



City Council of Monterey Park
The City Council Acting on Behalf of the Successor Agency of the Former Redevelopment Agency, the Housing Authority, the Monterey Park Financing Authority and the Monterey Park Geologic Hazard Abatement District Agenda

Special Meeting
Monterey Park City Hall, Room 266
320 W. Newmark Avenue, Monterey Park, CA 91754

Wednesday, October 1, 2025
5:30 PM

Mission Statement

The mission of the City of Monterey Park is to provide excellent service, foster growth and opportunity, and create a joyous and collaborative environment.

Land Acknowledgment

We would like to acknowledge that the land we inhabit today was once known as Tovangaar, the home of the Gabrieleño-Tongva people. We show our respect to the Gabrieleño-Tongva people, as well as all Indigenous people, past, present, and future, and honor their labor as original caretakers of this land. We commit to uplifting the Gabrieleño-Tongva people, invite you to acknowledge the history, and join us in caring for this land.

General Information

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 at www.montereypark.ca.gov/agendas.

Per the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please call City Hall at (626) 307-1359 for reasonable accommodation at least 8 hours before a meeting. Council Chambers are wheelchair accessible.

Public Participation

You may speak up to 5 minutes on an/each Agenda item. The Mayor and City Council may change the amount of time allowed for speakers. Written Communication will be accepted up to 3 hours before the meeting by completing an online form at www.montereypark.ca.gov/writtencomm.

Pursuant to Government Code Section 54954.3(a), the public may address the City Council only on matters listed on this Agenda. No other public comment will be accepted.

The City Council will recess to Closed Session following public comment and the Open Session items if any. Public participation is not allowed during Closed Session.

1. Call to Order

Mayor

2. Roll Call

Henry Lo, Vinh Ngo, Jose Sanchez, Thomas Wong, Elizabeth Yang

3. Public Communications

4. Closed Session

Upon conclusion of Closed Session, the Mayor and/or City Attorney will announce any reportable actions in accordance with the Brown Act.

4.A. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to Government Code § 54956.9(d)(2):

FACTS AND CIRCUMSTANCES: Attached letter dated September 24, 2025.

5. Adjournment

STEWART WEINBERG
DAVID A. ROSENFELD
WILLIAM A. SOKOL
LINDA BALDWIN JONES
ALAN G. CROWLEY
KRISTINA L. HILLMAN
BRUCE A. HARLAND
CAREN P. SENCER
ANNE I. YEN
MANUEL A. BOIGUES
KERIANNE R. STEELE
GARY P. PROVENCHER
EZEKIEL D. CARDER
LISL R. SOTO
JOLENE KRAMER
CAITLIN E. GRAY
TIFFANY L. GRAIN
DAVID W.M. FUJIMOTO
ANDREA C. MATSUOKA
ALEXANDER S. NAZAROV
SEAN W. McDONALD
KATHARINE R. McDONAGH
MAXIMILLIAN D. CASILLAS

WILLIAM T. HANLEY
BISMA SHAHBAZ
MICHAELA F. POSNER
ALEXANDER M. MILNE
WINNIE VIEN
NOREY L. NAVARRO
R. MAXWELL SINCLAIR
MIRANDA MAMMEN
ARDALAN "ARDY" RAGHIAN
SHANE M. REED
DOMINIQUE ARMSTRONG
MATTHEW C. FERNANDES
JONATHAN S. EZELL
MAX KOHN
COREY A. SHERMAN
CASEY WHITTEN-AMADON

OF COUNSEL

ROBERTA D. PERKINS
ROBERT E. SZYKOWNY
ANDREA K. DON
ANTONIO RUIZ
MICHAEL J. HAYES
ASHLEY K. IKEDA
JANNAH V. MANANSALA

LABOR EDUCATOR

NINA FENDEL (Retired Attorney)

Admitted in California, unless
otherwise noted
Admitted in Hawaii
Also admitted in Nevada
Also admitted in New York and
Alaska
Admitted in Nevada and
Washington
Also admitted in Idaho
Also admitted in New York
Admitted in Ohio
Admitted in New York

September 24, 2025

VIA EMAIL AND U.S. MAIL

Mr. Karl H. Berger
City Attorney, City of Monterey Park
Burke, Williams and Sorenson, LLP
444 South Flower Street
40th Floor
Los Angeles, CA 90071
kberger@bwsllaw.com

Re: City of Monterey Park's Barnes Gym Painting Project # 95057 & Library Flooring
R&R Project # 95059

Dear Mr. Berger:

I send this correspondence on behalf of my client, Construction Industry Force Account Council ("CIFAC"), regarding the City of Monterey Park's Resolution No. 2025-R3 and failure to comply with the Public Contract Code's competitive bidding requirements.

