



REGULAR ADJOURNED MEETING OF THE
MONTCLAIR PLANNING COMMISSION
to be held in the Council Chambers
5111 Benito Street, Montclair, California

Monday, July 12, 2021
7:00 p.m.

Remote Participation Information:

Zoom Link: <https://zoom.us/j/95858571900>

Dial Number: 1-(669)-900-6833

Meeting ID: 958 5857 1900

*If you want to make a public comment or speak on an agenda item, including public hearing, please complete a Speaker Card in the Council Chambers or at <https://www.cityofmontclair.org/public-comment/>. The Chair (or the meeting's Presiding Officer) will call on those who submitted requests to speak at the appropriate times during the meeting. Those who did not submit a request to speak who are present at the meeting location may raise their hand during Public Comment to request to speak. Those participating remotely may request speak using the "raise hand" function in Zoom or may dial *9 if on the phone, and then *6 to un-mute when called on to speak. Written comments (200-word limit per agenda item, and 200-word limit for all non-agenda items combined) and requests to speak can also be emailed to planning@cityofmontclair.org at least one hour before the meeting begins.*

REVISED AGENDA

1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

Chair Vacant, Vice Chair Manny Martinez, Commissioner Sergio Sahagun, Commissioner Ginger Eaton, Commissioner Jaso Sanchez, Commissioner Krishna Patel

4. APPROVAL OF MINUTES

None.

5. ORAL AND WRITTEN COMMUNICATIONS ON NON-AGENDA ITEMS

The public is invited to address the Planning Commission regarding any items that are not on the agenda. Comments should be limited to matters under the jurisdiction of the Planning Commission. It is respectfully requested that speakers limit their comments to no more than three minutes in length.

Any person wishing to address the Planning Commission on an agenda or non-agenda item should complete a Speaker/Virtual Speaker Card as described above.

6. AGENDA ITEMS

- a. PUBLIC HEARING – CASE NUMBER 2008-7’B’
Project Address: 10240-10244 Central Avenue
Project Applicant: Gardner Family Trust
Project Planner: Silvia Gutiérrez, Associate Planner
Request: Conditional Use Permit (CUP) Amendment and a Precise Plan of Design to allow a 1,440 square foot addition to the Los Portales Mexican Grill Restaurant and expansion of the existing Type 47 (On-Sale Beer, Wine, and Spirits) license.

- b. PUBLIC HEARING – CASE NUMBER 2019-22
Project Address: Citywide
Project Applicant: City of Montclair
Project Planner: Yvonne Nemeth, Associate Planner
Request: Zoning Code Amendment repeal and replace Chapter 11.73, add Chapter 11.77, and amend Chapter 11.46 pertaining to Wireless Telecommunication Facilities (WTF) constructed on private and public land within the City.

- c. PUBLIC HEARING – CASE NUMBER 2021-18
Project Address: 8801 Central Avenue, Unit F
Project Applicant: Lee Pan Montclair, LLC
Project Planner: Yvonne Nemeth, Associate Planner
Request: A request for a Conditional Use Permit (CUP) to operate a tattoo and piercing studio in an existing 2,654 square foot tenant space within the multi-tenant “Montclair Village Plaza.”

- d. Planning Commission reorganization

7. INFORMATION ITEMS

Although the Planning Commission is prohibited from taking action on or discussing items not on the posted agenda, a member of the Planning Commission may ask for information, request a report back or to place a matter of business on the agenda for a subsequent meeting, ask a question for clarification, make a brief announcement, or briefly report on his or her own activities, provided the foregoing are related to, or within the jurisdiction of, the Planning Commission.

8. PUBLIC INSPECTION OF MATERIALS

Reports, backup materials, and additional materials related to this project item can be viewed on our website www.cityofmontclair.org by clicking on the agenda for July 12, 2021.

9. ADJOURNMENT

The City of Montclair Planning Commission meeting is adjourned to the regularly scheduled meeting of July 26, 2021, at 7:00 p.m.

CERTIFICATION OF AGENDA POSTING

I, Michael Diaz, Community Development Director for the City of Montclair, hereby certify that a copy of this agenda has been posted on the bulletin board adjacent to the south door of Montclair City Hall on July 8, 2021.



CITY OF MONTCLAIR
PLANNING COMMISSION

MEETING DATE: 07/12/21

AGENDA ITEM 6.a

Case No. 2008-7 'B'

Application: Conditional Use Permit (CUP) Amendment and a Precise Plan of Design to allow a 1,440 square foot addition to the Los Portales Mexican Grill Restaurant and expansion of the existing Type 47 (On-Sale Beer, Wine, and Spirits) license.

Project Address: 10240-10244 Central Avenue

Property Owner: Gardner Family Trust

General Plan: General Commercial

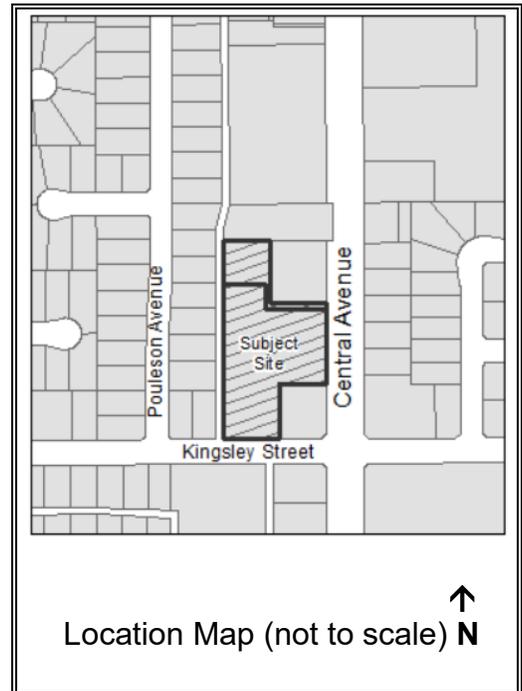
Zoning: C-2 (Restricted Commercial)

