

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

**AGENDA**

Monday, September 20, 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, MONTCLAIR COMMUNITY FOUNDATION, AND  
MONTCLAIR PUBLIC FINANCING AUTHORITY**

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

Monday, September 20, 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]  
Montclair Public Financing Authority [MPFA]

**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. Consider Adoption of Montclair Public Financing Authority Resolution No. 21-01 Authorizing the Issuance of Lease Revenue Bonds, Series 2021A, in a Total Issuance Not to Exceed \$49,000,000; Approving Appointment of the Financial Team; Approving the Execution and Delivery of Related Documents in Connection with the Offering and Sale of Such Bonds (Site Lease, Lease Agreement, Assignment Agreement, Indenture, Continuing Disclosure Certificate, Preliminary Official Statement, and Bond Purchase Agreement); and Authorizing Other Matters Related Thereto [MPFA]

Consider Adoption of Resolution No. 21-3320 Approving the Montclair Public Financing Authority's Issuance of Lease Revenue Bonds, Series 2021A, in a Total Issuance Not to Exceed \$49,000,000; Approving Appointment of the Financial Team; Approving the Execution and Delivery of Related Documents in Connection with the Offering and Sale of Such Bonds (Site Lease, Lease Agreement, Indenture, Continuing Disclosure Certificate, Preliminary Official Statement, and Bond Purchase Agreement); and Authorizing Other Matters Related Thereto [CC]

Consider Authorizing the City Manager to Execute Each of the Related Documents (Site Lease, Lease Agreement, Assignment Agreement, Indenture, Continuing Disclosure Certificate, Preliminary Official Statement, and Bond Purchase Agreement) in Connection with the Offering and Sale of Lease Revenue Bonds, Series 2021A [CC/MPFA]

5

- B. Consider Adoption of Resolution No. 21-3321 Approving the Form and Authorizing the Execution of the Official Statement, Continuing Disclosure Certificate and Pension Policy, Each Relating to the Issuance of Pension Obligation Bonds (POBs); Approving Additional Actions Related Thereto; Including Establishing Within the General Fund a UAL/POB Amortization Fund to Facilitate Management and Amortization of New UAL; and Authorizing the City Manager to Execute Each of the Aforenamed Documents [CC]

23

- C. Second Reading — Consider Adoption 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 [CC]

Consider Adoption of Resolution No. 21-3323 Establishing Design Guidelines for Wireless Telecommunications Facilities [CC]

39

- D. 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, October 4, 2021, at 7:00 p.m. in the City Council Chambers to Consider Second Reading and Adoption of Ordinance No. 21-996 [CC]

69

**VIII. CONSENT CALENDAR**

- A. Approval of Minutes

- 1. Regular Joint Meeting — August 16, 2021 [CC/SA/MHC/MHA/MCF]

200

B. Administrative Reports	
1. Consider Receiving and Filing of Treasurer’s Report [CC]	86
2. Consider Approval of Warrant Registers & Payroll Documentation [CC]	87
3. Consider Receiving and Filing of Treasurer’s Report [SA]	88
4. Consider Approval of Warrant Register [SA]	89
5. Consider Receiving and Filing of Treasurer’s Report [MHC]	90
6. Consider Approval of Warrant Register [MHC]	91
7. Consider Receiving and Filing of Treasurer’s Report [MHA]	92
8. Consider Approval of Warrant Register [MHA]	93
9. Consider Declaring Certain City Property as Surplus and Available for Auction or Destruction [CC]	94
10. Consider Authorizing the Destruction of Certain Obsolete Public Records Pursuant to the City of Montclair Records Retention Schedule [CC]	101
C. Agreements	
1. Consider Approval of Agreement No. 21-57, a Memorandum of Understanding with the Montclair General Employees’ Association for the Period of July 1, 2021 to June 30, 2024 [CC]	
Consider Approval of Agreement No. 21-59, a Memorandum of Understanding with the Montclair City Confidential Employees’ Association for the Period of July 1, 2021 to June 30, 2022 [CC]	
Consider Approving the Transfer of the Appropriate Additional Compensation from the Personnel Adjustment Reserve Fund to the General Operating Fund [CC]	107
2. Consider Approval of Reimbursement Agreement No. 21-61 with Niu Investment LLC and Don Julian Investment LLC Related to the Properties Generally Located on the Northeast Corner of Monte Vista Avenue and Mission Boulevard (5006 and 5010 Mission Boulevard, Montclair, CA) [CC]	110
3. Consider Approval of Agreement No. 21-62 with the San Bernardino County Department of Behavioral Health (DBH) for the Use of Dedicated Office Space Within the Montclair Police Department for Co-Locating DBH Triage, Engagement, and Support Teams Program Staff to Assist/Link Consumers with Community Services [CC]	143
4. 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]	
Consider Approval of Agreement No. 21-63 with Biggs Cardoso and Associates for Design and Construction Management Services for the Pacific Electric Trail Bridge Replacement Project [CC]	
Consider Authorizing Staff to Advertise for Bid Proposals for Construction of the Pacific Electric Trail Bridge Replacement Project [CC]	164
D. Resolutions	
1. Consider Adoption of Resolution No. 21-3303 Adopting the Measure I Five-Year Capital Improvement Plan and Expenditure Strategy for Fiscal Year 2021-22 Through Fiscal Year 2025-26 [CC]	186

- 2. Consider Adoption of Resolution No. 21-3304 Authorizing the Application to the California Department of Parks and Recreation for the Per Capita Grant Program for the Revitalization of Recreation Elements at Sunset Park [CC]  
Consider Authorizing City Manager Edward C. Starr to Execute Documents Related to the Per Capita Program [CC] 190
- 3. Consider Adoption of Resolution No. 21-3322 Adopting Updated Procedures Applicable to Continuing Disclosure Obligations Undertaken by the City and its Related Entities in Connection with Bond Issues [CC] 193

**IX. PULLED CONSENT CALENDAR ITEMS**

**X. COUNCIL WORKSHOP**

- A. Reeder Ranch Park Development Update by EPT Design  
*(The City Council may consider continuing this item to an adjourned meeting on Monday, October 4, 2021, at 5:45 p.m.)*

**XI. COMMUNICATIONS**

- B. Department Reports — None
- C. 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*
  - 2. Closed Session Pursuant to Government Code Section 54956.8 Regarding Real Property Negotiations  
*Property: 2.34 acres at Central Avenue & Richton Street, Montclair (2 parcels, APNs 1007-393-04 & 1007-681-03)*  
*Negotiating Parties: City of Montclair and Pennel Holding Company LTD*  
*City Negotiator: Edward C. Starr, City Manager*  
*Under Negotiation: Recommendations Regarding Purchase Price*
- D. City Manager/Executive Director
- E. Mayor/Chairperson
- F. Council Members/Directors
- G. Committee Meeting Minutes *(for informational purposes only)*
  - 1. Personnel Committee Meeting — August 16, 2021 [CC] 199

**XII. CLOSED SESSION**

**XIII. CLOSED SESSION ANNOUNCEMENTS**

**XIV. ADJOURNMENT**

*The next regular joint meeting of the City Council, Successor Agency Board, Montclair Housing Corporation Board, Montclair Housing Authority Commission, and Montclair Community Foundation Board will be held on Monday, October 4, 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 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, September 16, 2021.*



# CITY COUNCIL AGENDA REPORT

**DATE:** SEPTEMBER 20, 2021

**FILE I.D.:** FIN212

**SECTION:** PUBLIC HEARINGS

**DEPT.:** CITY MGR.

**ITEM NO.:** A

**PREPARER:** E. STARR

**SUBJECT:** CONSIDER ADOPTION OF MONTCLAIR PUBLIC FINANCING AUTHORITY RESOLUTION NO. 21-01 AUTHORIZING THE ISSUANCE OF LEASE REVENUE BONDS, SERIES 2021A, IN A TOTAL ISSUANCE NOT TO EXCEED \$49,000,000; APPROVING APPOINTMENT OF THE FINANCIAL TEAM; APPROVING THE EXECUTION AND DELIVERY OF RELATED DOCUMENTS IN CONNECTION WITH THE OFFERING AND SALE OF SUCH BONDS (SITE LEASE, LEASE AGREEMENT, ASSIGNMENT AGREEMENT, INDENTURE, CONTINUING DISCLOSURE CERTIFICATE, PRELIMINARY OFFICIAL STATEMENT, AND BOND PURCHASE AGREEMENT); AND AUTHORIZING OTHER MATTERS RELATED THERETO

CONSIDER ADOPTION OF RESOLUTION NO. 21-3320 APPROVING THE MONTCLAIR PUBLIC FINANCING AUTHORITY'S ISSUANCE OF LEASE REVENUE BONDS, SERIES 2021A, IN A TOTAL ISSUANCE NOT TO EXCEED \$49,000,000; APPROVING APPOINTMENT OF THE FINANCIAL TEAM; APPROVING THE EXECUTION AND DELIVERY OF RELATED DOCUMENTS IN CONNECTION WITH THE OFFERING AND SALE OF SUCH BONDS (SITE LEASE, LEASE AGREEMENT, INDENTURE, CONTINUING DISCLOSURE CERTIFICATE, PRELIMINARY OFFICIAL STATEMENT, AND BOND PURCHASE AGREEMENT); AND AUTHORIZING OTHER MATTERS RELATED THERETO

CONSIDER AUTHORIZING THE CITY MANAGER TO EXECUTE EACH OF THE RELATED DOCUMENTS (SITE LEASE, LEASE AGREEMENT, ASSIGNMENT AGREEMENT, INDENTURE, CONTINUING DISCLOSURE CERTIFICATE, PRELIMINARY OFFICIAL STATEMENT, AND BOND PURCHASE AGREEMENT) IN CONNECTION WITH THE OFFERING AND SALE OF LEASE REVENUE BONDS, SERIES 2021A

---

**REASON FOR CONSIDERATION:** At the April 20, 2021 City Council Workshop on pension obligation and infrastructure bonds, the City Council directed City staff to proceed toward an issuance of infrastructure bonds in the fall of 2021.

The City Council also serves as the Board of Directors of the Montclair Public Financing Authority (MPFA). The MPFA Board of Directors (the "Authority") and the City Council are requested to consider adoption of MPFA Resolution No. 21-01 and City Council Resolution No. 21-3320, respectively, concerning the issuance of lease revenue bonds in the estimated amount of \$45 million, but not to exceed \$49 million. Issuance of bonds at this time could potentially secure approximately \$50 million+ for infrastructure and capital improvement projects when the bond premium expected to be paid by bond investors is added to the total.

Copies of documents related to the issuance of the 2021 Lease Revenue Bonds have been included in the agenda packet for City Council review and consideration. These documents include the following:

- Site Lease
- Lease Agreement
- Assignment Agreement
- Indenture

- Continuing Disclosure Certificate
- Preliminary Official Statement
- Bond Purchase Agreement

Copies of each of the above-listed documents, by reference hereof, are incorporated into and made a part of this agenda report, and copies are enclosed in the agenda packet for City Council review and consideration.

Also included by reference are Exhibit 1 (Projects List) and Exhibit 2 (the appraisal report for leased assets).

**BACKGROUND:** A long-term lease obligation entered into by a municipality as lessee is not considered an indebtedness or liability requiring voter approval pursuant to Article XVI, Section 18 of the California Constitution if the indebtedness meets the following criteria for a "lease exception":

- Most general fund related capital improvements are financed using a lease revenue bond structure—a joint powers financing authority (e.g., the Montclair Public Financing Authority) issues revenue bonds secured by lease payments to be made by a municipality under a lease agreement.
- Obligation to pay rent in each year is contingent upon the lessee having "beneficial use and occupancy" of the leased premises.
- In the event the lessee fails to pay rent when due there can be no acceleration of the future rent due. The rent in each year represents the "fair rental value" of the premises.

Based on the above "lease exception," in May 2005 the City and Authority issued \$31,300,000 in Lease Revenue Bonds to finance construction of a new Police Facility, Senior and Youth Centers, and other infrastructure projects. The Bonds were issued following voter approval in November 2004 of Measure F, establishing a 0.25% Transactions and Use Tax in the City.

In November 2014, the City and Authority issued a \$45 million Lease Revenue Refunding Bond package to refinance the 2005 Issue and provide additional new proceeds to finance roadway and other infrastructure improvements throughout the City. The 2014 Bonds are currently outstanding in the amount of \$61,878,993, which includes both principal and interest and have a final maturity date of October 1, 2045. The 2014 Issue cannot be refunded any earlier than November 2024. Annual debt service payments are secured by a commitment of General Fund Revenues, including Measure F revenues comingled with other General Fund earnings.

In the November 3, 2020, General Municipal Election, Measure L—a measure to establish a one-percent transactions and use tax to fund general community needs—was passed with the approval of over 68 percent of the votes cast by Montclair residents. Collection of revenues from Measure L ("Measure L Revenues") began in April 2021, and the measure is projected to generate approximately \$7.5 million during its first year of operation.

As of September 10, 2021, the City received acknowledgement from the California Department of Tax and Fee Administration (CDTFA) that it has approved agreements for the preparation and administration (including collection) of Measure L.

The use of Measure L revenue is not restricted for a specific purpose or project. Under State law, Measure L revenues are comingled in the City's General Fund with other revenue sources, including Measure F earnings.

At a City Council Workshop on April 20, 2021, a presentation was made by the City's Underwriter, Hilltop Securities, on the 2021 Lease Revenue Bond size and its structure. The City Council's direction was to proceed with the financing and return with legal documentation, sizing, and formal financing approval.

During the June 2021 review of the Fiscal Year 2021–22 Proposed Budget, the City Council approved the use of General Fund Revenues, including revenues generated by Measure L, for upcoming payments related to 2021 Lease Revenue Bonds (*i.e.*, the Base Rental Payments and Additional Payments, as required).

If the City Council and the Authority Board of Directors determine that 2021 Lease Revenue Bonds should be issued, a list of proposed projects for use of the funds is attached for consideration as Exhibit 1.

As indicated in Exhibit 1, the City Manager has identified the need for more than \$98 million in projects including median, street, park and infrastructure improvements—not including design, right-of-way and project management costs. The City Council would be able to revise and/or reprioritize the list of projects to be implemented, and the City Manager anticipates presenting the list of projects to the City Council at a workshop for further consideration.

The 2021 Lease Revenue Bonds will be issued based on an Indenture which sets out the terms of the Bonds including payment, interest rates, redemption, and covenants of the City. Payments made to the Authority by the City are assigned to a Trustee and used to make debt service payments on the Bonds. The Authority functions as the Lessor and the City functions as the Lessee.

Bonds related to the 2021 issue will be Federally and State tax-exempt because they will be used to finance public capital improvements that are owned and used by the City. Interest payments to investors would not be included for Federal or State income tax purposes.

**Bond Security.** The 2021 Lease Revenue Bonds will be payable from lease payments made by the City, which lease payments are payable from the City's general fund. The leased assets are listed below and in Exhibit 2. However, none of the leased assets will be mortgaged.

A Lease Agreement sets out the terms of the lease between the City and the Authority, including rental payments and insurance, and a description of the assets being pledged and subject to lease payments.

- The City is the fee owner of the leased properties. In connection with the issuance of the 2021 Lease Revenue Bonds, the Authority and City will enter into a Site Lease as of October 1, 2021. Under the Site Lease, the Authority will lease the properties from the City and, under terms of the Lease Agreement, the City subleases the leased property from the Authority. None of the leased properties constitute security for the 2021 Bonds.



- The leased properties will consist of 11 parcels currently developed as parks, or to be developed as parks, located in, and owned by, the City. The properties to be leased include the following:
  - **Essex Park** — the park is 2.90 acres and has an estimated value of \$4,257,000.
  - **MacArthur Park** — the park is 2.56 acres, and has an estimated value of \$3,439,000.
  - **Mini Park #1** — the park is 0.40 acres, and has an estimated value of \$568,000.
  - **Mini Park #2** — the park is 0.06 acres and has an estimated value of \$79,000.
  - **Moreno Vista Park** — the park is 1.24 acres and has an estimated value of \$1,740,000.
  - **Saratoga Park** — the park is 11.69 acres and has an estimated value of \$16,797,000.
  - **Sunrise Park** — the park is 2.26 acres and has an estimated value of \$3,344,000.
  - **Sunset Park** — the park is 7.83 acres and has an estimated value of \$9,739,000.
  - **Sycamore Park** — the park is 0.77 acres and has an estimated value of 2,009,000.
  - **Reeder Ranch Park** — the property is 1.56 acres and has an estimated value of \$1,710,000. The property is currently undeveloped and scheduled for approximately \$5 million in improvements in 2022.
  - **County Park** — the property is 4.78 acres and has an estimated value of 5,425,000. The property is currently undeveloped.

Based on an appraisal dated August 26, 2021 (Exhibit 2), the total estimated market value of all the leased property as of August 5, 2021, is \$49,107,000.

Pursuant to the Lease Agreement, the City may substitute all or a portion of a leased property or release a portion of a leased property during the term of the Lease Agreement (see Page 18 of the Preliminary Official Statement).

- Under the Lease Agreement, the City will agree to pay semiannual Base Rental Payments for use and occupancy of the leased properties, subject to provisions of the Lease Agreement.
- The City will covenant to make all necessary appropriations by including all Base Rental and Additional Payments due under the Lease Agreement in its annual operating budget, commencing after issuance of the 2021 Bonds.
- The City will covenant to secure and maintain (or cause to be secured and maintained) during the term of the Lease Agreement certain insurance coverage, to include the following, such insurance maintained in part or in conjunction with other insurance coverage carried by the City or in participation in a joint powers authority or other pooled insurance program:

- Rental Interruption/Use and Occupancy Insurance — to cover loss, total or partial, of the use of the leased properties and the improvements on the properties as a result of hazard covered in the property insurance (not to be self-insured by the City).
  - Property Insurance — to cover loss or damage by all "special form" perils (not including earthquake insurance) to all buildings on leased properties and owned by the City, in amounts at least equal to the lesser of replacement value of insured buildings or the aggregate principal amount of the Base Rental payments outstanding (may be covered under a self-insurance program).
  - Standard Commercial General Liability Insurance — to cover the City and its respective members, officers, agents, employees and assigns, including for indemnification against direct or contingent loss or liability for damages for bodily and personal injury, death, or property damage by reason of the operation of the leased property should the City be legally liable (may be covered under a self-insurance program).
  - Workers' Compensation Insurance — to cover all employees through the term of the Lease Agreement (may be covered under a self-insurance program).
  - Title Insurance — delivered to the Trustee on the issuance date of the 2021 Bonds, or a commitment for such policy (or policies) with respect to the leased properties.
- The 2021 Bonds are limited obligations of the Authority secured solely by a pledge of revenues. The obligation of the City to make the Base Rental Payments under the Lease Agreement will not constitute an obligation for which the City is obligated to levy or pledge any form of taxation, or for which the City has levied or pledged any form of taxation or full faith and credit.
    - The 2021 Bonds will be payable from and secured by a pledge of Revenues—as defined in the Indenture, these Revenues mean all Base Rental Payments pursuant to the Lease Agreement and all other proceeds derived by the Authority from operation or use of the leased properties. No Reserve Fund will be established for the 2021 Bonds under the Indenture.
    - The Authority will assign to the Trustee for payment of the 2021 Bonds the Authority's rights, title, and interest in the Lease Agreement, including the right to receive Base Rental Payments to be made by the City under terms of the Lease Agreement.
    - Pursuant to the Indenture, the Trustee will establish a special fund designated the "Revenue Fund." The Trustee will hold the Revenue Fund in trust for the City until all required Revenues are paid in full pursuant to the Lease Agreement or until the 2021 Bonds are no longer outstanding. The Trustee will transfer money from the Revenue Fund to the Interest Fund, Principal Fund or Redemption Fund, respectively,

for payment of interest, principal, or redemption price, as applicable, coming due with respect to the 2021 Bonds.

- All revenues will be paid directly by the City to the Trustee. All revenues will be deposited by the Trustee in the Revenue Fund. If the Trustee receives revenues in an amount in excess of the amount necessary to pay the amount due and owing on the next Interest Payment Date, Principal Payment Date, Mandatory Sinking Account Payment Date or redemption date then amounts in the Revenue Fund not needed to make such payments may be utilized by the Trustee, as directed in writing by the City, for any other purpose.

The City currently has an "A+" rating by Standard & Poor's (S&P), and there is a likelihood that the rating may be upgraded to "AA" due to the passage of Measure L. The S&P rating is a credit score (a letter grade) that describes the general creditworthiness of the entity issuing debt, and how likely the debt will be repaid. The ratings are informational only and are not investment recommendations nor a predictor of default. S&P also rates the creditworthiness of bonds. The best S&P rating is "AAA", meaning it is highly likely the borrower will repay its debt. A higher letter grade generally associates with a lower interest rate due to the lack of risk; i.e., investors will accept a smaller return in exchange for a safe investment. Adding a "+" or "-" to the letter rating denotes a more stable or less stable outlook, respectively.

In comparison, as of January 2021, the S&P rating for the U.S. government was AA+, denoting a very stable outlook—the U.S. had an "AAA" rating (extremely stable) until 2011. Currently, only a few countries (Australia, Canada, Luxembourg, and Norway) have an "AAA" rating. Two U.S. companies, Microsoft and Johnson & Johnson, also have "AAA" ratings. In relative terms, Montclair's "A+" rating denotes an agency that has "strong" capacity to meet its financial commitments, whereas an "AA" rating denotes a "very strong" capacity to meet financial commitments.

**The Authority is requested to adopt the following:**

1. **Montclair Public Financing Authority Resolution No. 21-01:** The Resolution by the Montclair Public Financing Authority would approve and consent to the issuance of the 2021 Lease Revenue Bond Issue and approve the appointment of the following as "Financing Team" members:
  - U.S. Bank National Association, as Trustee;
  - Nixon Peabody LLC, as Bond Counsel;
  - Richards, Watson & Gershon, as Disclosure Counsel;
  - Hilltop Securities Inc., as Underwriter; and
  - Urban Futures, Inc., as Municipal Advisor

In addition, adoption of Resolution No. 21-01 would approve the form and authorize execution of the below listed documents for the 2021 Lease Revenue Bond financing:

- **Site Lease:** Pursuant to the Site Lease, the City would lease certain City-owned property to the Authority. The property to be leased would include 11 public park properties owned by the City. On August 26,

2021, Thompson & Thompson delivered an appraisal report to the City determining the value of said parks to be \$49,107,000. The Authority would advance all rental payments for the entire 30-year term of the Lease which will be equivalent to the amount of the 2021 Lease Revenue Bond financing principal and interest payments.

- **Lease Agreement:** Concurrent with the Site Lease, the Authority and the City would enter into the Lease Agreement. The Lease Agreement would provide the City with use of the rental proceeds from the Site Lease (bond funds) for public infrastructure projects. The City would lease-back the public facilities from the Authority and provide the funds for the bond repayment to the Authority. The City would be responsible for maintenance of the leased facilities.

The term of the Lease Agreement would commence on the closing date of the bond issue and end on April 1, 2051, unless extended or unless the bonds are prepaid. The City would have the option to substitute other City-owned land and facilities from the Lease Agreement and could remove one or more of the public parks upon meeting certain conditions.

- **Assignment Agreement:** Under the Assignment Agreement, the Authority will assign to the Trustee for payment of the 2021 Bonds the Authority's rights, title, and interest in the Lease Agreement, including the right to receive Base Rental Payments to be made by the City under terms of the Lease Agreement.
- **Indenture:** Through the Trust Agreement, U.S. Bank National Association will receive the Lease Payments from the City and make the payments of principal and interest to the owners of the 2021 Lease Revenue Bonds. In addition, the Trustee will hold the Project Fund on behalf of the City and distribute proceeds to the City upon request and requisition by the City of said amounts.
- **Continuing Disclosure Certificate:** A Continuing Disclosure Certificate must be supplied for bond issues pursuant to Security and Exchange Commission Rule 15c2-12(b)(5). The purpose of continuing disclosure is to have the financial data of the City analyzed by an impartial third party. The continuing disclosure information would be supplied to a national repository for the information of the public and the bond holders.
- **Preliminary Official Statement:** The Official Statement is the document presented to potential bond purchasers that describes the City. The document also discusses the structure and financing terms of the bond issue as well as summarizing the legal documents.
- **Bond Purchase Agreement:** The Bond Purchase Agreement authorizes the Underwriter, Hilltop Securities Inc., to purchase bonds from the Authority for offering to the public.

**The Council is requested to adopt the following:**

1. **City Council Resolution No. 21-3320:** Adoption of City Council Resolution No. 21-3320 would approve and consent to the issuance of the 2021 Lease Revenue Bond financing by the Authority and approve the appointment of the Financing Team, listed above, as Trustee, Bond Counsel, Disclosure Counsel, Underwriter, and Municipal Advisor. In addition, adoption of Resolution No. 21-3320 would approve the form, and authorize execution, of the documents approved by the Authority for the 2021 Lease Revenue Bond financing, including the Site Lease, Lease Agreement, Indenture, Continuing Disclosure Certificate, Preliminary Official Statement, and Bond Purchase Agreement.

**FISCAL IMPACT:** The City and Authority propose to issue approximately \$45,000,000 in Lease Revenue Bonds. The estimated sources and uses of the bond proceeds are summarized as follows:

Principal Amount of Bonds	\$45,000,000
Reoffering Premium	5,865,180
Total Sources	50,865,000
Uses New Projects Fund	50,431,430
Underwriter's Discount	213,750
Costs of Issuance	220,000
Total Uses	\$50,865,000

The reoffering premium is estimated to be paid by the Bond investors and will be determined at the time the Bonds are sold.

Currently, yields for the Bonds are ranging from .19% in 2022 to 2.8% in 2051, and the true interest cost (which includes costs) has been calculated at 3.064%. The Bonds will be Federally and State tax-exempt due to the public nature of the planned improvements.

Following Council and Board approval, the Financing Team will finalize a bond credit rating with a bond sale estimated early in October and proceeds available to the City on or about October 27.

The following **Table 1** shows the annualized debt service on the Lease Revenue Bonds, based on an issuance of \$45,000,000.

**Table 1  
Annual Debt Service on Lease Revenue Bonds**

<i>Bond Year Ending June 1</i>	<i>Principal</i>	<i>Interest</i>	<i>Annual Debt Service</i>
2022	230,000.00	753,316.67	983,316.67
2023	875,000.00	1,754,100.00	2,629,100.00
2024	905,000.00	1,727,850.00	2,632,850.00
2025	930,000.00	1,700,700.00	2,630,700.00

<i>Bond Year Ending June 1</i>	<i>Principal</i>	<i>Interest</i>	<i>Annual Debt Service</i>
2026	960,000.00	1,672,800.00	2,632,800.00
2027	985,000.00	1,644,000.00	2,629,000.00
2028	1,025,000.00	1,604,600.00	2,629,600.00
2029	1,065,000.00	1,563,600.00	2,628,600.00
2030	1,110,000.00	1,521,000.00	2,631,000.00
2031	1,155,000.00	1,476,600.00	2,631,600.00
2032	1,200,000.00	1,430,400.00	2,630,400.00
2033	1,250,000.00	1,382,400.00	2,632,400.00
2034	1,300,000.00	1,332,400.00	2,632,400.00
2035	1,350,000.00	1,280,400.00	2,630,400.00
2036	1,405,000.00	1,226,400.00	2,631,400.00
2037	1,460,000.00	1,170,200.00	2,630,200.00
2038	1,520,000.00	1,111,800.00	2,631,800.00
2039	1,580,000.00	1,051,000.00	2,631,000.00
2040	1,645,000.00	987,800.00	2,632,800.00
2041	1,710,000.00	992,000.00	2,632,000.00
2042	1,775,000.00	853,600.00	2,628,600.00
2043	1,850,000.00	782,600.00	2,632,600.00
2044	1,920,000.00	708,600.00	2,628,600.00
2045	2,000,000.00	631,800.00	2,631,800.00
2046	2,080,000.00	551,800.00	2,631,800.00
2047	2,165,000.00	468,600.00	2,633,600.00
2048	2,250,000.00	382,000.00	2,632,000.00
2049	2,340,000.00	292,000.00	2,632,000.00
2050	2,430,000.00	198,400.00	2,628,400.00
2051	2,530,000.00	101,200.00	2,631,200.00
<b>TOTAL:</b>	<b>45,000,000.00</b>	<b>32,283,966.67</b>	<b>77,283,966.67</b>

As indicated in **Table 1**, above, over a 30-year period the City would pay an estimated \$45,000,000.00 in principal and \$32,283,966.67 in interest, for a total payment of \$77,283,966.67.

Interest on the 2021 Bonds will be payable semiannually on April 1 and October 1 of each year, commencing April 1, 2022.

The Bonds will be subject to extraordinary, optional and mandatory sinking fund redemption prior to maturity as described on Pages 7, 8 and 9 of the Preliminary Official Statement.

- Extraordinary Redemption. The Bonds will be subject to redemption from insurance and condemnation proceeds on any date prior to their respective maturity dates, as a whole or in part, at the written direction of the City to the Trustee at a redemption price equal to the principal amount of the Bonds plus accrued interest thereon to the date fixed for redemption, without premium.

- Optional Redemption. The Bonds maturing on or after April 1, 2032, will be subject to redemption on or after April 1, 2031, at the option of the City, from any source of funds, on any date on or after June 1, 2031, in whole or in part at a redemption price equal to the principal amount of the 2021 Bonds to be redeemed, together with accrued but unpaid interest to the date of redemption, without premium.
- Mandatory Sinking Fund Redemption. The Bonds maturing on April 1, 2041 (the "Term Bonds") will be subject to mandatory redemption in whole or in part on April 1 in each year until maturity, from Mandatory Sinking Account Payments made by the Authority, at a redemption price equal to the principal amount thereof to be redeemed, together with accrued interest thereon to the redemption date, without premium. In lieu of redemption, Term Bonds may be purchased by the Authority and tendered to the Trustee. See Page 7, 8, and 9 of the Preliminary Official Statement for additional information.

**RECOMMENDATION:** Staff recommends the Montclair Public Financing Authority Board of Directors and Montclair City Council take the following actions:

1. Adopt Montclair Public Financing Authority Resolution No. 21-01 authorizing the issuance of Lease Revenue Bonds, Series 2021A, in a total issuance not to exceed \$49,000,000; approving appointment of the Financial Team; approving the execution and delivery of related documents in connection with the offering and sale of such bonds (Site Lease, Lease Agreement, Assignment Agreement, Indenture, Official Statement, and Bond Purchase Agreement); and authorizing other matters related thereto.
2. Adopt City Council Resolution No. 21-3320 approving the Montclair Public Financing Authority's issuance of Lease Revenue Bonds, Series 2021A, in a total issuance not to exceed \$49,000,000; approving appointment of the Financial Team; approving the execution and delivery of related documents in connection with the offering and sale of such bonds (Site Lease, Lease Agreement, Indenture, Continuing Disclosure Certificate, Official Statement, and Bond Purchase Agreement); and authorizing other matters related thereto.
3. Authorize the City Manager to execute each of the related documents (Site Lease, Lease Agreement, Assignment Agreement, Indenture, Continuing Disclosure Certificate, Official Statement, and Bond Purchase Agreement) in connection with the offering and sale of Lease Revenue Bonds, Series 2021A.

RESOLUTION NO. 21-3320

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR APPROVING THE ISSUANCE BY THE MONTCLAIR PUBLIC FINANCING AUTHORITY OF NOT TO EXCEED \$49,000,000 OF MONTCLAIR PUBLIC FINANCING AUTHORITY LEASE REVENUE BONDS, SERIES 2021A; APPROVING THE EXECUTION AND DELIVERY OF RELATED DOCUMENTS IN CONNECTION WITH THE OFFERING AND SALE OF SUCH BONDS; AND AUTHORIZING OTHER MATTERS RELATED THERETO**

**WHEREAS**, the Montclair Public Financing Authority (the "Authority") was established for the purpose of carrying out the intent of the State Legislature as set forth in Article 4 of the Joint Powers Act, namely the financing of public capital improvements, and working capital whenever there are significant public benefits for taking such actions; and

**WHEREAS**, the City of Montclair (the "City") desires to finance the construction, acquisition and equipping of various public capital improvements within the City (the "Project"); and

**WHEREAS**, in order to provide funds to finance the Project and other related costs, the City desires that the Authority issue its Lease Revenue Bonds, Series 2021A (the "Bonds"); and

**WHEREAS**, Senate Bill 450 (Chapter 625 of the 2017-2018 Session of the California Legislature) ("SB 450") requires that the City obtain from an underwriter, financial advisor or private lender and disclose, prior to authorization of the issuance of bonds with a term of greater than 13 months, good faith estimates of the following information in a meeting open to the public: (a) the true interest cost of the bonds, (b) the sum of all fees and charges paid to third parties with respect to the bonds, (c) the amount of proceeds of the bonds expected to be received net of the fees and charges paid to third parties and any reserves or capitalized interest paid or funded with proceeds of the bonds, and (d) the sum total of all debt service payments on the bonds calculated to the final maturity of the bonds plus the fees and charges paid to third parties not paid with the proceeds of the bonds; and

**WHEREAS**, in compliance with SB 450, the City has obtained from its municipal advisor and the underwriter the required good faith estimates and such estimates are disclosed and set forth on Exhibit A attached hereto; and

**WHEREAS**, as required by Section 6586.5 of the California Government Code, the City has caused the publication of a notice of a public hearing on the financing of the Project once at least five days prior to the hearing in a newspaper of general circulation in the City; and

**WHEREAS**, the City held a public hearing at which all interested persons were provided the opportunity to speak on the subject of financing the Project; and

**WHEREAS**, there have been presented to this meeting the proposed forms of the following documents:

- (a) the Indenture;
- (b) the Site Lease;
- (c) the Lease Agreement;
- (d) the Preliminary Official Statement;
- (e) the Bond Purchase Agreement; and
- (f) the Continuing Disclosure Certificate;

**NOW, THEREFORE, BE IT RESOLVED**, by the City Council of the City of Montclair, as follows:

**SECTION 1. Findings and Determinations.** The City hereby specifically finds and declares that the actions authorized hereby constitute and are with respect to public affairs of the City and that the statements, findings and determinations of the City set forth above are true and correct and that the issuance of the Bonds by the Authority



will result in the following public benefits (i) demonstrable savings in effective interest rate, bond preparation, bond underwriting, or bond issuance costs (ii) significant reductions in effective user charges levied by the City, and (iii) more efficient delivery of local agency services to residential and commercial development.

**SECTION 2. Approval of Issuance of Bonds by the Authority.** The issuance of the Bonds by the Authority on the terms and conditions set forth in, and subject to the limitations specified in, the Indenture and this Resolution, is hereby approved; provided, however, that (i) the aggregate principal amount of Bonds shall not exceed \$49,000,000, (ii) the maturity of the Bonds shall not exceed April 1, 2051 and (iii) true interest cost of the Bonds shall not exceed 3.50%.

**SECTION 3. Approval of Indenture.** The form of Indenture presented at this meeting is hereby approved, and the City's Mayor, Mayor Pro Tem, City Manager or Finance Manager, or his or her designee (each, an "Authorized Officer") are each hereby authorized and directed, for and in the name of and on behalf of the City, to execute, acknowledge and deliver the Indenture in substantially the form presented at this meeting with such changes therein as the officer executing the same may approve, such approval to be conclusively evidenced by the execution and delivery thereof, including with respect to whether and what type(s) of credit enhancement supports the Bonds, or by other factors, as determined by the Authorized Officers in consultation with the City's financial and legal consultants as being in the best interests of the City.

**SECTION 4. Approval of Site Lease.** The form of Site Lease presented at this meeting is hereby approved and each Authorized Officer is hereby authorized and directed, for and in the name of and on behalf of the City, to execute, acknowledge and deliver the Site Lease in substantially the form presented at this meeting with such changes therein as the Authorized Officer executing the same may approve, such approval to be conclusively evidenced by the execution and delivery thereof.

**SECTION 5. Approval of Lease Agreement.** The form of Lease Agreement presented at this meeting is hereby approved and each Authorized Officer is hereby authorized and directed, for and in the name of and on behalf of the City, to execute, acknowledge and deliver the Lease Agreement in substantially the form presented at this meeting with such changes therein as the Authorized Officer executing the same may approve, such approval to be conclusively evidenced by the execution and delivery thereof.

**SECTION 6. Approval of Bond Purchase Agreement.** The City is hereby authorized to enter into the Bond Purchase Agreement and each Authorized Officer is hereby authorized and directed to execute and deliver the Bond Purchase Agreement on behalf of the City, in substantially the form presented to this meeting, with such changes therein, deletions therefrom and additions thereto as the Authorized Officer shall approve in consultation with the City's financial and legal consultants, which approval shall be conclusively evidenced by the execution and delivery thereof; provided, that the underwriting discount payable by the City pursuant to the Bond Purchase Agreement shall not exceed 0.80% of the aggregate principal amount of the Bonds.

**SECTION 7. Approval of Official Statement.** The Preliminary Official Statement is hereby approved and the same may be used and is hereby authorized to be used and distributed in the market by the underwriter incident to the marketing of the Bonds. Each Authorized Officer is hereby authorized to (a) make such changes in such form of the Preliminary Official Statement as such officer, in consultation with the City's financial and legal consultants and the Underwriter, shall determine to be appropriate, and (b) on behalf of the City, to deem such Preliminary Official Statement "final" pursuant to Rule 15c2-12 under the Securities Exchange Act of 1934 (the "Rule"). Each Authorized Officer is authorized and directed to prepare a final Official Statement, with such additional information as may be permitted to be excluded from the Preliminary Official Statement pursuant to the Rule, which final Official Statement shall be executed and delivered in the name and on behalf of the City by an Authorized Officer, and such Authorized Officer is authorized and directed to prepare, execute and deliver in the name and on behalf of the City any supplemental filings related to such final Official Statement.

**SECTION 8. Approval of Continuing Disclosure Certificate.** The form of Continuing Disclosure Certificate presented at this meeting is hereby approved and each Authorized Officer is hereby authorized and directed, for and in the name of and on behalf of the City, to execute, acknowledge and deliver the Continuing Disclosure Certificate in substantially the form presented at this meeting with such changes therein

as the Authorized Officer executing the same may approve, such approval to be conclusively evidenced by the execution and delivery thereof.

