

**CITY COUNCIL, SUCCESSOR REDEVELOPMENT AGENCY,  
MONTCLAIR HOUSING CORPORATION, MONTCLAIR  
HOUSING AUTHORITY, AND MONTCLAIR COMMUNITY  
FOUNDATION MEETINGS**

**AGENDA**

Monday, August 16, 2021  
7:00 p.m.

Location

Council Chamber  
5111 Benito Street  
Montclair, CA 91763

Webinar Link

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

Dial #

1-669-900-6833

Meeting ID

952-3987-2725



Mayor Javier "John" Dutrey  
Mayor Pro Tem Bill Ruh  
Council Members Tenice Johnson,  
Council Member Corysa Martinez  
Council Member Benjamin "Ben" Lopez

City Manager Edward C. Starr  
City Attorney Diane E. Robbins  
City Clerk Andrea M. Myrick



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

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

Monday, August 16, 2021  
7:00 p.m.

*Remote Participation Information:*

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

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

Meeting ID: 952-3987-2725

*If you want to make a public comment or speak on an agenda item, including public hearing and closed session items, please complete a Speaker Card in the Council Chambers or at <https://www.cityofmontclair.org/public-comment/>. The Mayor/Chair (or the meeting's Presiding Officer) will call on those who submitted requests to speak at the appropriate times during the meeting. Those who did not submit a request to speak who are present at the meeting location may raise their hand during Public Comment to request to speak. Those participating remotely may request speak using the "raise hand" function in Zoom or may dial \*9 if on the phone, and then \*6 to un-mute when called on to speak. Written comments (200-word limit per agenda item, and 200-word limit for all non-agenda items combined) and requests to speak can also be emailed to [cityclerk@cityofmontclair.org](mailto:cityclerk@cityofmontclair.org) at least one hour before the meeting begins.*

*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.*

## **AGENDA**

- 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**

- A. COVID-19 Community Recognition Award

**VI. PUBLIC COMMENT**

*During Public Comment, you may comment on any subject that **does not** appear on this agenda. Each speaker has up to five minutes. The meeting's presiding officer may provide more or less time to accommodate speakers with special needs or a large number of speakers waiting in line. (Government Code Section 54954.3).*

*If you did not submit a Speaker Card and would like to speak on an item on the **Consent Calendar**, please raise your hand during Public Comment to announce the agenda item you would like to provide comments on. The presiding officer will pull the item from the Consent Calendar and will then call on you to speak at the time of the 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. 21-996 Amending Portions of Title 11 of the Montclair Municipal Code Relating to Accessory Dwelling Units and Junior Accessory Dwelling Units in the City [CC]

Consider Setting a Public Hearing for Monday, September 20, 2021, at 7:00 p.m. in the City Council Chambers to Consider Second Reading and Adoption of Ordinance No. 21-996 [CC]

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- B. First Reading — Consider Ordinance No. 21-998 Repealing and Replacing Chapter 11.73 of the Montclair Municipal Code to Update Regulations, Standards, and Create Design Guidelines for Wireless Telecommunications Facilities on Public and Private Property; Adding Chapter 11.77 to Establish an Administrative Permitting Process; and Amending Chapter 11.46 to Exempt Certain Wireless Telecommunications Facilities [CC]

Consider Setting a Public Hearing for Monday, September 20, 2021, at 7:00 p.m. in the City Council Chambers to Consider Second Reading and Adoption of Ordinance No. 21-998 [CC]

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**VIII. CONSENT CALENDAR**

- A. Approval of Minutes

- 1. Regular Joint Meeting — August 2, 2021 [CC/SA/MHC/MHA/MCF] 121

- B. Administrative Reports

- 1. Consider Receiving and Filing of Treasurer’s Report [CC] 78
- 2. Consider Approval of Warrant Registers & Payroll Documentation [CC] 79
- 3. Consider Receiving and Filing of Treasurer’s Report [SA] 80
- 4. Consider Approval of Warrant Register [SA] 81
- 5. Consider Receiving and Filing of Treasurer’s Report [MHC] 82
- 6. Consider Approval of Warrant Register [MHC] 83
- 7. Consider Receiving and Filing of Treasurer’s Report [MHA] 84
- 8. Consider Approval of Warrant Register [MHA] 85
- 9. Consider Receiving and Filing a Status Report on Emergency Contracting Procedures for the Pacific Electric Trail Bridge Replacement Project and Determining There is a Need to Continue the Action [CC] 86

- C. Agreements

- 1. Consider Approval of Agreement No. 21-44, the Labor Agreement for Management (Nonsafety and Safety) Employees Regarding the Terms and Conditions of Employment for the Period of July 1, 2021 to June 30, 2022 [CC]

Consider Approval of Agreement No. 21-45, the Labor Agreement for Executive Management Employees Regarding the Terms and Conditions of Employment for the Period of July 1, 2021 to June 30, 2022 [CC]

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- 2. Consider Approval of Amendment No. 1 to Agreement No. 21-49 with Ontario-Montclair School District to Increase Funding for the Montclair After-School Program [CC]

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- 3. Consider Approval of Amendment No. 1 to Agreement No. 21-50 with Ontario-Montclair School District to Increase Funding for the Montclair After-School Summer Expanded Learning Program [CC] 95
- 4. Consider Approval of Agreement Nos. 21-54 and 21-55 with Montclair Little League and Agreement No. 21-56 with Golden Girls Softball League for Use of Ball Field Facilities for the 2021 Winter Season [CC] 98

D. Resolutions — None

**IX. PULLED CONSENT CALENDAR ITEMS**

**X. COMMUNICATIONS**

A. Department Reports — None

B. City Attorney

- 1. Request to Meet in Closed Session Pursuant to Government Code §54956.9(d)(4) Regarding Initiation of Litigation [CC]  
*1 potential case*

C. City Manager/Executive Director

D. Mayor/Chairperson

- 1. Cancellation of Tuesday, September 7, 2021 Regular Joint Meeting [CC/SA/MHC/MHA/MCF]

E. Council Members/Directors

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

- 1. Personnel Committee Meeting — August 2, 2021 [CC] 120

**XI. CLOSED SESSION**

**XII. CLOSED SESSION ANNOUNCEMENTS**

**XIII. ADJOURNMENT**

*The regular joint meeting of the City Council, Successor Agency Board, Montclair Housing Corporation Board, Montclair Housing Authority Commission, and Montclair Community Foundation Board scheduled for Tuesday, September 7, 2021 has been cancelled due to a lack of pressing business. The next regular joint meeting will be held on Monday, September 20, 2021, at 7:00 p.m.*

*Reports, backup materials, and additional materials related to any item on this Agenda distributed to the meeting 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. Please call the City Clerk's Office at (909) 625-9416 or send an e-mail to [cityclerk@cityofmontclair.org](mailto:cityclerk@cityofmontclair.org) to request documents via e-mail.*

*If you need special assistance to participate in this meeting, please contact the City Clerk's Office at (909) 625-9416 or e-mail [cityclerk@cityofmontclair.org](mailto:cityclerk@cityofmontclair.org). Notification prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. (28 CFR 35.102-35.104 ADA Title II)*

*I, Andrea M. Myrick, 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, August 12, 2021.*



Chapter 11.23 in its entirety with new regulations and associated changes in other related portions of Chapter 11 to ensure consistency. A memorandum summarizing State Laws is provided for reference (Exhibit B).

The following references summarize the key changes in the new Ordinance:

- Replace the existing term and definition of “Second Dwelling Unit” with the new terms “Accessory Dwelling Unit (ADU)” and “Junior Accessory Dwelling Unit (JADU)” at Section 11.02.010, which are defined as:

**Accessory Dwelling Unit** means an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. The ADU shall include a permanent structure with a permanent foundation, connection to utilities, with provisions for living, sleeping, cooking, and bathroom facilities. An ADU may also include:

- An **efficiency unit**, as defined by Section 17958.1 of the California Health and Safety Code for occupancy by no more than two persons which have a minimum floor area of 150 square feet and shall have kitchen and bathroom facilities; and
- A **manufactured home**, as defined by Section 18007 of the California Health and Safety Code.

**Junior Accessory Dwelling Units (JADU).** A JADU is a dwelling unit that is no more than 500 square feet in size and contained entirely within a single-family residence and a converted garage that provides living facilities for up to two persons. A JADU may include separate sanitation facilities or may share sanitation facilities with the existing residence.

- Eliminates minimum lot size requirements so that any property improved with an existing residential unit could be eligible for an ADU.
- Establishes new standard design criteria intended to streamline the review process (e.g., matching rooflines and roof materials, exterior finishes and window styles, etc.) and promote architectural compatibility with the main dwelling.
- Owner-occupancy is not required as a condition of having a detached or attached ADU (City currently requires either the primary dwelling or ADU and/or JADU are occupied by the owner). However, owner-occupancy in either the main unit or JADU is required as a condition of having a JADU.
- Requires City approval for complete ADU applications within 60 days. When application meets all submittal requirements, ADUs and JADUs are reviewed administratively, much like how a room addition is handled.
- Establishes new development standards for ADUs and JADUs in single-family and multifamily residential zones. ADUs are currently only allowed on lots within single-family zones with single-family dwellings. Proposed Ordinance introduces the concept of JADUs not currently addressed by the existing code.

- A comparison of the existing regulations and those of the State is provide in the following table:

<b>Table 1: Comparison of Existing and New ADU Regulations</b>	
<b><i>Existing Ordinance</i></b>	<b><i>New Ordinance<sup>1</sup></i></b>
One ADU per lot	Two ADUs per lot
No Junior ADU provisions	Junior ADU allowed
Single-family zones only	Allowed in single-family and multifamily zones
5-foot minimum setbacks	4-foot setbacks
15-foot height limitation	Maximum 16 feet in height
Max Size: 750 SF attached or detached	150 SF Minimum 850 SF Maximum 1,000 SF Maximum
Requires parking if garage is converted	No parking required, including garage conversions
ADU permits processed in 120 days	ADU permits processed in 60 days
Owner-occupancy required	No owner occupancy required until January 2025 JADU requires owner-occupancy
<sup>1</sup> Pursuant to new or updated State law as of January 1, 2020	

The intent of the State Legislature was to reduce regulatory barriers and costs, streamline the approval process, and to expand the potential capacity for ADUs in response to California's housing shortage. Moreover, the State Legislature determined that housing was a matter of statewide concern, rather than a local matter, so imposed new limits on the City's ability to regulate ADUs and JADUs. As such, all existing County and City ordinances regulating ADUs which do not comply with Government Code Sections 65852.2 and 65852.22 (as amended), by January 1, 2020, were deemed to be null and void. In their place, state standards pertaining to ADUs and JADUs would apply by default, unless and until the adoption of a compliant ordinance. Ordinance No. 21-996 would comply with state requirements and restore local control to extent allowed by the state.

As identified in Table 1 above, the City's current regulations allow property owners the ability to build one ADU on any residentially-zoned property developed with a single-family residence. The maximum size allowed for an ADU was limited to 750 square feet whether attached or detached to the main dwelling unit. If the ADU was located in a garage conversion, then replacement parking was required for the displaced parking. The City also required the property owner live in either the main dwelling unit or the ADU. JADUs were not an available option.

Based on State mandates, all of the City's current provisions above are modified to allow ADUs and JADUs in all residential zones, to permit an increase in maximum unit sizes, allow reduced minimum setbacks, and prohibit local requirements to replace or add parking. For example, in single-family zones, a maximum number of two ADUs (one being a JADU) are possible on a property (presuming other development standards

are met). In multifamily developments, at least one ADU would be allowed with a maximum number of units allowed being limited to no more than 25 percent of the total existing number of units within the development. Non-habitable space, such as garages, storage rooms, etc., would be eligible for conversion into a dwelling unit with no parking requirements. Multi-unit developments built as a single complex are considered one property, regardless the number of parcels.

State ADU Law does not require additional building setbacks for the conversion of existing accessory structures to an ADU. For new construction, side and rear setbacks are reduced to a minimum of four feet rather than 5 or 12 (side setbacks) and 15 feet (rear setback) respectively. One area where local regulations have some flexibility is the side street setback for corner lots. The proposed Ordinance requires a minimum setback of 15 feet on the street side. This will enable an adequate open yard for visual relief but not be too excessive to conflict with the minimum size standard in the ADU Law. The Ordinance also requires that all corner lots must provide and maintain a clear vision triangle at the intersection of the streets' right-of-way for the purpose of traffic safety.

The state's regulations prohibiting the City from requiring replacement or new parking spaces for ADUs is of concern generally, but specifically when ADUs are located in multifamily districts where parking shortages is already a problem on-site and on public streets. Despite the restraint put upon the City by the state, staff encourages property owners to consider the potential adverse impacts caused by eliminating on-site parking and to explore alternatives to add ADU(s) in other areas where existing parking for their residents is maintained.

Another significant change is with regard to the requirement for the property owner to live in either the primary unit or the ADU. Under the new State requirements, this rule is temporarily suspended for five years. For ADUs built from January 1, 2020, through January 1, 2025, the City is not permitted to impose an owner-occupancy requirement, except for applications to create a JADU (when owner-occupancy on the site is required). This new change does not void previous covenants requiring owner-occupancy for the ADUs legally established prior to January 1, 2020, under the City's previous requirements. The owner occupancy requirement would be possible after January 1, 2025. Staff believes the occupancy requirement is a crucial factor in ensuring the maintenance and upkeep of the property and a recognized way to maintain neighborhood stability and harmony.

### ***ADUs and Regional Housing Needs Assessment (RHNA)***

New ADUs and JADUs developed in the City will count toward the City's housing production in meeting RHNA housing targets. The City's RHNA allocation for the upcoming 6th Cycle, 2021-2029 timeframe is 2,593 units. As allowed by State Department of Housing and Community Development (HCD), staff fully intends to use ADUs as a strategy toward meeting housing targets for the City.

### ***Housing and Community Development (HCD) Review***

Government Code Section 65852.2 requires the City submit the Ordinance to HCD within 60 days of adoption by the City Council. If HCD finds the ordinance does not comply with the new ADU laws, HCD will notify the City. Should this occur the City



would have 30 days to either amend the Ordinance or adopt additional findings that explain the reason the Ordinance complies with the statute.

### ***General Plan Consistency***

The law states that ADUs shall be deemed an accessory use and shall not be considered to exceed the allowable density for the lot where it is located, and shall be deemed a residential use that is consistent with the existing general plan and zoning district for the lot. Therefore, no amendments to the General Plan are required.

### ***Conclusion***

City staff recognizes the need to address the state's housing shortage and the role ADUs and JADUs play in addressing the issue. Despite some concerns with the state's parking regulations, if done well, ADUs can be successfully integrated into the existing housing stock and contribute more housing to the community. Although the opportunity to have an ADU has expanded, it is unlikely that every property in the City will construct an ADU and/or JADU. Based on recent activity for the last two years the Planning Division has processed 10-15 ADU applications per year. Staff expects this number to continue and possibly increase modestly for the next few years.

Lastly, City staff will continue to work on developing pre-approved ADU designs to streamline the review process and encourage appropriate integration of units within the community. Pre-approved ADU designs will be developed using funds made available to the City under the State's Local Early Action Planning Grants (LEAP Program). The City's LEAP Program grant was approved by the State in 2020.

***Environmental Review.*** The proposed Zoning Code Amendment Ordinance is exempt from the provisions of the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment. Furthermore, per Section 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because the required changes have no potential for resulting in physical change to the environment, directly or indirectly. Lastly, the changes are consistent with the goals and policies of the General Plan and will bring the City's code into compliance with State Law.

**FISCAL IMPACT:** Adoption of Ordinance No. 21-996 would create no direct fiscal impact to the City's General Fund.

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

1. Introduce and conduct the first reading of Ordinance No. 21-996 amending portions of Title 11 of the Montclair Municipal Code relating to accessory dwelling units and junior accessory dwelling units in the City.
2. Set a public hearing for Monday, September 20, 2021, at 7:00 p.m. in the City Council Chambers to consider second reading and adoption of Ordinance No. 21-996.

***Attachments:***

- *Ordinance No. 21-996*
- *HCD Memorandum Summarizing Changes in State Law*

**ORDINANCE NO. 21-996**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR, CALIFORNIA, AMENDING PORTIONS OF CHAPTERS 11.02, 11.16, 11.18, 11.19, 11.20, 11.22, and 11.36 AND REPEALING AND REPLACING CHAPTER 11.23 OF TITLE 11 OF THE MONTCLAIR MUNICIPAL CODE RELATING TO ACCESSORY DWELLING UNITS IN THE CITY**

**WHEREAS**, the California Legislature adopted legislation in 2019 amending California Government Code Sections 65852.2 and 65852.22, which took effect January 1, 2020, imposing new limitations on a local agency's ability to regulate accessory dwelling units (ADUs), and junior accessory dwelling units (JADUs); and

**WHEREAS**, the City Council finds that it is necessary and appropriate to amend Chapter 11.02 (Definitions), portions of Chapters 11.16, 11.18, 11.19, 11.20, 11.22, and 11.36, and replace Chapter 11.23 of the Montclair Municipal Code in order to comply with California Government Code Sections 65852.2 and 65852.22. The state found that accessory dwelling units (also commonly referred to as "granny flats," in-law apartments," or "accessory units") provided an important source of affordable rental housing designed to meet the special housing needs of individuals and families, particularly those of low and moderate income; and

**WHEREAS**, adopting an Ordinance consistent with California Government Code Sections 65852.2 and 65852.22 ensures that the character of the City is preserved to the maximum extent permitted by law and that the City's regulation of ADUs and JADUs continues to promote the health, safety, and welfare of the community; and

**WHEREAS**, allowing ADUs and JADUs in conjunction with existing or proposed residential development provides additional rental housing stock, some of which will satisfy the City's 6th Cycle Regional Housing Needs Assessment (RNHA) for the period covering 2021-2029; and

**WHEREAS**, ADUs and JADUs offer lower cost housing to meet the needs of existing and future residents within existing neighborhoods, while respecting architectural character; and

**WHEREAS**, a public hearing was held by the Planning Commission on June 14, 2021, in the Council Chambers located at 5111 Benito Street, Montclair, California. A notice of time, place and purpose of the public hearing was given in accordance with the Ralph M. Brown Act. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this public hearing; and

**WHEREAS**, on June 14, 2021, the Planning Commission, by a 4-0-1 vote, approved Resolution No. 21-1947 recommending City Council approval of Zoning Code Amendment ZCA 2021-16 to modify the regulations pertaining to accessory dwelling units and junior accessory dwelling units; and

**WHEREAS**, on August 16, 2021, the City Council conducted a first reading of the proposed Ordinance in consideration of Ordinance No. 21-996 to amend portions of Chapters 11.02, 11.16, 11.18, 11.19, 11.20, 11.22, 11.36, and repeal and replace Chapter 11.23 of the Montclair Municipal Code relating to accessory dwelling units (ADU) and junior accessory dwelling units (JADU) in the City; and

**WHEREAS**, the City Council moved to set a public hearing to consider adoption of Ordinance No. 21-996 for Monday, September 20, 2021; and

**WHEREAS**, a public hearing was held by the City Council on September 20, 2021, in the Council Chambers located at 5111 Benito Street, Montclair, California. A notice of time, place and purpose of the public hearing was given in accordance with the Ralph M. Brown Act. Evidence, both written and oral, was presented to, and considered by, the City Council at this public hearing.

**NOW, THEREFORE, BE IT ENACTED AND ORDAINED** by the Montclair City Council as follows:

**SECTION I.** The foregoing Recitals are adopted as findings of the City Council as though set forth in full within the body of this Ordinance.

**SECTION II.** The Montclair Municipal Code for the City of Montclair ("Code") shall be amended to add new definitions to Chapter 11.02 DEFINITIONS, Section 11.02.010 as follows:

**Accessory Dwelling Unit (ADU)** means an attached or a detached residential dwelling unit which provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. It shall include a permanent structure, with a permanent foundation, connection to utilities, with provisions for living, sleeping, eating, cooking, and bathroom facilities on the same parcel the main dwelling exists. The definition of accessory dwelling unit includes the following:

1. An efficiency unit, as defined by Section 17958.1 of the California Health and Safety Code for occupancy by no more than two persons which have a minimum floor area of 150 square feet and shall have kitchen and bathroom facilities; and
2. A manufactured home, as defined by Section 18007 of the California Health and Safety Code.

**Accessory Dwelling Unit Types.** For purposes of this section, there are three types of accessory dwelling units allowed, subject to the requirements of Chapter 11.23.030, and as described below:

1. **Detached Accessory Dwelling Unit.** A detached ADU is a dwelling unit with complete independent living facilities constructed as a separate structure from the main dwelling unit on the property.
2. **Attached Accessory Dwelling Unit.** An attached ADU is a dwelling unit with complete independent living facilities that shares at least one common wall with the existing main dwelling unit on the property.
3. **Junior Accessory Dwelling Units (JADU).** A JADU is a dwelling unit that is no more than 500 square feet in size and contained entirely within a single-family residence that provides living facilities for up to two persons. A JADU may include separate sanitation facilities or may share sanitation facilities with the existing residence.

**Accessory Structure** means a structure that is accessory and incidental to a dwelling located on the same lot.

**Complete Independent Living Facilities** means the permanent provision for living, sleeping, eating, cooking, and bathroom facilities for a main or accessory dwelling unit.

**Kitchen** means a room or area that is designed for and contains approved permanent cooking, refrigeration and sink facilities.

**Kitchenette or Efficiency Kitchen** means a small area designated for preparing food as part of a room instead of a separate room. A kitchenette or Efficiency Kitchen shall include each of the following elements:

1. Approved cooking, refrigeration, and sink facilities. A microwave or toaster oven shall not be considered an approved cooking appliance for purposes of determining if a room constitutes a kitchenette/efficiency kitchen.
2. A food preparation counter or counters that total at least 15 square feet in area; and
3. Food storage cabinets that total at least 30 square feet of shelf space.

**Floor Area** means the total floor area measured from the outside of the exterior walls of a detached ADU, or the area from the outside of the exterior walls of the ADU to the centerline of shared interior walls that separate the accessory unit and primary-unit living space. Proposed habitable space located under a sloping roof where the sloping ceiling measures less than five feet from the finished floor to the finished ceiling is not counted as floor area. Carports, covered porches (open on three sides) and patios, chimneys, stairwells and mechanical closets are not counted toward the determination of floor area of an ADU.

**Habitable Floor Area** means the total floor area of all habitable rooms in a dwelling unit.

**Habitable Room** means any finished and conditioned (heated) space or room in a dwelling unit other than a bathroom, closet, pantry, hallway, storage space, enclosed patio, laundry room, garage or carport as defined by the Building Code.

**Main Dwelling Unit** means the existing or proposed single-family dwelling on the lot where an ADU would be located.

**Nonconforming Zoning Condition** means a physical improvement on a property that does not conform to current zoning standards.

**Passageway** means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the ADU or JADU.

**Proposed Dwelling** means a dwelling that is the subject of a permit application and that meets the requirements for permitting.

**Public Transit** means a location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.

**Tandem Parking** means that two or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.

**SECTION III.** The Code shall be further amended at the following sections to ensure consistency with Chapter 11.23, with the following additions and ~~deletions~~:

**11.16.030 - Uses permitted.**

~~No building or structure or land in the A Zone shall be used, and no building or structure shall be hereafter erected, structurally altered, or enlarged in the A Zone, except for those uses which shall be subsequently adopted by resolution of the Planning Commission to provide for the estate development.~~

The following uses shall be permitted in the Estate A zone:

- A. Accessory Dwelling Units and Junior Accessory Dwellings Units

**11.18.30 - Uses Permitted**

The following uses shall be permitted in the R-1 zone:

- H. ~~Second dwelling units~~ Accessory Dwelling Units and Junior Accessory Dwellings Units pursuant to Chapter 11.23 of this title and accessory buildings pursuant to Chapter 11.19 of this title or improvements incidental to any of the permitted uses in this chapter. No motor home, mobile home, tank, shipping container, trailer, business, or other vehicle or similar item shall be considered or permitted as accessory buildings.

**11.18.040 - Property development standards.**

- E. Yards. The following yards shall be established and maintained (see Section 11.38.060 of this Code for additional setbacks which may be required for planned rights-of-way):
  - 4. See Chapter 11.23 for setbacks applicable to Accessory Dwelling Units; refer to Tables 1 and 2.

**11.19.080 - Building separation.**

- C. See Chapter 11.23 for building separation standards applicable to Accessory Dwelling Units; refer to Tables 1 and 2.

**11.20.020 - Uses permitted.**

- F. Accessory Dwelling Units subject to Chapter 11.23 of this title.

**11.20.070 - Yards.**

- E. See Chapter 11.23 for setbacks applicable to Accessory Dwelling Units refer to Table 2.

**11.22.020 – Uses permitted.**

B. The following shall be permitted as accessory uses:

5. Accessory Dwelling Units subject to Chapter 11.23 of this title; refer to Table 2.

**11.22.040 – Property development standards.**

I. Yards and Setbacks. Developments in the R-3 Zone shall have and maintain the following minimum yards and setbacks (see Sections 11.38.050 and 11.38.060 of this title for additional requirements). Building setbacks shall be measured from the front property line.

5. See Chapter 11.23 for setbacks applicable to Accessory Dwelling Units; refer to Table 2.

**SECTION IV.** The Code shall be amended to repeal existing Chapter 11.23 and replace it with new Chapter 11.23 entitled " ACCESSORY DWELLING UNITS" as follows:

**11.23.010 – Purpose and intent.**

The purpose and intent of this chapter is to establish procedures for permitting accessory dwelling units (ADUs) and junior accessory dwelling units (JADUs) on lots zoned for residential uses, in accordance with California Government Code sections 65852.2 and 65852.22. This chapter provides standards for ADUs to minimize adverse impacts on the public health, safety, and general welfare from the establishment of accessory dwelling units.

Nothing herein shall preclude or prevent the City from undertaking any other enforcement action with respect to an accessory dwelling unit which the City is otherwise authorized under this code or applicable state or federal law, including but not limited to the abatement of public nuisances.

**11.23.020 – Applicability.**

- A. This chapter shall apply to the construction of any ADU in single-family and multifamily residential districts within the City as defined herein.
- B. The construction, establishment, alteration, enlargement, or modification of an accessory dwelling unit shall comply with the requirements of this chapter in conjunction with the issuance of necessary construction and alteration permits as may be required by adopted codes listed in Title 10 of the Montclair Municipal Code.
- C. The provisions of this chapter shall in no way validate any existing accessory dwelling unit constructed without City approval and permits. Accessory structures erected without benefit of City approval and a building permit shall be removed upon notification or, if possible, modified to comply with the provisions of this chapter and any applicable requirements in the adopted codes listed in Title 10 of the Montclair Municipal Code.
- D. Existing ADUs that were approved pursuant to City requirements and permits prior to the adoption of this Chapter are deemed to be lawfully permitted. Existing ADUs shall count towards the maximum number of ADUs allowed for each property. Modifications to the size of existing ADUs shall be subject to the provisions of this Chapter as modified from time to time.
- E. ADUs are prohibited in all zones other than those zones where residential uses are permitted. ADUs are also prohibited in the following locations:
  - 1. Adopted specific plans that already contain provisions for high-density residential and mixed-use development, including but not limited to the *North Montclair Downtown Specific Plan, Montclair Place District Specific Plan, and the Arrow Highway Mixed-Use District Specific Plan.*
  - 2. Non-conforming residential developments on Commercial and Industrial zoned properties.

**11.23.030 – Permitted locations and standards.**

Accessory dwelling units are allowed in all residential zones with a legally established existing, or proposed, main dwelling unit as specified in this section, and generally by means of one of the following scenarios:

- A. In Single Family Zoned Districts (Table 1):
  - 1. Conversion of existing space within the floor space of the main dwelling unit to provide a JADU. In a single-family zoned districts, only one JADU shall be allowed on a single parcel.
  - 2. Construction of an attached ADU or a detached ADU. In single-family zoned districts only one ADU, attached or detached, shall be allowed with or without one JADU on a single parcel.

<b>Table 1 ADU Development Standards – Single Family Zones: R-1, R-1(SL), R-1(11), R-1(20)</b>			
<b>Standard</b>	<b>JADU</b>	<b>Attached- ADU</b>	<b>Detached-ADU</b>
<b>Number of ADUs Allowed Per Lot <sup>1</sup></b>	Minimum of 1: JADU, or Attached- ADU, or Detached-ADU Maximum of 2: One JADU plus an Attached- ADU, or Detached-ADU		
<b>Unit Size</b>	Minimum 150 SF Maximum 500 SF	Minimum 150 SF Maximum 1,000 SF	150 SF 1,000 SF
<b>Lot Coverage <sup>2</sup> (All structures)</b>	N/A	35 percent	35 percent or 50 percent <sup>3</sup>
<b>Setbacks</b>	Front: 25 feet Street Side: 15 feet Interior: 4 feet Rear: 4 feet		
<b>Building Separation</b>	N/A	N/A	6 feet
<b>Building Height <sup>4</sup></b>	Maximum 16 feet for JADU, Attached- ADU, or Detached-ADU Exception for JADU or Attached-ADU when integrated into, or when attached to an existing two-story main dwelling unit.  Maximum 35 feet or the height of the existing two-story main dwelling unit, whichever is less.  Detached-ADU limited to 1-Story and maximum height of 16 feet.		
<sup>1</sup> Main dwelling unit required. <sup>2</sup> Lot coverage Maximum does not applied to ADUs 800 SF and under <sup>3</sup> Single family residential properties located in R1 zones on the official zoning map designated by the "SL" suffix <sup>4</sup> Building height measured to the peak of the structure. Minimum setback and building separation distances shall be measured from the closest points of the building or structure walls to another structure or property line, including chimneys, bay windows, or other architectural elements extending outward from the building wall plane.			

- B. In multifamily-zoned districts and developments (Table 2) ADUs, except a JADU, are permitted and may be accommodated in one or more of the following ways:
  - 1. Conversion of covered or enclosed parking spaces, or
  - 2. Conversion of unused or vacated non-habitable spaces such as offices, storage rooms, passageways, attics, basements, etc.; Conversion of Laundry facilities shall be permitted unless required as part of a previously approved Precise Plan of Design and/or Conditional Use Permit for the subject property; or
  - 3. Construction of detached ADUs on surplus or utilized open space area not within a required front or street side setback area.

<b>Table 2 ADU Development Standards – Multi-Family Zones: R-2 and R-3</b>		
<b>Standard</b>	<b>Attached ADU</b>	<b>Detached ADU</b>
<b>Number Per Lot <sup>1</sup></b> <i>(Includes conversion of qualifying existing space and new construction)</i>	Minimum of 1 unit (Attached or Detached ADU) or Maximum of 25 percent of the total number of existing dwelling units within in the complex <sup>2</sup>	
<b>Unit Size</b>	150 SF Minimum 850 SF Maximum (One-bedroom) 1,000 SF Maximum (Two-bedroom)	
<b>Lot Coverage<sup>3</sup></b> <i>(All structures)</i>	R-2:40 percent for structures over 800 SF R-3: Buildings and structures shall not cover more of a lot than would be permitted when satisfying all yard, open space, parking and access requirements for structures over 800 SF per MMC	
<b>Setbacks</b>	Front: 25 feet Street Side: 15 feet Interior: 4 feet Rear: 4 feet	
<b>Building Separation</b>	N/A	6 feet
<b>Building Height<sup>3</sup></b>	Attached ADU: Maximum 16 feet or height of existing main residential building whichever is less, or Maximum height 35 feet or height of the existing two-story residential building, whichever is less. Detached ADU: 1-Story and maximum height of 16 feet	
<p><sup>1</sup> An approved and constructed multifamily dwelling complex required. Complex is considered one property regardless of the number of parcels.</p> <p><sup>2</sup> When the calculation for maximum number of units results in a fractional number over 1 unit, it shall be rounded to the next highest whole number if the fraction is one-half or more; otherwise it shall be rounded down to the next lowest whole number.</p> <p><sup>3</sup> Lot coverage Maximum does not applied to ADUs 800 SF and under</p>		

**11.23.040 – Process and timing.**

The review of an ADU application is considered and approved ministerially, without discretionary review or a hearing. The City must act on an application to create an ADU or JADU within 60 days from the date that the City receives a completed application, unless either:

- A. The applicant requests a delay, in which case the 60-day time period is tolled for the period of the requested delay, or
- B. When an application to create an ADU or JADU is submitted on a vacant or partially vacant site involving new construction with a Precise Plan of Design permit application to create a new single-family dwelling on the lot, the City may delay acting on the permit application for the ADU or JADU until the City acts on the Precise Plan of Design permit application to create the new single-family dwelling, but the application to create the ADU or JADU will still be considered ministerial without discretionary review or a hearing.
- C. When an application to create an ADU is submitted on a vacant or partially vacant site involving new construction with a Precise Plan of Design permit application to create a new multiple family dwelling on the lot, the City may delay acting on the permit application for the ADU until the City acts on the Precise Plan of Design permit application to create the new single-family dwelling, but the application to create the ADU will still be considered ministerial without discretionary review or a hearing.

**11.23.050 – ADU and JADU permits.**

The City may charge a fee to reimburse it for costs incurred in processing ADU permits, including the costs of adopting or amending the City’s ADU ordinance. The

ADU-permit processing fee is determined by the Planning Department and approved by the City Council by resolution.

#### **11.23.060 - Parking.**

One on-site uncovered parking space shall be required for each ADU, regardless of the number of bedrooms. No on-site parking shall be required for a JADU.

Parking space(s) may be provided on a paved surface within:

- A. A front or street side setback area, provided that said space when combined with other hardscape surfaces within the setback does not exceed 50 percent of the required landscape setback area, as approved by the Community Development Director/Designee; or
- B. As a tandem parking space on a new or existing paved driveway.
- C. Parking space dimensions shall be at least 9 feet wide by 20 feet deep. Parking space within an enclosed garage shall have unobstructed dimensions of at least 10 feet wide by 20 feet deep.
- D. No additional driveway approaches from public streets shall be permitted for required parking spaces for ADUs. Access to an authorized parking space may be provided from an alley.
- E. Exception: No on-site parking space for an ADU shall be required in the following situations:
  1. The ADU is located within one-half mile walking distance of public transit, including, without limitation, a bus stop, train station, or paratransit stop, as designated by a public agency; or
  2. The ADU is located within an architecturally and historically significant district established by the City; or
  3. When on-street parking permits are required but not offered to the occupant of the ADU; or
  4. When there is an established car share vehicle stop located within one block of the ADU.
  5. The ADU is converted as part of the proposed or existing primary residence or an accessory structure.
- F. When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an ADU or converted to an ADU, replacement of such structures not required.

#### **11.23.070 - Plan review submittal requirements.**

Proposals for an ADU or JADU shall require the preparation of professionally and accurately drawn plans for City review and subsequent approval of a building permit. Plans for an accessory dwelling unit shall be submitted to the Department of Community Development for review to determine compliance with each of the general requirements in subsection 11.23.090, prior to the submittal of an application for a building permit.