Assessor Parcel No.: 1010-353-13 and 14

EXISTING SITE FEATURES

Structures: 4,380-square-foot restaurant lease space in a 19,651-square-foot commercial shopping center

Parking: 110 shared parking spaces and two (2) disabled- accessible parking spaces



ADJACENT LAND USE DESIGNATIONS AND USES

	<i>General Plan</i>	<i>Zoning</i>	<i>Use of Property</i>
Site	General Commercial	C-2 (Restricted Commercial)	Shopping Center
North	General Commercial	AP (Administrative Professional)	Medical Clinic
South	General Commercial	C-2 (Restricted Commercial)	Gas Station
East	Low Density Residential (3-7 units/acre)	R-3 (Multiple Family Residential)/ C-2 (Restricted Commercial)	Residential
West	Low Density Residential (3-7 units/acre)	R-1 Single Family Residential/ R-2 (Two Family Duplex Residential)	Residential/Commercial

Report on Item Number 6.a

PUBLIC HEARING – CASE NUMBER 2008-7 'B'

APPLICATION TYPE(S)	Conditional Use Permit Amendment Precise Plan of Design
NAME OF APPLICANT	Gardner Family Trust
LOCATION OF PROPERTY	10240-10244 Central Avenue
GENERAL PLAN DESIGNATION	General Commercial
ZONING DESIGNATION	"C-2" (Restricted Commercial)
EXISTING LAND USE	Multi-tenant commercial shopping center
ENVIRONMENTAL DETERMINATION	Categorically Exempt (Section 15303)
PROJECT PLANNER	Silvia Gutiérrez

Project Description

The applicant is requesting an amendment to the existing Conditional Use Permit (CUP) and a Precise Plan of Design related to the proposed floor area addition to the existing Los Portales Mexican Grill Restaurant. The following is a brief summary of the requested entitlements:

Conditional Use Permit (CUP) Amendment:

- A 24' by 60' building addition to the north side of the existing building for an expanded dining area of 1,440 square feet with a dining capacity of 56 seats. The addition will occupy a small area of the site currently used for parking. Primary access to the expanded dining area would be from the interior of the existing restaurant wall by means of new double doors. Two doors on the west elevation provide required exiting.
- To permit the extension of the existing Type 47 (On-Sale Beer, Wine, and Spirits) license to the expanded dining area.
- To amend current business hours to 9:00 a.m. to 9:00 p.m. Monday through Thursday and 8:00 a.m. to 11:00 p.m. on Friday, Saturday, and Sunday.

Precise Plan of Design (PPD) – Design elements of the proposed addition include:

- A sloped roof clad with standing seam metal panels. Same style of roof panels will also be applied (vertically) to wall areas on the east and west between the top the

windows and the pitch of the roof. Support columns around the building elevations will be clad in both stucco (upper) and brick (base). Maximum height of the slope roof addition is 15 feet.

- The shape and orientation of the addition is to the north. Large folding windows on east, north, and west facing sides of the addition add to the feeling of the space as an “outdoor dining” area. Ratio of window to wall is 50:50.
- Exterior colors for the addition will match the recently painted colors of the existing multi-tenant building. The color of the standing seam roof will closely match the dark trim of the building.
- A conceptual landscape and irrigation plan prepared by a California-licensed landscape architect for the site is included. The plan features a raised planter along the north side of the new addition with drought tolerant plant materials. Other landscape improvements in the parking areas near the addition include trees, drought tolerant shrubs, and groundcovers. No turf areas are proposed.
- Reconfiguration of the parking lot on the north side of the existing restaurant, which includes new landscaping and parking lot lighting.
- Construct a second new covered trash enclosure adjacent to the alley. The new trash enclosure would meet current City standards.
- New identification signs for the business. The applicant will submit a separate application for new signs for administrative review and approval by City staff.

Background

- Section 11.42.020 of the Montclair Municipal Code requires a CUP for all sales of alcoholic beverages within city boundaries whether for on-site consumption or takeout.
- Based on City records, construction of the existing commercial center occurred in 1965, with expansions in 1968 and 1972. In 1972, a Mexican restaurant under different name and ownership was a major tenant in the center with a CUP (Case 353) allowing service of serve beer and wine with meals.
- Los Portales Mexican Grill Restaurant opened in 1998 at the location of the previous restaurant. The Ayala Family operates the business.
- In 2008, under Case No. 2008-7, Los Portales Mexican Grill Restaurant obtained approval of CUP to expand its dining room into an adjacent lease space within the building.
- In 2015, the City approved Case No. 2008-7'A' to amend an existing CUP for an

upgrade of the existing ABC license from a Type 41 (Beer and Wine) license to a Type 47 (Beer, Wine, and Spirits) license with meals at the existing full service restaurant. A small bar area (approximately 135 square feet) with six stools and a counter was part of this upgrade.

Planning Division Comments

The proposed expansion of the restaurant represents the Ayala's family commitment to improve its restaurant at this location. The addition not only expands dining capacity but also serves as a "semi-outdoor" patio area for diners. The space would also provide a measure of flexibility to respond to health emergencies such as recently experienced during the COVID-19 pandemic. Moreover, the project makes good use of an underutilized portion of the site with no significant impact to the operation of adjacent tenants in the center. Staff also believes that having the addition face northward will activate this area of the center and improve visibility to an otherwise hidden area. The reconfigured north parking area will be improved and more attractive.

Site Plan

The site is of adequate size and shape to support the proposal, access to the site is appropriate, and proposed site improvements including parking and landscaping are consistent with applicable City development standards. The project meets setbacks and the maximum height of the slope roof addition is 15 feet at its highest point, well below the maximum 75-foot height limit.

