

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, JANUARY 7, 2019, AT 7:00 P.M. IN THE CITY COUNCIL CHAMBERS, 5111 BENITO STREET, MONTCLAIR, CALIFORNIA

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**I. CALL TO ORDER**

Mayor/Chairperson Dutrey called the meeting to order at 7:00 p.m. and asked that everyone please silence their electronic devices as a courtesy to others while the meeting is in session.

**II. INVOCATION**

**Pastor Joe McTarsney, Calvary Chapel Chino Hills**, gave the Invocation.

**III. PLEDGE OF ALLEGIANCE**

Council Member/Director Martinez led those assembled in the Pledge.

**IV. ROLL CALL**

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

City Manager/Executive Director Starr; Director of Administrative Services and Human Resources Hamilton; City Planner/Planning Manager Diaz; Assistant Director of Housing/Planning Manager Caldwell; Finance Director Parker; Public Works Director/City Engineer Castillo; City Attorney Robbins; City Clerk Phillips

**V. PRESENTATIONS — None**

**VI. PUBLIC HEARINGS — None**

**VII. PUBLIC COMMENT**

**A. Dr. James Lally, of Lally Medical Group**, 5050 San Bernardino Street, Montclair, stated over the weekend there was a situation involving a man making death threats to **Dr. Lally's** staff and that, thanks to the Police Department's quick response, the officers were able to deescalate the situation and **Dr. Lally's** team was able to get the man the mental health care assistance he needed.

**B. Mrs. Ginger Eaton**, 5560 Cambridge Street, Montclair, addressed comments made by Mayor Dutrey at the December 17th meeting related to his belief that her participation in the vote at the December 3rd meeting to select the method of filling the vacancy on the City Council was unethical and done in self-interest in hopes of being appointed to the Council vacancy. She admonished Mayor Dutrey for inappropriate comments calling her integrity into question, and stated she had sought advice from the City Attorney before the December 3rd meeting as to whether she was to participate in the discussion and vote on that item, and was advised that there was no reason for her to not participate in any discussions or votes on the matter.

**VIII. CONSENT CALENDAR**

Moved by Council Member Ruh, seconded by Mayor Pro Tem Raft, and carried unanimously 4-0 that the City Council approve the remainder of the Consent Calendar, as presented:

**A. Approval of Minutes — None**

**B. Administrative Reports**

**1. Authorizing a \$1,944 Appropriation from Proposition 30 Funds to Purchase a New HP Envy Laptop Computer for use with the Police Department's Recently Acquired Leica Laser Scanning Forensic Mapping System**

The City Council authorized a \$1,944 appropriation from Proposition 30 funds to purchase a new HP Envy laptop computer for use with the Police Department's recently acquired Leica Laser Scanning Forensic Mapping System.

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

The City Council approved the City Warrant Register dated January 7, 2019, totaling \$1,606,100.15; and the Payroll Documentation dated December 23, 2018, totaling \$619,826.30 gross, with \$435,057.37 net being the total cash disbursement.

**C. Agreements**

**1. Approval of Agreement Nos. 19-01, 19-02, 19-03, and 19-04 with Montclair Little League, Golden Girls Softball League, and All Cities Youth Baseball for use of Ball Field Facilities**

The City Council approved *Agreement Nos. 19-01, 19-02, 19-03, and 19-04* with Montclair Little League, Golden Girls Softball League, and All Cities Youth Baseball for use of ball field facilities.

**D. Resolutions — None**

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

**X. BUSINESS ITEMS**

**A. Consider Making an Appointment to Fill the Vacancy on the City Council for a Term Ending in December 2020**

Mayor Dutrey requested City Attorney Robbins provide a summary of a memorandum that was provided to the City Council regarding the City Council vacancy.

