California and, according to the Los Angeles Times, 29.3 percent of all Californians have received at least one dose. While this is encouraging, California has a long way to go as it is only halfway to the 60 percent minimum goal recommended by the Harvard University study.

Despite the CDC's finding that the COVID-19 vaccines are safe, a March 8, 2021 poll by Monmouth University found that 1 in 4 Americans remain unwilling to get vaccinated despite its scientifically proven effectiveness. For example, in December 2020, prior to the vaccination rollout, the City of Montclair experienced 14 positive coronavirus cases amongst its employees; however, in March 2021, after all employees were provided an opportunity to receive the vaccination, only one employee tested positive: one who declined the vaccination. Simply put: the vaccine has demonstrated its effectiveness in reducing the number of positive coronavirus cases amongst City employees.

Although the City could mandate its employees receive the vaccination, each person may refuse to get the vaccination for a variety of reasons and, therefore, the City prefers to educate employees on the importance of receiving the vaccination. Therefore, to aid in the improvement of public health and economic prosperity in the City of Montclair, Resolution No. 21-3306 provides a directive to the City Manager/Director of Emergency Services to develop and implement a reward and/or incentive program to encourage employees to get fully vaccinated.

FISCAL IMPACT: The social and organizational cost of dealing with the emergence, resiliency, and mitigation/eradication of the COVID-19 virus in the Montclair community has been impactful on the health and welfare of Montclair businesses, citizens, and City employees. The future impacts continue to remain undetermined and uncertain, including the infection rate of the coronavirus within the Montclair organizational ranks, the need for the updated administrative leave, and the development of a reward and/or incentive program to those receiving the COVID-19 vaccine; however, if Resolution No. 21-3306 is adopted, and if subsequently authorized by the City Council, additional funds would be available for transfer from the Contingency Fund to the General Operating Fund to assist with administering and providing for the services, actions, and assistance as provided for in Resolution No. 21-3306.

In the event such funds are necessary, staff will bring a separate action to the City Council for consideration. The City will continue to find alternative means to recoup any funds expended in combating the COVID-19 pandemic through federal or state grant programs.

RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 21-3306 continuing to declare that a local public health emergency exists in the City of Montclair, updating provisions of the declaration in relation to COVID-19 paid leave and provision of employee vaccination incentives, and continuing to establish City eligibility for Federal and State funding assistance.

RESOLUTION NO. 21-3306

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR CONTINUING TO DECLARE THAT A LOCAL PUBLIC HEALTH EMERGENCY EXISTS IN THE CITY OF MONTCLAIR, AND THAT BY THIS PROCLAMATION HEREBY CONTINUES TO ESTABLISH CITY ELIGIBILITY FOR FEDERAL AND STATE FUNDING ASSISTANCE

WHEREAS, on March 4, 2020, California Governor Gavin Newsom issued a [proclamation declaring a State of Emergency](#) to prepare for, contain, and respond to mitigating the effects of, and recovery from, the spread of the COVID-19 virus (novel coronavirus 2019) in the state of California. The proclamation was introduced as the number of deaths and positive COVID-19 cases in California increased; and

WHEREAS, according to the State of Emergency declaration, the State of California is deploying every level of government to help identify cases and slow the spread of the COVID-19 virus, and the emergency proclamation will help the state further prepare California's communities and the state's health care system in the event the virus spreads more broadly; and

WHEREAS, the Governor's emergency proclamation includes provisions that protect consumers against price gouging, allow for health care workers to come from out of state to assist at health care facilities, and give health care facilities the flexibility to plan and adapt to accommodate incoming patients; and

WHEREAS, other provisions in the proclamation include the following:

- The 30-day time period in Health and Safety Code section 101080, with which a local governing authority must renew a local health emergency, is waived for the duration of the statewide emergency, and will remain in effect until each local governing authority terminates its respective local health emergency;
- The 60-day time period in Government Code Section 8630, within which local government authorities must renew a local emergency, is waived for the duration of the state emergency, and will remain in effect until each local governing authority terminates its respective local emergency;
- To promptly respond for the protection of public health, state entities are, notwithstanding any other state or local law, authorized to share relevant medical information, limited to the patient's underlying health conditions, age, current condition, date of exposure, and possible contact tracing, as necessary to address the effect of the COVID-19 outbreak with state, local, federal, and nongovernmental partners, with such information to be used for the limited purposes of monitoring, investigation and control, and treatment and coordination of care;

The notification requirement of Civil Code section 1798.24, subdivision (i), is suspended;

- Notwithstanding Health and Safety Code sections 1797.52 and 1797.218, during the course of this emergency, any EMT-P licensees shall have the authority to transport patients to medical facilities other than acute care hospitals when approved by the California EMS Authority; and

Health and Safety Code sections 1797.52 and 1797.218 are suspended until the termination of this state of emergency; and

WHEREAS, on March 12, 2020, California Governor Gavin Newsom issued [Executive Order No. N-25-20 enhancing-state and local governments ability to respond to the COVID-19 pandemic](#); and

WHEREAS, significant provisions in the Executive Order include the following:

- State and local public health officials may, as they deem necessary in the interest of public health, issue guidance limiting or recommending limitations upon attendance at public assemblies, conferences, or other mass events, which could cause the cancellation of such gatherings through no fault or responsibility of the parties involved, thereby constituting a *force majeure* (unforeseeable circumstances that prevent fulfillment of a contract);

- All California residents are to heed any orders and guidance of state and local public health officials, including but not limited to the imposition of "social distancing" measures, to control the spread of COVID-19;
- The Governor's Office of Emergency Services shall ensure adequate state staffing during this emergency;
- The California Health and Human Services Agency and the Office of Emergency Services shall identify, and shall otherwise be prepared to make available — including through the execution of any necessary contracts or other agreements and, if necessary, through the exercise of the State's power to commandeer property — hotels and other places of temporary residence, medical facilities, and other facilities that are suitable for use as places of temporary residence or medical facilities as necessary for quarantining, isolating, or treating individuals who test positive for COVID-19 or who have had a high-risk exposure and are thought to be in the incubation period;
- Notwithstanding any other provision of state or local law, including the Bagley-Keene Act or the Brown Act, a local legislative body or state body is authorized to hold public meetings via teleconferencing and to make public meetings accessible telephonically or otherwise electronically to all members of the public seeking to attend and to address the local legislative body or state body, during the period in which state or local public officials impose or recommend measures to promote social distancing, including but not limited to limitations on public events;
- All requirements in both the Bagley-Keene Act and the Brown Act expressly or implicitly requiring the physical presence of members, the clerk or other personnel of the body, or of the public as a condition of participation in a quorum for a public meeting are hereby waived;
- Any otherwise-applicable requirements under the Bagley-Keene and the Brown Act, including the following:
 1. State and local bodies notice each teleconference location from which a member will be participating in a public meeting;
 2. Each teleconference location be accessible to the public;
 3. Members of the public may address the body at each teleconference location;
 4. State and local bodies post agendas at all teleconference locations;
 5. At least one member of the state body be physically present at the location specified in the notice of the meeting; and
 6. During teleconference meetings, [at] least a quorum of the members of the local body participate from locations within the boundaries of the territory over which the local body exercises jurisdiction;

Are hereby suspended, on the conditions that:

1. Each state or local body must give advance notice of each public meeting, according to the timeframe otherwise prescribed by the Bagley-Keene Act or the Brown Act, and using the means otherwise prescribed by the Bagley-Keene Act or the Brown Act, as applicable;
2. Consistent with the notice requirement in paragraph "1" [immediately above], each state or local body must notice at least one publicly accessible location from which members of the public shall have the right to observe and offer public comment at the public meeting, consistent with the public's right of access and public comment otherwise provided for by the Bagley-Keene Act and the Brown Act, as applicable (including, but not limited to, the requirement that such rights of access and public comment be made available in a manner consistent with the Americans with Disabilities Act);

In addition to the mandatory conditions set forth above, all state and local bodies are urged to use sound discretion and to make reasonable efforts to adhere as closely as reasonably possible to the provisions of the Bagley-Keene Act and the Brown Act, and other applicable local laws regulating the conduct of public meetings, in order to maximize transparency and provide the public access to their meetings; and

WHEREAS, on March 11, 2020, the California Department of Public Health issued [Gathering Guidance](#) to protect public health and slow the rate of transmission of COVID-19; and

WHEREAS, gatherings, as described below, should be postponed or canceled across the state of California for at least the remainder of the month of March 2020 (extended to May 10, 2020 by the Center for Disease Control), or until further notice, and this [Gathering Guidance](#) remains in place until the end of March 2020 (May 10, 2020 pursuant to the CDC), or until further notice, and will likely be extended:

- Large gatherings that include 250 people or more (changed to 50 by the CDC) should be postponed or canceled;
 1. This includes gatherings such as concerts, conferences, and professional, college, and school sporting events; and
- Smaller gatherings held in venues that do not allow "social distancing" of six feet per person should be postponed or canceled;
 1. This includes gatherings in crowded auditoriums, rooms or other venues, and the venue space does not matter;
 2. Achieving space between individuals of approximately six feet is advisable;
 3. Additionally, there is a particular focus on creating space between individuals who have come together on a one-time or rare basis and who have very different travel patterns, such as those coming from multiple countries, states or counties;
 4. "Social distancing" is a practice recommended by public health officials to stop or slow down the spread of contagious diseases; and its effective implementation requires the creation of physical space between individuals who may spread certain infectious diseases; and the key is to minimize the number of gatherings as much as possible and to achieve space between individuals when events or activities cannot be modified, postponed, or canceled;
- Gatherings of individuals who are at higher risk [60-years of age or older and those with underlying health conditions] for severe illness from COVID-19 should be limited to no more than 10 people;
 1. This includes gatherings such as those at retirement facilities, assisted living facilities, developmental homes, and support groups for people with health conditions;
- A "gathering" is any event or convening that brings together people in a single room or single space at the same time, such as an auditorium, stadium, arena, large conference room, meeting hall, cafeteria, or any other indoor or outdoor space;

The above Gathering Guidance applies to all non-essential professional, social, and community gatherings regardless of their sponsor; and gatherings that do not meet the aforementioned criteria should only be conducted when they are essential—that is, if the activity is essential and could not be postponed or achieved without gathering, meaning that some other means of communication could not be used to conduct the essential function;

The above Gathering Guidance shall not apply to activities such as attendance at regular school classes, work, or essential services; and

WHEREAS, on March 12, 2020, the [San Bernardino County Public Health Department ordered cancellation of gatherings](#) in compliance with the [Gathering Guidance](#) issued on Wednesday, March 11, 2020, by the California Department of Public Health; and

WHEREAS, on March 13, 2020, the Chaffey Joint Union High School District (CJUHS) announced the temporary suspension of in-class instruction and all school activities, effective Monday, March 16, 2020, and the suspension includes the temporary shutdown of Montclair High School, with regularly scheduled school instruction to begin on Monday, April 6, 2020 — a date that may change as new information related to the COVID-19 virus is evaluated; and

WHEREAS, on March 13, 2020, the Ontario-Montclair School District (OMSD) announced the temporary suspension of in-class instruction and all school activities,

effective Monday, March 16, 2020, and OMSD will resume its regularly scheduled instruction at all schools beginning Monday, April 6, 2020 – a date that may change as new information related to the COVID-19 virus is evaluated; and

WHEREAS, on March 13, 2020, President Trump declared a national emergency to offset lagging coronavirus testing and unlock \$50 billion in Federal Emergency Management Agency (FEMA) funds; and

WHEREAS, President Trump said the declaration would address the testing shortcomings that health experts say hindered the country's ability to contain the virus when it first appeared on American shores; and

WHEREAS, the emergency declaration outlines a series of agreements with private companies including Google, Target and Walmart to facilitate swifter COVID-19 testing for Americans, with Target and Walmart agreeing to set aside parking lot space for testing sites, while Google pledged to set up a website to determine whether a person needs a test, and where one is available; and

WHEREAS, the emergency declaration will authorize the U.S. Department of Health and Human Services to waive certain Medicare, Medicaid, and Children's Health Insurance program requirements in an effort to bypass certain regulatory requirements; and

WHEREAS, federal health officials have warned Americans to expect developments related to the COVID-19 pandemic to worsen, spurring much of the country's public spaces to shutter; and

WHEREAS, on March 15, 2020, Governor Newsom urged all bars, wineries, nightclubs and brewpubs to close and encouraged all seniors and people with chronic health conditions to isolate themselves at home in an effort to curb and contain the spread of the coronavirus;

WHEREAS, on March 16, 2020, the City Council adopted Resolution No. 20-3263, A Resolution Of The City Council Of The City Of Montclair Declaring That A Local Public Health Emergency Exists In The City Of Montclair, And That By This Proclamation Hereby Establishes City Eligibility For Federal And State Funding Assistance; and

WHEREAS, on March 18, 2020, President Trump signed into law the Family First Coronavirus Response Act (FFCRA), effective April 2, 2020, a large-scale COVID-19 relief package, which provided, in part, the following:

- Funding for free COVID-19 testing: Federal healthcare providers, such as Medicare and Medicaid, as well as employer-sponsored group health plans, are required to provide coverage for COVID-19 testing;
- Paid sick leave and paid family medical leave:
 1. Employees of companies with fewer than 500 employees must provide to an employee who is quarantined, self-quarantines on the advice of a doctor, or is awaiting diagnosis as a result of experiencing COVID-19 symptoms up to two weeks of Emergency Paid Sick Leave, which must be counted as an addition to any benefits the employee already accrues and cannot reduce existing employee benefits or rights;
 2. Employees of companies with fewer than 500 employees may take up to 12 weeks of protected family and medical leave (FMLA) for illness related to COVID-19, to care for an individual under quarantine or medical self-quarantine, or to care for a child whose school or place of care has been closed due to COVID-19 and, as part of this leave and after the first 10 days, the City is to pay any additional FMLA leave taken with no less than two-thirds of the employee's usual pay;
 3. Small- and mid-size businesses would receive tax credits to pay for medical and family leave of up to 100% of the wages they pay out; and
 4. Self-employed individuals would receive tax credits to receive paid leave.

- Expansion of unemployment benefits: The U.S. Department of Labor provided \$1 billion in funding to provide additional flexibility for state unemployment agencies and additional administrative funding to respond to the COVID-19 pandemic;
- Expansion of nutritional programs: The Special Supplemental Nutrition Program for Women, Infants and Children, the Emergency Food Assistance Program, and the Senior Nutrition Program will receive supplemental funding to assist Americans affected by the virus, and the package also provides funding for state waivers to pay for meals for children who normally receive meal services at school; and
- The provisions of the FFCRA were set to expire on December 31, 2020.