As mentioned above, the location of the new addition will be over a small parking area with five parking spaces. The loss of these spaces is minimal and does not affect the overall number of required spaces to support the other businesses in the center. Based on the building square footage of the center and existing uses, a minimum of 105 parking spaces are required. The project, after parking reconfiguration, provides 110 spaces including four disabled parking spaces. Per Section, 11.66.10 of the Montclair Municipal Code, parking for restaurant uses may be calculated at one space per "four permanent seats in such building or structure, or for each six occupants based upon the occupant load of such building or structure as determined by the Building Official, whichever is greater." The existing restaurant with new dining area requires 35 spaces to support its ultimate dining capacity of 208 seats. Therefore, adequate on-site parking is readily available to support the proposed restaurant use as well as the other existing retail tenants in the center.

The proposed expansion would not result in a significant change to the overall operation of the full service restaurant or introduce any problematic uses. The restaurant does not propose late closing hours during the week and continually serves a variety of full entree meals made to order for consumption on the premises. The sale of alcoholic beverages would complement meals, but not be a major portion of the business. Staff has visited and patronized the restaurant on many occasions and can confirm that the owners have

operated and managed their business in a satisfactory manner and have deemed the premises in good order. As such, the sale and consumption of alcoholic beverages in conjunction with a bona fide restaurant at this location is an appropriate use and compatible with the other commercial retail type businesses in the surrounding area.

Regarding the hours of operation, staff is in general support if adequate staff and security measures (i.e., surveillance cameras) are in place at all times. To address this requirement, a number of conditions of approval are included in the draft resolution.

Building Design & Landscaping

Staff believes the building addition to be well designed and appropriate. The shape and design elements differentiates it from the look of the main building, which is consistent with intended use of the space as a semi-outdoor area. The colors of the proposed addition will match the colors of the recently painted main building. The final color for the roof is key, and will be selected to closely match the dark color of the trim. A condition of approval is included to ensure that the applicant and staff concur on the appropriate color selection for the metal roof.

Further, the proposed shed roof design for the building is tall enough with attic space to house rooftop equipment that would otherwise detract from the desired appearance. Staff has added a condition of approval requiring that any future rooftop equipment be fully screened from view in an architecturally compatible manner. When complete the project will result in an attractive improvement to property along Central Avenue and serve as a catalyst to encourage other owners to improve the properties.

The option of having operable windows allows the owner to take advantage of good weather days and allow breezes and open views to the outside. During inclement weather, the windows can be closed to keep the space warm or cool by means of a concealed HVAC system. The added benefit of the operable windows is being able to secure the area during closed hours.

Security

According to Police Department records, the subject business and retail center are not major sources of known problems or significant calls for service within the last 12 months. Nevertheless, in an effort to continue improving security and the ability to monitor the premises more appropriately, security cameras have been required as a condition of approval. The restaurant owner and property owner concur with the need to be proactive on security concerns and already have installed security cameras in place but will be making modifications to increase coverage and efficiency with newer equipment. If the expansion request is granted, cameras would be added on the exterior to cover the proposed expanded area.

Lastly, the applicant will be required to install signs stating “No Loitering or Consumption of Alcoholic Beverages on the Premises” on the exterior of the building and within all parking areas in plain view of store employees and customers.

Concentration of Licenses

The project site is located within Census Tract Number 2.08, which allows up to one (1) on-sale ABC license. According to ABC records, as of July 2021, Los Portales holds the only on-sale within the census tract. Since, this is an existing license that if approved would be applied to the expanded dining area, there will not be an increase that would result in an overconcentration. Therefore, ABC does not require a finding of public convenience or necessity in order to issue the license upgrade.

Public Notice

This item was published as a public hearing in the Inland Valley Daily Bulletin newspaper on July 2, 2021, as prescribed by law for this discretionary land use entitlement. Public hearing notices were mailed to all property owners within 300 feet from the boundaries of the subject property. Courtesy notices were distributed to tenants within the adjacent portion of the center in which the property is located. As of the writing of this report, no comments from the public have been received.

Conditional Use Permit Findings

Staff believes the necessary findings for granting a CUP amendment can be made, as follows:

- A. The CUP Amendment to extend on-premises sale of beer, wine, and spirits (ABC Type 47 License) in conjunction with full food service currently provided the existing restaurant use to the proposed 1,440-square-foot dining area addition is essential or desirable to the public convenience and public welfare. The option to purchase and consume beer, wine, spirits with meals provides the public of legal drinking age additional eating and seating options within the community. Such availability of alcoholic beverages with meals, inside the restaurant, is common among other restaurants in the vicinity.

- B. The granting of the CUP amendment to extend with on-premises sale of beer, wine, and spirits in conjunction with sit-down dining, will not be materially detrimental to the public welfare and to other property in the vicinity. The proposed sale and service of alcoholic beverages in the new addition will not adversely affect existing parking, adds more security, and exterior lighting. Moreover, the proposed restaurant use is compatible with existing C-2 Restricted Commercial zoning designation of the site, and surrounding development, or any sensitive land uses in the surrounding area.

- C. Granting the requested CUP Amendment to allow the proposed extension of the existing Type 47 license (On-Sale Beer, Wine, and Spirits) to the expanded restaurant area will not be materially detrimental to the public welfare and to other property in the vicinity. The existing restaurant operates as a family-oriented restaurant, it is anticipated, the expansion should not change or introduce new problematic uses to the use that would be incompatible with adjacent commercial uses or negatively affect any sensitive land uses in the surrounding area.
- D. That the proposal to allow Los Portales Mexican Grill Restaurant, an existing restaurant to expand 1,440 square feet to the north and extend the Type 47 (On-Sale Beer, Wine, and Spirits) license to the new enclosed addition is consistent with goals and objectives of the General Commercial General Plan Land Use designation for the subject property, in that the adopted General Plan encourages a wide range of retail and services within the retail commercial area including full service restaurants.

