



CITY OF MONTEBELLO
CITY COUNCIL AND PUBLIC FINANCING AUTHORITY JOINT REGULAR MEETING

MINUTES

WEDNESDAY, AUGUST 10, 2022 AT 5:00 P.M.

CITY HALL COUNCIL CHAMBERS
1600 WEST BEVERLY BOULEVARD
MONTEBELLO, CALIFORNIA

OPENING CEREMONIES

CALL TO ORDER – Mayor Cobos-Cawthorne called the meeting to order at 5:07 p.m.

ROLL CALL – Members present were Mayor/Chairperson Cobos-Cawthorne, Mayor Pro Tem/Vice Chairperson Jimenez, Councilmember/Member Peralta, Councilmember/ Member Melendez, and Councilmember/ Member Torres. City Clerk/Board Secretary Jimenez and Treasurer Gutierrez were also present.

STAFF PRESENT – City Attorney Chris Cardinale, City Manager René Bobadilla, Assistant City Manager Arlene Salazar, Senior Deputy City Clerk Alicia Fernandez, Deputy City Clerk Kimberly Guillen, and Records Coordinator Angelina Padilla.

PUBLIC COMMENTS FOR CLOSED SESSION ITEMS

The City Clerk's Office acknowledged one (1) member of the public wishing to address the City Council. Speaker was provided three minutes to address the City Council and said speaker card is on file at the City Clerk's office. No written comments were submitted for Closed Session.

CLOSED SESSION – 5:30 P.M.

Mayor Cobos-Cawthorne recessed the meeting into Closed Session at 5:16 p.m. to consider the following closed session items:

1. THREAT TO PUBLIC SERVICES OR FACILITIES

Government Code Section 54957

Consultation with City Manager, Police Chief, City Attorney and other related City officials.

2. CONFERENCE WITH REAL PROPERTY NEGOTIATORS

- a. Government Code Section 54956.8
Property: Bus Depot
Agency Negotiator: René Bobadilla, City Manager
Negotiating Party: Pico Rivera
Under Negotiation: Price and Terms

- b. Government Code Section 54956.8
Property: 701 West Whittier Boulevard, Montebello
Agency Negotiator: René Bobadilla, City Manager
Negotiating Party: Jimmy's Property
Under Negotiation: Price and Terms

3. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

Government Code Section 54956.9(d)(1)
Maria Perez v. City Of Montebello
Los Angeles Superior Court Case No. 19STCV06622

4. PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Government Code Section 54957
Title: City Manager René Bobadilla

REGULAR SESSION – NO LATER THAN 6:00 P.M.

CLOSED SESSION REPORT

Mayor Cobos-Cawthorne reconvened the meeting at 6:02 p.m. City Attorney Arnold Alvarez-Glasman provided the following report to City Council: a briefing was provided on Item No. 1, no action taken and nothing to report; an updated was provided on Item No. 2a, no action taken and nothing to report; Item No. 2b. was not discussed as there was no update to provided; a briefing on settlement efforts associated with this matter was provided on Item No. 3, and settlement authority was provided by the City Council on the terms and conditions were discussed but is not final and therefore not reportable; and City Council briefly discussed Item No. 4 but no action was taken. City Attorney Cardinale stated that Closed Session Item N. 4 also appears on the Open Session portion of the meeting.

INVOCATION – City Clerk Christopher Jimenez

PLEDGE OF ALLEGIANCE – Alina Martirosyan

CORRECTIONS TO THE AGENDA – CITY MANAGER – No changes.

CEREMONIAL/PRESENTATIONS

5. **RECOGNITION OF CITIZEN OF THE MONTH – MANUEL SANCHEZ** – Presented by Mayor Cobos-Cawthorne.
6. **RECOGNITION OF ALINA MARTIROSYAN** – Presented by Mayor Cobos-Cawthorne.
7. **PROCLAMATION CELEBRATING THE 100TH YEAR ANNIVERSARY OF THE CITY OF MONTEBELLO FIRE DEPARTMENT** – Presented by Mayor Cobos-Cawthorne.
8. **RECOGNITION OF NATIONAL WELLNESS MONTH** – Presented by Mayor Cobos-Cawthorne.

PUBLIC COMMENTS ON NON-AGENDA AND AGENDA ITEMS (30 MINUTES)

The City Clerk's Office acknowledged seven (7) members of the public wishing to address the City Council. Speakers were provided three minutes to address the City Council and said speaker cards are on file at the City Clerk's office.

The City Clerk's Office acknowledged ten (10) written public comments submitted to the City's public comment email address; said comments are on file at the City Clerk's office.

STAFF COMMUNICATIONS ON ITEMS OF COMMUNITY INTEREST

PUBLIC HEARING

9. **PUBLIC HEARING TO ADOPT RESOLUTION NO. 22-67 APPROVING THE DRAFT FISCAL YEAR 2022-23 COMMUNITY DEVELOPMENT BLOCK GRANT AND HOME INVESTMENT PARTNERSHIPS ANNUAL ACTION PLAN AND THE FY 2022-23 COMMERCIAL FAÇADE PROGRAM**

Housing Manager Rosemary Perich presented a staff report to the City Council, including a PowerPoint presentation which covered how the City currently administers the Federal Housing and Urban Development Community Development Block Grant and Home Investment Partnerships entitlement programs. Ms. Perich explained the two programs, provided a brief background, an overview of the funding allocations, funding requests, award amounts, funding awards, and was available to answer any questions.

The Public Hearing was opened at 7:26 p.m. Four (4) members of the public wishing to address the City Council were acknowledged. Speakers were provided three minutes to address the City Council and said speaker cards are on file at the City Clerk's office. The Public Hearing was closed at 7:30 p.m.

Mayor Pro Tem Jimenez motioned, seconded by Councilmember Melendez that the City Council approve the recommendations as shown below:

- 1) Conduct a Public Hearing to consider adopting Resolution22-67 approving the draft Fiscal Year 2022-23 Community Development Block Grant and Home Investment Partnerships Annual Action Plan and the FY 2022-23 Commercial Façade Program; and
- 2) Take such additional, related action that may be desirable.

Motion was approved unanimously.

REGULAR BUSINESS

10. INTRODUCTION AND FIRST READING OF ORDINANCE NO. 2452 UPDATING MONTEBELLO MUNICIPAL CODE CHAPTER 2.16 – DIRECTOR OF FINANCE

City Attorney Chris Cardinale provided a brief description of this item.

Councilmember Torres expressed his opposition to this item and suggested amending the recommendations below to include keeping the language of transparency of accountability to the residents and that we continue to ask for monthly reports of receipts and disbursements so that City Council can understand the exact financial condition of the City. Councilmember Peralta asked a few clarifying questions regarding the warrant registers and monthly statement of receipts of all payments and disbursements; Director Solorza provided clarification. Councilmember Peralta expressed her preference for monthly statement of receipts of all payments and disbursements rather than a warrant register and also recommended not removing that language from the Ordinance.

Councilmember Melendez motioned, seconded by Mayor Pro Tem Jimenez that the City Council approve the recommendations as is.

Peralta made a substitute motion to move forward with the item as recommended but to amend the recommendation to include keeping the language related to monthly statement of receipts of all payments and disbursements; motion seconded by Councilmember Torres.

The motion failed by the following vote:

MOVED: Peralta	SECONDED: Torres	FAILED: 2-3-0-0
AYES: Torres, Peralta		
NOES: Melendez, Jimenez, Cobos-Cawthorne		
ABSTAIN: None		
ABSENT: None		

The original motion was brought back to the floor to approve the item with the recommendations as shown below:

RECOMMENDATION: It is recommended that the City Council:

- 1) Introduce and Conduct First Reading of Ordinance No. 2452 Amending Montebello Municipal Code Chapter 2.16.020 – Director of Finance, Powers and Duties; and
- 2) Take such additional, related action(s) that may be desirable.