**SECTION 9. Other Acts.** The officers and staff of the City are hereby authorized and directed, jointly and severally, to do any and all things, to execute and deliver any and all documents, which in consultation with the City Attorney or with bond counsel, they may deem necessary or advisable in order to effectuate the purposes of this Resolution, and any and all such actions previously taken by such officers or staff members are hereby ratified and confirmed. Any one of the Authorized Officers is hereby authorized and directed, for and in the name of and on behalf of the City, to evaluate and select one or more municipal bond insurers for all or any portion of the Bonds and to execute and deliver such contracts and agreements with such bond insurers as may be approved by the Authorized Officer executing the same, subject to the provisions of this Resolution, such approval to be conclusively evidenced by such execution and delivery.

**SECTION 10. Effective Date.** This Resolution shall take effect upon adoption.

**APPROVED and ADOPTED** this XX day of X, 2021.

**ATTEST:**

\_\_\_\_\_  
Mayor

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

I, Andrea M. Myrick, City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 21-3320 was duly adopted by the City Council of said city and was approved by the Mayor of said city at a regular meeting of said City Council held on the XX day of XX, 2021, and that it was adopted by the following vote, to-wit:

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

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

## EXHIBIT A

### GOOD FAITH ESTIMATES

The following information was obtained from the City's municipal advisor and underwriter, and is provided in compliance with Section 5852.1 of the California Government Code with respect to the base rental payments evidenced by the Bonds:

1. *True Interest Cost of the Base Rental Payments Evidenced by the Bonds.* Assuming the estimated aggregate principal amount of the Bonds authorized to be issued by the Authority of \$45,000,000 is sold, and based on market interest rates prevailing at the time of preparation of this information, a good faith estimate of the true interest cost of the base rental payments evidenced by the Bonds, which means the rate necessary to discount the amounts payable on the respective principal and interest payment dates to the purchase price received for the Bonds, is 3.05%.

2. *Finance Charge of the Bonds.* Assuming the estimated aggregate principal amount of the Bonds authorized to be issued by the Authority of \$45,000,000 is sold, and based on market interest rates prevailing at the time of preparation of this information, a good faith estimate of the City's finance charge of the Bonds, which means the sum of all fees and charges paid to third parties (or costs associated with the Bonds), is \$435,000.

3. *Amount of Proceeds to be Received.* Assuming the estimated aggregate principal amount of the Bonds authorized to be issued by the Authority of \$45,000,000 is sold, and based on market interest rates prevailing at the time of preparation of this information, a good faith estimate of the amount of proceeds expected to be received by the City following the Authority's sale of the Bonds, less the finance charge of the Bonds described in paragraph 2 above and any reserves or capitalized interest paid or funded with proceeds of the Bonds, is \$50,000,000.

4. *Total Payment Amount.* Assuming the estimated aggregate principal amount of the Bonds authorized to be issued by the Authority of \$45,000,000 is sold, and based on market interest rates prevailing at the time of preparation of this information, a good faith estimate of the total payment amount, which means the sum total of all payments the City will make to pay base rental payments evidenced by the Bonds calculated to the final maturity of the Bonds plus the finance charge of the Bonds described in paragraph 2 above not paid with the proceeds of the Bonds, is \$77,300,000.

Attention is directed to the fact that the foregoing information constitutes good faith estimates only. The actual interest cost, finance charges, amount of proceeds and total payment amount may vary from those presently estimated due to variations from these estimates in the timing of the sale of the Bonds, the actual principal amount of Bonds sold, the amortization of the Bonds sold and market interest rates at the time of sale.

RESOLUTION NO. 21-01

**A RESOLUTION OF THE GOVERNING BOARD OF THE MONTCLAIR PUBLIC FINANCING AUTHORITY AUTHORIZING THE ISSUANCE NOT TO EXCEED \$49,000,000 OF MONTCLAIR PUBLIC FINANCING AUTHORITY LEASE REVENUE BONDS, SERIES 2021A; APPROVING THE EXECUTION AND DELIVERY OF RELATED DOCUMENTS IN CONNECTION WITH THE OFFERING AND SALE OF SUCH BONDS; AND AUTHORIZING OTHER MATTERS RELATED THERETO**

**WHEREAS**, the Montclair Public Financing Authority (the "Authority") was established for the purpose of carrying out the intent of the State Legislature as set forth in Article 4 of the Joint Powers Act, namely the financing of public capital improvements, and working capital whenever there are significant public benefits for taking such actions; and

**WHEREAS**, the City of Montclair (the "City") desires to finance the construction, acquisition and equipping of various public capital improvements within the City (the "Project"); and

**WHEREAS**, in order to provide funds to finance the Project and other related costs, the City desires that the Authority issue its Lease Revenue Bonds, Series 2021A (the "Bonds"); and

**WHEREAS**, Senate Bill 450 (Chapter 625 of the 2017-2018 Session of the California Legislature) ("SB 450") requires that the Authority obtain from an underwriter, financial advisor or private lender and disclose, prior to authorization of the issuance of bonds with a term of greater than 13 months, good faith estimates of the following information in a meeting open to the public: (a) the true interest cost of the bonds, (b) the sum of all fees and charges paid to third parties with respect to the bonds, (c) the amount of proceeds of the bonds expected to be received net of the fees and charges paid to third parties and any reserves or capitalized interest paid or funded with proceeds of the bonds, and (d) the sum total of all debt service payments on the bonds calculated to the final maturity of the bonds plus the fees and charges paid to third parties not paid with the proceeds of the bonds; and

**WHEREAS**, in compliance with SB 450, the Authority has obtained from its municipal advisors and the underwriter the required good faith estimates and such estimates are disclosed and set forth on Exhibit A attached hereto; and

**WHEREAS**, there have been presented to this meeting the proposed forms of the following documents:

- (a) the Indenture;
- (b) the Site Lease;
- (c) the Lease Agreement;
- (d) the Preliminary Official Statement;
- (e) the Bond Purchase Agreement; and
- (f) the Assignment Agreement;

**NOW, THEREFORE, BE IT RESOLVED**, determined and ordered by the Montclair Public Financing Authority as follows:

**SECTION 1. Approval of Issuance of Bonds by the Authority.** The issuance of the Bonds by the Authority on the terms and conditions set forth in, and subject to the limitations specified in, the Indenture and this Resolution, is hereby approved; provided, however, that (i) the aggregate principal amount of Bonds shall not exceed \$49,000,000, (ii) the maturity of the Bonds shall not exceed April 1, 2051, and (iii) the true interest cost of the Bonds shall not exceed 3.50%.

**SECTION 2. Approval of Indenture.** The form of Indenture presented at this meeting is hereby approved and the Chair, Vice Chair, the Executive Director and the Treasurer or their respective designated representatives (each an "Authorized Officer") are hereby authorized and directed, for and in the name of and on behalf of the Authority, to execute, acknowledge and deliver the Indenture in substantially the form presented at this meeting with such changes therein as the officers executing the same

may approve, such approval to be conclusively evidenced by the execution and delivery thereof.

**SECTION 3. Approval of Site Lease.** The form of Site Lease presented at this meeting is hereby approved and each Authorized Officer is hereby authorized and directed, for and in the name of and on behalf of the Authority, to execute, acknowledge and deliver the Site Lease in substantially the form presented at this meeting with such changes therein as the Authorized Officer executing the same may approve, such approval to be conclusively evidenced by the execution and delivery thereof.

**SECTION 4. Approval of Lease Agreement.** The form of Lease Agreement presented at this meeting is hereby approved and each Authorized Officer is hereby authorized and directed, for and in the name of and on behalf of the Authority, to execute, acknowledge and deliver the Lease Agreement in substantially the form presented at this meeting with such changes therein as the Authorized Officer executing the same may approve, such approval to be conclusively evidenced by the execution and delivery thereof.

**SECTION 5. Approval of Bond Purchase Agreement.** The Authority is hereby authorized to enter into the Bond Purchase Agreement and each Authorized Officer is hereby authorized and directed to execute and deliver the Bond Purchase Agreement on behalf of the Authority, in substantially the form presented to this meeting, with such changes therein, deletions therefrom and additions thereto as the Authorized Officer shall approve in consultation with the Authority's financial and legal consultants, which approval shall be conclusively evidenced by the execution and delivery thereof; provided, that the underwriting discount payable pursuant to the Bond Purchase Contract shall not exceed 0.80% of the aggregate principal amount of the Bonds.

**SECTION 6. Approval of Assignment Agreement.** The form of Assignment Agreement presented at this meeting is hereby approved and each Authorized Officer is hereby authorized and directed, for and in the name of and on behalf of the Authority, to execute, acknowledge and deliver the Assignment Agreement in substantially the form presented at this meeting with such changes therein as the Authorized Officer executing the same may approve, such approval to be conclusively evidenced by the execution and delivery thereof.

**SECTION 7. Approval of Official Statement.** The Preliminary Official Statement is hereby approved and the same may be used and is hereby authorized to be used and distributed in the market by the Underwriter incident to the marketing of the Bonds. Each Authorized Officer is hereby authorized to (a) make such changes in such form of the Preliminary Official Statement as such officer, in consultation with the Authority's financial and legal consultants and the Underwriter, shall determine to be appropriate, and (b) on behalf of the Authority, to deem such Preliminary Official Statement "final" pursuant to Rule 15c2-12 under the Securities Exchange Act of 1934 (the "Rule"). Each Authorized Officer is authorized and directed to prepare a final Official Statement, with such additional information as may be permitted to be excluded from the Preliminary Official Statement pursuant to the Rule, which final Official Statement shall be executed and delivered in the name and on behalf of the Authority by an Authorized Officer, and such Authorized Officer is authorized and directed to prepare, execute and deliver in the name and on behalf of the Authority any supplemental filings related to such final Official Statement.

**SECTION 8. Other Acts.** The officers and staff of the Authority are hereby authorized and directed, jointly and severally, to do any and all things, to execute and deliver any and all documents, which in consultation with Authority Counsel and with bond counsel, they may deem necessary or advisable in order to effectuate the purposes of this Resolution, and any and all such actions previously taken by such officers or staff members are hereby ratified and confirmed. Any one of the Authorized Officers is hereby authorized and directed, for and in the name of and on behalf of the Authority, to evaluate and select one or more municipal bond insurers for all or any portion of the Bonds and to execute and deliver such contracts and agreements with such bond insurers as may be approved by the Authorized Officer executing the same, subject to the provisions of this Resolution, such approval to be conclusively evidenced by such execution and delivery.

**SECTION 9. Effective Date.** This Resolution shall take effect upon adoption.

APPROVED AND ADOPTED this XX day of XX, 2021.

---

Chair

ATTEST:

---

Secretary

I, Andrea M. Myrick, City Clerk of the City of Montclair/Secretary of the Montclair Public Financing Authority, DO HEREBY CERTIFY that Resolution No. 21-01 was duly adopted by the City Council/Board of Directors of said City/Authority and was approved by the Mayor/Chair of said City/Board at a regular meeting of said City Council/Authority Board held on the XX day of XX, 2021, and that it was adopted by the following vote, to-wit:

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

---

Andrea M. Myrick  
City Clerk/Authority Secretary

**EXHIBIT A**  
**GOOD FAITH ESTIMATES**

The following information was obtained from the Authority's municipal advisor and underwriter, and is provided in compliance with Section 5852.1 of the California Government Code with respect to the Bonds:

1. *True Interest Cost of the Bonds.* Assuming the estimated aggregate principal amount of the Bonds authorized to be issued by the Authority of \$45,000,000 is sold, and based on market interest rates prevailing at the time of preparation of this information, a good faith estimate of the true interest cost of the Bonds, which means the rate necessary to discount the amounts payable on the respective principal and interest payment dates to the purchase price received for the Bonds, is 3.05%.

2. *Finance Charge of the Bonds.* Assuming the estimated aggregate principal amount of the Bonds authorized to be issued by the Authority of \$45,000,000 is sold, and based on market interest rates prevailing at the time of preparation of this information, a good faith estimate of the City's finance charge of the Bonds, which means the sum of all fees and charges paid to third parties (or costs associated with the Bonds), is \$435,000.

3. *Amount of Proceeds to be Received.* Assuming the estimated aggregate principal amount of the Bonds authorized to be issued by the Authority of \$45,000,000 is sold, and based on market interest rates prevailing at the time of preparation of this information, a good faith estimate of the amount of proceeds expected to be received by the Authority following the Authority's sale of the Bonds, less the finance charge of the Bonds described in paragraph 2 above and any reserves or capitalized interest paid or funded with proceeds of the Bonds, is \$50,000,000.

4. *Total Payment Amount.* Assuming the estimated aggregate principal amount of the Bonds authorized to be issued by the Authority \$45,000,000 is sold, and based on market interest rates prevailing at the time of preparation of this information, a good faith estimate of the total payment amount, which means the sum total of all payments the Authority will make to pay debt service on the Bonds calculated to the final maturity of the Bonds plus the finance charge of the Bonds described in paragraph 2 above not paid with the proceeds of the Bonds, is \$77,300,000.

Attention is directed to the fact that the foregoing information constitutes good faith estimates only. The actual interest cost, finance charges, amount of proceeds and total payment amount may vary from those presently estimated due to variations from these estimates in the timing of the sale of the Bonds, the actual principal amount of Bonds sold, the amortization of the Bonds sold and market interest rates at the time of sale.



# CITY COUNCIL AGENDA REPORT

**DATE:** SEPTEMBER 20, 2021

**FILE I.D.:** FIN212

**SECTION:** PUBLIC HEARINGS

**DEPT.:** CITY MGR.

**ITEM NO.:** B

**PREPARER:** E. STARR

**SUBJECT:** CONSIDER ADOPTION OF RESOLUTION NO. 21-3321 APPROVING THE FORM AND AUTHORIZING THE EXECUTION OF THE OFFICIAL STATEMENT, CONTINUING DISCLOSURE CERTIFICATE AND PENSION POLICY, EACH RELATING TO THE ISSUANCE OF PENSION OBLIGATION BONDS (POBS); APPROVING ADDITIONAL ACTIONS RELATED THERETO; INCLUDING ESTABLISHING WITHIN THE GENERAL FUND A UAL/POB AMORTIZATION FUND TO FACILITATE MANAGEMENT AND AMORTIZATION OF NEW UAL; AND AUTHORIZING THE CITY MANAGER TO EXECUTE EACH OF THE AFORENAMED DOCUMENTS

**REASON FOR CONSIDERATION:** In May 2020, in consideration of a projected negative economic impact from the COVID-19 pandemic, the City Council adopted Resolution No. 20-3267 declaring a state of fiscal urgency (which was expressly distinguished from a state of fiscal emergency). Resolution No. 20-3267 directed the City Manager to take strategic measures to reduce or avoid successive budgetary deficits, which measures may include, among other actions, identify alternatives for revenue enhancement and evaluate the issuance of pension obligation bonds ("POBs").

The City Council was asked to consider authorizing issuance of POBs as an important tool in stabilizing the City's long-term fiscal health. At that time, the issuance of POBS would allow the City to prepay up to 100 percent of projected unfunded accrued liability (UAL), or approximately \$78 million as referenced in the 2020 California Public Employees' Retirement System (CalPERS) Valuation Report, generating significant long-term savings vis-à-vis cumulative annual payment to CalPERS on the UAL. The City Council subsequently ratified pursuing POBs upon adoption of the Fiscal Year 2020-21 Proposed Annual City Budget.

At the April 20, 2021 City Council Workshop on pension obligation and infrastructure bonds, the City Council was presented with three preliminary POB alternatives. However, due to a number of considerations discussed under "BACKGROUND", the alternatives presented at the April 20 workshop have been superseded with the single POB bond proposal herein presented.

On May 3, 2021, the City Council approved Resolution No. 21-3310 authorizing the issuance of POBs to prepay the UAL. The Resolution also approved the form and execution of Trust and Bond Purchase Agreement, authorized Judicial Validation Proceedings relating to the issuance of POBs, and approved other actions related to the POB issuance process including retention of Nixon Peabody LLP to act as bond counsel; Richards, Watson & Gershon to act as bond disclosure counsel; Urban Futures, Inc. to act as municipal advisor; Hilltop Securities Inc., to act as underwriter; and U.S. Bank National Assoc. to act as trustee—together, the "Financial Team."

The remaining final actions to be taken by the City Council include approval of Resolution No. 21-3321 approving the form and authorizing execution of the following instruments:



- Official Statement (POS);
- Continuing Disclosure Certificate; and
- Unfunded Accrued Liability ("UAL") Pension Policy.

Copies of each of the above–three documents, by reference hereof, are incorporated into and made a part of this agenda report, and copies are enclosed in the agenda packet for City Council review and consideration.

**BACKGROUND:** Pension obligation bonds (POBs) entered into by a municipality are not considered an indebtedness or liability requiring voter approval pursuant to Article XVI, Section 18 of the California Constitution if the indebtedness meets the following "exception":

- The indebtedness, such as a Pension Obligation, is an obligation imposed by law. This exception is based on the position that the obligation is involuntary, and therefore would not require voter approval. However, because of limited case law on this exception a judicial validation action is required to establish validity of the bonds. Under the judicial validation process, the municipality effectively files a lawsuit against the public. In most cases, there is no response to the complaint filed and the municipality obtains a default judgement that cannot be challenged.

Based on the above exception, and due to the following impacts, the City Manager recommended the City Council consider issuing POBs.

Over the last two decades the California Public Employees' Retirement System ("CalPERS") has made significant changes to the assumptions used in calculating local agencies' pension liabilities. These changes have resulted from the following:

- An increased overall unfunded accrued liability ("UAL") due, in part, to a lowering of the Public Employee Retirement Fund's (PERF) discount rate (the assumed rate of return on investments) from 7.5 percent to 7.0 percent, to be followed by an expected reduction to 6.8 percent as mandated by CalPERS' [Funding Risk Mitigation Policy](#), adopted in 2015. This policy mandates that a double-digit return on investments shall trigger a reduction in the discount rate—for the 12-month period ending June 30, 2021, CalPERS reported a 21.3 percent net return on investments, thereby triggering the proposed reduction to 6.8 percent, although, CalPERS may consider a more drastic one-half percent reduction, to 6.5 percent.
- Sharp increases in annual payments due to CalPERS' problematic investment strategies and consistent failure by CalPERS to achieve a rate of return on investments that meets investment portfolio goals.
- Steep investment losses during the Great Recession and failure of the pension fund to fully recover from investment losses.
- Misguided and inaccurate assurances provided to public agencies regarding improvements to public safety employee retirement plans and their subsequent increase to employer rates and the UAL.
- Employer payment holidays that underfunded pension liabilities.
- Underfunded employee service credit purchases that pushed future associated pension liabilities onto employers.

- Rate-smoothing policies and practices that initially produced artificially reduced rates followed by successive years of amortized UAL payments over a 30-year period, subsequently reduced to a 20-year period.

In May 2020, in consideration of a projected negative economic impact from the COVID-19 pandemic, the City Council adopted Resolution No. 20-3267, declaring a state of fiscal urgency (which was expressly distinguished from a state of fiscal emergency). Resolution No. 20-3267, directed the City Manager to take strategic measures to reduce or avoid successive budgetary deficits, which measures may include, among other actions, identify alternatives for revenue enhancement and evaluate the issuance of pension obligation bonds ("POBs").

The City Council was asked to consider authorizing issuance of POBs as an important tool in stabilizing the City's long-term fiscal health. The issuance of POBS would allow the City to prepay up to 100 percent of projected UAL, or approximately \$78 million as referenced in the 2020 CalPERS Valuation Report, generating significant long-term savings vis-à-vis cumulative annual payment to CalPERS on the UAL. The City Council subsequently ratified pursuing POBs upon adoption of the Fiscal Year 2020-21 Proposed Annual City Budget.

At the April 20, 2021, City Council Workshop on pension obligation and infrastructure bonds, the City Council was presented with three preliminary POB alternatives. However, those scenarios are no longer valid, for the following important reasons:

- CalPERS' investment returns for the fiscal year ended June 30, 2021 are reported at 21.3 percent, reducing the City's UAL from \$82,637,507 (based on the most recent June 30, 2021 Valuation Report from CalPERS) to an estimated \$59.6 million (the City is still awaiting an official estimate from CalPERS).
- Based on the above investment return of 21.3 percent, CalPERS' [Funding Risk Mitigation Policy](#) mandates a lowering of the discount rate from 7 percent to a publicly announced discount rate of 6.8 percent, with a further reduction of the discount rate to as low as 6.5 percent being discussed by the CalPERS Board of Directors. The change to the discount rate will be discussed at the Board's November 2021 meeting, and would go into effect for the actuarial study of June 30, 2021.

A change in the discount rate from 7 percent to 6.8 percent is projected to increase the City's UAL from \$59.6 million to \$63.69 million. Pursuant to City Council direction, however, the City annually pays its UAL at the beginning of each fiscal year to avoid accruing interest. Following the City's annual payment of \$5,761,184 in July 2021, the UAL to be prepaid from POB proceeds is estimated to be \$61.31 million when adjusted to a Bond closing and payout date of October 27, including the cost of issuing the Bonds. The City Council is advised that this estimate is preliminary, and it is important to note that a decision by the CalPERS Board to adjust the discount rate lower than 6.8 percent, or make other actuarial changes based on inflation or mortality assumptions, will further affect UAL calculations.

On May 3, 2021, the City Council approved Resolution No. 21-3310 (the "Authorizing Resolution") authorizing the issuance of POBs to prepay the City's unfunded accrued liability (UAL). Resolution No. 21-3310 also approved the form and execution of Trust

and Bond Purchase Agreement, authorized Judicial Validation Proceedings relating to the issuance of pension obligation bonds (POBs), and approved other actions related to the POB issuance process including retention of Nixon Peabody LLP to act as bond counsel; Richards, Watson & Gershon to act as bond disclosure counsel; Urban Futures, Inc. to act as municipal advisor; Hilltop Securities Inc., to act as underwriter; and U.S. Bank National Assoc. to act as trustee.

On May 6, 2021, the City filed a complaint in the Superior Court of the State of California for the County of San Bernardino (the "Court") in a matter entitled *City of Montclair v. All Persons Interested et al.* (Case No. CIVSB2112608) (the "Validation Petition"). The City filed the Validation Petition in order to seek judicial validation for the issuance of the Bonds (and additional bonds which the City may issue, from time-to-time, to refund all or a portion of the UAL pursuant to authorization provided in the Authorizing Resolution).

On July 27, 2021, the Court entered a default judgment (the "Validation Judgment") in favor of the City with respect to the Validation Petition, and the protest period expired on August 27, 2021, clearing the way for the City to proceed with POB issuance.

The Bonds will be obligations of the City payable from any lawfully available funds. The City will covenant in the Trust Agreement to include, in its budget for each fiscal year, annual necessary appropriations therefor. The obligations of the City under the Bonds, including the obligation to make all payments of principal, premium, if any, and interest when due, will be absolute and unconditional, without any right of set-off or counter claim.

The City has three main CalPERS plans—Police, Fire and Miscellaneous employee groups, and within each plan are multiple tiers (plan formulas). Each plan's UAL is comprised of multiple "amortization bases", which are positive and negative amounts generated each year based on the performance of CalPERS' Investment Fund, actual experience (such as compensation, retirement timing and mortality) and changes in the actuarial assumptions. Annually, each amortization base generates positive and negative inputs based on the performance of the CalPERS Investment Fund and changes in actuarial assumptions.

Further, each amortization base has a separate payment schedule set over a fixed period of years. Because of CalPERS' amortization methodology, some of the payments continue to increase each year while others may drop off, creating an unstable, cyclical funding environment that is projected to continue producing significant increases in UAL payments over the next 12 years, followed by a projected series of decreasing UAL payments in the subsequent 12 years, particularly in the last six years of the UAL payment cycle. However, adjustments to the discount rate and mortality tables, investment losses (or gains), economic conditions, and other unaccounted factors could result in additional increases not presently projected.

For most municipal agencies, including Montclair, funding these growing pension liabilities challenges the fiscal capacity to produce balanced budgets while concurrently maintaining staffing and historic service levels. In that regard, the City of Montclair is focused on minimizing annual payment increases to CalPERS so that balanced budgets can be maintained, with minimal impacts to services offered to the residents and businesses of Montclair.

Through the issuance of POBs intended to prepay the City's existing UAL, Montclair can achieve improved control over the level of payments required to pay debt service on the bonds. POB payments are anticipated to be level each year, providing the City with the

capacity to better plan its pension expenses for budgeting purposes, while concurrently producing short- and long-term savings vis-à-vis annual UAL payments to CalPERS, and allowing the City to focus on maintaining and improving public programs, services and working conditions, presenting balanced budgets, and improving the status of the City's assigned and unassigned reserves.

Pension Obligation Bonds issued by the City will be Federally taxable—they are considered working capital expenditures and, therefore, do not qualify for tax-exemption status; i.e., interest payments to investors would be included for income tax purposes.

The City currently has an "A+" rating by Standard & Poor's (S&P), and there is a likelihood that the rating may be upgraded to "AA" due to the passage of Measure L. The S&P rating is a credit score (a letter grade) that describes the general creditworthiness of the entity issuing debt, and how likely the debt will be repaid. The ratings are informational only and are not investment recommendations nor a predictor of default. S&P also rates the creditworthiness of bonds. The best S&P rating is "AAA", meaning it is highly likely the borrower will repay its debt. A higher letter grade generally associates with a lower interest rate due to the lack of risk; i.e., investors will accept a smaller return in exchange for a safe investment. Adding a "+" or "-" to the letter rating denotes a more stable or less stable outlook, respectively.

In comparison, as of January 2021, the S&P rating for the U.S. government was AA+, denoting a very stable outlook—the U.S. had an "AAA" rating (extremely stable) until 2011. Currently, only a few countries (Australia, Canada, Luxembourg, and Norway) have an "AAA" rating. Two U.S. companies, Microsoft and Johnson & Johnson, also have "AAA" ratings. In relative terms, Montclair's "A+" rating denotes an agency that has "strong" capacity to meet its financial commitments, whereas an "AA" rating denotes a "very strong" capacity to meet financial commitments.

**The City Council is requested to adopt Resolution No. 21-3321, approving the form and authorizing execution of the Official Statement, Continuing Disclosure Certificate, and Pension Policy.**

1. **Official Statement:** Prior to structuring or issuing any form of debt, the municipal issuer typically forms a team of experts (the "Financial Team") to assist with complying with all the legal requirements and structuring the issuance. The City Council approved the Financial Team for POBs at its May 3, 2021 meeting. This team typically includes an underwriting firm, bond counsel, financial adviser, rating agency, and insurer. One of the important tasks of the issuance process is preparing an Official Statement — the document enclosed for City Council review is a "Preliminary Official Statement" pending final review and analysis by the Financial Team.

The Official Statement is comparable to a fund prospectus that is often used in the sale of corporate equities, mutual fund sales or debt offering, and is the document used by the issuer and underwriting firm to sell bonds to potential buyers and protect investors' interests by providing all the information deemed necessary by the Securities and Exchange Commission (SEC).

The Preliminary Official Statement for the POBs has been prepared by Richards Watson & Gershon, the City's bond disclosure counsel, and describes the essential terms of the bonds, including the terms and features of the bonds through

maturity. Information in the Preliminary Official Statement includes, but is not limited to, the following:

- The interest rate or, if the interest rate is variable, the manner in which the rate is determined;
- The timing and manner of payment of the interest and the principal of the bonds;
- The minimum denomination in which the bonds may be sold;
- Whether the bonds can be redeemed by the City prior to maturity and, if so, on what terms;
- Whether the investor has the right to require the City to repurchase the bonds at their face value;
- The sources from which the City has promised to make payment on the bonds;
- Whether any bond insurance, letter of credit, or other guarantees have been provided for repayment;
- The consequences of a default by the City;
- A description of outstanding debt, the authority to incur debt, limitations on debt and the future debt burden of the City;
- A description of basic legal documents such as the Authorizing Resolution and Indenture and Trust Agreements; and
- Legal matters such as pending proceedings that may affect the securities offered, legal opinions, and tax considerations.

The Underwriter and the City have reviewed the information in the Preliminary Official Statement in accordance with, and as part of, their dual responsibilities to investors for accuracy and completeness of information.

The Preliminary Official Statement is provided to furnish information in connection with the sale of the City's 2021 Taxable Pension Obligation Bonds in the estimated aggregate principal amount of \$61,870,000. The Bonds will be issued pursuant to (i) Articles 10 and 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the California Government Code, commencing with Sections 53570 and 53580, respectively (the "Refunding Bond Law"); (ii) Resolution No. 21-3310, adopted by the City Council on May 3, 2021; and (iii) the Trust Agreement, dated as of October 1, 2021 by and between the City and U.S. Bank National Association, as Trustee.

Payment on the Bonds will be made semiannually on June 1 and December 1 of each year, commencing June 1, 2022. The Bonds will be obligations of the City payable from any lawfully available funds, and the City will covenant in the Trust Agreement to include, in its annual budget necessary appropriations for payment on the Bonds.

The Bonds will be subject to optional redemption and mandatory sinking fund redemption prior to maturity as described on Pages 7, 8 and 9 of the Official Statement.

- Optional Redemption. The Bonds maturing on or after June 1, 2032, will be subject to redemption, at the option of the City, from any source of funds, on any date on or after June 1, 2031, in whole or in part from such maturities as selected by the City and by lot within a maturity at a redemption price equal to the principal amount to be redeemed, together with accrued interest to the date of redemption, without premium.
- Mandatory Sinking Fund Redemption. The Bonds maturing on June 1, 2040 (the “Term Bonds”) will be subject to mandatory redemption in whole or in part by lot, from sinking fund payments, at a redemption price equal to the principal amount of such Term Bonds to be redeemed, without premium, in the aggregate respective principal amounts and on June 1 in the respective years as set forth in the table on Page 7 of the Official Statement, plus accrued interest to the date of redemption; provided, however, that if some but not all of the Term Bonds of a maturity have been redeemed pursuant to the optional redemption provisions or special redemption provisions, the total amount of all future sinking fund payments (including the principal amount of the Term Bonds coming due at the maturity thereof) will be reduced by the aggregate principal amount of the Term Bonds so redeemed, to be allocated among such sinking fund payments on a pro rata basis as determined by the City.
- **Annual Debt Service:** The following **Table 1** shows the annualized debt service on the POBs, based on an issuance of \$61,870,000, without regard to any optional or special mandatory redemption, and based on a 6.7 percent discount rate. **Table 1** also includes prior annual debt service payments to CalPERS that would otherwise be required if the City elected not to issue POBs.

**Table 1**  
**Annual Debt Service on POBs**  
**Assumes 6.70% CalPERS Discount Rate**  
**Plus Prior Debt Service Obligation to CalPERS on the UAL (Without POBs)**

<i>Bond Year Ending June 1</i>	<i>Principal</i>	<i>Coupon</i>	<i>Interest</i>	<i>Annual Debt Service</i>	<i>Prior Debt Service</i>
2022			845,719.08	845,719.08	845,719.08
2023	2,920,000.00	0.45%	1,422,705.00	4,342,705.00	6,158,196.00
2024	2,935,000.00	0.75%	1,409,565.00	4,344,565.00	6,673,575.96
2025	2,955,000.00	1.050%	1,387,552.50	4,342,552.50	7,200,921.00
2026	2,985,000.00	1.350%	1,356,525.00	4,341,525.00	6,910,599.00
2027	3,025,000.00	1.650%	1,316,227.50	4,341,227.50	6,606,108.96
2028	3,075,000.00	1.850%	1,266,315.00	4,341,315.00	6,214,424.04
2029	3,135,000.00	2.050%	1,209,427.50	4,344,427.50	5,828,021.04
2030	3,200,000.00	2.200%	1,145,160.00	4,345,160.00	6,030,816.00
2031	3,270,000.00	2.350%	1,074,760.00	4,344,760.00	6,239,187.96
2032	3,345,000.00	2.550%	997,915.00	4,342,915.00	6,453,290.04
2033	3,430,000.00	2.700%	912,617.50	4,342,617.50	6,489,216.00
2034	3,525,000.00	2.800%	820,007.50	4,345,007.50	4,473,938.04

<i>Bond Year Ending June 1</i>	<i>Principal</i>	<i>Coupon</i>	<i>Interest</i>	<i>Annual Debt Service</i>	<i>Prior Debt Service</i>
2035	3,620,000.00	2.850%	721,307.50	4,341,307.50	4,379,921.04
2036	3,725,000.00	2.900%	618,137.50	4,343,137.50	4,192,691.04
2037	3,830,000.00	3.050%	510,112.50	4,340,112.50	3,153,495.96
2038	3,950,000.00	3.050%	393,297.50	4,343,297.50	2,874,887.04
2039	4,070,000.00	3.050%	272,822.50	4,342,822.50	2,863,303.04
2040	4,195,000.00	3.050%	148,687.50	4,343,687.50	2,846,169.96
2041	680,000.00	3.050%	20,740.00	700,740.00	600,606.96
<b>TOTAL:</b>	<b>61,870,000.00</b>		<b>17,849,601.58</b>	<b>79,719,602.58</b>	<b>96,188,269.08</b>

As indicated in **Table 1**, above, over a 19-year period the City would pay an estimated \$61,870,000 in principal and \$17,849,602.58 in interest, for a total payment of \$79,719,602.58. In comparison, the comparable UAL payment to CalPERS over the same period would be \$96,188,269.08, assuming a 6.7 percent discount rate, resulting in a net savings of \$16,468,666.50.

Pursuant to the Trust Agreement, the Trustee will establish and maintain a “City of Montclair 2021 Taxable Pension Obligation Bonds Revenue Fund,” a “Bond Interest Account” and “Bond Principal Account” within the Revenue Fund.

The City covenants to include in its annual budget a provision to provide funds in an amount sufficient to pay the principal, premium, if any, and interest on the Bonds coming due in each Fiscal Year, but only to the extent that such amounts exceed the amount of available funds then on deposit in the Revenue Fund, and will make annual appropriations for all such amounts. So long as any Bonds are Outstanding, the City will deliver funds to the Trustee for deposit to the Revenue Fund equal to the portion of the Annual Debt Service coming due.

If the principal, premium, if any, and interest on the Bonds coming due in any fiscal year exceeds the sum of amounts in the City budget, together with amounts then on deposit in the Revenue Fund, the City will amend or supplement the Budget to provide for additional amounts.

The Bonds will not constitute an obligation of the City for which the City will be obligated to levy or pledge any form of taxation. The Bonds also represent a replacement of debt (the UAL owed annually to CalPERS), not new debt.

2. **Continuing Disclosure Certificate:** A Continuing Disclosure Certificate is to be executed and delivered by the City in connection with issuance of the City's 2021 Taxable POBs. The Disclosure Certificate is being executed for (i) the benefit of the holders and beneficial owners of the Bonds, and (ii) in order to assist the Underwriter in complying with SEC Rules (Rule 15c2-12).

In order to sell bonds, the City must enter into a written agreement or undertaking to make certain annual financial information about the City is publicly available for as long as any bonds remain outstanding. The contractual obligation by the City to make information available on an annual basis is referred to as “continuing disclosure,” and the written document is called the “Continuing Disclosure Certificate”. The City is required to post continuing disclosure information on the Municipal Securities Rulemaking Board’s Electronic Municipal Market Access (EMMA) website ([www.emma.msrb.org](http://www.emma.msrb.org)).

The exact type of information required to be updated annually and publicly disclosed through EMMA differs depending on the type of bond issue, but generally consists of the annual financial statements of the issuer and certain specific operating data. Specifically, the City, through its Dissemination Agent, is required to provide prompt notice to EMMA of certain material events, as indicated below:

- Annual financial statements and other operating data of the City as set forth in the Continuing Disclosure Certificate for the bonds. The City's Annual Report shall contain or incorporate by reference all of the information identified in Section 4 of the Continuing Disclosure Certificate.
- Principal and interest payment delinquencies;
- Non-payment related defaults, if material;
- Unscheduled draws on debt service reserves reflecting financial difficulties; provided, it is hereby acknowledged that, at the issuance date of the Bonds, there is no debt service reserve established or required under the governing documents for the Bonds;
- Unscheduled draws on credit enhancements reflecting financial difficulties;
- Substitution of credit or liquidity providers, or their failure to perform;
- Material events affecting exemption of interest on the Bonds from personal income taxes of the State of California;
- Modifications to rights of Bond owners, if material;
- Bond calls, if material, and tender offers;
- Defeasances;
- Release, substitution, or sale of property securing repayment of the Bonds, if material;
- Rating changes;
- Bankruptcy, insolvency, receivership or similar event of the City;
- The consummation of a merger, consolidation, or acquisition involving the City or the sale of all or substantially all of the assets of the City, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
- Appointment of a successor or additional trustee or the change of name of a trustee, if material;
- Incurrence of a financial obligation of the City, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the City, any of which affect security holders, if material; and



- Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the City, any of which reflect financial difficulties.
3. **City of Montclair Unfunded Accrued Liability (UAL) Pension Policy:** The purpose of the Unfunded Accrued Liability ("UAL") Pension Policy ("Policy") is to provide guidance on the development and adoption of a funding plan for any UAL that are calculated annually by CalPERS, or for any UAL remaining immediately after issuance of the POBs.

In adopting the Pension Policy, the City Council recognizes that a fiscally prudent Policy should achieve the following:

- Maintain the City's sound financial position;
- Ensure the City has the flexibility to respond to changes in future service priorities, revenue levels, and operating expenditures, including meeting its ongoing payment obligations related to the City's POB, its normal employer pension rate component, and any new or remaining UAL after POB issuance;
- Protect the City's creditworthiness;
- Ensure that all pension funding decisions are structured to protect both current and future taxpayers, ratepayers, and residents of the City; and
- Ensure that the City's debt, including the structure of the City's POB and future UAL amortization, is consistent with the City's short- and long-term strategic planning goals, objectives, capital improvement program, fiduciary responsibilities, and/or annual adopted budgets.

In furtherance of Policy objectives, the City has committed to a framework for funding the City's employee pension plans, taking into account factors that are relevant to pension benefit security and the fiscal and operational health of the City. These factors include, but are not limited to the following:

- The financial position of the City;
- Stability of the City's pension plans (pension benefit security) and/or affordability of the City's annual pension-related payments;
- Terms of the City's CalPERS contract and collective bargaining agreements; and
- Minimum pension funding requirements under State law.