Precise Plan of Design Findings

Pursuant to Chapter 11.80 of the Montclair Municipal Code, the following findings for the Precise Plan of Design can be made:

- A. The proposed enclosed 1,440 square-foot addition to an existing restaurant is consistent with the applicable zoning standards and land uses allowed within the C-2 Restricted Commercial zone.
- B. At 2.50 acres in area, the overall shape and size of the site is sufficient to accommodate the proposed restaurant enclosed addition without need for any variances from applicable development standards of the Municipal Code. The site is designed with ample onsite parking that will be available to support all onsite uses, via an existing reciprocal access and parking agreement.
- C. The general arrangement of the proposed enclosed addition, massing, heights, landscaping and respective architectural designs as indicated in submitted plans is attractive and up-to-date.

Environmental Assessment

The proposal to allow Los Portales, an existing bonafide restaurant to expand 1,440 square feet to the north and extend a Type 47 (On-Sale Beer, Wine, and Spirits license) in conjunction with meal service within the expanded restaurant area. is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15303 of the State CEQA Guidelines and based on its own independent judgment, concurs with staff's determination of said exemption and finding of no significant effect on the environment. The project qualifies the size of the building is less than 10,000 square feet and does not generate significant amounts of hazardous

substances and all necessary public services and facilities are available.

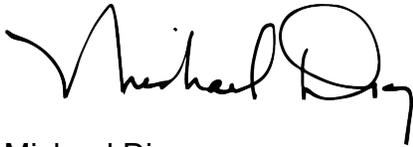
Planning Division Recommendation

Staff recommends that the Planning Commission take the following action(s):

- A. Move that based upon evidence submitted, the project is deemed categorically exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15303. The project qualifies because the size of the building is less than 10,000 square feet and does not generate significant amounts of hazardous substances and all necessary public services and facilities are available; and

- B. Move to approve a Conditional Use Permit Amendment under Case No. 2008-7 'B', to extend the existing ABC Type 47 License in conjunction with meals to the proposed new 1,440 square-foot addition, subject to the conditions of approval contained in attached Resolution No. 21-1951.

Respectfully Submitted,



Michael Diaz
Director of Community Development

c: Rick Gardner, 10256 Central Avenue, Montclair, CA 91763
Ricardo Ayala, 10244 Central Avenue, Montclair, CA 91763

RESOLUTION NUMBER 21-1951

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MONTCLAIR APPROVING A CONDITIONAL USE PERMIT AMENDMENT AND A PRECISE PLAN OF DESIGN UNDER CASE NO. 2008-7'B' TO ALLOW A 1,400 SQUARE FOOT ADDITION TO AN EXISTING RESTAURANT AND EXTENSION OF THE ABC TYPE 47 (ON-PREMISES SALE OF BEER, WINE, AND SPIRITS) TO DINING AREA AT 10240-10244 CENTRAL AVENUE, IN THE C-2 RESTRICTED COMMERCIAL ZONE (APN 1010-353-13 AND 1010-353-14)

A. Recitals.

WHEREAS, on June 29, 2021, the Gardner Family Trust, property owner, filed an application to amend an existing Conditional Use Permit under Case No. 2008-7"B and a Precise Plan of Design to allow a 1,440 square addition to an existing restaurant and to extend a Type 47 license (On-Sale Beer, Wine, and Spirits) to said dining area; and

WHEREAS, the application applies to an existing full-service restaurant use occupying a lease space of approximately 4,380 square feet at 10240-10244 Central Avenue; and

WHEREAS, in November 2015 the Planning Commission granted approval of a request to upgrade the existing ABC Type 41 License (on-premises sale of beer and wine with meals) to an ABC Type 47 License (on-premises sale of beer, wine, and spirits with meals); and

WHEREAS, the proposed expanded area where alcoholic beverages are intended to be sold and served requires an amendment to the existing CUP pursuant to Section 11.42.020 of the Montclair Municipal Code; and

WHEREAS, the existing restaurant and area where the building addition is proposed is within an existing multi-tenant commercial retail center situated on 2.50-acres in a C-2 Restricted Commercial zoning district, and

WHEREAS, the existing restaurant is consistent with the use and development standards of the underlying C-2 (Restricted Commercial) zoning district and the intent and requirements of the Montclair Municipal Code; and

WHEREAS, staff has determined the proposed on-premises sale of beer, wine, and distilled spirits in conjunction with a bona fide eating establishment meets the intent and requirements of the ordinance for such use and the applicable development standards of the C-2 (Restricted Commercial) zone and Chapter 11.42 MMC ("Alcoholic Beverages – Regulation of Sale"); and

WHEREAS, the proposed project qualifies categorically exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15303 of the State

CEQA Guidelines, in that the proposed building addition does not exceed 2,500 square feet and the use of the space as dining area is consistent with the existing full service restaurant that does not generate significant amounts of hazardous substances and in a location where all necessary public services and facilities to serve the site and use are readily available.

WHEREAS, the Planning Commission has reviewed the Planning Division's determination that proposed CUP Amendment and building addition are categorically exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15303 of the State CEQA Guidelines and based on its own independent judgment, concurs with staff's determination of said exemption; and

WHEREAS, a notice of public hearing was duly given and posted in the manner and for the time frame prescribed by law; and

WHEREAS, on July 12, 2021, commencing at 7:00 p.m. in the Council Chambers at Montclair City Hall, the Planning Commission conducted a meeting at which time all persons wishing to testify in connection with said project were heard and said proposal was fully studied.

B. Resolution.

SECTION 1. This Commission hereby specifically finds that all of the facts set forth in the Recitals, Part A, of this Resolution are true and correct.