Motion approved by the following vote:

MOVED: Peralta	SECONDED: Torres	APPROVED: 3-2-0-0
AYES: Melendez, Jimenez, Cobos-Cawthorne		
NOES: Torres, Peralta		
ABSTAIN: None		
ABSENT: None		

11. CONSIDERATION OF THIRD AMENDMENT TO EMPLOYMENT AGREEMENT FOR RENE BOBADILLA AS CITY MANAGER

City Attorney Cardinale presented the staff report to City Council and was available to answer any questions.

Councilmember Torres expressed his opposition to this item considering the City Manager is currently under contract. Councilmember Melendez expressed his support for this item and stated the City Manager has continuously shown how the City is progressing. Councilmember Peralta acknowledged the City Manager’s accomplishments and expressed her opposition to recommendation two of this report. Mayor Pro Tem Jimenez commended the City Manager who effectively brought in professional and skilled employees that moved the City into the right direction and expressed her support for this item. Mayor Cobos-Cawthorne also commended the City Manager for his hard work and expressed her support for this item. Councilmember Torres asked clarifying questions and City Attorney Cardinale clarified that City Council should direct communication directly to the City Manager, as that is his role. It was motioned by Councilmember Melendez, seconded by Mayor Pro Tem Jimenez that:

RECOMMENDATION: It is recommended that the City Council:

- 1) Approve the attached Third Amendment to the Employment Agreement between the City of Montebello and Rene Bobadilla as City Manager; and
- 2) Authorize the payment of a one-time performance compensation; and
- 3) Take such additional, related, action that may be desirable.

Item was approved by the following vote:

MOVED: Melendez	SECONDED: Jimenez	APPROVED: 3-2-0-0
AYES: Melendez, Jimenez, Cobos-Cawthorne		
NOES: Torres, Peralta		
ABSTAIN: None		
ABSENT: None		

CONSENT CALENDAR

Councilmember Torres pulled Item No. 19 for discussion.

Councilmember Melendez motioned, seconded by Mayor Pro Tem Jimenez, that Items 12-22 be approved; motion passed unanimously. City Attorney Cardinale asked for a Public Financing Authority roll call vote for Item No. 20, which passed unanimously as well.

12. AWARD OF CONSTRUCTION CONTRACT NO. 4021 – ANNUAL SLURRY SEAL PROJECT, FISCAL YEAR 2022-2022 (CP. NO. 892)

RECOMMENDATION: It is recommended that the City Council:

- 1) Award a construction contract for the Annual Slurry Seal Project – Fiscal Year 2022-23 (CP 892) in the amount of \$399,920 to Doug Martin Contracting Company, Inc.; and
- 2) Authorize the Director Public Works to review and approve change orders within a 15% contingency of the contract amount as recommended by the City Engineer; and
- 3) Amend the Fiscal Year 2022-23 budget by increasing appropriations by \$300,000 in Account No. 200-99-7116 (Gas Tax, Improvements Other Than Building); and \$100,000 in Account No. 222-99-7116 (Measure M, Improvements Other Than Building); and
- 4) Authorize the City Manager to execute the Contract Agreement, on behalf of the City; and
- 5) Take such additional, related, action that may be desirable.

13. APPROVE AN AGREEMENT TO PROVIDE SCHOOL RESOURCE OFFICERS (“SRO”) TO THE MONTEBELLO UNIFIED SCHOOL DISTRICT (“MUSD”)

RECOMMENDATION: It is recommended that the City Council:

- 1) Approve an agreement to provide School Resource Officers (“SRO”) to the Montebello Unified School District (“MUSD”); and
- 2) Take such additional, and related, action that may be desirable.

14. APPROVE RECEIPT OF AN AWARD FROM THE CALIFORNIA DEPARTMENT OF FORESTRY AND FIRE PROTECTION (CAL FIRE) FIRE PREVENTION GRANTS PROGRAM AND APPROPRIATE FUNDS IN FISCAL YEAR 2022-23

RECOMMENDATION: It is recommended that the City Council:

- 1) Approve the appropriation of \$108,997 awarded to the Fire Department by the California Department of Forestry and Fire Protection (CAL FIRE) Fire Prevention Grants Program for Fiscal Year 2022-23; and
- 2) Amend the Fiscal Year 2022-23 budget by increasing appropriations by \$108,997 in Expense Account No. 265-85-856-6040.10 and Revenue Account No. 265-99-4198.10

(Grants, Fire, Cal Fire Wildfire Prevention, Other Contract Services and Grants, Cal Fire Wildfire Prevention; and

3) Take such additional, related, action that may be desirable

15. APPROVE AMENDMENT NO. 3 TO AGREEMENT NO. 3697 WITH AVAIL TECHNOLOGIES, INC., FOR MAINTENANCE AND SUPPORT OF MONTEBELLO BUS LINES' INTELLIGENT TRANSPORTATION SYSTEM AND FIXED ROUTE PASSENGER INFORMATION SYSTEM

RECOMMENDATION: It is recommended that the City Council:

1) Approve Amendment No. 3 to Agreement No. 3697 with Avail Technologies, Inc. (Avail), in an annual not-to-exceed the amount of \$178,405, to extend software maintenance and support services for a one-year term with Montebello Bus Lines (MBL) for its Intelligent Transportation System (ITS) and Fixed Route Passenger Information System; and

2) Authorize the City Manager to execute Amendment No. 3 on behalf of the City; and

3) Take such additional, related, action that may be desirable.

16. APPROVE AMENDMENT NO. 1 TO AGREEMENT NO. 2669 WITH CLEAN ENERGY FUELS CORP. TO PROVIDE MAINTENANCE AND SUPPORT SERVICES FOR MONTEBELLO BUS LINES' COMPRESSED NATURAL GAS STATION

RECOMMENDATION: It is recommended that the City Council:

1) Approve Amendment No. 1 to Agreement No. 2669 with Clean Energy Fuels Corp. (Clean Energy), to provide maintenance and support services for Montebello Bus Lines' compressed natural gas (CNG) station for an additional one-year (1-year) term with the option for renewal of up to two (2) additional one-year (1-year) terms; and

2) Authorize the City Manager and/or designee to execute Amendment No. 1 on behalf of the City of Montebello (City); and

3) Take such additional, related, action that may be desirable.

17. ADOPT RESOLUTION NO. 22-61 AUTHORIZING THE CITY MANAGER TO EXECUTE ALL REQUIRED DOCUMENTS TO OBTAIN FUNDS PROVIDED BY SENATE BILL 1 (SB1)

RECOMMENDATION: It is recommended that the City Council:

1) Adopt Resolution No. 22-61 authorizing the City Manager to execute all required documents to obtain funds provided by Senate Bill 1 (SB1); and

2) Take such additional, related, action that may be desirable.