WHEREAS, on March 19, 2020, Governor Newsom announced a statewide order to shelter at home, affecting 40 million Californians, and restricting all non-essential travel and activities outside the home. In Italy, the coronavirus death toll of 3,405 surpasses China's number of fatalities, while China reports no new domestic coronavirus cases since the outbreak started; and

WHEREAS, on March 20, 2020, the global death toll from the coronavirus passes 10,000; and

WHEREAS, on March 23, 2020, the World Health Organization declares that "the pandemic is accelerating;" and

WHEREAS, on March 25, 2020, Governor Newsom announced financial help for Californians, including a 90-day waiver of mortgage payments from Wells Fargo, U.S. Bank, Citigroup, JPMorgan Chase, and about 200 smaller banks and credits unions. Bank of America agreed to a 30-day waiver. For the next 60 days, Governor Newsom issued a moratorium on initiating foreclosure sales or evictions; and

WHEREAS, on March 26, 2020, 3,283,000 people applied for unemployment in one week, the largest number ever documented by the weekly jobless claims report by the Labor Department, the number of coronavirus cases in California passed 3,000, and the United States surpassed both China and Italy with the most coronavirus cases at 82,404; and

WHEREAS, on March 27, 2020, President Trump signed into law the Coronavirus Aid, Relief, and Economic Security Act, also known as the CARES Act, a \$2.2 trillion economic stimulus package, which provided, in part:

- The allocation of \$130 billion to the medical and hospital industries;
- Required group health plans, health insurance carriers, and Medicare to cover COVID-19 testing and vaccination;
- Authorized and appropriated \$1.32 billion in grants to community health care centers for the prevention, diagnosis, and treatment of COVID-19;
- Allowed for funding for elder nutrition support to be used for an individual who is unable to obtain food due to social distancing and waived the usual dietary guideline requirements during the COVID-19 health emergency;
- Allocated up to \$500 billion to the Economic Stabilization Fund ("Main Street Lending Program") for assistance to eligible businesses, states, and municipalities;
- Created a \$349 billion small-business loan program called the Paycheck Protection Program (PPP);
- Expanded the Small Business Administration's Economic Injury Disaster Loans (EIDL) to cover most nonprofit and faith-based organizations;
- Provided certain eligible individuals with one-time stimulus checks, considered credits against 2020 personal income tax:
 1. \$2,400 to each married couple filing jointly or \$1,200 to each other individual;
 2. \$500 for each dependent who is a qualifying child under the age of 17 as of December 31, 2020; and
 3. Such payments were reduced depending on the income of the couple or individual and eliminated to any couple earning more than

\$146,500 annually or any individual earning more than \$112,501 annually.

- Enhanced unemployment benefits:
 1. Under the Federal Pandemic Unemployment Compensation (FPUC) provision, an additional \$600 per week was provided to each individual receiving unemployment benefits from March 27, 2020 through July 26, 2020;
 2. Under the Pandemic Emergency Unemployment Compensation (PEUC) provision, the CARES Act provided for an additional thirteen weeks of unemployment benefits for those who have exhausted the California state-provided 26-weeks of unemployment benefits; and
 3. Under the Pandemic Unemployment Assistance (PUA) provision, unemployment insurance benefits were expanded to include any individual out of work due to the pandemic, including formerly self-employed, contracted, and gig workers.
- Student loans: Suspended payments and accrual of interest on federal student loans through September 30, 2020 and suspended garnishments and tax refund interception related to federal student loans through September 30, 2020;
- Retirement plans: Waived the 10% tax penalty for early distributions from IRAs, 401(k) plans, 403(b), and 457(b) plans in situations where an individual, his/her spouse, or his/her dependent has been diagnosed with COVID-19, the individual experienced adverse financial consequences because he/she was quarantined, furloughed, laid off, or hours were reduced, or the individual experienced adverse financial consequences because he/she was unable to work due to lack of child care; and
- Foreclosure and eviction moratorium: Those with federally-backed mortgages were protected from foreclosure until at least August 31, 2020 and provided for a 120-day moratorium (beginning on March 27, 2020, and lasting until July 24, 2020) on eviction filings for rental units in properties that participate in federal assistance programs or have a federally backed mortgage or multifamily mortgage loan, which was estimated to cover 28% of all rental units in the United States.

WHEREAS, on March 27, 2020, the United States became the first country to exceed 100,000 confirmed cases of the coronavirus and Governor Newsom issued a statewide moratorium on the eviction of renters; and

WHEREAS, on March 31, 2020, the United States death toll from the coronavirus climbed past 3,500, which passed China's official count; and

WHEREAS, on April 2, 2020, the number of coronavirus cases worldwide exceeded 1 million and more than 50,000 deaths with more than 10,000 cases and 200 deaths in California. Additionally, more than 1.9 million Californians have filed for unemployment benefits since March 12, 2020, an average of more than 111,000 claims per day over the previous week; and

WHEREAS, on April 6, 2020, there are more than 10,000 coronavirus deaths reported in the United States; and

WHEREAS, on April 9, 2020, the death toll from coronavirus in California passed 500; and

WHEREAS, on April 14, 2020, Governor Newsom laid out a 6-point framework of what it will take to begin gradually lifting the state's shelter in place restriction, which is predicated upon:

- Expanded testing and contact tracing for those who test positive;
- Being able to protect California's most vulnerable populations, including seniors, homeless individuals, and those with compromised immunity;
- Ensuring medical facilities are equipped to handle potential surges;
- Working with research hospitals and other research partners to pursue therapies for the virus;
- Making sure businesses, schools, and other public spaces can continue physical distancing; and

- Being able to return to more strict measures, as needed.

WHEREAS, on April 15, 2020, there were more than 2 million coronavirus cases worldwide and over 600,000 in the United States. Additionally, Governor Newsom announced new initiative to help unemployed Californians, including \$125 million in assistance for undocumented immigrants; and

WHEREAS, on April 24, 2020, the number of coronavirus deaths in the United States topped 50,000 and President Trump signed into law the Paycheck Protection Program and Health Care Enhancement Act, which provided, in part:

- An additional \$320 billion of funding to the Paycheck Protection Program (PPP), which provided low-interest loans for payroll costs and other expenses to small businesses that are forgivable under certain circumstances; and
- An appropriation of \$25 billion to research, develop, validate, manufacture, purchase, administer, and expand capacity for COVID-19 testing.

WHEREAS, on April 28, 2020, the United States had more than 1,000,000 coronavirus cases and Governor Newsom laid out a four stage plan of lifting restrictions in California and reopening businesses, which were:

- Stage 1: Everyone is either staying at home or a member of the essential workforce;
- Stage 2: Reopening lower risk workplaces, including non-essential manufacturing, schools, childcare facilities, retail business for curbside pickup, and offices where working remotely is not possible;
- Stage 3: Reopening higher risk workplaces, which require close proximity to other people, including hair salons, nail salons, gyms, movie theaters, sporting events without live audiences, and in-person religious services; and
- Stage 4: Ending the stay-at-home order, which would allow for the reopening of concert venues, convention centers, and sporting events with live audiences.

WHEREAS, on April 30, 2020, a total of 30 million Americans filed for unemployment over the previous six week period; and

WHEREAS, on May 8, 2020, California entered into Stage 2 of Governor Newsom's reopening plan, while the unemployment rate in the United States reached 14.7%, which was the highest since the Great Depression; and

WHEREAS, on May 26, 2020, Governor Newsom announced that the state is moving into Stage 3 and allowing hair salons and barbershops to reopen; and

WHEREAS, on May 27, 2020, the United States recorded more than 100,000 coronavirus deaths; and

WHEREAS, on June 13, 2020, more than 5,000 Californians died because of the coronavirus with more than 2 million diagnosed with the coronavirus in the United States; and

WHEREAS, on June 18, 2020, Governor Newsom required masks or face coverings be worn in public statewide; and

WHEREAS, on June 28, 2020, the United States experienced 125,000 deaths as a result of the coronavirus, and, in an effort to reduce the rapidly increasing rates of coronavirus infections, Governor Newsom ordered seven counties to close bars and recommended closures in another eight counties; and

WHEREAS, on July 1, 2020, Governor Newsom announced the return of stricter stay at home restrictions and the closure of indoor operations of specific businesses, such as restaurants, wineries, movie theaters, family entertainment centers, zoos, and museums; and

WHEREAS, on July 15, 2020, California averaged 7,927 new coronavirus cases each day and experienced an average of 83 deaths per day; and

WHEREAS, on July 22, 2020, California became the state with the highest number of coronavirus cases with 413,576 passing New York; however, despite California's population being twice that of New York, California had about 8,000 deaths compared to New York's 32,520 confirmed deaths; and

WHEREAS, on July 29, 2020, the United States had more than 150,000 deaths from the coronavirus, the most reported by any country in the world; and

WHEREAS, on August 7, 2020, California reported more than 10,000 deaths from the coronavirus; and

WHEREAS, on August 8, 2020, President Trump signed four orders reinstating the federal jobless unemployment aid bonus, but reduced the weekly payments from \$600 to \$400, deferring payment and interest rates on federal held student loans until the end of 2020, extending the freeze on evictions, and deferring social security payroll taxes to the end of 2020, in an effort to relieve the impact of the coronavirus pandemic; and

WHEREAS, on August 28, 2020, Governor Newsom announced a new framework for evaluating coronavirus activity and allowing businesses to resume operations under a new color-coded tier system requiring counties to adhere to a 21-day waiting mandatory waiting period before being downgraded to the next tier:

- Purple (Widespread): Counties with more than 7 daily new cases per 100,000 residents or higher than 8% positivity rate will be placed in the Purple Tier, which requires most non-essential indoor businesses operations to be closed;
- Red (Substantial): Counties with 4 to 7 daily new cases per 100,000 residents or 5-8 percent positivity rate will be placed in the Red Tier, which requires some non-essential indoor businesses to remain closed while others are permitted to open;
- Orange (Moderate): Counties with 1 to 3.9 daily new cases per 100,000 residents or 2-4.9 percent positivity rate will be assigned to the Orange Tier, which permits some indoor business operation to open with certain modifications; and
- Yellow (Minimal): Counties with less than 1 daily new case per 100,000 residents or less than 2 percent positivity rate are designed in the Yellow Tier, which permits most indoor businesses to open with certain modifications.

WHEREAS, on August 31, 2020, the United States had more than 6 million cases of coronavirus and California had more than 700,000 cases; and

WHEREAS, on September 2, 2020, Governor Newsom announced the state will be using \$600 million to purchase hotels, motels, and apartment buildings before December 31, 2020 in support of homeless housing initiatives; and

WHEREAS, on September 22, 2020, the United States surpassed 200,000 in the number of deaths related to the coronavirus; and

WHEREAS, on October 16, 2020, more than 8 million COVID-19 cases have been reported in the United States and, on October 19, 2020, the number of global coronavirus cases exceeded 40 million; and

WHEREAS, on October 25, 2020, more than 225,000 people have died from the coronavirus and there were close to 900,000 confirmed cases in California; and

WHEREAS, on November 9, 2020, the United States had more than 10 million confirmed coronavirus cases and the number of global coronavirus cases exceeded 50 million. Pfizer announced that its new COVID-19 vaccine appeared to have a 90% effective rate and preventing infections; and

WHEREAS, on November 10, 2020, California had more than 18,000 deaths caused by the coronavirus; and

WHEREAS, on November 14, 2020, California officially surpassed 1 million diagnosed cases of coronavirus cases since the pandemic began; and

WHEREAS, on November 16, 2020, Moderna’s COVID-19 vaccine demonstrated up to a 94.5 percent effective rate; and

WHEREAS, on November 18, 2020, as the nationwide death toll from the coronavirus exceeded 250,000, 18,360 of which were in California, Pfizer announced that the interim results from its ongoing coronavirus study demonstrated as high as a 95 percent effective rate at preventing infection; and

WHEREAS, on November 20, 2020, Pfizer requested that United States regulators allow emergency use of its COVID-19 vaccine, which would permit vaccine doses being administered as soon as early December 2020; and

WHEREAS, on November 23, 2020, AstraZeneca announced its vaccine is 90 percent effective when administered in two doses and it does not require the ultra-cold storage like the Pfizer and Moderna vaccines do; and

WHEREAS, on November 30, 2020, Moderna became the second company to file for Emergency Use Authorization, which would permit the distribution of its vaccine in mid-December 2020; and

WHEREAS, on December 2, 2020, over 100,000 Americans were hospitalized for the coronavirus, the number of new daily cases of coronavirus in California exceeded 20,000, and the United Kingdom became the first country to approve Pfizer’s coronavirus vaccine with 800,000 doses to be distributed one week after approval; and

WHEREAS, on December 3, 2020, Governor Newsom announced a new stay at home order for California, which brought back many of the restrictions initially imposed in March 2020, causing many businesses to shutter, prohibiting private gatherings, limiting restaurants service to take out and delivery only, and banning all non-essential travel; and

WHEREAS, on December 5, 2020, coronavirus cases in California reached new record-breaking heights with 25,068 cases reported for one day, bringing the state’s total number of cases to more than 1.3 million; and

WHEREAS, on December 6, 2020, the surging coronavirus “second wave” caused another 30,057 new cases; and

WHEREAS, on December 8, 2020, for the fifth day in a row, California set a record for the number of patients in the ICU (2,417) as the death toll in California exceeded 20,000 persons; however, in the United Kingdom, Pfizer’s vaccine began to be administered to its citizens; and

WHEREAS, on December 10, 2020, as 220 Californians and 3,124 Americans lost their life to the coronavirus, the FDA approved widespread use of Pfizer’s vaccine on December 11, 2020; and

WHEREAS, on December 13, 2020, the first doses of Pfizer’s coronavirus vaccine arrived in California; and

WHEREAS, on December 14, 2020, as the coronavirus death toll exceeded 300,000, the first coronavirus vaccinations were administered in the United States and California; and

WHEREAS, on December 18, 2020, the FDA authorized Moderna’s vaccine for emergency use; and

WHEREAS, on December 24, 2020, California surpassed 2 million total coronavirus cases; and

WHEREAS, on December 27, 2020, President Trump signed into law the Consolidated Appropriations Act, 2021, which was a \$2.3 trillion spending bill that included \$900 billion in stimulus relief for the COVID-19 pandemic in the United States. The Coronavirus Response and Relief Supplemental Appropriation Act, 2021, of the Consolidated Appropriations Act, provided, in part, the following for COVID-19 relief:

- \$325 billion for small businesses primarily to boost the Paycheck Protection Program (PPP);
- \$166 billion for a \$600 stimulus check payable to most Americans with an adjusted gross income lower than \$75,000;

- \$120 billion for an extension of increased federal unemployment benefits (\$300 per week until March 31, 2021);
- \$82 billion for schools and universities;
- \$69 billion for vaccines, testing, and health providers;
- \$25 billion for federal aid to state and local governments for rental assistance programs;
- \$13 billion to increase monthly Supplemental Nutrition Assistance Program (SNAP/food stamp) benefit by 15 percent through June 30, 2021;
- \$13 billion to the farming and ranching industry;
- \$10 billion for child care;
- \$10 billion for the U.S. Postal Service; and
- Extend the eviction moratorium for tenants with annual incomes of less than \$99,000 to January 31, 2021.

