



CITY OF MONTCLAIR
PLANNING COMMISSION MINUTES
REGULAR ADJOURNED MEETING
December 9, 2019
COUNCIL CHAMBERS
5111 Benito Street, Montclair, California 91763

CALL TO ORDER

Chair Rowley called the meeting to order at 7:00 p.m.

PLEDGE OF ALLEGIANCE

Vice Chair Martinez led those present in the salute to the flag.

ROLL CALL

Present: Chair Rowley, Vice Chair Martinez, Commissioners Eaton, Sahagun and Sanchez, Community Development Director Diaz, Assistant Director of Housing/Planning Manager Caldwell, Associate Planner Gutierrez, and Deputy City Attorney Holdaway

Also Present: City Manager Edward C. Starr, Senior Management Analyst Mikey Fuentes

MINUTES

The minutes from the November 12, 2019, regular meeting were presented for approval. Vice Chair Martinez moved to approve, Chair Rowley seconded, there being no opposition to the motion, the motion passed 4-0 (Vice Chair Martinez abstained).

ORAL AND WRITTEN COMMUNICATIONS

None.

AGENDA ITEMS

- a. PUBLIC HEARING - CASE NUMBER 2019-27
(Continued from November 12, 2019 PC Meeting)
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| Project Address: | 5450 Deodar Street |
| Project Applicant: | City of Montclair/Crown Castle |
| Project Planner: | Silvia Gutierrez, Associate Planner |
| Request: | Request for a Conditional Use Permit, Precise Plan of Design and Variance to allow a 78-foot high telecommunication tower and associated support equipment at MacArthur Park. |

Vice Chair Martinez recused himself because he lives within 500 feet of this project site.

Associate Planner Gutierrez reviewed the staff report.

Chair Rowley opened the public hearing.

Chair Rowley asked about the area between the back of the existing installation and the freeway, the little dark zone where park workers have found things. It is a place where folks could hide and will this eliminate that dark area where someone can hide? He would like to see us eliminate that dark area. Community Development Director Diaz commented the proposal will not eliminate that area between the wall and the edge of the fence that encloses the equipment for the antenna completely. The conditions of approval require the area be fenced off so that no one can get back there easily and until the wall for the freeway is constructed, even while they are doing the work, because they have to move the tree out of the way to do the work and that area will be completely cut off with chain link fencing. So, during the construction period, it will be off-limits. When the freeway wall is completed, it will come back as a condition of approval to finish the decorative wall or fencing all the way to the new wall of the freeway and close it off. Chair Rowley asked how much space will be there, will the existing couple of feet be there. Associate Planner Gutierrez stated that it is showing 3 to 5 feet, it's just a matter of the requirement that SBCTA does not want the wrought iron to connect directly to the wall. They are not giving allowance for that but the applicant was in attendance and could answer that. Chair Rowley asked if we cannot connect to that fence and it cannot go right up against the new wall that will be the freeway, could we block that area off so that it cannot be accessed. Community Development Director commented that the fence will keep people out of that area until such time as we might make improvements to the park with a walkway that goes around the perimeter so that would be a DG walkway that could be opened up when that time comes, but in the meantime and after construction is completed of the freeway wall, it will be closed off for any kind of access until we make major changes to the park where we might open that as part of the walkway. Community Development Director Diaz replied that the fence will not have to touch the wall, they can put a post right up against the wall and not have it connect to the wall and still have it do the same thing.

Commissioner Sahagun asked about the maintenance of the trees. How often is a crew sent to check for falling limbs or broken limbs? Is there a timeframe or a service call?

Joel Taubman, Crown Castle, applicant, replied they have annual inspections of every site that is owned by Crown Castle and the site, at a minimum, will be viewed and assessed annually. Their customers, if they have any reason to be on-site will also have an obligation to contact them if they find any deficiencies and their also our public number for their network operations center is available if anyone finds any deficiency and wants to report it.

Hearing no other requests to comment from the public, Chair Rowley closed the public hearing

Chair Rowley moved that, based upon evidence submitted, the project is deemed exempt from the requirements of the California Environmental Quality Act (CEQA). Further, the project qualifies as a Class 2 and 3 exemption under State CEQA Guidelines Sections 15302 and 15303, Commissioner Sahagun seconded, there being no opposition to the motion, the motion passed 4-0.