18. APPROVE ESTABLISHING SOLE-SOURCE BLANKET PURCHASE ORDERS WITH AMERICAN MOVING PARTS, CUMMINS PACIFIC, INLAND KENWORTH, INTERSTATE BATTERIES, NAPA

AUTO PARTS, NFI PARTS, AND WAYNE ELECTRIC COMPANY TO PURCHASE MAINTENANCE-RELATED BUS PARTS AND VEHICLE FLEET PARTS

RECOMMENDATION: It is recommended that the City Council:

- 1) Approve establishing a sole-source blanket purchase order with American Moving Parts, LLC (American Moving Parts), for the total not-to-exceed amount of \$80,000, to purchase maintenance-related bus parts for Montebello Bus Lines (MBL) and vehicle fleet parts for the Montebello Fire Department (MFD) for the Fiscal Year 2022-23; and
 - 2) Approve establishing a sole-source blanket purchase order with Cummins Pacific, LLC (Cummins Pacific), for the total not-to-exceed amount of \$80,000, to purchase maintenance-related bus parts for MBL and vehicle fleet parts for the MFD for the Fiscal Year 2022-23; and
 - 3) Approve establishing a sole-source blanket purchase order with Inland Kenworth Inc. (Inland Kenworth), for the total not-to-exceed amount of \$75,000, to purchase maintenance-related bus parts for the Fiscal Year 2022-23; and
 - 4) Approve establishing a sole-source blanket purchase order with R & M Hansen Enterprises, Inc. (dba Interstate Batteries), for the total not-to-exceed amount of \$75,000, to purchase maintenance-related bus parts for the Fiscal Year 2022-23; and
 - 5) Approve establishing a sole-source blanket purchase order with SoCal Auto & Truck Parts, Inc. (dba Napa Auto Parts), for the total not-to-exceed amount of \$85,000, to purchase maintenance-related bus parts for the Fiscal Year 2022-23; and
 - 6) Approve establishing a sole-source blanket purchase order with The Aftermarket Parts Company, LLC (dba NFI Parts), for the total not-to-exceed amount of \$200,000, to purchase maintenance-related bus parts for the Fiscal Year 2022-23; and
 - 7) Approve establishing a sole-source blanket purchase order with Wayne Harmeier, Inc., (dba Wayne Electric Company), for the total not-to-exceed amount of \$75,000, to purchase maintenance-related bus parts for the Fiscal Year 2022-23; and
 - 8) Take such additional, related, action that may be desirable.
- 19. APPROVE AGREEMENTS WITH COASTAL OCCUPATIONAL MEDICAL GROUP (AGREEMENT NO. 3996) AND RELIANT IMMEDIATE CARE MEDICAL GROUP (AGREEMENT NO. 3997)**
Councilmember Torres expressed his opposition to this item and motioned to approve the item as is; seconded by Councilmember Melendez.

Motioned approved unanimously.

RECOMMENDATION: It is recommended that the City Council:

- 1) Approve the attached agreement with Coastal Occupational Medical Group (Akeso) (Agreement No. 3996); and
- 2) Approve the attached agreement with Reliant Immediate Care Medical Group, Inc.(Reliant) (Agreement No. 3997); and,
- 3) Take such additional, related action(s) that may be desirable.

20. ADOPTION OF A MONTEBELLO PUBLIC FINANCING AUTHORITY (PFA) RESOLUTION NO. 22-01 ESTABLISHING THE REGULAR MEETING DATES

RECOMMENDATION: It is recommended that the City Council and Public Financing Authority:

- 1) Adopt the Resolution establishing the regular meeting dates and adopting the Debt Management Policy (the “Debt Management Policy”) of the City of Montebello as the debt management policy of the Authority.

21. APPROVE AGREEMENT NO. 4020 WITH JCL TRAFFIC SERVICES

RECOMMENDATION: It is recommended that the City Council:

- 1) Approve the attached agreement with JCL Traffic Services (Agreement No. 4020); and
- 2) Take such additional, related action(s) that may be desirable.

22. PAYMENT OF BILLS: RESOLUTION NO. 22-65 APPROVING THE CITY WARRANT REGISTER OF DEMANDS DATED AUGUST 10, 2022

RECOMMENDATION: Adopt Resolution No. 22-65 approving the Warrant Register dated August 10, 2022.

AB 1234 TRAVEL REPORTS

No reports provided.

COUNCIL ORALS

Council member announcements; requests for future agenda items; conference/meetings reports.

- **Councilmember Torres** – none.
- **Councilmember Melendez** – none.
- **Councilmember Peralta** – none.
 - a. Direction to provide information and outreach on Tenant Protections and Resources to our community.
 - b. Discussion and action regarding District Election Public Outreach Plan and a city website function that allows residents to look up their district through address input.
 - c. Requesting that the Traffic & Safety Commission restarts their monthly meetings to address crucial concerns regarding traffic, parking, and dangerous streets/intersections. Councilmember asked for Council consensus to direct staff to provide resources for tenant protections on Item a. Housing Manager Rosemary Perich provided a briefing to the City Council regarding the housing resources provided by the Housing Rights Center, including additional information; consensus was received. For Item b., City Manager Bobadilla tested the website to show the Council how to search for their district and explained the voter outreach that staff will conduct. For Item c., City Manager Bobadilla clarified that the City

does not have a Traffic Commission but does has a Traffic Safety Committee and encouraged the City Council to address any issues or concerns to Director of Public Works, James Enriquez; the Committee meets as needed. Councilmember Peralta requested that the Committee meet to address on-going issue. Director Enriquez clarified that Committee functions as an appeal body to review issues; currently no appeals has been submitted.

- **Mayor Pro Tem Jimenez** – none.
- **Mayor Cobos-Cawthorne** – none.

ADJOURNMENT

Mayor Cobos-Cawthorne adjourned in the memory of Monterey Park Police Officer Gardiel Solorio who was fatally shot, and in memory of Director Solorza’s father, Carlos Solorza. Mayor Pro Tem Jimenez motioned, seconded to Councilmember Melendez, to adjourn the meeting at 8:35 p.m.

THE MINUTES OF AUGUST 10, 2022 ARE HEREBY APPROVED AND ADOPTED ON THIS 12TH DAY OF OCTOBER 2022.



Alicia Fernandez, Senior Deputy City Clerk

CLOSED SESSION SPEAKER CARDS



SPEAKER CARD

Please Note: Address and phone number are optional and not required to speak. Public Comment/Speaker Card must be submitted to City Clerk's Office prior to 5:00 p.m. for live meetings or in accordance with Assembly Bill 361 for video/audio meetings.

Type of Comment:

Closed Session

Non-Agenda Item

AGENDA ITEM NO. _____

Meeting Date: _____

Time Received: _____

Date Received: _____

SPEAKER'S FULL NAME: Will Cervera **PHONE:** 325 3532626
(Optional)

ADDRESS: _____
(Optional)

ORGANIZATION REPRESENTED: None

Opposed In Support Neutral **TOPIC:** Closed Session

NOTES: _____

ACCOMMODATIONS: _____

Translation Needed: No Yes Language: _____

Received by Staff _____ **Received Via:** Email Phone In Person

AGENDA & NON-AGENDA SPEAKER CARDS



SPEAKER CARD

Please Note: Address and phone number are optional and not required to speak. Public Comment/Speaker Card must be submitted to City Clerk's Office prior to 5:00 p.m. for live meetings or in accordance with Assembly Bill 361 for video/audio meetings.

Type of Comment:

Closed Session

Non-Agenda Item

AGENDA ITEM NO. 10, 11, 12, 22

Meeting Date: 8/10

Time Received: _____

Date Received: _____

SPEAKER'S FULL NAME: Will Cervero

PHONE: 323 353 2626

(Optional)

ADDRESS: _____

(Optional)

ORGANIZATION REPRESENTED: _____

Opposed

In Support

Neutral

TOPIC: Public comment item 10, #11

NOTES: #12 #22

ACCOMMODATIONS: _____

Translation Needed: No

Yes

Language: _____

Received by Staff _____

Received Via: Email

Phone

In Person



SPEAKER CARD

Please Note: Address and phone number are optional and not required to speak. Public Comment/Speaker Card must be submitted to City Clerk's Office prior to 5:00 p.m. for live meetings or in accordance with Assembly Bill 361 for video/audio meetings.