A complete set of plans, drawn in a standard architectural and/or engineering scale (e.g. ¼, ½, 1:10, 1:20, etc.) with appropriate dimensions and labels, shall include:

- A. Site Plan. A site plan showing the entirety of the property and the location of the proposed ADUs in context with property lines, existing and/or proposed structures, and other significant features (e.g., driveways, pools, fences and walls, trees, utility poles and boxes, major slopes, etc. ) on the site. Add dimensions for the site and setback distances from property lines and existing structures.
- B. Floor Plans. Prepare a detailed and scaled floor plan for the ADU(s), identifying each room, room dimensions, and floor area calculations. Show location and size of all windows and doors. For an attached ADU or JADU provide a complete floor plan for the main dwelling unit to which they are attached.
- C. Building Elevations. Complete set of dimensioned building elevations for detached and attached ADUs. Show all proposed openings, exterior materials/finishes, roof pitch, and architectural details. For a JADU or Attached ADU, show proposed unit in context with the existing main dwelling unit to which it is attached.



- D. Roof Plan. Show roof pitch, and placement of any required vents. No new or additional roof top air conditioner units or ducts shall be permitted on an attached or detached ADU, or JADU.

The review and approval of plans by Community Development Department shall be performed by the Director of Community Development or his/her designee and shall be completed within 60 days of receiving a complete application for an ADU which meets the requirements and standards of this Chapter.

**11.23.080 – Building permit required.**

Approval of an ADU application pursuant to this chapter is a ministerial action not subject to discretionary review beyond the General Requirements contained in this chapter. As such, plans receiving approval by the Community Development Department shall be submitted to the Building Division for required building permit(s). Plans shall comply with all applicable requirements of the Building Code as adopted pursuant to Title 10 of the Municipal Code and enforced at the time of application.

**11.23.090 – General requirements.**

- A. The property and on-site structures on which an ADU is proposed shall be in good physical condition consistent with Chapter 10.32 (Property Maintenance Code) of the Montclair Municipal Code. No building permit for an ADU or JADU shall be issued for properties having current building or zoning code violations, unpermitted construction, or code enforcement violations/liens, until such matters have been resolved.
- B. Placement of an attached or detached ADU shall not be located on a parcel in a way that would prohibit access to a designated parking area, or impede safe ingress or egress by emergency personnel to the structure or yard areas.
- C. A Detached-ADU may be of standard residential construction, manufactured housing, or factory-built housing placed on permanent foundations. Manufactured or factory-built housing shall be generally consistent with Design Guidelines specified in Section 11.23.100. The use of commercial storage or shipping containers for purposes of this Chapter shall not be permitted.
- D. An Attached or Detached ADU shall contain no more than two (2) bedrooms
- E. ADUs shall be assigned a separate address and identified by the addition of an alpha character (e.g., A, B.) to the address of the main dwelling unit on the property.
- F. An ADU may be metered separately from the main dwelling unit for gas, electricity, communications, water, sewer services. A JADU shall not be metered separately. The use of a sub meter for the JADU may be allowed to measure the amount of the utility (i.e., gas, electricity, and water) used by a JADU, subject to Building Code regulations.
- G. All new utilities for a Detached-ADU shall be installed underground.
- H. An Attached or Detached-ADU shall be constructed on a permanent foundation and connected to the public sewer.
- I. An ADU must have a separate exterior entrance, apart from that of the main dwelling unit dwelling. The separate entrance shall be located on the side or rear of the structure and whenever possible facing interior yard areas; and
- J. The primary and ADUs may not be sold separately and no subdivision of land or air rights shall be allowed.
- K. Property owner shall obtain and provide to the City a Will Serve Letter from the City's authorized solid waste hauler.
- L. Fire sprinklers shall be required in an ADU if sprinklers are required in the primary residence unless specifically exempt per Montclair City Code or State Code.
- M. The detached ADU, and attached ADU and/or principal dwelling may be rented. Junior ADU constructed with living area of principle dwelling shall be subject to owner occupancy requirements.

### 11.23.100 – Standard ADU design guidelines.

The design of all ADUs shall be complementary or similar to the appearance of the main dwelling unit. When appropriate, the use of City pre-approved ADU designs is encouraged. In preparing plans, consideration shall be given to the following basic design elements:

- A. Roof shape and pitch, eaves, roofing materials; and
- B. Materials, textures, finishes and colors of the exterior walls, windows, doors, etc.; and
- C. ADU façade elevations visible from the public right-of-way shall incorporate Windows, entries, or other architectural features that are compatible with the main dwelling unit.
  1. Avoid locating bathroom facilities and placing related windows or vents on the street facing side of a proposed ADU.
  2. Remove garage doors and replace with a new façade when converting a garage or carport attached to an existing main dwelling unit, or a detached garage structure. The new façade shall include windows and exhibit other architectural features that are proportionate and compatible with the appearance of the main dwelling unit. Stucco walls devoid of compatible architectural features shall not be allowed.
- D. No window-mounted or exposed roof-mounted HVAC equipment (e.g., air conditioners, condensers, and/or ductwork, etc.) shall be allowed. Roof mounted HVAC equipment may be proposed when fully screened from view to the street and adjoining properties by means of a mechanical well and/or parapets walls of a height proportionate and appropriate to architecture of the ADU and main dwelling unit, as approved by the Community Development Director. The use of a mini-split HVAC system that does not rely on ducts to deliver heated and cooled air is encouraged.

### 11.23.100 – Owner occupancy.

An ADU and/or the main dwelling may be rented without owner occupancy requirements. ADUs can be rented for a term no fewer than 30 days for residential purposes, and cannot be used as a short-term or vacation rental (fewer than 30 days).

If there is a JADU on the property, either the JADU or Primary Dwelling shall be occupied by the owner of record, unless the property is entirely owned by another governmental agency, land trust, or housing organization.

- A. Deed Restriction. Prior to issuance of a final inspection and release of occupancy of building permit for an ADU or JADU, a deed restriction must be recorded against the title of the property in the County Recorder's office and a copy filed with the Development Services Department. The deed restriction must run with the land and bind all future owners. The form of the deed restriction will be provided by the City and must provide that:
  1. The ADU or JADU may not be sold separately from the main dwelling.
  2. The ADU or JADU is restricted to the approved size and to other attributes allowed by this section.
  3. The deed restriction runs with the land and may be enforced against future property owners.
  4. The deed restriction may be removed if the owner eliminates the ADU or JADU, as evidenced by, for example, removal of the kitchen facilities. To remove the deed restriction, an owner may make a written request to the Community Development Director, providing evidence that the ADU or JADU has in fact been eliminated. The Director may then determine whether the evidence supports the claim that the ADU or JADU has been eliminated. Appeal may be taken from the Community Development Director's determination consistent in accordance with Chapter 17.47. If the ADU or JADU is not entirely physically removed, but is only eliminated by virtue of having a necessary component of an ADU or JADU removed, the remaining structure and improvements must otherwise comply with applicable provisions of this Code.

- B. The deed restriction is enforceable by the Community Development Director or his or her designee for the benefit of the City. Failure of the property owner to comply with the deed restriction may result in legal action against the property owner, and the City is authorized to obtain any remedy available to it at law or equity, including, but not limited to, obtaining an injunction enjoining the use of the ADU or JADU in violation of the recorded restrictions or abatement of the illegal unit.

**11.23.120 – Reporting of annual rent.**

To facilitate the City’s obligation to identify adequate sites for housing in accordance with Government Code sections 65583.1 and 65852.2, the following requirements shall be satisfied:

- A. With the building permit application, the applicant shall provide the City with an estimate of the projected annual rent that will be charged for the ADU or JADU.
- B. By January 31 of each calendar year, the owner of the property containing an ADU or JADU shall report the actual rent charged for the ADU or JADU during the prior calendar year. If the City does not receive the report, the owner is in violation of this Code, and the City may send the owner a notice of violation. If the owner fails to submit the report within the time period stated in the notice of violation, the City may enforce this provision in accordance with applicable law. This condition shall be added to owner occupancy covenant,

**11.23.130 – Impact fees.**

- A. Development impact fees are required to be paid for an attached or detached ADU greater than 750 square feet. Development impact fees charged shall be charged proportionately in relation to the square footage of the primary dwelling unit.
- B. Development impact fees are not required to be paid for construction of a JADU.

**11.23.140 – Conformance.**

Approved accessory dwelling units that conforms to this section shall:

- A. Be deemed an accessory use or an accessory building; and
- B. Be deemed a residential use that is consistent with the General Plan and the zoning designations for the lot; and
- C. Not be considered to exceed the allowable density for the lot on which it is located and not be counted as part of the overall density allowed in the zoning district.

**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.

**ATTEST:**

\_\_\_\_\_  
Mayor

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

I, Andrea M. Myrick, City Clerk of the City of Montclair, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 21-996 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. Myrick  
City Clerk

FIRST  
READING  
08/16/2021

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT  
DIVISION OF HOUSING POLICY DEVELOPMENT**

2020 W. El Camino Avenue, Suite 500  
Sacramento, CA 95833  
(916) 263-2911 / FAX (916) 263-7453  
[www.hcd.ca.gov](http://www.hcd.ca.gov)



**MEMORANDUM**

**DATE:** January 10, 2020

**TO:** Planning Directors and Interested Parties

*Zachary Olmstead*

**FROM:** Zachary Olmstead, Deputy Director  
Division of Housing Policy Development

**SUBJECT:** **Local Agency Accessory Dwelling Units**  
**Chapter 653, Statutes of 2019 (Senate Bill 13)**  
**Chapter 655, Statutes of 2019 (Assembly Bill 68)**  
**Chapter 657, Statutes of 2019 (Assembly Bill 587)**  
**Chapter 178, Statutes of 2019 (Assembly Bill 670)**  
**Chapter 658, Statutes of 2019 (Assembly Bill 671)**  
**Chapter 659, Statutes of 2019 (Assembly Bill 881)**

This memorandum is to inform you of the amendments to California law, effective January 1, 2020, regarding the creation of accessory dwelling units (ADU) and junior accessory dwelling units (JADU). Chapter 653, Statutes of 2019 (Senate Bill 13, Section 3), Chapter 655, Statutes of 2019 (Assembly Bill 68, Section 2) and Chapter 659 (Assembly Bill 881, Section 1.5 and 2.5) build upon recent changes to ADU and JADU law (Government Code Section 65852.2, 65852.22 and Health & Safety Code Section 17980.12) and further address barriers to the development of ADUs and JADUs. (Attachment A includes the combined ADU statute updates from SB 13, AB 68 and AB 881).

This recent legislation, among other changes, addresses the following:

- Development standards shall not include requirements on minimum lot size (Section (a)(1)(B)(i)).
- Clarifies areas designated for ADUs may be based on water and sewer and impacts on traffic flow and public safety.
- Eliminates owner-occupancy requirements by local agencies (Section (a)(6) & (e)(1)) until January 1, 2025.
- Prohibits a local agency from establishing a maximum size of an ADU of less than 850 square feet, or 1000 square feet if the ADU contains more than one bedroom (Section (c)(2)(B)).
- Clarifies that when ADUs are created through the conversion of a garage, carport or covered parking structure, replacement offstreet parking spaces cannot be required by the local agency (Section (a)(1)(D)(xi)).

- Reduces the maximum ADU and JADU application review time from 120 days to 60 days (Section (a)(3) and (b)).
- Clarifies “public transit” to include various means of transportation that charge set fees, run on fixed routes and are available to the public (Section (j)(10)).
- Establishes impact fee exemptions or limitations based on the size of the ADU. ADUs up to 750 square feet are exempt from impact fees and impact fees for an ADU of 750 square feet or larger shall be proportional to the relationship of the ADU to the primary dwelling unit (Section (f)(3)).
- Defines an “accessory structure” to mean a structure that is accessory or incidental to a dwelling on the same lot as the ADU (Section (j)(2)).
- Authorizes HCD to notify the local agency if the department finds that their ADU ordinance is not in compliance with state law (Section (h)(2)).
- Clarifies that a local agency may identify an ADU or JADU as an adequate site to satisfy RHNA housing needs as specified in Gov. Code Section 65583.1(a) and 65852.2(m).
- Permits JADUs without an ordinance adoption by a local agency (Section (a)(3), (b) and (e)).
- Allows a permitted JADU to be constructed within the walls of the proposed or existing single-family residence and eliminates the required inclusion of an existing bedroom or an interior entry into the single-family residence (Gov. Code Section 65852.22).
- Allows upon application and approval, an owner of a substandard ADU 5 years to correct the violation, if the violation is not a health and safety issue, as determined by the enforcement agency (Section (n)).
- Creates a narrow exemption to the prohibition for ADUs to be sold or otherwise conveyed separate from the primary dwelling by allowing deed-restricted sales to occur. To qualify, the primary dwelling and the ADU are to be built by a qualified non-profit corporation whose mission is to provide units to low-income households (Gov. Code Section 65852.26).
- Removes covenants, conditions and restrictions (CC&Rs) that either effectively prohibit or unreasonably restrict the construction or use of an ADU or JADU on a lot zoned for single-family residential use are void and unenforceable (Civil Code Section 4751).
- Requires local agency housing elements to include a plan that incentivizes and promotes the creation of ADUs that can offer affordable rents for very low, low-, or moderate-income households and requires HCD to develop a list of state grants and financial incentives in connection with the planning, construction and operation of affordable ADUs (Gov. Code Section 65583 and Health and Safety Code Section 50504.5) (Attachment D).

For assistance, please see the amended statutes in Attachments A, B, C and D. HCD continues to be available to provide preliminary reviews of draft ADU ordinances to assist local agencies in meeting statutory requirements. In addition, pursuant to Gov. Code Section 65852.2(h), adopted ADU ordinances shall be submitted to HCD within 60 days of adoption. For more information and updates, please contact HCD’s ADU team at [adu@hcd.ca.gov](mailto:adu@hcd.ca.gov).

# ATTACHMENT A

## GOV. CODE: TITLE 7, DIVISION 1, CHAPTER 4, ARTICLE 2

### (AB 881, AB 68 and SB 13 Accessory Dwelling Units)

(Changes noted in strikeout, underline/italics)

Effective January 1, 2020, Section 65852.2 of the Government Code is amended to read:

#### **65852.2.**

(a) (1) A local agency may, by ordinance, provide for the creation of accessory dwelling units in areas zoned to allow single-family or multifamily dwelling residential use. The ordinance shall do all of the following:

(A) Designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted. The designation of areas may be based on ~~criteria that may include, but are not limited to,~~ the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety. A local agency that does not provide water or sewer services shall consult with the local water or sewer service provider regarding the adequacy of water and sewer services before designating an area where accessory dwelling units may be permitted.

(B) (i) Impose standards on accessory dwelling units that include, but are not limited to, parking, height, setback, ~~lot coverage,~~ landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Places. Resources. These standards shall not include requirements on minimum lot size.

(ii) Notwithstanding clause (i), a local agency may reduce or eliminate parking requirements for any accessory dwelling unit located within its jurisdiction.

(C) Provide that accessory dwelling units do not exceed the allowable density for the lot upon which the accessory dwelling unit is located, and that accessory dwelling units are a residential use that is consistent with the existing general plan and zoning designation for the lot.

(D) Require the accessory dwelling units to comply with all of the following:

(i) The accessory dwelling unit may be rented separate from the primary residence, ~~but~~ but may not be sold or otherwise conveyed separate from the primary residence.

(ii) The lot is zoned to allow single-family or multifamily dwelling residential use and includes a proposed or existing ~~single-family~~ dwelling.

(iii) The accessory dwelling unit is either attached ~~to,~~ or located ~~within the living area of the~~ within, the proposed or existing primary ~~dwelling or~~ dwelling, including attached garages, storage areas or similar uses, or an accessory structure or detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling.

(iv) ~~The total area of floorspace of~~ If there is an existing primary dwelling, the total floor area of an attached accessory dwelling unit shall not exceed 50 percent of the proposed or existing primary dwelling living area or 1,200 square feet. existing primary dwelling.

(v) The total floor area of ~~floorspace~~ for a detached accessory dwelling unit shall not exceed 1,200 square feet.

(vi) No passageway shall be required in conjunction with the construction of an accessory dwelling unit.

(vii) No setback shall be required for an existing ~~garage living area or~~ accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, and a setback of no more than ~~five-four~~ feet from the side and rear lot lines shall be required for an accessory dwelling

~~unit that is constructed above a garage. not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure.~~

(viii) Local building code requirements that apply to detached dwellings, as appropriate.

(ix) Approval by the local health officer where a private sewage disposal system is being used, if required.

(x) (I) Parking requirements for accessory dwelling units shall not exceed one parking space per a ccessory dwelling unit or per bedroom, whichever is less. These spaces may be provided as tandem parking on a driveway.

(II) Offstreet parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions.

(III) This clause shall not apply to a an accessory dwelling unit that is described in subdivision (d).

(xi) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, ~~and the local agency requires shall not require that those offstreet offstreet parking spaces be replaced, the replacement spaces may be located in any configuration on the same lot as the accessory dwelling unit, including, but not limited to, as covered spaces, uncovered spaces, or tandem spaces, or by the use of mechanical automobile parking lifts. This clause shall not apply to a unit that is described in subdivision (d).~~ replaced.

(xii) Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.

(2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(3) ~~When a local agency receives its first application on or after July 1, 2003, for a permit pursuant to this subdivision, the application A permit application for an accessory dwelling unit or a junior accessory dwelling unit shall be considered and approved ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits, within 120 days after receiving the application. permits. The permitting agency shall act on the application to create an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay ating on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall be considered without discretionary review or hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. A local agency may charge a fee to reimburse it for costs ~~that it incurs~~ as a result of amendments to this paragraph enacted during the 2001-02 Regular Session of the Legislature, ncurred to implement this paragraph, including the costs of adopting or amending any ordinance that provides for the creation of an accessory dwelling unit.~~

(4) An existing ordinance governing the creation of an accessory dwelling unit by a local agency or an accessory dwelling ordinance adopted by a local agency ~~subsequent to the effective date of the act adding this paragraph~~ shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units, except as otherwise provided in this subdivision. ~~In the event that~~ If a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision, that ordinance shall be null and void ~~upon the effective date of the act adding this paragraph~~ and that agency shall thereafter apply the standards established in this



subdivision for the approval of accessory dwelling units, unless and until the agency adopts an ordinance that complies with this section.

(5) No other local ordinance, policy, or regulation shall be the basis for the *delay or denial* of a building permit or a use permit under this subdivision.

(6) This subdivision establishes the maximum standards that local agencies shall use to evaluate a proposed accessory dwelling unit on a lot ~~zoned for residential use~~ that includes a proposed or existing single-family dwelling. No additional standards, other than those provided in this subdivision, shall be ~~utilized~~ used or imposed, including any owner-occupant requirement, except that a local agency may require an ~~applicant for a permit issued pursuant to this subdivision to be an owner-occupant~~ or that the property be used for rentals of terms longer than 30 days.

(7) A local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of an accessory dwelling unit if these provisions are consistent with the limitations of this subdivision.

(8) An accessory dwelling unit that conforms to this subdivision shall be deemed to be an accessory use or an accessory building and shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot. The accessory dwelling unit shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

*(b) When a local agency that has not adopted an ordinance governing accessory dwelling units in accordance with subdivision (a) receives an application for a permit to create an accessory dwelling unit pursuant to this subdivision, the local agency shall approve or disapprove the application ministerially without discretionary review pursuant to subdivision (a) within 120 days after receiving the application. (a). The permitting agency shall act on the application to create an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall still be considered ministerially without discretionary review or a hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. If the local agency has not acted upon the completed application within 60 days, the application shall be deemed approved.*

*(c) (1) Subject to paragraph (2), a local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units.*

*~~(A)~~ Notwithstanding paragraph (1), a local agency shall not establish by ordinance any of the following:*

*~~A~~ A minimum square footage requirement for either an attached or detached accessory dwelling unit that prohibits an efficiency unit.*

*~~B~~ A maximum square footage requirement for either an attached or detached accessory dwelling unit that is less than either of the following:*

*~~1~~ 850 square feet.*

*~~2~~ 1,000 square feet for an accessory dwelling unit that provides more than one bedroom.*

*~~(C)~~ A local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units. No minimum Any other minimum or maximum size for an accessory dwelling unit, or size based upon a percentage of the proposed or existing primary dwelling, shall be established by ordinance or limits on lot coverage, floor area ratio, open space, and minimum lot size, for either attached or detached dwellings that does not permit at least an efficiency unit to be constructed in compliance with local development standards. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence. 800 square*

foot accessory dwelling unit that is at least 16 feet in height with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.

Ø Notwithstanding any other law, a local agency, whether or not it has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), shall not impose parking standards for an accessory dwelling unit in any of the following instances:

- (1) The accessory dwelling unit is located within one-half mile *walking distance* of public transit.
- (2) The accessory dwelling unit is located within an architecturally and historically significant historic district.
- (3) The accessory dwelling unit is part of the proposed or existing primary residence or an accessory structure.
- (4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.
- (5) When there is a car share vehicle located within one block of the accessory dwelling unit.

Ø (1) Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit ~~to create within a zone for single-family use one accessory dwelling unit per single-family lot if the unit is contained within the existing space of a single-family residence - o accessory structure, including, but not limited to, a studio, pool house, or other similar structure,~~ ~~has independent exterior access from the existing residence, and the side and rear setbacks are sufficient for fire safety. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence. A city may require owner occupancy for either the primary or the accessory dwelling unit created through this process.~~ within a residential or mixed-use zone to create any of the following:

Ⓐ ) One accessory dwelling unit or junior accessory dwelling unit per lot with a proposed or existing single-family dwelling if all of the following apply:

Ⓘ The accessory dwelling unit or junior accessory dwelling unit is within the proposed space of a single-family dwelling or existing space of a single-family dwelling or accessory structure and may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing accessory structure. An expansion beyond the physical dimensions of the existing accessory structure shall be limited to accommodating ingress and egress.

Ⓝ The space has exterior access from the proposed or existing single-family dwelling. (iii) The side and rear setbacks are sufficient for fire and safety.

(iv) The junior accessory dwelling unit complies with the requirements of Section 65852.22.

Ⓑ ) One detached, new construction, accessory dwelling unit that does not exceed four-foot side and rear yard setbacks for a lot with a proposed or existing single-family dwelling. The accessory dwelling unit may be combined with a junior accessory dwelling unit described in subparagraph (A). A local agency may impose the following conditions on the accessory dwelling unit: (i) A total floor area limitation of not more than 800 square feet.

(ii) A height limitation of 16 feet.

Ⓒ ) (i) Multiple accessory dwelling units within the portions of existing multifamily dwelling structures that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, if each unit complies with state building standards for dwellings.

(ii) A local agency shall allow at least one accessory dwelling unit within an existing multifamily dwelling and shall allow up to 25 percent of the existing multifamily dwelling units.

Ⓓ ) Not more than two accessory dwelling units that are located on a lot that has an existing multifamily dwelling, but are detached from that multifamily dwelling and are subject to a height limit of 16 feet and four-foot rear yard and side setbacks.

Ⓔ ) A local agency shall not require, as a condition for ministerial approval of a permit application for the creation of an accessory dwelling unit or a junior accessory dwelling unit, the correction of nonconforming zoning conditions.

§ ) The installation of fire sprinklers shall not be required in an accessory dwelling unit if sprinklers are not required for the primary residence.

§ ) A local agency shall require that a rental of the accessory dwelling unit created pursuant to this subdivision be for a term longer than 30 days.

§ ) A local agency may require, as part of the application for a permit to create an accessory dwelling unit connected to an onsite water treatment system, a percolation test completed within the last five years, or, if the percolation test has been recertified, within the last 10 years.

§ ) Notwithstanding subdivision (c) and paragraph (1) a local agency that has adopted an ordinance by July 1, 2018, providing for the approval of accessory dwelling units in multifamily dwelling structures shall ministerially consider a permit application to construct an accessory dwelling unit that is described in paragraph (1), and may impose standards including, but not limited to, design, development, and historic standards on said accessory dwelling units. These standards shall not include requirements on minimum lot size.

¶(1) Fees charged for the construction of accessory dwelling units shall be determined in accordance with Chapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012).

(2) An accessory dwelling unit shall not be considered by a local agency, special district, or water corporation to be a new residential use for the purposes of calculating connection fees or capacity charges for utilities, including water and sewer service, unless the accessory dwelling unit was constructed with a new single-family dwelling.

(3) (A) A local agency, special district, or water corporation shall not impose any impact fee upon the development of an accessory dwelling unit less than 750 square feet. Any impact fees charged for an accessory dwelling unit of 750 square feet or more shall be charged proportionately in relation to the square footage of the primary dwelling unit.

(B) For purposes of this paragraph, "impact fee" has the same meaning as the term "fee" is defined in subdivision (b) of Section 66000, except that it also includes fees specified in Section 66477. "Impact fee" does not include any connection fee or capacity charge charged by a local agency, special district, or water corporation.

→(4) For an accessory dwelling unit described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation shall not require the applicant to install a new or separate utility connection directly between the accessory dwelling unit and the utility or impose a related connection fee or capacity charge, unless the accessory dwelling unit was constructed with a new single-family home.

→(5) For an accessory dwelling unit that is not described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation may require a new or separate utility connection directly between the accessory dwelling unit and the utility. Consistent with Section 66013, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its size-square feet or the number of its plumbing fixtures, drainage fixture unit (DFU) values, as defined in the Uniform Plumbing Code adopted and published by the International Association of Plumbing and Mechanical Officials, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.

¶ This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of an accessory dwelling unit.

→Local (1) agencies A local agency shall submit a copy of the ordinance adopted pursuant to subdivision (a) to the Department of Housing and Community Development within 60 days after adoption. The department may review and comment on this submitted ordinance. After adoption of an ordinance, the department may submit written findings to the local agency as to whether the ordinance complies with this section.

→(A) If the department finds that the local agency's ordinance does not comply with this section, the department shall notify the local agency and shall provide the local agency with a reasonable time.

no longer than 30 days, to respond to the findings before taking any other action authorized by this section.

(B) The local agency shall consider the findings made by the department pursuant to subparagraph (A) and shall do one of the following:

(X ) Amend the ordinance to comply with this section.

(Y) Adopt the ordinance without changes. The local agency shall include findings in its resolution adopting the ordinance that explain the reasons the local agency believes that the ordinance complies with this section despite the findings of the department.

B(A) If the local agency does not amend its ordinance in response to the department's findings or does not adopt a resolution with findings explaining the reason the ordinance complies with this section and addressing the department's findings, the department shall notify the local agency and may notify the Attorney General that the local agency is in violation of state law.

(B) Before notifying the Attorney General that the local agency is in violation of state law, the department may consider whether a local agency adopted an ordinance in compliance with this section between January 1, 2017, and January 1, 2020.

(i) The department may review, adopt, amend, or repeal guidelines to implement uniform standards or criteria that supplement or clarify the terms, references, and standards set forth in this section. The guidelines adopted pursuant to this subdivision are not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2.

~~(j)~~ (j) As used in this section, the following terms mean:

~~(1) "Living area" means the interior habitable area of a dwelling unit including basements and attics but does not include a garage or any accessory structure.~~

~~(2) "Local agency" means a city, county, or city and county, whether general law or chartered.~~

~~(3) For purposes of this section, "neighborhood" has the same meaning as set forth in Section 65589.5.~~

~~(4) (1) "Accessory dwelling unit" means an attached or a detached residential dwelling unit which provides complete independent living facilities for one or more persons. persons and is located on a lot with a proposed or existing primary residence. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated. An accessory dwelling unit also includes the following:~~

~~(A ) An efficiency unit.~~

~~(B ) A manufactured home, as defined in Section 18007 of the Health and Safety Code.~~

~~(2) "Accessory structure" means a structure that is accessory and incidental to a dwelling located on the same lot.~~

~~(3) An efficiency unit, "Efficiency unit" has the same meaning as defined in Section 17958.1 of the Health and Safety Code.~~

~~(4) A manufactured home, as defined in Section 18007 of the Health and Safety Code. "Living area" means the interior habitable area of a dwelling unit, including basements and attics, but does not include a garage or any accessory structure.~~

~~(5) "Local agency" means a city, county, or city and county, whether general law or chartered.~~

~~(6) "Neighborhood" has the same meaning as set forth in Section 65589.5.~~

~~(7) "Nonconforming zoning condition" means a physical improvement on a property that does not conform with current zoning standards.~~

~~(8) "Passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.~~

~~(9) "Proposed dwelling" means a dwelling that is the subject of a permit application and that meets the requirements for permitting.~~

~~(10) "Public transit" means a location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.~~

~~(6)~~ (11) "Tandem parking" means that two or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.

(k) A local agency shall not issue a certificate of occupancy for an accessory dwelling unit before the local agency issues a certificate of occupancy for the primary dwelling.

~~(j)~~ (l) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for accessory dwelling units.

(f) A local agency may count an accessory dwelling unit for purposes of identifying adequate sites for housing, as specified in subdivision (a) of Section 65583.1, subject to authorization by the department and compliance with this division.

(g) In enforcing building standards pursuant to Article 1 (commencing with Section 17960) of Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code for an accessory dwelling unit described in paragraph (1) or (2) below, a local agency, upon request of an owner of an accessory dwelling unit for a delay in enforcement, shall delay enforcement of a building standard, subject to compliance with Section 17980.12 of the Health and Safety Code:

(1) The accessory dwelling unit was built before January 1, 2020.

(2) The accessory dwelling unit was built on or after January 1, 2020, in a local jurisdiction that, at the time the accessory dwelling unit was built, had a noncompliant accessory dwelling unit ordinance, but the ordinance is compliant at the time the request is made.

(3) This section shall remain in effect only until January 1, 2025, and as of that date is repealed.

**(Becomes operative on January 1, 2025)**

Section 65852.2 of the Government Code is amended to read (changes from January 1, 2020 statute noted in underline/italic):

**65852.2.**

(a) (1) A local agency may, by ordinance, provide for the creation of accessory dwelling units in areas zoned to allow single-family or multifamily dwelling residential use. The ordinance shall do all of the following:

(A) Designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted. The designation of areas may be based on the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety. A local agency that does not provide water or sewer services shall consult with the local water or sewer service provider regarding the adequacy of water and sewer services before designating an area where accessory dwelling units may be permitted.

(B) (i) Impose standards on accessory dwelling units that include, but are not limited to, parking, height, setback, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Resources. These standards shall not include requirements on minimum lot size.

~~N~~otwithstanding clause (i), a local agency may reduce or eliminate parking requirements for any accessory dwelling unit located within its jurisdiction.

(C) Provide that accessory dwelling units do not exceed the allowable density for the lot upon which the accessory dwelling unit is located, and that accessory dwelling units are a residential use that is consistent with the existing general plan and zoning designation for the lot.

(D) Require the accessory dwelling units to comply with all of the following:

(i) The accessory dwelling unit may be rented separate from the primary residence, but may not be sold or otherwise conveyed separate from the primary residence.

(ii) The lot is zoned to allow single-family or multifamily dwelling residential use and includes a proposed or existing dwelling.

(iii) The accessory dwelling unit is either attached to, or located within, the proposed or existing primary dwelling, including attached garages, storage areas or similar uses, or an accessory structure or detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling.

(iv) If there is an existing primary dwelling, the total floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing primary dwelling.

(v) The total floor area for a detached accessory dwelling unit shall not exceed 1,200 square feet.

(vi) No passageway shall be required in conjunction with the construction of an accessory dwelling unit.

(vii) No setback shall be required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, and a setback of no more than four feet from the side and rear lot lines shall be required for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure.

(viii) Local building code requirements that apply to detached dwellings, as appropriate.

(ix) Approval by the local health officer where a private sewage disposal system is being used, if required.

(x) (I) Parking requirements for accessory dwelling units shall not exceed one parking space per accessory dwelling unit or per bedroom, whichever is less. These spaces may be provided as tandem parking on a driveway.

(II) Offstreet parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions.

(III) This clause shall not apply to an accessory dwelling unit that is described in subdivision (d).

(xi) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, the local agency shall not require that those offstreet parking spaces be replaced.

(xii) Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.

(2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(3) A permit application for an accessory dwelling unit or a junior accessory dwelling unit shall be considered and approved ministerially without discretionary review or a hearing, notwithstanding

Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits. The permitting agency shall act on the application to create an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall be considered without discretionary review or hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. A local agency may charge a fee to reimburse it for costs incurred to implement this paragraph, including the costs of adopting or amending any ordinance that provides for the creation of an accessory dwelling unit.

(4) An existing ordinance governing the creation of an accessory dwelling unit by a local agency or an accessory dwelling ordinance adopted by a local agency shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units, except as otherwise provided in this subdivision. If a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision, that ordinance shall be null and void and that agency shall thereafter apply the standards established in this subdivision for the approval of accessory dwelling units, unless and until the agency adopts an ordinance that complies with this section. No other local ordinance, policy, or regulation shall be the basis for the delay or denial of a building permit or a use permit under this subdivision.

(5) (A) This subdivision establishes the maximum standards that local agencies shall use to evaluate a proposed accessory dwelling unit on a lot that includes a proposed or existing single-family dwelling. No additional standards, other than those provided in this subdivision, shall be used or imposed, ~~including any owner-occupant requirement, except that a local agency may require that the property be used for rentals of terms longer than 30 days.~~ imposed except that, *subject to subparagraph (B), a local agency may require an applicant for a permit issued pursuant to this subdivision to be an owner-occupant or that the property be used for rentals of terms longer than 30 days.*

*(B) Notwithstanding subparagraph (A), a local agency shall not impose an owner-occupant requirement on an accessory dwelling unit permitted between January 1, 2020, to January 1, 2025, during which time the local agency was prohibited from imposing an owner-occupant requirement.*

(6) A local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of an accessory dwelling unit if these provisions are consistent with the limitations of this subdivision.

(7) An accessory dwelling unit that conforms to this subdivision shall be deemed to be an accessory use or an accessory building and shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot. The accessory dwelling unit shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(b) When a local agency that has not adopted an ordinance governing accessory dwelling units in accordance with subdivision (a) receives an application for a permit to create an accessory dwelling unit pursuant to this subdivision, the local agency shall approve or disapprove the application

ministerially without discretionary review pursuant to subdivision (a). The permitting agency shall act on the application to create an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall still be considered ministerially without discretionary review or a hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. If the local agency has not acted upon the completed application within 60 days, the application shall be deemed approved.

(c) (1) Subject to paragraph (2), a local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units.

(2) Notwithstanding paragraph (1), a local agency shall not establish by ordinance any of the following:

(A) A minimum square footage requirement for either an attached or detached accessory dwelling unit that prohibits an efficiency unit.

(B) A maximum square footage requirement for either an attached or detached accessory dwelling unit that is less than either of the following:

(i) 850 square feet.

(ii) 1,000 square feet for an accessory dwelling unit that provides more than one bedroom.

(C) Any other minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit that is at least 16 feet in height with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.

(d) Notwithstanding any other law, a local agency, whether or not it has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), shall not impose parking standards for an accessory dwelling unit in any of the following instances:

(1) The accessory dwelling unit is located within one-half mile walking distance of public transit.

(2) The accessory dwelling unit is located within an architecturally and historically significant historic district.

(3) The accessory dwelling unit is part of the proposed or existing primary residence or an accessory structure.

(4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.

(5) When there is a car share vehicle located within one block of the accessory dwelling unit.

