

MINUTES OF THE REGULAR JOINT MEETING OF THE MONTCLAIR CITY COUNCIL, SUCCESSOR AGENCY AND MONTCLAIR HOUSING CORPORATION BOARDS, MONTCLAIR HOUSING AUTHORITY COMMISSION, AND MONTCLAIR COMMUNITY FOUNDATION BOARD HELD ON MONDAY, MARCH 21, 2022 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.

II. INVOCATION

Ma Mukthika and Sri Nithya Gauribharathananda, Nithyananda Vedic Temple, gave the invocation.

III. PLEDGE OF ALLEGIANCE

Mayor Pro Tem/Vice Chair Ruh 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 Community Development Diaz; Director of Human Services Richter; Finance Manager Kulbeck; Executive Director of Public Safety/Police Chief Avels; Director of Public Works/City Engineer Heredia; City Attorney Robbins; City Clerk Myrick

V. PRESENTATIONS — None

VI. PUBLIC COMMENT

- A. **Mr. Bruce Culp**, resident, stated he continues to monitor the demolition and replacement of the **Pacific Electric Trail** bridge and stated he will be happy to share photographs he is taking to document the progress. He expressed his appreciation to staff for their continued diligence in moving this project forward. He also extended his thoughts and prayers to those suffering in Ukraine.
- B. **Ms. Yvette Miranda**, resident and parent of an **Ontario-Montclair School District** student and member of **Safe Routes to School (SRTS) Community of Ontario & Montclair**, expressed gratitude for the improvements around Montclair schools. She thanked Council Member Lopez for his involvement with the SRTS parent group.
- C. **Ms. Elizabeth Valdez**, resident and **SRTS Community of Ontario & Montclair** member, submitted a written comment expressing appreciation for the school safety infrastructure improvements and Council Member Lopez's support.

VII. PUBLIC HEARINGS

A. **Second Reading — Consider Adoption of Ordinance No. 22-1000 Adopting a Policy for the Use of Military Equipment by the Montclair Police Department**

Mayor Dutrey declared it the time and place set for public hearing to consider second reading of Ordinance No. 22-1000 and invited comments from the public.

Mr. Culp restated his support for this Ordinance, adding he feels the availability of this information would deter rather than invite crime.

There being no one else in the audience wishing to speak, Mayor Dutrey closed the public hearing and returned the matter to the City Council for its consideration.

Council Member Lopez stated while he intends to support the adoption of the Ordinance so that the Police Department can have its

policy in place by the statutory deadline, he is not happy overall that this is being required of cities.

Moved by Mayor Pro Tem Ruh, seconded by Council Member Johnson, and carried that Ordinance No. 22-1000 be read by number and title only, further reading be waived, and this be declared its second reading; and that the City Council adopt Ordinance No. 22-1000.

Ordinance No. 22-1000 was adopted by the following 5-0 vote:

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

VIII. CONSENT CALENDAR

Council Member Johnson stated she would like to comment on Item B-13.

Council Member Lopez requested Items B-10, C-1, and D-1 be pulled from the Consent Calendar.

Mayor Dutrey entertained discussion on Items B-10, B-13, and C-1 prior to the vote on the Consent Calendar, and pulled Item D-1 for separate discussion and vote.

Moved by Council Member/Director Lopez, seconded by Council Member/Director Johnson, and carried unanimously 5-0, the City Council pulled Item D-1 and approved the remainder of the Consent Calendar, with discussion held on Items B-10, B-13, and C-1:

A. Approval of Minutes

1. Adjourned Special Meeting — March 7, 2022

The City Council approved the minutes of the March 7, 2022 adjourned meeting.

2. Regular Joint Meeting — March 7, 2022

The City Council, Successor Agency Board of Directors, Montclair Housing Corporation Board of Directors, Montclair Housing Authority Commissioners, and Montclair Community Foundation Board of Directors approved the minutes of the March 7, 2022 regular joint meeting.

B. Administrative Reports

1. Receiving and Filing of City Treasurer's Report

The City Council received and filed the City Treasurer's Report for the month ending February 28, 2022.

2. Approval of City Warrant Register and Payroll Documentation

The City Council approved the City Warrant Register dated March 21, 2022, totaling \$1,254,626.62; and the Payroll Documentation dated February 27, 2022, amounting to \$641,209.04 gross, with \$445,960.13 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 February 28, 2022.