Type of Comment:

 Closed Session

 Non-Agenda Item
AGENDA ITEM NO. _____

Meeting Date:
9/10/22
Time Received: _____

Date Received: _____

SPEAKER'S FULL NAME:
MICHAEL CHIEE
PHONE: _____

(Optional)

ADDRESS: _____

(Optional)

ORGANIZATION REPRESENTED:
SELF

 Opposed

 In Support

 Neutral
TOPIC:
PUBLIC INTEREST TOPIC
NOTES: _____

ACCOMMODATIONS: _____

Translation Needed:

 No

 Yes

Language: _____

Received by Staff _____

Received Via:

 Email

 Phone

 In Person



SPEAKER CARD

Please Note: Address and phone number are optional and not required to speak. Public Comment/Speaker Card must be submitted to City Clerk's Office prior to 5:00 p.m. for live meetings or in accordance with Assembly Bill 361 for video/audio meetings.

Type of Comment:

Closed Session

Non-Agenda Item

AGENDA ITEM NO. _____

Meeting Date:

Aug 10, 22

Time Received: _____

Date Received: _____

SPEAKER'S FULL NAME:

Roger Jimenez

PHONE:

(323) 6835632
(Optional)

ADDRESS:

1133 Beach St Montebello
(Optional)

ORGANIZATION REPRESENTED: _____

Opposed

In Support

Neutral

TOPIC:

Police

NOTES: _____

ACCOMMODATIONS: _____

Translation Needed: No

Yes

Language: _____

Received by Staff _____

Received Via: Email

Phone

In Person



SPEAKER CARD

10, 11, 12

Please Note: Address and phone number are optional and not required to speak.

Public Comment/Speaker Card must be submitted to City Clerk's Office prior to 5:00 p.m. for live meetings or in accordance with Assembly Bill 361 for video/audio meetings.

Type of Comment:

Closed Session Non-Agenda Item

Agenda

AGENDA ITEM NO.

10-11-12

Meeting Date:

10 August 2022

Time Received:

5:05pm

Date Received:

SPEAKER'S FULL NAME:

MARGOT EISER

PHONE:

(Optional)

ADDRESS:

Resident address file

(Optional)

ORGANIZATION REPRESENTED:

Opposed

In Support

Neutral

TOPIC:

Need public to be informed about the detail of financial arrangements

NOTES:

ACCOMMODATIONS:

Translation Needed:

No

Yes

Language:

Received by Staff

Received Via:

Email

Phone

In Person



SPEAKER CARD

Please Note: Address and phone number are optional and not required to speak. Public Comment/Speaker Card must be submitted to City Clerk's Office prior to 5:00 p.m. for live meetings or in accordance with Assembly Bill 361 for video/audio meetings.

Type of Comment: Closed Session Non-Agenda Item AGENDA ITEM NO. _____

Meeting Date: 8/10 Time Received: 5:20 Date Received: _____

SPEAKER'S FULL NAME: Rosemary Torres PHONE: 633-9252
(Optional)

ADDRESS: 1424 S 4th St
(Optional)

ORGANIZATION REPRESENTED: self

Opposed In Support Neutral TOPIC: giving thanks to MFD mayor

NOTES: and City Manager

ACCOMMODATIONS: _____

Translation Needed: No Yes Language: _____

Received by Staff _____ Received Via: Email Phone In Person



SPEAKER CARD

Please Note: Address and phone number are optional and not required to speak. Public Comment/Speaker Card must be submitted to City Clerk's Office prior to 5:00 p.m. for live meetings or in accordance with Assembly Bill 361 for video/audio meetings.

Type of Comment: Closed Session Non-Agenda Item **AGENDA ITEM NO.** _____

Meeting Date: 8/10 **Time Received:** _____ **Date Received:** _____

SPEAKER'S FULL NAME: ROSA TAMAYO **PHONE:** 303-724-6099
(Optional)

ADDRESS: 500 S. Montebello Blvd #4c MTB CA. 90640
(Optional)

ORGANIZATION REPRESENTED: _____

Opposed In Support Neutral **TOPIC:** _____

NOTES: _____

ACCOMMODATIONS: _____

Translation Needed: No Yes Language: Spanish

Received by Staff _____ **Received Via:** Email Phone In Person



SPEAKER CARD

Please Note: Address and phone number are optional and not required to speak.

Public Comment/Speaker Card must be submitted to City Clerk's Office prior to 5:00 p.m. for live meetings or in accordance with Assembly Bill 361 for video/audio meetings.

Type of Comment:

Closed Session

Non-Agenda Item

AGENDA ITEM NO. _____

Meeting Date: _____

Time Received: _____

Date Received: _____

SPEAKER'S FULL NAME:

Jada Roberts

PHONE: _____

(Optional)

ADDRESS: _____

(Optional)

ORGANIZATION REPRESENTED: _____

Opposed

In Support

Neutral

TOPIC: _____

NOTES: _____

ACCOMMODATIONS: _____

Translation Needed:

No

Yes

Language: _____

Received by Staff _____

Received Via:

Email

Phone

In Person

AGENDA & NON-AGENDA COMMENTS

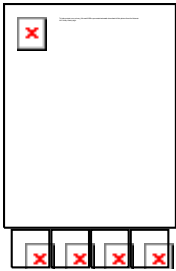
Padilla, Angelina

From: Fiona Reimers <FReimers@library.lacounty.gov>
Sent: Wednesday, August 3, 2022 7:55 PM
To: comment, ccpublic
Subject: [External] Public Comment for 8/10/22 City Council Meeting

Good evening,

I would like to submit the following for public comment at the 8/10/22 Regular City Council Meeting:

"Good evening members of the City Council. My name is Fiona Reimers and I am pleased to serve you as the new Community Library Manager at Chet Holifield Library in south Montebello. The library continues to offer free resources to meet your informational or recreational needs. We are an ideal homework spot and a place to check out a laptop, state parks pass, or the latest bestseller. Please visit us Monday through Friday or online at lacountylibrary.org. I look forward to meeting you in person soon and sharing about upcoming programs at the library. Thank you."



FIONA REIMERS
COMMUNITY LIBRARY MANAGER
LA County Library | Chet Holifield Library
1060 S Greenwood Ave, Montebello, CA 90640
P: 323.728.0421
E: freimers@library.lacounty.gov
LACountyLibrary.org

*****PLEASE DO NOT CLICK ON UNKNOWN LINKS. Contact Montebello IT Division if you are unsure.*****

Padilla, Angelina

From: THOEUN TOM UCH <utandihappi@aol.com>
Sent: Saturday, August 6, 2022 10:41 AM
To: comment, ccpublic
Subject: [External] ACLU

The fundamentals of free speech “ for “and “ against “ is provided by the US Constitution and CANNOT be denied or suppressed.

The City of Montebello and the Council must right the wrongs.

Tom and Alexandria Uch

Sent from my iPhone

PLEASE DO NOT CLICK ON UNKNOWN LINKS. Contact Montebello IT Division if you are unsure.

Padilla, Angelina

From: Martin Arcos <1965mararcos@gmail.com>
Sent: Tuesday, August 9, 2022 2:25 PM
To: comment, ccpublic
Subject: [External] Thank you

Hello, Madame Mayor, Council and Chiefs;

I would like to thank you for bringing back the feel of family, first the Firework show was spectacular, I told my children when I was their age we would go to the city park and watch fireworks.! They were nowhere as grand as the ones on July2. Then the Street event was so much fun, there were kids attractions, then the music was fantastic, the best part was it was free to the community. I'm sure Torres will complain like he always does, but correct me if I'm wrong didn't he get paid for the 5 meetings he's missed? How much did that cost us the taxpayers?

On Facebook one week he was acting like his medical condition was so dire, then 2 weeks later he's in Mexico water rafting and horseback riding, At last meeting when he could post and brag about his vacation, but he was a no show at last Council meeting and I did not hear his name so guess he doesn't care about city business.