(e) (1) Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an



application for a building permit within a residential or mixed-use zone to create any of the following:

(A) One accessory dwelling unit or junior accessory dwelling unit per lot with a proposed or existing single-family dwelling if all of the following apply:

(i) The accessory dwelling unit or junior accessory dwelling unit is within the proposed space of a single-family dwelling or existing space of a single-family dwelling or accessory structure and may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing accessory structure. An expansion beyond the physical dimensions of the existing accessory structure shall be limited to accommodating ingress and egress.

(ii) The space has exterior access from the proposed or existing single-family dwelling.

(iii) The side and rear setbacks are sufficient for fire and safety.

(iv) The junior accessory dwelling unit complies with the requirements of Section 65852.22.

(B) One detached, new construction, accessory dwelling unit that does not exceed four-foot side and rear yard setbacks for a lot with a proposed or existing single-family dwelling. The accessory dwelling unit may be combined with a junior accessory dwelling unit described in subparagraph (A). A local agency may impose the following conditions on the accessory dwelling unit:

(i) A total floor area limitation of not more than 800 square feet.

(ii) A height limitation of 16 feet.

(C) (i) Multiple accessory dwelling units within the portions of existing multifamily dwelling structures that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, if each unit complies with state building standards for dwellings.

(ii) A local agency shall allow at least one accessory dwelling unit within an existing multifamily dwelling and may shall allow up to 25 percent of the existing multifamily dwelling units.

(D) Not more than two accessory dwelling units that are located on a lot that has an existing multifamily dwelling, but are detached from that multifamily dwelling and are subject to a height limit of 16 feet and four-foot rear yard and side setbacks.

(2) A local agency shall not require, as a condition for ministerial approval of a permit application for the creation of an accessory dwelling unit or a junior accessory dwelling unit, the correction of nonconforming zoning conditions.

(3) The installation of fire sprinklers shall not be required in an accessory dwelling unit if sprinklers are not required for the primary residence.

(4) A local agency may require owner occupancy for either the primary dwelling or the accessory dwelling unit on a single-family lot, subject to the requirements of paragraph (6) of subdivision (a).

(5) A local agency shall require that a rental of the accessory dwelling unit created pursuant to this subdivision be for a term longer than 30 days.

~~§~~ (6) A local agency may require, as part of the application for a permit to create an accessory dwelling unit connected to an onsite water treatment system, a percolation test

completed within the last five years, or, if the percolation test has been recertified, within the last 10 years.

~~§~~ (7) Notwithstanding subdivision (c) and paragraph (1) a local agency that has adopted an ordinance by July 1, 2018, providing for the approval of accessory dwelling units in multifamily dwelling structures shall ministerially consider a permit application to construct an accessory dwelling unit that is described in paragraph (1), and may impose standards including, but not limited to, design, development, and historic standards on said accessory dwelling units. These standards shall not include requirements on minimum lot size.

(f) (1) Fees charged for the construction of accessory dwelling units shall be determined in accordance with Chapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012).

(2) An accessory dwelling unit shall not be considered by a local agency, special district, or water corporation to be a new residential use for purposes of calculating connection fees or capacity charges for utilities, including water and sewer service, unless the accessory dwelling unit was constructed with a new single-family dwelling.

(3) (A) A local agency, special district, or water corporation shall not impose any impact fee upon the development of an accessory dwelling unit less than 750 square feet. Any impact fees charged for an accessory dwelling unit of 750 square feet or more shall be charged proportionately in relation to the square footage of the primary dwelling unit.

(B) For purposes of this paragraph, "impact fee" has the same meaning as the term "fee" is defined in subdivision (b) of Section 66000, except that it also includes fees specified in Section 66477. "Impact fee" does not include any connection fee or capacity charge charged by a local agency, special district, or water corporation.

(4) For an accessory dwelling unit described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation shall not require the applicant to install a new or separate utility connection directly between the accessory dwelling unit and the utility or impose a related connection fee or capacity charge, unless the accessory dwelling unit was constructed with a new single-family home dwelling.

(5) For an accessory dwelling unit that is not described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation may require a new or separate utility connection directly between the accessory dwelling unit and the utility. Consistent with Section 66013, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its square feet or the number of its drainage fixture unit (DFU) values, as defined in the Uniform Plumbing Code adopted and published by the International Association of Plumbing and Mechanical Officials, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.

(g) This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of an accessory dwelling unit.

(h) (1) A local agency shall submit a copy of the ordinance adopted pursuant to subdivision (a) to the Department of Housing and Community Development within 60 days after adoption. After adoption of an ordinance, the department may submit written findings to the local agency as to whether the ordinance complies with this section.

(2) (A) If the department finds that the local agency's ordinance does not comply with this section, the department shall notify the local agency and shall provide the local agency with a reasonable time, no longer than 30 days, to respond to the findings before taking any other action authorized by this section.

(B) The local agency shall consider the findings made by the department pursuant to subparagraph (A) and shall do one of the following:

(i) Amend the ordinance to comply with this section.

(ii) Adopt the ordinance without changes. The local agency shall include findings in its resolution adopting the ordinance that explain the reasons the local agency believes that the ordinance complies with this section despite the findings of the department.

(3) (A) If the local agency does not amend its ordinance in response to the department's findings or does not adopt a resolution with findings explaining the reason the ordinance complies with this section and addressing the department's findings, the department shall notify the local agency and may notify the Attorney General that the local agency is in violation of state law.

(B) Before notifying the Attorney General that the local agency is in violation of state law, the department may consider whether a local agency adopted an ordinance in compliance with this section between January 1, 2017, and January 1, 2020.

(i) The department may review, adopt, amend, or repeal guidelines to implement uniform standards or criteria that supplement or clarify the terms, references, and standards set forth in this section. The guidelines adopted pursuant to this subdivision are not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2.

(j) As used in this section, the following terms mean:

(1) "Accessory dwelling unit" means an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated. An accessory dwelling unit also includes the following:

(A) An efficiency unit.

(B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

(2) "Accessory structure" means a structure that is accessory and incidental to a dwelling located on the same lot.

(3) "Efficiency unit" has the same meaning as defined in Section 17958.1 of the Health and Safety Code.

(4) "Living area" means the interior habitable area of a dwelling unit, including basements and attics, but does not include a garage or any accessory structure.

(5) "Local agency" means a city, county, or city and county, whether general law or chartered.

(6) "Neighborhood" has the same meaning as set forth in Section 65589.5.

(A) An efficiency unit, as defined in Section 17958.1 of the Health and Safety Code.

(B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

(7) "Nonconforming zoning condition" means a physical improvement on a property that does not conform with current zoning standards.

(8) "Passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.

(9) "Proposed dwelling" means a dwelling that is the subject of a permit application and that meets the requirements for permitting.

(10) "Public transit" means a location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.

(11) "Tandem parking" means that two or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.

(k) A local agency shall not issue a certificate of occupancy for an accessory dwelling unit before the local agency issues a certificate of occupancy for the primary dwelling.

(l) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for accessory dwelling units.

(m) A local agency may count an accessory dwelling unit for purposes of identifying adequate sites for housing, as specified in subdivision (a) of Section 65583.1, subject to authorization by the department and compliance with this division.

(n) In enforcing building standards pursuant to Article 1 (commencing with Section 17960) of Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code for an accessory dwelling unit described in paragraph (1) or (2) below, a local agency, upon request of an owner of an accessory dwelling unit for a delay in enforcement, shall delay enforcement of a building standard, subject to compliance with Section 17980.12 of the Health and Safety Code:

(1) The accessory dwelling unit was built before January 1, 2020.

(2) The accessory dwelling unit was built on or after January 1, 2020, in a local jurisdiction that, at the time the accessory dwelling unit was built, had a noncompliant accessory dwelling unit ordinance, but the ordinance is compliant at the time the request is made.

(o) This section shall ~~remain in effect only until January 1, 2025, and as of that date is repealed~~ become operative on January 1, 2025. Effective January 1, 2020, Section 65852.22 of the Government Code is amended to read (changes noted in ~~strikeout~~, underline/italics) (AB 68 (Ting)):

**65852.22.**

(a) Notwithstanding Section 65852.2, a local agency may, by ordinance, provide for the creation of junior accessory dwelling units in single-family residential zones. The ordinance may require a permit to be obtained for the creation of a junior accessory dwelling unit, and shall do all of the following:

(1) Limit the number of junior accessory dwelling units to one per residential lot zoned for single-family residences with a single-family residence ~~already built~~ built, or proposed to be built, on the lot.

(2) Require owner-occupancy in the single-family residence in which the junior accessory dwelling unit will be permitted. The owner may reside in either the remaining portion of the structure or the newly created junior accessory dwelling unit. Owner-occupancy shall not be required if the owner is another governmental agency, land trust, or housing organization.

(3) Require the recordation of a deed restriction, which shall run with the land, shall be filed with the permitting agency, and shall include both of the following:

(A) A prohibition on the sale of the junior accessory dwelling unit separate from the sale of the single-family residence, including a statement that the deed restriction may be enforced against future purchasers.

(B) A restriction on the size and attributes of the junior accessory dwelling unit that conforms with this section.

(4) Require a permitted junior accessory dwelling unit to be constructed within the existing walls of the structure, and require the inclusion of an existing bedroom. proposed or existing single-family residence.

(5) Require a permitted junior accessory dwelling to include a separate entrance from the main entrance to the structure, with an interior entry to the main living area. A permitted junior accessory dwelling may include a second interior doorway for sound attenuation. proposed or existing single-family residence.

(6) Require the permitted junior accessory dwelling unit to include an efficiency kitchen, which shall include all of the following:

~~(A)~~ A sink with a maximum waste line diameter of 1.5 inches.

~~(B)~~ (A) A cooking facility with appliances that do not require electrical service greater than 120 volts, or natural or propane gas. appliances.

~~(C)~~ (B) A food preparation counter and storage cabinets that are of reasonable size in relation to the size of the junior accessory dwelling unit.

(b) (1) An ordinance shall not require additional parking as a condition to grant a permit.

(2) This subdivision shall not be interpreted to prohibit the requirement of an inspection, including the imposition of a fee for that inspection, to determine whether if the junior accessory dwelling unit is in compliance complies with applicable building standards.

(c) An application for a permit pursuant to this section shall, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits, be considered ministerially, without discretionary review or a hearing. A permit shall be issued within 120 days of submission of an application for a permit pursuant to this section. The permitting agency shall act on the application to create a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family dwelling on the lot. If the permit application to create a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the junior accessory dwelling unit shall still be considered ministerially without discretionary review or a hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. A local agency may charge a fee to reimburse the local agency for costs incurred in connection with the issuance of a permit pursuant to this section.

(d) For the purposes of any fire or life protection ordinance or regulation, a junior accessory dwelling unit shall not be considered a separate or new dwelling unit. This section shall not be construed to prohibit a city, county, city and county, or other local public entity from adopting an ordinance or regulation relating to fire and life protection requirements within a single-family residence that contains a junior accessory dwelling unit so long as the ordinance or regulation applies uniformly to all single-family residences within the zone regardless of whether the single-family residence includes

a junior accessory dwelling unit or not.

(e) For the purposes of providing service for water, sewer, or power, including a connection fee, a junior accessory dwelling unit shall not be considered a separate or new dwelling unit.

(f) This section shall not be construed to prohibit a local agency from adopting an ordinance or regulation, related to parking or a service or a connection fee for water, sewer, or power, that applies to a single-family residence that contains a junior accessory dwelling unit, so long as that ordinance or regulation applies uniformly to all single-family residences regardless of whether the single-family residence includes a junior accessory dwelling unit.

(g) ) If a local agency has not adopted a local ordinance pursuant to this section, the local agency shall ministerially approve a permit to construct a junior accessory dwelling unit that satisfies the requirements set forth in subparagraph (A) of paragraph (1) of subdivision (e) of Section 65852.2 and the requirements of this section.

~~(g)~~ (h) For purposes of this section, the following terms have the following meanings:

(1) "Junior accessory dwelling unit" means a unit that is no more than 500 square feet in size and contained entirely within ~~an existing a single-family structure.~~ residence. A junior accessory dwelling unit may include separate sanitation facilities, or may share sanitation facilities with the existing structure.

(2) "Local agency" means a city, county, or city and county, whether general law or chartered. Effective January 1, 2020 Section 17980.12 is added to the Health and Safety Code, immediately following Section 17980.11, to read (changes noted in underline/italics) (SB 13 (Wieckowski)):

#### **17980.12.**

(a) (1) An enforcement agency, until January 1, 2030, that issues to an owner of an accessory dwelling unit described in subparagraph (A) or (B) below, a notice to correct a violation of any provision of any building standard pursuant to this part shall include in that notice a statement that the owner of the unit has a right to request a delay in enforcement pursuant to this subdivision:

A ) The accessory dwelling unit was built before January 1, 2020.

B ) The accessory dwelling unit was built on or after January 1, 2020, in a local jurisdiction that, at the time the accessory dwelling unit was built, had a noncompliant accessory dwelling unit ordinance, but the ordinance is compliant at the time the request is made.

C ) The owner of an accessory dwelling unit that receives a notice to correct violations or abate nuisances as described in paragraph (1) may, in the form and manner prescribed by the enforcement agency, submit an application to the enforcement agency requesting that enforcement of the violation be delayed for five years on the basis that correcting the violation is not necessary to protect health and safety.

D ) The enforcement agency shall grant an application described in paragraph (2) if the enforcement agency determines that correcting the violation is not necessary to protect health and safety. In making this determination, the enforcement agency shall consult with the entity responsible for enforcement of

building standards and other regulations of the State Fire Marshal pursuant to Section 13146.

E ) The enforcement agency shall not approve any applications pursuant to this section on or after January 1, 2030. However, any delay that was approved by the enforcement agency before January 1, 2030, shall be valid for the full term of the delay that was approved at the time of the initial approval of the application pursuant to paragraph (3).

F ) For purposes of this section, "accessory dwelling unit" has the same meaning as defined in Section 65852.2.

G ) This section shall remain in effect only until January 1, 2035, and as of that date is repealed.

## ATTACHMENT B

### GOV. CODE: TITLE 7, DIVISION 1, CHAPTER 4, ARTICLE 2

#### AB 587 Accessory Dwelling Units

(Changes noted in underline/italics)

Effective January 1, 2020 Section 65852.26 is added to the Government Code, immediately following Section 65852.25, to read (AB 587 (Friedman)):

#### 65852.26.

§ ) Notwithstanding clause (i) of subparagraph (D) of paragraph (1) of subdivision (a) of Section 65852.2, a local agency may, by ordinance, allow an accessory dwelling unit to be sold or conveyed separately from the primary residence to a qualified buyer if all of the following apply:

Ø ) The property was built or developed by a qualified nonprofit corporation.

Ø ) There is an enforceable restriction on the use of the land pursuant to a recorded contract between the qualified buyer and the qualified nonprofit corporation that satisfies all of the requirements

specified in paragraph (10) of subdivision (a) of Section 402.1 of the Revenue and Taxation Code.

Ø ) The property is held pursuant to a recorded tenancy in common agreement that includes all of the following:

Ⓐ ) The agreement allocates to each qualified buyer an undivided, unequal interest in the property based on the size of the dwelling each qualified buyer occupies.

Ⓑ ) A repurchase option that requires the qualified buyer to first offer the qualified nonprofit corporation to buy the property if the buyer desires to sell or convey the property.

Ⓒ ) A requirement that the qualified buyer occupy the property as the buyer's principal residence.

Ⓓ ) Affordability restrictions on the sale and conveyance of the property that ensure the property will be preserved for low-income housing for 45 years for owner-occupied housing units and will be sold or resold to a qualified buyer.

Ⓔ ) A grant deed naming the grantor, grantee, and describing the property interests being transferred shall be recorded in the county in which the property is located. A Preliminary Change of Ownership

Report shall be filed concurrently with this grant deed pursuant to Section 480.3 of the Revenue and Taxation Code.

Ø ) Notwithstanding subparagraph (A) of paragraph (2) of subdivision (f) of Section 65852.2, if requested by a utility providing service to the primary residence, the accessory dwelling unit has a separate water, sewer, or electrical connection to that utility.

Ø ) For purposes of this section, the following definitions apply:

Ø ) "Qualified buyer" means persons and families of low or moderate income, as that term is defined in Section 50093 of the Health and Safety Code.

Ø ) "Qualified nonprofit corporation" means a nonprofit corporation organized pursuant to Section 501(c)(3) of the Internal Revenue Code that has received a welfare exemption under Section 214.15 of the Revenue and Taxation Code for properties intended to be sold to low-income families who participate in a special no-interest loan program.

## ATTACHMENT C

### CIVIL CODE: DIVISION 4, PART 5, CHAPTER 5, ARTICLE 1 AB 670 Accessory Dwelling Units (Changes noted in underline/italics)

Effective January 1, 2020, Section 4751 is added to the Civil Code, to read (AB 670 (Friedman)):

#### **4751.**

*Any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of any interest in a planned development, and any provision of a governing document, that either effectively prohibits or unreasonably restricts the construction or use of an accessory dwelling unit or junior accessory dwelling unit on a lot zoned for single-family residential use that meets the requirements of Section 65852.2 or 65852.22 of the Government Code, is void and unenforceable.*

*This section does not apply to provisions that impose reasonable restrictions on accessory dwelling units or junior accessory dwelling units. For purposes of this subdivision, "reasonable restrictions" means restrictions that do not unreasonably increase the cost to construct, effectively prohibit the construction of, or extinguish the ability to otherwise construct, an accessory dwelling unit or junior accessory dwelling unit consistent with the provisions of Section 65852.2 or 65852.22 of the Government Code.*



## ATTACHMENT D

### GOV. CODE: TITLE 7, DIVISION 1, CHAPTER 3, ARTICLE 10.6 AB 671 Accessory Dwelling Units

(Changes noted in underline/italics)

Effective January 1, 2020, Section 65583(c)(7) of the Government Code is added to read (sections of housing element law omitted for conciseness) (AB 671 (Friedman)):

#### **65583(c)(7).**

Develop a plan that incentivizes and promotes the creation of accessory dwelling units that can be offered at affordable rent, as defined in Section 50053 of the Health and Safety Code, for very low, low-, or moderate-income households. For purposes of this paragraph, "accessory dwelling units" has the same meaning as "accessory dwelling unit" as defined in paragraph (4) of subdivision (i) of Section 65852.2.

Effective January 1, 2020, Section 50504.5 is added to the Health and Safety Code, to read (AB 671 (Friedman)):

#### **50504.5.**

§ ) The department shall develop by December 31, 2020, a list of existing state grants and financial incentives for operating, administrative, and other expenses in connection with the planning,

construction, and operation of an accessory dwelling unit with affordable rent, as defined in Section 50053, for very low, low-, and moderate-income households.

§ ) The list shall be posted on the department's internet website by December 31, 2020.

§ ) For purposes of this section, "accessory dwelling unit" has the same meaning as defined in paragraph (4) of subdivision (i) of Section 65852.2 of the Government Code.



# CITY COUNCIL AGENDA REPORT

**DATE:** AUGUST 16, 2021

**FILE I.D.:** CDV079

**SECTION:** PUBLIC HEARINGS

**DEPT.:** COMMUNITY DEV.

**ITEM NO.:** B

**PREPARER:** Y. NEMETH

**SUBJECT:** FIRST READING — CONSIDER ORDINANCE NO. 21-998 REPEALING AND REPLACING CHAPTER 11.73 OF THE MONTCLAIR MUNICIPAL CODE TO UPDATE REGULATIONS, STANDARDS, AND CREATE DESIGN GUIDELINES FOR WIRELESS TELECOMMUNICATIONS FACILITIES ON PUBLIC AND PRIVATE PROPERTY; ADDING CHAPTER 11.77 TO ESTABLISH AN ADMINISTRATIVE PERMITTING PROCESS; AND AMENDING CHAPTER 11.46 TO EXEMPT CERTAIN WIRELESS TELECOMMUNICATIONS FACILITIES

CONSIDER SETTING A PUBLIC HEARING FOR MONDAY, SEPTEMBER 20, 2021, AT 7:00 P.M. IN THE CITY COUNCIL CHAMBERS TO CONSIDER SECOND READING AND ADOPTION OF ORDINANCE NO. 21-998

**REASON FOR CONSIDERATION:** The City initially adopted an Ordinance regulating wireless telecommunications facilities in 2003 via Ordinance No. 02-829, which was updated to incorporate small cell facilities via Ordinance No. 19-980 in 2019. Several changes to state and federal law over the years as well as increasing demand for wireless technology have necessitated updating the City’s regulations for legal compliance and developing new design standards for these structures.

The City Council adopts Ordinances to make changes to the Montclair Municipal Code (MMC) and set local regulations. Adoption of an Ordinance requires two readings, each held at separate public hearings before the City Council. An Ordinance may be adopted only after the second reading is held at a regular Council meeting occurring at least five days after the introduction of the proposed Ordinance. If substantial changes to the Ordinance are approved, the amended Ordinance must be re-introduced at a public hearing at least five days prior to conducting the second reading and adopting the Ordinance.

A copy of proposed Ordinance No. 21-998 is attached for City Council review and consideration.

**BACKGROUND:** Since the passage of the 1996 Telecommunications Act, Congress and the Federal Communications Commission (FCC) have moved to expedite the deployment of wireless telecommunications facilities across the country. In 2003, the City adopted Ordinance No. 02-829, enacting MMC Chapter 11.73 - Wireless Telecommunications Facilities. Since adoption, the Code has remained unchanged, while major changes have occurred in wireless technology, consumer demand, and additional federal and state regulation.

On July 12, 2021, the Planning Commission, by a 5-0 vote, approved Resolution No. 21-1948 recommending the City Council approve Zoning Code Amendment No. 2019-22 to modify the regulations pertaining to wireless telecommunications facilities.

Proposed Ordinance No. 21-998 would update standards that apply to all “macrocell” wireless telecommunications facilities (WTF), existing and new, within the boundaries of the City. Small cell wireless telecommunications facilities in the public right-of-way are subject to Chapter 9.105, and antennas and satellite dish antennas that are subject to Chapter 11.46 of the MMC.

## **Macrocell Sites**

Ordinance No. 21-998 primarily applies to what the wireless industry describes as a “macrocell” site, in contrast to “Small Cell” sites. Macrocell sites have the highest coverage and capacity capabilities of all system types to deliver voice, text, and broadband communications through high-powered radiofrequency (RF) signals to large geographic areas. A typical macrocell site includes one or more provider antennas affixed to tall, freestanding towers (often designed as faux-trees), the top of tall structures, water tanks, or as an architectural feature attached to an existing building, and a base equipment area within a secured enclosure (often by means of block walls or fences). Despite their capabilities, macrocell sites have capacity limits and as demand for wireless technology increases, more macrocell sites are necessary, especially in areas with higher density populations. Small cell antennas provide small footprint coverage to high traffic areas and supplement existing macrocell coverage.

The purpose of Ordinance No. 21-998 is to ensure the City complies with federal and state regulations, address advances in technology, minimize the visual impact of facilities, and promote comprehensive wireless coverage and capacity in the City of Montclair. As such, Ordinance No. 21-998 proposes the following changes to the MMC:

- Repeal the existing provisions of Chapter 11.73 and replace with new and updated provisions to comply with new regulations issued by the FCC and the State;
- Add Chapter 11.77 to allow administrative level review by the Director of Community Development, or designee, for small installations or upgrades involving minor or less complex new construction; and
- Amend Chapter 11.46, Section 11.46.010 under *Purpose and Intent* to add the following language: “This Chapter 11.46 does not apply to wireless telecommunications facilities that are subject to the regulations in Chapter 11.73 of the Code.”

As the number of wireless users increase and rely upon cell phones, smart phones, and the wide range of wireless devices instead of landline phones and wireline internet connections, capacity for these services needs to expand. Technological advancement is identified in terms of “Generations” (or “G”), such as 1G/analog, 2G/cell phone, 3G/smart phone, 4G/universal personal communicator device, and now 5G, means more wireless telecommunications facilities will be required to build enough infrastructure capacity to meet demand. Moreover, recent experience during the COVID-19 pandemic confirms the need for dependable communication access without signal loss.

Adoption of the proposed WTF Ordinance would bring the City’s current Ordinance in compliance with recent legislation and updates in technology, while requiring stronger standards for facilities. The new Ordinance will provide applicants, service providers, property owners, and City residents a clear guide on the policies of the City regarding WTFs on public and private land.

## **New Locations and Standards**

Current code prohibits the installation of a WTF on R-1 (Single-family) zoned and developed properties within the City. Most of the City is zoned R-1 Single-family Residential which means the majority of WTFs in the City are on developed commercial and industrial-zoned properties. The only exception to the general prohibition in R-1 zones is the ability to locate a WTF in a public park subject to specific distance requirements. The two locations in town where a WTF exists at a public park is at Alma Hofman and MacArthur Parks. However, over the years, property owners or WTF developers have approached the City with requests to install a WTF on other residentially

zoned properties developed with non-residential uses such as church or public utility sites.

With this update, staff considered the possibility of expanding opportunities into residentially-zoned properties to allow WTFs in limited ways. The first step was to determine minimum criteria for possible site locations. Staff identified a small number of potential sites in the R-1 zones of the City all of which were larger than two acres (either a single parcel or multiple adjoining parcels owned by the same party), located on major streets, and not developed with residential structures. The two-acre minimum seemed to be a sufficient minimize size to allow for (depending on existing site development) the installation of a WTF and associated ground-mounted enclosures, with little to no adverse impact, visual, or otherwise. Religious institutions own some of the largest sites in the City that could potentially accommodate a WTF, if properly situated, with little to no significant impact on required parking, setbacks, etc., for the primary use of the site. Since the possible number of sites meeting the minimum two-acre size is limited, the likelihood of a proliferation of WTFs in the City is relatively low. Moreover, there is no guarantee of approval since each potential site is unique and existing conditions may make the installation a WTF infeasible.

Concerning setback requirements, the current 200-foot setback requirement is not easily achievable for most sites unless at a park, so staff is recommending a revision. The proposed Ordinance would reduce the setback for freestanding WTF structures, to a minimum of 110 percent of the height of the structure (e.g. faux tree) or less if specifically designed to collapse directly downward should failure occur. To date, there have been no structural problems reported regarding an existing freestanding WTF structure in the City. More importantly, the Ordinance does not allow a WTF (including ground-mounted equipment and/or enclosure) within any required front or street side setback area of a property.

The Ordinance proposes a maximum height of 60 feet for freestanding WTFs instead of the height of the underlying district. In nearly every case, a variance for height was required to achieve an effective antenna height and allow for the co-location of at least one additional wireless provider. The proposed increase in height would eliminate the need to obtain a variance and allow a modest increase in overall height for a faux tree installation to achieve a realistic appearance to the greatest extent possible.

Lastly, the requirement for a CUP would remain to ensure any proposal for WTF for a particular site is appropriate with respect to existing site conditions, its design and appearance, and for compliance with all specific conditions of approval.

### ***Stealth Technology***

The proposed Ordinance continues to require the use of stealth wireless facilities (camouflage, disguise, concealment). The goals of this requirement is to encourage flexibility in the type of antenna used on a host structure so that the antenna does not dominate the structure, does not exceed the height allowed by the zoning district, and the wireless facility is of an appropriate design and scale in relation to the surrounding setting. The Ordinance also strongly encourages carriers to seek placement, construction, or modification of a WTF on existing host structures such as buildings and utility infrastructure rather than erecting freestanding towers. Except for a few early macrocell facilities, most of the macrocell sites in the City are concealed as faux trees (pine or palm), or within a structure (e.g., Montclair Obelisk at Freedom Plaza). Stealth technology standards would also apply to antenna facilities that approved administratively.

### ***Eligible Facilities***

In Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012 (47 USC\_1455) the FCC was directed to remove obstacles to the modification process of wireless facilities. This Section requires a state or local government to not deny, and approve any eligible request for a modification that does not substantially change the physical dimensions of the tower or base station that were legally established. As defined, “Eligible Facility” means modifications to an existing tower or base station including the collocation of new transmission equipment, removal of transmission equipment, or the replacement of transmission equipment. The FCC went further in allowing a potential increase in the height of facility by more than 10 percent or 20 vertical feet, before a change would be deemed “substantial” and thereby allow a local government to intervene.

The addition of Chapter 11.77 to allow administrative level review by the Director of Community Development, or designee, is in part to quickly process Eligible Facilities requests and other small and/or less complex installations involving minor new construction. This would eliminate the need for a public hearing and streamline the process for timely approvals.

### ***Limits on Consideration of Radio Frequency (RF) Emissions***

Concerns about the possible negative health effects of radio frequency (RF) emissions generated by wireless facilities are often raised whenever cities consider approving new wireless regulations or approve new wireless facility applications. However, federal law has preempted the City’s ability to consider such matters to the extent wireless facilities comply with RF standards promulgated by the FCC. The Federal Telecommunications Act of 1996 states in part:

“No state or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the FCC’s regulations concerning such emissions.” (47 U.S.C. § 332(c)(7)(B)(iv).

Thus, to deny any request for authorization to place, construct, or modify personal wireless service facilities on the basis of environmental effects of RF emissions to the extent that such wireless facilities comply with the FCC’s regulations concerning such emissions is prohibited. All the City can do is to require that such facilities at all times meet the FCC requirements for RF emissions. The Ordinance requires applicants to furnish an RF exposure compliance report prepared by a certified RF engineer acceptable to the City, that certifies that the proposed small wireless facility, as well as any collocated wireless facilities, will comply with applicable federal RF exposure standards and exposure limits.

### ***Public Comment***

Ordinance No. 21-998 was presented to the Real Estate Committee of the City Council on May 17, 2021. Prior to the meeting, staff received an inquiry from Mr. James Grice, Bryan Cave Leighton Paisner LLP representing Vertical Bridge, a private owner and operator of a communications infrastructure, to consider certain revisions to the Ordinance (see attached Attachment 1 — *Memorandum from BCLP dated June 1, 2021 “Re: Bethany Baptist—revisions to siting ordinance”*). Staff discussed the suggested modifications with Mr. Grice, and then reviewed them with special counsel from Best, Best, and Krieger (BBK) assisting staff with this Ordinance.

After consultation with BBK and further consideration, staff either maintained the originally proposed language or modified language to address suggested modifications as shown in Table 1 (Attachment 2 — *Staff's Response to BCLP's Suggestions Dated June 1, 2021*).

Further public comments will be accepted prior to and during the public hearings being held by the City Council for the proposed Ordinance.

### **Conclusion**

Despite the limitations placed on local government, staff believes the proposed Ordinance update is compliant with federal and state regulations, modestly expands development opportunities, and strengthens specific development standards. Staff believes the Ordinance represents a reasonable approach to guide the deployment of wireless telecommunication facilities within the City's boundaries.

Moreover, the intent of proposed Ordinance No. 21-998 and standards contained in the design guidelines titled *Design Standards for Wireless Telecommunications Facilities on Public and Private Property* are to protect and promote public health, safety, and welfare, and balance the benefits of advanced wireless services while maintaining the aesthetic character of the City's neighborhoods to the greatest extent possible. Accordingly, staff recommends City Council approval of the proposed Ordinance.

**Environmental Review.** This Ordinance is exempt from review under the State of California Environmental Quality Act ("CEQA") Guidelines pursuant to the following Sections: 15378(b)(5), 15061 (b)(3); 15302; 15303; and 15300.2.

**FISCAL IMPACT:** Adoption of Ordinance No. 21-998 would create no direct fiscal impact to the City's General Fund.

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

1. Introduce and conduct the first reading of Ordinance No. 21-998 repealing and replacing Chapter 11.73 of the Montclair Municipal Code to update regulations, standards, and create design guidelines for wireless telecommunications facilities on public and private property; adding Chapter 11.77 to establish an administrative permitting process; and amending Chapter 11.46 to exempt certain wireless telecommunications facilities.
2. Set a public hearing for Monday, September 20, 2021, at 7:00 p.m. in the City Council Chambers to consider second reading and adoption of Ordinance No. 21-998.

### **Attachments:**

- *Proposed Ordinance No. 21-998*
- *Design Standards for Wireless Telecommunications Facilities on Public and Private Property*
- *Attachment 1 — Memorandum dated June 1, 2021 "Bethany Baptist—revisions to siting ordinance"*
- *Attachment 2 — Staff's Response to BCLP's Suggestions dated June 1, 2021*

ORDINANCE NO. 21-998

**AN ORDINANCE OF THE CITY OF MONTCLAIR CALIFORNIA REPEALING AND REPLACING CHAPTER 11.73 OF THE MONTCLAIR MUNICIPAL CODE TO UPDATE REGULATIONS, STANDARDS, AND CREATE DESIGN GUIDELINES FOR WIRELESS TELECOMMUNICATIONS FACILITIES ON PUBLIC AND PRIVATE PROPERTY; ADDING CHAPTER 11.77 TO THE CITY MUNICIPAL CODE TO ESTABLISH AN ADMINISTRATIVE PERMITTING PROCESS; AND AMENDING CHAPTER 11.46 TO EXEMPT CERTAIN WIRELESS TELECOMMUNICATIONS FACILITIES**

**WHEREAS**, the City of Montclair, California ("City") is a municipal corporation, duly organized under the California Constitution and laws of the State of California; and

**WHEREAS**, pursuant to the police powers delegated to it by the California Constitution, the City is authorized to enact laws which promote the public health, safety, and general welfare of its citizens; and

**WHEREAS**, the City currently regulates permitting of wireless telecommunications facilities on public and private property in the City pursuant to Chapter 11.73 which was adopted in 2002; and

**WHEREAS**, numerous new federal and state laws and regulations have come into force since that time which place restrictions on local permitting including but not limited to establishing short timelines or "shot clocks" for action on applications, establishing "deemed granted" and other remedies for failing to take final action, and preempting local authority to deny certain types of wireless telecommunications facilities applications; and

**WHEREAS**, the City Council deems it to be necessary and appropriate to update its standards, regulations, and create design guidelines relating to the location, placement, design, construction, and maintenance of wireless telecommunications facilities on public and private property in the City, and providing for the enforcement of said standards and regulations, consistent with federal and state law limitations on that authority; and

**NOW, THEREFORE, BE IT ENACTED AND ORDAINED** by the Montclair City Council:

**SECTION I.** The foregoing Recitals are adopted as findings of the City Council as though set forth in full within the body of this ordinance.

**SECTION II.** Chapter 11.73 of the Montclair Municipal Code for the City of Montclair ("Code") shall be repealed, and replaced with the following:

**Chapter 11.73 - WIRELESS TELECOMMUNICATIONS FACILITIES**

**11.73.010 - Purpose and intent.**

The purpose and intent of this Chapter is to establish standards for the review, siting and development of wireless telecommunications facilities on public and private property throughout the City. A primary intent is to ensure that wireless networks are implemented with the fewest possible facilities, in the least visible manner, and with the least disruptive impact on the City's neighborhoods. This shall be accomplished through allowing collocation of multiple wireless providers at approved locations, requiring creative, stealth facility designs in zones where facilities are allowed, and prohibiting facilities within, and immediately adjacent to, certain limited City zoning districts where such facilities on public and private property would be highly incompatible with the predominant existing uses in those zoning districts. The regulations set forth in this Chapter are intended to protect and promote the public health, safety and general welfare, and to promote and enhance the aesthetic qualities of the community as set forth in the goals, objectives, and policies of the General Plan, while concurrently allowing for the orderly and efficient development of a wireless telecommunications infrastructure in accordance with state and federal law and Federal Communications Commission regulations.