WHEREAS, on December 31, 2020, the death toll in California topped 25,000 as 428 more people died; and

WHEREAS, on January 1, 2021, the United States reported more than 20 million coronavirus cases;

WHEREAS, on January 3, 2021, the COVID-19 death toll in the United States surpassed 350,000; and

WHEREAS, as of January 12, 2021, the United States continued to be in the midst of a massive surge in coronavirus cases, reporting more than 22,800,000 confirmed cases and nearly 380,000 deaths since the beginning of the pandemic, California reported approximately 2,786,000 confirmed cases and 31,000 deaths, and San Bernardino County reported 236,000 confirmed cases and 1,551 deaths; and

WHEREAS, on January 19, 2021, the United States' death toll from the coronavirus exceeded 400,000 and, globally, the death toll is more than 2 million; and

WHEREAS, on January 19, 2021, due to the expiration of the Family First Coronavirus Response Act (FFCRA) and the absence of any other federal or state law providing for continued paid COVID-19-related administrative leave, the City Council rescinded Resolution No. 20-3263 and replaced it with Resolution No. 21-3299, A Resolution Of The City Council Of The City Of Montclair Continuing To Declare That A Local Public Health Emergency Exists In The City Of Montclair, And That By This Proclamation Hereby Continues To Establish City Eligibility For Federal And State Funding Assistance, to provide employees paid COVID-19-related administrative leave retroactive to January 1, 2021; and

WHEREAS, on February 3, 2021, more people in America received their first dose of the COVID-19 vaccine than have been infected with the coronavirus; and

WHEREAS, on February 9, 2021, for the first time in months, California reported a daily total of new coronavirus cases under 10,000, down from the peak of 53,711 new cases set on December 16, 2020; and

WHEREAS, on February 10, 2021, California reported the highest death toll of any state in the nation with 44,995 total deaths; and

WHEREAS, on February 22, 2021, the coronavirus death toll in the United States is more than 500,000, 50,000 of which are in California; and

WHEREAS, on February 25, 2021, [Harvard University immunologists reported](#) that current vaccines appear to be effective enough to end the pandemic, despite growing concerns that more infectious COVID-19 variants would severely blunt the effectiveness of the current vaccines; however, in order to create herd immunity effects, at least 60 percent of the population would have to be vaccinated, albeit the goal should be much higher than that to reach widespread herd immunity; and

WHEREAS, on February 27, 2021, the FDA issued an Emergency Use Authorization for the Johnson & Johnson single-dose coronavirus vaccine; and

WHEREAS, on March 1, 2021, as Johnson & Johnson began shipping the first 4 million doses of its coronavirus vaccine, California's 7 day test positivity rate set a record low of 2.3%, which continued to drop each day thereafter; and

WHEREAS, on March 5, 2021, Governor Newsom signed a \$6.6 billion bill aimed to incentivize schools to reopen for in person class, which, in part, provided:

- A \$2 billion incentive pool with money given to schools that reopen campuses for safety improvements, such as ventilation systems and protective equipment; and
- \$4.6 billion in general funding for all schools.

WHEREAS, on March 11, 2021, President Biden signed into law the American Rescue Plan Act of 2021, which is a \$1.9 trillion economic stimulus package intended to speed up the United States' recovery from the economic and health effects of the coronavirus pandemic. The American Rescue Plan Act provides, in part:

- An extension of the expanded unemployment benefits with a \$300 weekly supplement through September 6, 2021 (Labor Day), which prevents the current \$300 weekly benefit from expiring on March 31, 2021;
- Stimulus checks: Similar to the provisions of the previous CARES Act, eligible individuals will receive up to \$1,400 in a direct, one-time payment;
- Limited extension of FFCRA: Employers may continue the emergency paid leave as outlined in the Families First Coronavirus Response Act and receive tax credits through October 1, 2021; however, the Act did not require that employers provide this benefit;
- An extension of the 15 percent increase in food stamp benefits to September 2021;
- Tax provisions, including but not limited to:
 1. Expand the child tax credit by allowing qualified families to offset \$3,600 for each child under the age of 6 and \$3,000 for each child between the ages of 6 to 17 for the 2021 tax year;
 2. Expand the child and dependent care credit by making the credit fully refundable and increasing the maximum benefit to \$4,000 for one eligible individual and \$8,000 for two or more individuals;
 3. Expand the earned income tax credit by removing the upper age limit and lowering the lower age limit to 19; and
 4. If President Biden or the U.S. Congress cancel any student loan debt, that any such forgiven student loan debt is made tax-free.
- Grants to small businesses, including \$28.6 billion for a new grant program for restaurants and bars to meet payroll and other expenses;
- \$350 billion to help state, local, and tribal governments bridge budget shortfalls caused by the COVID-19 pandemic;
- \$130 billion for K-12 schools and another \$40 billion for colleges and universities;
- Funding for housing, including, but not limited to:
 1. \$21.6 billion for rental assistance programs;
 2. \$10 billion for the Homeowner Assistance Fund;
 3. \$5 billion for Section 8 Housing Choice Voucher Program; and
 4. \$5 billion to support state and local programs for the homeless and at-risk individuals.
- COVID-19-related specific funding, including, but not limited to:
 1. \$50 billion to FEMA for vaccine distribution and assistance; and
 2. \$47.8 billion on COVID-19 testing, mitigation, and transmission prevention, including diagnosis, tracing, and monitoring.
- \$86 billion for a rescue/bailout package for approximately 185 multiemployer pension funds;
- Transportation-related funding including \$30.5 billion in grants to public transit and commuter rail agencies across the country to mitigate major decreases in ridership and fare revenue due to the COVID-19 pandemic,

\$15 billion to the airlines for a third extension of the Payroll Support Program, \$8 billion to U.S. airports; and \$2 billion to Amtrak;

- \$10.4 billion for agriculture and USDA;
- \$1.85 billion for cybersecurity funding; and
- Subsidize 100% of premiums for eligible COBRA recipients from April 1, 2021 to September 30, 2021.

WHEREAS, on March 12, 2021, California reported it had provided 2 million vaccines to underserved communities; and

WHEREAS, on March 14, 2021, San Bernardino County advanced from the state's purple tier to the less-restrictive red tier allowing for crowds in retail stores to increase from 25 percent to 50 percent capacity, reopening of museums, movie theaters, and indoor dining at restaurants at 25 percent capacity, and gyms can operate at 10 percent capacity; and

WHEREAS, on March 15, 2021, California's 7-day coronavirus test positivity rate dropped below 2 percent to 1.9 percent and California began administering vaccines to transit workers and persons between the ages of 16 to 64 with underlying health conditions; and

WHEREAS, on March 19, 2021, Governor Newsom signed into law Senate Bill No. 95, codified as California Labor Code §§ 248.2 & 248.3, which provides for 80 hours of COVID-19 Supplemental Paid Sick Leave for matters related to COVID-19 symptoms or sickness, obtaining or feeling the effects of a coronavirus vaccine, providing care to another, or providing childcare when a school or daycare is shutdown due to COVID-19 on the premises, which is retroactive to January 1, 2021 and effective until September 30, 2021; and

WHEREAS, any COVID-19-related paid administrative leave provided to an employee pursuant to Resolution No. 21-3299 shall be counted towards the total number of hours of COVID-19 Supplemental Paid Sick Leave as authorized by California Labor Code § 248.3(c); and

WHEREAS, on March 22, 2021, the Centers for Disease Control and Prevention (CDC) stated that the COVID-19 vaccine is safe and effective indicating that 126 million doses of COVID-19 vaccines were administered in the United States from December 14, 2020 to March 22, 2021 and, during that time, through the CDC's Vaccine Adverse Reporting System (VAERS), 2,216 reports of death (0.0018%) among vaccinated people were received; however, these reports are being investigated by the CDC and have not yet been verified as linked to the coronavirus vaccine; and

WHEREAS, on March 23, 2021, San Bernardino County reported more than 200,000 county residents being fully vaccinated with the coronavirus vaccine and, as vaccination numbers continue to rise, the number of coronavirus cases continues to decline. Statewide, there have been 15,152,845 coronavirus vaccine doses administered with about 26% of all Californians receiving at least one dose and 12.6% being fully vaccinated; and

WHEREAS, on March 25, 2021, Governor Newsom expanded vaccine eligibility to people ages 50 and older on April 1, 2021 and to people 16 and older on April 15, 2021, stated that California will be able to administer as many as 4 million doses beginning the week of March 29, 2021, and touted that the state has issued vaccines to 15 million people; and

WHEREAS, pursuant to Section 6.080.060.A.1. of Chapter 6.08 of Title 6 of the Montclair Municipal Code, the City Manager, as Director of Emergency Services, is empowered to request the City Council to proclaim the existence or threatened existence of a local emergency if the City Council is in session, or to issue such proclamation if the City Council is not in session; provided, however, whenever a local emergency is proclaimed by the Director, the City Council shall take action to ratify the proclamation within seven days thereafter or the proclamation shall have no further force or effect; and

WHEREAS, by proclamation of an emergency, the Director shall continue to control and direct the effort of the emergency organization for Montclair for the accomplishment of the purposes of Chapter 6.08 of Title 6 of the Montclair Municipal Code; and

WHEREAS, in the event of a proclamation of a state of emergency by the Governor of California, the Director is empowered as follows:

1. Make and issue rules and regulations on matters reasonably related to the protection of life and property as affected by such emergency; provided, however, such rules and regulations shall be confirmed at the earliest practicable time by the City Council;
2. Obtain vital supplies, equipment, and such other properties found lacking and needed for the protection of life and property and to bind the City for the fair value thereof, and if required immediately, to commandeer the same for public use;
3. Require emergency services of any City office or employee, and to command the aid of as many citizens of this community as the Director deems necessary in the execution of his duties; such persons shall be entitled to all privileges, benefits and immunities as are provided by State law for duly registered disaster workers;
4. Requisition necessary personnel or material of any City department or agency;
5. Execute all ordinary power as City Manager, all of the special powers conferred upon the City Manager by Chapter 6.08 of Title 6 of the Montclair Municipal Code or by other action of the City Council, including power conferred in the City of Montclair Emergency Plan, as prepared by the Montclair Disaster Preparedness Council, which plan shall provide for the effective mobilization of all of the resources of the City, both public and private, to meet any condition constituting a local emergency or state of emergency, provided such plan is adopted by resolution of the City Council; and

WHEREAS, any expenditures made in connection with emergency activities, including mutual aid activities, shall be deemed conclusively to be for the direct protection and benefit of the inhabitants and property of the City; and

WHEREAS, during an emergency, it shall be unlawful to do any of the following:

1. Willfully obstruct, hinder or delay any member of the emergency organization in the enforcement of any lawful rule or regulation issued pursuant to Chapter 6.08 of Title 6 of the Montclair Municipal Code;
2. Commit any act forbidden by any lawful rule or regulation issued pursuant to Chapter 6.08 of Title 6 of the Montclair Municipal Code, if such act is of such a nature as to imperil the lives or property of inhabitants of Montclair, or to prevent, hinder or delay the defense or protection thereof;
3. Wear, carry or display, without authority, any means of identification specified by the emergency agency of the State or the Montclair Disaster Preparedness Council; and

WHEREAS, the City Council rescinds Resolution No. 21-3299 and replaces it with Resolution No. 21-3306 to remove provisions for paid administrative leave and rely upon existing state law, as outlined in Paragraph 24 below, in certain circumstances wherein an employee was quarantined or infected with the COVID-19 coronavirus.

NOW, THEREFORE, BE IT PROCLAIMED that the City Council of the City of Montclair declared on March 16, 2020 in Resolution No. 20-3263, continued to declare on January 19, 2021 in Resolution 21-3299, and continued to and does hereby continue to declare, that a local public health emergency exists in the City of Montclair, and established, and hereby continues to establish, the City of Montclair's eligibility for any federal and state funding assistance related to this public health emergency and the COVID-19 pandemic.

BE IT FURTHER PROCLAIMED that the City Council of the City of Montclair authorized on March 16, 2020 in Resolution No. 20-3263, continued to authorize in Resolution No. 21-3299, and does hereby continue to authorize, the City Manager, as Director of Emergency Services, to execute the purpose and intent of this Proclamation, and to carry out the powers and duties so authorized pursuant to this Proclamation and Section 6.08.060 of Chapter 6.08 of Title 6 of the Montclair Municipal Code, and to report, as necessary, to the Disaster Preparedness Council as that Council is defined and empowered pursuant to Sections 6.08.030 and 6.08.040 of Chapter 6.08 of Title 6 of the Montclair Municipal Code.