Commissioner Sahagun moved to approve a Conditional Use Permit, Precise Plan of Design, and Variance under Case No. 2019-27 to allow a telecommunications facility, disguised as a 78-foot high monopine tree, at MacArthur Park at 5450 Deodar Street, per the submitted plans, as described in the staff report and required findings, subject to the conditions of approval in attached Resolution Number 19-1934, seconded by Commissioner Eaton, there being no opposition to the motion, the motion passed 4-0.

b. PUBLIC HEARING – ORDINANCE NUMBER 19-983

Project Address:	Citywide
Project Applicant:	City of Montclair
Project Manager:	Edward C. Starr, City Manager
Request:	An Ordinance repealing Chapter 11.11 of Title 11 of the Montclair Municipal Code regarding medical cannabis dispensaries, cultivation and processing, commercial cannabis activities, delivery of cannabis and cannabis related products and outdoor cultivation of cannabis, and replacing it with Chapter 11.11 to Title 11 of the Montclair Municipal Code entitled “Commercial Cannabis Uses.”

City Manager Edward Starr attended the meeting to provide the presentation and to answer any questions. He stated it was his pleasure to be before the Commission to make the presentation. He realized it was the first time the City Manager has come before the Planning Commission and he felt it would not be the last because there is a joint meeting with the City

Council scheduled for February regarding the General Plan so for good or bad, the Commission will be seeing him on a regular basis.

He opened that this has been a very deliberate process, one that city staff has not engaged in without a lot of thought and consideration. This process started back in 2016 when we first heard that the State of California was considering a proposition, specifically Proposition 64, that would legalize cannabis. Up until that time, the City responded to the State's regulatory efforts as it relates to regulating medicinal and adult-use cannabis throughout the State of California and, at that time, in response to the Medicinal Adult Use Cannabis Regulation Safety Act (MAUCRSA), which was a series of laws that were adopted by the State of California, designed to give a regulatory structure for any cities that may have wanted to consider medicinal or recreational cannabis at that point in time, although medicinal cannabis was certainly legal in California back as early as 1996. With the Medical Marijuana Regulation Safety Act (MMRSA), the State created an opportunity for cities to effectively get on the bandwagon and implement some regulatory controls. However, most cities at that time decided to opt out of that. The vast majority of cities throughout the State of California adopted to not implement a regulatory system and, in fact, chose to ban all forms of cannabis, whether it be medical or adult-use within their respective communities, including Montclair. In fact, we amended the Montclair Municipal Code by adding Chapter 11.11 to the Code that would prohibit the sale, distribution and delivery of cannabis as well as the cultivation throughout the community. But, of course, with the passage of Proposition 64 Adult Use of Marijuana Act (AUMA) in 2016, that changed everything. It changed the outlook on how the communities were to react and consider integrating a regulatory system in their respective communities. So, it was at that time in 2016 that staff started to look at this issue with some earnest. We even presented to the City Council a definitive guideline on how the Council may want to proceed and it was in response to that the City Council gave staff direction to pursue a regulatory system that would allow for them to consider regulating medicinal as well as adult-use cannabis in the Montclair community. So, since that time, that is what staff has engaged in. In fact, we hired a company, HDL, which is a tax-consulting company to examine the implementation of a regulatory system in the community. A workshop was presented to the City Council by HDL and, after that Council workshop, staff made the determination that it would perhaps be better for us to pursue this regulatory structure instead of using a contract agency primarily because we understood the community and we understood what was going to be necessary to implement an effective regulatory system. We believe we have the talent and the skills in the community and within staff to pursue designing a regulatory system and it gave us the opportunity to look at this whole issue from an intimate perspective. In other words, not just rely on the work of a consultant but rely on our own talents to examine a vast array of ordinances that were implemented in other communities to look and wait and see what the State was going to come up with in relation to its regulatory structure and to take all of that into consideration and design an ordinance which we think would be acceptable to our community. As stated, this process began in 2016, you can see that it has been a multi-year-long process. We did a couple workshops earlier in the year before the City Council where draft ordinances were presented.