**11.73.020 – Applicability.**

This Chapter applies to all wireless telecommunications facilities existing and proposed to be located within the corporate boundary of the City of Montclair, except wireless telecommunications facilities in the public right-of-way that are subject to Chapter 9.105 and antennas and satellite dish antennas that are subject to Chapter 11.46 of the City Code.

**11.73.030 – Exemptions.**

The following facilities are exempt from the requirements of this Chapter 11.73, and may be governed by other laws:

- A. Amateur radio antennas:
  - 1. That are completely enclosed within a permitted building; or
  - 2. That consist of a single wire not exceeding one-fourth inch in diameter. Such wire antennas may be located in setback areas provided the antenna does not extend above the maximum building height in the district.
  - 3. That consist of a single ground-mounted vertical pole or whip antenna not exceeding the maximum building height allowable for the zone measured from finish grade at the base of the antenna, and not located in any required setback area. Support structures or masts for pole or whip antennas shall conform to standards set out in the current California Building Code. A building permit may be required for the support structure or mast.
- B. “Like kind” equipment meaning the replacement or changing of equipment in an existing shroud, cabinet, vault, or secured ground lease area, which was approved by an entitlement and/or permit issued by the City that is substantially similar in appearance, size, dimensions, weight, and RF emissions to the then-existing and approved equipment. This exemption does not apply to generators.
- C. The following temporary facilities that will be placed for less than seven consecutive days, provided any necessary building permit or other approval is obtained and the landowner’s written consent is provided to the Director prior to installation:
  - 1. Facilities installed and operated for large-scale events; and
  - 2. Facilities needed for coverage during the temporary relocation of an existing and already-approved facility.

**11.73.040 – Nonconforming wireless telecommunications facilities.**

- A. Legal Nonconforming Facility. Any facility that is lawfully constructed, erected, or approved prior to the effective date of Ordinance 21-998, in compliance with applicable laws, and which facility does not conform to the requirements of this chapter shall be accepted and allowed as a legal nonconforming facility. Legal nonconforming wireless telecommunications facilities shall comply at all times with the laws, ordinances, and regulations in effect at the time that the application was granted, and any applicable federal or state laws as they may be amended or enacted from time to time, and shall at all times comply with the conditions of approval. Any legal nonconforming facility which fails to comply with applicable laws, ordinances, regulations, or conditions of approval may be required to conform to the provisions of this chapter.
- B. Illegal Nonconforming Facility. Any facility constructed or erected prior to the effective date of Ordinance 21-998 in violation of applicable laws, ordinances, or regulations shall be considered an Illegal Nonconforming Facility and shall be abated as a public nuisance pursuant to Chapters 1.12 and 7.24.020.H of the Montclair Municipal Code

**11.73.050 – Definitions.**

For the purposes of this Chapter, the following definitions shall apply:

**Administrative Permit** means a permit obtained pursuant to Chapter 11.77.



**Alternative tower structure** means clock or bell towers, steeples, spires, monoliths, light poles, artificial trees and similar alternative design mounting structures that camouflage or conceal the presence of an antenna or antenna arrays.

**Antenna** means any exterior transmitting or receiving device mounted on a tower, building structure, pole or alternative tower structure and used in communication that radiate or capture electromagnetic waves, digital signals, analog signals, radio frequencies, wireless telecommunications signals or other communications signals.

**Antenna array** means a set of one or more antennas.

**Applicant** means the person filing an application for placement or modification of a wireless telecommunications facility on public or private property in the City of Montclair.

**Building-mounted** – means mounted to the side or integrated into the façade, but not the roof, of a building or another structure such as a water tank, pump station, church steeple, freestanding sign, or similar structure.

**CUP** means Conditional Use Permit.

**City** shall mean the City of Montclair, California, a municipal corporation.

**Code** means Montclair Municipal Code.

**Collocation** means (a) for the purposes of any eligible facilities request, the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(2), as may be amended, which defines that term as "[t]he mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes." As an illustration and not a limitation, the FCC's definition means to add transmission equipment to an existing facility and does not necessarily refer to two or more different facility operators in the same location; and (b) for all other purposes, the same as defined in 47 C.F.R. § 1.6002(g)(1) and (2), as may be amended, which defines "collocation" as (1) mounting or installing an antenna facility on a pre-existing structure, and/or (2) modifying a structure for the purpose of mounting or installing an antenna facility on that structure.

**Design Standards** means those detailed design standards, specifications, and examples adopted by the City Council related to the design and installation of wireless telecommunications facilities.

**Director** means the Director of Community of Development of the City of Montclair or his or her designee.

**Eligible Facilities Request** means the same as in 47 C.F.R. § 1.6100(b)(3), or any successor provision.

**FCC** means the Federal Communications Commission or its lawful successor.

**Fall Zone** – means the area on the ground within a prescribed radius from the base of a wireless telecommunications facility. The fall zone is the area within which there is a potential hazard from falling debris, collapsing material, or the collapse of the tower itself.

**Freestanding telecommunications tower or structure** – means any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, such as a monopole tower.

**Height** means, when referring to a tower or other structure, the vertical distance measured from the finished grade level to the highest point on the tower or other structure, even if said highest point is an antenna. The finished grade shall not be artificially or unnecessarily raised to achieve a taller height for the tower or structure.

**Macro cell facility (or site)** means a large wireless communication facility that provides radio frequency coverage for a personal wireless service. Generally, macro cell antennas are mounted on ground-based towers, rooftops and other existing structures, at a height that provides a clear view over the surrounding buildings and terrain. Macro cell facilities typically contain antennas that are greater than three cubic feet per antenna and typically cover large geographic areas with relatively high capacity and may be capable of hosting multiple wireless service providers. For purposes of this chapter, a macrocell is anything other than a small cell, microcell or in-strand antenna. In addition to the requirements found in this chapter, a macrocell shall comply with the applicable zoning and use requirements as a "wireless telecommunications facility or wireless facility".

**Modification** means any change to an existing wireless telecommunications facility that involves any of the following: collocation, expansion, alteration, enlargement, intensification, reduction, or augmentation, including, but not limited to, a change in

size, shape, color, visual design, or exterior material. Modification does not include repair, replacement, or maintenance if those actions do not involve a change to the existing facility involving any of the following: collocation, expansion, alteration, enlargement, intensification, reduction, or augmentation.

**Monopalm** means a stealth tower structure resembling a palm tree constructed and designed for the sole purpose of supporting and concealing a wireless telecommunications antenna or antenna array.

**Monopine** means a stealth tower structure resembling a pine tree constructed and designed for the sole purpose of supporting and concealing a wireless telecommunications antenna or antenna array.

**Monopole** means a structure comprised of a single spire for the sole purpose of supporting a wireless telecommunications antenna or antenna array.

**Roof-mounted** means an antenna or antenna array directly attached or affixed to the roof of an existing building, tower or structure other than a lattice tower, monopole, monopalm or monopine.

**Stealth**, or a stealth facility, means a facility that is designed to look like something other than a wireless tower, base station or facility.

**Temporary Facility** means a wireless facility intended or used to provide wireless services on a temporary or emergency basis, such as a large-scale special event in which more users than usual gather in a single location or following a duly proclaimed local or state emergency as defined in California Government Code Section 8558 requiring additional service capabilities. Temporary facilities include without limitation, cells on wheels (COW), sites on wheels (SOW), cells on light trucks (COLTs), or other similar wireless facilities: (1) that will be in place for no more than six months (or such other longer time as the City may allow in light of the event or emergency); (2) for which required notice is provided to the FAA; (3) that do not require marking or lighting under FAA regulations; (4) that will be less than 200 feet in height; and (5) that will either involve no excavation or involve excavation only as required to safely anchor the facility, where the depth of previous disturbance exceeds the proposed construction depth (excluding footings and other anchoring mechanisms) by at least two feet.

**Wireless telecommunications facility (or wireless facility)** means antenna structures and other types of installations used for the provision of wireless services at a fixed location, including, without limitation, any associated tower, support structure(s), and base station(s). Accessory equipment associated with the installation of a wireless telecommunications facility includes, but is not limited to, cabling, generators, air conditioning units, electrical panels, equipment shelters, equipment cabinets, equipment buildings, pedestals, meters, vaults, splice boxes, and surface location markers, service roads and other similar improvements.

#### **11.73.060 – Permit required.**

An Administrative Permit or Conditional Use Permit (CUP) in compliance with the design guidelines, as applicable, processed in accordance with Chapter 11.77 or Chapter 11.78 of the Montclair Municipal Code shall be required for all wireless telecommunications facilities on public and private property within the City that are not exempt pursuant to Section 11.73.030. A CUP is required for installations involving a new freestanding support structure and for certain collocations that the Director has deemed complex based on the nature of the installation. All other wireless installations on public and private property require an Administration Permit.

Building Permits. All improvements associated with a new wireless telecommunications facility and all modifications to existing facilities, shall require City review and the issuance of building permits.

#### **11.73.070 – Primary land use required.**

Wireless telecommunications facility shall be permitted only as an accessory use on real property that is presently developed with a legal, conforming primary land use. Applications for facilities on undeveloped parcels shall not be considered unless the application is filed concurrently with an application for development of a conforming land use on the parcel. A variance application requesting that development of the primary land use on the parcel be permitted to deviate from any of the City's development standards solely to accommodate a wireless telecommunications facility on the same parcel shall not be considered.

**11.73.080 – Application requirements.**

In addition to complying with the standard application submittal requirements and design guidelines for an Administrative Permit or CUP as provided in Chapters 11.77, 11.78, and 11.73 of the Montclair Municipal Code, the applicant shall also provide all information required on a form published, and from time to time updated, by the Director.

**11.73.090 – Permitted locations.**

Wireless telecommunications facilities on public and private property may be located within the following zoning districts, subject to the approval of a CUP and compliance with the design standards of Section 11.73.110:

- A. Residential Zones
  - 1. R-1 Zone (Single-Family Residential) – On properties two acres in size or larger where the primary use is not residential such as a religious institution, public utility facility, public park, or other similar non-residential use as determined by the Community Development Director. Qualifying properties may be comprised of one or more abutting parcels under the same ownership.
  - 2. R-3 Zone (Multiple-Family Residential) – When integrated into the existing architectural framework of a building or structure – such as the backside of parapet walls, within towers or wall setbacks, in roof attic space, etc. – so that the presence of an antenna or antenna arrays are concealed. Ground mounted support equipment shall not be located in required parking spaces and/or required setbacks. Freestanding wireless telecommunications facilities shall be not be permitted
- B. Non-Residential Zones
  - 1. AP (Administrative Professional Zone);
  - 2. C-3 (General Commercial Zone);
  - 3. MIP (Manufacturing Industrial Zone);
  - 4. M-1 (Limited Manufacturing Zone);
  - 5. M-2 (General Manufacturing Zone).
- C. Specific Plans
  - 1. North Montclair Downtown Specific Plan (NMDSP)
  - 2. Montclair Place District Specific Plan (MPDSP)
  - 3. Arrow Highway Mixed-Use District (AHMUD)
  - 4. Auto Mall," "Business Park," "Commercial," "Commercial/Office" and "Industrial" zones of the Holt Boulevard Specific Plan (HBSP).

**11.73.100– Prohibited locations.**

Wireless telecommunications facilities on public and private property shall be expressly prohibited within the following zoning district designations:

- A. R-1 Zone – where the primary use of the site is residential and the site does not meet the minimum parcel size requirement as identified in Section 11.73.090.A.1;
- B. R-2 (Two-Family Residential);
- C. C-2 (Restricted Commercial).

**11.73.110 – Design and development standards.**

Design and Development standards for Wireless Telecommunications Facilities on Public and Private Property are provided as a separate document which may be updated from time-to-time by the Community Development Director.

**11.73.120 – Monitoring and maintenance.**

The owner of the wireless telecommunications facility shall routinely monitor the site to ensure the facility is maintained in good condition at all times in accordance with all approved plans and conditions of approval. Such maintenance shall include, but shall not be limited to, routine inspections to verify the facility and its components are

structurally sound, is free of: general dirt and grease; chipped, faded, peeling or cracked paint; trash, debris, litter, graffiti and other forms of vandalism; cracks, dents, blemishes and discolorations; visible rust or corrosion on any unpainted metal areas; and, the health and operation of associated landscaping and irrigation.

The owner of the facility shall also be responsible for maintaining the integrity and appearance of their facility making sure that any deficiencies (e.g., missing or defective parts, faux branches and foliage, stealth components, etc.) are routinely replaced in a timely manner with matching material and functioning parts, with or without notification from the City.

Any damage from any cause shall be repaired by the Permittee within 30 days of notice. Weathered, faded or missing parts/materials used to disguise/camouflage the facility shall be maintained and/or replaced by the Permittee within 30 days of notice. All graffiti on facilities must be removed at the sole expense of the Permittee within 72 hours after notification from the City. All other forms of vandalism and damage shall be removed and/or repaired within 72 hours of notice by the City.

**11.73.130 – Special standards for temporary facilities.**

- A. The proposed temporary facility must comply with all applicable laws and regulations, and submit proof of compliance, as proposed for use, with FCC regulations governing radio frequency emissions.
- B. The proposed facility will be placed and protected to prevent hazard to the public and property, and so as not to unreasonably interfere with pedestrian vehicular traffic, and all ADA space and path of travel requirements.
- C. The proposed facility must comply with all conditions for a temporary wireless facility, and there must be an appropriate plan for removal of the facility and restoration of property affected by it.
- D. The permit is sought for the minimum period required, and no greater than the maximum period permitted by the City.
- E. Any permit issued shall identify where the temporary wireless facility will be placed, and the period for which it may remain in place.

**11.73.140 – Required findings for wireless telecommunications facilities.**

- A. Other than eligible facilities requests and temporary wireless facilities, the Director, City Manager, or Planning Commission, as the case may be, shall approve the installation or modification of a wireless telecommunications facilities if, on the basis of the application and other materials or evidence provided in review thereof, it finds the following: These are in addition to any applicable findings in Title 11 of the Montclair Municipal Code associated with a Conditional Use Permit, when applicable.
  - 1. There is adequate space on the property for the wireless telecommunications facility without conflicting with existing buildings or other improvements on the property or reducing required parking or landscaping;
  - 2. The design and placement of the wireless telecommunications facility complies with all applicable design and location standards, and will not adversely impact the use of the property, buildings and structures located on the property, or the surrounding area or neighborhood;
  - 3. The wireless telecommunications facility as proposed is consistent with the provisions of this Chapter and complies with all other applicable requirements of Title 11 of the Montclair Municipal Code; and
  - 4. The wireless telecommunications facility meets applicable requirements and standards of state and federal law.
- B. For eligible facilities requests, the Director or Planning Commission, as the case may be, shall approve the installation or modification of a wireless telecommunications facilities if, on the basis of the application and other materials or evidence provided in review thereof, it finds the following:
  - 1. The application qualifies as an eligible facilities requests subject to this Chapter.
  - 2. The proposed facility will comply with all generally-applicable laws.

- C. For temporary facilities not exempt pursuant to Section 11.73.030(C), the Director, or Planning Commission, as the case may be, shall approve an application if, on the basis of the application and other materials or evidence provided in review thereof, it finds the following:
  - 1. The facility qualifies as a temporary facility;
  - 2. There is an adequate need for the facility (e.g., wireless facility relocation or large-scale event);
  - 3. The facility is not detrimental to the public health, safety, and welfare;
  - 4. The facility complies with all applicable design and location standards; and
  - 5. The facility meets all applicable requirements of state and federal law.

**11.73.150 – Exceptions.**

- A. The approving authority may grant an exception to any of the requirements of this Chapter and/or the applicable design and location standards if it determines that the applicant has established that denial of an application would:
  - 1. Within the meaning of federal law, prohibit or effectively prohibit the provision of personal wireless services; or
  - 2. Otherwise violate applicable laws or regulations; or
  - 3. Require a technically infeasible design or installation of a wireless telecommunications facility.
- B. If that determination is made, the requirements of this Chapter and/or the applicable design and location standards may be waived, but only to the minimum extent required to avoid the prohibition, violation, or technically infeasible design or installation.

**11.73.160 – Conditions of approval.**

- A. Conditions of approval shall be imposed by the approving authority on all permits granted pursuant to this Chapter to ensure compliance with the intent of Title 11 of the City Code, the required standards and findings, and the protection of the public health, safety, general welfare, and aesthetics.
- B. In addition to any supplemental conditions imposed by the approving authority, all permits granted pursuant to this Chapter shall be subject to the following conditions, unless modified by the approving authority:
  - 1. This permit shall be valid for a period of 10 years, unless pursuant to another provision of the Code or these conditions, it expires sooner or is terminated. At the end of 10 years from the date of issuance, this permit shall automatically expire, unless an extension or renewal has been granted. A person holding this permit must either (1) remove the facility within 30 days following this permit's expiration (provided that removal of any support structure owned by City, a utility, or another entity need not be removed, but must be restored to its prior condition, except as specifically permitted by the City); or (2) at least 90 days prior to expiration, submit an application to renew this permit, which application must, among all other requirements, demonstrate that the impact of the wireless telecommunications facility cannot be reduced. The wireless facility must remain in place until it is acted upon by the City and all appeals from the City's decision exhausted.
  - 2. Timing of Installation. The installation and construction authorized by this permit shall begin within one (1) year after its approval, or such approval shall expire without further action by the City. The installation and construction authorized by this permit shall conclude, including any necessary post-installation repairs and/or restoration to the installation site, within 30 days following the day construction commenced. If the wireless facility is to be installed adjacent to residences, construction and maintenance of the facility shall be limited to the hours as per City of Montclair Municipal Code Section 6.12.060.D. Emergency repairs of the wireless facility may occur at any time.

3. The operation of the approved facility shall commence no later than one month after the completion of installation, or this permit will expire without further action by the City.
4. The Permittee shall submit an as-built drawing within 90 days after installation of the facility, in a format acceptable to the City.
5. The wireless telecommunications facility shall be constructed in substantial compliance with plans reviewed and approved by the Director.
6. No advertising, signs or lighting shall be incorporated or attached to the antenna array or support facilities, except as required by the City's Building Division or federal regulations.
7. All electrical and utility connections serving the facility shall be placed underground in accordance with the requirements of the Montclair Municipal Code.
8. A back-up generator authorized by this permit must comply with City Code Chapter 6.12 - "Noise Control".
9. The Permittee shall submit to the City certification of continued use of the approved facility on an annual basis at the time of business license renewal for as long as the facility remains in operation. The certification shall indicate that the facility is operating as approved and that the facility complies with the most current FCC safety standards. Facilities that are no longer in operation shall be completely removed within 90 days after the date cessation of operation.
10. If no annual certification is provided, the permit for the facility may be revoked by the Director. Prior to revoking a permit, the Director shall provide the owners of record written notice of their failure to provide the annual certification and an opportunity for a hearing.
11. Written notice of change of ownership and contact information of the facility shall be provided in writing to the Director within 30 days of said change. Failure to provide the information may cause for grounds to revoke the entitlements by the Director.
12. Radio Frequency Exposure Compliance. All facilities must comply with all standards and regulations of the FCC and any other state or federal government agency with the authority to regulate RF exposure standards. After transmitter and antenna system optimization, but prior to unattended operations of the facility, Permittee or its representative must conduct on-site post-installation RF emissions testing to demonstrate actual compliance with the FCC OET Bulletin 65 RF emissions safety rules for general population/uncontrolled RF exposure in all sectors. For this testing, the transmitter shall be operating at maximum operating power, and the testing shall occur outwards to a distance where the RF emissions no longer exceed the uncontrolled/general population limit.
13. All future changes and modifications to an approved facility shall require prior review and approval by Chapter 11.73.
14. Prior to construction of the facility, the Permittee shall:
  - a. Obtain a building permit that complies with all requirements of the Building and Engineering Divisions and the Montclair Fire Department.
  - b. Remit to the City a performance bond, or other form or surety acceptable to the City in an amount to be determined by the Director for the purpose of removing the subject facility and all associated support equipment in the event the facility becomes abandoned, this permit is revoked by the Director, or the Permittee does not or is unable to remove the facility.
  - c. Submit a copy of the lease with the property owner. If the lease is extended or terminated, notice and evidence thereof shall be provided to the Director. Upon termination or expiration of the lease, this permit for the facility shall become null and void and the facility shall be completely removed within 90 days.
15. Permittee shall undertake all reasonable efforts to avoid undue adverse impacts to adjacent properties and/or uses that may arise from the

construction, operation, maintenance, modification, and removal of the facility.

16. If, as a result of the operation of the subject facility, existing or future residential, commercial or industrial properties near the site experience interference difficulties with electronic equipment (such as radios, televisions, telephones, home computers, etc.), or if public safety personnel experience interference with communications systems, the Permittee shall be solely and fully responsible to correct any and all problems upon proof of such interference.
17. The site and the facility, including, but not limited to, all landscaping, fencing, and related transmission equipment, must be maintained in a neat and clean manner and in accordance with all approved plans and shall remain free of: general dirt and grease; chipped, faded, peeling or cracked paint; trash, debris, litter, graffiti and other forms of vandalism; cracks, dents, blemishes and discolorations; visible rust or corrosion on any unpainted metal areas. Any damage from any cause shall be repaired by the Permittee within 30 days of notice. Weathered, faded, or missing parts/materials used to disguise/camouflage the facility shall be maintained and/or replaced by the Permittee within 30 days of notice. All graffiti on facilities must be removed at the sole expense of the Permittee within 72 hours after notification from the City. All other forms of vandalism and damage shall be removed and/or repaired within 72 hours of notice by the City.
18. To ensure compliance with the conditions of the approval, a final inspection is required from the Building and Planning Divisions upon completion of construction and all improvements. The Permittee shall contact the City to schedule an appointment for such inspections. Further, after the initial inspection, the City or its designee may enter onto the facility area to inspect the facility upon 24 hours prior notice to the Permittee. The Permittee shall cooperate with all inspections and may be present for any inspection of its facility by the City. The City reserves the right to enter or direct its designee to enter the facility and support, repair, disable, or remove any elements of the facility in emergencies or when the facility threatens imminent harm to persons or property. The City shall make an effort to contact the Permittee prior to disabling or removing any facility elements, but in any case shall notify Permittee within 24 hours of doing so.
19. The Permittee shall at all times maintain accurate contact information for all parties responsible for the facility, which shall include a phone number, street mailing address, and email address for at least one natural person. The FCC Antenna Structure Registration site number, City permit number, primary leaseholder's, and facility manager's contact information shall be kept current and prominently displayed on the facility where it can be easily viewed from ground level.
20. Testing of any equipment shall take place on weekdays only, and only between the hours of 8:30 a.m. and 4:30 p.m., except that testing is prohibited on holidays that fall on a weekday. In addition, testing is prohibited on weekend days.
21. No possessory interest is created by this permit. However, to the extent that a possessory interest is deemed created by a governmental entity with taxation authority, Permittee acknowledges that City has given to Permittee notice pursuant to California Revenue and Taxation Code Section 107.6 that the use or occupancy of any public property pursuant to this permit may create a possessory interest which may be subject to the payment of property taxes levied upon such interest. Permittee shall be solely liable for, and shall pay and discharge prior to delinquency, any and all possessory interact taxes or other taxes, fees, and assessments levied against Permittee's right to possession, occupancy, or use of any public property pursuant to any right of possession, occupancy, or use created by this permit.
22. The Permittee must maintain complete and accurate copies of all permits and other regulatory approvals issued in connection with the facility, which includes without limitation this approval, the approved plans and photo simulations incorporated into this approval, all conditions associated with this approval and any ministerial permits or approvals issued in connection with this approval. In the event that the

Permittee does not maintain such records as required in this condition or fails to produce true and complete copies of such records within a reasonable time after a written request from the City, any ambiguities or uncertainties that would be resolved through an inspection of the missing records will be construed against the Permittee.

23. The Permittee shall agree to defend, at its sole expense, any action brought against the City, its agents, officers, or employees because of the issuance of this approval; or in the alternative, to relinquish such approval. The Permittee shall reimburse the City, its agents, officers, or employees for any court costs and attorney fees that the City, its agents, officers, or employees may be required by a court to pay as a result of such action. The City may, at its sole discretion, participate at its own expense in the defense of any such action, but such participation shall not relieve Permittee of its obligations under this condition.
24. In the event that the City determines that it is necessary to take legal action to enforce any of these conditions, or to revoke this permit, and such legal action is taken, the Permittee shall be required to pay any and all costs of such legal action, including reasonable attorney's fees, incurred by the City, even if the matter is not prosecuted to a final judgment or is amicably resolved, unless the City should otherwise agree with Permittee to waive said fees or any part thereof. The foregoing shall not apply if the Permittee prevails in the enforcement proceeding.

#### **11.73.170 – Eligible facilities requests.**

- A. Eligible Facilities Requests. In addition to the conditions provided in Section 11.73.150 of this Chapter (with the exception of 11.73.150(b) which shall not apply to eligible facilities requests) and any supplemental conditions imposed by the Director, all permits for eligible facilities requests granted pursuant to this Chapter shall be subject to the following additional conditions, unless modified by the approving authority:
  1. Permit subject to conditions of underlying permit. Any permit or wireless telecommunications facility authorization granted in response to an application qualifying as an eligible facilities request shall be subject to the terms and conditions of the underlying permit;
  2. No permit term extension. The City's grant or grant by operation of law of an eligible facilities request permit constitutes a federally-mandated modification to the underlying permit or approval for the subject tower or base station. Notwithstanding any permit duration established in another permit condition, the City's grant or grant by operation of law of a eligible facilities request permit will not extend the permit term for the underlying permit or any other underlying regulatory approval, and its term shall be coterminous with the underlying permit or other regulatory approval for the subject tower or base station.
  3. No waiver of standing. The City's grant or grant by operation of law of an eligible facilities request does not waive, and shall not be construed to waive, any standing by the City to challenge Section 6409(a) of the
  4. Spectrum Act, any FCC rules that interpret Section 6409(a) of the Spectrum Act, or any modification to Section 6409(a) of the Spectrum Act.

**SECTION III.** Title 11, Division IV of the Code shall be amended to add new Chapter 11.77, as follows:

#### **Chapter 11.77 – ADMINISTRATIVE PERMIT**

##### **11.77.010 – Purpose.**

This chapter is intended to allow for administrative review and decisions for: (1) specific projects involving less complex installations, smaller installations, or less new construction; or (2) applications for which there is no discretion.



#### **11.77.020 – Scope.**

The following permit and application types shall undergo an administrative review pursuant to this Chapter rather than requiring a Conditional Use Permit pursuant to Chapter 11.78:

- A. Applications to install or modify wireless facilities on public or private property; except for proposed installations requiring new support structures and,
- B. At the Director's discretion, certain collocations based on their complexity.

#### **11.77.030 – Review authority.**

The Director of Community Development (Director), or its designee, is responsible for administering this Chapter. As part of the administration of this Chapter, the Director may:

- A. Interpret the provisions of this Chapter and related chapters in Title XI – Zoning and Development;
- B. Develop forms and procedures for submission of applications consistent with this Chapter;
- C. Determine the amount of and collect, as a condition of the completeness of any application, any fee established by this Chapter;
- D. Establish deadlines for submission of information related to an application, and extend or shorten deadlines where appropriate and consistent with state and federal laws and regulations;
- E. Issue any notices of incompleteness, requests for information, or conduct or commission such studies as may be required to determine whether a permit should be issued;
- F. Require, as part of, and as a condition of completeness of any application, notice to members of the public that may be affected by proposed work or project;
- G. Determine whether to approve, approve subject to conditions, or deny an application; and
- H. Take such other steps as may be required to timely act upon applications, including issuing written decisions and entering into agreements to mutually extend the time for action on an application.

#### **11.77.040 – Appeal.**

- A. Any person adversely affected by the decision of the Director pursuant to this Chapter may appeal the Director's decision to the City Manager, who may decide the issues de novo, and whose written decision will be the final decision of the City.
- B. Where the Director grants an application based on a finding that denial would result in a prohibition or effective prohibition under applicable federal law, the decision shall be automatically appealed to the City Manager.
- C. All appeals must be filed within two (2) business days of the issuance of the written decision of the Director, unless the Director extends the time therefore. An extension may not be granted where extension would result in approval of the application by operation of law.

#### **11.77.050 – Applications.**

- A. Submissions. Applicant shall submit a paper copy and an electronic copy of any application, amendments, or supplements to an application, or responses to notices of incompleteness and requests for information regarding an application to: Director of Community Development, at City Hall.
- B. Content. An applicant shall submit an application on the form approved by the Director, which may be updated from time-to-time. If no form has been approved, applications must contain all required fee(s), documents, information, and any other materials necessary to allow the Director to make required findings and ensure that the proposed project will comply with applicable federal and state law, the City Code, and will not endanger the public health, safety, or welfare (including proof of compliance with the

FCC's radio frequency emissions standards) and must specify whether the applicant believes state or federal law requires action on the application within a specified time period. If applicant contends that denial of the application would prohibit or effectively prohibit the provision of service in violation of federal law, or otherwise violate applicable law, the application must provide all information on which the applicant relies on in support of that claim.

- C. Fees. Application fee(s) shall be required to be submitted with any application for an administrative permit. The City Council is hereby authorized to determine, or cause to be determined, the amount, type, and other terms of such fee(s) from time to time by means of resolution. Notwithstanding the foregoing, no application fee shall be refundable, in whole or in part, to an applicant for an administrative permit unless paid as a refundable deposit.
- D. Waivers. Requests for waivers from any application requirement shall be made in writing to the Director or his or her designee. The Director may grant or deny a request for a waiver pursuant to this subsection. The Director may grant a request for waiver if it is demonstrated that, notwithstanding the issuance of a waiver, the City will be provided all information necessary to understand the nature of the project or other activity to be conducted pursuant to the permit sought. All waivers approved pursuant to this subsection shall be (1) granted only on a case- by-case basis, and (2) narrowly-tailored to minimize deviation from the application requirements.

**11.77.060 – Findings, decisions, and consultants.**

- A. The findings required for approval can be found in the respective sections of the Code for each application or project type.
- B. Decisions. Decisions on an application shall be in writing and include the reasons for the decision.
- C. Independent Consultants. The Director or City Manager, as the case may be, is authorized, in its discretion, to select and retain independent consultant(s) with expertise in relevant fields in connection with the review of any application under this Chapter. Such independent consultant review may be retained on any issue that involves specialized or expert knowledge in connection with an application.

**11.77.070- Conditions of approval.**

- A. The Director or City Manager, as the case may be, may impose conditions of approval on all permits granted pursuant to this Chapter.

**11.77.080 – Breach; termination of permit.**

- A. An administrative permit may be revoked for failure to comply with the conditions of the permit and applicable law. Upon revocation, any construction or installations made under the permit must be removed; provided that removal of a support structure owned by a City, a utility, or another entity authorized to maintain the support structure need not be removed, but must be restored to its prior condition, except as specifically permitted by the City. All costs incurred by the City in connection with the revocation and removal shall be paid by entities who own or control any part of the project or installation.
- B. For projects or installations without a permit. Any work or installations performed without an administrative permit (except for those exempted by this Chapter or respective chapters for a specific project type) must be removed; provided that removal of support structure owned by City, a utility, or another entity authorized to maintain a support structure in the right-of-way need not be removed, but must be restored to its prior condition, except as specifically permitted by the City. All costs incurred by the City in connection with the revocation and removal shall be paid by entities who own or control any part of the project or installation.
- C. Municipal Infraction. Any violation of this Chapter will be subject to the penalties set forth in Chapter 1.12 of the City Code.

**SECTION IV.** Section 11.46.010 of the Code shall be amended to add the following:

This Chapter 11.46 does not apply to wireless telecommunications facilities that are subject to the regulations in Chapter 11.73 of the Code.

**SECTION V.** Environmental Review. This Ordinance is not a project within the meaning of Section 15378 of the State of California Environmental Quality Act ("CEQA") Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly. The Ordinance establishes an application process for permits to install or modify wireless telecommunications facilities on new and existing structures on public and private property in the City of Montclair. The Ordinance does not authorize any specific development or installation on any specific piece of property within the City's boundaries. Moreover, when and if an application for installation is submitted, the City will – at that time – conduct preliminary review of the application in accordance with CEQA.

Alternatively, even if the Ordinance is a "project" within the meaning of State CEQA Guidelines section 15378, the Ordinance is exempt from CEQA on multiple grounds. First, the Ordinance is exempt from CEQA because the City Council's adoption of the Ordinance is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment (State CEQA Guidelines, §15061(b)(3).) That is, approval of the Ordinance will not result in the actual installation of any facilities in the City. In order to install a facility in accordance with this Ordinance, the applicant would have to submit an application for installation of the wireless facility. At that time, the City will have specific and definite information regarding the facility to review in accordance with CEQA. And, in fact, the City will conduct preliminary review under CEQA at that time.

Moreover, in the event that the Ordinance is interpreted so as to permit installation of wireless facilities on a particular site, the installation would be exempt from CEQA review in accordance with either: (1) State CEQA Guidelines section 15302 (replacement or reconstruction) because the wireless telecommunications facility installations regulated by the Ordinance involve the replacement or modification of existing structures and facilities on private and public property in the City of Montclair where the replacement support structure will be located on the same site as the structure that it is replacing and will serve substantially the same purpose and capacity as the structure that it is replacing; and/or (2) State CEQA Guidelines section 15303 (new construction or conversion of small structures) because the wireless telecommunications facility installations regulated by the Ordinance involve new structures and/or the replacement or modification of existing structures and consist of: (a) the construction and siting of limited numbers of wireless telecommunications facilities; (b) the installation of associated equipment in ground-mounted cabinets or enclosures not exceeding 10,000 square feet in floor area on sites zoned for such use, not involving the use of significant amounts of hazardous substances; and (3) limited utility extensions to serve such facilities on public and private property where all necessary public services and facilities are available and the surrounding area is not environmentally sensitive. None of the exceptions to the Class 2 or 3 Categorical Exemptions found in State CEQA Guidelines section 15300.2 apply because the Ordinance does not present any unusual circumstances; would not damage scenic resources, including any resources in the area of a Scenic Highway; would not be utilized on a hazardous waste site; and would not impact historic resources of any kind. The City Council, therefore, directs that a Notice of Exemption be filed with the San Bernardino County Clerk within five working days of the passage and adoption of the Ordinance.

**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. Myrick, City Clerk of the City of Montclair, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 21-996 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. Myrick  
City Clerk

FIRST  
READING  
08/16/2021



# Design Standards for Wireless Telecommunications Facilities on Public and Private Property

Date Approved:

## SECTION A: PURPOSE

The purpose of these Standards is to establish general aesthetic requirements and standards that all wireless telecommunications facilities installed within the public and private property must meet. The intent of these requirements and standards complements the criteria established in Chapter 11.73 of the Montclair Municipal Code. Be informed that small cell facilities not installed within the public ROW are subject to the provisions of the City's Wireless Telecommunications Ordinance in Chapter 11.73 of the Montclair Municipal Code. These Standards are subject to amendment from time to time.