BE IT FURTHER PROCLAIMED that the City Council of the City of Montclair authorized and directed on March 16, 2020 in Resolution No. 20-3263, continued to authorize and direct on January 19, 2021 in Resolution No. 21-3299, and does hereby continue to authorize and direct, rescinds the previous language contained in Paragraph 24 of both Resolution No. 20-3263 and Resolution No. 21-3299 and hereby modifies Paragraph 24 as indicated below, that the City Manager, as Director of Emergency Services, shall consider and act on the following:

1. Maintain a local COVID-19 information page on the City's Homepage at <https://cityofmontclair.org/residents/the-novel-coronavirus-covid-19> to regularly update the City Council and residents of Montclair on the latest local events related to the COVID-19 virus;
2. Work with the City's partners in the health care system to ensure Montclair residents have access to a robust plan to monitor for, detect and, if needed, isolate any cases of the COVID-19 virus;
3. Monitor local hospitals for potential cases of the COVID-19 virus in the local area;
4. Work with the [San Bernardino County Department of Public Health](#) to ensure services are available to Montclair residents who may have contracted COVID-19, and ensure access to regional health care services provided through [Arrowhead Regional Medical Center](#);
5. Ensure that Montclair's emergency service providers, including Police, Fire, Paramedics, Code Enforcement, Public Works, and others have the proper equipment and capacity to respond to calls for service, and direct patients with COVID-19 to the proper medical health agencies;
6. Offer available specialized training to public safety personnel to ensure proper response to COVID-19-related service calls;
7. Work with mutual aid partners to ensure extended coverage throughout the mutual aid region to ensure available public safety staffing;
8. Work with federal, state and local health agencies to ensure Montclair residents have access to COVID-19 test kits as available, and provide support, as required, related to traffic control around testing centers;
9. Train personnel at the Montclair Medical Clinic to recognize symptoms related to the COVID-19 virus;
10. Work with federal, state and county partners to properly plan and train for responses to any emergency or outbreak related to the COVID-19 virus;
11. Regularly meet with hospitals, City paramedics and local public health centers to obtain the latest information related to the COVID-19 virus and its spread in the community and region;
12. Regularly meet with the Ontario-Montclair Schools District (OMSD) and Chaffey Joint Union High School District (Montclair High School) officials to ensure the health and safety of the community's youth, and to discuss any need or requirement to close or extend the closure of schools and suspension of classes;
13. Comply with the Guidance Gathering issued by the California Department of Public Health and the CDC, and any extensions thereof;
14. Comply with social distancing requirements issued by the California Department of Public Health and the CDC, and any extensions thereof;
15. Suspend extra-curricular and co-curricular activities for all OMSD schools and CJUHSD in cooperation with the Superintendents of OMSD and CJUHSD;
16. Suspend non-essential City-sponsored activities in compliance with the Guidance Gathering and social distancing requirements issued by the Center for Disease Control (CDC) and the California Department of Public Health to dates to be determined, but at least through May 10, 2020, such non-essential City-sponsored activities to include the following (additional activities may be added while others may be removed from the list based on program/activity requirements, extension of the Gathering Guidance, and other exigent circumstances):
 - a. After-School Program (ASP) activities (provide for the re-tasking of ASP employees, as required and permitted pursuant to employment agreements);

- b. City-sponsored academic and athletic competitions;
- c. Recognition/Awards Events (e.g., Montclair to College graduation, Public Safety Recognition Luncheon, Community Activities Commission ceremonies);
- d. Open House events (e.g., Public Safety Open House);
- e. Scheduled large- and medium-size public gatherings that would fail to comply with social distancing requirements, including private large- and medium-size gatherings, scheduled at City facilities including, but not limited to:
 - o Country Fair Jamboree
 - o Summer Recreation Program Kickoff
 - o Camp Montclair
 - o Community Health Fair
 - o Easter Eggstravaganza
 - o Senior Citizen Program activities including, but not limited to, Nutrition Program (transition to box lunches), monthly Senior Citizen birthday party, and trips
 - o Community Prayer Luncheon
 - o Memorial Day Event
 - o Peace Officers Memorial Ceremony
 - o Youth Center activities
 - o Mini-school Program – unless the necessity for child care services becomes an overriding consideration; provided, however, the City may operate child care services for employees of the City to ensure the maintenance of essential services
 - o Human Services-sponsored recreation activities including, but not limited to, scheduled classes, youth and adult sports leagues, and other qualifying events
 - o Suspend yard sale program
 - o Private events using City-rented facilities including, but not limited to weddings, social gatherings, and other events
 - o Public restrooms that cannot be maintained in a sanitary condition
 - o Alma Hofman Splash Pad
 - o And other City-sponsored activities as determined necessary, through June 30, 2020, unless otherwise altered by direction of the City Council
- f. Scheduled small public gatherings, including private gatherings, scheduled at City facilities, that fail to achieve the ability to comply with social distancing requirements, or as otherwise represent a danger to individuals who are at higher risk [60-years of age or older and those with underlying health conditions] for severe illness from the COVID-19 virus (e.g., activities at the Senior Center; also, allow no more than ten senior citizens on the Golden Express transportation service at any one time);
- g. Both large and small private gatherings at private facilities, including, but not limited to, concert halls, churches, sports stadiums, restaurants, bars, breweries, entertainment zones, private residences, hotels, and other private facilities shall be required to self-regulate; provided, however, in the event self-regulation fails, the City may adopt rules and regulations to require compliance with applicable Gathering Guidance provisions;
- h. On March 15, 2020, the U.S. Center for Disease Control (CDC) changed the Gathering Guidance to eight weeks from Sunday, March 15, 2020, thereby extending the Gathering Guidance to May 10, 2020. Furthermore, the CDC redefined a "large" or "mass" gathering to be 50 or more people. In anticipation of further extensions, the City proposes extending the local Gathering Guidance date restriction to June 30, 2020, to effectuate proper planning and execution of

programs and activities. The June 30, 2020, Gathering Guidance date will be subject to revision by the City Council.

17. Meet with businesses, such as Costco, Target and Montclair Place, to determine means to control panic shopping and address the undisciplined assembling of shoppers prior to and after store openings;
18. Suspend operation of City-operated weight/exercise rooms at all City facilities;
19. Suspend rental of City facilities for large and small events in compliance with California Department of Public Health and CDC Gathering Guidance;
20. Implement restrictions on employee travel to conferences and seminars:
 - a. Allow employees to cancel travel to scheduled conferences and seminars with no fiscal penalty to employees; provided, however, employees shall seek to recover refunds for related travel;
 - b. The City Manager shall approve all City-related travel during the local public health emergency;
21. Implement tele-working protocols for City employees;
22. Revisit facial hair grooming standards, particularly for public safety personnel required to wear facemasks and gas masks;
23. In compliance with the Americans with Disabilities Act, Meyers-Milias-Brown Act, and other applicable state and/or federal laws, implement labor procedures to address employees contracting COVID-19;
24. Because the City Council finds the COVID-19 vaccine to be scientifically proven to eliminate or mitigate the ability for a person to become infected with the coronavirus and to assist in the eradication of the coronavirus pandemic to improve public health and economic prosperity in the City of Montclair:
 - a. Provide paid COVID-19-related administrative leave to employees as required by federal and/or state law; and
 - b. Develop and implement a reward and/or incentive program to encourage employees to get fully COVID-19 vaccinated.
25. Direct the Finance Department to disinfect all U.S. coinage and paper currency processed by the City;
26. Train City personnel in proper procedures for dealing with citizen concerns related to the COVID-19 virus;
27. Under City Council direction, implement provisions of the Bagley-Keene Act, Brown Act, and other applicable state and/or local laws regulating the conduct of public meetings, in order to maximize transparency and provide the public access to meetings;
28. Re-task available City employees to assist with canvassing the City's homeless population to disseminate information and offer resources and assistance to prevent an outbreak of COVID-19 within the homeless population and provide testing and public health assistance for those members of the homeless population determined to be affected with the COVID-19 virus;
29. Re-task available City employees to assist with contacting the City's elderly population to disseminate information and offer resources and assistance to prevent an outbreak of COVID-19 and provide testing and public health assistance to members of the elderly population determined to be affected with the COVID-19 virus;
30. Re-task available City employees to assist the Police Department with operation of required prophylactic operations, including Point of Distribution operations and public testing areas for COVID-19, and designate potential testing sites, which may include the Montclair Police Department, Montclair Place, Target, Costco, Tiki Drive-in Theater, and other locations as may be recommended for easy public access;
31. To the extent applicable, and to protect homeless individuals, follow the [Guidance for Homeless Assistance Providers on Novel Coronavirus \(COVID-19\)](#);
32. Work with telecommunication providers to open free Wi-Fi access, communitywide, for students displaced from school;

33. To the extent practicable, close City buildings to non-essential public access; however, provide pre-scheduled by appointment access, as necessary;
34. Provide alternatives means for utility payments;
35. Suspend restrictions related to on-street parking on scheduled street sweeping days;
36. Except for essential government services, prepare the Montclair community and organization for a potential "shelter-in-place" order from the municipal, San Bernardino County, State, and/or Federal governments;
37. Implement other rules and regulations, as required, on matters reasonably related to the protection of life and property as affected by the local public health emergency; provided, however, such rules and regulations shall be confirmed at the earliest practicable time by the City Council.

BE IT FURTHER PROCLAIMED that the City Council of the City of Montclair, on March 16, 2020 in Resolution No. 20-3263, authorized and directed the transfer of up to \$200,000 from the General Fund Reserve Fund to the Contingency Account to assist the City Manager/Director of Emergency Services with administering and providing for the services, actions and assistance as provided for in this Proclamation; however, neither Resolution No. 21-3299 nor this Resolution authorizes an additional \$200,000 from the General Fund Reserve Fund to the Contingency Account.

BE IT FINALLY PROCLAIMED, that, pursuant to California Governor Newsom issuing a [proclamation declaring a State of Emergency](#) that waives the following:

1. The 30-day time period in Health and Safety Code section 101080, with which a local governing authority must renew a local health emergency; and
2. The 60-day time period in Government Code Section 8630, within which local government authorities must renew a local emergency;

the Montclair City Council hereby proclaims that Resolution No. 21-3299 be rescinded and replaced with Resolution No. 21-3306, which shall remain in force and effect until the City Council of the City of Montclair terminates the local health emergency.

APPROVED AND ADOPTED this XX day of XX, 2021.

ATTEST:

Mayor

City Clerk

I, Andrea M. Phillips, City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 21-3306 was duly adopted by the City Council of said city and was approved by the Mayor of said city at a regular meeting of said City Council held on the XX day of XX, 2021, and that it was adopted by the following vote, to-wit:

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

Andrea M. Phillips
City Clerk



CITY COUNCIL AGENDA REPORT

DATE: APRIL 5, 2021 **FILE I.D.:** COV150
SECTION: RESPONSE **DEPT.:** CITY MGR.
ITEM NO.: A **PREPARER:** E. STARR
SUBJECT: CONSIDER RECEIVING AND FILING THE RESPONSE TO COUNCIL INQUIRY REGARDING
THE REOPENING OF CITY FACILITIES

CONSIDER TAKING ONE OF THE FOLLOWING ACTIONS:

ADOPT CITY FACILITIES REOPENING PROTOCOLS AND PRACTICES AS PROVIDED FOR
HEREIN AND IN COMPLIANCE WITH THE CITY FACILITIES REOPENING, HEALTH AND
SAFETY PLAN; OR

AS REQUESTED BY PRESIDENT BIDEN, DELAY THE REOPENING OF CITY FACILITIES TO
THURSDAY, APRIL 29, 2021, OR THE DAY AFTER THE NATION ACHIEVES THE BIDEN-
HARRIS ADMINISTRATION'S OBJECTIVE TO FULLY VACCINATE 200 MILLION
AMERICANS

REASON FOR CONSIDERATION: At the March 15, 2021, meeting of the City Council the City Manager reported on a tentative reopening plan for City facilities following the announcement by the California Department of Public Health (CDPH) that San Bernardino County could enter the Red Tier effective Sunday, March 14, 2021.

Mayor Dutrey requested that information regarding the reopening of City facilities be presented at the April 5, 2021, meeting of the City Council.

A copy of the *Blueprint for a Safer Economy* is attached as Exhibit A to this response to City Council.

BACKGROUND: At its September 21, 2020, meeting, the City Council adopted a *City Facilities Public Reopening, Health and Safety Plan*, introducing a strong, clear and detailed guidance to ensure public health and safety while at City facilities. Protocols in the *Plan* are based on a variety of sources including, but not limited to, the federal governments [Opening America](https://www.whitehouse.gov/openingamerica/)¹ plan, [CDC Guidelines](https://www.cdc.gov/coronavirus/2019-ncov/community/reopen-guidance.html)², [State of California Guidance](https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Guidance.aspx)³, [EEOC Guidance for the workplace](https://www.californiaemploymentlawreport.com/2020/06/eeoc-provides-additional-guidance-on-workplace-issues/)⁴, and the Aspen Institute [Return to Play COVID-19 Risk Assessment Tool](https://www.aspenprojectplay.org/return-to-play)⁵. A copy of the *Plan* was provided to each member of the City Council and City personnel.

Establishing appropriate guidance allows the City to achieve consistency and avoid unnecessary confusion among employees and residents. This effort includes guidance on public services, facility operations, buildings and spaces, and community programs such as recreation activities, parks, senior and youth center operations, indoor and outdoor sports, summer concerts and outdoor movie events, holiday celebrations, summer camp programs, elections, and other events.

¹ <https://www.whitehouse.gov/openingamerica/>

² <https://www.cdc.gov/coronavirus/2019-ncov/community/reopen-guidance.html>

³ <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Guidance.aspx>

⁴ <https://www.californiaemploymentlawreport.com/2020/06/eeoc-provides-additional-guidance-on-workplace-issues/>

⁵ <https://www.aspenprojectplay.org/return-to-play>

The **Plan** is an evolving document: specific guidance for various activities are developed over time, and as new guidance are promulgated and issued by regulating authorities they are automatically adopted into the **Plan**.

The **Plan** was developed, in part, to achieve the following objectives:

- Serve as a guidance as to when City of Montclair facilities are reopened to the public, and when programs and activities are to be restored or phased in. Because the **Plan** is a living document, reopening guidelines are subject to change.
- Function as a guiding tool for establishing facility reopening protocols. In its implementation, the **Plan** may modify, suspend, or replace existing department policies. It is also recognized that the environment surrounding COVID-19 continues to be evolutionary in nature. As a result, established guidance are subject to change and modification pursuant to legal, environmental, health, medical, governmental and institutional changes and requirements.
- Provide protocols to be used as a set of tools, procedures, and guidance that enable the resumption of public operations amidst an ongoing public health emergency.
- Provide for implementation of measures that address functionality, flexibility, and operational safety while concurrently adhering to traditional legal mandates related to the provision of municipal services.
- Provide for restoration of City operations in a safe and thoughtful manner achieved through a phased and deliberate process that will require regular adjustment to reflect operational and environmental realities. Communication of the **Plan** to all levels of the Montclair organization has been vital to an effective, safe, and healthy approach to the City's preparation for a public reopening.
- Provide tools for the safety of employees and the public as normal business operations resume amidst the continued presence of the COVID-19 pandemic.
- Allow for the inclusion of guidance from federal, state, and county agencies, and the inclusion of strategies developed by industry-specific leadership groups.
- Provide supplemental information that supports protocols and Guidance from the San Bernardino County Public Health Department, California Department of Public Health (CDPH), Centers for Disease Control and Prevention (CDC), and other public health-related agencies.