For what we defined as the Medicinal Adult Use Cannabis Regulation Safety Law the City of Montclair (MAUCRSL), the MAUCRSL is effectively three ordinances. It is the regulatory

ordinance, which functions as the main guideline for implementing the regulatory system in the Montclair community. It is Ordinance No. 19-982, 19-983, and 19-984 referenced repeatedly in the Power Point presentation and agenda report that is presented to you for your consideration. The one of primary concern to you is the land use ordinance and that is No. 19-983 and we believe that ordinance is fairly responsive in addressing the areas in the community where we believe there is a fit for this sort of program in the Montclair community. The third ordinance that comprises the MAUCRSL is Ordinance No. 19-984 and that effectively is the second-hand smoking ordinance. It deals with two things. It deals with use of tobacco products as well as the use of cannabis products and it structures where cannabis and tobacco products can be used in the community. As you look at the ordinance, you will see that tobacco products obviously can be used in a much broader sense throughout the community; however, it does restrict it from places of employment and from public places. Cannabis, on the other hand, when it comes to smoking it, it can only be smoked in private residences or places that are sponsoring the use of cannabis at particular events as long as they are private events. The consumption of edibles is another issue. It does not relate to second-hand smoke productions and, plus, you are not going to know if someone is consuming edibles, but the consumption of cannabis as a smoking product is strictly regulated in the ordinance related to second-hand smoke. City Manager Starr encouraged members of the Commission to ask questions when they think of them, you do not need to wait until he has completed the presentation. Mr. Starr added that he preferred that if any Commissioner had questions as he goes forward that they interrupt and ask questions at that time for clarification purposes so that you clearly understand what the purpose of the ordinances are, what they are doing, and where we are going with them.

City Manager Starr started the Power Point presentation.

Commissioner Martinez commented that he wanted to make it clear that the framework for all of this, is just agreeing to the proposal by staff to regulate these areas in Montclair. City Manager Starr replied that the answer is yes and no. The City of Montclair currently prohibits the use of cannabis in medicinal and adult-use cannabis use in the City except as specifically defined by AUMA and that is the private cultivation in residential properties. That is also covered in the Power Point presentation. Each residential property is permitted to cultivate up to six mature cannabis plants. The land use ordinance before the Commission does impose some regulatory standards in relation to that private cultivation and that is within our purview. It is granted to us by the medicinal and adult-use cannabis regulator and safety act, the MAUCRSA, by the State of California. As long as we do not prohibit the private cultivation and use of cannabis within the structure of the Adult Use Marijuana Act (AUMA) and the MAUCRSA, then we are in compliance with State law. As it relates to the commercial aspects of cannabis, both the adult-use and medicinal use, both of those are currently illegal in the City of Montclair, including the cultivation of cannabis at locations where groups of individuals get together and attempt to grow them in those locations. You know we have had some problems with that sort of activity, had some of those buildings catch on fire, but that activity is not permitted, we have never permitted it, and the regulatory ordinance gives us specific authority to prohibit that sort of use in the City of Montclair altogether. In fact, there is no need for those groups getting together for private cultivation of cannabis in commercial buildings for their own personal use because if the City Council does adopt a regulatory system, then the adult

recreational use for commercial cultivation and other aspects that are permitted through that regulatory process would take its place. The AUMA as well as the MAUCRSA does allow a city to allow that sort of activity but our ordinance will prohibit it and, in fact, effective January of 2020, it effectively goes away anyway. You can no longer have cooperatives with the medicinal and adult-use cannabis regulation safety act. So, we do not really need to worry about that, but we did include a component in the regulatory ordinance that prohibits it. Again, it is a yes and no. Right now the commercial aspect of cannabis is prohibited in our community, but under AUMA and the MAUCRSA, the private cultivation of up to six mature plants is permitted, however, in the case of the medicinal use for those individuals who have authorization from a medical provider, they can grow more, up to 12, and, in some cases, even more than that, depending on their need, but they require specific medical authorization to exceed the state limits on cannabis.