## SECTION B: LOCATION CRITERIA

The City recognizes that the siting of wireless telecommunications facilities is largely dictated by wireless providers in response to customers' needs, terrain, and radio frequency modeling results. However, the City seeks to stealth and ensure that any proposed wireless infrastructure is well integrated to its surroundings. Any wireless telecommunications facility will be review for context in design, scale, color, and materials. To that end, the City recommends the following criteria for placement:

1. The City encourages network providers to co-locate new equipment onto existing infrastructure wherever technically feasible. The City recognizes each carrier owns rights to a spectrum of operating frequency and requires some separation with competing antennas to avoid signal interference.
2. Any wireless telecommunications facilities and/or equipment shall be located such that they do not:
  - Impede, obstruct, or hinder any neighboring properties,
  - Impact pedestrian or vehicular travel;
  - Affect public safety;
  - Obstruct the legal access to or use of the public ROW;
  - Violate any federal or state laws;
  - Violate or conflict with public ROW design standards, specifications, or design district requirements;
  - Violate Americans with Disabilities Act (ADA) requirements; and/or
  - Create a risk to public health, safety, or welfare.
3. In any Specific Plan Area (i.e., North Montclair Downtown Specific Plan, Arrow Highway Mixed- Use District), or a neighborhood with unique infrastructure assemblies, any wireless telecommunications facilities may only be allowed if the applicant can demonstrate that the proposed installation can effectively match and complement the existing aesthetics in terms of the design, colors, height, materials, and size. Unique assemblies may include, without limitation, decorative brickwork, trim, architectural luminaires, mounting heights, and pole colors.

## SECTION C: CONSIDERATION OF ALTERNATIVE LOCATIONS

The Applicant must identify alternative locations in the vicinity of the proposed wireless telecommunications facility and explain why the proposed location was selected. The City may propose an alternative location to the one proposed in the application if that the alternative location:

1. Is substantially similar in physical characteristics to the proposed structure;
2. The visual impacts that may be suffered by the public are no greater than the impact if installed on the proposed structure; and
3. The alternative infrastructure can accommodate the proposed wireless telecommunications facility without creating any risk to the public health or safety.
4. Allows for an installation that is technically feasible.

## SECTION D: DESIGN CRITERIA

The general intent for these standards is to preserve the character of the City's neighborhoods and corridors by encouraging installations that blend into the existing surroundings and/or streetscape as much as possible. To achieve this goal the City has developed the following general criteria for the applicant to work towards achieving with their respective requests for approval.

Applicants are strongly encouraged to consult with City staff early on in the process prior to formally submitting an application.

### Standard Design Elements

Applicants shall take into consideration the following criteria:

- Integration and Concealment

All wireless telecommunications facilities and modifications should be well integrated and concealed to a level that all components are hidden from view. It is a function of the appearance, placement, context, and level of visibility of a wireless telecommunications facility. Every aspect of a site is considered an element of concealment including (but not limited to) the dimensions, build and scale, offset, azimuth, height, location, color, tree shape, branch count, materials and texture. Future modifications to a site must not defeat concealment.

- Balance

All visible elements should have symmetry in all visible dimensions. Antennas and concealment elements should not dominate the element they are placed on. For

example, visible antennas should be equal in length, width, depth, and should be evenly spaced on their support structure. Visible equipment should be grouped in like size and should also be evenly spaced on the support structure in a way that compliments the symmetry of antennas. Visible concealment elements should observe the bilateral symmetry of faux architectural elements or screen boxes, such as adding cupolas or faux chimneys to both sides of a façade instead of one, or raising parapets at two corners of a façade instead of one, etc. Antennas and shrouds should not dominate the element they are placed on.

- Context

Take note of the surrounding conditions such as character, topography of the area, existing materials and construction techniques to determine the best design solutions. For example, a faux tree may be appropriate if there are other nearby mature trees of similar heights, a cupola or façade-mounted antennas for certain style architectures; a faux chimney may look good but not too many; and a rooftop box may look appropriate on a three-story industrial building, but not on a one-story shopping center.

The following development standards shall be applicable to all wireless telecommunications facilities on public and private property, to the extent allowed by applicable law:

A. Minimal Visual Impact. All wireless telecommunications facilities shall utilize all practical means and designs to minimize the visual impact of these facilities to surrounding area in which the facility is located, including, but not limited to, the following:

1. Applicants are encouraged to utilize the smallest facility components and support structure necessary to meet the applicant's defined service objectives. Collocations on existing structures are preferred over the use of new freestanding structures. All new facilities and structures, including collocations, must be "stealth," as defined in Section 11.73.050.
2. All wireless telecommunications facilities shall be stealth, or designed to employ screening and/or camouflage design techniques to ensure that the facility is as visually compatible and/or inconspicuous as feasibly possible. Proposed telecommunication facilities shall consider the surrounding context in determining the type of facility, its design, scale, colors, and materials.
3. Artificial "trees." Carrier has the option of using a stealth monotree design when its design fits into the visual context of the site and surrounding vistas

If an artificial tree is proposed, the design shall meet the following requirements:

- a. The selection of an artificial tree style shall be compatible with existing



natural trees in the immediate areas of the installation. If no natural trees exist within the immediate area, the applicant shall create a landscape setting that integrates the artificial tree with added species of a similar variety. In these cases, the City reserves the right to require the installation of live trees having a height equivalent to 75 percent of the height of the artificial "tree."

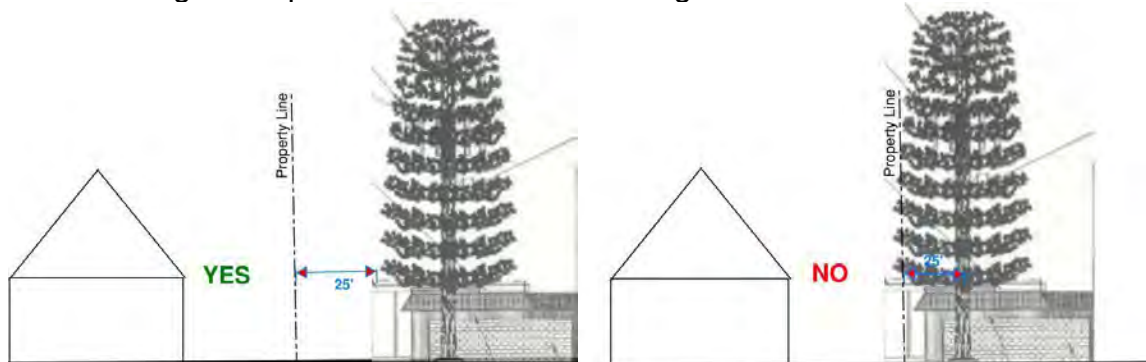
- b. Branching patterns for "monopine" or a similar tree style shall be at least 12 feet above finished grade or higher depending on the design of the monotree and immediate visual context of the site, subject to approval by the Director of Community Development. Further, antennas and/or array of antennas shall not extend beyond in any direction from the end of branches or fronds.
  - c. Antennas, support arms, foot pegs, shrouds and other hardware elements shall be painted, coated, and/or covered in a manner to blend in with colors and finishes of the artificial tree.
  - d. Ample branch pattern and foliage shall be provided to conceal antennas from view and achieve the appearance of a natural tree or palm to the greatest extent possible, subject to the approval of the Community Development Director. If deemed necessary by the Director, an additional 5 to 10 feet in height may be granted to achieve a more natural appearing tree. The additional height shall not be utilized for increasing the height of any antenna or antenna array.
  - e. Faux bark cladding shall be provided from the ground to five feet beyond where the faux branches begin; above the faux bark shall be flat non-reflective paint to match the bark.
  - f. No limit on the number of antenna panels for a wireless telecommunication tower or structure provided they fully integrate and/or concealed within a stealth design facility approved by the Director of Community Development.
4. Building Mounted Facilities. Building mounted wireless telecommunication facilities are preferred wherever feasible. Such installations shall be integrated architecturally with the existing building or structure and may be integrated into new or existing architectural elements such as, but not limited to, cupolas, chimneys, towers, steeples, attic spaces, behind parapet walls, or on the side wall of a building not visible to the street or adjacent properties. All building mounted installations are subject to the review of Community Development Director and may be approved upon the finding that subject proposal is exceptional in design and architecturally appropriate with the existing building or structure to which the facility is affixed.

5. Outdoor ground-mounted equipment associated with support structures and base stations shall be avoided whenever feasible. All ground-mounted equipment must be stealth. The wireless facility shall be concealed within an existing structure, behind a decorative solid masonry wall enclosure, or other means of concealment consistent with the applicable standards of the Section as approved by the Director of Community Development.
6. Cables and Wiring. All cables and wiring must be within the structure, or if not feasible, within conduit on the exterior of the structure. The conduit must be a color that matches the pole and of the smallest size technically feasible.
7. Electric. Applicants must use flat rate electric metering, if available. In any case where a meter would be ground-mounted or pole-mounted and cannot be completely concealed within the building or proposed structure, applicant shall use the smallest form factor metering device available.
8. No logos, decals, or advertising of any type may be affixed to any element of the wireless telecommunications facility or equipment or pole, except as required by federal or state law. However, the City shall require a decal or placard measuring no more than 4" x 6" in size, which lists the facility owner's name and emergency contact phone number. The placard shall be placed in an inconspicuous manner area on an element of the equipment.
9. The use of any cooling system associated with the wireless telecommunications facility shall comply with all applicable local regulations and federal and state laws.

B. Height.

1. For Building Mounted facilities on an existing, legally permitted, building or structure, the maximum height shall not exceed the applicable height limit for structures in the applicable zone. Any increase in height of an existing structure to accommodate a building mounted facility shall be designed to be in scale and proportion to the existing building or structure as originally configured.
2. For a freestanding wireless facility, the maximum height shall be as low as possible to meet the applicant's defined service objectives and shall be limited to 60 feet in overall height as measured from the immediate finished grade of the facility to the highest finished point of the structure/facility. The Planning Commission may consider an exception for up to an additional 15-foot increase in height provided that the applicant can demonstrate the technical necessity of such extension and provided that the performance and design standards of this chapter are met. The applicant shall pay for the City to hire an independent qualified radio frequency engineer to substantiate the applicant's claim of technical necessity.

3. No rooftop-mounted facilities shall be allowed, unless a proposed facility is designed to architecturally integrate into the existing building or structure and the antennas and support equipment are completely concealed. The use of a wood or metal screen panels are not considered to be sufficient to meet the above requirement. Equipment shall not be placed on a rooftop where the rooftop is less than 20 feet above ground level.
- C. Setbacks. Freestanding facilities, guy wires, accessory buildings and other ancillary improvements associated with the facility shall comply with the minimum setbacks of the underlying zoning district or Specific Plan, as further clarified below:
1. No freestanding tower or ground mounted support equipment and enclosures shall be permitted in the front and/or street side setback areas.
  2. In no case shall a freestanding tower, or any part thereof, be located within 25 feet of any property line of an abutting property with a residential use, including multi-family developments. Setbacks shall be measured from the most projected element (i.e., branches) to the nearest property line. At no point, shall any elements of the wireless telecommunications facility (fronds, antennas, faux branches, etc.) encroach into any neighboring properties.
  3. In addition to the aforesaid provisions, a freestanding telecommunications tower or structure allowed in the R-1 Zone shall be setback from the nearest property line(s) of a residential property the lesser distance as determined by the one of the two following methods:
    - a. A distance equal to 120 percent of the permitted height of the freestanding antenna tower or structure; or
    - b. The distance identified as the “fall zone,” an area within the prescribed radius from the base of a wireless telecommunications facility in which there is a potential hazard from falling debris, collapsing material or the collapse of the tower itself, as calculated and stamped by a California licensed structural engineer. In no case, shall the freestanding telecommunications tower or structure be located closer than 25 feet from any adjacent property lines. To clarify, below is an example of a diagram to provide visual understanding of setback buffers:



- D. Separation. The following separation requirements shall apply to all wireless telecommunications facilities, provided, however, that the Community Development Director or Planning Commission, as the case may be, may consider a reduction in the minimum separation requirement if: (1) the goals of this Chapter would be better served by granting such approval; or (2) doing so would prevent a violation of law.

Type of Facility	Minimum Required Separation
Freestanding → Freestanding	750 feet
Freestanding → Facade/roof-mounted	500 feet
Facade/roof-mounted → Facade/roof-mounted	500 feet

- E. Traffic Safety. All facilities shall be designed and located in such a manner as to avoid adverse impacts on traffic safety.
- F. Parking. Placement of a wireless telecommunications facility in a parking lot or parking structure may not cause a reduction in the required parking spaces to less than the number required for the existing use(s) on the subject property.
- G. General Orders. All installations shall fully comply with the California Public Utilities Commission (“CPUC”) General Orders, including, but not limited to General Order 95 (“GO 95”). None of the design standards are meant to conflict with or cause a violation of GO 95, including, but not limited to, its standards for a safe installation on a utility pole. Accordingly, the standards can be adjusted at the City’s discretion to ensure compliance with CPUC rules on safety.
- H. Landscaping. In addition to any landscaping used for concealment or screening purposes, the applicant shall install additional landscaping to replace any existing landscaping displaced during construction or installation of the applicant’s facility, including but not limited to add, fix, and/or replace any permanent irrigation system. Landscaping should be used to offset the overall visual impacts of the wireless telecommunications facilities. Existing and proposed landscape materials and design techniques should be utilized to integrate and soften the look of the facility with the surrounding environment to improve views from neighboring properties and the public right-of-way. Existing, mature trees should be retained when feasible. Any trees proposed for removal should be replaced in-kind or with sufficient replacements. All landscaping elements shall conform with MMC’s Chapter 11.60 Water-Efficient Landscaping and Conservation Sections.
  1. The applicant’s landscaping plan shall be subject to the City’s review and approval but shall, at a minimum, match the existing landscaping and foliage surrounding the installation site.
  2. All landscaping and permanent irrigation plans shall include a long-term maintenance and irrigation schedule.

3. All landscaping shall be maintained by owner of the facility in a neat, orderly, disease- and weed- free condition at all times.

I. Fencing/Gates/Ladders.

1. Gates should be constructed of similar or complimentary materials as the enclosure but should maintain opaque qualities. Locate gates away from public areas if possible.
2. Fences should be constructed of decorative materials that compliment and blend with the surroundings. Chain-link and barbed wire fencing are not permitted. Anti-graffiti finishes should be applied to all solid fences, walls, and gates. Employ design techniques to reduce the opportunities for graffiti.
3. Caged access ladders should be located away from street views and placed in an area of the building where visibility is minimized.

SECTION E: EXAMPLES ON TYPES OF INSTALLATIONS

**Side-Mounted Facilities**



Side mounted facilities shall blend with existing architectural features of the building or structure. Architectural features must be developed in order to create a balanced appearance.

**Roof-Mounted Facilities**



Roof-mounted facilities shall be screened from view by a treatment that compliments the architecture of the building or structure, or be designed to be visually integrated with the host structure.

## Alternative Antenna Support Structures



Alternative antenna support structures shall be used in lieu of monopoles where the opportunity exists or where visibility impacts are a concern. Facility antennas shall be integrated into existing or new developed facilities that are functional for other purposes to the extent practical. Whenever possible, antennas shall be concealed within features such as clock towers or similar structures that are compatible with the surrounding land uses.

## Monopine / Monopalm



Monopine or monopalm design facilities shall be compatible with existing natural trees in the immediate areas of the installations. Any reduced number of fronds defeats concealment and is not allowed. Any increase in size or number of any visible element (antenna, equipment, or foliage) is considered defeating concealment and is not allowed if it cannot be stealth. For any modifications, if fronds are replaced, they should all match each other and should meet or exceed the level of concealment to the satisfaction of the Community Development Director. If to faux palms, these components should be concealed within the growth pod, hula skirt, or in the equipment enclosure to the satisfaction of the Community Development Director.

# ATTACHMENT 1

Date: June 1, 2021  
 To: Michael Diaz  
 City of Montclair CA  
 From: James W. Grice  
 Email: james.grice@bclplaw.com  
 Direct: +1 816 374 3245  
 Re: Bethany Baptist—revisions to siting ordinance

We and Vertical Bridge Development LLC appreciate the city’s cooperation and consideration of Vertical Bridge’s needs and concerns. We have carefully reviewed the ordinance’s text from a developer’s perspective and would like to request the amendments provided below:

Citation	Prior Language	Amended Language	Reason for Alteration
11.73.010	A primary intent is to ensure that wireless networks are implemented with the fewest possible facilities, in the least visible manner and with the least disruptive impact on the City’s neighborhoods.	A primary intent is to ensure that wireless networks are implemented in the least visible manner and with the least disruptive impact on the City’s neighborhoods.	The FCC prevents dictation of a cell <b>provider’s number and</b> placement of facilities. This language may lead to conflict with that pre-empted space if utilized improperly. See 47 C.F.R. Section 24.103.
11.73.110(B)(3)	The use of an artificial monopalm or monopine design facility may be permitted in specific physical settings, but are not encouraged if other alternative stealthing methods are available.	The use of an artificial monopalm, design facility may be permitted in specific physical settings, but is not encouraged if other alternative stealthing methods, including other monotree designs, are available.	The changes just clarify that other tree designs are acceptable and that only monopalm designs are disfavored.

11.73.110(B)(3)(b)	Branching patterns for <b>"monopine"</b> or similar shall begin a minimum of 12 feet from the base of the structure.	Branching patterns for <b>"monopine"</b> or similar shall begin a minimum of 18 feet from the base of the structure.	It is much easier to reach (and climb) a tower with a 12-foot ladder than with an 18-foot ladder. For added safety and security, the bottom branches should begin at least 18 feet from the base. We will provide images of tree designs with branches beginning at his height.
11.73.110(B)(3)(f)	A maximum of nine (9) antenna panels may be installed per carrier permitted to collocate on any type of freestanding wireless telecommunication tower or structure.	Recommend deletion.	Most providers require more than 9 antenna panels. This requirement will often not be feasible. We will provide images of towers with more than 9 panels. Because this requirement is often not feasible, it could have the effect of prohibiting cell service in violation of 47 USC section 332(c)(7)(B)
11.73.110(C)(2)	For a freestanding wireless facility the maximum height shall be as low as possible to meet the <b>applicant's defined</b> service objectives and shall not exceed 55 feet.	For a freestanding wireless facility the maximum height shall be as low as possible to meet the <b>applicant's defined</b> service objectives and shall not exceed 60 feet.	Even though the landscape is relatively flat in Montclair, an additional five feet will better permit co-locators on the tower to provide service to the surrounding area and to rise above the surrounding trees and buildings.



<p>11.73.110(D)(1)</p>	<p>No freestanding tower or ground mounted support equipment and enclosures shall be permitted in the front and/or street side setback areas.</p>	<p>Recommend deletion.</p>	<p>On many properties, the only feasible location for a tower is in the front or side street setback areas. Assuming all camouflaging and safety requirements are satisfied, there will be no negative impact from permitting a tower in these areas of a property.</p>
<p>11.73.110(D)(2)</p>	<p>In no case shall a freestanding tower, or any part thereof, be located within 25 feet of any property line of an abutting property with a residential use, including multifamily developments.</p>	<p>In no case shall the base of the monopole tower be located within 25 feet of any property line of an abutting property with a residential use, including multifamily developments.</p>	<p>The change simply clarifies where the setback should be measured from on the tower. Typically, this measurement is conducted from the base of the tower. The concern with the prior language would be that the setback might be measured from the end of the longest branch of a monotree or the ground installations associated with the tower.</p>

<p>11.73.110(N)</p>	<p>Ground-Mounted Facilities. Outdoor ground-mounted equipment associated with support structures and base stations shall be avoided whenever feasible. In locations visible or accessible to the public, applicants shall conceal outdoor ground-mounted equipment, including ancillary power generation <b>equipment...</b></p>	<p>Ground-Mounted Facilities. In locations visible or accessible to the public, applicants shall conceal outdoor ground-mounted equipment, including ancillary power generation <b>equipment...</b></p>	<p>Most towers utilize outdoor ground-mounted equipment. It will never be feasible to avoid outdoor ground-mounted equipment.</p>
<p>11.73.150(1)(2)</p>	<p>The design and placement of the wireless telecommunications facility complies with all applicable design and location standards, and will not adversely impact the use of the property, buildings and structures located on the property, or the surrounding area or neighborhood;</p>	<p>The design and placement of the wireless telecommunications facility complies with all applicable design and location standards, and will not adversely impact the surrounding area or neighborhood;</p>	<p>Typically, the property owner protects the use of the property, buildings, and structures located on the property through private negotiations of leases.</p>

Again, we appreciate your willingness to take our input into consideration and for all of your assistance throughout this process. We look forward to being a good corporate citizen of Montclair. As always, we are happy to schedule a call to discuss any of the above suggestions (or any other questions or concerns you may have).

## ATTACHMENT 2

### STAFF'S RESPONSE (IN GRAY COLUMN) TO BCLP'S SUGGESTIONS DATED JUNE 1, 2021

Section	Prior Language	Suggested Amended Language	Reason for Alternative	Staff Responses
11.73.010	A primary intent is to ensure that wireless networks are implemented with the fewest possible facilities, in the least visible manner and with the least disruptive impact on the City's neighborhoods.	<del>A primary intent is to ensure that wireless networks are implemented in the least visible manner and with the least disruptive impact on the City's neighborhoods.</del>	The FCC prevents dictation of a cell provider's number and placement of facilities. This language may lead to conflict with that pre-empted space if utilized improperly. See 47 C.F.R. Section 24.103.	<b>Staff made no changes to draft Ordinance</b>
11.73.110 (B)(3)	<del>The use of an artificial monopalm or monopine design facility may be permitted in specific physical settings, but are not encouraged if other alternative stealthing methods are available.</del>	<del>The use of an artificial monopalm, design facility may be permitted in specific physical settings, but is not encouraged if other alternative stealthing methods, including other monotree designs, are available.</del>	The changes just clarify that other tree designs are acceptable and that only monopalm designs are disfavored.	<b>Staff developed alternative language</b>  <i>Carrier has the option of using a stealth monotree design when its design fits into the visual context of the site and surrounding vistas.</i>
11.73.110 (B)(3)(b)	<del>Branching patterns for "monopine" or similar shall begin a minimum of 12 feet from the base of the structure.</del>	<del>Branching patterns for "monopine" or similar shall begin a minimum of 18 feet from the base of the structure.</del>	It is much easier to reach (and climb) a tower with a 12-foot ladder than with an 18-foot ladder. For added safety and security, the bottom branches should begin at least 18 feet from the base. We will provide images of tree designs with branches beginning at his height.	<b>Staff modified language</b>  Branching patterns for "monopine" or a similar tree style shall be at least <b>12 feet above finished grade or higher depending on the design of the monotree and immediate visual context of the site, subject to approval by the Director of Community Development.</b>

Section	Prior Language	Suggested Amended Language	Reason for Alternative	Staff Responses
11.73.110 (B)(3)(f)	A maximum of nine (9) antenna panels may be installed per carrier permitted to collocate on any type of freestanding wireless telecommunication tower or structure.	Recommend deletion.	Most providers require more than 9 antenna panels. This requirement will often not be feasible. We will provide images of towers with more than 9 panels. Because this requirement is often not feasible, it could have the effect of prohibiting cell service in violation of 47 USC section 332(c)(7)(B)	<p><b>Staff developed alternative language</b></p> <p><i>No limit on the number of antenna panels for a wireless telecommunication tower or structure provided they fully integrated and/or concealed within a stealth design facility approved by the Director of Community Development.</i></p>
11.73.110 (C)(2)	For a freestanding wireless facility the maximum height shall be as low as possible to meet the applicant's defined service objectives and shall not exceed 55 feet.	For a freestanding wireless facility the maximum height shall be as low as possible to meet the applicant's defined service objectives and shall not exceed 60 feet.	Even though the landscape is relatively flat in Montclair, an additional five feet will better permit co-locators on the tower to provide service to the surrounding area and to rise above the surrounding trees and buildings.	<p><b>Staff developed alternative language</b></p> <p><i>For a freestanding wireless facility the maximum height shall be as low as possible to meet the applicant's defined service objectives and shall be limited to 60 feet in overall height as measured from the immediate finished grade of the facility to the highest finished point of the structure/facility.</i></p>
11.73.110 (D)(1)	No freestanding tower or ground mounted support equipment and enclosures shall be permitted in the front and/or street side setback areas.	Recommend deletion.	On many properties, the only feasible location for a tower is in the front or side street setback areas. Assuming all camouflaging and safety requirements are satisfied, there will be no negative impact from permitting a tower in these areas of a property.	<p><b>Staff made no changes to draft Ordinance</b></p>

Section	Prior Language	Suggested Amended Language	Reason for Alternative	Staff Responses
11.73.110 (D)(2)	In no case shall a freestanding tower, or any part thereof, be located within 25 feet of any property line of an abutting property with a residential use, including multifamily developments.	<del>In no case shall the base of the monopole tower be located within 25 feet of any property line of an abutting property with a residential use, including multifamily developments.</del>	The change simply clarifies where the setback should be measured from on the tower. Typically, this measurement is conducted from the base of the tower. The concern with the prior language would be that the setback might be measured from the end of the longest branch of a monotree or the ground installations associated with the tower.	<b>Staff made no changes to draft Ordinance</b>
11.73.110 (N)	<del>Ground Mounted Facilities. Outdoor ground-mounted equipment associated with support structures and base stations shall be avoided whenever feasible. In locations visible or accessible to the public, applicants shall conceal outdoor ground-mounted equipment, including ancillary power generation equipment...</del>	<del>Ground Mounted Facilities. In locations visible or accessible to the public, applicants shall conceal outdoor ground-mounted equipment, including ancillary power generation equipment...</del>	Most towers utilize outdoor ground-mounted equipment. It will never be feasible to avoid outdoor ground-mounted equipment.	<b>Staff developed alternative language</b>  <i><b>Outdoor ground-mounted equipment associated with support structures and base stations shall be avoided whenever feasible. All ground-mounted equipment must be stealth. The wireless facility shall be concealed within an existing structure, behind a decorative solid masonry wall enclosure, or other means of concealment consistent with the applicable standards of the Section as approved by the Director of Community Development.</b></i>

Section	Prior Language	Suggested Amended Language	Reason for Alternative	Staff Responses
11.73.150 (1)(2)	The design and placement of the wireless telecommunications facility complies with all applicable design and location standards, and will not adversely impact the use of the property, buildings and structures located on the property, or the surrounding area or neighborhood;	<del>The design and placement of the wireless telecommunications facility complies with all applicable design and location standards, and will not adversely impact the surrounding area or neighborhood;</del>	Typically, the property owner protects the use of The property, buildings, and Structures located on the property through private negotiations of leases.	<b>Staff made no changes to draft Ordinance</b>



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	AUGUST 16, 2021	<b>FILE I.D.:</b>	FIN520
<b>SECTION:</b>	CONSENT - ADMIN. REPORTS	<b>DEPT.:</b>	FINANCE
<b>ITEM NO.:</b>	1	<b>PREPARER:</b>	J. KULBECK
<b>SUBJECT:</b>	CONSIDER RECEIVING AND FILING OF TREASURER'S REPORT		

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**REASON FOR CONSIDERATION:** The City Council is requested to consider receiving and filing the City of Montclair Treasurer's Report for the month ending July 31, 2021.

**BACKGROUND:** Included in the City Council's agenda packet is a copy of the Treasurer's Report for the period ending July 31, 2021.

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

**RECOMMENDATION:** Staff recommends the City Council receive and file the Treasurer's Report for the month ending July 31, 2021.



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	AUGUST 16, 2021	<b>FILE I.D.:</b>	FIN540
<b>SECTION:</b>	CONSENT - ADMIN. REPORTS	<b>DEPT.:</b>	FINANCE
<b>ITEM NO.:</b>	2	<b>PREPARER:</b>	L. LEW/V. FLORES
<b>SUBJECT:</b>	CONSIDER APPROVAL OF WARRANT REGISTER AND PAYROLL DOCUMENTATION		

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

**BACKGROUND:** Mayor Pro Tem Ruh has examined the Warrant Register dated August 16, 2021, and the Payroll Documentation dated July 18, 2021, and recommends their approval.

**FISCAL IMPACT:** The Warrant Register dated August 16, 2021, totals \$2,416,173.83; and the Payroll Documentation dated July 18, 2021 totals \$608,745.34 gross, with \$422,382.06 net being the total cash disbursement.

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





# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	AUGUST 16, 2021	<b>FILE I.D.:</b>	FIN510
<b>SECTION:</b>	CONSENT - ADMIN. REPORTS	<b>DEPT.:</b>	SA
<b>ITEM NO.:</b>	3	<b>PREPARER:</b>	C. RAMIREZ
<b>SUBJECT:</b>	CONSIDER RECEIVING AND FILING OF TREASURER'S REPORT		

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**REASON FOR CONSIDERATION:** The City Council acting as Successor to the Redevelopment Agency Board of Directors (Successor Agency Board) is requested to consider receiving and filing the Successor to the Redevelopment Agency Treasurer's Report for the month ending July 31, 2021, pursuant to state law.

**BACKGROUND:** Included in the Successor Agency Board's agenda packet is a copy of the Successor to the Redevelopment Agency Treasurer's Report for the period ending July 31, 2021.

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

**RECOMMENDATION:** Staff recommends the Successor Agency Board receive and file the Successor to the Redevelopment Agency Treasurer's Report for the month ending July 31, 2021.



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	AUGUST 16, 2021	<b>FILE I.D.:</b>	FIN530
<b>SECTION:</b>	CONSENT - ADMIN. REPORTS	<b>DEPT.:</b>	SA
<b>ITEM NO.:</b>	4	<b>PREPARER:</b>	C. RAMIREZ
<b>SUBJECT:</b>	CONSIDER APPROVAL OF WARRANT REGISTER		

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**REASON FOR CONSIDERATION:** The City Council acting as Successor to the Redevelopment Agency Board of Directors is requested to consider receiving and filing the Successor to the Redevelopment Agency Warrant Register for the month ending July 31, 2021, pursuant to state law.

**BACKGROUND:** Vice Chair Ruh has examined the Successor to the Redevelopment Agency Warrant Register dated 07.01.21-07.31.21 in the amounts of \$7,103.06 for the Combined Operating Fund and \$0.00 for the Redevelopment Obligation Retirement Funds, and finds it to be in order.

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

**RECOMMENDATION:** Vice Chair Ruh recommends the City Council as Successor to the Redevelopment Agency Board of Directors approve the Successor to the Redevelopment Agency Warrant Register for the period ending July 31, 2021.



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	AUGUST 16, 2021	<b>FILE I.D.:</b>	FIN525
<b>SECTION:</b>	CONSENT - ADMIN. REPORTS	<b>DEPT.:</b>	MHC
<b>ITEM NO.:</b>	5	<b>PREPARER:</b>	C. RAMIREZ
<b>SUBJECT:</b>	CONSIDER RECEIVING AND FILING OF TREASURER'S REPORT		

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**REASON FOR CONSIDERATION:** The Montclair Housing Corporation Board of Directors is requested to receive and file the Montclair Housing Corporation Treasurer's Report for the month ending July 31, 2021, pursuant to state law.

**BACKGROUND:** Included in the Montclair Housing Corporation Board agenda packet is a copy of the Treasurer's Report for the period ending July 31, 2021.

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

**RECOMMENDATION:** Staff recommends the Montclair Housing Corporation Board of Directors receive and file the Treasurer's Report for the month ending July 31, 2021.



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	AUGUST 16, 2021	<b>FILE I.D.:</b>	FIN545
<b>SECTION:</b>	CONSENT - ADMIN. REPORTS	<b>DEPT.:</b>	MHC
<b>ITEM NO.:</b>	6	<b>PREPARER:</b>	C. RAMIREZ
<b>SUBJECT:</b>	CONSIDER APPROVAL OF WARRANT REGISTER		

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**REASON FOR CONSIDERATION:** The Montclair Housing Corporation Board of Directors is requested to consider receiving and filing the Warrant Register for the month ending July 31, 2021, pursuant to state law.

**BACKGROUND:** Vice Chair Ruh has examined the Warrant Register dated 07.01.21-07.31.21 in the amount of \$42,558.02 for the Montclair Housing Corporation and finds it to be in order.

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

**RECOMMENDATION:** Vice Chair Ruh recommends the Montclair Housing Corporation Board of Directors approve the Warrant Register for the period ending July 31, 2021.



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	AUGUST 16, 2021	<b>FILE I.D.:</b>	FIN525
<b>SECTION:</b>	CONSENT - ADMIN. REPORTS	<b>DEPT.:</b>	MHA
<b>ITEM NO.:</b>	7	<b>PREPARER:</b>	C. RAMIREZ
<b>SUBJECT:</b>	CONSIDER RECEIVING AND FILING OF TREASURER'S REPORT		

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**REASON FOR CONSIDERATION:** The Montclair Housing Authority Commission is requested to receive and file the Montclair Housing Authority Treasurer's Report for the month ending July 31, 2021, pursuant to state law.

**BACKGROUND:** Included in the Montclair Housing Authority Commission's agenda packet is a copy of the Treasurer's Report for the period ending July 31, 2021.

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

**RECOMMENDATION:** Staff recommends the Montclair Housing Authority Commission receive and file the Treasurer's Report for the month ending July 31, 2021.



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	AUGUST 16, 2021	<b>FILE I.D.:</b>	FIN545
<b>SECTION:</b>	CONSENT - ADMIN. REPORTS	<b>DEPT.:</b>	MHA
<b>ITEM NO.:</b>	8	<b>PREPARER:</b>	C. RAMIREZ
<b>SUBJECT:</b>	CONSIDER APPROVAL OF WARRANT REGISTER		

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**REASON FOR CONSIDERATION:** The Montclair Housing Authority Commission is requested to consider receiving and filing the Warrant Register for the month ending July 31, 2021, pursuant to state law.

**BACKGROUND:** Vice Chair Ruh has examined the Warrant Register dated 07.01.21-07.31.21 in the amount of \$0.00 for the Montclair Housing Authority and finds it to be in order.

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

**RECOMMENDATION:** Vice Chair Ruh recommends the Montclair Housing Authority Commission approve the Warrant Register for the period ending July 31, 2021.



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	AUGUST 16, 2021	<b>FILE I.D.:</b>	TRN110A
<b>SECTION:</b>	CONSENT - ADMIN. REPORTS	<b>DEPT.:</b>	PUBLIC WORKS
<b>ITEM NO.:</b>	9	<b>PREPARER:</b>	M. HUDSON
<b>SUBJECT:</b>	CONSIDER RECEIVING AND FILING A STATUS REPORT ON EMERGENCY CONTRACTING PROCEDURES FOR THE PACIFIC ELECTRIC TRAIL BRIDGE REPLACEMENT PROJECT AND DETERMINING THERE IS A NEED TO CONTINUE THE ACTION		

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**REASON FOR CONSIDERATION:** By City Council action on April 19, 2021, Resolution 21-3307 was adopted declaring a need for emergency contracting procedures for the PE Trail Bridge Replacement project. Under Public Contract Code Section 22050, the governing body shall review the emergency action at its next regularly scheduled meeting and every regularly scheduled meeting thereafter until the action is terminated, to determine, by a fourth-fifths majority vote, that there is a need to continue the action.