SECTION 2. Based upon the entire record before the Planning Commission during the above-referenced hearing on July 12, 2021, including written and oral staff reports together with public testimony, this Planning Commission hereby finds as follow with respect to the recommendation of approval of Precise Plan of Design and Conditional Use Permit Amendment under Case No. 2008-7'B', subject to the conditions of approval contained in this resolution enumerated below:

NOW, THEREFORE, it is hereby found, determined, and resolved by the Planning Commission of the City of Montclair as follows:

1. This Commission hereby specifically finds that all of the facts set forth in the Recitals, Part A, of this Resolution are true and correct.
2. Based upon substantial evidence presented to this Commission during the above-referenced public hearing on July 12, 2021, including written and oral staff reports, together with public testimony, this Commission hereby finds as follows:

Precise Plan of Design Findings

- A. The proposed enclosed 1,440 square-foot addition to an existing restaurant is consistent with the applicable zoning standards and land uses allowed within the C-2 Restricted Commercial zones.

- B. At 2.50 acres in area, the overall shape and size of the site is sufficient to accommodate the proposed restaurant enclosed addition without need for any variances from applicable development standards of the Municipal Code. The site is designed with ample onsite parking that will be available to support all on-site uses, via an existing reciprocal access and parking agreement.
- C. The general arrangement of the proposed enclosed addition, massing, heights, landscaping and respective architectural designs as indicated in submitted plans is attractive and up-to-date. When the project is completed the this site will provide a much needed visual boost and image enhancement to the site and to what passersby see from the west side of Central Avenue.

Conditional Use Permit Findings

- A. The CUP Amendment to extend on-premises sale of beer, wine, and spirits (ABC Type 47 License) in conjunction with full food service currently provided the existing restaurant use to the proposed 1,440-square-foot dining area addition is essential or desirable to the public convenience and public welfare. The option to purchase and consume beer, wine, spirits with meals provides the public of legal drinking age additional eating and seating options within the community. Such availability of alcoholic beverages with meals, inside the restaurant, is common among other restaurants in the vicinity.
- B. The granting of the CUP amendment to extend with on-premises sale of beer, wine, and spirits in conjunction with sit-down dining, will not be materially detrimental to the public welfare and to other property in the vicinity. The proposed sale and service of alcoholic beverages in the new addition will not adversely affect existing parking, adds more security, and exterior lighting. Moreover, the proposed restaurant use is compatible with existing C-2 Restricted Commercial zoning designation of the site, and surrounding development, or any sensitive land uses in the surrounding area.
- C. Granting the requested CUP Amendment to allow the proposed extension of the existing Type 47 license (On-Sale Beer, Wine, and Spirits) to the expanded restaurant area will not be materially detrimental to the public welfare and to other property in the vicinity. The existing restaurant operates as a family-oriented restaurant, it is anticipated, the expansion should not change or introduce new problematic uses to the use that would be incompatible with adjacent commercial uses or negatively affect any sensitive land uses in the surrounding area.
- D. That the proposal to allow Los Portales Mexican Grill Restaurant, an existing restaurant to expand 1,440 square feet to the north and extend the Type 47 (On-Sale Beer, Wine, and Spirits) license to the new enclosed addition is consistent with goals and objectives of the General Commercial General Plan Land Use designation for the subject property, in that the adopted General Plan

encourages a wide range of retail and services within the retail commercial area including full service restaurants.

C. Conditions of Approval

Based upon the findings and conclusions set forth in the paragraphs above, this Commission hereby approves the application subject to every condition set forth below.

Planning Division

1. Conditional Use Permit (CUP) Amendment approval is hereby granted to allow the following at 10240-10246 Central Avenue:
 - a. The construction of a 1,440-square foot building addition attached to the north of the existing restaurant building with a maximum of dining capacity of 56 persons, as depicted on approved plans.
 - b. Extension of the existing Type 47 ABC License to allow on-premises sale of beer, wine, and spirits in the dining area within the proposed 1,440 square foot addition to existing restaurant. Conditions of approval applicable to the existing portions of the restaurant shall continue to apply per Resolution No. 15-1849.
2. This approval shall supersede all previously approved land use entitlements for the lease space.
3. This CUP approval shall be valid for a period of six months (180 calendar days) from the date of Planning Commission approval and shall automatically expire on the six-month anniversary date of Planning Commission action, unless the applicant is diligently pursuing building plan check toward eventual construction or implementation of the project. The applicant and/or property owner shall be responsible to apply for a time extension at least 30 days prior to the approval's expiration date. No further notice from the City will be given regarding the project's CUP expiration date.
4. This PPD approval shall be valid for a period of one year from the date of Planning Commission approval and shall automatically expire on the one year anniversary date of Planning Commission action, unless the applicant is diligently pursuing building plan check toward eventual construction or implementation of the project. The applicant and/or property owner shall be responsible to apply for a time extension at least 30 days prior to the approval's expiration date. No further notice from the City will be given regarding the project's PPD expiration date.
5. In establishing and conducting the subject use, the applicant shall at all times

comply with any and all laws, ordinances and regulations of the City of Montclair, the County of San Bernardino, and the State of California. Approval of this CUP and PPD shall not waive compliance with any such requirements.

6. This decision or any aspect of this decision may be appealed to the City Council within 15 days from the date of Planning Commission action, subject to filing the appropriate forms and related fees.
7. Within five (5) days of approval by the Planning Commission, the applicant shall submit the following payments to the Planning Division:
 - a. A check in the amount of **\$50.00**, payable to "Clerk of the Board of Supervisors," to cover the fee for filing a Notice of Exemption for the project as required by the California Environmental Quality Act (CEQA).
 - b. A check in the amount of **\$897.92**, made payable to "City of Montclair," to cover the actual cost of publishing a Notice of Public Hearing in a newspaper of general circulation (Inland Valley Daily Bulletin) as required by state law.
 - c. A check in the amount of **\$150.00**, made payable to "City of Montclair," to cover the actual cost of Montclair Fire Marshal review time.
8. The overall design theme approved for the construction of the new restaurant building shall be as illustrated and noted on approved design plans submitted on June 21, 2021, on file with the Planning Division, and as described in the prepared staff report. No changes to the approved set of plans, including the exterior design and materials/finishes, shall be permitted without prior City review and approval. Any modification, intensification, or expansion of the use and design plan beyond that which is specifically approved with this PPD and CUP shall require review and approval by the Planning Commission.
9. No changes to the approved set of plans, including the exterior design and colors/materials/finishes, shall be permitted without prior City review and approval. Any modification, intensification, or expansion of the use and design beyond that which is specifically approved shall require further review and approval by the Planning Commission.
10. Approved colors and materials for the project shall be per sample colors and finishes on file with the City and to the satisfaction of the Director of Community Development or assigned designee.
 - a. Standing Seam Metal Roof color shall match the Dark Gray Brown trim used on the main building to greatest extent possible. Applicant shall submit a material sample of the roof material and color for review and approval of the Director of Community Development or assigned designee.