City Manager Starr added that we (*the City of Montclair*) have a strong enforcement program, our Code Enforcement Supervisor, Gabe Fondario, is in the audience along with Merry Westerlin, his supervisor, and Gabe can certainly attest that the work and effort he puts forth and the struggle he has to endure on a daily basis to try to identify the black market activity, but what is important and necessary for the Commission to realize is that once you do implement a regulatory system, the black market typically starts to avoid your community. It may congregate in surrounding communities because once you have a legal system in place, then they recognize that there is a customer draw to the legal businesses and there may be some interest on their part to tap into that customer base that is going into the legal businesses for their cannabis so they try to attract by offering their product, but the ideal of a regulatory system is that you are providing the customer base a product that has been regulated, tracked and traced, effectively guaranteed from not being tainted by poisons or in other ways contaminated. A market that, even if it thought to engage in that type of activity, would immediately lose their license and/or their permit in the City of Montclair and their financial future in that business. So there would be no interest for them to do that.

Chair Rowley asked about Mr. Starr's comment about the legal activity driving out the illegal and do we actually have bona fide facts regarding that or is that merely an opinion piece. City Manager Starr replied that it is both. It is fact in cities that have adopted regulatory systems and there having been a reduction in black market activity, but black market activity survives because of the tax structure imposed by the State of California on legalized commercial cannabis activity. It's the tax structure that has directed people still towards the black market activity, but in other cities where there is no regulatory system, the black market thrives. There cannot be a city that can come and tell you that they do not have a problem with cannabis in our community because it is not true. All you have to do is go and look at Weed Maps and see that all of these vehicles on Weed Maps and you can see that all of these vehicles for every community are businesses that are delivering cannabis to the door of the customer in every city in California. So, for any city to say that they have no cannabis activity occurring in their community is a demonstration of a lack of understanding of how the black market businesses operate. For that matter, the legalized businesses can deliver as well, but the mass of what you would see probably is black market and the reason for that is because there is relatively very little legalized dispensary activity in the State of California.

Commissioner Sahagun asked about the property owners. City Manager Starr replied that we can go after the owners. Under a regulatory system, they have to provide us evidence that the property owner has given them permission to operate a commercial cannabis activity. Obviously, if it is a black market, they are dealing with the property owner, who is allowing that to go on, but we go after the property owner and stiff penalties may be applicable. So, you will not have a lot of property owners who are permitting black market activity in the City once a regulatory system is in place.

Commissioner Eaton asked if that was with or without a city's own regulation. City Manager Starr stated that every city could have a ban on the legalization of cannabis for medicinal or adult-use in their own respective communities, but they cannot prohibit the door-to-door delivery of cannabis to their community, provided, obviously, that a business is operating outside of their community because they cannot be operating in their community for the purposes of delivery, but they certainly can be operating outside of their community and it can either be a legalized business in another city or a black market activity. It is up to the City to prove that it is a black market company and take enforcement actions related to black market activity, but that is a totally separate issue. In any event, they cannot prevent the delivery of legalized cannabis into their respective boundaries.

Commissioner Sanchez asked for clarification regarding a screenshot from the Power Point presentation regarding vehicles and delivery of cannabis. City Manager Starr replied that it is a screenshot of where they are at. Under a regulatory system, the vehicles have to comply with certain standards as far as how much cannabis they can carry, how much cash can be in the vehicle, who the individuals are that are driving the vehicles. Under a non-regulatory system, there is no such control. Certainly, under the State's guidelines under the Bureau of Cannabis Control, the vehicles are regulated through that mechanism, but the only restriction on Weed Maps at this point in time is that they cannot identify the illegal businesses. That is not to say that each of those vehicles is not coming from an illegal business; that would probably be too difficult for the State of California to regulate. It does not mean they are not going to go in that direction.

Chair Rowley asked if it says greenhouse, was that going to be indoors or outdoors. City Manager Starr replied that a greenhouse is indoors and we do address it through the regulatory ordinance. We do not really prefer types of commercial cannabis activities because then you are getting more towards just the average person wanting to get involved in the business and they do not really have the financial capacity to get involved in the cultivation of cannabis because they cannot pay for the costly control mechanisms that allow it, but there is some allowance under the law for a smaller nursery as well as larger nursery but there are regulatory systems that are in place in relation to that. We do discuss it in the regulatory ordinance but it is not a type of cultivation that we are generally recognizing as a want in the community. We may have one or two licenses for certain types of nursery types of cultivation, but the majority of cultivation in the community is through micro-businesses, which limits it to 10,000 square feet or less of cannabis space or to the larger businesses up to 20,000 square feet for larger cultivation, but all of that is indoors and the reason for the limitation on 20,000 is that the State of California itself does not really allow for larger cultivation until January of 2022 in which case then they will allow for larger cultivation above 100,000 square feet. Because at that point in

time the State envisions that larger commercial enterprises such as the tobacco industry are going to demonstrate interest, but they want to keep the amount of the California marketplace until after that point in time. They are not allowed into the California marketplace until that point in time to allow the smaller commercial enterprises to get a foothold in the State of California.