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 02.01.22-02.28.22 in the amounts of \$7,657.00 for the Combined Operating Fund and \$0.00 for the Redevelopment Obligation Retirement Funds.

5. Receiving and Filing of MHC Treasurer's Report

The MHC Board received and filed the MHC Treasurer's Report for the month ending February 28, 2022.

6. Approval of MHC Warrant Register

The MHC Board approved the MHC Warrant Register dated 02.01.22-02.28.22 in the amount of \$56,674.15.

7. Receiving and Filing of MHA Treasurer's Report

The MHA Commissioners received and filed the MHA Treasurer's Report for the month ending February 28, 2022.

8. Approval of MHA Warrant Register

The MHA Commissioners approved the MHA Warrant Register dated 02.01.22-02.28.22 in the amount of \$0.00.

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

Declaring Termination of the Emergency Action Authorized on April 19, 2021 Related to the Pacific Electric Trail Bridge Replacement Project

The City Council took the following actions:

- (a) Received and filed a final status report on emergency contracting procedures for the Pacific Electric Trail Bridge Replacement Project.
- (b) Declared termination of the emergency action authorized on April 19, 2021 related to the Pacific Electric Trail Bridge Replacement Project.

10. Rejecting All Bids for Construction of the Modular Restroom Facility at the Montclair Transcenter Project

Authorizing Staff to Modify the Plans and Specifications and Re-Advertise for Bid Proposals for Construction of the Modular Restroom Facility at the Montclair Transcenter Project

Council Member Lopez asked what amount was budgeted for this project.

City Manager Starr advised the construction estimate was \$80,000, which is the base budgeted amount.

Council Member Lopez asked if the \$25,000 contribution from Greyhound is allocated for this project.

City Manager Starr stated that is correct.

Council Member Lopez asked if staff would be paid more for their work on the project, since the utility portion of the project would now be completed in-house.

City Manager Starr stated staff would receive their regular rate of pay and overtime pay when necessary.

Council Member Lopez asked if the state owns the property.

City Manager Starr explained that, while the state owns the property, the City has an arrangement with Caltrans and San Bernardino County Transportation Authority where the City maintains the maintenance and operations, and the City is currently trying to expand the contract.

Council Member Lopez asked if other duties of Public Works staff would be neglected if they are redirected to this work.

City Manager Starr stated that is true but noted, due to the nature of many duties of the Public Works Department, they are often tasked with unscheduled activities such as the cleanup that was required after the recent windstorm.

Council Member Lopez asked if part-time staff could be hired to fill in any deficiencies.

City Manager Starr stated that, if needed, the City could utilize one of its contracts for specialty part-time labor.

The City Council took the following actions:

- (a) Rejected all bids for construction of the Modular Restroom Facility at the Montclair Transcenter Project.
- (b) Authorized staff to modify the plans and specifications and re-advertise for bid proposals for construction of the Modular Restroom Facility at the Montclair Transcenter Project.

11. Declaring a 1991 GMC Sewer Jetter Truck as Surplus and Available for Auction

The City Council declared a 1991 GMC Sewer Jetter Truck as surplus and available for auction.

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

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

13. Approval of the Fiscal Year 2021-22 Schedule of Recommendations from the Community Activities Commission for Community Benefits Funding

Council Member Johnson stated she is pleased to see all organizations who applied received some of this supportive funding. She recalled hearing very touching stories when she was on the Community Activities Commission and heard the organizations speak at these benefit funding hearings and appreciates all that these organizations do for Montclair residents.

Council Member Lopez asked if **House of Ruth** ever applies for this funding.

Director of Human Services Richter advised staff has reached out on many occasions but has not received any response.

Mayor Dutrey advised the Community Benefits Fund is allocated at the discretion of the City Council, and the City Council has the ability to increase this funding.

The City Council approved the Fiscal Year 2021-22 schedule of recommendations from the Community Activities Commission for Community Benefits Funding.

C. Agreements

1. Approval of Agreement No. 22-19 with San Bernardino County Service Area 70 Consolidated Fire District for a Household Hazardous Waste Collection Facilities Program

Council Member Lopez asked if the contract includes the same locations for the collection facilities and how they are chosen.

