

**MINUTES OF THE SPECIAL MEETING OF THE MONTCLAIR CITY  
COUNCIL HELD ON THURSDAY, MAY 9, 2019, AT 6:00 P.M. IN  
THE CITY COUNCIL CHAMBERS, 5111 BENITO STREET,  
MONTCLAIR, CALIFORNIA**

---

**I. CALL TO ORDER**

Mayor Dutrey called the meeting to order at 6:00 p.m.

**II. ROLL CALL**

Present: Mayor Dutrey; Mayor Pro Tem Raft; Council Members Ruh and Johnson; City Manager Starr; Finance Director Parker; Public Works Director/City Engineer Castillo; Assistant Director of Housing/Planning Manager Caldwell; Senior Management Analyst Fuentes; City Clerk Phillips

Absent: Council Member Martinez (excused)

**III. PUBLIC COMMENT**

Mayor Dutrey stated comments related to this Workshop would be held until after the presentation.

**IV. COUNCIL WORKSHOP**

**A. Consider Receiving an Executive Report on City's Response to Proposition 64 and Potential Regulations on Commercial Cannabis Activity in the City of Montclair**

**Consider Setting a Public Hearing for Monday, June 3, 2019, at 7:00 p.m. in the City Council Chambers to Consider Ordinance Nos. 19-982, 19-983, and 19-984 Implementing Regulations for Commercial Cannabis Activity and Restricting the Smoking of Tobacco and Cannabis Products in Workplaces and Public Spaces in the City of Montclair**

Code Enforcement Supervisor Fondario discussed the extraordinary amount of public resources used in futile attempts to shut down illegal commercial cannabis operations within the City over the past five years due to the quickly evolving political and legal landscapes and changing societal attitudes toward cannabis. Local efforts to stop these illegal businesses from operating are being undermined by the courts due to the passage of Proposition 64 in the state in 2016 and the involvement of powerful cannabis industry defense attorneys. He emphasized the positive impact that could be realized by allowing for and collaborating with legally-operated, regulated, and cooperative commercial cannabis businesses to help the City shut down and keep the illegal commercial cannabis operations out.

Mayor Dutrey asked that Code Enforcement Supervisor Fondario conclude his presentation at this time and requested City Manager Starr to begin his presentation.

City Manager Starr discussed the evolving regulatory history of cannabis at the federal and state levels, including the passage of Proposition 64 in 2016 and the trending rise in support for legalized medicinal and adult-use cannabis. He noted the City currently has in place a total ban on all medicinal and adult-use cannabis activities, but a lack of regulatory control over a legalized market has given rise to a multitude of unlicensed and unregulated commercial cannabis activities that create a present and immediate threat to the health, safety, and welfare of Montclair residents.

Council Member Ruh asked why other cities that have banned these activities are not experiencing the same problems.

City Manager Starr noted other cities are experiencing these issues.

Council Member Ruh asked why these businesses could not be shut down in the same manner as any other illegally operating business.

City Manager Starr advised the courts are not being cooperative in the issuance of warrants, and emphasized that the prosecution of illegal commercial cannabis operators is not only an expensive legal endeavor, but is also hindered by tactics designed to circumvent and delay the process, and burdened by a lack of enforcement powers that could only be made available through the adoption of a regulatory system with access to fines, penalties, and other legal remedies. He advised there is also no funding mechanism in place to address the increasing costs of enforcement and legal expenses, which are currently being borne by the General Fund.

Mayor Dutrey noted that as an employee of the City of Rialto, he understands it is difficult to enforce the ban on these businesses.

City Manager Starr concurred, noting the passage of California Proposition 64 in 2016 has encouraged an increasing number of illegal cannabis operations. He stated that since 2010, 30 commercial cannabis dispensaries and 14 cultivation facilities illegally operating in the City were shut down, with 21 of the 30 dispensaries and 11 of the 14 cultivation facilities having opened after the passage of Proposition 64 in 2016.