The City has identified several advantages to developing a Pension Policy that addresses pension liabilities, including the following:

- Allows for proper management of long-term pension liabilities, thereby minimizing both the short- and long-term fiscal effects of these liabilities on municipal operations development of annual operating budgets;

- Provides for a disciplined decision-making process, which contributes to better predictability in funding pension and other municipal obligations;
- Promotes transparency of funding decisions and comprehension of pension funding issues;
- Facilitates identification, understanding, and management of risk factors that affect the variability of pension funding obligations; and
- Promotes the conceptualization and comprehension of pension benefit security.

By issuing POBs, the City's target funding level is 100 percent of the current UAL. However, because CalPERS' internal decision-making process is dynamic and creates uncertainties, there is no clear and precise process that can be relied on to define absolute outcomes. For example, while CalPERS reported a 21.3 percent net return on investments for the year ending June 30, 2021, CalPERS' [Funding Risk Mitigation Policy](#), adopted in 2015, mandates that a double-digit return on investments shall trigger a reduction in the discount rate (the assumed rate of return on investments); i.e., the discount rate lowers in year of good investment returns. Accordingly, CalPERS' has proposed a minimum discount rate reduction for next fiscal year from 7 percent to 6.8 percent. Further analysis from CalPERS may lead to an even larger reduction—possibly to 6.75 percent or 6.5 percent. The final discount rate decision is expected from the CalPERS Board at its November 2021 meeting.

Based on the previous 7 percent discount rate, the funded status of the overall Public Employee Retirement Fund (PERF), at \$469 billion, was estimated at 82 percent. Under the new 6.8 percent discount rate, the funded status of the overall PERF declined to an estimated 80 percent because existing assets are assumed to grow at a slightly slower rate annually into the future. Lowering the discount rate also increases the likelihood that CalPERS can reach its funding targets over the long-term because the lower discount rate drives larger employer and member contributions.

The unknown quantity coming into total UAL calculation is CalPERS' dynamic decision-making process. The CalPERS Board of Directors will continue to review the discount rate through its Asset Liability Management (ALM) process during the balance of the calendar year, and may lower the discount rate, by some estimates, to 6.5 percent. Reducing the discount rate to 6.5 percent would immediately increase the UAL for all member agencies; thus, in the process it would create a new UAL balance for Montclair despite the City's immediate objective to produce a target funding level of 100 percent of current UAL and prepay that total by issuing POBS.

To address the above concern, the City's Underwriter will calculate the POB issue using a discount rate set at 6.7 percent—effectively, the City will borrow higher than the current, actuarial UAL estimate. This action would create for the City a temporary super-funded status within the UAL if the discount rate is reduced to 6.8 percent, and the over funded amount would be used to pay off any new UAL over subsequent years until the super funded amount is depleted or used in such other manner as necessary to address fund changes implemented by CalPERS.

However, if the discount rate were lowered to 6.5 percent, the super funded amount would immediately be used to offset the new UAL unless otherwise directed by CalPERS. The City should also anticipate a new UAL balance that may be higher than the super funded component if the discount rate is less than 6.7 percent. Accordingly, and, pursuant to the proposed Pension Policy, the City would establish a UAL/POB Amortization Fund and use the Fund to pay off, over time, any new UAL in excess of the superfund, and any new UAL on an ongoing basis.

- *UAL/POB Amortization Fund (UAL/POBAF)*. At its May 3, 2021, meeting, the City Council was asked to consider establishing a UAL/POB Amortization Fund (UAL/POBAF) and apply fund assets towards any new and recurring annual UAL payment requirements and/or retire the POBs prior to date of maturity. Separate from the UAL, the City would continue to be responsible for annual payments on the normal cost range component of the employer rate portion – estimated at approximately \$2.149 million for Fiscal Year 2021–22.
  - How does the UAL/POBAF Work? The Fiscal Year 2021–22 CalPERS UAL Payment of \$5,761,184, made in July 2021, would function as the base year UAL payment estimate. Subtract from the base year UAL payment estimate the projected 2023 POB Debt Service Payment of \$4,342,705 to arrive at the difference = \$1,418,479. The sum of \$1,418,479 would be transferred annually from the General Fund to the UAL/POBAF to achieve two objectives:
    - ✓ Annually service any new growth in the UAL outside of annual debt service on the POB; and
    - ✓ Reduce the amortization period on the POB; e.g., over a nineteen year period, the UAL/POB Amortization Service Fund would potentially accrue \$16,468,668 million, plus interest.
- Section 115 Trust. As an alternative to, or in conjunction with establishing the UAL/POBAF, the City may consider establishing a Section 115 Trust. General Fund revenue would be transferred to the trust to ensure funds will only be used for pension-related costs. Trust assets can be accessed to pay CalPERS at any time to reduce volatility and offset unexpected pension rate increases. The trust will have funds deposited into it at the discretion of the City Council, based on recommendations made by the City Manager or his/her designee during the annual budget adoption process. Monies put in a Section 115 Trust would be unavailable only for CalPERS-related payments and would not be available to the City for any other purpose; i.e., funds placed in the Trust would be treated the same as putting monies on deposit with CalPERS.

**FISCAL IMPACT:** The issuance of pension obligation bonds (POBs) for the refinancing of certain pension obligations of the City of Montclair is expected to reduce the annual costs related to the unfunded accrued liability (“UAL”) the City currently is obligated to pay CalPERS.

As of June 30, 2021, the City's UAL for all citywide employees and retirees is estimated to be approximately \$63.69 million based on the announced change in the CalPERS discount rate from 7 percent to 6.8 percent. The City's annual payment of \$5,761,184 in July 2021 reduced the current UAL to an estimated \$57.93 million. By using a more aggressive discount rate of 6.7 percent as the basis for determining the final sizing (the total sum of funds borrowed) of the POBs, the current UAL is adjusted to \$59.97 million, increasing to \$61.31 million with accrual to the projected Bond closing date. CalPERS has been contacted by the Underwriter to confirm the UAL payoff total, which will then be used to determine the final sizing of the Bond financing.

Currently, annual direct UAL payments to CalPERS (without consideration of POBs) will range from approximately \$6.6 million for the 2022-23 fiscal year, up to approximately \$6.9 million in Fiscal Year 2024-25 using the current 7 percent discount rate. Lowering the discount rate will increase annual UAL payments.

The issuance of POBs will allow the City to prepay up to 100 percent of the projected UAL, based on the 2021 valuation date report released by CalPERS. Using the aggressively lower discount rate of 6.7 percent to determine POB sizing, as discussed in the previous paragraph, would produce a temporary super- or over-funded status within the UAL, providing up to \$3.1 million for any new UAL that may occur as a result of decisions/actions/investment strategies taken by CalPERS including, but not limited to, introduction of a discount rate lower than 6.8 percent (and perhaps down to 6.5 percent), changes to mortality and demographic tables, and poor investment returns. Based on current estimates, using an aggressively lower discount rate of 6.7 percent would produce a Bond sizing of approximately \$63 million.

By issuing POBs, the City will be contractually obligated to make annual debt service payments to the bondholders. The annual debt service payments will be structured to be level dollar amount payments over the course of the life of the bonds. With lower interest rates paid on the bonds (approximately 4.1 percent), compared to the proposed 6.8 percent interest rate charged by CalPERS, and a 19-year bond repayment schedule, the City could potentially save approximately \$16.469 million or 24.9 percent on a net present value savings basis. Further, a POB issue reduces the potential UAL payment for Fiscal Year 2022-23 from an estimated \$6.6 million to approximately \$4.2 million.

It is expected that if the City Council approves Resolution No. 21-3321, the bonds will close, and money will be transferred to CalPERS, on October 27, 2021.

The POBs are not Federally tax-exempt because they are considered working capital expenditures and, therefore, do not qualify for tax-exemption status; i.e., interest payments to investors would be included for income tax purposes.

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

1. Adopt Resolution No. 21-3321 authorizing execution of the following documents and additional actions related thereto:
  - a. Official Statement — approves the form of the Preliminary Official Statement with such changes as are necessary to make it final as of its date;

- b. Continuing Disclosure Certificate – approves the form of the Continuing Disclosure Certificate to meet ongoing disclosure requirements directed of the City for the Bonds; and
  - c. Pension Policy – approves the proposed Pension Policy, giving the City direction on managing future pension unfunded liabilities which may occur and that are beyond the normal cost range.
2. Establish within the General Fund an UAL/POB Amortization Fund to facilitate management and amortization of new UAL; and
  3. Authorize the City Manager to execute the Official Statement, Continuing Disclosure Certificate, and Pension Policy.

**RESOLUTION NO. 21-3321**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR APPROVING THE FORM AND AUTHORIZING THE EXECUTION OF AN OFFICIAL STATEMENT, A CONTINUING DISCLOSURE CERTIFICATE AND A PENSION POLICY RELATING TO THE ISSUANCE OF PENSION OBLIGATION BONDS AND APPROVING ADDITIONAL ACTIONS RELATED THERETO**

**WHEREAS**, the City of Montclair (the "City") has previously adopted Resolution No. 21-3310 on May 3, 2021 approving the issuance of the City of Montclair 2021 Taxable Pension Obligation Bonds (the "Bonds"), approving the form and authorizing the execution of a Trust Agreement by and between the City and U.S. Bank National Association, as the trustee, and a Bond Purchase Agreement by and between the City and Hilltop Securities Inc., as Underwriter, and authorizing the filing of judicial validation proceedings relating to the issuance of the Bonds and approving additional actions related thereto; and

**WHEREAS**, the City desires to approve the form of and authorize the execution of an Official Statement and Continuing Disclosure Certificate relating to the Bonds.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Montclair as follows:

**Section 1.** The City Council does hereby find and declare that the above recitals are true and correct.

**Section 2.** The form of the Preliminary Official Statement, presented to the City Council at this meeting and on file with the City Clerk, is hereby approved. The Mayor of the City, the City Manager of the City or their written designees (the "Authorized Officers") are hereby authorized to make such changes to the Preliminary Official Statement as are necessary to make it final as of its date and are authorized and directed to execute and deliver a certificate deeming the Preliminary Official Statement final as of its date in accordance with Rule 15c2-12 promulgated under the Securities Exchange Act of 1934. Each of the Authorized Officers is hereby authorized and directed to execute, approve and deliver the final Official Statement, in the form of the Preliminary Official Statement with such changes, insertions and omissions as the Authorized Officer executing said document may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof by one or more of the Authorized Officers.

**Section 3.** The form of the Continuing Disclosure Certificate (the "Continuing Disclosure Certificate"), presented to the City Council at this meeting and on file with the City Clerk, is hereby approved. Each of the Authorized Officers is hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver the Continuing Disclosure Certificate in substantially said form, with such changes therein as the Authorized Officer executing such document may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

**Section 4.** The Pension Policy presented to the City Council at this meeting and on file with the City Clerk, is hereby approved.

**Section 5.** The Authorized Officers are, and each of them hereby is, authorized and directed to execute and deliver any and all documents and instruments and to do and cause to be done any and all acts and things necessary or proper for carrying out the transactions contemplated hereby.

**Section 6.** This Resolution shall take effect from and after the date of approval and adoption hereof.

**APPROVED AND ADOPTED** this XX day of XX, 2021.

**ATTEST:**

\_\_\_\_\_  
Mayor

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

**APPROVED AS TO  
LEGAL FORM:**

\_\_\_\_\_  
City Attorney

I, Andrea M. Myrick, City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 21-3321 was duly adopted by the City Council of said city and was approved by the Mayor of said city at a regular meeting of said City Council held on the XX day of XX, 2021, and that it was adopted by the following vote, to-wit:

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

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



# CITY COUNCIL AGENDA REPORT

---

<b>DATE:</b>	SEPTEMBER 20, 2021	<b>FILE I.D.:</b>	CDV079
<b>SECTION:</b>	PUBLIC HEARINGS	<b>DEPT.:</b>	COMMUNITY DEV.
<b>ITEM NO.:</b>	C	<b>PREPARER:</b>	M. DIAZ

**SUBJECT:** SECOND READING — CONSIDER ADOPTION 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

CONSIDER ADOPTION OF RESOLUTION NO. 21-3323 ESTABLISHING DESIGN GUIDELINES FOR WIRELESS TELECOMMUNICATIONS FACILITIES

---

**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. On August 16, 2021, the City Council conducted a public hearing for a first reading on the proposed Wireless Telecommunication Facility Ordinance and thereafter set a public hearing for a second reading on September 20, 2021.

Copies of proposed Ordinance No. 21-998 and proposed Resolution No. 21-3323 are 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 (Attachment 1 to the August 19, 2021 City Council Agenda Report — *Memorandum from BCLP dated*

June 1, 2021 “Re: Bethany Baptist—revisions to siting ordinance”). Staff discussed the suggested modifications with Mr. Grice and 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 to the August 19, 2021 City Council Agenda Report — *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 and adopt Resolution No. 21-3323 adopting the design guidelines for wireless telecommunications facilities.

**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 and Resolution No. 21-3323 would create no direct fiscal impact to the City’s General Fund.

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

1. Conduct second reading of Ordinance No. 21-998;
2. Adopt 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; and
3. Adopt Resolution No. 21-3323 establishing design guidelines for wireless telecommunications facilities.

### **Attachments:**

- *Proposed Ordinance No. 21-998*
- *Proposed Resolution No. 21-3323*
- *Exhibit 1 to proposed Resolution No. 21-3323: Design Standards for Wireless Telecommunications Facilities on Public and Private Property*

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

**WHEREAS**, on August 16, 2021, the City Council conducted a public hearing for a first reading of the proposed Ordinance No. 21-998 and thereafter set a public hearing for a second reading to take place on September 20, 2021.

**WHEREAS**, on September 20, 2021, the City Council conducted a public hearing for a second reading of proposed Ordinance No. 21-998.

**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.** 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 for 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

SECOND READING  
09/20/2021

RESOLUTION NO. 21-3323

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR ESTABLISHING DESIGN STANDARDS FOR WIRELESS TELECOMMUNICATION FACILITIES ON PUBLIC AND PRIVATE PROPERTY

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, 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; and

WHEREAS, the City Council deems it to be necessary and appropriate to provide for certain standards and regulations relating to the location, placement, design, construction, and maintenance of wireless telecommunication facilities and related structures within the City, and providing for the enforcement of said standards and regulations, consistent with federal and state law limitations on that authority; and

WHEREAS, on September 20, 2021, the City Council adopted 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; and

WHEREAS, City staff prepared aesthetic/design standards as contained in Design Standards for Wireless Telecommunications Facilities on Public and Private Property, document (Exhibit 1, attached hereto and incorporated herein); and

WHEREAS, such facilities shall comply with design standards adopted by separate resolution of the City Council.

NOW, THEREFORE, BE IT RESOLVED the City Council of the City of Montclair does hereby adopt Design Standards for Wireless Telecommunications Facilities on Public and Private Property, attached to and incorporated in this Resolution as Exhibit 1.

Effective Date. This Resolution shall be in full force and effect immediately upon adoption.

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 Resolution No. 21-3323 was duly adopted by the City Council of said city and was approved by the Mayor of said city at a regular meeting of said City Council held on the XX day of XX, 2021, and that it was adopted by the following vote, to-wit:

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

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



# 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.

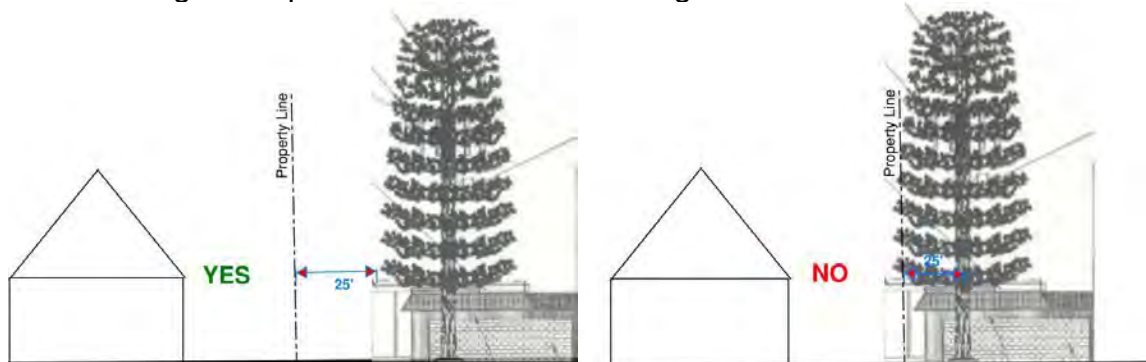


5. Outdoor ground-mounted equipment associated with support structures and base stations shall be avoided whenever feasible. All ground-mounted equipment must be stealth. The wireless facility shall be concealed within an existing structure, behind a decorative solid masonry wall enclosure, or other 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.





# CITY COUNCIL AGENDA REPORT

---

**DATE:** SEPTEMBER 20, 2021                      **FILE I.D.:** PLD050  
**SECTION:** PUBLIC HEARINGS                      **DEPT.:** COMMUNITY DEV.  
**ITEM NO.:** D    **PREPARER:** S. GUTIÉRREZ  
**SUBJECT:** 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

CONSIDER SETTING A PUBLIC HEARING FOR MONDAY, OCTOBER 4, 2021, AT 7:00 P.M. IN THE CITY COUNCIL CHAMBERS TO CONSIDER SECOND READING AND ADOPTION OF ORDINANCE NO. 21-996

---

**REASON FOR CONSIDERATION:** Due to changes in State law regarding Accessory Dwelling Units (ADUs), the City’s current ADU Ordinance is no longer valid. In response, staff is proposing amendments to Title 11 of the Montclair Municipal Code regarding regulations for Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs) to comply with new and/or revised state regulations, pursuant to Government Code Sections 65852.2 and 65852.22 that went into effect on January 1, 2020. The proposed Ordinance updates the City’s local standards to comply with the revisions to state law. Amendments to the Municipal Code require public hearing review and approval by the City Council.

The City Council adopts Ordinances to make changes to the Montclair Municipal Code 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 changes to the Ordinance are made after introduction, 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.

On August 16, 2021, the City Council conducted a public hearing for a first reading on the proposed ADU Ordinance; and thereafter set a public hearing for a second reading on September 20, 2021. However, during the public hearing Mayor Dutrey requested a revision to the Ordinance to include the annual report of the actual rent charged as part of the deed restriction requirement. In addition, the Mayor also requested the deed restriction include the requirement for the owner of a property with a JADU to live in either the primary dwelling unit or the JADU. To address this request, Section 11.23.110(A) of the Ordinance would be revised to:

- a. Add new subparagraph 4:
  - 4. “The property owner shall annually report to the City the actual rent charged for the ADU or JADU as required by Chapter 11.23 of the Montclair Municipal Code.”; and
- b. Add new subparagraph 5:
  - 5. “If the accessory dwelling unit is a JADU, 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:” and
- c. Change current subparagraph 4 to 6.

Pursuant to Government Code Section 36934 only “corrections of typographical or clerical errors,” are permitted while other revisions are considered an “alteration” within the meaning of this code section. As such, the revised ordinance will need to be considered with a new first reading, and a second reading at the following meeting.

The proposed changes are contained in Ordinance No. 21-996, a copy of which is attached for City Council review and consideration.

**BACKGROUND:** On July 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. City Council action would amend Chapters 11.02 (Definitions), portions of 11.16, 11.18, 11.19, 11.20, 11.22, and 11.36, and repeal and replace Chapter 11.23 of the Montclair Municipal Code.

Drafts of Ordinance No. 21-996 were presented to and reviewed by the Real Estate Committee of the City Council at meetings taking place on April 19 and May 17, 2021.

### ***Summary of Proposed Ordinance***

As discussed above, new or revised state regulations necessitate several changes to the City’s current zoning code pertaining to ADUs. Chapter 11.23 (currently referred to as “Second Dwelling Units”), adopted in 2009 is the primary set of current regulations for “second units.” Ordinance No. 21-996 proposes to repeal and replace 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 the relevant changes in state law was provided as an attachment in the August 16, 2021 Council meeting agenda report for reference.

The following references summarize the key changes in the new ADU 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, October 4, 2021, at 7:00 p.m. in the City Council Chambers to consider second reading and adoption of Ordinance No. 21-996.

*Attachments:*

- *Proposed Ordinance No. 21-996*

**ORDINANCE NO. 21-996**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR 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, at 7:00 p.m. 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 proposed 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 ADUs and JADUs in the City; and 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, at 7:00 p.m. 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; and

**WHEREAS**, revisions to the Ordinance requested at the August 16, 2021 meeting were incorporated into revised Ordinance presented to the City Council on Monday, September 20, 2021; and

**WHEREAS**, pursuant to Government Code Section 36934 revisions are limited to only "corrections of typographical or clerical errors," while other revisions are considered an "alteration" within the meaning of this code section. As such, the revised ordinance requires a new first reading, with a second reading at the following meeting; and

**WHEREAS**, on September 20, 2021, the City Council conducted a first reading of revised Ordinance No. 21-996 and moved to set a public hearing to consider adoption of the Ordinance for Monday, October 4, 2021; and

**WHEREAS**, a public hearing was held by the City Council on October 4, 2021, at 7:00 p.m. 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>		
<i>Standard</i>	<i>Attached ADU</i>	<i>Detached ADU</i>
<b>Number Per Lot</b> <sup>1</sup> <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</b> <sup>3</sup> <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</b> <sup>3</sup>	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.

#### 11.23.110 – 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 property owner shall annually report to the City the actual rent charged for the ADU or JADU as required by Chapter 11.23 of the Montclair Municipal Code.
  5. If the accessory dwelling unit is a JADU, 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.
  6. 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  
09/20/2021



# CITY COUNCIL AGENDA REPORT

---

<b>DATE:</b>	SEPTEMBER 20, 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		

---

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

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



# CITY COUNCIL AGENDA REPORT

---

<b>DATE:</b>	SEPTEMBER 20, 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 REGISTERS AND PAYROLL DOCUMENTATION		

---

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

**BACKGROUND:** Mayor Pro Tem Ruh has examined the Warrant Registers dated September 7, 2021, and September 20, 2021; and the Payroll Documentations dated August 1, 2021, and August 15, 2021, and recommends their approval.

**FISCAL IMPACT:** The Warrant Register dated September 7, 2021, totals \$2,300,161.88.

The Warrant Register dated September 20, 2021, totals \$992,132.34.

The Payroll Documentation dated August 1, 2021 totals \$633,921.59 gross, with \$444,621.77 net being the total cash disbursement.

The Payroll Documentation dated August 15, 2021 totals \$618,065.02 gross, with \$429,958.52 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

---

<b>DATE:</b>	SEPTEMBER 20, 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		

---

**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 August 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 August 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 August 31, 2021.



# CITY COUNCIL AGENDA REPORT

---

<b>DATE:</b>	SEPTEMBER 20, 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		

---

**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 August 31, 2021, pursuant to state law.

**BACKGROUND:** Vice Chair Ruh has examined the Successor to the Redevelopment Agency Warrant Register dated 08.01.21–08.31.21 in the amounts of \$12,236.61 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 August 31, 2021.



# CITY COUNCIL AGENDA REPORT

---

<b>DATE:</b>	SEPTEMBER 20, 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		

---

**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 August 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 August 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 August 31, 2021.



# CITY COUNCIL AGENDA REPORT

---

<b>DATE:</b>	SEPTEMBER 20, 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		

---

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

**BACKGROUND:** Vice Chair Ruh has examined the Warrant Register dated 08.01.21–08.31.21 in the amount of \$38,768.98 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 August 31, 2021.



# CITY COUNCIL AGENDA REPORT

---

<b>DATE:</b>	SEPTEMBER 20, 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		

---

**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 August 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 August 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 August 31, 2021.



# CITY COUNCIL AGENDA REPORT

---

<b>DATE:</b>	SEPTEMBER 20, 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		

---

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

**BACKGROUND:** Vice Chair Ruh has examined the Warrant Register dated 08.01.21-08.31.21 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 August 31, 2021.



# CITY COUNCIL AGENDA REPORT

---

<b>DATE:</b>	SEPTEMBER 20, 2021	<b>FILE I.D.:</b>	PDT360/EQS051/EQS052
<b>SECTION:</b>	CONSENT - ADMIN. REPORTS	<b>DEPT.:</b>	POLICE/ADMIN. SERVICES
<b>ITEM NO.:</b>	9	<b>PREPARER:</b>	R. PIPERSKY
<b>SUBJECT:</b>	CONSIDER DECLARING CERTAIN CITY PROPERTY AS SURPLUS AND AVAILABLE FOR AUCTION OR DESTRUCTION		

---

**REASON FOR CONSIDERATION:** The City Council is requested to declare certain City property as surplus items available for auction or destruction.

The lists of property to be declared as surplus and available for auction or destruction are attached to this report for the Council's review.

**BACKGROUND:** Throughout the years, City personnel routinely purchase items for use by their respective departments. These purchased items, as they are used, become obsolete, damaged, and unserviceable, and in some cases are no longer cost effective to maintain. When these items are no longer viable to one department, they are offered to other City departments where they may find a second service life.

If the items cannot be used by other City departments, they are declared surplus and sold at a public auction held by an auction service company. The City is able to receive proceeds from the auctioned items, which is returned to the General fund. All unserviceable items with no value are disposed using the most cost-efficient manner.

**FISCAL IMPACT:** There is no estimation as to the amount of proceeds the City would receive through the auction of these items.

**RECOMMENDATION:** Staff recommends the City Council declare certain City property as surplus and available for auction or destruction.





# CITY OF MONTCLAIR PROPERTY AUCTION LOG

DEPARTMENT		MONTH		PAGE		of	
TAG #	ID #	ESTIMATED VALUE	QUANTITY	DESCRIPTION OF SURPLUS ITEM	SERIAL #	CR #	PRICE SOLD FOR
15655	1	\$25 <sup>00</sup>	1	HP Laserjet Printer			
NA	2	\$25 <sup>00</sup>	1	HP Printer			
NA	3	\$10 <sup>00</sup>	1	Secrete monitor			
16132	4	\$75 <sup>00</sup>	1	HP Laserjet P2015dn			
NA	5	\$40 <sup>00</sup>	1	SHARP tv			
16695	6	\$10 <sup>00</sup>	1	HP monitor			
16956	7	\$10 <sup>00</sup>	1	HP Pradislay P221 monitor			
NA	8	\$60 <sup>00</sup>	1	Panasonic toughbook			
1612540	9	\$20 <sup>00</sup>	1	Toshiba Satellite			
NA	10	\$60 <sup>00</sup>	1	PANASONIC toughbook			
NA	11	\$60 <sup>00</sup>	1	Panasonic toughbook			
NA	12	\$60 <sup>00</sup>	1	Panasonic toughbook			
NA	13	\$40 <sup>00</sup>	1	HP Compaq dc7900			
NA	14	\$10 <sup>00</sup>	1	FireXpress			
15330	15	\$20 <sup>00</sup>	1	Dell Inspiron			

# CITY OF MONTCLAIR PROPERTY AUCTION LOG

DEPARTMENT		City	IV	MONTH		Sept 2021	PAGE 1 of 3	
TAG #	ID #	ESTIMATED VALUE	QUANTITY	DESCRIPTION OF ITEM TO BE DESTROYED	SERIAL #	CR #	PRICE SOLD FOR	
21-001	15842	\$50	1	Printer HP 1012	CNFB081587			
21-002	16404	50	1	LaserJet Pro 400 m401n	CNB98DFD9R			
21-003	17441	50	1	Hp Office Pro 8625	CN48CD415C0641			
21-004	16010	50	1	HP LaserJet 4250 tn	CNGXF42007			
21-005	16009	50	1	HP LaserJet 4250 tn	CNGXB31334			
21-006	17442	50	1	Canoscan LIDE 70	KCDA30770			
21-007	17443	50	1	HP LaserJet P1505n	CNBK505183			
21-008	15710	50	1	hp LaserJet 1300	CNBKD03361			
21-009	17444	75	1	Latitude D610	FNVZN71			
21-010	17445	75	1	Dell Inspiron 1150	2WX0S61			
21-011	17446	75	1	Dell Inspiron 1150	807JT51			
21-012	16958	75	1	HP Compaq 6300 Small Form Factor	MXL3070MTW			
21-013	16363	75	1	HP Compaq 8000 Elite Small Form Factor	MXL10223QQ			
21-014	16942	75	1	Hp Compaq 8300 Small Form Factor	MXL30218BP			
21-015	16346	75	1	HP Compaq 6000 Pro Small Form Factor	MXL0320657			
21-016	16347	50	1	ViewSonic VA2232WM	RMB103100352			
21-017	16357	50	1	ViewSonic VA2232WM	RMB103100343			
21-018	16752	50	1	ViewSonic VA1928WM	R170944E0522			
21-019	15742	50	1	ASUS VW224	B9LMTF246120			
21-020	16611	50	1	Samsung SyncMaster 2343 BMX	MV23H9NQ90233 1V			

# CITY OF MONTCLAIR PROPERTY AUCTION LOG

DEPARTMENT		City IV	MONTH		Sept 2021	PAGE		2	of	3
TAG #	ID #	ESTIMATED VALUE	QUANTITY	DESCRIPTION OF ITEM TO BE DESTROYED	SERIAL #	CR #	PRICE SOLD FOR			
21-021	15910		50	1	ViewSonic VX1935WM-3	QCX071130292				
21-022	17447		50	1	Samsung S27D360	02X4HCHG600390 R				
21-023	17493		50	1	Samsung S24D590PL	02K4HCKG101025 F				
21-024	16345		50	1	ViewSonic VA2232WM	rmb103100345				
21-025	17448		50	1	ViewSonic VA2248M-LED	SDD111500626				
21-026	16949		50	1	HP LV2311 Monitor	6CM2470X6Z				
21-027	17245		50	1	HP V241p	3CQ6190N1B				
21-028	17004		50	1	Samsung U28D590D	0317HCPG303005 K				
21-029	17249		50	1	HP 1755	CNK55224DT				
21-030	17580		25	1	Mitel 5340 IP Phone	AVAFN6733				
21-031	17581		25	1	Small Looks	SN: 173				
21-032	17582		25	1	Servo 120a	S15I001178				
21-033	17583		25	1	BSEM PDB 0100	700071				
21-034	17584		25	1	PortServer II16	SVV12557069				
21-035	17585		25	1	Mercury Interface Unit Trilogy	106313				
21-036	17586		25	1	BTO DL380 G4 II BU ALL	USE702N1JV				
21-037	17587		25	1	Panasonic PT-DW5100	SH8520085				
21-038	17588		25	1	APC UPS 550	BE550G				
21-039	N/A		25		-----	N/A				
21-040	17590		25	1	Chair (Green)	N/A				

# CITY OF MONTCLAIR PROPERTY AUCTION LOG

DEPARTMENT		City	IV	MONTH		Sept 2021	PAGE 3 of 3	
TAG #	ID #	ESTIMATED VALUE	QUANTITY	DESCRIPTION OF ITEM TO BE DESTROYED	SERIAL #	CR #	PRICE SOLD FOR	
21-041	17591	25	1	Chair (Green)	N/A			
21-042	17592	25	1	Council Chambers Box	N/A			
21-043	15717	25	1	Sony PFM TV	6501982			
21-044	17593	25	1	Clock	N/A			
21-045	17594	25	1	Display Device VC-C12	1009791			
21-046	17595	25	1	Sony STR-NX1	8826541			
21-047	17596	25	1	Mac Monitor 2009	N/A			
21-048	17597	25	1	Canon K10377	QC4-6315DB01-01			
21-049	17598	25	1	ViewSonic Display	N/A			
21-050	17599	25	1	ICP Controller (MXe)	1678063454			
21-051	17540	25	1	Painting (gold frame)	N/A			
21-52	17541	25	1	Painting (gold frame)	N/A			
21-53								
21-54								
21-55								
21-56								
21-57								
21-58								
21-59								
21-60								
21-61								
21-62								
21-63								
21-64								
21-65								
21-66								
21-67								
21-68								
21-69								
21-70								
21-71								
21-72								
21-73								
21-74								
21-75								
21-76								
21-77								





# CITY COUNCIL AGENDA REPORT

---

<b>DATE:</b>	SEPTEMBER 20, 2021	<b>FILE I.D.:</b>	CCK280
<b>SECTION:</b>	CONSENT - ADMIN. REPORTS	<b>DEPT.:</b>	CITY MGR./CITY CLERK
<b>ITEM NO.:</b>	10	<b>PREPARER:</b>	A. MYRICK
<b>SUBJECT:</b>	CONSIDER AUTHORIZING THE DESTRUCTION OF CERTAIN OBSOLETE PUBLIC RECORDS PURSUANT TO THE CITY OF MONTCLAIR RECORDS RETENTION SCHEDULE		

---

**REASON FOR CONSIDERATION:** The City Council is requested to authorize the destruction of certain obsolete public records pursuant to the City of Montclair Records Retention Schedule.

The subject records requested for destruction are listed on the attached *City of Montclair Destruction of Public Records Forms*. The current lists consist of records from the Human Services, Public Works, and Police Departments.

**BACKGROUND:** On November 19, 2012, the City Council adopted Resolution No. 12-2973 establishing the Montclair Records Retention Schedule as the City of Montclair's Official Records Management Program, and providing ongoing authority for the destruction of obsolete public records in accordance with the Records Retention Schedule by the City Clerk, with review and consent by the City Attorney. This allowed the City to free up office space used solely for the storage of boxes of records, and to reduce the costs of off-site records storage for hundreds of boxes of obsolete documents. While the practice of administratively destroying obsolete records was successful in reducing storage costs and has been used by many cities over the past decade, recent legal attention to the practice have resulted in a return to using the City Council approval process for the destruction of obsolete records in accordance with the Records Retention Schedule on a periodic basis.

**FISCAL IMPACT:** There would be no fiscal impact directly related to authorizing the destruction of the subject records. The Departments maintain the subject records within their offices, and will be using staff time and the City's monthly on-site shred service to destroy the records once approved.

**RECOMMENDATION:** Staff recommends the City Council authorize the destruction of certain public records pursuant to the Records Retention Schedule.







## CITY OF MONTCLAIR DESTRUCTION OF PUBLIC RECORDS FORM

Please refer to the City of Montclair Records Retention Schedule for record retention guidelines for each department.


The retention period has expired for the records listed below pursuant to the City of Montclair's Records Retention Schedule.


Department: Police

Page 1 of 3

<i>Record type &amp; Retention Period</i>	<i>Description of Records</i>	<i>Period covered</i>	<i>Additional Notes</i>
Admin Documents CU+2	Correspondence - letters and memos	2004-2016	No
Depart Manual S+5	Property & Evidence Packaging Procedures Manual	Revised 2005	No
Contracts & Agreements CL+5	AGMT 06-182 Best Contracting Services, Inc.	6-10-2008	No
Maintenance & Operations CU+2	Service call/repair to shelves in evidence	1-29-2009	No
Public Records Request CL+2	Century 21 Americana statistical data re: burglary and grand theft auto	4-22-2004	No
Public Records Request CL+2	PFF Bank & Trust re: reported crime near ATMs	1-24-2000	No
Public Records Request CL+2	WMF Group re: crime in the Pines Apartments	6-17-1999	No
Contracts & Agreements CL+5	Montclair Dept. of Human Services re: unclaimed operable bicycles & useable toys	10-29-1996	No
Contracts & Agreements CL+5	AGMT with House of Ruth for assistance for victims of domestic violence	10-1-2002 to 9-30-2005	No
Contracts & Agreements CL+5	AGMT with Dove Outreach for use of the Transcenter meeting facility	4-1-2004 to 2-22-2006	No
Contracts & Agreements CL+5	AGMT with DEA for special drug task force participation (now it's IRNET)	7-11-1996	No
Contracts & Agreements CL+5	AGMT with Network Omni for translation services	11-8-2007 to 4-20-2008	No

Approval for destruction of listed records:

Dept. Records Manager:  Date: 9-13-21

Department Head:  Date: 9-13-21

City Clerk: \_\_\_\_\_ Date: \_\_\_\_\_

City Attorney: \_\_\_\_\_ Date: \_\_\_\_\_



<i>Record type &amp; Retention Period</i>	<i>Description of Records</i>	<i>Period covered</i>	<i>Additional Notes</i>
Grants Approved CL+5	OTS Grant 1998-2000	1998-2000	No
Contracts & Agreements CL+5	AGMT with SBC for participation in work release program	7-1-2010 to 6-30-2013	No
Contracts & Agreements CL+5	AGMT with Minolta Business Solutions for copier	2002-2003	No
Dept Manual S+5	Computer User Manual Crime Analysis Search Guide	1989	No
Grants Approved CL+5	CLETEP Grant	5-1-2000 to 6-30-2001	No
Admin Documents CU+2	Memo requesting equipment for DB	2-12-2004	No
Admin Documents CU+2	Memo requesting transfer of SSLEG 2002 funds	5-6-2003	No
Grants Approved CL+5	Correspondence re: 2001-02 COPS grant	9-7-2001	No
Grants Approved CL+5	Correspondence re: 2001-02 COPS grant	10-2-2001	No
Grants Approved CL+5	Budget worksheet for SSLEG grant	7-1-2001 to 6-30-2003	No
Admin Documents CU+2	FY2006 Emergency Management Performance Grants Guidance & App kit	Nov. 2005	No
Admin Documents CU+2	FY2004 Homeland Security Grant Program grant guide and contact list	2-11-2004 to 3-1-2004	No
Admin Documents CU+2	email re: Hyper-Reach	1-22-2013	No
Admin Documents CU+2	email re: PAWS/CMAS grant offer	1-17-2013	No
Admin Documents CU+2	email re: PAWS/CMAS grant	1-14-2013	No
Contracts & Agreements CL+5	AGMT with CHP for the Every 15 Minutes Program	7-8-2004	No
Admin Documents CU+2	Police grants status chart	8-14-2003	No

Dept. Records Manager:

J Reed # 209

Date:

9/13/21

<i>Record type &amp; Retention Period</i>	<i>Description of Records</i>	<i>Period covered</i>	<i>Additional Notes</i>
Grants Approved CL+5	Financial Status Report OJP Grant 1996LBVX1049	3-31-2004	No
Grants Approved CL+5	Financial Status Reports OJP Grant 2003LBBX1388	1-26-2005 to 1-17-2006	No
Grants Approved CL+5	Financial Status Reports and other docs related to DOJ/OJP/LLEBG 2000LBBX2694	2-19-2004 TO 5-31-2005	No
Grants Approved CL+5	Financial Status Reports and other docs related to DOJ/OJP/LLEBG 1999LBVX7779	3-31-2004 to 5-11-2005	No
Training Files CU+2	Training Reimbursement Request - POST - tactical rifle course	4-25-2005 to 4-29-2005	No
Admin Documents CU+2	Police grants status charts	1-27-2004	No
Grants Approved CL+5	Financial Status Reports and other docs related to DOJ/OJP/LLEBG 2002LBBX1951	11-10-2004 to 12-13-05	No
Grants Approved CL+5	FY2004 Homeland Security Grant correspondence	8-2-2006	No
Grants Approved CL+5	Criminal Justice Programs Grant LO99017340 correspondence	7-28-2005	No
Grants Unapproved CL+2	CEDAP-19013 grant documents--app submitted 9-22-2006	8-16-2006 to 9-22-2006	No
Grants Approved CL+5	Docs pertaining to FY2001 LLEBG 2001-LB- BX-3120	7-23-2001 TO 4-12-2004	No
Grants Approved CL+5	Docs pertaining to SSLEG Fund	10-19-1998 to 6-3-2002	No
Admin Documents CU+2	PD Staff Meeting Notes	6-5-2007	No
Training Files CU+2	Grant Writing USA 2003 workshop and manual (Trudy Burson)	2003	No
Admin Documents CU+2	DOJ Police Hiring Supplement Program application kit (blank app & instructions)	1993	No
Admin Documents CU+2	DOJ Understanding Community Policing manual	1994	No
Grants Approved CL+5	OCJP No. IP98010360 - 1999-2000 Juvenile Accountability Incentive Block Grant	12-16-1998 to 1-29-2001	No

Dept. Records Manager:

*J. Reed #201*

Date:

*9/13/21*



# CITY OF MONTCLAIR DESTRUCTION OF PUBLIC RECORDS FORM

Please refer to the City of Montclair Records Retention Schedule  
for record retention guidelines for each department.