City Manager Starr advised the same locations are designated in Chino, Ontario, and Upland. He noted while the City has asked for a Montclair site, the County maintains that the current locations are adequate and adding new sites would increase their costs.

The City Council approved *Agreement No. 22-19* with San Bernardino County Service Area 70 Consolidated Fire District for

a Household Hazardous Waste Collection Facilities Program.

2. Authorizing Compliance Review of the Montclair Housing Authority's Existing Affordable Housing Agreements

Approval of Agreement No. 22-21 with the Strickler Association to Conduct Compliance Review of Existing Affordable Housing Agreements Subject to Any Revisions Deemed Necessary by the City Attorney

The City Council took the following actions:

- (a) Authorizing Compliance Review of the Montclair Housing Authority's Existing Affordable Housing Agreements.
- (b) Approved *Agreement No. 22-21* with the Strickler Association to conduct compliance review of existing affordable housing agreements subject to any revisions deemed necessary by the City Attorney.

IX. PULLED CONSENT CALENDAR ITEMS

D. Resolution

1. Adoption of Resolution No. 22-3340 Opposing the Potential Forthcoming Statewide Ballot Measure, the "Taxpayer Protection and Government Accountability Act"

Council Member Lopez asked why the City is taking a position on this now, when it hasn't even made it on the ballot.

Mayor Dutrey advised he asked for this be placed on the agenda at the request of the **League of California Cities (CalCities)**. He stated **CalCities** is taking the position that this law would create havoc for cities by limiting the ability to generate local revenues.

Council Member Lopez stated he believes if this were to get on the ballot and pass, it would not affect Measure L funds and simply tightens the ability for any municipality to raise taxes and fees. He noted with the state's surpluses it would be prudent for local governments to not be so quick to go to the voters for money. He stated he is not willing to formally oppose the legislation and asked the City Council not take a position at this time.

Mayor Dutrey advised this bill would prohibit any tax from having a local advisory committee which is common with local voter-approved tax measures. He added increasing fines such as code enforcement violations would need to go to the voters. He stated he would be fine if this measure only applied to the state, but local governments need to be left alone.

Moved by Mayor Dutrey, seconded by Council Member Johnson, and carried 4-1 (Lopez opposing), the City Council adopted Resolution No. 22-3340 opposing the potential forthcoming statewide ballot measure, the "Taxpayer Protection and Government Accountability Act".

X. BUSINESS ITEMS

A. Consider Discussing and Providing Direction Regarding Consideration of a Resolution of Censure Disapproving and Censuring Certain Conduct and Behavior of Montclair City Council Member Benjamin Lopez and Ratifying Protective Actions Taken, and Recommended, by the City Manager

City Manager Starr provided a PowerPoint-led presentation regarding the investigation that took place into the alleged misconduct of Council Member Lopez, in which the investigator sustained the allegations, and the actions taken by the City in response to protect the rights and safety of the affected employees. The presentation outlined actions the City Council could take including considering censuring Council Member Lopez and ratifying the protective actions

taken and recommended by the City Manager.

At 8:00 p.m., Mayor Dutrey called a 5-minute recess.

At 8:05 p.m., Mayor Dutrey called the meeting back to order with all Council Members present.

Mayor Dutrey invited comments from the public on this matter.

