

**CITY COUNCIL OF MONTEREY PARK
AND THE CITY COUNCIL ACTING ON BEHALF OF THE SUCCESSOR AGENCY OF THE
FORMER REDEVELOPMENT AGENCY**

AGENDA

REGULAR MEETING

**NOTE THAT THESE MEETINGS WILL BE CONDUCTED PURSUANT TO
SECTION 3 OF EXECUTIVE ORDER NO. N-29-20 ISSUED BY GOVERNOR NEWSOM ON MARCH
17, 2020.**

**ACCORDINGLY, COUNCILMEMBERS WILL BE PROVIDED WITH A MEETING LOGIN NUMBER
AND CONFERENCE CALL NUMBER; THEY WILL NOT BE PHYSICALLY PRESENT AT COUNCIL
CHAMBERS.**

**PURSUANT TO THE GOVERNOR’S ORDER, THE PUBLIC MAY PROVIDE PUBLIC COMMENT
UTILIZING THE METHODS SET FORTH BELOW.**

**NOTE THAT CITY HALL IS CURRENTLY CLOSED TO THE PUBLIC. YOU WILL NOT BE
ADMITTED TO CITY HALL.**

**Wednesday
April 15, 2020
7:00 p.m.**

MISSION STATEMENT

**The mission of the City of Monterey Park is to provide excellent services
to enhance the quality of life for our entire community.**

Documents related to an Agenda item are available to the public in the City Clerk’s Office located at 320 West Newmark Avenue, Monterey Park, CA 91754, during normal business hours and the City’s website at <http://www.montereypark.ca.gov/AgendaCenter/City-Council-17> .

PUBLIC COMMENTS ON AGENDA ITEMS

You may speak up to 5 minutes on Agenda item. You may combine up to 2 minutes of time with another person’s speaking. No person may speak more than a total of 10 minutes. The Mayor and City Council may change the amount of time allowed for speakers.

This Agenda includes items considered by the City Council acting on behalf of the Successor Agency of the former Monterey Park Redevelopment Agency which dissolved February 1, 2012. Successor Agency matters will include the notation of “SA” next to the Agenda Item Number.

PUBLIC PARTICIPATION

In accordance with Executive Order No. N-29-20 and guidance from the California Department of Public Health on gatherings, remote public participation is allowed in the following ways:

Participants are encouraged to join the meeting 30 minutes before the start of the meeting.

Public comment will be accepted via email to mpclerk@montereypark.ca.gov during the meeting, before the close of public comment, and read into the record during public comment, when feasible. We request that written communications be limited to not more than 50 words.

Public comment may be submitted via telephone during the meeting, before the close of public comment, by calling (877) 853-5247 or (888) 788-0099 and entering Zoom Meeting ID: 763220761 then press pound (#). When prompted to enter participation ID number press pound (#) again. If participants would like to make a public comment they will enter “*9” then the Clerk’s office will be notified and you will be in the rotation to make a public comment.

The public may also watch the meeting live on the city’s cable channel MPKTV (AT&T U-verse, channel 99 or Charter Communications, channel 182) or by visiting the city’s website at <http://www.montereypark.ca.gov/133/City-Council-Meeting-Videos>.

Important Disclaimer – When a participant calls in to join the meeting, their name and/or phone number will be visible to all participants. Note that all public meetings will be recorded.

CALL TO ORDER Mayor

FLAG SALUTE Mayor

ROLL CALL Peter Chan, Hans Liang, Henry Lo, Fred Sornoso, Yvonne Yiu

AGENDA ADDITIONS, DELETIONS, CHANGES AND ADOPTIONS

PUBLIC COMMUNICATIONS. While all comments are welcome, the Brown Act does not allow the City Council to take action on any item not on the agenda. The Council may briefly respond to comments after Public Communications is closed. Persons may, in addition to any other matter within the City Council's subject-matter jurisdiction, comment on Agenda Items at this time. If you provide public comment on a specific Agenda item at this time, however, you cannot later provide comments at the time the Agenda Item is considered.

ORAL AND WRITTEN COMMUNICATIONS

[1.] PRESENTATION

1-A. MPK COUNTS CENSUS 2020 – INFORMATIONAL UPDATE

[2.] OLD BUSINESS – None.

[3.] CONSENT CALENDAR ITEMS NOS. 3A-3L

3-A. MONTHLY INVESTMENT REPORT – MARCH 2020

It is recommended that the City Council:

- (1) Receive and file the monthly investment report; and
- (2) Take such additional, related, action that may be desirable.

3-B. MINUTES

It is recommended that the City Council and the City Council (acting on behalf of the Successor Agency):

- (1) Approve the minutes from the regular meetings of February 5, 2020 and March 4, 2020 and the special meetings of February 5, 2020, March 4, 2020, and March 18, 2020; and
- (2) Take such additional, related, action that may be desirable.

3-C. ACCEPT A \$50,000 DONATION ON BEHALF OF THE CITY OF MONTEREY PARK FOR LANGLEY CENTER

It is recommended that the City Council:

- (1) Accept a \$50,000 donation on behalf of the City of Monterey Park for Langley Center; and
- (3) Take such additional, related, action that may be desirable.

3-D. RENEWAL OF THE ASSESSMENT DISTRICT FOR FISCAL YEAR 2020-21 AND SCHEDULE A PUBLIC HEARING PURSUANT TO STREETS AND HIGHWAYS CODE §§ 22500, ET SEQ.

It is recommended that the City Council consider:

- (1) Adopting a resolution declaring the City Council's intent to levy and collect assessments for Fiscal Year 2020-21 in Citywide Maintenance District No. 93-1 pursuant to Streets and Highways Code §§ 22500, *et seq.* and setting a time and place for a public hearing; and/or
- (2) Taking such additional related action that may be desirable.

CEQA (California Environmental Quality Act):

The proposed action is exempt from review under the California Environmental Quality Act (Cal. Pub. Res. Code §§ 21000, *et seq.*; "CEQA") and CEQA Guidelines (Cal. Code Regs. tit. 14, §§ 15000, *et seq.*) because it establishes, modifies, structures, restructures, and approves rates and charges for meeting operating expenses; purchasing supplies, equipment, and materials; meeting financial requirements; and obtaining funds for capital projects needed to maintain service within existing service areas. The proposed action, therefore, is categorically exempt from further CEQA review under CEQA Guidelines § 15273.

3-E. SECOND READING AND ADOPTION: AN ORDINANCE AMENDING THE CITY'S CALPERS CONTRACT CAUSING MEMBERS OF THE MONTEREY PARK POLICE OFFICERS' MID-MANAGEMENT ASSOCIATION ("MPPOMMA"), MONTEREY PARK POLICE CAPTAINS ASSOCIATION ("MPPCA") AND THE PROFESSIONAL CHIEF FIRE OFFICERS ASSOCIATION ("PCOA") TO MAKE ADDITIONAL PAYMENTS TOWARD CALPERS COSTS AS FOLLOWS: AN ADDITIONAL 3% BY CLASSIC EMPLOYEES; AND 0.5% FOR PEPRA EMPLOYEES

It is recommended that the City Council consider:

- (1) Waiving the second reading and adopt the proposed ordinance; and
- (2) Taking such additional related action that may be desirable.

3-F. NATIONAL PUBLIC SAFETY TELECOMMUNICATORS WEEK RESOLUTION

It is recommended that the City Council:

- (1) Adopt a Resolution Declaring the week of April 12 through 18, 2020 to be National Public Safety Telecommunicators Week in Monterey Park; and
- (2) Take such additional, related, action that may be desirable

3-G. CONSIDERATION AND POSSIBLE ACTION TO ADOPT A RESOLUTION UPDATING THE CITY'S DESIGNATION OF APPLICANT'S AGENT RESOLUTION (FORM 130) WITH THE CALIFORNIA GOVERNOR'S OFFICE OF EMERGENCY SERVICES (CAL-OES) FOR THE PURPOSES OF OBTAINING FINANCIAL ASSISTANCE FROM THE FEDERAL EMERGENCY MANAGEMENT AUTHORITY (FEMA)

It is recommended that the City Council consider:

- (1) Adopting a resolution updating the City's designation of applicant's agent resolution with the California Governor's Office of Emergency Services; and/or
- (2) Taking such additional, related, action that may be desirable

CEQA (California Environmental Quality Act):

This Resolution is exempt from the requirements of the California Environmental Quality Act (Public Resources Code §§ 21000, *et seq.*; "CEQA") and CEQA Guidelines (California Code Regulations Title 14, §§ 15000, *et seq.*) because it does not constitute a "Project" under CEQA § 15378. Projects that may be funded by FEMA and Cal OES financial assistance may require project-specific environmental review.

3-H. CONSIDERATION AND INTRODUCTION OF AN ORDINANCE AMENDING THE MONTEREY PARK MUNICIPAL TO REGULATE THE UNLAWFUL USE OF PUBLIC PROPERTY

It is recommended that the City Council consider:

- (1) Introduce and waive first reading of ordinance amending the Monterey Park Municipal Code to regulate the unlawful use of public property; and/or
- (2) Taking such additional, related, action that may be desirable

CEQA (California Environmental Quality Act):

The proposed Ordinance is exempt from the requirements of the California Environmental Quality Act (Public Resources Code §§ 21000, *et seq.*; "CEQA") and CEQA Guidelines (California Code Regulations Title 14, §§ 15000, *et seq.*) because it does not constitute a "Project" under CEQA § 15378.

3-I. CONSIDERATION AND POSSIBLE ACTION TO ADOPT A REVISED RESOLUTION AUTHORIZING THE CITY MANAGER, OR DESIGNEE, TO APPLY FOR, RECEIVE AND APPROVE GRANT FUNDS FOR THE PLANNING GRANTS PROGRAM

It is recommended that the City Council consider:

- (1) Adopting a revised resolution authorizing the City Manager, or designee, to apply for, receive and appropriate grant funds for the Planning Grants Program; and
- (2) Taking such additional, related, action that may be desirable

3-J. ONE-YEAR TIME EXTENSION (EX-20-01) FOR TENTATIVE MAP NO. 82024 (TM-18-02) TO SUBDIVIDE AIR-RIGHTS FOR A THREE-UNIT RESIDENTIAL CONDOMINIUM DEVELOPMENT – 217 NORTH NICHOLSON AVENUE

It is recommended that the City Council consider:

- (1) Adopting a resolution approving a Time Extension (EX-20-01) for Tentative Map No. 82024 (TM-18-02); and
- (2) Taking such additional, related, action that may be desirable

CEQA (California Environmental Quality Act):

The Project is categorically exempt from additional environmental review pursuant to CEQA Guidelines § 15315 as a Class 15 categorical exemption (Minor Land Divisions). The Project consists of the division of property in an urbanized area that is zoned for residential use. The Project conforms to the General Plan because, according to the Land Use Element, the Single-Family Residential land use category allows for low density residential units, traditionally single-family homes with one dwelling permitted per legal lot. The Project is the subdivision of air-rights for the construction of three new residential dwelling units. The Project is consistent with zoning. Furthermore, the Project does not require any variances or exceptions, all services and access to the proposed parcels are available (to the City's standards), the parcel was not involved in a division of a larger parcel within the previous two years, and the parcel does not have an average slope greater than 20 percent.

3-K. ONE-YEAR TIME EXTENSION (EX-19-03) FOR TENTATIVE MAP NO. 73622 (TM-15-05) TO SUBDIVIDE ONE LOT INTO NINE LOTS – 1585 SOMBRERO DRIVE

It is recommended that the City Council consider:

- (1) Adopting a resolution approving a Time Extension (EX-19-03) for Tentative Map No. 73622 (TM-15-05); and
- (2) Taking such additional, related, action that may be desirable

CEQA (California Environmental Quality Act):

The Project is categorically exempt from additional environmental review pursuant to CEQA Guidelines § 15332 as a Class 32 categorical exemption (In-Fill Development Projects) in that the project consists of the subdivision of land for the construction of new single-family dwelling units. The property is designated Low Density Residential in the General Plan Land Use Element. The proposed development will take place within city limits on a project site of no more than five acres substantially surrounded by urban uses. The project site has no value as habitat for endangered, rare or threatened species in that the property was formerly developed with a service station; furthermore, the construction of the proposed project will take place entirely upon the existing, developed lot. Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality in that the project is an in-fill project in an existing developed and urban area. Lastly, the site can be adequately served by all required utilities and public services.

3-L. RESOLUTION IDENTIFYING A PUBLIC WORKS STREET MAINTENANCE PROJECT TO BE INCLUDED IN THE FY 2020-21 BUDGET AND FUNDED BY SENATE BILL 1: THE ROAD REPAIR AND ACCOUNTABILITY ACT OF 2017

It is recommended that the City Council:

- (1) Adopt a resolution identifying a street maintenance project to be included in the FY 2020-21 budget and funded with Road Maintenance and Rehabilitation Act (RMRA) funds, in a form approved by the City Attorney; and/or
- (2) Take such additional, related, action that may be desirable

[4.] PUBLIC HEARING – None.

[5.] NEW BUSINESS

5-A. EXTENSION OF EMERGENCY REGARDING COVID-19 PANDEMIC

It is recommended that the City Council consider:

- (1) Adopting a Resolution Ratifying Certain Actions Completed by the City Manager and Extending the Existence of a Local Emergency; and
- (2) Taking such additional, related, action that may be desirable

CEQA (California Environmental Quality Act):

The Resolution itself and the actions anticipated by the Resolution were reviewed pursuant to the California Environmental Quality Act (Public Resources Code §§ 21000, *et seq.*, “CEQA”) and the regulations promulgated thereunder (14 Cal. Code of Regulations §§15000, *et seq.*, the “CEQA Guidelines”). Based upon that review, this action is exempt from further review pursuant to CEQA Guidelines § 15269(a) because the protection of public and private property is necessary to maintain service essential to the public, health and welfare - CEQA findings regarding an anticipated imminent emergency are valid (*see CalBeach Advocates v. City of Solana Beach* (2002) 103 Cal.App.4th 529).

5-B. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTEREY PARK, CALIFORNIA APPOINTING COUNCIL REPRESENTATIVES TO SPECIFIC ORGANIZATIONS

It is recommended that the City Council:

- (1) Adopt a Resolution appointing representatives to specific organizations; and/or
- (2) Take such additional, related, action that may be desirable

5-C. CITY COUNCIL APPOINTMENTS TO VARIOUS COMMISSIONS, BOARDS AND COMMITTEES

It is recommended that the City Council:

- (1) Receive and file the list of Commission/Board/Committee members as listed in Attachment 1; and/or
- (2) Take such additional, related, action that may be desirable

5-D. MAYORAL ROTATION

It is recommended that the City Council consider:

- (1) Give direction regarding the method by which the Mayor and Mayor pro tempore are selected;
- (2) If appropriate, select the Mayor pro tempore and direct that a resolution memorializing the City Council's determination be placed on the consent calendar for the next regular meeting; and
- (3) Taking such additional, related, action that may be desirable

[6.] COUNCIL COMMUNICATIONS AND MAYOR/COUNCIL AND AGENCY MATTERS

6-A. A RESOLUTION ADOPTED BY THE CITY COUNCIL FOR THE CITY OF MONTEREY PARK ENCOURAGING THE COMMUNITY TO ADHERE TO THE "SAFER AT HOME" ORDERS AND CDC RECOMMENDATIONS TO COMBAT THE COVID-19 PANDEMIC – REQUESTED BY COUNCIL MEMBER LO

It is recommended that the City Council consider:

- (1) Adopting the Resolution encouraging the community to adhere to the "Safe at Home" orders and CDC recommendation to combat the COVID-19 pandemic; and
- (2) Taking such additional, related, action that may be desirable

[7.] CLOSED SESSION (IF REQUIRED; CITY ATTORNEY TO ANNOUNCE)

ADJOURN



City Council Staff Report

DATE: April 15, 2020

AGENDA ITEM NO: Consent Calendar
Agenda Item 3-A

TO: The Honorable Mayor and City Council
FROM: Joseph Leon, City Treasurer
SUBJECT: Monthly Investment Report – March 2020

RECOMMENDATION: It is recommended that the City Council:

- (1) Receive and file the monthly investment report; and
- (2) Take such additional, related, action that may be desirable.

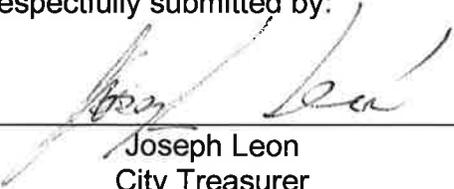
EXECUTIVE SUMMARY:

As of March 31, 2020 invested funds for the City of Monterey Park is \$91,592,455.87.

BACKGROUND:

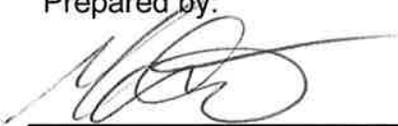
In accordance with the City's Investment Policy, a monthly investment report is presented to the City Council showing the types of investments, dates of maturities, amounts of deposits, rates of interest, and the current market values for securities with maturity more than 12 months. The attached monthly investment report includes a summary investment report for the LA County Pooled Investment Fund, which displays the composition by type for the entire pooled investment fund.

Respectfully submitted by:



Joseph Leon
City Treasurer

Prepared by:



Martha Garcia
Director of Management Services

Approved by:



Ron Bow
City Manager

**CITY OF MONTEREY PARK
INVESTMENT REPORT
AS OF MARCH 31, 2020**

INVESTMENTS PORTFOLIO PROFILE:

TOTAL BALANCE AT 3/31/2020

\$ 91,592,455.87

INVESTMENT COMPOSITION

(1)	<u>LA COUNTY POOLED INVESTMENT FUND</u> <i>(See Schedule A for LA County Pool Composition)</i>	ON DEMAND	1.890%	<u>\$ 2,738,626.14</u>
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(2)	<u>LOCAL AGENCY INVESTMENT FUND</u>	ON DEMAND	1.890%	<u>\$ 81,603,829.73</u>
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		<u>Purchase Date</u>	<u>Maturity Date</u>	<u>Interest Rate</u>	
(3)	<u>CERTIFICATES OF DEPOSIT</u>				
1	PREFERRED BANK	09/30/19	09/03/20	2.00%	140,000
2	ROYAL BUSINESS BANK	06/23/19	06/22/20	2.45%	250,000
3	ALLY BANK MIDVALE	10/06/17	10/05/20	1.95%	245,000
4	AMERICAN EXPRESS BANK	05/03/17	05/04/20	1.80%	245,000
5	AMERICAN FIRST CREDIT UNION	03/06/20	03/07/22	1.60%	245,000
6	CAPITAL ONE NATL BANK	10/25/17	10/26/20	2.00%	245,000
7	CITIBANK NATIONAL BANK	02/07/19	02/08/21	2.65%	245,000
8	COMMERCIAL BANK	06/21/18	06/22/20	2.75%	245,000
9	CUSTOMERS BANK	06/19/19	06/19/20	2.40%	245,000
10	DIRECT CFED CREDIT UNION	11/22/17	11/23/20	2.00%	245,000
11	DISCOVER BANK	09/01/17	09/01/20	1.90%	245,000
12	ENVISION CREDIT UNION	06/07/19	06/07/21	2.50%	245,000
13	FIRST SOURCE FED CREDIT UNION	10/08/19	03/26/21	1.95%	245,000
14	GARRETT BANK	05/09/18	05/11/20	2.55%	245,000
15	GOLDMAN SACHS BANK	10/18/17	10/19/20	1.95%	245,000
16	GRAND RIVER BANK	11/28/17	05/28/20	1.80%	245,000
17	GUARANTY BANK	03/15/18	09/15/20	2.40%	245,000
18	IBERIABANK	05/30/18	11/30/20	2.70%	245,000
19	KEESLER FEDERAL CREDIT UNION	12/21/18	06/22/20	3.00%	245,000
20	LAKESIDE BANK CHICAGO	05/10/17	05/11/20	1.65%	245,000
21	MORGAN STANLEY BANK	02/27/20	02/28/22	1.70%	245,000
22	MORGAN STANLEY PRIVATE BANK	02/27/20	02/28/22	1.70%	245,000
23	NATIONWIDE BANK	11/30/17	08/31/20	2.00%	245,000
24	STEARNS BANK	05/31/18	05/29/20	2.70%	245,000
25	SYNCHRONY BK RETAIL	04/27/18	04/27/20	2.55%	245,000
26	THIRD FED SAVINGS & LOAN	12/21/17	12/21/20	2.10%	245,000
27	UNIVERSITY IOWA CMNTY	04/30/18	04/30/21	2.75%	245,000
28	VIBRANT CREDIT UNION	12/21/18	06/22/20	2.95%	245,000
29	WELLS FARGO BANK	02/13/19	02/16/21	2.65%	245,000
30	WEX BANK	06/02/17	06/02/20	1.80%	245,000
	<i>Total CDs (30)</i>			2.230%	<u>\$ 7,250,000.00</u>

**CITY OF MONTEREY PARK
INVESTMENT REPORT
AS OF MARCH 31, 2020**

OTHER INFORMATION:

BANK BALANCE: ⁽¹⁾	<u>\$ 7,868,594.32</u>
AVERAGE MATURITY DAYS	19
AVERAGE INTEREST RATE FOR THE MONTH	1.917%

THE CITY'S INVESTMENT HAS SUFFICIENT LIQUIDITY TO MEET THE CITY'S EXPENDITURE REQUIREMENTS FOR THE NEXT 180 DAYS. THE 180-DAY LIQUIDITY DISCLOSURE IS REQUIRED PER GOVERNMENT CODE 53646.

INTEREST EARNINGS FOR 3RD QUARTER 2019-2020 **\$ 464,923.00**

THERE HAVE BEEN NO VARIANCES TO THE INVESTMENT POLICY.

(1) Bank balance is maintained to cover outstanding warrants, payroll checks and on-going operating costs.

POOLED SURPLUS AND SPECIFIC PURPOSE INVESTMENTS
AS OF FEBRUARY 29, 2020

SCHEDULE A

<u>PORTFOLIO PROFILE</u>	<u>Pooled Surplus Investments</u>	<u>Specific Purpose Investments</u>
Inventory Balance at 2/29/20		
At Cost	\$ 32,429,005,300	\$ 119,062,417
At Market	\$ 32,506,836,541	\$ 122,317,902
Repurchase Agreements	\$ -	\$ -
Reverse Repurchase Agreements	\$ -	\$ -
Composition by Security Type:		
Certificates of Deposit	10.02%	16.80%
United States Government and Agency Obligations	60.96%	44.25%
Bankers Acceptances	0.00%	0.00%
Commercial Paper	28.54%	0.00%
Municipal Obligations	0.17%	2.95%
Corporate and Deposit Notes	0.31%	0.00%
Repurchase Agreements	0.00%	0.00%
Asset-Backed	0.00%	0.00%
Other	0.00%	36.00%
1-60 days	38.07%	0.00%
61 days-1 year	14.57%	52.80%
Over 1 year	47.36%	47.20%
Weighted Average Days to Maturity	683	



City Council Staff Report

DATE: April 15, 2020

AGENDA ITEM NO: Consent Calendar
Agenda Item 3-B

TO: The Honorable Mayor and City Council

FROM: Vincent D. Chang, City Clerk

SUBJECT: Minutes

RECOMMENDATION:

It is recommended that the City Council and the City Council (acting on behalf of the Successor Agency)

- (1) Approve the minutes from the regular meeting of February 5, 2020 and March 4, 2020 and the special meeting of February 5, 2020, March 4, 2020, and March 18, 2020; and
- (2) Take such additional, related, action that may be desirable.

EXECUTIVE SUMMARY:

None.

BACKGROUND:

None.

FISCAL IMPACT:

None.

Respectfully submitted,

Prepared by:



Vincent D. Chang
City Clerk



Henry Lu
Minutes Clerk

Approved By:



Ron Bow
City Manager

Attachments: Minutes

ATTACHMENT 1

Minutes

**MINUTES
MONTEREY PARK CITY COUNCIL
SUCCESSOR AGENCY (SA)
SPECIAL MEETING
FEBRUARY 5, 2020**

The City Council of the City of Monterey Park held a Special Meeting of the Council in Room 266, Second Floor of City Hall, located at 320 West Newmark Avenue in the City of Monterey Park, Wednesday, February 5, 2020 at 6:00 p.m.

ROLL CALL:

City Manager Ron Bow called the roll:

Council Members Present: Peter Chan, Teresa Real Sebastian, Mitchell Ing, Hans Liang

Council Members Absent: Stephen Lam

AGENDA ADDITIONS, DELETIONS, CHANGES AND ADOPTIONS

None.

ORAL AND WRITTEN COMMUNICATIONS

None.

CLOSED SESSION

The City Council adjourned to closed session at 6:00 p.m.

**1. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION
(Government Code § 54956.9(d)(1)): Number of Cases: Five**

Randy Harper v. City of Monterey Park
WCAB No: ADJ10782893; ADJ10779362

Robin Lopez v. City of Monterey Park
WCAB No: ADJ11740964

Rick Munder v. City of Monterey Park
WCAB No: ADJ11775585

Ernesto Torrecillas v. City of Monterey Park
WCAB No: ADJ11841617

*Southwest Voter Registration Education Project and Shenkman & Hughes P.C.v.
City of Monterey Park* (filed December 5, 2019) LASC Case No. 19STCV43834

**2. CONFERENCE WITH LEGAL COUNSEL – INITIATION OF LITIGATION
(Government Code § 54956.9(d)(4)): One.**

*Southwest Voter Registration Education Project and Shenkman & Hughes P.C.v.
City of Monterey Park* (filed December 5, 2019) LASC Case No. 19STCV43834

RECONVENE & ADJOURNMENT

The City Council reconvened from Closed Session with most Council Members present.
The meeting was adjourned at 6:36 p.m.

Action Taken: No Reportable action taken in Closed Session.

Vincent D. Chang
City Clerk

**MINUTES
MONTEREY PARK CITY COUNCIL
SUCCESSOR AGENCY (SA)
FEBRUARY 5, 2020**

The City Council of the City of Monterey Park held a Regular Meeting of the Council in the Council Chamber, located at 320 West Newmark Avenue in the City of Monterey Park, Wednesday, February 5, 2020 at 7:00 p.m.

The minutes include items considered by the City Council acting on behalf of the Successor Agency of the former Monterey Park Redevelopment Agency, which dissolved February 1, 2012. Successor Agency matters will include the notation of "SA" next to the Agenda Item Number.

CALL TO ORDER:

Mayor Liang called the meeting to order at 7:02 p.m.

FLAG SALUTE:

The Monterey Park Fire Explorers

ROLL CALL:

City Clerk Vincent Chang called the roll:

Council Members Present: Peter Chan, Mitchell Ing, Hans Liang, Teresa Real
Sebastian

Council Members Absent: Stephen Lam

ALSO PRESENT: City Manager Ron Bow, Assistant City Attorney Karl Berger, Fire Chief Scott Haberle, Director of Public Works Mark McAvoy, Director of Recreation & Community Services Inez Alvarez, Director of Human Resources and Risk Management Tom Cody, Police Chief Jim Smith, Police Captain Kelly Gordon, Interim Director of Management and Support Services Joe Tanner, City Librarian Diana Garcia, Assistant City Engineer Frank Lopez, Water Utility Manager Richard Gonzalez, Deputy Fire Marshall Chris Gomez, Senior Planner Samantha Tewasart, Deputy City Clerk Cindy Trang

AGENDA ADDITIONS, DELETIONS, CHANGES AND ADOPTIONS

Mayor Pro Tem Ing dedicated the meeting to Fujiko Sato aka "Fudge", a long time resident and business owner, and read a brief background story about her. The City Council observed a moment of silence in memory of Fujiko Sato.

ORAL AND WRITTEN COMMUNICATIONS

- Fang Liu stated that she was unhappy about the quality of science education in the community.

MISSION STATEMENT

The mission of the City of Monterey Park is to provide excellent services to enhance
the quality of life for our entire community

- David Barron and Lisa Duong informed the public about the 100 year anniversary of the Optimist International and provided a brief history of the club. They invited the public to partake in the Optimist International Essay Contest. Mr. Barron requested the City Council consider moving the Lunar New Year festival location to other areas in the city.
- Theresa Amador invited the public to attend various fundraiser events. She stated that the Monterey Park Bruggemeyer Library Foundation will be hosting Novel-Tea at the Library to be held on March 28, 2020 from 2:00 – 5:00 p.m.; and that the Monterey Park Women’s Club will be hosting a Fashion Show to be held on April 4, 2020 from 11:00 a.m. – 2:00 p.m. at Quiet Cannon; and the Lion’s Club will be hosting a speaker contest on February 18, 2020 at 6:00 p.m. at Lion’s Manor.
- Vivian Hu stated that she attended a town hall meeting and expressed her concerns regarding the three ballot measures. She requested that the Council postpone the three ballot measures to the November election.
- Bill Lam spoke about the increasing homeless population. He provided photos of the homeless issue in Los Angeles County for the Council.

1. PRESENTATION

1A. LOS ANGELES COUNTY VOTE CENTER – INFORMATIONAL UPDATE

City Clerk Chang presented an informational update on the Los Angeles County Vote Centers.

1B. UPDATE ON THE CORONAVIRUS

Fire Chief Haberle presented an informational update on the Coronavirus.

2. OLD BUSINESS

None.

3. CONSENT CALENDAR ITEMS NOS. 3A-3E

Matters listed under consent calendar are considered to be routine, ongoing business and are enacted by one motion unless specified.

This item was heard after Agenda Item No. 4A.

Action Taken: The City Council and the City Council, acting on behalf of the Successor Agency, approved and adopted Item Nos. 3A and 3B on Consent Calendar, except for Item Nos. 3C-3E which were pulled for discussion and separate motion, reading resolutions and ordinances by the title only and waiving further reading thereof.

Motion: Moved by Council Member Chan and seconded by Mayor Liang motion carried by the following vote:

Ayes: Council Members: Chan, Real Sebastian, Ing, Liang
Noes: Council Members: None
Absent: Council Members: Lam
Abstain: Council Members: None

3A. WARRANT REGISTER FOR THE CITY OF MONTEREY PARK OF FEBRUARY 5, 2020

Disbursements will be made from the funds referenced in the attached Resolution in the staff report in Warrants numbered 326572-326815 and ACH numbered 01135-01176.

Action Taken: The City Council approved payment of warrants and adopted Resolution No. 12136 allowing certain claims and demands per warrant register dated February 05, 2020 totaling \$1,163,796.14 specifying the funds out of which the same are to be paid on Consent Calendar.

Resolution No. 12136, entitled:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTEREY PARK, CALIFORNIA ALLOWING CERTAIN CLAIMS AND DEMANDS PER WARRANT REGISTER DATED 5TH OF FEBRUARY 2020 TOTALING \$1,163,796.14 AND SPECIFYING THE FUNDS OUT OF WHICH THE SAME ARE TO BE PAID

3B. MINUTES

Approve the minutes from the regular meetings of October 2, 2019, October 16, 2019, November 6, 2019, and November 20, 2019, and the special meetings of October 2, 2019, October 28, 2019, and November 20, 2019.

Action Taken: The City Council approved the Minutes from the regular meetings of October 2, 2019, October 16, 2019, November 6, 2019, and November 20, 2019, and the special meetings of October 2, 2019, October 28, 2019, and November 20, 2019 on Consent Calendar.

3C. N. ATLANTIC BLVD. WATER AND SEWER IMPROVEMENTS – AUTHORIZATION TO ADVERTISE

Staff has prepared bid specifications for the N. Atlantic Blvd. Water and Sewer Improvements project and is requesting the City Council's authorization to advertise the project for construction bids.

CEQA (California Environmental Quality Act):

The proposed project is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to 14 California Code of Regulations § 15301 as a Class 1 categorical exemption (Existing Facilities). The Project results in minor alterations to existing public facilities involving no significant expansion of the existing use. The Project is not anticipated to have any significant impacts with regard to traffic, noise, air quality or water quality.

Action Taken: The City Council adopted Resolution No. 12137 approving the design and plans for the North Atlantic Boulevard Water and Sewer Improvements and authorized solicitation of bids.

Motion: Moved by Council Member Real Sebastian and seconded by Council Member Chan motion carried by the following vote:

Ayes: Council Members: Chan, Real Sebastian, Ing, Liang
Noes: Council Members: None
Absent: Council Members: Lam
Abstain: Council Members: None

Resolution No. 12137, entitled:

A RESOLUTION APPROVING THE DESIGN AND PLANS FOR THE N. ATLANTIC BLVD. WATER AND SEWER IMPROVEMENTS PROJECT PURSUANT TO GOVERNMENT CODE § 830.6 AND ESTABLISHING A PROJECT PAYMENT ACCOUNT

3D. APPROVAL OF AMENDMENT TO AGREEMENT WITH GENERAL PUMP COMPANY

The City Council awarded a contract to General Pump Company on January 4, 2017 for well maintenance services. The term of the agreement was for three years with an option for renewal upon mutual consent of both parties. Staff is requesting City Council to authorize the City Manager to execute the amendment to extend the term of the agreement by two years, to terminate on January 31, 2022. The annual cost is not to exceed \$400,000 and will be reimbursed by the Environmental Protection Agency (EPA).

Action Taken: The City Council authorized the City Manager to execute the First Amendment, in a form approved by the City Attorney, that would extend the term of the Maintenance Agreement with General Pump Company for two years.

Motion: Moved by Council Member Real Sebastian and seconded by Mayor Pro Tem Ing motion carried by the following vote:

Ayes: Council Members: Chan, Real Sebastian, Ing, Liang
Noes: Council Members: None
Absent: Council Members: Lam
Abstain: Council Members: None

3E. ANNUAL WEED ABATEMENT DECLARATION LIST

The County of Los Angeles Department of Agriculture Commissioner/Weights and Measures (Weed Abatement Division) has submitted the annual Weed Abatement Declaration List to the City. (The Weed Abatement Declaration List is a list of parcels in Monterey Park which have been identified by inspection to contain, or have the potential to contain, weeds, brush or other flammable materials sufficient to be considered a fire hazard.) The accompanying Resolution seeks City Council approval to declare the properties on the annual Weed Abatement Declaration List to be public nuisances which may be abated.

Discussion: The City Council discussed the potential conflict of interest stating many of their neighbors properties are on the list. Assistant City Attorney Berger stated that this is a city-wide weed abatement item and that there is no conflict of interest.

Action Taken: Mayor Pro Tem Ing recused himself and left the dais stating a potential conflict of interest, as his neighbors property is on the list. The City Council approved the Weed Abatement Declaration list and adopted Resolution No. 12138 declaring that weeds, brush, rubbish, refuse and dirt upon and in front of certain public and private property in the city are a public nuisance, and declaring its intention to provide for abatement.

Motion: Moved by Council Member Chan and seconded by Mayor Liang motion carried by the following vote:

Ayes: Council Members: Chan, Liang
Noes: Council Members: Real Sebastian
Absent: Council Members: Lam, Ing
Abstain: Council Members: None

Resolution No. 12138, entitled:

A RESOLUTION ADOPTED PURSUANT TO GOVERNMENT CODE § 39561 DECLARING THAT WEEDS, BRUSH, RUBBISH, REFUSE AND DIRT UPON AND IN FRONT OF CERTAIN PUBLIC AND PRIVATE PROPERTY IN THE CITY ARE A PUBLIC NUISANCE, AND DECLARING ITS INTENTION TO PROVIDE FOR ABATEMENT

4. PUBLIC HEARING

4-A. A PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE GARFIELD VILLAGE SPECIFIC PLAN (SPA-19-01), ZONE CHANGE (ZC-19-01) AND CONDITIONAL USE PERMIT (CU-19-04) FOR THE RECONSTRUCTION OF AN EXISTING SERVICE STATION (ARCO) AND CONSTRUCTION OF NEW 24-HOUR DRIVE-THROUGH COFFEE SHOP AT 2425 AND 2439 SOUTH GARFIELD AVENUE

On December 18, 2019, the City Council reviewed the requested Specific Plan Amendment (SPA-19-01), Zone Change (ZC-19-01), and Conditional Use Permit (CU-19-04). Collectively, these actions would allow for the reconstruction of an existing service station and construction of a new drive-through. At the meeting, the City Council requested to see the traffic analysis conducted for the project and continued the application to the February 5, 2020 meeting.

At this time, the Applicant is requesting a continuance of the application to a date uncertain due to scheduling conflicts. When the Applicant and application are ready to come back to the City Council the requested analysis and notice of the hearing date will be provided per MPMC § 21.32.070.

This item was heard after Agenda Item No. 4B.

Action Taken: The City Council opened the continued public hearing at 9:34 p.m. and directed staff to provide new notices to the surrounding properties within a 500 feet radius from the proposed project site.

Motion: Moved by Council Member Real Sebastian and seconded by Mayor Pro Tem Ing motion carried by the following vote:

Ayes: Council Members: Chan, Real Sebastian, Ing
Noes: Council Members: Liang
Absent: Council Members: Lam
Abstain: Council Members: None

Action Taken: The City Council continued the application to a date uncertain.

Motion: Moved by Mayor Liang and seconded by Council Member Chan motion failed by the following vote:

Ayes: Council Members: Chan, Liang
Noes: Council Members: Real Sebastian, Ing
Absent: Council Members: Lam
Abstain: Council Members: None

Assistant City Attorney Berger advised the Council that due to the absence of Council Member Lam's illness, the matter will be carried over to the next agenda for reconsideration.

4-B. CONSIDERATION OF A ZONE CHANGE (ZC-18-01) TO ALLOW FOR THE CREATION OF A SENIOR-CITIZEN-HOUSING (S-C-H) OVERLAY ZONE, AND CONDITIONAL USE PERMIT (CU-18-01) AND TENTATIVE MAP NO. 73741 (TM-18-01) FOR THE CONSTRUCTION OF A 40-UNIT SENIOR-CITIZEN HOUSING CONDOMINIUM PROJECT – 130-206 SOUTH CHANDLER AVENUE

If approved, the requested Zone Change (ZC-18-01), Conditional Use Permit (CU-18-01) and Tentative Map No. 73741 (TM-18-01) would collectively allow the construction of a 40-unit senior citizen housing project. This Project was first considered by the City Council on April 17, 2019; following a number of required amendments to the Project, the Applicant has revised its proposal and is seeking Council approval.

CEQA (California Environmental Quality Act):

As required by the California Environmental Quality Act (CEQA), the City prepared an Initial Study to determine what environmental impacts, if any, would be generated by the proposed project, pursuant to CEQA guidelines § 15063. With the implementation of certain mitigation measures, the proposed Project will not have a significant impact on the environment and therefore a Mitigated Negative Declaration with Mitigation Measures and Mitigation Monitoring and Reporting Plan is recommended.

This item was heard after Agenda Item No. 1B.

Public Speakers:

- Kenny Gao, representative of Latigo Canyon Development LLC, was present and available to answer questions.

Action Taken: The City Council (1) opened the continued public hearing at 9:16 p.m.; (2) received testimonial and documentary evidence; (3) there being no speakers, closed the public hearing at 9:17 p.m.; (4a) waived the first reading and introduced an ordinance approving a zone change to ZC-18-01; and (4b) adopted Resolution No. 12135 approving a Tentative Map No. 73741 (TM-18-01) subject to ZC-18-01 along with conditions of approval.

Motion: Moved by Mayor Liang and seconded by Council Member Real Sebastian motion carried by the following vote:

Ayes: Council Members: Chan, Real Sebastian, Ing, Liang
Noes: Council Members: None
Absent: Council Members: Lam
Abstain: Council Members: None

Ordinance 1st reading, entitled:

AN ORDINANCE AMENDING THE ZONING MAP (ZC-18-01) TO CHANGE THE ZONING FROM R-3 TO R-3 (S-C-H) TO ALLOW CONSTRUCTION OF A 40-UNIT SENIOR CITIZEN HOUSING CONDOMINIUM DEVELOPMENT AT 130-206 SOUTH CHANDLER AVENUE

Resolution No. 12135, entitled:

A RESOLUTION APPROVING CONDITIONAL USE PERMIT (CU-18-01) AND TENTATIVE MAP NO. 73741 (TM-18-01) TO SUBDIVIDE AIR RIGHTS FOR A 40-UNIT SENIOR CITIZEN HOUSING CONDOMINIUM DEVELOPMENT AT 130-206 SOUTH CHANDLER AVENUE

5. NEW BUSINESS

None.

6. COUNCIL COMMUNICATIONS AND MAYOR/COUNCIL AND AGENCY MATTERS

Council Member Chan stated that he attended the COG (Council of Governments) monthly meeting and reported that the City of Pomona had a presentation about building a temporary shelter for the homeless. He also stated that he attended the Transportation Committee meeting and reported that the Gold Line extension will not happen until around the year 2050. He also stated that he attended the ICA (Independent City Associations) Winter Seminar in Santa Barbara and reported about human trafficking. He wished everyone a Happy Lunar New Year.

Council Member Real Sebastian wished everyone a Happy Lunar New Year.

Mayor Pro Tem Ing stated that he attended the ICA Winter Seminar and reported about the sessions he attended regarding cyber security and artificial intelligence. He wished everyone a Happy Lunar New Year.

Mayor Liang reported that he attended the Los Angeles County Board of Supervisors meeting and was presented with a scroll on behalf of the City of Monterey Park's Lunar New Year Celebration. He stated that he attended the ICA Winter Seminar and reported about earthquake safety tips. He stated that residents can go to EarthquakeCountry.org for safety tips on what to do during an earthquake. He also informed the public about a California state sponsorship

program called Earthquake Brace + Bolt and stated that Monterey Park is listed as a qualified location for the program.

7. **CLOSED SESSION**

None.

ADJOURNMENT

There being no further business for consideration, the meeting was adjourned at 10:35 p.m.

Vincent D. Chang
City Clerk

**MINUTES
MONTEREY PARK CITY COUNCIL
SUCCESSOR AGENCY (SA)
SPECIAL MEETING
MARCH 4, 2020**

The City Council of the City of Monterey Park held a Special Meeting of the Council in Room 266, Second Floor of City Hall, located at 320 West Newmark Avenue in the City of Monterey Park, Wednesday, March 4, 2020 at 6:30 p.m.

ROLL CALL:

City Manager Ron Bow called the roll:

Council Members Present: Peter Chan, Mitchell Ing, Stephen Lam, Hans Liang,
Teresa Real Sebastian

Council Members Absent: None.

AGENDA ADDITIONS, DELETIONS, CHANGES AND ADOPTIONS

None.

ORAL AND WRITTEN COMMUNICATIONS

None.

CLOSED SESSION

The City Council adjourned to Closed Session at 6:30 p.m.

**1. CONFERENCE WITH LABOR NEGOTIATORS, PURSUANT TO CALIFORNIA
GOVERNMENT CODE § 54957.6**

City Negotiators: Ron Bow, City Manager; Tom Cody, Human Resources
Director

Employee Organizations: Confidential Bargaining Unit

**2. CONFERENCE WITH LEGAL COUNSEL – INITIATION OF LITIGATION
(Government Code § 54956.9(d) – *Number of Cases: 1*)**

Betty Lu v. City of Monterey Park (filed July 25, 2018)
LASC Case No. EC068865

RECONVENE & ADJOURNMENT

The City Council reconvened from Closed Session with all Council Members present. The meeting was adjourned at 6:50 p.m.

Action Taken: No Reportable action taken in Closed Session.

Vincent D. Chang
City Clerk

**MINUTES
MONTEREY PARK CITY COUNCIL
SUCCESSOR AGENCY (SA)
MARCH 4, 2020**

The City Council of the City of Monterey Park held a Regular Meeting of the Council in the Council Chamber, located at 320 West Newmark Avenue in the City of Monterey Park, Wednesday, March 4, 2020 at 7:00 p.m.

The minutes include items considered by the City Council acting on behalf of the Successor Agency of the former Monterey Park Redevelopment Agency, which dissolved February 1, 2012. Successor Agency matters will include the notation of "SA" next to the Agenda Item Number.

CALL TO ORDER:

Mayor Liang called the meeting to order at 7:02 p.m.

FLAG SALUTE:

The Monterey Park Fire Explorers

ROLL CALL:

City Clerk Vincent Chang called the roll:

Council Members Present: Peter Chan, Mitchell Ing, Stephen Lam, Hans Liang,
Teresa Real Sebastian

Council Members Absent: None

ALSO PRESENT: City Manager Ron Bow, Assistant City Attorney Berger, City Treasurer Joseph Leon, Interim Fire Chief Matt Hallock, Interim Police Chief Kelly Gordon, Director of Management Services Martha Garcia, Director of Public Works Mark McAvoy, Director of Recreation & Community Services Inez Alvarez, Director of Human Resources and Risk Management Tom Cody, City Librarian Diana Garcia, Financial Services Manager Harry Wong

AGENDA ADDITIONS, DELETIONS, CHANGES AND ADOPTIONS

Discussion: Council Member Real Sebastian requested an update regarding Agenda Item No. 4B, Senior Housing project on Chandler Avenue, from the February 5, 2020 City Council Meeting. Assistant City Attorney Berger stated that he advised staff to not include the item on this agenda as it needs to be renoticed as a public hearing.

ORAL AND WRITTEN COMMUNICATIONS

- Sarkis Antonian spoke about the March 3, 2020 Election unofficial results.

MISSION STATEMENT

The mission of the City of Monterey Park is to provide excellent services to enhance
the quality of life for our entire community

- Chuck Hayashi, Sylvia Poon, and Ling Zhang inquired about the city's next step regarding a revised notice for the weed abatement public hearing item that was postponed from the February 5, 2020 Regular City Council Meeting.
- Lupe Casteneda spoke about bingo activities at the Langley Senior Center.
- Hilton Wong, representing Recreation & Parks Commissioner Gary Lau, spoke about pickle ball and stated that starting March 10, 2020 there will be two pickle ball courts at Barnes Park. He invited the Council to the grand opening on March 14, 2020 at 10:00 a.m. at Barnes Park.
- Paul Isozaki spoke about City Measure II, HH, and GG and stated all three measures failed to pass. Greg Moss yielded his time.
- David Barron invited the public to Breakfast at the Chamber to be held on March, 18, 2020 at Jardin El Encanto. He stated he worked as a Clerk for the Vote Center during the election and reported on his experience.

1. PRESENTATION

1A. INTRODUCTION OF NEW MANAGEMENT SERVICES DIRECTOR, MARTHA GARCIA

City Manager Bow introduced the new Management Services Director Martha Garcia. Management Services Director Garcia introduced herself and gave a brief summary of her work history.

1B. CORONAVIRUS – INFORMATIONAL UPDATE

Interim Fire Chief Hallock presented an informational update on the Coronavirus also known as COVID-19. He announced a Ground Breaking Ceremony for Fire Station 62 that will be held on March 14, 2020 at 10:00 a.m.

2. OLD BUSINESS

None.

RECESSED AND RECONVENED

The City Council recessed at 8:48 p.m. and reconvened with all council members present at 9:01 p.m.

3. CONSENT CALENDAR ITEMS NOS. 3A-3G

Matters listed under consent calendar are considered to be routine, ongoing business and are enacted by one motion unless specified.

Action Taken: The City Council and the City Council, acting on behalf of the Successor Agency, approved and adopted Item Nos. 3A-3D, 3F, and 3G on Consent Calendar, except for Item No. 3E which was pulled for separate discussion and motion, reading resolutions and ordinances by the title only and waiving further reading thereof.

Motion: Moved by Council Member Chan and seconded by Mayor Pro Tem Ing motion carried by the following vote:

Ayes: Council Members: Chan, Lam, Real Sebastian, Ing, Liang
Noes: Council Members: None
Absent: Council Members: None
Abstain: Council Members: None

3A. WARRANT REGISTER FOR SUCCESSOR AGENCY TO THE FORMER COMMUNITY REDEVELOPMENT AGENCY OF FEBRUARY 19, 2020

Disbursements will be made from the funds referenced in the attached Resolution attached to the staff report in Warrant numbered 386-387.

Action Taken: The City Council and the City Council, acting on behalf of the Successor Agency, approved payment of warrants and adopted Resolution No. SA-178 of the Successor Agency to the former Monterey Park Redevelopment Agency allowing certain claims and demands per warrant register dated February 19, 2020 totaling \$2,042.34 and specifying the funds out of which the same are to be paid on Consent Calendar.

Resolution No. SA-178, entitled:

A RESOLUTION OF THE SUCCESSOR AGENCY TO THE FORMER COMMUNITY REDEVELOPMENT AGENCY (SA) ALLOWING CERTAIN CLAIMS AND DEMANDS PER WARRANT REGISTER DATED 19TH OF FEBRUARY 2020 TOTALING \$2,042.34 AND SPECIFYING THE FUNDS OUT OF WHICH THE SAME ARE TO BE PAID

3B. WARRANT REGISTER FOR THE CITY OF MONTEREY PARK OF FEBRUARY 19 AND MARCH 04, 2020

Disbursements will be made from the funds referenced in the attached Resolution attached to the staff report in Warrants numbered 326816-327127 and ACH numbered 001177-001243.

Action Taken: The City Council approved payment of warrants and adopted Resolution No. 12139 allowing certain claims and demands per Warrant Register dated February 19 and March 04, 2020 totaling \$1,495,497.72 specifying the funds out of which the same are to be paid on Consent Calendar.

Resolution No. 12139, entitled:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTEREY PARK, CALIFORNIA ALLOWING CERTAIN CLAIMS AND DEMANDS PER WARRANT REGISTER DATED 19TH OF FEBRUARY AND 4TH OF MARCH 2020 TOTALING \$1,495,497.72 AND SPECIFYING THE FUNDS OUT OF WHICH THE SAME ARE TO BE PAID

3C. MONTHLY INVESTMENT REPORT – JANUARY 2020

As of January 31, 2020, invested funds for the City of Monterey Park is \$93,310,455.87.

Action Taken: The City Council received and filed the monthly investment report on Consent Calendar.

3D. MINUTES

Approve the minutes from the regular meetings of December 18, 2019, January 15, 2020 and the special meetings of December 5, 2019, December 18, 2019, and January 15, 2020.

Action Taken: The City Council and the City Council, acting on behalf of the Successor Agency, approved the minutes from the regular meetings of December 18, 2019, January 15, 2020, and the special meetings of December 5, 2019, December 18, 2019, and January 15, 2020 on Consent Calendar.

3E. DECLARATION OF SURPLUS PROPERTY AND AWARD OF PURCHASE FINANCING – FIRE APPARATUS

In the FY 2018-2019 budget, City Council approved the capital improvement budget to purchase two new fire engines and one new fire ladder truck. In FY 2019-2020, Monterey Park Fire Department has received the two new fire engines from the vendor KME and conducted final inspection in February 2020 for delivery of the new fire ladder truck for. With the delivery of the three new fire apparatus, the Fire Department will have three fire apparatus moved to reserve status.

In addition to the three fire apparatus that will move to reserve status, the City also owns two 29-year-old reserve fire engines that are currently operationally ready, but are no longer compatible with CA AQMD laws. Additionally, the City owns one 20-year-old fire engine that was damaged and placed out of service. Monterey Park Fire Department is requesting to adopt a resolution (attachment 1) to the staff report to declare the referenced three fire apparatus as surplus property and authorizing the City Manager to dispose of such property by sale, donation, or other means.

Action Taken: The City Council adopted Resolution No. 12140 declaring three fire apparatus as surplus property and authorizing the City Manager to dispose of such property by sale, donation, or other means as amended to direct the City Manager to look into auctioning the two 1991 Emergency One Cyclone Fire Engine and report back to Council in the next year regarding disposal.

Motion: Moved by Council Member Real Sebastian and seconded by Mayor Pro Tem Ing motion carried by the following vote:

Ayes: Council Members: Lam, Real Sebastian, Ing, Liang
Noes: Council Members: Chan
Absent: Council Members: None
Abstain: Council Members: None

Resolution No. 12140, entitled:

A RESOLUTION DECLARING PERSONAL PROPERTY AS SURPLUS AND AUTHORIZING THE CITY MANAGER TO DISPOSE OF SUCH PROPERTY BY SALE, DONATION, OR OTHER MEANS

3F. WAIVE FURTHER READING AND ADOPT AN ORDINANCE APPROVING A ZONE CHANGE (ZC-18-01) TO ALLOW FOR THE CREATION OF A SENIOR-CITIZEN-HOUSING (S-C-H) OVERLAY ZONE FOR CONSTRUCTION OF A 40-UNIT SENIOR-CITIZEN HOUSING CONDOMINIUM PROJECT – 130-206 SOUTH CHANDLER AVENUE

The ordinance was introduced on February 5, 2020. At that meeting, the City Council conducted the first reading. The staff report from the February 5, 2020 meeting is attached to the staff report for reference. Second reading and adoption of this ordinance is recommended; if adopted, the ordinance will take effect in 30 days.

Action Taken: The City Council waived second reading and adopted Ordinance No. 2167 on Consent Calendar.

Ordinance No. 2167, entitled:

AN ORDINANCE AMENDING THE ZONING MAP (ZC-18-01) TO CHANGE THE ZONING FROM R-3 TO R-3 (S-C-H) TO ALLOW CONSTRUCTION OF A 40-UNIT SENIOR CITIZEN HOUSING CONDOMINIUM DEVELOPMENT AT 130-206 SOUTH CHANDLER AVENUE

3G. CONSIDERATION OF A RESOLUTION APPOINTING A REPRESENTATIVE TO THE INDEPENDENT CITIES RISK MANAGEMENT AUTHORITY (ICRMA)

The City of Monterey Park is a member of the Independent Cities Risk Management Authority (ICRMA). This Resolution notifies the ICRMA of the City Council's action to appoint Director of Management Services Martha Garcia as an alternate representative to the Independent Cities Risk Management Authority (ICRMA). Director of Human Resources & Risk Management Thomas J. Cody will remain the City's representative to the ICRMA Governing Board and Senior Management Analyst Hank Lu will continue to serve the board as the substitute alternate role.

Action Taken: The City Council adopted Resolution No. 12141 appointing Management Services Director Martha Garcia as the first alternate representative to the Independent Cities Risk Management Authority (ICRMA) Governing Board. Maintain Tom Cody, Director of Human Resources and Risk Management, as the primary representative and Hank Lu, Senior Management Analyst, as the second alternate representative on Consent Calendar.

Resolution No. 12141, entitled:

A RESOLUTION APPOINTING REPRESENTATIVES TO THE INDEPENDENT CITIES RISK MANAGEMENT AUTHORITY ("ICRMA")

4. PUBLIC HEARING

None.

5. NEW BUSINESS

None.

6. COUNCIL COMMUNICATIONS AND MAYOR/COUNCIL AND AGENCY MATTERS

Council Member Chan stated that he attended Police Chief Smith retirement party and reported it was well attended. He stated he attended the San Gabriel Valley Council of Governments meeting and reported that the SR-60 will not happen until the year 2057.

Council Member Lam had nothing to report.

Council Member Real Sebastian encouraged residents to attend and speak on the Regional Housing Needs Assessment at the Southern California Association of Government Regional Council Meeting on March 5, 2020, from 12:00 p.m. at 900 Wilshire Blvd. Suite 1700, Los Angeles, California, 90017.

Mayor Pro Tem Ing requested the City Manager to provide an update on the status of Developments in the City. He also would like to discuss how the travel bans may affect the businesses in the City.

Mayor Liang had nothing to report.

7. **CLOSED SESSION**

None.

ADJOURNMENT

There being no further business for consideration, the meeting was adjourned at 10:06 p.m.

Vincent D. Chang
City Clerk

**MINUTES
MONTEREY PARK CITY COUNCIL
SUCCESSOR AGENCY (SA)
SPECIAL MEETING
MARCH 18, 2020**

The City Council of the City of Monterey Park held a Special Meeting on Wednesday, March 18, 2020 at 12:00 p.m. The special meeting was conducted telephonically pursuant to Executive Order No. N-25-20 issued on March 12, 2020. Accordingly, Council Members were provided a conference call number and were not physically present at Council Chambers.

The minutes include items considered by the City Council acting on behalf of the Successor Agency of the former Monterey Park Redevelopment Agency, which dissolved February 1, 2012. Successor Agency matters will include the notation of "SA" next to the Agenda Item Number.

PUBLIC PARTICIPATION

In accordance with Executive Order No. N-25-20 and guidance from the California Department of Public Health on gatherings, remote public participation was allowed in the following ways:

Public comments were accepted in person during the meeting at the West Entrance (Police/Parking structure) of City Hall located at 320 W. Newmark Ave, Monterey Park.

Public comment were accepted by email to mpclerk@montereypark.ca.gov during the meeting, before the close of public comment, and read into the record during public comment.

Public comment may be submitted by telephone during the meeting, before the close of public comment, by calling 1 (646) 749-3122. Then enter access code 850797317 then press pound (#). When prompted to enter voice pin press pound (#) again. You will be joined in the meeting.

CALL TO ORDER:

Mayor Liang called the meeting to order at 12:05 p.m.

ROLL CALL:

Assistant Deputy City Clerk Helena Cho called the roll:

Council Members Present: Peter Chan, Mitchell Ing, Hans Liang, Teresa Real
Sebastian

Council Members Absent: Stephen Lam

MISSION STATEMENT

The mission of the City of Monterey Park is to provide excellent services to enhance
the quality of life for our entire community

ALSO PRESENT: City Manager Ron Bow, Assistant City Attorney Karl Berger, Interim Fire Chief Matt Hallock, Interim Police Chief Kelly Gordon, Director of Management Services Martha Garcia, Support Services Manager Tim Shay, Deputy City Clerk Cindy Trang

AGENDA ADDITIONS, DELETIONS, CHANGES AND ADOPTIONS

None.

ORAL AND WRITTEN COMMUNICATIONS

None.

1. DECLARATION OF EMERGENCY: COVID-19 PANDEMIC

On March 4, 2020, the Interim Fire Chief provided the City Council an update regarding the coronavirus identified as COVID-19. At that time, the City Council asked that the City Manager closely monitor the spread of COVID-19 and take appropriate action to protect public health and safety. On March 11, 2020, the World Health Organization (“WHO”) declared COVID-19 to be a pandemic. WHO defines a pandemic as the worldwide spread of a new disease against which most people do not have immunity. In response, the City Manager declared an administrative emergency and implemented emergency policies and procedures (“EP&P”) for mass gatherings, including City Council meetings. The City Council must ratify such actions within seven days after the administrative declaration of emergency. If adopted, the proposed Resolution would declare there to be a local emergency because of the COVID-19 Pandemic and ratify the actions undertaken by the City Manager since March 11, 2020.