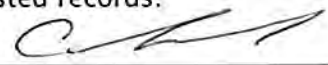
The retention period has expired for the records listed below pursuant to the City of Montclair's Records Retention Schedule.

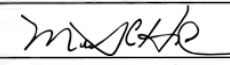
Department: Public Works


Page 1 of 1

<i>Record type &amp; Retention Period</i>	<i>Description of Records</i>	<i>Period covered</i>	<i>Additional Notes</i>
Maintenance & Operations CU+2	Park Maintenance Logs	2003-2006	
Maintenance & Operations CU+2	Sewer Maintenance Logs, Shopping Cart Reports	2011-2012	
Maintenance & Operations CU+2	Irrigation Logs, Street Sweeping Worksheets	2011-2012	
Daily Logs CU+2	Maintenance Workers Weekly Logs, City Yard Call Out Sheets	2003-2006	
Daily Logs CU+2	Gate Log for the City Yard	2004-2006	

Approval for destruction of listed records:

Dept. Records Manager:  Date: 8/17/21

Department Head:  Date: 8/17/2021

City Clerk:  Date: 9/9/2021

City Attorney: \_\_\_\_\_ Date: \_\_\_\_\_





# CITY COUNCIL AGENDA REPORT

---

**DATE:** JUNE 21, 2021                      **FILE I.D.:** MGE500/MCC500

**SECTION:** CONSENT - AGREEMENTS                      **DEPT.:** ADMIN. SVCS.

**ITEM NO.:** 1    **PREPARER:** J. HAMILTON

**SUBJECT:** CONSIDER APPROVAL OF AGREEMENT NO. 21-57, A MEMORANDUM OF UNDERSTANDING WITH THE MONTCLAIR GENERAL EMPLOYEES' ASSOCIATION FOR THE PERIOD OF JULY 1, 2021 TO JUNE 30, 2024

CONSIDER APPROVAL OF AGREEMENT NO. 21-59, A MEMORANDUM OF UNDERSTANDING WITH THE MONTCLAIR CITY CONFIDENTIAL EMPLOYEES' ASSOCIATION FOR THE PERIOD OF JULY 1, 2021 TO JUNE 30, 2022

CONSIDER APPROVING THE TRANSFER OF THE APPROPRIATE ADDITIONAL COMPENSATION FROM THE PERSONNEL ADJUSTMENT RESERVE FUND TO THE GENERAL OPERATING FUND

---

**REASON FOR CONSIDERATION:** The City Council is requested to consider the approval of Agreement No. 21-57, a Memorandum of Understanding (MOU) between the City of Montclair and the Montclair General Employees' Association (MGEA) for the period of July 1, 2021 to June 30, 2024; Agreement No. 21-59, a MOU between the City of Montclair and the Montclair City Confidential Employees' Association (MCCEA); and authorizing the transfer of the appropriate additional compensation from the Personnel Adjustment Reserve Fund to the General Operating Fund.

A copy of the proposed MGEA and MCCEA MOUs are provided in the agenda packet for the City Council's review and consideration.

**BACKGROUND:** Typically, on an annual basis, the City of Montclair negotiates on the terms and conditions of employment with the various labor associations, which include MGEA and MCCEA. Once an agreement is reached with the representative labor association, the City and the respective labor association will memorialize the terms in a signature agreement, which is presented to the Personnel Committee for approval of pay and benefit increases. The MOUs between the City and MGEA and MCCEA are then updated and presented to City Council for approval.

The following is a summary of the agreement reached between the City of Montclair and the Montclair City Confidential Employees' Association:

- Article 5 (Unit Description): The classifications represented by MGEA were updated to ensure that all affected classifications are added.
- Article 8 (Section 8.01, Wages): This change relates to the following salary increases of all classifications represented by MGEA effective July 1, 2021:
  - Effective August 16, 2021: 5% pay increase;
  - Effective first full pay period of July 2022: 3% pay increase; and
  - Effective first full pay period of July 2023: 3% pay increase.

- Article 9 (Section 9.01, Benefit Fund Contribution; Excess Funds to Deferred Compensation; Medical, Dental, and Optical Insurance): This change relates to the following medical benefit fund increases of all classifications represented by MGEA:
  - Effective September 1, 2021: Increase in the medical benefit fund contribution to a rate of \$1,250/month;
  - Effective first full pay period of July 2022: Increase in the medical benefit fund contribution to a rate of \$1,275/month; and
  - Effective first full pay period of July 2023: Increase in the medical benefit fund contribution to a rate of \$1,300/month;
- Article 13 (Section 13.03, Holiday Pay Option): This provision provides clarification as to when the time period shall be defined each year for the holiday pay option.
- Article 16 (Section 16.01): The changes in this provision provide clarification as to when the time period shall be defined each year for the sick leave redemption program, and provides some additional changes to clarify the intent of the Section.
- Article 44: This change describes the term of this new MOU to be from July 1, 2021 to June 30, 2024.

The following is a summary of the agreement reached between the City of Montclair and the Montclair City Confidential Employees' Association:

- Article 5 (Unit Description): The classifications represented by MCCEA were updated to ensure that all affected classifications are added.
- Article 7 (Section 7.01, Wages): This change relates to a 4 percent salary increase of all classifications represented by MCCEA effective August 16, 2021.
- Article 7 (Section 7.09, Bilingual Pay): The change in this provision extends the Bilingual Pay Program until June 30, 2030, at which time the program will be discontinued.
- Article 8 (Section 8.01, Benefit Contribution Fund; Excess Funds to Deferred Compensation; Medical, Dental, and Optical Insurance): This provision increases the benefit fund contribution to members of MCCEA to a rate of \$1,250/month effective September 2021.
- Article 8 (Section 8.03, Medical Insurance (Retirees)): This change permits employees hired on or before December 31, 1999 and eligible to retire on or after September 1, 2021, to participate in the retiree medical insurance option that existed on or before June 30, 2019. Specifically, these retirees have the additional option to remain enrolled in one of the health plans provided through the City. For those employees who do not meet the specific eligibility criteria as set forth above, retirement-eligible employees are not permitted to remain on City-provided health care plans, must obtain his/her own health insurance, and then

request reimbursement up to \$532.16/month in qualifying premium expenditures.

- Article 12 (Section 12.03, Holiday Pay Option): This provision provides clarification as to when the time period shall be defined each year for the holiday pay option.
- Article 14 (Section 14.01): The changes in this provision provide clarification as to when the time period shall be defined each year for the sick leave redemption program, and provides some additional changes to clarify the intent of the Section.
- Article 43: This change describes the term of this new MOU to be from July 1, 2021 to June 30, 2022.

**FISCAL IMPACT:** The fiscal impact associated with ratifying the proposed Agreement No. 21-57 and Agreement No. 21-59 due to additional compensation will be funded from the Personnel Adjustment Reserve of the General Fund as these increases were not included in the Fiscal Year 2021-2022 Budget. Therefore, City Council is requested to approve the transfer from the Personnel Adjustment Reserve to the General Operating Fund to fund the additional compensation.

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

1. Approve Agreement No. 21-57, a Memorandum of Understanding with the Montclair General Employees' Association (MGEA) for the period of July 1, 2021 to June 30, 2024;
2. Approve Agreement No. 21-59, a MOU with the Montclair City Confidential Employees' Association (MCCEA); and
3. Authorize the transfer of the appropriate additional compensation from the Personnel Adjustment Reserve Fund to the General Operating Fund.



# CITY COUNCIL AGENDA REPORT

---

<b>DATE:</b>	SEPTEMBER 20, 2021	<b>FILE I.D.:</b>	LDU325
<b>SECTION:</b>	CONSENT - AGREEMENTS	<b>DEPT.:</b>	ECONOMIC DEV.
<b>ITEM NO.:</b>	2	<b>PREPARER:</b>	M. FUENTES
<b>SUBJECT:</b>	CONSIDER APPROVAL OF REIMBURSEMENT AGREEMENT NO. 21-61 WITH NIU INVESTMENT LLC AND DON JULIAN INVESTMENT LLC RELATED TO THE PROPERTIES GENERALLY LOCATED ON THE NORTHEAST CORNER OF MONTE VISTA AVENUE AND MISSION BOULEVARD (5006 AND 5010 MISSION BOULEVARD, MONTCLAIR, CA)		

---

**REASON FOR CONSIDERATION:** As a means to recuperate costs associated with development projects, the City Council requires that developers enter into a reimbursement agreement with the City to cover costs associated with the use of consultants for legal and environmental review.

A copy of proposed Agreement No. 21-61 is attached for City Council review and consideration.

**BACKGROUND:** Staff was recently approached by Niu Investment LLC and Don Julian Investment, LLC (developers) regarding development of two adjacent properties (an area of approximately 2.47 gross acres in size located on the northeast corner of Monte Vista Avenue and Mission Boulevard, and an area of approximately 2.63 gross acres in size located on the northeast corner of Monte Vista Avenue and Mission Boulevard—5006 and 5010 Mission Boulevard) into a single property with an industrial/warehousing building equaling 114,875 square feet, with associated improvements including loading docks, truck and vehicle parking, and landscape areas.

The developers have agreed to enter into a reimbursement agreement with the City for costs and expenses related to environmental review by Dudek, and legal advice and review by Best Best & Krieger (BBK). Proposed Agreement No. 21-61 will reimburse costs associated with the project.

The developers' reimbursement to the City under Agreement No. 21-61 will ensure that the City has the necessary resources to diligently and efficiently process certain conditions related to the developers' project.

In order for the developers to begin utilizing the services of the City's consultants Dudek and BBK; it is necessary for the City to enter into reimbursement agreement with the developer.

Proposed Agreement Nos. 21-61 contains the terms of the developers' reimbursement of certain City-incurred costs associated with environmental review and legal advice and review for the proposed project as well as scope of work to be completed by the City's consultants. A synopsis of the proposed agreements include the following points:

- The consultants would be contractors exclusively of the City and not of the developers. The work product produced by the consultants, subject to financial reimbursement by the developers, would be photocopied for information to the developers, unless that work would be considered privileged or confidential under law.

- The City will retain the services of Dudek to prepare documentation in compliance with California Environmental Quality Act (CEQA). Dudek proposes to prepare an Initial Study/Environmental Checklist (IS/Checklist). The IS/Checklist will determine whether the current project will result in any new or substantially more severe environmental impacts compared to that evaluated in a supplemental EIR. Dudek anticipates that none of the conditions described in State CEQA Guidelines Section 15162 or 15163 calling for preparation of a supplemental or subsequent EIR will occur and that an Initial Study/Mitigated Negative Declaration will suffice. The estimated total costs associated with the environmental review is approximately \$77,700.
- The City will retain the services of BBK to provide legal services related to providing documents, advice and review regarding the development process for the proposed project, including compliance with CEQA and/or other documents that may be needed for the projects. The estimated total costs associated with legal review and advice is approximately \$50,000.
- The City would not exceed the estimated \$127,700 of costs for the project without first informing the developers in writing regarding the need for additional services. The City would be required to provide the developers with appropriate documentation of the reason for the excess costs so the developers may reasonably evaluate such costs. The City would also be required to inform the developers in writing prior to amending the scope of work to be conducted by the consultant. Once the City has provided such notice to the developers, the developers would be obligated to pay the excess cost in the same manner as the estimated costs. However, if the developers object to the excess costs, the developers must provide the City with a written objection no later than five days after receipt of the City's written notice. The City and developers would communicate in an attempt to resolve the objection. If the parties are unable to resolve the objection, the developers will have the sole and exclusive right to terminate the agreement and reimburse the City for all costs incurred to the date of termination.
- The City would be required to maintain accurate records of invoices received from, and payments made to, the consultants. The City would be required to provide a payment summary to the developers within a reasonable time upon request.
- The term of the Agreement would commence on September 20, 2021 and would terminate once all services required for the projects by the consultants have been completed to the City's reasonable satisfaction. The developers' obligation to reimburse the City would survive the termination of the Agreement.
- The City would be able to terminate the Agreement prior to the terms set forth above, without cost or liability, upon 30 days' written notice to the developers in the event the developers fail to satisfy any material obligation of the agreement or fails to prosecute its applications for the project. The developers would be able to terminate the Agreement upon 30 days' prior written notice provided that the developers give the City written notice withdrawing its application for the project and the developers would be obligated to satisfy all of its obligations under the Agreements through the effective date of the termination.
- The Agreement would not be assignable by either party without the prior written consent of the other party.



**FISCAL IMPACT:** Through proposed Agreement No. 21-61, the developers would be required to pay all costs associated with environmental review by Dudek, and legal advice and review by BBK. The estimated total cost of the reimbursement by the developers would be \$127,700. A breakdown of the costs is shown as follows:

<u>Reimbursement Agreement</u>	<u>Fees</u>
<b>Agreement No. 21-61</b>	
5006 & 5010 Mission Blvd	Dudek: \$77,700
Niu Investment LLC & Don Julian Investment LLC	BBK: \$50,000
	<b>Estimated Total Fees: \$127,700</b>

**RECOMMENDATION:** Staff recommends the City Council approve Reimbursement Agreement No. 21-61 with Niu Investment LLC and Don Julian Investment LLC related to the properties generally located on the northeast corner of Monte Vista Avenue and Mission Boulevard (5006 and 5010 Mission Boulevard, Montclair, California).

**AGREEMENT NO. 21-61**

**A REIMBURSEMENT AGREEMENT**

**Between**

**CITY OF MONTCLAIR  
a California Municipal Corporation**

**and**

**Niu Investment LLC, a California Limited Liability  
Company**

**and**

**Don Julian Investment LLC, a California Limited  
Liability Company**

**REIMBURSEMENT AGREEMENT**

---

This Reimbursement Agreement ("Agreement") is made this 2nd day of August, 2021, by and between the CITY OF MONTCLAIR, a California Municipal Corporation (the "City"), and Niu Investment LLC, a California limited liability company and Don Julian Investment, LLC, a California limited liability company (the "Applicants").

**RECITALS**

This Agreement is made with respect to the following facts.

A. The Applicants are the owners of certain real properties ("Properties") located within the City of Montclair, County of San Bernardino, California. The Properties consist of an area of approximately 2.47 gross acres in size located on the northeast corner of Monte Vista Ave and Mission Boulevard, Montclair, CA, and an area of approximately 2.63 gross acres in size located on the northeast corner of Monte Vista Ave and Mission Boulevard, Montclair, CA, for a combined area of approximately 5.1 gross acres. The Properties are further described in Exhibit "A" attached hereto and incorporated herein by reference.

B. The Applicants are contemplating the development of the Properties into a single industrial/warehousing building equaling approximately 114,875 square feet. Associated improvements include loading docks, truck and vehicle parking, and landscape areas ("Project").

C. The Applicants have or will submit applications for various discretionary land use approvals for the development of the Properties, including, without limitation, a General Plan Amendment, zone change, and Precise Plan of Design, as well as all related environmental review pursuant to the California Environmental Quality Act ("CEQA"). All of the above shall be referred to collectively as the "Project Approvals."

D. The Planning Commission of the City of Montclair and/or the City Council of the City of Montclair are the bodies responsible for the review and consideration of the Project Approvals.

E. To provide the City with the needed expertise and information necessary for the City's review and processing of the Project Approvals for the Project, it is or may become necessary for the City to retain certain outside legal, financial, environmental, appraisal, and other experts ("Consultants").

F. The Applicants have agreed to reimburse the City for Consultant's costs and expenses related to the Applicants' Project in the manner and amounts set forth in this Agreement. The Applicants' reimbursement to City under this Agreement will ensure that the City has the necessary resources to diligently and efficiently process certain conditions related to the Applicants' Project.

**TERMS**

NOW, THEREFORE, in consideration of the following mutual promises and agreements, City and Applicants agree as follows:

1 Incorporation of Recitals. The parties agree that the Recitals constitute the factual basis upon which the City and the Applicants have entered into this Agreement. The City and the Applicants each acknowledge the accuracy of the Recitals and agree that the Recitals are incorporated into this Agreement as though fully set forth at length.

2. City to Retain Consultants. As a necessary and indispensable part of the Conditions of Approval of Applicants' proposed Project and use of the Properties, the City shall retain the services of Consultants as set forth in Section 4 of this Agreement to provide advice as the City may deem necessary in its reasonable and sole discretion. The contemplated general scope of work of the Consultants for the Project are attached hereto as Exhibit "B" and incorporated herein by reference, but the City reserves the right, in its reasonable and sole discretion, to amend the scope of work as it deems necessary and appropriate to the City's proper review and consideration of the Applicants' Project. However, if such amendment will cause, or will be likely to cause, the Estimated Costs (as defined in Section 5) to be exceeded, the City shall promptly notify Applicants thereof in writing.

2.1 No Applicant/Consultant Privity. The Applicants agree that, notwithstanding the Applicants' reimbursement obligations under this Agreement, Consultants shall be the contractors exclusively of the City and not of the Applicants. Except for those disclosures required by law, including, without limitation, the Public Records Act, all conversations, notes, memoranda, correspondence and other forms of communication by and between the City and its Consultants which are deemed under law to be privileged and confidential shall not be subject to disclosure to the Applicants. The Applicants agree that they shall have no claim to, nor shall they assert any right in any reports, correspondence, plans, maps, drawings, news releases or any and all other documents or work product produced by the Consultants which is privileged or confidential under law; provided, however, the Applicants shall be provided with photocopies of all such documents or work product for which they have reimbursed the City which are not so privileged or confidential under law.

3. Applicants to Cooperate with Consultants. The Applicants agree to cooperate in good faith with the Consultants. The Applicants agree that they will instruct their respective agents, employees, consultants, contractors and attorneys to reasonably cooperate with the Consultants and to provide all necessary documents or information reasonably requested of them by the City and/or the Consultants; provided, however, that the foregoing shall not require the disclosure of any documents or information of the Applicants which by law is privileged, proprietary, confidential, and exempt from disclosure under the Public Records Act.

4. City's Selection of Consultants. The City proposes to retain the following as Consultants pursuant to Section 2 of this Agreement, but shall have the right to retain any additional consultants or sub-consultants pursuant to this Agreement: (1) Dudek (Environmental Review) to conduct technical studies and California Environmental Quality Act documentation, and (2) Best Best Kreiger, Attorneys at Law (BBK) (Legal Services) for legal analysis related to land use, zoning, and environmental compliance in connection with the project. If and when the City determines to retain such additional consultants or subconsultants, it shall first so inform the Applicants of its intent to do so, and include with such information the terms and conditions (including fees) upon which such parties will be retained. The Applicants shall have five (5) business days in which to review and approve or disapprove the retention of such parties (approval shall not be unreasonably withheld or conditioned). Provided that the Applicants have not notified the City of its disapproval as to the retention of any such parties on or prior to the expiration of such five (5) business day period, the City may thereafter retain such parties upon the terms and conditions submitted to the Applicants. In the event that the Applicants reasonably object to any such retention, the Applicants' objection shall state the reasons for their objection in sufficient detail that the City shall be able to address, and potentially remedy, such objection if the City so determines. The City and the Applicants shall promptly (but in no event later than five (5) calendar days after such objection) communicate in order to resolve any such objection, but if the parties are unable to resolve such objection, and if the City thereafter retains the disputed party, the Applicants shall have the sole and exclusive right to terminate this Agreement pursuant to Section 8 of this Agreement, subject to the Applicants' obligation to reimburse the City for all Costs incurred by the City prior to the date of termination, whether or not yet paid by the City to any Consultants.

5. Applicants' Reimbursement of Fees, Costs and Expenditures. The Applicants shall reimburse the City the actual fees, costs and other expenditures incurred by the City relative to the Consultants costs ("Costs") related to the Applicants' Project, subject to the terms and conditions of this Agreement. The Applicants further understand and agree that the Costs are based upon the rates provided by Consultants attached hereto as Exhibit "C" to this Agreement.

5.1 Estimated Costs; Deposit Account. The City has preliminarily reviewed the scope of work required and has estimated the aggregate Costs for all Consultants to be approximately One Hundred Twenty Seven Thousand Seven Hundred Dollars (\$127,700) ("Estimated Costs"). Upon the execution of this Agreement and before September 30, 2021, the Applicants shall submit a deposit in the amount of Fifty Thousand (\$50,000) as the initial amount to cover the Estimated Costs, which amount the City shall separately account for in a Project deposit account ("Deposit Account").

5.2 Replenishment of Deposit: At any time that the Deposit Account drops below Twenty Thousand Dollars (\$20,000), the City may make written demand on Applicants to replenish the Deposit Account to Fifty Thousand Dollars (\$50,000), and Applicants shall submit the required amount of funds to the Deposit Account within ten (10) calendar days. In the event the Applicants fail to make any required deposit, City

shall so notify Applicants in writing and Applicants shall have ten (10) additional calendar days to replenish the Deposit Account. If the Applicants fail to make the required deposit after such written notification, City shall have the right to consider Applicants' Project applications as withdrawn and cease processing such applications.

5.3 Excess Costs. The City shall not exceed the Estimated Costs without first informing the Applicants in writing regarding the need for additional services which cause the Costs to exceed the Estimated Costs ("Excess Costs") and shall provide appropriate documentation of such Excess Costs in sufficient detail that the Applicants shall be able to reasonably evaluate such costs. Notwithstanding anything herein to the contrary, the City shall not incur Excess Costs without the express prior written consent of the Applicants. The City shall also inform the Applicants in writing prior to amending any scope of services, or adding services, to be provided by the Consultants, and shall provide appropriate documentation of such amended or additional scope of work in sufficient detail that the Applicants shall be able to reasonably evaluate such amended scope, and approve or disapprove the same, in writing. The Applicants' obligation to reimburse the City for the Excess Costs shall be contingent upon the City providing the Applicants with written notice of the amendment of the scope of services to be performed by Consultants and the estimated cost thereof as described hereinabove prior to the commencement of work and Applicants' approval thereof, as herein provided. Once the City provides such notice and obtains such approval, then the Applicants shall be obligated to pay the Excess Costs in the same manner as the Estimated Costs provided above; provided, however, in the event that the Applicants reasonably disapprove any Excess Costs, the Applicants shall provide the City with a written objection not later than five (5) business days after receipt of the City's written notice stating the reasons for its objection in sufficient detail that the City shall be able to address, and possibly remedy, such objection if it chooses to do so. The City and the Applicants shall promptly (but in no event later than five (5) calendar days after such disapproval) communicate in order to resolve any such objection, but if the parties are unable to resolve such disapproval, and if the City thereafter pays any disputed Excess Costs, the Applicants shall have the sole and exclusive right to terminate this Agreement pursuant to Section 8 of this Agreement, subject to the Applicants' obligation to reimburse the City for all Costs and approved Excess Costs incurred by the City prior to the date of termination, whether or not yet paid by the City to Consultant. Upon such termination by the Applicants, the City shall have the right to consider the Application withdrawn and no longer obligated to process such Application.

5.4 Records: The City shall maintain accurate records of invoices received from, and payments made to, the Consultants resulting from the Project, and will provide a payment summary to the Applicants within a reasonable time upon request. In the event that excess funds remain in the Deposit Account upon conclusion of the Project and after all final payments to the Consultants have been made, the City shall refund that excess amount, if any, to the Applicants within fifteen (15) calendar days of final payment to the Consultants. Alternatively, if the Costs of the services of the Consultants exceed the Estimated Costs and Excess Costs, if any, then, subject to the terms and conditions of this Agreement, the Applicants shall remain obligated to pay for all such Costs. The

Applicants shall pay any such amount within ten (10) calendar days of written demand for payment by City.

6. Conditions of Approval. Applicants and City understand and agree that Applicants' application for land use entitlements concerning the Project are subject to the approval or conditional approval of the Planning Commission and/or City Council of City. Further, the Applicants and City understand and agree that some or all of the applications may require findings (including, without limitation, environmental determinations under CEQA) to be made by those legislative bodies. Nothing set forth in this Agreement shall be deemed to require approval or conditional approval of any or all of such land use and other applications by either the Planning Commission or the City Council, notwithstanding the Applicants' undertaking and completion of their obligations under this Agreement.

7. Term. The term of this Agreement shall commence on the date that this Agreement is approved by the City Council and fully executed by the parties, and shall terminate when all services required for the Project by Consultants have been completed to the City's reasonable satisfaction and the Applicants have satisfied all of its obligations under this Agreement. For purposes of this section, the Applicants' obligations shall include, but shall not be limited to, its obligation to reimburse the City for Estimated Costs and Excess Costs, whether or not paid by the City to Consultants prior to the date of termination, which accrue prior to the date of termination. The Applicants' obligation to reimburse the City as provided in this Agreement (Section 5) shall survive the termination of this Agreement.

8. Early Termination.

8.1 By City. The City may, in its reasonable and sole discretion, terminate this Agreement prior to the term set forth in Section 7, without cost or liability to the City, upon thirty (30) days' prior written notice to the Applicants in the event that Applicants (1) fail to satisfy any obligation of this Agreement (provided, however, if such failure is capable of being timely remedied without prejudice to the City, and is timely remedied by the Applicants, such failure shall be deemed to be waived); or (2) fail to reasonably prosecute their application(s) for the Project. In the event of such termination under this Section, the Applicants shall be deemed to have withdrawn their application(s) for the Project.

8.2 By Applicant. The Applicant may, in its reasonable and sole discretion, terminate this Agreement prior to the end of the term set forth in Section 7 above, upon thirty (30) days' prior written notice to the City; provided, however, that Applicant's right to so terminate this Agreement is expressly contingent upon Applicant satisfying both of the following: (1) Applicant shall give City written notice withdrawing its application(s) for the Project; and (2) Applicant shall satisfy all of its obligations under this Agreement up through the effective date of termination. For purposes of this Section, Applicant's obligations shall include, but shall not be limited to, its obligation to reimburse

the City for Estimated Costs and Excess Costs incurred prior to the date of termination, whether or not paid by the City to Consultants prior to the date of termination.

8.3 Notification: Within two (2) business days following either the City's decision to terminate this Agreement or the City's receipt of written notice indicating the Applicant's decision to terminate this Agreement, the City shall notify all Consultants and instruct them to cease work on the Project. Consultants shall also be instructed to bill the City for any services completed prior to the date of termination. Upon such termination by the Applicant, the City shall have the right to consider the Application withdrawn and no longer obligated to process such Application.

9. Assignability. This Agreement may not be assigned by either party without the prior and express written consent of the other party, which consent shall not be unreasonably withheld; provided, however, Applicants shall have the right to assign the Agreement to any entity that assumes ownership of the Property and in which the Applicants or an affiliate thereof has an ownership interest. In determining whether to approve a request by the Applicants to assign this Agreement, the City may consider, among other things, the proposed assignee's financial status and commitment to the Project. Any attempted assignment of this Agreement not in compliance with the terms of this Agreement shall be null and void and shall confer no rights or benefits upon the assignee.

10. No Oral Modifications. This Agreement represents the entire understanding of the City and the Applicants, and supersedes all other prior or contemporaneous written or oral agreements pertaining to the subject matter of this Agreement. This Agreement may be modified, only by a writing signed by both the authorized representatives of both the City and the Applicants. All modifications to this Agreement must be approved by the City Council of the City of Montclair.

11. Binding Upon Successors. This Agreement and each of its terms shall be binding upon the City, the Applicants and their respective officers, elected officials, employees, agents, contractors, and permitted successors and assigns.

12. Legal Challenges. Nothing herein shall be construed to require City to defend any third party claims and suits challenging any action taken by the City with regard to any procedural or substantive aspect of the City's approval of development of the Property, the environmental process, or the proposed Project. The Applicants may, however, in their sole and absolute discretion, appear as real party in interest in any such third party action or proceeding, and in such event, Applicants and the City shall defend such action or proceeding and the Applicants shall be responsible and reimburse the City for whatever reasonable legal fees and expert or other costs, in their entirety, including reasonable attorneys' fees, which may be incurred by the City in defense of such action or proceeding. The City shall have the absolute right to retain such legal counsel as the City deems necessary and appropriate, and the Applicants shall reimburse the City for any and all reasonable attorneys' fees and expert or other costs incurred by the City as a result of such third-party action or proceeding; provided, however, the Applicants may, at



any time, notify the City in writing of its decision to terminate such reimbursement obligation and, thereafter, the City may choose, in its sole discretion, to defend or not defend such third party action or proceeding. In the event that the City decides not to continue the defense of such third party action or proceeding, Applicants shall be obligated to reimburse City for any and all reasonable costs, fees, penalties or damages associated with dismissing the action or proceeding. In the event that the City decides to continue the defense of such third party action or proceeding, Applicants shall have no further obligation to reimburse City for its attorneys' fees and expert or other costs.

It is acknowledged by the parties that City is entering into this Agreement to assist Applicants in processing the Project. The Applicants understand and agree that City would not have entered this Agreement if it were to be liable in damages for breach of this Agreement. As a result, the Applicants understand and agree that City shall not be liable for damages to the Applicants or any successor for breach of this Agreement or for any cause of action that arises from this Agreement, except to the extent of any amounts in the Deposit Account that remain unencumbered and shall be refunded to the Applicants.

13. Attorneys' Fees. In the event that any action or proceeding, including arbitration, is commenced by the City to establish the validity of this Agreement or to enforce any one or more of its terms, the prevailing party in any such action or proceeding shall be entitled to recover from the other, in addition to all other legal and equitable remedies available to it, its reasonable attorneys' fees and costs of litigation, including, without limitation, filing fees, service fees, deposition costs, arbitration costs and expert witness fees, including actual costs and attorneys' fees on appeal.

14. Jurisdiction and Venue. This Agreement is executed and is to be performed in Montclair, San Bernardino County, California. Any action or proceeding brought relative to this Agreement shall be heard in the appropriate court in the County of San Bernardino, California. The City and Applicants all consent to the personal jurisdiction of the court in any such action or proceeding.

15. Severability. If any term or provision of this Agreement is found to be invalid or unenforceable, the City and the Applicants both agree that they would have executed this Agreement notwithstanding the invalidity of such term or provision. The invalid term or provision may be severed from the Agreement and the remainder of the Agreement may be enforced in its entirety.

16. Headings. The headings of each Section of this Agreement are for the purposes of convenience only and shall not be construed to either expand or limit the express terms and language of each Section. References to "Sections" are to sections of this Agreement, unless otherwise specifically provided.

17. Representations of Authority. Each party signing this Agreement on behalf of a party which is not a natural person hereby represents and warrants to the other party that all necessary legal prerequisites to that party's execution of this

Agreement have been satisfied and that he or she has been authorized to sign this Agreement and bind the party on whose behalf he or she signs.

18. Exhibits. All references in this Agreement to “Exhibits” shall be construed as though the words “hereby made a part hereof and incorporated herein by this reference” were, in each case, appended thereto.

19. Notices. Notices required under this Agreement shall be sent to the following:

If to City:  
Edward C. Starr, City Manager  
City of Montclair  
5111 Benito Street  
Montclair, CA 91763  
Fax: 909-621-1584

If to the Applicant:  
Mr. Cary Niu  
138 N. Glendora Avenue  
Glendora, CA 91741

Notices given pursuant to this Agreement shall be deemed received as follows:

- (1) If sent by United States Mail - five (5) calendar days after deposit into the United States Mail, first class postage prepaid.
- (2) If by facsimile - upon transmission and actual receipt by the receiving party.
- (3) If by express courier service or hand delivery - on the date of receipt by the receiving party.

The addresses for notices set forth in this Section 19 may be changed upon written notice of such change to either the City or the Applicant, as appropriate.

**[Signatures on following 3 pages]**

**CITY OF MONTCLAIR**  
a California Municipal Corporation

By: \_\_\_\_\_  
Javier John Dutrey, Mayor

ATTEST:

By: \_\_\_\_\_  
Andrea M. Myrick, City Clerk

APPROVED AS TO FORM:

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

**Niu Investment LLC, a California Limited Liability Company**

By: \_\_\_\_\_  
Name/Title:

By: \_\_\_\_\_  
Name/Title:

By: \_\_\_\_\_  
Name/Title:

By: \_\_\_\_\_  
Name/Title:

**ATTEST:**

By: \_\_\_\_\_  
Name/Title:

**Don Julian Investment LLC, a California Limited Liability Company**

By: \_\_\_\_\_  
Name/Title:

By: \_\_\_\_\_  
Name/Title:

By: \_\_\_\_\_  
Name/Title:

By: \_\_\_\_\_  
Name/Title:

**ATTEST:**

By: \_\_\_\_\_  
Name/Title:

**EXHIBIT "A"**  
**LEGAL DESCRIPTION OF PROPERTY**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF MONTCLAIR, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

**Parcel 1:**

Parcel 1 and 3, parcel map no. 3172, in the City of Montclair, County of San Bernardino, State of California, as per map recorded in Book 28 of parcel maps, Page 84, in the Office of the County Recorder of said County.

APN: 1011-311-15-0-000

APN: 1011-311-17-0-000

**Parcel 2:**

Parcels 2 and 4 of Parcel Map #3172 in the City of Montclair, County of San Bernardino, State of California, as per plat recorded in Book 28 of Parcel Maps, Page 84, in the Office of the County Recorder of said County.

The above legal description is pursuant to that notice of merger OWV-00023 recorded December 16, 1999 as instrument no. 1999-515997 of Official Records.

APN: 1011-311-19-0-000

**EXHIBIT "B"**  
**SCOPE OF SERVICE FOR CONSULTANTS**

**DUDEK**

Services related to environmental evaluation under CEQA.

**BEST BEST KREIGER Attorneys at Law (BBK)**

BBK will provide legal services related to (1) entitlements and (2) California Environmental Quality Act work for the Project.

**EXHIBIT "C"**  
**BILLING FOR EACH CONSULTANT**



August 5, 2021

P221719

Mr. Michael Diaz, Community Development Director  
City of Montclair  
5111 Benito Street  
Montclair, California 91763

**Subject:** *Proposal to Prepare Technical Studies and CEQA Documentation for the Proposed 5006 & 5010 Mission Boulevard Warehouse, Montclair, California*

Dear Mr. Diaz:

Dudek is pleased to submit this proposal to prepare technical studies and CEQA documentation for the proposed 5006 & 5010 Mission Boulevard Warehouse Project (project) in the City of Montclair, California (City). As currently planned, the project would be located on three parcels located at 5006 and 5001 Mission Boulevard and includes construction of a single industrial/warehouse building equaling approximately 114,875 square feet. Associated improvements include loading docks, truck and vehicle parking, and landscape areas. The project would also involve a General Plan Amendment to change the project site's General Plan designation from General Commercial and Business Park to Manufacturing Industrial Park.

The following includes our scope of work, proposed schedule, and estimated fee for these services. For budgeting purposes, it is assumed that all project-related environmental effects can be mitigated to a level of less than significant impact, and thus, an Initial Study/Mitigated Negative Declaration (IS/MND) would be the appropriate and defensible level of CEQA documentation for the project.

## Scope of Work

### Task 1: Technical Studies

#### Task 1a: Air Quality, Greenhouse Gas Emissions, Health Risk Assessment, and Energy

##### **Air Quality**

Dudek will assess the air quality impacts of the project utilizing the significance thresholds set forth by the CEQA Guidelines and the South Coast Air Quality Management District (SCAQMD). After reviewing all available project materials, Dudek will prepare a request for any outstanding data needed to conduct the analysis. If precise information on a particular factor is not available from the applicant or its representatives, Dudek will make every effort to quantify these items using the best available information for comparable data sources, but in all cases will consult first with the applicant regarding the information needed.

*Mr. Michael Diaz*

*Subject: Proposal to Prepare Technical Studies and CEQA Documentation for the Proposed 5006 & 5010 Mission Boulevard Warehouse, Montclair, California*

---

The air quality section of the IS/MND will include a brief discussion of criteria air pollutants, attainment status of the South Coast Air Basin, and applicable federal, state, and local air quality policies, regulations, and standards. Dudek will estimate construction emissions associated with implementation of the project using the California Emissions Estimation Model (CalEEMod). Short-term emissions resulting from demolition and construction of the proposed structures will be based on scheduling information (e.g., overall construction duration, phasing and phase timing) and probable construction activities (e.g., construction equipment type and quantity, workers, and haul trucks) developed by the project applicant and/or standardized approaches. Dudek will then evaluate the significance of the emissions based on the SCAQMD significance criteria. Details of the analysis (e.g., criteria air pollutant emission calculations) will be included in a technical appendix of the IS.