**BACKGROUND:** The City of Montclair, in coordination with San Bernardino County Transportation Authority (SBCTA), built a multi-purpose trail linking cities from Claremont to Rialto along the famous Pacific Electric Railway Line. This 21-mile trail is a vital component of our Active transportation and Healthy Montclair programs. The trail provides recreational and alternative transportation opportunities for cyclists, pedestrians, runners, and equestrians, and links our residents and the commuting public to schools, jobs, and our regional transportation hub. The 20-acre Montclair Transcenter is the largest facility of its kind between Union Station in Los Angeles and the San Bernardino station, and conveniently connects the region's fixed route commuter rail, bus service, and rideshare programs in one centrally located area. The Pacific Electric trail is a vital connection to this important transportation hub.

On March 21, 2021, the PE Trail Bridge was damaged due to a fire and closed to active transportation traffic. The closure of the bridge disrupts the regional connections of the PE Trail. A structural engineer who investigated the magnitude and extent of the damage, declared the PE Trail bridge a total loss and a replacement was recommended. To mitigate the risks that left the existing bridge vulnerable to fire, the replacement will be a prefabricated steel truss bridge. A steel truss bridge provides the best combination of long term value and affordability, while also recognizing the need for a speedy replacement of this vital piece of infrastructure. The use of a prefabricated bridge saves valuable time since its design has been preapproved by a state licensed structural engineer. Compared to a wooden structure, the construction of the steel truss bridge is completed at an accelerated pace, since it is delivered assembled and dropped into place.

The City of Montclair is a healthier and more equitable City due to safer and more connected roadways through the provision of active transportation options. SBCTA recognizes the value and importance of the PE trail. To that end, SBCTA has shown good faith and leadership by graciously offering to cover a percent of the cost, up to \$100,000, to replace the bridge through their TDA Grant Program. The City would cash flow the project and seek reimbursement from SBCTA at a future date.

Currently Pacific Electric Trail commuters are being detoured from the regional trail to Arrow Highway. To reduce the impact of the bridge closure, City staff will continue to work diligently through the use of the emergency contracting procedures to hire various consultants and contractors to complete the bridge replacement. Agreements will be executed in the near future. Any necessary environmental permits and studies will be processed to clear the project through the California Environmental Quality Act (CEQA) and U.S. Army Corps permitting process. A structural engineering consultant, BCA, was brought on to design the bridge deck and modifications to the existing bridge substructure and foundations to accept the new bridge.

### ***August 16, 2021 Update***

The design of the replacement bridge has been completed. On August 4, 2021, a purchase order was issued to Contech Engineered Solutions for \$81,312 for the purchase of this manufactured bridge. Fabrication of the bridge is estimated to take eight weeks and delivery is expected by October 1, 2021. During the time of fabrication, staff will solicit bid proposals for the demolition of the existing bridge and installation of the new bridge. The Pacific Electric Trail is expected to re-open by November 1, 2021. This date is contingent upon obtaining the necessary permit from the U.S. Army Corps of Engineers for the installation of the bridge over the San Antonio Channel.

**FISCAL IMPACT:** With the recent purchase of the manufactured bridge from Contech Engineered Solutions, the City's cost to replace the Pacific Electric Trail Bridge is now estimated at \$450,000 and will be funded from the General Fund Reserve. SBCTA has confirmed its intent to contribute \$100,000 from the TDA Grant Program to offset the costs associated with the bridge replacement.

**RECOMMENDATION:** Staff recommends that the City Council receive and file a status report on emergency contracting procedures for the PE Trail Bridge Replacement Project and determine there is a need to continue the action.





**PURCHASE ORDER**

No. **000006225**

**VENDOR:**  
Contech Engineered Solutions  
950 South Coast Dr.  
Suite 145  
Costa Mesa, CA 92626

**SHIP TO:**  
CITY OF MONTCLAIR  
5111 Benito Street  
Montclair, CA 91763

**BILL TO:**  
CITY OF MONTCLAIR  
5111 Benito Street  
Montclair, CA 91763-

VENDOR NO.	VENDOR PHONE NUMBER	TERMS	DATE	REQUIRED DELIVERY DATE			
ConEn001		0	08/04/2021				
<b>SHIPPING INSTRUCTIONS</b>							
(none)							
ITEM	QTY	U/M	DESCRIPTION/TASK	PRD CODE	ACCOUNT	UNIT PRICE	AMOUNT
1	0.00		Emergecny labor to replace the damaged Pacific Electric Trail Bridge		1751-0000-60020-400-17032	81,312.00	81,312.00

SUBTOTAL: 81,312.00  
TAX: 0.00  
SHIPPING: 0.00  

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TOTAL: 81,312.00

TAXABLE: No  
CONFIRMING:

*Janet Kulbeck*

AUTHORIZED SIGNATURE

**IMPORTANT: OUR ORDER NUMBER MUST APPEAR ON EVERY INVOICE AND PACKAGE**

This order is given upon the representation and guaranty of the manufacturer or seller that no breach of any State or Federal Law or Regulation has occurred in connection with the manufacturing, processing, branding, labeling or transportation of the merchandise herein mentioned. If such breach occurs or is charged by any legally constituted State or Federal authority, the buyer shall be entitled to rescind the order and return the unused merchandise and shall also be held harmless by the manufacturer or seller against any penalty incurred and/or the cost of defense of any proceeding designed to penalize the buyer therefor.



# CITY COUNCIL AGENDA REPORT

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**DATE:** AUGUST 16, 2021                      **FILE I.D.:** MAN500/EXM500  
**SECTION:** CONSENT - AGREEMENTS                      **DEPT.:** ADMIN. SVCS.  
**ITEM NO.:** 1    **PREPARER:** J. HAMILTON  
**SUBJECT:** CONSIDER APPROVAL OF AGREEMENT NO. 21-44, THE LABOR AGREEMENT FOR  
MANAGEMENT (NONSAFETY AND SAFETY) EMPLOYEES REGARDING THE TERMS AND  
CONDITIONS OF EMPLOYMENT FOR THE PERIOD OF JULY 1, 2021 TO JUNE 30, 2022  
  
CONSIDER APPROVAL OF AGREEMENT NO. 21-45, THE LABOR AGREEMENT FOR  
EXECUTIVE MANAGEMENT EMPLOYEES REGARDING THE TERMS AND CONDITIONS  
OF EMPLOYMENT FOR THE PERIOD OF JULY 1, 2021 TO JUNE 30, 2022

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**REASON FOR CONSIDERATION:** The City Council is requested to consider approval of the following: (1) Agreement No. 21-44, a labor agreement for Management (Nonsafety and Safety) employees regarding the terms and conditions of employment for the period of July 1, 2021 to June 30, 2022; and (2) Agreement No. 21-45, a Labor Agreement for Executive Management employees regarding the terms and conditions of employment for the period of July 1, 2021 to June 30, 2022. A copy of each of the above-identified labor agreements are available for the City Council's review and consideration.

**BACKGROUND:** Typically on an annual basis, the City of Montclair considers the terms and conditions of employment for unrepresented employees, which include Executive Managers, Managers (Nonsafety and Safety), and Part-Time Benefited employees. After some input from the unrepresented employees, the City will memorialize the new terms in a signature agreement, which is presented to the Personnel Committee for approval of pay and benefit increases. The labor agreements are also updated and presented to City Council for approval. The City has concluded its considerations for the unrepresented employees for the period of July 1, 2021 to June 30, 2022, and the following is a summary of each agreement related to the terms and conditions of employment:

1. Agreement No. 21-44: This Labor Agreement affects the terms of conditions of employment for those employees identified as Management (Nonsafety and Safety) employees for the period of July 1, 2021 to June 30, 2022, with the Personnel Committee having approved the following terms and conditions of employment on August 2, 2021:
  - Article 5: The following classifications shall be added to the list of Management Employees: Assistant Code Enforcement Manager; Economic Services & Housing Manager; Public Works Facilities/Maintenance Assistant Manager; Public Works Manager; Public Works Operations/Administrative Manager; Public Works Operations Assistant Manager; Assistant Public Works Manager; and Building Maintenance Supervisor.

The following classifications shall be removed from the list of Management Employees: Code Enforcement Supervisor (to be reassigned to Montclair

General Employees' Association); Fire Captain; and Public Works Superintendent.

The following paragraph is to be stricken from the Management Agreement: "Effective August 23, 2004, the Department of Labor (DOL) eliminated the FLSA overtime "exempt" status for all safety "first responders." Shift Fire Captains will continue to fall within the scope of management, but are no longer exempt from the minimum wage and overtime requirements of FLSA."

- Article 6 (Section 6.01): This change relates to a salary increase of 4 percent to all classifications identified as Management effective August 2, 2021.
  - Article 6 (Section 6.05, Fire Department, Section B.2.): The following language shall be added: "The City shall reimburse the Deputy Fire Chief for the actual cleaning costs necessary to properly maintain and care for uniforms authorized by the department for wear by the employee. In order to receive this reimbursement, the Deputy Fire Chief shall submit receipts for the actual costs incurred for cleaning his/her uniform."
  - Article 7 (Section 7.01): This change provides for the increase in the benefit fund contribution from \$1,350 per month to \$1,400 per month, per Management (Nonsafety and Safety) Employee, effective September 2021.
  - Article 11 (Section 11.03): The language of the Agreement is modified so that the Holiday Pay Option is exercised on the last day of the last full pay period in June of each year (previously it was on June 30<sup>th</sup> of each year).
  - Article 13 (Section 13.01): The language of the Agreement is modified so that the Annual Sick Leave Redemption Program is calculated on the last day of the last full pay period in November of each year.
  - Article 13 (Section 13.09): The language of the Agreement is modified so that the Annual Sick Leave Redemption Program is calculated on the last day of the last full pay period in November of each year.
  - Article 43: This change relates to the term of the Agreement.
2. Agreement No. 21-45: This Labor Agreement affects the terms of conditions of employment for those employees identified as Executive Management employees for the period of July 1, 2021 to June 30, 2022, with the Personnel Committee having approved the following terms and conditions of employment on August 2, 2021:
- Article 5: The following classifications shall be added to the list of Executive Management Employees: Director of Economic Development/Housing; and Director of Information Technology.
  - Article 6 (Section 6.01): This change relates to a salary increase of 4 percent to all classifications identified as Management effective August 2, 2021.
  - Article 6 (Section 6.05, Fire Department, Section 2): The following language shall be added: "The City shall reimburse the Fire Chief for the actual cleaning

costs necessary to properly maintain and care for uniforms authorized by the department for wear by the employee. In order to receive this reimbursement, the Fire Chief shall submit receipts for the actual costs incurred for cleaning his/her uniform.”

- Article 7 (Section 7.01): This change provides for the increase in the benefit fund contribution from \$1,350 per month to \$1,400 per month, per Executive Management Employee, effective September 2021.
- Article 13 (Section 13.01): The language of the Agreement is modified so that the Annual Sick Leave Redemption Program is calculated on the last day of the last full pay period in November of each year.
- Article 13 (Section 13.09): The language of the Agreement is modified so that the Annual Sick Leave Redemption Program is calculated on the last day of the last full pay period in November of each year.
- Article 41: This change relates to the term of the Agreement.

**FISCAL IMPACT:** The fiscal impact associated with ratifying proposed Agreement Nos. 21-44 and 21-45, due to additional compensation, will be funded from the Personnel Adjustment Reserve of the General Fund as these increases were not included in the original Fiscal Year 2021-2022 Budget.

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

1. Approve Agreement No. 21-44, a Labor Agreement for Management (Nonsafety and Safety) employees regarding the terms and conditions of employment for the period of July 1, 2021 to June 30, 2022; and
2. Approve Agreement No. 21-45, a Labor Agreement for Executive Management Employees regarding the terms and conditions of employment for the period of July 1, 2021 to June 30, 2022.



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	AUGUST 16, 2021	<b>FILE I.D.:</b>	HSV030
<b>SECTION:</b>	CONSENT - AGREEMENTS	<b>DEPT.:</b>	HUMAN SVCS.
<b>ITEM NO.:</b>	2	<b>PREPARER:</b>	A. COLUNGA
<b>SUBJECT:</b>	CONSIDER APPROVAL OF AMENDMENT NO. 1 TO AGREEMENT NO. 21-49 WITH ONTARIO-MONTCLAIR SCHOOL DISTRICT TO INCREASE FUNDING FOR THE MONTCLAIR AFTER-SCHOOL PROGRAM		

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**REASON FOR CONSIDERATION:** The City Council is requested to consider approval of Amendment No. 1 to Agreement No. 21-49 with Ontario-Montclair School District (OMSD) to increase funding for the Montclair After-School Program.

**BACKGROUND:** The Human Services Department has delivered after-school programs within OMSD schools since 1999. Funding for this program originates from the California Department of Education, After-School Education and Safety (ASES) program through grants made available to local education authorities, such as OMSD. The goal of the Montclair After-School Program (MAP) is to improve the academic performance and success of students in the program by providing high-quality academic programming after school while ensuring a safe physical and emotional environment for all.

The City Council approved Agreement No. 21-49 with OMSD to support MAP on July 19, 2021. The proposed amendment to Agreement No. 21-49 would provide increased funding for MAP at the following nine elementary school sites: El Camino, Howard, Kingsley, Lehigh, Mission, Monte Vista, Montera, Moreno, Ramona; and two middle school sites: Serrano, and Vernon. The State approved the rate increase from \$8.88 per pupil per day to \$10.18 per pupil per day.

**FISCAL IMPACT:** Should the City Council approve proposed Amendment No. 1 to Agreement No. 21-49, OMSD would provide an additional \$189,976.89 to fund personnel, training, program supplies, and grant oversight for a total contract amount of \$1,487,665.31. The proposed amendment would not change the term of the Agreement, which would continue through June 30, 2022.

**RECOMMENDATION:** Staff recommends the City Council approve Amendment No. 1 to Agreement No. 21-49 with Ontario-Montclair School District to increase funding for the Montclair After-School Program.



ONTARIO-MONTCLAIR SCHOOL DISTRICT
Ontario, California

AMENDMENT TO CONSULTANT SERVICES

Contract #: C \_\_\_\_\_ Amendment: M \_\_\_\_ Original Start Date \_\_\_\_\_ Original End Date \_\_\_\_\_

Contract \_\_\_\_\_ is herewith amended between the Ontario-Montclair School District and
Contract Number
\_\_\_\_\_ as authorized by the Terms and Conditions of the original Agreement
Consultant Name
except for:

AMENDMENT TO TERM (only to be filled out if the original date of agreement is changing):

Start Date: \_\_\_\_\_ End Date: \_\_\_\_\_
REQUIRED IF EXTENDING TERM

AMENDMENT TO SERVICES:

\_\_\_\_\_
\_\_\_\_\_
\_\_\_\_\_
\_\_\_\_\_
\_\_\_\_\_

AMENDMENT TO COMPENSATION:

DISTRICT agrees to compensate CONSULTANT in the following manner:

\_\_\_\_\_
\_\_\_\_\_
\_\_\_\_\_

In witness whereof, the parties hereto have caused this Agreement to be executed on Date of Board Meeting:

DISTRICT

CONSULTANT

Signature
Phil Hillman
Printed Name
Chief Business Official
Title
Ontario-Montclair School District
950 West D Street Ontario, CA 91762
(909) 459-2500

Signature
Printed Name
Title
Address
Telephone Number

Approved by Board of Trustees:

Ontario-Montclair School District  
 ASES Payment Schedule—City of Montclair  
 July 1, 2021 through June 30, 2022

No.	School	Program	Schedule A		OMSD's Balance	Tenthly Payment
			Estimated Allocation	95.00% To Montclair		
060	El Camino	ASES After-school Base	126,037.87	119,735.98	6,301.89	11,973.60
064	Howard	ASES After-school Base	152,664.92	145,031.67	7,633.25	14,503.17
065	Kingsley	ASES After-school Base	162,924.00	154,777.80	8,146.20	15,477.78
066	Lehigh	ASES After-school Base	166,710.09	158,374.58	8,335.51	15,837.46
071	Mission	ASES After-school Base	96,591.92	91,762.33	4,829.59	9,176.23
072	Monte Vista	ASES After-school Base	181,690.76	172,606.22	9,084.54	17,260.62
045	Montera	ASES After-school Base	152,664.92	145,031.67	7,633.25	14,503.17
073	Moreno	ASES After-school Base	152,664.92	145,031.67	7,633.25	14,503.17
074	Ramona	ASES After-school Base	152,664.92	145,031.67	7,633.25	14,503.17
382	Serrano	ASES After-school Base	139,232.44	132,270.82	6,961.62	13,227.08
383	Vernon	ASES After-school Base	82,116.74	78,010.90	4,105.84	7,801.09
			<u>1,565,963.50</u>	<u>1,487,665.31</u>	<u>78,298.19</u>	<u>148,766.54</u>



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	AUGUST 16, 2021	<b>FILE I.D.:</b>	HSV030
<b>SECTION:</b>	CONSENT - AGREEMENTS	<b>DEPT.:</b>	HUMAN SVCS.
<b>ITEM NO.:</b>	3	<b>PREPARER:</b>	A. COLUNGA
<b>SUBJECT:</b>	CONSIDER APPROVAL OF AMENDMENT NO. 1 TO AGREEMENT NO. 21-50 WITH ONTARIO-MONTCLAIR SCHOOL DISTRICT TO INCREASE FUNDING FOR THE MONTCLAIR AFTER-SCHOOL SUMMER EXPANDED LEARNING PROGRAM		

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**REASON FOR CONSIDERATION:** The City Council is requested to consider approval of Amendment No. 1 to Agreement No. 21-50 with Ontario-Montclair School District (OMSD) to increase funding for the Montclair After-school Summer Expanded Learning Program.

**BACKGROUND:** The Human Services Department has delivered after-school programs within OMSD schools since 1999. Funding for this program originates from the California Department of Education, After-School Education and Safety (ASES) Supplemental Expanded Learning program through grants made available to local education authorities, such as OMSD. The purpose of the funding is to provide communities with enhanced community-based after-school services in an effort to strengthen healthy child development.

The City Council approved Agreement No. 21-50 with OMSD to support the Montclair After-School Summer Expanded Learning Program on July 19, 2021. The proposed amendment to Agreement No. 21-50 would provide increased funding for summer expanded learning at the following five school sites: Kingsley, Lehigh, Mission, Monte Vista, and Serrano. The State approved the rate increase from \$8.88 per pupil per day to \$10.18 per pupil per day.

**FISCAL IMPACT:** Should the City Council approve proposed Amendment No. 1 to Agreement No. 21-50, OMSD would provide an additional \$18,019.32 for a total contract amount of \$141,105.21 to fund personnel, training, supplies, and grant oversight. The proposed amendment would not change the term of the Agreement, which would continue through June 30, 2022.

**RECOMMENDATION:** Staff recommends the City Council approve Amendment No. 1 to Agreement No. 21-50 with Ontario-Montclair School District to increase funding for the Montclair After-School Summer Expanded Learning Program.





ONTARIO-MONTCLAIR SCHOOL DISTRICT
Ontario, California

AMENDMENT TO CONSULTANT SERVICES

Contract #: C \_\_\_\_\_ Amendment: M \_\_\_\_ Original Start Date \_\_\_\_\_ Original End Date \_\_\_\_\_

Contract \_\_\_\_\_ is herewith amended between the Ontario-Montclair School District and
Contract Number
\_\_\_\_\_ as authorized by the Terms and Conditions of the original Agreement
Consultant Name
except for:

AMENDMENT TO TERM (only to be filled out if the original date of agreement is changing):

Start Date: \_\_\_\_\_ End Date: \_\_\_\_\_
REQUIRED IF EXTENDING TERM

AMENDMENT TO SERVICES:

\_\_\_\_\_
\_\_\_\_\_
\_\_\_\_\_
\_\_\_\_\_
\_\_\_\_\_

AMENDMENT TO COMPENSATION:

DISTRICT agrees to compensate CONSULTANT in the following manner:

\_\_\_\_\_
\_\_\_\_\_
\_\_\_\_\_

In witness whereof, the parties hereto have caused this Agreement to be executed on Date of Board Meeting:

DISTRICT

CONSULTANT

Signature
Phil Hillman
Printed Name
Chief Business Official
Title
Ontario-Montclair School District
950 West D Street Ontario, CA 91762
(909) 459-2500

Signature
Printed Name
Title
Address
Telephone Number

Approved by Board of Trustees:

Ontario-Montclair School District  
 ASES Payment Schedule—City of Montclair  
 July 1, 2021 through June 30, 2022

No.	School	Program	Schedule A		OMSD's Balance	Tenthly Payment
			Estimated Allocation	95.00% To Montclair		
065	Kingsley	ASES Supplemental	31,223.57	29,662.39	1,561.18	2,966.24
066	Lehigh	ASES Supplemental	28,229.60	26,818.12	1,411.48	2,681.81
071	Mission	ASES Supplemental	24,934.03	23,687.33	1,246.70	2,368.73
072	Monte Vista	ASES Supplemental	41,573.71	39,495.02	2,078.69	3,949.50
382	Serrano	ASES Supplemental	22,570.89	21,442.35	1,128.54	2,144.24
			<u>148,531.81</u>	<u>141,105.21</u>	<u>7,426.60</u>	<u>14,110.52</u>



# CITY COUNCIL AGENDA REPORT

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**DATE:** AUGUST 16, 2021                      **FILE I.D.:** HSV070, ATH215, 218, & 020  
**SECTION:** CONSENT - AGREEMENTS                      **DEPT.:** HUMAN SVCS.  
**ITEM NO.:** 4    **PREPARER:** F. SALTOS  
**SUBJECT:** CONSIDER APPROVAL OF AGREEMENT NOS. 21-54 AND 21-55 WITH MONTCLAIR  
LITTLE LEAGUE AND AGREEMENT NO. 21-56 WITH GOLDEN GIRLS SOFTBALL  
LEAGUE FOR USE OF BALL FIELD FACILITIES FOR THE 2021 WINTER SEASON

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**REASON FOR CONSIDERATION:** The Montclair Little League and Golden Girls Softball League have requested the use of the City's park facilities for their winter sports activities. The Leagues will follow at all times the most current and updated safety measures outlined for moderate-contact sports due to COVID-19 as outlined by the Health and Human Services Agency for the California Department of Public Health, and contained in proposed Agreement Nos. 21-54, 21-55, and 21-56, which are attached for City Council review and consideration.

**BACKGROUND:** In September 2020, Montclair Little League was given protocols for sport conditioning and at that time, the Board elected not to pursue re-opening the League for conditioning as they felt the protocols were very demanding—in particular, the testing for COVID-19. Now, as the State of California is providing fewer restrictions for moderate-contact sports, Montclair Little League is requesting, pursuant to Agreement Nos. 21-54 and 21-55, the use of the two southern and two northern fields at Saratoga Park, and the southern field at Kingsley Park on weekdays and Saturdays for its baseball activities. Pursuant to Agreement No. 21-56, Golden Girls Softball League would use the two fields at Vernon Park for its softball activities on weekdays and Saturdays. Sunday field use by all leagues is not permitted.

Montclair Little League and Golden Girls Softball League have each requested the use of lights for activities that may be conducted after dark. The cost of electrical services associated with such lighting and alarm fees will be covered by the City of Montclair. Due to COVID-19, the City will cover the costs for the cleaning of the restrooms. The Leagues are required to provide a deposit of \$300 for a cleaning fee if needed during the contract period.

**FISCAL IMPACT:** Approval of the proposed Agreements would be part of the annual cost to the City of Montclair of approximately \$13,000 total in lighting and alarm fees and \$20,800 in restroom cleaning fees through Anthesis, a total of \$33,800. The terms of proposed Agreement Nos. 21-54, 21-55, and 21-56 with Montclair Little League and Golden Girls Softball League are September 1, 2021, through December 31, 2021.

**RECOMMENDATION:** Staff recommends the City Council approve Agreement Nos. 21-54, 21-55, and 21-56 with Montclair Little League and Golden Girls Softball League for use of ball field facilities.

**AGREEMENT NO. 21-54  
WITH MONTCLAIR LITTLE LEAGUE  
FOR USE OF SARATOGA PARK**

**THIS AGREEMENT** is made and entered into by and between the City of Montclair, hereinafter called "CITY," and Montclair Little League, hereinafter called "LEAGUE." This Agreement is contingent upon the LEAGUE fulfilling its prior contract's financial obligations and paying any and all outstanding invoices owed to the CITY. Use of any and all facilities listed herein may not be used until all fees have been paid.

LEAGUE must follow at all times the most current and updated safety measures outlined below for Moderate-Contact Sports due to COVID-19 as outlined by the State of California-Health and Human Services Agency, California Department of Public Health.

The following guidance is mandatory:

- Informed Consent (City waiver and League waiver)
- Safety Plan

The following general guidance are strongly encouraged:

- Face Coverings
- Physical Distancing
- Hygiene and Sanitation
- Limitations on mixing by participants
- Travel Considerations

**WITNESSETH:**

**WHEREAS**, CITY presently has baseball fields in Saratoga Park (two northern and two southern fields) generally located at the southwest corner of Vernon Avenue and Kingsley Street, Montclair, California, and

**WHEREAS**, said Park has been developed to provide areas for youth sports, on which premises LEAGUE desires to use for Little League baseball (including the Challenger Division for children with disabilities) conditioning at such times and hours set forth in Section 1(aa). The term of this Agreement is for September 1, 2021 through December 31, 2021.

**SECTION 1:** LEAGUE hereby agrees as follows:

- a. Provide CITY a list of all your participants and coaches. All must sign CITY approved waiver and submit to CITY liaison prior to participating.
- b. Not to use the premises for any other purpose, except as above indicated.
- c. Not to sublet the field.

- d. Not to make any improvements or alterations on said premises.
- e. Not to charge for parking of vehicles in the parking lots located within CITY facilities and not to park in the fields or walkways.
- f. Not to erect any barriers or fences of any kind unless approved by CITY.
- g. Not to use herbicides at the park for any purpose.
- h. Not to disconnect or make changes to existing phone line account.
- i. Not to allow hitting balls into the chain link fences for batting practice.
- j. To provide the CITY with a written list of all items to be stored in park buildings. No items should be stored in rest room facilities, except rest room supplies. Any items found to be stored in buildings without prior written authorization from the CITY will be removed by city crews with or without prior notice to LEAGUE. Any cost incurred by the CITY by removing, storing, or disposal of said property shall be the responsibility of LEAGUE.
- k. To provide a special parking area for participants in the Challenger Division, at the times of their games, by cordoning off the southeast portion of the parking lot; to provide the equipment and personnel needed to set up the special parking area; to see that all equipment is removed and properly stored after each use; to provide personnel to monitor the cordoned off area during its use.
- l. CITY to maintain restroom facilities and CITY to furnish all supplies for each well-maintained restroom. LEAGUE to police the entire premises after each day's use and pick up all paper, trash, and other debris that may have accumulated, and leave the premises in a condition deemed acceptable to CITY. This work shall be completed within two hours after an activity has ended. If the premises are not maintained as stated a contracted cleaning agency will be hired by the CITY and the LEAGUE will be responsible for all fees related to the service.
- m. To maintain all equipment and appliances within the snack bar and snack bar building at all times. To clean all sinks, grills, screens, exhaust hoods, mop all floors and clean countertops and utensils after each day's use and leave the snack bar in a condition deemed acceptable to CITY. The snack bar area should not be used for storage of any materials not pertaining to food items used for snack bar operations.
- n. To ensure when a barbecue is used (a permit is required to be obtained by Department of Public Health), it is set up a minimum of ten feet away from any structure and LEAGUE must provide one fire extinguisher for each barbecue being used. All safety and health regulations set forth by the County of San Bernardino Department of Public Health must be followed. LEAGUE must also ensure that a drip pan be used and ensure barbecue has completely cooled down before returning to storage in any CITY structure.

- o. To deposit, with the CITY representative, the sum of Three Hundred Dollars (\$300) as a refundable cleaning deposit to ensure the proper care and cleanup of the snack bar, restrooms, meeting areas, towers, and equipment therein. At the end of the playing season, an inspection shall be conducted by CITY and LEAGUE representatives to ensure that all areas and CITY-owned equipment have been properly cared for, maintained and cleaned. All non-CITY-owned equipment, with exception of refrigerators, freezers, and ice machines shall be removed from snack bar areas. Refrigerators, freezers, and ice machines owned by LEAGUE shall be cleaned out, doors left open, and electrical turned off. Any food items left in the refrigerators and/or freezers will be discarded by the CITY. Ice machines owned by CITY shall be cleaned out, serviced, and maintained by CITY.
- p. To conform to all safety and health regulations set forth by the County of San Bernardino Department of Public Health and register your snack bar as Pre-packaged. Maintain all CITY-installed facilities and equipment in their original condition. Failure to comply with these requirements will result in a breach of this Agreement and the loss of the use of the premises.
- q. To follow proper call-out procedures in an emergency (an urgent need for assistance or some type of immediate action) by using only telephone numbers issued for this purpose. A Contact List containing the emergency telephone numbers is attached.
- r. LEAGUE agrees to assist CITY in keeping order in the park area and to provide responsible supervision as may be necessary to prevent vandalism or malicious mischief to the property including for graffiti removal on buildings within 24 hours of notification, contact Graffiti Abatement Hotline at (909) 625-9429 and report vandalism immediately to the Public Works Department at (909) 625-9480. LEAGUE will not attempt to remove Graffiti or make repairs to building. LEAGUE shall furnish and supply personnel to conduct and supervise LEAGUE activities on the premises.
- s. If LEAGUE elects to use lights for activities conducted after dark, the CITY will provide electrical services associated with lights at no charge to the LEAGUE.
- t. To deposit, with the CITY representative, the sum of Five Hundred Dollars (\$500) as a security deposit, to ensure the proper and prompt payment of any incurred damages to facilities associated with the LEAGUE. In the event all potential damages are paid by the end of this Agreement term, the deposit will be refunded.
- u. To provide the CITY representative with a list of the Board of Directors, including names, addresses, and telephone numbers.
- v. To provide CITY with participant rosters, practice and game schedules. Also, sixty percent of league participants must live in Montclair and provide verification such as registration forms.

- w. To provide CITY with financial statements upon request for audit purposes.
- x. To designate one individual as the LEAGUE's representative to work with the CITY's representative.
- y. This Agreement is subject to the terms and conditions of any master lease CITY may have with another public agency, of which LEAGUE had knowledge.
- aa. It is agreed that LEAGUE may use said baseball fields from September 1, 2021, through December 31, 2021, Mondays through Fridays generally commencing at 4:00 p.m. and Saturdays, generally commencing at 8:00 a.m. No games or activities will be conducted past 9:45 p.m.
- bb. PUBLIC LIABILITY AND PROPERTY DAMAGE: Throughout the term of this Agreement, at LEAGUE's sole cost and expense, LEAGUE shall keep, or cause to be kept, in full force and effect, for the mutual benefit of CITY and LEAGUE, comprehensive, broad form, general public liability insurance against claims and liabilities for personal injury, death, or property providing proof of at least One Million Dollars (\$1,000,000) for bodily injury or death to any one person or for any one accident or occurrence, and at least Three Hundred Thousand Dollars (\$300,000) for property damage. All insurance required by this Agreement shall be carried only by responsible insurance companies duly admitted to transact business in the State of California and shall name as additional insured the CITY, its elected officials, officers, employees, and agents. All policies shall contain language, to the extent obtainable, to the effect that (1) the insurer and the insured waive the right of subrogation against CITY and CITY's elected officials, officers, employees, and agents; (2) the policies are primary and non contributing with any insurance that may be carried by CITY; and (3) they cannot be canceled or materially changed except after thirty (30) days' notice, in writing, by the insurer to CITY by certified mail. LEAGUE shall furnish CITY with copies of such policies promptly upon receipt of them or certificate(s) evidencing the insurance.
- cc. INDEMNIFICATION: LEAGUE shall defend, indemnify and save harmless CITY, its elected and appointed officials, officers, agents, and employees from all liability from loss, damage, or injury to persons or property including the payment by LEAGUE of any and all legal costs and attorneys' fees in any manner arising out of any negligent or intentional or willful acts or omissions of the LEAGUE in the activities, use, or occupancy of the PREMISES including, but not limited to, all consequential damages to the maximum extent permitted by law.
- dd. It is understood and agreed that there is no relationship of employer-employee for Workers' Compensation purposes between CITY and any person connected with the LEAGUE, unless such person is otherwise regularly employed by and conducting official business of CITY.
- ee. To conduct all operations in compliance with the Americans with Disabilities Act.

- ff. The use of City facilities for room reservations by the LEAGUE are not available at this time. In the event they become available the City will notify LEAGUE. City recommends Zoom meetings.
- gg. LEAGUE may place banners up on weekdays and Saturdays, but they must be removed by the close of Saturday each week. Banners are not allowed to stay up on Sundays. Banners must be no greater than 3 feet by 5 feet. Banners will be attached to outfield chain link fence using clip on rings. Banner clearance from turf is a minimum of 2 inches. The City will determine if a banner is past its useful life due to sun fade, rips, graffiti, etc., and will notify LEAGUE of said issue. LEAGUE will have 24 hours to remove said banner. The CITY has the right to remove and dispose of any banner that is not displayed following the above mentioned procedures.
- hh. LEAGUE may place shade cloth as necessary to dug outs on weekdays and Saturdays, but they must be removed by the close of Saturday each week. Shade cloth is not allowed to stay up on Sundays. Shade cloth must be no greater than what may be required to provide adequate coverage over dug outs. Shade cloth will be attached to dug out structure using clip on rings. The City will determine if a shade cloth is past its useful life due to sun fade, rips, graffiti, etc. and will notify LEAGUE of said issue. LEAGUE will have 24 hours to remove said shade cloth. The CITY has the right to remove and dispose of any shade cloth that is not displayed following the above mentioned procedures. If LEAGUE does not remove or replace shade cloth as requested by CITY within 24 hours, CITY may prohibit use of fields and snack bar facilities to LEAGUE until request has been met.
- ii. Locks are issued by the City to secure areas of the park and have access to those areas such as snack bar shutters for maintenance. If locks are needed to replace a lost or damaged lock contact the City immediately. The League at no time shall use personal locks to secure any area. If a personal lock is found the League will be notified and will have 24 hours to remove it. If not removed the City will remove it by any means necessary and the City will not be held responsible for the League's lock.

**SECTION 2:** CITY hereby agrees as follows:

- a. To maintain the periphery of the premises, including shrubs and trees, and mow all grass on a year-round basis.
- b. To pay for all water used on premises.
- c. To have full control over watering the entire premises. LEAGUE shall not adjust or readjust or otherwise change the sprinkler system or water control facilities.
- d. To provide emergency call-out telephone numbers for use by LEAGUE. A Contact List containing the emergency telephone numbers is attached.



- e. To provide to LEAGUE, inventory list of equipment in snack bar and meeting areas; to provide inspection of those areas and equipment at the end of the agreement period.
- f. Upon approval of the Director of Human Services, LEAGUE's cleaning deposit shall rollover any unused monies into the next Agreement.
- g. To designate a CITY representative to work with LEAGUE on all non-maintenance issues relating to the use of CITY facilities.
- h. To provide alarm service at no charge to LEAGUE.

**NOW, THEREFORE,** if any terms of this Agreement are not complied with, the Agreement will become null and void and the LEAGUE will be refused use of CITY facilities. 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 LEAGUE at least ten (10) days prior written notice.