CEQA (California Environmental Quality Act):

The Resolution itself and the actions anticipated by the Resolution were reviewed pursuant to the California Environmental Quality Act (Public Resources Code §§ 21000, *et seq.*, “CEQA”) and the regulations promulgated thereunder (14 Cal. Code of Regulations §§15000, *et seq.*, the “CEQA Guidelines”). Based upon that review, this action is exempt from further review pursuant to CEQA Guidelines § 15269(a) because the protection of public and private property is necessary to maintain service essential to the public, health and welfare.

Public Speakers:

Jennifer Tang wrote an email requesting for Council to consider protecting the community during the COVID-19 pandemic. She attached a list of recommendations on how to support the community during the pandemic.

Action Taken: The City Council adopted Resolution No. 12142 declaring a local emergency resulting from the COVID-19 Pandemic and ratifying the City Manager’s administrative Declaration of Emergency dated March 11, 2020.

Motion: Moved by Council Member Chan and seconded by Council Member Real Sebastian motion carried by the following vote:

Ayes: Council Members: Chan, Real Sebastian, Ing, Liang
Noes: Council Members: None
Absent: Council Members: Lam
Abstain: Council Members: None

Resolution No. 12142, entitled:

A RESOLUTION ADOPTED BY THE CITY COUNCIL FOR THE CITY OF MONTEREY PARK CONFIRMING THE EXISTENCE OF A LOCAL EMERGENCY

ADJOURNMENT

There being no further business for consideration, the meeting was adjourned at 1:06 p.m.

Vincent D. Chang
City Clerk



City Council Staff Report

DATE: April 15, 2020

AGENDA ITEM NO: Consent Calendar
Agenda Item 3-C

TO: The Honorable Mayor and City Council
FROM: Inez Alvarez, Director of Recreation & Community Services
SUBJECT: Accept a \$50,000 donation on behalf of the City of Monterey Park for Langley Center

RECOMMENDATION:

It is recommended that the City Council:

1. Accept a \$50,000 donation on behalf of the City of Monterey Park for Langley Center; and
2. Take such additional, related, action that may be desirable.

EXECUTIVE SUMMARY:

Pursuant to Resolution No. 11776, the City Council may accept donations with a value estimated at \$25,000 or greater (Attachment 1). Therefore, it is requested that the City Council accept a donation of \$50,000 from Mr. Don Knudsen for Langley Center.

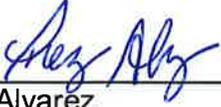
BACKGROUND:

Mr. Don Knudsen, a Monterey Park resident and patron of Langley Center gifted a generous donation of \$50,000 to support activities at Langley Center. He often walked to and from Langley Center for exercise and also participated in a variety of programs including billiards, ping-pong, special event luncheons, and morning coffee social time.

FISCAL IMPACT:

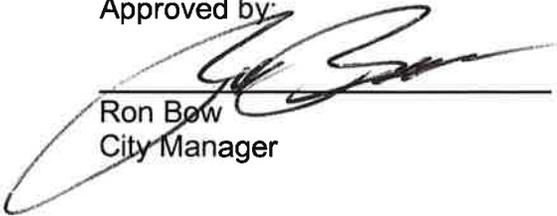
If accepted, the \$50,000 donation will be deposited into the Langley Center account 0075-450-0075-08550.

Respectfully submitted by:



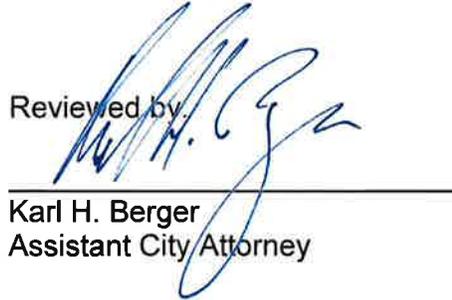
Inez Alvarez
Director of Recreation and Community Services

Approved by:



Ron Bow
City Manager

Reviewed by:



Karl H. Berger
Assistant City Attorney

ATTACHMENT(S):

1. Resolution No. 11776

ATTACHMENT 1
Resolution No. 11776

RESOLUTION NO. 11776

A RESOLUTION ESTABLISHING POLICIES AND PROCEDURES FOR ACCEPTING CONTRIBUTIONS, DONATIONS, GIFTS, BEQUESTS, AND DEVICES FOR PUBLIC PURPOSES.

The City Council of the City of Monterey Park does hereby resolve as follows:

SECTION 1: The City Council finds and declares as follows:

- A. Community members seeking to improve the City's services, contribute to the construction of important public facilities, or otherwise seeking to enhance the City frequently seek to make contributions, donations, gifts, bequests, or devices (collectively, "donations") to the City;
- B. A review of the City's documents show that there are no existing policies for accepting such generous donations;
- C. It is in the public interest for the City to establish policies for accepting donations so that persons making such donations may take appropriate tax deductions, the City uses donations for the purpose for which they were intended, and so the City's administration has clear direction regarding what kinds of donations should be accepted;
- D. The City Council, or its designee, may accept or reject any donation for any public purpose. In doing so, the City may keep or dispose such donations or use them in the manner required by the donor;
- E. Unless otherwise specified by the donor, the City may use donations in any manner it chooses to promote the public interest;
- F. Contributions to the City may be tax deductible as a charitable contribution if the donation is made exclusively for a public purpose (26 U.S.C. § 170(c)(1)). For example, without limitation, art education is a legitimate public purpose (Government Code § 15813).

SECTION 2: *Definitions.* Unless the contrary is stated or clearly appears from the context, the following definitions will govern the construction of the words and phrases used in this chapter.

- A. "City manager" means the city manager or designee;
- B. "Donation" means a contribution, donation, gift, bequest or devise of personal or real property, but not personal services. Donations may be solicited or unsolicited by the City;

- C. "Donor" means a person, including a corporate entity, making a donation to the City for a public purpose.

SECTION 3: Authority. Pursuant to Government Code § 37354, the city manager is authorized to accept donations in accordance with this Resolution and with applicable administrative policies and procedures that may be promulgated by the city manager.

SECTION 4: Donations. The City will accept the following donations, upon the recommendation of the city manager:

- A. *Property donations.* Donations consisting of pecuniary, real or personal property with a fair market value of less than \$25,000 shall receive a written confirmation from the City.
- B. *Donations valued over \$25,000.* At the discretion of the City Council, the City Council may accept donations with a value estimated at \$25,000 or greater.

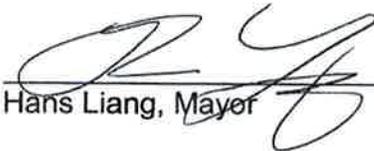
SECTION 5: Use of Donations. Pursuant to Government Code § 37355, the city manager may direct the use of donations unless a donor designated a donation for a particular use. If a donation must be used for a particular use, the city manager must ensure that the City uses the donations in the manner required by the donor.

SECTION 6: Charitable Contribution. Pursuant to 26 U.S.C. § 170(c)(1), donations made to the City may be tax deductible if made for a public purpose. Upon accepting or declining a donation, the city manager will provide donors with a written statement that includes the following information in accordance with Internal Revenue Code § 1.170A-13:

- A. Name of donor;
- B. Description of donation;
- C. Date of receipt;
- D. For personal or real property, the location of property;
- E. Use of property by the City;
- F. Whether the property is being used for exclusively public purposes; and
- G. That the City accepted or declined the donation.

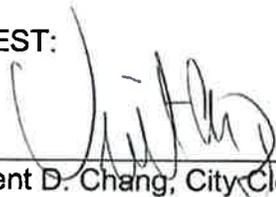
SECTION 8: This Resolution will become effective immediately upon adoption and will remain effective unless superseded or repealed.

PASSED AND ADOPTED this 5th day of August, 2015.



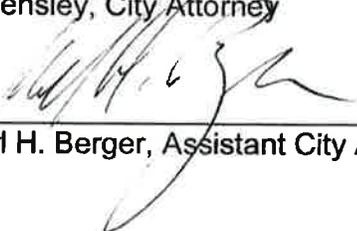
Hans Liang, Mayor

ATTEST:



Vincent D. Chang, City Clerk

APPROVED AS TO FORM:
Mark D. Hensley, City Attorney

By: 

Karl H. Berger, Assistant City Attorney

State of California)
County of Los Angeles) ss.
City of Monterey Park)

I, Vincent D. Chang, City Clerk of the City of Monterey Park, California, do hereby certify that the foregoing Resolution No. 11776 was duly and regularly adopted by the City Council of the City of Monterey Park at a meeting held on the 5th day of August, 2015, by the following vote:

Ayes:	Council Members: Lam, Real Sebastian, Ing, Chan, Liang
Naes:	Council Members: None
Absent:	Council Members: None
Abstain:	Council Members: None

Dated this 5th day of August, 2015.



Vincent D. Chang, City Clerk
City of Monterey Park, California



City Council Staff Report

DATE: April 15, 2020

AGENDA ITEM NO: Consent Calendar
Agenda Item 3-D

TO: The Honorable Mayor and City Council

FROM: Martha Garcia, Director of Management Services

SUBJECT: Renewal of the Assessment District for Fiscal Year 2020-21 and schedule a public hearing pursuant to Streets and Highways Code §§ 22500, *et seq.*

RECOMMENDATION:

It is recommended that the City Council consider:

1. Adopting a resolution declaring the City Council's intent to levy and collect assessments for Fiscal Year 2020-21 in Citywide Maintenance District No. 93-1 pursuant to Streets and Highways Code §§ 22500, *et seq.* and setting a time and place for a public hearing; and/or
2. Taking such additional, related, action that may be desirable.

CEQA

The proposed action is exempt from review under the California Environmental Quality Act (Cal. Pub. Res. Code §§ 21000, *et seq.*; "CEQA") and CEQA Guidelines (Cal. Code Regs. tit. 14, §§ 15000, *et seq.*) because it establishes, modifies, structures, restructures, and approves rates and charges for meeting operating expenses; purchasing supplies, equipment, and materials; meeting financial requirements; and obtaining funds for capital projects needed to maintain service within existing service areas. The proposed action, therefore, is categorically exempt from further CEQA review under CEQA Guidelines § 15273.

EXECUTIVE SUMMARY:

In 1993 the City formed a citywide benefit assessment district to finance the operation and maintenance of public street lighting and landscaping. The district was renewed each of the past 27 years and must be renewed for 2020-21 in order for the City to continue the collection of assessments. To begin the district renewal, staff recommends a public hearing be held on June 3, 2020. Scheduling the public hearing is a required process and it does not automatically renew the district. The district renewal will follow the City Council's action at the conclusion of the June 3rd public hearing.

BACKGROUND:

In 1993, the State implemented Education Revenue Augmentation (ERAF) transfer that shifts property tax revenues from local governments to schools. The City's loss from ERAF was

\$1.2 million. In 1993, after considering various options to balance the budget, the City formed a benefit assessment district. The assessment revenues are used to pay for the costs for maintaining street lighting and public landscaping. The funds freed up by the assessment revenues are used to maintain essential City services such as police, fire, public works, recreation, and library.

The City is required to renew the assessment district annually. The City has renewed the district for the past 27 years. To start the renewal process, the attached resolution and the April 3, 2020 engineer's report have been prepared for the City Council's consideration.

RESOLUTION OF INTENTION

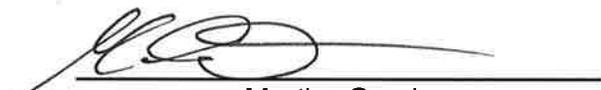
The resolution describes the April 3, 2020 Engineer's Report, which was prepared pursuant to Streets and Highways Code § 22566, the assessment district and its boundaries, specifies date, time, and place of the public hearing. The proposed assessment per single family home for 2020-21 is \$40.97. There is no increase from 2019-20. As shown in the attached resolution, staff recommends that the hearing be scheduled for June 3, 2020 at 7:00 p.m. in the City Council Chamber. As required by law, a notice for the public hearing will be published. The renewal will be completed following the City Council's action at the June 3rd hearing.

FISCAL IMPACT

The proposed assessment rates for 2020-21 are the same as for 2019-20. The projected assessment revenue is approximately \$983,530.¹ If the City does not renew the assessment district, it must reduce expenditures by \$983,530 to balance the budget.

Respectfully submitted and prepared by:

Approved By:



Martha Garcia
Director of Management Services

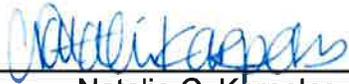


Ron Bow
City Manager

Reviewed By:

¹ The maintenance of street lighting and landscaping is a direct and special benefit to all parcels within the District. The assessment district revenue for the fiscal year was calculated using a formula based on Equivalent Dwelling Units (EDU), which takes into consideration land use and parcel size. Based on the EDU factor assigned to each parcel (e.g., parcels designated for multi-family residential uses are assigned a factor of 0.85 EDU per dwelling unit), benefit costs are spread equally to all parcels within the District. (See Attachment 2 for further explanation of the Assessment Formula.)

Staff Report
April 15, 2020
Page 3



Natalie C. Karpeles
Deputy City Attorney

Attachment(s):

1. Resolution
2. Preliminary Engineer's Report

Attachment 1 Resolution

RESOLUTION NO. _____

RESOLUTION DECLARING THE CITY COUNCIL'S INTENT TO LEVY AND COLLECT ASSESSMENTS FOR FISCAL YEAR 2020-21 IN CITYWIDE MAINTENANCE DISTRICT NO. 93-1 PURSUANT TO STREETS AND HIGHWAYS CODE § 22587 AND SETTING A TIME AND PLACE FOR A PUBLIC HEARING.

The City Council for the City of Monterey Park does resolve as follows:

SECTION 1: The City Council finds as follows:

- A. The City Council seeks to levy assessments for Fiscal Year 2020-21 pursuant to Streets and Highways Code §§ 22500, *et seq.* for Citywide Maintenance District No. 93-1 ("District"); and
- B. The District is exempt from the procedures and approval process of California Constitution art. XIID, § 4 pursuant to California Constitution, art. XIID, § 5(a).

SECTION 2: The April 3, 2020 Engineer's Report ("Report") was prepared pursuant to Streets and Highways Code § 22566 for Fiscal Year 2020-2021, and is attached as Exhibit A to this Resolution.

SECTION 3: After reviewing the Report, the City Council finds as follows:

- A. The Report sufficient meets the requirements set forth in Streets and Highways Code §§ 22565, *et seq.*
- B. The Engineer's estimate of the itemized costs and expenses of said work, as contained in the Report is preliminarily approved and confirmed.
- C. The diagram, showing the boundaries of the land within the District referred to and described in the Report is preliminarily approved and confirmed.
- D. The proposed assessment upon the land in the District is in proportion to the estimated special benefit to be received by said land, as contained in the Report, is hereby preliminarily approved and confirmed.
- E. The Report may be used for the purposes of all subsequent proceedings pursuant to the proposed benefit assessment.

SECTION 4: The City Council directs the City Clerk to give notice that the City Council intends to undertake proceedings for levying and collecting of special assessments for Fiscal Year 2020-21 on real property within the District for the continual maintenance of certain improvements as shown and delineated on a map previously approved by City Council and on file with the City Clerk which is available for public inspection and incorporated into this Resolution as if fully set forth ("Map") pursuant to Streets and Highways Code § 22508. Any proposed changes to the map, maintenance, and assessments are set forth in the Report.

SECTION 5: On June 3, 2020, the City Council will consider ordering the annual assessment recommended by the Report. The annual assessment proposed for each Equivalent Dwelling Unit (EDU) in the Report is \$40.97 for Fiscal Year 2020-21, no increase from Fiscal Year 2019-20.

SECTION 6: If approved, the assessment levied and collected is for maintaining certain landscaping and street lighting improvements, as set forth in the Report, referenced and so incorporated herein.

SECTION 7: If approved, the County Auditor/Controller must enter on the County Assessment Roll the amount of the assessments and collect such assessments at the time and in the same manner as County taxes are collected. After collection by the County, the net amount of the assessments, after the deduction of any compensation due to the County for collection, must be paid to the City Treasurer for purposes of paying the costs and expenses of the District.

SECTION 8: All monies collected for such assessments must be deposited in a special fund known as "Special Fund City of Monterey Park Citywide Maintenance District No. 93-1." Payment may be made out of said fund only for the purpose provided for in this Resolution and as set forth in an appropriate resolution on or about June 3, 2020.

SECTION 9: Any public property included within boundaries of the District is exempt from assessment.

SECTION 10: The public hearing to consider levying the assessments identified in this Resolution will take place on June 3, 2020, or as soon thereafter as is practicable, at a regular meeting of the City Council at the Council Chamber, 320 West Newmark Avenue, Monterey Park.

SECTION 11: The City Clerk is hereby authorized and directed to publish this Resolution pursuant to Government Code § 6061 and Streets and Highways Code § 22554.

SECTION 12: A majority protest from the property owners may cause any proposed increase of assessment for the 2020-21 Fiscal Year to be abandoned. Written protest must be submitted to the City Clerk's office at City Hall, 320 West Newmark Avenue, Monterey Park, CA 91754, before the close of the public hearing on June 3, 2020. Each written protest must state the grounds of objection and contain a description of property owned.

SECTION 13: For any and all information relating to the proceedings, protest procedure, any documentation and/or information of a procedural or technical-nature, your attention is directed to the below listed person so designated:

Martha Garcia
Director of Management Services
City of Monterey Park
320 West Newmark Avenue
Monterey Park, California 91754
(626) 307-1349

SECTION 14: This Resolution takes effect immediately upon its adoption.

PASSED, APPROVED AND ADOPTED this 15th of April 2020

Hans Liang, Mayor
City of Monterey Park

ATTEST:

Vincent D. Chang, City Clerk
City of Monterey Park

APPROVED AS TO FORM:
MARK D. HENSLEY, City Attorney

By:



Natalie C. Karpeles
Deputy City Attorney

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) **SS**
CITY OF MONTEREY PARK)

I, VINCENT D. CHANG, City Clerk of the City of Monterey Park, California, do hereby certify that the foregoing Resolution No. _____ was duly adopted by the City Council of the City of Monterey Park at a Regular Meeting held on the 15th of April 2020, by the following vote of the Council:

AYES:
NOES:
ABSTAIN:
ABSENT:

Dated this 15th day of April 2020

Vincent D. Chang, City Clerk
City of Monterey Park

Attachment 2
April 3, 2020 Engineer's Report

APRIL 3, 2020

ENGINEER'S REPORT

CITY OF MONTEREY PARK

CITYWIDE MAINTENANCE DISTRICT NO. 93-1

FOR THE 2020-2021 FISCAL YEAR

**ENGINEER'S REPORT
CITY OF MONTEREY PARK
CITYWIDE MAINTENANCE DISTRICT NO. 93-1
FOR THE 2020-2021 FISCAL YEAR**

PURPOSE

The purpose of this report is to establish the annual levy of assessments for the City of Monterey Park Citywide Maintenance District 93-1 (District) for the 2020-2021 Fiscal Year.

INTRODUCTION

The District was formed in 1993 under the Landscaping and Lighting Act of 1972 (the "Act"). The District provides the City with a source of funds for the operation and maintenance of street trees, median landscaping, and streetlights on arterial streets within the City. Assessments are levied upon each parcel for the necessary costs of operating, servicing, and maintenance of the respective facilities, which provides safety protection and enhances the value of each and every parcel in the City.

Street tree and median landscaping maintenance are important services in any urban environment. Trees and landscaping, when well maintained, provide beautification, shade, traffic safety, and enhancement of the desirability of the surroundings, along with a direct, positive effect on property values.

Adequate street lighting is considered imperative for their contribution to public convenience and community safety. Protection of property, increased public safety, reduction of traffic accidents, savings in accident costs and lost working hours, are specific benefits that benefit properties within the City of Monterey Park. The lighting benefit is directly related to public safety and property protection.

Property values in a community are increased when public infrastructure such as street trees, median landscaping, and street lighting are in place, improved, operable, safe, clean and maintained. Facilities that are unsafe or destroyed by the elements or vandalism decrease quality of life.

The operation, servicing, and maintenance of the facilities within the District are consistent with the Act, and will be administered pursuant to the City of Monterey Park ordinances and regulations.

The properties that benefit from operation and maintenance of the street trees, median landscaping, and lighting will fund these activities in proportion to the specific benefits that each property receives.

Payment for the assessment for each parcel will be made in the same manner and at the same time as payments are made for property taxes for each property. Revenues from these assessments must be placed in a special fund and cannot be used for any other purpose.

The City Council of the City of Monterey Park will set a date for a public hearing. The public hearing will be held on the date and at the time and place described specifically in the Resolution of

Intention. Notice will be given by publishing the Resolution of Intention in accordance with requirements of the Government Code.

DESCRIPTION OF IMPROVEMENTS

The improvements are the operation, servicing, and maintenance of street trees, median landscaping, and street lighting, including but not limited to, personnel, electrical energy, utilities, materials, and contracting services for the satisfactory operation of these services described as follows:

Street Trees and Median Landscaping

Landscaping, planting shrubbery and trees, irrigation systems, hardscapes, and fixtures in public rights-of way within the proposed boundary of the District.

Street Lighting

Poles, fixtures, bulbs, conduits, equipment including anchors, posts and pedestals, and metering devices, as required to provide safety lighting in public rights-of-way within the proposed boundaries of the District.

Maintenance means the furnishing of services and materials for the ordinary and usual operation and servicing of the landscaping and public lighting facilities including repair, removal or replacement of all or part of any of the landscaping and public lighting facilities. Maintenance also means providing for the life, growth, health and beauty of the landscaping, including cultivation, irrigation, trimming, spraying, fertilizing and treating for disease or injury; and the removal of trimmings, rubbish, debris and other solid waste.

Servicing means the furnishing of water for the irrigation of the landscaping and the maintenance of any of the public lighting facilities or improvements and the furnishing of electric current or energy, gas or other illuminating agent for the public lighting facilities, or for the lighting or operation of landscaping.

ESTIMATE OF COST

The estimated costs of the operation, servicing and maintenance of the improvements for Fiscal Year 2020-2021, as summarized below same as last year.

I. STREET LANDSCAPING AND FACILITY MAINTENANCE

A. Street Trees and Median Landscaping

1. O & M	\$1,389,086
2. Reserves	<u>-0-</u>
Sub-Total	\$1,389,086

II. STREET LIGHTING

A. Street Lights

II. STREET LIGHTING

A. Street Lights	
1. O & M	\$565,070
2. Reserves	<u>-0-</u>
Sub-Total	\$565,070
Total Cost	\$1,954,156
Less City General Fund Contributions	<u><970,626></u>
Total Funded by Assessments	\$983,530

The Act requires that the City establish a special fund for the revenues and expenditures of the District. Funds raised by assessment shall be used only for the purposes as stated in this report. A contribution to the District by the City may be made to reduce assessments, as the City Council deems appropriate. Any balance or deficit remaining on July 1 must be carried over to the next fiscal year.

ASSESSMENT ROLL

The proposed assessment and the amount of assessment for Fiscal Year 2020-21 apportioned to each lot or parcel, as shown on the latest roll at the Assessor's Office are on file in the office of the City Clerk of the City of Monterey Park.

The description of each lot or parcel is part of the records of the Assessor of the County of Los Angeles and these records are, by reference, made part of this report.

The total proposed assessment for fiscal year 2020-2021 is approximately \$983,530.

METHODS OF APPORTIONMENT OF ASSESSMENT

1. GENERAL

Part 2 of Division 15 of the Streets and Highways Code (the Code), also known as the Landscaping and Lighting Act of 1972, permits the establishment of assessment districts by cities for the purpose of providing certain public improvements which include construction, operation, maintenance and servicing of street trees, median landscaping and street lights.

The Act requires that maintenance assessments be levied according to benefit rather than according to assessed value.

The Act also permits the designation of zones of benefit within any individual assessment district if by reasons or variations in the nature, location, and extent of the improvements, the various areas will receive different degrees of benefit from the improvement. Thus, the Act requires the levy of a true "assessment" rather than a "special tax."

rights of way.

2. ASSESSMENT FORMULA

Section 22509 of the Code provides that the Act shall be liberally constructed to effectuate its purpose. Therefore, any reasonable formula, or method, when upheld by the City Council after a public hearing, is conclusive.

Section 22573 of the Code provides the net amount to be assessed upon lands within an assessment district may be apportioned by any formula or method which fairly distributes the net amount among all assessable lots or parcels in proportion to the estimated special benefit to be received by each such lot or parcel from the improvements.

Since the assessment will be levied against properties as shown on the Property Tax Rolls of the Los Angeles County Assessor, the final charges must be assigned by Assessor's Parcel Number. The formula shown below takes into the consideration of land use and parcel size.

Single Family Residential.

The single-family residential parcel has been selected as the basic unit for calculation of the benefit assessments. This basic unit shall be called an Equivalent Dwelling Unit (EDU). Parcels developed for single family residential uses, including condominiums, are assessed one (1) EDU.

Multi-Family Residential.

Multi-family residential uses are given a factor of 0.85 EDU per dwelling unit. Based on data from representative cities in urban Southern California, the multiple residential factor of 85 percent is determined by the statistical proportion of relative trip generation from various types of residential uses, in combination with population density per unit.

Mobile Home.

Parcels designated for mobile home park uses are assigned 0.5 EDU per unit.

Commercial/ Industrial.

In converting improved non-residential properties to EDU's the factor used is the typical lot size for single-family residential parcels, which is 6,000 square feet, or 7.26 dwelling units per acre.

The commercial/industrial parcels will be assessed 7.26 EDU for each acre, or any portion thereof up to five (5) acres and 0.73 for every additional acre or portion thereof above five acres. This lower EDU factor is based on the fact that many of the larger commercial/industrial developments contain internal street systems and provide their own street lighting. The minimum number of EDUs per commercial/industrial parcel will be one (1) EDU.

Vacant Residential.

Vacant residential property is described as parcels with no improved dwelling structures. These

properties receive benefits based on their land, as this is the basis of their value. The land value portion of residential property in Monterey Park is about 50 percent. Parcels defined as single-family residential parcels which do not have structures on the parcels are therefore, assessed 50 percent of a single-family dwelling. The parcels will be assessed 0.50 EDU per parcel. Parcels defined as vacant multi-family residential will be assessed at 50 percent of the rate for vacant commercial/industrial property.

Vacant Commercial/Industrial.

Parcels which are not zoned for residential use and which do not have structures on the parcels are assessed based upon the acreage of the parcel. These parcels will be assessed at 50 percent of the rate of improved commercial/industrial property.

Institutional.

Institutional parcels are defined as those used for private schools, lodge halls, convalescent hospitals, and other similar uses. These parcels will be assessed at the same rate as improved commercial/industrial property.

Utility.

Parcels owned by private utility companies will be assessed at the same rate as improved commercial/industrial property based upon a comparable land use for the property. Utility rights-of-way will be exempt from assessments.

Exempt.

Parcels of land defined in the County Assessor's records as being exempt from property taxes will be exempt from District assessments. This includes all publicly owned property, all easements and rights-of-way, and common areas.

BENEFIT DETERMINATION

Special Benefits from the public improvements operated and maintained by the District are received directly by all parcels within the City. The maintenance of street lighting and landscaping is distributed throughout the district and is of direct and specific benefit to all parcels within the District. Therefore the costs associated with these benefits are spread equally, based on Equivalent Dwelling Units (EDU), to all parcels within the District.

Special benefits include maintenance of street trees and medians on the major thoroughfares, which are the main travel ways of the City. Street lighting is also considered a special benefit since all parcels within the City access public streets which have streetlights. Costs incurred by the City to administer these programs are also considered a citywide benefit. The primary benefits of streetlights are convenience, safety, security, and protection of property, property improvements, and persons. The primary benefits of street trees and median landscaping on arterial streets are the improved safety and aesthetic appeal within the community.

ASSESSMENT RATE BY MAINTENANCE CATEGORY

Category	2020-2021 Proposed	
	Budget	Rate Per EDU
Street Trees and Median Landscaping	\$485,700 ^(*)	\$ 20.23
Street Lighting	497,830 ^(*)	20.74
Total Assessment	\$983,530	\$ 40.97

* Net of City General Fund contributions

INVENTORY OF PARCELS

The following information was obtained from the Los Angeles County Assessor’s Roll, Assessor’s Parcel Maps, and the City of Monterey Park Development Services Department.

Land Use		Parcels	Units	Acres	EDUs
1. Single Family Residential (SFR)		13,701	13,701	1,761.63	13,701
2. Multi-Family Residential (MFR)		1,448	6,454	733.55	5,625.58
3. Vacant SFR		131	-	37.25	64.50
4. Vacant MFR		-	-	-	-
5. Mobile Home		2	23	1.58	11.50
6. Commercial Industrial		914	-	515.27	3,547.33
7. Vacant Commercial Industrial		64	-	220.63	326.52
8. Utilities		58	-	154.87	426.62
9. Exempt					
a.	Alhambra City School District	4	-	-	-
b.	Garvey School District	3	-	-	-
c.	L.A. City Community College	4	-	-	-
d.	LACO Flood Control District	4	-	-	-
e.	L.A. County	10	-	-	-
f.	L.A. Unified School District	2	-	-	-
g.	Metropolitan Water District	7	-	-	-
h.	Montebello Unified School District	2	-	-	-
i.	State of California	4	-	-	-
j.	City of Montebello	1	-	-	-
k.	City of Monterey Park	50	-	-	-
l.	SFR Common Area	9	-	-	-
SUBTOTAL (9. a-l)		100	-	-	-
10. Institutional		50	50	41.59	303.06
TOTALS		16,468	20,228	3,466.37	24,006.11

PROPERTY OWNER LIST

A list of names and addresses of the owners of all parcels within the District is shown on the last equalized Property Tax Roll of the Assessor of the County of Los Angeles, which by reference is hereby made a part of this report.

ASSESSMENT DISTRICT BOUNDARY MAP AND ASSESSMENT DIAGRAM

An Assessment Diagram for the District has been submitted to the City Clerk in the format required under the provisions of the Act. The attached is a facsimile of the map on file in the office of the City Clerk.

The lines and dimensions of each lot or parcel within the District are those lines and dimensions shown on the maps of the Assessor of the County of Los Angeles for the year when this report was prepared. The Assessor's maps and records are incorporated by reference herein and made part of this report.

RESOLUTION

Resolution of Intention is on file in the Office of the City Clerk.

CERTIFICATION

This report contains the necessary data required to conduct the proceedings and is submitted to the Office of the City Clerk for filing and public inspection.



Martha Garcia
Director of Management Services

4/3/2020

Date



Mark A. McAvoy
Director of Public Works / City Engineer

4/3/2020

Date



City Council Staff Report

DATE: April 15, 2020

AGENDA ITEM NO: Consent Calendar
Agenda Item 3-E

TO: The Honorable Mayor and City Council

FROM: Danielle Tellez, Interim Director of Human Resources and Risk Management

SUBJECT: Second reading and adoption: An ordinance amending the City's CalPERS contract causing members of the Monterey Park Police Officers' Mid-Management Association ("MPPOMMA"), Monterey Park Police Captains Association ("MPPCA") and the Professional Chief Fire Officers Association ("PCOA") to make additional payments toward CalPERS cost as follows: an additional 3% by classic employees; and 0.5% for PEPRA employees.

RECOMMENDATION:

It is recommended that the City Council consider:

1. Waiving the second reading and adopt the proposed ordinance; and
2. Take such additional, related, action that may be desirable.

EXECUTIVE SUMMARY:

On April 7, 2020, the City Council introduced and waived the first reading of an ordinance amending the City's CalPERS contract in accordance with Government Code § 20471. At the same meeting, the City Council adopted an urgency ordinance to help facilitate the process.

Second reading and adoption of the ordinance is recommended; the ordinance will become effective 30 days after adoption.

Approved by:

A handwritten signature in blue ink, appearing to read "Danielle Tellez", written over a horizontal line.

Danielle Tellez
Interim Director of Human
Resources and Risk
Management

April 15, 2020

CalPERS Amendment to contract for MMPPOMMA, MPPCA, and PCOA Staff Report

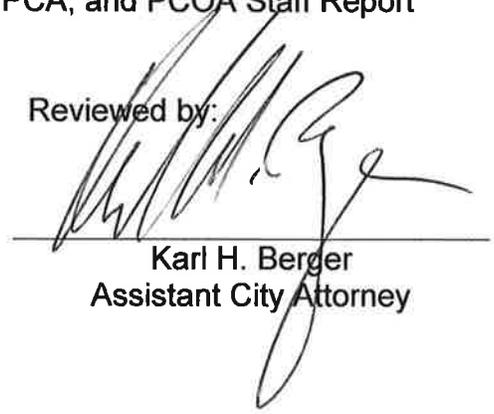
Page 2

Approved by:



Ron Bow
City Manager

Reviewed by:



Karl H. Berger
Assistant City Attorney

ATTACHMENTS:

1. Draft City Council Ordinance CalPERS

ATTACHMENT 1

CalPERS Draft Ordinance

ORDINANCE NO. _____

An Ordinance of the City Council of the City of Monterey Park authorizing an amendment to the contract between the City Council of the City of Monterey Park and the Board of Administration of the California Public Employees' Retirement System.

The City Council of the City of Monterey Park does ordain as follows:

SECTION 1. That an amendment to the contract between the City Council of the City of Monterey Park and the Board of Administration, California Public Employees' Retirement System is hereby authorized, a copy of said amendment being attached hereto, marked Exhibit, and by such reference made a part hereof as though herein set out in full.

SECTION 2. The Mayor of the City Council City of Monterey Park is hereby authorized, empowered, and directed to execute said amendment for and on behalf of said Agency.

SECTION 3. This Ordinance shall take effect 30 days after the date of its adoption, and prior to the expiration of 15 days from the passage thereof shall be published at least once in *The Wave*, a newspaper of general circulation, published and circulated in the County of Los Angeles and thenceforth and thereafter the same shall be in full force and effect.

SECTION 4. The City Clerk shall certify to the passage and adoption of this Ordinance and to its approval by the Mayor and said Ordinance shall become effective thirty days after adoption.

PASSED, APPROVED AND ADOPTED this ____ day of _____, 2020.

Hans Liang, Mayor
City of Monterey Park, California

ATTEST:

Vincent D. Chang, City Clerk
City of Monterey Park, California

APPROVED AS TO FORM:
Mark D. Hensley, City Attorney

By: 
Karl H. Berger, Assistant City Attorney

State of California)
County of Los Angeles) §
City of Monterey Park)

I, Vincent D. Chang, City Clerk of the City of Monterey Park, California, do hereby certify that the foregoing Resolution No. _____ was duly and regularly adopted by the City Council of the City of Monterey Park at a regular meeting held on the ___ day of _____, 2020 by the following vote:

Ayes:	Council Members:
Nays:	Council Members:
Absent:	Council Members:
Abstain:	Council Members:

Dated this ___ day of _____, 2020.

Vincent D. Chang, City Clerk
City of Monterey Park, California



City Council Staff Report

DATE: April 15, 2020

AGENDA ITEM NO: Consent Calendar
Agenda Item 3-F

TO: The Honorable Mayor and City Council
FROM: Kelly Gordon, Chief of Police
SUBJECT: National Public Safety Telecommunicators Week Resolution

RECOMMENDATION:

It is recommended that the City Council:

1. Adopt a Resolution Declaring the week of April 12 through 18, 2020 to be National Public Safety Telecommunicators Week in Monterey Park; and
2. Take such additional, related, action that may be desirable.

EXECUTIVE SUMMARY:

The Monterey Park Police Department is celebrating the week of April 12-18, 2020 as National Public Safety Telecommunicators Week. This week, sponsored by the Association of Public-Safety Communications Officials (APCO) International and celebrated annually, honors the thousands of men and women who respond to emergency calls, dispatch emergency professionals and equipment, and render life saving assistance to the citizens of the United States. We are enlisting your support in the form of a resolution to honor these men and women in our area for the work that they do every day to protect the residents of Monterey Park.

BACKGROUND:

Historically, the Police Department recognizes and celebrates the hard work of these dedicated professionals. We are confident you will stand behind the commitment and devotion these men and women provide to ensure the safety and security of Monterey Park residents.

FISCAL IMPACT:

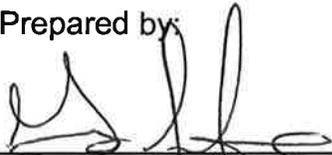
None.

Respectfully submitted by:



Kelly Gordon
Chief of Police

Prepared by:



Gus Jimenez
Lieutenant

Approved by:



Ron Bow
City Manager

ATTACHMENT(S):
1. Resolution

ATTACHMENT 1
Resolution

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTEREY PARK DECLARING APRIL 12-18, 2020, NATIONAL PUBLIC SAFETY TELECOMMUNICATIONS WEEK IN MONTEREY PARK

The City Council does resolve as follows:

Section 1. The City Council finds and declares that:

- A. The Monterey Park Police Department is celebrating the week of April 12-18, 2020 as National Public Safety Telecommunicators Week. This week, sponsored by the Association of Public-Safety Communications Officials (APCO) International and celebrated annually, honors the thousands of men and women who respond to emergency calls, dispatch emergency professionals and equipment, and render life saving assistance to the citizens of the United States. We are enlisting your support in the form of a resolution to honor these men and women in our area for the work that they do every day to protect the residents of Monterey Park.
- B. Emergencies can occur at anytime that requires police, fire or emergency medical services. When an emergency occurs the prompt response of police officers, firefighters and paramedics is critical to the protection of life and preservation of property.
- C. The safety of our police officers and firefighters is dependent upon the quality and accuracy of information obtained from citizens who telephone the Monterey Park police-fire communications center. Public Safety Telecommunicators are the first and most critical contact our citizens have with emergency services.
- D. Public Safety Telecommunicators are the single vital link for our police officers and firefighters by monitoring their activities by radio, providing them information and insuring their safety. Public Safety Telecommunicators of the Monterey Park Police Department have contributed substantially to the apprehension of criminals, suppression of fires and treatment of patients.
- E. Whereas each dispatcher has exhibited compassion, understanding and professionalism during the performance of their job in the past year.
- F. Historically, the Police Department recognizes and celebrates the hard work of these dedicated professionals. We are confident you will stand behind the commitment and devotion these men and women provide to ensure the safety and security of Monterey Park residents.

Section 2. The City Council further declares:

- A. The week of April 12 through 18, 2020 to be National Public Safety Telecommunicators Week in Monterey Park, in honor of the men and women whose diligence and professionalism keep our city and citizens safe.

Section 3. This Resolution takes effect immediately upon its adoption.

PASSED, APPROVED, AND ADOPTED this April 15, 2020

Hans Liang, Mayor
Monterey Park, California

ATTEST:

Vincent D. Chang, City Clerk
Monterey Park, California

State of California)
County of Los Angeles) ss.
City of Monterey Park)

I, Vincent D. Chang, City Clerk of the City of Monterey Park, California, do hereby certify that the foregoing Resolution No. ____ was duly and regularly adopted by the City Council of the City of Monterey Park at a meeting held on the 15th day of April 2020, by the following vote:

Ayes:	Council Members:
Noes:	Council Members:
Absent:	Council Members:
Abstain:	Council Members:

Dated this April 15, 2020.

Vincent D. Chang, City Clerk
Monterey Park, California



City Council Staff Report

DATE: April 15, 2020

AGENDA ITEM NO: Consent Calendar
Agenda Item 3-G.

TO: The Honorable Mayor and City Council

FROM: Ron Bow, City Manager & Director of Emergency Services
Chief Kelly Gordon, Monterey Park Police Department
Chief Matthew Hallock, Monterey Park Fire Department

SUBJECT: Consideration and possible action to adopt a Resolution updating the City's Designation of Applicant's Agent Resolution (Form 130) with the California Governor's Office of Emergency Services (Cal-OES) for the purposes of obtaining financial assistance from the Federal Emergency Management Authority (FEMA).

RECOMMENDATION:

It is recommended that the City Council consider:

1. Adopting a resolution updating the City's designation of applicant's agent resolution with the California Governor's Office of Emergency Services; and/or
2. Taking such additional, related, action that may be desirable.

CEQA:

This Resolution is exempt from the requirements of the California Environmental Quality Act (Public Resources Code §§ 21000, *et seq.*; "CEQA") and CEQA Guidelines (California Code Regulations Title 14, §§ 15000, *et seq.*) because it does not constitute a "Project" under CEQA § 15378. Projects that may be funded by FEMA and Cal OES financial assistance may require project-specific environmental review.

EXECUTIVE SUMMARY:

Cal-OES Form 130 designates the agents authorized to submit applications and engage with Cal-OES and FEMA for the purposes of obtaining federal financial assistance. The Emergency Management Performance Grant requires that the City file a Form 130 with the State once every three years; the City's last Form 130 Resolution was approved on July 17, 2013 and is expired. A Cal-OES Form 130 is required for the City to be eligible for funding.

BACKGROUND:

The City is currently providing emergency protective measures as a result of the COVID-19 pandemic. On March 22, 2020, President Trump declared a major disaster for the State of California; such a declaration mobilizes federal resources through FEMA for federal assistance to state or local governments to pay part of the costs of rebuilding a community's damaged infrastructure. Federal assistance may include funding for debris removal, emergency protective measures and public services, repair or replacement of damaged public property, loans needed by communities for essential government functions and grants for public schools. To be eligible to recover costs, the City is required to file certain necessary forms with Cal-OES. In order to do so, the City must first designate which agents will be authorized to act on its behalf to submit applications and engage with Cal-OES and FEMA for the purposes of obtaining federal financial assistance. The attached Cal-OES Resolution Form 130 designates the City's agents the City Manager, the Fire Chief and the Director of Management Services.

FISCAL IMPACT:

Without an up-to-date Cal-OES Form 130 on file with the State, the City will not be eligible to receive disaster funding from Cal-OES or FEMA should it incur costs associated with a disaster.

Respectfully Submitted and Prepared by:

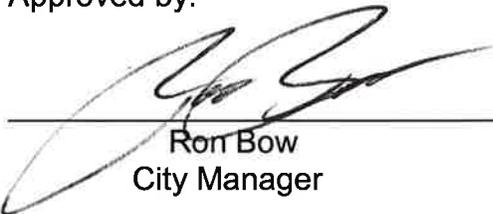


Chief Kelly Gordon
Monterey Park Police Department



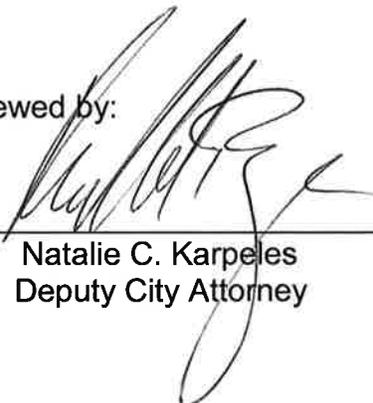
Chief Matthew Hallock
Monterey Park Fire Department

Approved by:



Ron Bow
City Manager

Reviewed by:



Natalie C. Karpeles
Deputy City Attorney

Attachment(s)

1. Resolution Form 130

ATTACHMENT 1
Resolution

RESOLUTION NO. _____

RESOLUTION DESIGNATING THE CITY MANAGER; THE FIRE CHIEF; OR THE DIRECTOR OF MANAGEMENT SERVICES TO ACT AS THE AGENT FOR THE CITY OF MONTEREY PARK FOR THE PURPOSE OF APPLYING FOR FEDERAL AND STATE FINANCIAL ASSISTANCE, PURSUANT TO 42 USC §§ 5121, ET SEQ.

The City Council for the City of Monterey Park does resolve as follows:

SECTION 1: Pursuant to 42 USC §§ 5121, et seq., and other applicable law, the City Council appoints the following public officials to act as the City's agents when seeking federal financial assistance: (a) the City Manager; (b) the Fire Chief; and (c) the Director of Management Services (collectively, the "City's Agents").

SECTION 2: The City's Agents are authorized to take all responsible actions needed to satisfy requirements of applicable law, and regulations promulgated by the California Emergency Management Agency, to obtain disaster assistance including, without limitation, executing required documents and agreements.

SECTION 3: This Resolution takes effect immediately upon its adoption.

PASSED, APPROVED AND ADOPTED this 15th of April 2020

Hans Liang, Mayor
City of Monterey Park

ATTEST:

Vincent D. Chang, City Clerk
City of Monterey Park

APPROVED AS TO FORM:
MARK D. HENSLEY, City Attorney

By:


Karl H. Berger
Assistant City Attorney



City Council Staff Report

DATE: April 15, 2020

AGENDA ITEM NO: Consent Calendar
Agenda Item 3-H.

TO: The Honorable Mayor and City Council
FROM: Chief Kelly Gordon, Monterey Park Police Department
Chief Matthew Hallock, Monterey Park Fire Department
SUBJECT: Consideration and introduction of an Ordinance amending the Monterey Park Municipal to regulate the unlawful use of public property.

RECOMMENDATION:

It is recommended that the City Council consider:

1. Introduce and waive first reading of ordinance amending the Monterey Park Municipal Code to regulate the unlawful use of public property; and/or
2. Taking such additional, related, action that may be desirable.

CEQA:

The proposed Ordinance is exempt from the requirements of the California Environmental Quality Act (Public Resources Code §§ 21000, et seq.; "CEQA") and CEQA Guidelines (California Code Regulations Title 14, §§ 15000, et seq.) because it does not constitute a "Project" under CEQA § 15378.

EXECUTIVE SUMMARY:

In 2018 and 2019 the Ninth Circuit Court of Appeals rendered a decision in *Martin v. City of Boise*. In sum, the Court found that the Eighth Amendment to the United States Constitution prevents public entities from enforcing regulations prohibiting homeless persons from sitting, sleeping or lying on sidewalks or other public places whenever the number of homeless individuals in the jurisdiction exceeds the number of available shelter beds. As a result, most public entities in the Ninth Circuit suspended enforcing such regulations. A review of the Monterey Park Municipal Code ("MPMC") shows that it is desirable to reconcile the City's existing regulations with the *Martin v. City of Boise* case.

BACKGROUND:

On September 4, 2018, the Ninth District Court of Appeals issued its decision in *Martin et al., v. City of Boise* (9th Cir. 2018) 902 F.3d 1031 stating that ordinances/statutes

which criminalize the status of being “homeless,” or criminalize the “unavoidable consequences” of that status – such as sitting, lying or sleeping on sidewalks and other public grounds – constitute cruel and unusual punishment, in violation of the Eighth Amendment. That case was subsequently superseded by the opinion in *Marin v. City of Boise* (9th Cir. 2019) 920 F.3d 584¹ which, substantively, came to the same conclusions.

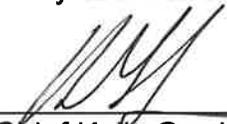
For context, the City of Boise was sued by Robert Martin and other homeless plaintiffs – some of which were cited for violating a “camping ordinance” that prohibited dwelling on the streets, sidewalks, public parks or spaces (similar to many city and county ordinances in other jurisdictions); while others were cited for violating a “disorderly conduct” ordinance that prohibited “occupying or lodging” without permission (similar to Penal Code § 647(e)). Evidence showed that Boise had 867 homeless individuals and 446 shelter beds at the time of the citations (in other words, the plaintiffs had nowhere else to sleep/stay at the time the citations were issued). Accordingly, the Ninth Circuit ruled that, where there is greater number of homeless individuals than the number of available shelter beds, enforcement of “camping” or “disorderly conduct” ordinances violates the Eighth Amendment. The court did acknowledge (but without suggesting examples) that, there may be circumstances where regulations prohibiting sitting, lying or sleeping outside at particular times or in particular locations might well be constitutionally permissible. So, too, might regulations barring the obstruction of public rights-of-way or the erection of certain structures.

The draft ordinance contains recommended revisions to the MPMC to ensure that the City abides by applicable law.

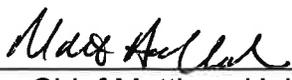
FISCAL IMPACT:

None.

Respectfully submitted and prepared by:



Chief Kelly Gordon
Monterey Park Police Department



Chief Matthew Hallock
Monterey Park Fire Department

¹ Note that on December 16, 2019, the U.S. Supreme Court denied a petition by the city of Boise to review the decision in this case; meaning that the April 2019 ruling is binding on the Ninth Circuit, which includes California.

Approved by:



Ron Bow
City Manager

Reviewed by:



Natalie C. Karpeles
Deputy City Attorney

Attachment(s)

1. Ordinance
2. *Martin v. City of Boise* (9th Cir. 2019) 920 F.3d 584

ATTACHMENT 1
Ordinance

CITY OF MONTEREY PARK

ORDINANCE NO. XXXX

AN ORDINANCE AMENDING THE MONTEREY PARK MUNICIPAL CODE TO REGULATE THE UNLAWFUL USE OF PUBLIC PROPERTY

THE CITY COUNCIL DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council finds and declares as follows:

- A. Enforcement anti-nuisance regulations (such as camping, loitering, and some trespassing) was largely suspended based upon the decision made by the Ninth Circuit Court of Appeals in *Martin v. City of Boise* (9th Cir. 2019) 920 F.3d 584 (amending and superseding on denial of rehearing *Martin et al., v. City of Boise* (9th Cir. 2018) 902 F.3d 1031) *cert. denied sub nom. City of Boise, Idaho v. Martin*, No. 19-247, 2019 WL 6833408 (U.S. Dec. 16, 2019);
- B. When adopting this Ordinance, the City considered the entire administrative record including, without limitation, information set forth in staff reports presented to the City Council; photographic evidence presented by staff during its presentation to the Council; public testimony; the City’s count of its Homeless Population; and other evidence set forth in the record or commonly known to the community;
- C. Should any part of this Ordinance inadvertently regulate use of public property in a manner that does not conform with applicable laws, the Council intends that such regulation be interpreted and enforced in a manner that brings this Ordinance into conformance with such laws.

SECTION 2. A new Chapter 6.37 is added to the Monterey Park Municipal Code (“MPMC”) to read as follows:

“CHAPTER 6.37

UNLAWFUL USE OF PUBLIC PROPERTY

6.37.010. Purpose.

This Chapter is adopted pursuant to the city’s police powers as set forth in the California Constitution and Government Code § 37359 for the following purposes:

- A. To protect public health and safety by ensuring public property is used for its intended purpose by all members of the community. This includes, without limitation, protecting the personal constitutional rights of all individuals to access and use public property safely and freely in the manner for which it was intended.

- B. To maintain and improve the City's aesthetics to promote public welfare and economic development.
- C. To balance freedom of expression with reasonable time, place, and manner restrictions for protecting public health, safety, and welfare.
- D. To avoid creation of public nuisances when solid or liquid waste is intentionally or unintentionally discarded upon public property.
- E. To balance the needs of individuals with that of the general public when utilizing public property.
- F. Nothing in this chapter is intended to, nor does it, restrict recreational activities on public property at the times and places available for such use.

6.37.020. Administration.

The City Manager is authorized to promulgate administrative policies and procedures ("AP&P") that may be needed to implement this chapter.

6.37.030 Definitions.

Unless the contrary is stated or clearly appears from the context, the following definitions govern the construction of the words and phrases used in this Chapter.

"City" means the City of Monterey Park and its agents including, without limitation, sworn law enforcement officials.

"Camper" means a structure designed to be mounted on a motor vehicle and to provide facilities for human habitation or camping purposes.

"Camp facilities" includes one or more of the following items: tents, huts, other unpermitted physical shelters, cots, beds, sleeping bags, hammocks, or bedrolls.

"City Manager" means the City Manager or designee.

"Encampment" means a location consisting of camp facilities, cooking facilities, and other evidence of human habitation.

"Entrance" means the entire area between the outer edge of an entrance to a building and the exterior door and includes the entry way, doorway or vestibule.

"Homeless person" has the same meaning as set forth in 42 U.S.C. § 11302.

"House car" means a motor vehicle originally designed, or permanently or temporarily altered and equipped, for human habitation, or to which a camper is permanently or temporarily attached.

"Human habitation" means the use of a vehicle for a dwelling. Evidence of human habitation includes activities such as sleeping, setting up housekeeping or

cooking, and/or any other activity where it reasonably appears, in light of all the circumstances, that one or more persons are using the vehicle as a living accommodation. The use of a vehicle for six or more consecutive hours for eating, resting, recreating and/or sleeping per se constitutes "human habitation" for purposes of this chapter.

"Overnight shelter" means a facility with overnight sleeping accommodations, the primary purpose of which is to provide temporary shelter for homeless persons at no charge. A shelter is not available when the homeless person cannot occupy the space due to overcapacity, exhaustion of stay limitations, or when religious observance is required as a condition of gaining shelter. If a homeless person cannot utilize the overnight shelter space due to voluntary actions including, without limitation, intoxication, drug use, unruly behavior, or violation of shelter rules, the overnight shelter space is "available" for purposes of this chapter.

"Personal Effects" means personal property consisting of at least the following items:

- A. Medication, personal documents, identification, prescriptions, eyeglasses, or other medical devices;
- B. Sleeping bag or bed roll which is sanitary and non-verminous;
- C. Tents in usable and good condition;
- D. Clothes stored in a manner protecting them from the elements, which are not unsanitary, soiled, or verminous; and
- E. Personal property with an individual value of at least \$50.

"Public Right-of-Way" means any city street, sidewalk, pedestrian path, bike path or any other "public way," as defined by Streets & Highways Code § 18609.

"Restricted Area" means any public right-of-way and public property including, without limitation, parks, parking lots, and the "Trail" as defined by § 12.44.010 of this Code.

6.37.040. Prohibitions.

- A. Except by permit issued in accordance with this chapter, it is unlawful for persons to use, occupy, or allow the use or occupancy of any house car for human habitation within the city.
- B. Except as otherwise provided by this chapter or other applicable law, it is unlawful for any person to sleep, camp, or store personal property, including camp facilities and paraphernalia, in or on restricted public property.
- C. Except with a valid special events or park permit, it is unlawful for any person to be present upon restricted public property in manner that interferes with the ordinary flow of pedestrian or vehicle traffic.

6.37.050. Exceptions.

- A. The prohibitions in this Chapter may not be enforced against a homeless person when overnight shelters are not available to temporarily shelter the homeless person. This exception applies only during the time period when an overnight shelter is not available. This exception does not extend to other prohibitions within this code including, without limitation, prohibitions on improper waste disposal; public decency; or noise.
- B. This chapter does not apply to registered guests, campers, or residents at mobile home or recreational vehicle parks validly existing in accordance with this code. Further, sleeping in a parked vehicle for a limited time, not to exceed four hours, under bona fide conditions of emergency, or in the interest of public safety, does not constitute a violation of this chapter.
- C. This chapter does not apply to persons sleeping, camping, or storing personal property in areas designated for such purposes that are permitted by a governmental entity or in a caretaker's residence.

6.37.060. Permit Procedure for Use of Streets for Temporary Human Habitation.

- A. After first obtaining an overnight parking permit for recreational vehicles or campers pursuant to this Code, any resident or owner of land within the City also may obtain a second permit to use that recreational vehicle or camper as temporary human habitation; this use will only be permitted on a street within 300 feet of the permittee's residence or land, and only for a period not exceeding 72 consecutive hours at any one time.
- B. A resident or owner of land within the City may receive such permits for not more than a total of 10 days within any one calendar year.
- C. The applicant for such permit must provide such information as the City Manager determines is necessary to implement the provisions of this chapter including, without limitation, (1) the proposed location of the camper or recreational vehicle, (2) the requested time period for the permit, (3) the status of the applicant as a resident or owner of land within the City, (4) the license plate number of the recreational trailer or recreational vehicle, or such other information as is determined by the City Manager to be sufficient to identify the camper or recreational vehicle for which the permit will be issued.
- D. If the use requested by the resident or owner complies with the provisions of this chapter, then the permit may be issued without charge.
- E. In addition to displaying the overnight parking permit for recreational vehicles or recreational trailers, the temporary human habitation permit must be prominently displayed on the camper or recreational vehicle at all times when the recreational trailer or recreational vehicle is being used for temporary human habitation on a street.

6.37.070. Control of Location Reserved.

Notwithstanding any provision of this chapter to the contrary, the City Manager may prohibit or restrict a permit being issued to use a recreational vehicle or camper for temporary human habitation on any particular street or any portion thereof, or may designate a specific location for any particular permit which exceeds the 300-foot limit if he or she determines such prohibition, restriction, or designation is required for the public health, safety or welfare.

6.37.080. Utility Connections Prohibited Except with Encroachment Permit.

Except with a permit as provided elsewhere in this Code, it is unlawful for any person to place an electrical, water, gas, telephone, or other utility connection so as to encroach on a sidewalk or other public right-of-way.

6.37.090. Signs.

The City Manager is authorized to construct, maintain, and post such markings and signs as are determined necessary or desirable to give public notice of this chapter.

6.37.100. Camp facilities.

- A. Unless otherwise authorized in this chapter, any personal property stored or found in restricted public places or as part of an encampment, is deemed abandoned property.
- B. The City Manager is authorized to remove personal property on restricted public places or in encampments in accordance with this chapter.

6.37.110. Property Removal.

The City Manager may remove personal property from restricted public places or from an encampment as follows:

- A. The City Manager may remove any personal property, including personal effects, stored or remaining in restricted public places or from an encampment.
- B. Except for personal effects, the City Manager may dispose of such abandoned personal property, including personal effects, in any reasonable manner including, without limitation, destruction.

6.37.120. Personal Effects.

- A. The City Manager must conspicuously post and date a notice either at the exact location from which the personal effects were removed or at another nearby location giving the following information:
 - 1. A list of personal effects removed;
 - 2. A telephone number for information on retrieving personal effects;

and

3. The length of time during which the personal effects may be claimed.
- B. The City Manager must maintain an inventory identifying personal effects as follows:
1. The approximate location of the property; and
 2. The nature of items removed.
- C. Removed personal effects must be placed in containers labeled in a manner facilitating identification by the City Manager and owner and which reasonably protects such property from damage or theft;
- D. Removed personal effects must be stored in an area designated by the City Manager for a period of 90 days;
- E. If personal effects are claimed within 90 days from removal, unless the property is connected to a crime or is illegal to possess, the City Manager must release the stored property to the owner upon the person claiming ownership identifying the property and approximate location where the property was left.