Also would like to thank David S. the Parks Director for all the wonderful programs in our city, and for all his hard work and dedication to our community.

He truly deserves a raise, if the city had to pay him by the hour, the Over Time alone would be a lot of money, he's always there at the start and when we are leaving he's still there.

Our city is very lucky to have great staff, I see positive changes, our streets are looking good, I see more positive Police presents driving around and finally our Fire Department has new fire trucks. At an open house at Fire Station I remember seeing duct tape holding the Fire Truck together, they said they couldn't get parts because the company went out of business.

Again thank you for the great job you are doing.

Sincerely,
Martin Arcos
Montebello Resident

PLEASE DO NOT CLICK ON UNKNOWN LINKS. Contact Montebello IT Division if you are unsure.

Padilla, Angelina

From: Amanda Johansen <amandajohansenk@gmail.com>
Sent: Tuesday, August 9, 2022 5:40 PM
To: comment, ccpublic
Subject: [External] Public Comment on Agenda/Non-Agenda Items (Ordinance 2443)

Dear Mayor Cobos-Cawthorne and Honorable Members of the City Council:

I want to express my disapproval with Ordinance 2443 and further express my agreement with the ACLU SoCal. Not only does this ordinance violate the Brown Act, it is violative of the First Amendment. The public has the right to express their opinions to any public official during the meeting regarding an item being debated or any matter of public interest. This ordinance shields elected officials and appointed officers from accountability to the extent that it impedes on everyone's right to express their thoughts on city matters. I urge that the Montebello City Council consider repealing the ordinance so that we may continue to provide necessary input to the officials who we have elected.

Thank you for your attention to this matter.

Sincerely,
Amanda Johansen
Montebello Resident

PLEASE DO NOT CLICK ON UNKNOWN LINKS. Contact Montebello IT Division if you are unsure.

August 9, 2022

**To: Mayor Kimberly Ann Cobos-Cawthorne
Mayor Pro Tem Angie Jimenez
Councilmember David Torres
Councilmember Scarlet Peralta
Councilmember Salvador Melendez**

Thank you for allowing me to provide public comment via email regarding the intent to suppress citizen's rights by enacting Ordinance 2443-City Council Procedures.

As a citizen of Montebello, I have the right and privilege to speak to you all in this public forum regarding issues that affect our city. As stated within the Brown Act, I understand and agree with the need to control a public audience and to have an expectation of decorum and respect. However, the implementation of this ordinance goes beyond that by imposing limitations on public opinion, input and/or criticism of your actions and directives. Your duty to serve the city of Montebello as my elected representative requires that you be open to a respectful discussion with your constituents regarding matters that affect Montebello's citizens and city operations. Without the citizens being able to provide input, how will you know what is in the city or citizen's best interest? How will you be able to initiate positive change? Open communication is key with issue identification and resolution. Without this open communication, we no longer have a democracy, but now we move closer to dictatorship, tyranny, inequality, and unfairness.

The Brown Act continues by stipulating that city officials may not stop or limit public response because of a city official's personal disagreement with the citizen's point of view. Your proposed intent to limit the public's voice is not only a violation of the Brown Act, but also the US Constitution, and California Law. This has been confirmed by the notification the city received from the ACLU. More importantly, it should violate your professional ethics and morals as a public official.

Please consider terminating this initiative and allowing Montebello to once again flourish based on the voices of its citizens and the ethical actions of its elected representatives. And just to remind you all that the citizen's elected you and depend on you to make decisions in the best interest of your constituency and not for your own personal gain or notoriety.

**Respectfully,
Dr. Pattie Soltero Sanchez
815 Perry Ave.
Montebello, CA 90640
626-297-8307**

Padilla, Angelina

From: David J Gutierrez <davidjgutierrez8@gmail.com>
Sent: Wednesday, August 10, 2022 12:47 PM
To: comment, ccpublic
Subject: [External] ACLU

Hello Mayor, Council and Chiefs;

This meeting I'd like to address the ACLU mess brought by Councilman Torres vs the City, you're patting yourself on the back for an issue they have been trying to make relevant.

In all our city history the comments have always been addressed to the Mayor. By allowing speakers to address Councilmembers directly is going to cause a circus atmosphere.

Are speakers going to be allowed to rebuttal, because presently we are not allowed to speak once we finish our time.

How will any city business be conducted?

During Oral comments allowing speakers to speak directly to Councilmembers could result in actions like you Torres once was allowed to speak for 33 minutes, if I had been present at the meeting I would have yelled out to shut up.

Will it be acceptable for Councilmembers to speak against a resident speaker's opinion? Where are our First Amendment rights?

As a long time resident I am against this stupid move by Torres using the ACLU. Enough do your job and respect your colleagues.

Bill Ceveras

PLEASE DO NOT CLICK ON UNKNOWN LINKS. Contact Montebello IT Division if you are unsure.

Padilla, Angelina

From: Jack Cortez <jackcortez11@proton.me>
Sent: Wednesday, August 10, 2022 2:15 PM
To: comment, ccpublic
Subject: [External] Letter for Today's Council Meeting

Scarlett,

We represent hundreds of Montebello resident workers whose primary interest is in ensuring a more ideal community to live, play and work — and most importantly ensuring their own financial security for the foreseeable future. These resident workers are primarily hourly workers who live and work in the Montebello community and are eager to see the City they live in and love continually improve for their own benefit. This is amplified greatly by unprecedented rises in the inflation rates that in some cases exceed 30% on consumer staples like energy and food. In fact, a recent article showed something as basic as a Target shopping trip exceeded 37% inflation from just one year ago on items like toilet paper, non-alcoholic beverages, sundries, and more. These are the issues and daily challenges that these resident workers care deeply about. In fact, care deeply about doesn't even begin to scratch the surface. Every day, people in this community are making heartbreaking choices: can I afford to fill up even partially my tank of gas, and how will I ensure my kid can get to school safely because I now work a second job in the mornings because costs have dramatically exceeded stagnating incomes.

With regards to issues regarding the ACLU and Montebello City Council, these resident workers quite simply do not care. It's 100% insider baseball that does not meaningfully move the needle for any resident in any way, shape, or form with regards to their financial prosperity going forward into the future. How does this item change any of that for any team member or resident of the community? How does this item meaningfully improve anyones lives other than your own trying to attack your colleagues because you want to feel temporarily important in your very important elected position representing a grand total of what will be a few thousand total votes in a world of over 7 billion. There is an old Yiddish phrase, to a worm in horseradish, the world in its entirety is horseradish. Well Scarlett, unfortunately for you, the world in which we live in does not include your insider baseball political games and tactics, none of which help us on an everyday basis, nor does it include the recent home one of you bought (congratulations by the way!). Wait...you bought a home right now that's close to a million dollars really quickly after being elected to council? Interesting. Why is it that politicians, even low level ones like you in tiny cities, always seem to experience such extravagant financial gain so quickly after being elected when there was little evidence of any financial prosperity prior to being elected? Well, I digress. What really counts here is you were elected to oversee the City, not run it day by day in excruciating minutia. Let the City management run the City and you do what you were elected to do and what councils in City's with FAR more prosperity have done for decades: talk to residents, attend ribbon cutting ceremonies, set high level policy, innovate and think about the future, promote stability for business development, and being a leader in difficult times.

Not bickering and arguing, posting inflammatory instagram posts, getting involved in BS employee concerns, plotting against each other, and trying to control a council in a very small city in the suburbs of Los Angeles. Posting an Instagram post on the ACLU as a "vote for me in District 2" — is that even legal? should a Councilmember be commenting on a legal matter? — after your colleague Councilmember Torres so slyly brings in the ACLU, such a noted force for positivity after all, that demeans the City and your colleagues and promoting it really goes against everything you should be doing which is promoting City positivity and cheerleading for the City and its success, not publicizing negative things your colleague has drummed up.