Blueprint for a Safer Economy.

On August 28, 2020, California Governor Newsom announced the [California Color Coded County Tier System](https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/California-Color-Coded-Tier-System--en.pdf)⁶ or the "[Blueprint for a Safer Economy \(ca.gov\)](https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/COVID19CountyMonitoringOverview.aspx)"⁷ (the "**Blueprint**") – a four-tier color-coded plan for reopening the state's economy amid the coronavirus pandemic. The plan, which went into effect on Monday, August 31, 2020, replaced the state's previous watch list system which allowed each of the state's 58 counties to develop their own reopening guidelines. Reopening phases contained in the **City Facilities Public Reopening, Health and Safety Plan** are based largely on the **Blueprint**.

⁶ <https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH Document Library/COVID-19/California-Color-Coded-Tier-System--en.pdf>

⁷ <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/COVID19CountyMonitoringOverview.aspx>

Counties move through the **Blueprint's** four tiers based on two metrics: (1) each county's number of COVID-19 cases, and (2) its percentage of adjusted positive tests (case rate). Case rates are determined using confirmed cases, and do not include state and federal inmate cases.

Each county is assigned to a tier based on an adjusted case rate and positivity test rate from the prior two reporting periods (the preceding two weeks). If a county's case rate and positivity test rate fall into two separate tiers, the county will be assigned (or remain in) the more restrictive tier.

Under the **Blueprint**, each county was given a designation of "**Tier 1 - Purple**", "**Tier 2 - Red**", "**Tier 3 - Orange**", or "**Tier 4 - Yellow**". Each tier determines what types of businesses and activities are allowed to open (with or without modification) in each county. The revised system guards against loosening restrictions too soon by investing more authority with the state instead of the counties.

Effective September 8, 2020, San Bernardino County was placed in **Tier 1 - Purple** in compliance with the **Blueprint**.

Blueprint Tier Assignment.

An important feature of the state's color-coded system is that it requires an extended waiting period to verify the direction of data before movement to a different tier is permitted. In operation, the more cases and positive test results, the tighter the restrictions are on restaurants, retail shops, and other businesses.

Under the **Blueprint**, each county is assigned its tier every Tuesday, with a start date of September 8, 2020. A county must remain in a tier for 21 consecutive days (3 weeks) before moving to the next tier. To move forward, a county must meet the next tier's criteria for 14 consecutive days (2 weeks). The mandatory 21-day wait time between tier placements is intended to provide a buffer in terms of criteria and data evaluation and trending.

A county can only move forward one tier at a time, even if metrics qualify for a more advanced tier. A county can, however, move backwards by failing to meet the criteria for two consecutive weeks, or if state officials see a rapid rise in hospitalizations.

The **Blueprint** also stipulates that schools may reopen for in-person instruction based on criteria in the [School Re-opening Framework](#)⁸.

Schools in counties within **Tier 1 - Purple** are not permitted to reopen for in-person instruction, with an exception for waivers granted by local health departments for TK-6 grades. Schools not authorized to reopen may provide structured, in-person supervision and services to students under the [Guidance for Small Cohorts/Groups of Children and Youth](#)⁹.

Schools are eligible for reopening fully for in-person instruction following California School Sector Specific Guidelines ([K-12 School Guidance](#)¹⁰) once the county is off **Tier 1 - Purple** for 14 days. The Ontario-Montclair School District has announced April 5, 2021, as the start date for in-person hybrid instruction. The Chaffey Joint Union High School District plans to start in-person hybrid instruction during the week of April 12, 2021.

⁸ <https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/Schools%20Reopening%20Recommendations.pdf>

⁹ <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/small-groups-child-youth.aspx>

¹⁰ [https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH Document Library/COVID-19/Consolidated_Schools_Guidance.pdf](https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/Consolidated_Schools_Guidance.pdf)

The hybrid instruction plan typically provides for two days of on-campus instruction and two days of distant learning each week school is in session. See [K-12 School Guidance](#)¹⁰ and the [K-12 Schools FAQ](#)¹¹ for additional information on school re-opening eligibility criteria under the *Blueprint*.

Schools are not required to close if a county no longer meets relevant school re-opening criteria (e.g., goes from Red Tier to Purple Tier or has adjusted county case rates $\geq 25/100,000$ population) but may consider increasing testing per the CDPH supported testing [framework](#)¹².

California Issues Modified Regional Stay-At-Home Order.

On December 3, 2020, Governor Newsom issued a modified regional stay-at-home order that came at a difficult time in California's virus response. Intensive Care Units (ICUs) were announced to have less than 15% capacity, non-essential businesses were closed down, and all private gatherings were prohibited. The modified regional stay-at-home order, which effectively suspended the *Blueprint*, was rescinded on Monday, January 25, 2021, returning the state to the color-coded tier system contained in the *Blueprint*. The rescission was based on projections over a four week period showing that new ICU capacity in the state would exceed 15%, largely due to the dissemination of vaccines in California.

By returning to [Tier 1 - Purple](#), restaurants were allowed to remain open with outdoor dining, nail and hair salons reopened with modifications, and certain youth sports activities were allowed to resume. In counties where the daily new case rate is below 25 cases per 100,000 residents, some schools have applied to reopen as well.

California Department of Public Health (CDPH) Provides for Modified Tier Migration.

On Friday, March 12, 2021, the CDPH announced a modified tier migration plan that allows the state to loosen the criteria for counties to exit the *Blueprint's* strictest tier, [Tier 1 - Purple](#).

The *Blueprint* categorizes counties into one of four color-coded tiers based on a few factors: testing positivity rates; a health equity metric intended to ensure that the positivity rate in poorer communities is not significantly worse than the county's overall figure; and, in terms of wider re-openings, adjusted case rates.

Originally, counties had to record a case rate — adjusted based on the number of tests performed — at or below 7.0 new cases per day per 100,000 people to move from [Tier 1 - Purple](#) to [Tier 2 - Red](#). However, by accelerating administration of the coronavirus vaccines to Californians, state health officials were able to loosen the criteria for counties to exit the strictest ([Tier 1 - Purple](#)) of California's four color-coded tiers. See **Chart 1**, below, defining case and positivity rates for migration to lower risk tiers:

¹¹ <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Schools-FAQ.aspx>

¹² https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH_Document_Library/COVID-19/K12_School_Testing_Considerations_Information.pdf

**Chart 1
Tier Migration Health Metrics
Based on Risk of Community Disease Transmission**

	Higher Risk → Lower Risk of Community Disease Transmission***			
Measure	Tier 1 Widespread (Purple)	Tier 2 Substantial (Red)	Tier 3 Moderate (Orange)	Tier 4 Minimal (Yellow)
Adjusted Case Rate for Tier Assignment ** (Rate per 100,000 population * excluding prison cases^, 7 Day average with 7 day lag)	> 10	4-10	1 – 3.9	< 1
Test Positivity ^ (Excluding prison cases^, 7 day average with 7 day lag)	> 8%	5-8%	2 – 4.9%	< 2%

On Friday, March 12, 2021, California met its target for administering more than 2 million COVID-19 vaccines in the hardest-hit and most disadvantaged areas of the state. Achieving a more equitable distribution of vaccine doses cleared the way for significant economic re-openings.

In its bid to address inequities in the vaccine rollout, the CDPH earmarked 40 percent of available vaccination supplies for residents in the most disadvantaged areas, as identified by a socioeconomic measurement tool called the [California Healthy Places Index](#)¹³. The earmarked doses went to communities in the lowest quartile of the index — which includes roughly 400 ZIP Codes throughout the state. Montclair received a portion of the earmarked vaccinations.

In meeting the goal of administering two million vaccine doses to disadvantaged areas by March 12, counties with a case rate of up to 10.0 new cases per day per 100,000 people were informed that they were eligible to advance to **Tier 2 - Red** in 48-hours (Sunday, March 14, 2021), provided that each eligible county has demonstrated the modified lower case rate for the two consecutive weeks prior to migration from **Tier 1 - Purple**. The state's change to the formula for advancing provides additional room to prevent a potential regression back into **Tier 1 - Purple**.

Thirteen counties — Los Angeles, Orange, San Bernardino, Amador, Colusa, Contra Costa, Mendocino, Mono, Placer, San Benito, Siskiyou, Sonoma and Tuolumne — exited **Tier 1 - Purple** on Sunday March 14, followed by 10 additional counties — Sacramento, San Diego, Riverside, Ventura, Lake, Monterey, Santa Barbara, Sutter, Tehama, and Tulare — on Wednesday, March 17, 2021.

¹³ <https://map.healthyplacesindex.org/>

Framework for Moving Through the Color-Coded Tiers.

1. CDPH will assess indicators weekly on Mondays and release updated tier assignments on Tuesdays.
2. A county must remain in a tier for a minimum of three weeks before being able to advance to a less restrictive tier.
3. A county can only move forward one tier at a time, even if metrics qualify for a more advanced tier.
4. If a county's adjusted case rate for tier assignment and test positivity measure fall into two different tiers, the county will be assigned to the more restrictive tier.
5. The health equity metric is applied to jurisdictions with populations greater than 106,000. Rules of the health equity metric are described on the CDPH's [Health Equity Metric page](#)¹⁴.
6. City local health jurisdiction (LHJ) data will be included in overall metrics, and city LHJs will be assigned the same tier as the surrounding county
7. An LHJ may continue to implement or maintain more restrictive public health measures if the local health officer determines that health conditions in that jurisdiction warrant such measures.
8. Tier status goes into effect the Wednesday following each weekly tier assignment announcement on Tuesdays.
9. Once statewide vaccine equity goals are met, determination of the number of weeks a county has accumulated towards movement to a more or less restrictive tier follows the framework that is in place at the time of tier assessment. For example, if a county had a case rate of 8 per 100,000 and test positivity < 8% for 2 weeks prior to the time when the Goal 1 thresholds are met, the county will be eligible to move to the **Tier 2 - Red**.
10. A county must meet criteria for movement to the next less restrictive for the prior two consecutive weeks in order to progress to the next tier; which can be achieved by either or combination of criteria described below:
 - a. Meeting the Adjusted Case Rate, Test Positivity, and Health Equity metric criteria for a less restrictive tier.
 - b. Meeting the criteria for movement to the next less restrictive tier through health equity accelerated progression.

Can a County Move Back in Tier Assignment?

1. During the weekly assessment, if a county's adjusted case rate and/or test positivity has fallen within a more restrictive tier for two consecutive weekly periods, the state will review the most recent 10 days of data, and if CDPH determines there are objective signs of improvement the county may remain in the tier. If the county's most recent 10 days data does not show objective signs of improvement the county must revert to the more restrictive tier. For subsequent weekly assessments, the above rules apply.

¹⁴ <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/CaliforniaHealthEquityMetric.aspx>

2. At any time, state and county public health officials may work together to determine targeted interventions or countywide modifications necessary to address impacted hospital capacity and drivers of disease transmission, as needed, including movement across more than one tier. Key considerations will also include the rate of increase in new cases and/or test positivity, more recent data as noted above, public health capacity, and other epidemiological factors.
3. Counties with a population less than 106,000 will have a small county criteria applied to it to ensure movement to a more restrictive tier is appropriate.
4. Counties will have three days, beginning the Wednesday after tier assignments are announced on Tuesdays, to implement any sector changes or closures unless extreme circumstances merit immediate action.

Tier 5 - Green to be Added to the *Blueprint*.

The California Department of Public Health is developing a new green tier ("Tier 5 - Green") in anticipation of a bright light at the end of the pandemic's tunnel. The presumption is that Tier 5 - Green will represent an all clear with no modifications or restrictions. Furthermore, Tier 5 - Green may only come when the state reaches a minimum of 30 million+ people fully vaccinated, putting California closer to "herd immunity".

What is Herd Immunity?

Herd immunity is reached when so many people have immunity that a virus cannot find new hosts and effectively stops spreading, resulting in community-wide protection. Public health officials believe that in the case of the coronavirus and its recent mutation to new and more contagious strains, the herd immunity threshold may be as high as 90% immunity. While the United States (and California) remain some distance from achieving this threshold, each step toward the threshold slows transmission, according to public health officials. However, both California and the nation face "*herd immunity uncertainty*" because an estimated 25 percent of the U.S. population has indicated vaccine reluctance according to [polling data](#)¹⁵ released on March 8, 2021, from Monmouth University.

Tier 2 - Red Reopening in California.

Counties progressing to Tier 2 - Red are permitted to:

- Resume indoor dining at restaurants and movie theater showings at 25% capacity.
- Welcome back students in person in grades 7 through 12.
- Reopen indoor gyms and dance and yoga studios at 10% capacity.
- Expand capacity restrictions at nonessential stores and libraries.
- Allow museums, zoos and aquariums to reopen indoor operations, at 25% capacity.

¹⁵ https://www.monmouth.edu/polling-institute/reports/monmouthpoll_us_030821/

- Allow amusement parks to reopen at 15% capacity, with other modifications, starting April 1, 2021. Long-closed attractions such as Disneyland, Universal Studios, Knott's Berry Farm and Six Flags Magic Mountain are again welcoming visitors after being closed for a year. Attendees must demonstrate proof of California residency.

How to reopen is a decision of local health officials, who can adopt rules that are stricter than the state. San Bernardino County health officials elected to reopen to the fullest extent allowed under current Guidance. Cities have discretion to determine municipal facilities reopening protocols subject to local conditions and requirements.

A detailed Tier Reopening Activity Chart for business reopenings and required operational modifications is attached as Exhibit 1, and is available at [Blueprint Activity and Business Tiers March 11, 2021 \(ca.gov\)](#)¹⁶.

Tier 2 - Red Reopening of City of Montclair Public Facilities.

As an essential public service, the City of Montclair continued administrative and other operations throughout the public health crisis. Normal in-person interactions and business with the public has been maintained through online services and in person by appointment. Business with partner agencies has been conducted through Email, telephone, and Zoom—a web-based interactive meeting environment.

Based on San Bernardino County entering **Tier 2 - Red** on March 14, and pursuant to the *City Facilities Public Reopening, Health and Safety Plan* and the *Plan's* requirement that San Bernardino County must remain in **Tier 2 - Red** for no less than two weeks before City facilities can reopen.