They cannot obtain the State license until after they get the local permit. Some applicants have tried, but the State, under the MAUCRSA, is required to contact the local governing agency and ask if there is a regulatory system in place and if there is not, then the State will not issue the state license. Until there is that local regulatory structure in place, there is nowhere for them to go as far as a state license except for another municipality that may regulate it.

Chair Rowley asked if there will be a limit on the number of licenses. City Manager Starr answered yes. They will be limited by type of commercial cannabis activity. Some we do not allow at all in the City and others we do. The regulatory ordinance makes recommendations but it will be up to the City Council to massage those numbers. What we recommended is what we believe are the maximum allowed. The City could take a position that they want to only allow certain types and limit or even expand the number of permits that would be issued under these regulatory programs. That will be entirely up to the City Council or for that matter, they can defer it to the Commercial Cannabis Activity Evaluation Committee, which is a body that is established by the regulatory ordinances to provide a mechanism that will consist of people outside the City Council to examine regulations and rules to implement the provisions of the MAUCRSA so we can have an effective program in the City. That is up to the Council whether or not they want to defer that authority to the evaluation committee or keep that all to themselves. The regulatory ordinance also provides that even though the Council may adopt the maximum numbers for the different types, the ordinance recommends, there is no requirement that we issue all of those licenses. So, for example, the ordinance may authorize a maximum of five retail dispensaries in the City. But, if we choose, to only implement or issue two at any one given time to give us an opportunity to see how the program progresses and then issue two more three years later, one year later or however far later, that is completely within our discretion and control. Then impose the same general requirements on both medicinal and adult-use; the only minimal differences between the two, under medicinal you can be 18 or older to buy and under adult-use it is 21 and older and for medicinal use, you can be in possession of a greater number of mature plants on your property or private residence if you have authorization from a physician that allows you to do that. Throughout our regulatory system, the public health, safety and welfare is our primary consideration. In fact, the reason why we chose to go down this road is the public health, safety and welfare considerations because staff believes that under an unregulated system, there are no controls and we cannot verify the safety of the product, cannot limit where they are going, cannot limit the type of activity because we do not know about them under the black market activity. So, the public health, safety and welfare are at risk under an unregulated system and we believe that by continuing with an unregulated system, we are allowing that activity to occur. We will still try to attack through our enforcement measures, but we are recognizing that we are slowly losing that battle and ultimately believe that we may lose it entirely in the long term as the courts continue to take a more permissive attitude towards this issue because they believe that it has been legalized and just because you have chosen not to regulate it, is not the court's problem.