**APPROVED AND ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

**LEAGUE:**

**CITY:**

**MONTCLAIR LITTLE LEAGUE**

**CITY OF MONTCLAIR**

\_\_\_\_\_  
President

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

\_\_\_\_\_  
Secretary

**ATTEST:**

\_\_\_\_\_  
Andrea M. Myrick  
City Clerk

CITY OF MONTCLAIR - CONTACT LIST FOR SPORTS LEAGUES

WINTER 2021

<b>Reason for Contact</b>	<b>Authority</b>	<b>Contact</b>	<b>Telephone Number</b>
<b>After-Hours/ Emergency</b>	Montclair Police Department	Dispatch	(909) 621-4771 9-1-1 (Emergency)
<b>Sports League Administration</b>	City's Sports League Liaison	Fernando Saltos	Work: (909) 625-9496
<b>Building Maintenance</b>	Building Maintenance Supervisor	Mathew Paradis	Work: (909) 625-9443 Cell: (909) 721-1860
<b>Grounds Maintenance</b>	Asst. Public Works Superintendent	Jim Diaz	Work: (909) 625-9466 Cell: (909) 721-1775
<b>Vandalism</b>	Public Works Department		(909) 625-9480
<b>Graffiti Removal</b>	Graffiti Abatement Hotline		(909) 625-9429

**AGREEMENT NO. 21-55  
WITH MONTCLAIR LITTLE LEAGUE  
FOR USE OF KINGSLEY PARK**

**THIS AGREEMENT** is made and entered into by and between the City of Montclair, hereinafter called "CITY," and Montclair Little League, hereinafter called "LEAGUE." This Agreement is contingent upon the LEAGUE fulfilling its prior contract's financial obligations and paying any and all outstanding invoices owed to the CITY. Use of any and all facilities listed herein may not be used until all fees have been paid.

LEAGUE must follow at all times the most current and updated safety measures outlined below for Moderate-Contact Sports due to COVID-19 as outlined by the State of California-Health and Human Services Agency, California Department of Public Health.

The following guidance is mandatory:

- Informed Consent (City waiver and League waiver)
- Safety Plan

The following general guidance are strongly encouraged:

- Face Coverings
- Physical Distancing
- Hygiene and Sanitation
- Limitations on mixing by participants
- Travel Considerations

**WITNESSETH:**

**WHEREAS**, CITY presently has a baseball field generally located at the northwest end of Kingsley Elementary School at Benson Avenue and Kingsley Street, Montclair, California, and

**WHEREAS**, said Park has been developed to provide areas for youth sports, on which premises LEAGUE desires to use for Junior/Senior Little League baseball conditioning at such times and hours set forth in Section 1(y). The term of this Agreement is for September 1, 2021 through December 31, 2021.

**SECTION 1:** LEAGUE hereby agrees as follows:

- a. Provide CITY a list of all your participants and coaches. All must sign CITY approved waiver and submit to CITY liaison prior to participating.
- b. Not to use the premises for any other purpose, except as above indicated.
- c. Not to sublet the field.

- d. Not to make any improvements or alterations on said premises.
- e. Not to charge for parking of vehicles in the parking lots located within CITY facilities and not to park in the fields or walkways.
- f. Not to erect any barriers or fences of any kind unless approved by CITY.
- g. Not to use herbicides at the park for any purpose.
- h. Not to disconnect or make changes to existing phone line account.
- i. Not to allow hitting balls into the chain link fences for batting practice.
- j. To provide the CITY with a written list of all items to be stored in park buildings. No items should be stored in rest room facilities, except rest room supplies. Any items found to be stored in buildings without prior written authorization from the CITY will be removed by city crews with or without prior notice to LEAGUE. Any cost incurred by the CITY by removing, storing, or disposal of said property shall be the responsibility of LEAGUE.
- k. CITY to maintain restroom facilities and CITY to furnish all supplies for each well- maintained restroom. LEAGUE to police the entire premises after each day's use and pick up all paper, trash, and other debris that may have accumulated, and leave the premises in a condition deemed acceptable to CITY. This work shall be completed within two hours after an activity has ended. If the premises are not maintained as stated a contracted cleaning agency will be hired by the CITY and the LEAGUE will be responsible for all fees related to the service.
- l. To maintain all equipment and appliances within the snack bar and snack bar building at all times. To clean all sinks, grills, screens, exhaust hoods, mop all floors and clean countertops and utensils after each day's use and leave the snack bar in a condition deemed acceptable to CITY. The snack bar area should not be used for storage of any materials not pertaining to food items used for snack bar operations.
- m. To ensure when a barbecue is used (a permit is required to be obtained by Department of Public Health), it is set up a minimum of ten feet away from any structure and LEAGUE must provide one fire extinguisher for each barbecue being used. All safety and health regulations set forth by the County of San Bernardino Department of Public Health must be followed. LEAGUE must also ensure that a drip pan be used and ensure barbecue has completely cooled down before returning to storage in any CITY structure.
- n. To deposit, with the CITY representative, the sum of Three Hundred Dollars (\$300) as a refundable cleaning deposit to ensure the proper care and cleanup of the snack bar, restrooms, meeting areas, towers, and equipment therein. At the end of the playing season, an inspection shall be conducted by CITY and LEAGUE representatives to ensure that all areas and CITY-owned equipment have been properly cared for, maintained and cleaned. All

non-CITY-owned equipment, with exception of refrigerators, freezers, and ice machines shall be removed from snack bar areas. Refrigerators, freezers, and ice machines owned by LEAGUE shall be cleaned out, doors left open, and electrical turned off. Any food items left in the refrigerators and/or freezers will be discarded by the CITY. Ice machines owned by CITY shall be cleaned out, serviced, and maintained by CITY.

- o. To conform to all safety and health regulations set forth by the County of San Bernardino Department of Public Health and register your snack bar as Pre-packaged. Maintain all CITY-installed facilities and equipment in their original condition. Failure to comply with these requirements will result in a breach of this Agreement and the loss of the use of the premises.
- p. To follow proper call-out procedures in an emergency (an urgent need for assistance or some type of immediate action) by using only telephone numbers issued for this purpose. A Contact List containing the emergency telephone numbers is attached.
- q. LEAGUE agrees to assist CITY in keeping order in the park area and to provide responsible supervision as may be necessary to prevent vandalism or malicious mischief to the property including for graffiti removal on buildings within 24 hours of notification, contact Graffiti Abatement Hotline at (909) 625-9429 and report vandalism immediately to the Public Works Department at (909) 625-9480. LEAGUE will not attempt to remove Graffiti or make repairs to building. LEAGUE shall furnish and supply personnel to conduct and supervise LEAGUE activities on the premises.
- r. If LEAGUE elects to use lights for activities conducted after dark, the CITY will provide electrical services associated with lights at no charge to the LEAGUE.
- s. To deposit, with the CITY representative, the sum of Five Hundred Dollars (\$500) as a security deposit, to ensure the proper and prompt payment of any incurred damages to facilities associated with the LEAGUE. In the event all potential damages are paid by the end of this Agreement term, the deposit will be refunded.
- t. To provide the CITY representative with a list of the Board of Directors including names, addresses, and telephone numbers.
- u. To provide CITY with participant rosters, and conditioning schedules. Also, sixty percent of league participants must live in Montclair and provide verification such as registration forms.
- v. To provide CITY with financial statements upon request for audit purposes.
- w. To designate one individual as the LEAGUE's representative to work with the CITY's representative.

- x. This Agreement is subject to the terms and conditions of any master lease CITY may have with another public agency of which LEAGUE had knowledge.
- y. It is agreed that LEAGUE may use said baseball fields from September 1, 2021, through December 31, 2021, Mondays through Fridays generally commencing at 4:00 p.m. and Saturdays generally commencing at 8:00 a.m.. No games or activities will be conducted past 9:45 p.m.
- z. PUBLIC LIABILITY AND PROPERTY DAMAGE: Throughout the term of this Agreement, at LEAGUE's sole cost and expense, LEAGUE shall keep, or cause to be kept in full force and effect for the mutual benefit of CITY and LEAGUE comprehensive, broad form, general public liability insurance against claims and liabilities for personal injury, death, or property providing proof of at least One Million Dollars (\$1,000,000) for bodily injury or death to any one person or for any one accident or occurrence and at least Three Hundred Thousand Dollars (\$300,000) for property damage. All insurance required by this Agreement shall be carried only by responsible insurance companies duly admitted to transact business in the State of California and shall name as additional insured the CITY, its elected officials, officers, employees, and agents. All policies shall contain language, to the extent obtainable, to the effect that (1) the insurer and the insured waive the right of subrogation against CITY and CITY's elected officials, officers, employees, and agents; (2) the policies are primary and noncontributing with any insurance that may be carried by CITY; and (3) they cannot be canceled or materially changed except after thirty (30) days' notice in writing by the insurer to CITY by certified mail. LEAGUE shall furnish CITY with copies of such policies promptly upon receipt of them, or certificate(s) evidencing the insurance.
- aa. INDEMNIFICATION: LEAGUE shall defend, indemnify, and save harmless CITY, its elected and appointed officials, officers, agents, and employees from all liability from loss, damage, or injury to persons or property including the payment by LEAGUE of any and all legal costs and attorneys' fees in any manner arising out of any negligent or intentional or willful acts or omissions of the LEAGUE in the activities, use, or occupancy of the PREMISES including, but not limited to, all consequential damages to the maximum extent permitted by law.
- bb. It is understood and agreed that there is no relationship of employer-employee for Workers' Compensation purposes between CITY and any person connected with the LEAGUE, unless such person is otherwise regularly employed by and conducting official business of CITY.
- cc. To conduct all operations in compliance with the Americans with Disabilities Act.
- dd. The use of City facilities for room reservations by the LEAGUE are not available at this time. In the event they become available the City will notify LEAGUE. City recommends Zoom meetings.

- ee. LEAGUE may place banners up on weekdays and Saturdays, but they must be removed by the close of Saturday each week. Banners are not allowed to stay up on Sundays. Banners must be no greater than 3'X 5'. Banners will be attached to outfield chain link fence using clip on rings. Banner clearance from turf is a minimum of 2". The City will determine if a banner is past its useful life due to sun fade, rips, graffiti, etc. and will notify LEAGUE of said issue. LEAGUE will have 24 hours to remove said banner. The CITY has the right to remove and dispose of any banner that is not displayed following the above mentioned procedures.
- ff. LEAGUE may place shade cloth as necessary to dug outs on weekdays and Saturdays, but they must be removed by the close of Saturday each week. Shade cloth is not allowed to stay up on Sundays. Shade cloth must be no greater than what may be required to provide adequate coverage over dug outs. Shade cloth will be attached to dug out structure using clip on rings. The City will determine if a shade cloth is past its useful life due to sun fade, rips, graffiti, etc. and will notify LEAGUE of said issue. LEAGUE will have 24 hours to remove said shade cloth. The CITY has the right to remove and dispose of any shade cloth that is not displayed following the above mentioned procedures. If LEAGUE does not remove or replace shade cloth as requested by CITY within 24 hours, CITY may prohibit use of fields and snack bar facilities to LEAGUE until request has been met.
- gg. Locks are issued by the City to secure areas of the park and have access to those areas such as snack bar shutters for maintenance. If locks are needed to replace a lost or damaged lock contact the City immediately. The League at no time shall use personal locks to secure any area. If a personal lock is found the League will be notified and will have 24 hours to remove it. If not removed the City will remove it by any means necessary and the City will not be held responsible for the League's lock.

**SECTION 2:** CITY hereby agrees as follows:

- a. To maintain the periphery of the premises, including shrubs and trees, and mow all grass on a year-round basis.
- b. To pay for all water used on premises.
- c. To have full control over watering the entire premises. LEAGUE shall not adjust or readjust or otherwise change the sprinkler system or water control facilities.
- d. To provide emergency call-out telephone numbers for use by LEAGUE. A Contact List containing the emergency telephone numbers is attached.
- e. To provide to LEAGUE, inventory list of equipment in snack bar and meeting areas; to provide inspection of those areas and equipment at the end of the agreement period.

- f. Upon approval of the Director of Human Services, LEAGUE's cleaning deposit shall rollover any unused monies into the next Agreement.
- g. To designate a CITY representative to work with LEAGUE on all non-maintenance issues relating to the use of CITY facilities.
- h. To provide alarm service at no charge to LEAGUE.

**NOW, THEREFORE,** if any terms of this Agreement are not complied with, the Agreement will become null and void and the LEAGUE will be refused use of CITY facilities. 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 LEAGUE at least ten (10) days prior written notice.

**APPROVED AND ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

**LEAGUE:**

**CITY:**

**MONTCLAIR LITTLE LEAGUE**

**CITY OF MONTCLAIR**

\_\_\_\_\_  
President

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

\_\_\_\_\_  
Secretary

**ATTEST:**

\_\_\_\_\_  
Andrea M. Myrick  
City Clerk



CITY OF MONTCLAIR – CONTACT LIST FOR SPORTS LEAGUES  
 WINTER 2021

<b>Reason for Contact</b>	<b>Authority</b>	<b>Contact</b>	<b>Telephone Number</b>
<b>After-Hours/ Emergency</b>	Montclair Police Department	Dispatch	(909) 621-4771 9-1-1 (Emergency)
<b>Sports League Administration</b>	City’s Sports League Liaison	Fernando Saltos	Work: (909) 625-9496
<b>Building Maintenance</b>	Building Maintenance Supervisor	Mathew Paradis	Work: (909) 625-9443 Cell: (909) 721-1860
<b>Grounds Maintenance</b>	Asst. Public Works Superintendent	Jim Diaz	Work: (909) 625-9466 Cell: (909) 721-1775
<b>Vandalism</b>	Public Works Department		(909) 625-9480
<b>Graffiti Removal</b>	Graffiti Abatement Hotline		(909) 625-9429

**AGREEMENT NO. 21-56  
WITH MONTCLAIR GOLDEN GIRLS SOFTBALL LEAGUE  
FOR USE OF VERNON PARK**

**THIS AGREEMENT** is made and entered into by and between the City of Montclair, hereinafter called "CITY," and Montclair Little League, hereinafter called "LEAGUE." This Agreement is contingent upon the LEAGUE fulfilling its prior contract's financial obligations and paying any and all outstanding invoices owed to the CITY. Use of any and all facilities listed herein may not be used until all fees have been paid.

LEAGUE must follow at all times the most current and updated safety measures outlined below for Moderate-Contact Sports due to COVID-19 as outlined by the State of California-Health and Human Services Agency, California Department of Public Health.

The following guidance is mandatory:

- Informed Consent (City waiver and League waiver)
- Safety Plan

The following general guidance are strongly encouraged:

- Face Coverings
- Physical Distancing
- Hygiene and Sanitation
- Limitations on mixing by participants
- Travel Considerations

**WITNESSETH:**

**WHEREAS**, CITY presently has softball fields (the east and west fields) generally located at the southeast corner of the Vernon Junior High School complex, south of the corner of Benson Avenue and San Bernardino Street, Montclair, California; and

**WHEREAS**, said Park has been developed to provide areas for youth sports, on which premises LEAGUE desires to use for girls softball conditioning at such times and hours set forth in Section 1(y). The term of this Agreement is for September 1, 2021 through December 31, 2021.

**SECTION 1:** LEAGUE hereby agrees as follows:

- a. Provide CITY a list of all your participants and coaches. All must sign CITY approved waiver and submit to CITY liaison prior to participating.
- b. Not to use the premises for any other purpose, except as above indicated.

- c. Not to permit practice sessions in the southeast quadrant of the field; to provide specific written notice to each coach and, in turn, obtain written confirmation from each coach.
- d. Not to sublet the field.
- e. Not to make any improvements or alterations on said premises.
- f. Not to charge for parking of vehicles in the parking lots located within CITY facilities and not to park in the fields or walkways.
- g. Not to erect any barriers or fences of any kind unless approved by CITY.
- h. Not to use herbicides at the park for any purpose.
- i. Not to disconnect or make changes to existing phone line account
- j. To provide the CITY with a written list of all items to be stored in park buildings. No items should be stored in rest room facilities, except rest room supplies. Any items found to be stored in buildings without prior written authorization from the CITY will be removed by city crews with or without prior notice to LEAGUE. Any cost incurred by the CITY by removing, storing, or disposal of said property shall be the responsibility of LEAGUE.
- k. CITY to maintain restroom facilities and CITY to furnish all supplies for each well- maintained restroom. LEAGUE to police the entire premises after each day's use and pick up all paper, trash, and other debris that may have accumulated, and leave the premises in a condition deemed acceptable to CITY. This work shall be completed within two hours after an activity has ended. If the premises are not maintained as stated a contracted cleaning agency will be hired by the CITY and the LEAGUE will be responsible for all fees related to the service.
- l. To maintain all equipment and appliances within the snack bar and snack bar building at all times. To clean all sinks, grills, screens, exhaust hoods, mop all floors and clean countertops and utensils after each day's use and leave the snack bar in a condition deemed acceptable to CITY. The snack bar area should not be used for storage of any materials not pertaining to food items used for snack bar operations.
- m. To ensure when a barbecue is used (a permit is required to be obtained by Department of Public Health), it is set up a minimum of ten feet away from any structure and LEAGUE must provide one fire extinguisher for each barbecue being used. All safety and health regulations set forth by the County of San Bernardino Department of Public Health must be followed. LEAGUE must also ensure that a drip pan be used and ensure barbecue has completely cooled down before returning to storage in any CITY structure.
- n. To deposit, with the CITY representative, the sum of Three Hundred Dollars (\$300) as a refundable cleaning deposit to ensure the proper care and

cleanup of the snack bar, restrooms, and equipment therein. At the end of the playing season, an inspection shall be conducted by CITY and LEAGUE representatives to ensure that all areas and CITY-owned equipment have been properly cared for, maintained and cleaned. All non-CITY-owned equipment, with exception of refrigerators, freezers, and ice machines shall be removed from snack bar areas. Refrigerators, freezers, and ice machines owned by LEAGUE shall be cleaned out, doors left open, and electrical turned off. Any food items left in the refrigerators and/or freezers will be discarded by the CITY. Ice machines owned by CITY shall be cleaned out, serviced, and maintained by CITY.

- o. To conform to all safety and health regulations set forth by the County of San Bernardino Department of Public Health and register your snackbar as Pre-packaged. Maintain all CITY-installed facilities and equipment in their original condition. Failure to comply with these requirements will result in a breach of this Agreement and the loss of the use of the premises.
- p. To be responsible for all costs as a result of lost or stolen keys.
- q. LEAGUE agrees to assist CITY in keeping order in the park area and to provide responsible supervision as may be necessary to prevent vandalism or malicious mischief to the property including for graffiti removal on buildings within 24 hours of notification, contact Graffiti Abatement Hotline at (909) 625-9429 and report vandalism immediately to the Public Works Department at (909) 625-9480. LEAGUE will not attempt to remove Graffiti or make repairs to building. LEAGUE shall furnish and supply personnel to conduct and supervise LEAGUE activities on the premises.
- r. If LEAGUE elects to use lights for activities conducted after dark, the CITY will provide electrical services associated with lights at no charge to the LEAGUE.
- s. To deposit, with the CITY representative, the sum of Five Hundred Dollars (\$500) as a security deposit, to ensure the proper and prompt payment of any incurred damages to facilities associated with the LEAGUE. In the event all potential damages are paid by the end of this Agreement term, the deposit will be refunded.
- t. To provide the CITY representative with a list of the Board of Directors including names, addresses, and telephone numbers.
- u. To provide CITY with participant rosters, and conditioning schedules. Also, sixty percent of league participants must live in Montclair and provide verification such as registration forms.
- v. To provide CITY with financial statements upon request for audit purposes.
- w. To designate one individual as the LEAGUE's representative to work with the CITY's representative.

- x. This Agreement is subject to the terms and conditions of any master lease CITY may have with another public agency of which LEAGUE had knowledge.
- y. It is agreed that LEAGUE may use said baseball fields from September 1, 2021, through December 31, 2021, Mondays through Fridays generally commencing at 4:00 p.m. and Saturdays generally commencing at 8:00 a.m.. No games or activities will be conducted past 9:45 p.m.
- z. PUBLIC LIABILITY AND PROPERTY DAMAGE: Throughout the term of this Agreement, at LEAGUE's sole cost and expense, LEAGUE shall keep, or cause to be kept in full force and effect for the mutual benefit of CITY and LEAGUE comprehensive, broad form, general public liability insurance against claims and liabilities for personal injury, death, or property providing proof of at least One Million Dollars (\$1,000,000) for bodily injury or death to any one person or for any one accident or occurrence and at least Three Hundred Thousand Dollars (\$300,000) for property damage. All insurance required by this Agreement shall be carried only by responsible insurance companies duly admitted to transact business in the State of California and shall name as additional insured the CITY, its elected officials, officers, employees, and agents. All policies shall contain language, to the extent obtainable, to the effect that (1) the insurer and the insured waive the right of subrogation against CITY and CITY's elected officials, officers, employees, and agents; (2) the policies are primary and noncontributing with any insurance that may be carried by CITY; and (3) they cannot be canceled or materially changed except after thirty (30) days' notice in writing by the insurer to CITY by certified mail. LEAGUE shall furnish CITY with copies of such policies promptly upon receipt of them, or certificate(s) evidencing the insurance.
- aa. INDEMNIFICATION: LEAGUE shall defend, indemnify and save harmless CITY, its elected and appointed officials, officers, agents, and employees from all liability from loss, damage, or injury to persons or property including the payment by LEAGUE of any and all legal costs and attorneys' fees in any manner arising out of any negligent or intentional or willful acts or omissions of the LEAGUE in the activities, use, or occupancy of the PREMISES including, but not limited to, all consequential damages, to the maximum extent permitted by law.
- bb. It is understood and agreed that there is no relationship of employer-employee for Workers' Compensation purposes between CITY and any person connected with the LEAGUE, unless such person is otherwise regularly employed by and conducting official business of CITY.
- cc. To conduct all operations in compliance with the Americans with Disabilities Act.
- dd. The use of City facilities for room reservations by the LEAGUE are not available at this time. In the event they become available the City will notify LEAGUE. City recommends Zoom meetings.

- ee. LEAGUE may place banners up on weekdays and Saturdays, but they must be removed by the close of Saturday each week. Banners are not allowed to stay up on Sundays. Banners must be no greater than 3'X 5'. Banners will be attached to outfield chain link fence using clip on rings. Banner clearance from turf is a minimum of 2". The City will determine if a banner is past its useful life due to sun fade, rips, graffiti, etc. and will notify LEAGUE of said issue. LEAGUE will have 24 hours to remove said banner. The CITY has the right to remove and dispose of any banner that is not displayed following the above mentioned procedures.
- ff. LEAGUE may place shade cloth as necessary to dug outs on weekdays and Saturdays, but they must be removed by the close of Saturday each week. Shade cloth is not allowed to stay up on Sundays. Shade cloth must be no greater than what may be required to provide adequate coverage over dug outs. Shade cloth will be attached to dug out structure using clip on rings. The City will determine if a shade cloth is past its useful life due to sun fade, rips, graffiti, etc. and will notify LEAGUE of said issue. LEAGUE will have 24 hours to remove said shade cloth. The CITY has the right to remove and dispose of any shade cloth that is not displayed following the above mentioned procedures. If LEAGUE does not remove or replace shade cloth as requested by CITY within 24 hours, CITY may prohibit use of fields and snack bar facilities to LEAGUE until request has been met.
- gg. Locks are issued by the City to secure areas of the park and have access to those areas such as snack bar shutters for maintenance. If locks are needed to replace a lost or damaged lock contact the City immediately. The League at no time shall use personal locks to secure any area. If a personal lock is found the League will be notified and will have 24 hours to remove it. If not removed the City will remove it by any means necessary and the City will not be held responsible for the League's lock.

**SECTION 2:** CITY hereby agrees as follows:

- a. To maintain the periphery of the premises, including shrubs and trees, and mow all grass on a year-round basis.
- b. To pay for all water used on premises.
- c. To have full control over watering the entire premises. LEAGUE shall not adjust or readjust or otherwise change the sprinkler system or water control facilities.
- d. To provide emergency call-out telephone numbers for use by LEAGUE. A Contact List containing the emergency telephone numbers is attached.
- e. Upon approval of the Director of Human Services, LEAGUE's cleaning deposit shall rollover any unused monies into the next Agreement.

- f. To designate a CITY representative to work with LEAGUE on all non-maintenance issues relating to the use of CITY facilities.

**NOW, THEREFORE,** if any terms of this Agreement are not complied with, the Agreement will become null and void and the LEAGUE will be refused use of CITY facilities. 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 LEAGUE at least ten (10) days prior written notice.

**APPROVED AND ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

**LEAGUE:**

**GOLDEN GIRLS SOFTBALL**

**CITY:**

**CITY OF MONTCLAIR**

\_\_\_\_\_  
President

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

\_\_\_\_\_  
Secretary

**ATTEST:**

\_\_\_\_\_  
Andrea M. Myrick  
City Clerk

CITY OF MONTCLAIR – CONTACT LIST FOR SPORTS LEAGUES  
 WINTER 2021

<b>Reason for Contact</b>	<b>Authority</b>	<b>Contact</b>	<b>Telephone Number</b>
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<b>Sports League Administration</b>	City’s Sports League Liaison	Fernando Saltos	Work: (909) 625-9496
<b>Building Maintenance</b>	Building Maintenance Supervisor	Mathew Paradis	Work: (909) 625-9443 Cell: (909) 721-1860
<b>Grounds Maintenance</b>	Asst. Public Works Superintendent	Jim Diaz	Work: (909) 625-9466 Cell: (909) 721-1775
<b>Vandalism</b>	Public Works Department		(909) 625-9480
<b>Graffiti Removal</b>	Graffiti Abatement Hotline		(909) 625-9429



**MINUTES OF THE MEETING OF THE MONTCLAIR  
PERSONNEL COMMITTEE HELD ON MONDAY,  
AUGUST 2, 2021, AT 6:30 P.M. IN THE CITY  
ADMINISTRATIVE OFFICES, 5111 BENITO STREET,  
MONTCLAIR, CALIFORNIA**

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**I. CALL TO ORDER**

Mayor Pro Tem Ruh called the meeting to order at 6:30 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 July 19, 2021.**

Moved by Council Member Johnson, seconded by Mayor Pro Tem Ruh, and carried unanimously to approve the minutes of the Personnel Committee meeting of July 19, 2021.

**IV. PUBLIC COMMENT - None**

**V. CLOSED SESSION**

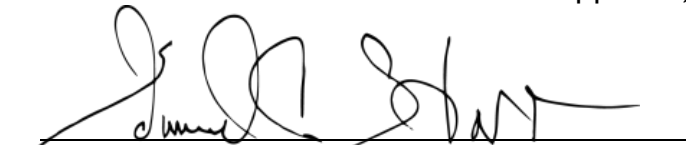
At 6:31 p.m., the Personnel Committee went into Closed Session regarding personnel matters related to appointments, resignations/terminations, and evaluations of employee performance.

At 6:45 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 6:45 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, AUGUST 2, 2021 AT 7:02 P.M. IN THE CITY COUNCIL CHAMBERS, 5111 BENITO STREET, MONTCLAIR, CALIFORNIA

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I. CALL TO ORDER

Mayor/Chair Dutrey called the meeting to order at 7:02 p.m.

II. INVOCATION

The invocation was given by **Mayor Pro Tem Ruh**.

III. PLEDGE OF ALLEGIANCE

Council Member/Director 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 Human Services Richter; Director of Economic Development Fuentes; Finance Manager Kulbeck; City Attorney Robbins; City Clerk Myrick

V. PRESENTATIONS — None

VI. PUBLIC COMMENT

A. **Mr. Bill Kaufman** spoke in support of the Cannabis industry, providing several examples of ways in which legal cannabis businesses have improved communities, including generating tax revenue to cities, eliminating illegal cannabis operations, and providing a safe place for adults to purchase recreational cannabis products.

B. **Mr. Thuan Nguyen**, resident, spoke in support of the Pride Month proclamation issued in June and actions taken by the City such as displaying rainbow lighting the Council Chambers and making relevant social media posts throughout the month. He stated it was a historic moment for the City in spite of the anti-LGBTQ+ comments made by **Mr. Rinker** and other residents at the meetings. He urged the community to pay attention to what's going on in the City and speak up on City issues at Council meetings. He disagreed with Mayor Dutrey's comment that proclamation should not be controversial or political, noting it is due to Council Member Lopez's membership on the City Council despite his past anti-LGBTQ+ advocacy. He pointed out LGBTQ+ individuals living as they are openly should not be controversial, but because of individuals like **Mr. Rinker**, it is still necessary to politicize the issue. He added Mayor Dutrey and Mayor Pro Tem Ruh have not rescinded their endorsements of Council Member Lopez despite knowing him and his politics for decades. He also dismissed rumors that he is planning to run for public office.

C. **Mrs. Carolyn Raft**, resident, responded to comments made by Council Member Lopez at a previous Council meeting regarding her tenure on the City Council, refuting his characterization of her as someone who reads from scripts and votes however staff wants. She stated she would always thoroughly read the agenda in advance and when she had a question or issue, she would speak directly with staff prior to the meeting to get clarification, and did not try to impress anyone by having a question or comment on every agenda item during the meeting. She added she always respected staff's time and work and did not treat them as her own employees. She stated prior

to becoming a Council Member, she worked at a bank and then helped run her family business, so she is not unfamiliar with accounting and was regarded by the *Inland Valley Daily Bulletin* as a fiscal hawk.

- D. **Mr. Shamsian Shaj** stated he has enjoyed running his business in Montclair for the past 12 years, and feels this is the best city one could operate a business.

**VII. PUBLIC HEARINGS — None**

**VIII. CONSENT CALENDAR**

Mayor Dutrey stated he would like incorporate corrections, a copy of which were provided to Council Members prior to the meeting, to Item A-1, the minutes of the July 19, 2021 regular meeting, into the motion to adopt the Consent Calendar.

Council Member Lopez noted he had questions on items C-3 and D-1.

Mayor Dutrey allowed Council Member Lopez to ask his questions prior to the vote on the Consent Calendar.

Moved by Council Member/Director Lopez, seconded by Mayor Pro Tem/Vice Chair Ruh, and carried unanimously 5-0, the City Council approved the Consent Calendar with corrections to Item A-1 and discussion on Items C-3 and D-1:

**A. Approval of Minutes**

**1. Regular Joint Meeting — July 19, 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 July 19, 2021 regular joint meeting, with the inclusion of a reference to a request Mayor Dutrey made of staff during the Police Department Report on Fireworks Enforcement Detail (X. Communications, Item A-1).

**B. Administrative Reports**

**1. Approval of City Warrant Register and Payroll Documentation**

The City Council approved the City Warrant Register dated August 2, 2021, totaling \$6,812,235.56; and the Payroll Documentation dated July 4, 2021, amounting to \$607,229.07 gross, with \$421,308.31 net being the total cash disbursement.

**2. Receiving and Filing a Status Report on Emergency Contracting Procedures for the Pacific Electric Trail Bridge Replacement Project and Determining There is a Need to Continue the Action**

The City Council received and filed a status report on emergency contracting procedures for the Pacific Electric Trail Bridge Replacement Project and determined there is a need to continue the action.

**3. Authorizing the Purchase of a Mobile Column Lift from Bendpak in the Amount of \$40,094.27 and the Installation of an Electrical Circuit in the City Yard Garage by Rymax Electric at a Cost of \$2,950**

The City Council authorized the purchase of a mobile column lift from Bendpak in the amount of \$40,094.27 and the installation of an electrical circuit in the City Yard garage by Rymax Electric at a cost of \$2,950.

### C. Agreements

1. **Approval of Agreement No. 21-38 with Econolite Systems for Traffic Signal Maintenance Services**

The City Council approved *Agreement No. 21-38* with Econolite Systems for traffic signal maintenance services.

2. **Approval of Agreement No. 21-43 with the Inland Valley Humane Society & S.P.C.A. for Animal Control Services**

The City Council approved *Agreement No. 21-43* with the Inland Valley Humane Society & S.P.C.A. for animal control services.

3. **Approval of Agreement No. 21-47 with EXTTI for Professional Workplace Services in Expert Testimony, Training, and Investigations**

**Authorizing the City Manager to Execute Separate Agreements with EXTTI for Specialized Services in Compliance with Agreement No. 21-47**

Council Member Lopez asked if the attorney referred to in the agenda report is the same one who provided the ethics training this year.

City Manager Starr confirmed it is the same attorney.

Council Member Lopez asked if her rate is different depending on the function she is performing.

City Manager Starr indicated rates are based on the individual and are listed on the attached fee schedule.

The City Council took the following actions:

- (a) Approved *Agreement No. 21-47* with EXTTI for professional workplace services in expert testimony, training, and investigations.
- (b) Authorized the City Manager to execute separate agreements with EXTTI for specialized services in compliance with *Agreement No. 21-47*.

4. **Approval of Reimbursement Agreement Nos. 21-52 and 21-53 with Maple Multifamily Land CA, L.P. Related to the Properties Generally Located on the Southwest Corner of Monte Vista Avenue and Arrow Highway (Alexan-Kendry Expansion Project Site); and the Northwest Corner of Monte Vista Avenue and Richton Street (Vulcan Project Site)**

The City Council approved Reimbursement *Agreement Nos. 21-52 and 21-53* with Maple Multifamily Land CA, L.P. related to the properties generally located on the southwest corner of Monte Vista Avenue and Arrow Highway (Alexan-Kendry Expansion Project Site); and the northwest corner of Monte Vista Avenue and Richton Street (Vulcan Project Site).

### D. Resolutions

1. **Adoption of Resolution No. 21-3301 Approving a List of Projects to be Funded by Senate Bill 1 (SB1) from the State of California Road Repair and Accountability Act of 2017**

Council Member Lopez asked if the Ramona Avenue and Howard Street Roundabout Project would need to undergo an Environmental Impact Report (EIR) or if it would be able to break ground after this approval.

City Manager Starr advised the City Council's approval is simply a requirement for use of the funds, however the City already has the funds and intends to begin the project later this year.

Interim Director of Public Works Hudson advised the project would likely be exempt from the EIR process.

The City Council adopted Resolution No. 21-3301 approving a list of projects to be funded by Senate Bill 1 (SB1) from the State of California Road Repair and Accountability Act of 2017.

**2. Adoption of Resolution No. 21-3314 Authorizing Placement of Assessments on Certain Properties for Delinquent Sewer and Trash Accounts**

The City Council adopted Resolution No. 21-3314 authorizing placement of assessments on certain properties for delinquent sewer and trash accounts.

**IX. PULLED CONSENT CALENDAR ITEMS — None**

**X. COMMUNICATIONS**

**A. Department Reports**

**1. City Clerk — Establishment of City Council Policies and Procedure for the Conduct of Meetings and Other Administrative Matters**

City Clerk Myrick advised the City Council currently has a Policy and Appointment Process Manual that was last updated in 2016, but may consider directing staff to develop a more robust series of Council policies. The City Council was provided with a copy of the City of Victorville's City Council Policies and Procedures Manual as a sample of what other cities have established.

**Mr. Nguyen**, resident, stated he hopes policies that are included allow the respectful conduct of the public's business in an open manner that allows public participation, and also respects staff's time to provide direct services to residents.