1. **Ms. Alma Trejo**, resident, noted she is not surprised and has spoken out against Mr. Lopez's homophobic and sexist rhetoric in the past, including social media posts. She stated he has now shown who he is despite never admitting fault or responding to those who spoke out against him. She stated her disappointment in Mayor Dutrey and others who openly supported his election. She expressed her disappointment that the public's concerns went ignored about Mr. Lopez, and now the City must spend funds on costly litigation because of Mr. Lopez's actions to harass two men from the vulnerable group he lobbied against. She stated Mr. Lopez should resign and that more training would not be enough.
2. **Mr. Culp** apologized to the victims, noting they did the right thing to report the harassment, and assured them that the residents would work to remove Council Member Lopez from office. He expressed disgust at how quickly Mr. Lopez preyed on employees upon assuming his office. He stated while Mr. Lopez often expresses concern over the City's finances, the City has incurred several costs due to his actions so far, including the hiring of an investigator and defense attorney, other legal costs, additional equipment for Council Member Lopez's use outside of City Hall, high-level staff time meeting with employees and facilitating Council meetings about this issue, costs associated with working arrangements for the employees to minimize contact with Council Member Lopez, and the harassment training that may be required. He stated there may be more consequences including denial of grants. He requested the City Council adopt a motion to have staff prepare a report of all the costs related to this matter so the public can be informed, and Council Member Lopez may be compelled to do the right thing and reimburse the City out of his own pocket.
3. **Mr. Thuan Nguyen**, resident, stated he has spoken against the anti-LGBTQ rhetoric of Mr. Lopez for the past two years and sees the irony that his behavior was an expression of his own self-hatred. He disagreed with those crediting Council Member Lopez for community projects, noting his contributions to those projects are not unique and are shared with other officials, community members, and staff; however his history of anti-LGBTQ lobbying can be uniquely attributed to him. He expressed support for the employees who endured harassment from Mr. Lopez and stated the City needs to do more than training, such as changing the culture and hearing concerns from residents and employees. He stated he also holds Mayor Dutrey and Mayor Pro Tem Ruh accountable for endorsing Mr. Lopez and asked for their rescission of those endorsements.
4. **Mrs. Carolyn Raft**, resident, stated she has known all three individuals for many years, and believes the two employees. She urged Council Member Lopez to resign for the sake of his family, noting a former Montclair Mayor who was involved in a solicitation scandal resigned immediately when his actions came to light.
5. **Mr. Rob Pipersky**, resident, stated his belief that Mr. Lopez abused his power as a council member to gain sexual favors from employees, and he does not feel a censure is a strong enough punishment. He stated while only two incidents have

come to light, there are likely many more with this being the tip of the iceberg. He insisted the issue is with Mr. Lopez's predatory behavior and not his sexuality. He stated the City Council should start a recall against Council Member Lopez and advocate for his removal. Because a Council Member cannot be removed from office without having committed a felony, he suggested the City adopt a law to make sexual harassment by an elected official while in office a felony. He asserted that Mr. Lopez was not acting in the City's interest and the City should not pay for his legal defense.

6. **Ms. Celina Gutierrez** stated she is the mother of a child who participates in **Montclair Little League** and they both support "Coach Ben," which is what they call Mr. Lopez, who coaches for their team. She stated Coach Ben has been respectful and kind to her family, and has coached players with same-sex parents and has never discriminated. She criticized those who commented remotely for "hiding behind a computer screen."

City Clerk Myrick read written comments submitted by the following individuals and summarized below:

7. **Anel Bravo Bautista** stated they were horrified to learn after his election of Mr. Lopez's history of homophobic actions that do not align with this community, and stated they feel those who have attempted to speak out against his representation have been silenced and blocked by Mayor Dutrey and Council Member Lopez. They requested the City Council take immediate disciplinary action against Council Member Lopez in light of these lawsuits.
8. **Mr. Javier Hernandez**, Executive Director of the **Inland Empire Coalition for Immigrant Justice (ICIJ)**, stated his organization works with over 50 organizations in the Inland Empire, reaching over 50,000 families including residents of Montclair. He stated **ICIJ** is in support of censuring Council Member Lopez for these allegations and for his past homophobic and divisive comments. He stated he feels Mr. Lopez was emboldened to cause this harm as a direct result of the support he received from the Mayor and City Council, both by their silence and their endorsements of his candidacy. He stated while censure is a step in the right direction, the Mayor and City Council owe the residents of Montclair an apology for not censuring him sooner for being a divisive figure in the community.
9. **Mr. Luis Nolasco**, resident of the Inland Empire, stated he is a proud member of the LGBTQ community and echoes the call for a censure of Council Member Lopez for both the current allegations and his past actions and rhetoric against the LGBTQ community.

Council Member Johnson stated this is an ugly situation and nobody wants to be in this position. She stated the City Council heard the investigator's report, which included evidence and interviews with several individuals, and the City Council has a duty to protect.