Mr. Starr continued and explained that we are not proposing a taxation system. What we are proposing is a franchise system. A person will apply for a permit to receive a commercial cannabis permit in the City of Montclair. If they are authorized a permit, they can potentially operate under that permit for up to five years. That is a long time to operate under the safety of a permit system, recognizing that you are making a huge investment in that business that you are going to operate in this City. Whereas, under a permit system and a taxing system in other municipalities, each year, you have to go under a re-permitting process and if it is determined that, for whatever reason, that municipality no longer is interested in giving you that permit, they can revoke that permit. We have a re-authorization process; every year you have to be re-authorized, but it is not as exhaustive of a re-examination process. As long as we are able to ascertain that you are fully in compliance with the MAUCRSL, then you would be allowed to continue under that franchise agreement. Then, at the end of the five years, you go under a full review and you can get that franchise renewed again. But, again, the idea behind this is multi-fold: (1) we are giving you the opportunity for your investment to have a long-term return for that investment. In turn, if you do not comply with every aspect of the MAUCRSL that is applicable to your business, we are going to strip that permit from you and you have just lost, not only your investment, but a massive opportunity for financial gain in this community over the long term. That economic incentive provides a tremendous incentive to make certain that there is 100% compliance with every aspect of the regulatory system that this system puts in place. Because the economic impact on those investors is too significant otherwise. The other aspect of a franchise system is that we do impose a franchise fee on the respective permittees. In exchange for that franchise fee, they get the permit to operate. It is up to them whether or not they want to pass-on the franchise fee to their customers. If they want to absorb the franchise fee and be able to sell their product at a lower cost because they are not passing on a tax that other communities are requiring that they pass on, it is entirely up to the operator. If they want to pass on a portion of the franchise fee, it is entirely up to the operator, but the City still has to be paid the franchise fee no matter what that amount is, whether it be 3%, 5% or 8%, whatever the Council chooses to adopt. We are not there yet. We presume that at the on-set, it will likely be at the lower end to give the operators an opportunity to get operational and functioning and not have the burden of that fee at a higher rate on them, but passing it on to the customer is always at their discretion, which makes it not a tax, but a fee on the cost of receiving that franchise permit from the operator and the fee will be based, just like any tax will be, on the gross revenues of the business and the other aspect that is positive for the City is that as a franchise fee, the Council can change the fee at any time, they do not have to go to the voters to ask for a change to the fee or to lower or raise it. It will all be based on what we determine we need to operate the regulatory system. If we determine that more money is needed, then the Council can decide to raise the regulatory fee, based on the needs of the City to maintain, operate, and enforce the regulatory system.

Planning Commissioner Martinez asked if the consumer transaction resulted in a sales tax. City Manager Starr replied that the regular taxes, the Bradley-Burns sales taxes will continue to apply, just as the transaction and use tax will apply, but every City has their sales taxes that are imposed by state law. Not every city necessarily has the transaction use tax, but more and more cities are adopting it. Each year there is a ballot and we are seeing that municipalities up and down the state are imposing transaction and use taxes. Ours is currently at .25%, which is probably the lowest in the State of California, but the Bradley-Burns is consistent,

except for those taxes that they have imposed otherwise. Then the State has imposed its tax structure, which is significant, 15% plus other taxes related to cultivation per plant. It is a complicated tax structuring system. We are not adding to the tax burden, but we are imposing a fee for the franchise because frankly there is value in getting a permit for up to five years provided you remain in compliance with the MAUCRSL. There is a tremendous value to that and that value is reimbursed to the City through the franchise fee. However, if the Council chooses to go to the voters to ask that they approve a tax specifically for cannabis, they could do that. We are not contemplating that because we believe the franchise fee serves in that stead. We are the only city in the State of California that has come up with this concept. He expected that once publicity starts to occur about the uniqueness of this approach, more and more cities are going to follow in line with pursuing a franchise fee as opposed to a cannabis tax.

Chair Rowley asked if the need for a laboratory indicates that the black market, marijuana that is coming into the community is laced with junk. City Manager Starr replied that is one of the major complaints about the black market is quality control and the product is not only tainted, but the types of chemicals that can be in it can be very toxic and then you do not know what the quality control or the level of THC in the product. It could have a higher level of THC than you want people to consume or it could be that the product has an extremely low level of THC, in which case the consumer is not getting what it paid for. Chair Rowley asked if that means that the legal level of marijuana has a level of THC that it cannot exceed. City Manager Starr replied yes, it is regulated by the Department of Public Health through the manufacturing process as well as the Department of Agriculture through the cultivation. There are restrictions on the amount of THC that can go into the commercial product just as there is on industrial hemp. If someone is engaged in the production of industrial hemp, it cannot exceed .3% THC, which is the psychoactive component of hemp and in order for it not be considered a THC cannabis product, industrial hemp cannot have more than .3%. Chair Rowley thanked City Manager Starr for the information because he said there is "talk" that the new marijuana has such a high level of THC, that it is what is doing so much damage so it is interesting to know that in the legal market, it is going to be regulated. City Manager Starr added that in the State of California, the level is regulated.

Senior Analyst Fuentes added that the testing has several classifications of toxic chemicals, pesticide, fecal matter, other additives that they test to make sure that the cannabis is pure and a lot of the cases that you have seen on the news where people have become sick from vape pens are from the actual illicit market consuming cannabis that is laced with additives.