6.37.130. Disposition of Property.

- A. Personal effects remaining unclaimed at the end of 90 days from removal may be dedicated public use and may be given for charitable use to a local nonprofit agency or placed for sale pursuant to this code.
- B. All other personal property is deemed intentionally abandoned and may be summarily abated and destroyed.”

SECTION 3. MPMC § 4.30.060(e)(3) is amended to read as follows:

“The vacant lot must be adequately secured at all times to prevent illegal dumping, criminal activity, vandalism, graffiti, ~~trespassing, on-site loitering~~ and any and all other attractive nuisances to the satisfaction of the community development director.”

SECTION 4. The section catch-line/title of MPMC § 9.51.020 is amended to read as follows:

“9.51.020 Loitering—Picketing.”

SECTION 5. MPMC § 9.90.050 is amended to read as follows:

“9.90.050 Possession prohibited in designated public places.

No person shall have in his or her possession ~~can possess~~ for other than a lawful purpose any graffiti implement while doing any activity in any public park, playground, swimming pool, recreational facility, or other public building owned and operated by the

city, or while being present ~~loitering~~ in or near an underpass, bridge abutment, storm drain, and other similar types of infrastructure not normally used by the public, except authorized employees of the city or an individual or authorized employee of an individual company under contract with the city which requires the use of such graffiti implements or except as graffiti implements may be used in planned, adult-supervised activities. ~~Any person arrested for violation of this section shall have the burden of proof that possession of the graffiti implement was for a lawful purpose.~~

SECTION 6. MPMC § 21.10.230(B)(2) is amended to read as follows:

“The proposed use will not present adverse secondary impacts, including, without limitation, unlawful use of public property ~~loitering~~, obstruction of pedestrian traffic, vehicular traffic, parking, crime, interference with children on their way to school, interference with shoppers using streets, defacement and damage to structures.”

SECTION 7. MPMC § 12.04.070 is repealed.

SECTION 8. MPMC § 12.04.190 is amended to read as follows:

“12.04.190 Park closure.

~~No person shall~~ Except as otherwise provided by a valid permit issued in accordance with this code, it is unlawful for any person to enter, remain, or stay or loiter in any park or recreation center within the city at any time between the hours of ten-thirty p.m. and six a.m. of the following day; provided, however, that no person shall can enter, remain, or stay or loiter in Langley Park at any time between the hours of seven p.m. and six a.m. of the following day. ~~No person shall be subject to this section if said person is participating in an activity which has been authorized, in writing, by the recreation and parks department director to be conducted during such hours.~~

SECTION 9. *Construction.* This Ordinance must be broadly construed to achieve the purposes stated in this Ordinance. It is the City Council’s intent that the provisions of this Ordinance be interpreted or implemented by the City and others in a manner that facilitates the purposes set forth in this Ordinance.

SECTION 10. *Enforceability.* Repeal of any provision of the MPMC does not affect any penalty, forfeiture, or liability incurred before, or preclude prosecution and imposition of penalties for any violation occurring before this Ordinance’s effective date. Any such repealed part will remain in full force and effect for sustaining action or prosecuting violations occurring before the effective date of this Ordinance.

SECTION 11. *Validity of Previous Code Sections.* If this entire Ordinance or its application is deemed invalid by a court of competent jurisdiction, any repeal or amendment of the MPMC or other city ordinance by this Ordinance will be rendered void and cause such previous MPMC provision or other the city ordinance to remain in full force and effect for all purposes.

SECTION 12. *Reliance on Record.* Each and every one of the findings and determinations in this Ordinance are based on the competent and substantial evidence, both oral and written, contained in the entire record relating to the project. The findings and determinations constitute the independent findings and determinations of the City

Council in all respects and are fully and completely supported by substantial evidence in the record as a whole.

SECTION 13. Severability. If any part of this Ordinance or its application is deemed invalid by a court of competent jurisdiction, the City Council intends that such invalidity will not affect the effectiveness of the remaining provisions or applications and, to this end, the provisions of this Ordinance are severable.

SECTION 14. Recording. The City Clerk, or her duly appointed deputy, is directed to certify the passage and adoption of this Ordinance; cause it to be entered into the City of Monterey Park's book of original ordinances; make a note of the passage and adoption in the records of this meeting; and, within fifteen (15) days after the passage and adoption of this Ordinance, cause it to be published or posted in accordance with California law.

SECTION 15. Effective Date. This Ordinance becomes effective on the 30th day following its passage and adoption.

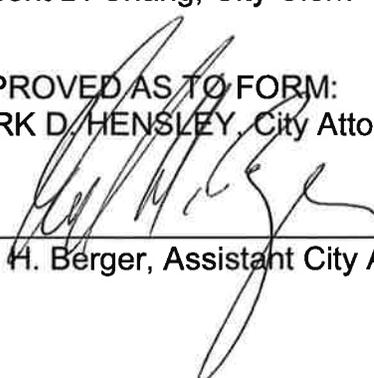
PASSED, APPROVED, AND ADOPTED April ____, 2020.

Hans Liang, Mayor

ATTEST:

Vincent D. Chang, City Clerk

APPROVED AS TO FORM:
MARK D. HENSLEY, City Attorney



Karl H. Berger, Assistant City Attorney

ATTACHMENT 2

Martin v. City of Boise (9th Cir. 2019) 920 F.3d 584



KeyCite Blue Flag – Appeal Notification

Petition for Certiorari Docketed by [CITY OF BOISE, IDAHO v. ROBERT MARTIN, ET AL.](#), U.S., August 26, 2019

920 F.3d 584

United States Court of Appeals, Ninth Circuit.

Robert MARTIN; Lawrence Lee Smith; Robert Anderson; Janet F. Bell; Pamela S. Hawkes; and Basil E. Humphrey, Plaintiffs-Appellants,

v.

CITY OF BOISE, Defendant-Appellee.

No. 15-35845

|

Argued and Submitted July 13, 2017 Portland, Oregon

|

Filed April 1, 2019

Synopsis

Background: Homeless persons brought § 1983 action challenging city's public camping ordinance on Eighth Amendment grounds. The United States District Court for the District of Idaho, [Ronald E. Bush](#), United States Magistrate Judge, [834 F.Supp.2d 1103](#), entered summary judgment in defendants' favor, and plaintiffs appealed. The Court of Appeals, [709 F.3d 890](#), reversed and remanded. On remand, defendants moved for summary judgment, and the District Court, [Bush](#), United States Magistrate Judge, [993 F.Supp.2d 1237](#), granted motion in part and denied it in part. Appeal was taken.

Holdings: On denial of panel rehearing and rehearing en banc, the Court of Appeals, [Berzon](#), Circuit Judge, held that:

homeless persons had standing to pursue their claims even after city adopted protocol not to enforce its public camping ordinance when available shelters were full;

plaintiffs were generally barred by [Heck](#) doctrine from commencing § 1983 action to obtain retrospective relief based on alleged unconstitutionality of their convictions;

[Heck](#) doctrine had no application to homeless persons whose citations under city's public camping ordinance were dismissed before the state obtained a conviction;

[Heck](#) doctrine did not apply to prevent homeless persons allegedly lacking alternative types of shelter from pursuing § 1983 action to obtain prospective relief preventing enforcement of city's ordinance; and

Eighth Amendment prohibited the imposition of criminal penalties for sitting, sleeping, or lying outside on public property on homeless individuals who could not obtain shelter.

Reversed and remanded.

Opinion, [902 F.3d 1031](#), superseded.

[Owens](#), Circuit Judge, filed opinion concurring in part and dissenting in part.

[Berzon](#), Circuit Judge, filed opinion concurring in the denial of rehearing en banc.

[M. Smith](#), Circuit Judge, filed opinion dissenting from the denial of rehearing en banc, in which [Callahan](#), [Bea](#), [Ikuta](#), [Bennett](#), and [R. Nelson](#), Circuit Judges, joined.

[Bennett](#), Circuit Judge, filed opinion dissenting from the denial of rehearing en banc, in which [Bea](#), [Ikuta](#), and [R. Nelson](#), Circuit Judges, joined, and in which [M. Smith](#), Circuit Judge, joined in part.

Attorneys and Law Firms

*587 [Michael E. Bern](#) (argued) and [Kimberly Leefatt](#), Latham & Watkins LLP, Washington, D.C.; [Howard A. Belodoff](#), Idaho Legal Aid Services Inc., Boise, Idaho; Eric Tars, National Law Center on Homelessness & Poverty, Washington, D.C.; Plaintiffs-Appellants.

[Brady J. Hall](#) (argued), [Michael W. Moore](#), and [Steven R. Kraft](#), Moore Elia Kraft & Hall LLP, Boise, Idaho; [Scott B. Muir](#), Deputy City Attorney; [Robert B. Luce](#), City Attorney; City Attorney's Office, Boise, Idaho; for Defendant-Appellee.

Appeal from the United States District Court for the District of Idaho, Ronald E. Bush, Chief [Magistrate Judge, Presiding, D.C. No. 1:09-cv-00540-REB](#)

Before: [Marsha S. Berzon](#), [Paul J. Watford](#), and [John B. Owens](#), Circuit Judges.

Concurrence in Order by Judge [Berzon](#);

Dissent to Order by Judge [Milan D. Smith, Jr.](#);

Dissent to Order by Judge [Bennett](#);

Partial Concurrence and Partial Dissent by Judge [Owens](#)

*588 ORDER

The Opinion filed September 4, 2018, and reported at [902 F.3d 1031](#), is hereby amended. The amended opinion will be filed concurrently with this order.

The panel has unanimously voted to deny the petition for panel rehearing. The full court was advised of the petition for rehearing en banc. A judge requested a vote on whether to rehear the matter en banc. The matter failed to receive a majority of votes of the nonrecused active judges in favor of en banc consideration. [Fed. R. App. P. 35](#). The petition for panel rehearing and the petition for rehearing en banc are **DENIED**.

Future petitions for rehearing or rehearing en banc will not be entertained in this case.

[BERZON](#), Circuit Judge, concurring in the denial of rehearing en banc:

I strongly disfavor this circuit's innovation in en banc procedure—ubiquitous dissents in the denial of rehearing en banc, sometimes accompanied by concurrences in the denial of rehearing en banc. As I have previously explained, dissents in the denial of rehearing en banc, in particular, often engage in a “distorted presentation of the issues in the case, creating the impression of rampant error in the original panel opinion although a majority—often a decisive majority—of the active members of the court ... perceived no error.” *Defs. of Wildlife Ctr. for Biological Diversity v. EPA*, 450 F.3d 394, 402 (9th Cir. 2006) (Berzon, J., concurring in denial of rehearing en banc); see also Marsha S. Berzon, *Dissent, “Dissentals,” and Decision Making*, 100

Calif. L. Rev. 1479 (2012). Often times, the dramatic tone of these dissents leads them to read more like petitions for writ of certiorari on steroids, rather than reasoned judicial opinions.

Despite my distaste for these separate writings, I have, on occasion, written concurrences in the denial of rehearing en banc. On those rare occasions, I have addressed arguments raised for the first time during the en banc process, corrected misrepresentations, or highlighted important facets of the case that had yet to be discussed.

This case serves as one of the few occasions in which I feel compelled to write a brief concurrence. I will not address the dissents' challenges to the *Heck v. Humphrey*, 512 U.S. 477, 114 S.Ct. 2364, 129 L.Ed.2d 383 (1994), and Eighth Amendment rulings of *Martin v. City of Boise*, 902 F.3d 1031 (9th Cir. 2018), as the opinion sufficiently rebuts those erroneous arguments. I write only to raise two points.

First, the City of Boise did not initially seek en banc reconsideration of the Eighth Amendment holding. When this court solicited the parties' positions as to whether the Eighth Amendment holding merits en banc review, the City's initial submission, before mildly supporting en banc reconsideration, was that the opinion is quite "narrow" and its "interpretation of the [C]onstitution raises little actual conflict with Boise's Ordinances or [their] enforcement." And the City noted that it viewed *589 prosecution of homeless individuals for sleeping outside as a "last resort," not as a principal weapon in reducing homelessness and its impact on the City.

The City is quite right about the limited nature of the opinion. On the merits, the opinion holds only that municipal ordinances that criminalize sleeping, sitting, or lying in *all* public spaces, when *no* alternative sleeping space is available, violate the Eighth Amendment. *Martin*, 902 F.3d at 1035. Nothing in the opinion reaches beyond criminalizing the biologically essential need to sleep when there is no available shelter.

Second, Judge M. Smith's dissent features an unattributed color photograph of "a Los Angeles public sidewalk." The photograph depicts several tents lining a street and is presumably designed to demonstrate the purported negative impact of *Martin*. But the photograph fails to fulfill its intended purpose for several reasons.

For starters, the picture is not in the record of this case and is thus inappropriately included in the dissent. It is not the practice of this circuit to include outside-the-record photographs in judicial opinions, especially when such photographs are entirely unrelated to the case. And in this instance, the photograph is entirely unrelated. It depicts a sidewalk in Los Angeles, not a location in the City of Boise, the actual municipality at issue. Nor can the photograph be said to illuminate the impact of *Martin* within this circuit, as it predates our decision and was likely taken in 2017.¹

But even putting aside the use of a pre-*Martin*, outside-the-record photograph from another municipality, the photograph does not serve to illustrate a concrete effect of *Martin*'s holding. The opinion clearly states that it is not outlawing ordinances "barring the obstruction of public rights of way or the erection of certain structures," such as tents, *id.* at 1048 n.8, and that the holding "in no way dictate[s] to the City that it must provide sufficient shelter for the homeless, or allow anyone who wishes to sit, lie, or sleep on the streets ... at any time and at any place," *id.* at 1048 (quoting *Jones v. City of Los Angeles*, 444 F.3d 1118, 1138 (9th Cir. 2006)).

What the pre-*Martin* photograph *does* demonstrate is that the ordinances criminalizing sleeping in public places were never a viable solution to the homelessness problem. People with no place to live will sleep outside if they have no alternative. Taking them to jail for a few days is both unconstitutional, for the reasons discussed in the opinion, and, in all likelihood, pointless.

The distressing homelessness problem—distressing to the people with nowhere to live as well as to the rest of society—has grown into a crisis for many reasons, among them the cost of housing, the drying up of affordable care for people with mental illness, and the failure to provide adequate treatment for drug addiction. *See, e.g.*, U.S. Interagency Council on Homelessness, *Homelessness in America: Focus on Individual Adults 5–8* (2018), https://www.usich.gov/resources/?uploads/asset_library/

HIA_Individual_Adults.pdf. The crisis continued to burgeon while ordinances *590 forbidding sleeping in public were on the books and sometimes enforced. There is no reason to believe that it has grown, and is likely to grow larger, because *Martin* held it unconstitutional to criminalize simply sleeping *somewhere* in public if one has nowhere else to do so.

For the foregoing reasons, I concur in the denial of rehearing en banc.

M. SMITH, Circuit Judge, with whom CALLAHAN, BEA, IKUTA, BENNETT, and R. NELSON, Circuit Judges, join, dissenting from the denial of rehearing en banc:

In one misguided ruling, a three-judge panel of our court badly misconstrued not one or two, but three areas of binding Supreme Court precedent, and crafted a holding that has begun wreaking havoc on local governments, residents, and businesses throughout our circuit. Under the panel's decision, local governments are forbidden from enforcing laws restricting public sleeping and camping unless they provide shelter for every homeless individual within their jurisdictions. Moreover, the panel's reasoning will soon prevent local governments from enforcing a host of other public health and safety laws, such as those prohibiting public defecation and urination. Perhaps most unfortunately, the panel's opinion shackles the hands of public officials trying to redress the serious societal concern of homelessness.¹

I respectfully dissent from our court's refusal to correct this holding by rehearing the case en banc.

I.

The most harmful aspect of the panel's opinion is its misreading of Eighth Amendment precedent. My colleagues cobble together disparate portions of a fragmented Supreme Court opinion to hold that "an ordinance violates the Eighth Amendment insofar as it imposes criminal sanctions against homeless individuals for sleeping outdoors, on public property, when no alternative shelter is available to them." *Martin v. City of Boise*, 902 F.3d 1031, 1035 (9th Cir. 2018). That holding is legally and practically ill-conceived, and conflicts with the reasoning of every other appellate court² that has considered the issue.

A.

The panel struggles to paint its holding as a faithful interpretation of the Supreme Court's fragmented opinion in *Powell v. Texas*, 392 U.S. 514, 88 S.Ct. 2145, 20 L.Ed.2d 1254 (1968). It fails.

To understand *Powell*, we must begin with the Court's decision in *Robinson v. California*, 370 U.S. 660, 82 S.Ct. 1417, 8 L.Ed.2d 758 (1962). There, the Court addressed a statute that made it a "criminal offense for a person to 'be addicted to the use of narcotics.'" *Robinson*, 370 U.S. at 660, 82 S.Ct. 1417 (quoting Cal. Health & Safety Code § 11721). The statute allowed defendants to be convicted so long as they were drug addicts, regardless of whether they actually used or possessed drugs. *Id.* at 665, 82 S.Ct. 1417. The Court struck *591 down the statute under the Eighth Amendment, reasoning that because "narcotic addiction is an illness ... which may be contracted innocently or involuntarily ... a state law which imprisons a person thus afflicted as criminal, even though he has never touched any narcotic drug" violates the Eighth Amendment. *Id.* at 667, 82 S.Ct. 1417.

A few years later, in *Powell*, the Court addressed the scope of its holding in *Robinson*. *Powell* concerned the constitutionality of a Texas law that criminalized public drunkenness. *Powell*, 392 U.S. at 516, 88 S.Ct. 2145. As the panel's opinion acknowledges, there was no majority in *Powell*. The four Justices in the plurality interpreted the decision in *Robinson* as standing for the limited proposition that the government could not criminalize one's status. *Id.* at 534, 88 S.Ct. 2145. They held that because the Texas statute criminalized conduct rather than alcoholism, the law was constitutional. *Powell*, 392 U.S. at 532, 88 S.Ct. 2145.

The four dissenting Justices in *Powell* read *Robinson* more broadly: They believed that “criminal penalties may not be inflicted upon a person for being in a condition he is powerless to change.” *Id.* at 567, 88 S.Ct. 2145 (Fortas, J., dissenting). Although the statute in *Powell* differed from that in *Robinson* by covering involuntary conduct, the dissent found the same constitutional defect present in both cases. *Id.* at 567–68, 88 S.Ct. 2145.

Justice White concurred in the judgment. He upheld the defendant’s conviction because Powell had not made a showing that he was unable to stay off the streets on the night he was arrested. *Id.* at 552–53, 88 S.Ct. 2145 (White, J., concurring in the result). He wrote that it was “unnecessary to pursue at this point the further definition of the circumstances or the state of intoxication which might bar conviction of a chronic alcoholic for being drunk in a public place.” *Id.* at 553, 88 S.Ct. 2145.

The panel contends that because Justice White concurred in the judgment alone, the views of the dissenting Justices constitute the holding of *Powell*. *Martin*, 902 F.3d at 1048. That tenuous reasoning—which metamorphosizes the *Powell* dissent into the majority opinion—defies logic.

Because *Powell* was a 4–1–4 decision, the Supreme Court’s decision in *Marks v. United States* guides our analysis. 430 U.S. 188, 97 S.Ct. 990, 51 L.Ed.2d 260 (1977). There, the Court held that “[w]hen a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, ‘the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds.’ ” *Id.* at 193, 97 S.Ct. 990 (quoting *Gregg v. Georgia*, 428 U.S. 153, 169 n.15, 96 S.Ct. 2909, 49 L.Ed.2d 859 (1976) (plurality opinion)) (emphasis added). When *Marks* is applied to *Powell*, the holding is clear: The defendant’s conviction was constitutional because it involved the commission of an act. Nothing more, nothing less.

This is hardly a radical proposition. I am not alone in recognizing that “there is definitely no Supreme Court holding” prohibiting the criminalization of involuntary conduct. *United States v. Moore*, 486 F.2d 1139, 1150 (D.C. Cir. 1973) (en banc). Indeed, in the years since *Powell* was decided, courts—including our own—have routinely upheld state laws that criminalized acts that were allegedly compelled or involuntary. *See, e.g., United States v. Stenson*, 475 F. App’x 630, 631 (7th Cir. 2012) (holding that it was constitutional for the defendant to be punished for violating the terms of his parole by consuming alcohol because he “was not punished for his status as an alcoholic but for his conduct”); *592 *Joshua v. Adams*, 231 F. App’x 592, 594 (9th Cir. 2007) (“Joshua also contends that the state court ignored his mental illness [schizophrenia], which rendered him unable to control his behavior, and his sentence was actually a penalty for his illness This contention is without merit because, in contrast to *Robinson*, where a statute specifically criminalized addiction, Joshua was convicted of a criminal offense separate and distinct from his ‘status’ as a schizophrenic.”); *United States v. Benefield*, 889 F.2d 1061, 1064 (11th Cir. 1989) (“The considerations that make any incarceration unconstitutional when a statute punishes a defendant for his status are not applicable when the government seeks to punish a person’s actions.”).³

To be sure, *Marks* is controversial. Last term, the Court agreed to consider whether to abandon the rule *Marks* established (but ultimately resolved the case on other grounds and found it “unnecessary to consider ... the proper application of *Marks*”). *Hughes v. United States*, — U.S. —, 138 S.Ct. 1765, 1772, 201 L.Ed.2d 72 (2018). At oral argument, the Justices criticized the logical subset rule established by *Marks* for elevating the outlier views of concurring Justices to precedential status.⁴ The Court also acknowledged that lower courts have inconsistently interpreted the holdings of fractured decisions under *Marks*.⁵

Those criticisms, however, were based on the assumption that *Marks* means what it says and says what it means: Only the views of the Justices concurring in the judgment may be considered in construing the Court’s holding. *Marks*, 430 U.S. at 193, 97 S.Ct. 990. The Justices did not even think to consider that *Marks* allows dissenting Justices to create the Court’s holding. As a *Marks* scholar has observed, such a method of vote counting “would paradoxically create a precedent that contradicted the judgment in that very case.”⁶ And yet the panel’s opinion flouts that common sense rule to extract from *Powell* a holding that does not exist.

What the panel really does is engage in a predictive model of precedent. The panel opinion implies that if a case like *Powell* were to arise again, a majority of the Court would hold that the criminalization of involuntary conduct violates the Eighth Amendment. Utilizing such reasoning, the panel borrows the Justices' robes and adopts that holding on their behalf.

But the Court has repeatedly discouraged us from making such predictions when construing precedent. See *Rodriguez de Quijas v. Shearson/Am. Express, Inc.*, 490 U.S. 477, 484, 109 S.Ct. 1917, 104 L.Ed.2d 526 (1989). And, for good reason. Predictions about how Justices will rule rest on unwarranted speculation about what goes on in their minds. Such amateur fortunetelling also precludes us from considering new insights on the issues—difficult as they may be in the case of 4–1–4 decisions like *Powell*—that have arisen since the Court's fragmented opinion. See *E.I. du Pont de Nemours & Co. v. Train*, 430 U.S. 112, 135 n.26, 97 S.Ct. 965, 51 L.Ed.2d 204 (1977) (noting “the wisdom of allowing difficult issues to mature through *593 full consideration by the courts of appeals”).

In short, predictions about how the Justices will rule ought not to create precedent. The panel's Eighth Amendment holding lacks any support in *Robinson* or *Powell*.

B.

Our panel's opinion also conflicts with the reasoning underlying the decisions of other appellate courts.

The California Supreme Court, in *Tobe v. City of Santa Ana*, rejected the plaintiffs' Eighth Amendment challenge to a city ordinance that banned public camping. 892 P.2d 1145 (1995). The court reached that conclusion despite evidence that, on any given night, at least 2,500 homeless persons in the city did not have shelter beds available to them. *Id.* at 1152. The court sensibly reasoned that because *Powell* was a fragmented opinion, it did not create precedent on “the question of whether certain conduct cannot constitutionally be punished because it is, in some sense, ‘involuntary’ or ‘occasioned by a compulsion.’” *Id.* at 1166 (quoting *Powell*, 392 U.S. at 533, 88 S.Ct. 2145). Our panel—bound by the same Supreme Court precedent—invalidates identical California ordinances previously upheld by the California Supreme Court. Both courts cannot be correct.

The California Supreme Court acknowledged that homelessness is a serious societal problem. It explained, however, that:

Many of those issues are the result of legislative policy decisions. The arguments of many amici curiae regarding the apparently intractable problem of homelessness and the impact of the Santa Ana ordinance on various groups of homeless persons (e.g., teenagers, families with children, and the mentally ill) should be addressed to the Legislature and the Orange County Board of Supervisors, not the judiciary. Neither the criminal justice system nor the judiciary is equipped to resolve chronic social problems, but criminalizing conduct that is a product of those problems is not for that reason constitutionally impermissible.

Id. at 1157 n.12. By creating new constitutional rights out of whole cloth, my well-meaning, but unelected, colleagues improperly inject themselves into the role of public policymaking.⁷

The reasoning of our panel decision also conflicts with precedents of the Fourth and Eleventh Circuits. In *Manning v. Caldwell*, the Fourth Circuit held that a Virginia statute that criminalized the possession of alcohol did not violate the Eighth Amendment when it punished the involuntary actions of homeless alcoholics. 900 F.3d 139, 153 (4th Cir. 2018), *reh'g en banc granted* 741 F. App'x 937 (4th Cir. 2018).⁸ *594 The court rejected the argument that Justice White's opinion in *Powell* “requires this court to hold that Virginia's statutory scheme imposes cruel and unusual punishment because it criminalizes [plaintiffs']

status as homeless alcoholics.” *Id.* at 145. The court found that the statute passed constitutional muster because “it is the act of possessing alcohol—not the status of being an alcoholic—that gives rise to criminal sanctions.” *Id.* at 147.

Boise’s Ordinances at issue in this case are no different: They do not criminalize the status of homelessness, but only the act of camping on public land or occupying public places without permission. *Martin*, 902 F.3d at 1035. The Fourth Circuit correctly recognized that these kinds of laws do not run afoul of *Robinson* and *Powell*.

The Eleventh Circuit has agreed. In *Joel v. City of Orlando*, the court held that a city ordinance prohibiting sleeping on public property was constitutional. 232 F.3d 1353, 1362 (11th Cir. 2000). The court rejected the plaintiffs’ Eighth Amendment challenge because the ordinance “targets conduct, and does not provide criminal punishment based on a person’s status.” *Id.* The court prudently concluded that “[t]he City is constitutionally allowed to regulate where ‘camping’ occurs.” *Id.*

We ought to have adopted the sound reasoning of these other courts. By holding that Boise’s enforcement of its Ordinances violates the Eighth Amendment, our panel has needlessly created a split in authority on this straightforward issue.

C.

One would think our panel’s legally incorrect decision would at least foster the common good. Nothing could be further from the truth. The panel’s decision generates dire practical consequences for the hundreds of local governments within our jurisdiction, and for the millions of people that reside therein.

The panel opinion masquerades its decision as a narrow one by representing that it “in no way dictate[s] to the City that it must provide sufficient shelter for the homeless, or allow anyone who wishes to sit, lie, or sleep on the streets ... at any time and at any place.” *Martin*, 902 F.3d at 1048 (quoting *Jones v. City of Los Angeles*, 444 F.3d 1118, 1138 (9th Cir. 2006)).

That excerpt, however, glosses over the decision’s actual holding: “We hold only that ... as long as there is no option of sleeping indoors, the government cannot criminalize indigent, homeless people for sleeping outdoors, on public property.” *Id.* Such a holding leaves cities with a Hobson’s choice: They must either undertake an overwhelming financial responsibility to provide housing for or count the number of homeless individuals within their jurisdiction every night, or abandon enforcement of a host of laws regulating public health and safety. The Constitution has no such requirement.

* * *

Under the panel’s decision, local governments can enforce certain of their public health and safety laws only when homeless individuals have the choice to sleep indoors. That inevitably leads to the question of how local officials ought to know whether that option exists.

The number of homeless individuals within a municipality on any given night is not automatically reported and updated in real time. Instead, volunteers or government employees must painstakingly tally the number of homeless individuals block by block, alley by alley, doorway by doorway. Given the daily fluctuations in the homeless population, the panel’s opinion would require this labor-intensive task be done every single day. Yet in massive cities *595 such as Los Angeles, that is simply impossible. Even when thousands of volunteers devote dozens of hours to such “a herculean task,” it takes three days to finish counting—and even then “not everybody really gets counted.”⁹ Lest one think Los Angeles is unique, our circuit is home to many of the largest homeless populations nationwide.¹⁰

If cities do manage to cobble together the resources for such a system, what happens if officials (much less volunteers) miss a homeless individual during their daily count and police issue citations under the false impression that the number of shelter

beds exceeds the number of homeless people that night? According to the panel’s opinion, that city has violated the Eighth Amendment, thereby potentially leading to lawsuits for significant monetary damages and other relief.

And what if local governments (understandably) lack the resources necessary for such a monumental task?¹¹ They have no choice but to stop enforcing laws that prohibit public sleeping and camping.¹² Accordingly, *596 our panel’s decision effectively allows homeless individuals to sleep and live wherever they wish on most public property. Without an absolute confidence that they can house every homeless individual, city officials will be powerless to assist residents lodging valid complaints about the health and safety of their neighborhoods.¹³

As if the panel’s actual holding wasn’t concerning enough, the logic of the panel’s opinion reaches even further in scope. The opinion reasons that because “resisting the need to ... engage in [] life-sustaining activities is impossible,” punishing the homeless for engaging in those actions in public violates the Eighth Amendment. *Martin*, 902 F.3d at 1048. What else is a life-sustaining activity? Surely bodily functions. By holding that the Eighth Amendment proscribes the criminalization of involuntary conduct, the panel’s decision will inevitably result in the striking down of laws that prohibit public defecation and urination.¹⁴ The panel’s reasoning also casts doubt on public safety laws restricting drug paraphernalia, for the use of hypodermic needles and the like is no less involuntary for the homeless suffering from the scourge of addiction than is their sleeping in public.

It is a timeless adage that states have a “universally acknowledged power and duty to enact and enforce all such laws ... as may rightly be deemed necessary or expedient for the safety, health, morals, comfort and welfare of its people.” *Knoxville Iron Co. v. Harbison*, 183 U.S. 13, 20, 22 S.Ct. 1, 46 L.Ed. 55 (1901) (internal quotations omitted). I fear that the panel’s decision will prohibit local governments from fulfilling their duty to enforce an array of public health and safety laws. Halting enforcement of such laws will potentially wreak havoc on our communities.¹⁵ As we have already begun to witness, our neighborhoods will soon feature “[t]ents ... equipped with mini refrigerators, cupboards, televisions, and heaters, [that] vie with pedestrian traffic” and “human waste appearing on sidewalks and at local playgrounds.” *597¹⁶



A Los Angeles Public Sidewalk

II.

The panel's fanciful merits-determination is accompanied by a no-less-inventive series of procedural rulings. The panel's opinion also misconstrues two other areas of Supreme Court precedent concerning limits on the parties who can bring § 1983 challenges for violations of the Eighth Amendment.

A.

The panel erred in holding that Robert Martin and Robert Anderson could obtain prospective relief under *Heck v. Humphrey* and its progeny. 512 U.S. 477, 114 S.Ct. 2364, 129 L.Ed.2d 383 (1994). As recognized by Judge Owens's dissent, that conclusion cuts against binding precedent on the issue.

The Supreme Court has stated that *Heck* bars § 1983 claims if success on that claim would "necessarily demonstrate the invalidity of [the plaintiff's] confinement or its duration." *Wilkinson v. Dotson*, 544 U.S. 74, 82, 125 S.Ct. 1242, 161 L.Ed.2d 253 (2005); see also *Edwards v. Balisok*, 520 U.S. 641, 648, 117 S.Ct. 1584, 137 L.Ed.2d 906 (1997) (stating that *Heck* applies to claims for declaratory relief). Martin and Anderson's prospective claims did just that. Those plaintiffs sought a declaration that the Ordinances under which they were convicted are unconstitutional and an injunction against their future enforcement on the grounds of unconstitutionality. It is clear that *Heck* bars these claims because Martin and Anderson necessarily seek to demonstrate the invalidity of their previous convictions.

The panel opinion relies on *Edwards* to argue that *Heck* does not bar plaintiffs' requested relief, but *Edwards* cannot bear the weight the panel puts on it. In *598 *Edwards*, the plaintiff sought an injunction that would require prison officials to date-stamp witness statements at the time received. 520 U.S. at 643, 117 S.Ct. 1584. The Court concluded that requiring prison officials to date-stamp witness statements did not necessarily imply the invalidity of previous determinations that the prisoner was not entitled to good-time credits, and that *Heck*, therefore, did not bar prospective injunctive relief. *Id.* at 648, 117 S.Ct. 1584.

Here, in contrast, a declaration that the Ordinances are unconstitutional and an injunction against their future enforcement necessarily demonstrate the invalidity of the plaintiffs' prior convictions. According to data from the U.S. Department of Housing and Urban Development, the number of homeless individuals in Boise exceeded the number of available shelter beds during each of the years that the plaintiffs were cited.¹⁷ Under the panel's holding that "the government cannot criminalize indigent, homeless people for sleeping outdoors, on public property" "as long as there is no option of sleeping indoors," that data necessarily demonstrates the invalidity of the plaintiffs' prior convictions. *Martin*, 902 F.3d at 1048.

B.

The panel also erred in holding that Robert Martin and Pamela Hawkes, who were cited but not convicted of violating the Ordinances, had standing to sue under the Eighth Amendment. In so doing, the panel created a circuit split with the Fifth Circuit.

The panel relied on *Ingraham v. Wright*, 430 U.S. 651, 97 S.Ct. 1401, 51 L.Ed.2d 711 (1977), to find that a plaintiff "need demonstrate only the initiation of the criminal process against him, not a conviction," to bring an Eighth Amendment challenge. *Martin*, 902 F.3d at 1045. The panel cites *Ingraham*'s observation that the Cruel and Unusual Punishments Clause circumscribes the criminal process in that "it imposes substantive limits on what can be made criminal and punished as such." *Id.* at 1046 (citing *Ingraham*, 430 U.S. at 667, 97 S.Ct. 1401). This reading of *Ingraham*, however, cherry picks isolated statements from the decision without considering them in their accurate context. The *Ingraham* Court plainly held that "Eighth Amendment scrutiny is appropriate only after the State has complied with the constitutional guarantees traditionally associated with criminal prosecutions." 430 U.S. at 671 n.40, 97 S.Ct. 1401. And, "the State does not acquire the power to punish with which the Eighth Amendment is concerned until *after* it has secured a formal adjudication of guilt." *Id.* (emphasis added). As the *Ingraham* Court recognized, "[T]he decisions of [the Supreme] Court construing the proscription against cruel and unusual punishment confirms that it was designed to protect those *convicted* of crimes." *Id.* at 664, 97 S.Ct. 1401 (emphasis added). Clearly, then, *Ingraham*

stands for the proposition that to challenge a criminal statute as violative of the Eighth Amendment, the individual must be convicted of that relevant crime.

The Fifth Circuit recognized this limitation on standing in *Johnson v. City of Dallas*, 61 F.3d 442 (5th Cir. 1995). There, the court confronted a similar action brought by homeless individuals challenging a sleeping in public ordinance. *599 *Johnson*, 61 F.3d at 443. The court held that the plaintiffs did not have standing to raise an Eighth Amendment challenge to the ordinance because although “numerous tickets ha[d] been issued ... [there was] no indication that any Appellees ha[d] been convicted” of violating the sleeping in public ordinance. *Id.* at 445. The Fifth Circuit explained that *Ingraham* clearly required a plaintiff be convicted under a criminal statute before challenging that statute’s validity. *Id.* at 444–45 (citing *Robinson*, 370 U.S. at 663, 82 S.Ct. 1417; *Ingraham*, 430 U.S. at 667, 97 S.Ct. 1401).

By permitting Martin and Hawkes to maintain their Eighth Amendment challenge, the panel’s decision created a circuit split with the Fifth Circuit and took our circuit far afield from “[t]he primary purpose of (the Cruel and Unusual Punishments Clause) ... [which is] the method or kind of punishment imposed for the violation of criminal statutes.” *Ingraham*, 430 U.S. at 667, 97 S.Ct. 1401 (quoting *Powell*, 392 U.S. at 531–32, 88 S.Ct. 2145).

III.

None of us is blind to the undeniable suffering that the homeless endure, and I understand the panel’s impulse to help such a vulnerable population. But the Eighth Amendment is not a vehicle through which to critique public policy choices or to hamstring a local government’s enforcement of its criminal code. The panel’s decision, which effectively strikes down the anti-camping and anti-sleeping Ordinances of Boise and that of countless, if not all, cities within our jurisdiction, has no legitimate basis in current law.

I am deeply concerned about the consequences of our panel’s unfortunate opinion, and I regret that we did not vote to reconsider this case en banc. I respectfully dissent.

BENNETT, Circuit Judge, with whom BEA, IKUTA, and R. NELSON, Circuit Judges, join, and with whom M. SMITH, Circuit Judge, joins as to Part II, dissenting from the denial of rehearing en banc:

I fully join Judge M. Smith’s opinion dissenting from the denial of rehearing en banc. I write separately to explain that except in extraordinary circumstances not present in this case, and based on its text, tradition, and original public meaning, the Cruel and Unusual Punishments Clause of the Eighth Amendment does not impose substantive limits on what conduct a state may criminalize.

I recognize that we are, of course, bound by Supreme Court precedent holding that the Eighth Amendment encompasses a limitation “on what can be made criminal and punished as such.” *Ingraham v. Wright*, 430 U.S. 651, 667, 97 S.Ct. 1401, 51 L.Ed.2d 711 (1977) (citing *Robinson v. California*, 370 U.S. 660, 82 S.Ct. 1417, 8 L.Ed.2d 758 (1962)). However, the *Ingraham* Court specifically “recognized [this] limitation as one to be applied sparingly.” *Id.* As Judge M. Smith’s dissent ably points out, the panel ignored *Ingraham*’s clear direction that Eighth Amendment scrutiny attaches only after a criminal conviction. Because the panel’s decision, which allows pre-conviction Eighth Amendment challenges, is wholly inconsistent with the text and tradition of the Eighth Amendment, I respectfully dissent from our decision not to rehear this case en banc.

I.

The text of the Cruel and Unusual Punishments Clause is virtually identical to Section 10 of the English Declaration of *600 Rights of 1689,¹ and there is no question that the drafters of the Eighth Amendment were influenced by the prevailing interpretation of Section 10. See *Solem v. Helm*, 463 U.S. 277, 286, 103 S.Ct. 3001, 77 L.Ed.2d 637 (1983) (observing that one of the themes of the founding era “was that Americans had all the rights of English subjects” and the Framers’ “use of the language of the English Bill of Rights is convincing proof that they intended to provide at least the same protection”); *Timbs v. Indiana*, 586 U.S. —, 139 S.Ct. 682, — L.Ed.2d — (2019) (Thomas, J., concurring) (“[T]he text of the Eighth Amendment was ‘based directly on ... the Virginia Declaration of Rights,’ which ‘adopted verbatim the language of the English Bill of Rights.’” (quoting *Browning-Ferris Indus. of Vt., Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257, 266, 109 S.Ct. 2909, 106 L.Ed.2d 219 (1989))). Thus, “not only is the original meaning of the 1689 Declaration of Rights relevant, but also the circumstances of its enactment, insofar as they display the particular ‘rights of English subjects’ it was designed to vindicate.” *Harmelin v. Michigan*, 501 U.S. 957, 967, 111 S.Ct. 2680, 115 L.Ed.2d 836 (1991) (Scalia, J., concurring).

Justice Scalia’s concurrence in *Harmelin* provides a thorough and well-researched discussion of the original public meaning of the Cruel and Unusual Punishments Clause, including a detailed overview of the history of Section 10 of the English Declaration of Rights. See *id.* at 966–85, 111 S.Ct. 2680 (Scalia, J., concurring). Rather than reciting Justice Scalia’s *Harmelin* discussion in its entirety, I provide only a broad description of its historical analysis. Although the issue Justice Scalia confronted in *Harmelin* was whether the Framers intended to graft a proportionality requirement on the Eighth Amendment, see *id.* at 976, 111 S.Ct. 2680, his opinion’s historical exposition is instructive to the issue of what the Eighth Amendment meant when it was written.

The English Declaration of Rights’s prohibition on “cruell and unusuall Punishments” is attributed to the arbitrary punishments imposed by the King’s Bench following the Monmouth Rebellion in the late 17th century. *Id.* at 967, 111 S.Ct. 2680 (Scalia, J., concurring). “Historians have viewed the English provision as a reaction either to the ‘Bloody Assize,’ the treason trials conducted by Chief Justice Jeffreys in 1685 after the abortive rebellion of the Duke of Monmouth, or to the perjury prosecution of Titus Oates in the same year.” *Ingraham*, 430 U.S. at 664, 97 S.Ct. 1401 (footnote omitted).

Presiding over a special commission in the wake of the Monmouth Rebellion, Chief Justice Jeffreys imposed “vicious punishments for treason,” including “drawing and quartering, burning of women felons, beheading, [and] disemboweling.” *Harmelin*, 501 U.S. at 968, 111 S.Ct. 2680. In the view of some historians, “the story of The Bloody Assizes ... helped to place constitutional limitations on the crime of treason and to produce a bar against cruel and unusual Punishments.” *Furman v. Georgia*, 408 U.S. 238, 254, 92 S.Ct. 2726, 33 L.Ed.2d 346 (1972) (Douglas, J., concurring).

More recent scholarship suggests that Section 10 of the Declaration of Rights was motivated more by Jeffreys’s treatment of Titus Oates, a Protestant cleric and convicted perjurer. In addition to the pillory, the scourge, and life imprisonment, Jeffreys sentenced Oates to be “stript of [his] Canonical Habits.” *601 *Harmelin*, 501 U.S. at 970, 111 S.Ct. 2680 (Scalia, J., concurring) (quoting Second Trial of Titus Oates, 10 How. St. Tr. 1227, 1316 (K.B. 1685)). Years after the sentence was carried out, and months after the passage of the Declaration of Rights, the House of Commons passed a bill to annul Oates’s sentence. Though the House of Lords never agreed, the Commons issued a report asserting that Oates’s sentence was the sort of “cruel and unusual Punishment” that Parliament complained of in the Declaration of Rights. *Harmelin*, 501 U.S. at 972, 111 S.Ct. 2680 (citing 10 Journal of the House of Commons 247 (Aug. 2, 1689)). In the view of the Commons and the dissenting Lords, Oates’s punishment was “‘out of the Judges’ Power,’ ‘contrary to Law and ancient practice,’ without ‘Precedents’ or ‘express Law to warrant,’ ‘unusual,’ ‘illegal,’ or imposed by ‘Pretence to a discretionary Power.’” *Id.* at 973, 111 S.Ct. 2680 (quoting 1 Journals of the House of Lords 367 (May 31, 1689); 10 Journal of the House of Commons 247 (Aug. 2, 1689)).

Thus, Justice Scalia concluded that the prohibition on “cruell and unusuall punishments” as used in the English Declaration, “was primarily a requirement that judges pronouncing sentence remain within the bounds of common-law tradition.” *Harmelin*, 501 U.S. at 974, 111 S.Ct. 2680 (Scalia, J., concurring) (citing *Ingraham*, 430 U.S. at 665, 97 S.Ct. 1401; 1 J. Chitty, Criminal Law 710–12 (5th Am. ed. 1847); Anthony F. Granucci, *Nor Cruel and Unusual Punishments Inflicted: The Original Meaning*, 57 Calif. L. Rev. 839, 859 (1969)).

But Justice Scalia was careful not to impute the English meaning of “cruell and unusuall” directly to the Framers of our Bill of Rights: “the ultimate question is not what ‘cruell and unusuall punishments’ meant in the Declaration of Rights, but what its meaning was to the Americans who adopted the Eighth Amendment.” *Id.* at 975, 111 S.Ct. 2680. “Wrenched out of its common-law context, and applied to the actions of a legislature ... the Clause disables the Legislature from authorizing particular forms or ‘modes’ of punishment—specifically, cruel methods of punishment that are not regularly or customarily employed.” *Id.* at 976, 111 S.Ct. 2680.

As support for his conclusion that the Framers of the Bill of Rights intended for the Eighth Amendment to reach only certain punishment methods, Justice Scalia looked to “the state ratifying conventions that prompted the Bill of Rights.” *Id.* at 979, 111 S.Ct. 2680. Patrick Henry, speaking at the Virginia Ratifying convention, “decried the absence of a bill of rights,” arguing that “Congress will loose the restriction of not ... inflicting cruel and unusual punishments. ... What has distinguished our ancestors?—They would not admit of tortures, or cruel and barbarous punishment.” *Id.* at 980, 111 S.Ct. 2680 (quoting 3 J. Elliot, Debates on the Federal Constitution 447 (2d ed. 1854)). The Massachusetts Convention likewise heard the objection that, in the absence of a ban on cruel and unusual punishments, “racks and gibbets may be amongst the most mild instruments of [Congress’s] discipline.” *Id.* at 979, 111 S.Ct. 2680 (internal quotation marks omitted) (quoting 2 J. Debates on the Federal Constitution, at 111). These historical sources “confirm[] the view that the cruel and unusual punishments clause was directed at prohibiting certain *methods* of punishment.” *Id.* (internal quotation marks omitted) (quoting Granucci, 57 Calif. L. Rev. at 842) (emphasis in *Harmelin*).

In addition, early state court decisions “interpreting state constitutional provisions with identical or more expansive wording (i.e., ‘cruel or unusual’) concluded that these provisions ... proscribe[d] ... only certain modes of punishment.” *Id.* at 983, 111 S.Ct. 2680; *see also* *602 *id.* at 982, 111 S.Ct. 2680 (“Many other Americans apparently agreed that the Clause only outlawed certain *modes* of punishment.”).

In short, when the Framers drafted and the several states ratified the Eighth Amendment, the original public meaning of the Cruel and Unusual Punishments Clause was “to proscribe ... methods of punishment.” *Estelle v. Gamble*, 429 U.S. 97, 102, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976). There is simply no indication in the history of the Eighth Amendment that the Cruel and Unusual Punishments Clause was intended to reach the substantive authority of Congress to criminalize acts or status, and certainly not before conviction. Incorporation, of course, extended the reach of the Clause to the States, but worked no change in its meaning.

II.

The panel here held that “the Eighth Amendment prohibits the imposition of criminal penalties for sitting, sleeping, or lying outside on public property for homeless individuals who cannot obtain shelter.” *Martin v. City of Boise*, 902 F.3d 1031, 1048 (9th Cir. 2018). In so holding, the panel allows challenges asserting this prohibition to be brought in advance of any conviction. That holding, however, has nothing to do with the punishment that the City of Boise imposes for those offenses, and thus nothing to do with the text and tradition of the Eighth Amendment.

The panel pays only the barest attention to the Supreme Court’s admonition that the application of the Eighth Amendment to substantive criminal law be “sparing[],” *Martin*, 902 F.3d at 1047 (quoting *Ingraham*, 430 U.S. at 667, 97 S.Ct. 1401), and its holding here is dramatic in scope and completely unfaithful to the proper interpretation of the Cruel and Unusual Punishments Clause.

“The primary purpose of (the Cruel and Unusual Punishments Clause) has always been considered, and properly so, to be directed at the method or kind of punishment imposed for the violation of criminal statutes.” *Ingraham*, 430 U.S. at 667, 97 S.Ct. 1401 (internal quotation marks omitted) (quoting *Powell v. Texas*, 392 U.S. 514, 531–32, 88 S.Ct. 2145, 20 L.Ed.2d 1254 (1968)). It should, therefore, be the “rare case” where a court invokes the Eighth Amendment’s criminalization component. *Jones v. City of Los Angeles*, 444 F.3d 1118, 1146 (9th Cir. 2006) (Rymer, J., dissenting), *vacated*, 505 F.3d 1006 (9th Cir.

2007).² And permitting a pre-conviction challenge to a local ordinance, as the panel does here, is flatly inconsistent with the Cruel and Unusual Punishments Clause’s core constitutional function: regulating the *methods* of punishment that may be inflicted upon one convicted of an offense. *Harmelin*, 501 U.S. at 977, 979, 111 S.Ct. 2680 (Scalia, J., concurring). As Judge Rymer, dissenting in *Jones*, observed, “the Eighth Amendment’s ‘protections do not attach until after conviction and sentence.’”³ 444 F.3d at 1147 (Rymer, J., dissenting) *603 (internal alterations omitted) (quoting *Graham v. Connor*, 490 U.S. 386, 392 n.6, 109 S.Ct. 1865, 104 L.Ed.2d 443 (1989)).⁴

The panel’s holding thus permits plaintiffs who have never been convicted of any offense to avail themselves of a constitutional protection that, historically, has been concerned with prohibition of “only certain modes of punishment.” *Harmelin*, 501 U.S. at 983, 111 S.Ct. 2680; see also *United States v. Quinn*, 123 F.3d 1415, 1425 (11th Cir. 1997) (citing *Harmelin* for the proposition that a “plurality of the Supreme Court ... has rejected the notion that the Eighth Amendment’s protection from cruel and unusual punishment extends to the type of offense for which a sentence is imposed”).

Extending the Cruel and Unusual Punishments Clause to encompass pre-conviction challenges to substantive criminal law stretches the Eighth Amendment past its breaking point. I doubt that the drafters of our Bill of Rights, the legislators of the states that ratified it, or the public at the time would ever have imagined that a ban on “cruel and unusual punishments” would permit a plaintiff to challenge a substantive criminal statute or ordinance that he or she had not even been convicted of violating. We should have taken this case en banc to confirm that an Eighth Amendment challenge does not lie in the absence of a punishment following conviction for an offense.

* * *

At common law and at the founding, a prohibition on “cruel and unusual punishments” was simply that: a limit on the types of punishments that government could inflict following a criminal conviction. The panel strayed far from the text and history of the Cruel and Unusual Punishments Clause in imposing the substantive limits it has on the City of Boise, particularly as to plaintiffs who have not yet even been convicted of an offense. We should have reheard this case en banc, and I respectfully dissent.

Opinion

BERZON, Circuit Judge:

“The law, in its majestic equality, forbids rich and poor alike to sleep under bridges, to beg in the streets, and to steal their bread.”

— Anatole France, *The Red Lily*

We consider whether the Eighth Amendment’s prohibition on cruel and unusual punishment bars a city from prosecuting people criminally for sleeping outside on public property when those people have no home or other shelter to go to. We conclude that it does.

The plaintiffs-appellants are six current or former residents of the City of Boise (“the City”), who are homeless or have recently been homeless. Each plaintiff alleges that, between 2007 and 2009, he or she was cited by Boise police for violating one or both of two city ordinances. The first, Boise City Code § 9-10-02 (the “Camping Ordinance”), makes it a misdemeanor to use “any of the streets, sidewalks, parks, or public places as a camping place at any time.” The Camping Ordinance defines “camping” as “the use of public property as a temporary or permanent *604 place of dwelling, lodging, or residence.” *Id.* The second, Boise City Code § 6-01-05 (the “Disorderly Conduct Ordinance”), bans “[o]ccupying, lodging, or sleeping in any building, structure, or public place, whether public or private ... without the permission of the owner or person entitled to possession or in control thereof.”

All plaintiffs seek retrospective relief for their previous citations under the ordinances. Two of the plaintiffs, Robert Anderson and Robert Martin, allege that they expect to be cited under the ordinances again in the future and seek declaratory and injunctive relief against future prosecution.

In *Jones v. City of Los Angeles*, 444 F.3d 1118, 1138 (9th Cir. 2006), vacated, 505 F.3d 1006 (9th Cir. 2007), a panel of this court concluded that “so long as there is a greater number of homeless individuals in Los Angeles than the number of available beds [in shelters]” for the homeless, Los Angeles could not enforce a similar ordinance against homeless individuals “for involuntarily sitting, lying, and sleeping in public.” *Jones* is not binding on us, as there was an underlying settlement between the parties and our opinion was vacated as a result. We agree with *Jones*’s reasoning and central conclusion, however, and so hold that an ordinance violates the Eighth Amendment insofar as it imposes criminal sanctions against homeless individuals for sleeping outdoors, on public property, when no alternative shelter is available to them. Two of the plaintiffs, we further hold, may be entitled to retrospective and prospective relief for violation of that Eighth Amendment right.

I. Background

The district court granted summary judgment to the City on all claims. We therefore review the record in the light most favorable to the plaintiffs. *Tolan v. Cotton*, 572 U.S. 650, 134 S.Ct. 1861, 1866, 188 L.Ed.2d 895 (2014).

Boise has a significant and increasing homeless population. According to the Point-in-Time Count (“PIT Count”) conducted by the Idaho Housing and Finance Association, there were 753 homeless individuals in Ada County — the county of which Boise is the seat — in January 2014, 46 of whom were “unsheltered,” or living in places unsuited to human habitation such as parks or sidewalks. In 2016, the last year for which data is available, there were 867 homeless individuals counted in Ada County, 125 of whom were unsheltered.¹ The PIT Count likely underestimates the number of homeless individuals in Ada County. It is “widely recognized that a one-night point in time count will undercount the homeless population,” as many homeless individuals may have access to temporary housing on a given night, and as weather conditions may affect the number of available volunteers and the number of homeless people staying at shelters or accessing services on the night of the count.

*605 There are currently three homeless shelters in the City of Boise offering emergency shelter services, all run by private, nonprofit organizations. As far as the record reveals, these three shelters are the only shelters in Ada County.

One shelter — “Sanctuary” — is operated by Interfaith Sanctuary Housing Services, Inc. The shelter is open to men, women, and children of all faiths, and does not impose any religious requirements on its residents. Sanctuary has 96 beds reserved for individual men and women, with several additional beds reserved for families. The shelter uses floor mats when it reaches capacity with beds.

Because of its limited capacity, Sanctuary frequently has to turn away homeless people seeking shelter. In 2010, Sanctuary reached full capacity in the men’s area “at least half of every month,” and the women’s area reached capacity “almost every night of the week.” In 2014, the shelter reported that it was full for men, women, or both on 38% of nights. Sanctuary provides beds first to people who spent the previous night at Sanctuary. At 9:00 pm each night, it allots any remaining beds to those who added their names to the shelter’s waiting list.

The other two shelters in Boise are both operated by the Boise Rescue Mission (“BRM”), a Christian nonprofit organization. One of those shelters, the River of Life Rescue Mission (“River of Life”), is open exclusively to men; the other, the City Light Home for Women and Children (“City Light”), shelters women and children only.

BRM’s facilities provide two primary “programs” for the homeless, the Emergency Services Program and the New Life Discipleship Program.² The Emergency Services Program provides temporary shelter, food, and clothing to anyone in need.

Christian religious services are offered to those seeking shelter through the Emergency Services Program. The shelters display messages and iconography on the walls, and the intake form for emergency shelter guests includes a religious message.³

Homeless individuals may check in to either BRM facility between 4:00 and 5:30 pm. Those who arrive at BRM facilities between 5:30 and 8:00 pm may be denied shelter, depending on the reason for their late arrival; generally, anyone arriving after 8:00 pm is denied shelter.

Except in winter, male guests in the Emergency Services Program may stay at River of Life for up to 17 consecutive nights; women and children in the Emergency Services Program may stay at City Light for up to 30 consecutive nights. After the time limit is reached, homeless individuals who do not join the Discipleship Program may not return to a BRM shelter for at least 30 days.⁴ Participants in the Emergency Services Program must return to the shelter every night during the applicable 17-day or 30-day period; if a resident fails to check in to a BRM shelter each night, that resident is prohibited from staying overnight at that shelter for 30 *606 days. BRM's rules on the length of a person's stay in the Emergency Services Program are suspended during the winter.

The Discipleship Program is an "intensive, Christ-based residential recovery program" of which "[r]eligious study is the very essence." The record does not indicate any limit to how long a member of the Discipleship Program may stay at a BRM shelter.

The River of Life shelter contains 148 beds for emergency use, along with 40 floor mats for overflow; 78 additional beds serve those in non-emergency shelter programs such as the Discipleship Program. The City Light shelter has 110 beds for emergency services, as well as 40 floor mats to handle overflow and 38 beds for women in non-emergency shelter programs. All told, Boise's three homeless shelters contain 354 beds and 92 overflow mats for homeless individuals.

A. The Plaintiffs

Plaintiffs Robert Martin, Robert Anderson, Lawrence Lee Smith, Basil E. Humphrey, Pamela S. Hawkes, and Janet F. Bell are all homeless individuals who have lived in or around Boise since at least 2007. Between 2007 and 2009, each plaintiff was convicted at least once of violating the Camping Ordinance, the Disorderly Conduct Ordinance, or both. With one exception, all plaintiffs were sentenced to time served for all convictions; on two occasions, Hawkes was sentenced to one additional day in jail. During the same period, Hawkes was cited, but not convicted, under the Camping Ordinance, and Martin was cited, but not convicted, under the Disorderly Conduct Ordinance.

Plaintiff Robert Anderson currently lives in Boise; he is homeless and has often relied on Boise's shelters for housing. In the summer of 2007, Anderson stayed at River of Life as part of the Emergency Services Program until he reached the shelter's 17-day limit for male guests. Anderson testified that during his 2007 stay at River of Life, he was required to attend chapel services before he was permitted to eat dinner. At the conclusion of his 17-day stay, Anderson declined to enter the Discipleship Program because of his religious beliefs. As Anderson was barred by the shelter's policies from returning to River of Life for 30 days, he slept outside for the next several weeks. On September 1, 2007, Anderson was cited under the Camping Ordinance. He pled guilty to violating the Camping Ordinance and paid a \$25 fine; he did not appeal his conviction.

Plaintiff Robert Martin is a former resident of Boise who currently lives in Post Falls, Idaho. Martin returns frequently to Boise to visit his minor son. In March of 2009, Martin was cited under the Camping Ordinance for sleeping outside; he was cited again in 2012 under the same ordinance.