Dudek will also assess the project's potential to cause or contribute to exceedances of ambient air quality standards at sensitive receptors near the project activities using the SCAQMD's localized significance thresholds (LSTs). For projects with a total site area of five acres or fewer, the assessment may use a "lookup table" approach provided by the SCAQMD. It is assumed that the disturbed area of construction would occur within five acres or less per day and the assessment will use the lookup table approach and the construction emission estimates from CalEEMod. If onsite emissions generated during proposed construction activities would exceed the LSTs, then mitigation measures will be evaluated to reduce project-generated emissions below the LSTs.

The closest sensitive receptors are anticipated to be residences located at an estimated distance of 150 feet to the south of the project site. Therefore, a construction health risk assessment is recommended (HRA) and is included below.

CalEEMod will also be used to estimate project-generated operational criteria air pollutant emissions associated with energy and area sources. Dudek will estimate mobile source (i.e., worker vehicles and heavy-duty trucks) emissions outside of CalEEMod using a spreadsheet model and emission factors from CARB's EMFAC 2021 motor vehicle emission inventory program. The mobile source emissions will be based on the trip generation rates and additional trip characteristics provided in the trip generation memorandum for the project. Energy and area source emissions (e.g., natural gas combustion and consumer products) will be estimated using the default values in CalEEMod for the proposed land uses (e.g., unrefrigerated warehouse) based on the total proposed square footage for the building. Project-specific values will be used in place of CalEEMod default values when available. Offroad equipment (e.g., forklift) emissions will also be estimated using CalEEMod based on equipment type and operational specifications provided by the applicant; for budgetary purposes, no other stationary sources of emissions are assumed to be proposed. Specifically, it is assumed that the project would not have cold storage (i.e., refrigeration) and emissions associated with transport refrigeration unit trucks and emergency generators for back-up power will not be estimated as part of the project's emission inventory. The project site does not currently support any existing operations. As such, no existing emissions will be assumed from the current site operations. Therefore, Dudek will compare estimated project-generated operational emissions to the SCAQMD emissions-based significance thresholds.

Dudek will also compare estimated onsite operational criteria air pollutant emissions to the SCAQMD operational LSTs from the look-up tables. For budgetary purposes, it is assumed that a dispersion model LST analysis is not required. Based on the project's trip generation memorandum, the project would produce less than 100 trucks per day. Therefore, Dudek does not recommend preparation of an operational HRA at this time. However, if requested later, Dudek can prepare a Health Risk Assessment under a separate scope and budget.

Mr. Michael Diaz

Subject: *Proposal to Prepare Technical Studies and CEQA Documentation for the Proposed 5006 & 5010 Mission Boulevard Warehouse, Montclair, California*

---

Dudek will evaluate whether traffic associated with the project could lead to potential exposure of sensitive receptors to substantial localized concentrations of carbon monoxide (CO hotspots). The qualitative assessment will compare the daily intersection traffic volumes provided in the traffic report prepared for the project to the SCAQMD 2003 Air Quality Management Plan carbon monoxide modeling for the worst-case intersections in the air basin. For budgetary purposes, it is assumed that a quantitative CO hotspots analysis would not be required. With the transition from Level of Service to Vehicle Miles Traveled analysis, the information necessary to perform the quantitative CO hotspot analysis may not be available; therefore, we will work with the applicant to identify an alternative qualitative approach, if appropriate.

The other Appendix G thresholds will also be evaluated in the air quality assessment including the potential for the project to result in other emissions such as objectionable odors or to conflict with the current SCAQMD Air Quality Management Plan.

### **Construction HRA**

The nearest sensitive receptors are located approximately 140 feet to the south of the project site and thus a quantitative HRA is recommended for disclosure in the CEQA documentation. The primary TAC of concern during construction would be DPM from heavy-duty trucks and onsite off-road equipment. Dudek will use AERMOD to conduct dispersion modeling and CARB's HARP2 to calculate the health impacts. The dispersion of DPM and associated health risk impacts on sensitive receptors will be determined using AERMOD, HARP2, local meteorological data obtained from the SCAQMD, the site plan to determine the location of the sources, and the estimated annual average DPM emissions. The maximum cancer risks at the appropriate receptors (e.g., proximate residential receptors) will be tabulated. Cancer risk isopleths (i.e., lines of equal cancer risk) will be plotted on figures showing the project site if the maximum cancer risk exceeds the SCAQMD significance threshold of 10 in one million. The assessment will also include the estimated chronic (long-term) hazard indices due to non-cancer health effects associated with DPM. The hazard indices will be tabulated at the appropriate locations and plotted on figures similar to those showing estimated cancer risks if they exceed the SCAQMD significance threshold of 1.0. For the operational HRA, if cancer risk exceeds 1 in 1 million at the closest receptor a cancer burden assessment will be completed. If the health impacts exceed the thresholds of significance, we will suggest appropriate mitigation measures to reduce the health impacts. A HRA will be prepared as a technical appendix and a summary of the methodology and results will be provided in the air quality section of the IS document.

### **Greenhouse Gas Emissions**

The greenhouse gas (GHG) emissions section of the IS/MND will include a brief description of global climate change and a summary of key and applicable regulatory measures. Dudek will estimate the GHG emissions associated with demolition and construction of the project using CalEEMod based on the same construction scenario used in the air quality analysis. Project-generated operational GHG emissions that will be estimated will include those associated with area sources, mobile sources, natural gas usage, electrical generation, water supply, wastewater treatment, solid waste disposal, and off-road equipment. The emissions estimates will be based on information provided by the applicant or CalEEMod default values for the proposed land use. Details of the analysis (e.g., annual GHG emission calculations) will be included in the IS appendix.

Mr. Michael Diaz

Subject: *Proposal to Prepare Technical Studies and CEQA Documentation for the Proposed 5006 & 5010 Mission Boulevard Warehouse, Montclair, California*

---

The impact analysis will reflect Appendix G of the State CEQA Guidelines; specifically, whether the project would (a) generate GHG emissions, either directly or indirectly, that may have a significant impact on the environment and (b) conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of GHGs. The SCAQMD GHG CEQA Significance Threshold Working Group has proposed options lead agencies can select from to screen thresholds of significance for GHG emissions in residential and commercial projects; however, no thresholds have been formally adopted. Options the SCAQMD evaluated include bright-line screening thresholds of 3,000 metric tons of carbon dioxide equivalent (MT CO<sub>2e</sub>) per year for industrial projects. Our budget assumes that a simple emission-based threshold can be used, such as the 3,000 MT CO<sub>2e</sub> per year threshold.

In addition, Dudek will discuss how the project complies with state regulations (Assembly Bill 32); General Plan goals, objectives, and policies that help the City contribute to regional GHG reduction efforts; and applicable development standards that would increase energy efficiency, such as the California Building Code. Dudek will also provide a qualitative post-2020 analysis that will evaluate whether or not the project-generated GHG emissions would impede the attainment of the 2030 and 2050 reduction goals identified in Senate Bill 32 and Executive Order S-3-05, respectively. Because the City has not adopted a numeric post-2020 threshold or provided guidance for demonstrating that a project will not impede the implementation of State's post-2020 GHG reduction goals, a qualitative assessment is assumed to be sufficient.

### Energy

Dudek will prepare an energy assessment for the project per Appendix G of the CEQA Guidelines. Based on Appendix G of the CEQA Guidelines, the impact analysis will assess if the project would (1) result in potentially significant environmental impact due to wasteful, inefficient, or unnecessary consumption of energy resources, during project construction or operation, and (2) conflict with or obstruct a state or local plan for renewable energy or energy efficiency. The project will be assessed in regards to construction and operational energy consumption, which will be quantified to the extent estimation methods and project-specifics are available. Project electricity and natural gas usage will be estimated based on project specifics; CalEEMod default values will be used, as appropriate, when project specifics are not available. Petroleum consumption will be estimated using CalEEMod and based on the same equipment and vehicle assumptions assumed in the air quality and GHG emissions analysis. Project elements that would reduce the project's energy demand during construction and operations will be identified in the analysis and quantified as available. Dudek assumes that the Applicant will provide a list of the project's energy conservation measures prior to initiating air quality and GHG emissions modeling, as the energy analysis will be prepared consistent with the emissions modeling assumptions.

### Deliverables

- Air quality, GHG emissions, construction health risk assessment, and energy analysis and modeling in the IS/MND document (electronic copy; no standalone report provided)

### Task 1b: Biological Resources

While the project site is situated well within an urban context, half of the site is undeveloped and contains ruderal (i.e., weedy) vegetation that could potentially support a limited range of biological resources. In order to provide a

*Mr. Michael Diaz*

*Subject: Proposal to Prepare Technical Studies and CEQA Documentation for the Proposed 5006 & 5010 Mission Boulevard Warehouse, Montclair, California*

---

defensible document and provide substantial evidence detailing the project's anticipated less than significant impacts to biological resources, Dudek will conduct a limited biological analysis for the project site.

Dudek will review all available and relevant literature and data on sensitive habitats and species distribution to determine if those resources have the potential to occur on or immediately adjacent to the project site (i.e., the study area). All appropriate and available biological documentation, surveys, published research, and maps will be compiled, reviewed, and analyzed. Following the literature review, Dudek biologists will conduct a general survey of the study area to identify existing biological resources and potential biological constraints. Land covers and vegetation communities will be classified and mapped in the field onto an aerial photographic base. During the field survey, a general inventory of plant and wildlife species detected by sight, calls, tracks, scat, or other sign will be compiled, and a determination of potential sensitive species that could occur within the study area will be made.

Results of the literature review and field reconnaissance will be summarized in the IS/MND. The summary will include a description of the existing conditions of the study area in terms of vegetation, flora, wildlife, and wildlife habitats; discuss potential impacts to biological resources that would result from the project; and recommend mitigation measures for potential impacts to special-status biological resources, if required.

Due to the highly disturbed condition of the project site, it is expected that a formal jurisdictional wetlands delineation or focused special-status species surveys will not be required, and thus, this task does not include these activities.

### **Deliverables**

- Biological resources analysis and related appendices included in the IS/MND (electronic copy)

### **Task 1c: Cultural Resources**

The following tasks serve to provide an assessment of impacts to cultural resources and tribal cultural resources in conformance with CEQA and all applicable local municipal guidelines and regulations.

### **Records Search**

Dudek will begin by conducting a California Historical Resources Information Systems (CHRIS) records search of the project area and a one-half-(0.5) mile radius at the South Central Coastal Information Center (SCCIC), which houses cultural resource records for San Bernardino County. For the purposes of this scope, Dudek assumes the project area includes an approximately 5.13-acre site composed of three parcels (Assessor Parcel Number: 101-131-119, 101-131-115 and 101-131-117) located at 5006 and 5010 Mission Boulevard. The purpose of the records search is to identify any previously recorded cultural resources that may be located within the project area. In addition to a review of previously prepared site records and reports, the records search will also review historical maps of the project area, ethnographies, the National Register of Historic Places (NRHP), the California Register of Historical Resources (CRHR), and the lists of California State Historical Landmarks, California Points of Historical Interest, Archaeological Determinations of Eligibility, and the Built Environment Resources Directory (BERD). Finally, a review of historical maps and aerials will be conducted to better determine the history of land use and disturbance within the project area. This information will be used to determine cultural resource sensitivity within the project area in order to assess potential impacts to cultural resources. Dudek assumes the direct fees for the SCCIC records

Mr. Michael Diaz

Subject: *Proposal to Prepare Technical Studies and CEQA Documentation for the Proposed 5006 & 5010 Mission Boulevard Warehouse, Montclair, California*

---

search will not exceed \$1,000. Please note that due to the past and present limitations imposed by COVID-19 protocols, the SCCIC response time for records searches has been significantly delayed. To minimize delay as much as possible, Dudek will initiate a CHRIS records search with the SCCIC immediately upon award of the project.

### Native American Coordination

**Assembly Bill 52/Senate Bill 18:** The project is subject to compliance with Assembly Bill (AB) 52 and Senate Bill (SB) 18, which requires lead agencies to provide tribes who have requested notification with early notice of the project and, if requested, consultation to inform the CEQA process with respect to tribal cultural resources. While AB 52 and SB 18 are government-to-government processes between the CEQA lead agency and California Native American Tribes, Dudek can assist the lead agency, in this case the City of Montclair, with their Native American consultation obligations pursuant to AB 52 and SB 18. Assistance with these efforts would be accomplished by the following: 1) contact the California State Native American Heritage Commission (NAHC) to request a review of their Sacred Lands and obtain a list of tribal representatives with potential knowledge of cultural resources within the project area; 2) write notification letters subject to the City's approval and placement on City letterhead for dissemination to each of the tribal representatives who have previously contacted the City requesting project notification and, if desired by the City, any additional names provided by the NAHC. The letter will include, but may not be limited to the following: location of proposed project site and associated figure, a summary of the proposed project and objectives including extent of ground disturbing activities (if known), agency contact information, and a clear statement requesting all communication within 30 and 90 days of receipt of notification under AB 52 and SB 18, respectively.

It is assumed that AB 52 and SB 18 formal consultation or other tribal outreach, if required, will be conducted by the City and no attendance of Dudek staff to virtual or in person meetings will be required. If it is determined that support, outside of the estimated scope and cost, is required or desired to assist in the City's Tribal consultation process pertaining to this proposed project, Dudek will provide an augment to this scope of work and associated costs, accordingly.

### Survey

Dudek will survey the project site for cultural resources. Dudek assumes locational data will be provided for the project area and fieldwork will be conducted according to those delineated boundaries. The survey (needed due to the presence of exposed ground on the project site) will consist of an intensive-level pedestrian survey, conducted by Dudek archaeologist/s, for all accessible portions of the project area using survey transects spaced no more than 10 meters (30 feet) apart, where feasible. Dudek anticipates vegetation, structures and pavement to obscure the ground surface in portions of the project area. To overcome visibility issues, small surface scrapes may be employed to reveal the ground surface and special attention will be given areas with exposed ground. If necessary, surface scrapes will occur in 10 meter intervals, or subjectively as appropriate. If the client would prefer surface scrapes not be employed, please inform your Dudek contact and the survey will be conducted accordingly. Should resources be identified, they will be mapped using GPS enabled ESRI Collector software. Dudek assumes that no newly or previously discovered archaeological resources will be encountered requiring formal recordation. No artifacts, samples, or specimens will be collected during the survey. Should any resources be encountered during the survey that require recordation or collecting, Dudek will work with you to determine an appropriate scope of work and associated costs. For the purposes of this scope and cost, Dudek assumes that a Native American monitor will not be required during the survey. If it is determined that a Native American monitor is required to be present



Mr. Michael Diaz

Subject: *Proposal to Prepare Technical Studies and CEQA Documentation for the Proposed 5006 & 5010 Mission Boulevard Warehouse, Montclair, California*

---

during the pedestrian survey, Dudek will provide an augment to this scope of work and associated costs, accordingly.

### Archaeological Resources Letter-Style Report

Dudek will prepare an archaeological resources letter-style report that will summarize the results of the CHRIS records search and background research, pedestrian survey, a brief project description, and a review of the geotechnical report prepared for the project site (if available). The report will discuss the proposed project's potential to impact historic-era and prehistoric archaeological resources under CEQA and will provide mitigation measures and recommendations as appropriate. We assume no more than one (1) draft and one (1) final version of the memorandum will be required (electronic copies).

It is anticipated that a draft report will be provided within 8-10 weeks of contract authorization and formal Notice to Proceed. This timeframe is primarily based on the reduced capacity of the SCCIC to perform records searches as a result of COVID-19. If the records search results are provided earlier than expected, this timeline could potentially be minimized.

### CEQA Document

**Cultural Resources.** Dudek will prepare a CEQA document Cultural Resources section that will summarize the results of the CHRIS records search and background research. The section will discuss the proposed project's potential to impact cultural resources in conformance with CEQA and will provide mitigation measures and recommendations as appropriate.

**Tribal Cultural Resources.** Dudek will prepare a CEQA document Tribal Cultural Resources section that will summarize the results of the CHRIS records search, NAHC SLF, background and ethnographic research and all of the City's AB 52 and SB 18 tribal outreach efforts for the project, including notification and consultation with applicable tribes. In addition, the section will provide a brief analysis of potential project-related impacts to Tribal Cultural Resources in conformance with AB 52 and SB 18 and CEQA and will provide mitigation measures and recommendations as appropriate.

### Deliverables

- Draft and final Archaeological Resources Letter-Style Report (electronic copies)
- CEQA Cultural Resources and Tribal Cultural Resources ISMND sections (electronic copy)

### Task 1d: Noise and Vibration

Dudek noise specialists will assess the noise impacts associated with construction and operation of the project and will prepare the noise section of the IS/MND. We will identify relevant noise regulations and planning standards and determine significance thresholds by which to compare project impacts. Existing noise-sensitive land uses (e.g., residences) in the project area will be identified along with existing sources of noise. Existing noise conditions in the project area will be quantified based on investigator-attended short-term (approximately 15 minutes each) outdoor ambient noise level measurements to be conducted at selected sample locations in the project area, which

Mr. Michael Diaz

Subject: *Proposal to Prepare Technical Studies and CEQA Documentation for the Proposed 5006 & 5010 Mission Boulevard Warehouse, Montclair, California*

---

will be used to support impact assessment and check modeling of existing traffic noise. Residences exist to the south of the project site.

Construction noise and groundborne vibration attributed to the project will be evaluated based on construction equipment data to be provided by the project applicant and noise/vibration modeling methods recommended by the U.S. Federal Highway Administration (FHWA), Federal Transit Administration (FTA), and/or the California Department of Transportation (Caltrans). Using traffic data provided by the project traffic consultant, noise from passenger vehicles and truck trips along roadways to and from the project site would be modeled for existing and future conditions with and without the project. The current version of the FHWA-approved traffic noise prediction model, Traffic Noise Model® (TNM®) Version 2.5 will be used for the traffic noise assessment. Key roadway segments will be assessed, including Mission Boulevard, Fremont Avenue, Monte Vista Avenue, and up to three others as deemed necessary to adequately determine existing and future conditions. Aggregate noise emission from project on-site equipment (e.g., HVAC systems) and operations to the surrounding community will be predicted using techniques at Dudek discretion (but likely emulating International Organization of Standardization [ISO] 9613-2 algorithms and reference data), with project operations input parameters provided by the applicant, from equipment manufacturer data, and published data from studies of similar facilities.

The significance of noise impacts will be assessed based on City noise standards and relevant thresholds selected for the project. Where significant noise impacts are identified, conceptual options for mitigation to reduce impacts to a less than significant level (where feasible) will be identified. The findings of the noise analysis will be summarized in the noise section of the project's IS/MND.

#### *Deliverables*

- Noise and vibration analysis and modeling in the IS/MND document (electronic copy; no standalone report provided)

#### Task 1e: *Paleontological Resources*

Consistent with the CEQA guidelines, Dudek will complete a paleontological resources desktop review and inventory. Dudek's qualified paleontologists will complete a paleontological records search through the Natural History Museum of Los Angeles County and/or the San Bernardino County Museum (if responsive to our request) to determine the location of any previously recorded fossil discoveries within and nearby the proposed project site. Dudek will also review geological maps and paleontological and geological literature, which along with the records search, will provide information necessary to determine the paleontological sensitivity of proposed project area. Direct costs for the records search are assumed to be no more than \$1,000.00. Dudek will prepare a paleontological resources analysis that will include all necessary information, including records search and map and literature review results, to provide recommendations for future management considerations or treatment. It is assumed that any existing geotechnical and paleontological resource reports will be provided to Dudek, if available.

#### *Deliverables*

- Paleontological Resources analysis within IS/MND (electronic Copy)



Mr. Michael Diaz

Subject: *Proposal to Prepare Technical Studies and CEQA Documentation for the Proposed 5006 & 5010 Mission Boulevard Warehouse, Montclair, California*

---

## Task 2: Administrative and Screencheck Draft IS/MND

Consistent with both the CEQA Guidelines Appendix G Environmental Checklist and the City's local CEQA implementation guidelines, Dudek will prepare one administrative draft version of the IS/MND for review and comment by the City. The Administrative Draft IS/MND will identify potentially significant environmental impacts associated with the project, and, if required, feasible mitigation measures recommended to reduce adverse impacts to less than significant. Environmental setting, impact analyses, and substantiating documentation will be provided to support all responses and conclusions, including the inclusion of concise tables and high-quality, full-color figures. All environmental impact areas outlined in Appendix G of the CEQA Guidelines will be discussed and analyzed. The findings of all technical studies prepared under Task 1 will be summarized and incorporated into the Administrative Draft IS/MND to support the significance determinations.

For technical environmental impact areas not covered by the Dudek-prepared technical studies, Dudek will rely on technical reports or engineering plans provided by the applicant to address each impact area. Dudek assumes these reports and plans will include a Trip Generation Memorandum, Vehicle Miles Traveled Report, Geotechnical Report, Water Quality Management Plan/Drainage Plan, and/or Conceptual Utility Plans. If these plans are not available, Dudek may address the applicable impact areas using published information from government agencies (i.e., geological maps prepared Department of Conservation to address questions within the Geology and Soils section of the IS/MND) and/or by explaining how existing City, County, State, and Federal regulations appropriately address potential impacts (i.e., explaining how the project's required compliance with the National Pollutant Discharge Elimination System Construction General Permit would address potential water quality impacts during construction).

For non-technical environmental impact areas (e.g., Land Use and Planning, Population and Housing, Public Services), Dudek will rely on applicable sources (i.e., City of Montclair General Plan) to qualitatively address these issues.

Following up to one round of review and comment on the Draft IS/MND by the City (including the City attorney, Best, Best, and Krieger [BB&K]), we will make one corresponding round of revisions to the Draft IS/MND and technical studies, as required. Upon delivery of comments, we will complete any necessary edits and recommended revisions, using track changes in Microsoft Word so that all reviewers/commenters can easily follow where Dudek has made revisions to the document. Upon receipt of the second and final round of comments, Dudek will make any final necessary edits and revisions and prepare the final Initial Study. It is our expectation that this submittal will satisfactorily address all prior comments on the previous submittal, and thus, only minor editorial and formatting edits will be required prior to finalizing the document for City decision makers and the public.

### *Deliverables:*

- Administrative drafts of Draft IS/MND (electronic copy)
- Review of the administrative drafts of Draft IS/MND by the City and BB&K, followed by one round of revisions to the Draft IS/MND (electronic copies)
- Screencheck drafts of the Draft IS/MND (electronic copy)

Mr. Michael Diaz

Subject: *Proposal to Prepare Technical Studies and CEQA Documentation for the Proposed 5006 & 5010 Mission Boulevard Warehouse, Montclair, California*

---

### Task 3: Public Review Draft IS/MND

Dudek will finalize the public review version of the Draft IS/MND and publicly distribute the document to the County Clerk, responsible and trustee agencies, surrounding jurisdictions, and other interested parties pursuant to the distribution list prepared by the City. Hard copies of the Draft IS/MND will include technical appendices on a CD affixed to the back cover of the document. Dudek will distribute the deliverables via U.S. Postal Service certified mail and/or FedEx overnight service, and will include the Notice of Intent to Adopt a Proposed MND (NOI) and Notice of Completion (NOC), both prepared by Dudek. Dudek will also create an optimized, web-ready PDF of the Draft IS/MND for the City to post online.

For the purposes of this scope of work, it is tentatively assumed that the Draft IS/MND will not need to be sent to the State Clearinghouse for distribution to and review by applicable state resource agencies, since the project is not expected to impact any State resources. If the City concludes that the project would not result in environmental impacts to resources managed by state agencies, then the City, as lead agency, can determine that the Draft IS/MND need only be locally circulated, and the public review period can be shortened to a minimum of 20 days. If the City determines that the project could have a potential impact on State resources, the Draft IS/MND would be sent to the State Clearinghouse for a public review period of 30 days.

#### *Deliverables:*

- Draft IS/MND and technical appendices (electronic copy)
- NOI and NOC (electronic copies)

### Task 4: Final IS/MND

Dudek will provide responses to comments from all agency and public comments that raise substantive environmental issues associated with the Draft IS/MND. The responses will be thoughtful and thorough, and will be provided as part of the Final IS/MND. **Based on the nature of the project and the proximity to potential stakeholders, it is anticipated that no more 15 comments will be received by the City in relation to the project (note that a single comment letter may include several comments). No letters from any potential project opponent's attorneys are assumed. If an extraordinary number of comment letters, letters from project opponent's attorneys (which are often lengthy and/or overly technical), or comment letters requiring new analysis are received, Dudek will discuss the budgetary implications with the City, and an augment may be required if any of these circumstances occurs.**

Dudek will prepare a mitigation monitoring and reporting program (MMRP) pursuant to CEQA Guidelines Section 15097. The MMRP will contain all mitigation measures recommended in the IS/MND. This comprehensive MMRP will provide the City with a single source of reference to the full range of mitigation measures to be implemented to ensure achievement of the impact avoidance envisioned in the IS/MND. For each measure or group of similar measures, the party or parties responsible for ensuring proper implementation will be identified, along with the timing and method of verification.

Mr. Michael Diaz

Subject: *Proposal to Prepare Technical Studies and CEQA Documentation for the Proposed 5006 & 5010 Mission Boulevard Warehouse, Montclair, California*

---

The comment letters and responses, MMRP, preface, and (if applicable) a discussion of any minor edits made to the Draft IS/MND as a result of comments will constitute the Final IS/MND. Following one round of the City's review, we will finalize and mail the Final IS/MND to any party who previously provided comments on the Draft IS/MND.

**Deliverables:**

- Final IS/MND and technical appendices (electronic copy)

## Task 5: Project Management, Meetings, and Hearings

The Dudek project manager will participate in one teleconference project kickoff meeting with the City to discuss the project and the overall CEQA process, identify any outstanding data needs, establish internal communication protocols, and refine the project schedule. In addition to the initial kickoff meeting, the Dudek project manager will prepare for and attend two public hearings (i.e., Planning Commission and City Council hearings) where the IS/MND and the project will be considered.

This task also includes time for the Dudek project manager to oversee the IS/MND's budget, scheduling, and implementation, as well as organizing and overseeing preparation of the document. The project manager will be responsible for facilitating completion of each task order on time and within the contracted budget while verifying that the product meets the City's needs.

**Deliverables:**

- Preparation for and participate in one teleconference project kickoff meeting and one public hearing

## Schedule

Table 1 presents the proposed work schedule for the IS/MND. This schedule assumes that work will be authorized on "Week 0," and that all requested data needs will be provided by "Week 1." It is assumed that work will be authorized at the next City Council Hearing, which would be either August 16, 2021 or August 30, 2021.

Mr. Michael Diaz

Subject: Proposal to Prepare Technical Studies and CEQA Documentation for the Proposed 5006 & 5010 Mission Boulevard Warehouse, Montclair, California

**Table 1. Tentative Schedule**

Task	Tentative Time of Completion	Date <sup>1</sup>	
Notice to Proceed	Week 0	August 16	August 30
Task 1a: Air Quality, Greenhouse Gas Emissions, Health Risk Assessments, and Energy	Week 5	September 20	October 4
Task 1b: Biological Resources	Week 5	September 20	October 4
Task 1c: Cultural Resources	Week 8	October 11	October 25
Task 1d: Noise and Vibration	Week 6	September 27	October 11
Task 1e: Paleontological Resources	Week 6	September 27	October 11
Task 2: Administrative and Screencheck Draft IS/MND	-	-	-
Administrative drafts of Draft IS/MND	Week 8	October 11	October 25
City/BB&K Review	Week 11	November 1	November 15
Screencheck draft of the Draft IS/MND	Week 13	November 15	November 29
Task 3: Public Review Draft IS/MND	Weeks 14-16	Nov. 22 - Dec. 13	Dec. 3 - Dec 22
Task 4: Final IS/MND	Week 18	December 27	January 7, 2022
Task 5: Project Management, Meetings, and Hearings	-	-	-
Planning Commission Meeting	Week 20	January 10, 2022	January 24, 2022
City Council Meeting	Week 22	January 24, 2022	February 7, 2022

<sup>1</sup> All dates in 2021 unless otherwise specified.

## Fees

As provided in Table 2, Dudek proposes a time-and-materials, not-to-exceed fee of **\$77,700** to complete the required tasks for the IS/MND. The total cost included in Table 2 covers the scope of work described in the previous paragraphs, as well as all travel, printing, and associated expenses. Due to potentially dynamic project considerations, Dudek reserves the right to shift funds among individual task budgets according to specific needs.

Mr. Michael Diaz

Subject: Proposal to Prepare Technical Studies and CEQA Documentation for the Proposed 5006 & 5010 Mission Boulevard Warehouse, Montclair, California

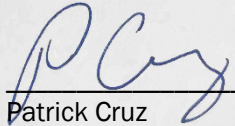
## Table 2. Estimated Fees

Task	Estimated Fee <sup>1</sup>
Task 1a: Air Quality, Greenhouse Gas Emissions, Health Risk Assessment, and Energy	\$15,900
Task 1b: Biological Resources	\$3,600
Task 1c: Cultural Resources	\$8,900
Task 1d: Noise and Vibration	\$8,500
Task 1e: Paleontological Resources	\$2,300
Task 2: Administrative and Screencheck Draft IS/MND and Technical Studies	\$22,500
Task 3: Public Review Draft IS/MND	\$4,000
Task 4: Final IS/MND	\$5,500
Task 5: Project Management, Meetings, and Hearings	\$6,500
<b>Total Professional Labor (plus other direct costs)</b>	<b>\$77,700</b>

<sup>2</sup> Excludes the California Department of Fish and Wildlife fees (if applicable) paid during filing of the Notice of Determination with the County Clerk.

Dudek appreciates your review and consideration of this proposal. Please feel free to contact me at 949.373.8331 or pcruz@dudek.com with any questions. We look forward to working with you on the project.

Sincerely,



Patrick Cruz  
Environmental Planner

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



**BEST BEST & KRIEGER**   
ATTORNEYS AT LAW

3390 University Avenue, 5th Floor, P.O. Box 1028, Riverside, CA 92502  
Phone: (951) 686-1450 | Fax: (951) 686-3083 | www.bbklaw.com

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

**Amy E. Hoyt**  
(951) 826-8303  
Amy.Hoyt@bbklaw.com  
File No. 09957.00000

August 31, 2021

**VIA E-MAIL TO: MDIAZ@CITYOFMONTCLAIR.ORG**

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

Re: Continued Engagement of Best Best & Krieger LLP - 5506-5010 Mission Blvd. Warehouse Project

Dear Mr. Diaz:

Best Best & Krieger LLP is pleased to continue to represent the City of Montclair regarding the 5506-5010 Mission Blvd. Warehouse Project. Specifically, you have asked us to assist the City and provide legal services related to entitlements and CEQA work for the Project. You also asked for an estimate of our costs to provide such services. Although the actual cost may be higher or lower depending on the scope of services that are necessary, our estimate is \$50,000.

Except as to the above scope of our representation in this matter, the terms of our representation are set forth in our original engagement letter subject to the updated fee arrangement. The hourly rates for such services are as follows:

Alisha Winterswyk, Partner	\$530 per hour
Marco Martinez, Partner	\$510 per hour
Mrunal Shah, Partner	\$485 per hour
Monica Castillo, Associate	\$360 per hour

We have checked the following names against our client index: New Crossing Development LLC and Anthony La. Based on the conflict check performed for this matter, it was determined that we have no existing conflicts. Please review the list. If you do not tell us to the contrary, we will assume that this list is complete and accurate. We request that you update this list for us if there are any changes in the future.

09957.00000\34304261.1



**BEST BEST & KRIEGER**  
ATTORNEYS AT LAW

Michael P. Diaz  
August 31, 2021  
Page 2

If this letter meets with your approval, please sign and date it, and return it to us. If you have any other questions or concerns about the terms of our representation, please contact me. Thank you for the opportunity to continue to represent the City of Montclair.

Sincerely,

Amy E. Hoyt  
of BEST BEST & KRIEGER LLP

AEH:mmc

AGREED AND ACCEPTED:

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

Dated: \_\_\_\_\_



# CITY COUNCIL AGENDA REPORT

---

<b>DATE:</b>	SEPTEMBER 20, 2021	<b>FILE I.D.:</b>	PDT175
<b>SECTION:</b>	CONSENT - AGREEMENTS	<b>DEPT.:</b>	POLICE
<b>ITEM NO.:</b>	3	<b>PREPARER:</b>	B. VENTURA
<b>SUBJECT:</b>	CONSIDER APPROVAL OF AGREEMENT NO. 21-62 WITH THE SAN BERNARDINO COUNTY DEPARTMENT OF BEHAVIORAL HEALTH (DBH) FOR THE USE OF DEDICATED OFFICE SPACE WITHIN THE MONTCLAIR POLICE DEPARTMENT FOR CO-LOCATING DBH TRIAGE, ENGAGEMENT, AND SUPPORT TEAMS PROGRAM STAFF TO ASSIST/LINK CONSUMERS WITH COMMUNITY SERVICES		

---

**REASON FOR CONSIDERATION:** The City Council is requested to consider approval of Agreement No. 21-62 with the San Bernardino County Department of Behavioral Health (DBH) for the use of dedicated office space within the Montclair Police Department for co-locating DBH Triage, Engagement, and Support Teams (TEST) program staff to assist/link consumers with community services.

A copy of proposed Agreement No. 21-62 is attached for City Council's review and consideration. Also attached is a report/recommendation to the Board of Supervisors of San Bernardino County from DBH recommending approval with the Montclair Police Department for dedicated office space for DBH staff to provide crisis services.

**BACKGROUND:** The San Bernardino County DBH, under state law, provides mental health and substance use disorder treatment services to County residents. In order to maintain a continuum of care, DBH operates or contracts for the provision of prevention and early intervention services, 24-hour care, day treatment outpatient services, case management, and crisis and referral services. Community services are provided in all major County metropolitan areas and are readily accessible to County residents.

Since 2015, DBH has partnered with various key agencies for no cost office space to place DBH crisis triage staff in underserved areas throughout San Bernardino County. DBH-selected agencies, known as "points of access" such as law enforcement, hospital emergency departments, colleges, and agencies within the judicial court system, assist consumers experiencing a mental health crisis. The TEST team's co-located program allows immediate access to crisis triage by a mental health specialist, which has resulted in thousands of successful outcomes.

Since the inception of TEST in 2014, the purpose was to improve consumer access to specialized behavioral health services during a mental health crisis and to minimize negative outcomes such as incarcerations and hospitalizations. In FY 2019-20, there were a total of 6,056 TEST encounters with co-located TEST staff in San Bernardino County.

The following results can be highlighted from those encounters:

- By DBH co-locating mental health crisis triage staff where consumers live and work the access to specialty mental health services for underserved consumers has increased.



- Consumers receiving crisis triage followed by immediate linkage to appropriate services has improved consumer outcomes.
- Decreased costs for law enforcement agencies and emergency room services as resources to assist consumers in crisis are diverted to TEST staff and more appropriate linked services.
- Increased number of consumers experiencing a mental health crisis diverted from the justice system, hospitals and/or psychiatric hospitalization.

A key component of the TEST program is to ensure 100 percent of agency's referrals, consumers experiencing a mental health crisis, are seen in a timely fashion, initiating improved consumer outcomes and providing immediate access to Specialty Mental Health Services for consumers in a mental health crisis. This would drastically reduce law enforcement costs. The DBH service provided comes at no cost to the City of Montclair and is provided by the TEST program as an expedient link to behavioral health services for the community served. Initial services shall be directed toward achieving crisis intervention, diversion, and stabilization.

TEST staff is called to assist agency staff when a possible consumer is exhibiting symptoms of a psychiatric crisis. If the consumer does not present as violent and/or a danger to staff safety and the community, TEST would immediately respond starting with triage to engage and support the consumer in crisis. TEST staff would provide crisis intervention with assessment and evaluation including collateral to help identify the needs for behavioral health services. The goal of intensive case management is to stabilize and successfully link consumers to DBH services and other community resources.

The following are services provided by TEST staff:

- Crisis intervention is a quick emergency response service enabling the individual to cope with a crisis, while maintaining his/her status as a functioning community member to the greatest extent possible. A crisis is an unplanned event that results in the individual's need for immediate service intervention. The response modality must allow for the resolution of the consumer's crisis. Crisis intervention services are limited to stabilization of the presenting emergency. Service activities include but are not limited to assessment, evaluation, and collateral.
  - Assessment is an analysis of the history and current status of the individual's mental, emotional, or behavioral disorder. Relevant cultural factors and history may be included where appropriate. Assessments would include consumer level of acuity and risk.
  - Evaluation is an appraisal of the individual's community functioning in several areas including living situation, daily activities, social support systems and health status. Cultural issues may be addressed where appropriate.
  - Collateral is contact with one or more significant support persons in the life of the individual to assist the consumer in crisis as quickly as possible.

TEST staff responsibilities would be as follows:

- Provide crisis triage/response/intervention.
- Provide interagency coordination of crisis services.
- Conduct case management needs assessment for possible intensive case management for consumers, identified and referred by the Agency, for referrals/linkage to DBH services and/or other community services.
- Identify individuals with potential Substance Use Disorder and Recovery Services (SUDRS) needs and refer to community SUDRS services.
- Provide short-term follow-up case management services (up to 59 days) while consumers are appropriately linked to DBH services and/or other community services.
- Collaborate with Agency staff, community agencies, family, and other support persons to avoid psychiatric hospitalizations or law enforcement escalations and to improve consumers daily functioning.
- Maintain appropriate and timely documentation, according to DBH policies and standards.
- Attend co-location meetings such as, briefings, staff meetings, and/or other team/community meetings as appropriate.

**FISCAL IMPACT:** If authorized by the City Council, proposed Agreement No. 21-62 would have no fiscal impact on the City's General Fund.

**RECOMMENDATION:** Staff recommends the City Council approve Agreement No. 21-62 with the San Bernardino County Department of Behavioral Health for the use of dedicated office space within the Montclair Police Department for co-locating DBH Triage, Engagement, and Support Teams program staff to assist/link consumers with community services.