Vice Chair Martinez asked, hypothetically, if the Planning Commission adopts this Resolution, does the City Council get the opportunity to choose, for example, to have that zone allowed in the northeast area of Montclair or to change the distance requirements from 600 feet to 1,000 feet? City Manager Starr commented that before ordinances are adopted the City Council can make any recommendation(s) it wants, just as the Planning Commission has the authority to suggest recommendations to the land use ordinance, but the City Council has the ultimate authority to make recommendations related to changes, whether it be to enhance or to reduce, as long as it is in compliance with state law and after the ordinances are adopted. The ordinances themselves, primarily the regulatory ordinance as well as the land use ordinance

gives the City Council authority to amend the ordinances by resolution so we do not have to go through an exhaustive ordinance review process. The ordinance is designed to protect public health, safety, and welfare as the primary concerns and as we go through this process, if the City Council chooses to engage in a permitting program and we find along the way that we need to implement more regulations or if the City Council does not want to issue more permits or no longer want to issue permits for certain types of cannabis activities, or expand it or add to the number of zones, however the City Council wants to do it, they can do it by resolution. Vice Chair Martinez stated the reason he asked the question is just his personal thought, in the northeast section of Montclair, there are several uses that will be permitted and he was just thinking out loud whether the retail component of the cannabis is necessary there and was that being a good neighbor to the City of Upland because he did not think they allowed this and is it something based on figures or is it something we can step back the retail component and keep it down in the south section in the unincorporated parts of the County. He was just throwing that out there and he did not know if it was mandatory and he was fine with it, he knows there was a lot of research done, but he did want to pose the question. City Manager Starr replied that through our analysis and in looking at the City, staff believes this quadrant of the City can support retail and believe that the mix of businesses in this particular area lends itself to that sort of commercial cannabis activity in that area. We do understand that there is a mobile home park that is marked on the map in this area; however, it is not a residential zone. As with mobile home parks, they often go where they want to go and are regulated by the State and not by local government. We are prohibited from regulating mobile home parks and sometimes mobile home parks simply show up in places that you do not necessarily want them to be or expect them to be. In designing this and recognizing that that mobile home park is there, if we started treating properties residential that are not in residential zones as a barrier, then we probably would end up eliminating almost every area of the City. So, we had to make a decision and that decision was that we would try and protect and preserve the 100-foot barrier around mobile home parks but that is probably as close to being sensitive to that particular use that we can be otherwise we are going to end up virtually excluding almost all of the City from this activity if the City Council wants to go down this direction. We have given them what we interpret to be the maximum extent that the City Council can go with and not be in violation of being sensitive to the intent and purpose of the ordinance and the public safety, health and welfare, which is again why the majority of the activities would be in south Montclair because this is the industrial area of the City. We would look at two dispensaries at the most in that area, it is a logical area for the dispensaries, but he understood if the City Council chooses to exclude this area for any type of commercial cannabis activity because it is the north and the north is the area we are moving forward with development. When the workshops were held for the City Council, there was representation from the mobile home park expressing concern about this process and legalizing cannabis businesses around the mobile home park. He emphasized that over the course of the last decade, the area surrounding the mobile home park has been one of the most concentrated areas for illegal black market commercial cannabis activity and not during that entire ten year period did he ever hear of one complaint about the black market activity that was going on around the mobile home park. So, now that we are looking at the legalization, there is concern about the potential for this activity and he hears that message but there continues to be black market activity around this mobile home park and he has not heard one expression to the City about the black market activity that is occurring around the mobile home park. He did not know how to address it any further. On the one

hand, you do not want the illegal business but on the other hand you have no complaint about the black market activity. The two do mix to him and it seems to him that it is better that you regulate it than to continue to allow the black market activity to occur.

Commissioner Sahagun commented that at that mobile home park, there are only two ways in and out of the park, it has a perimeter wall all the way around and we want to consider that it is residential but it is semi-protected. City Manager Starr stated that right across the street is where we found that cultivation center that had thousands and thousands of plants in it.