B. Procedural History

The plaintiffs filed this action in the United States District Court for the District of Idaho in October of 2009. All plaintiffs alleged that their previous citations under the Camping Ordinance and the Disorderly Conduct Ordinance violated the Cruel and Unusual Punishments Clause of the Eighth Amendment, and sought damages for those alleged violations under 42 U.S.C.

§ 1983. Cf. *Jones*, 444 F.3d at 1138. Anderson and Martin also sought prospective declaratory and injunctive relief precluding future enforcement of the ordinances under the same statute and the Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202.

After this litigation began, the Boise Police Department promulgated a new *607 “Special Order,” effective as of January 1, 2010, that prohibited enforcement of either the Camping Ordinance or the Disorderly Conduct Ordinance against any homeless person on public property on any night when no shelter had “an available overnight space.” City police implemented the Special Order through a two-step procedure known as the “Shelter Protocol.”

Under the Shelter Protocol, if any shelter in Boise reaches capacity on a given night, that shelter will so notify the police at roughly 11:00 pm. Each shelter has discretion to determine whether it is full, and Boise police have no other mechanism or criteria for gauging whether a shelter is full. Since the Shelter Protocol was adopted, Sanctuary has reported that it was full on almost 40% of nights. Although BRM agreed to the Shelter Protocol, its internal policy is never to turn any person away because of a lack of space, and neither BRM shelter has ever reported that it was full.

If all shelters are full on the same night, police are to refrain from enforcing either ordinance. Presumably because the BRM shelters have not reported full, Boise police continue to issue citations regularly under both ordinances.

In July 2011, the district court granted summary judgment to the City. It held that the plaintiffs’ claims for retrospective relief were barred under the *Rooker-Feldman* doctrine and that their claims for prospective relief were mooted by the Special Order and the Shelter Protocol. *Bell v. City of Boise*, 834 F.Supp.2d 1103 (D. Idaho 2011). On appeal, we reversed and remanded. *Bell v. City of Boise*, 709 F.3d 890, 901 (9th Cir. 2013). We held that the district court erred in dismissing the plaintiffs’ claims under the *Rooker-Feldman* doctrine. *Id.* at 897. In so holding, we expressly declined to consider whether the favorable-termination requirement from *Heck v. Humphrey*, 512 U.S. 477, 114 S.Ct. 2364, 129 L.Ed.2d 383 (1994), applied to the plaintiffs’ claims for retrospective relief. Instead, we left the issue for the district court on remand. *Bell*, 709 F.3d at 897 n.11.

Bell further held that the plaintiffs’ claims for prospective relief were not moot. The City had not met its “heavy burden” of demonstrating that the challenged conduct — enforcement of the two ordinances against homeless individuals with no access to shelter — “could not reasonably be expected to recur.” *Id.* at 898, 901 (quoting *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 189, 120 S.Ct. 693, 145 L.Ed.2d 610 (2000)). We emphasized that the Special Order was a statement of administrative policy and so could be amended or reversed at any time by the Boise Chief of Police. *Id.* at 899–900.

Finally, *Bell* rejected the City’s argument that the plaintiffs lacked standing to seek prospective relief because they were no longer homeless. *Id.* at 901 & n.12. We noted that, on summary judgment, the plaintiffs “need not establish that they in fact have standing, but only that there is a genuine issue of material fact as to the standing elements.” *Id.* (citation omitted).

On remand, the district court again granted summary judgment to the City on the plaintiffs’ § 1983 claims. The court observed that *Heck* requires a § 1983 plaintiff seeking damages for “harm caused by actions whose unlawfulness would render a conviction or sentence invalid” to demonstrate that “the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal ... or called into question by a federal court’s issuance of a writ of habeas corpus.” 512 U.S. at 486–87, 114 S.Ct. 2364. According to the district court, “a judgment finding the Ordinances unconstitutional *608 ... necessarily would imply the invalidity of Plaintiffs’ [previous] convictions under those ordinances,” and the plaintiffs therefore were required to demonstrate that their convictions or sentences had already been invalidated. As none of the plaintiffs had raised an Eighth Amendment challenge as a defense to criminal prosecution, nor had any plaintiff successfully appealed their conviction, the district court held that all of the plaintiffs’ claims for retrospective relief were barred by *Heck*. The district court also rejected as barred by *Heck* the plaintiffs’ claim for prospective injunctive relief under § 1983, reasoning that “a ruling in favor of Plaintiffs on even a prospective § 1983 claim would demonstrate the invalidity of any confinement stemming from those convictions.”

Finally, the district court determined that, although *Heck* did not bar relief under the Declaratory Judgment Act, Martin and Anderson now lack standing to pursue such relief. The linchpin of this holding was that the Camping Ordinance and the Disorderly Conduct Ordinance were both amended in 2014 to codify the Special Order's mandate that "[l]aw enforcement officers shall not enforce [the ordinances] when the individual is on public property and there is no available overnight shelter." Boise City Code §§ 6-01-05, 9-10-02. Because the ordinances, as amended, permitted camping or sleeping in a public place when no shelter space was available, the court held that there was no "credible threat" of future prosecution. "If the Ordinances are not to be enforced when the shelters are full, those Ordinances do not inflict a constitutional injury upon these particular plaintiffs" The court emphasized that the record "suggests there is no known citation of a homeless individual under the Ordinances for camping or sleeping on public property on any night or morning when he or she was unable to secure shelter due to a lack of shelter capacity" and that "there has not been a single night when all three shelters in Boise called in to report they were simultaneously full for men, women or families."

This appeal followed.

II. Discussion

A. Standing

We first consider whether any of the plaintiffs has standing to pursue prospective relief.⁵ We conclude that there are sufficient opposing facts in the record to create a genuine issue of material fact as to whether Martin and Anderson face a credible threat of prosecution under one or both ordinances in the future at a time when they are unable to stay at any Boise homeless shelter.⁶

"To establish Article III standing, an injury must be concrete, particularized, and actual or imminent; fairly traceable to the challenged action; and redressable by a favorable ruling." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 133 S.Ct. 1138, 1147, 185 L.Ed.2d 264 (2013) (citation omitted). "Although imminence is concededly a somewhat elastic concept, it cannot be stretched beyond its purpose, which is to ensure that the alleged injury *609 is not too speculative for Article III purposes — that the injury is *certainly* impending." *Id.* (citation omitted). A plaintiff need not, however, await an arrest or prosecution to have standing to challenge the constitutionality of a criminal statute. "When the plaintiff has alleged an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution thereunder, he should not be required to await and undergo a criminal prosecution as the sole means of seeking relief." *Babbitt v. United Farm Workers Nat'l Union*, 442 U.S. 289, 298, 99 S.Ct. 2301, 60 L.Ed.2d 895 (1979) (citation and internal quotation marks omitted). To defeat a motion for summary judgment premised on an alleged lack of standing, plaintiffs "need not establish that they in fact have standing, but only that there is a genuine question of material fact as to the standing elements." *Cent. Delta Water Agency v. United States*, 306 F.3d 938, 947 (9th Cir. 2002).

In dismissing Martin and Anderson's claims for declaratory relief for lack of standing, the district court emphasized that Boise's ordinances, as amended in 2014, preclude the City from issuing a citation when there is no available space at a shelter, and there is consequently no risk that either Martin or Anderson will be cited under such circumstances in the future. Viewing the record in the light most favorable to the plaintiffs, we cannot agree.

Although the 2014 amendments preclude the City from enforcing the ordinances when there is no room available at any shelter, the record demonstrates that the City is wholly reliant on the shelters to self-report when they are full. It is undisputed that Sanctuary is full as to men on a substantial percentage of nights, perhaps as high as 50%. The City nevertheless emphasizes that since the adoption of the Shelter Protocol in 2010, the BRM facilities, River of Life and City Light, have never reported that they are full, and BRM states that it will never turn people away due to lack space.

The plaintiffs have pointed to substantial evidence in the record, however, indicating that whether or not the BRM facilities are ever full or turn homeless individuals away *for lack of space*, they *do* refuse to shelter homeless people who exhaust the number of days allotted by the facilities. Specifically, the plaintiffs allege, and the City does not dispute, that it is BRM's policy

to limit men to 17 consecutive days in the Emergency Services Program, after which they cannot return to River of Life for 30 days; City Light has a similar 30-day limit for women and children. Anderson testified that BRM has enforced this policy against him in the past, forcing him to sleep outdoors.

The plaintiffs have adduced further evidence indicating that River of Life permits individuals to remain at the shelter after 17 days in the Emergency Services Program only on the condition that they become part of the New Life Discipleship program, which has a mandatory religious focus. For example, there is evidence that participants in the New Life Program are not allowed to spend days at Corpus Christi, a local Catholic program, “because it’s ... a different sect.” There are also facts in dispute concerning whether the Emergency Services Program itself has a religious component. Although the City argues strenuously that the Emergency Services Program is secular, Anderson testified to the contrary; he stated that he was once required to attend chapel before being permitted to eat dinner at the River of Life shelter. Both Martin and Anderson have objected to the overall religious atmosphere *610 of the River of Life shelter, including the Christian messaging on the shelter’s intake form and the Christian iconography on the shelter walls. A city cannot, via the threat of prosecution, coerce an individual to attend religion-based treatment programs consistently with the Establishment Clause of the First Amendment. *Inouye v. Kemna*, 504 F.3d 705, 712–13 (9th Cir. 2007). Yet at the conclusion of a 17-day stay at River of Life, or a 30-day stay at City Light, an individual may be forced to choose between sleeping outside on nights when Sanctuary is full (and risking arrest under the ordinances), or enrolling in BRM programming that is antithetical to his or her religious beliefs.

The 17-day and 30-day limits are not the only BRM policies which functionally limit access to BRM facilities even when space is nominally available. River of Life also turns individuals away if they voluntarily leave the shelter before the 17-day limit and then attempt to return within 30 days. An individual who voluntarily leaves a BRM facility for any reason — perhaps because temporary shelter is available at Sanctuary, or with friends or family, or in a hotel — cannot immediately return to the shelter if circumstances change. Moreover, BRM’s facilities may deny shelter to any individual who arrives after 5:30 pm, and generally will deny shelter to anyone arriving after 8:00 pm. Sanctuary, however, does not assign beds to persons on its waiting list until 9:00 pm. Thus, by the time a homeless individual on the Sanctuary waiting list discovers that the shelter has no room available, it may be too late to seek shelter at either BRM facility.

So, even if we credit the City’s evidence that BRM’s facilities have never been “full,” and that the City has never cited any person under the ordinances who could not obtain shelter “due to a lack of shelter capacity,” there remains a genuine issue of material fact as to whether homeless individuals in Boise run a credible risk of being issued a citation on a night when Sanctuary is full and they have been denied entry to a BRM facility for reasons other than shelter capacity. If so, then as a practical matter, no shelter is available. We note that despite the Shelter Protocol and the amendments to both ordinances, the City continues regularly to issue citations for violating both ordinances; during the first three months of 2015, the Boise Police Department issued over 175 such citations.

The City argues that Martin faces little risk of prosecution under either ordinance because he has not lived in Boise since 2013. Martin states, however, that he is still homeless and still visits Boise several times a year to visit his minor son, and that he has continued to seek shelter at Sanctuary and River of Life. Although Martin may no longer spend enough time in Boise to risk running afoul of BRM’s 17-day limit, he testified that he has unsuccessfully sought shelter at River of Life after being placed on Sanctuary’s waiting list, only to discover later in the evening that Sanctuary had no available beds. Should Martin return to Boise to visit his son, there is a reasonable possibility that he might again seek shelter at Sanctuary, only to discover (after BRM has closed for the night) that Sanctuary has no space for him. Anderson, for his part, continues to live in Boise and states that he remains homeless.

We conclude that both Martin and Anderson have demonstrated a genuine issue of material fact regarding whether they face a credible risk of prosecution under the ordinances in the future on a night when they have been denied access to Boise’s homeless shelters; both plaintiffs therefore have standing to seek prospective relief.

*611 B. *Heck v. Humphrey*

We turn next to the impact of *Heck v. Humphrey* and its progeny on this case. With regard to retrospective relief, the plaintiffs maintain that *Heck* should not bar their claims because, with one exception, all of the plaintiffs were sentenced to time served.⁷ It would therefore have been impossible for the plaintiffs to obtain federal habeas relief, as any petition for a writ of habeas corpus must be filed while the petitioner is “in custody pursuant to the judgment of a State court.” See 28 U.S.C. § 2254(a); *Spencer v. Kemna*, 523 U.S. 1, 7, 17–18, 118 S.Ct. 978, 140 L.Ed.2d 43 (1998). With regard to prospective relief, the plaintiffs emphasize that they seek only equitable protection against *future* enforcement of an allegedly unconstitutional statute, and not to invalidate any prior conviction under the same statute. We hold that although the *Heck* line of cases precludes most — but not all — of the plaintiffs’ requests for retrospective relief, that doctrine has no application to the plaintiffs’ request for an injunction enjoining prospective enforcement of the ordinances.

1. The *Heck* Doctrine

A long line of Supreme Court case law, beginning with *Preiser v. Rodriguez*, 411 U.S. 475, 93 S.Ct. 1827, 36 L.Ed.2d 439 (1973), holds that a prisoner in state custody cannot use a § 1983 action to challenge the fact or duration of his or her confinement, but must instead seek federal habeas corpus relief or analogous state relief. *Id.* at 477, 500. *Preiser* considered whether a prison inmate could bring a § 1983 action seeking an injunction to remedy an unconstitutional deprivation of good-time conduct credits. Observing that habeas corpus is the traditional instrument to obtain release from unlawful confinement, *Preiser* recognized an implicit exception from § 1983’s broad scope for actions that lie “within the core of habeas corpus” — specifically, challenges to the “fact or duration” of confinement. *Id.* at 487, 500, 93 S.Ct. 1827. The Supreme Court subsequently held, however, that although *Preiser* barred inmates from obtaining an injunction to restore good-time credits via a § 1983 action, *Preiser* did not “preclude a litigant with standing from obtaining by way of ancillary relief an otherwise proper injunction enjoining the *prospective* enforcement of invalid prison regulations.” *Wolff v. McDonnell*, 418 U.S. 539, 555, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974) (emphasis added).

Heck addressed a § 1983 action brought by an inmate seeking compensatory and punitive damages. The inmate alleged that state and county officials had engaged in unlawful investigations and knowing destruction of exculpatory evidence. *Heck*, 512 U.S. at 479, 114 S.Ct. 2364. The Court in *Heck* analogized a § 1983 action of this type, which called into question the validity of an underlying conviction, to a cause of action for malicious prosecution, *id.* at 483–84, 114 S.Ct. 2364, and went on to hold that, as with a malicious prosecution claim, a plaintiff in such an action must demonstrate a favorable termination of the criminal proceedings before seeking tort relief, *id.* at 486–87, 114 S.Ct. 2364. “[T]o recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared *612 invalid by a state tribunal authorized to make such determination, or called into question by a federal court’s issuance of a writ of habeas corpus.” *Id.*

Edwards v. Balisok, 520 U.S. 641, 117 S.Ct. 1584, 137 L.Ed.2d 906 (1997) extended *Heck*’s holding to claims for declaratory relief. *Id.* at 648, 117 S.Ct. 1584. The plaintiff in *Edwards* alleged that he had been deprived of earned good-time credits without due process of law, because the decisionmaker in disciplinary proceedings had concealed exculpatory evidence. Because the plaintiff’s claim for declaratory relief was “based on allegations of deceit and bias on the part of the decisionmaker that necessarily imply the invalidity of the punishment imposed,” *Edwards* held, it was “not cognizable under § 1983.” *Id.* *Edwards* went on to hold, however, that a requested injunction requiring prison officials to date-stamp witness statements was not *Heck*-barred, reasoning that a “prayer for such *prospective* relief will not ‘necessarily imply’ the invalidity of a previous loss of good-time credits, and so may properly be brought under § 1983.” *Id.* (emphasis added).

Most recently, *Wilkinson v. Dotson*, 544 U.S. 74, 125 S.Ct. 1242, 161 L.Ed.2d 253 (2005), stated that *Heck* bars § 1983 suits even when the relief sought is prospective injunctive or declaratory relief, “if success in that action would necessarily demonstrate the invalidity of confinement or its duration.” *Id.* at 81–82, 125 S.Ct. 1242 (emphasis omitted). But *Wilkinson* held that the plaintiffs in that case *could* seek a prospective injunction compelling the state to comply with constitutional requirements in parole

proceedings in the future. The Court observed that the prisoners' claims for future relief, "if successful, will not necessarily imply the invalidity of confinement or shorten its duration." *Id.* at 82, 125 S.Ct. 1242.

The Supreme Court did not, in these cases or any other, conclusively determine whether *Heck*'s favorable-termination requirement applies to convicts who have no practical opportunity to challenge their conviction or sentence via a petition for habeas corpus. See *Muhammad v. Close*, 540 U.S. 749, 752 & n.2, 124 S.Ct. 1303, 158 L.Ed.2d 32 (2004). But in *Spencer*, five Justices suggested that *Heck* may not apply in such circumstances. *Spencer*, 523 U.S. at 3, 118 S.Ct. 978.

The petitioner in *Spencer* had filed a federal habeas petition seeking to invalidate an order revoking his parole. While the habeas petition was pending, the petitioner's term of imprisonment expired, and his habeas petition was consequently dismissed as moot. Justice Souter wrote a concurring opinion in which three other Justices joined, addressing the petitioner's argument that if his habeas petition were mooted by his release, any § 1983 action would be barred under *Heck*, yet he would no longer have access to a federal habeas forum to challenge the validity of his parole revocation. *Id.* at 18–19, 118 S.Ct. 978 (Souter, J., concurring). Justice Souter stated that in his view "*Heck* has no such effect," and that "a former prisoner, no longer 'in custody,' may bring a § 1983 action establishing the unconstitutionality of a conviction or confinement without being bound to satisfy a favorable-termination requirement that it would be impossible as a matter of law for him to satisfy." *Id.* at 21, 118 S.Ct. 978. Justice Stevens, dissenting, stated that he would have held the habeas petition in *Spencer* not moot, but agreed that "[g]iven the Court's holding that petitioner does not have a remedy under the habeas statute, it is perfectly clear ... that he may bring an action under 42 U.S.C. § 1983." *Id.* at 25, 118 S.Ct. 978 n.8 (Stevens, J., dissenting).

*613 Relying on the concurring and dissenting opinions in *Spencer*, we have held that the "unavailability of a remedy in habeas corpus because of mootness" permitted a plaintiff released from custody to maintain a § 1983 action for damages, "even though success in that action would imply the invalidity of the disciplinary proceeding that caused revocation of his good-time credits." *Nonnette v. Small*, 316 F.3d 872, 876 (9th Cir. 2002). But we have limited *Nonnette* in recent years. Most notably, we held in *Lyall v. City of Los Angeles*, 807 F.3d 1178 (9th Cir. 2015), that even where a plaintiff had no practical opportunity to pursue federal habeas relief while detained because of the short duration of his confinement, *Heck* bars a § 1983 action that would imply the invalidity of a prior conviction if the plaintiff could have sought invalidation of the underlying conviction via direct appeal or state post-conviction relief, but did not do so. *Id.* at 1192 & n.12.

2. Retrospective Relief

Here, the majority of the plaintiffs' claims for *retrospective* relief are governed squarely by *Lyall*. It is undisputed that all the plaintiffs not only failed to challenge their convictions on direct appeal but expressly waived the right to do so as a condition of their guilty pleas. The plaintiffs have made no showing that any of their convictions were invalidated via state post-conviction relief. We therefore hold that all but two of the plaintiffs' claims for damages are foreclosed under *Lyall*.

Two of the plaintiffs, however, Robert Martin and Pamela Hawkes, also received citations under the ordinances that were dismissed before the state obtained a conviction. Hawkes was cited for violating the Camping Ordinance on July 8, 2007; that violation was dismissed on August 28, 2007. Martin was cited for violating the Disorderly Conduct Ordinance on April 24, 2009; those charges were dismissed on September 9, 2009. The complaint alleges two injuries stemming from these dismissed citations: (1) the continued inclusion of the citations on plaintiffs' criminal records; and (2) the accumulation of a host of criminal fines and incarceration costs. Plaintiffs seek orders compelling the City to "expunge[] ... the records of any homeless individuals unlawfully cited or arrested and charged under [the Ordinances]" and "reimburse[] ... any criminal fines paid ... [or] costs of incarceration billed."

With respect to these two incidents, the district court erred in finding that the plaintiffs' Eighth Amendment challenge was barred by *Heck*. Where there is no "conviction or sentence" that may be undermined by a grant of relief to the plaintiffs, the *Heck* doctrine has no application. 512 U.S. at 486–87, 114 S.Ct. 2364; see also *Wallace v. Kato*, 549 U.S. 384, 393, 127 S.Ct. 1091, 166 L.Ed.2d 973 (2007).

Relying on *Ingraham v. Wright*, 430 U.S. 651, 664, 97 S.Ct. 1401, 51 L.Ed.2d 711 (1977), the City argues that the Eighth Amendment, and the Cruel and Unusual Punishments Clause in particular, have no application where there has been no conviction. The City's reliance on *Ingraham* is misplaced. As the Supreme Court observed in *Ingraham*, the Cruel and Unusual Punishments Clause not only limits the types of punishment that may be imposed and prohibits the imposition of punishment grossly disproportionate to the severity of the crime, but also "imposes substantive limits on what can be made criminal and punished as such." *Id.* at 667, 97 S.Ct. 1401. "This [latter] protection governs the criminal law process as a whole, not only the imposition of punishment postconviction." *Jones*, 444 F.3d at 1128.

*614 *Ingraham* concerned only whether "impositions outside the criminal process" — in that case, the paddling of schoolchildren — "constituted cruel and unusual punishment." 430 U.S. at 667, 97 S.Ct. 1401. *Ingraham* did not hold that a plaintiff challenging the state's power to criminalize a particular status or conduct in the first instance, as the plaintiffs in this case do, must first be convicted. If conviction were a prerequisite for such a challenge, "the state could in effect punish individuals in the preconviction stages of the criminal law enforcement process for being or doing things that under the [Cruel and Unusual Punishments Clause] cannot be subject to the criminal process." *Jones*, 444 F.3d at 1129. For those rare Eighth Amendment challenges concerning the state's very power to criminalize particular behavior or status, then, a plaintiff need demonstrate only the initiation of the criminal process against him, not a conviction.

3. Prospective Relief

The district court also erred in concluding that the plaintiffs' requests for prospective injunctive relief were barred by *Heck*. The district court relied entirely on language in *Wilkinson* stating that "a state prisoner's § 1983 action is barred (absent prior invalidation) ... no matter the relief sought (damages or equitable relief) ... if success in that action would necessarily demonstrate the invalidity of confinement or its duration." *Wilkinson*, 544 U.S. at 81–82, 125 S.Ct. 1242. The district court concluded from this language in *Wilkinson* that a person convicted under an allegedly unconstitutional statute may never challenge the validity or application of that statute after the initial criminal proceeding is complete, even when the relief sought is prospective only and independent of the prior conviction. The logical extension of the district court's interpretation is that an individual who does not successfully invalidate a first conviction under an unconstitutional statute will have no opportunity to challenge that statute prospectively so as to avoid arrest and conviction for violating that same statute in the future.

Neither *Wilkinson* nor any other case in the *Heck* line supports such a result. Rather, *Wolff*, *Edwards*, and *Wilkinson* compel the opposite conclusion.

Wolff held that although *Preiser* barred a § 1983 action seeking restoration of good-time credits absent a successful challenge in federal habeas proceedings, *Preiser* did not "preclude a litigant with standing from obtaining by way of ancillary relief an otherwise proper injunction enjoining the prospective enforcement of invalid ... regulations." *Wolff*, 418 U.S. at 555, 94 S.Ct. 2963. Although *Wolff* was decided before *Heck*, the Court subsequently made clear that *Heck* effected no change in the law in this regard, observing in *Edwards* that "[o]rdinarily, a prayer for ... prospective [injunctive] relief will not 'necessarily imply' the invalidity of a *previous* loss of good-time credits, and so may properly be brought under § 1983." *Edwards*, 520 U.S. at 648, 117 S.Ct. 1584 (emphasis added). Importantly, the Court held in *Edwards* that although the plaintiff could not, consistently with *Heck*, seek a declaratory judgment stating that the procedures employed by state officials that deprived him of good-time credits were unconstitutional, he *could* seek an injunction barring such allegedly unconstitutional procedures in the future. *Id.* Finally, the Court noted in *Wilkinson* that the *Heck* line of cases "has focused on the need to ensure that state prisoners use only habeas corpus (or similar state) remedies *when they seek to invalidate the duration of their confinement*," *Wilkinson*, 544 U.S. at 81, 125 S.Ct. 1242 (emphasis added), alluding *615 to an existing confinement, not one yet to come.

The *Heck* doctrine, in other words, serves to ensure the finality and validity of previous convictions, not to insulate future prosecutions from challenge. In context, it is clear that *Wilkinson*'s holding that the *Heck* doctrine bars a § 1983 action "no matter the relief sought (damages or equitable relief) ... if success in that action would necessarily demonstrate the invalidity of confinement or its duration" applies to equitable relief concerning an existing confinement, not to suits seeking to preclude

an unconstitutional confinement in the future, arising from incidents occurring after any prior conviction and stemming from a possible later prosecution and conviction. *Id.* at 81–82, 125 S.Ct. 1242 (emphasis added). As *Wilkinson* held, “claims for *future* relief (which, if successful, will not necessarily imply the invalidity of confinement or shorten its duration)” are distant from the “core” of habeas corpus with which the *Heck* line of cases is concerned, and are not precluded by the *Heck* doctrine. *Id.* at 82, 125 S.Ct. 1242.

In sum, we hold that the majority of the plaintiffs’ claims for retrospective relief are barred by *Heck*, but both Martin and Hawkes stated claims for damages to which *Heck* has no application. We further hold that *Heck* has no application to the plaintiffs’ requests for prospective injunctive relief.

C. The Eighth Amendment

At last, we turn to the merits — does the Cruel and Unusual Punishments Clause of the Eighth Amendment preclude the enforcement of a statute prohibiting sleeping outside against homeless individuals with no access to alternative shelter? We hold that it does, for essentially the same reasons articulated in the now-vacated *Jones* opinion.

The Eighth Amendment states: “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” U.S. Const., amend. VIII. The Cruel and Unusual Punishments Clause “circumscribes the criminal process in three ways.” *Ingraham*, 430 U.S. at 667, 97 S.Ct. 1401. First, it limits the type of punishment the government may impose; second, it proscribes punishment “grossly disproportionate” to the severity of the crime; and third, it places substantive limits on what the government may criminalize. *Id.* It is the third limitation that is pertinent here.

“Even one day in prison would be a cruel and unusual punishment for the ‘crime’ of having a common cold.” *Robinson v. California*, 370 U.S. 660, 667, 82 S.Ct. 1417, 8 L.Ed.2d 758 (1962). Cases construing substantive limits as to what the government may criminalize are rare, however, and for good reason — the Cruel and Unusual Punishments Clause’s third limitation is “one to be applied sparingly.” *Ingraham*, 430 U.S. at 667, 97 S.Ct. 1401.

Robinson, the seminal case in this branch of Eighth Amendment jurisprudence, held a California statute that “ma[de] the ‘status’ of narcotic addiction a criminal offense” invalid under the Cruel and Unusual Punishments Clause. 370 U.S. at 666, 82 S.Ct. 1417. The California law at issue in *Robinson* was “not one which punishe[d] a person for the use of narcotics, for their purchase, sale or possession, or for antisocial or disorderly behavior resulting from their administration”; it punished addiction itself. *Id.* Recognizing narcotics addiction as an illness or disease — “apparently an illness which may be contracted innocently or involuntarily” — and observing that a “law which made a criminal offense of ... a disease would doubtless be universally thought to be an infliction of *616 cruel and unusual punishment,” *Robinson* held the challenged statute a violation of the Eighth Amendment. *Id.* at 666–67, 82 S.Ct. 1417.

As *Jones* observed, *Robinson* did not explain at length the principles underpinning its holding. See *Jones*, 444 F.3d at 1133. In *Powell v. Texas*, 392 U.S. 514, 88 S.Ct. 2145, 20 L.Ed.2d 1254 (1968), however, the Court elaborated on the principle first articulated in *Robinson*.

Powell concerned the constitutionality of a Texas law making public drunkenness a criminal offense. Justice Marshall, writing for a plurality of the Court, distinguished the Texas statute from the law at issue in *Robinson* on the ground that the Texas statute made criminal not alcoholism but *conduct* — appearing in public while intoxicated. “[A]ppellant was convicted, not for being a chronic alcoholic, but for being in public while drunk on a particular occasion. The State of Texas thus has not sought to punish a mere status, as California did in *Robinson*; nor has it attempted to regulate appellant’s behavior in the privacy of his own home.” *Id.* at 532, 88 S.Ct. 2145 (plurality opinion).

The *Powell* plurality opinion went on to interpret *Robinson* as precluding only the criminalization of “status,” not of “involuntary” conduct. “The entire thrust of *Robinson*’s interpretation of the Cruel and Unusual Punishment Clause is that criminal penalties may be inflicted only if the accused has committed some act, has engaged in some behavior, which society

has an interest in preventing, or perhaps in historical common law terms, has committed some actus reus. It thus does not deal with the question of whether certain conduct cannot constitutionally be punished because it is, in some sense, ‘involuntary’” *Id.* at 533, 88 S.Ct. 2145.

Four Justices dissented from the Court’s holding in *Powell*; Justice White concurred in the result alone. Notably, Justice White noted that many chronic alcoholics are also homeless, and that for those individuals, public drunkenness may be unavoidable as a practical matter. “For all practical purposes the public streets may be home for these unfortunates, not because their disease compels them to be there, but because, drunk or sober, they have no place else to go and no place else to be when they are drinking. ... For some of these alcoholics I would think a showing could be made that resisting drunkenness is impossible and that avoiding public places when intoxicated is also impossible. As applied to them this statute is in effect a law which bans a single act for which they may not be convicted under the Eighth Amendment — the act of getting drunk.” *Id.* at 551, 88 S.Ct. 2145 (White, J., concurring in the judgment).

The four dissenting Justices adopted a position consistent with that taken by Justice White: that under *Robinson*, “criminal penalties may not be inflicted upon a person for being in a condition he is powerless to change,” and that the defendant, “once intoxicated, ... could not prevent himself from appearing in public places.” *Id.* at 567, 88 S.Ct. 2145 (Fortas, J., dissenting). Thus, five Justices gleaned from *Robinson* the principle that “that the Eighth Amendment prohibits the state from punishing an involuntary act or condition if it is the unavoidable consequence of one’s status or being.” *Jones*, 444 F.3d at 1135; *see also United States v. Robertson*, 875 F.3d 1281, 1291 (9th Cir. 2017).

This principle compels the conclusion that the Eighth Amendment prohibits the imposition of criminal penalties for sitting, sleeping, or lying outside on public property for homeless individuals who cannot obtain shelter. As *Jones* reasoned, “[w]hether sitting, lying, and sleeping are *617 defined as acts or conditions, they are universal and unavoidable consequences of being human.” *Jones*, 444 F.3d at 1136. Moreover, any “conduct at issue here is involuntary and inseparable from status — they are one and the same, given that human beings are biologically compelled to rest, whether by sitting, lying, or sleeping.” *Id.* As a result, just as the state may not criminalize the state of being “homeless in public places,” the state may not “criminalize conduct that is an unavoidable consequence of being homeless — namely sitting, lying, or sleeping on the streets.” *Id.* at 1137.

Our holding is a narrow one. Like the *Jones* panel, “we in no way dictate to the City that it must provide sufficient shelter for the homeless, or allow anyone who wishes to sit, lie, or sleep on the streets ... at any time and at any place.” *Id.* at 1138. We hold only that “so long as there is a greater number of homeless individuals in [a jurisdiction] than the number of available beds [in shelters],” the jurisdiction cannot prosecute homeless individuals for “involuntarily sitting, lying, and sleeping in public.” *Id.* That is, as long as there is no option of sleeping indoors, the government cannot criminalize indigent, homeless people for sleeping outdoors, on public property, on the false premise they had a choice in the matter.⁸

We are not alone in reaching this conclusion. As one court has observed, “resisting the need to eat, sleep or engage in other life-sustaining activities is impossible. Avoiding public places when engaging in this otherwise innocent conduct is also impossible. ... As long as the homeless plaintiffs do not have a single place where they can lawfully be, the challenged ordinances, as applied to them, effectively punish them for something for which they may not be convicted under the [E]ighth [A]mendment — sleeping, eating and other innocent conduct.” *Pottinger v. City of Miami*, 810 F.Supp. 1551, 1565 (S.D. Fla. 1992); *see also Johnson v. City of Dallas*, 860 F.Supp. 344, 350 (N.D. Tex. 1994) (holding that a “sleeping in public ordinance as applied against the homeless is unconstitutional”), *rev’d on other grounds*, 61 F.3d 442 (5th Cir. 1995).⁹

Here, the two ordinances criminalize the simple act of sleeping outside on public property, whether bare or with a blanket or other basic bedding. The Disorderly *618 Conduct Ordinance, on its face, criminalizes “[o]ccupying, lodging, or sleeping in any building, structure or place, whether public or private” without permission. Boise City Code § 6-01-05. Its scope is just as sweeping as the Los Angeles ordinance at issue in *Jones*, which mandated that “[n]o person shall sit, lie or sleep in or upon any street, sidewalk or other public way.” 444 F.3d at 1123.

The Camping Ordinance criminalizes using “any of the streets, sidewalks, parks or public places as a camping place at any time.” Boise City Code § 9-10-02. The ordinance defines “camping” broadly:

The term “camp” or “camping” shall mean the use of public property as a temporary or permanent place of dwelling, lodging, or residence, or as a living accommodation at anytime between sunset and sunrise, or as a sojourn. Indicia of camping may include, but are not limited to, storage of personal belongings, using tents or other temporary structures for sleeping or storage of personal belongings, carrying on cooking activities or making any fire in an unauthorized area, or any of these activities in combination with one another or in combination with either sleeping or making preparations to sleep (including the laying down of bedding for the purpose of sleeping).

Id. It appears from the record that the Camping Ordinance is frequently enforced against homeless individuals with some elementary bedding, whether or not any of the other listed indicia of “camping” — the erection of temporary structures, the activity of cooking or making fire, or the storage of personal property — are present. For example, a Boise police officer testified that he cited plaintiff Pamela Hawkes under the Camping Ordinance for sleeping outside “wrapped in a blanket with her sandals off and next to her,” for sleeping in a public restroom “with blankets,” and for sleeping in a park “on a blanket, wrapped in blankets on the ground.” The Camping Ordinance therefore can be, and allegedly is, enforced against homeless individuals who take even the most rudimentary precautions to protect themselves from the elements. We conclude that a municipality cannot criminalize such behavior consistently with the Eighth Amendment when no sleeping space is practically available in any shelter.

III. Conclusion

For the foregoing reasons, we **AFFIRM** the judgment of the district court as to the plaintiffs’ requests for retrospective relief, except as such claims relate to Hawkes’s July 2007 citation under the Camping Ordinance and Martin’s April 2009 citation under the Disorderly Conduct Ordinance. We **REVERSE** and **REMAND** with respect to the plaintiffs’ requests for prospective relief, both declaratory and injunctive, and to the plaintiffs’ claims for retrospective relief insofar as they relate to Hawkes’ July 2007 citation or Martin’s April 2009 citation.¹⁰

OWENS, Circuit Judge, concurring in part and dissenting in part:

I agree with the majority that the doctrine of *Heck v. Humphrey*, 512 U.S. 477, 114 S.Ct. 2364, 129 L.Ed.2d 383 (1994), bars the plaintiffs’ 42 U.S.C. § 1983 claims for damages that are based on convictions that have not been challenged on direct appeal or invalidated in state post-conviction relief. See *Lyall v. City of Los Angeles*, 807 F.3d 1178, 1192 n.12 (9th Cir. 2015).

I also agree that *Heck* and its progeny have no application where there is no “conviction *619 or sentence” that would be undermined by granting a plaintiff’s request for relief under § 1983. *Heck*, 512 U.S. at 486–87, 114 S.Ct. 2364; see also *Wallace v. Kato*, 549 U.S. 384, 393, 127 S.Ct. 1091, 166 L.Ed.2d 973 (2007). I therefore concur in the majority’s conclusion that *Heck* does not bar plaintiffs Robert Martin and Pamela Hawkes from seeking retrospective relief for the two instances in which they received citations, but not convictions. I also concur in the majority’s Eighth Amendment analysis as to those two claims for retrospective relief.

Where I part ways with the majority is in my understanding of *Heck*’s application to the plaintiffs’ claims for declaratory and injunctive relief. In *Wilkinson v. Dotson*, 544 U.S. 74, 125 S.Ct. 1242, 161 L.Ed.2d 253 (2005), the Supreme Court explained where the *Heck* doctrine stands today:

[A] state prisoner’s § 1983 action is barred (absent prior invalidation)—no matter the relief sought (damages or equitable relief), no matter the target of the prisoner’s suit (state conduct leading to conviction or internal prison proceedings)—*if* success in that action would necessarily demonstrate the invalidity of confinement or its duration.

Id. at 81–82. Here, the majority acknowledges this language in *Wilkinson*, but concludes that *Heck*’s bar on any type of relief that “would necessarily demonstrate the invalidity of confinement” does not preclude the prospective claims at issue. The majority reasons that the purpose of *Heck* is “to ensure the finality and validity of previous convictions, not to insulate future prosecutions from challenge,” and so concludes that the plaintiffs’ prospective claims may proceed. I respectfully disagree.

A declaration that the city ordinances are unconstitutional and an injunction against their future enforcement necessarily demonstrate the invalidity of the plaintiffs’ prior convictions. Indeed, any time an individual challenges the constitutionality of a substantive criminal statute under which he has been convicted, he asks for a judgment that would necessarily demonstrate the invalidity of his conviction. And though neither the Supreme Court nor this court has squarely addressed *Heck*’s application to § 1983 claims challenging the constitutionality of a substantive criminal statute, I believe *Edwards v. Balisok*, 520 U.S. 641, 117 S.Ct. 1584, 137 L.Ed.2d 906 (1997), makes clear that *Heck* prohibits such challenges. In *Edwards*, the Supreme Court explained that although our court had recognized that *Heck* barred § 1983 claims challenging the validity of a prisoner’s confinement “as a substantive matter,” it improperly distinguished as not *Heck*-barred *all* claims alleging only procedural violations. 520 U.S. at 645, 117 S.Ct. 1584. In holding that *Heck* also barred those procedural claims that would necessarily imply the invalidity of a conviction, the Court did not question our conclusion that claims challenging a conviction “as a substantive matter” are barred by *Heck*. *Id.*; see also *Wilkinson*, 544 U.S. at 82, 125 S.Ct. 1242 (holding that the plaintiffs’ claims could proceed because the relief requested would only “render invalid the state *procedures*” and “a favorable judgment [would] not ‘necessarily imply the invalidity of [their] conviction[s] or sentence[s]’ ” (emphasis added) (quoting *Heck*, 512 U.S. at 487, 114 S.Ct. 2364)).

Edwards thus leads me to conclude that an individual who was convicted under a criminal statute, but who did not challenge the constitutionality of the statute at the time of his conviction through direct appeal or post-conviction relief, cannot do so in the first instance by seeking declaratory or injunctive relief under § 1983. See *620 *Abusaid v. Hillsborough Cty. Bd. of Cty. Comm’rs*, 405 F.3d 1298, 1316 n.9 (11th Cir. 2005) (assuming that a § 1983 claim challenging “the constitutionality of the ordinance under which [the petitioner was convicted]” would be *Heck*-barred). I therefore would hold that *Heck* bars the plaintiffs’ claims for declaratory and injunctive relief.

We are not the first court to struggle applying *Heck* to “real life examples,” nor will we be the last. See, e.g., *Spencer v. Kemna*, 523 U.S. 1, 21, 118 S.Ct. 978, 140 L.Ed.2d 43 (1998) (Ginsburg, J., concurring) (alterations and internal quotation marks omitted) (explaining that her thoughts on *Heck* had changed since she joined the majority opinion in that case). If the slate were blank, I would agree that the majority’s holding as to prospective relief makes good sense. But because I read *Heck* and its progeny differently, I dissent as to that section of the majority’s opinion. I otherwise join the majority in full.

All Citations

920 F.3d 584, 19 Cal. Daily Op. Serv. 2944, 2019 Daily Journal D.A.R. 2762

Footnotes

- 1 Although Judge M. Smith does not credit the photograph to any source, an internet search suggests that the original photograph is attributable to Los Angeles County. See *Implementing the Los Angeles County Homelessness Initiative*, L.A. County, <http://homeless.lacounty.gov/implementing-the-los-angeles-county-homeless-initiative/> [<https://web.archive.org/web/?20170405225036/>]

homeless.lacounty.gov/implementing-the-los-angeles-county-homeless-initiative/#]; see also Los Angeles County (@CountyofLA), Twitter (Nov. 29, 2017, 3:23 PM), <https://twitter.com/CountyofLA/status/936012841533894657>.

- 1 With almost 553,000 people who experienced homelessness nationwide on a single night in January 2018, this issue affects communities across our country. U.S. Dep't of Hous. & Urban Dev., Office of Cmty. Planning & Dev., The 2018 Annual Homeless Assessment Report (AHAR) to Congress 1 (Dec. 2018), <https://www.hudexchange.info/resources/documents/2018-AHAR-Part-1.pdf>.
- 2 Our court previously adopted the same Eighth Amendment holding as the panel in *Jones v. City of Los Angeles*, 444 F.3d 1118, 1138 (9th Cir. 2006), but that decision was later vacated. 505 F.3d 1006 (9th Cir. 2007).
- 3 That most of these opinions were unpublished only buttresses my point: It is uncontroversial that *Powell* does not prohibit the criminalization of involuntary conduct.
- 4 Transcript of Oral Argument at 14, *Hughes v. United States*, — U.S. —, 138 S.Ct. 1765, 201 L.Ed.2d 72 (2018) (No. 17-155).
- 5 *Id.* at 49.
- 6 Richard M. Re, *Beyond the Marks Rule*, 132 Harv. L. Rev. (forthcoming 2019), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3090620.
- 7 Justice Black has also observed that solutions for challenging social issues should be left to the policymakers:
I cannot say that the States should be totally barred from one avenue of experimentation, the criminal process, in attempting to find a means to cope with this difficult social problem [I]t seems to me that the present use of criminal sanctions might possibly be unwise, but I am by no means convinced that any use of criminal sanctions would inevitably be unwise or, above all, that I am qualified in this area to know what is legislatively wise and what is legislatively unwise.
Powell, 392 U.S. at 539–40, 88 S.Ct. 2145 (Black, J., concurring).
- 8 Pursuant to Fourth Circuit Local Rule 35(c), “[g]ranting of rehearing en banc vacates the previous panel judgment and opinion.” I mention *Manning*, however, as an illustration of other courts’ reasoning on the Eighth Amendment issue.
- 9 Matt Tinoco, *LA Counts Its Homeless, But Counting Everybody Is Virtually Impossible*, LAist (Jan. 22, 2019, 2:08 PM), https://laist.com/2019/01/22/los_angeles_homeless_count_2019_how_volunteer.php. The panel conceded the imprecision of such counts in its opinion. See *Martin*, 902 F.3d at 1036 n.1 (acknowledging that the count of homeless individuals “is not always precise”). But it went on to disregard that fact when tying a city’s ability to enforce its laws to these counts.
- 10 The U.S. Department of Housing and Urban Development’s 2018 Annual Homeless Assessment Report to Congress reveals that municipalities within our circuit have among the highest homeless populations in the country. In Los Angeles City and County alone, 49,955 people experienced homelessness in 2018. The number was 12,112 people in Seattle and King County, Washington, and 8,576 people in San Diego City and County, California. See *supra* note 1, at 18, 20. In 2016, Las Vegas had an estimated homeless population of 7,509 individuals, and California’s Santa Clara County had 6,556. Joaquin Palomino, *How Many People Live On Our Streets?*, S.F. Chronicle (June 28, 2016), <https://projects.sfchronicle.com/sf-homeless/numbers>.
- 11 Cities can instead provide sufficient housing for every homeless individual, but the cost would be prohibitively expensive for most local governments. Los Angeles, for example, would need to spend \$403.4 million to house every homeless individual not living in a vehicle. See Los Angeles Homeless Services Authority, Report on Emergency Framework to Homelessness Plan 13 (June 2018), <https://assets.documentcloud.org/documents/4550980/LAHSAs-ShelteringReport.pdf>. In San Francisco, building new centers to provide a mere 400 additional shelter spaces was estimated to cost between \$10 million and \$20 million, and would require \$20 million to \$30 million to operate each year. See Heather Knight, *A Better Model, A Better Result?*, S.F. Chronicle (June 29, 2016), <https://projects.sfchronicle.com/sfhomeless/shelters>. Perhaps these staggering sums are why the panel went out of its way to state that it “in no way dictate[s] to the City that it must provide sufficient shelter for the homeless.” *Martin*, 902 F.3d at 1048.
- 12 Indeed, in the few short months since the panel’s decision, several cities have thrown up their hands and abandoned any attempt to enforce such laws. See, e.g., Cynthia Hubert, *Sacramento County Cleared Homeless Camps All Year. Now It Has Stopped Citing Campers*, Sacramento Bee (Sept. 18, 2019, 4:27 PM), <https://www.sacbee.com/news/local/homeless/article218605025.html> (“Sacramento County park rangers have suddenly stopped issuing citations altogether after a federal court ruling this month.”); Michael Ellis Langley, *Policing Homelessness*, Golden State Newspapers (Feb. 22, 2019), http://www.goldenstatenewspapers.com/tracy_press/news/policing-homelessness/article_5fe6a9ca-3642-11e9-9b25-37610ef2dbae.html (Sheriff Pat Withrow stating that, “[a]s far as camping ordinances and things like that, we’re probably holding off on [issuing citations] for a while” in light of *Martin v. City of Boise*); Kelsie Morgan, *Moses Lake Sees Spike in Homeless Activity Following 9th Circuit Court Decision*, KXLY (Oct. 2, 2018, 12:50 PM), <https://www.kxly.com/news/moses-lake-sees-spike-in-homeless-activityfollowing-9th-circuit-court-decision/801772571> (“Because the City of Moses Lake does not currently have a homeless shelter, city officials can no longer penalize people for sleeping in public areas.”); Brandon Pho, *Buena Park Residents Express Opposition to Possible Homeless Shelter*, Voice of OC (Feb. 14, 2019), <https://voiceofoc.org/2019/02/buena-park-residents-express-opposition-to-possible-homeless-shelter/> (stating that Judge David Carter of the U.S. District Court for the Central District of California has “warn[ed] Orange County cities to

get more shelters online or risk the inability to enforce their anti-camping ordinances”); Nick Welsh, *Court Rules to Protect Sleeping in Public: Santa Barbara City Parks Subject of Ongoing Debate*, Santa Barbara Indep. (Oct. 31, 2018), <http://www.independent.com/news/2018/oct/31/court-rules-protect-sleeping-public/?jqm> (“In the wake of what’s known as ‘the Boise decision,’ Santa Barbara city police found themselves scratching their heads over what they could and could not issue citations for.”).

13 In 2017, for example, San Francisco received 32,272 complaints about homeless encampments to its 311-line. Kevin Fagan, *The Situation On The Streets*, S.F. Chronicle (June 28, 2018), <https://projects.sfchronicle.com/sf-homeless/2018-state-of-homelessness>.

14 See Heather Knight, *It’s No Laughing Matter—SF Forming Poop Patrol to Keep Sidewalks Clean*, S.F. Chronicle (Aug. 14, 2018), <https://www.sfchronicle.com/bayarea/heatherknight/article/It-s-nolaughing-matter-SF-forming-Poop-13153517.php>.

15 See Anna Gorman and Kaiser Health News, *Medieval Diseases Are Infecting California’s Homeless*, The Atlantic (Mar. 8, 2019), <https://www.theatlantic.com/health/archive/2019/03/typhus-tuberculosismedieval-diseases-spreading-homeless/584380/> (describing the recent outbreaks of typhus, Hepatitis A, and shigellosis as “disaster[s] and [a] public-health crisis” and noting that such “diseases spread quickly and widely among people living outside or in shelters”).

16 Scott Johnson and Peter Kiefer, *LA’s Battle for Venice Beach: Homeless Surge Puts Hollywood’s Progressive Ideals to the Test*, Hollywood Reporter (Jan. 11, 2019, 6:00 AM), <https://www.hollywoodreporter.com/features/las-homeless-surge-puts-hollywoods-progressive-ideals-test-1174599>.

17 See U.S. Dep’t of Hous. & Urban Dev., PIT Data Since 2007, <https://www.hudexchange.info/resources/documents/2007-2018-PITCounts-by-CoC.xlsx>; U.S. Dep’t of Hous. & Urban Dev., HIC Data Since 2007, <https://www.hudexchange.info/resources/documents/2007-2018HIC-Counts-by-CoC.xlsx>. Boise is within Ada County and listed under CoC code ID-500.

1 1 Wm. & Mary, 2d Sess., ch. 2, 3 Stat. at Large 440, 441 (1689) (Section 10 of the English Declaration of Rights) (“excessive Baile ought not to be required, nor excessive Fines imposed; nor cruell and unusuall Punishments inflicted.”).

2 *Jones*, of course, was vacated and lacks precedential value. 505 F.3d 1006 (9th Cir. 2007). But the panel here resuscitated *Jones*’s errant holding, including, apparently, its application of the Cruel and Unusual Punishments Clause in the absence of a criminal conviction. We should have taken this case en banc to correct this misinterpretation of the Eighth Amendment.

3 We have emphasized the need to proceed cautiously when extending the reach of the Cruel and Unusual Punishments Clause beyond regulation of the methods of punishment that may be inflicted upon conviction for an offense. See *United States v. Ritter*, 752 F.2d 435, 438 (9th Cir. 1985) (repeating *Ingraham*’s direction that “this particular use of the cruel and unusual punishment clause is to be applied sparingly” and noting that *Robinson* represents “the rare type of case in which the clause has been used to limit what may be made criminal”); see also *United States v. Ayala*, 35 F.3d 423, 426 (9th Cir. 1994) (limiting application of *Robinson* to crimes lacking an actus reus). The panel’s holding here throws that caution to the wind.

4 Judge Friendly also expressed “considerable doubt that the cruel and unusual punishment clause is properly applicable at all until after conviction and sentence.” *Johnson v. Glick*, 481 F.2d 1028, 1032 (2d Cir. 1973).

1 The United States Department of Housing and Urban Development (“HUD”) requires local homeless assistance and prevention networks to conduct an annual count of homeless individuals on one night each January, known as the PIT Count, as a condition of receiving federal funds. State, local, and federal governmental entities, as well as private service providers, rely on the PIT Count as a “critical source of data” on homelessness in the United States. The parties acknowledge that the PIT Count is not always precise. The City’s Director of Community Partnerships, Diana Lachiondo, testified that the PIT Count is “not always the ... best resource for numbers,” but also stated that “the point-in-time count is our best snapshot” for counting the number of homeless individuals in a particular region, and that she “cannot give ... any other number with any kind of confidence.”

2 The record suggests that BRM provides some limited additional non-emergency shelter programming which, like the Discipleship Program, has overtly religious components.

3 The intake form states in relevant part that “We are a Gospel Rescue Mission. Gospel means ‘Good News,’ and the Good News is that Jesus saves us from sin past, present, and future. We would like to share the Good News with you. Have you heard of Jesus? ... Would you like to know more about him?”

4 The parties dispute the extent to which BRM actually enforces the 17- and 30-day limits.

5 Standing to pursue retrospective relief is not in doubt. The only threshold question affecting the availability of a claim for retrospective relief — a question we address in the next section — is whether such relief is barred by the doctrine established in *Heck*.

6 Although the SAC is somewhat ambiguous regarding which of the plaintiffs seeks prospective relief, counsel for the plaintiffs made clear at oral argument that only two of the plaintiffs, Martin and Anderson, seek such relief, and the district court considered the standing question with respect to Martin and Anderson only.

7 Plaintiff Pamela Hawkes was convicted of violating the Camping Ordinance or Disorderly Conduct Ordinance on twelve occasions; although she was usually sentenced to time served, she was twice sentenced to one additional day in jail.

8 Naturally, our holding does not cover individuals who *do* have access to adequate temporary shelter, whether because they have the means to pay for it or because it is realistically available to them for free, but who choose not to use it. Nor do we suggest that a

jurisdiction with insufficient shelter can *never* criminalize the act of sleeping outside. Even where shelter is unavailable, an ordinance prohibiting sitting, lying, or sleeping outside at particular times or in particular locations might well be constitutionally permissible. See *Jones*, 444 F.3d at 1123. So, too, might an ordinance barring the obstruction of public rights of way or the erection of certain structures. Whether some other ordinance is consistent with the Eighth Amendment will depend, as here, on whether it punishes a person for lacking the means to live out the “universal and unavoidable consequences of being human” in the way the ordinance prescribes. *Id.* at 1136.

9 In *Joel v. City of Orlando*, 232 F.3d 1353, 1362 (11th Cir. 2000), the Eleventh Circuit upheld an anti-camping ordinance similar to Boise’s against an Eighth Amendment challenge. In *Joel*, however, the defendants presented unrefuted evidence that the homeless shelters in the City of Orlando had never reached capacity and that the plaintiffs had always enjoyed access to shelter space. *Id.* Those unrefuted facts were critical to the court’s holding. *Id.* As discussed below, the plaintiffs here have demonstrated a genuine issue of material fact concerning whether they have been denied access to shelter in the past or expect to be so denied in the future. *Joel* therefore does not provide persuasive guidance for this case.

10 Costs shall be awarded to the plaintiffs.



City Council Staff Report

DATE: April 15, 2020

AGENDA ITEM NO: Consent Calendar
Agenda Item 3-I.

TO: Honorable Mayor and Members of the City Council
FROM: Mark A. McAvoy, Director of Public Works/City Engineer/City Planner
SUBJECT: Consideration and possible action to adopt a revised resolution authorizing the City Manager, or designee, to apply for, receive and approve grant funds for the Planning Grants Program.

RECOMMENDATION:

It is recommended that the City Council consider:

- (1) Adopting a revised resolution authorizing the City Manager, or designee, to apply for, receive and appropriate grant funds for the Planning Grants Program; and
- (2) Taking such additional, related, action that may be desirable.

EXECUTIVE SUMMARY:

The California Department of Housing and Community Development (HCD) is soliciting applications for funding from the Planning Grants Program to eligible local governments. Eligible grant activities include updates to general, community or specific plans and updates to zoning ordinances, among other things. On December 18, 2019, the City Council adopted Resolution No. 12131, triggering the application process for the receipt and approval of grant funds for the Planning Grants Program. On or about February 10, 2020, HCD began reviewing the City's application; on March 4, 2020, HCD notified the City of its preference (not a legal requirement) that certain information be added to the City's resolution. To expedite processing of the grant, staff revised the resolution and recommends that the City Council consider adopting the attached draft resolution. The staff report from the December 18, 2019 meeting is attached for reference.

FISCAL IMPACT:

There is no impact to the general fund. If monies are awarded to the City through the PGP, the City will be reimbursed for its costs related to the Proposal.

Respectfully Submitted by:

Prepared By:

for Mark A. McAvoy
Director of Public Works/City

Samantha Tewasart
Senior Planner

Staff Report
April 15, 2020
Page 2

Engineer/City Planner



Ron Bow
City Manager



Natalie C. Karpeles
Deputy City Attorney

Attachments:

Attachment 1: Draft Resolution

Attachment 2: City Council Staff Report dated December 18, 2020

Attachment 3: City Council Resolution No. 12131

ATTACHMENT 1

Draft Resolution

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING THE CITY MANAGER, OR DESIGNEE,
TO APPLY FOR, RECEIVE AND APPROVE GRANT FUNDS FOR THE
PLANNING GRANTS PROGRAM.**

The City Council of the City of Monterey Park does resolve as follows:

SECTION 1: The City Council finds and declares that:

- A. The Planning Grants Program (PGP) is funded through the Building Homes and Jobs Act Trust Fund (Senate Bill 2, 2017). Senate Bill 2 provides one-time funding and ongoing technical assistance to eligible local governments in California to adopt and implement plans and process improvements that streamline housing approvals and accelerate housing production. Eligible grant activities include updates to general, community or specific plans and updates to zoning ordinances, among other things;
- B. On March 28, 2019, the California Department of Housing and Community Development (HCD) issued a Notice of Funding Availability (“NOFA”) for approximately \$123 million under the PGP. Of which, the City may be eligible for a minimum of \$25,000 and a maximum of \$310,000;
- C. The City is currently updating the 2021-2029 Housing Element of its general plan; relatedly, it is also updating its Zoning Code in order to implement the Housing Element (the “Proposal”). Specifically, the updates proposed to the 2021-2029 Housing Element address the City’s Regional Housing Needs Assessment; and
- D. The City Council would like to authorize the City Manager, or designee, to execute documents to apply for, and potentially receive, up to \$310,000 in PGP monies from the HCD related to the Proposal.

SECTION 2: *Authorizations.* The City Council authorizes the City Manager, or designee, to execute the City of Monterey Park’s PGP application, the PGP Grant Documents, and any amendments thereto, on behalf of the City as required by HCD for receipt of the PGP Grant. If the application is approved by HCD, the City Council authorizes the City Manager, or designee, to enter into, execute, and deliver a State of California Agreement (Standard Agreement) for the amount of \$310,000, and any and all other documents required or deemed necessary or appropriate to evidence and secure the PGP grant, the City’s obligations related thereto, and all amendments thereto (collectively, the “PGP Grant Documents”), in forms approved by the City Attorney, as set forth in this Resolution.