City facilities begin to reopen effective Tuesday, April 6, 2021, following City Council approval and pursuant to the following schedule – ongoing restrictions include the wearing of facemasks, social distancing, and limited capacity on attendance:

- April 6, 2021 — City buildings open to the public for the conduct of business, only. Attendees must wear facemasks, practice social distancing, and agree to temperature scans before interacting directly with employees in face-to-face meetings. Appropriate signage will be posted regarding CDPH Guidance compliance.
- April 6, 2021 — City parks are accessible to the public as follows:
 - Certain park features shall remain closed; e.g., the Splash Pad at Alma Hofman Park remains closed until Summer 2022, and outdoor basketball courts remain closed pursuant to CDPH Guidance and will remain unpermitted until allowed by CDPH guidance.
 - Appropriate signage, as indicated in **Graphic 1**, below, will be posted at parks and other facilities regarding CDPH Guidance compliance:

¹⁶ https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH Document Library/COVID-19/Dimmer-Framework-September_2020.pdf

Graphic 1 CDPH Health and Safety Reminders



- Tennis courts are available for single's play, only—appropriate signage to be posted.
- Skate Park reopens to limited capacity of no more than ten skaters per session, limited to one-hour sessions per skater if other Skate Park participants are waiting, with two-hour breaks between skate activity if necessary to permit access by waiting skaters. Participants are required to comply with posted rules, and shall not engage in physical contact while in the Skate Park. Drinks and refreshments in the Skate Park are prohibited. Loitering in the Skate Park is prohibited. Facemasks are not required while engaged in skating activity. Appropriate signage will be posted.
- Playground sets (slides, jungle gyms, swings, etc.) are open only to children 12 years of age and younger, with adult supervision.
- Park attendees shall wear face masks (except when engaging in physical exercise such as singles tennis), practice social distancing (excluding members of the same household), and avoid gatherings (excluding members of the same household).
- Separate agreements are in place with sports leagues for the use of City sports fields. Outdoor sports activities (youth and adult) are subject to CDPH guidance.
- Indoor sports activities including indoor basketball and volleyball (youth and adult) are subject to CDPH guidance and will remain unpermitted until allowed by CDPH guidance.

- May 3, 2021 — City Council meetings will resume in the Council Chambers under restrictive protocols:
 - Separation (sneeze-type) panels shall be in place between City Council members and City staff.
 - City Council Members and City staff shall wear face coverings, except when speaking.
 - City staff representation in the City Council Chambers shall be limited based on City Council agenda presentations and as directed by the City Manager.
 - Members of the public shall wear facemasks and be social distanced in the audience seating area—seating shall be appropriately marked for social distancing. Overflow seating will be available in the West Lobby of City Hall. Appropriate signage shall be posted.
 - Public attendees shall only address the City Council by submitting a written request and when called upon by the Mayor as provided for in the public comments section allowed for in the City Council agenda. Members of the public calling in or watching a Zoom or live feed of the City Council meeting shall follow protocols outlined in the agenda for addressing the City Council.
 - Subcommittee meetings of the City Council shall continue to be conducted by Zoom until San Bernardino County enters **Tier 4 - Yellow**.
- May 10, 2021 — Planning Commission meetings will resume in the Council Chambers under restrictive protocols as provided for under City Council meetings, subject to modification.
- **Tier 3 - Orange** — The Youth Center reopens after San Bernardino County has been in **Tier 3 - Orange** for no less than two weeks, subject to CDPH Guidance.
 - City staff and attendees shall be required to wear face coverings and practice social distancing. Public attendance may be limited, based on CDPH Guidance.
 - Appropriate signage shall be posted.
- **Tier 3 - Orange** — Community Activities Commission meetings will resume in the Council Chambers under restrictive protocols as provided for under City Council meetings, subject to modification.
- **Tier 4 - Yellow** or **Tier 5 - Green** if established by CDPH — The Senior Center reopens after San Bernardino County has been in **Tier 4 - Yellow** for no less than two weeks, subject to CDPH Guidance. However, if a **Tier 5 - Green** is established by the CDPH, the Senior Center will not resume normal operations until San Bernardino County has entered **Tier 5 - Green**. The wearing of face coverings and the practice of social distancing shall be subject to CDPH Guidance.
- **Tier 4 - Yellow** or **Tier 5 - Green** if established by CDPH — All other City-sponsored programs and activities shall return to a normal operating schedule.

Tier 3 – Orange Statewide Reopening Health Metric Requirement.

When California reaches its next goal of administering 4 million doses in the hardest-hit areas of the state, the threshold to move into **Tier 3 – Orange** would be relaxed from a requirement of under 4.0 new cases per day per 100,000 residents to under 6.0 new cases per day per 100,000 residents.

A detailed Tier Reopening Activity Chart for business reopenings and required operational modifications is attached as Exhibit 1, and is available at [Blueprint Activity and Business Tiers March 11, 2021 \(ca.gov\)](#)¹⁷.

Tier 4 – Yellow Statewide Reopening Health Metric Requirement.

Entering the least restrictive **Tier 4 – Yellow** would necessitate an adjusted daily new case rate below 2.0 per 100,000 people, compared with the current requirement of less than 1.0 new cases per day per 100,000 residents.

A detailed Tier Reopening Activity Chart for business reopenings and required operational modifications is attached as Exhibit 1, and is available at [Blueprint Activity and Business Tiers March 11, 2021 \(ca.gov\)](#)¹⁷.

Tier 5 – Green Full Reopening.

All City-operated facilities and City-sponsored programs and activities return to a normal operating schedule.

City staff recommends adhering to the reopening guidelines established above. This cautious approach, with modification, reflects provisions outlined in the **Plan**.

The City Council is also reminded that Montclair remains a high-risk community for spread of the coronavirus, and is recognized by the state as a disadvantaged area as identified by the [California Healthy Places Index](#)¹⁸.

Reopening activity requirements for **Tier 5 – Green** are not yet available from the CDPH; however, it is anticipated that all pandemic-related restrictions will be rescinded upon entry into **Tier 5 – Green**.

Biden-Harris Administration Request Delay to Re-openings.

The latest health metrics indicate that the world has entered its fourth stage of the coronavirus pandemic—a stage that may prove to be the deadliest of the pandemic due to the virulent form virus variants are taking.

However, because the United States is far ahead of many nations in vaccine administration, the surge in the United States may be controlled and its impact reduced. The Centers for Disease Control and Prevention (CDC) has cautioned, however, that for those individuals who have not received their first dose of the Moderna or Pfizer vaccines or the Johnson & Johnson vaccine, their risk of contracting one of the new and deadlier forms of the coronavirus is high.

¹⁷ https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH_Document_Library/COVID-19/Dimmer-Framework-September_2020.pdf

¹⁸ <https://map.healthyplacesindex.org/>

For the two-week period prior to March 30, 2021, positive cases skyrocketed 133 percent in Michigan, 62 percent in Connecticut, and 42 percent in New York. California's seven-day case rate, however, is at a low of 1.6 percent. Nonetheless, the CDPH warns that transmission levels could increase as people gather for Passover and Easter and travel for spring break.

Furthermore, new coronavirus variants continue to flare up throughout California. The Brazilian variant, which appears to be more infectious, is spreading in San Diego and San Francisco, and the CDPH is tracking five "known variants of concern" and three "known variants of interest," which together account for more than 9,000 cases statewide.

To minimize spread of the variant, the Biden-Harris Administration has considered two tactics:

1. Ring vaccination. The tactic involves vaccinating contacts and potential contacts, essentially smothering the outbreak by surrounding it with immunity—scientific data supports that each of the COVID-19 vaccines are efficient in providing immunity against virus variants.
2. Delayed re-openings. This step, recommended by the Biden-Harris Administration on March 29, would delay re-openings, especially for areas with surges, and particularly for high-risk activities that occur indoors, until the next 100 million Americans are vaccinated—on March 19, the United States reached the target of vaccinating 100 million Americans. On March 25, 2021, President Biden directed the goal of vaccinating an additional 100 million Americans by April 29.

FISCAL IMPACT: Reopening City facilities, including parks, will increase General Fund operating and maintenance costs.

Due to the loss of General Fund Revenue during the pandemic, three full-time and three part-time Maintenance Worker positions, and one Police Sergeant position and one Police Officer position were left temporarily vacant. It will be necessary to restore these positions to meet the demand for increased levels of service in the community and at City facilities and parks. Restoring these positions will cost approximately \$650,000.

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

1. Receive and file the response to Council inquiry regarding the reopening of City facilities.
2. Take one of the following actions:
 - a. Adopt the City Facilities Reopening Protocols and Practices as provided for herein and in compliance with the City Facilities Reopening, Health and Safety Plan; or
 - b. As requested by President Biden, delay the reopening of City facilities to Thursday, April 29, 2021, or the day after the nation achieves the Biden-Harris Administration's objective to fully vaccinate 200 million Americans.

Blueprint for a Safer Economy

Activity and Business Tiers

March 11, 2021

SECTORS	Tier 1 Widespread (Case Rate >7 and Test Positivity >8%)	Tier 2 Substantial (Case Rate 4-7 and Test Positivity 5-8%)	Tier 3 Moderate (Case Rate 1-3.9 and Test Positivity 2-4.9%)	Tier 4 Minimal (Case Rate <1 and Test Positivity <2%)
Post 2 million doses administered in first Healthy Places Index quartile	CR >10	CR 4-10	CR 1-3.9	CR <1
Post 4 million doses administered in first Healthy Places Index quartile	CR >10	CR 6-10	CR 2-5.9	CR <2
Critical Infrastructure	Open with modifications	Open with modifications	Open with modifications	Open with modifications
Gatherings (current posted performance limits)	Outdoor gatherings only with modifications • Max 3 households	Indoor gatherings strongly discouraged, allowed with modifications • Max 3 households	Indoor gatherings strongly discouraged, allowed with modifications • Max 3 households	Indoor gatherings strongly discouraged, allowed with modifications • Max 3 households
Limited Services	Open with modifications	Open with modifications	Open with modifications	Open with modifications
Outdoor Playgrounds & Outdoor Recreational Facilities	Open with modifications	Open with modifications	Open with modifications	Open with modifications
Hair Salons & Barbershops	Open indoors with modifications	Open indoors with modifications	Open indoors with modifications	Open indoors with modifications
All Retail (including critical infrastructure, except standalone grocers)	Open indoors with modifications • Max 25% capacity	Open indoors with modifications • Max 50% capacity	Open indoors with modifications	Open indoors with modifications

SECTORS	Tier 1 Widespread (Case Rate >7 and Test Positivity >8%) CR >10	Tier 2 Substantial (Case Rate 4-7 and Test Positivity 5-8%) CR 4-10	Tier 3 Moderate (Case Rate 1-3.9 and Test Positivity 2-4.9%) CR 1-3.9	Tier 4 Minimal (Case Rate <1 and Test Positivity <2%) CR <1
Post 2 million doses administered in first Healthy Places Index quartile	CR >10	CR 4-10	CR 1-3.9	CR <1
Post 4 million doses administered in first Healthy Places Index quartile	CR >10	CR 6-10	CR 2-5.9	CR <2
Shopping Centers (Malls, Destination Centers, Swap Meets)	Open indoors with modifications <ul style="list-style-type: none"> Max 25% capacity Closed common areas Closed food courts 	Open indoors with modifications <ul style="list-style-type: none"> Max 50% capacity Closed common areas Reduced capacity food courts (see restaurants) 	Open indoors with modifications <ul style="list-style-type: none"> Closed common areas Reduced capacity food courts (see restaurants) 	Open indoors with modifications <ul style="list-style-type: none"> Reduced capacity food courts (see restaurants)
Personal Care Services	Open indoors with modifications	Open indoors with modifications	Open indoors with modifications	Open indoors with modifications
Museums, Zoos, and Aquariums	Outdoor only with modifications	Open indoors with modifications <ul style="list-style-type: none"> Indoor activities max 25% capacity 	Open indoors with modifications <ul style="list-style-type: none"> Indoor activities max 50% capacity 	Open indoors with modifications
Places of Worship	<ul style="list-style-type: none"> Outdoor encouraged Indoor strongly discouraged, allowed with modifications Max 25% capacity 	Open indoors with modifications <ul style="list-style-type: none"> Max 25% capacity 	Open indoors with modifications <ul style="list-style-type: none"> Max 50% capacity 	Open indoors with modifications <ul style="list-style-type: none"> Max 50% capacity
Movie Theaters	Outdoor only with modifications	Open indoors with modifications <ul style="list-style-type: none"> Max 25% capacity or 100 people, whichever is fewer 	Open indoors with modifications <ul style="list-style-type: none"> Max 50% capacity or 200 people, whichever is fewer 	Open indoors with modifications <ul style="list-style-type: none"> Max 50% capacity

SECTORS	Tier 1 Widespread (Case Rate >7 and Test Positivity >8%) CR >10	Tier 2 Substantial (Case Rate 4-7 and Test Positivity 5-8%) CR 4-10	Tier 3 Moderate (Case Rate 1-3.9 and Test Positivity 2-4.9%) CR 1-3.9	Tier 4 Minimal (Case Rate <1 and Test Positivity <2%) CR <1
Post 2 million doses administered in first Healthy Places Index quartile	CR >10	CR 4-10	CR 1-3.9	CR <1
Post 4 million doses administered in first Healthy Places Index quartile	CR >10	CR 6-10	CR 2-5.9	CR <2
Hotels and Lodging	Open with modifications	Open with modifications <ul style="list-style-type: none"> +Fitness centers (+10%) 	Open with modifications <ul style="list-style-type: none"> +Fitness centers (+25%) +Indoor pools 	Open with modifications <ul style="list-style-type: none"> +Fitness Centers (50%) +Spa facilities etc.
Gyms and Fitness Centers	Outdoor only with modifications	Open indoors with modifications <ul style="list-style-type: none"> Max 10% capacity +Climbing walls 	Open indoors with modifications <ul style="list-style-type: none"> Max 25% capacity +Indoor pools 	Open indoors with modifications <ul style="list-style-type: none"> Max 50% capacity +Saunas +Steam rooms
Restaurants	Outdoor only with modifications	Open indoors with modifications <ul style="list-style-type: none"> Max 25% capacity or 100 people, whichever is fewer 	Open indoors with modifications <ul style="list-style-type: none"> Max 50% capacity or 200 people, whichever is fewer 	Open indoors with modifications <ul style="list-style-type: none"> Max 50% capacity
Wineries, Breweries and Distilleries***	Effective March 13, 2021: Outdoor only with modifications <ul style="list-style-type: none"> Reservations 90-minute time limit Seating/tables only Limited hours (service for on-site consumption closed by 8 pm) 	Effective March 13, 2021: Outdoor only with modifications <ul style="list-style-type: none"> Reservations 90-minute time limit Seating/tables only Limited hours (service for on-site consumption closed by 8 pm) 	Effective March 13, 2021: Open indoors with modifications <ul style="list-style-type: none"> Max 25% capacity indoors, or 100 people, whichever is fewer 	Effective March 13, 2021: Open indoors with modifications <ul style="list-style-type: none"> Max 50% capacity or 200 people indoors, whichever is fewer