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS  
OF SAN BERNARDINO COUNTY  
AND RECORD OF ACTION**

October 5, 2021

**FROM**

**VERONICA KELLEY, Director, Department of Behavioral Health**

**SUBJECT**

Non-financial Memorandum of Understanding with Montclair Police Department for Dedicated Office Space.

**RECOMMENDATION(S)**

Approve non-financial Memorandum of Understanding with Montclair Police Department for dedicated office space for the Department of Behavioral Health staff to provide crisis services, for the period of October 5, 2021 through June 30, 2026.  
(Presenter: Veronica Kelley, Director, 388-0801)

**COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES**

**Provide for the Safety, Health and Social Service Needs of County Residents.**

**Pursue County Goals and Objectives by Working with Other Agencies and Stakeholders.**

**FINANCIAL IMPACT**

This item does not impact Discretionary General Funding (Net County Cost). The non-financial Memorandum of Understanding (MOU) allows the Department of Behavioral health (DBH) to utilize office space located within Montclair Police Department (MPD) at no cost to the County in order for DBH to provide crisis services through the Triage, Engagement and Support Team (TEST) program.

**BACKGROUND INFORMATION**

Since 2015, DBH has partnered with various key agencies, for no cost office space to place DBH crisis triage staff in underserved areas throughout San Bernardino County. DBH-selected agencies, known as 'points of access' such as law enforcement, hospital emergency departments, colleges, and agencies within the judicial court system, to assist consumers experiencing a mental health crisis. The TEST team's co-located program allows immediate access to crisis triage by a mental health specialist, which has resulted in thousands of successful outcomes.

In 2019-20, there were a total of 6,056 encounters with co-located DBH TEST staff, many of which resulted in crisis stabilization instead of unnecessary incarcerations and/or hospitalizations. Crisis stabilization with case management and linkage to appropriate services reduce expenditures for law enforcement resources and hospital emergency departments.

The non-financial Memorandum of Understanding (MOU) outlines the use of office space at MPD for the TEST service team to provide these services.

The recommended non-financial MOU will allow DBH to utilize space at MPD through June 30, 2026, and may be terminated by either party without cause. The MOU reaffirms DBH's commitment to provide access to crisis services for underserved populations at a variety of collaborated sites throughout San Bernardino County.

**PROCUREMENT**

N/A

**REVIEW BY OTHERS**

This item has been reviewed by Behavioral Health Contracts (Ellayna Hoatson, Contracts Supervisor I, 388-0858) on August 10, 2021; County Counsel (Dawn Martin, Deputy County Counsel, 387-5455) on August 24, 2021; Finance (Christopher Lange, Administrative Analyst, 386-8392) on Month DD, YYYY; County Finance and Administration (Tanya Bratton, Deputy Executive Officer, 388-0332) on Month DD, YYYY

**MEMORANDUM OF UNDERSTANDING**

**Between**

**San Bernardino County Department of Behavioral Health**

**And**

**City of Montclair Police Department**

**For**

**Dedicated Office Space**

**October 26, 2021**

**WHEREAS**, the San Bernardino County (County), Department of Behavioral Health hereinafter referred to as DBH, and City of Montclair Police Department hereinafter referred to as MPD, Collaborating Agency or Agency; and

**WHEREAS**, DBH desires to expand consumer rapid access to mental health crisis care through community Triage, Engagement and Support Teams (TEST). DBH will do so by collaborating for dedicated office space, at no cost, within agencies that have the highest contact with consumers experiencing a psychiatric emergency. These agencies, named 'points of access' are law enforcement, hospital emergency rooms, schools and court related agencies; and

**WHEREAS**, DBH has been allocated funds by the Mental Health Services Act (MHSA) to provide such services; and

**WHEREAS**, MPD is willing and able to provide adequate, non-financial, dedicated office space located in MPD, specifically for DBH services provided by co-located TEST staff, to assist/link consumers; and

**NOW THEREFORE**, DBH and MPD mutually agree to the following terms and conditions:

## TABLE OF CONTENTS

I.	PURPOSE .....	3
II.	DEFINITIONS .....	3
III.	COLLABORATING AGENCY FACILITY REQUIREMENTS .....	4
IV.	AGENCY GENERAL RESPONSIBILITIES.....	4
V.	DBH GENERAL RESPONSIBILITIES .....	5
VI.	MUTUAL RESPONSIBILITIES.....	6
VII.	RIGHT TO MONITOR AND AUDIT .....	8
VIII.	TERM.....	9
IX.	EARLY TERMINATION.....	9
X.	GENERAL PROVISIONS.....	9
XI.	CONCLUSION .....	10

Attachments: Exhibit I – Description of TEST Services for Participating Agencies

## I. PURPOSE

This Memorandum of Understanding (MOU) serves to identify areas of agreement and responsibility between Montclair Police Department (MPD) and the Department of Behavioral Health (DBH), regarding the use of dedicated office space within MPD for co-locating DBH TEST program staff to assist/link consumers with community services.

DBH will assign the TEST staff that will utilize office space within MPD location here:

### **Montclair Police Department**

4870 Arrow Highway  
Montclair, CA 91763  
(909) 448-3600

The partnership between DBH and MPD is a joint effort to bring responsive access to mental health crisis services to the Montclair community, at no charge, for a consumer in need. In exchange for MPD's space and responsibilities hereunder, the TEST staff will be providing crisis assessments, intervention, and intensive case management with linkage to community resources as outlined in the Exhibit I.

## II. DEFINITIONS

The terms consumer, resident, individual, client or participant are used interchangeably throughout this document referring to the individual inquiring, accessing and/or receiving services.

The terms agency, contractor, vendor will refer to AGENCY.

- A. **Authorization for Release of Protected Health Information (PHI):** A HIPAA compliant authorization signed by the client or client's legal representative, authorizing DBH to release the client's information to a designated recipient. This form must be completed thoroughly with specified records to be shared, a designated time frame and expiration date, as well as a signature by the DBH client or his/her legal representative. If the form is signed by a legal representative, proof from the court system designating legal representation must accompany the request.
- B. **Department of Behavioral Health (DBH):** The San Bernardino County Department of Behavioral Health, under state law, provides mental health and substance use disorder treatment services to County residents. In order to maintain a continuum of care, DBH operates or contracts for the provision of prevention and early intervention services, 24-hour care, day treatment outpatient services, case management, and crisis and referral services. Community services are provided in all major County metropolitan areas and are readily accessible to County residents.
- C. **Health Insurance Portability and Accountability Act (HIPAA):** A federal law designed to improve portability and continuity of health insurance coverage in the group and individual markets, to combat waste, fraud, and abuse in health insurance and health care delivery, to promote the use of medical savings accounts, to improve access to long-term care services and coverage, to simplify the administration of health insurance, and for other purposes.
- D. **Mental Health Services Act (MHSA):** Mental Health Services Act, also known as Proposition 63, imposes a 1% tax on adjusted annual income over \$1,000,000. In November 2004, California voters passed Proposition 63 to adopt the MHSA. According to the MHSA, the intent of the funding is to reduce the long-term adverse impact on individuals, families, and State and local budgets resulting from untreated serious mental illness.

- E. **Personally Identifiable Information (PII):** PII is information that can be used alone or in conjunction with other personal or identifying information, which is linked or linkable to a specific individual. This includes: name, social security number, date of birth, address, driver's license, photo identification, other identifying number (case number, client index number, SIMON number/medical record number, etc.).
- F. **Protected Health Information (PHI):** PHI is individually identifiable health information held or transmitted by a covered entity or its business associate, in any form or media, whether electronic, paper or oral. Individually identifiable information is information, including demographic data, that relates to the individual's past, present or future physical or mental health or condition; the provision of health care to the individual; or the past, present, or future payment for the provision of health care to the individual, and identifies the individual or for which there is reasonable basis to believe it can be used to identify the individual. PHI excludes individually identifiable health information in education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. 1232g; in records described at 20 U.S.C.1232g(a)(4)(B)(iv); in employment records held by a covered entity in its role as employer; and regarding a person who has been deceased for more than fifty (50) years.
- G. **Triage, Engagement and Support Teams (TEST):** Triage teams specializing in crisis intervention, continuum of care, and intensive case management for individuals experiencing an urgent psychiatric health condition with up to 59 days of individualized linkage and follow up services. The goal is to improve consumer experience by improving access to mental health services with local staff and rapid response times, allowing the consumer to possibly stay within their own community and strengthening their opportunity for recovery and wellness while reducing involvement with the criminal justice system, reducing frequencies of emergency room visits and/or unnecessary hospitalization.

### III. COLLABORATING AGENCY FACILITY REQUIREMENTS

#### Agency will:

- A. Provide adequate workspace for DBH staff within the Agency. Adequate workspace shall include a personal work area with a desk, chairs and secure document storage.
- B. Provide a designated area for consultation of consumers as required.
- C. Provide a parking space for a County or DBH staff vehicle.
- D. Provide access to a desk phone, fax machine and photocopier.
- E. Provide DBH staff access to staff restrooms and breakroom.
- F. Maintain and relay safety/security procedures related to DBH staff assigned to Agency.
- G. Assign building passes and office keys as needed to TEST staff, and/or DBH employees regularly assigned to Agency.

### IV. AGENCY GENERAL RESPONSIBILITIES

- A. Agency will not assign this MOU, either in whole or in part, without the prior written consent of DBH.
- B. Agency shall make available to the DBH Program Manager (PM) copies of all administrative policies and procedures utilized and developed for this service location(s) and shall maintain ongoing communication with the DBH PM regarding those policies and procedures.



- C. Agency is aware that DBH is required by regulation to safeguard Personally Identifiable Information (PII) and Protected Health Information (PHI) such as names and other identifying information concerning persons receiving services from unauthorized use or disclosure pursuant to this MOU.
- D. Information obtained by DBH for participants is PHI and any DBH documents stored at MPD are highly sensitive and confidential; therefore, MPD shall provide DBH with secure document storage and use the same physical safeguards related to such document storage that MPD uses to safeguard its own lawfully protected information.
- E. Should MPD find the need to obtain PHI about a consumer, MPD shall request the consumer complete the DBH Authorization for Release of Protected Health Information (COM001) form prior to any discussion or release regarding consumer PHI, including but not limited to diagnosis treatment, and/or outcomes. The form must state DBH can share consumer's PHI with MPD, with specified time frames including expiration date. This provision will remain in force even after the termination of the MOU.
- F. MPD acknowledges DBH must track/report specified data required by Mental Health Services Act (MHSA) in a format approved by DBH. Part of the necessary information measures the referrals and linkage to appropriate services designed to address the particular behavioral health issues being presented to law enforcement (justice system); reduction of the time individuals needing mental health services spend within the justice system; reduced number of visits to assist the same consumer for behavioral health-related concerns post TEST involvement, and to facilitate assessments of individuals experiencing a mental health crisis that could result in inpatient hospitalization. MPD further acknowledges that these tracking/reporting requirements may change per the County and/or the State.

**V. DBH GENERAL RESPONSIBILITIES**

**DBH will:**

- A. In the least restrictive environment possible, provide crisis intervention designed to divert seriously mentally ill consumers from law enforcement encounters. The primary usage of this office space is to:
  - 1. Provide crisis intervention services for consumers in surrounding community.
  - 2. Provide intensive case management for local consumers participating in TEST.
  - 3. Be the central location for TEST staff to link consumers to the appropriate public and/or private community resources for up to 59 days.
  - 4. Be an in-house asset to MPD and the City of Montclair in improving outcomes for consumers with behavioral health issues.
- B. Assign staff for a minimum of 40 hours a week to MPD. This may include any combination of the following: Social Worker II, Mental Health Specialist, Alcohol and Drug Counselor, and Clinical Therapist, for the purpose of providing crisis response services within the dedicated office space and in the field (exact service hours will be agreed upon between DBH Program Manager and MPD).
- C. Adhere to Agency's required clearance protocols for assigned DBH staff prior to staff person utilizing dedicated office space.

- D. Monitor and coordinate staff work schedules, as staff work hours may vary.
- E. Assign computers and cell phones to TEST staff. ALL correspondence with TEST staff must be sent through the DBH email system. No other Agency email is to be allocated to the TEST staff. DBH staff shall adhere to the DBH Electronic Mail Policy.
- F. Provide administrative supervision to all DBH staff located or utilizing the MPD offices. Any concerns or suggestions regarding any type of matters shall be taken to the DBH Program Manager, supervisory staff or his/her designee.
- G. Communicate with the appropriate MPD supervisory staff or his/her designee with any concerns and/or suggestions for overcoming problem areas and/or changing procedures related to facility usage or supervision.
- H. Maintain authority and responsibility for the assignment and/or reassignment of all TEST staff.
- I. Address the MHSA goals, measure and report outcomes in collaboration with MPD by increasing access to mental health services, reducing criminal and juvenile justice involvement while also reducing frequency of emergency room visits and unnecessary hospitalizations within the local community.
- J. Maintain consumer records in compliance with all regulations set forth by the State and provide access to clinical records by DBH staff.
- K. Pursuant to HIPAA, DBH has implemented administrative, physical, and technical safeguards to protect the confidentiality, integrity, and availability of PHI transmitted or maintained in any form or medium.
- L. Obtain a valid Authorization for Release of PHI from DBH client prior to sharing any PHI with MPD and in the performance of required services.

## **VI. MUTUAL RESPONSIBILITIES**

- A. DBH TEST staff will coordinate with MPD staff for the purpose of providing crisis intervention services and intensive case management and linkage for referred consumers.
- B. MPD and DBH agree to develop a program unique to MPD needs and internal procedures for optimal utilization of TEST services and fulfillment of consumer needs as outlined in Exhibit I of this MOU.
- C. Both agencies must comply with relevant regulations for any release of information. MPD and DBH agree they will establish mutually satisfactory methods for the exchange of such information as may be necessary in order that each party may perform its duties and functions under this MOU. Both agencies will develop appropriate procedures to ensure all information is safeguarded from unauthorized disclosure in accordance with applicable State and Federal laws and regulations, and as referred herein.
- D. MPD and DBH agree they will establish mutually satisfactory methods for problem resolution at the lowest possible level as the optimum, with a procedure to mobilize problem resolution up through the MPD and DBH mutual chain of command, as deemed necessary.
- E. MPD and DBH agree to develop and implement procedures and forms necessary to administer and document each program referral, participation, compliance and effectiveness.

- F. MPD and DBH agree to develop internal procedures for resolving grievances including the specific steps a consumer must follow, and the time limits for resolution.
- G. MPD and DBH agree to comply with all applicable local, State, and Federal laws.
- H. MPD and DBH shall not charge each other for any of the items or services provided hereunder.
- I. Indemnification and Insurance Requirements between the governing entities of MPD and DBH, which are the City of Montclair (City) and San Bernardino County (County) are as follows:
  - 1. The City agrees to defend, indemnify and hold harmless the County, it's officers, staff, agents, and volunteers for any and all claims, losses, actions, damages and/or liability resulting from this agreement/contract from any cause whatsoever, including any costs or expenses incurred by County, except as prohibited by law, arising out of the City or MPD's negligent or wrongful acts or omissions in connection with its performance under the herein agreement.
  - 2. The County agrees to defend, indemnify and hold harmless the City, it's officers, staff, agents, and volunteers for any and all claims, losses, actions, damages and/or liability arising out of this agreement/contract from any cause whatsoever, including any costs or expenses incurred by the City, except as prohibited by law, arising out of County's or DBH's negligent or wrongful acts or omissions in connection with its performance under the herein agreement.
  - 3. In the event that the County and/or the City are determined to be comparatively at fault for any claim, action, loss or damage which results from their respective obligations under this agreement, the County and/or the City shall indemnify the other to the extent of its comparative fault.
  - 4. The County and the City are authorized self-insured entities for purposes of General Liability, Automobile Liability, Workers' Compensation, and Professional Liability coverage and warrants that through its program of self-insurance, it has adequate coverage or resources to protect against liabilities arising out of the terms, conditions and obligations of this agreement.
- J. Privacy and Security
  - 1. MPD and DBH shall adhere to any County applicable privacy-related policies pertaining to PII. DBH has a specific responsibility to comply with all applicable State and Federal regulations pertaining to privacy and security of client PHI and strictly maintain the confidentiality of behavioral health records, and MPD shall assist DBH in upholding said confidentiality by applying safeguards as discussed herein. Regulations have been promulgated governing the privacy and security of individually identifiable health information (IIHI) PHI or electronic Protected Health Information (ePHI).
  - 2. In addition to the aforementioned protection of IIHI, PHI, and e-PH, both parties shall adhere to the protection of personally identifiable information (PII) and Medi-Cal PII. PII includes any information that can be used to search for or identify individuals such as but not limited to name, social security number or date of birth. Whereas Medi-Cal PII is the information that is directly obtained in the course of performing an administrative function

on behalf of Medi-Cal, such as determining eligibility that can be used alone in conjunction with any other information to identify an individual.

3. Reporting Improper Access, Use, or Disclosure of Unsecure PHI and PII,

Upon discovery of any unauthorized use, access or disclosure of PHI or any other security incident with regards to PHI or PII, MPD agrees to report to DBH no later than one (1) business day upon the discovery of a potential breach. MPD shall cooperate and provide information to DBH to assist with appropriate reporting requirements to the DBH Office of Compliance.

K. MPD and DBH will ensure any DBH client PHI that is stored on MPD premises will be locked and secure in adherence to IIHI and PHI privacy requirements.

L. MPD and DBH shall protect from unauthorized use or disclosure names and other identifying information concerning persons receiving services pursuant to this MOU, except for statistical information not identifying any consumer DBH and MPD shall not use or disclose any identifying information for any other purpose other than carrying out the obligations under this MOU, except as may be otherwise permitted or required by law. This provision will remain in force even after the termination of the MOU.

M. MPD and DBH agree they will collaborate in providing in-service training to MPD staff on the services offered under this MOU and any relevant policies/procedures, including the Authorization to Release of Protected Health Information Policy and Procedure.

## VII. RIGHT TO MONITOR AND AUDIT

A. Agency will collaborate with DBH in the implementation, monitoring and evaluation of this MOU and share information as needed.

B. Agency shall provide all reasonable facilities and assistance for the safety and convenience of DBH's representative in the performance of monitoring or auditing duties. Any supervisory or administrative inspections and evaluations shall be performed in such a manner as will not unduly delay the work of MPD.

C. MPD and DBH agree to work together to develop a tracking system of calls that TEST staff respond to for the purpose of productivity measures and staff accountability.

D. A review of productivity at the Agency location for TEST services shall be conducted after the end of each fiscal year.

E. Agency and DBH will participate in evaluating the progress of the overall program in regard to responding to the mental health needs of local communities.

F. Agency and DBH will work jointly to monitor outcome measures. Agency and DBH shall comply with all local, State and Federal regulations regarding local, State and Federal performance outcomes measurements requirements and participate in the outcome measurement process, as required by the State and/or DBH. For MHSA programs, Agency agrees to meet the goals and intention of the program as indicated in the related MHSA Component Plan and most recent up dates.

## VIII. TERM

This Memorandum of Understanding (MOU) is effective date of execution through June 30, 2026 and may be terminated earlier in accordance with provisions of Section IX of this MOU.

**IX. EARLY TERMINATION**

- A. This MOU may be terminated without cause upon thirty (30) days written notice by either party. DBH's Director is authorized to exercise DBH's rights with respect to any termination of this MOU. The MPD's Chief of Police, or his/her appointed designee, has authority to terminate this MOU on behalf of MPD.

**X. GENERAL PROVISIONS**

- A. DBH staff vacancies or changes in staffing plan shall be submitted to the appropriate Agency's contact person within 48 hours of DBH's knowledge of such occurrence. Such notice shall include a plan of action to address the vacancy or a justification for the staffing plan change.
- B. No waiver of any of the provisions of the MOU documents shall be effective unless it is made in a writing which refers to provisions so waived and which is executed by the parties. No course of dealing and no delay or failure of a party in exercising any right under any MOU document shall affect any other or future exercise of that right or any exercise of any other right. A party shall not be precluded from exercising a right by its having partially exercised that right or its having previously abandoned or discontinued steps to enforce that right.
- C. Any alterations, variations, modifications, or waivers of provisions of the MOU, unless specifically allowed in the MOU, shall be valid only when they have been reduced to writing, duly signed and approved by the authorized representatives of both parties as an amendment to this MOU. No oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.

**XI. CONCLUSION**

- A. This MOU, consisting of ten pages (10) is the full and complete document describing services to be rendered by MPD to DBH including all covenants, conditions and benefits.
- B. The signatures of the parties affixed to this MOU affirm that they are duly authorized to commit and bind their respective departments to the terms and conditions set forth in this document.

This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Agreement. The parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Agreement upon request.

City of Montclair  
 Montclair Police Department

\_\_\_\_\_  
 Name: Robert Avels  
 Title: Police Chief  
 Address: 4870 Arrow Highway  
 Montclair, CA 91763

Date: \_\_\_\_\_

\_\_\_\_\_  
 Name: Javier John Dutrey  
 Title: Mayor

Date: \_\_\_\_\_

SAN BERNARDINO COUNTY

► \_\_\_\_\_  
 Curt Hagman, Chairman, Board of Supervisors

Dated \_\_\_\_\_  
 SIGNED AND CERTIFIED THAT A COPY OF THIS  
 DOCUMENT HAS BEEN DELIVERED TO THE  
 CHAIRMAN OF THE BOARD  
 Lynna Monell  
 Clerk of the Board of Supervisors  
 San Bernardino County

\_\_\_\_\_  
 Name: Andrea Myrick  
 Title: City Clerk

Date: \_\_\_\_\_

By \_\_\_\_\_

Description of Triage,  
Engagement and Support Teams (TEST) Services Available  
And Co-location Specific Considerations

**FOR**

**Montclair Police Department  
4870 Arrow Highway  
Montclair, CA 91763**

Department of Behavioral Health (DBH) TEST Program has community base teams that respond throughout San Bernardino County for anyone having a mental health emergency and is in need of crisis triage. The success of TEST has grown with Agency collaborations throughout San Bernardino County. DBH funds:

- **Triage, Engagement and Support Team (TEST)**  
**Program Manager II:** Vivian Bermudez (909) 421-9456  
**Number of Locations:** Approximately **28** community office spaces  
**Base Location:** Co-located within participating community agency  
**Specialty:** Mental Health Crisis triage for consumers referred by Agency.

TEST teams work with consumers experiencing a mental health crisis to develop and maintain a level of stability that reduces the need for emergency services and minimizes incarcerations and psychiatric hospitalizations, freeing law enforcement and medical facilities resources.

Agencies requesting to co-locate a TEST team participate collaboratively with DBH. The Agency provides no cost office space and refers local consumers that may need TEST's specialized services. The referred consumer receives expedited access to mental health crisis triage from TEST staff co-located in the Agency offices. Consumers are given the opportunity to de-escalate and focus on their present needs and learn how TEST can assist them by linking them to appropriate services resulting in better consumer outcomes.

Exhibit I is attached to the MOU as an overview of the TEST program, specifies considerations unique to the Agency, defines the specific services available through the TEST program, and shares the State mandated reporting requirement.

I. Overview of TEST Current Successes and Examples

- A. Since the inception of TEST in 2014, the purpose was to improve consumer access to specialized behavioral health services during a mental health crisis and to minimize negative outcomes such as incarcerations and hospitalizations. In FY 2019/20, there were a total of 6,056 TEST encounters with co-located TEST staff in San Bernardino County.
- B. The following results can be highlighted:
- By DBH co-locating mental health crisis triage staff where consumers live and work the access to specialty mental health services for underserved consumers has increased.
  - Consumers receiving crisis triage followed by immediate linkage to appropriate services has improved consumer outcomes.
  - Decreased costs for law enforcement agencies and emergency room services as resources to assist consumers in crisis are diverted to TEST staff and more appropriate linked services.

- Increased number of consumers experiencing a mental health crisis diverted from the justice system, hospitals and/or psychiatric hospitalization.

C. TEST within your agency:

TEST’s Program Manager (PM) or designee will select the appropriate staff for your facility. The PM continually evaluates TEST locations on their successes for providing services/referrals/linkage for consumers in crisis. In the office space provided each TEST encounter will focus on individual consumer needs, and provide community base crisis triage combined with linkage to quality mental health services to improve consumer outcomes.

<b>TEST Commitment to Agency</b>	<b>TEST Provides</b>
To ensure 100% of Agency’s referrals, consumers experiencing a mental health crisis, are seen in a timely fashion, initiating improved consumer outcomes.	TEST staff provides immediate access to Specialty Mental Health Services for consumers <u>in a mental health crisis.</u>

D. Agencies Most Frequently Referred Consumers:

DBH shall screen consumers generated and referred by the Agency, shall develop policies and procedures regarding those persons who are eligible for services; and shall provide a linkage plan for all consumer interventions that aid in the maintenance of a stable level of functioning.

<b>Most Frequent Referrals</b>	<b>TEST Specific Focus</b>
Consumer in crisis, coming in contact with host Agency, having co-occurring mental health and substance use disorders	When TEST staff identifies consumers with co-occurring mental health and substance use disorders staff links/provides referrals to appropriate services
Consumers in crisis who may respond well to peer support and self-help groups	TEST staff arranges access to peer support and self-help groups
Consumers in crisis who are part of the 25% of statistical uninsured consumers	TEST serves uninsured consumers and links them with services/applying for or utilizing current insurance coverage
Consumers in crisis needing more than day one of crisis intervention/intensive case management. Usually needing an assisted period of stabilization with regular follow up such as several weeks of guidance and/or a more intensive level of assistance.	TEST will provide up to 59 days of case management services; TEST will provide linkage to all community resources and services accessible to DBH that could be beneficial to each unique consumer with a focus on long term stabilization, minimized use of emergency room services as well as reduced psychiatric hospital admissions.

II. Participating Agency Considerations

A. General Considerations

- Provide TEST staff access to data to track/report necessary information that measures reduced time law enforcement spends with individuals needing mental health services; reduced number of encounters between consumer and



law enforcement; reduced number of crisis referrals that result in arrests and jail time; and reductions in crisis referred consumers that do not need emergency services and hospitalization. Work collaboratively with DBH, as necessary.

B. Considerations Applicable to Law Enforcement

- At the Station Commander's discretion and with his/her approval, provide TEST staff with a hand-held radio after the appropriate C.L.E.T.S. testing has been taken and a statement of confidentiality has been signed and received by the Agency.
- Provide training to TEST staff for radio use with provided call signs.
- Provide TEST staff an unmarked safety vehicle, if available, to facilitate services.

III. Detailed Description of Available Services TEST Staff May Provide

- A. The behavioral health service provided comes at no cost to the Agency and is provided by the TEST program as an expedient link to behavioral health services for the community served. Initial services shall be directed toward achieving crisis intervention, diversion, and stabilization.
- B. TEST staff is called to assist Agency staff when a possible consumer is exhibiting symptoms of psychiatric crisis. If the consumer does not present as violent and/or a danger to staff safety and the community, TEST will immediately respond starting with triage to engage and support the consumer in crisis. TEST staff will provide crisis intervention with assessment and evaluation including collateral to help identify the needs for behavioral health services. The goal of intensive case management is to stabilize and successfully link consumers to DBH services and other community resources.

The following are services provided by TEST staff:

1. Crisis Intervention is a quick emergency response service enabling the individual to cope with a crisis, while maintaining his/her status as a functioning community member to the greatest extent possible. A crisis is an unplanned event that results in the individual's need for immediate service intervention. The response modality must allow for the resolution of the consumer's crisis. Crisis Intervention services are limited to stabilization of the presenting emergency. Service activities include but are not limited to assessment, evaluation, and collateral.
  - a. Assessment is an analysis of the history and current status of the individual's mental, emotional, or behavioral disorder. Relevant cultural factors and history may be included where appropriate. Assessments will include consumer level of acuity and risk.
  - b. Evaluation is an appraisal of the individual's community functioning in several areas including living situation, daily activities, social

support systems and health status. Cultural issues may be addressed where appropriate.

- c. Collateral is contact with one or more significant support persons in the life of the individual to assist the consumer in crisis as quickly as possible.
2. Intensive Case Management provided by TEST staff for up to 59 days to link the consumer with appropriate DBH and community resources for continued stability.
- C. Consumer interventions conclude following completion of services or consumer is at an acceptable level of stability and/or linkage with supportive resources.

#### IV. TEST Staff

All TEST staff shall be employed by DBH. The staff described will work the designated number of hours per week in full time equivalents (FTE's), and perform the job functions specified. Clinical staff providing TEST services shall be licensed or waived by viable internship by the State, if applicable.

##### A. The staffing will consist of the following:

An intensive case management treatment model will be used and will employ staff members that may include any combination of the following: Social Worker II, Alcohol and Drug Counselor, Mental Health Specialist, and Clinical Therapist, for the purpose of providing crisis intervention services, intensive case management and linkage within the dedicated office space, and in the field.

##### B. Staff Responsibilities:

1. Provide crisis triage/response/intervention.
2. Provide interagency coordination of crisis services.
3. Conduct case management needs assessment for possible intensive case management for consumers, identified and referred by the Agency, for referrals/linkage to DBH services and/or other community services.
4. Identify individuals with potential Substance Use Disorder and Recovery Services (SUDRS) needs and refer to community SUDRS services.
5. Provide short-term follow-up case management services (up to 59 days) while consumers are appropriately linked to DBH services and/or other community services.
6. Collaborate with Agency staff, community agencies, family, and other support persons to avoid psychiatric hospitalizations or law enforcement escalations and to improve consumers daily functioning.
7. Maintain appropriate and timely documentation, according to DBH policies and standards.
8. Attend co-location meetings such as, briefings, staff meetings, and/or other team/community meetings, as appropriate.

- C. Welfare and Institutions Code (WIC) 5150 Adults/5585 Children - Involuntary Psychiatric Hold:
  - Most TEST Paraprofessional staff are not able to write WIC 5150 or 5585 holds, but can assist law enforcement during WIC 5150 or 5585 evaluations by providing support to the officers writing the holds.
  - The exception occurs when a DBH Clinical Therapist is available and law enforcement is NOT available to do the WIC 5150/5585 evaluations. After an evaluation, if appropriate, DBH Clinical Therapist will write the needed hold.
- D. Transporting WIC 5150 or 5585 holds to appropriate psychiatric facility:
  - TEST staff is able to transport consumers that do not present as violent or a flight risk with appropriate Agency vehicle without a law enforcement officer. This method frees up law enforcement to return to the community instead of transporting the consumer and waiting at the hospital.
  - TEST staff can follow/meet law enforcement to/at the hospital and sit with the consumer that do not present as violent or a flight risk.

V. Data Reporting and Outcome Measures Requirements

- A. The assigned DBH Program Manager is responsible for reporting MHSA goals and outcome measures to the MHSA Coordinator, as appropriate.

The outcomes-based criteria which shall be measured are as follows:

GOALS	KEY OUTCOMES
Reduce unnecessary psychiatric hospitalizations	<ul style="list-style-type: none"> <li>• Increased use of alternative crisis interventions (e.g., CWIC, CCRT, CSU).</li> <li>• Increase in number of individuals diverted from hospitalization.</li> <li>• Increase access to and use of existing community resources (e.g., housing, mental health services, alcohol and drug services, medical treatment, education services, etc.)</li> </ul>

- B. DBH shall be responsible for collecting and entering data via the data collection instrument developed by the County and the State on all clients referred by the agency. DBH shall ensure the data is entered electronically at encrypted network sites and downloaded at the County centralized database (Integrated System). In addition to the below performance-based criteria, data collection shall include demographic data, the number of case openings, the number of case closings, and the services provided. DBH may base future extensions of this program upon positive performance outcomes, which DBH will monitor throughout the year. TEST staff, in collaboration with host Agency, shall collect data in a timely manner and submit it to the DBH MHSA coordinator.

VI. DBH Considerations and Special Provisions

- A. Program Manager shall monitor TEST staff and provide oversight on a regular basis in regard to compliance with all of the above requirements.

- B. It is further expected that the consumer population will be reflective of the social, economic and ethnic characteristics of the communities served by the Agency.



# CITY COUNCIL AGENDA REPORT

---

**DATE:** SEPTEMBER 20, 2021                      **FILE I.D.:** TRN110A  
**SECTION:** CONSENT - AGREEMENTS                      **DEPT.:** PUBLIC WORKS  
**ITEM NO.:** 4    **PREPARER:** S. STANTON

**SUBJECT:** 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

CONSIDER APPROVAL OF AGREEMENT NO. 21-63 WITH BIGGS CARDOSA AND ASSOCIATES FOR DESIGN AND CONSTRUCTION MANAGEMENT SERVICES FOR THE PACIFIC ELECTRIC TRAIL BRIDGE REPLACEMENT PROJECT

CONSIDER AUTHORIZING STAFF TO ADVERTISE FOR BID PROPOSALS FOR CONSTRUCTION OF THE PACIFIC ELECTRIC TRAIL BRIDGE REPLACEMENT PROJECT

---

**REASON FOR CONSIDERATION:** By City Council action on April 19, 2021, Resolution No. 21-3307 was adopted declaring a need for emergency contracting procedures for the Pacific Electric (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 County 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.

### ***September 15, 2021 Update***

The bridge is currently being fabricated by Contech Engineered Solutions. The bridge replacement project also requires environmental studies, Army Corp of Engineer permitting and special structural inspection services.

Biggs Cardosa Associates Inc. (BCA) is preparing the design and structural calculations for the fabrication of the bridge. BCA will assist with the environmental studies, permitting, inspections and preparation of plans and specifications for the bridge replacement project. Therefore, staff recommends the approval of Agreement No. 21-63 with Biggs Cardosa and Associates Inc. in an amount not to exceed \$99,676 for design services, \$16,350 for construction support and \$22,700 for special inspections services. In total, the assisted contracted services with BCA will total an amount not to exceed \$138,726.

Additionally, staff requests authorization to advertise the project for demolition of the existing bridge and installation of the new pre-fabricated bridge. Cost for advertisement should not exceed \$1,500.

**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 take the following actions:

1. Receive and file the status report on emergency contracting procedures for the Pacific Electric Trail Bridge Replacement Project.
2. Approve Agreement No. 21-63 with Biggs Cardosa and Associates Inc. and for design and construction management services for the Pacific Electric Trail Bridge Replacement Project.
3. Authorize staff to advertise for bid proposals for construction of the Pacific Electric Trail Bridge Replacement Project.



**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		Emergeeny 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  
**TOTAL: 81,312.00**

TAXABLE: No  
 CONFIRMING:

*Janet Kulleck*

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 OF MONTCLAIR**

**AGREEMENT FOR CONSULTANT SERVICES**

**PACIFIC ELECTRIC BIKE TRAIL BRIDGE CONSTRUCTION SUPPORT**

THIS AGREEMENT is made and effective as of September 21, 2021, between the City of Montclair, a municipal corporation ("City") and Biggs Cardosa Associates Inc. a California corporation ("Consultant"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. **TERM**

This Agreement shall commence on September 21, 2021, and shall remain and continue in effect for a period of 12 months until tasks described herein are completed, but in no event later than September 20, 2022, unless sooner terminated pursuant to the provisions of this Agreement.

2. **SERVICES**

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

3. **PERFORMANCE**

Consultant shall at all times faithfully, competently and to the best of his/her ability, experience and talent, perform all tasks described herein. Consultant shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of Consultant hereunder in meeting its obligations under this Agreement.

4. **CITY MANAGEMENT**

City's City Manager shall represent City in all matters pertaining to the administration of this Agreement, review and approval of all products submitted by Consultant, but not including the authority to enlarge the Tasks to be Performed or change the compensation due to Consultant. City's City Manager shall be authorized to act on City's behalf and to execute all necessary documents which enlarge the Tasks to be Performed or change Consultant's compensation, subject to Section 6 hereof.

5. **PAYMENT**

(a) The City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit A, attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. This amount shall not exceed



\$138,726 for the total term of the Agreement unless additional payment is approved as provided in this Agreement.

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

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

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

6. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE

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

(b) In the event this Agreement is terminated pursuant to this Section, the City shall pay to Consultant on a pro-rata basis the actual value of the work performed up to the time of termination, provided that the work performed is of value to the City. Upon termination of the Agreement pursuant to this Section, the Consultant will submit an invoice to the City pursuant to Section 6(c).

7. DEFAULT OF CONSULTANT

(a) The Consultant's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Consultant is in default for cause under the

terms of this Agreement, City shall have no obligation or duty to continue compensating Consultant for any work performed after the date of default and can terminate this Agreement immediately by written notice to the Consultant. If such failure by the Consultant to make progress in the performance of work hereunder arises out of causes beyond the Consultant's control, and without fault or negligence of the Consultant, it shall not be considered a default.

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

8. OWNERSHIP OF DOCUMENTS

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

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

9. INDEMNIFICATION

(a) Defense, Indemnity and Hold Harmless. Contractor shall defend, indemnify, and hold harmless the City, its present and former officers, directors, employees, agents, staff, volunteers, mayor, council, boards, committees, and

representatives, as broadly interpreted (collectively, the “Indemnified Parties”), of and from all claims, suits, demands, obligations, losses, damages, sums, or any other matters threatened or presently asserted, including but not limited to all legal fees, costs of defense and litigation expenses (including legal fees, expert fees and any other costs or fees, including those of adverse parties imposed on or sought against the Indemnified Parties), arising directly or indirectly out of any liability or claim of loss or liability for personal injury, bodily injury to persons, contractual liability, errors or omissions, breach, failure to perform, damage to or loss of property, or any other loss, damage, injury or other claim of any kind or nature arising out of the work to be performed by Contractor herein, caused by or arising out of the negligent acts or omissions, or intentional misconduct of Contractor, including its subcontractors, employees, agents, and other persons or entities performing work for Contractor.