City Attorney Robbins advised that Government Code 36512(b) provides that the City Council shall fill the vacancy by appointment or call a special election to fill the vacancy within 60 days from the commencement of the vacancy. The vacancy occurred on December 10, 2018 when Mayor Dutrey was sworn in as Mayor and vacated his council seat, and the 60 day period will expire on February 8, 2019. If the City Council does not fill the vacancy within the mandated 60-day period, it will have failed to do what the Government Code mandates. The Government Code provides no alternative or specific remedy in the event the mandate is not fulfilled, nor is there case law addressing potential consequences. She noted there appears to be no reason why action cannot be taken by the City Council after the expiration of the 60 day period, even though not within the timeframe set forth in the Government Code. She also noted Government Code Section 36512 allows for the City Council to adopt an ordinance providing for an interim appointment of a person to fill the vacancy until the date of a special election.

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Members of the public made the following comments:

- 1. Mr. Victor Mendez**, 5134 Aspen Drive, Montclair, stated he thought the logical choice would be to appoint the third-place candidate to the vacancy; however, because the Council does

not appear to be taking this path, he requested to be considered as an appointee. He stated he has lived in Montclair for 19 years and was a Police Officer for 17 years, and is the president of his Homeowners' Association.

2. **Mr. Matthew Escalante**, 10275 Camarena Avenue, Montclair, cited the United States Constitution in his support for the City Council calling a special election to fill the vacancy.
3. **Mr. Rob Pipersky**, 4319 Orchard Street, Montclair, stated he is opposed to holding an expensive election, and requested Council Member Ruh consider what the residents want, which is for their elected representatives to make tough decisions.
4. **Mr. Roger Lambert**, resident, stated there were several other candidates for a Council seat during the last election besides Mr. Ruh and Mrs. Martinez and recommended the Council appoint the third place candidate to fill the vacancy.
5. **Mr. Benjamin Lopez**, resident, explained that while Montclair has historically made appointments to vacancies on the Council, the Council would always follow some type of procedure to ensure fairness—whether it be an application and interview process, appointment of the next runner-up from the election, or a combination of a special election and a temporary appointment. He stated if a special election were to be called, he would gladly run and let the people of Montclair decide.

Council Member Ruh noted he feels the decision should be up to the voters and that many of those who have expressed to him that they are interested in being considered for the vacancy also indicated they would not put forth the costs or effort of running for the seat in an election. He noted he spoke to an attorney at the law firm **Reed & Davidson**, which specializes in election law, and was advised that (1) the current City Council is not bound to the decisions made by the Council that was seated before December 10, 2018 and (2) if the Council does not fill the vacancy by February 8, 2019, the Council must call a special election.

Mayor Pro Tem Raft stated the residents would not want their taxpayer money spent on holding a special election, and pointed out that neither Council Member Ruh nor Mayor Dutrey had made any nominations to fill the vacancy and should therefore appoint the only person nominated, **Mrs. Ginger Eaton**, who is the most qualified person she can think of to fill the vacancy. She noted she was also upset to learn that during the election someone was going door-to-door telling residents that she is a racist, which she asserted is completely false and has no bearing on her nomination.

\*Mayor Pro Tem Raft nominated **Mrs. Eaton** to be appointed to fill the vacancy on the City Council for a term ending December 2020. Council Member Martinez seconded the motion, adding that **Mrs. Eaton** is the only other person serving on the City Council with her who was present at nearly every Holiday, Chamber, and important community event to represent the City or engage with the community. She stated she feels **Mrs. Eaton** is able to dedicate herself to the City as she has done over the last several months.

Council Member Ruh advised he has served on the Council since 1998 and attends every event that he is able to outside of his demanding professional life. He stated he feels public service is not a sacrifice, but a privilege. He reiterated his support of filling the vacancy by special election.

Mayor Dutrey stated the seat represents 40,000 residents, of which over 14,000 are registered voters, and he would like to ensure the right decision is made for the public. He called for the vote to be taken on **Mrs. Eaton's** nomination.

\*The nomination of **Mrs. Eaton** to be appointed fill the vacancy on the City Council for a term ending in December 2020 was voted upon as follows:

AYES: Martinez, Raft  
NOES: Ruh, Dutrey  
ABSTAIN: None  
ABSENT: None

**Mrs. Eaton's** nomination was defeated by a tie vote of 2-2.

Mayor Dutrey requested additional remarks from members of the audience wishing to speak.