SECTORS	Tier 1 Widespread (Case Rate >7 and Test Positivity >8%) CR >10	Tier 2 Substantial (Case Rate 4-7 and Test Positivity 5-8%) CR 4-10	Tier 3 Moderate (Case Rate 1-3.9 and Test Positivity 2-4.9%) CR 1-3.9	Tier 4 Minimal (Case Rate <1 and Test Positivity <2%) CR <1
Post 2 million doses administered in first Healthy Places Index quartile	CR >10	CR 4-10	CR 1-3.9	CR <1
Post 4 million doses administered in first Healthy Places Index quartile	CR >10	CR 6-10	CR 2-5.9	CR <2
Bars (where no meal provided; follow restaurant guidance where meal is provided)	Closed	Closed	Open outdoors with modifications	Effective March 13, 2021: Open indoors with modifications <ul style="list-style-type: none"> Max 25% capacity indoors, or 100 people, whichever is fewer
Family Entertainment Centers	Outdoor only with modifications e.g. <ul style="list-style-type: none"> Kart Racing Mini Golf Batting Cages 	Outdoor only with modifications e.g. <ul style="list-style-type: none"> Kart Racing Mini Golf Batting Cages 	Open indoors for naturally distanced activities with modifications <ul style="list-style-type: none"> Max 25% capacity Bowling Alleys 	Open indoors for activities with increased risk of proximity and mixing with modifications <ul style="list-style-type: none"> Max 50% capacity Arcade Games Ice and roller skating Indoor playgrounds
Cardrooms, Satellite Wagering	Outdoor only with modifications	Outdoor only with modifications	Open indoors with modifications <ul style="list-style-type: none"> Max 25% capacity 	Open indoors with modifications <ul style="list-style-type: none"> Max 50% capacity
Offices	Remote	Remote	Open indoors with modifications <ul style="list-style-type: none"> Encourage telework 	Open indoors with modifications <ul style="list-style-type: none"> Encourage telework

SECTORS	Tier 1 Widespread (Case Rate >7 and Test Positivity >8%) CR >10	Tier 2 Substantial (Case Rate 4-7 and Test Positivity 5-8%) CR 4-10	Tier 3 Moderate (Case Rate 1-3.9 and Test Positivity 2-4.9%) CR 1-3.9	Tier 4 Minimal (Case Rate <1 and Test Positivity <2%) CR <1
Post 2 million doses administered in first Healthy Places Index quartile	CR >10	CR 4-10	CR 1-3.9	CR <1
Post 4 million doses administered in first Healthy Places Index quartile	CR >10	CR 6-10	CR 2-5.9	CR <2
<p>Outdoor Live Events with Assigned Seats and Controlled Mixing (e.g., sports and live performances)*</p> <p>Indoor guidance forthcoming</p>	<p>Current: Open with modifications, no live audiences</p> <p>Effective April 1, 2021:</p> <ul style="list-style-type: none"> • 100 people or fewer • Regional visitors (120 miles) • Advanced reservations only • No concessions or concourse sales 	<p>Current: Open with modifications, no live audiences</p> <p>Effective April 1, 2021:</p> <ul style="list-style-type: none"> • Max 20%, includes suites with 25% occupancy per suite and suites no more than 3 households • Weekly worker testing program • In-state visitors only, check for current CDPH I Travel Advisory in effect • Advanced reservations only • Primarily in-seat concessions (no concourse sales) 	<p>Current:</p> <ul style="list-style-type: none"> • Open with modifications • Permanent venues with live audiences outdoors only • Capacity must be limited to 20% • Reservations required • Assigned seating only • In-seat concessions only (no concourse sales) • Regional attendees only (within 120 miles) <p>Effective April 1, 2021:</p> <ul style="list-style-type: none"> • Max 33%, includes suites with 25% occupancy per suite • Weekly worker testing program • In-state visitors only, check for current CDPH Travel Advisory in effect 	<p>Current:</p> <ul style="list-style-type: none"> • Open with modifications • Permanent venues with live audiences outdoors only • Capacity must be limited to 25% • Reservations required • Assigned seating only • In-seat concessions only (no concourse sales) • Regional attendees only (within 120 miles) <p>Effective April 1, 2021:</p> <ul style="list-style-type: none"> • Max 67%, includes suites with 25% occupancy per suite • In-state visitors only, check for current CDPH Travel Advisory in effect • Primarily in-seat concessions (no concourse sales)

SECTORS	Tier 1 Widespread (Case Rate >7 and Test Positivity >8%) CR >10	Tier 2 Substantial (Case Rate 4-7 and Test Positivity 5-8%) CR 4-10	Tier 3 Moderate (Case Rate 1-3.9 and Test Positivity 2-4.9%) CR 1-3.9	Tier 4 Minimal (Case Rate <1 and Test Positivity <2%) CR <1
Post 2 million doses administered in first Healthy Places Index quartile	CR >10	CR 4-10	CR 1-3.9	CR <1
Post 4 million doses administered in first Healthy Places Index quartile	CR >10	CR 6-10	CR 2-5.9	CR <2
			<ul style="list-style-type: none"> Primarily in-seat concessions (no concourse sales) Max 67% if all guests are tested or show proof of full vaccination 	
Amusement Parks**	<p>Current: Closed</p> <p>Effective April 1, 2021: Closed</p>	<p>Current: Closed</p> <p>Effective April 1, 2021:</p> <ul style="list-style-type: none"> Max 15% Small Groups - Max 10 people or 3 household groups with no intergroup mixing Indoor capacity max 15% with time restrictions No indoor dining Weekly worker testing program In-state visitors only, check for current CDPH Travel Advisory in effect Online ticket purchases only 	<p>Current:</p> <ul style="list-style-type: none"> Smaller parks can open with modifications Capacity must be limited to 25% or 500 people, whichever is less Outdoor attractions only can open Reservations or advanced ticket sales required Local attendees only (from the same county as the park's location) <p>Effective April 1, 2021:</p> <ul style="list-style-type: none"> Max 25% Indoor capacity max 25% with time restrictions 	<p>Current:</p> <ul style="list-style-type: none"> Larger parks can open with modifications Park capacity must be limited to 25% Reservations or advanced ticket sales required <p>Effective April 1, 2021:</p> <ul style="list-style-type: none"> Max 35% Indoor capacity max 25% with time restrictions Weekly worker testing program With other modifications In-state visitors only, check for current CDPH Travel Advisory in effect

SECTORS	Tier 1 Widespread (Case Rate >7 and Test Positivity >8%)	Tier 2 Substantial (Case Rate 4-7 and Test Positivity 5-8%)	Tier 3 Moderate (Case Rate 1-3.9 and Test Positivity 2-4.9%)	Tier 4 Minimal (Case Rate <1 and Test Positivity <2%)
Post 2 million doses administered in first Healthy Places Index quartile	CR >10	CR 4-10	CR 1-3.9	CR <1
Post 4 million doses administered in first Healthy Places Index quartile	CR >10	CR 6-10	CR 2-5.9	CR <2
			<ul style="list-style-type: none"> Weekly worker testing program With other modifications In-state visitors only, check for current CDPH Travel Advisory in effect 	
Overnight Sleepaway Camps****	Closed	Effective June 1, 2021: Open with modifications	Effective June 1, 2021: Open with modifications	Effective June 1, 2021: Open with modifications

Updated on March 11, 2021:

***Effective March 13, 2021.

****Regardless of trigger being met, these activities (overnight sleepaway camps) cannot begin any sooner than June 1, 2021.

Updated on March 5, 2021:

*Regardless of trigger being met, these activities (outdoor live events) cannot begin any sooner than April 1, 2021.

**Regardless of trigger being met, these activities (amusement parks) cannot begin any sooner than April 1, 2021.

**MINUTES OF THE MEETING OF THE MONTCLAIR
PERSONNEL COMMITTEE HELD ON MONDAY,
MARCH 15, 2021, AT 8:45 P.M. IN THE CITY
ADMINISTRATIVE OFFICES, 5111 BENITO STREET,
MONTCLAIR, CALIFORNIA, REMOTELY VIA ZOOM**

I. CALL TO ORDER

Mayor Pro Tem Ruh called the meeting to order at 8:45 p.m.

II. ROLL CALL

Present: Mayor Pro Tem Ruh, Council Member Johnson, and City Manager Starr

III. APPROVAL OF MINUTES

A. Minutes of the Regular Personnel Committee Meeting of March 2, 2020.

Moved by Council Member Johnson, seconded by Mayor Pro Tem Ruh, and carried unanimously to approve the minutes of the Personnel Committee meeting of March 2, 2020.

IV. PUBLIC COMMENT - None

V. CLOSED SESSION

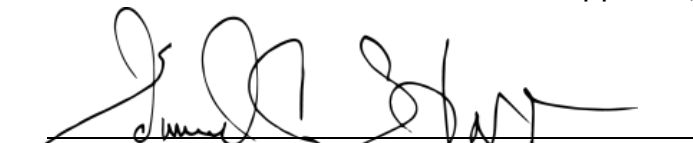
At 8:46 p.m., the Personnel Committee went into Closed Session regarding personnel matters related to appointments, resignations/terminations, and evaluations of employee performance.

At 9:09 p.m., the Personnel Committee returned from Closed Session. Mayor Pro Tem Ruh stated that no announcements would be made at this time.

VI. ADJOURNMENT

At 9:09 p.m., Mayor Pro Tem Ruh adjourned the Personnel Committee.

Submitted for Personnel Committee approval,



Edward C. Starr
City Manager

MINUTES OF THE REGULAR JOINT MEETING OF THE MONTCLAIR CITY COUNCIL, SUCCESSOR AGENCY AND MONTCLAIR HOUSING CORPORATION BOARDS, MONTCLAIR HOUSING AUTHORITY COMMISSION, AND MONTCLAIR COMMUNITY FOUNDATION BOARD HELD ON MONDAY, MARCH 15, 2021 AT 7:00 P.M. CONDUCTED REMOTELY PURSUANT TO GOVERNOR NEWSOM'S EXECUTIVE ORDERS SUSPENDING CERTAIN ASPECTS OF THE BROWN ACT DURING THE COVID-19 STATE OF EMERGENCY AND MANDATING STAY-AT-HOME SAFETY PROTOCOLS

I. CALL TO ORDER

Mayor/Chair Dutrey called the meeting to order at 7:00 p.m.

II. INVOCATION

A moment of silence was held for victims of COVID-19 since the pandemic began one year ago.

III. PLEDGE OF ALLEGIANCE

Council Member Johnson led meeting participants in the Pledge.

IV. ROLL CALL

Present: Mayor/Chair Dutrey; Mayor Pro Tem/Vice Chair Ruh; Council Members/Directors Johnson, Martinez, and Lopez

City Manager/Executive Director Starr; Director of Administrative Services and Human Resources Hamilton; Finance Manager Kulbeck; Public Works Director/City Engineer Castillo; Human Services Director Richter; Senior Management Analyst Fuentes; City Attorney Robbins; City Clerk Phillips

V. PRESENTATIONS

A. COVID-19 Community Recognition Award

Mayor Dutrey presented the COVID-19 Community Recognition Award to **Mr. Daniel Burkholder**, a Montclair resident, who elaborately decorated his family's home with lights and distributed holiday goody bags to neighbors with his four-year-old son to spread holiday cheer during the pandemic. **Mr. Burkholder** also performed CPR in an attempt to save his neighbor's life during a tragic choking incident until the paramedics arrived.

Mayor Dutrey thanked **Mr. Burkholder** for his giving spirit and his heroic efforts, and advised he would arrange to personally present him with a Certificate of Recognition and a City pin.

VI. PUBLIC COMMENT

A. **Mr. Bruce Culp**, resident, acknowledged a year since the pandemic began and commended the City for keeping its mask mandate in place. He urged a cautious approach to reopening in the coming months and suggested keeping the mask mandate until at least the yellow tier.

B. **Mr. Gian Paul Lincoln** introduced himself as a Montclair resident of two years and a current **California Polytechnic University, Pomona** student, and stated he is pleased to have the opportunity to participate in a Council meeting.

VII. PUBLIC HEARINGS

A. **First Reading — Consider Ordinance No. 21-997 Amending Section 2.12.020 of the Montclair Municipal Code Related to Campaign Contribution Limits in Accordance with Assembly Bill 571**

Consider Setting a Public Hearing to Consider Adoption of Ordinance No. 21-997 on Monday, April 5, 2021, at 7:00 p.m.

Mayor Dutrey declared it the time and place for a public hearing related to Ordinance No. 20-997 and invited members of the audience to provide comments.

Mr. Bruce Culp, resident, expressed his opposition to campaign contributions generally, noting they make elected officials beholden to their donors, and used the example of Council Members accepting contributions from and advocating for the interests of public employee labor unions.

There being no one else in the audience wishing to speak and no written comments submitted in relation to this item, Mayor Dutrey closed the public hearing and returned the matter to the City Council for consideration.

Council Member Lopez stated he would like the Ordinance to clarify that the City maintains its policy of requiring full disclosure of all contributions over \$99.

City Manager Starr advised that the reporting of contributions in excess of \$99 is already required under state law.

Council Member Lopez stated he is content with the Ordinance as long as the record shows the City Council's intent to maintain transparency.

Mayor Dutrey added that any contribution of \$1,000 or greater is required to be reported within 24 hours.

Moved by Mayor Pro Tem Ruh, seconded by Council Member Lopez, and carried that Ordinance No. 20-997 be read by number and title only, further reading be waived, and this be declared its first reading; and that the City Council set a public hearing for Monday, April 5, 2021, at 7:00 p.m. to consider second reading and adoption of Ordinance No. 20-997.

First reading of Ordinance No. 20-997 was approved, and public hearing for second reading was set 4-1 by the following roll call vote:

AYES:	Lopez, Johnson, Ruh, Dutrey
NOES:	Martinez
ABSTAIN:	None
ABSENT:	None

VIII. CONSENT CALENDAR

Mayor Dutrey requested Item C-1 be pulled for a separate vote, and that public comments and discussion be recorded for Item C-2.

Council Member Lopez noted he would like to make comments and request clarification on Items B-9, B-10, and C-1.