SECTION 3: The City will be subject to the terms and conditions as specified in the PGP Grant Documents. Funds are to be used for allowable expenditures as specifically identified in the Standard Agreement. The application in full is incorporated as part of the Standard Agreement. Any and all activities funded, information provided, and timelines represented in the application will be enforceable through the executed Standard Agreement. The City Council agrees to use the funds for eligible uses in the manner

presented in the application as approved by HCD and in accordance with the NOFA, the PGP Guidelines, and the 2019 PGP Application.

SECTION 4: The City Manager, or designee, is authorized to accept and spend the grant monies identified in this Resolution for the purposes set forth herein.

SECTION 5: The City Council hereby amends or supplements the City's Budget for fiscal year 2020-21 to appropriate the monies identified herein to pay for the retention plan proposed by the City in support of its grant application. The City Manager, or designee, is authorized to implement the purpose of this section.

SECTION 6: *Reliance on Record.* Each and every one of the findings and determinations in this Resolution are based on the competent and substantial evidence, both oral and written, contained in the entire record. The findings and determinations constitute the independent findings and determinations of the City Council in all respects and are fully and completely supported by substantial evidence in the record as a whole.

SECTION 7: This Resolution does not affect any penalty, forfeiture, or liability incurred before, or precludes prosecution and imposition of penalties for any violation occurring before this Resolution's effective date. Any such amended part will remain in full force and effect for sustaining action or prosecuting violations occurring before the effective date of this Resolution.

SECTION 8: If any part of this Resolution or its application is deemed invalid by a court of competent jurisdiction, the City Council intends that such invalidity will not affect the effectiveness of the remaining provisions or applications and, to this end, the provisions of this Resolution are severable.

SECTION 9: *Effective Date.* This Resolution becomes effective immediately upon adoption and will remain effective until repealed or superseded.

ADOPTED AND APPROVED this ____ day of April 2020.

Hans Liang, Mayor

APPROVED AS TO FORM:
MARK D. HENSLEY, City Attorney

By:



Natalie C. Karpeles, Deputy City Attorney

ATTACHMENT 2

City Council Staff Report dated December 18, 2020



City Council Staff Report

DATE: December 18, 2019

AGENDA ITEM NO: Consent Calendar
Agenda Item 3-H.

TO: Honorable Mayor and Members of the City Council
FROM: Mark A. McAvoy, Director of Public Works/City Engineer/City Planner
SUBJECT: Consideration and possible action to adopt a resolution authorizing the City Manager, or designee, to apply for, receive and approve grant funds for the Planning Grants Program.

RECOMMENDATION:

It is recommended that the City Council consider:

- (1) Adopting a resolution authorizing the City Manager, or designee, to apply for, receive and appropriate grant funds for the Planning Grants Program; and
- (2) Taking such additional, related, action that may be desirable.

EXECUTIVE SUMMARY:

The California Department of Housing and Community Development is soliciting applications for funding from the Planning Grants Program to eligible local governments. Eligible grant activities include updates to general, community or specific plans and updates to zoning ordinances, among other things. Staff is recommending that the City Council consider authorizing the City Manager, or designee, to apply for, receive and appropriate \$310,000 in grant funds towards updating the City's 2021-2029 Housing Element and Zoning Code (the "Proposal"). The application deadline is December 20, 2019.

BACKGROUND:

The Planning Grants Program (PGP) is funded through the Building Homes and Jobs Act Trust Fund (Senate Bill 2, 2017). The PGP program is intended for the preparation, adoption and implementation of plans that streamline housing approvals and accelerate housing production. Senate Bill 2, among other things, provides one-time financial and technical assistance to local governments to update planning documents in order to:

- Accelerate housing production;
- Streamline the approval of housing development affordable to owner and renter households at all income levels;
- Facilitate housing affordability, particularly for all income groups;
- Promote development consistent with the State Planning Priorities; and
- Ensure geographic equity in the distribution and expenditure of allocated funds.

The California Department of Housing and Community Development (HCD) determined maximum award amounts based on population estimates from the Department of Finance. Per these estimates, the City is characterized as a "Medium Locality" (e.g., it has a population between 60,000 to 200,000 people); therefore, it may receive a minimum of \$25,000 and \$310,000 in fund monies for eligible activities.

Eligible activities encompass a variety of planning documents, planning activities and strategies, and must demonstrate a nexus to accelerating housing production. Examples of eligible activities as described by HCD include: (1) updates to general, community or specific plans; (2) updates to zoning ordinances; (3) environmental analyses that eliminate the need for project-specific review; and (4) local process improvements that enhance and expedite local planning. The City is required to update its Housing Element for the 6th Regional Housing Needs Assessment (RHNA) Cycle (2021 to 2029 planning period) and specifically address how housing units will be planned for in the City by the year 2029. Accordingly, the City is currently updating the 2021-2029 Housing Element of its general plan, as well as its Zoning Code (in order to implement the Housing Element) (the "Proposal").

The application deadline is December 20, 2019. Staff is recommending that the City Council consider authorizing the City Manager, or designee, to apply for, receive and appropriate \$310,000 in grant funds towards the Proposal.

FISCAL IMPACT:

There is no impact to the general fund. If monies are awarded to the City through the PGP, the City will be reimbursed for its costs related to the Proposal.

Respectfully Submitted by:

Prepared By:



Mark A. McAvoy
Director of Public Works/City
Engineer/City Planner



Samantha Tewart
Senior Planner



Ron Bow
City Manager



Natalie C. Karpeles
Deputy City Attorney

Attachments:

Attachment 1: Draft Resolution

ATTACHMENT 1

Draft Resolution

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING THE CITY MANAGER, OR DESIGNEE,
TO APPLY FOR, RECEIVE AND APPROVE GRANT FUNDS FOR THE
PLANNING GRANTS PROGRAM.**

The City Council of the City of Monterey Park does resolve as follows:

SECTION 1: The City Council finds and declares that:

- A. The Planning Grants Program (PGP) is funded through the Building Homes and Jobs Act Trust Fund (Senate Bill 2, 2017). Senate Bill 2 provides one-time funding and ongoing technical assistance to eligible local governments in California to adopt and implement plans and process improvements that streamline housing approvals and accelerate housing production. Eligible grant activities include updates to general, community or specific plans and updates to zoning ordinances, among other things;
- B. On March 28, 2019, the California Department of Housing and Community Development (HCD) issued a Notice of Funding Availability for approximately \$123 million under the PGP. Of which, the City may be eligible for a minimum of \$25,000 and a maximum of \$310,000;
- C. The City is currently updating the 2021-2029 Housing Element of its general plan; relatedly, it is also updating its Zoning Code in order to implement the Housing Element (the "Proposal"). Specifically, the updates proposed to the 2021-2029 Housing Element address the City's Regional Housing Needs Assessment; and
- D. The City Council would like to authorize the City Manager, or designee, to execute documents to apply for, and potentially receive, up to \$310,000 in PGP monies from the HCD related to the Proposal.

SECTION 2: *Authorizations.* The City Manager, or designee, is authorized to apply for a \$310,000 grant from HCD to be used for the Proposal.

SECTION 3: The City Manager, or designee, is authorized to execute any required documents to receive the grant for the purposes identified herein.

SECTION 4: The City Manager, or designee, is authorized to accept and spend the grant monies identified in this Resolution for the purposes set forth herein.

SECTION 5: The City Council hereby amends or supplements the City's Budget for fiscal year 2020-21 to appropriate the monies identified herein to pay for the retention plan proposed by the City in support of its grant application. The City Manager, or designee, is authorized to implement the purpose of this section.

SECTION 6: *Reliance on Record.* Each and every one of the findings and determinations in this Resolution are based on the competent and substantial evidence, both oral and written, contained in the entire record. The findings and determinations constitute the

independent findings and determinations of the City Council in all respects and are fully and completely supported by substantial evidence in the record as a whole.

SECTION 7: This Resolution does not affect any penalty, forfeiture, or liability incurred before, or precludes prosecution and imposition of penalties for any violation occurring before this Resolution's effective date. Any such amended part will remain in full force and effect for sustaining action or prosecuting violations occurring before the effective date of this Resolution.

SECTION 8: If any part of this Resolution or its application is deemed invalid by a court of competent jurisdiction, the City Council intends that such invalidity will not affect the effectiveness of the remaining provisions or applications and, to this end, the provisions of this Resolution are severable.

SECTION 9: Effective Date. This Resolution becomes effective immediately upon adoption and will remain effective until repealed or superseded.

ADOPTED AND APPROVED this ____ day of December 2019.

Hans Liang, Mayor

APPROVED AS TO FORM:
MARK D. HENSLEY, City Attorney

By: 

Natalie C. Karpeles, Deputy City Attorney

ATTACHMENT 3

City Council Resolution No. 12131

RESOLUTION NO. 12131

A RESOLUTION AUTHORIZING THE CITY MANAGER, OR DESIGNEE, TO APPLY FOR, RECEIVE AND APPROVE GRANT FUNDS FOR THE PLANNING GRANTS PROGRAM.

The City Council of the City of Monterey Park does resolve as follows:

SECTION 1: The City Council finds and declares as follows:

- A. The Planning Grants Program (PGP) is funded through the Building Homes and Jobs Act Trust Fund (Senate Bill 2, 2017). Senate Bill 2 provides one-time funding and ongoing technical assistance to eligible local governments in California to adopt and implement plans and process improvements that streamline housing approvals and accelerate housing production. Eligible grant activities include updates to general, community or specific plans and updates to zoning ordinances, among other things;
- B. On March 28, 2019, the California Department of Housing and Community Development (HCD) issued a Notice of Funding Availability (NOFA) for approximately \$123 million under the PGP. Of which, the City may be eligible for a minimum of \$25,000 and a maximum of \$310,000;
- C. The City is currently updating the 2021-2029 Housing Element of its general plan; relatedly, it is also updating its Zoning Code in order to implement the Housing Element (the "Proposal"). Specifically, the updates proposed to the 2021-2029 Housing Element address the City's Regional Housing Needs Assessment; and
- D. The City Council would like to authorize the City Manager to execute documents to apply for, and potentially receive, up to \$310,000 in PGP monies from the HCD related to the Proposal.

SECTION 2: *Authorizations.* The City Manager, or designee, is authorized to apply for a \$310,000 grant from HCD to be used for the Proposal.

SECTION 3: The City Manager, or designee, is authorized to execute any required documents to receive the grant for the purposes identified herein.

SECTION 4: The City Manager, or designee, is authorized to accept and spend the grant monies identified in this Resolution for the purposes set forth herein.

SECTION 5: The City Council hereby amends or supplements the City's Budget for fiscal year 2020-21 to appropriate the monies identified herein to pay for the application, acquisition, and retention plan proposed by the City in support of its grant application. The City Manager, or designee, is authorized to implement the purpose of this section.

SECTION 6: *Reliance on Record.* Each and every one of the findings and determinations in this Resolution are based on the competent and substantial evidence, both oral and written, contained in the entire record. The findings and determinations constitute the

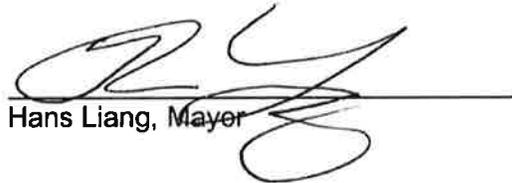
independent findings and determinations of the City Council in all respects and are fully and completely supported by substantial evidence in the record as a whole.

SECTION 7: This Resolution does not affect any penalty, forfeiture, or liability incurred before, or precludes prosecution and imposition of penalties for any violation occurring before this Resolution's effective date. Any such amended part will remain in full force and effect for sustaining action or prosecuting violations occurring before the effective date of this Resolution.

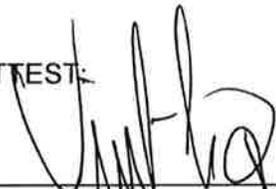
SECTION 8: If any part of this Resolution or its application is deemed invalid by a court of competent jurisdiction, the City Council intends that such invalidity will not affect the effectiveness of the remaining provisions or applications and, to this end, the provisions of this Resolution are severable.

SECTION 9: Effective Date. This Resolution becomes effective immediately upon adoption and will remain effective until repealed or superseded.

ADOPTED AND APPROVED this 18th day of December 2019.

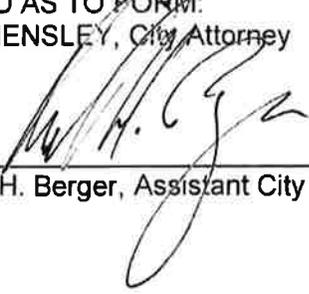

Hans Liang, Mayor

ATTEST:



Vincent Di Chang, City Clerk

APPROVED AS TO FORM:
MARK D. HENSLEY, City Attorney

By: 

Karl H. Berger, Assistant City Attorney

Resolution No. 12131
Page 3 of 3

State of California)
County of Los Angeles) §
City of Monterey Park)

I, Vincent D. Chang, City Clerk of the City of Monterey Park, California, do hereby certify that the foregoing Resolution No. 12131 was duly and regularly adopted by the City Council of the City of Monterey Park at a regular meeting held on the 18th day of December, 2019 by the following vote:

Ayes:	Council Members: Chan, Lam, Real Sebastian, Ing, Liang
Noes:	Council Members: None
Absent:	Council Members: None
Abstain:	Council Members: None

Dated this 18th day of December, 2019.



Vincent D. Chang, City Clerk
City of Monterey Park, California



City Council Staff Report

DATE: April 15, 2020

AGENDA ITEM NO: Consent Calendar
Agenda Item 3-J.

TO: Honorable Mayor and Members of the City Council
FROM: Mark A. McAvoy, Director of Public Works/City Engineer/City Planner
SUBJECT: One-year Time Extension (EX-20-01) for Tentative Map No. 82024 (TM-18-02) to subdivide air-rights for a three-unit residential condominium development – 217 North Nicholson Avenue.

RECOMMENDATION:

It is recommended that the City Council consider:

- (1) Adopting a resolution approving a Time Extension (EX-20-01) for Tentative Map No. 82024 (TM-18-02); and
- (2) Taking such additional, related, action that may be desirable.

EXECUTIVE SUMMARY:

On March 2, 2020, Jack Lee of Cal Land Engineering, Inc., submitted an application pursuant to Title 20 of the Monterey Park Municipal Code ("MPMC") requesting approval of a one-year time extension for Tentative Map No. 82024 (TM-18-02) to subdivide air-rights for a three-unit residential condominium development at 217 North Nicholson Avenue ("Project"). Pursuant to MPMC § 20.10.020, the City Council "shall grant the extension and any subsequent extensions; provided, that it finds good cause for doing so and that such extensions do not exceed an aggregate of three years." It is recommended that the City Council determine whether good cause for the extension exists.

CEQA (California Environmental Quality Act):

The Project is categorically exempt from additional environmental review pursuant to CEQA Guidelines § 15315 as a Class 15 categorical exemption (Minor Land Divisions). The Project consists of the division of property in an urbanized area that is zoned for residential use. The Project conforms to the General Plan because, according to the Land Use Element, the Single-Family Residential land use category allows for low density residential units, traditionally single-family homes with one dwelling permitted per legal lot. The Project is the subdivision of air-rights for the construction of three new residential dwelling units. The Project is consistent with zoning. Furthermore, the Project does not require any variances or exceptions, all services and access to the proposed parcels are available (to the City's standards), the parcel was not involved in a

division of a larger parcel within the previous two years, and the parcel does not have an average slope greater than 20 percent.

BACKGROUND & DISCUSSION:

The applicant, Jack Lee, is requesting a one-year time extension for Tentative Map No. 82024 (TM-18-02) to subdivide air-rights for a three-unit residential development at 217 North Nicholson Avenue. The property is zoned R-3 (High Density Residential) and is designated High Density Residential (HDR) in the General Plan.

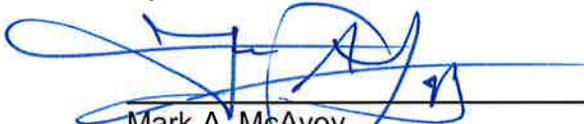
On March 13, 2018, the Planning Commission adopted Resolution No. 04-18 approving Tentative Map No. 82024 (TM-18-02). Once a tentative map is approved, the final map must be submitted and recorded before the tentative map expires; in this instance, the tentative map is due to expire March 13, 2020.¹ On March 2, 2020, the Applicant filed his written extension application with the City Planner.

The recommended action includes consideration of an extension of an approved tentative map. Pursuant to MPMC § 20.10.020, the City Council "shall" extend the time to record a final map for one year if it finds good cause for doing so and that such extensions do not exceed an aggregate of three years (see, also, Government Code § 66451.3). The building permit for the proposed project was issued on February 18, 2020 and the Applicant submitted its CC&Rs to the City Attorney's Office for review; these circumstances help to demonstrate the Applicant's intent to continue to move the project forward. Further, the Applicant is currently working with the Engineering Division to finalize the Map currently under review by the Engineering Division.

This is the first extension requested by the Applicant and it is only for a period of one year. If approved, Tentative Map No. 82024 (TM-18-02) will expire on March 13, 2021.

Respectfully submitted:

By:


Mark A. McAvoy
Director of Public Works/City
Engineer/City Planner

Prepared by:


Samantha Tewasart
Senior Planner

Approved by:


Ron Bow
City Manager

Reviewed by:


Natalie C. Karpeles
Deputy City Attorney

¹ See MPMC § 20.10.010.

Staff Report
April 15, 2020
Page 3
Attachments:

- Attachment 1: Time extension letter, dated March 2, 2020
- Attachment 2: Planning Commission Staff Report, dated March 13, 2018
- Attachment 3: Planning Commission Resolution No. 04-18
- Attachment 4: Tentative Map No. 82024
- Attachment 5: Draft Resolution

ATTACHMENT 1

Time extension letter, dated March 2, 2020

Cal Land Engineering, Inc.
dba Quartech Consultants
Geotechnical, Environmental, and Civil Engineering

March 11, 2020

City of Monterey Park
Community and Economic Development Department
320 West Newmark Avenue
Monterey Park, California 91754

Attention: Ms. Samantha Tewasart

Subject: Application of Extension, 217 N. Nicholson Avenue, Parcel Map No.: 82024, Monterey Park, California

Ladies and Gentlemen:

This letter is to apply the extension of the Tentative Parcel Map No. 82024 in the City of Monterey Park, California. Cal Land Engineering, Inc. prepared the final map. This map is being reviewed and approved by the City consulting surveyor, Due to the map required owner's signature, the map was submitted to City surveyor a little late. This extension will provide sufficient time for the map to be approved by City council and final map to be recorded.

If you should have any questions, please call the undersigned.

Respectfully submitted,
CalLand Engineering, Inc. (CLE)
dba Quartech Consultants (QCI)



Jack C. Lee,
Principal Engineer

Dist: (1) Addressee

576 East Lambert Road, Brea, California 92821; Tel: 714-671-1050; Fax: 714-671-1090

ATTACHMENT 2

Planning Commission Staff Report, dated March 13, 2018



Planning Commission Staff Report

DATE: March 13, 2018

AGENDA ITEM NO: 3-C

TO: The Planning Commission
FROM: Michael A. Huntley, Community and Economic Development Director
SUBJECT: A Public Hearing to consider Tentative Map No. 82024 (TM-18-02) to allow the subdivision of air-rights to establish and maintain a 3-unit residential development – 217 North Nicholson Avenue.

RECOMMENDATION:

It is recommended that the Planning Commission consider:

- (1) Opening the public hearing;
- (2) Receiving documentary and testimonial evidence;
- (3) Closing the public hearing;
- (4) Adopting the Resolution approving Tentative Map No. 82024 (TM-18-02) subject to conditions of approval; and
- (5) Taking such additional, related, action that may be desirable.

CEQA (California Environmental Quality Act)

The Project is categorically exempt from additional environmental review pursuant to CEQA Guidelines § 15315 as a Class 15 categorical exemption (Minor Land Divisions) in that the project consists of the subdivision of air-rights to establish and maintain a 3-unit residential development. The division is in conformance with the General Plan and zoning in that the subject property is zoned R-3 (High Density Residential) and designated High Density Residential in the General Plan Land Use Element. The parcel was not involved in a division of a larger parcel within the previous 2 years.

EXECUTIVE SUMMARY:

The applicant, Angus Lin, seeks a Tentative Map to subdivide air rights to develop a 3-unit condominium project at 217 North Nicholson Avenue ("Project Site").

The R-3 (High Density Residential) zone allows for a density up to 4 units; the applicant is proposing to construct 4 units. The proposed project meets the zoning regulations and development standards. The High Density Residential land use allows for a broad range of dwelling unit types which may be attached or detached. The residential units consist typically of apartments, condominiums, and townhomes built at a maximum density of 25 units per acre.

North Nicholson Avenue is completely developed with multi-unit residential developments constructed from the 1990s to the 2000s. The subject property is the only remaining lot currently developed with three older detached residential dwelling units constructed during the 1940s.

Property Description

The property is located at the mid-block of North Nicholson Avenue, between East Emerson Avenue and East Garvey Avenue. The property is zoned R-3 (High Density Residential) and designated High Density Residential in the General Plan. To the north, south, east, and west are R-3 zoned lots. The subject site has a frontage of 50 feet and a depth of 273.33 feet, with a total lot area of 13,667 square feet in size.

Project Description

The property will remain as one lot. Under California law, a tentative map is required to subdivide air space for separate ownership of each of the units.

The Units 1 and 2 will have 3 bedrooms and Unit 3 will have 4 bedrooms. The 3 units will range in size from 1,667 square feet and 1,937 square feet. The proposed buildings on the site will meet the required front and rear setback of 25 feet, a 15-foot street side setback for the first floor, 25-foot street side setback for the second floor, a 5-foot interior side setback for the first floor, and a 10-foot interior side setback for the second floor. Each unit will be two stories, with a maximum height of 25 feet 6 inches. A clearance of at least 12 feet will be provided between the buildings.

Pursuant to Monterey Park Municipal Code (MPMC) § 21.22.050, condominium units with 3 or fewer bedrooms require 2 enclosed garage spaces, plus 1 guest parking per 2 dwelling units, and four or more bedrooms require 2 enclosed garage spaces, plus 1 guest parking per dwelling unit. Overall, 8 enclosed garage spaces and 2 guest parking spaces are required and will be provided. According to the site plan, each unit will be provided with a two-car garage. The driveway has a width of 18 feet, and each parking space has a back-up space of 25 feet. Each enclosed parking space is required to have a minimum width of 9 feet, and a minimum depth of 19 feet.

Per the MPMC, the project is required to provide a minimum of 400 square feet of common open space, and a minimum of 250 square feet of private open space per unit. According to the site plan, the project will include 1,250 square feet of common open space throughout the property, and each unit will be provided with private open spaces with ranging from 256 square feet to 290 square feet. The common open space area will be regulated by CC&Rs and maintained by a Homeowner's Association.

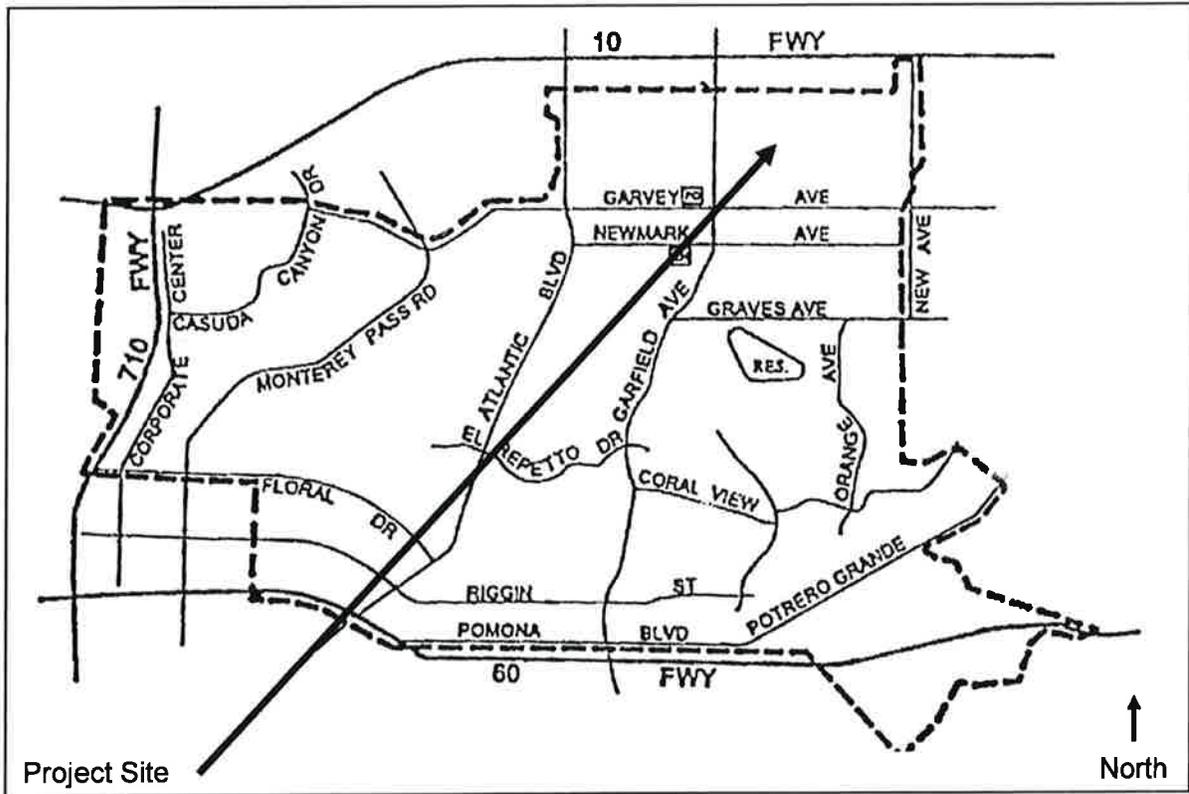
The project is in compliance with R-3 development standards. Subsequent to Planning Commission review, the project design must be reviewed and approved by the Design Review Board.

OTHER ITEMS:

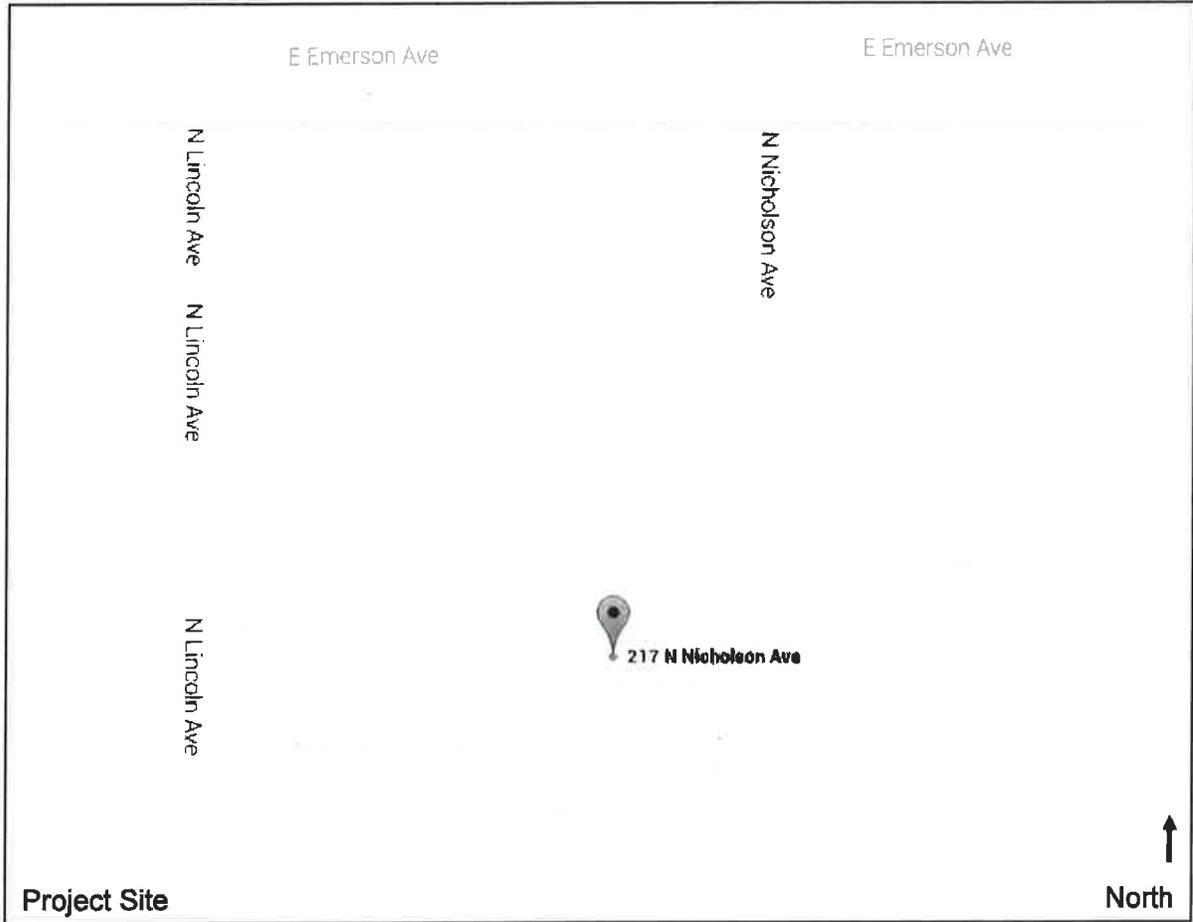
Legal Notification

The legal notice of this hearing was posted at the subject site, City Hall, Monterey Park Bruggemeyer Library, and Langley Center on **February 16, 2018** and published in the Wave on **February 22, 2018**, with affidavits of posting on file. The legal notice of this hearing was mailed to **166** property owners within a 300 foot radius and current tenants of the property concerned on **February 16, 2018**.

Vicinity Map



Street Map



Aerial Map



ALTERNATIVE COMMISSION CONSIDERATIONS:

None.

FISCAL IMPACT:

There may be an increase in sales tax revenue and business license tax revenue. Calculations of the exact amount would be speculative.

Respectfully submitted,



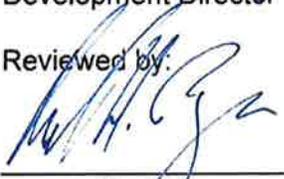
Michael A. Huntley
Community and Economic
Development Director

Prepared by:



Samantha Tewasart
Senior Planner

Reviewed by:



Karl H. Berger
Assistant City Attorney

Attachments:

- Attachment 1: Draft Resolution
- Attachment 2: Tentative Map No. 82024

ATTACHMENT 1

Draft Resolution

RESOLUTION NO.

A RESOLUTION APPROVING TENTATIVE MAP NO. 82024 (TM-18-02) TO SUBDIVIDE AIR RIGHTS FOR A THREE-UNIT RESIDENTIAL CONDOMINIUM DEVELOPMENT AT 217 NORTH NICHOLSON AVENUE.

The Planning Commission of the City of Monterey Park does resolve as follows:

SECTION 1: The Planning Commission finds and declares that:

- A. On January 2, 2018, Angus Lin, submitted an application pursuant to Title 20 of the Monterey Park Municipal Code ("MPMC") requesting approval of Tentative Map No. 82024 (TM-18-02) to subdivide air rights to establish and maintain a 3-unit condominium project at 217 North Nicholson Avenue ("Project");
- B. The proposed Project was reviewed by the Community and Economic Development Department for, in part, consistency with the General Plan and conformity with the MPMC;
- C. In addition, the City reviewed the Project's environmental impacts under the California Environmental Quality Act (Public Resources Code §§ 21000, *et seq.*, "CEQA") and the regulations promulgated thereunder (14 California Code of Regulations §§ 15000, *et seq.*, the "CEQA Guidelines");
- D. The Community and Economic Development Department completed its review and scheduled a public hearing regarding the proposed Project, before the Planning Commission for March 13, 2018. Notice of the public hearing on the proposed Project was posted and mailed as required by the MPMC;
- E. On March 13, 2018, the Planning Commission held a public hearing to receive public testimony and other evidence regarding the proposed Project including, without limitation, information provided to the Planning Commission by City staff and public testimony, and representatives of the Applicant; and
- F. This Resolution and its findings are made based upon the testimony and evidence presented to the Commission at its March 13, 2018 hearing including, without limitation, the staff report submitted by the Community and Economic Development Department.

SECTION 2: *Factual Findings and Conclusions.* The Planning Commission finds that the following facts exist and makes the following conclusions:

- A. The project consists of the division of property in an urbanized area zoned for residential use into four or fewer parcels. The Applicant seeks to construct 3 new residential dwelling units and subdivide the air rights for condominium purposes;
- B. 217 North Nicholson Avenue is zoned R-3 (High Density Residential) and designated High Density Residential in the General Plan. The High Density

**PLANNING COMMISSION
RESOLUTION NO.
PAGE 2 OF 5**

Residential category allows a broad range of dwelling unit types which may be attached or detached. The residential units consist typically of apartments, condominiums, and townhomes;

- C. The project site is located at the mid-block of North Nicholson Avenue, between East Newmark Avenue and East Garvey Avenue. The properties located to the north, south, east, and west are R-3 zoned lots;
- D. The project site is rectangular shaped, relatively flat, has a frontage of 50 feet, and total lot area of 13,667 square feet (0.31 acres) in area and is currently developed with 3 older detached residential dwelling units;
- E. The proposed subdivision does not require any variances or exceptions;
- F. The proposed subdivision will provide required access and services to each subdivided lot;
- G. The subject property has not been involved in a division of a larger parcel within the previous two years;
- H. The subject property does not have an average slope greater than 20 percent; and
- I. There are no public easements for access within the proposed development.

SECTION 3: *Environmental Assessment.* Because of the facts identified in Section 2 of this Resolution, the Project is categorically exempt from additional environmental review pursuant to CEQA Guidelines § 15315 as a Class 15 categorical exemption (Minor Land Divisions).

SECTION 4: *Tentative Map Findings.* The Commission finds as follows pursuant to Government Code § 66474 and MPMC Title 20:

- A. The proposed tentative map is consistent with applicable general and specific plans as required by Government Code § 66473.5. The tentative map for this project would allow two condominium units to be constructed on the site. This is less than the maximum density of 25 dwelling units per acre for this site. Consequently, the project complies with the General Plan. The property is located on North Nicholson Avenue, a local street with a 50-foot right-of-way, which is adequate in size and capacity to accommodate the anticipated traffic that will be generated by the proposed development. There is no specific plan adopted for this area.
- B. The design or improvement of the proposed subdivision is consistent with applicable general and specific plans. The design of the proposed subdivision is consistent with the General Plan in that the project is a 3-unit condominium

**PLANNING COMMISSION
RESOLUTION NO.
PAGE 3 OF 5**

project, which is compatible with the high density housing either attached or detached allowed in the high density residential category. There is no specific plan adopted for this area.

- C. The site is physically suitable for the type of development and the proposed density of the development. The size of the property is 13,667 square feet (0.31 acres) and adequate in size to accommodate a 4-unit condominium project because in the R-3 Zone, one dwelling unit is allowed for every 3,000 square feet of lot area on lots of 7,000 square feet or more and having a front lot line of at least 50 feet.
- D. The design of the subdivision or the proposed improvements is not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat. The subject property is bordered by residentially developed lots to the north, south, east, and west. There are no rare plants, wild animals nor cultural, historical or scenic aspects within the surrounding area.
- E. The design of the subdivision or the type of improvements is not likely to cause serious public health problems. The proposed subdivision will not cause any public health problems in that the subject development will be constructed according to all City, State, and Federal regulations and specifications.
- F. The design of the subdivision or the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of, property within proposed subdivision. There are no public easements for access within the proposed development.

SECTION 5: *Approval.* Subject to the conditions listed on the attached Exhibit "A," which are incorporated into this Resolution by reference, the Planning Commission approves Tentative Map No. 82024 (TM-18-02).

SECTION 6: *Reliance on Record.* Each and every one of the findings and determinations in this Resolution are based on the competent and substantial evidence, both oral and written, contained in the entire record relating to the project. The findings and determinations constitute the independent findings and determinations of the Planning Commission in all respects and are fully and completely supported by substantial evidence in the record as a whole.

SECTION 7: *Limitations.* The Planning Commission's analysis and evaluation of the project is based on the best information currently available. It is inevitable that in evaluating a project that absolute and perfect knowledge of all possible aspects of the project will not exist. One of the major limitations on analysis of the project is the Planning Commission's lack of knowledge of future events. In all instances, best efforts have been made to form accurate assumptions. Somewhat related to this are the limitations on the City's ability to solve what are

**PLANNING COMMISSION
RESOLUTION NO.
PAGE 4 OF 5**

in effect regional, state, and national problems and issues. The City must work within the political framework within which it exists and with the limitations inherent in that framework.

SECTION 8: *Summaries of Information.* All summaries of information in the findings, which precede this section, are based on the substantial evidence in the record. The absence of any particular fact from any such summary is not an indication that a particular finding is not based in part on that fact.

SECTION 9: This Resolution will remain effective until superseded by a subsequent resolution.

SECTION 10: A copy of this Resolution will be mailed to the Applicant and to any other person requesting a copy.

SECTION 11: This Resolution may be appealed within ten (10) calendar days after its adoption. All appeals must be in writing and filed with the City Clerk within this time period. Failure to file a timely written appeal will constitute a waiver of any right of appeal.

SECTION 12: Except as provided in Section 11, this Resolution is the Planning Commission's final decision and will become effective immediately upon adoption.

ADOPTED AND APPROVED this 13th day of March 2018.

Chairperson Larry Sullivan

I hereby certify that the foregoing Resolution was duly adopted by the Planning Commission of the City of Monterey Park at the regular meeting held on the 13th day of March 2018, by the following vote of the Planning Commission:

AYES:
NOES:
ABSTAIN:
ABSENT:

Michael A. Huntley, Secretary

**PLANNING COMMISSION
RESOLUTION NO.
PAGE 5 OF 5**

**APPROVED AS TO FORM:
Mark D. Hensley, City Attorney**

By: 

Karl H. Berger
Assistant City Attorney

PLANNING COMMISSION RESOLUTION NO.

Exhibit A

CONDITIONS OF APPROVAL

217 NORTH NICHOLSON AVENUE

In addition to all applicable provisions of the Monterey Park Municipal Code ("MPMC"), Angus Lin agrees that he will comply with the following conditions for approval of Tentative Map No. 82024 (TM-18-02) ("Project Conditions").

PLANNING:

1. Angus Lin (the "Applicant"), agrees to indemnify and hold the City harmless from and against any claim, action, damages, costs (including, without limitation, attorney's fees), injuries, or liability, arising from the City's approval of TM-18-02 except for such loss or damage arising from the City's sole negligence or willful misconduct. Should the City be named in any suit, or should any claim be brought against it by suit or otherwise, whether the same be groundless or not, arising out of the City approval of TM-18-02, the Applicant agrees to defend the City (at the City's request and with counsel satisfactory to the City) and will indemnify the City for any judgment rendered against it or any sums paid out in settlement or otherwise. For purposes of this section "the City" includes the City of Monterey Park's elected officials, appointed officials, officers, and employees.
2. This approval is for the project as shown on the plans reviewed and approved by the Planning Commission and on file. Before the City issues a building permit, the Applicant must submit plans, showing that the project substantially complies with the plans and conditions of approval on file with the Planning and Building and Safety Division. Any subsequent modification must be referred to the Director of Community and Economic Development for a determination regarding the need for Planning Commission review and approval of the proposed modification.
3. The tentative map expires twenty-four months after its approval if the use has not commenced or if improvements are required, but construction has not commenced under a valid building permit. A total of three, one year, extensions may be granted by the Planning Commission upon finding of good cause. An application requesting an extension must be filed with the Community and Economic Development Department.
4. All conditions of approval must be listed on the plans submitted for plan check and on the plans for which a building permit is issued.
5. Before building permits are issued, the applicant must obtain all the necessary approvals, licenses and permits and pay all the appropriate fees as required by the City.

**PLANNING COMMISSION
RESOLUTION NO.**

6. The real property subject to TM-18-02 must remain well-maintained and free of graffiti.
7. Building permits are required for any interior tenant improvements.
8. Landscaping/irrigation must be maintained in good condition at all times.
9. A final map must be approved and recorded before the City issues a certificate of occupancy.
10. All enclosed garage spaces must be used for off-street parking only. There cannot be any personal storage or conversion of this space that would prevent the parking of vehicles in the enclosed garage. This condition must be included in the conditions, covenants and restrictions ("CC&Rs") recorded for this property.

BUILDING:

11. The second sheet of the building plans must list all City of Monterey Park conditions of approval.
12. A building permit does not permit excavations to encroach into adjacent properties. Requirements for protection of adjacent properties are defined in Civil Code § 832.
13. The site plan must indicate the proposed path of building sewer, size of sewer line, location of cleanouts, and the invert elevation of the lateral at the property line.
14. A soils and geology report is required as part of plan check submittal.
15. Before the City issues a building permit, the applicant must obtain a permit from CAL-OSHA to construct the project.
16. The applicant must submit a compaction report for demolition of previous buildings to the Monterey Park Public Works Department for approval before the City allows the applicant to excavate new foundations.

ENGINEERING:

17. Under the Los Angeles County Municipal "National Pollutant Discharge Elimination System (NPDES) Permit," which the City of Monterey Park is a permittee; this project involves the distribution of soils by grading, clearing and/or excavation. The applicant/property owner is required to obtain a "General Construction Activity Storm Water" Permit, and the City of Monterey Park will condition a grading permit on evidence of compliance with this permit and its requirements. Compliance information is available in the office of the City Engineer. Upon approval of the NPDES document by the City, the

**PLANNING COMMISSION
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applicant/property owner must submit an electronic copy of the approved NPDES file, including site drawings, before the City issues a building or grading permit.

18. The applicant must record the Final Map after the City approves the final map in accordance with the MPMC and accepts any applicable bonds or agreements. A refundable \$187 cash deposit must be submitted to guarantee that developer will provide the City with one (1) transparent 4 mil thick mylar tracing, one (1) electronic file of approved final map tracings transferable to City's AutoCAD and GIS systems and two (2) blueprints of the recorded map which must be filed with the City Engineer within three (3) months of recordation. If recorded copy is not submitted by the end of the three-month time period, developer will forfeit the \$187 cash deposit.
19. The applicant/property owner must provide written proof that there are no liens against the subdivision for unpaid taxes or special assessments and submit Los Angeles County tax bill, tax payment receipt, and copy of cancelled check before filing a Final Map with the City for approval.
20. Applicant agrees to pay City any development impact fees ("DIFs") that may be applicable to the Project. Applicant takes notice pursuant to Government Code § 66020(d) that City is imposing the DIFs upon the Project in accordance with the Mitigation Fee Act (Government Code § 66000, *et seq.*). Applicant is informed that it may protest DIFs in accordance with Government Code § 66020.
21. A homeowner's association must be established.
22. Covenants Conditions & Restrictions must be prepared and filed with the City to obtain City Attorney and the City Engineer approval. Developer/owner is responsible for securing the CC&R guidelines from the Office of the City Engineer. A copy of the recorded CC&Rs must be submitted before final inspection and clearance of the building permit. The applicant must pay for the City's costs associated with reviewing the CC&Rs including, without limitation, legal costs.
23. All improvement plans, including grading and public improvement plans must be based upon City approved criteria. Benchmark references to be obtained from the Engineering Division.
24. A water plan must be submitted for review and approval by the City Engineer. This plan must substantiate adequate water service for domestic flow, fire flow and identify backflow prevention. If current fire flow and pressure tests are not available to substantiate adequate pressure and flow to serve the development, the developer is responsible for conducting the appropriate tests and submitting copies of the test results for review and ultimate approval by the City.
25. Water Division requirements are to be determined upon completion and submittal of a water meter sizing sheet by the applicant. This may include up sizing of

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water meter and water services. All upgrading costs are the responsibility of the property owner.

26. The applicant must provide survey monuments denoting the new property boundaries and lot lines to the satisfaction of the City Engineer. All maps must be prepared from a field survey. Compiled maps are not permitted unless prior approval is granted by the City Engineer. Whenever possible, lot lines must be located to coincide with the top of all man-made slopes. Any deviation from this requirement must be approved by the City Engineer.
27. The applicant must provide a site drainage plan for review and approval by the City Engineer. The property drainage must be designed so that the property drains to the public street or in a manner otherwise acceptable to the City Engineer. Drainage from contiguous properties cannot be blocked and must be accommodated to the satisfaction of the City Engineer. A hydrology and hydraulic study of the site may be required for submittal to the City Engineer for review and approval.
28. All storm drainage facilities serving the development must accommodate a 50 year storm. If existing storm drain facilities are inadequate they must be enlarged as necessary. All storm drain facilities must be designed and constructed to Los Angeles County Department of Public Works standards and specifications and also the satisfaction of the City Engineer before approving grading and drainage plans.
29. Any damage done to existing street improvements and utilities during construction must be repaired before the City issues certificates of occupancy. Pre-existing damaged, deteriorated, substandard or off-grade curb, gutter, driveways and sidewalk must be repaired or replaced to the satisfaction of the City Engineer.
30. All public works improvements must comply with the standards and specifications of the City and to the satisfaction of the City Engineer. All public works improvements must be completed and accepted by the City or a public works improvement guarantee and agreement posted before final map approved by the City Council.
31. All electric, telephone and cable TV utility services must be installed fully underground and to required City standards. Satisfactory provisions for all other utilities and service connections, including water, sewer and gas, shall be made to City and public utility standards. A utility plan must be prepared and submitted showing all existing and proposed utilities. The utilities may be shown on either a separate plan or on the proposed site plan.
32. A sewer study must be provided to demonstrate that the new development does not negatively impact the existing sewer system. If the existing sewer does not have adequate capacity to serve the development, the developer will be

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responsible for upgrading the sewer main as necessary in the public right-of-way. A sewer connection reconstruction fee will be assessed at the time the City issues a building permit in accordance with MPMC Chapter 14.06.

33. All buildings must have roof gutters and all roof drainage must be conducted to the public street or an approved drainage facility in a manner approved by the City Engineer.
34. The grading and drainage plan and street improvement plan must be submitted by the first plan check. The street improvement plan must include the removal and reconstruction of the sidewalk, driveway approach, and curb and gutter along the entire property frontage. It must also include asphalt pavement removal and replacement to the centerline of the street.
35. Parkways must be irrigated and landscaped per plans submitted for review and approval by the City Engineer. The need for preserving existing street trees and/or providing additional street trees must be reviewed and approved by the City Recreation and Parks Department.
36. The City may restrict driveway access to and from the project in the event that future traffic conditions warrant such restricted turn movements.
37. Automatic irrigation system controllers for landscaping must be weather- or soil moisture-based controllers that automatically adjust irrigation in response to conditions change.
38. Weather-based controllers without integral rain sensors or communication systems that account for local rainfall must have a separate wired or wireless rain sensor which connects or communicates with the controller(s). Soil moisture-based controllers are not required to have rain sensor input.

FIRE:

39. All conditions identified by the Fire Department are subject to the review and approval of the Fire Chief for determination of applicability and extent to which any condition may be required.
40. All structures must be fully sprinklered per NFPA (National Fire Protection Association) 13D and local amendments.
41. A minimum number of fire hydrants must be provided such that all points of all structures are within 600 feet of the structure. Show all existing and proposed fire hydrants on the site plan, per California Fire Code (CFC) Appendix C.
42. The front 150 feet of the driveway must be deemed a fire lane. The minimum width must be 20 feet. Appropriate signage must be provided. The fire lane must be shown on the plan submittal, per CFC § 503.1.

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43. Address numbers must be provided on the street curb. Numerals must be 4 inches in height, two and one-half inches in width with a stroke width of approximately three-fourths inch. The house number must be centered on a six-inch by sixteen-inch rectangular background per MPMC § 13.17.050.

POLICE:

44. Adequate exterior lighting must be provided so that the units are visible from the street during the hours of darkness.

45. The shrubbery on the property must be installed and maintained in such condition to permit good visibility of the units from the streets. Any shrubbery surrounding the complex and in the courtyard areas must be planted and maintained where the height of the greenery would not easily conceal persons.

46. The driveway leading into the complex must be constructed and maintained in such a condition that traffic is easily visible to those entering or leaving the location.

47. Any outside ladders leading to the roof top must be secured to prevent unauthorized access to the roof.

48. Address number must be illuminated during hours of darkness and positioned as to be readily readable from the street.

49. Each distinct unit within the building must have its address displayed on or directly above both the front and rear doors.

50. All common open areas must be well lit during the hours of darkness.

51. Signs must be posted at the guest parking areas and in the driveway leading into the complex.

52. A thoroughfare for residents, guests, and any necessary emergency vehicles and/or personnel must be maintained at all times. The Monterey Park Police Department Traffic Bureau must be contacted for sign verbiage and posting locations. The Traffic Bureau Sergeant can be reached at (626) 307-1481.

By signing this document, Angus Lin, certifies that the Applicant read, understood, and agrees to the Project Conditions listed in this document.

Angus Lin, Applicant

ATTACHMENT 3

Planning Commission Resolution No. 04-18

RESOLUTION NO. 04-18

A RESOLUTION APPROVING TENTATIVE MAP NO. 82024 (TM-18-02) TO SUBDIVIDE AIR RIGHTS FOR A THREE-UNIT RESIDENTIAL CONDOMINIUM DEVELOPMENT AT 217 NORTH NICHOLSON AVENUE.

The Planning Commission of the City of Monterey Park does resolve as follows:

SECTION 1: The Planning Commission finds and declares that:

- A. On January 2, 2018, Angus Lin, submitted an application pursuant to Title 20 of the Monterey Park Municipal Code (“MPMC”) requesting approval of Tentative Map No. 82024 (TM-18-02) to subdivide air rights to establish and maintain a 3-unit condominium project at 217 North Nicholson Avenue (“Project”);
- B. The proposed Project was reviewed by the Community and Economic Development Department for, in part, consistency with the General Plan and conformity with the MPMC;
- C. In addition, the City reviewed the Project’s environmental impacts under the California Environmental Quality Act (Public Resources Code §§ 21000, *et seq.*, “CEQA”) and the regulations promulgated thereunder (14 California Code of Regulations §§ 15000, *et seq.*, the “CEQA Guidelines”);
- D. The Community and Economic Development Department completed its review and scheduled a public hearing regarding the proposed Project, before the Planning Commission for March 13, 2018. Notice of the public hearing on the proposed Project was posted and mailed as required by the MPMC;
- E. On March 13, 2018, the Planning Commission held a public hearing to receive public testimony and other evidence regarding the proposed Project including, without limitation, information provided to the Planning Commission by City staff and public testimony, and representatives of the Applicant; and
- F. This Resolution and its findings are made based upon the testimony and evidence presented to the Commission at its March 13, 2018 hearing including, without limitation, the staff report submitted by the Community and Economic Development Department.

SECTION 2: *Factual Findings and Conclusions.* The Planning Commission finds that the following facts exist and makes the following conclusions:

- A. The project consists of the division of property in an urbanized area zoned for residential use into four or fewer parcels. The Applicant seeks to construct 3 new residential dwelling units and subdivide the air rights for condominium purposes;
- B. 217 North Nicholson Avenue is zoned R-3 (High Density Residential) and designated High Density Residential in the General Plan. The High Density

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RESOLUTION NO. 04-18
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Residential category allows a broad range of dwelling unit types which may be attached or detached. The residential units consist typically of apartments, condominiums, and townhomes;

- C. The project site is located at the mid-block of North Nicholson Avenue, between East Newmark Avenue and East Garvey Avenue. The properties located to the north, south, east, and west are R-3 zoned lots;
- D. The project site is rectangular shaped, relatively flat, has a frontage of 50 feet, and total lot area of 13,667 square feet (0.31 acres) in area and is currently developed with 3 older detached residential dwelling units;
- E. The proposed subdivision does not require any variances or exceptions;
- F. The proposed subdivision will provide required access and services to each subdivided lot;
- G. The subject property has not been involved in a division of a larger parcel within the previous two years;
- H. The subject property does not have an average slope greater than 20 percent; and
- I. There are no public easements for access within the proposed development.

SECTION 3: *Environmental Assessment.* Because of the facts identified in Section 2 of this Resolution, the Project is categorically exempt from additional environmental review pursuant to CEQA Guidelines § 15315 as a Class 15 categorical exemption (Minor Land Divisions).

SECTION 4: *Tentative Map Findings.* The Commission finds as follows pursuant to Government Code § 66474 and MPMC Title 20:

- A. The proposed tentative map is consistent with applicable general and specific plans as required by Government Code § 66473.5. The tentative map for this project would allow two condominium units to be constructed on the site. This is less than the maximum density of 25 dwelling units per acre for this site. Consequently, the project complies with the General Plan. The property is located on North Nicholson Avenue, a local street with a 50-foot right-of-way, which is adequate in size and capacity to accommodate the anticipated traffic that will be generated by the proposed development. There is no specific plan adopted for this area.
- B. The design or improvement of the proposed subdivision is consistent with applicable general and specific plans. The design of the proposed subdivision is consistent with the General Plan in that the project is a 3-unit condominium

**PLANNING COMMISSION
RESOLUTION NO. 04-18
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project, which is compatible with the high density housing either attached or detached allowed in the high density residential category. There is no specific plan adopted for this area.

- C. The site is physically suitable for the type of development and the proposed density of the development. The size of the property is 13,667 square feet (0.31 acres) and adequate in size to accommodate a 4-unit condominium project because in the R-3 Zone, one dwelling unit is allowed for every 3,000 square feet of lot area on lots of 7,000 square feet or more and having a front lot line of at least 50 feet.
- D. The design of the subdivision or the proposed improvements is not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat. The subject property is bordered by residentially developed lots to the north, south, east, and west. There are no rare plants, wild animals nor cultural, historical or scenic aspects within the surrounding area.
- E. The design of the subdivision or the type of improvements is not likely to cause serious public health problems. The proposed subdivision will not cause any public health problems in that the subject development will be constructed according to all City, State, and Federal regulations and specifications.
- F. The design of the subdivision or the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of, property within proposed subdivision. There are no public easements for access within the proposed development.

SECTION 5: Approval. Subject to the conditions listed on the attached Exhibit "A," which are incorporated into this Resolution by reference, the Planning Commission approves Tentative Map No. 82024 (TM-18-02).

SECTION 6: Reliance on Record. Each and every one of the findings and determinations in this Resolution are based on the competent and substantial evidence, both oral and written, contained in the entire record relating to the project. The findings and determinations constitute the independent findings and determinations of the Planning Commission in all respects and are fully and completely supported by substantial evidence in the record as a whole.

SECTION 7: Limitations. The Planning Commission's analysis and evaluation of the project is based on the best information currently available. It is inevitable that in evaluating a project that absolute and perfect knowledge of all possible aspects of the project will not exist. One of the major limitations on analysis of the project is the Planning Commission's lack of knowledge of future events. In all instances, best efforts have been made to form accurate assumptions. Somewhat related to this are the limitations on the City's ability to solve what

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are in effect regional, state, and national problems and issues. The City must work within the political framework within which it exists and with the limitations inherent in that framework.

SECTION 8: *Summaries of Information.* All summaries of information in the findings, which precede this section, are based on the substantial evidence in the record. The absence of any particular fact from any such summary is not an indication that a particular finding is not based in part on that fact.

SECTION 9: This Resolution will remain effective until superseded by a subsequent resolution.

SECTION 10: A copy of this Resolution will be mailed to the Applicant and to any other person requesting a copy.

SECTION 11: This Resolution may be appealed within ten (10) calendar days after its adoption. All appeals must be in writing and filed with the City Clerk within this time period. Failure to file a timely written appeal will constitute a waiver of any right of appeal.

SECTION 12: Except as provided in Section 11, this Resolution is the Planning Commission's final decision and will become effective immediately upon adoption.

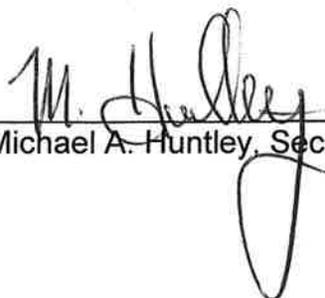
ADOPTED AND APPROVED this 13th day of March 2018.



Chairperson Larry Sullivan

I hereby certify that the foregoing Resolution was duly adopted by the Planning Commission of the City of Monterey Park at the regular meeting held on the 13th day of March 2018, by the following vote of the Planning Commission:

AYES: Commissioners Sullivan, Robinson, Amador, and Choi
NOES: Commissioner Brossy de Dios
ABSTAIN: None
ABSENT: None

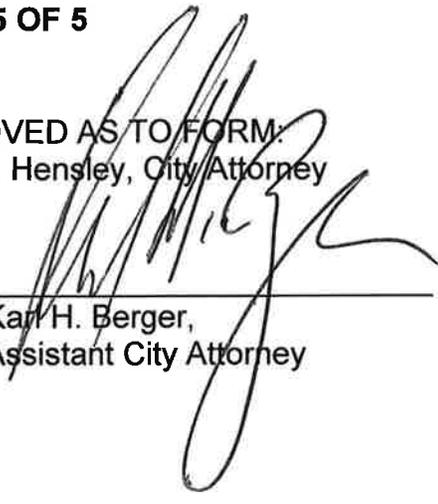


Michael A. Huntley, Secretary

**PLANNING COMMISSION
RESOLUTION NO. 04-18
PAGE 5 OF 5**

APPROVED AS TO FORM:
Mark D. Hensley, City Attorney

By:



Karl H. Berger,
Assistant City Attorney

PLANNING COMMISSION RESOLUTION NO. 04-18

Exhibit A

CONDITIONS OF APPROVAL

217 NORTH NICHOLSON AVENUE

In addition to all applicable provisions of the Monterey Park Municipal Code (“MPMC”), Angus Lin agrees that he will comply with the following conditions for approval of Tentative Map No. 82024 (TM-18-02) (“Project Conditions”).