Would a member of the board of directors of a public company ever disparage their own company and promote such disparagement and then claim it was for the betterment of the company? Never. They would internally work to fix whatever issues they thought existed and not use it as an opportunity to promote themselves. But perhaps we are asking for too much after all, because clearly you're not a board of directors member of a prestigious company, you're a Councilmember who won with a few thousand votes in a place that used to be consider nice who is clamoring to unnecessarily win her election by so elegantly exposing your colleagues as terrible so you can attempt to take over the majority of council and enforce your will upon the City. We usually enjoy wishing people well, but in this case, we actually do not wish well upon your plan.

Anonymous

P.S. You don't need to run in November and you know it. You already have your at large seat for 2 more years and you are just running for a feeling of importance. So why are you running again?

Padilla, Angelina

From: Jen Flores <jenflores48@proton.me>
Sent: Wednesday, August 10, 2022 2:41 PM
To: comment, ccpublic
Subject: [External] Letter for Tonights Meeting

David,

Like we mentioned to your protege Scarlett, we represent hundreds of Montebello resident workers whose primary interest is in ensuring a more ideal community to live, play and work — and most importantly ensuring their own financial security for the foreseeable future. These resident workers are primarily hourly workers who live and work in the Montebello community and are eager to see the City they live in and love continually improve for their own benefit.

These resident workers are incredibly curious. Besides reaching out to the ACLU to have them belittle your colleagues, what have you done for us lately? All we've heard about is your continual negativity, your utter insistence to dive into the absolute monotony and minutia of little tiny meaningless things, and your power hungry struggle to control this City Council so you and your colleague Scarlett can have some relevance and control City Council. Or maybe the control of council helps the both of you with your close to million dollar single family residences. Wait, David, you don't have a job? That should come as a surprise to many in the City, but honestly, look at this surrounding area, it's full of elected officials with no gainful employment who simply suck on the teet of the machine that elected them in the first place. And then residents wonder why their communities stagnate and look the way they do. Ray Abassi and AAE the former City Engineers is not a job David, and since their removal I'm sure that well has really dried up, our condolences. Maybe Frankenstein Ray will help you out in some other way hoping you'll get the majority again.

Let's get back to this ACLU thing...pretend for a moment you were employed David, let me give it a moment because you'll need to suspend your disbelief at the thought of actually working. Let's give that a few moments more. We hope you didn't leave your job at the District Attorney's office of LA because you were misbehaving now, that would be a shocker, I mean after all obviously all the misbehavior and harassment that was exposed in Montebello couldn't be a character flaw that would seep into your former work environment could it? It had to have been a political attack by your colleagues in Montebello, then coordinated with an employment attack by your superiors at the Los Angeles District Attorney's office - a conspiracy! That sort of rumor mill will even get felon Will Cervera fired up. Felon Will Cervera, as in can't vote Will Cervera but public comments all the time and is on disability Will Cervera? Not felon as in case number 16HF1351 of the County of Orange Superior Court William Paul Cervera Jr now is it? "Attempted murder... William Paul Cervera Jr did unlawfully and with the specific intent to kill, attempt to murder Jane Doe, a human being." But back to the facts, David, what is your specific intent with regards to the City, not to attempted kill the majority your three other colleagues have is it?

Your behavior with the ACLU and the negative promotion you are drumming up is nothing more than an attempt to attack your colleagues as you seek, strive, and muster up all the hatred you have to eliminate your colleagues so you can hold the majority on the Council and enact your will upon it. Shouldn't Councilmember represent the people - do you David as an unemployed man with a close to million dollar single family residence really represent your community? Your continual promotion of negativity demeans the City and your colleagues and promoting it really goes against everything you should be doing which is promoting City positivity and cheerleading for the City and its success, not publicizing negative things your colleague has drummed up. Would a member of the board of directors of a public company ever disparage their own company and promote such disparagement and then claim it was for the betterment of the company? Never. They would internally work to fix whatever issues they thought existed and not use it as an opportunity to promote themselves.

In your heart of hearts David, think about this. If you were in control of Council, would you really be bringing in the ACLU to spew negativity about the City? Or would all of a sudden your posts magically turn all positive the moment you were in control.

Anonymous

P.S. You don't need to run in November and you know it. You already have your at large seat for 2 more years and you are just running again for a feeling of importance. So why are you running again?

Guillen, Kimberly (Admin)

From: Anna Estrada <annaestrada741@gmail.com>
Sent: Wednesday, August 10, 2022 4:14 PM
To: comment, ccpublic
Subject: [External] ACLU

Hello, my name is Anna Estrada I am writing regarding that stupid Facebook post by Councilwoman Peralta, linking the City Manager with the ACLU story. I've spoken to you and know there is no way you wrote that post yourself. I see the one with black background is the same post as another woman, either she wrote that post or someone else did.

Please next time you are given something to read prepared for you, would you kindly practice reading it? When you were not allowed to use your phone it was so obvious both you and Torres couldn't be coached, you were both lost. Ask the person that answers questions for you to help so you don't say Um, Um over and over, at the last meeting while we were watching at home it became a game how many times you'd said um, it was 19 times!

I am happy all Districts are up for the November election and I will be out helping Steve Andrade beat you Ms.Peralta you do absolutely nothing to better our community but take pictures of yourself, that's when you attend meetings.

Long Time Montebello Resident.

Anna Estrada

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Padilla, Angelina

From: Zoe McKinney <ZMcKinney@aclusocal.org>
Sent: Wednesday, August 10, 2022 4:37 PM
To: comment, ccpublic
Cc: Peter Eliasberg
Subject: [External] Ordinance 2443 - First Amendment violations
Attachments: 2022.08.05 ACLU ltr to Montebello Ordinance 2443 FINAL.pdf

Mayor Cobos-Cawthorne and Honorable Members of the City Council:

I am submitting this public comment for the Council's August 10, 2022 regular meeting. Multiple provisions in Ordinance 2443, recently enacted by the Council, trigger grave constitutional concerns. The provision in the Ordinance limiting the public's ability to direct comments to individual members of City Council, as well as the provision prohibiting criticism of City staff or council members are overbroad and unjustified restrictions on protected speech. To the extent the City Council justifies these unlawful provisions by reference to similar provisions in other jurisdictions, we note that (1) those referenced provisions also violate the First Amendment, and (2) Montebello is the only jurisdiction we are aware of that has enacted an ordinance—as opposed to a resolution or policy—to this effect.

Our letter detailing the legal bases for our concerns is attached. The Council must repeal or substantially alter these illegal provisions or be prepared to defend them in court.

Zoë McKinney

Staff Attorney, First Amendment and Democracy
ACLU Foundation of Southern California
1313 W 8th Street, Suite 200
Los Angeles, CA 90017
(o) 213.977.5244

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August 5, 2022

Via electronic mail only

Mayor Kimberly Ann Cobos-Cawthorne, City of Montebello
Honorable Members of the City Council, City of Montebello

Re: Ordinance 2443

Dear Mayor Cobos-Cawthorne and Honorable Members of the City Council:

We are concerned that the Montebello City Council is attempting to insulate itself from public input and participation. Rather than facilitate public participation in the political process in furtherance of California's commitment to open government,¹ Ordinance 2443 raises significant Brown Act and constitutional concerns. Not only does it drastically decrease the time allotted for public comment,² but it also impermissibly restricts free speech, including speech on matters of public concern. Sections 8(D) and 13(C) of the Ordinance suggest an attempt to silence dissent and criticism in violation of California Law and the Constitution. As such, we urge the City Council to repeal or substantially alter the Ordinance, with particular attention paid to Sections 8(D) and 13(C).