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

(c) Subcontractors and Indemnification. Contractor agrees to and shall obtain executed indemnity agreements in favor of the Indemnified Parties with provisions identical to those set forth from each and every Subcontractor, Sub consultant, or other person or entity involved by, for, with, or on behalf of Contractor in the performance of any aspect of this Agreement. In the event Contractor fails to obtain such indemnity obligations, Contractor shall be fully responsible for each and every Subcontractor, Subconsultant or other person or entity in terms of defense, indemnity and hold harmless obligations in favor of the Indemnified Parties as set forth above. This obligation to indemnify and defend the Indemnified Parties is binding on the successors, assigns, or heirs of Contractor and shall survive the full performance or termination of

this Agreement. These indemnification provisions are independent of and shall not in any way be limited or superseded by the insurance requirements and insurance-related provisions of this Agreement.

(d) City Lost or Damaged Property – Theft. Contractor further agrees to pay or cause to be paid to the Indemnified Parties’ benefit, any and all damages, fines, penalties, and loss or theft of property of the City arising out of or related in any way to the negligent acts or omissions or intentional misconduct of Contractor or of Contractor’s officers, agents, representatives, employees, independent contractors, subcontractors or affiliated or related entities and/or its or their employees, agents and representatives, whether such actions, omissions to act, negligence or intentional conduct is or was authorized by this Agreement or not. City assumes no responsibility whatsoever for any property placed on the premises of City. Contractor further agrees to waive all rights of subrogation against the Indemnified Parties.

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

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

(g) The obligations of Contractor under this or any other provision of this Agreement shall not be limited by the provisions of any workers’ compensation act or similar act. The Contractor expressly waives any statutory immunity under such statutes or laws as to the Indemnified Parties. The Contractor’s indemnity obligation set forth in this Section 9 shall not be limited by the limits of any policies of insurance required or provided by the Contractor pursuant to this Agreement.

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

10. INSURANCE

The City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

(a) Types of Required Coverages

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

- (1) Commercial General Liability: Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office “occurrence” form CG 00 01, including products and completed operations, property damage, bodily injury, and personal & advertising injury with limits no less than \$3,000,000 per occurrence, and \$5,000,000 aggregate total bodily injury, personal injury, and property damage.
- (2) Automobile Liability Insurance: Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 0001 covering “Any Auto” (Symbol 1), including owned, non-owned and hired autos, or the exact equivalent, with minimum limits of \$5,000,000 for bodily injury and property damage, each accident. If Contractor owns no vehicles, auto liability coverage may be provided by means of a non-owned and hired auto endorsement to the general liability policy. Automobile liability insurance and endorsements shall be kept in force at all times during the performance of this Agreement.
- (3) Workers’ Compensation: Workers’ Compensation Insurance, as required by the State of California and Employer’s Liability Insurance with a limit of not less than \$1,000,000 each accident for bodily injury and \$1,000,000 each employee for bodily injury by disease.
- (4) Professional Liability: Professional Liability insurance with limit of not less than \$3,000,000 each claim. Covered professional services shall specifically include all work to be performed under the Agreement and delete any exclusion that may potentially affect the work to be performed.

(b) Endorsements

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

(1) Commercial General Liability

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

Additional Insured Endorsements shall not:

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

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

Primary Insurance: This insurance shall be primary and any other insurance, whether primary, excess, umbrella or contingent insurance, including deductible, or self-insurance available to the insureds added by endorsement, shall be in excess of, and shall not contribute with, this insurance. Coverage shall be at least as broad as ISO CG 20 01 04 13.

(2) Auto Liability

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

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

(3) Workers' Compensation

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

(c) Notice of Cancellation

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

## (d) Waiver of Subrogation

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

## (e) Evidence of Insurance

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

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

## (f) Deductible or Self-Insured Retention

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

## (g) Contractual Liability/Insurance Obligations

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

## (h) Failure to Maintain Coverage

Contractor agrees to suspend and cease all operations hereunder during such period of time as the required insurance coverage is not in effect and evidence of insurance has not been furnished to the City. The City shall have the right to withhold any payment due Contractor until Contractor has fully complied with the insurance provisions of this Contract. In addition, the City may either immediately terminate this

Agreement or, if insurance is available at a reasonable cost, City may take out the necessary insurance and pay, at Contractor's expense, the premium thereon.

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

(i) Acceptability of Insurers

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

(j) Claims Made Policies

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

(k) Insurance for Subcontractors

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

11. INDEPENDENT CONTRACTOR

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



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

12. LEGAL RESPONSIBILITIES

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

13. UNDUE INFLUENCE

Consultant declares and warrants that no undue influence or pressure is used against or in concert with any officer or employee of the City of Montclair in connection with the award, terms or implementation of this Agreement, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of the City of Montclair will receive compensation, directly or indirectly, from Consultant, or from any officer, employee or agent of Consultant, in connection with the award of this Agreement or any work to be conducted as a result of this Agreement. Violation of this Section shall be a material breach of this Agreement entitling the City to any and all remedies at law or in equity.

14. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES

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

15. RELEASE OF INFORMATION/CONFLICTS OF INTEREST

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

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

(c) Consultant shall comply with all applicable federal, state and local Conflict of Interest laws, including the Political Reform Act (California Government Code, Section 81000, *et. seq.*) and California Government Code, Section 1090, *et. seq.* Consultant covenants that neither he/she nor any officer or principal of their firm have any interest in, or shall acquire any interest, directly or indirectly, which will conflict in any manner or degree with the performance of their services hereunder. Consultant further covenants that in the performance of this Agreement, no person having such interest shall be employed by them as an officer, employee, agent or subconsultant. Consultant further covenants that Consultant has not contracted with nor is performing any services, directly or indirectly, with any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) owning property in the City or the study area and further covenants and agrees that Consultant and/or its subconsultants shall provide no service or enter into any agreement or agreements with a/any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) owning property in the City or the study area prior to the completion of the work under this Agreement. Further, Consultant covenants not to give or receive any compensation, monetary or otherwise, to or from the ultimate vendor(s) of services to the City as a result of the performance of this Agreement, or the services that may be procured by the City as a result of the recommendations made by the Consultant. The Consultant's covenant under this Section shall survive the termination of this Agreement.

16. NOTICES

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

To City:	Monica Heredia Director of Public Works/City Engineer City of Montclair 5111 Benito Street Montclair, CA 91763
----------	--

To Consultant: Biggs Cardosa Associates Inc.  
 500 S. Main Street, Ste 1200  
 Orange, CA 92868

17. ASSIGNMENT AND SUBCONTRACTING

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

18. LICENSES

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

19. GOVERNING LAW

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

20. ENTIRE AGREEMENT

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

21. CONFIDENTIALITY

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

22. DISCRIMINATION

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

23. EFFECT OF PARTIAL INVALIDITY

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

24. CLAIMS AGAINST CITY

Contractor must comply with the claim procedures set forth in Government Code sections 900, *et. seq.*, and/or Montclair Municipal Code, Chapter 1.16, as applicable, prior to filing any lawsuit against the City. Such claims and any subsequent lawsuit based upon the claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Contractor. If no such claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Contractor shall be barred from bringing and maintaining a valid lawsuit against the City.

25. AUTHORITY TO EXECUTE THIS AGREEMENT

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

26. NO THIRD PARTY BENEFICIARIES

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

27. COST OF LITIGATION

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

28. AUTHORITY TO EXECUTE THIS AGREEMENT

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

29. COUNTERPARTS

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

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

**CITY OF MONTCLAIR**

**CONSULTANT**

By: \_\_\_\_\_  
Javier John Dutrey, Mayor

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

Attest:

By: \_\_\_\_\_  
Andrea M. Myrick, City Clerk

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

Approved as to Form:

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

**EXHIBIT A**

**BIGGS CARDOSA  
ASSOCIATES INC**  
STRUCTURAL ENGINEERS

500 S. Main Street, Ste. 1200  
Orange, CA 92668-4607  
Telephone 714.550.4885

August 12, 2021

City of Montclair | Public Works Department  
5111 Benito Street  
Montclair, CA 91763

Attention: Steve Stanton

Subject: Pacific Electric Trail Bridge  
Biggs Cardosa Proposal

Dear Mr. Stanton:

Biggs Cardosa Associates, Inc. is pleased to submit our proposal to provide engineering, environmental, and structural observation services for the subject project.

**Project Understanding**

The existing Pacific Electric Trail Bridge is a timber bridge that is approximately 70' long and 16' wide. It is supported by concrete abutments that previously supported a railroad bridge. The bridge spans the San Antonio Creek Channel.

The bridge caught fire on Sunday, March 21 and is a total loss. Biggs Cardosa and the City of Montclair met on-site on Thursday, April 1 to discuss bridge replacement concepts. The intent is to replace the fire damaged timber bridge with a prefabricated pedestrian steel truss bridge. The existing concrete abutments will be re-used. No modifications to the San Antonio Creek Channel are proposed. The contractor may need to temporarily access the channel to remove the existing timber superstructure.

The City will purchase the prefabricated truss bridge directly from Contech Engineering Solutions (preliminary drawings are attached). Contech will provide shop drawings and calculations for the bridge superstructure. Biggs Cardosa will be responsible for coordinating with Contech, reviewing calculations and shop drawings, verifying the adequacy of the existing abutments, designing the bridge bearings and concrete deck, and for preparing plans and specifications for the demolition of the existing bridge and installation of the new bridge.

We are supported by the following subconsultants to assist in delivering the Scope of Work:

- ICF will prepare the necessary environmental documentation for CEQA compliance, including the Notice of Exemption, and technical memorandums related to biology, cultural resources, etc.
- BKF Engineers will assist in researching and coordinating utilities crossing the bridge, and preparing civil details for the bridge and trail approaches.



Pacific Electric Trail Bridge  
Biggs Cardosa Proposal

Please refer to the attached scopes for additional detail related to our subconsultants.  
The following sections of this proposal describe Biggs Cardosa’s Scope of Work in detail.

**Project Milestones**

The project is anticipated to include the following milestones:

- Design Services
  - Preparation of the necessary environmental documentation.
  - Utility investigation and research.
  - Development of plans and specifications to support the City in bidding the project.
- Construction Support Services
  - Engineering Support During Construction
  - Structural Observation

**Scope of Work (Design Services)**

**Task 1 – Project Management / Administration**

Biggs Cardosa will participate in internal coordination meetings, and meetings with the City, Contech, and the City’s on-call surveyor to resolve any design issues. Biggs Cardosa will submit monthly invoices and perform other general administrative project tasks.

*Assumptions:*

- It is assumed that the Period of Performance of this contract, including Construction Support Services, will be six (6) months from the date of Notice to Proceed. If exceeded, Biggs Cardosa requests the opportunity to update the attached Charge Rate Schedule.
- It is assumed that any permit application fees will be paid by the City.
- Up to four (4) meetings are included in this scope.

*Deliverables:*

- Meeting Participation
- Monthly Invoicing / Progress Reporting

**Task 2 – Plans, Specifications & Estimates (PS&E)**

Biggs Cardosa will prepare plans, technical specifications, structural and quantity calculations, and a construction cost estimate. Plans are anticipated to include a General Plan (showing the prefabricated truss bridge) and detail sheets for the deck, bearings, and other details not covered by Contech’s Scope of Work. A Draft Submittal will be prepared for City review, then an Issued for Bid Submittal will be prepared to advertise the construction contract.

*Assumptions:*

- Plans will be drafted in AutoCAD format. References will be made to City Standard Plans, Caltrans Standard Plans, and SPPWC, where applicable.





Pacific Electric Trail Bridge  
Biggs Cardosa Proposal

- Technical Specifications will be developed based on 2018 Caltrans Standard Specifications and Standard Special Provisions for structural items, and 2018 Greenbook for civil items.
- The City will prepare the Notice Inviting Bids and General Conditions, with input from Biggs Cardosa on technical items, as required.
- Preparation of water pollution control items (e.g. the SWPPP, if required) are anticipated to be prepared by the contractor.
- Cost estimates will be prepared in Excel format, and will use unit prices from similar projects and Caltrans Contract Cost Data.
- Structural calculations will be prepared in conformance with the AASHTO LRFD Pedestrian Bridge Guidelines.
- No modifications to the bridge substructure (besides drilling holes for bearing anchor bolts) or the San Antonio Creek Channel are anticipated.

*Deliverables:*

- Draft Plans
- Draft Technical Specifications
- Draft and Final Cost Estimate
- Structural Calculations
- Quantity Calculations
- Issued for Bid Plans
- Issued for Bid Technical Specifications

**Scope of Work (Construction Support Services)**

**Task 3 – Engineering Support During Construction**

Biggs Cardosa will provide assistance during bidding and construction. Our scope includes responding to Requests for Information (RFIs), reviewing shop drawings, visiting the site as needed during construction, and preparing record drawings based on the Contractor’s red-lined changes.

*Assumptions:*

- Attending a pre-construction meeting is included in this scope.
- Up to two (2) site visits are included in this scope.
- Responding to up to ten (10) RFIs are included in this scope.
- Reviewing up to three (3) shop drawings are included in this scope.

*Deliverables:*

- RFI Responses
- Shop Drawing Reviews
- Site Visits
- Record Drawings





Pacific Electric Trail Bridge  
Biggs Cardosa Proposal

Task 4 – Structural Observations

Structural observation by the Structural Engineer of Record (Biggs Cardosa Associates) will constitute periodic observation of the construction, recommendation on specified materials testing, and required construction quality control and provide a final letter of construction conformance that is often required by the oversight agencies.

Biggs Cardosa proposes to provide the following scope of structural observation services for the Pacific Electric Trail Bridge:

1. Perform site visits during construction of the following construction activities to observe that the proper construction quality control inspections are being performed:
  - a. During removal of existing bridges
  - b. During pedestrian bridge erection/installations
  - c. During Bridge Deck pour
2. Review the material test result reports performed by the third-party inspection.
3. Provide a Letter of Construction Conformance.

*Assumptions:*

- Refer to the attached fee proposal for estimated durations (number of days) for each activity.

*Deliverables:*

- Site Visits / Inspections
- Material Test Result Reports
- Letter of Construction Conformance

**Fee**

We propose to provide the Design Services and Engineering Support During Construction Services outlined in this proposal on a time and materials basis with the following not to exceed amounts:

- Design Services: \$99,676
- Engineering Support During Construction: \$16,350

We also propose to provide the Structural Observation Services outlined in this proposal for a Fixed Fee (Lump Sum) of \$22,700.

A breakdown of our fee proposal is attached along with our Charge Rate Schedule.



**BIGGS CARDOSA  
ASSOCIATES INC**  
STRUCTURAL ENGINEERS

500 S. Main Street, Ste. 1200  
Orange, CA 92668-4507  
Telephone 714.550.4665

**CHARGE RATE SCHEDULE**

Principal	\$240.00 - \$300.00
Associate	\$224.00
Engineering Manager	\$195.00
Senior Engineer	\$175.00
Project Engineer	\$160.00
Staff Engineer	\$148.00
Assistant Engineer	\$135.00
Junior Engineer	\$124.00
Senior Computer Drafter	\$140.00
Computer Drafter	\$124.00
Junior Computer Drafter	\$112.00
BIM/Visualization Specialist	\$140.00
Project Administrator	\$158.00
Project Coordinator	\$130.00
Secretarial Services	\$92.00
Construction Manager	\$230.00
Senior Structural Representative	\$204.00
Structural Representative	\$182.00
Assistant Structures Representative	\$146.00
Construction Bridge Inspector	\$165.00
Subconsultants	At Cost
Expenses	Cost Plus 10%
In-House CADD Plots	
Prints	\$0.32/ sq. ft.
Plots	\$1.60/ sq. ft.
Mylar Plots	\$3.20/ sq. ft.

Charge Rates Applicable thru March 31, 2022





# CITY COUNCIL AGENDA REPORT

---

<b>DATE:</b>	SEPTEMBER 20, 2021	<b>FILE I.D.:</b>	TRN510
<b>SECTION:</b>	CONSENT - RESOLUTIONS	<b>DEPT.:</b>	PUBLIC WORKS
<b>ITEM NO.:</b>	1	<b>PREPARER:</b>	M. HEREDIA
<b>SUBJECT:</b>	CONSIDER ADOPTION OF RESOLUTION NO. 21-3303 ADOPTING THE MEASURE I FIVE-YEAR CAPITAL IMPROVEMENT PLAN AND EXPENDITURE STRATEGY FOR FISCAL YEAR 2021-22 THROUGH FISCAL YEAR 2025-26		

---

**REASON FOR CONSIDERATION:** The San Bernardino County Transportation Authority (SBCTA) requires each local jurisdiction to annually update its Five-Year Capital Improvement Plan (CIP) funded by Measure I Local Pass-Through Program. The City Council is requested to consider adopting Resolution No. 21-3303 according to SBCTA requirements. A copy of proposed Resolution No. 21-3303 is attached for City Council review and consideration.

**BACKGROUND:** On September 8, 2020, the City Council adopted by Resolution the Fiscal Year 2020-21 through 2024-25 Measure I Five-Year Capital Improvement Program (CIP), also known as the “five-year look-ahead CIP plan.” The CIP identifies projects that will be funded by the local pass-through program. If necessary, the CIP can be amended by August 15, 2022.

**FISCAL IMPACT:** There is no immediate fiscal impact to the City with the adoption of Resolution No. 21-3303. Measure I Local Pass-Through Program funds are received monthly and will fund the projects listed on the Local Street Program. The City has successfully expedited construction of major infrastructure and utilized the available loan program from SBCTA to accelerate construction of the improvements needed along Monte Vista Avenue. The City will use future revenues from the SBCTA program to pay back the loan.

**RECOMMENDATION:** Staff recommends that the City Council adopt Resolution No. 21-3303 adopting the Five-Year Capital Improvement Plan (CIP) and the Expenditure Strategy for Fiscal Year 2021-22 through Fiscal Year 2025-26.

**RESOLUTION NO. 21-3303**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR, STATE OF CALIFORNIA, ADOPTING THE MEASURE I FIVE-YEAR CAPITAL IMPROVEMENT PROGRAM AND EXPENDITURE STRATEGY FOR FISCAL YEAR 2021/22 TO FISCAL YEAR 2025/26**

**WHEREAS**, San Bernardino County voters approved passage of Measure I in November 2004, authorizing the San Bernardino County Transportation Authority (SBCTA) to impose a one-half of one percent retail transactions and use tax applicable in the incorporated and unincorporated territory of the County of San Bernardino; and

**WHEREAS**, revenue from the tax can only be used for transportation improvement and traffic management programs authorized in the Expenditure Plans set forth in Ordinance 04-01 of the Authority, and

**WHEREAS**, the SBCTA's Measure I Strategic Plan requires each local jurisdiction applying for revenue from the Local Streets Program to annually adopt and update a Five-Year Capital Improvement Plan; and

**WHEREAS**, California Public Utilities Code 190300 and Ordinance No. 04-1 require each local jurisdiction to maintain General Fund expenditures for transportation-related construction and maintenance activities at the required Maintenance of Effort base year level in each fiscal year of the adopted Five-Year Capital Improvement Plan, which for the City of Montclair is \$894,728.

**NOW THEREFORE BE IT RESOLVED** that the City Council of the City of Montclair hereby adopts the Measure I Five-Year Capital Improvement Program and Expenditure Strategy for Fiscal Year 2021-22 to Fiscal Year 2025-26 attached to this resolution.

**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 Resolution No. 21-3303 was duly adopted by the City Council of said city and was approved by the Mayor of said city at a regular meeting of said City Council held on the XX day of XX, 2021, and that it was adopted by the following vote, to-wit:

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

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

CITY OF MONTCLAIR

**MEASURE I CAPITAL IMPROVEMENT PLAN**

**EXPENDITURE STRATEGY**

**Fiscal Year 2021/2022 to Fiscal Year 2025/2026**

The City of Montclair plans on using Measure I as matching funds for federal funds associated with the design and construction of the Central Bridge at the Union Pacific Railroad tracks. The funds will also be utilized to service the I-10/Monte Vista Interchange Term Loan Agreements in place. The City also intends to expend Measure I funds on maintenance of City streets to the extent permissible under SBCTA policies.

Resolution Number: 21-3303  
 Resolution Approval Date: September 20, 2021  
 Contact Person/Title: Monica Heredia  
 Phone: 909-625-9441  
 Email: mheredia@cityofmontclair.org

**Measure I Local Pass-through Program  
 FIVE YEAR CAPITAL IMPROVEMENT PLAN  
 Fiscal Years 2021/2022 thru 2025/2026**

**Montclair**

6/30/21 Carryover Balance: **\$0.00**

	Is Project in City's Non-motorized Transportation Plan? (Yes/No)	Does Project have an ATP Component? (Yes/No)	Is the Project on the City's Neast Study List? (Public/DF Share %)	Estimated Total Project Cost	FY2021/22 Est. Revenue		FY2022/23 Est. Revenue		FY2023/24 Est. Revenue		FY2024/25 Est. Revenue		FY2025/26 Est. Revenue		Total Est. Rev.
					Carryover Funds	Current Estimate	Carryover Funds	Current Estimate	Carryover Funds	Current Estimate	Carryover Funds	Current Estimate	Carryover Funds	Current Estimate	
<b>Named Projects:</b>															
Central Bridge Consultant Costs	No	No	0%	\$50,000.00	0.00	50,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	\$4,204,896.00
Central Bridge Local Match	No	No	0%	\$400,000.00	0.00	400,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	\$50,000.00
I-10/Monte Vista Interchange Term Loan Agreement	No	No	0%	\$33,144,900.00	0.00	74,620.00	1,348,156.00	0.00	843,707.00	0.00	0.00	0.00	0.00	0.00	\$400,000.00
Monte Vista Avenue Grade Separation Handrail Replacement	No	No	0%	\$150,000.00	0.00	150,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	\$2,266,483.00
				<b>Named Projects Total:</b>	\$0.00	\$674,620.00	\$1,348,156.00	\$0.00	\$843,707.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$150,000.00
				<b>Total Carryover + Estimate:</b>	\$674,620.00	\$674,620.00	\$1,348,156.00	\$843,707.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$2,866,483.00
				<b>(%) Named Projects to FY Est. Revenue:</b>	85.69%		164.76%	100.21%							

**Categorical Projects:**

	No	Yes	Estimated Total Project Cost	FY2021/22 Est. Revenue		FY2022/23 Est. Revenue		FY2023/24 Est. Revenue		FY2024/25 Est. Revenue		FY2025/26 Est. Revenue		Total Est. Rev.
				Carryover Funds	Current Estimate	Carryover Funds	Current Estimate	Carryover Funds	Current Estimate	Carryover Funds	Current Estimate			
Pavement Management System - Citywide	No	No	\$50,000.00	0.00	50,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	\$50,000.00
Traffic Safety Improvements - Citywide	No	No	\$50,000.00	0.00	50,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	\$50,000.00
			<b>Categorical Projects Total:</b>		\$100,000.00		\$0.00		\$0.00		\$0.00		\$0.00	\$100,000.00
			<b>(%) Categorical Projects to FY Est. Revenue:</b>		12.70%		0.00%		0.00%		0.00%		0.00%	
				<b>Total Carryover Programming:</b>										\$0.00
				<b>Total Estimated Programming:</b>										\$2,966,483.00
				<b>Total Programming:</b>										\$2,966,483.00

Total Programming is currently 70.55% (must not exceed 150%) of Carryover Balance + Total Est. Revenue.





# CITY COUNCIL AGENDA REPORT

---

<b>DATE:</b>	SEPTEMBER 20, 2021	<b>FILE I.D.:</b>	GRT125/PRK650
<b>SECTION:</b>	CONSENT - RESOLUTIONS	<b>DEPT.:</b>	HUMAN SVCS./PUBLIC WORKS
<b>ITEM NO.:</b>	2	<b>PREPARER:</b>	A. COLUNGA

**SUBJECT:** CONSIDER ADOPTION OF RESOLUTION NO. 21-3304 AUTHORIZING THE APPLICATION TO THE CALIFORNIA DEPARTMENT OF PARKS AND RECREATION FOR THE PER CAPITA GRANT PROGRAM FOR THE REVITALIZATION OF RECREATION ELEMENTS AT SUNSET PARK

CONSIDER AUTHORIZING CITY MANAGER EDWARD C. STARR TO EXECUTE DOCUMENTS RELATED TO THE PER CAPITA PROGRAM

---

**REASON FOR CONSIDERATION:** The City Council is requested to consider the adoption of Resolution No. 21-3304 authorizing the application to the California Department of Parks and Recreation for the Per Capita Grant Program for the revitalization of recreation elements at Sunset Park. Further, the City Council is requested to authorize City Manager Edward C. Starr to execute documents related to the Per Capita Program.

**BACKGROUND:** The California Department of Parks and Recreation released the request for applications for the Per Capita program funded by proposition 68 which was approved by state voters in the June 2018 election. Funds are available to the City of Montclair allocated on a per capita basis.

The primary purpose of the funding must be public recreation and based on those funding requirements, staff evaluated our current recreation elements. Staff recommends revitalizing recreation elements at Sunset Park including the playground and minor recreation supporting equipment as funding allows. Upon review of the City parks, the playground at Sunset Park is in most need of being replaced.

The Per Capita Grant Program does not require a match for Sunset Park, as it falls within a severely disadvantaged area of our community. Outreach and community will be conducted as new playground equipment for Sunset Park is selected. Resolution No. 21-3304 authorizes the application to be submitted and authorizes the City Manager Edward C. Starr to execute documents related to the Per Capita Program.

**FISCAL IMPACT:** Adoption of proposed Resolution No. 21-3304 would have no direct fiscal impact on the City's General Fund at this time, but may result in the award of \$177,952 for the revitalization of recreation elements at Sunset Park. Future impacts to the City's general fund include the requirement to maintain the park for thirty years.

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

1. Adopt Resolution No. 21-3304 authorizing the application to the California Department of Parks and Recreation for the Per Capita Grant Program for the revitalization of recreation elements at Sunset Park.
2. Authorize City Manager Edward C. Starr to execute documents related to the Per Capita Program.

**RESOLUTION NO. 21-3304**

**A RESOLUTION OF THE CITY COUNCIL OF  
THE CITY OF MONTCLAIR APPROVING THE  
APPLICATION FOR PER CAPITA GRANT  
FUNDS**

**WHEREAS**, the State Department of Parks and Recreation has been delegated the responsibility by the Legislature of the State of California for the administration of the Per Capita Grant Program, setting up necessary procedures governing application(s); and

**WHEREAS**, said procedures established by the State Department of Parks and Recreation require the grantee's Governing Body to certify by resolution the approval of project application(s) before submission of said applications to the State; and

**WHEREAS**, , the grantee will enter into a contract(s) with the State of California to complete project(s);

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

1. Approves the filing of project application(s) for Per Capita program grant project(s); and
2. Certifies that said grantee has or will have available, prior to commencement of project work utilizing Per Capita funding, sufficient funds to complete the project(s); and
3. Certifies that the grantee has or will have sufficient funds to operate and maintain the project(s), and
4. Certifies that all projects proposed will be consistent with the park and recreation element of the CITY OF MONTCLAIR general or recreation plan (PRC §80063(a)), and
5. Certifies that these funds will be used to supplement, not supplant, local revenues in existence as of June 5, 2018 (PRC §80062(d)), and
6. Certifies that it will comply with the provisions of §1771.5 of the State Labor Code, and
7. (PRC §80001(b)(8)(A-G)) To the extent practicable, as identified in the "Presidential Memorandum--Promoting Diversity and Inclusion in Our National Parks, National Forests, and Other Public Lands and Waters," dated January 12, 2017, the CITY OF MONTCLAIR will consider a range of actions that include, but are not limited to, the following:
  - (A) Conducting active outreach to diverse populations, particularly minority, low-income, and disabled populations and tribal communities, to increase awareness within those communities and the public generally about specific programs and opportunities.
  - (B) Mentoring new environmental, outdoor recreation, and conservation leaders to increase diverse representation across these areas.
  - (C) Creating new partnerships with state, local, tribal, private, and nonprofit organizations to expand access for diverse populations.
  - (D) Identifying and implementing improvements to existing programs to increase visitation and access by diverse populations, particularly minority, low-income, and disabled populations and tribal communities.
  - (E) Expanding the use of multilingual and culturally appropriate materials in public communications and educational strategies, including through social media strategies, as appropriate, that target diverse populations.
  - (F) Developing or expanding coordinated efforts to promote youth engagement and empowerment, including fostering new partnerships with diversity-serving and youth-serving organizations, urban areas, and programs.
  - (G) Identifying possible staff liaisons to diverse populations.



8. Agrees that to the extent practicable, the project(s) will provide workforce education and training, contractor and job opportunities for disadvantaged communities (PRC §80001(b)(5)).
9. Certifies that the grantee shall not reduce the amount of funding otherwise available to be spent on parks or other projects eligible for funds under this division in its jurisdiction. A one-time allocation of other funding that has been expended for parks or other projects, but which is not available on an ongoing basis, shall not be considered when calculating a recipient's annual expenditures. (PRC §80062(d)).
10. Certifies that the grantee has reviewed, understands, and agrees to the General Provisions contained in the contract shown in the Procedural Guide; and
11. Delegates the authority to the City Manager or designee to conduct all negotiations, sign and submit all documents, including, but not limited to applications, agreements, amendments, and payment requests, which may be necessary for the completion of the grant scope(s); and
12. Agrees to comply with all applicable federal, state and local laws, ordinances, rules, regulations and guidelines.

**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 Resolution No. 21-3304 was duly adopted by the City Council of said city and was approved by the Mayor of said city at a regular meeting of said City Council held on the XX day of XX, 2021, and that it was adopted by the following vote, to-wit:

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

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



# CITY COUNCIL AGENDA REPORT

---

<b>DATE:</b>	SEPTEMBER 20, 2021	<b>FILE I.D.:</b>	FIN357
<b>SECTION:</b>	CONSENT - RESOLUTIONS	<b>DEPT.:</b>	CITY MGR.
<b>ITEM NO.:</b>	3	<b>PREPARER:</b>	E. STARR
<b>SUBJECT:</b>	CONSIDER ADOPTION OF RESOLUTION NO. 21-3322 ADOPTING UPDATED PROCEDURES APPLICABLE TO CONTINUING DISCLOSURE OBLIGATIONS UNDERTAKEN BY THE CITY AND ITS RELATED ENTITIES IN CONNECTION WITH BOND ISSUES		

---

**REASON FOR CONSIDERATION:** With respect to municipal bond issues, the municipal entity that issued or otherwise is responsible for payment on the bonds is generally required to undertake certain continuing disclosure obligations, including annual financial updates and notices of certain events, so that the information is available to the investing public. In 2014, the City Council adopted Resolution No. 14-3054, adopting for the City a set of Continuing Disclosure Compliance Procedures (the “Previously Adopted Procedures”) to formalize the City’s internal process in ensuring compliance with its bond continuing disclosure obligations. There has been presented to the City Council updated Continuing Disclosure Compliance Procedures reflecting recent changes to the law.

**BACKGROUND:** In view of increased emphasis by U.S. Securities and Exchange Commission (the “SEC”) on municipal entities’ compliance with bond-related continuing disclosure undertakings, the City Council adopted the Previously Adopted Procedures around the time that Montclair Public Financing Authority 2014 Lease Revenue Bonds were issued. The Previously Adopted Procedures formalized the City’s internal process in ensuring compliance with these continuing disclosure obligations.

The SEC has amended the rule pertaining to the continuing disclosure in recent years. Staff recommends the adoption of updated Continuing Disclosure Compliance Procedures, in anticipation of contemplated issuance of the City’s pension obligation bonds and the contemplated issuance of another series of lease revenue bonds by the Montclair Public Financing Authority to finance various infrastructure projects.

**FISCAL IMPACT:** No significant fiscal impact will result from the adoption of these procedures.

**RECOMMENDATION:** Staff recommends that Council adopt Resolution No. 21-3322 adopting updated continuing disclosure compliance procedures for bonds issued by the City and its related entities.

RESOLUTION NO. 21-3322

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR ADOPTING UPDATED CONTINUING DISCLOSURE COMPLIANCE PROCEDURES

WHEREAS, the City of Montclair or one or more of its related entities, such as joint powers authorities formed by the City (collectively, the "City") has issued bonds which are currently outstanding and, in connection with such bonds, has agreed to undertake certain continuing disclosure obligations pursuant to Rule 15c2-12 ("Rule 15c2-12") promulgated by the U.S. Securities and Exchange Commission (the "SEC") pursuant to the Securities Exchange Act of 1934; and

WHEREAS, the City may issue additional bonds from time to time and, in connection with such bonds, agree to undertake certain continuing disclosure obligations pursuant to Rule 15c2-12; and

WHEREAS, in 2014, the City Council adopted Resolution No. 14-3054, adopting for the City a set of Continuing Disclosure Compliance Procedures (the "Previously Adopted Procedures"); and

WHEREAS, there has been presented to the City Council updated Continuing Disclosure Compliance Procedures, as set forth in Exhibit A (the "Updated Procedures"), reflecting changes to Rule 15c2-12 promulgated in recent years and other updates;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MONTCLAIR DOES HEREBY RESOLVE, DETERMINE AND ORDER AS FOLLOWS:

Section 1. The above recitals, and each of them, are true and correct.

Section 2. The Updated Procedures, as set forth in Exhibit A, are hereby approved and adopted and shall be made applicable to all bonds (or other municipal securities) issued by or on behalf of the City, for which the City undertakes continuing disclosure obligations in connection with Rule 15c2-12. The Updated Procedures shall supersede the Previously Adopted Procedures.

Section 3. The City Manager, in consultation with counsel, is hereby authorized to amend the Procedures from time to time as necessary or appropriate.

Section 4. The City Manager, the Finance Manager and all other officers of the City are hereby authorized and directed, jointly and severally, to do any and all things, to effectuate the purposes of this Resolution and to implement the Updated Procedures any such actions previously taken by such officers are hereby ratified and confirmed.

Section 5. This Resolution shall take effect immediately upon adoption.

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 Resolution No. 21-3322 was duly adopted by the City Council of said city and was approved by the Mayor of said city at a regular meeting of said City Council held on the XX day of XX, 2021, and that it was adopted by the following vote, to-wit:

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

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

EXHIBIT A

City of Montclair  
Updated Continuing Disclosure Compliance Procedures

(attached)

## CONTINUING DISCLOSURE COMPLIANCE PROCEDURES

### 1. BACKGROUND AND TRAINING

Rule 15c2-12, promulgated by the U.S. Securities and Exchange Commission (the “SEC”) pursuant to the Securities Exchange Act of 1934, requires certain information be disclosed to the municipal bond marketplace. The SEC has stated that it has a mandate “to adopt rules reasonably designed to prevent fraudulent, deceptive or manipulative acts or practices in the market for municipal securities.” The SEC has taken the position that material non-compliance by an issuer with past continuing disclosure obligations may warrant, without corrective actions, an underwriter being prohibited from underwriting the issuer’s bonds, and thus prevent the issuer from accessing the municipal bond marketplace.

The following procedures will help ensure compliance by the City of Montclair and its related public entities with Rule 15c2-12 and its continuing disclosure obligations under continuing disclosure agreements or similar instruments executed in connection with its municipal bond offerings. Certain capitalized terms herein will have the meanings ascribed to them in the respective continuing disclosure agreements or similar instruments.

### 2. DESIGNATION OF RESPONSIBLE OFFICER

The Responsible Officer will be the officer or other employee responsible for compiling and filing Annual Reports (as defined in the continuing disclosure agreements) and notices regarding enumerated events (“Event Notices”), if required to be filed pursuant to the continuing disclosure agreements or similar instruments. The initial Responsible Officer will be the City’s Finance Manager. From time to time, the City Manager may designate a different person to serve as the Responsible Officer.

### 3. RESPONSIBLE OFFICER TO BECOME FAMILIAR WITH “EMMA” AND FILING REQUIREMENTS UNDER CONTINUING DISCLOSURE AGREEMENTS

- A. The Responsible Officer will take such action as may be necessary or appropriate to become familiar with the Municipal Securities Rulemaking Board’s Electronic Municipal Market Access (“EMMA”) website. The Responsible Officer should understand how to locate on EMMA the filings made by the City in connection with bonds issued by the City. If the City is serving as its own Dissemination Agent, the Responsible Officer will establish a user identification and password for EMMA and become familiar with uploading documents onto EMMA.
- B. For each separate issue of the City’s outstanding bonds, the Responsible Officer will read the related continuing disclosure agreement or similar instrument and identify the following:
  - (i) The date by which the Annual Report must be filed;
  - (ii) The contents needed to be included in the Annual Report;
  - (iii) The Event Notices that must be filed; and
  - (iv) When Event Notices are required to be filed.

- C. The Responsible Officer should be aware of the types of events (the “Listed Events”) that would require the filing of an Event Notice. If clarification is required regarding what is meant by a Listed Event, the City’s bond counsel or disclosure counsel should be contacted to seek such clarification.
4. PREPARATION AND FILING OF ANNUAL REPORTS AND EVENT NOTICES
- A. The City will strive to begin the process of completing its audited financial statements as soon as practicable after the close of each Fiscal Year. Such audited financial statements should be completed in time to be submitted to the City Council (or other governing board) before the date that the Annual Report must be filed.
  - B. The Responsible Officer will identify any information that is required to be included in the Annual Report but is not part of the City’s audited financial statements, and contact the sources necessary to compile such information as soon as possible after the close of each Fiscal Year. The Responsible Officer will consider adding any information required by its continuing disclosure agreements or similar instrument not already included in its audited financial statements into a supplementary information section of audited financial statements.
  - C. Following the compilation of the information that is to be included in the Annual Report, the Responsible Officer will (or will cause the Dissemination Agent to) submit the Annual Report to EMMA on or before the date on which the Annual Report must be filed.
  - D. Each year, by no later than the date that the Annual Report is required to be filed on EMMA, the Responsible Officer will review the EMMA website to confirm that the Annual Report has been posted with respect to all applicable securities. If the Annual Report has not been posted, the dissemination agent will be notified, or the Responsible Officer will file the Annual Report, as applicable.
  - E. The Responsible Officer will identify, or with the assistance of consultants engaged to monitor compliance will identify, the occurrence of a Listed Event and prepare, or have prepared, the appropriate Event Disclosure. The Responsible Officer will file (or will cause the dissemination agent to file) Event Notices on EMMA in a timely manner, when so required by the continuing disclosure agreements or similar instrument. The Responsible Officer will contact the City’s bond counsel or disclosure counsel if there are any questions regarding whether an event constitutes a Listed Event, and whether such occurrence will require the filing of an Event Notice.
  - F. In connection with amendments to Rule 15c2-12 adopted in 2018, for any new continuing disclosure agreement executed on or after February 27, 2019 with respect to a debt issue (the “Debt”), the Responsible Officer will, before the Debt issuance date, review the City’s financial records and create a list of the City’s existing financial obligations (as such term is defined by Rule 15c2-12) (the “Financial Obligations List”). The Financial Obligations List will be continuously updated by the Responsible Officer. Whenever the City prepares to enter into a new financial obligation or modify the terms of an existing financial obligation, the Responsible Officer will determine whether the

incurrence of such financial obligation or modification of terms would require an Event Notice under the continuing disclosure agreement. If a determination is made that an Event Notice would be required, the Responsible Officer, in consultation with legal counsel, will cause the Event Notice to be filed on a timely basis, when so required by the continuing disclosure agreements or similar instrument.