PLANNING:

1. Angus Lin (the “Applicant”), agrees to indemnify and hold the City harmless from and against any claim, action, damages, costs (including, without limitation, attorney's fees), injuries, or liability, arising from the City’s approval of TM-18-02 except for such loss or damage arising from the City’s sole negligence or willful misconduct. Should the City be named in any suit, or should any claim be brought against it by suit or otherwise, whether the same be groundless or not, arising out of the City approval of TM-18-02, the Applicant agrees to defend the City (at the City’s request and with counsel satisfactory to the City) and will indemnify the City for any judgment rendered against it or any sums paid out in settlement or otherwise. For purposes of this section “the City” includes the City of Monterey Park’s elected officials, appointed officials, officers, and employees.
2. This approval is for the project as shown on the plans reviewed and approved by the Planning Commission and on file. Before the City issues a building permit, the Applicant must submit plans, showing that the project substantially complies with the plans and conditions of approval on file with the Planning and Building and Safety Division. Any subsequent modification must be referred to the Director of Community and Economic Development for a determination regarding the need for Planning Commission review and approval of the proposed modification.
3. The tentative map expires twenty-four months after its approval if the use has not commenced or if improvements are required, but construction has not commenced under a valid building permit. A total of three, one year, extensions may be granted by the Planning Commission upon finding of good cause. An application requesting an extension must be filed with the Community and Economic Development Department.
4. All conditions of approval must be listed on the plans submitted for plan check and on the plans for which a building permit is issued.
5. Before building permits are issued, the applicant must obtain all the necessary approvals, licenses and permits and pay all the appropriate fees as required by the City.

**PLANNING COMMISSION
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6. The real property subject to TM-18-02 must remain well-maintained and free of graffiti.
7. Building permits are required for any interior tenant improvements.
8. Landscaping/irrigation must be maintained in good condition at all times.
9. A final map must be approved and recorded before the City issues a certificate of occupancy.
10. All enclosed garage spaces must be used for off-street parking only. There cannot be any personal storage or conversion of this space that would prevent the parking of vehicles in the enclosed garage. This condition must be included in the conditions, covenants and restrictions ("CC&Rs") recorded for this property.

BUILDING:

11. The second sheet of the building plans must list all City of Monterey Park conditions of approval.
12. A building permit does not permit excavations to encroach into adjacent properties. Requirements for protection of adjacent properties are defined in Civil Code § 832.
13. The site plan must indicate the proposed path of building sewer, size of sewer line, location of cleanouts, and the invert elevation of the lateral at the property line.
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**PLANNING COMMISSION
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41. A minimum number of fire hydrants must be provided such that all points of all structures are within 600 feet of the structure. Show all existing and proposed fire hydrants on the site plan, per California Fire Code (CFC) Appendix C.
42. The front 150 feet of the driveway must be deemed a fire lane. The minimum width must be 18 feet. Appropriate signage must be provided. The fire lane must be shown on the plan submittal, per CFC § 503.1.

**PLANNING COMMISSION
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43. Address numbers must be provided on the street curb. Numerals must be 4 inches in height, two and one-half inches in width with a stroke width of approximately three-fourths inch. The house number must be centered on a six-inch by sixteen-inch rectangular background per MPMC § 13.17.050.

POLICE:

44. Adequate exterior lighting must be provided so that the units are visible from the street during the hours of darkness.

45. The shrubbery on the property must be installed and maintained in such condition to permit good visibility of the units from the streets. Any shrubbery surrounding the complex and in the courtyard areas must be planted and maintained where the height of the greenery would not easily conceal persons.

46. The driveway leading into the complex must be constructed and maintained in such a condition that traffic is easily visible to those entering or leaving the location.

47. Any outside ladders leading to the roof top must be secured to prevent unauthorized access to the roof.

48. Address number must be illuminated during hours of darkness and positioned as to be readily readable from the street.

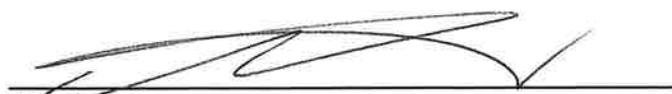
49. Each distinct unit within the building must have its address displayed on or directly above both the front and rear doors.

50. All common open areas must be well lit during the hours of darkness.

51. Signs must be posted at the guest parking areas and in the driveway leading into the complex.

52. A thoroughfare for residents, guests, and any necessary emergency vehicles and/or personnel must be maintained at all times. The Monterey Park Police Department Traffic Bureau must be contacted for sign verbiage and posting locations. The Traffic Bureau Sergeant can be reached at (626) 307-1481.

By signing this document, Angus Lin, certifies that the Applicant read, understood, and agrees to the Project Conditions listed in this document.



Angus Lin, Applicant

ATTACHMENT 4

Tentative Map No. 82024

ATTACHMENT 5

Draft Resolution

RESOLUTION NO. _____

A RESOLUTION APPROVING A ONE-YEAR EXTENSION OF TIME (EX-20-01) FOR TENTATIVE MAP NO. 82024 (TM-18-02) TO SUBDIVIDE AIR-RIGHTS FOR A 3-UNIT RESIDENTIAL CONOMINIUM DEVELOPMENT AT 217 NORTH NICHOLSON AVENUE.

The City Council of the City of Monterey Park does resolve as follows:

SECTION 1: The City Council finds as follows:

- A. On March 2, 2020, Jack Lee of Cal Lang Engineering, Inc., on behalf of the property owner, submitted an application pursuant to Title 20 of the Monterey Park Municipal Code ("MPMC") requesting approval of a one-year time extension for Tentative Map No. 82024 (TM-18-02) to subdivide air-rights for a three-unit residential development at 217 North Nicholson Avenue ("Project");
- B. The proposed Project was reviewed by the City Planner for, in part, consistency with the General Plan and conformity with the MPMC;
- C. The City reviewed the Project's environmental impacts under the California Environmental Quality Act (Public Resources Code §§ 21000, *et seq.*, "CEQA") and the regulations promulgated thereunder (14 California Code of Regulations §§ 15000, *et seq.*, the "CEQA Guidelines"); and
- D. The City Planner completed review and scheduled a public hearing regarding the proposed Project before the City Council for April 15, 2020, pursuant to Government Code § 66451.3.

SECTION 2: *Factual Findings and Conclusions.* Based upon the entire administrative record and the evidence provided during the public hearing, the City Council finds as follows:

- A. On March 13, 2018, the Planning Commission adopted Resolution No. 04-18 approving Tentative Map No. 82024 (TM-18-02); the tentative map is due to expire March 13, 2020;
- B. The Applicant seeks a one-year time extension to record the final map related to the construction of three new residential dwelling units and subdivide the air rights for condominium purposes. Applicant timey filed this written extension request on March 2, 2020;
- C. 217 North Nicholson Avenue is zoned R-3 (Density Residential) and designated High Density Residential (HDR) in the General Plan;
- D. The Project property is located at the mid-block of North Nicholson Avenue, between East Newmark Avenue and East Garvey Avenue. The properties located to the north, south, east, and west are R-3 zoned lots;

- E. The project site is rectangular shaped, relatively flat, has a frontage of 50 feet, and total lot area of 13,667 square feet (0.31 acres) in area and is currently developed with three older detached residential dwelling units; and
- F. The time extension is necessary to record the final map. The construction plans for the Project have gone through a second round of review. The grading plan and map have been submitted and are currently under review by the Engineering Division.

SECTION 3: *Environmental Assessment.* Because of the facts identified in Section 2 of this Resolution, the Project is categorically exempt from additional environmental review pursuant to CEQA Guidelines § 15315 as a Class 15 categorical exemption (Minor Land Divisions). The Project consists of the division of property in an urbanized area that is zoned for residential use. The Project conforms to the General Plan because, according to the Land Use Element, the Single-Family Residential land use category allows for low density residential units, traditionally single-family homes with one dwelling permitted per legal lot. The Project is the subdivision of air-rights for the construction of three two-story single-family residences. The project is consistent with zoning. Furthermore, the Project does not require any variances or exceptions, all services and access to the proposed parcels are available (to the City's standards), the parcel was not involved in a division of a larger parcel within the previous two years, and the parcel does not have an average slope greater than 20 percent.

SECTION 4: *Determination.* The City Council approves Time Extension (EX-20-01) for Tentative Map No. 82024 (TM-18-02) to March 13, 2021.

SECTION 5: *Reliance on Record.* Each and every one of the findings and determinations in this Resolution are based on the competent and substantial evidence, both oral and written, contained in the entire record relating to the Project. The findings and determinations constitute the independent findings and determinations of the City Council in all respects and are fully and completely supported by substantial evidence in the record as a whole.

SECTION 6: *Summaries of Information.* All summaries of information in the findings, which precede this section, are based on the substantial evidence in the record. The absence of any particular fact from any such summary is not an indication that a particular finding is not based in part on that fact.

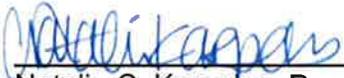
SECTION 7: *Notice.* The City Clerk is directed to provide a copy of this Resolution to the Planning Commission and any other person requesting a copy.

SECTION 8: *Effective Date.* This Resolution becomes effective immediately upon adoption and memorializes the City Council's final decision made on April 15, 2020. Note that persons dissatisfied with the City Council's decision may appeal it in accordance with application law to the Los Angeles Superior Court within 90 days of the City Council's decisions.

ADOPTED AND APPROVED this ____ day of April 2020.

Hans Liang, Mayor

APPROVED AS TO FORM:
MARK D. HENSLEY, City Attorney

By: _____
Natalie C. Karpeles, Deputy City Attorney



City Council Staff Report

DATE: April 15, 2020

AGENDA ITEM NO: Consent Calendar
Agenda Item 3-K.

TO: Honorable Mayor and Members of the City Council
FROM: Mark A. McAvoy, Director of Public Works/City Engineer/City Planner
SUBJECT: One-year Time Extension (EX-19-03) for Tentative Map No. 73622 (TM-15-05) to subdivide one lot into nine lots – 1585 Sombrero Drive.

RECOMMENDATION:

It is recommended that the City Council consider:

- (1) Adopting a resolution approving a Time Extension (EX-19-03) for Tentative Map No. 73622 (TM-15-05); and
- (2) Taking such additional, related, action that may be desirable.

EXECUTIVE SUMMARY:

On December 30, 2019, the property owner, Yaonan Duan of RCAM Investment Inc., submitted an application pursuant to Title 20 of the Monterey Park Municipal Code ("MPMC") requesting approval of a one-year time extension for Tentative Map No. 73622 (TM-15-05) to subdivide one lot into nine lots at 1585 Sombrero Drive ("Project"). Pursuant to MPMC § 20.10.020, the City Council "shall grant the extension and any subsequent extensions; provided, that it finds good cause for doing so and that such extensions do not exceed an aggregate of three years." It is recommended that the City Council determine whether good cause for the extension exists.

CEQA (California Environmental Quality Act):

The Project is categorically exempt from additional environmental review pursuant to CEQA Guidelines § 15332 as a Class 32 categorical exemption (In-Fill Development Projects) in that the project consists of the subdivision of land for the construction of new single-family dwelling units. The property is designated Low Density Residential in the General Plan Land Use Element. The proposed development will take place within city limits on a project site of no more than five acres substantially surrounded by urban uses. The project site has no value as habitat for endangered, rare or threatened species in that the property was formerly developed with a service station; furthermore, the construction of the proposed project will take place entirely upon the existing, developed lot. Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality in that the project is an in-fill project in an existing developed and urban area. Lastly, the site can be adequately served by all required utilities and public services.

BACKGROUND & DISCUSSION:

The applicant, Yaonan Duan of RCAM Investment Inc., is requesting a one-year time extension for Tentative Map No. 73622 (TM-15-05) to subdivide one lot into nine lots at 1585 Sombrero Drive. The property is zoned R-1 (Single-Family Residential) and is designated Low Density Residential (LDR) in the General Plan.

On April 24, 2018, the Planning Commission adopted Resolution No. 08-18 approving Tentative Map No. 73622 (TM-15-05). Once a tentative map is approved, the final map must be submitted and recorded before the tentative map expires; in this instance, the tentative map is due to expire April 24, 2020.¹ On December 30, 2019, the Applicant filed his written extension application with the City Planner; this action automatically extends the map for 60 days (*i.e.*, until June 23, 2020) or until the expiration application is approved, conditionally approved, or denied, whichever occurs first.²

According to Government Code § 66451.3(a), extension of an approved tentative map requires a public hearing before the City Council can consider making the findings to approve it. Pursuant to MPMC § 20.10.020, the City Council “shall” approve the request for the extension of an approved tentative map, in whole or in part, upon making the following findings:

1. There is good cause for granting the extension; and
2. In doing so, the total number of extensions granted will not exceed an aggregate of three years.

This is the first extension requested by the Applicant and it is only for a period of one year. If approved, Tentative Map No. 73622 (TM-15-05) will expire on April 24, 2021.

Respectfully submitted:

By:



for Mark A. McAvoy
Director of Public Works/City
Engineer/City Planner

Prepared by:



Samantha Tewart
Senior Planner

Approved by:



Ron Bow
City Manager

Reviewed by:



Natalie C. Karpeles
Deputy City Attorney

¹ See MPMC § 20.10.010

² Per Government Code § 66463.5(c)

Attachments:

- Attachment 1: Time extension letter, dated December 30, 2019
- Attachment 2: Planning Commission Staff Report, dated April 24, 2018
- Attachment 3: Planning Commission Resolution No. 08-18
- Attachment 4: Tentative Map No. 73622
- Attachment 5: Draft Resolution

ATTACHMENT 1

Time extension letter, dated December 30, 2019

RCAM Investment Inc.

108 Campanita Ct. Monterey Park, CA 91754

Tel: (626)940-6666, 310-993-2508(cell)

Samantha Tewart

Senior Planner

City of Monterey Park

320 West Newmark Ave. Monterey Park CA 91754-2896

Tel: (626)307-1315

www.MontereyPark.ca.gov

Dear Ms. Samantha,

Due to the restructure of internal shareholders and legal activities in our company, I need to submit an application to have extension on our Tentative Track Map No. 73622 which Planning Commission approved the project subject to Conditions of Approval on April 24, 2018.

If you have any questions, please contact me at (626)940-6666.

Sincerely yours,

Yaonan Duan

ATTACHMENT 2

Planning Commission Staff Report, dated February 13, 2018



Planning Commission Staff Report

DATE: April 24, 2018

AGENDA ITEM NO: 4-A

TO: The Planning Commission
FROM: Michael A. Huntley, Community and Economic Development Director
SUBJECT: A Public Hearing to consider Tentative Map No. 73622 (TM-15-04) to subdivide one lot into 9 lots – 1585 Sombrero Drive.

RECOMMENDATION:

It is recommended that the Planning Commission consider:

- (1) Opening the public hearing;
- (2) Receiving documentary and testimonial evidence;
- (3) Closing the public hearing;
- (4) Adopting the Resolution approving Tentative Map No. 73622 (TM-15-04) subject to conditions of approval; and
- (5) Taking such additional, related, action that may be desirable.

EXECUTIVE SUMMARY:

On February 13, 2018, the Planning Commission considered evidence presented at the August 11, 2015 meeting and supplemental information including the project geotechnical report that was reviewed and approved by the City's Engineering Division. The staff reports from the August 11, 2015 and February 13, 2018 meetings are attached for reference.

At the February 13th meeting, the Planning Commission had additional questions about the site drainage and alignment and angle of the private street, and continued the application to the March 27, 2018 meeting. At the March 26th meeting, the applicant requested a continuance of the application to the April 10th meeting to allow for additional time to address the matters and then requested another continuance on April 10th to the meeting of April 24, 2018.

Since the February 13th meeting, the applicant has been working with the City's Engineering Division to address the concerns raised by the Planning Commission. According to the Engineering Division, the initial conceptual design of the site drainage to Campanita Court is acceptable with the condition that a hydrology and hydraulic study and Low Impact Development (LID) report be submitted and approved prior to the recording of the final map.

With regards to the alignment and angle of the private street, the Engineering Division reviewed the conceptual grading and drainage plan and determined that the proposed

horizontal and vertical alignments of the driveway are acceptable. In terms of the horizontal alignment of the driveway approach, according to the grading and drainage plan, the driveway approach is approximately 56 feet wide. Each lane will be approximately 28 feet at the approach. The distance from the curb line to the edge of the driveway along the middle of the exiting lane (14 feet from the edge of the approach) is approximately 20.5 feet when it is measured perpendicular to Sombrero Drive. That distance will allow the car to be near perpendicular to the street at the edge of the curb before the car turns into Sombrero Drive. When the car is behind the curb and ready to turn into Sombrero Drive the cars coming down slope will be on the left hand side and cars coming upslope will be on the right hand side. The Los Angeles County code requires unobstructed viewing distance of 260 feet for streets with a 25 mile per hour (mph) speed limit. Based on the street configuration, the required viewing distance could be achieved. The side walls would not block car viewing due to their height and locations.

In terms of the vertical alignment (profile) of the up-sloping driveway, per Los Angeles County standards, the line of sight analysis is based on a car parked behind the curb line and the driver located 10 feet behind the curb line. The driveway is mostly a 15 percent slope. However, based on the conceptual grading plan (attached), the slope at the top of the driveway is relatively flat. From the curb line (flow line) toward the end of the cul-de-sac, the grade goes higher 4 feet long at an 8.33 percent slope, followed by 4 feet of sidewalk at a 2 percent up slope, then 10 feet of 5 percent down slope before the 15 percent descending slope. At 10 feet behind the curb (flow) line, the grade is slightly higher than the flow line grade. The transition slope provides an adequate flat surface at the top of the slope for the line of sight.

Based upon the information and analysis provided by the applicant, it is recommended that the Planning Commission adopt the draft resolution approving the application.

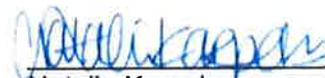
Respectfully submitted,


Michael A. Huntley
Community and Economic
Development Director

Prepared by:


Samantha Tewasart
Senior Planner

Reviewed by:


Natalie Karpeles
Deputy City Attorney

**Staff Report
Page 3**

Attachments:

Attachment 1: Draft Resolution

Attachment 2: Tentative Map No. 73622

**Attachment 3: Planning Commission Staff Report and Minutes, dated February
13, 2018**

**Attachment 4: Planning Commission Staff Report and Minutes, dated August 11,
2015**

Attachment 5: Project Geotechnical Report and Drainage and Grading Plan

ATTACHMENT 1

Draft Resolution

RESOLUTION NO.

A RESOLUTION APPROVING TENTATIVE MAP NO. 073622 (TM-15-04) TO SUBDIVIDE ONE LOT INTO 9 LOTS AT 1585 SOMBRERO DRIVE.

The Planning Commission of the City of Monterey Park does resolve as follows:

SECTION 1: The Planning Commission finds and declares that:

- A. On June 4, 2015, Yaonan Duan, submitted an application pursuant to Title 20 of the Monterey Park Municipal Code ("MPMC") requesting approval of Tentative Map No. 073622 (TM-15-04) to subdivide one lot into 9 lots at 1585 Sombrero Drive ("Project");
- B. The proposed Project was reviewed by the Community and Economic Development Department for, in part, consistency with the General Plan and conformity with the MPMC;
- C. In addition, the City reviewed the Project's environmental impacts under the California Environmental Quality Act (Public Resources Code §§ 21000, *et seq.*, "CEQA") and the regulations promulgated thereunder (14 California Code of Regulations §§ 15000, *et seq.*, the "CEQA Guidelines");
- D. The Community and Economic Development Department completed its review and scheduled a public hearing regarding the proposed Project, before the Planning Commission for August 11, 2015, February 13, 2018, and April 24, 2018. Notice of the public hearing on the proposed Project was posted and mailed as required by the MPMC;
- E. On August 11, 2015, February 13, 2018, and April 24, 2018 the Planning Commission held a public hearing to receive public testimony and other evidence regarding the proposed Project including, without limitation, information provided to the Planning Commission by City staff and public testimony, and representatives of the Applicant, Yaonan Duan; and
- F. This Resolution and its findings are made based upon the testimony and evidence presented to the Commission at its August 11, 2015, February 13, 2018, and April 24, 2018 hearing including, without limitation, the staff report submitted by the Community and Economic Development Department.

SECTION 2: *Factual Findings and Conclusions.* The Planning Commission finds that the following facts exist and makes the following conclusions:

- A. The Applicant seeks to subdivide one lot into 9 lots, in order to create 8 single-family lots and one private street;
- B. 1585 Sombrero Drive is zoned R-1 (Single-Family Residential) and designated Low Density Residential in the General Plan;

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RESOLUTION NO.
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- C. The Project property is located on the north side of Sombrero Drive, a local street with a 50-foot right-of-way. To property is surrounded to the north, south, east and west by single-family dwelling units with private yards;
- D. The Project property is 81,460 square feet (1.87 acres) in size and is currently a vacant hillside lot;
- E. Once the initial lot has been subdivided, the 9 proposed lots will range in size from 7,648 square feet to 9,554 square feet;
- F. There is no specific plan adopted for this area;
- G. There are no rare plants, wild animals nor cultural, historical or scenic aspects within the surrounding area, nor is the area located within a natural watershed or wildlife corridor;
- H. The site on which the property is located is not identified as hazardous site, and is not located in close proximity to any known health hazards; and
- I. There are no public easements for access within the proposed development.

SECTION 3: *Environmental Assessment.* A tentative map is not a project as defined by the California Environmental Quality Act (CEQA) Guidelines and therefore not subject to environmental review. A project is defined as "the whole of the action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." The construction of 8 residential dwelling units is categorically exempt from additional environmental review pursuant to CEQA Guidelines § 15332 as a Class 32 categorical exemption (Infill Development).

SECTION 4: *Tentative Map Findings.* The Commission finds as follows pursuant to Government Code § 66474 and MPMC Title 20:

- A. The proposed tentative map is consistent with applicable general and specific plans as required by Government Code § 66473.5. The tentative map for this project would allow for the construction of 8 single-family dwelling units once the lot is subdivided. According to the General Plan Low Density Residential land use category the allowed density is 0 to 8 dwelling units per acre or 1 dwelling unit per 5,445 square feet of lot area. The proposed site is almost two acres, but the proposed density will be half the density allowed by the Low Density Residential land use category. The property is located on Sombrero Drive, which is adequate in size and capacity to accommodate the anticipated traffic that will be generated by the proposed development. The proposed subdivision

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PAGE 3 OF 5**

and development are permitted in the R-1 zone and do not violate the City's minimum lot size and density requirements for this zone.

- B. The design or improvement of the proposed subdivision is consistent with the General Plan in that the project is located within the R-1 zoning district and meets all of the requirements of said district. The 9 lot subdivision project is compatible with the single-family dwelling units with private yards allowed in the low density residential category and is consistent with applicable provisions of the General Plan which envisions residential projects of this size on this site.
- C. The site is physically suitable for the type of development and the proposed density of the development. In the R-1 zone, one dwelling unit is allowed for every 6,000 square feet of lot area; the size of the property in question is 81,460 square feet (1.87 acres) and could theoretically accommodate about 14 homes. The project proposes the development of one dwelling on 8 of the subdivided lots. Therefore, the site is physically suitable for the type and density of the proposed development.
- D. The design of the subdivision or the proposed improvements is not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat. The subject property is bordered by residentially developed lots to the north, south, east, and west with no known fish or wildlife habitat in the vicinity. The property is not located within a natural watershed or wildlife corridor and therefore is not likely to disrupt environmentally sensitive areas outside of the immediate project area.
- E. The design of the subdivision or the type of improvements is not likely to cause serious public health problems, because the site on which the property is located is not identified as hazardous site, and is not located in close proximity to any known health hazards. The type of use of the property is to be residential, which is unlikely to result in serious health problems.
- F. The design of the subdivision or the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of, property within proposed subdivision. There are no existing accessible easements within the project area. The project, as approved, meets all residential development standards and the parcel map allows the lot to be subdivided into residential units.

SECTION 5: *Approval.* Subject to the conditions listed on the attached Exhibit "A," which are incorporated into this Resolution by reference, the Planning Commission approves Tentative Map No. 73622 (TM-15-04).

**PLANNING COMMISSION
RESOLUTION NO.
PAGE 4 OF 5**

SECTION 6: *Reliance on Record.* Each and every one of the findings and determinations in this Resolution are based on the competent and substantial evidence, both oral and written, contained in the entire record relating to the project. The findings and determinations constitute the independent findings and determinations of the Planning Commission in all respects and are fully and completely supported by substantial evidence in the record as a whole.

SECTION 7: *Limitations.* The Planning Commission's analysis and evaluation of the project is based on the best information currently available. It is inevitable that in evaluating a project that absolute and perfect knowledge of all possible aspects of the project will not exist. One of the major limitations on analysis of the project is the Planning Commission's lack of knowledge of future events. In all instances, best efforts have been made to form accurate assumptions. Somewhat related to this are the limitations on the City's ability to solve what are in effect regional, state, and national problems and issues. The City must work within the political framework within which it exists and with the limitations inherent in that framework.

SECTION 8: *Summaries of Information.* All summaries of information in the findings, which precede this section, are based on the substantial evidence in the record. The absence of any particular fact from any such summary is not an indication that a particular finding is not based in part on that fact.

SECTION 9: This Resolution will remain effective until superseded by a subsequent resolution.

SECTION 10: A copy of this Resolution will be mailed to the Applicant and to any other person requesting a copy.

SECTION 11: This Resolution may be appealed within ten (10) calendar days after its adoption. All appeals must be in writing and filed with the City Clerk within this time period. Failure to file a timely written appeal will constitute a waiver of any right of appeal.

SECTION 12: Except as provided in Section 11, this Resolution is the Planning Commission's final decision and will become effective immediately upon adoption.

ADOPTED AND APPROVED this 24th day of April 2018.

Chairperson Larry Sullivan

**PLANNING COMMISSION
RESOLUTION NO.
PAGE 5 OF 5**

I hereby certify that the foregoing Resolution was duly adopted by the Planning Commission of the City of Monterey Park at the regular meeting held on the 24th day of April 2018, by the following vote of the Planning Commission:

AYES:
NOES:
ABSTAIN:
ABSENT:

Michael A. Huntley, Secretary

APPROVED AS TO FORM:
Mark D. Hensley, City Attorney

By:



Natalie C. Karpeles,
Deputy City Attorney

PLANNING COMMISSION RESOLUTION NO.

Exhibit A

CONDITIONS OF APPROVAL

1585 SOMBRERO DRIVE

In addition to all applicable provisions of the Monterey Park Municipal Code ("MPMC"), Yaonan Duan agrees that he will comply with the following provisions as conditions for the City of Monterey Park's approval of Tentative Map No. 73622 (TM-15-04) ("Project Conditions").

PLANNING:

1. Yaonan Duan (the "Applicant"), agrees to indemnify and hold the City harmless from and against any claim, action, damages, costs (including, without limitation, attorney's fees), injuries, or liability, arising from the City's approval of TM-15-04 except for such loss or damage arising from the City's sole negligence or willful misconduct. Should the City be named in any suit, or should any claim be brought against it by suit or otherwise, whether the same be groundless or not, arising out of the City approval of TM-15-04, the Applicant agrees to defend the City (at the City's request and with counsel satisfactory to the City) and will indemnify the City for any judgment rendered against it or any sums paid out in settlement or otherwise. For purposes of this section "the City" includes the City of Monterey Park's elected officials, appointed officials, officers, and employees.
2. This approval is for the project as shown on the plans reviewed and approved by the Planning Commission and on file. Before the City issues a building permit, the Applicant must submit plans, showing that the project substantially complies with the plans and conditions of approval on file with the Planning and Building and Safety Division. Any subsequent modification must be referred to the Director of Community and Economic Development for a determination regarding the need for Planning Commission review and approval of the proposed modification.
3. The tentative map expires twenty-four months after its approval if the use has not commenced or if improvements are required, but construction has not commenced under a valid building permit. A total of three, one year, extensions may be granted by the Planning Commission upon finding of good cause. An application requesting an extension must be filed with the Community and Economic Development Department.
4. All conditions of approval must be listed on the plans submitted for plan check and on the plans for which a building permit is issued.

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5. Before building permits are issued, the applicant must obtain all the necessary approvals, licenses and permits and pay all the appropriate fees as required by the City.
6. The real property subject to TM-15-04 must remain well-maintained and free of graffiti.
7. Building permits are required for any interior tenant improvements.
8. Landscaping/irrigation must be maintained in good condition at all times.
9. A final map must be approved and recorded before the City issues a certificate of occupancy.
10. All enclosed garage spaces must be used for off-street parking only. There cannot be any personal storage or conversion of this space that would prevent the parking of vehicles in the enclosed garage. This condition must be included in the conditions, covenants and restrictions ("CC&Rs") recorded for this property.

BUILDING:

11. The second sheet of the building plans must list all City of Monterey Park conditions of approval.
12. A building permit does not permit excavations to encroach into adjacent properties. Requirements for protection of adjacent properties are defined in the California Civil Code §832.
13. The site plan must indicate the proposed path of building sewer, size of sewer line, location of cleanouts, and the invert elevation of the lateral at the property line.
14. A soils and geology report is required as part of plan check submittal.
15. Before the City issues a building permit, the applicant must obtain a permit from CAL-OSHA to construct the project.
16. The applicant must submit a compaction report for demolition of previous buildings to the Monterey Park Public Works Department for approval before the City allows the applicant to excavate new foundations.

ENGINEERING:

17. Under the Los Angeles County Municipal "National Pollutant Discharge Elimination System (NPDES) Permit," which the City of Monterey Park is a permittee; this project involves the distribution of soils by grading, clearing and/or excavation. The developer/owner is required to obtain a "General Construction

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Activity Storm Water” Permit, and the City of Monterey Park will condition a grading permit on evidence of compliance with this permit and its requirements. This project will require the preparation of a Low Impact Development (LID) and a Storm Water Pollution Prevention Plan (SWPPP). Upon approval of the NPDES document by the City, the applicant/property owner must submit an electronic copy of the approved NPDES file, including site drawings, before the City issues a building or grading permit.

18. The applicant must record the Final Map after the City approves the final map in accordance with the MPMC and accepts any applicable bonds or agreements. A refundable \$191 cash deposit must be submitted to guarantee that developer will provide the City with one (1) transparent 4 mil thick mylar tracing, one (1) electronic file of approved final map tracings transferable to City's AutoCAD and GIS systems and two (2) blueprints of the recorded map which must be filed with the City Engineer within three (3) months of recordation. If recorded copy is not submitted by the end of the three-month time period, developer will forfeit the \$191 cash deposit.
19. The applicant/property owner must provide written proof that there are no liens against the subdivision for unpaid taxes or special assessments and submit Los Angeles County tax bill, tax payment receipt, and copy of cancelled check before filing a Final Map with the City for approval.
20. The developer/owner is responsible for ascertaining and paying all City development fees such as, but not limited to, sewer deficiency fees, water meter fees and metered water service impact fees as required by the MPMC.
21. Covenants Conditions & Restrictions must be prepared and filed with the City to obtain City Attorney and the City Engineer approval. Developer/owner is responsible for securing the CC&R guidelines from the Office of the City Engineer. A copy of the recorded CC&Rs must be submitted before final inspection and clearance of the building permit.
22. All improvement plans, including grading and public improvement plans must be based upon City approved criteria. Benchmark references to be obtained from the Engineering Division.
23. A water plan must be submitted for review and approval by the City Engineer. This plan must substantiate adequate water service for domestic flow, fire flow and identify backflow prevention. If current fire flow and pressure tests are not available to substantiate adequate pressure and flow to serve the development, the developer is responsible for conducting the appropriate tests and submitting copies of the test results for review and ultimate approval by the City.
24. Water Division requirements are to be determined upon completion and submittal of a water meter sizing sheet by the applicant. This may include up sizing of

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water meter and water services. All upgrading costs are the responsibility of the property owner.

25. The domestic water demand should be provided to the City in the form of (Average Hourly Demand) and (Peak Hourly Demand). If it is determined that the surrounding infrastructure is inadequate to meet the additional demand of the project, the developer must provide recommendations to improve the system to a level needed to meet the additional demand. This should include hydraulic modeling and calculations supporting the recommendation. The proposed system improvements will be reviewed and validated by the City's Water Division and the City Engineer.
26. The applicant must provide survey monuments denoting the new property boundaries and lot lines to the satisfaction of the City Engineer. All maps must be prepared from a field survey. Compiled maps are not permitted unless prior approval is granted by the City Engineer. Whenever possible, lot lines must be located to coincide with the top of all man-made slopes. Any deviation from this requirement must be approved by the City Engineer.
27. The applicant must provide a site drainage plan for review and approval by the City Engineer. The property drainage must be designed so that the property drains to the public street or in a manner otherwise acceptable to the City Engineer. Drainage from contiguous properties must not be blocked and must be accommodated to the satisfaction of the City Engineer. A hydrology and hydraulic study of the site may be required for submittal to the City Engineer for review and approval.
28. All storm drainage facilities serving the development must accommodate a 50 year storm. If existing storm drain facilities are inadequate they must be enlarged as necessary. All storm drain facilities must be designed and constructed to Los Angeles County Department of Public Works standards and specifications and also the satisfaction of the City Engineer before approving grading and drainage plans.
29. A street lighting/photometric plans must be prepared for review and approved by the City Engineer. Streetlights must be installed along the frontage of the project site. The plans must be designed using Los Angeles County Standards.
30. Provide a street improvement plan for Sombrero Drive up to the street centerline. The street improvement must consist of pavement grinding and rubberized asphalt overlay and may require localized pavement repairs depending on the conditions of the streets. Construct new curb and gutter, main entry driveway, and 5-foot wide sidewalk. The improvements must be along the entire property frontage as approved by the City Engineer.

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RESOLUTION NO.**

31. Landscaping and irrigation plans must be prepared and all parkway tree types must be reviewed and approved by the City Parks Division.
32. All public works improvements must comply with the standards and specifications of the City and to the satisfaction of the City Engineer. All public works improvements must be completed and accepted by the City or a public works improvement guarantee and agreement posted before final map approved by the City Council.
33. All electric, telephone and cable TV utility services must be installed fully underground and to required City standards. Satisfactory provisions for all other utilities and service connections, including water, sewer and gas, shall be made to City and public utility standards. A utility plan must be prepared and submitted showing all existing and proposed utilities. The utilities may be shown on either a separate plan or on the proposed site plan.
34. Provide a Sewer Study for existing sewer contributory flow and sewer connection. If it is determined that the surrounding infrastructure is inadequate to meet the additional demand of the project, the developer must provide recommendations to improve the system to a level needed to meet the additional demand. A sewer connection reconstruction fee will be assessed at the time of issuance of a building permit in accordance with the provisions of Chapter 14.06 of the Monterey Park Municipal Code (MPMC).
35. Construct wheelchair ramp(s) in the curb return at the street intersection (main driveway entrance).
36. All buildings must have roof gutters and all roof drainage must be conducted to the public street or an approved drainage facility in a manner approved by the City Engineer.
37. Modify and/or correction the tentative map in accordance with the adopted conditions of approval of the tentative map and specific criteria noted by the City Engineer. Verify the drainage pattern of adjacent properties.

FIRE:

38. All conditions identified by the Fire Department are subject to the review and approval of the Fire Chief for determination of applicability and extent to which any condition may be required.
39. All structures must be fully sprinkler per the National Fire Protection Association (NFPA) 13D and local amendments.
40. Fire flow for entire project is 1,500 gpm at 20 psi for 2 hour duration. Verification of water supply available must be provided by the water purveyor upon building plan submittal. A reduction in the required fire flow up to 50 percent is allowed by

**PLANNING COMMISSION
RESOLUTION NO.**

a written request to the Monterey Park Fire Department ("MPFD") per California Fire Code (CFC) Appendix B/C.

41. A written request must be made to the MPFD for fire lane grade greater than 10 percent per CFC D103.2.
42. Fire hydrants must be provided to ensure all points of all structures are within 600 feet of a hydrant. Hydrants must be in place and operational before construction commencing per CFC 507.5.1.
43. All curbs must be painted red to indicate no parking allowed per CFC Appendix D103.6.1.
44. Address numbers must be provided on the street curb. Numerals must be 4 inches in height, two and one-half inches in width with a stroke width of approximately $\frac{3}{4}$ inches. The house number must be centered on a 6-inch by 16-inch rectangular background per MPMC § 13.17.050.

POLICE:

45. Adequate exterior lighting must be provided so that the units are visible from the street during the hours of darkness.
46. Address number must be illuminated during hours of darkness and positioned as to be readily readable from the street. Numbers must be at least 12 inches in height.
47. All common open areas must be well lit during the hours of darkness.

By signing this document, Yaonan Duan, certifies that the Applicant read, understood, and agrees to the Project Conditions listed in this document.

Yaonan Duan, Applicant

ATTACHMENT 2

Tentative Map No. 73622

ATTACHMENT 3

Planning Commission Staff Report and Minutes, dated February 13, 2018



Planning Commission Staff Report

DATE: February 13, 2018

AGENDA ITEM NO: 4-A

TO: The Planning Commission
FROM: Michael A. Huntley, Community and Economic Development Director
SUBJECT: A Public Hearing to consider Tentative Map No. 73622 (TM-15-04) to subdivide one lot into 9 lots – 1585 Sombrero Avenue.

RECOMMENDATION:

It is recommended that the Planning Commission consider:

- (1) Opening the public hearing;
- (2) Receiving documentary and testimonial evidence;
- (3) Closing the public hearing;
- (4) Adopting the Resolution approving Tentative Map No. 73622 (TM-15-04) subject to conditions of approval; and
- (5) Taking such additional, related, action that may be desirable.

CEQA (California Environmental Quality Act)

The proposed project is categorically exempt from the provision of the California Environmental Quality Act (CEQA) per CEQA Guidelines § 15332 (Class 32 – In-fill Development), because the project consists of the subdivision of land for the construction of new single-family dwelling units.

EXECUTIVE SUMMARY:

The applicant, Yaonan Duan, is requesting approval of a Tentative Map to subdivide one lot into 9 lots at 1585 Sombrero Drive ("Project Site").

On August 11, 2015, this application was presented to the Planning Commission for review and approval. At the meeting the Planning Commission expressed concerns about the slope stability and continued the application to October 13, 2015. On October 13, 2015, the applicant requested to continue the application to a date uncertain to allow for additional time to address the concerns. After a lengthy review between the project engineering firm, EGL Associates, and the City's Engineering Division, the project Geotechnical Report was approved and the application is brought back to the Planning Commission for review.

Extensive slope stability analysis has been conducted per the City's request. The analyses were conducted on a per lot basis, and were conducted on the most critical conditions of temporary cut and permanent building conditions. In order to maintain necessary slope stability, the geotechnical report requires that caissons be installed and that the built up slope include geogrids to stabilize the temporary and permanent slopes.

In summary, according to the Geotechnical Report, the proposed slopes with building loads were analyzed on a lot-by-lot basis. The upper slopes will be constructed with shoring piles a minimum of 2 feet in diameter and spaced 4 feet on center. The shoring will be designed as permanent structures to support the fill left in place and the new proposed fill. The shoring is designed for the lateral load capacities. A geogrid system will be used on the upper slope. The geogrid system will be placed every 2 feet vertical up to 3 feet below the bottom of the footings, or 5 feet below the proposed pad grade, whichever is deeper, and extend the entire width and length of the compacted fill. Any future excavations on any lot must be reviewed on a lot-by-lot basis. The geogrid placement is to be separate from the retaining walls construction and does not need to tie into the walls. Based on the results of the slope stability analyses the stabilization of the lower and upper slopes is possible utilizing geogrid and piles.

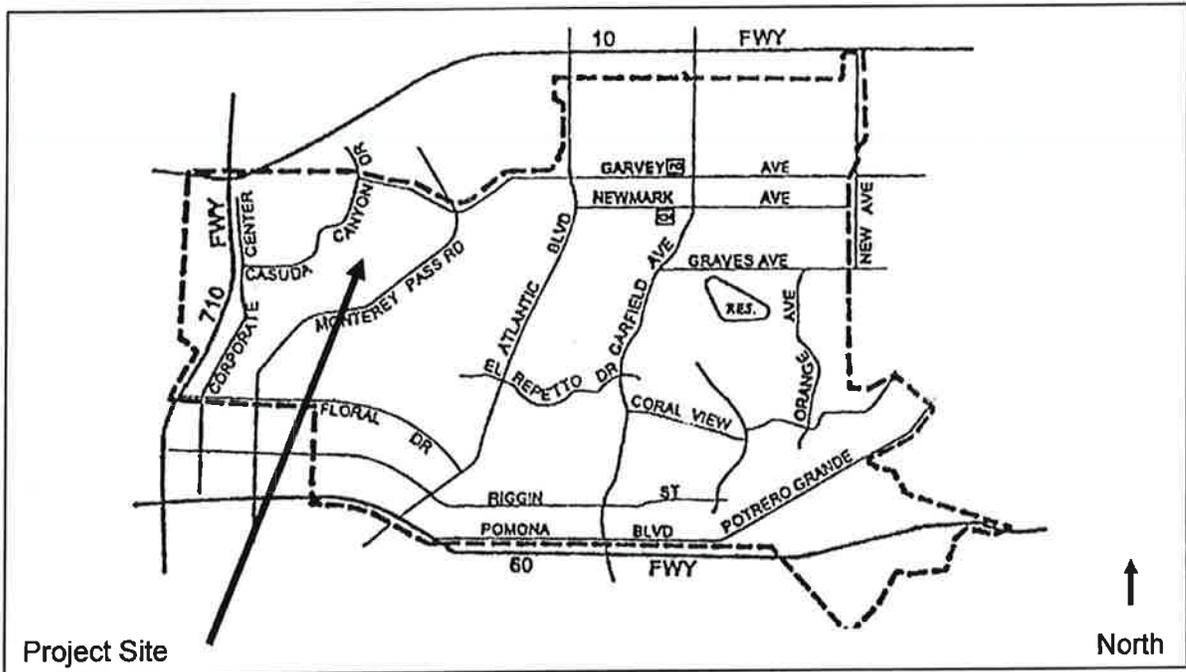
Additionally, on December 2017, the applicant hosted an outreach meeting to discuss the Geotechnical Report with the adjacent properties. Notices about the meeting were mailed to the properties located within 300 feet of the subject property. According to the applicant, eleven people were in attendance.

Overall, the scope of the project has not changed since the August 11, 2015 meeting. The design and project layout are the same. Staff has included the August 11, 2015 Planning Commission staff report for reference. The only new information presented to the Planning Commission is the approved Geotechnical Report. The proposed project meets the City's zoning regulations and development standards. The Low Density Residential land use allows traditional single-family homes, with one dwelling unit permitted per legal lot. Residences in this category consist generally of single-family detached houses with private yards. The subject property is currently a vacant hillside lot. The existing developments on Sombrero Drive include single-family dwellings many of which were constructed in the 1960s.

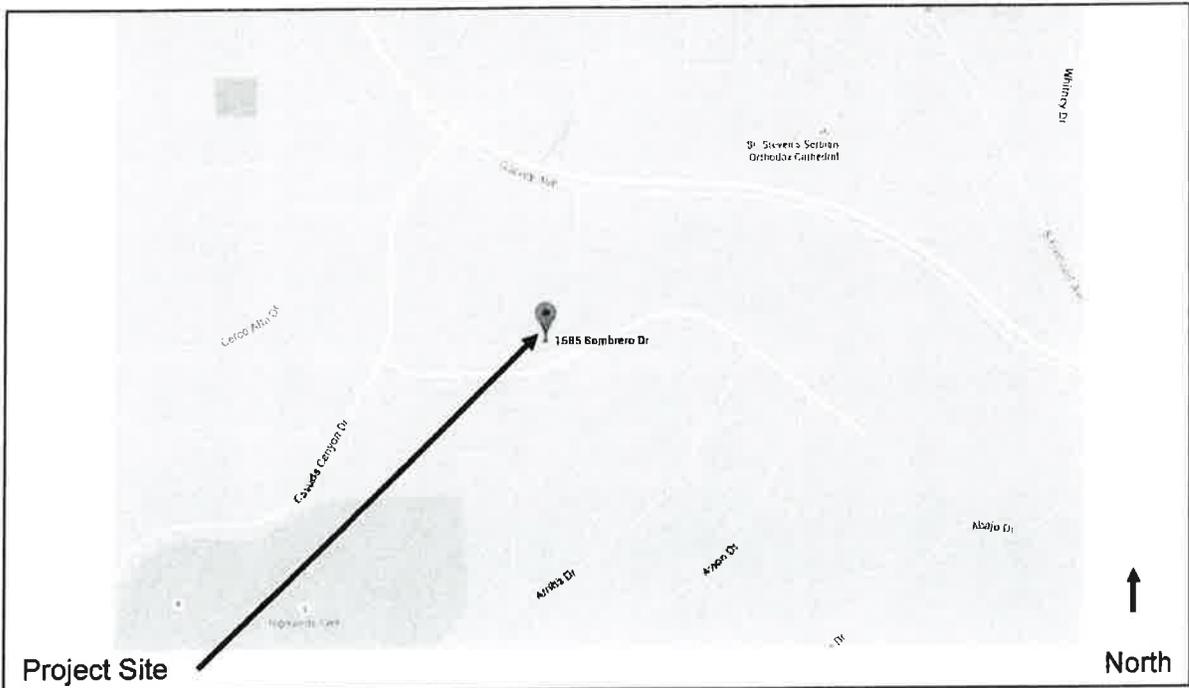
Legal Notification

The legal notice of this hearing was posted at the subject site, City Hall, Monterey Park Bruggemeyer Library, and Langley Center on **January 16, 2018** and published in the Wave on **January 25, 2018**, with affidavits of posting on file. The legal notice of this hearing was mailed to **152** property owners within a 300 foot radius and current tenants of the property concerned on **January 16, 2018**.

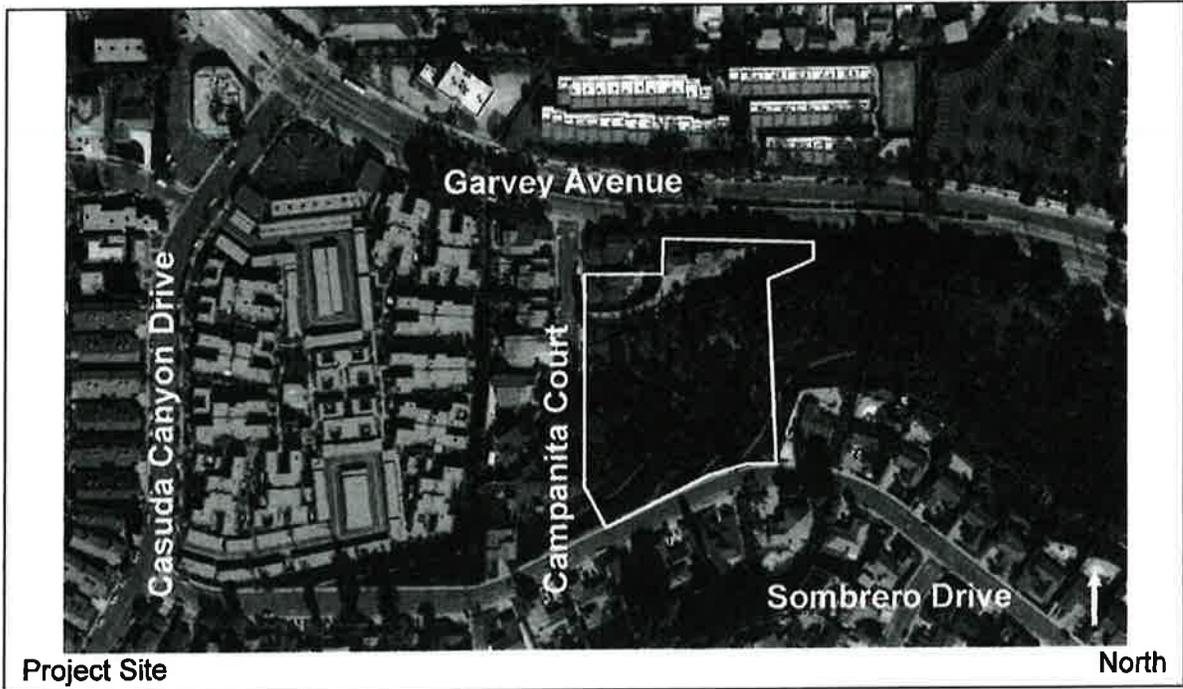
Vicinity Map



Street Map



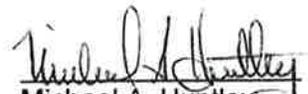
Aerial Map



FISCAL IMPACT:

There may be an increase in property tax revenue as a result of the project, but the exact amount would be speculative.

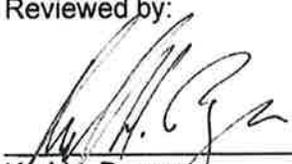
Respectfully submitted,


Michael A. Huntley
Community and Economic
Development Director

Prepared by:


Samantha Tewasart
Senior Planner

Reviewed by:


Karl H. Berger
Assistant City Attorney

**Staff Report
Page 5**

Attachments:

Attachment 1: Draft Resolution

Attachment 2: Tentative Map No. 73622

Attachment 3: Planning Commission Staff Report, dated August 11, 2015

Attachment 4: Planning Commission Minutes, dated August 11, 2015

Attachment 5: Project Geotechnical Report

**OFFICIAL MINUTES
MONTEREY PARK PLANNING COMMISSION
REGULAR MEETING
FEBRUARY 13, 2018**

The Planning Commission of the City of Monterey Park held a regular meeting of the Board in the Council Chambers, located at 320 West Newmark Avenue in the City of Monterey Park, Tuesday, February 13, 2018 at 7:00 p.m.

CALL TO ORDER:

Chairperson Larry Sullivan called the Planning Commission meeting to order at 7:00 p.m.

ROLL CALL:

Planner Tewasart called the roll:

Board Members Present: Larry Sullivan, Delario Robinson, and Eric Brossy De Dios

Board Members Absent: Theresa Amador and Ricky Choi

ALSO PRESENT: Karl H. Berger, Assistant City Attorney, Michael A. Huntley, Director of Community and Economic Development, Samantha Tewasart, Senior Planner

AGENDA ADDITIONS, DELETIONS, CHANGES AND ADOPTIONS: None

ORAL AND WRITTEN COMMUNICATIONS: None

[1.] PRESENTATIONS: None

[2.] CONSENT CALENDAR:

January 9, 2018 –

Action Taken: The Planning Commission approved the minutes of January 9, 2018 with amendments.

Motion: Moved by Commissioner Brossy de Dios and seconded by Commissioner Robinson, motion carried by the following vote:

Ayes: Commissioners: Sullivan, Robinson, and Brossy de Dios

Noes: Commissioners: None

Absent: Commissioners: Amador and Choi

Abstain: Commissioners: None

[3.] PUBLIC HEARING:

3-A VARIANCE (V-17-01) TO EXCEED THE MAXIMUM ALLOWED FLOOR AREA RATIO FROM 35 PERCENT TO 40 PERCENT OF THE LOT AREA – 1881-1891 WEST ROCK VIEW COURT

Planner Tewasart provided a brief summary of the staff report.

MISSION STATEMENT

The mission of the City of Monterey Park is to provide excellent services to enhance the quality of life for our entire community

Chairperson Sullivan opened the public hearing.

Applicant Jose Murguia, 601 South 3rd Avenue, Montebello, CA 90640, was present to speak on the project, on behalf of the property owner Jose Saavedra. Applicant Murguia stated that the two separate lots would allow for floor area ratio of 40 percent and combining the lots would allow for 35 percent. Other cities allow for a 60 percent floor area ratio.

Chairperson Sullivan stated that in Monterey Park larger developments are kept proportional to surrounding properties. If a variance is granted to one property, others may want the same.

Speaker Roche McCoy, 1380 Rock Haven Street, Monterey Park, Mr. Saavedra is 89 years old. He has lived in Monterey Park since 1969 and it has been his dream to buy the house. Part of the reason for the variance is that the hallways, stairways, and rooms are a little bit wider because of his age and an elevator will be put in. The extra 5 percent made a big difference in the plans. The house will not block anyone's views.

Speaker Min Kam, 1901 West Rock View Court, Monterey Park, many of the existing homes in the area was built in the 1950s and they really enjoy the area. He expressed concerns about the project being out of character of the other properties in the area.

Chairperson Sullivan closed the public hearing.

Commissioner Brossy de Dios stated that this is a single-family dwelling area and there is a code to follow and there does not appear to be a compelling reason other than the needs of the property owner to grant a variance at this time.

Commissioner Robinson stated that there are strict guidelines to what can done and what cannot be done. There is a code and there does not appear to be a hardship to grant the variance.

Chairperson Sullivan concurred that there does not appear to be a compelling reason to grant the variance.

Action Taken: The Planning Commission after considering the evidence presented during the public hearing **denied** the requested variance for 1881-1891 Rock View Court.

Motion: Moved, by Commissioner Robinson and seconded by Commissioner Brossy de Dios, motion carried by the following vote:

Ayes: Commissioners: Sullivan, Robinson, and Brossy de Dios
Noes: Commissioners: None
Absent: Commissioners: Amador and Choi
Abstain: Commissioners: None

MISSION STATEMENT

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3-B TENTATIVE MAP NO. 78241 (TM-18-01) TO ALLOW FOR THE SUBDIVISION OF AIR-RIGHTS TO ESTABLISH AND MAINTAIN A 2-UNIT RESIDENTIAL CONDOMINIUM CONVERSION DEVELOPMENT IN THE R-2 (MEDIUM DENSITY RESIDENTIAL) ZONE – 417 NORTH SIERRA VISTA AVENUE

Planner Tewasart provided a brief summary of the staff report.

Chairperson Sullivan opened the public hearing.

Speaker Francisco Alonso, 415 North Sierra Vista Street #C, stated that he is neutral and does not have any objections.

Chairperson Sullivan closed the public hearing.

Commissioner Brossy de Dios inquired about the open space requirement. Director Huntley replied that the project went through the plan checking process as well as the Design Review Board and the requirements were reviewed and met.

Action Taken: The Planning Commission after considering the evidence presented during the public hearing **approved** the requested tentative map for 417 North Sierra Vista Avenue.

Motion: Moved, by Commissioner Brossy de Dios and seconded by Commissioner Robinson, motion carried by the following vote:

Ayes: Commissioners: Sullivan, Robinson, and Brossy de Dios
Noes: Commissioners: None
Absent: Commissioners: Amador and Choi
Abstain: Commissioners: None

[4.] OLD BUSINESS:

4-A TENTATIVE MAP NO. 73622 (TM-15-04) TO ALLOW FOR A ONE LOT SUBDIVISION INTO 9-LOTS IN THE R-1 (LOW DENSITY RESIDENTIAL) ZONE – 1585 SOMBRERO DRIVE

Planner Tewasart provided a brief summary of the staff report.

Chairperson Sullivan opened the public hearing.

Architect Edel Vera, 3125 Andrita Street, Los Angeles, CA 90065 stated that they have been working diligently with the civil and soils engineers to try to accommodate all the concerns from the previous meeting.

Commissioner Brossy de Dios inquired about the alignment of the private streets and expressed concerns about the angle of the upper private street and how it ties into Sombrero Drive at a rather acute angle. Architect Vera replied that in order to maintain visibility at that point they tried to keep the structures away from the street and intersection.

MISSION STATEMENT

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Commissioner Brossy de Dios inquired why the driveway was not move further east for a more perpendicular entrance. Architect Vera replied that the property currently has a dirt access and they are following the existing contours to minimize the grading.

Commissioner Brossy de Dios inquired about the approach to stormwater. Architect Vera replied that everything will be collected along Sombrero and discharged underground through piping onto the Campanita right-of-way. Commissioner Brossy de Dios inquired about the stormwater line and whether it will be outletted through a parkway drain to the gutter. Architect Vera replied that there will be an easement and they are still working on the SUMP and LID requirements to percolate as much as much as possible. This will be left over storm drainage from the upper side of the project.

Speaker Charlie Cai, 125 Campanita Court, Monterey Park, stated that he is an adjacent neighbor and is in support of the development. The existing property has been an empty lot of years and is dirty and unsafe. They understand the stability of the soil.

Speaker Rich Chow, 1536 Sombrero Drive, Monterey Park, expressed concerns about the stability of the soil. In the past year the property has slightly shifted and there are cracks in the structure. There is definitely some movement in the land there. By creating more building or development there it is going to change the integrity of the slope. He also expressed concerns about the entry on Sombrero.

Chairperson Sullivan closed the public hearing.

Action Taken: The Planning Commission after considering the evidence presented during the public hearing **continued** the requested tentative map for 1585 Sombrero the regularly scheduled of March 27, 2018.

Motion: Moved, by Commissioner Robinson and seconded by Commissioner Brossy de Dios, motion carried by the following vote:

Ayes: Commissioners: Sullivan, Robinson, and Brossy de Dios
Noes: Commissioners: None
Absent: Commissioners: Amador and Choi
Abstain: Commissioners: None

[5.] NEW BUSINESS: None.

[6.] COMMISSION COMMUNICATIONS AND MATTERS: None

[7.] STAFF COMMUNICATIONS AND MATTERS:

Director Huntley provided an update on projects.

ADJOURNMENT:

There being no further business for consideration, the Planning Commission meeting was adjourned at 8:01 p.m.

MISSION STATEMENT

The mission of the City of Monterey Park is to provide excellent services to enhance the quality of life for our entire community

Next regular scheduled meeting on February 27, 2018 at 7:00 p.m. in the Council Chambers.

Michael A. Huntley
Director of Community and Economic Development

MISSION STATEMENT
The mission of the City of Monterey Park is to provide excellent services to enhance
the quality of life for our entire community

ATTACHMENT 4

Planning Commission Staff Report and Minutes, dated August 11, 2015



Planning Commission Staff Report

DATE: August 11, 2015

AGENDA ITEM NO: 2-B

TO: The Planning Commission
FROM: Michael A. Huntley, Community and Economic Development Director
SUBJECT: A Public Hearing to consider Tentative Map No. 073622 (TM-15-04) to subdivide one lot into 9 lots – 1585 Sombrero Avenue.

RECOMMENDATION:

It is recommended that the Planning Commission consider:

- (1) Opening the public hearing;
- (2) Receiving documentary and testimonial evidence;
- (3) Closing the public hearing;
- (4) Adopting the Resolution approving Tentative Map No. 073622 (TM-15-04) subject to conditions of approval; and
- (5) Taking such additional, related, action that may be desirable.