- b. Stucco wall elements of the exterior walls shall of addition shall be painted La Habra brand "Sand Stone," or equivalent the colors on the main building.
 - c. Base of exterior walls shall be clad with brick veneer, to match color, size, and pattern as used on the main building per approved plans.
 - d. Rain gutters shall be finished in a color to match the finished background surface material (e.g., fascia, stucco, trim, etc.) on which they are attached, to the greatest extent possible.
 - e. Foldable windows shall not be used as advertisement space. Catalog Specifications shall be submitted for foldable windows and doors. Mullions shall be Dark Bronze.
11. All exterior lighting shall comply with the submitted photometric plan for the entire site.
- a. Provide a minimum maintained illumination level of one (1) foot-candle across the site.
 - b. All lighting fixtures shall be vandal-resistant and of a design, that complements the architecture of the building.
 - c. All parking lot and other freestanding light fixtures shall incorporate 90-degree cut-off style luminaires and flat lenses to direct illumination downward to the surface to be illuminated away from public rights-of-way and properties adjacent to the subject site. Cut-off shields may be required to ensure illumination does not adversely affect adjacent properties to the greatest extent possible.
 - d. Freestanding light fixtures and poles shall not exceed a maximum height of 20'-0" as measured from adjacent grade to top of luminaires. Details must be shown on plans.
 - e. Above-grade concrete support pedestals for all proposed freestanding light poles throughout the project site shall be clad in a color coordinated stucco finish to complement the main building. Details must be shown on plans.
 - f. Wall-mounted fixtures shall be shielded. The use of unshielded wall packs, barn lighters, other similar unshielded luminaires, and/or decorative lighting installed solely for the purpose of illuminating the roof shall not be permitted.

- g. "Wall-washers" or decorative landscape lighting shall be subject to review and approval by the Planning Division.
12. Restaurant hours shall be adjusted to 9:00 a.m. to 9:00 p.m. Monday through Thursday, and 8:00 a.m. to 11:00 p.m. on Friday, Saturday, Sunday. The applicant may close the restaurant earlier than the hours stated herein. Any extension of the restaurant hours beyond the limits stated herein shall require written notification to the Planning Division and is subject to City approval.
 13. Any substantial changes to the operation, increase in the floor area of the existing building or approved outdoor dining area shall require prior City approval.
 14. The approved restaurant shall be operated, maintained and open to the general public as a full service (bona fide) eating establishment, serving meals at all times that beer, wine, and distilled spirits are offered for sale and consumption on the premises.
 15. No live entertainment activities are included with this approval. It shall be the responsibility of the business owner to submit an application for an Entertainment Permit pursuant to the Montclair Municipal Code. Entertainment Permits shall be reviewed and approved by the Montclair Police Department.
 16. No alcoholic beverages shall be consumed outside the enclosed building.
 17. Any discontinuation or substantial changes to the full service restaurant without City approval shall be a violation of this CUP and may be cause for revocation. Upon transfer, sale or re-assignment of the restaurant to another individual or entity, the applicant shall make full disclosure of the CUP requirements and restrictions to future buyers, transferees or assignees.
 18. The Type 47 ABC license (on-premises sale of beer wine, and distilled spirits) may be modified or revoked for failure to abide by the conditions of this approval or in the event the use is determined to be a nuisance to surrounding properties, businesses, or the community at large.
 19. At no time shall the premises be converted into other uses where minors are generally excluded, such as a bar with no bona fide restaurant component, entertainment venue, night club, dance hall, or banquet hall operated by either the restaurant owner or outside vendors or promoters.
 20. The applicant and property owner shall sign an Affidavit of Acceptance form and submit the document to the Planning Division within 30 days of receipt of the Planning Commission Resolution.
 21. The applicant and/or property owner shall ensure that a copy of the Planning Commission Resolution, including all conditions of approval, be reproduced on

the first page of the construction drawings and shall be distributed to all design professionals, contractors, and subcontractors participating in the construction phase of the project.

22. A copy of this Planning Commission Resolution, shall be kept on the premises at all times to be made immediately available to law enforcement officers, Code Enforcement officers, and/or fire and building inspectors in the course of conducting inspections of said premises.
23. Prior to the commencement of business activities, the business owner shall apply for and obtain a City of Montclair Business License, and shall maintain a valid City business license at all times. Should such licensing be denied, expire or lapse at any time in the future, this permit shall become considered a violation of this condition and the use shall be subject to revocation proceedings.
24. The following mandatory conditions are hereby imposed as part of the CUP approval:
 - a. The premises shall be maintained at all times in a neat and orderly manner.
 - b. Trash receptacles shall be provided in such number and at such locations as may be specified by the Director, or designee.
 - c. Alcoholic beverages shall not be allowed to be consumed outside of the permitted restaurant premises, which shall consist of the demised lease space described herein as permitted by the Planning Commission. Applicant shall post notification of this limitation within plain view of employees and customers.
 - d. The exterior appearance of the premises shall be maintained in a manner consistent with the exterior appearance of commercial properties already constructed within the immediate area so as to not cause blight or deterioration, or to substantially diminish or impair property values within the neighborhood.
 - e. The permittee shall comply with all California Department of Alcohol Beverage Control statutes, rules and regulations relating to the sale, purchase, display, possession and consumption of alcoholic beverages.
 - f. The permittee shall acknowledge and agree the City has a legitimate and compelling governmental interest in permittee's strict compliance with all conditions imposed upon the permit, including adherence to State statutes, rules and regulations as specified in subsection (e) above. The permittee shall further acknowledge and agree, in writing, that any violation of a State statute, rule or regulation concerning the sale to or

consumption of alcoholic beverages by a minor has been determined by the City to have a deleterious secondary effect upon:

- i. The specific land use requested by the permittee and authorized by the City;
 - ii. The compatibility of permittee's authorized land use with adjacent land uses;
 - iii. The welfare and safety of the general public within the City. In view of such deleterious secondary effects, permittee shall acknowledge the City has specifically reserved the right and authority to impose sanctions, including suspension or revocation of the CUP, as a consequence of one or more violations of a State statute, rule or regulation concerning the sale to or consumption of beer and wine by a minor.
- g. The permit shall, after notice to the permittee and an opportunity to be heard, be subject to the imposition of such additional conditions as may be reasonable and necessary to address problems of land use compatibility, security, or crime control that have arisen since the issuance of the permit.
25. During all hours of business operation, the permittee shall have a "manager" present at the establishment and on duty. The permittee and manager shall be responsible for the conduct of all employees and shall not cause, permit, allow, aid, abet, or suffer any violation of the conditions of this permit or of any provision of the Montclair Municipal Code. Failure to comply with any or all of the conditions of approval shall be deemed sufficient grounds to initiate revocation proceedings regarding the Conditional Use Permit approval.
26. The on-site manager shall take whatever steps are deemed necessary to assure the orderly conduct of employees, patrons, and visitors on the premises.
27. No exterior security bars and roll-up doors shall be installed on windows and pedestrian building entrances.
28. Any landscape material disturbed or destroyed during construction shall be replanted subject to the approval of the Director.
29. No outdoor storage of used fats, oils, or grease (FOG) shall be allowed in trash enclosures.
30. No window signs either inside or outside, or signs placed inside the business directed toward the outside shall advertise the availability of beer, wine, or distilled spirits.

31. No outdoor display areas for merchandise are allowed at any time.
32. All graffiti and vandalism and/or damage to the subject site and/or structure shall be removed or repaired within 72 hours of notice from the City.
33. Amplified music shall be allowed in the addition and shall comply with the City's Noise Ordinance.
34. On-site electronic arcade and amusement games shall be prohibited.
35. Any rooftop or roof-mounted equipment shall be fully screened from view to the satisfaction of the Director.
36. All satellite dish antennas, microwave receivers and transmitters, and other forms of communication equipment shall be located in a manner in accordance with the provisions of Chapter 11.46 of the Montclair Municipal Code.
37. Prior to issuance of a Certificate of Occupancy, the applicant shall install approved landscaping materials on the property, subject to the satisfaction of the City Planner. Except as otherwise specified on the approved landscape plan, the following standards shall apply:
 - a. All shrubs shall be minimum five-gallon container size.
 - b. All trees (except required street trees) shall be minimum 24-inch box size and double-staked.
 - c. All trees within the public right-of-way parameters shall be 24-inch box size.
 - d. All landscape planting areas shall have 100 percent irrigation coverage by an automatic irrigation system.
 - e. Palm Spring Gold shall be added in place of brown mulch in planter areas.
38. All landscaping and irrigation systems shall be maintained in accordance with the approved site and/or landscape plan to ensure water use efficiency.
39. Any plant material that does not survive or is removed or destroyed shall be replaced upon its demise or removal with plant material of a like type and size as that originally approved and installed.
40. Plant material shall not be severely pruned such that it stunts or deforms its natural growth pattern or characteristic feature(s). Trees shall be pruned to ISA (International Society of Arboriculture) standards and only as necessary to promote healthy growth and for aesthetic purposes (i.e., to enhance the natural

form of the tree). Improperly or severely pruned trees, including topping as defined by the Water Conservation Ordinance, that results in the removal of the normal canopy and/or disfigurement of the tree shall be replaced with a tree of similar size and maturity as that which was removed or, as required by the Community Development Director.

41. All automobile parking spaces shall be clearly delineated with double-line (e.g. "hairpin") striping.
42. Temporary promotional signs shall comply with Chapter 11.72 of the Montclair Municipal Code. Temporary banners for the purpose of announcing a grand opening or promotional event shall require a banner permit from the Planning Division prior to installation.
43. No portable flags, pennants, spinners, painted-on signs, off-premise signs, trailer-mounted electronic sign/message boards or other similar types of portable signs shall be allowed.
44. No exterior surface-mounted exposed ducts, conduit or electrical lines shall be allowed on walls, awnings, or other exterior faces of the building. In addition, all electrical switchgear, meters, etc., shall be screened or housed in an enclosure to the extent allowed by the utilities.
45. All on-site ground-mounted mechanical equipment, including, but not limited to, utility meters, air conditioners, condenser units, and repair equipment shall be located within the building or on the exterior of the building only when necessary and screened in a manner that is compatible with the architectural design of the building subject to the satisfaction of the City Planner.
46. No exterior public telephones, vending machines, children's rides or other coin-operated machines shall be located on the site.
47. At no time shall any storage occur in the area outside the rear exit of the tenant space, including shelving, boxes, supplies, etc., as said area is a designated emergency exit path for the subject building.
48. Prior to the installation of any signs, the applicant shall submit an application for a Sign Permit and set of plans to the Planning Division for review and approval. The set of plans shall be drawn to scale, and include all proposed building mounted signs, directional signs, and wall mounted/freestanding menu boards intended for the drive-thru lane. The plans shall also comply with the following standards:
 - a. All wall signs shall utilize individual channel letters.
 - b. Exposed raceways shall be prohibited for all building-mounted and freestanding signs.