**Mrs. Raft**, resident, stated Mayor Dutrey has been appropriately calling out the behaviors exhibited by Council Member Lopez during meetings, noting he has continued to speak on matters not on the agenda in violation of the Brown Act and she hopes the policies will help to correct Mr. Lopez's behavior.

Mayor Dutrey stated he feels having a clear set of policies and procedures outlined in such a manual would be beneficial to newer Council Members, noting three of the current Council Members have served for fewer than three years whereas he and Mayor Pro Tem Ruh each exceed twenty years on the Council.

Moved by Mayor Dutrey, seconded by Council Member Johnson, and carried unanimously 5-0, the City Council took the following actions:

- (a) Directed staff to draft City Council policies and procedures for future Council consideration; and
- (b) Established an Ad Hoc Committee for the purpose of drafting the policies and appointing Mayor Dutrey and Mayor Pro Tem Ruh to serve on the Committee.

**2. Administrative Services — Recruitment Procedures**

Mayor Dutrey advised this report would be given at the next Council Meeting so that staff has time to prepare a thorough presentation.

**3. Human Services — Activities and Programs Update**

Director of Human Services Richter thanked the City Council for attending last week's Summer Concert in the Park and reminded everyone that tomorrow is National Night Out beginning at 6:30 p.m.

She advised that, due to public health concerns as a result of the rise in cases of the COVID-19 delta variant, the Montclair Senior Center reopening has been postponed until further notice. She advised curbside pick-up for the lunch program will continue Monday through Friday, 11:30 a.m. to 12:30 p.m. She added vaccinated volunteers are needed to assist in the kitchen and asked those interested to contact the Senior Center.

She advised that, in addition to the COVID-19 testing available at **Montclair Place** from 10:00 a.m. to 6:00 p.m. every Monday, beginning this Wednesday the COVID-19 testing bus provided by the State and **OptumServe** will offer testing at the **Kids' Station** parking lot in the **Montclair Transcenter**. Testing will be available at this site from 11:00 a.m. to 7:00 p.m. and walk-ins are welcome at this site.

## **B. City Attorney**

City Attorney Robbins requested the City Council meet in closed session for conference with legal counsel regarding the following matters, explaining the potential litigation matter is related to the City's recently implemented COVID-19 vaccination policy:

### **1. Closed Session Pursuant to Government Code Section 54956.9(d)(2) Regarding Potential Litigation**

*One Potential Case*

### **2. Closed Session Pursuant to Government Code Section 54957.6 Regarding Conference with City's Designated Labor Negotiator Edward C. Starr**

Agency: City of Montclair  
Employee: Management, Montclair City Confidential  
Organizations: Employees' Assoc., Montclair General Employees' Assoc., Montclair Fire Fighters' Assoc., and Montclair Police Officers' Assoc.

City Attorney Robbins requested the City Council also meet in closed session to discuss a matter not on the agenda that has come to the City's attention today and requires immediate attention. She advised adding a new item to the current meeting's agenda requires a four-fifths vote from the City Council. She advised the matter is in relation to a complaint that was received by the City this afternoon from **California Occupational Safety and Health Administration (Cal/OSHA)**, and requires that an investigation be conducted within five days of receipt. She noted the item could be discussed in closed session pursuant to Government Code Section 54956.9(d)(2).

Council Member Lopez asked if the details of who submitted the complaint are available.

City Attorney Robbins advised that such information is not provided in the complaint and staff is not aware of who it came from. She noted there should be no further discussion of this matter in open session.

Moved by Council Member Johnson, seconded by Mayor Pro Tem Ruh, and carried by a 4-0-1 vote (Lopez abstained), the City Council declared that there is an urgent need to address a matter that came to the City's attention after the posting of the agenda, and added the following item to the Closed Session agenda:

### **3. Closed Session Pursuant to Government Code Section 54956.9(d)(2) Regarding Potential Litigation**

*One Potential Case*

**C. City Manager/Executive Director**

City Manager/Executive Director Starr advised he does not have a detailed COVID-19 update at this time as he has not had a chance to review the current data, but will be reviewing the data that is released tomorrow related to the rise in Delta variant cases in the region.

**D. Mayor/Chair**

1. Mayor/Chair Dutrey made the following comments:

- (a) He requested tonight's meeting be adjourned in memory of the following three individuals who recently passed away:
  - **Mr. Rudolph "Rudy" S. Gomez**, who was a resident as well as a former City employee.
  - **Mr. Ronald Wells**, husband of Community Activities Commissioner Diane Wells.
  - **Mr. Steven Ernest Terra**, son-in-law of the late former Council Member **Elouise "Dolly" Lewman**, and a retired **Monte Vista Water District** employee, who lived in Montclair for most of his life.
- (b) He advised **Mr. John Pulido**, a **Montclair High School** graduate who served in the **U.S. Army** from 1989 to 2020 and whose family was presented with his military banner that was displayed in the City during his service, was again honored by the **Los Angeles Dodgers** during the second inning at a game he coincidentally attended on July 22nd.

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

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

- (a) She noted she and Mayor Dutrey attended an Inland Empire Division meeting of the **League of California Cities**, where she learned there is a major blood shortage and encouraged those who can to donate blood at tomorrow's drive hosted by the **American Red Cross** at the Senior Center during or prior to National Night Out.
- (b) She announced **Montclair Place** is holding kids events on the first and third Thursdays of every month at 4:00 p.m. through the end of the year on the lower level of the mall between **Kids Empire** and **Barnes & Noble**.
- (c) She stated she hopes to see everyone tomorrow night at **Alma Hofman Park!**

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

- (a) He stated there was a great turnout for the mariachi concert in the park last week and he expects tomorrow night's turnout to National Night Out to be even bigger.
- (b) He stated **Mr. Wells** was a good friend of his, and was admired for his courage and being a fighter throughout the long battle with his illness, noting he even continued to walk to the polls to vote. He commended **Mrs. Wells** for remaining strong for her husband while being his caretaker and extended his sympathies.
- (c) He noted he just saw **Mr. Terra** several months ago and was very sad to hear of his passing. He wished his deepest condolences to the **Terra** and **Lewman** families.
- (d) He stated the **Gomez** family has been close with his family for over 50 years, noting **Rudy's** brother and his mother briefly dated when they were much younger. He remem-

bered **Rudy** as a fellow **USC** fan with a fighting spirit and wished condolences to his family.

- (e) Although the Administrative Services Department's report on recruitment procedures is delayed, he stated he would like to receive a copy of the **National Testing Network** contract and fees.

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

- (a) He stated he has known **Ron** and **Diane Wells** for over 30 years since they live nearby, and gave **Mrs. Wells** his sincere condolences.
- (b) He noted although he did not know him well personally, he can see that **Mr. Terra** will be truly missed by many.
- (c) He stated **Mr. Gomez** was part of the Montclair City family as a former employee, and gave condolences to his family and friends.
- (d) He stated he is excited for National Night Out tomorrow and expects it to be a great event.
- (e) He noted on Sunday, the 25th of July, he attended **Iglesia Ni Cristo's** celebration of 25 years in Montclair and 117 years as a congregation and wished them congratulations.
- (f) He urged everyone to thank those in the healthcare industry for all that they have endured in the past year and continue to endure.
- (g) He contrasted the current vaccine hesitancy for COVID-19, a disease that can cause serious long-term health impacts, to the Polio outbreak of the 1950s, where people were desperate to receive the vaccine to prevent a disease for which the most common inflictions were flu-like symptoms, malaise, headaches, and muscle stiffness, and that had a 0.5 percent chance to enter the nervous system resulting in paralysis or even death, which is even lower than the current COVID-19 death rate.
- (h) He warned that even vaccinated individuals, such as **U.S. Senator Lindsey Graham**, a Republican from South Carolina, tested positive recently for the Delta variant of COVID-19 because he did not take precautions, and a young man named **Stephen Harmon** of Corona, who did not believe COVID-19 was a real disease, passed away from it a couple weeks ago, not long after making a public post on **Twitter** about refusing to get vaccinated. He was only 34 years old. **Mr. Harmon** was a member of **Hillsong Church**, and was working to become a minister.
- (i) He reported news of a surge of COVID-19 cases in Texas caused by the Lambda coronavirus variant, which was first identified in Peru and South America, and may be more resistant to vaccines. He advised the public should continue taking precautions—even those who have been vaccinated.

## F. Committee Meeting Minutes

### 1. Minutes of Personnel Committee Meeting of July 19, 2021

The City Council received and filed the minutes of the Personnel Committee meeting of July 19, 2021, for informational purposes.

## XI. CLOSED SESSION

At 8:07 p.m., the City Council went into closed session to discuss labor negotiations and potential litigation.



**XII. CLOSED SESSION ANNOUNCEMENTS**

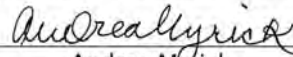
At 9:54 p.m., the City Council returned from closed session. Mayor Dutrey announced the City Council met in closed session to discuss labor negotiations and potential litigation; information was received and direction given to staff; and no further announcements would be made at this time.

**XIII. ADJOURNMENT**

At 9:55 p.m., Mayor/Chair Dutrey adjourned the City Council, Successor Agency Board, Montclair Housing Authority Commission, and Montclair Community Foundation Board.

The meeting was adjourned in memory of **Mr. Rudy Gomez, Mr. Ron Wells, and Mr. Steve Terra.**

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



\_\_\_\_\_  
Andrea Myrick  
City Clerk

PENDING APPROVAL

**CITY OF MONTCLAIR**  
**TREASURER'S REPORT**  
**FOR THE MONTH ENDING**  
**JULY 31, 2021**

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**SCHEDULE 3**

STATEMENT OF CASH AND INVESTMENT ACCOUNTS

**GRAPH**

CASH AND INVESTMENTS BY TYPE

**CITY OF MONTCLAIR  
STATEMENTS OF COMPLIANCE WITH THE INVESTMENT POLICY  
AND INVESTMENT STRATEGY**

**JULY 31, 2021**

COMPLIANCE STATEMENT

The City has the following amount invested in various financial instruments. This conforms with the investment policy approved by the City Council.

Total Investments	<u>\$ 32,784,379</u>
-------------------	----------------------

During the current month the City was in compliance with the internal control procedures set forth in the Investment Policy.

INVESTMENT STRATEGY FOR THE UPCOMING MONTH

During the upcoming month, surplus moneys will be invested in the Local Agency Investment Fund and other investments authorized in the Investment Policy. The City has sufficient monies available to meet expenditures during the next six month period.

CITY OF MONTCLAIR  
STATEMENT OF CASH AND INVESTMENTS BY FUND  
AS OF JULY 31, 2021

Fund	Beginning Balance	Receipts	Disbursements	Interfund Transfers	Ending Balance
General Fund	\$ 1,676,106.40	\$ 3,191,174.53	\$ 7,534,906.30	\$ -	\$ (2,667,625.37) (1)
Gas Tax Fund	(227,788.57)	101,712.69	54,940.25	-	(181,016.13) (2)
Road Maintenance - Section 2032	1,606,322.14	71,363.78	-	-	1,677,685.92
Measure 1 Fund	3,502,364.86	97,047.87	1,061.50	-	3,598,351.23
Traffic Safety	109,604.20	9,624.82	-	-	119,229.02
Disability Access Fund - Bus. License	37,267.20	844.00	-	-	38,111.20
Park Maintenance	86,452.71	2,962.40	3,447.27	-	85,967.84
Park Development	1,149,207.06	-	-	-	1,149,207.06
CDBG	(30,399.24)	-	6,988.15	-	(37,387.39) (2)
May Bdgt Revise Cares Act Dist	-	-	-	-	-
SB2 Planning Grant	-	-	-	-	-
Air Quality Improvement Trust	217,359.14	-	-	-	217,359.14
SB Cty Cares Act Relief Fund	-	-	-	-	-
SB Cty Cares Act Infrastructure	(853,333.25)	-	-	-	(853,333.25) (2)
Senior Nutrition Program	(70,203.38)	23,878.39	12,099.87	-	(58,424.86) (2)
American Rescue Plan	-	4,794,353.00	-	-	4,794,353.00
Forfeiture Fund - State	111,452.65	-	-	-	111,452.65
Proposition 30/SB 109	122,237.48	-	-	-	122,237.48
SB 509 Public Safety	222,402.62	39,873.35	14,497.29	-	247,778.68
Forfeiture Fund-Federal/DOJ	402,480.52	4,599.85	-	-	407,080.37
Asset Seizure Fund	6,775.11	0.02	-	-	6,775.13
Section 11489 Subfund	45,137.41	-	2,240.00	-	42,897.41
Fed Asset Forfeiture-Treasury	92,344.82	-	-	-	92,344.82
School District Grant Fund	-	-	-	-	-
State Supplemental Law Enforce	347,813.52	-	-	-	347,813.52
PC 1202.5 Crime Prevention	2,108.82	5.92	-	-	2,114.74
Recycling Grant Fund	80,859.00	-	-	-	80,859.00
Homeless Emergency Aid Program	(47,024.86)	-	-	-	(47,024.86) (2)
Bureau of Justice Assistance	-	-	-	-	-
Statewide Park Dev Grant	-	-	-	-	-
Homeless Housing Assist Preven	13,725.00	-	2,119.16	-	11,605.84
After School Program Fund	466,175.27	203.74	108,600.23	-	357,778.78
OTS Grant	-	-	-	-	-
FIRST 5 Fund	1,290.78	-	-	-	1,290.78
Safety Dept. Grants	299,107.72	-	-	-	299,107.72
OSMD Immunization Grant	(2,708.40)	-	590.04	-	(3,298.44) (2)
Kaiser Permanente Grant	4,878.87	-	-	-	4,878.87
Resource Center Grant - OMSD	16,416.79	777.00	545.18	-	16,648.61
Title IIIB Sr Support Services	4,040.40	20,535.70	2,805.81	-	21,770.29 (2)
Healthy Community Strategic Plan	17,847.78	-	-	-	17,847.78
ASES Supplemental Grant	118,502.20	-	408.55	-	118,093.65
E.M.S. - Paramedic Fund	(32,278.34)	3,806.01	4,641.94	-	(33,114.27) (3)
Economic Development	6,162,484.46	-	42,337.50	-	6,120,146.96
City Contributions/Donations Fund	500.00	-	-	-	500.00
Sewer Operating Fund	1,885,824.33	450,397.70	213,859.86	-	2,122,362.17
Sewer Replacement Fund	2,107,340.14	-	-	-	2,107,340.14
CFD 2011-1 (Paseos)	142,753.00	-	3,339.19	-	139,413.81
CFD 2011-2 (Arrow Station)	90,507.81	446.29	-	-	90,954.10
Inland Empire Utility Agency	2,773,469.25	39,642.94	-	-	2,813,112.19
Sewer Expansion Fee Fund	598,307.55	3,959.46	-	-	602,267.01
Developer Impact Fees - Local	1,145,568.90	-	-	-	1,145,568.90
Developer Impact Fees - Regional	175,769.27	-	-	-	175,769.27
Burrtec Pavement Impact Fees	231,952.09	19,457.47	-	-	251,409.56
PUC Reimbursement Fund-MVGS	1,689,981.14	-	-	-	1,689,981.14
Utility Underground In-Lieu	340,516.52	-	-	-	340,516.52
General Plan Update Fee	88,620.57	1,219.70	-	-	89,840.27
Housing Fund	555,326.51	-	-	-	555,326.51
Public Education/Govt. PEG Fee Fund	40,490.73	-	-	-	40,490.73
Infrastructure Fund	(2,648,631.36)	-	52,353.82	-	(2,700,985.18) (4)
COVID-19	(256,875.17)	-	4,331.72	-	(261,206.89)
Successor Agency Bonds-Taxable	4,789,190.64	3,910.24	-	-	4,793,100.88
Successor Agency Bonds-Tax Exempt	8,231,098.75	6,720.45	9,006.00	-	8,228,813.20
2014 Lease Revenue Bond Proceeds	-	6,171.00	6,171.00	-	-
2014 Lease Revenue Bond Debt Svc	(2,594.80)	-	-	-	(2,594.80) (5)
Contingency Fund	233,836.96	-	-	-	233,836.96 (1)
Assigned General Fund Reserves	9,444,961.57	23,321.20	-	-	9,468,282.77 (1)
<b>TOTALS</b>	<b>\$ 47,316,943.29</b>	<b>\$ 8,918,009.52</b>	<b>\$ 8,081,290.63</b>	<b>\$ -</b>	<b>\$ 48,153,662.18</b>

Negative Cash Notes follow this presentation.

### **Notes on Negative Cash Balances**

- (1)** The General Operating Fund may have a negative cash for the majority of the fiscal year awaiting property and sales tax collections. This is covered by the Contingency Fund and other General Fund Reserve Funds until those collections are received. As Contingency and General Reserves exceed this negative, the City is not utilizing restricted resources.
- (2)** These are reimbursable grant funds that utilize general pool monies initially to cover expenditures pending reimbursement from the granting agencies. Therefore, it is not uncommon for these to be negative until that reimbursement is received.
- (3)** This fund has operational deficits annually. At the end of the fiscal year it is restored by a General Fund Transfer.
- (4)** The Infrastructure Fund receives transfers from other funds to accomplish infrastructure projects. Those transfers are usually recorded when the projects nears completion or prior to mid-year budget preparation. Any negative in that fund will be eliminated at those times. Transfers from these funds (C.D.B.G., Gas Tax, Measure I, etc.) may go negative on cash pending collections of these revenues. In this way we can determine if obligations for projects are exceeding current resources.
- (5)** This debt service operation utilizes transaction and use taxes which are part of the sales tax and Successor Agency property taxes. These have been sufficient in prior fiscal years to cover the necessary debt service; however, they are not completely received until fiscal year-end. Once debt service is covered the excess will be transferred to the General Fund.

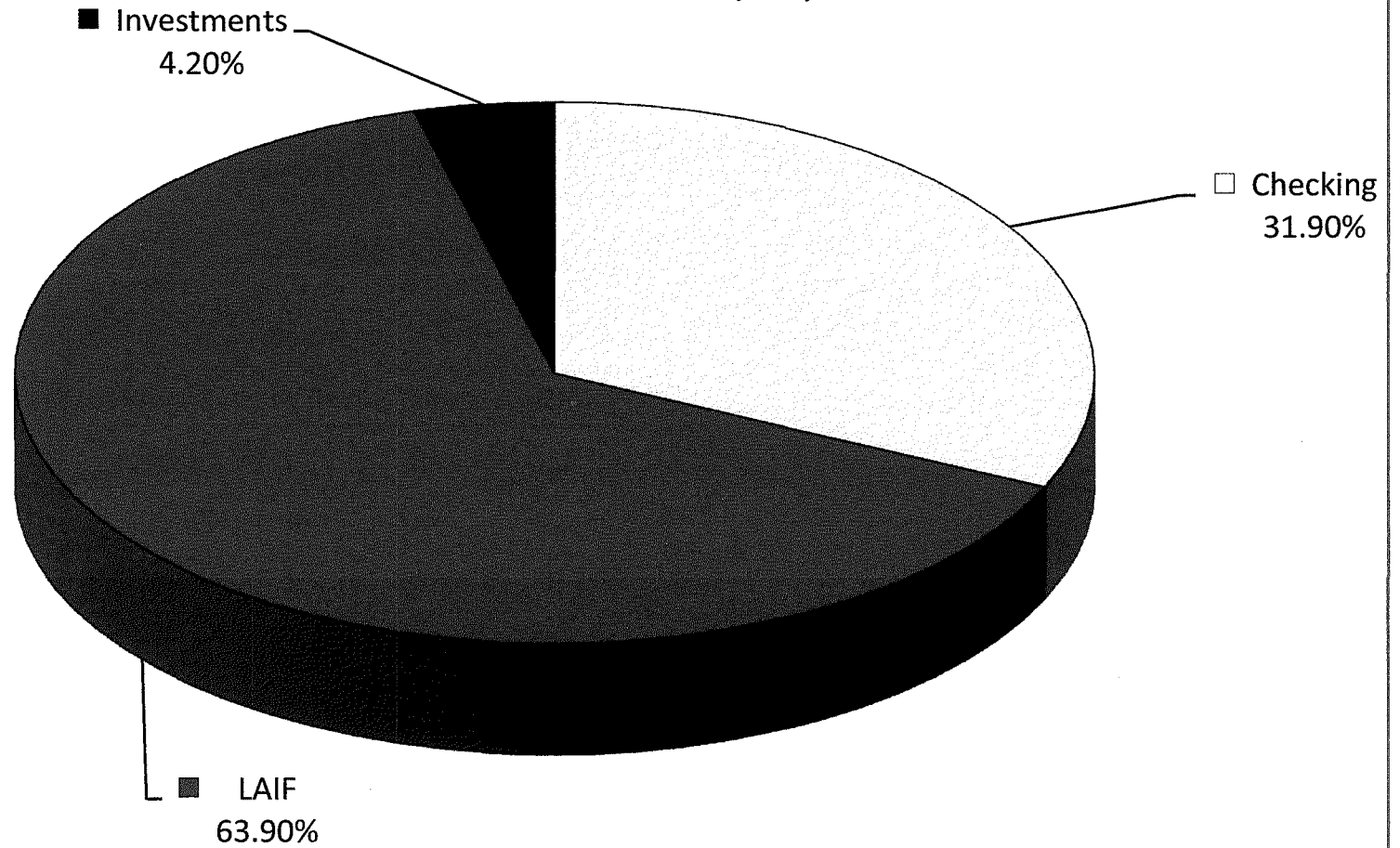
**CITY OF MONTCLAIR  
STATEMENT OF CASH AND INVESTMENT ACCOUNTS  
AS OF JULY 31, 2021**

	<u>Par Value</u>	<u>Purchase Date</u>	<u>Maturity Date</u>	<u>Coupon Interest Rate</u>	<u>Current Market Value</u>	<u>Balance at Cost</u>	<u>Totals</u>
<b>CHECKING ACCOUNT</b>							
Checking Account							\$ 15,362,449.47
Asset Seizure Account							\$ 6,834.13
<b>CASH W/FISCAL AGENT, CD's, LAIF DEPOSITS, AND SHORT-TERM U.S. AGENCY SECURITIES</b>							
Local Agency Investment Fund (LAIF)				0.220%	30,823,470.12	30,784,378.58	
First American Government					2,000,000.00	2,000,000.00	
					<u>\$ 32,823,470.12</u>		\$ 32,784,378.58
<b>U.S. AGENCY SECURITIES</b>							
					<u>\$ -</u>		<u>\$ -</u>
<b>TOTAL</b>							<u>\$ 48,153,662.18</u>

Current market values obtained from US Bank.

**CITY OF MONTCLAIR  
CASH AND INVESTMENTS BY TYPE  
July 31, 2021**

**Total Cash & Investments \$48,153,663**





**CITY OF MONTCLAIR AS SUCCESSOR TO  
THE REDEVELOPMENT AGENCY  
TREASURER'S REPORT  
FOR THE MONTH ENDING**

**July 31, 2021**

**CITY OF MONTCLAIR AS SUCCESSOR TO  
THE REDEVELOPMENT AGENCY  
STATEMENT OF CASH BY FUND  
July 31, 2021**

**COMBINED OPERATING FUND**

Operating	<u>49,163.52</u>	\$ 49,163.52
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**LRPRP Fund**

Operating	<u>0.00</u>	\$ 0.00
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**RORF**

	620,730.96	
RORF Area I	0.00	
RORF Area II	0.00	
RORF Area III	0.00	
RORF Area IV	0.00	
RORF Area V	0.00	
RORF Area VI	0.00	\$ 620,730.96

**TOTAL CASH**

**\$ 669,894.48**

**CITY OF MONTCLAIR AS SUCCESSOR TO  
THE REDEVELOPMENT AGENCY  
STATEMENT OF CASH  
July 31, 2021**

**Checking Account**

US Bank

**669,894.48**

**TOTAL CASH**

**669,894.48**

**NOTE:**

In accordance with State law, the Successor Agency receives the monies necessary to cover its obligations for the upcoming six month period. The monies are received in January and June of each year.

The Successor Agency has sufficient funds available to meet expenditures during the upcoming six-month period.

**CITY OF MONTCLAIR AS SUCCESSOR TO  
THE REDEVELOPMENT AGENCY  
WARRANT REGISTER**

**FOR THE MONTH ENDING**

**July 31, 2021**

City of Montclair  
 Final Warrant Register  
 Council Date 08/16/2021  
 Regular Warrants  
 Checking Account: Successor to the RDA

	Warrants	US Bank transfers	<b>Area Totals</b>
SRDA Combined Operating Fund	0.00	7,103.06	<b>7,103.06</b>
RORF (Redevelopment Obligation Retirement Funds)	0.00	0.00	<b>0.00</b>
	0.00	7,103.06	
<b>July 2021 Total</b>			<b>7,103.06</b>

Note: Reimburse City for 7/8, 7/22 payrolls

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**Vice Chair Ruh**

# Book Transfer Daily Activity Detail

CITY OF MONTCLAIR

SinglePoint

Reported Activity From 07/01/2021 To 07/30/2021

Printed on 08/05/2021 at 8:54 AM PDT



Effective Date	Amount	From: Debit Account Number	To: Credit Account Number	Status
07/22/2021	\$2,385.81	153499275813	153499275805	Completed

Debit Account Name CITY OF MONTCLAIR SUCCESSOR AGENCY  
Debit Account Type DDA  
Credit Account Name CITY OF MONTCLAIR GENERAL ACCOUNT  
Credit Account Type DDA  
Template Name .  
Memo Reimburse City for 07/22/21 Payroll  
Initiate Date 07/22/2021  
Initiate Time 04:59PM CDT  
Initiated By JKULBECK  
Completed Date 07/22/2021  
Completed Time 04:59PM CDT

Effective Date	Amount	From: Debit Account Number	To: Credit Account Number	Status
07/12/2021	\$4,717.25	153499275813	153499275805	Completed

Debit Account Name CITY OF MONTCLAIR SUCCESSOR AGENCY  
Debit Account Type DDA  
Credit Account Name CITY OF MONTCLAIR GENERAL ACCOUNT  
Credit Account Type DDA  
Template Name .  
Memo Reimburse City for 07/08/21 Payroll  
Initiate Date 07/12/2021  
Initiate Time 12:48PM CDT  
Initiated By JKULBECK  
Completed Date 07/12/2021  
Completed Time 12:48PM CDT

---

Total Number of Book Transfers: 2  
Total Amount of Book Transfers: \$7,103.06

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--- End of Report ---

**CITY OF MONTCLAIR  
HOUSING CORPORATION  
TREASURER'S REPORT  
FOR THE MONTH ENDING**

**July 31, 2021**

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**SCHEDULE 1 - STATEMENT OF CASH AND INVESTMENTS**

**CASH AND INVESTMENTS GRAPH**



Schedule 1

CITY OF MONTCLAIR  
HOUSING CORPORATION  
STATEMENT OF CASH AND INVESTMENTS  
July 31, 2021

	<u>Interest Rate</u>	<u>Market Value</u>	<u>Book Value</u>
<b>Checking Account</b>			
US Bank			483,566.86
<b>Investments</b>			
LAIF	0.22%	1,713,937.94	<u>1,711,764.26</u>
<b>TOTAL CASH &amp; INVESTMENTS</b>			<u><u>2,195,331.12</u></u>

**NOTE:**

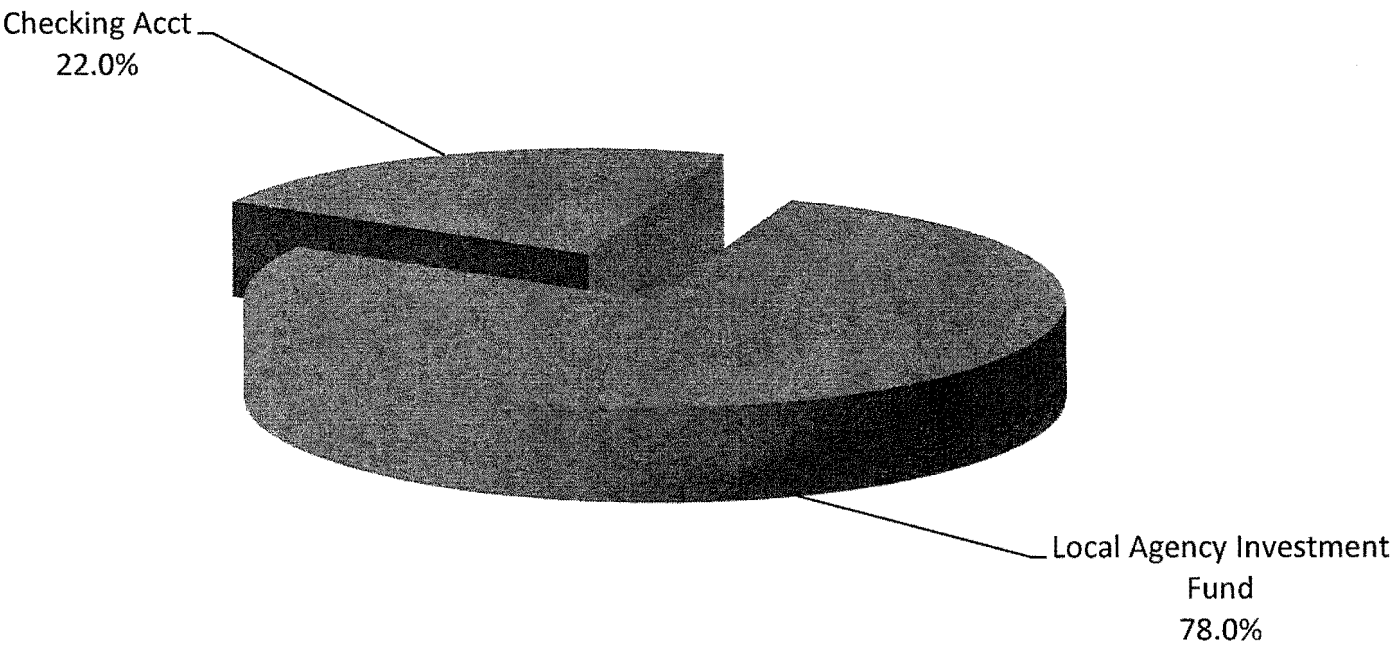
Pursuant to the Corporation's Investment Policy, all moneys are invested in banks, the Local Agency Investment Fund, and in securities with maturities of no greater than three years.

The Corporation has sufficient funds available to meet expenditures during the upcoming six-month period.

The Corporation is in compliance with the internal control procedures set forth in its Investment Policy.

**CITY OF MONTCLAIR  
HOUSING CORPORATION  
CASH AND INVESTMENTS GRAPH  
July 31, 2021**

**Total Cash & Investments - \$2,195,331**



**CITY OF MONTCLAIR  
HOUSING CORPORATION  
WARRANT REGISTER**

**FOR THE MONTH ENDING**

**July 31, 2021**

City of Montclair  
Final Warrant Register  
Council Date 08/16/2021  
Regular Warrants  
Checking Account: MHC

<u>Warrants</u>	<u>ACH Transfers</u>	<u>Voided Checks</u>	<u>US Bank transfers</u>	<u>Totals</u>
28,700.44	0.00	0.00	13,857.58	<b>42,558.02</b>

**July 2021 Total** 42,558.02

US Bank transfers:  
Reimburse City for 07/8 payroll  
Reimburse City for 07/22 payroll

---

**Vice Chair Ruh**

# Accounts Payable

## Checks by Date - Summary by Check Number

User: cramirez  
Printed: 8/4/2021 5:53 PM



Check No	Vendor No	Vendor Name	Check Date	Check Amount
5208	land012	Landscape Maintenance Unlimited	07/08/2021	6,091.00
5209	Hele001	Helena Gardens Owners Association	07/22/2021	2,439.12
5210	Hugo001	Hugo Jaramillo	07/22/2021	6,850.00
5211	mont043	Montclair Meadows Owners Assoc	07/22/2021	1,800.00
5212	Arti005	Artic Plumbing	07/22/2021	279.00
5213	Klau002	Klaus & Sons Plumbing Co	07/22/2021	3,578.00
5214	Mont002	City of Montclair	07/22/2021	1,932.80
5215	Mont074	Monte Vista Water District	07/22/2021	4,174.15
5216	Nagc006	NAGCO GLASS	07/22/2021	300.00
5217	Sout018	Southern California Edison Co	07/22/2021	771.16
5218	Sout021	Southern California Gas Co	07/22/2021	485.21
Report Total (11 checks):				28,700.44

# Book Transfer Daily Activity Detail

CITY OF MONTCLAIR  
SinglePoint  
Reported Activity From 07/01/2021 To 07/30/2021  
Printed on 08/05/2021 at 8:52 AM PDT



Effective Date	Amount	From: Debit Account Number	To: Credit Account Number	Status
07/22/2021	\$3,743.12	153499275821	153499275805	Completed

Debit Account Name MONTCLAIR HOUSING CORPORATION  
Debit Account Type DDA  
Credit Account Name CITY OF MONTCLAIR GENERAL ACCOUNT  
Credit Account Type DDA  
Template Name .  
Memo Reimburse City for 07/22/21 Payroll  
Initiate Date 07/22/2021  
Initiate Time 04:59PM CDT  
Initiated By JKULBECK  
Completed Date 07/22/2021  
Completed Time 04:59PM CDT

Effective Date	Amount	From: Debit Account Number	To: Credit Account Number	Status
07/12/2021	\$10,114.46	153499275821	153499275805	Completed

Debit Account Name MONTCLAIR HOUSING CORPORATION  
Debit Account Type DDA  
Credit Account Name CITY OF MONTCLAIR GENERAL ACCOUNT  
Credit Account Type DDA  
Template Name .  
Memo Reimburse City for 07/08/21 Payroll  
Initiate Date 07/12/2021  
Initiate Time 12:48PM CDT  
Initiated By JKULBECK  
Completed Date 07/12/2021  
Completed Time 12:48PM CDT

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Total Number of Book Transfers: 2  
Total Amount of Book Transfers: \$13,857.58

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--- End of Report ---

**CITY OF MONTCLAIR  
HOUSING AUTHORITY  
TREASURER'S REPORT  
FOR THE MONTH ENDING  
July 31, 2021**

**Schedule 1**

**CITY OF MONTCLAIR  
HOUSING AUTHORITY  
STATEMENT OF CASH  
July 31, 2021**

	<u>Amount</u>
<b>Checking Account</b>	
US Bank	4,471.16
<b>TOTAL CASH</b>	<b>\$ <u>4,471.16</u></b>

**NOTE:**

During the upcoming month, surplus moneys will be invested in the Local Agency Investment Fund. The MHA has sufficient monies available to meet expenditures during the next six month period.



**CITY OF MONTCLAIR  
HOUSING AUTHORITY  
WARRANT REGISTER  
FOR THE MONTH ENDING  
July 31, 2021**

City of Montclair  
Final Warrant Register  
Council Date 08/16/2021  
Regular Warrants  
Checking Account: MHA

<u>Warrants</u>	<u>Voided Checks</u>	<u>US Bank transfers - out.</u>	<u>Totals</u>
0.00	0.00	0.00	<b>0.00</b>
<b>July 2021 Total</b>			<b><u><u>0.00</u></u></b>

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**Vice Chair Ruh**