EXECUTIVE SUMMARY:

The applicant, Yaonan Duan, seeks a Tentative Map to subdivide one lot into 9 lots at 1585 Sombrero Drive ("Project Site").

The proposed project meets the City's zoning regulations and development standards. The Low Density Residential land use allows traditional single-family homes, with one dwelling unit permitted per legal lot. Residences in this category consist generally of single-family detached houses with private yards. The subject property is currently a vacant hillside lot. The existing developments on Sombrero Drive include single-family dwellings many of which were constructed in the 1960s.

Property Description

The project site is located on the north side of Sombrero Drive. The property is zoned R-1 (Single-Family Residential) and designated Low Density Residential in the General Plan. To the north, south, east, and west of the property are R-1 zoned lots. The project site has a frontage of 470.13 feet and an average depth of 247.05 feet, with a total lot area of 81,460 square feet (1.87 acres) in size.

Project Description

The proposed project is the subdivision of one lot into 9 lots. The subdivision will create 8 new residential lots and the 9th lot will be a private street. The new lots will range in area: Lot 1 (7,998 square feet); Lot 2 (7,648 square feet); Lot 3 (9,345 square feet); Lot 4 (9,067 square feet); Lot 5 (9,167 square feet); Lot 6 (9,339 square feet); Lot 7 (9,239 square feet); Lot 8 (9,554 square feet); and Lot 9 (private street). All of the proposed lots exceed the minimum lot area of 6,000 square feet.

Lot 1 will be constructed with a 2,998 square feet single-family dwelling with 4 bedrooms and an attached two-car garage. Lot 2 will be constructed with a 2,963 square feet single-family dwelling with 4 bedrooms and an attached 2-car garage. Lot 3 will be constructed with a 3,558 square feet single-family dwelling with 5 bedrooms and an attached 3-car garage. Lot 4 will be constructed with a 3,619 square feet single-family dwelling with 5 bedrooms and an attached 3-car garage. Lot 5 will be constructed with a 2,966 square feet single-family dwelling with 4 bedrooms and an attached 2-car garage. Lot 6 will be constructed with a 2,961 square feet single-family dwelling with 4 bedrooms and an attached 2-car garage. Lot 7 will be constructed with a 2,988 square feet single-family dwelling with 4 bedrooms and an attached 2-car garage. Lot 8 will be constructed with a 2,991 square feet single-family dwelling with 4 bedrooms and an attached 2-car garage.

The proposed dwelling units will meet the required front and rear setback of 25 feet, with 5-foot side setback for the first floor, and 10-foot side setback for the second floor. Each unit will be two stories, with a maximum height of 28 feet or less. The project complies with R-1 development standards.

Pursuant to Monterey Park Municipal Code (MPMC) § 21.22.050, a single-family dwelling that is less than 3,000 square feet require 2 enclosed garage spaces. A single-family dwelling that is greater than 3,000 square feet requires 3 enclosed garage spaces. Each enclosed parking space will have a minimum width of 9 feet and a minimum depth of 20 feet. The project site will be accessible from two driveways – three of the lots will be accessible from 108 Campanita Court and 4 of the lots will be accessible from Sombrero Drive.

The 9-lots will be regulated by CC&Rs and maintained by a Homeowner's Association. The project will provide 3.5 feet wide dedication on Sombrero Drive to allow for the construction of a new 5 feet wide sidewalk. Additionally, a 6 feet wide easement will be provided for planting and public utility purposes.

OTHER ITEMS:

Legal Notification

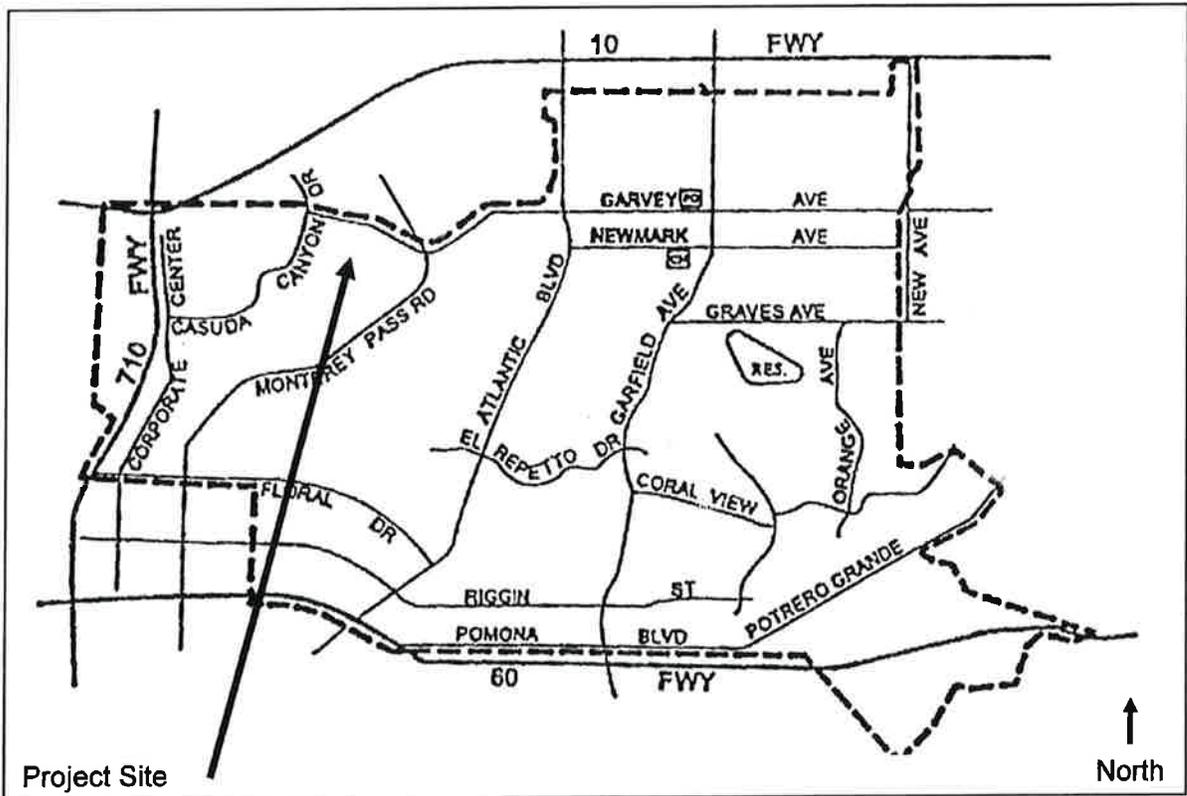
The legal notice of this hearing was posted at the subject site, City Hall, Monterey Park Bruggemeyer Library, and Langley Center on **July 24, 2015** and published in the Wave on **July 30, 2015**, with affidavits of posting on file. The legal notice of this hearing was

mailed to 152 property owners within a 300 foot radius and current tenants of the property concerned on July 27, 2015.

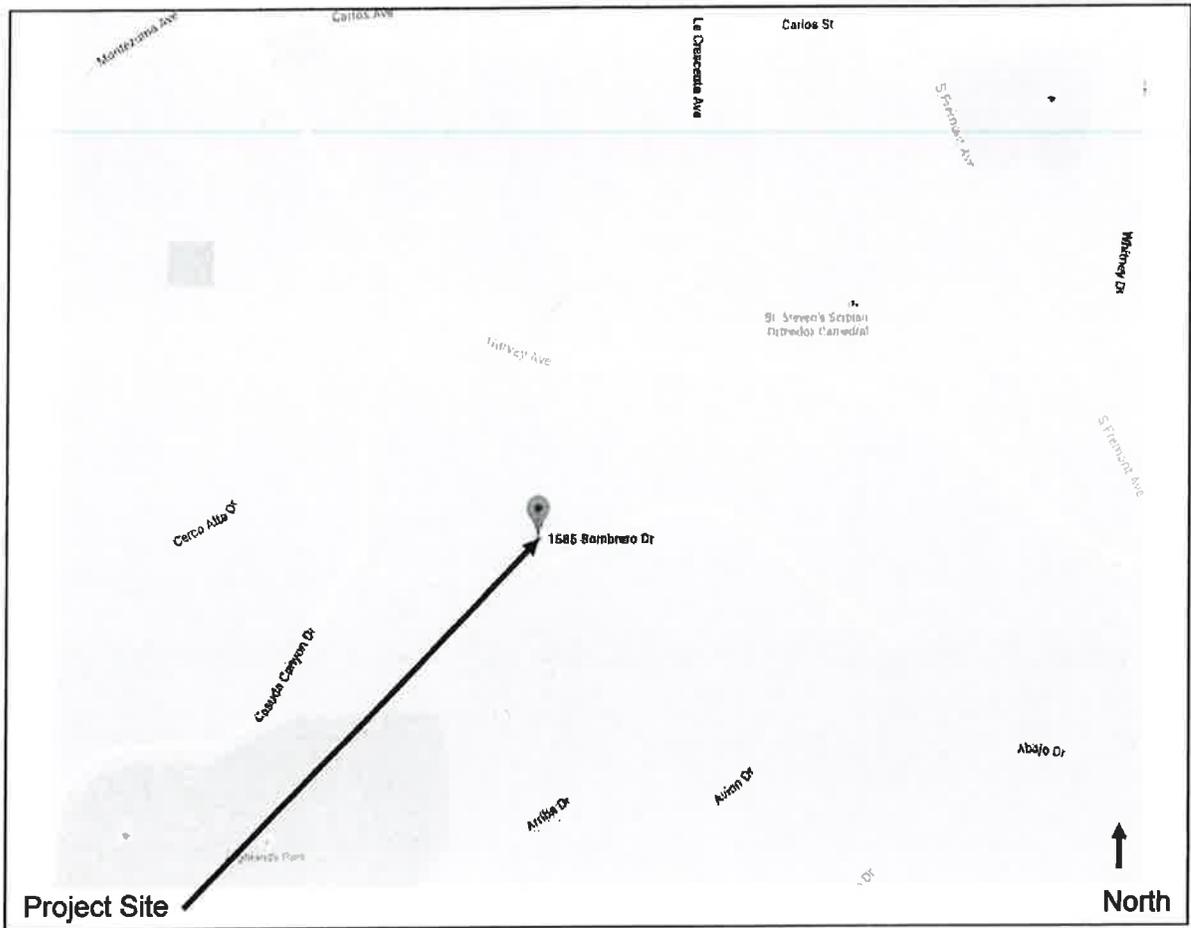
Environmental Assessment

The Project is categorically exempt from additional environmental review pursuant to CEQA Guidelines § 15332 as a Class 32 categorical exemption (In-fill Development).

Vicinity Map



Street Map



Aerial Map



ALTERNATIVE COMMISSION CONSIDERATIONS:

None recommended. The proposed action is review of a tentative map only; no other discretionary review is proposed.

FISCAL IMPACT:

There may be an increase in property tax revenue as a result of the project, but the exact amount would be speculative.

Respectfully submitted,

Michael A. Huntley
Community and Economic
Development Director

Prepared by:

Reviewed by:

Samantha Tewasart
Senior Planner



Karl H. Berger
Assistant City Attorney

Attachments:

Exhibit A: Draft Resolution

Exhibit B: Site, floor, elevation plans and Tentative Map

**OFFICIAL MINUTES
MONTEREY PARK PLANNING COMMISSION
REGULAR MEETING
AUGUST 11, 2015**

The Planning Commission of the City of Monterey Park held a Regular Meeting of the Board in the Council Chambers, located at 320 West Newmark Avenue in the City of Monterey Park, Tuesday, August 11, 2015 at 7:00 p.m.

CALL TO ORDER:

Chairperson Garcia called the meeting to order at 7:00 p.m.

ROLL CALL:

Planner Tewasart called the roll:

Commissioners Present: Rodrigo Garcia, Ricky Choi, Larry Sullivan, Margaret Leung, Lincoln Lee

Commissioners Absent: None

ALSO PRESENT: Karl H. Berger, Assistant City Attorney, Michael A. Huntley, Director of Community and Economic Development, Samantha Tewasart, Senior Planner

ORAL AND WRITTEN COMMUNICATIONS:

None

AGENDA CHANGES AND ADOPTION:

None

APPROVAL OF MINUTES:

None

PUBLIC HEARING:

None

OLD BUSINESS:

None

NEW BUSINESS:

2-A. TENTATIVE MAP NO. 073487 – 418 SOUTH RUSSELL AVENUE (TM-15-03)

The applicant, Frances Tran, seeks a Tentative Map to subdivide air right to establish and maintain a 2-unit condominium conversion project at 418 South Russell Avenue.

Planner Tewasart provided a brief summary of the staff report.

Commissioner Sullivan inquired rather these condominium units will be sold at market price. Planner Tewasart replied yes.

Chair Garcia opened public hearing.

Chair Garcia closed public hearing.

Commissioner Sullivan stated that there is a discrepancy between the architectural plan and site plan. Planner Tewasart stated that the architectural plan is accurate.

Action Taken: The Planning Commission after considering the evidence presented during the public hearing adopted **Resolution No. 14-15** approving Tentative Map No. 073487 (TM-15-03) to allow the subdivide air right to establish and maintain a 2-unit condominium conversion project at 418 South Russell Avenue in the R-2 (Medium Density Residential) Zone.

Resolution No. 14-15, entitled:

A RESOLUTION APPROVING TENTATIVE MAP NO. 073487 (TM-15-03) TO ALLOW THE SUBDIVISION OF AIR RIGHTS TO ESTABLISH AND MAINTAIN A CONDOMINIUM CONVERSION PROJECT AT 418 SOUTH RUSSELL AVENUE.

Motion: Moved by Commissioner Lee and seconded by Commissioner Choi, motion carried by the following vote:

Ayes: Commissioners: Garcia, Choi, Lee, Leung, and Sullivan

Noes: Commissioners: None

Absent: Commissioners: None

Abstain: Commissioners: None

2-B TENTATIVE MAP NO. 073622 – 1585 SOMBRERO DRIVE (TM-15-04)

The applicant, Yaonan Duan, seek a Tentative Map to subdivide one lot into 9 lots at 1585 Sombrero Drive ("Project Site").

Planner Tewasart provided a brief summary of the staff report.

Commissioner Lee inquired rather this is a gated community. Planner Tewasart replied yes.

Commissioner Leung asked if streetlights will be install on the new street. Planner Tewasart replied that it is required by public works to install streetlights.

Commissioner Choi asked if this property had always been vacant in the past. Planner Tewasart replied yes.

Chair Garcia inquired rather the staff had looked at the soil report for this project. Planner Tewasart replied that the public works staff is currently reviewing the geotechnical report.

Chair Garcia opened public hearing.

Applicant Representative, Hank Jong, stated that the applicant hired a licensed soil engineer to conduct the soil report and they will follow the condition stated in the report.

Commissioner Lee asked if section CC, with 3 tiers of retaining wall, has the worst soil condition on the site. Representative Jong replied yes and stated that this section will require the most retaining wall.

Commissioner Lee inquired about the height of the retaining walls. Representative Jong replied that the maximum height for the wall will be 6 feet. Commissioner Lee inquired about the total elevation of all 3 tiers of the wall. Representative Jong replied that the elevation difference from the lowest point to the highest point will be 18 feet.

Commissioner Lee asked how far apart each tier of retaining wall will be. Representative Jong replied that each tier of wall will be 3 to 5 feet apart. Commissioner Lee stated that the retaining walls are laterally supporting each other which mean the engineer is designing an 18 feet retaining wall. Representative Jong stated that the structural engineer will decide on how to group the retaining walls but maximum exposure for each tier of wall will be 6 feet in height.

Commissioner Lee asked what type of foundation is the soil report recommending. Representative Jong replied that the soil report recommend using caisson.

Commissioner Lee inquired if the soil engineer had studied the slope sustainability of this hill. Representative Jong replied that the soil report indicated the soil in this area is stable but it will require additional foundation and caisson for the development.

Commissioner Lee inquired rather the city has a soil engineer reviewing the geotechnical report. Director Huntley replied that the city contract out to AECOM to review the report.

Commissioner Lee inquired rather this project requires an EIR. Planner Tewart replied that this project is categorically exempt.

Commissioner Lee asked which aspect of the project is being review by the Commission. Director Huntley replied that the Commission is responsible for reviewing the zoning aspect of the subdivision.

Commissioner Leung inquired about the drainage. Representative Jong stated that for the higher side of the lot water will collect in a catch basin and then diverted down the slope, and for the lower side of the lot water will be diverted to the street using piping. Commissioner Leung asked which street the water is draining to. Representative Jong replied that almost 100 percent of the drainage will go to Campanita Court.

Director Huntley stated that this project will need to meet the Low Impact Development Standards.

Chair Garcia inquired about the storm water mitigations. Representative Jong replied that the engineer will probably install a subsurface chamber on the down slope side.

Commissioner Sullivan inquired rather the design of the development will change depending on the result of the geotechnical report. Representative Jong stated that the outlook of the house will not change but the foundation might change base on the result of the geotechnical report.

Commissioner Sullivan inquired rather the result of the geotechnical report will increase the maximum height of the building. Representative Jong replied that the development will follow the City's height standard.

Commissioner Sullivan stated that he is concerned that the geotechnical report will alternate the design of the tentative map and the design of the development.

Commissioner Choi inquired about the landscaping design. Representative Jong stated that the project will follow the City's landscaping requirements.

Commissioner Sullivan asked where the water will be coming from for this project. Director Huntley stated that the water will be coming from Garvey and Sombrero.

Chair Garcia expressed the Commission's concerns about the geotechnical report. Director Huntley stated that the Commission can continue this item until the consultant is finish reviewing the geotechnical report.

Representative Jong stated that after reviewing the preliminary soil report, he believes that the site is stable for this development.

Chair Garcia inquired if the report shows any historic slippage plate. Representative Jong replied no but there is some surface erosion due to the long period of vacancy.

Chair Garcia inquired rather all the proposed houses will need caisson. Representative Jong replied that most downhill lots will require a minimum of 20 feet depth caisson into the bedrock.

Public Speaker:

Ron Hirosawa, as a resident, expressed his opposition to the proposed project. Resident Hirosawa stated that he would like to know the identity of the investors because he is concern that the investor will abandon the project. Resident Hirosawa stated that he also has concern about the stability of the soil, drainage, and the layout of the project.

Paul Isozaki, as a resident, also expressed his concern on the stability of the soil due to the history of the area.

Linda Yoshioka, as a resident, expressed her opposition to the proposed project. Resident Yoshioka stated that she is concern that this development will affect the condition of her house because she does not believe the soil is stable.

Project representative, Arnold Chen, presented a brief summary of the project.

Commissioner Lee inquired about the location of the soldier pile. Representative Chen stated that he is not sure. Representative Chen stated that he will need the recommendation of the civil engineer and structural engineer to decide where the soldier pile will be located.

Commissioner Lee inquired if the house is located on top of the soldiers pile. Representative Chen replied that he does not have the answer at this moment.

Commissioner Lee inquired about the type of the soil the building is sitting on. Representative Chen replied that some of the buildings are sitting on bedrock. Representative Chen stated that some of the bedrock are 3 to 5 feet below the surface and some are deeper.

Commissioner Leung inquired rather the original lot 8 has an existing 2-story house. Representative Chen replied that the lot is vacant. Representative Chen stated that there is a 2-story house on one of the parcel located on Campanita Court. He purchased it so this project can have a better access.

Commissioner Choi inquired if the existing 2-story house will remain. Representative Chen replied yes.

Commissioner Sullivan stated that he is still concern about the historical issue of the hillside and the potential damage this development might cause to surrounding properties.

Chair Garcia stated that he would like to see the result of the geotechnical report before making a decision.

Chair Garcia closed public hearing.

Commissioner Lee stated that the hill is sliding at this moment and he is concern about the risk if the developer abandons the project due to the economy.

Commissioner Leung stated that she would like to see some mitigation factors that will ensure the surrounding neighbors will have insurance if there are any damages due to the construction. Commissioner Leung stated that she would also like the applicant to create a construction timeline.

Chair Garcia inquired if the Commission can condition the applicant to ensure that compensation will be provide to the surrounding residents if this development create damages to surrounding properties. Attorney Berger stated that the Commission can make their decision based on the soil report and suggested to continue the item. Attorney Berger stated that the approval of the subdivision map should not endanger the health and public safety.

Commissioner Sullivan stated that he would like to protect the surrounding hillside residents from damages created by this development. Attorney Berger stated that if there is an issue between the applicant and surrounding residents, it will be a private matter.

Commissioner Sullivan inquired if the Commission can condition that the applicant cannot receive a final construction approval if there is any pending legal issue. Attorney Berger stated that the Commission cannot add additional standards for permit approval.

Commissioner Lee inquired if the Commission can have the applicant to obtain a grading bond. Attorney Berger stated that the grading bond is a standard requirement for a grading permit.

Commissioner Choi stated that he shared the same concern with the other Commissioners, and he would like the soil report to be reviewed first before bringing this item back to the Commission.

Chair Garcia stated that he would like to continue the item after the review of the geotechnical report.

Commissioner Sullivan inquired if there is an outreach for this project. Director Huntley stated that a subdivision project usually does not require a community outreach. Commissioner Sullivan inquired if the staff notified the surrounding residents about this development. Director Huntley replied yes.

Action Taken: The Planning Commission after considering the evidence presented during the public hearing **CONTINUED** Tentative Map No. 073622 to subdivide one lot into 9 lots at 1585 Sombrero Drive in the R-1 (Single-Family Residential) Zone to the meeting of October 13, 2015.

Motion: Moved by Commissioner Sullivan and seconded by Commissioner Choi, motion carried by the following vote:

Ayes: Commissioners: Garcia, Choi, Lee, Leung, and Sullivan

Noes: Commissioners: None

Absent: Commissioners: None

Abstain: Commissioners: None

ITEMS FROM COMMUNITY AND ECONOMIC DEVELOPMENT:

Director Huntley stated that the next Planning Commission on, August 25, 2015, will consist of the South Garfield Village Specific Plan.

Chair Garcia inquired if there is an update from the staff. Director Huntley provided a brief update on some project.

ITEMS FROM THE COMMISSION:

None

ADJOURNMENT

There being no further business for consideration, the meeting was adjourned on August 11, 2015 at 8:30 p.m. to the next regular meeting on August 25, 2015 at 8:30 p.m. in the Council Chambers.

Michael A. Huntley
Director of Community and Economic Development

Approved on at the regular Planning Commission meeting.

ATTACHMENT 5

Project Geotechnical Report and Drainage and Grading Plans

ATTACHMENT 3

Planning Commission Resolution No. 08-18

RESOLUTION NO. 08-18

A RESOLUTION APPROVING TENTATIVE MAP NO. 073622 (TM-15-04) TO SUBDIVIDE ONE LOT INTO 9 LOTS AT 1585 SOMBRERO DRIVE.

The Planning Commission of the City of Monterey Park does resolve as follows:

SECTION 1: The Planning Commission finds and declares that:

- A. On June 4, 2015, Yaonan Duan, submitted an application pursuant to Title 20 of the Monterey Park Municipal Code (“MPMC”) requesting approval of Tentative Map No. 073622 (TM-15-04) to subdivide one lot into 9 lots at 1585 Sombrero Drive (“Project”);
- B. The proposed Project was reviewed by the Community and Economic Development Department for, in part, consistency with the General Plan and conformity with the MPMC;
- C. In addition, the City reviewed the Project’s environmental impacts under the California Environmental Quality Act (Public Resources Code §§ 21000, *et seq.*, “CEQA”) and the regulations promulgated thereunder (14 California Code of Regulations §§ 15000, *et seq.*, the “CEQA Guidelines”);
- D. The Community and Economic Development Department completed its review and scheduled a public hearing regarding the proposed Project, before the Planning Commission for August 11, 2015, February 13, 2018, and April 24, 2018. Notice of the public hearing on the proposed Project was posted and mailed as required by the MPMC;
- E. On August 11, 2015, February 13, 2018, and April 24, 2018 the Planning Commission held a public hearing to receive public testimony and other evidence regarding the proposed Project including, without limitation, information provided to the Planning Commission by City staff and public testimony, and representatives of the Applicant, Yaonan Duan; and
- F. This Resolution and its findings are made based upon the testimony and evidence presented to the Commission at its August 11, 2015, February 13, 2018, and April 24, 2018 hearing including, without limitation, the staff report submitted by the Community and Economic Development Department.

SECTION 2: *Factual Findings and Conclusions.* The Planning Commission finds that the following facts exist and makes the following conclusions:

- A. The Applicant seeks to subdivide one lot into 9 lots, in order to create 8 single-family lots and one private street;
- B. 1585 Sombrero Drive is zoned R-1 (Single-Family Residential) and designated Low Density Residential in the General Plan;

**PLANNING COMMISSION
RESOLUTION NO. 08-18
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- C. The Project property is located on the north side of Sombrero Drive, a local street with a 50-foot right-of-way. To property is surrounded to the north, south, east and west by single-family dwelling units with private yards;
- D. The Project property is 81,460 square feet (1.87 acres) in size and is currently a vacant hillside lot;
- E. Once the initial lot has been subdivided, the 9 proposed lots will range in size from 7,648 square feet to 9,554 square feet;
- F. There is no specific plan adopted for this area;
- G. There are no rare plants, wild animals nor cultural, historical or scenic aspects within the surrounding area, nor is the area located within a natural watershed or wildlife corridor;
- H. The site on which the property is located is not identified as hazardous site, and is not located in close proximity to any known health hazards; and
- I. There are no public easements for access within the proposed development.

SECTION 3: *Environmental Assessment.* A tentative map is not a project as defined by the California Environmental Quality Act (CEQA) Guidelines and therefore not subject to environmental review. A project is defined as “the whole of the action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.” The construction of 8 residential dwelling units is categorically exempt from additional environmental review pursuant to CEQA Guidelines § 15332 as a Class 32 categorical exemption (Infill Development).

SECTION 4: *Tentative Map Findings.* The Commission finds as follows pursuant to Government Code § 66474 and MPMC Title 20:

- A. The proposed tentative map is consistent with applicable general and specific plans as required by Government Code § 66473.5. The tentative map for this project would allow for the construction of 8 single-family dwelling units once the lot is subdivided. According to the General Plan Low Density Residential land use category the allowed density is 0 to 8 dwelling units per acre or 1 dwelling unit per 5,445 square feet of lot area. The proposed site is almost two acres, but the proposed density will be half the density allowed by the Low Density Residential land use category. The property is located on Sombrero Drive, which is adequate in size and capacity to accommodate the anticipated traffic that will be generated by the proposed development. The proposed subdivision

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and development are permitted in the R-1 zone and do not violate the City's minimum lot size and density requirements for this zone.

- B. The design or improvement of the proposed subdivision is consistent with the General Plan in that the project is located within the R-1 zoning district and meets all of the requirements of said district. The 9 lot subdivision project is compatible with the single-family dwelling units with private yards allowed in the low density residential category and is consistent with applicable provisions of the General Plan which envisions residential projects of this size on this site.
- C. The site is physically suitable for the type of development and the proposed density of the development. In the R-1 zone, one dwelling unit is allowed for every 6,000 square feet of lot area; the size of the property in question is 81,460 square feet (1.87 acres) and could theoretically accommodate about 14 homes. The project proposes the development of one dwelling on 8 of the subdivided lots. Therefore, the site is physically suitable for the type and density of the proposed development.
- D. The design of the subdivision or the proposed improvements is not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat. The subject property is bordered by residentially developed lots to the north, south, east, and west with no known fish or wildlife habitat in the vicinity. The property is not located within a natural watershed or wildlife corridor and therefore is not likely to disrupt environmentally sensitive areas outside of the immediate project area.
- E. The design of the subdivision or the type of improvements is not likely to cause serious public health problems, because the site on which the property is located is not identified as hazardous site, and is not located in close proximity to any known health hazards. The type of use of the property is to be residential, which is unlikely to result in serious health problems.
- F. The design of the subdivision or the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of, property within proposed subdivision. There are no existing accessible easements within the project area. The project, as approved, meets all residential development standards and the parcel map allows the lot to be subdivided into residential units.

SECTION 5: *Approval.* Subject to the conditions listed on the attached Exhibit "A," which are incorporated into this Resolution by reference, the Planning Commission approves Tentative Map No. 73622 (TM-15-04).

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SECTION 6: *Reliance on Record.* Each and every one of the findings and determinations in this Resolution are based on the competent and substantial evidence, both oral and written, contained in the entire record relating to the project. The findings and determinations constitute the independent findings and determinations of the Planning Commission in all respects and are fully and completely supported by substantial evidence in the record as a whole.

SECTION 7: *Limitations.* The Planning Commission's analysis and evaluation of the project is based on the best information currently available. It is inevitable that in evaluating a project that absolute and perfect knowledge of all possible aspects of the project will not exist. One of the major limitations on analysis of the project is the Planning Commission's lack of knowledge of future events. In all instances, best efforts have been made to form accurate assumptions. Somewhat related to this are the limitations on the City's ability to solve what are in effect regional, state, and national problems and issues. The City must work within the political framework within which it exists and with the limitations inherent in that framework.

SECTION 8: *Summaries of Information.* All summaries of information in the findings, which precede this section, are based on the substantial evidence in the record. The absence of any particular fact from any such summary is not an indication that a particular finding is not based in part on that fact.

SECTION 9: This Resolution will remain effective until superseded by a subsequent resolution.

SECTION 10: A copy of this Resolution will be mailed to the Applicant and to any other person requesting a copy.

SECTION 11: This Resolution may be appealed within ten (10) calendar days after its adoption. All appeals must be in writing and filed with the City Clerk within this time period. Failure to file a timely written appeal will constitute a waiver of any right of appeal.

SECTION 12: Except as provided in Section 11, this Resolution is the Planning Commission's final decision and will become effective immediately upon adoption.

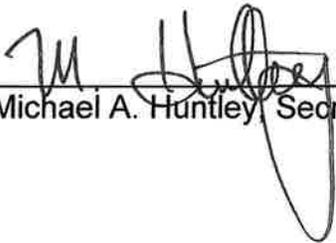
ADOPTED AND APPROVED this 24th day of April 2018.


Chairperson Larry Sullivan

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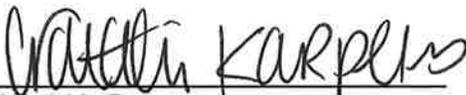
I hereby certify that the foregoing Resolution was duly adopted by the Planning Commission of the City of Monterey Park at the regular meeting held on the 24th day of April 2018, by the following vote of the Planning Commission:

AYES: Commissioners Sullivan, Robinson, Amador, Choi, and Brossy de
Dios
NOES: None
ABSTAIN: None
ABSENT: None



Michael A. Huntley, Secretary

APPROVED AS TO FORM:
Mark D. Hensley, City Attorney

By: 
~~Karl H. Berger,~~ NATAHE C. KARPELES
Assistant City Attorney
DEPUTY

PLANNING COMMISSION RESOLUTION NO. 08-18

Exhibit A

CONDITIONS OF APPROVAL

1585 SOMBRERO DRIVE

In addition to all applicable provisions of the Monterey Park Municipal Code ("MPMC"), Yaonan Duan agrees that he will comply with the following provisions as conditions for the City of Monterey Park's approval of Tentative Map No. 73622 (TM-15-04) ("Project Conditions").

PLANNING:

1. Yaonan Duan (the "Applicant"), agrees to indemnify and hold the City harmless from and against any claim, action, damages, costs (including, without limitation, attorney's fees), injuries, or liability, arising from the City's approval of TM-15-04 except for such loss or damage arising from the City's sole negligence or willful misconduct. Should the City be named in any suit, or should any claim be brought against it by suit or otherwise, whether the same be groundless or not, arising out of the City approval of TM-15-04, the Applicant agrees to defend the City (at the City's request and with counsel satisfactory to the City) and will indemnify the City for any judgment rendered against it or any sums paid out in settlement or otherwise. For purposes of this section "the City" includes the City of Monterey Park's elected officials, appointed officials, officers, and employees.
2. This approval is for the project as shown on the plans reviewed and approved by the Planning Commission and on file. Before the City issues a building permit, the Applicant must submit plans, showing that the project substantially complies with the plans and conditions of approval on file with the Planning and Building and Safety Division. Any subsequent modification must be referred to the Director of Community and Economic Development for a determination regarding the need for Planning Commission review and approval of the proposed modification.
3. The tentative map expires twenty-four months after its approval if the use has not commenced or if improvements are required, but construction has not commenced under a valid building permit. A total of three, one year, extensions may be granted by the Planning Commission upon finding of good cause. An application requesting an extension must be filed with the Community and Economic Development Department.
4. All conditions of approval must be listed on the plans submitted for plan check and on the plans for which a building permit is issued.

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5. Before building permits are issued, the applicant must obtain all the necessary approvals, licenses and permits and pay all the appropriate fees as required by the City.
6. The real property subject to TM-15-04 must remain well-maintained and free of graffiti.
7. Building permits are required for any interior tenant improvements.
8. Landscaping/irrigation must be maintained in good condition at all times.
9. A final map must be approved and recorded before the City issues a certificate of occupancy.
10. All enclosed garage spaces must be used for off-street parking only. There cannot be any personal storage or conversion of this space that would prevent the parking of vehicles in the enclosed garage. This condition must be included in the conditions, covenants and restrictions ("CC&Rs") recorded for this property.

BUILDING:

11. The second sheet of the building plans must list all City of Monterey Park conditions of approval.
12. A building permit does not permit excavations to encroach into adjacent properties. Requirements for protection of adjacent properties are defined in the California Civil Code §832.
13. The site plan must indicate the proposed path of building sewer, size of sewer line, location of cleanouts, and the invert elevation of the lateral at the property line.
14. A soils and geology report is required as part of plan check submittal.
15. Before the City issues a building permit, the applicant must obtain a permit from CAL-OSHA to construct the project.
16. The applicant must submit a compaction report for demolition of previous buildings to the Monterey Park Public Works Department for approval before the City allows the applicant to excavate new foundations.

ENGINEERING:

17. Under the Los Angeles County Municipal "National Pollutant Discharge Elimination System (NPDES) Permit," which the City of Monterey Park is a permittee; this project involves the distribution of soils by grading, clearing and/or excavation. The developer/owner is required to obtain a "General Construction

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Activity Storm Water” Permit, and the City of Monterey Park will condition a grading permit on evidence of compliance with this permit and its requirements. This project will require the preparation of a Low Impact Development (LID) and a Storm Water Pollution Prevention Plan (SWPPP). Upon approval of the NPDES document by the City, the applicant/property owner must submit an electronic copy of the approved NPDES file, including site drawings, before the City issues a building or grading permit.

18. The applicant must record the Final Map after the City approves the final map in accordance with the MPMC and accepts any applicable bonds or agreements. A refundable \$191 cash deposit must be submitted to guarantee that developer will provide the City with one (1) transparent 4 mil thick mylar tracing, one (1) electronic file of approved final map tracings transferable to City’s AutoCAD and GIS systems and two (2) blueprints of the recorded map which must be filed with the City Engineer within three (3) months of recordation. If recorded copy is not submitted by the end of the three-month time period, developer will forfeit the \$191 cash deposit.
19. The applicant/property owner must provide written proof that there are no liens against the subdivision for unpaid taxes or special assessments and submit Los Angeles County tax bill, tax payment receipt, and copy of cancelled check before filing a Final Map with the City for approval.
20. The developer/owner is responsible for ascertaining and paying all City development fees such as, but not limited to, sewer deficiency fees, water meter fees and metered water service impact fees as required by the MPMC.
21. Covenants Conditions & Restrictions must be prepared and filed with the City to obtain City Attorney and the City Engineer approval. Developer/owner is responsible for securing the CC&R guidelines from the Office of the City Engineer. A copy of the recorded CC&Rs must be submitted before final inspection and clearance of the building permit.
22. All improvement plans, including grading and public improvement plans must be based upon City approved criteria. Benchmark references to be obtained from the Engineering Division.
23. A water plan must be submitted for review and approval by the City Engineer. This plan must substantiate adequate water service for domestic flow, fire flow and identify backflow prevention. If current fire flow and pressure tests are not available to substantiate adequate pressure and flow to serve the development, the developer is responsible for conducting the appropriate tests and submitting copies of the test results for review and ultimate approval by the City.
24. Water Division requirements are to be determined upon completion and submittal of a water meter sizing sheet by the applicant. This may include up sizing of

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water meter and water services. All upgrading costs are the responsibility of the property owner.

25. The domestic water demand should be provided to the City in the form of (Average Hourly Demand) and (Peak Hourly Demand). If it is determined that the surrounding infrastructure is inadequate to meet the additional demand of the project, the developer must provide recommendations to improve the system to a level needed to meet the additional demand. This should include hydraulic modeling and calculations supporting the recommendation. The proposed system improvements will be reviewed and validated by the City's Water Division and the City Engineer.
26. The applicant must provide survey monuments denoting the new property boundaries and lot lines to the satisfaction of the City Engineer. All maps must be prepared from a field survey. Compiled maps are not permitted unless prior approval is granted by the City Engineer. Whenever possible, lot lines must be located to coincide with the top of all man-made slopes. Any deviation from this requirement must be approved by the City Engineer.
27. The applicant must provide a site drainage plan for review and approval by the City Engineer. The property drainage must be designed so that the property drains to the public street or in a manner otherwise acceptable to the City Engineer. Drainage from contiguous properties must not be blocked and must be accommodated to the satisfaction of the City Engineer. A hydrology and hydraulic study of the site may be required for submittal to the City Engineer for review and approval.
28. All storm drainage facilities serving the development must accommodate a 50 year storm. If existing storm drain facilities are inadequate they must be enlarged as necessary. All storm drain facilities must be designed and constructed to Los Angeles County Department of Public Works standards and specifications and also the satisfaction of the City Engineer before approving grading and drainage plans.
29. A street lighting/photometric plans must be prepared for review and approved by the City Engineer. Streetlights must be installed along the frontage of the project site. The plans must be designed using Los Angeles County Standards.
30. Provide a street improvement plan for Sombrero Drive and Campanita Court up to the street centerline. The street improvement must consist of pavement grinding and rubberized asphalt overlay and may require localized pavement repairs depending on the conditions of the streets. Construct new curb and gutter, main entry driveway, and 5-foot wide sidewalk. The improvements must be along the entire property frontage as approved by the City Engineer.

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31. Landscaping and irrigation plans must be prepared and all parkway tree types must be reviewed and approved by the City Parks Division.
32. All public works improvements must comply with the standards and specifications of the City and to the satisfaction of the City Engineer. All public works improvements must be completed and accepted by the City or a public works improvement guarantee and agreement posted before final map approved by the City Council.
33. All electric, telephone and cable TV utility services must be installed fully underground and to required City standards. Satisfactory provisions for all other utilities and service connections, including water, sewer and gas, shall be made to City and public utility standards. A utility plan must be prepared and submitted showing all existing and proposed utilities. The utilities may be shown on either a separate plan or on the proposed site plan.
34. Provide a Sewer Study for existing sewer contributory flow and sewer connection. If it is determined that the surrounding infrastructure is inadequate to meet the additional demand of the project, the developer must provide recommendations to improve the system to a level needed to meet the additional demand. A sewer connection reconstruction fee will be assessed at the time of issuance of a building permit in accordance with the provisions of Chapter 14,06 of the Monterey Park Municipal Code (MPMC).
35. Construct wheelchair ramp(s) in the curb return at the street intersection (main driveway entrance).
36. All buildings must have roof gutters and all roof drainage must be conducted to the public street or an approved drainage facility in a manner approved by the City Engineer.
37. Modify and/or correction the tentative map in accordance with the adopted conditions of approval of the tentative map and specific criteria noted by the City Engineer. Verify the drainage pattern of adjacent properties.

FIRE:

38. All conditions identified by the Fire Department are subject to the review and approval of the Fire Chief for determination of applicability and extent to which any condition may be required.
39. All structures must be fully sprinkler per the National Fire Protection Association (NFPA) 13D and local amendments.
40. Fire flow for entire project is 1,500 gpm at 20 psi for 2 hour duration. Verification of water supply available must be provided by the water purveyor upon building plan submittal. A reduction in the required fire flow up to 50 percent is allowed by

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a written request to the Monterey Park Fire Department (“MPFD”) per California Fire Code (CFC) Appendix B/C.

41. A written request must be made to the MPFD for fire lane grade greater than 10 percent per CFC D103.2.
42. Fire hydrants must be provided to ensure all points of all structures are within 600 feet of a hydrant. Hydrants must be in place and operational before construction commencing per CFC 507.5.1.
43. All curbs must be painted red to indicate no parking allowed per CFC Appendix D103.6.1.
44. Address numbers must be provided on the street curb. Numerals must be 4 inches in height, two and one-half inches in width with a stroke width of approximately $\frac{3}{4}$ inches. The house number must be centered on a 6-inch by 16-inch rectangular background per MPMC § 13.17.050.

POLICE:

45. Adequate exterior lighting must be provided so that the units are visible from the street during the hours of darkness.
46. Address number must be illuminated during hours of darkness and positioned as to be readily readable from the street. Numbers must be at least 12 inches in height.
47. All common open areas must be well lit during the hours of darkness.

MISCELLANEOUS:

48. Prior to plan check submittal, Applicant is required to provide proof that an Easement Agreement For Grant of Access between the properties located at 108 Campanita Court (Assessor’s Parcel No. 5254-003-127) and 1585 Sombrero Drive (Assessor’s Parcel No. 5254-003-014) – specifically, to allow the driveway for 1585 Sombrero Drive to travel over and across a portion of 108 Campanita Court for ingress and egress purposes – has been recorded with the Los Angeles County Recorder’s Office.

By signing this document, Yaonan Duan, certifies that the Applicant read, understood, and agrees to the Project Conditions listed in this document.



Yaonan Duan, Applicant

ATTACHMENT 4

Tentative Map No. 73622

ATTACHMENT 5

Draft Resolution

RESOLUTION NO. _____

**A RESOLUTION APPROVING A ONE-YEAR EXTENSION OF TIME
(EX-19-03) FOR TENTATIVE MAP NO. 73622 (TM-15-05) TO
SUBDIVIDE ONE LOT INTO NINE LOTS AT 1585 SOMBRERO DRIVE.**

The City Council of the City of Monterey Park does resolve as follows:

SECTION 1: The City Council finds as follows:

- A. On December 30, 2019, the property owner, Yaonan Duan of RCAM Investment Inc., submitted an application pursuant to Title 20 of the Monterey Park Municipal Code ("MPMC") requesting approval of a one-year time extension for Tentative Map No. 73622 (TM-15-05) to subdivide one lot into nine lots at 1585 Sombrero Drive ("Project");
- B. The proposed Project was reviewed by the City Planner for, in part, consistency with the General Plan and conformity with the MPMC;
- C. The City reviewed the Project's environmental impacts under the California Environmental Quality Act (Public Resources Code §§ 21000, *et seq.*, "CEQA") and the regulations promulgated thereunder (14 California Code of Regulations §§ 15000, *et seq.*, the "CEQA Guidelines"); and
- D. The City Planner completed review and scheduled a public hearing regarding the proposed Project before the City Council for April 15, 2020, pursuant to Government Code § 66451.3.

SECTION 2: *Factual Findings and Conclusions.* Based upon the entire administrative record and the evidence provided during the public hearing, the City Council finds as follows:

- A. On April 24, 2018, the Planning Commission adopted Resolution No. 08-18 approving Tentative Map No. 73622 (TM-15-05); the tentative map is due to expire April 24, 2020;
- B. The Applicant seeks a one-year time extension to record the final map related to the subdivision of one lot into nine lots. Applicant timely filed this written extension request on December 30, 2019;
- C. 1585 Sombrero Drive is zoned R-1 (Single-Family Residential) and designated Low Density Residential (LDR) in the General Plan;
- D. The Project property is located on the north side of Sombrero Drive, a local street with a 50-foot right-of-way. To property is surrounded to the north, south, east and west by single-family dwelling units with private yards;
- E. The Project property is 81,460 square feet (1.87 acres) in size and is currently a vacant hillside lot;

- F. Once the initial lot has been subdivided, the nine proposed lots will range in size from 7,648 square feet to 9,554 square feet;
- G. There is no specific plan adopted for this area;
- H. There are no rare plants, wild animals nor cultural, historical or scenic aspects within the surrounding area, nor is the area located within a natural watershed or wildlife corridor;
- I. The site on which the property is located is not identified as hazardous site, and is not located in close proximity to any known health hazards;
- J. There are no public easements for access within the proposed development; and
- K. The time extension is necessary to record the final map.

SECTION 3: Environmental Assessment. Because of the facts identified in Section 2 of this Resolution, the Project is categorically exempt from additional environmental review pursuant to CEQA Guidelines § 15332 as a Class 32 categorical exemption (In-Fill Development Projects). The Project consists of the subdivision of land for the construction of new single-family dwelling units. The property is designated Low Density Residential in the General Plan Land Use Element. The proposed development will take place within city limits on a project site of no more than five acres substantially surrounded by urban uses. The project site has no value as habitat for endangered, rare or threatened species in that the property was formerly developed with a service station; furthermore, the construction of the proposed project will take place entirely upon the existing, developed lot. Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality in that the project is an in-fill project in an existing developed and urban area. Lastly, the site can be adequately served by all required utilities and public services.

SECTION 4: Determination. The City Council approves Time Extension (EX-19-03) for Tentative Map No. 73622 (TM-15-05) to April 24, 2021.

SECTION 5: Reliance on Record. Each and every one of the findings and determinations in this Resolution are based on the competent and substantial evidence, both oral and written, contained in the entire record relating to the Project. The findings and determinations constitute the independent findings and determinations of the City Council in all respects and are fully and completely supported by substantial evidence in the record as a whole.

SECTION 6: Summaries of Information. All summaries of information in the findings, which precede this section, are based on the substantial evidence in the record. The absence of any particular fact from any such summary is not an indication that a particular finding is not based in part on that fact.

SECTION 7: Notice. The City Clerk is directed to provide a copy of this Resolution to the Planning Commission and any other person requesting a copy.

SECTION 8: Effective Date. This Resolution becomes effective immediately upon adoption and memorializes the City Council's final decision made on April 15, 2020. Note that persons dissatisfied with the City Council's decision may appeal it in accordance with application law to the Los Angeles Superior Court within 90 days of the City Council's decisions.

ADOPTED AND APPROVED this ____ day of April 2020.

Hans Liang, Mayor

APPROVED AS TO FORM:
MARK D. HENSLEY, City Attorney

By:



Natalie C. Karpeles, Deputy City Attorney



City Council Staff Report

DATE: April 15, 2020

AGENDA ITEM NO: Consent Calendar
Agenda Item 3-L.

TO: The Honorable Mayor and City Council
FROM: Mark A. McAvoy, Director of Public Works/City Engineer
SUBJECT: Resolution Identifying a Public Works Street Maintenance Project to be Included in the FY 2020-21 Budget and Funded by Senate Bill 1: The Road Repair and Accountability Act of 2017

RECOMMENDATION:

It is recommended that the City Council:

1. Adopt a resolution identifying a street maintenance project to be included in the FY 2020-21 budget and funded with Road Maintenance and Rehabilitation Act (RMRA) funds, in a form approved by the City Attorney; and/or
2. Take such additional, related action that may be desirable.

EXECUTIVE SUMMARY:

Senate Bill 1 (SB 1), the Road Repair and Accountability Act of 2017 addresses the significant multi-modal transportation funding shortfall statewide. As of November 2017, portions of SB 1 revenues are deposited into a Road Maintenance and Rehabilitation Account (RMRA) and made available to eligible cities and counties, which must comply with RMRA funding requirements as determined by the California Transportation Commission (CTC).

RMRA funds made available for the Local Streets and Roads Funding Program are prioritized for expenditure on basic road maintenance and rehabilitation projects, and on critical safety projects. The CTC provided a number of example projects and uses for RMRA funding that include, but are not limited to, the following: Road Maintenance and Rehabilitation, Safety Projects, Railroad Grade Separations, Complete Streets Components (including active transportation purposes, pedestrian and bicycle safety projects, transit facilities, and drainage and stormwater capture projects in conjunction with any other allowable project), and Traffic Control Devices.

BACKGROUND:

The most recent State estimates for FY 2020-21 project Monterey Park to receive \$1,167,736 in RMRA funds. In order to be eligible to receive these funds, agencies must submit a proposed project list to the CTC by May 1, 2020, along with budget support

documentation including the council meeting minutes and/or resolution of the City Council committing to the project list.

The proposed capital improvement project includes the resurfacing of various local streets as identified in the City's Pavement Management Study, listed in the resolution. Staff reviewed the study and selected those street segments that would most benefit from a rehabilitation project based on their current conditions. Once the resolution is adopted and submitted, staff will begin the design plans and specifications. Construction of the project is anticipated to begin in the summer of 2021. Rehabilitation will include isolated repairs and patching, as well as concrete items (such as sidewalk and ramp repairs), but will primarily include grinding and overlay of the roadway surface with asphalt concrete and/or asphalt rubber hot mix.

FISCAL IMPACT:

As the City's budget process for FY 2020-21 is now underway, the adoption of the resolution to include the capital improvement project in the upcoming budget and funded with RMRA funds will allow the City to receive the RMRA funding for street rehabilitation projects, and help the City improve the overall quality of the roadway system.

Respectfully submitted by:


for Mark A. McAvoy
Director of Public Works /
City Engineer

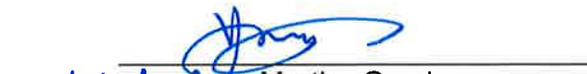
Prepared by:


Frank A. Lopez
Assistant City Engineer

Approved by:


Ron Bow
City Manager

Reviewed by:

on behalf of 
Martha Garcia
Director of Management Services

Reviewed by:


Natalie C. Karpeles
Deputy City Attorney

Attachment:

1. Resolution

ATTACHMENT 1
Resolution

RESOLUTION NO.

A RESOLUTION IDENTIFYING A STREET MAINTENANCE PROJECT TO BE INCLUDED IN THE FY 2020-21 BUDGET AND FUNDED BY SENATE BILL 1: ROAD REPAIR AND ACCOUNTABILITY ACT OF 2017

THE CITY COUNCIL RESOLVES AS FOLLOWS:

SECTION 1. The City Council finds as follows:

A. Senate Bill 1 (SB 1), the Road Repair and Accountability Act of 2017, was passed by the Legislature and signed into law by the Governor in April 2017 in order to address the significant multi-modal transportation funding shortfalls statewide.

B. SB 1 includes accountability and transparency provisions that will ensure the residents of our City are aware of the projects proposed for funding in our community and which projects have been completed each fiscal year.

C. The City must adopt, by resolution, a list of projects proposed to receive fiscal year funding from the Road Maintenance and Rehabilitation Account (RMRA), created by SB 1, which must include a description and the location of each proposed project, a proposed schedule for the project's completion, and the estimated useful life of the improvement.

D. The City will receive an estimated \$1,167,736 in RMRA funding in Fiscal Year 2020-21.

E. This is the fourth year in which the City is receiving SB 1 funding and will enable the City to continue essential road maintenance and rehabilitation projects, safety improvements, repairing and replacing aging bridges, and increasing access and mobility options for the traveling public that would not have otherwise been possible without SB 1.

F. The City used a Pavement Management Program to help develop the SB 1 project list to ensure revenues are being used on the most high-priority and cost-effective projects that also meet the communities priorities for transportation investment.

G. The funding from SB 1 will help the City maintain and rehabilitate its streets throughout the City this year and several similar projects into the future. This revenue will help us increase the overall quality of our road system over the next decade.

H. Cities and counties own and operate more than 81 percent of streets and roads in California, and from the moment we open our front door to drive to work, bike

to school, or walk to the bus station, people are dependent upon a safe, reliable local transportation network.

I. The SB 1 project list and overall investment in our local streets and roads infrastructure with a focus on basic maintenance and safety and investing in complete streets infrastructure will have significant positive co-benefits statewide.

SECTION 2. The City Council takes the following actions:

A. The Operating Budget for fiscal year 2020-2021 is amended to incorporate the following project planned to be funded with Road Maintenance and Rehabilitation Account revenues:

Project: Various Street Resurfacing
Description: Cold mill asphalt concrete pavement and construct conventional and/or rubberized asphalt concrete overlay on various local streets. Work includes but is not limited to asphalt grind and overlay, concrete curb, gutter, sidewalk, and curb ramps repair or replacement.

Location:

Street Name	From	To
1st St	Atlantic Blvd	City Limits (West)
Abe Wy	Metro Dr	End
Ackley Pl	Ackley St	End
Ackley St	Arroyo Dr	End
Adams Wy	Van Buren Dr	End
Agate Wy	Bloom Dr	End
Aldergate St	Wilcox Av	End
Alisar Ave	End (N)	End (S)
Andrix St	Lupine Av	Floral Dr
Arlight St	Garfield Av	Andrix St
Arroyo Dr	Potrero Grande Dr	End (N)
Ash Dr	Pepper St	Hollyoak Dr
Aztec Wy	Metro Dr	Country Rd
Bataan Pl	Aztec Way	End
Berkebile Ct	Abe Way	End
Bloom Dr	Coral View St (W)	Coral View St (E)
Bluestone Ln	Arroyo Dr	End
Bluffdale St	Markland Dr	Markland Dr
Browning Pl	Tegner Dr	End

Street Name	From	To
Buchanan Pl	Ackley St	End
Clover Dr	Heather Dr	Iris Wy
Coriolanus Dr	Alisar Av	End
Country Rd	Orange Av	Town Av
Country Pl	Country Rd	End
Elmgate St	Almora St	Wilcox Av
Emerald Wy	Wheeler Dr	End
Eroica Dr	Alisar Av	End
Fernfield Dr (E)	End (E)	End (W)
Fillmore Dr	Ackley St	End
Floral Dr	Garfield Av	Fulton Av
Foxglove Dr	Fernfield Dr	End
Fulton Ave	Markland Dr	Riggin St
Gleason St (E)	End (E)	Fulton Av
Grant St	Van Buren Dr	End
Hamlet Dr	Country Rd	Village Dr
Hammel St	Riggin St (E)	Riggin St (W)
Harrison Rd	Ackley St	Orange Av
Heather Dr	Lupine Av	Clover Dr
Hendron Wy	Kempton Av	End
Holly Oak Dr	Pepper St	Palm Av
Holly Oak Pl	Hollyoak Dr	End
Iris Wy	Fulton Av	End
Juneway Rd	Gleason St	Pomona Bl
Kempton Ave	Lincoln Av	End
Kempton Pl	Kempton Av	End
Kenton Dr	Potrero Grande Dr	End
Langley Wy	Lincoln Av	End
Laurel Dr	Pepper St	Ackley St
Laurel Cir	Laurel Dr	End
Laurel Pl	Laurel Dr	End
Lupine Ave	Kempton Av	Heather Dr
Lupine Pl	Lupine Av	End
Luy St	Van Buren Dr	End
Magnolia Dr	Ackley St	Hollyoak Dr
Mancha Wy	Keller St	End
Mancha Pl	Mancha Wy	End
Maplegate St	Aldergate St	End
McComb Wy	Kempton Av	Wilcox Av
McPherrin Av	Harding Av	Newmark Av

Street Name	From	To
Metro Dr	Orange Av	Village Dr
Milam Pl	Wilcox Av	End
Mooney Dr	Orange Av	City Limits (E)
Mooney Dr	Kempton Av	Russell Av
Oakgate St	Wilcox Av	Aldergate St
Olive Pl	Orange Av	End
Orange Pl	Orange Av	End
Pierce Pl	Ackley St	End
Plateau Ave	Village Dr	End
Polk Wy	Van Buren Dr	End
Ransom Wy	Russell Av	End
Riggin St	Fulton Av	End
Robinlinda Ln	Arroyo Dr	End
Russell Ave	Graves Av	End
San Patricio Dr	Alisar Av	Ackley St
Starbird Dr	Trumbower Av	End
Starbird Pl	Starbird Dr	End
Taft Ct	Orange Av	End
Taylor Dr	Ackley St	End
Tegner Dr	Orange Av	City Limit
Teresa Ave	Kays Av	City Limits (E)
Town Ave	Country Rd	Kays Av
Trumbower Ave	Starbird Dr	Keller St
Tyler Dr	Ackley St	End
Van Buren Dr	Fulton Av	Fillmore Dr
Vercoe Pl	Wilcox Av	End
Village Dr	Plateau Av	Kays Av
Village Pl	Village Dr	End
Wheeler Dr	Heather Dr (S)	Heather Dr (N)
Whitehurst Dr	Keller St	End
Wilcox Av	Fulton Av	Kempton Av
Wilcox Av	Pomona Bl	Aldergate St
Wilcox Av	El Repetto Dr	Keller St
Wilson Pl	Orange Av	End
Woodland Wy	Markland Dr	End

Estimated Useful Life: 15-20 years
**Est. Year of Construction/
Completion:** Fiscal Year 2020-2021
Budget Amount: \$1,167,736

SECTION 3. If any part of this Resolution or its application is deemed invalid by a court of competent jurisdiction, the City Council intends that such invalidity will not affect the effectiveness of the remaining provisions or applications and, to this end, the provisions of this Resolution are severable.

SECTION 4. To the extent that any other resolution is incorporated into this Resolution, it is superseded or amended in its entirety.

SECTION 5. This Resolution takes effect immediately upon its adoption.

PASSED, APPROVED AND ADOPTED this 15th of April 2020.

Hans Liang, Mayor
City of Monterey Park

ATTEST:

Vincent D. Chang, City Clerk
City of Monterey Park

APPROVED AS TO FORM:
MARK D. HENSLEY, City Attorney

By: 

Natalie C. Karpeles
Deputy City Attorney



City Council Staff Report

DATE: April 15, 2020

AGENDA ITEM NO: New Business
Agenda Item 5-A

TO: The Honorable Mayor and City Council

FROM: Ron Bow, City Manager & Director of Emergency Services

SUBJECT: Extension of Emergency regarding COVID-19 Pandemic

RECOMMENDATION:

It is recommended that the City Council consider:

1. Adopting a Resolution Ratifying Certain Actions Completed by the City Manager and Extending the Existence of a Local Emergency; and
2. Taking such additional, related, action that may be desirable.