Mayor Pro Tem Ruh stated he is against harassment of any type, whether playful jokes, bullying, or sexual harassment, noting all types can be hurtful and are difficult for the victim to deal with. He stated that during a closed session the City Council did receive a report from the investigator who sustained the facts of the alleged harassment; however, he feels only two individuals were heard from in this situation whereas three were involved. He also stated he feels this is a case that should be judged by the legal system, not the City Council. He added his belief that elected officials should use better judgment and not socialize at all with staff. He added this is an agonizing decision that he will make based on what he knows are the facts, but he is willing to admit he is wrong if proven so.

Council Member Martinez disagreed with Council Member Ruh that only two parties were heard from, stating the investigator interviewed all three parties, which included Council Member Lopez, and reported the findings. She stated the Council has a duty to protect the City's employees from harassment. She stated her appreciation for the due diligence put into tonight's report from the City Manager and City Attorney, noting it was owed to those who were victimized as well as those who have yet to be victimized and those who have not yet come forward. She stated the findings are from a neutral third party investigator who determined the allegations were factual, true incidents that occurred.

Mayor Dutrey stated the City Council is taking this situation very seriously and is trying to make this a fair process, just as a normal employee would receive. He emphasized this is not being done as a personal attack on Mr. Lopez, but as an obligation to the employees of the City of Montclair and the residents who expect the City Council Members to act in a professional manner when it comes to personnel issues.

Moved by Mayor Dutrey, seconded by Council Member Johnson, and carried 4-0-1 (Lopez abstained), the City Council took the following actions:

1. Scheduled for consideration by the City Council a censure of Montclair City Council Member Benjamin Lopez at the next regular meeting on Monday, April 4, 2022, at 7:00 p.m. in the City Council Chambers;
2. Directed staff to prepare a resolution of the censure based on the information in the City Manager's presentation and staff report on this item; and
3. Ratified protective actions taken and recommended by the City Manager.

XI. COUNCIL WORKSHOP

A. Discussion of Audit Responsibilities and Process with Governing Board of the City (Audit Committee) by Van Lant & Fankhanel, LLP, the City's Independent Auditing Firm

The City Council continued this presentation to an adjourned meeting on Monday, April 4, 2022, at 5:45 p.m. in the City Council Chambers.

XII. COMMUNICATIONS

A. Department Reports — None

B. City Attorney — No Comments

C. City Manager/Executive Director — No Comments

D. Mayor/Chair — No Comments

E. Council Members/Directors

1. Council Member/Director Johnson announced the **Chamber of Commerce** will be hosting a free e-waste drive-thru event this Saturday and Sunday, March 26 and 27, at the Chamber office's parking lot located at 8800 Benson Avenue from 9:00 a.m. to 2:00 p.m. each day.
2. Mayor Pro Tem/Vice Chair Ruh wished his sincere condolences to **Chaffey College Governing Board President Gary Ovitt** and **Chaffey Joint Union High School District Board President Sue Ovitt** for the recent and sudden loss of a family member, noting he attended the memorial service.

3. Council Member/Director Lopez made the following comments:
 - (a) He asked why the protected turn signal was removed from the traffic light he reported at the last meeting.

City Manager Starr advised the light is located in **Caltrans'** area of responsibility and the City has communicated with them regarding the light and other issues such as enhancing markings and installing pylons temporarily for the lanes that turn onto the freeway.

- (b) He warned those who will be driving tonight that from 11:00 p.m. to 5:00 a.m., the I-10 Freeway will be closed down completely from Euclid Avenue to Holt Boulevard.

F. Committee Meeting Minutes

1. Minutes of Personnel Committee Meeting of March 7, 2022

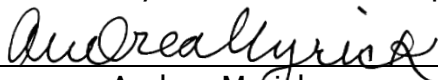
The City Council received and filed the minutes of the Personnel Committee meeting of March 7, 2022, for informational purposes.

XIII. ADJOURNMENT

At 9:00 p.m., Chair Dutrey adjourned the Successor Agency Board, Montclair Housing Corporation Board, Montclair Housing Authority Commission, and Montclair Community Foundation Board.

At 9:00 p.m., Mayor Dutrey adjourned the City Council to Monday, April 4, 2022, at 5:45 p.m. in the City Council Chambers for a Council Workshop presentation about the City's annual audit procedures by Van Lant & Fankhanel, LLP.

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



Andrea Myrick
City Clerk