Moved by Council Member/Director Lopez, seconded by Mayor Pro Tem/Vice Chair Ruh, and carried 5-0 by roll call vote, the City Council approved the Consent Calendar as presented with the exception of Item C-1 and with comments and discussion on Items C-2, B-9, and B-10:

A. Approval of Minutes

1. Adjourned Meeting — February 24, 2021

The City Council approved the minutes of the February 24, 2021 adjourned meeting.

2. Regular Joint Meeting — March 1, 2021

The City Council, Successor Agency Board of Directors, Montclair Housing Corporation Board of Directors, Montclair Housing Authority Commissioners, and Montclair Community Foundation Board of Directors approved the minutes of the March 1, 2021 regular joint meeting.

B. Administrative Reports

1. Receiving and Filing of City Treasurer's Report

The City Council received and filed the City Treasurer's Report for the month ending February 28, 2021.

2. Approval of City Warrant Register and Payroll Documentation

The City Council approved the City Warrant Register dated March 15, 2021, totaling \$757,848.95; and the Payroll Documentation dated February 14, 2021, amounting to \$585,400.67 gross, with \$405,467.00 net being the total cash disbursement.

3. Receiving and Filing of Successor Agency Treasurer's Report

The Successor Agency Board received and filed the Successor Agency Treasurer's Report for the month ending February 28, 2021.

4. Approval of Successor Agency Warrant Register

The Successor Agency Board approved the Successor Agency Warrant Register dated 02.01.21-02.28.21 in the amounts of \$32,801.74 for the Combined Operating Fund and \$0.00 for the Redevelopment Obligation Retirement Funds.

5. Receiving and Filing of MHC Treasurer's Report

The MHC Board received and filed the MHC Treasurer's Report for the month ending February 28, 2021.

6. Approval of MHC Warrant Register

The MHC Board approved the MHC Warrant Register dated 02.01.21-02.28.21 in the amount of \$96,117.29.

7. Receiving and Filing of MHA Treasurer's Report

The MHA Commissioners received and filed the MHA Treasurer's Report for the month ending February 28, 2021.

8. Approval of MHA Warrant Register

The MHA Commissioners approved the MHA Warrant Register dated 02.01.21-02.28.21 in the amount of \$0.00.

9. Approval of the Fiscal Year 2020-21 Schedule of Recommendations from the Community Activities Commission (CAC) for Community Benefits Funding

Council Member Lopez requested data about where the other 40% of families being assisted by the **Christian Development Center's (CDC)** program reside outside of Montclair.

City Manager Starr stated information about program participants is collected but the City does not have all of it.

Council Member Johnson added the **CDC** hosts monthly give-aways for needy families where they use a sign-in sheet to collect data on those they serve. She added when she served on the CAC, she was always so touched by the work these various organizations do for the community.

Mayor Pro Tem Ruh recommended anyone with questions about the **CDC's** program contact **Pastor Donald Rucker**. He advised the City only requires information about how much of these programs and services are provided to Montclair residents.

Council Member Martinez thanked the twelve organizations for providing invaluable assistance as community partners to the City's residents. She commended the Human Services Department and the CAC for coordinating the funding awards to these deserving organizations.

The City Council approved of the Fiscal Year 2020-21 schedule

of recommendations from the CAC for community benefits funding.

10. Authorizing the Receipt of a Second Allocation of Community Development Block Grant (CDBG-CV3) Funds in the Amount of \$210,620 to Continue to Respond to the COVID-19 Public Health Crisis

Council Member Lopez asked if the \$59,000 allocation is for personnel costs.

City Manager Starr advised it would cover costs of Code Enforcement personnel assigned to the program.

The City Council authorized the receipt of a second allocation of Community Development Block Grant (CDBG-CV3) funds in the amount of \$210,620 to continue to respond to the COVID-19 public health crisis.

11. Approval of Grant Deed No. 1683 Transferring a Remnant Parcel on Helena Avenue to the Adjacent Property Owners

Authorizing Staff to Record Grant Deed No. 1683 with the Office of the San Bernardino County Recorder

The City Council took the following actions:

- (a) Approved Grant Deed No. 1683 transferring a remnant parcel on Helena Avenue to the adjacent property owners.
- (b) Authorized staff to record Grant Deed No. 1683 with the Office of the San Bernardino County Recorder.

12. Acceptance of Grant Deed No. 1684, an Easement for Construction, Maintenance, and Use of Sidewalks and Appurtenances Located at 4288 Holt Boulevard (APN 1009-514-06)

Authorizing Staff to Record Grant Deed No. 1684 with the Office of the San Bernardino County Recorder

The City Council took the following actions:

- (a) Accepted Grant Deed No. 1684, an easement for construction, maintenance, and use of sidewalks and appurtenances located at 4288 Holt Boulevard (APN 1009-514-06).
- (b) Authorized staff to record Grant Deed No. 1684 with the Office of the San Bernardino County Recorder.

13. Authorizing Liberty Manufacturing, Inc. to Mine the Ballistic Rubber Bullet Trap in the Firearms Shooting Range to Remove Excess Debris and Recycle Recovered Metals

The City Council authorized Liberty Manufacturing, Inc. to mine the ballistic rubber bullet trap in the firearms shooting range to remove excess debris and recycle recovered metals.

14. Declaring a 2002 Dodge Dakota Cadet Truck and a 2006 Chevrolet Impala Administration Vehicle as Surplus and Available for Sale at Auction

The City Council declared a 2002 Dodge Dakota Cadet Truck and a 2006 Chevrolet Impala Administration Vehicle as surplus and available for sale at auction.

15. Declaring Certain City Property Surplus and Available for Auction or Destruction

The City Council declared certain City property surplus and available for auction or destruction.

C. Agreements

2. Approval of Agreement No. 21-15 with Vigilant Solutions, LLC for Investigative Data Platform Access

Authorizing a \$3,500 Allocation from the SB 509 Public Safety Fund and a \$4,250 Appropriation from the Prop 30/AB 109 Fund for Costs Associated with Agreement No. 21-15

Mr. Culp stated concerns regarding the unwarranted surveillance of the public using automatic license plate readers (ALPRs), noting there is a danger of the information being shared with outside companies or used inappropriately for personal purposes by staff. He noted the language in the proposed contract does not address this issue and requested language be added to require public review.

City Manager Starr advised the City already utilizes ALPR technology but the technology is outdated and does not currently communicate with other agencies. He also assured federal regulations prohibit sharing and usage of data collected outside the realm of police investigations and other legitimate activities, with the threat of serious discipline for violations.

Executive Director of Public Safety/Police Chief Avels stated ALPR cameras were mounted on three police vehicles that are currently out of service, and the City is not currently collecting ALPR data. He noted the contract would provide the City with access to data that is already in the system, and that the City will look to purchase upgraded equipment at a future date to contribute to the system and to assist the Department with its own investigations.

The City Council took the following actions:

- (a) Approved *Agreement No. 21-15* with Vigilant Solutions, LLC for investigative data platform access.
- (b) Authorized a \$3,500 allocation from the SB 509 Public Safety Fund and a \$4,250 appropriation from the Prop 30/AB 109 Fund for costs associated with *Agreement No. 21-15*.

D. Resolutions — None

IX. PULLED CONSENT CALENDAR ITEMS

C. Agreements

1. Approval of Agreement No. 21-14, Amendment No. 2 to Agreement No. 18-34 with the San Bernardino County Department of Aging and Adult Services to Provide Additional Funding to Support the Senior Citizen Transportation Program

Mayor Dutrey recused himself from the vote on this item.

Moved by Council Member Johnson, seconded by Council Member Martinez, and carried by a 4-0 roll call vote (Mayor Dutrey recused), the City Council approved *Agreement No. 21-14, Amendment No. 2 to Agreement No. 18-34* with the San Bernardino County Department of Aging and Adult Services to provide additional funding to support the Senior Citizen Transportation Program.

X. COUNCIL WORKSHOP

A. Redevelopment Foundation Areas

Moved by Council Member Lopez, seconded by Council Member Johnson, and carried unanimously 5-0, the City Council continued this item to an adjourned meeting on Monday, April 5, 2021, at 5:45 p.m.

XI. COMMUNICATIONS

A. **Department Reports** — None

B. **City Attorney** — None

C. **City Manager/Executive Director**

City Manager Starr provided a COVID-19 statistics update including 288,688 cases and 3,512 deaths in San Bernardino County, with 648 cases and 98 deaths in Montclair. He advised that in addition to persons 65 years and older, all persons over the age of 16 with certain chronic illnesses are now eligible to receive the vaccine in California.

He advised the City Council Chambers may not be ready for in-person meetings until mid-April or May, noting the new technology equipment needs to be extensively tested before a meeting can be held. He noted Parks Division staff is preparing for parks to open April 19th; however, the Splash Pad will remain closed until summer of 2022. He advised the Youth Center is scheduled to open when the County enters the orange tier, and the Senior Center would open either in the yellow or a newly proposed green tier. He advised the **Ontario-Montclair School District** intends to open in-person classes on April 5th and **Montclair High School** may be considering opening soon as well.

He announced the Senior Center will be sponsoring a COVID-19 vaccination drive on March 22nd from 10:00 a.m. to 2:00 p.m. for seniors ages 65 and up who reside in San Bernardino County, and the second dose will be scheduled for April 12th. He advised sign up information would be made available on the City's website.

D. **Mayor/Chair**

1. Mayor/Chair Dutrey made the following comments:

- (a) He requested a report or agenda item about reopening City parks and the Council Chambers at the April 5th City Council meeting.
- (b) He recognized the one year anniversary of the pandemic and urged everyone to remain disciplined with safety measures to continue progress. He noted tonight's meeting would be adjourned in memory of the 98 Montclair residents who passed away over the last year from the disease.
- (c) He noted at the last **Metrolink** board meeting, on which he serves as an alternate board member for the **San Bernardino County Transportation Authority (SBCTA)**, he learned that **Metrolink** has seen a 30-40% rise in ridership over the past month.
- (d) He noted as representative of the City of Montclair on the **Inland Empire Utilities Agency's (IEUA)** Regional Sewerage Program Policy Committee, he looks forward to collaborating with IEUA and the 7 other contracting cities over the next year on a new long-term sewer contract.
- (e) He advised the **Gold Line** Committee consisting of Mayor Pro Tem Ruh, City Manager Starr, and himself met with lobbyists to discuss seeking federal funds to close the funding gap for construction of the Los Angeles County portion of the **Gold Line** segment from Pomona to Montclair.

E. City Council/Successor Agency Board/MHC Board/MHA Board/MCF Board

1. Mayor Pro Tem/Vice Chair Ruh made the following comments:

- (a) He agreed that even with the rollout of vaccinations ramping up, everyone should continue to wear masks and commended Montclair's pragmatic approach to requiring face masks early on, noting many businesses have appreciated having the City's authority to keep its employees safe. He condemned the idea that requiring people to wear a mask in public is infringing on personal freedoms or that wearing a mask should be a personal decision, noting if the same logic were applied to driving the speed limit, a person driving at a high speed they feel is safe for themselves puts others' lives at risk.
- (b) In honor of **International Women's Month**, he shared the story of **Deborah Sampson**, a Massachusetts woman who disguised herself as a man in order to serve in the Continental Army during the **Revolutionary War**.

2. Council Member/Director Johnson made the following comments:

- (a) She noted in a survey performed by FM3 over a year ago, residents supported increasing taxes to maintain services such as fire, police, and 9-1-1 emergency response as well as youth and senior programs and pothole repair. She noted there has been discussion about utilizing future tax revenues on infrastructure projects, and stated she would like for the conversation to include the aforementioned services in the future.

Mayor Dutrey requested staff schedule a workshop prior to the preliminary budget review for the Council to further discuss the allocation of increased revenues in anticipation of the Measure L tax going into effect.

City Manager Starr advised there may not be enough information to determine the extent of those revenues because several factors are delaying the City's access to information and estimates. He stated no information has been received from the fourth quarter of 2020 and the state is considering another business deferment of sales tax payments. He noted the timeline of an economic rebound is also uncertain. He assured that the City's Department heads are currently making appropriate requests for their needs and the needs of the community for the upcoming Fiscal Year which include many service enhancement measures.

- (b) She commended the Information Technology staff for launching the City's new website redesign, noting it looks fabulous.
- (c) She thanked City Manager Starr for working to make future council meetings accessible to those who wish to participate in-person, remotely, or however they feel safe.
- (d) She stated although many businesses have closed their doors permanently over the past year, a new business called **Paradise Nutrition Center** has just opened up in the **Stater Brothers** shopping center. She reported she stopped in for a healthy smoothie and a sugar-free cheesecake, both of which were delicious.
- (e) She promoted an e-waste drive being hosted by the Chamber of Commerce at its office at 8880 Benson Avenue on March 27 and 28 from 9:00 a.m. to 3:00 p.m.

3. Council Member/Director Lopez made the following comments:
 - (a) He encouraged residents who receive the \$1,400 stimulus allocation to spend it in the community to stimulate the local economy.
 - (b) He thanked the Montclair Police Officers who responded to the graffiti that vandalized the outdoor dining tents at **Los Portales**.
 - (c) He requested next month's Code Enforcement/Public Safety Committee meeting be held next month to discuss graffiti concerns.
 - (d) He concurred that Measure L is the new funding source the City has been waiting for to improve police and fire services.
 - (e) He noted **SBCTA** will be performing construction on the I-10 Corridor Project resulting in freeway segment closures. The first is the eastbound segment from Indian Hill to Monte Vista Avenue starting Friday, March 19 at 9:00 p.m. through Monday, March 22 at 5:00 a.m.; and the second is the eastbound segment from Monte Vista Avenue to Central Avenue beginning Friday, March 26 and ending Monday, March 29 at 5:00 p.m. He advised future overnight closures of Palo Verde Street and Monte Vista Avenue will be announced soon.

F. Committee Meeting Minutes

1. Minutes of Personnel Committee Meeting of March 2, 2020

The City Council received and filed the minutes of the Personnel Committee meeting of March 2, 2020, for informational purposes.

XII. ADJOURNMENT

At 8:41 p.m., Chair Dutrey adjourned the Successor Agency Board, Montclair Housing Corporation Board, Montclair Housing Authority Commission, and Montclair Community Foundation Board.

At 8:41 p.m., Mayor Dutrey adjourned the City Council to the Redevelopment Foundation Areas workshop on Monday, April 5, 2021, at 5:45 p.m.

Submitted for City Council/Successor Agency Board/Montclair Housing Corporation Board/Montclair Housing Authority Commission/Montclair Community Foundation Board approval,



Andrea M. Phillips
City Clerk