Staff recommends the Planning Commission take the following actions in regard to the Planning Commission Resolution No. 19-935, recommending that the City Council adopt Ordinance No. 19-983 and these actions are that you move, based upon the evidence submitted, a finding is made the proposed Ordinance No. 19-983 is exempt from further CEQA review, pursuant to the guidelines as established here under this particular motion and adopt Planning Resolution No. 19-935, recommending the City Council adopt Ordinance No. 19-983, repealing Chapter 11.11 of Title 11 of the Montclair Municipal Code regarding medical cannabis dispensaries, cultivation, processing, commercial cannabis activities, delivery of cannabis and cannabis related products and outdoor cultivation of cannabis and replacing it with Chapter 11.11 of Title 11 of the Montclair Municipal Code entitled Commercial Cannabis Uses.

Chair Rowley thanked City Manager Staff on behalf of the Planning Commission for his very detailed report; he felt it was very informative.

Chair Rowley opened the public hearing.

Bruce Culp, resident, thanked City staff for taking the initiative by starting work on day one and putting together this comprehensive and well thought-out and written set of ordinances. He commented that 80% of the neighbors at the Paseos are regular users of recreational cannabis and he suggested that the shops at the southeast corner of Arrow Highway and Monte Vista Avenue, would be an ideal location for retail of cannabis. The corner of Central Avenue and Arrow Highway would be close enough, but he believed the southeast corner of Arrow and Monte Vista would be good. One, it is across from the Police station, safe as it can be. Two, it is within easy walking distance of a majority of what he believes will be young professionals and college students. Three, it is near a transportation center so we could attract users from other cities and bring in money without having to clog up our streets. He commented that he believed property managers use cannabis use as a way to bully and harass a lot of the residents there and as the City staff are developing these high density areas, he asked that some protections be put in for residents so that they cannot singly evict residents just for that cause alone.

Bill Kaufman, commented that the presentation was the most comprehensive and educational presentation that he has seen and he has seen quite a few. He has been through Santa Monica and Venice, Temecula and others. In other areas you will see first class dispensaries on Wilshire Boulevard, on Galey Avenue, at McKinney Street, but you see there is you see a first-class business, it is run properly, nobody gets in unless they are age 21, and there is a guard

and. When you have a very legitimate business, he believed it should be opened to the residents of Montclair in an area that they frequent. Typically, \$200,000 to \$300,000 goes into making one of these dispensaries and he felt that the entertainment center at Montclair Plaza would be the perfect location to put a first-class dispensary. You are going to have people congregating there. You do have a location where people congregate, 250,000 people per day go past on the I-10 freeway and this would be a boon for the City of Montclair. If you put a dispensary in the back alley somewhere, people do not come to that. Right now dispensaries are closing down because people they do not have the revenue because do not want to go where they are. Average user is a 42-year-old male or 52-year-old female. It should not be behind the black curtain. He passed out a flyer with information regarding cannabis. He commented that we have to look at this as a very legitimate industry, it is coming out of the ground, it is young and we do not know where it will be ten years from now.

Hearing no other requests to comment from the public, Chair Rowley closed the public hearing

Chair Rowley moved to recommend that based upon the evidence submitted a finding is made that the proposed Ordinance No. 19-983 is exempt from further CEQA review pursuant to the Guidelines, seconded by Commissioner Sahagun, there being no opposition to the motion, the motion passed 5-0.

Commissioner Eaton moved to adopt Resolution No. 19-1935, as amended, recommending the City Council adopt an ordinance to repeal Chapter 11.11 of Title 11 of the Montclair Municipal Code and replace it with Chapter 11.11 Title 11 of the Montclair Municipal Code entitled Commercial Cannabis Uses, amending page 44, Section 4, just before the signature line, seconded by Commissioner Sanchez, there being no opposition to the motion, the motion passed 5-0.

Commissioner Eaton thanked City Manager Starr stating that it was long (*presentation*) but very informative and that former Mayor Paul Eaton (deceased) would be very happy that this is finally starting to happen.

INFORMATION ITEMS

Community Development Director Diaz reminded the Commission that on Monday, December 16 at 5:45 p.m., there will be a joint Planning Commission and City Council meeting to give an overview of the Montclair Village project in North Montclair.

Chair Rowley adjourned the meeting at 10:09 p.m.

Respectfully submitted,

Laura Embree
Recording Secretary