CIFAC is a non-profit coalition of construction industry associations, contractors and labor unions that monitors state and local agencies' compliance with competitive bidding laws. These laws, enshrined mostly in the California Public Contract Code, ensure that agencies use taxpayer funds responsibly and "obtain the best result for the public," while allowing contractors on public construction projects to compete on an open and level playing field.¹ CIFAC seeks to promote fair and open bidding on all public projects throughout the state and does not advocate on behalf of any specific contractors.

On January 21, 2025, the City Council passed a resolution, Resolution No. 2025-R3, declaring a local "emergency" resulting from the Los Angeles and Ventura Counties' January 2025 windstorm and firestorm events ("Resolution"). The City was spared from directly experiencing the events, but the staff report supporting the Resolution explained the City could nevertheless declare an emergency because, in relevant part, (1) "[t]he widespread structure destruction and damage will result in increased prices for construction product and contractor services" including upcoming City projects to "improve vital infrastructure such as water, stormwater, and wastewater facilities" and (2) the windstorm and firestorms "starkly emphasized" the need to take "fire prevention" actions such as "undergrounding power lines to the greatest extent practicable." The Resolution incorporated and ratified an emergency declaration and authorized the City Manager to "take all steps necessary to protect public health, safety, welfare and property

¹ *M & B Construction v. Yuba County Water Agency* (1999) 68 Cal.App.4th 1353, 1360; see also *Domar Electric, Inc. v. City of Los Angeles* (1994) 9 Cal.4th 161, 170-171.

including . . . awarding and executing contracts in accordance with [Public Contract Code] § 22050.”

As far as CIFAC knows, the City Council has not revisited its vote approving the Resolution by voting to continue or discontinue the Resolution.

The City has, however, received and filed status reports concerning the Resolution and status of the “emergency.” Most recently, on September 3, 2025, the City Council received and filed a staff report summarizing the current status of the local emergency, specifically information about 12 projects that the City had awarded following the adoption of the Resolution, apparently without competitive bidding. The list included 12 projects, including a “Concrete Improvement” project, “Sidewalk Assessment and Repairs,” a “Gymnasium Painting” project, “Library Carpet Replacement,” a Gym “and Office Flooring” project, and even a City “Council Chambers & Restroom Remodeling” project. This list of 12 projects did not include a 13th project for “Pickleball Resurfacing” that was on the agenda for the City Council to approve that same night.

This letter explains why the Resolution should be rescinded and, even if it is not, is insufficient to excuse the City’s ongoing failure to comply with State law competitive bidding requirements and accordingly why the City must reject all bids and competitively bid all public works projects pursuant to the California Uniform Construction Cost Accounting Act of the California Public Contract Code.

I. The City’s Resolution Was Not Based On An “Emergency” as Required By the California Uniform Construction Cost Accounting Act of the Public Contract Code

Pursuant to the Public Contract Code, cities that have elected to become subject to the Public Contract Code’s California Uniform Construction Cost Accounting Act, Public Contract Code § 22000 *et seq.* (“CUCCAA”),² must “let to contract by formal bidding procedure” all public projects of more than \$200,000.³

Among other things, this formal competitive bidding procedure requires that “[t]he governing body of the participating public agency or its designated representative . . . adopt plans, specifications, and working details”⁴ and that the agency publish a notice inviting formal bids. The notice must do all of the following: state the time and place for the receiving and opening of sealed bids; distinctly describe the project; be published at least 14 calendar days before the date of bid opening in a newspaper of general circulation published or circulated within the jurisdiction of the public agency or if no such newspaper exists at least posted in three public places designated by ordinance or regulation of the public agency as places for posting these notices; and be sent electronically and mailed to all construction trade journals specified by the California Uniform Construction Cost Accounting Commission at least 15 calendar days before bid opening⁵.

An exception to this formal bidding rule is that:

² The City has elected to be governed by CUCCAA. The City is listed as a participating CUCCAA agency on the California Uniform Construction Cost Accounting Commission’s website: https://www.sco.ca.gov/Files-ARD-Local/participating_agencies_-_general.pdf.

³ Pub. Contract Code, § 22032(c).

⁴ Pub. Contract Code, § 22039.

⁵ Pub. Contract Code, § 22037.