City Manager Starr discussed the commercial cannabis market in California, demonstrating that 80 percent of legally grown cannabis grown in the State is funneled into the illegal market and only 20 percent is sold through legal markets due to most cities in the state banning retail within their jurisdictions, causing the black market to thrive with little competition from legitimate businesses. To address this imbalance, there have been 46 cannabis-related bills introduced in the current Legislative Session. Of most concern to staff is AB 1356 (Ting), which would require local jurisdictions whose voters supported Proposition 64 by more than 50 percent to adopt a licensing structure for retail commercial cannabis activity. This legislation would require Montclair to allow a minimum of five retail commercial cannabis licenses based on the number of on-sale retail liquor licenses. In addition, cities are being threatened by the cannabis industry's pursuit of local ballot initiatives, which would take control out of the City's hands and favor the interests of the cannabis industry rather than the residents. He noted the City has already received communications from a marketing firm representing an illegal cannabis operator, **Orbis Capital Consultants**, which intends to pursue the placement of a ballot measure on the November 2020 General Municipal Election to overturn the City's ban on cannabis and implement a permit program.

City Manager Starr discussed the salient points and key provisions of the proposed ordinances that make up the *Medicinal and Adult-Use Cannabis Regulation Safety Law of the City of Montclair* (the MAUCRSL) as follows:

**Proposed Ordinance No. 19-982** (the Comprehensive Commercial Cannabis Regulatory Ordinance of the City of Montclair):

1. Provides for a number of regulatory measures for the private cultivation of cannabis and the commercial cannabis marketplace;
2. Establishes a comprehensive set of provisions for the regulation of adult-use and medicinal commercial cannabis in Montclair including the cultivation, distribution, transport, storage, manufacturing, processing, and sale of cannabis for adults 21 years of age or older and for patients with valid physician's recommendations for medicinal use;

3. Establishes compliance requirements by incorporation of a series of regulations adopted by State Licensing Agencies (the Bureau of Cannabis Control, Department of Public Health, and Department of Food and Agriculture);
4. Effective January 1, 2018, and only after City Council adoption of the MAUCRSL and the promulgation of necessary rules, regulations, applications, the City would be empowered to permit persons who obtain both a state license issued under the MAUCRSA and City permit issued under the MAUCRSL to engage in commercial cannabis activities;
5. Imposes the same general requirements on both medicinal and adult-use commercial cannabis activity, with specific exceptions (e.g., persons 18 years of age and older can purchase medicinal cannabis and cannabis products; persons 21 years of age and older can purchase adult-use cannabis and cannabis products);
6. Requires protection of the public to be the highest priority in exercising the City's permitting, regulatory, and disciplinary authority functions under the MAUCRSL;
7. Pursuant to agreement between the City and State Licensing Agencies, the City would be delegated the full power and authority to enforce the MAUCRSA and regulations promulgated by State Licensing Agencies;
8. Establishes an application program for a commercial cannabis activity permit, which may require any or all of the following:
  - Fingerprints and background check;
  - Evidence of right to occupy a premises for commercial cannabis activity;
  - Evidence of a labor peace agreement;
  - Proof of bond to cover costs of destruction of cannabis if required by a violation of the MAUCRSL;
  - Description of operating procedures;
  - Premises diagram showing the layout of the commercial cannabis activity;
  - Business Plan;
  - Security Plan;
  - Premises Maintenance Plan;
  - Lighting Plan;
  - Storage and Transportation Plan;
  - Financial Integrity and Transaction Plan;
  - Statement of Commitment to Cole Memo Principles;
  - Plan to discourage loitering and panhandling;
  - Anti-drug Campaign Plan for school-age persons;
  - Community Engagement and Investment Plan;
  - Fair Work Compensation Plan;
  - Advertising Plan;
  - Non-consumption Policies;
  - Commitment for Participation in a Legal Defense Fund;
  - Indoor Cultivation Plan, if applicable;
  - Cannabis Waste Management Plan.
9. Requires denial of an application for a City permit if an applicant does not qualify, and authorizes denial if any specified conditions occur as provided for in the MAUCRSL;
10. Provides for appeals and hearings;
11. Establishes the Commercial Cannabis Activity Evaluation Committee (CCAEC) for selection of permitted applicants, and

empowers the City Council to devolve all decisions related to permitting commercial cannabis activities to the CCAEC, and allows for the City Council to divest itself of the permit approval process;

Mayor Dutrey stated he would like to have a future meeting to further discuss the composition and duties of the CCAEC.