Background

Ordinance 2443 was introduced in the City Council of the City of Montebello on October 13, 2021 and was approved and adopted on October 27, 2021. The Ordinance proposed amendments to the rules of conduct of "All City Council and Successor Agency Meetings, Proceedings, Business, and Rescinding Resolution."

Section 8(D) of the Ordinance requires that "[a]ll comments from the audience during Public Comments must be addressed to Mayor/Chairperson."³ Section 13(C) requires that individuals "[n]ever publicly criticize an individual employee, including Council/Agency appointed officers" and directs that "[a]ll critical comments about staff performance should *only*

¹ The Brown Act makes clear that "the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the *people's* business... The people of this State do not yield their sovereignty to the agencies which serve them." CAL. GOV'T CODE § 54950 (emphasis added). *See also* CAL. CONST., Art. I, § 3.

² *Compare* City of Montebello Resolution No. 06-22, Section 5(C) (three minutes per speaker on each item) *with* Ordinance 2443, Section 7(E) (limiting time for public comment to a total of 30 minutes). *See* Montebello City Council Meeting Agenda, October 13, 2021, available at <https://www.cityofmontebello.com/archive-council-agenda/2021-1/715-council-meeting-agenda-10-13-2021/file.html> (Resolution No. 06-22 is Attachment B to the agenda, and Ordinance 2443 is Attachment E to the agenda).

³ Ordinance 2443, Section 8(D), available at <https://bit.ly/3chs0Oj>.

be made to the City Manager through private correspondence or conversation.”⁴ Section 13(C) is entitled “Council/Agency and City Staff Conduct”, thus we read the provision to prohibit *both* city employees and elected members of the City Council from “publicly criticiz[ing]” a city employee.

Free Speech Concerns

Nowhere is the fundamental right to free speech and expression more vital than when people address public officials about issues of public concern, or when the public’s elected representatives or other public officials provide their constituents with critiques of the government designed to serve the people. Indeed, political expression on governmental affairs and public issues “has always rested on the highest rung of the hierarchy of First Amendment values.” *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 913 (1982) (citation omitted). The protection of such political expression reflects the “profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.” *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964). Such protected political expression “may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.” *Id.* “[I]t is only through free debate and free exchange of ideas that government remains responsive to the will of the people and peaceful change is effected.” *Terminiello v. City of Norwalk*, 900 F.2d 1421, 1425 (9th Cir. 1990) (citing *Madison Sch. Dist. v. Wisconsin Employment Relations Comm’n*, 429 U.S. 167, 175 (1976)).

A. Preventing the public from addressing individual council members violates the Brown Act and Constitution.

Section 8(D), which states that all public comments “must be addressed to Mayor/Chairperson,” prohibits the public from addressing individual members of the Council and plainly violates the First Amendment and the Brown Act. Meetings of the City Council constitute limited public forums. *See White v. City of Norwalk*, 900 F.2d 1421, 1425 (9th Cir. 1990). In a limited public forum, the government may enact reasonable restrictions to preserve the space for its intended purpose. *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 131 (2001). And the Brown Act itself indicates that the public shall have the right to speak on “any item of interest . . . within the subject matter jurisdiction of the legislative body.” Cal. Gov’t Code § 54954.3(a). More generally, “[d]ebate over public issues, including the qualifications and performance of public officials [], lies at the heart of the First Amendment. Central to these principles is the ability to question and challenge the fitness of the administrative leader of a [government body], especially in a forum created specifically to foster discussion about [issues within the body’s purview].” *Leventhal v. Vista Unified Sch. Dist.*, 973 F. Supp. 951, 958 (S.D. Cal. 1997) (citing *Schenck v. Pro-Choice Network*, 519 U.S. 357, 358 (1997)); *see also McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 344–45 (1995); *First Nat’l Bank of Boston v. Bellotti*, 435 U.S. 765, 776–77 (1987); *Sullivan*, 376 U.S. at 270-71. As such, critiques of the actions or inactions of individual council members about issues within the Council’s jurisdiction are protected by these First Amendment and Brown Act principles.

Preventing the public from addressing an individual Council member—other than the Mayor—directly leads to absurd and unreasonable results. For example, it prevents a person

⁴ Ordinance 2443, Section 13(C) (emphasis added), available at <https://bit.ly/3chs0Oj>.

from directly responding to a particular comment or action by a Council member or directing comments to a Council member they believe to be the deciding vote on a matter of public interest. It also ignores the fact that the Council does not always act as a cohesive body. And, in the case of a split vote, it would be nonsensical and confusing for a member of the public to criticize the Mayor when he or she voted in the way the constituent preferred, while prohibiting the constituent from directing criticism at the council members who voted the against the constituent's preference.

We previously litigated this issue in a case against the Orange County Board of Supervisors. There, the superior court judge enjoined OCBOS from enforcing a similar provision, which required that all comments be directed to the Board as a whole rather than to individual Board members.⁵ In response to the litigation, the OCBOS later amended its Rules of Procedure to specify that members of the public may comment on, question, or criticize the statements, votes, actions or omissions of individual Board members.⁶ The Montebello City Council must similarly reject this unlawful provision.

B. Section 13(C) is unconstitutionally overbroad.

Government employees “have not relinquished the First Amendment rights they would otherwise enjoy as citizens to comment on matters of public interest.” *United States v. Nat’l Treasury Employees Union*, 513 U.S. 454, 465 (1995) (quoting *Pickering v. Bd. of Ed. Of Tp. High School Dist. 205, Will Cnty., Il.*, 391 U.S. 563, 568 (1968) (quotation marks omitted)). The First Amendment protects a government employee’s speech on matters of public concern unless outweighed by the state’s interests in promoting workplace efficiency. *Pickering*, 391 U.S. at 567. Section 13(C), however, makes no such distinction for speech on matters of public concern. To the contrary, the Ordinance categorically bans “any and all public criticism of city government employees.” The Supreme Court has repeatedly held that the *Pickering* balancing test is subject to an “enormous variety of fact situations” and that there is no “general standard” to apply. *Connick v. Meyers*, 461 U.S. 138, 154 (1983). A blanket rule prohibiting *any* criticism, therefore, runs counter to the balancing approach mandated by the Supreme Court and necessarily will restrict some constitutionally protected speech on matters of public concern.

Furthermore, courts are skeptical of blanket prophylactic prohibitions on speech of government officials rather than “*post hoc* analysis of one employee’s speech and its impact on that employee’s public responsibilities.” *Nat’l Treasury Employees Union*, 513 U.S. at 466-67. While there might be some instances where staff members engage in criticism so unprofessional that it might justify individual discipline, the broad rule categorically prohibiting criticism, including on matters of significant public concern, is unconstitutional.

⁵ Order Granting in Part and Denying in Part Plaintiff-Petitioner’s Motion for Preliminary Injunction, Dkt. 78, at 4, *People’s Homeless Task Force v. Cnty. of Orange*, No. 30-2019-01062485 (October 10, 2019) (enjoining enforcement of rule requiring public to address “[a]ll remarks and questions” to “the Board as a whole” and “not to any individual Board member”). Order attached as Appendix A.

⁶ Rule 46, OCBOS Rules of Procedure, available at <https://cob.ocgov.com/sites/cob/files/2021-07/Board%20Rules%20approved%2007-13-2021.pdf>.