- G. Certain Listed Events are qualified by a materiality standard. Materiality is determined according to SEC guidance available at the time. If clarification is required regarding materiality on any potential Listed Event, The Responsible Officer will contact the City's bond counsel or disclosure counsel to seek clarification. The Responsible Officer's determination of materiality will depend on the facts and circumstances surrounding the event and will take into consideration many factors including, but not limited to, the following:
- Source of security pledged for repayment of the financial obligation,
  - Rights associated with such a pledge (e.g., senior versus subordinate),
  - Principal amount or notional amount (in the case of a derivative instrument or guarantee of a derivative instrument),
  - Covenants,
  - Events of default,
  - Remedies,
  - Other similar terms that affect security holders to which the issuer agreed at the time of incurrence,
  - Size of the overall balance sheet,
  - Size of existing obligations, and
  - Size of the overall bond portfolio.

5. RETENTION OF RECORDS

- A. The documents identified below should be retained for a period of at least six years following the termination of the City's obligations (*i.e.*, the legal defeasance, prior redemption or payment in full of the related issue of municipal securities) under a continuing disclosure agreement or similar instrument.
- B. The City will retain, in its records, the transcripts containing the documents related to each issue of bonds or other obligations of the City.
- C. The City will retain copies, in paper or electronic form, of each Listed Event Notice submitted to EMMA.
- D. The City will retain copies, in paper or electronic form, of each Annual Report submitted to EMMA.
- E. To the extent that the content of an Annual Report is based on source materials created or obtained by the City, the City will retain in its records, such source materials created or obtained by the City.

**MINUTES OF THE MEETING OF THE MONTCLAIR  
PERSONNEL COMMITTEE HELD ON MONDAY,  
AUGUST 16, 2021, AT 6:30 P.M. IN THE CITY  
ADMINISTRATIVE OFFICES, 5111 BENITO STREET,  
MONTCLAIR, CALIFORNIA**

---

**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 August 2, 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 August 2, 2021.

**IV. PUBLIC COMMENT - None**

**V. CLOSED SESSION**

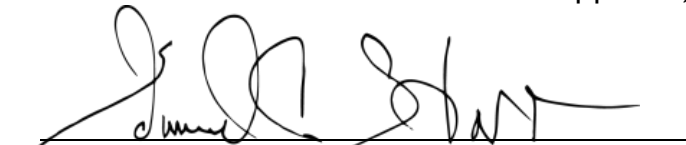
At 6:31 p.m., the Personnel Committee went into Closed Session regarding personnel matters related to appointments, resignations/terminations, and evaluations of employee performance.

At 6:55 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 6:55 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 16, 2021 AT 7:00 P.M. IN THE CITY COUNCIL CHAMBERS, 5111 BENITO STREET, MONTCLAIR, CALIFORNIA

---

I. CALL TO ORDER

Mayor/Chair Dutrey called the meeting to order at 7:00 p.m. and asked for a moment of silence to recognize the American soldiers whose lives were lost during the war in Afghanistan including Montclair resident **Alex Olscero** who perished in October 31, 2006.

II. INVOCATION

The invocation was given by Montclair Police Chaplain Vicki Brobeck.

III. PLEDGE OF ALLEGIANCE

Council Member/Director Lopez 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

A. COVID-19 Community Recognition Award

Mayor Dutrey announced tonight's award recipients are Montclair Police Department Chaplains **Vicki Brobeck**, **Josh Matlock**, and **Joe McTarsney**; and Montclair Fire Department Chaplains **Jimmy Crowell** and **Alan Olmos**. He along with Mayor Pro Tem Ruh and Council Members Johnson, Martinez, and Lopez presented each Chaplain with Certificates of Recognition.

Mayor Dutrey stated Montclair's Police and Fire Chaplains prayed for the City throughout the pandemic and have provided support and comfort to the City's first responders, staff, and the community.

VI. PUBLIC COMMENT

A. **Mrs. Carolyn Raft**, resident, asked for prayers for those who remain in Afghanistan following the United States Military's withdrawal and the Taliban's hostile takeover of the country.

B. **Mr. Bill Kaufman** urged the City to move forward with its formerly proposed plan to allow cannabis business in the City, noting neighboring cities of Rancho Cucamonga, Claremont, and Corona are moving quickly in order to gain the economic advantage of being early to welcome and attract high quality businesses in the industry.

C. **Ms. Rose Delgado**, resident, stated her concerns regarding pedestrian safety around Vernon Middle School, noting she recently witnessed children narrowly escape being hit by a car, including her own daughter. She requested the City perform another safety assessment of the intersections around the schools and implement more safety measures.

D. **Ms. Ruby Long**, Field Representative for **San Bernardino County Fourth District Supervisor Curt Hagman**, stated the District will be hosting the following events:

- A community open house on Thursday, September 9, from 5:00 to 7:00 p.m. at **Supervisor Hagman's** District Office located at 14010 City Center Drive in Chino Hills. Various County Departments will be available to educate about County resources for residents and businesses. Food will be served and there will be a raffle.
  - The District's quarterly shredding event on Saturday, September 25, from 9:00 a.m. to noon at Upland Memorial Park. County residents can bring personal papers for shredding, with a limit of three boxes per person.
- E. **Mr. Bruce Culp**, resident, stated he is happy to learn progress is being made on replacing the **Pacific Electric Trail** bridge. He thanked City Manager Starr, the City Council, and City staff for continuing to advocate to secure funding to bring the **Gold Line** to Montclair, noting he fully supports the mission as a resident of the City's north Montclair transit-oriented district. He also encouraged everyone to vote "no" on the state's gubernatorial recall election.

## 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**

#### **Consider Setting a Public Hearing for Monday, September 20, 2021, at 7:00 p.m. to Consider Adoption of Ordinance No. 21-996**

Mayor Dutrey declared it the time and place for a public hearing related to Ordinance No. 20-996 and invited members of the audience to provide comments.

**Mr. Culp** stated his support for this Ordinance as a measure to address the homeless crisis and noted that, while he realizes it is a state mandate that many local officials and residents do not agree with, he feels it is necessary for the state to overrule local opposition. He requested the City Council consider additional measures to reduce the environmental impacts of increased density such as requiring electric vehicle charging stations and solar energy to reduce greenhouse gas emissions.

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

Council Member Johnson noted there are no provisions to construct additional parking spaces on the property and asked if the City is precluded from imposing such requirements by the state.

Director of Community Development Diaz stated the City is barred from requiring the addition of or limits to parking in relation to ADUs and JADUs.

Council Member Lopez noted this would exacerbate parking issues that already exist throughout the single family neighborhoods. He asked if the pre-approved designs must be used for ADUs.

Director of Community Development Diaz stated the pre-approved designs are intended to expedite the process for those who use them but they are not required.

Mayor Pro Tem Ruh stated as an affordable housing advocate he supports this Ordinance, noting while local governments oppose state mandates, they tend to neglect their local responsibility to provide affordable housing for working class members of their communities, low income families, and college students.

Mayor Dutrey stated he would like there to be a deed restriction on properties with JADUs disclosing to future buyers that the owner is required to occupy one of the units as their primary residence.

Mayor Dutrey asked if the construction of a new detached ADU would requires energy efficient systems like new construction homes do.

Director of Community Development Diaz stated all new construction requires it.

Council Member Lopez asked why owner occupancy cannot be required for one of the units for homes with detached ADUs.

Director of Community Development Diaz stated owner occupancy requirements can be reinstated after 2025 for detached ADUs.

Moved by Mayor Pro Tem Ruh, seconded by Council Member Johnson, and carried that Ordinance No. 20-996 be read by number and title only, further reading be waived, and this be declared its first reading; and that the City Council set a public hearing for Monday, September 20, 2021, at 7:00 p.m. to consider second reading and adoption of Ordinance No. 20-996.

First reading of Ordinance No. 20-996 was approved, and public hearing for second reading was set unanimously by the following roll call vote:

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

**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**

**Consider Setting a Public Hearing for Monday, September 20, 2021, at 7:00 p.m. to Consider Adoption of Ordinance No. 21-998**

Mayor Dutrey declared it the time and place for a public hearing related to Ordinance No. 20-998 and invited members of the audience to provide comments.

**Ms. Sasha Riedisser** thanked Director of Community Development Diaz and the Planning Division for ensuring the Ordinance allows for adequate access to telecommunication services for the community.

**Mr. Culp** expressed his support for the expansion of wireless infrastructure to keep up with advances in technology.

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

Council Member Johnson asked if there could be multiple poles in a single location.

Director of Community Development Diaz advised it is typical for wireless companies to share the costs for hosting their facilities on the same structure.

Council Member Johnson asked if these structures can be located in the north Montclair commercial areas.

Director of Community Development Diaz stated they will likely be easier to integrate with the newer and taller buildings in that area and noted some older ones in that area will require updates soon to support new facilities and to be in compliance with the new design standards.

Council Member Lopez asked if the designs must be trees.

Director of Community Development Diaz stated there are several different types of designs other than trees such as obelisks or flag

poles.

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

Council Member Lopez referenced the letter from Bethany Baptist Church referenced in the report asked if churches are inquiring about hosting these structures on their properties.

Director of Community Development Diaz stated there has been interest from several churches.

Mayor Pro Tem Ruh asked if residents could have these in their yards.

Director of Community Development Diaz stated they are not permitted in most residential zones.

Moved by Mayor Pro Tem Ruh, seconded by Council Member Lopez, and carried that Ordinance No. 20-998 be read by number and title only, further reading be waived, and this be declared its first reading; and that the City Council set a public hearing for Monday, September 20, 2021, at 7:00 p.m. to consider second reading and adoption of Ordinance No. 20-998.

First reading of Ordinance No. 20-998 was approved, and public hearing for second reading was set unanimously by the following roll call vote:

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

#### **VIII. CONSENT CALENDAR**

Council Member Lopez noted he had questions on item C-4.

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

Council Member Johnson stated she would like to abstain from voting on Items C-2 and C-3 and requested they be pulled from consent.

Moved by Mayor Pro Tem/Vice Chair Ruh, seconded by Council Member/Director Lopez, and carried unanimously 5-0, the City Council approved the remainder of the Consent Calendar with discussion on Item C-4:

##### **A. Approval of Minutes**

###### **1. Regular Joint Meeting — August 2, 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 August 2, 2021 regular joint meeting.

##### **B. Administrative Reports**

###### **1. Receiving and Filing of City Treasurer's Report**

The City Council received and filed the City Treasurer's Report for the month ending July 31, 2021.

###### **2. Approval of City Warrant Register and Payroll Documentation**

The City Council approved the City Warrant Register dated August 16, 2021, totaling \$2,416,173.83; and the Payroll Documentation dated July 18, 2021, amounting to \$608,745.34 gross, with \$422,382.06 net being the total cash disbursement.

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

The City Council acting as successor to the Redevelopment Agency Board received and filed the Successor to the

Redevelopment Agency Treasurer's Report for the month ending July 31, 2021.

**4. Approval of Successor Agency Warrant Register**

The City Council acting as successor to the Redevelopment Agency Board approved 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.

**5. Receiving and Filing of MHC Treasurer's Report**

The MHC Board received and filed the MHC Treasurer's Report for the month ending July 31, 2021.

**6. Approval of MHC Warrant Register**

The MHC Board approved the MHC Warrant Register dated 07.01.21-07.31.21 in the amount of \$42,558.02.

**7. Receiving and Filing of MHA Treasurer's Report**

The MHA Commissioners received and filed the MHA Treasurer's Report for the month ending July 31, 2021.

**8. Approval of MHA Warrant Register**

The MHA Commissioners approved the MHA Warrant Register dated 07.01.21-07.31.21 in the amount of \$0.00.

**9. 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.

**C. Agreements**

**1. 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**

**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**

The City Council took the following actions:

(a) Approved *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.

(b) Approved *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.

**4. 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**

Council Member Lopez asked if access to adequate cleaning and restroom supplies could be provided by **Anthesis** to the users of the fields, noting there have been instances where there has been no toilet paper in the stalls or the toilets have become clogged.

Director of Human Services Richter advised the ball field users should contact City staff if there are any issues needing immediate attention with regard to cleanliness, operation of restroom facilities, or supplies.

Mayor Dutrey stated he anticipates the ball fields will be renovated soon including improvements to the restroom facilities, with the City owing thanks to **Congresswoman Norma Torres** for helping to secure federal funding.

The City Council approved *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.

## IX. PULLED CONSENT CALENDAR ITEMS

### C. Agreements

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

The City Council, by a 4-0 vote (Johnson abstained) approved Amendment No. 1 to *Agreement No. 21-49* with Ontario-Montclair School District to increase funding for the Montclair After-School Program.

#### 3. 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

The City Council, by a 4-0 vote (Johnson abstained) approved 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.

## X. COMMUNICATIONS

### A. Department Reports — None

### B. City Attorney

City Attorney Robbins requested the City Council meet in closed session concerning the following:

#### 1. Closed Session Pursuant to Government Code Section 54956.9(d)(4) Regarding Potential Litigation

*One Potential Case*

### C. City Manager/Executive Director

City Manager/Executive Director Starr stated his heart is with Council Member Lopez related to the health issues his family is dealing with and that he hopes for a positive outcome.

### D. Mayor/Chair

#### 1. Cancellation of Tuesday, September 7, 2021 Regular Joint Meeting

Mayor/Chair Dutrey announced the cancellation of the next regular joint meeting following Labor Day.

#### 2. Mayor/Chair Dutrey asked if the City Council could hold a workshop to discuss the infrastructure bond projects.

City Manager Starr advised the City Council would vote on the structure of the bonds and the infrastructure bond projects at its next regular meeting.

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

1. Mayor Pro Tem/Vice Chair Ruh made the following comments:
  - (a) He congratulated **Assembly Member Freddie Rodriguez** for securing state funds for a welding program at **Chaffey College**.
  - (b) He thanked **Congresswoman Norma Torres** for working to secure funds for improvements at **Saratoga Park**.
  - (c) He stated *National Night Out* was a great event and a huge success with the community and thanked Police and Fire personnel for their hard work on it.
  - (d) He advised that "D" Street in La Verne would be closed from Arrow Highway to Bonita Avenue through October 23rd due to construction on the **Gold Line**.
  - (e) He noted he was happy employees were able to enjoy **In-N-Out** for their annual employee barbecue.
  - (f) He noted some elected officials are being told not to seek federal funding and stated he opposes this view because the state of California contributes far more money to the federal government than it receives back, making the state a net donor. He stated he believes getting federal money is good for the state and the state is entitled to it.
2. Council Member/Director Lopez made the following comments:
  - (a) *National Night Out* was widely attended and enjoyed by the community. He extended his gratitude to Chief Avels, Fire personnel, and other staff who made the event a success.
  - (b) He announced several temporary lane, ramp, and freeway closures in the coming month in relation to the I-10 Corridor project.
  - (c) He stated he attended a retirement party for Captain Ed Cook who was with the City for 29 years.
  - (d) He noted he attended the funeral for former City employee **Rudy Gomez** and presented the City Council's Certificate of Adjournment to the family at the funeral.
  - (e) He stated he regrets missing the tour with **Congresswoman Torres of Saratoga Park** but was happy to learn it was thoroughly conducted and several issues were addressed. He noted he looks forward to the park improvements and hopes for a new tower for baseball announcers.
3. Council Member/Director Johnson made the following comments:
  - (a) She announced **Kids Emporium at Montclair Place** will be holding a bubble show this Thursday at 4:00 p.m.
  - (b) She stated she noticed signs at **Montclair Place** for a scavenger hunt for students to win **AMC Theater** tickets.
4. Council Member/Director Martinez made the following comments:
  - (a) She thanked Director of Community Development Diaz for his thorough presentations on tonight's Ordinances.
  - (b) She stated she was glad employees were able to enjoy some **In-N-Out** at the employee barbecue.

**F. Committee Meeting Minutes**

**1. Minutes of Personnel Committee Meeting of August 2, 2021**

The City Council received and filed the minutes of the Personnel Committee meeting of August 2, 2021, for informational purposes.

**XI. CLOSED SESSION**

At 8:57 p.m., the City Council went into closed session to discuss potential litigation.

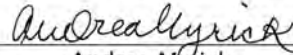
**XII. CLOSED SESSION ANNOUNCEMENTS**

At 9:10 p.m., the City Council returned from closed session. Mayor Dutrey announced the City Council met in closed session to discuss potential litigation; information was received and direction given to staff; and no further announcements would be made at this time.

**XIII. ADJOURNMENT**

At 9:10 p.m., Mayor/Chair Dutrey adjourned the City Council, Successor Agency Board, Montclair Housing Authority Commission, and Montclair Community Foundation Board.

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



Andrea Myrick  
City Clerk



**CITY OF MONTCLAIR**

**TREASURER'S REPORT**

**FOR THE MONTH ENDING**

**AUGUST 31, 2021**

**TABLE OF CONTENTS**

**SCHEDULE 1**

STATEMENTS OF COMPLIANCE WITH INVESTMENT POLICY AND INVESTMENT STRATEGY FOR AUGUST 31, 2021

**SCHEDULE 2**

STATEMENT OF CASH AND INVESTMENTS BY FUND

**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**

**AUGUST 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 \$ 32,784,379

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 AUGUST 31, 2021

Fund	Beginning Balance	Receipts	Disbursements	Interfund Transfers	Ending Balance
General Fund	\$ (2,667,625.37)	\$ 2,481,203.06	\$ 2,146,610.57	\$ (29,501.47)	\$ (2,362,534.35) (1)
Gas Tax Fund	(181,016.13)	85,814.01	89,669.73	-	(184,871.85) (2)
Road Maintenance - Section 2032	1,677,685.92	62,043.49	27,351.42	4,979.74	1,717,357.73
Measure 1 Fund	3,598,351.23	89,822.84	-	10,857.64	3,699,031.71
Traffic Safety	119,229.02	1,661.86	-	-	120,890.88
Disability Access Fund - Bus. License	38,111.20	882.00	401.10	-	38,592.10
Park Maintenance	85,967.84	25.21	4,919.75	-	81,073.30
Park Development	1,149,207.06	-	-	-	1,149,207.06
CDBG	(37,387.39)	-	17,122.94	(5,700.70)	(60,211.03) (2)
May Bdgt Revise Cares Act Dist	-	-	-	-	-
SB2 Planning Grant	-	13,111.57	-	673.83	231,144.54
Air Quality Improvement Trust	217,359.14	-	-	-	-
SB City Cares Act Relief Fund	-	-	-	-	-
SB City Cares Act Infrastructure	(853,333.25)	-	61,563.99	-	(914,897.24) (2)
Senior Nutrition Program	(58,424.86)	21,821.33	20,236.42	-	(56,839.95) (2)
American Rescue Plan	4,794,353.00	-	-	-	4,794,353.00
Forfeiture Fund - State	111,452.65	2,175.28	-	345.51	113,973.44
Proposition 30/SB 109	122,237.48	-	125.44	378.95	122,490.99
SB 509 Public Safety	247,778.68	48,427.00	114,876.27	-	182,329.41
Forfeiture Fund-Federal/DOJ	407,080.37	-	-	1,247.73	408,328.10
Asset Seizure Fund	6,775.13	0.02	-	-	6,775.15
Section 11489 Subfund	42,897.41	383.87	1,680.26	139.93	41,740.95
Fed Asset Forfeiture-Treasury	92,344.82	21,328.66	-	286.28	113,959.76
School District Grant Fund	-	-	-	-	-
State Supplemental Law Enforce	347,813.52	-	-	1,078.25	348,891.77
PC 1202.5 Crime Prevention	2,114.74	4.60	-	6.54	2,125.88
Recycling Grant Fund	80,859.00	-	10,734.00	250.67	70,375.67
Homeless Emergency Aid Program	(47,024.86)	-	4,450.00	-	(51,474.86) (2)
Bureau of Justice Assistance	-	-	-	-	-
Statewide Park Dev Grant	-	-	-	-	-
Homeless Housing Assist Preven	11,605.84	-	2,000.00	-	9,605.84
After School Program Fund	357,778.78	-	77,402.65	-	280,376.13
OTS Grant	-	-	-	-	-
FIRST 5 Fund	1,250.78	-	-	-	1,250.78
Safety Dept. Grants	299,107.72	3,831.06	5,770.50	-	297,168.28
OSMD Immunization Grant	(3,298.44)	-	-	-	(3,298.44) (2)
Kaiser Permanente Grant	4,878.87	-	258.99	-	4,619.88
Resource Center Grant - OMSD	16,648.61	-	2,538.41	-	14,110.20
Title III B. Sr Support Services	21,770.29	-	1,196.26	-	20,574.03
Healthy Community Strategic Plan	17,847.78	-	911.84	-	16,935.94
ASES Supplemental Grant	118,093.65	-	3,640.04	-	114,453.61
E.M.S. - Paramedic Fund	(33,114.27)	5,514.48	14,573.80	-	(42,173.59) (3)
Economic Development	6,120,146.96	-	52,054.29	-	6,068,092.67
City Contributions/Donations Fund	500.00	-	-	-	500.00
Sewer Operating Fund	2,122,362.17	561,664.85	327,303.44	5,846.22	2,362,569.80
Sewer Replacement Fund	2,107,340.14	-	-	6,532.94	2,113,873.08
CFD 2011-1 (Passos)	139,413.81	-	166.89	442.55	139,689.47
CFD 2011-2 (Arrow Station)	90,954.10	-	497.07	280.58	90,737.61
Inland Empire Utility Agency	2,813,112.19	12,046.92	-	-	2,825,159.11
Sewer Expansion Fee Fund	602,267.01	1,203.46	-	1,854.81	605,325.28
Developer Impact Fees - Local	1,145,568.90	25,704.00	-	-	1,171,272.90
Developer Impact Fees - Regional	175,769.27	58,298.00	-	-	234,067.27
Burntec Pavement Impact Fees	251,409.56	-	-	-	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	89,840.27	1,222.52	-	-	91,062.79
Housing Fund	555,326.51	381.69	-	-	555,708.20
Public Education/Govt. PEG Fee Fund	40,490.73	-	-	-	40,490.73
Infrastructure Fund	(2,700,985.18)	156,247.29	87,680.49	-	(2,630,618.38) (4)
COVID-19	(251,206.89)	-	13,480.48	-	(274,687.37)
Successor Agency Bonds-Taxable	4,793,100.88	-	-	-	4,793,100.88
Successor Agency Bonds-Tax Exempt	8,228,813.20	-	13,404.00	-	8,215,409.20
2014 Lease Revenue Bond Proceeds	-	-	1,873.50	-	(1,873.50)
2014 Lease Revenue Bond Debt Svc	-	-	3,206.00	-	(5,800.80)
Contingency Fund	(2,594.80)	-	-	-	(2,594.80)
Assigned General Fund Reserves	233,836.96	-	-	-	233,836.96
TOTALS	9,468,282.77	\$ 3,657,819.07	\$ 3,147,994.81	\$ -	9,428,188.50
	\$ 48,153,662.18				\$ 48,663,486.44

Negative Cash Notes follow this presentation.

### **Notes on Negative Cash Balances**

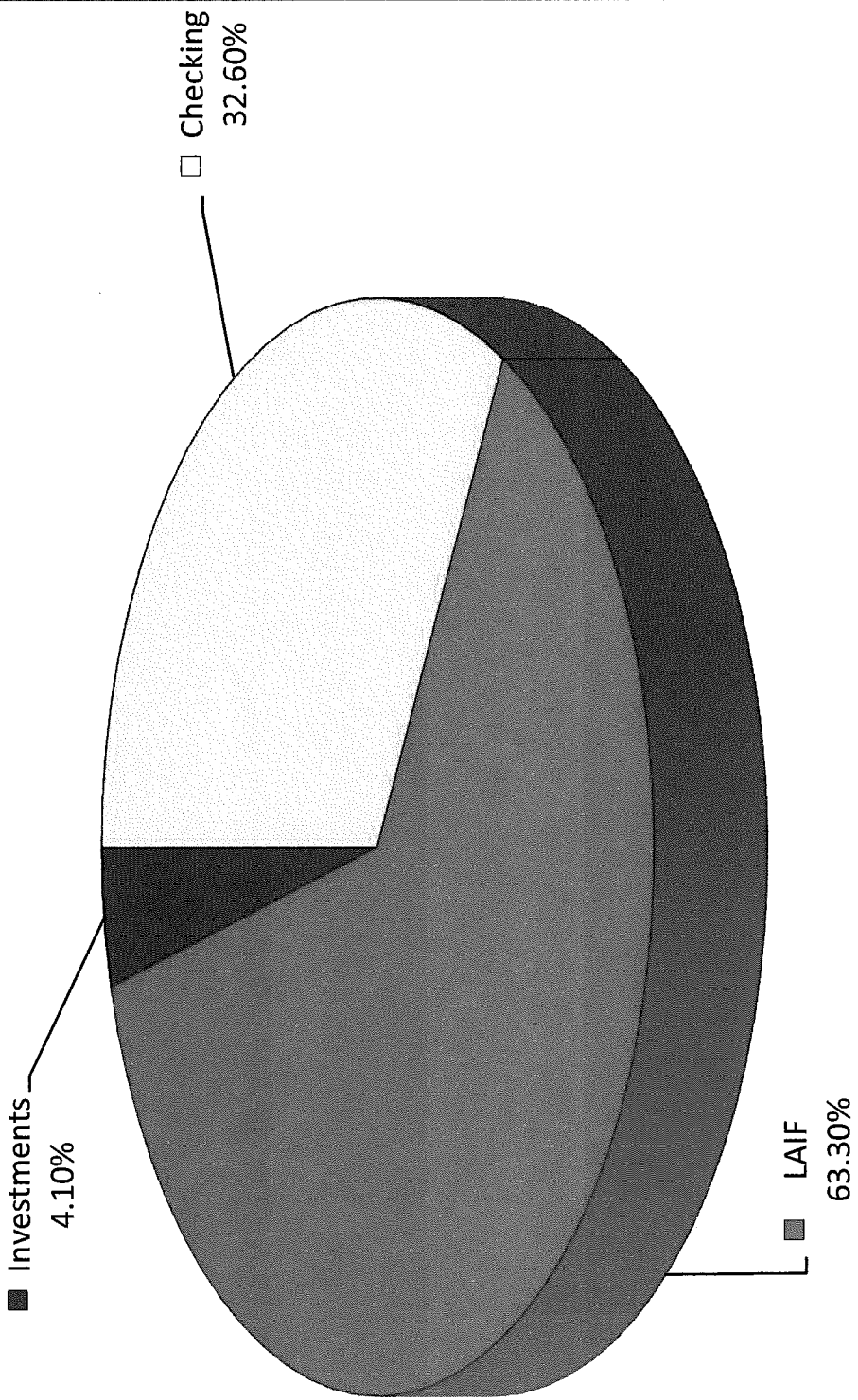
- (1) The General Operating Fund may have a negative cash for the majority of the fiscal year awaiting property and sales tax collections. This is covered by the Contingency Fund and other General Fund Reserve Funds until those collections are received. As Contingency and General Reserves exceed this 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 AUGUST 31, 2021**

	Par Value	Purchase Date	Maturity Date	Coupon Interest Rate	Current Market Value	Balance at Cost	Totals
<b>CHECKING ACCOUNT</b>							
Checking Account							\$ 15,872,273.71
Asset Seizure Account							\$ 6,834.15
<b>CASH W/FISCAL AGENT, CD's, LAIF DEPOSITS, AND SHORT-TERM U.S. AGENCY SECURITIES</b>							
Local Agency Investment Fund (LAIF)				0.210%	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>							
					\$ -		\$ -
<b>TOTAL</b>							<u>\$ 48,663,486.44</u>

Current market values obtained from US Bank.

**CITY OF MONTCLAIR**  
**CASH AND INVESTMENTS BY TYPE**  
**August 31, 2021**  
**Total Cash & Investments \$48,663,487**



**CITY OF MONTCLAIR AS SUCCESSOR TO  
THE REDEVELOPMENT AGENCY  
TREASURER'S REPORT**

**FOR THE MONTH ENDING**

**August 31, 2021**



**CITY OF MONTCLAIR AS SUCCESSOR TO  
THE REDEVELOPMENT AGENCY  
STATEMENT OF CASH BY FUND  
August 31, 2021**

**COMBINED OPERATING FUND**

Operating	<u>36,926.91</u>	\$ 36,926.91
-----------	------------------	--------------

**LRPRP Fund**

Operating	<u>0.00</u>	\$ 0.00
-----------	-------------	---------

**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**

	<u>\$ 657,657.87</u>
--	----------------------

**CITY OF MONTCLAIR AS SUCCESSOR TO  
THE REDEVELOPMENT AGENCY  
STATEMENT OF CASH  
August 31, 2021**

**Checking Account**

US Bank

**657,657.87**

**TOTAL CASH**

**657,657.87**

**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**

**August 31, 2021**

City of Montclair  
Final Warrant Register  
Council Date 09/20/2021  
Regular Warrants  
Checking Account: Successor to the RDA

	<u>Warrants</u>	<u>US Bank transfers</u>	<u>Area Totals</u>
SRDA Combined Operating Fund	0.00	12,236.61	<b>12,236.61</b>
RORF (Redevelopment Obligation Retirement Funds)	0.00	0.00	<b>0.00</b>
	<u>0.00</u>	<u>12,236.61</u>	
			<b><u><u>12,236.61</u></u></b>

Note: Reimburse City for 8/5, 8/18 payrolls  
Repay December 2019 Loan to City

---

**Vice Chair Ruh**

# Book Transfer Daily Activity Detail

CITY OF MONTCLAIR  
SinglePoint  
Reported Activity From 08/02/2021 To 08/31/2021  
Printed on 09/08/2021 at 4:37 PM PDT



Effective Date	Amount	From: Debit Account Number	To: Credit Account Number	Status
08/19/2021	\$4,106.91	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 08/19/21 Payroll  
**Initiate Date** 08/19/2021  
**Initiate Time** 10:04AM CDT  
**Initiated By** JKULBECK  
**Completed Date** 08/19/2021  
**Completed Time** 10:04AM CDT

Effective Date	Amount	From: Debit Account Number	To: Credit Account Number	Status
08/18/2021	\$5,000.00	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** Repay December 2019 Loan to City  
**Initiate Date** 08/18/2021  
**Initiate Time** 05:47PM CDT  
**Initiated By** JKULBECK  
**Completed Date** 08/18/2021  
**Completed Time** 05:47PM CDT

Effective Date	Amount	From: Debit Account Number	To: Credit Account Number	Status
08/05/2021	\$3,129.70	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 08/05/21 Payroll  
**Initiate Date** 08/05/2021  
**Initiate Time** 08:04PM CDT  
**Initiated By** JKULBECK  
**Completed Date** 08/05/2021  
**Completed Time** 08:04PM CDT

---

**Total Number of Book Transfers:** 3  
**Total Amount of Book Transfers:** \$12,236.61

---

--- End of Report ---

**CITY OF MONTCLAIR  
HOUSING CORPORATION  
TREASURER'S REPORT**

**FOR THE MONTH ENDING**

**August 31, 2021**

**TABLE OF CONTENTS**

**SCHEDULE 1 - STATEMENT OF CASH AND INVESTMENTS**

**CASH AND INVESTMENTS GRAPH**

Schedule 1

CITY OF MONTCLAIR  
HOUSING CORPORATION  
STATEMENT OF CASH AND INVESTMENTS  
August 31, 2021

	<u>Interest Rate</u>	<u>Market Value</u>	<u>Book Value</u>
<b>Checking Account</b>			
US Bank			496,472.54
<b>Investments</b>			
LAIF	0.21%	1,711,906.29	<u>1,711,764.26</u>
<b>TOTAL CASH &amp; INVESTMENTS</b>			<u><u>2,208,236.80</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.

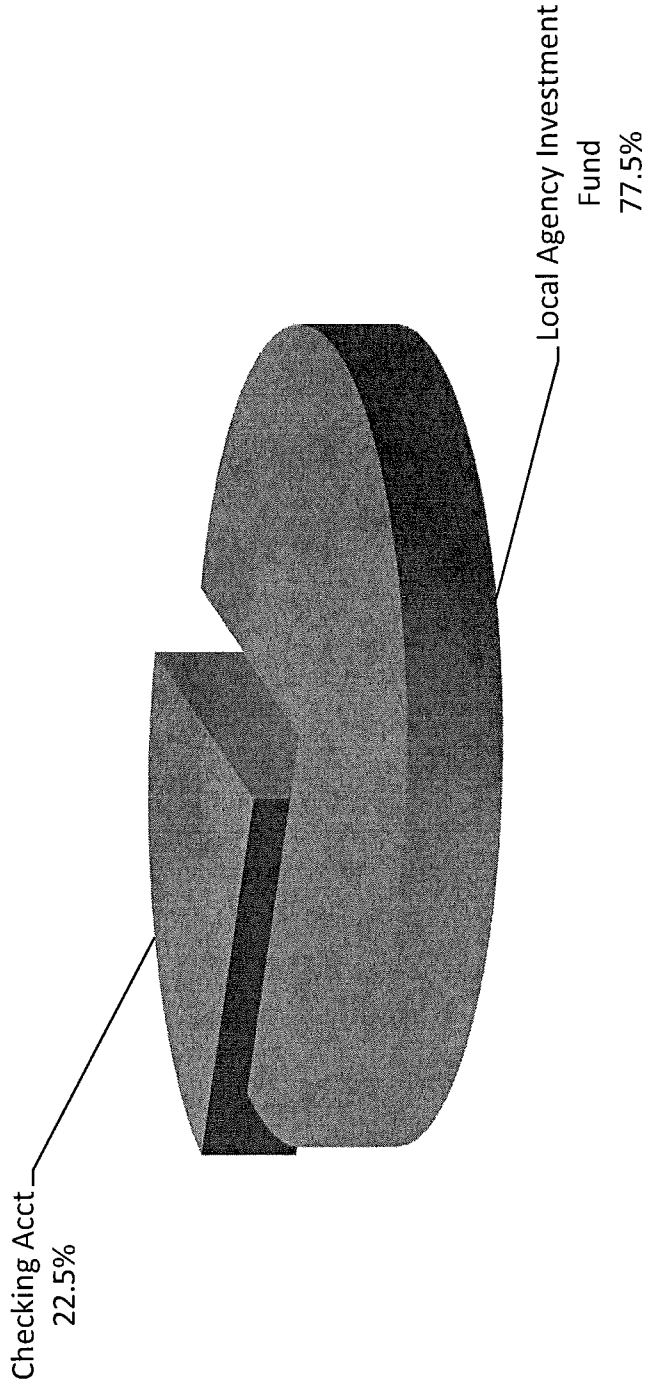
The Corporation has sufficient funds available to meet expenditures during the upcoming six-month period.

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  
August 31, 2021**

**Total Cash & Investments - \$2,208,237**



**CITY OF MONTCLAIR  
HOUSING CORPORATION  
WARRANT REGISTER**

**FOR THE MONTH ENDING**

**August 31, 2021**

City of Montclair  
Final Warrant Register  
Council Date 09/20/2021  
Regular Warrants  
Checking Account: MHC

Warrants	ACH Transfers	Voided Checks	US Bank transfers	<b>Totals</b>
28,234.13	0.00	0.00	10,534.85	<b>38,768.98</b>

**August 2021 Total**

**38,768.98**

US Bank transfers:

Reimburse City for 08/5 payroll

Reimburse City for 08/19 payroll

---

**Vice Chair Ruh**

# Book Transfer Daily Activity Detail

CITY OF MONTCLAIR

SinglePoint

Reported Activity From 08/02/2021 To 08/31/2021

Printed on 09/08/2021 at 4:36 PM PDT



Effective Date	Amount	From: Debit Account Number	To: Credit Account Number	Status
08/19/2021	\$4,700.46	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 08/19/21 Payroll  
**Initiate Date** 08/19/2021  
**Initiate Time** 10:04AM CDT  
**Initiated By** JKULBECK  
**Completed Date** 08/19/2021  
**Completed Time** 10:04AM CDT

Effective Date	Amount	From: Debit Account Number	To: Credit Account Number	Status
08/05/2021	\$5,834.39	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 08/05/21 Payroll  
**Initiate Date** 08/05/2021  
**Initiate Time** 08:04PM CDT  
**Initiated By** JKULBECK  
**Completed Date** 08/05/2021  
**Completed Time** 08:04PM CDT

---

**Total Number of Book Transfers:** 2  
**Total Amount of Book Transfers:** \$10,534.85

---

--- End of Report ---

# Accounts Payable

## Checks by Date - Summary by Check Number

User: cramirez  
Printed: 9/8/2021 4:53 PM



Check No	Vendor No	Vendor Name	Check Date	Check Amount
5219	Hugo001	Hugo Jaramillo	08/05/2021	22,500.00
5220	Land012	Landscape Maintenance Unlimited	08/05/2021	5,721.00
5221	Sout018	Southern California Edison Co	08/05/2021	13.13
Report Total (3 checks):				28,234.13

**CITY OF MONTCLAIR  
HOUSING AUTHORITY  
TREASURER'S REPORT  
FOR THE MONTH ENDING  
August 31, 2021**

**Schedule 1**

**CITY OF MONTCLAIR  
HOUSING AUTHORITY  
STATEMENT OF CASH  
August 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  
August 31, 2021**



City of Montclair  
Final Warrant Register  
Council Date 09/20/2021  
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	0.00
<b>August 2021 Total</b>			<b><u><u>0.00</u></u></b>

---

Vice Chair Ruh