In cases of emergency when repair or replacements are necessary, the governing body may proceed at once to replace or repair any public facility without adopting plans, specifications, strain sheets, or working details, or giving notice for bids to let contracts. . . . In case of an emergency, if notice for bids to let contracts will not be given, the public agency shall comply with Chapter 2.5 (commencing with Section 22050).⁶

Pub. Contract Code § 22050 states, among other things, that “the governing body shall review the emergency action at its next regularly scheduled meeting and, except as specified below, at every regularly scheduled meeting thereafter until the action is terminated, to determine, by a four-fifths vote, that there is a need to continue the action,” and “When the governing body reviews the emergency action pursuant to paragraph (1) or (2), it shall terminate the action at the earliest possible date that conditions warrant so that the remainder of the emergency action may be completed by giving notice for bids to let contracts.”

The emergency exception to formal bidding applies only in very extreme circumstances, such as where formal bidding would prevent a city from taking immediate action to address a sudden and unexpected occurrence that poses a clear and imminent danger. Public Contract Code section 1102 defines “emergency” as “... a *sudden, unexpected occurrence that poses a clear and imminent danger*, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services.”⁷

If it were not already clear from the restrictive language of the statute, case law establishes that the emergency exception is an extremely narrow exception that can rarely be relied on.

In *Marshall v. Pasadena Unified School District*, the court held that a school district’s justification for awarding a contract without competitive bidding failed to constitute an emergency under the Public Contract code. In that case, the school district adopted an emergency resolution to award a construction contract for a project that was significantly delayed due to a previous contractor’s inability to meet deadlines. The school district argued that “...the inability to utilize the modernized/new classrooms will impact instruction/curriculum, and the unfinished structures, open trenches and materials represent serious safety concerns...”⁸ The *Marshall* court reasoned that “...given the strong public policy favoring competitive bidding, the emergency exception thereto should be strictly construed and restricted to circumstances which truly satisfy the statutory criteria.”⁹ The court held that the factual circumstances “...*did not come close* to meeting the standard set by section 1102” given the failure of the previous contractor to timely finish the school modernization project was not a sudden, unexpected occurrence at all, and it did not require prompt action to protect life, health and property.¹⁰

⁶ Pub. Contract Code, § 22035(a), (b).

⁷ Pub. Contract Code, § 1102 (emphasis added); *see also Marshall v. Pasadena Unified Sch. Dist.* (2004) 119 Cal.App.4th 1241, 1245, as modified on denial of reh'g (July 28, 2004) (explaining that, because section 1102 defines “emergency” for purposes of the entire Public Contract Code, its definition must be read into section 20113).

⁸ *Marshall, supra*, 119 Cal.App.4th at 1247.

⁹ *Id.* at 1257.

¹⁰ *Id.* at 1258.

In *Los Osos v. City of San Luis Obispo*, a California Environmental Quality Act (“CEQA”) case that is instructive given the Public Contract Code’s definition of emergency was imported from CEQA,¹¹ the court also found the definition of emergency was not satisfied. In that case, the city’s groundwater pumping caused subsidence resulting in damage to buildings. The court reasoned that the circumstances were not a sudden, unexpected occurrence but rather the result of “...the city [having] made a political choice over time.”¹² The court also reasoned that the harm was not an imminent and substantial threat to public safety given it had accumulated as a result of about a year’s worth of rainfall. The court thus held that CEQA’s “extremely narrow” definition of emergency was not satisfied, and that “...the mere declaration of the [City] council ... that the ordinance is passed for the immediate preservation of the public health [wa]s neither conclusive nor sufficient.”¹³

Here, just like in *Marshall* and *Los Osos*, the circumstances surrounding the Resolution come nowhere close to constituting an emergency under § 1102’s narrow definition, as the City cannot meet either of the definition’s elements.

First, just like in *Marshall* and *Los Osos*, there is no sudden or unexpected occurrence that poses a clear and imminent danger. While the January 2025 windstorms and firestorms in Los Angeles and Ventura Counties amounted to a sudden or unexpected occurrence, they did not pose a clear and imminent danger to the City. The event occurred outside the City’s boundaries and did not affect City property. The Staff Report itself admitted that the City simply wanted to begin to take more “fire prevention” measures, namely the undergrounding of utilities, and was concerned that the windstorms and firestorms would make contractors more scarce and expensive. This is akin to the *Marshall* school district being faced with the unexpected roadblock of significant contractor delays, which, while inconvenient, certainly poses no clear or imminent danger.