1. **Ms. Shirley Wofford**, 5640 Palo Verde Street, Montclair, stated she has been a resident of Montclair for 60 years, and stated she does not want to see taxpayer money spent on an unnecessary election. She stated the Council needs to do their job and appoint someone.
2. **Mrs. Joan Lindhorst**, resident, stated the candidate from the last election with the third-highest number of votes should be appointed.
3. **Mrs. Ginger Eaton**, 5560 Cambridge Street, Montclair, stated she feels as though she is caught in the middle of this debate, although she would be honored to serve on the City Council if she is to be appointed. She requested clarification from City Attorney Robbins that the December 3rd vote on the process of filling the vacancy was valid and that the Council is bound to appoint to fill the vacancy.

City Attorney Robbins stated that in her opinion the City Council's decision to choose the method on December 3rd was a valid action for the City Council to take, as long as the method was not acted upon before the vacancy was created on December 10th.

Council Member Ruh stated the Council Members concerned about the cost of an election are the same Council Members who voted in favor of providing pay raises for the City Council. He argued that on December 3rd, he did not feel the options were adequately discussed before the vote was taken.

Council Member Ruh made a motion that the City Council call a special election for November of 2019, to fill the vacancy on the City Council.

Mayor Dutrey asked whether the motion was valid.

City Attorney Robbins advised a special election is not on tonight's agenda for discussion and the motion is not valid pursuant to the Brown Act.

Council Member Ruh amended his motion to place an item on the next regular City Council meeting agenda on January 22, 2019 to consider calling a special election for November of 2019 to fill the vacancy. Mayor Dutrey seconded the motion.

The motion was voted upon as follows:

AYES: Ruh, Dutrey  
NOES: Martinez, Raft  
ABSTAIN: None  
ABSENT: None

The motion was defeated by a tie vote of 2-2.

Council Member Ruh made a motion to discuss all options available to fill the vacancy at the next regular meeting on January 22, 2019, including calling for a special election. Mayor Dutrey seconded the motion.

The motion to discuss all options available to fill the vacancy at the next regular meeting on January 22, 2019 was voted upon as follows:

AYES: Ruh, Dutrey  
NOES: Martinez, Raft  
ABSTAIN: None  
ABSENT: None

The motion was defeated by a tie vote of 2-2.

Mayor Pro Tem Raft made a motion to continue this item to the next regular meeting on January 22, 2019. Council Member Martinez seconded the motion.

The motion to continue this item to the next regular meeting on January 22, 2019 was carried 3-1 by the following vote:

AYES: Martinez, Raft, Dutrey  
NOES: Ruh  
ABSTAIN: None  
ABSENT: None

Mayor Dutrey stated he voted yes to move forward on this issue, but noted he does not support making an appointment.

**XI. RESPONSE — None**

**XII. COMMUNICATIONS**

**A. City 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 54956.8 Regarding Real Property Negotiations**

Properties: 9030 Fremont Ave., Montclair (APN 1008-163-12-0000)

Negotiating Parties: City of Montclair and Ya Lin Liu/Jian Chen

City Negotiator: Edward C. Starr, City Manager

Under Negotiation: Recommendations Regarding Purchase Price

**2. Closed Session Pursuant to Government Code Section 54956.8 Regarding Real Property Negotiations**

Properties: 9070 Fremont Ave., Montclair (APN 1008-163-16-0000)

Negotiating Parties: City of Montclair and Don S. Angelo

City Negotiator: Edward C. Starr, City Manager

Under Negotiation: Recommendations Regarding Purchase Price

**3. Closed Session Pursuant to Government Code Section 54956.8 Regarding Real Property Negotiations**

Properties: 5072 Moreno St., Montclair (APN 1008-163-19-0000)