As overbroad as Section 13(C) is with respect to city employees, it is even less defensible as applied to legislators, whom the right to publicly comment on the functioning of the city government does not exclude. *See Bond v. Floyd*, 385 U.S. 116, 136 (1966) (finding “no support for” the State of Georgia’s argument that the First Amendment protects only “the citizen-critic” and not “a legislator”). The City cannot apply greater restrictions to legislators’ speech than it does to members of the public’s speech. *Id.* at 133 (“The State declines to argue that Bond’s statements would violate any law if made by a private citizen, but it does argue that even though such a citizen might be protected by his First Amendment rights, the State may nonetheless apply a stricter standard to its legislators. We do not agree.”). Rather, legislators’ ability to publicly criticize the government is vital to our system of government, “so that their constituents can be fully informed[,]... be better able to assess their qualifications[, and] ... be represented in governmental debates by the person they have elected to represent them.” *Id.* at 136-137. And the inability of elected representatives to voice their concerns about the functioning of the city government on the record would be detrimental to their ability to represent the will of their constituents.

Even if the Supreme Court’s jurisprudence about public employee speech (i.e. the *Pickering* balancing test) did apply to a legislator, Section 13(C) is still overbroad for the reasons set forth above.

If the Section 13(C) prohibition were to remain in place, city staff members would lose their rights as citizens to criticize even their own elected official, and elected officials would not be able to criticize each other’s policy positions, even when running for re-election. These outcomes are unconstitutional and threaten the legitimacy of the democratic process.

C. Courts have determined that provisions analogous to Section 13(C) are impermissible viewpoint restrictions on speech.

When city employees or councilmembers are speaking on matters of public concern, the usual First Amendment protections apply. It is a bedrock principle of free speech that “a speaker may not be stopped from speaking because the moderator disagrees with the viewpoint he is expressing.” *White*, 900 F.2d at 1425 (citing *Perry Educ. Ass’n v. Perry Local Educators Ass’n*, 460 U.S. 37, 60-61 (1983)). Federal courts in California have long rejected public meeting policies that prohibit criticism of district employees. *See Leventhal*, 973 F. Supp. at 956 (school district bylaw restricting raising “complaints” or “charges” against employees at open board meeting “violative of core First Amendment values”); *Baca v. Moreno Valley Unified Sch. Dist.*, 936 F. Supp. 719, 727-28 (C.D. Cal. 1996) (“District cannot prohibit speech on the ground that it is, or may be, false or defamatory, let alone on the ground that it is negatively critical of [the] District’s employees.”). Although *Leventhal* and *Baca* involved policies restricting the public’s ability to criticize government employees, Section 13(C) is nonetheless viewpoint discriminatory on its face in that it restricts exclusively critical or negative comments. That Section 13(C) proscribes speech by council members or city staff rather than members of the public may implicate the scope of the First Amendment right at issue, but it does not change the analysis with respect to viewpoint discrimination.

Conclusion

Ordinance 2443 contains provisions that are unconstitutional restrictions on free speech and weakens the public's ability to be informed about the workings of their government and thus engage in the political process. Section 13(C) creates an atmosphere of silencing dissent and criticism, and opens the possibility to retaliation and harassment of city staff who are passionate about speaking out and informing the public of their concerns. Section 13(C) is plainly unlawful for the reasons discussed above, and the Council must repeal it. Not only is this necessary to protect the free speech of staff and council members, but it is also needed to ensure transparency in the political process and promote public access to government. We hope that we can resolve disputes without need for further legal action. Section 8(D) also violates the First Amendment and the Brown Act. Should the Council refuse to repeal or substantially alter these provisions to bring Ordinance 2443 into compliance with the First Amendment and California free speech requirements, we will consider all appropriate action including seeking relief from the court.

Please notify us of the steps you intend to take to address these concerns no later than August 31, 2022. If you have any questions or would like additional guidance, please contact Peter Eliasberg PEliasberg@aclusocal.org. Thank you for your attention on this matter.

Sincerely,



Peter Eliasberg
Chief Counsel
Manheim Family Attorney for
First Amendment Rights



Zoë McKinney
First Amendment and Democracy Staff Attorney

Cc (via e-mail):

Arnold M. Alvarez-Glasman, Montebello City Attorney
Rene Bobadilla, Montebello City Manager

PUBLIC HEARING - ITEM NO. 9
SPEAKER CARDS



SPEAKER CARD

Please Note: Address and phone number are optional and not required to speak.

Public Comment/Speaker Card must be submitted to City Clerk's Office prior to 5:00 p.m. for live meetings or in accordance with Assembly Bill 361 for video/audio meetings.

Type of Comment:

Closed Session

Non-Agenda Item

AGENDA ITEM NO. 9

Meeting Date:

8/10/22

Time Received: _____

Date Received: _____

SPEAKER'S FULL NAME:

Lorraine Richards

PHONE: _____

(Optional)

ADDRESS:

449 CONCOURSE AVE MTB 90640

ORGANIZATION REPRESENTED:

YMCA Montebello Commerce
(Optional)

Opposed

In Support

Neutral

TOPIC:

CDBG Funds

NOTES: _____

ACCOMMODATIONS: _____

Translation Needed:

No

Yes

Language: _____

Received by Staff _____

Received Via:

Email

Phone

In Person



SPEAKER CARD

Please Note: Address and phone number are optional and not required to speak. Public Comment/Speaker Card must be submitted to City Clerk's Office prior to 5:00 p.m. for live meetings or in accordance with Assembly Bill 361 for video/audio meetings.

Type of Comment:

Closed Session

Non-Agenda Item

AGENDA ITEM NO. 9

Meeting Date:

8/10/22

Time Received: _____

Date Received: _____

SPEAKER'S FULL NAME:

Betty Jane Rodriguez

PHONE:

323
722.7299
(Optional)

ADDRESS:

1701 Loma Rd

(Optional)

ORGANIZATION REPRESENTED:

YMCA

Opposed

In Support

Neutral

TOPIC: _____

NOTES: _____

ACCOMMODATIONS: _____

Translation Needed:

No

Yes

Language: _____

Received by Staff _____

Received Via:

Email

Phone

In Person



SPEAKER CARD

Please Note: Address and phone number are optional and not required to speak. Public Comment/Speaker Card must be submitted to City Clerk's Office prior to 5:00 p.m. for live meetings or in accordance with Assembly Bill 361 for video/audio meetings.

Type of Comment:

Closed Session

Non-Agenda Item

AGENDA ITEM NO. 9

Meeting Date: 8/10/22

Time Received: 5:05pm

Date Received: 8/10

SPEAKER'S FULL NAME:

Margot Eiser

PHONE: _____
(Optional)

ADDRESS: _____
(Optional)

ORGANIZATION REPRESENTED: _____

Opposed In Support Neutral **TOPIC:** _____

NOTES: _____

ACCOMMODATIONS: _____

Translation Needed: No Yes Language: _____

Received by Staff _____

Received Via: Email Phone In Person



SPEAKER CARD

Please Note: Address and phone number are optional and not required to speak.
Public Comment/Speaker Card must be submitted to City Clerk's Office prior to 5:00 p.m.
for live meetings or in accordance with Assembly Bill 361 for video/audio meetings.

Type of Comment:

Closed Session

Non-Agenda Item

AGENDA ITEM NO. C-DBG-19

Meeting Date: 8/10/22

Time Received: 5:20pm

Date Received: 8/10/22

SPEAKER'S FULL NAME: Paul Parzik

PHONE: 626.482.5857

ADDRESS: 2000 W. Beverly Blvd. Montebello (YMCA)

(Optional)

ORGANIZATION REPRESENTED: YMCA

Opposed

In Support

Neutral

TOPIC: C-DBG

NOTES: to support appeal by YMCA

ACCOMMODATIONS: _____

Translation Needed: No

Yes

Language: _____

Received by Staff _____

Received Via:

Email

Phone

In Person