Second, immediate action is not required to prevent or mitigate the loss or impairment of life, health, property, or essential public services. The September 3, 2025 staff report listing the projects the City has procured pursuant to the Resolution make clear that the City is using the Resolution to procure projects that do not arise from the need to take any other immediate action to protect property or essential public services. The projects include a \$365,594 “Library Carpet Replacement” project and a \$230,957 “Concrete Improvement Project,” not to mention the remodeling of the City Council’s own chambers and restrooms and the resurfacing of pickleball courts. Moreover, the City’s stated justifications for invoking the emergency exception were nearly identical to the school district in *Marshall*: rising contractor costs and a long-term, hypothetical danger to residents due to utilities not being underground. *Marshall* makes clear that these are insufficient grounds for immediate action to prevent or mitigate the loss or impairment of life, health, property or essential public services under § 1102. Further, the City’s case is even weaker than *Los Osos*, where actual harm to buildings had already occurred, and the court still did not find that “immediate preservation of the public health” was necessary.

¹¹ The *Los Osos* court examined the legislative history of § 1102 and explained that § 1102’s definition of emergency was imported from CEQA. *Id.* at 1257 (citing Assem. Com. on Local Government, Bill Analysis of AB 3348 (1993–1994 Reg. Sess.) April 13, 1994, p. 2). The CEQA definition of emergency is: “Emergency” means a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services. “Emergency” includes such occurrences as fire, flood, earthquake, or other soil or geologic movements, as well as such occurrences as riot, accident, or sabotage.” (Pub. Resources Code, § 21060.3).

¹² *Id.*

¹³ *Los Osos Valley Associates v. City of San Luis Obispo* (1994) 30 Cal.App.4th 1670, 1682.

Thus, the City cannot meet its burden to show that the applicable state law emergency exception to formal competitive bidding applies to justify the Resolution, and the Resolution's authorization otherwise is void.

II. The City Must Reject All Bids and Procure All Post-Resolution Projects Exceeding \$200,000 via a Formal Competitive Bidding Process

Contracts procured in violation of the Public Contract Code's competitive bidding requirements will be void and unenforceable. *See Miller v. McKinnon* (1942) 20 Cal.2d 83, 89 (holding that public projects that are not competitively bid or otherwise awarded in violation of the Public Contract Code are "absolutely void as being in excess of the agency's power" and therefore unenforceable); *Amelco Elec. v. City of Thousand Oaks* (2002) 27 Cal.4th 228, 234, 239 (same).

Here, the City apparently used the Resolution as an excuse to disregard CUCCAA's bidding requirements for all the projects listed in the September 3, 2025 staff report. Eight of the 12 projects listed in the September 3, 2025 exceeded \$200,000 yet the City did not formally bid them pursuant to the CUCCAA. Given, as explained above, there was no "emergency" in this case based on the Public Contract Code's own definition and interpretive caselaw, the City must abandon its void procurement of the projects that it was required to formally bid under the CUCCAA but failed to, and must re-procure those projects via formal competitive bidding.

III. The City Must Also Re-Vote & Rescind the Resolution At Its Next Regular Meeting

The Resolution should be revisited and rescinded at the City Council's next regularly scheduled meeting to comply with the Public Contract Code.

City Council has never revisited the Resolution by putting it to a vote again. This failure to revisit the Resolution is a blatant violation of Public Contract Code § 22050's requirement "the governing body shall review the emergency action at its next regularly scheduled meeting and, except as specified below, at every regularly scheduled meeting thereafter until the action is terminated, to determine, by a four-fifths vote, that there is a need to continue the action." City Council has only received and filed Staff Reports on the status of the "emergency" and the projects procured without competitive bidding pursuant to the Resolution.

Given the Resolution was never based on an "emergency" as defined and required by the Public Contract Code, the Resolution's authorization of the City Manager to procure projects without competitive bidding is void from inception and should be rescinded.

IV. Conclusion

CIFAC would prefer to avoid legal action. However, if the City insists on continuing the Resolution and allowing projects to proceed under it without formal competitive bidding, CIFAC will consider legal action, up to and including a complaint to the California Uniform Construction Cost Accounting Commission and litigation remedies. We will also seek to recover all attorney fees and expenses incurred, as permitted by law.

Please respond to this letter by October 7, 2025 confirming that the City has (1) rescinded the Resolution and (2) will advertise and bid all Projects over \$200,000 previously not bid under the Resolution pursuant to CUCCAA.

Sincerely,



Andrea Matsuoka

ACM:lcw
opeiu 29 afl-cio(1)

CC by email only: Michelle Pickens, Executive Director, CIFAC, mpickens@cifac.org
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