Council Member Ruh stated he would prefer only members of the community including residents and businesses be eligible to serve on such a committee, with the exception of Commissioners and Council Members who would not be involved.

12. Establishes the Cannabis Management and Compliance Program in the City Manager's Office to support the CCAEC;
13. Prohibits the sale of adulterated or misbranded cannabis and cannabis products;
14. Establishes a franchise program, rather than implementing a tax, which will assist with funding of and provide for the following activities:
  - The viability of the MAUCRSL's regulatory program;
  - The public health, safety, and welfare of the community and the permitted business
  - Prevent the intrusion of unpermitted commercial cannabis operators in the City to the detriment of permitted commercial cannabis activities;
  - Administration, enforcement, and oversight of local requirements;
  - Community education programs related to commercial cannabis activity and anti-drug programs for the community's youth;
  - Training and education programs for officers, employees, and agents of the City tasked with the administration, oversight, and enforcement of commercial cannabis activities.
15. Provides for the number and types of commercial cannabis activity permits that may be issued;
16. Imposes a franchise fee, set by resolution of the City Council, on all permitted commercial cannabis activities;
17. Imposes annual permit fees and other fees related to receiving a City-issued commercial cannabis activity permit;
18. Requires an application for a permit for cultivation to identify the source of water supply;
19. Provides for the seizure and destruction of growing or harvested cannabis without a court order by the local Chief of Police when such cannabis is grown or harvested without a required permit;
20. Establishes inspection requirements for permitted commercial cannabis activities;
21. Establishes a legal defense fund that is based on contributions by permitted commercial cannabis activities for use by the City in defense of the MAUCRSL and the City's permitting processes;
22. Establishes a placard compliance system, similar to a County-sponsored restaurant grading system;
23. Establishes a disciplinary process for probation, suspension, or revocation of permits;
24. Establishes a system of fines and penalties, including an administrative citation process; and

25. Establishes other regulatory provisions, rules, restrictions, requirements, procedures, and legal structures related to regulating the medicinal and adult-use cannabis marketplace in the City.

Mayor Pro Tem Raft left the meeting at 7:59 p.m. and returned at 8:00 p.m.

City Manager Starr stated the issuance of permits would be discretionary and the City would be within its authority to control, regulate, amend, and modify the issuance of commercial cannabis activity permits, and discussed the different types of permits that would be required for each type of commercial activity.

Mayor Dutrey left the meeting at 8:05 p.m. and returned at 8:08 p.m.

City Manager Starr indicated the estimated revenue generated from annual permit fees and discipline-based penalties is projected to be significant. Of note, the franchise fee adopted in lieu of a tax, could potentially generate \$500,000 to \$1.75 million annually assuming a franchise fee of 5 percent. Other state sales taxes and local transactions and use taxes could produce an additional \$100,000 to \$300,000 annually. Other administrative and processing fees may generate between \$25,000 and \$100,000 annually. Montclair would also become eligible for a wide range of grants that are only available to local agencies that have adopted regulatory schemes for commercial cannabis activity, with an estimated potential of \$200,000 being available per year. An annual projection of \$1 million to \$2.5 million is anticipated based on the number and type of permits issued.

**Proposed Ordinance No. 19-983** (the Commercial Cannabis Land Use Ordinance of the City of Montclair):

1. Imposes restrictions on the private cultivation of cannabis;
2. Provides for a specified CEQA process for applicants;
3. Provides for location by commercial cannabis activity type;
4. Designates zones where commercial cannabis activity is permitted;
5. Provides for an Administrative Professional Zone exemption for a store-front retail commercial cannabis activity;
6. Establishes separation requirements from sensitive uses (schools, public parks, public library, youth centers, and alcohol and drug treatment centers) and residential zones;
7. Prohibits home occupancy permits; and
8. Provides for fines and penalties for violations that are in addition to proposed Ordinance No. 19-982.