Negotiating Parties: City of Montclair and Dolores Casas Fimbres

City Negotiator: Edward C. Starr, City Manager

Under Negotiation: Recommendations Regarding Purchase Price

### C. City Manager/Executive Director

City Manager/Executive Director Starr discussed a formal response submitted by the City to the **Metro Gold Line Foothill Extension Construction Authority** Supplemental Environmental Impact Report (SEIR) studying a proposal by the **Construction Authority** to consider splitting the Gold Line Phase 2B Extension Project from Glendora to Montclair into multiple construction phases, with a future Gold Line station in either La Verne or northern Pomona to be designated as the “temporary” terminus. He noted the City’s formal response letter was drafted by staff in opposition to a letter by **San Bernardino County Transportation Authority (SBCTA)** dated December 21, 2018 submitted to the **Construction Authority** recommending the proposed “temporary” terminus be made the final terminus due to perceived competition with **Metrolink’s** San Bernardino line. He advised the **SBCTA** letter and the City’s response to the SEIR are posted on the City website and encouraged those who have not read it to do so.

### D. Mayor/Chair

#### 1. General Plan Focus Group Assignments

Mayor Dutrey noted he has a conflict with the CORE focus group meeting scheduled on February 20th. He asked if any Council members had questions, requests, or comments regarding their focus group assignments.

Council Member Ruh stated he can make himself available to attend all focus groups if necessary.

Mayor Dutrey stated due to the unavailability of some appointees, he would like to appoint **Mrs. Ginger Eaton** and assign Council Member Ruh to the “Active and Creative Community” focus group, and asked Council Member Emeritus **Leonard Paulitz** to serve on the “Natural, Healthy, and Safe Community” focus group.

Mayor/Chairperson Dutrey stated he was sad to learn of the homicide incident that occurred yesterday in Montclair in which an 18-year-old lost his life. He stated he has confidence that the Police Department will locate the suspect and bring them to justice.

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

Council Member/Director Martinez made the following comments:

1. She thanked everyone for attending tonight’s meeting, noting residents’ input and concerns are appreciated.
2. She thanked Detective Minook for responding to a situation she reported over the weekend, as well as Chief Avels and Lieutenant Michels for removing abandoned Bird scooters that were inhibiting the safe use of City sidewalks.

Mayor Pro Tem/Vice Chairperson Raft stated she appreciates all who came forward with their comments this evening and wished everyone a Happy New Year.

Council Member/Director Ruh thanked staff members who worked over the holidays to keep the community safe and urged residents to shop Montclair this year and keep our tax dollars in the City.

### F. Committee Meeting Minutes

#### 1. Minutes of Personnel Committee Meeting of December 17, 2018

The City Council received and filed the minutes of the Personnel Committee meeting of December 17, 2018, for informational purposes.

**XIII. CLOSED SESSION**

At 8:24 p.m., Chairperson Dutrey adjourned the Successor Agency Board of Directors, the Montclair Housing Corporation Board of Directors, the Montclair Housing Authority Commissioners, and the Montclair Community Foundation Board of Directors.

At 8:24 p.m., Council Member Ruh left the meeting.

At 8:25 p.m., the City Council entered into closed session to discuss real property negotiations pursuant to Government Code Section 54956.8.

**XIV. CLOSED SESSION ANNOUNCEMENTS**

At 8:45 p.m., the City Council returned from Closed Session. In attendance were Mayor Dutrey, Mayor Pro Tem Raft, and Council Member Martinez. Mayor Dutrey announced that information was received regarding real property negotiations, direction was given to staff, and no further announcements would be made at this time.

**XV. ADJOURNMENT**

At 8:45 p.m., Mayor Dutrey adjourned the City Council, noting it would next convene on Tuesday, January 22, 2019, at 5:45 p.m. in the City Council Chambers to receive a presentation from the **Metro Gold Line Foothill Extension Construction Authority** regarding an update of the Phase 2B Project, which was adjourned from the December 17, 2018 regular meeting.

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



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Andrea M. Phillips  
City Clerk