CEQA:

The Resolution itself and the actions anticipated by the Resolution were reviewed pursuant to the California Environmental Quality Act (Public Resources Code §§ 21000, *et seq.*, "CEQA") and the regulations promulgated thereunder (14 Cal. Code of Regulations §§15000, *et seq.*, the "CEQA Guidelines"). Based upon that review, this action is exempt from further review pursuant to CEQA Guidelines § 15269(a) because the protection of public and private property is necessary to maintain service essential to the public, health and welfare.¹

EXECUTIVE SUMMARY:

On March 18, 2020, the City Council adopted Resolution No. 12142 which declared a local emergency resulting from the COVID-19 Pandemic (the "COVID-19 Pandemic"). Pursuant to Resolution No. 12142 and Monterey Park Municipal Code ("MPMC"), the City Manager implemented certain emergency policies and procedures ("EP&P") to protect public health and safety. Generally, these relate to designation of quarantine sites; protection of public employees; and continuity of government.

Government Code § 8630 requires that the City Council review a local emergency at least once every 60 days. Based upon readily available information, it does not appear that the Pandemic will end any time soon. Indeed, it may be that the situation will become worse than it is at the time this staff report is written.

¹ CEQA findings regarding an anticipated imminent emergency are valid (*see CalBeach Advocates v. City of Solana Beach* (2002) 103 Cal.App.4th 529).

FISCAL IMPACT:

The fiscal impact is unknown at this time. The City Manager's Office will provide a report within 60 days after the City Council's action.

Respectfully Submitted by:



Ron Bow
City Manager

Reviewed by:



Kelly Gordon
Police Chief

Reviewed by:



Matt Hallock
Fire Chief

Reviewed by:



Karl H. Berger
Assistant City Attorney

ATTACHMENT:

1. Draft Resolution

ATTACHMENT 1

Draft Resolution

RESOLUTION NO. _____

A RESOLUTION ADOPTED BY THE CITY COUNCIL FOR THE CITY OF MONTEREY PARK RATIFYING CERTAIN ACTIONS COMPLETED BY THE CITY MANAGER AND EXTENDING THE EXISTENCE OF A LOCAL EMERGENCY.

BE IT RESOLVED by the Council of the City of Monterey Park as follows:

SECTION 1: The City Council finds as follows:

- A. On March 18, 2020, the City Council adopted Resolution No. 12142 which confirmed the existence of a local emergency related to the COVID-19 Pandemic (the "COVID-19 Pandemic").
- B. Section 4 of Resolution No. 12142 authorizes the City Manager to undertake all actions needed to preserve public health and safety in accordance with applicable law.
- C. Responses to the COVID-19 Pandemic have occurred on nearly a daily basis since March 11, 2020 which is when the City Manager declared a local emergency to exist. As a result, the City Manager has undertaken a number of actions as reflected in the attached Exhibit "A," which is incorporated by reference (the "Emergency Policies and Procedures" or "EP&P").
- D. Government Code § 8630 requires that the City Council review a local emergency at least once every 60 days. Based upon the verbal and written reports of the City Manager regarding the COVID-19 Pandemic, the City Council is satisfied that the local emergency will continue for the foreseeable future.

SECTION 2: The City Council reviewed the state of the community and continues to extend the COVID-19 Pandemic emergency. The EP&P are ratified and approved.

SECTION 3: This Resolution supplements Resolution No. 12142 and confirms the ongoing COVID-19 Pandemic emergency. This local emergency will continue to exist until otherwise determined by City Council Resolution.

SECTION 4: This Resolution will take effect immediately upon adoption.

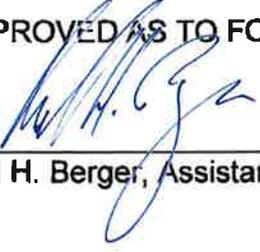
PASSED AND ADOPTED this ____ day of April, 2020.

Hans Liang, Mayor

ATTEST:

Vincent D. Chang, City Clerk

APPROVED AS TO FORM:



Karl H. Berger, Assistant City Attorney

Attachments:

Exhibit A: Emergency Policies and Procedures

EMERGENCY POLICIES AND PROCEDURES

MARCH 11 – APRIL 9, 2020

COVID-19 PANDEMIC

I. Purpose

These emergency policies and procedures (“EP&P”) were adopted pursuant to Monterey Park Municipal Code (“MPMC”) §§ 2.52.050 and 2.52.060; and Resolution No. 12142, adopted March 18, 2020 to protect public health, safety, and welfare including, without limitation, the health and safety of all City employees.

II. Definitions

Unless the contrary is stated or clearly appears from the context, the following definitions govern the construction of the words and phrases used in this EP&P. Words and phrases undefined in this EP&P have the same meaning as set forth in applicable law.

“City Manager” means the Director of Emergency Services identified in MPMC § 2.52.050.

“COVID-19 Pandemic” means the local emergency identified by Resolution No. 12142.

“Fire Chief” means the Coordinator of Emergency Services identified in MPMC § 2.52.050.

“Police Chief” means the Assistant Director of Emergency Services identified in MPMC § 2.52.050.

III. Appointment of Assistant Director and Coordinator of Emergency Services

Pursuant to MPMC § 2.52.050, the City Manager appointed the Police Chief as Assistant Director of Emergency Services and the Fire Chief as Coordinator of Emergency Services on March 11, 2020.

IV. City Employees and Personnel Rules

The various temporary personnel rules implemented by this EP&P were promulgated during the COVID-19 Pandemic and are only intended to be in effect during the time of emergency. To the extent practicable, the City Manager, Police Chief, and Fire Chief met with representatives of employee bargaining units to discuss implementation of these temporary personnel rules. If these EP&P further require a meet and confer with bargaining units, those meetings will be held at the earliest practicable time pursuant to Government Code § 3504.5(b).

EMERGENCY POLICIES AND PROCEDURES

MARCH 11 – APRIL 9, 2020

COVID-19 PANDEMIC

V. Miscellaneous

The EP&P attached as Exhibit “A,” and incorporated by reference, are approved by the City Manager. These EP&P are listed in chronological order and describe their substantive effect. If required, these EP&P may be implemented, refined, revised, repealed, or otherwise amended by the City Manager, Police Chief, or Fire Chief in response to the ongoing COVID-19 Pandemic. Implementation of these EP&P may be reflected in separate documents issued by the Police Chief, Fire Chief, or other Department Directors.

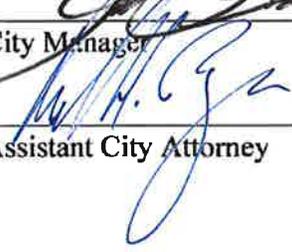
These EP&P are subject to ratification by the City Council in accordance with Resolution No. 12142 and MPMC § 2.52.060(a)(6)(A). They will remain effective unless superseded by applicable federal or state law; or are terminated by the City Council or City Manager.

APPROVED:



City Manager

APPROVED AS TO FORM:



Assistant City Attorney

Date: April 9, 2020

EXHIBIT A

Chronological EP&P

March 16:

- City Manager orders employees age 65+ to work from home.
- City Manager orders Help Desk established.
- City Manager orders City utilities to extending service without penalties and no late fees during emergency.
- City Manager cancels all April and May events.
- City Manager orders employees to use gloves when handling mail and establishes protocol for “cooling down” period on mail.

March 17:

- City Manager orders protocol for meal service to for seniors.

March 18:

- City Manager orders that all employee’s temperatures be taken as they arrive to work in the morning; if temperature, send home.

March 19:

- City Manager orders credit card policy change to allow customers to pay 100% of fees/rates by credit card.
- City Manager orders alternate work schedule for employees.
- Police Chief orders implementation of A & B shifts; schedule splitting 50% of workforce in each shift.
- City Manager orders increased janitorial services to include daily sanitizing.
- City Manager orders credit card limits increased to \$10,000 for Department Directors.

March 20:

- City Manager orders that only essential personnel gain access to City Hall. City Councilmembers and nonessential personnel are excluded.
- City Manager orders Department Directors to implement shift work emphasizing work in pairs and in field work in separate vehicles 6 and maintain feet separation.

- City Manager orders Department Directors to designate successor in the event of infection to ensure continuity of government.

March 25:

- City Manager orders all City parks closed including basketball courts.

March 26:

- City Manager orders all public projects for MPFD and MPPD to be placed on hold.
- City Manager orders Library to turn off Wi-Fi at 8:00 p.m. instead of 10:00 p.m. to avoid people loitering near the library.
- City Manager appoints Recreation and Community Services Director as Public Information Officer

March 27:

- City Manager orders street lights de-energized to help with closure of the parks.
- City Manager orders A-Frames set up at Edison Trails regarding closure.

March 30:

- Police Chief orders detectives to be placed on A & B shift.
- City Manager allows for donation of gloves/masks.

April 1:

- City Manager orders water barriers be delivered to Monterey Park hospital.

April 6:

- Police Chief orders MPPD employees to wear masks at City Hall and during calls for service/dealing with the public.
- Fire Chief orders decontamination of fire equipment.

April 7:

- City Manager orders Spirit Bus Operations be suspended on April 9, 2020.
- City Manager orders Weed Abatement proceedings held until further notice.
- City Manager orders execution of an emergency contract for sewer repair work at 518 W. Hellman Ave with GRBCON Inc. at the cost not to exceed \$7,496.00

April 8:

- City Manager orders face coverings at City Hall.

April 9:

- City Manager orders all public parking lots closed.
- City Manager orders execution of a contract amendment with Computer Service Company in the amount of \$29,950 for traffic signal maintenance work at the intersection of Garvey Ave/ Garfield Ave



City Council Staff Report

DATE: April 15, 2020

AGENDA ITEM NO: New Business
Agenda Item 5-B

TO: The Honorable Mayor and City Council
FROM: Ron Bow, City Manager
SUBJECT: A Resolution of the City Council of the City of Monterey Park, California
Appointing Council Representatives to Specific Organizations

RECOMMENDATION:

It is recommended that the City Council:

1. Adopt a Resolution appointing representatives to specific organizations; and/or
2. Take such additional, related, action that may be desirable.

EXECUTIVE SUMMARY:

Pursuant to Section VIII of the City Council's Policies and Procedures, the City Council generally appoints representatives to various regional and community organizations each July. Appointments are recommended by the Mayor and confirmed by the City Council.

BACKGROUND:

There are currently 10 associations/organizations requiring a City Council representative. One organization, the Los Angeles County Sanitation District, requires that the Mayor be the Council representative; the alternate representative has traditionally been the Mayor Pro Tem.

FISCAL IMPACT:

None.

Staff Report
April 15, 2020
Page 2

Respectfully submitted and
approved by:



Ron Bow
City Manager

Prepared by:



Cindy H. Trang
Deputy City Clerk

Reviewed by:



Natalie C. Karpeles
Deputy City Attorney

ATTACHMENTS

1. Summary of Organizations
2. Draft Resolution

ATTACHMENT 1

Summary of Organizations

Summary of Organizations

Board of Education/City Council Joint Use Committee (Alhambra Unified School District) is a joint committee to share ideas and discuss joint use efforts between the City and the Alhambra Unified District to promote safety and well being of the children attending the schools in the City. Meetings: Varies.

California Contract Cities Association (CCAC) is a collection of member cities united for a common cause. The general purpose is to serve as a rallying point for cities contracting for municipal services to ensure constituents the best service at the minimum cost. Through municipal seminars, education, exchange of ideas and information, the association combines resources to influence policy decisions affecting its member cities. These cities band together to form a collective voice. Meetings: Varies. <https://www.contractcities.org/>

Independent Cities Association is made up of nearly 40 member cities in the Southern California area and focuses on public safety, education, infrastructure, legislative advocacy, intergovernmental relationships and other major issues that transcend the boundaries of its member cities. ICA holds two Annual Seminars bringing together city council members, city officials and business partners for the purpose of collaboration, networking, and knowledge exchange. The Winter Seminar (held in January) addresses public safety and the Summer Seminar (held in July) focuses on contemporary issues. Meetings: 2nd Thursday at 7 p.m., Metropolitan Water District, 700 N. Alameda St., Los Angeles. <http://www.icacities.org/>

League of California Cities is an association of California city officials who work together to enhance their knowledge and skills, exchange information, and combine resources so that they may influence policy decisions that affect cities. Meetings: Varies. <https://www.cacities.org/>

Los Angeles County Sanitation District #2 is a public agency focused on converting waste into resources like recycled water, energy and recycled materials. The agency consists of 24 independent special districts serving about 5.6 million people in Los Angeles County. The service areas in the map below cover approximately 850 square miles and encompass 78 cities and unincorporated areas in the county. It requires that the Mayor be the Council representative. The alternate representative has traditionally been the Mayor Pro Tem. Meetings: 2nd and 4th Wednesdays at 1:30 p.m., 1955 Workman Mill Rd., Whittier. <https://www.lacsd.org/default.htm>

San Gabriel Valley Council of Governments (SGVCOG) is a joint powers authority made up of representatives from 30 cities, 3 Los Angeles County Supervisorial Districts, and the 3 Municipal Water Districts located in the San Gabriel Valley. The SGVCOG serves as a regional voice for its member agencies and works to improve the quality of life for the more than 2 million residents living in the San Gabriel Valley. The SGVCOG works on issues of importance to its member agencies, including transportation, homelessness, the environment, and water, and seeks to address these regionally. Meetings: 3rd Thursday at 4 p.m., 100 S. Vincent Ave. #200, West Covina. <https://www.sgvkog.org/>

San Gabriel Valley Economic Partnership reflect the growing and broad membership including business, local government, colleges and universities and non-profit organizations committed to the mission of advancing the economic vitality and quality of life of the San Gabriel Valley. Meetings: Varies. <https://sgvpartnership.org/>

San Gabriel Valley Mosquito Abatement is a public health agency that provides ongoing mosquito and vector control for its residents. Meetings: 2nd Friday at 7:00 a.m., 1145 N. Azusa Canyon Road, West Covina. <https://www.sgvmosquito.org/>

Sister Cities Commission is a City's commission to promote friendship, goodwill and a communication amongst the Sister Cities of Monterey Park by participate in the exchange of cultures bringing about productive and lasting friendships' participate in the City of Monterey Park's cultural events and programs promoting the exposure of their culture, and serve as ambassadors to sister city visitors. Meetings: Quarterly – January, April, July, October – 1st Tuesday of each month 7:00 p.m., Bruggemeyer Library, 318 S. Ramona Ave., Monterey Park. <https://www.montereypark.ca.gov/651/Sister-Cities-Commission>

Southern California Association of Governments (SCAG) is a Joint Powers Authority under California state law, established as an association of local governments and agencies that voluntarily convene as a forum to address regional issues. Under federal law, SCAG is designated as a Metropolitan Planning Organization (MPO) and under state law as a Regional Transportation Planning Agency and a Council of Governments. Meetings: 1st Thursday, SCAG Main Office, 818 W 7th Street, 12th Floor, Los Angeles, 9 a.m. Executive/Administration Committee and Policy Committee Meeting, 10 a.m., Transportation Committee. <http://www.scag.ca.gov/Pages/default.aspx>

ATTACHMENT 2
Draft Resolution

RESOLUTION NO.

A RESOLUTION ASSIGNING REPRESENTATIVES TO SPECIFIC ORGANIZATIONS IN ACCORDANCE WITH SECTION VIII OF THE CITY COUNCIL POLICIES AND PROCEDURES.

The City Council does resolve as follows:

SECTION 1. The City Council finds and declares that:

- A. The City Council of the City of Monterey Park supports Elected Official representation in local associations and organizations.
- B. These specific local associations and organizations require Elected Official and/or staff representation.
- C. Section VIII of the City Council's Policies and Procedures requires the City Council to review all Committee/Organization assignments each April; however, due to the election of a newly Council Member, a review of the appointments is required sooner. Appointments are made at the recommendation of the Mayor, with City Council Approval.

SECTION 2. Council Members are appointed to the following local associations and organizations:

Board of Education/City Council Joint Use Committee (Alhambra School District)	Representative:
	Representative:
	Staff Representative:
California Contract Cities Association	Representative:
	Alternate:
Independent Cities Association	Representative:
	Alternate:
League of California Cities	Representative:
	Alternate:

Los Angeles County Sanitation District	Representative: Mayor Alternate: Mayor Pro Tem
San Gabriel Valley Council of Governments	Representative: Alternate:
San Gabriel Valley Economic Partnership	Representative: Alternate:
San Gabriel Valley Mosquito Abatement District:	Representative:
Sister City Commission	Representative: Alternate:
Southern California Association of Governments (SCAG)	Representative:

SECTION 3. This Resolution takes effect immediately upon its adoption. The City Clerk is directed to certify to the adoption of this Resolution and enter it into the book of original Resolutions.

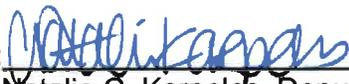
PASSED, APPROVED, AND ADOPTED this day of , 2020.

Hans Liang, Mayor

APPROVED AS TO FORM:
Mark D. Hensley, City Attorney

ATTEST:

Vincent D. Chang, City Clerk

By: 

Natalie C. Karpeles, Deputy City Attorney



City Council Staff Report

DATE: April 15, 2020

AGENDA ITEM NO: New Business
Agenda Item 5-C

TO: The Honorable Mayor and City Council
FROM: Vincent D. Chang, City Clerk
SUBJECT: City Council Appointments to various Commissions, Boards and Committees.

RECOMMENDATION:

It is recommended that the City Council

- (1) Receive and file the list of Commission/Board/Committee members as listed in Attachment 1; and/or
- (2) Take such additional, related, action that may be desirable.

EXECUTIVE SUMMARY:

Pursuant to Monterey Park Municipal Code ("MPMC") Chapter 2.82, each council member appoints his/her respective representative(s) to the City's nine commissions to serve a one-year term (beginning on May 1st and ending April 30th). Commissioners may not serve more than **eight** consecutive one-year terms on the same commission. A Commissioner's term will automatically roll over unless otherwise directed by council members.

BACKGROUND:

Each council member may appoint one seat to the following committees/commissions: Business Improvement District Advisory Committee, Design Review Board, Economic Development Advisory Commission, Environmental Commission, Planning Commission, Recreation and Parks Commission, and Traffic Commission. Each council member may appoint two seats to both the Commission on Aging and the Community Participation Commission. As part of the appointment process, all commissioners must meet the membership requirements and criteria outlined in MPMC § 2.82.040. Each commissioner serves at the pleasure of the appointing council member. Lastly, persons cannot simultaneously serve on more than one commission/committee.

Attached to the staff report are a list of current commissioners, blank worksheets, a copy of MPMC Chapter 2.82, a copy of Resolution No. 11589, and a blank commission application. Council members can review and confirm existing appointments and/or make new selections at a subsequent council meeting or by contacting the City Clerk's office.

All Commissioners will be required to submit a commission application and/or a residency verification form upon appointment.

FISCAL IMPACT:

None.

Respectfully submitted,



Vincent D. Chang
City Clerk

Prepared by:



Cindy H. Trang
Deputy City Clerk

Approved By:



Ron Bow
City Manager

Reviewed by:



Natalie C. Karpeles
Deputy City Attorney

Attachments:

1. List of Commission Appointments
2. MPMC 2.82
3. Resolution No. 11589
4. Commission Application

ATTACHMENT 1

List of Commissions Appointments

PETER CHAN

		Appointees 2019-2020 Term	Terms:	Appointment:
Seat No. 1	Commission on Aging	Steve Shieh	8/7/13 - 4/30/14 5/1/14 - 4/30/15 5/1/15 - 4/30/16 5/1/16 - 4/30/17 5/1/17 - 4/30/18 5/1/18 - 4/30/19 5/1/19 - 4/30/20	
Seat No. 2	Commission on Aging	Alex Tang	5/1/15 - 4/30/16 5/1/16 - 4/30/17 5/1/17 - 4/30/18 5/1/18 - 4/30/19 5/1/19 - 4/30/20	
Seat No. 1	Business Improvement District Advisory Committee	Jessy Li Dynasty World Travel	8/15/18 - 4/30/19 5/1/19 - 4/30/20	
Seat No. 1	Community Participation Commission	Victoria Chavez-Calderon	8/7/13 - 4/30/14 5/1/14 - 4/30/15 5/1/15 - 4/30/16 5/1/16 - 4/30/17 5/1/17 - 4/30/18 5/1/18 - 4/30/19 5/1/19 - 4/30/20	
Seat No. 2	Community Participation Commission	Annie J. Park	11/6/19 - 4/30/20	
Seat No. 1	Design Review Board	Gay Q. Yuen	7/6/16 - 4/30/17 5/1/17 - 4/30/18 5/1/18 - 4/30/19 5/1/19 - 4/30/20	
Seat No. 1	Economic Development Advisory Commission	Vacant		
Seat No. 1	Environmental Commission	Shirley Hwong	8/5/15 - 4/30/16 5/1/16 - 4/30/17 5/1/17 - 4/30/18 5/1/18 - 4/30/19 5/1/19 - 4/30/20	
Seat No. 1	Planning Commission	Theresa Garcia Amador	5/1/16 - 4/30/17 5/1/17 - 4/30/18 5/1/18 - 4/30/19 5/1/19 - 4/30/20	
Seat No. 1	Recreation and Parks Commission	Philip Chang	5/1/16 - 4/30/17 5/1/17 - 4/30/18 5/1/18 - 4/30/19 5/1/19 - 4/30/20	
Seat No. 1	Traffic Commission	Allan Paul Shatkin	5/1/17 - 4/30/18 5/1/18 - 4/30/19 5/1/19 - 4/30/20	

HANS LIANG

		Appointees 2019 - 2020 Term	Terms:	Appointment:
Seat No. 5	Commission on Aging	Vacant		
Seat No. 6	Commission on Aging	Virginia Mason-Greene	1/22/18 - 4/30/18 5/1/18 - 4/30/19 5/1/18 - 4/30/19 5/1/19 - 4/30/20	
Seat No. 3	Business Improvement District Advisory Committee	Josephine Louie United pacific Bank	8/5/15 - 4/30/16 5/1/16 - 4/30/17 5/1/17 - 4/30/18 5/1/18 - 4/30/19 5/1/19 - 4/30/20	
Seat No. 5	Community Participation Commission	Carol Ann Sullivan	6/1/16 - 4/30/17 5/1/17 - 4/30/18 5/1/18 - 4/30/19 5/1/19 - 4/30/20	
Seat No. 6	Community Participation Commission	Barbara Ngai	12/19/18 - 4/30/19 5/1/19 - 4/30/20	
Seat No. 3	Design Review Board	Elizabeth Yang	5/1/16 - 4/30/17 5/1/17 - 4/30/18 5/1/18 - 4/30/19 5/1/19 - 4/30/20	
Seat No. 3	Economic Development Advisory Commission	Vacant		
Seat No. 3	Environmental Commission	Karl Wong	11/6/13 - 4/30/14 5/1/14 - 4/30/15 5/1/15 - 4/30/16 5/1/16 - 4/30/17 5/1/17 - 4/30/18 5/1/18 - 4/30/19 5/1/19 - 4/30/20	
Seat No. 3	Planning Commission	Ricky Choi	8/7/13 - 4/30/14 5/1/14 - 4/30/15 5/1/15 - 4/30/16 5/1/16 - 4/30/17 5/1/17 - 4/30/18 5/1/18 - 4/30/19 5/1/19 - 4/30/20	
Seat No. 3	Recreation and Parks Commission	Vacant		
Seat No. 3	Traffic Commission	Benkin Jong	11/6/13 - 4/30/14 5/1/14 - 4/30/15 5/1/15 - 4/30/16 5/1/16 - 4/30/17 5/1/17 - 4/30/18 5/1/18 - 4/30/19 5/1/19 - 4/30/20	

Commissioners for the 2019 - 2020 Term

Commission on Aging

Seat No. 3	Commission on Aging	Vacant	
Seat No. 4	Commission on Aging	Beryl Shieh	8/7/13 - 4/30/14 5/1/14 - 4/30/15 5/1/15 - 4/30/16 5/1/16 - 4/30/17 5/1/17 - 4/30/18 5/1/18 - 4/30/19 5/1/19 - 4/30/20
Seat No. 7	Commission on Aging	Virginia King	5/1/15 - 4/30/16 5/1/16 - 4/30/17 5/1/17 - 4/30/18 5/1/18 - 4/30/19
Seat No. 8	Commission on Aging	Vacant	
Seat No. 9	Commission on Aging	Vacant	
Seat No. 10	Commission on Aging	Mau, Tak Kuen "Charles"	1/7/15 - 4/30/15 5/1/15 - 4/30/16 5/1/16 - 4/30/17 5/1/17 - 4/30/18 5/1/18 - 4/30/19 5/1/19 - 4/30/20

Business Improvement District Advisory Committee

Seat No. 2	Business Improvement District Advisory Committee	Guey Lin Jeng (Gene) Martin Florist	8/21/13 - 4/30/14 5/1/14 - 4/30/15 5/1/15 - 4/30/16 5/1/16 - 4/30/17 5/1/17 - 4/30/18 5/1/18 - 4/30/19 5/1/19 - 4/30/20
Seat No. 4	Business Improvement District Advisory Committee	Darren Inouye Rainbow Art	4/25/19 - 4/30/20
Seat No. 5	Business Improvement District Advisory Committee	Johnny Thompson Johnny Thompson Music	8/7/13 - 4/30/14 5/1/14 - 4/30/15 5/1/15 - 4/30/16 5/1/16 - 4/30/17 5/1/17 - 4/30/18 5/1/18 - 4/30/19 5/1/19 - 4/30/20

Community Participation Commission			
Seat No. 3	Community Participation Commission	Sandra Hidalgo	5/1/17 - 4/30/18 5/1/18 - 4/30/19 5/1/19 - 4/30/20
Seat No. 4	Community Participation Commission	Julia Villagran	5/1/15 - 4/30/16 5/1/16 - 4/30/17 5/1/17 - 4/30/18 5/1/18 - 4/30/19 5/1/19 - 4/30/20
Seat No. 7	Community Participation Commission	Terry Valenzuela	2/13/19 - 4/30/19 5/1/19 - 4/30/20
Seat No. 8	Community Participation Commission	Tammy Louie	2/13/19 - 4/30/19 5/1/19 - 4/30/20
Seat No. 9	Community Participation Commission	Mary Ann Garcia-Barlow	10/24/18 - 4/30/19 5/1/19 - 4/30/20
Seat No. 10	Community Participation Commission	Grace Ge (PeiJun)	8/7/13 - 4/30/14 5/1/14 - 4/30/15 5/1/15 - 4/30/16 5/1/16 - 4/30/17 5/1/17 - 4/30/18 5/1/18 - 4/30/19 5/1/19 - 4/30/20
Design Review Board			
Seat No. 2	Design Review Board	Tammy Sam	7/18/18 - 4/30/19 5/1/19 - 4/30/20
Seat No. 4	Design Review Board	Peter Lin	12/10/19 - 4/30/20
Seat No. 5	Design Review Board	Ivan W Lam	11/15/16 - 4/30/17 5/1/17 - 4/30/18 5/1/18 - 4/30/19 5/1/19 - 4/30/20
Economic Development Advisory Commission			
Seat No. 2	Economic Development Advisory Commission	Dominic A. Lombardo	8/21/13 - 4/30/14 5/1/14 - 4/30/15 5/1/15 - 4/30/16 5/1/16 - 4/30/17 5/1/17 - 4/30/18 5/1/18 - 4/30/19 5/1/19 - 4/30/20
Seat No. 4	Economic Development Advisory Commission	Leilani Morales	12/2/19 - 4/30/20
Seat No. 5	Economic Development Advisory Commission	Philip Smith	6/1/16 - 4/30/17 5/1/17 - 4/30/18 5/1/18 - 4/30/19 5/1/19 - 4/30/20

Environmental Commission			
Seat No. 2	Environmental Commission	Kathy Hyang Ko	3/4/19 - 4/30/19 5/1/19 - 4/30/20
Seat No. 4	Environmental Commission	Sam Cheung	8/10/17 - 4/30/18 5/1/18 - 4/30/19 5/1/19 - 4/30/20
Seat No. 5	Environmental Commission	Stephen Fong	5/1/18 - 4/30/19 5/1/19 - 4/30/20
Planning Commission			
Seat No. 2	Planning Commission	Antonio Salazar	5/28/19 - 4/30/20
Seat No. 4	Planning Commission	Eric Brossy de Dios	5/1/17 - 4/30/18 5/1/18 - 4/30/19 5/1/19 - 4/30/20
Seat No. 5	Planning Commission	Delario M. Robinson	6/1/16 - 4/30/17 5/1/17 - 4/30/18 5/1/18 - 4/30/19 5/1/19 - 4/30/20
Recreation and Parks Commission			
Seat No. 2	Recreation and Parks Commission	Paul Duke Lee	1/26/15 - 4/30/16 5/1/16 - 4/30/17 5/1/17 - 4/30/18 5/1/18 - 4/30/19 5/1/19 - 4/30/20
Seat No. 4	Recreation and Parks Commission	Gary Lau	7/23/18 - 4/30/19 5/1/19 - 4/30/20
Seat No. 5	Recreation and Parks Commission	Vacant	
Traffic Commission			
Seat No. 2	Traffic Commission	Steve Klein	5/1/15 - 4/30/16 5/1/16 - 4/30/17 5/1/17 - 4/30/18 5/1/18 - 4/30/19 5/1/19 - 4/30/20
Seat No. 4	Traffic Commission	Ulysses Ramirez	10/14/13 - 4/30/14 5/1/14 - 4/30/15 5/1/15 - 4/30/16 5/1/16 - 4/30/17 5/1/17 - 4/30/18 5/1/18 - 4/30/19 5/1/19 - 4/30/20
Seat No. 5	Traffic Commission	Paul G. Perez	10/7/15 - 4/30/16 5/1/16 - 4/30/17 5/1/17 - 4/30/18 5/1/18 - 4/30/19 5/1/19 - 4/30/20

Commissions Appointment Worksheet

Name: _____

Commissions	Appointment
Commission on Aging	
Commission on Aging	
Business Improvement District Advisory Committee	
Community Participation Commission	
Community Participation Commission	
Design Review Board	
Economic Development Advisory Commission	
Environmental Commission	
Planning Commission	
Recreation and Parks Commission	
Traffic Commission	

Please insert the names of your appointees and return the worksheet to the City Clerk's office. You may choose from the current list or make your own selection. Please have your appointees complete a commission application and return to the City Clerk's office with proof of residency.

Commission application is available on the City's website at <https://www.montereypark.ca.gov/636/Boards-Commissions>. Completed application may be return to the City Clerk's office by mail or email to mpclerk@montereypark.ca.gov

ATTACHMENT 2
MPMC 2.82

Chapter 2.82 GENERAL REQUIREMENTS FOR CITY COMMISSIONS, BOARDS AND COMMITTEES

Note

* Prior ordinance history: Ords. 1520, 1523, 1753, 1756, 1874, 1888, 1988 and 1994.

2.82.010 Purpose.

This chapter is adopted for the purpose of setting forth the enabling provisions establishing the city's various bodies, boards, and commissions (collectively "committees") that assist the city council in conducting public business and prescribing the manner in which persons may be appointed to such committees. Additional committees may be created by city council resolution. (Ord. 2098 § 2, 2013)

2.82.020 Compensation.

The city council may, by resolution, determine whether, and in what amount, compensation will be provided for members of the committees established by this chapter. Without a city council resolution establishing compensation, it is conclusively presumed that no compensation is to be provided. (Ord. 2098 § 2, 2013)

2.82.030 Further provisions.

- (a) Member qualifications and/or committee duties or responsibilities may be revised or amended by city council resolution.
- (b) Members of the library board are not subject to this chapter, pursuant to Education Code Section 18911.
- (c) Persons serving on one committee cannot simultaneously serve on another committee. (Ord. 2156 § 3, 2018; Ord. 2098 § 2, 2013)

2.82.040 Membership.

(a) Unless otherwise provided, committees established pursuant to this chapter consist of five members who are appointed individually, one per city council member, in the manner provided by this chapter. Three members constitute a quorum. The city manager may designate an ex-officio staff person to serve as secretary and custodian of records who will not have a vote.

(b) Unless otherwise provided, during their incumbency all members must be, and remain, a resident in fact of the city. Residency will be verified annually by the city clerk's office. Should any member cease to be a city resident, that office is deemed vacant and the term of such member terminated. The secretary will notify the city council and the city clerk of such termination as soon as administratively possible.

- (c) Convicted felons cannot serve on committees. (Ord. 2098 § 2, 2013)

2.82.050 Terms of office.

(a) Unless otherwise provided by law or resolution, each member may serve for a one-year term. No person may serve more than eight consecutive terms on the same commission. If an individual separates from serving on a board or commission because the individual has completed serving eight consecutive terms, such person cannot be reappointed to the same board or commission for at least twelve consecutive months. A person cannot serve on more than one board or commission at the same time.

(b) Unless otherwise provided, all committee members will serve until a successor is qualified and appointed. (Ord. 2156 § 4, 2018; Ord. 2098 § 2, 2013)

2.82.060 Appointment procedures.

(a) Persons seeking appointment to a committee should file applications, in a form prescribed by the city clerk, or designee, to the city clerk's office.

(b) Unless otherwise provided, each councilmember may appoint one person to a particular board or commission. Persons nominated by a councilmember are announced at a council meeting, but the nomination does not require ratification by council action.

- (c) Every term begins May 1st and ends April 30th of the following year. (Ord. 2098 § 2, 2013)

2.82.070 Removal by city council.

Notwithstanding any other provision of this chapter, all members serve at the pleasure of the appointing city council member and may be removed by that council member at any time. (Ord. 2098 § 2, 2013)

2.82.080 Organization.

(a) Each May, a committee will annually organize and elect a chairperson and vice-chairperson from its membership for a one-year term. In the chairperson's or vice-chairperson's absence or disability, the committee may designate a chairperson or vice-chairperson pro tempore.

(b) Regular meetings may be held on a day and time established by committee resolution and may be amended from time to time.

(c) Committees may establish a procedure for calling special meetings and may also adopt application requirements, meeting procedures, and other reasonable rules and regulations for conducting business. Minutes must be kept of all meetings and the secretary will deliver copies of minutes to the city clerk for filing.

(d) Committees may designate one of its members, or a subcommittee composed of not more than two members, to study, review, consider, or make recommendations concerning any matter within the committee's purview. (Ord. 2098 § 2, 2013)

2.82.090 Nonattendance.

(a) Unless otherwise provided, if a committee member fails to attend three consecutive meetings, unless excused for cause by the committee chairperson, that member's office is deemed vacant and the member's term ended. The committee secretary must immediately notify the city council and city clerk of such termination.

(b) Any member of any city commission, board or committee appointed by a city council member, and terminated from said commission, board or committee for absences, whether excused or unexcused, cannot be nominated for appointment to any city commission, board or committee for a period of twelve months after said termination became effective. (Ord. 2098 § 2, 2013)

2.82.100 Vacancy.

If a vacancy occurs other than term expiration, notice must be given to the city council and city clerk. The appointing city council member may appoint a new member in accordance with this chapter for the remaining portion of the term, subject to the Maddy Act (Government Code Section 54970 et seq.); any partial term of service will count as a full year toward the term of office. (Ord. 2098 § 2, 2013)

View the [mobile version](#).

ATTACHMENT 3
Resolution No. 11589

RESOLUTION NO. 11589

A RESOLUTION ESTABLISHING VARIOUS BOARDS AND COMMISSION IN ACCORDANCE WITH CHAPTER 2.82 OF THE MONTEREY PARK MUNICIPAL CODE.

BE IT RESOLVED by the Council of the City of Monterey Park as follows:

SECTION 1: Unless otherwise provide by this Resolution, all Boards and Commissions established by this Resolution will conform with Monterey Park Municipal Code ("MPMC") Chapter 2.82 as to membership, terms, and procedures.

SECTION 2: Commission on Aging. The City Council establishes a Commission on Aging as follows:

A. *Membership.* The Commission on Aging will consist of ten individuals. Each councilmember may appoint two individuals to the Commission on Aging in accordance with MPMC Chapter 2.82.

B. *Responsibilities.* The Commission on Aging may undertake the following activities:

1. Provide liaison and coordination among the senior citizen community, the city council, the recreation and parks commission, the community relations commission, community service organizations, and other governmental and private agencies in relation to aging;

2. Promote and encourage community interest and responsibility to correct and prevent problems of aging;

3. Obtain resources for available grants and funds for senior citizen projects;

4. Improve the physical and social environment with respect to senior citizens;

5. Obtain and distribute resource information for various services intended to benefit senior citizens such as legal aid, medical programs, housing and transportation;

6. Encourage established agencies to take responsibility for meeting needs as they are discovered and to take all appropriate action;

7. Develop and assist in planning appropriate services or projects if existing agencies are unable to meet the need;

8. Participate in the establishment of the policy and/or program development of such service or project during and after its formulation; and

9. Act in an advisory capacity to the city council in all matters pertaining to senior citizen problems.

SECTION 3: Business Improvement District Advisory Committee. The City Council establishes a Business Improvement District Advisory Committee as follows:

A. *Membership.* Members serving on the Business Improvement District Advisory Committee must own or operate a business within the business improvement district.

B. *Responsibilities.* The Business Improvement District Advisory Committee may undertake the following activities:

1. Make recommendations to the City Council regarding operations and marketing for the downtown business area;

2. Make recommendations to the City Council regarding the methods and ways in which the revenue is derived from the charges, assessments and contributions imposed or authorized by Chapter 5.82 of this Code and California Streets and Highways Code §§ 36500, *et seq.*

SECTION 4: Youth Advisory Board. The Youth Advisory Board established by Resolution No. 9939 and Resolution No. 9984 is dissolved and Resolution Nos. 9939 and 9984 are repealed.

SECTION 5: Community Participation Commission. The City Council establishes a Community Participation Commission as follows:

A. *Membership.* The Community Participation Commission will consist of ten members plus seven non-voting youth members. Each councilmember may appoint two individuals to the Community Participation Commission in accordance with MPMC Chapter 2.82.

B. Youth members will be selected by the Community Participation Commission as follows:

1. Three members from the Alhambra Unified School District;

2. Two members from the Montebello Unified School District;
3. Two members at large from the community to accommodate students attending private schools
4. Members must be currently attending high school or attended within the last six months.

C. *Responsibilities.* The Community Participation Commission may undertake the following activities:

1. Coordinate activities and programs with the Youth Advisory Board;
2. Seek out and publicize artistic, cultural and historic exhibits, performances and opportunities that enhances the community;
3. Increase public awareness and appreciation of Monterey Park's history and heritage;
4. Preserve memorabilia and records of the history of Monterey Park and maintain a written history of the city;
5. Conduct and recommend programs which will increase good will among residents of the community and open new opportunities into all phases of community life for all residents;
6. To make residents aware of the services, programs and organizations available in the community;
7. Provide information and opportunities for newcomers to become involved in the community;
8. Foster mutual regard and understanding among all racial, religious and ethnic groups in the community;
9. Participate in community affairs;
10. Promote and encourage community interest and responsibility to correct and prevent conditions of neighborhood blight and deterioration by developing programs and resources in order to provide for a more suitable living environment for all residents;
11. Involve youths in community activities; and

12. Act in an advisory capacity to the city council on all matters pertaining to the city's community participation activities.
13. Review existing youth programs and make recommendations to improve these programs;
14. Inform the Community Participation Commission and City Council of the needs, concerns, achievements, goals and problems of the youth in the community;
15. Promote increased interest and participation among the youth in community affairs;
16. Foster increased understanding between youth groups within the community by providing conflict resolution; and
17. Provide an annual report to the City Council via the Community Participation Commission regarding the status of the community's youth.

SECTION 6: Economic Development Advisory Commission. The City Council establishes an Economic Development Advisory Commission as follows:

- A. *Membership.* Each member must be either a resident of the city or have business experience with a background in finance, economics or development.
- B. *Responsibilities.* The Economic Development Advisory Commission may undertake the following activities:
 1. Monitor implementation of the most current economic development strategic plan adopted by the city council;
 2. Recommend updates or amendments to the economic development strategic plan as deemed necessary;
 3. Provide the city council with annual reports on progress towards meeting economic and community development goals as identified in the economic development strategic plan; and
 4. Act in an advisory capacity to the city council on the needs of local businesses, and the availability of economic development opportunities and resources.

SECTION 7: Environmental Commission. The City Council establishes an Environmental Commission as follows:

A. *Membership.* The Environmental Commission will consist of five members plus two ex officio youth members appointed by the Environmental Commission. Each member may be a resident of the city of Monterey Park, an individual operating or working in the city of Monterey Park, or a professional or scholar in the environmental field.

B. *Responsibilities.* The Environmental Commission may undertake the following activities:

1. Develops and implement policies and procedures relevant to the environment and sustainability of the community;
2. Promote programs to increase the education and awareness of the environment, in addition to providing direct benefits to individual residents and businesses through dollar savings;
3. Investigate potential funding in order to implement programs directly in the community and to operate the activities of the commission;
4. Monitoring legislative activities that would affect the city and provide recommendations to the city council;
5. Undertake such activities as directed by the city council for other issues deemed necessary as the environmental integrity of the city that affects numerous areas of municipal government, planning, transportation, air quality, congestion management, and community improvement; and
6. Serve in advisory capacity to the city council on issues deemed relevant to the environment and sustainability of the city.

SECTION 8: Recreation and Parks Commission. The City Council establishes a Recreation and Parks Commission as follows:

A. *Membership.* The Recreation and Parks Commission will consist of five members plus ex officio member(s) as approved by the city manager or it's designees. Regular members cannot hold any paid office or employment in the city government.

B. *Responsibilities.* The Recreation and Parks Commission may undertake the following activities:

1. Act in advisory capacity to the city council and administrative personnel in all matters pertaining to parks, parkways and public recreation and to cooperate with other governmental agencies and civic groups in the acquisition, planning and programming thereof;
2. Formulate and propose policies on recreation services for approval by the city council;
3. Make periodic inventories of recreation services that may be needed and interpret the needs of the public to the city council and administration;
4. Aid in coordinating the recreation services with the programs of other governmental agencies and voluntary organizations;
5. Inform the public of the policies and functions of the recreation and parks program; and
6. Inform, advise and cooperate with boards of education and boards of school trustees of school districts comprising a part of the city or being immediately adjacent to the city to the extent that such information, advice and cooperation shall be proper and desirable in preparing, revising or carrying out the park or recreation program of the city.

SECTION 9: All boards and commissions nametags, business cards and letterheads must be approved by the city manager or his designee.

SECTION 10. Resolution is exempt from review under the California Environmental Quality Act (California Public Resources Code §§ 21000, *et seq.*, "CEQA") and CEQA regulations (14 California Code of Regulations §§ 15000, *et seq.*) because it consists only of revisions and clarifications to existing codes and procedures regarding appointing persons to City commissions, boards, and committees. Adopting this Resolution will not have the effect of deleting or substantially changing any regulatory standards or required findings.

SECTION 11: This Resolution will become effective on the same date as Ordinance No. 2098 and will remain effective unless repealed or superseded.

SECTION 12: The City Clerk will certify to the passage and adoption of this Resolution; will enter the same in the book of original Resolutions of said City; and will make a minute of the passage and adoption thereof in the record of proceedings of the City Council of said City, in the minutes of the meeting at which the same is passed and adopted.

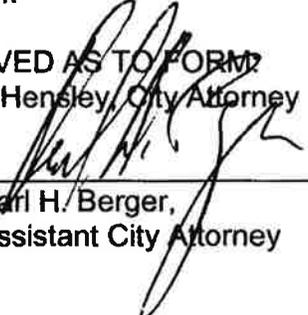
PASSED AND ADOPTED this 19th day of June, 2013.



Teresa Real Sebastian,
Mayor

ATTEST: 

Vincent Chang,
City Clerk

APPROVED AS TO FORM
Mark D. Hensley, City Attorney
By: 

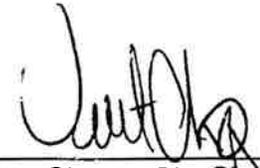
Karl H. Berger,
Assistant City Attorney

State of California)
County of Los Angeles) ss.
City of Monterey Park)

I, Vincent D. Chang, City Clerk of the City of Monterey Park, California, do hereby certify that the foregoing Resolution No. 11589 was duly and regularly adopted by the City Council of the City of Monterey Park at a meeting held on the 19th day of June, 2013, by the following vote:

Ayes: Council Members: Chan, Liang, Wong
Nayes: Council Members: Ing, Real Sebastian
Absent: Council Members: None
Abstain: Council Members: None

Dated this 19th day of June, 2013.



Vincent Chang, City Clerk
City of Monterey Park, California

ATTACHMENT 4
Commission Application



CITY OF MONTEREY PARK

320 West Newmark Ave.
Monterey Park, CA 91754
(626) 307-1362
www.montereypark.ca.gov

Application for Civic Service City Commissions/Boards/Committees

The Monterey Park City Council seeks citizens to serve on duly constituted Boards, Commissions, and Committees to assist and advise City Council on specific assigned matters. No citizen may serve on more than one standing Board, Commission, or Committee at one time. Applications will be kept on file for one (1) year from the date received. For certain boards, annual residency verification is required in accordance to MPMC 2.82. This is a public document and is subject to disclosure. Please return completed application **and** proof of residency (if required) to the City Clerk's office by mail or email at mpclerk@montereypark.ca.gov.

Name _____

Commission/Committee or Board on which you want to serve (You may list more than one)

1) _____ 3) _____
2) _____ 4) _____

Home Address _____ City _____

Zip Code _____ If resident of the City of Monterey Park, how long? _____

E-Mail Address _____ Telephone _____

Occupation _____

Business Name _____

Business Address _____

Zip Code _____ Telephone _____

Have you ever been convicted of a felony? Yes No

If so, please state the nature of offense, state and disposition on a separate sheet of paper. Convictions will not necessarily result in automatic disqualification, however, failure to give complete and accurate information may be grounds for rejection and/or removal from office.

Prior Community Involvement/Activities

CITY OF MONTEREY PARK – Application for Civic Service
City Commissions/Boards/Committees

Name _____

Provide a brief review of your background, qualifications, education and your interest in serving the City

References: List two.

Name _____

Address _____

Telephone _____

Name _____

Address _____

Telephone _____

I declare under penalty of perjury, under the laws of the State of California, that all statements contained in this application and any accompanying documents is true and correct, with full knowledge that all statements made in this application are subject to investigation and that any false or dishonest answer to any question may be grounds for denial or subsequent revocation of commission.

I further acknowledge that information contained in this application is a public record and may be subject to disclosure and I may be required to file a Statement of Economic Interests Form (Form 700).

Signature _____ Date _____

For office use only

I certified that proof of residency was verified in accordance to MPMC 2.82. I declare under penalty of perjury that the forgoing is true and correct.

Proof of residency: Name: _____

Government Issued ID

Utility Bill

Voter Registration

Other _____

Signature _____ Date _____



City Council Staff Report

DATE: April 15, 2020

AGENDA ITEM NO: New Business
Agenda Item 5-D

TO: The Honorable Mayor and City Council
FROM: Vincent D. Chang, City Clerk
SUBJECT: Mayoral rotation

RECOMMENDATION:

It is recommended that the City Council consider:

1. Give direction regarding the method by which the Mayor and Mayor pro tempore are selected;
2. If appropriate, select the Mayor pro tem and direct that a resolution memorializing the City Council's determination be placed on the consent calendar for the next regular meeting; and
3. Take such additional, related, action that may be desirable.

EXECUTIVE SUMMARY:

On April 1, 2020, the City Council deferred selection of a mayor pro tempore until its meeting of April 15, 2020. As noted at that time, Resolution No. 11507 determines the mayoral rotation for the City Council. That Resolution, however, anticipates that all City Council elections will be at-large; it has not been amended to reflect the district-based elections that are now in effect. Based upon that Resolution, Mayor Hans Liang's term will end May 4, 2020.

BACKGROUND:

Government Code § 36801 requires the new City Council to select the mayor and mayor pro tempore upon assuming office. Accordingly, the City Council confirmed that Mayor Hans Liang would continue as Mayor until, at the latest, May 4, 2020. The Council, however, deferred selection of the mayor pro tempore until it could discuss the matter during the April 14, 2020 regular meeting.

In 1982, the City Council established a policy for mayoral rotation that gave each member of the City Council an opportunity to be Mayor at least once during their term. Resolution No. 8584 creates a nine month and two week mayoral term for each Councilmember.

In 1994, the City Council adopted Resolution No. 9921 which temporarily established an 11 month and two week mayoral term until January 1999. This was implemented in order to accommodate the City's change in election dates caused by California law. After January 1999, the mayor rotation reverted to the nine month and two week term established by Resolution No. 8584.

In 2012, the City Council adopted Resolution No. 11507. That Resolution established the current mayoral term which is 41 weeks. It further amended Resolution Nos. 8585 and 9921 to conform with Resolution No. 11507. Section 6 of Resolution No. 11507 provides that "[b]y affirmative vote of not less than four members of the Council, the provisions of this resolution may be suspended, and any member of the Council may be appointed to the position of Mayor or Mayor Pro Tempore for a fixed or indeterminate term or terms."

On May 31, 2019, the City's former at-large election system for City Council switched to district elections. In accordance with Monterey Park Municipal Code ("MPMC") §§ 2.04.060 to 2.04.090. Councilmembers Yvonne Yiu, Henry Lo and Fred Sornoso were elected to the City Council on March 3, 2020. Based upon the policy of Resolution No. 8584, individuals with the highest number of votes would be ranked for the order of mayoral appointment, i.e., the person with the highest number of votes would be ranked first. Using Resolution No. 8584, Councilmember Sornoso would become mayor pro tempore and become Mayor on May 5, 2020.

These resolutions, however, were based upon the assumption that the City Council would be selected through an at-large election. With districts, each elected Councilmember received the highest number of votes for that district. And, since each district may have different numbers of registered voters who actually voted in a general municipal election, there may be a systemic disparity in the number of votes each successful candidate received. Accordingly, the assumptions made by Resolution No. 8584 might result in a skewed ranking for mayoral appointments and thus create an unintended inequity in the mayoral rotation.

There are additional facts for the City Council to consider when appointing the next mayor pro tempore. First, the two incumbent City Councilmembers were elected at-large and their terms will both expire in 2022. Because of term limits, they are ineligible to run for City Council in the 2022 election.

Second, the City has been in a declared state of emergency since March 11, 2020. As a result, most public meetings were cancelled in order to protect public health and safety. Any City Council meeting that is called is being held via electronic means in accordance with Executive Order No. N-29-20 issued on March 17, 2020. The current state of emergency may make it challenging for newly elected Councilmembers to immediately become Mayor or Mayor Pro Tempore.

Based upon all of the above, the City Council should consider what policy it wishes to implement short-term and long-term for the mayoral rotation. Several options are available (in no particular order):

- The Council utilizes the existing system and selects Councilmember Fred Sornoso to become mayor pro tempore. He would then become Mayor on May 5, 2020;
- The Council extends the term of Mayor Hans Liang and selects Councilmember Peter Chan to be mayor pro tem. Per the sample schedule, each succeeding Councilmember's term as mayor or mayor pro tempore would be extended for a period of time until 2024 at which time all mayoral rotations would again conform with the existing system; or
- The Council could abandon the existing system (as provided by Section 6 of Resolution No. 11507) and instead utilize a traditional method of selecting the mayor and mayor pro tempore via a nomination and vote for each position.

Whichever method the City Council chooses, it should implement that system on April 15th to select (at a minimum) the mayor pro tempore. Thereafter, a resolution memorializing the decision would be placed on the agenda for the next regular City Council meeting.

FISCAL IMPACT:

None identified.

Respectfully submitted by:



Vincent D. Chang,
City Clerk

ATTACHMENTS:

1. Sample mayoral rotation schedule

ATTACHMENT 1
Sample Schedule

Hans mayoral term ends

5/4/2020

Mayoral Duration	Beginning Date	Ending Date	Order			Council Member	Council Member	Council Member
			Mayor	Mayor Pro Tem	Council Member			
24.5 wks	5/5/2020	10/22/2020	Hans Liang	Peter Chan	District 2	District 3	District 4	
24.5 wks	10/23/2020	4/12/2021	Peter Chan	District 2	District 3	District 4	Hans Liang	
Election		3/8/2022	District 2	District 3	District 4	District 1	District 5	
50.0 wks	4/13/2021	3/28/2022	District 2	District 3	District 4	District 1	District 5	
50.0 wks	3/29/2022	3/13/2023	District 3	District 4	District 1	District 5	District 2	
50.0 wks	3/14/2023	2/26/2024	District 4	District 1	District 5	District 2	District 3	
Election		3/5/2024	District 1	District 5	District 2	District 3	District 4	
41.0 wks	3/6/2024	12/9/2024	District 1	District 5	District 2	District 3	District 4	
41.0 wks	12/10/2024	9/22/2025	District 5	District 2	District 3	District 4	District 1	
Election		3/3/2026	District 2	District 3	District 4	District 1	District 5	
41.0 wks	9/23/2025	7/6/2026	District 2	District 3	District 4	District 1	District 5	
41.0 wks	7/7/2026	4/19/2027	District 3	District 4	District 1	District 5	District 2	
41.0 wks	4/20/2027	1/31/2028	District 4	District 1	District 5	District 2	District 3	
Election		3/7/2028	District 1	District 5	District 2	District 3	District 4	
41.0 wks	2/1/2028	11/13/2028	District 1	District 5	District 2	District 3	District 4	
41.0 wks	11/14/2028	8/27/2029	District 5	District 2	District 3	District 4	District 1	
Election		3/5/2030	District 2	District 3	District 4	District 1	District 5	
41.0 wks	8/28/2029	6/10/2030	District 2	District 3	District 4	District 1	District 5	
41.0 wks	6/11/2030	3/24/2031	District 3	District 4	District 1	District 5	District 2	
41.0 wks	3/25/2031	1/5/2032	District 4	District 1	District 5	District 2	District 3	
Election		3/2/2032	District 1	District 5	District 2	District 3	District 4	
41.0 wks	1/6/2032	10/18/2032	District 1	District 5	District 2	District 3	District 4	
41.0 wks	10/19/2032	8/1/2033	District 5	District 2	District 3	District 4	District 1	
Election		3/7/2034	District 2	District 3	District 4	District 1	District 5	
41.0 wks	8/2/2033	5/15/2034	District 2	District 3	District 4	District 1	District 5	
41.0 wks	5/16/2034	2/26/2035	District 3	District 4	District 1	District 5	District 2	
41.0 wks	2/27/2035	12/10/2035	District 4	District 1	District 5	District 2	District 3	
Election		3/4/2036	District 1	District 5	District 2	District 3	District 4	

41.0 wks	12/11/2035	9/22/2036	District 1	District 5	District 2	District 3	District 4
41.0 wks	9/23/2036	7/6/2037	District 5	District 2	District 3	District 4	District 1
Election		3/2/2038	District 2	District 3	District 4	District 1	District 5
41.0 wks	7/7/2037	4/19/2038	District 2	District 3	District 4	District 1	District 5
41.0 wks	4/20/2038	1/31/2039	District 3	District 4	District 1	District 5	District 2
41.0 wks	2/1/2039	11/14/2039	District 4	District 1	District 5	District 2	District 3
Election		3/6/2040	District 1	District 5	District 2	District 3	District 4
41.0 wks	11/15/2039	8/27/2040	District 1	District 5	District 2	District 3	District 4
41.0 wks	8/28/2040	6/10/2041	District 5	District 2	District 3	District 4	District 1
Election		3/4/2042	District 2	District 3	District 4	District 1	District 5
41.0 wks	6/11/2041	3/24/2042	District 2	District 3	District 4	District 1	District 5
41.0 wks	3/25/2042	1/5/2043	District 3	District 4	District 1	District 5	District 2
41.0 wks	1/6/2043	10/19/2043	District 4	District 1	District 5	District 2	District 3
Election		3/8/2044	District 1	District 5	District 2	District 3	District 4
41.0 wks	10/20/2043	8/1/2044	District 1	District 5	District 2	District 3	District 4
41.0 wks	8/2/2044	5/15/2045	District 5	District 2	District 3	District 4	District 1

RESOLUTION NO. _____

A RESOLUTION ADOPTED BY THE CITY COUNCIL FOR THE CITY OF MONTEREY PARK ENCOURAGING THE COMMUNITY TO ADHERE TO THE “SAFER AT HOME” ORDERS AND CDC RECOMMENDATIONS TO COMBAT THE COVID-19 PANDEMIC.

BE IT RESOLVED by the Council of the City of Monterey Park as follows:

SECTION 1: The City Council finds as follows:

- A. On March 11, 2020, the World Health Organization (“WHO”) declared that the COVID-19 coronavirus resulted in a worldwide pandemic.
- B. In response, the City of Monterey Park declared a local emergency on March 11, 2020 which was subsequently ratified by Resolution No. 12142 on March 18, 2020 (the “COVID-19 Pandemic”).
- C. In the weeks since the WHO first identified the COVID-19 Pandemic, the City of Monterey Park has undertaken an unprecedented response to the emergency to protect public health and safety.
- D. Among other things, the City joined state and County emergency responders in implementing physical distancing measures to help “flatten the curve” as to the number of individuals infected by COVID-19.
- E. Toward that end, the City Council seeks to encourage all residents of Monterey Park to undertake prudent measures that will assist with the national, state, and local efforts to reduce the spread of COVID-19.

SECTION 2: The City Manager is directed to provide appropriate and practical information to the public regarding recommendations (and orders) from the State of California, the Los Angeles Department of Public Health, the Centers for Disease Control, and other recognized government agencies needed to fight against the spread of COVID-19. These include, without limitation, staying home; washing hands; employ physical distancing; and wearing face coverings. Educating the public regarding these matters should be accomplished through all recognized media including, without limitation, local television, daily newspapers, social media outlets, and the City’s website. The residents of Monterey Park should know that their elected and appointed officials are working tirelessly to help keep them safe.

SECTION 3: This Resolution will take effect immediately upon adoption.

PASSED AND ADOPTED this ____ day of April, 2020.

Hans Liang, Mayor

ATTEST:

Vincent D. Chang, City Clerk

APPROVED AS TO FORM:

Karl H. Berger, Assistant City Attorney