City Manager Starr noted the Ordinance would create a foundational basis for zoning and land use designations for commercial cannabis activity in the City pursuant to the goals and objectives of the MAUCRSL, and designate such zones or districts of the City for operation of commercial cannabis activities. Commercial cannabis activities are proposed to be permitted only in the following zones: Administrative Professional, General Commercial, Manufacturing Industrial, Limited Manufacturing, and General Manufacturing. Within each zone where such activities would be permitted, only certain types and numbers of commercial cannabis activities would be allowed. The number and type of activities permitted in each zone may be defined and limited by provisions of a franchise agreement between the City and a permittee.

City Manager Starr noted the activities would not be permitted within 600 feet of sensitive uses including schools, public parks, public libraries, youth centers, and alcoholism or drug abuse recovery or treatment facilities; within 100 feet from any other commercial

cannabis activity of the same permit type in the City; or within 100 feet of residential zones in the City.

**Proposed Ordinance No. 19-984** (the Comprehensive Second-Hand Smoke Control Ordinance of the City of Montclair):

1. Provides for restrictions on second-hand smoke and the consumption of tobacco, tobacco products, cannabis, and cannabis products;
2. Provides that the smoking of tobacco products and cannabis products is prohibited in all places of employment and all places open to the public;
3. Provides that, except as otherwise provided by law, the smoking of adult-use and medicinal cannabis is prohibited at any place other than a private residence;
4. Provides limitations on the smoking of tobacco and cannabis in motels, hotels, guest homes, boarding houses, halfway houses, day care facilities, and other temporary lodgings;
5. Provides for the designation of indoor and outdoor smoking areas; and
6. Provides for fines and penalties and for a tobacco retailer permit fee to assist with enforcement of the Ordinance.

City Manager Starr noted the purpose of this Ordinance is to protect the public health, safety, and welfare by prohibiting the smoking of cigarettes, electronic smoking devices, and cannabis at places of employment and in public places under circumstances where other persons will be exposed to second-hand smoke. It would also provide for a cleaner and more hygienic environment for the City and its residents.

Council Member Ruh asked how multifamily residences would address the second-hand smoke concerns.

City Manager Starr indicated the property manager or management company would be required to establish smoking areas and would be responsible for enforcing the provisions within their communities.

Council Member Johnson stated her questions and concerns as follows:

- Addressing criminal activities associated with all-cash businesses.

City Manager Starr indicated the state looked into operating a bank but it was determined to be too costly, and is instead looking into working with the Federal Government. He noted there are also companies considering providing banking and credit card transaction procedure services to vetted applicants.

- Would AB 1356 (Ting) allow businesses to open anywhere in the City?

City Manager Starr noted the bill is silent about location.

- Would a labor unit need to be established for employees?

City Manager Starr advised the state law requires a labor peace agreement between the businesses and employees, but it does not have to be a union per se.

- How would deliveries be required to verify the age of the resident?

City Manager Starr noted the state already requires that deliveries be made to a person with identification to verify age.

Council Member Johnson expressed her appreciation to City Manager Starr and City staff for the extensive time, research, and work that went into drafting these Ordinances, no matter the outcome of the Council's decision.

City Manager Starr noted staff has worked on developing these ordinances for the past two years since the Council provided direction.

Mayor Pro Tem Raft asked if the Council only has 120 days to implement regulations.

City Manager Starr clarified the 120 day timeline would only be in effect if AB 1356 passes. He noted that if the City Council does not act on these ordinances before July 1, 2019, the Ordinances may need to go through the extensive and costly CEQA process.

Council Member Ruh noted many festivals would likely want to allow for the sale and consumption of cannabis products.

City Manager Starr indicated such festivals would not be permitted to operate in the City under the proposed regulations.

Council Member Ruh noted employees making deliveries of cannabis products would be carrying a large amount of cash and would be targets for criminal activities. He asked if there are any protections or regulations for such circumstances.

City Manager Starr advised the state regulates deliveries and the City cannot impose more strict regulations.

Mayor Dutrey requested those in the audience wishing to speak to provide their comments at this time.

**Mr. Bruce Culp**, resident, thanked staff and noted he is impressed by the comprehensiveness of the Ordinances. He noted over 50 percent of residents who voted in Montclair in 2016 are in favor of safe and legal availability to cannabis and based on the way things are going, the City will be forced to legalize it one way or another. He noted while he respects the opposition due to various reasons, he supports safe access to the products.

**Mr. Mark Ramos, United Food and Commercial Workers (UFCW)**, advised his organization endorsed Proposition 64 and represents cannabis workers in the industry. He noted he would like to provide input related to worker protections and the procedures used to determine which businesses are issued permits.

Council Member Ruh stated he feels June 3rd is too soon to hold the first reading of the Ordinances, and that the community needs to be provided with more opportunities to provide input. He thanked UFCW representatives for attending tonight's meeting and offering to provide input.

Mayor Dutrey thanked all who spoke, noting he appreciates their comments. He stated that while he does not personally support the legalization of cannabis, the world is changing and if the City will be forced to allow these businesses to operate, it should be done in a way that benefits the City economically and ensures residents and businesses are not negatively impacted. He stated he would like to have another workshop before the first reading of the ordinances to further discuss the CCAEC, areas where the businesses would be permitted, safety concerns for residents and businesses, and how the program would be implemented. He noted after the City Manager's presentation this evening, he feels he is more favorable than he was prior to the meeting, and after residents are given more opportunities to provide input the Council can determine whether to move forward.

Mayor Dutrey asked if a permanent moratorium could be placed on the ordinances if they are adopted to meet the July 1 deadline, preempt attempts to initiate ballot measures, and give the Council more time to deliberate and make changes.

City Manager Starr advised moratoriums can only be temporary for a set period of time.

Mayor Pro Tem Raft stated she would support having another workshop on this topic.

Council Member Ruh stated he feels there should be many additional meetings on weekends and in other locations throughout the community to reach more people.

Mayor Dutrey advised a special meeting would be scheduled for Thursday, May 30, 2019, at 6:00 p.m. to hold the workshop.

Mayor Pro Tem Raft suggested the City could do more to promote the meeting online.

Council Member Ruh argued residents cannot be expected to check the City's website all the time for such announcements.

Council Member Johnson noted she is concerned about not meeting the July 1, 2019 deadline and throwing money away to initiate the CEQA process.

Council Member Ruh stated residents deserve more opportunities to provide input.

At 9:22 p.m. Council Member Ruh left the meeting.

Mayor Pro Tem Raft noted if there was not a deadline she would agree with extending the process much longer, but she still feels the second workshop could be advertised to attract more participation from the community.

Mayor Dutrey asked if the Council could adopt the regulatory ordinance before July 1st and amend it later.

City Manager Starr indicated the regulatory ordinance would implement the regulations but would need the land use ordinance to regulate where the businesses could operate.

Council Member Ruh returned to the meeting at 9:24 p.m.

City Manager Starr noted in 2017, HdL made a presentation to the City Council at a public meeting at which the public had opportunity to provide input. At that meeting, the City Council directed staff to further investigate and develop a potential regulation structure.

Council Member Ruh insisted that if residents didn't know it was going on then they did not have an opportunity to provide input.

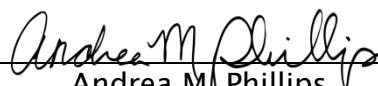
City Manager Starr noted a Proposition 218 notice will be mailed to all property owners in the City in the coming weeks related to trash and sewer billing, and that a notice of the workshop and tentative public hearings could be included with that mailing to advertise the meeting.

Moved by Council Member Ruh, seconded by Council Member Johnson, and carried unanimously 4-0 that the City Council call a special meeting on Thursday, May 30, 2019, at 6:00 p.m. in the City Council Chambers to discuss potential regulations of commercial cannabis activities in the City of Montclair.

## V. ADJOURNMENT

At 9:29 p.m., Mayor Dutrey adjourned the City Council.

Submitted for City Council approval,

  
\_\_\_\_\_  
Andrea M. Phillips  
City Clerk