49. Temporary promotional signs shall comply with Chapter 11.72 of the Montclair Municipal Code, including, but not limited to the following:
 - a. Temporary banners for the purpose of announcing the grand opening or advertising promotions shall require a banner permit from the Planning Division prior to installation.
 - b. Promotional window signs shall not occupy more than 25 percent of the aggregate window area.
 - c. At no time shall pennants, inflatable signs, "human" signs, or other similar advertising devices be utilized on the property or off-site.
50. All signs shall be maintained at all times, in good appearance and operating condition. Exposed surfaces shall be cleaned and painted as necessary. Broken and defective parts shall be repaired or replaced.
51. To ensure compliance with the conditions of the approval, a final inspection is required from the Building and Planning Divisions upon completion of construction and all improvements. The applicant shall contact the City to schedule an appointment for such inspections.
52. The applicant shall indemnify, protect, defend, and hold harmless, the City, and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, from any and all claims, demands, law suits, writs of mandamus, and other actions and proceedings (whether legal, equitable, declaratory, administrative, or adjudicatory in nature), and alternative dispute resolutions procedures (including, but not limited to arbitrations, mediations, and other such procedures), (collectively "Actions"), brought against the City, and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, that challenge, attack, or seek to modify, set aside, void or annul, the any action of, or permit or approval issued by the City and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities, thereof (including actions approved by the voters of City), for or concerning the project, whether such actions, are brought under the California Environmental Quality Act, the Planning and Zoning Law, the Subdivision Map Act, Code of Civil Procedure Section 1085 or 1094.5, or any decision of a court of competent jurisdiction. It is expressly agreed that the City shall have the right to approve, which approval will not be unreasonably withheld, the legal counsel providing the City's defense, and that applicant shall reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. City shall promptly notify the applicant of any action brought and City shall cooperate with the applicant in the defense of the Action.

Building Division

53. Submit four complete sets of plans including the following:
 - a. Site/Plot Plan.
 - b. Floor Plan.
 - c. Reflected Ceiling Plan.
 - d. Electrical Plans including the size of the main switch, number and size of service entrance conductors, panel schedules, and single line diagrams.
 - e. Plumbing plans, including isometrics, underground diagrams, water and waste diagram, fixture units, gas piping, and heating and air conditioning.
 - f. Provide an existing plan of the building including all walls to be demolished.
 - g. Waste recycling plan, recycling 65 percent of all construction debris.
54. Submit two sets of structural calculations, if required, and two sets of energy conservation calculations. Architect's/Engineer's stamp and "wet" signature are required prior to plan check approval.
55. The applicant shall comply with the latest adopted California Building Code, and other applicable codes, ordinances and regulations in effect at the time of permit application. These applicable codes shall be indicated on the first page of submitted plans.
56. Contractors must show proof of State and City licenses and Workers' Compensation coverage to the City prior to permit issuance.
57. Separate permits are required for fire sprinklers, fire alarms, signage, fencing and/or walls. Submit details of construction on the plans. Double wall conditions which have been created by an adjacent property line wall not be allowed.
58. Plans shall be submitted for plan check and approved prior to construction. All plans shall be marked with the project file number.
59. Construction activity shall only be permitted from the hours of 7:00 a.m. to 8:00 p.m. daily.
60. Prior to issuance of building permits for a new commercial or industrial development project or major addition, the applicant shall pay development fees at the established rate. Such fees may include but are not limited to: Transportation Development Fee, Permit and Plan Check Fees, School Fees. Pay all required school fees directly to the Ontario-Montclair School District and the Chaffey Joint Union High School District. Applicant shall provide a copy of the school fees receipt to the Building and Safety Division prior to permits issuance.

61. All trash enclosures shall be constructed of a material consistent with the primary type and color of that used on the building. The construction of such trash enclosure(s) shall conform to City standards and shall have a solid roof complementary to the main building. Black-colored concrete shall be used for the trash enclosure floor and its apron.
62. All utility services to the project shall be installed underground.
63. Electrical and fire suppression service shall rise within the interior of the building(s). Roof ladders shall also be located entirely inside the building.
64. All construction work carried out under the review of the Building Division shall be of good quality. The Building Official shall have the authority to enforce the installation of work that is straight, level, plumb, square, etc., as the situation requires. All work shall be well fit and of a durable nature. Paint and stucco in all cases shall not be below standard for the use applied.
65. Provide and clearly indicate on submitted plans disabled-accessible path(s) of travel to the public right-of-way and all required disabled-accessible parking lot signs. Sidewalks, paths-of-travel, and curb cuts shall comply with the requirements of the California Building Code, Title 24. The maximum cross-slope on a sidewalk or path-of-travel shall not exceed two percent (2%). The restaurant shall have an accessible path of travel connecting to the mall entrance.
66. Provide the required number of accessible parking spaces as determined by the CBC, Chapter 11B. The spaces shall be designated by the provisions laid out for accessible parking.
67. Construction drawings submitted to the building division for plan review shall comply with the Montclair Security Ordinance No. 357, including, but not limited to, adherence to the following standards:
 - a. Install a numerical address on the east building elevation. Address numerals shall be in a font acceptable to the Planning Division, a minimum of ten inches in height, a minimum of 1 ½ inches in depth, and be in contrasting color which adequately contrast to the background to which they are attached.
 - b. Provide and maintain a minimum illumination level of one (1) foot-candle from dusk until dawn every day.
 - c. Install an approved emergency lighting to provide adequate illumination automatically in the event of an interruption of electrical service.

68. Exposed raceways shall be prohibited on all building-mounted and freestanding signs. An architectural sign backing/raceway may be allowed on the commercial building subject to review and approval by the City Planner.
69. Decorative foam trim shall not be used in areas subject to damage such as entry doors, garage doors, etc. Use of decorative foam shall not be allowed to be used below the second story.
70. Each building shall have individual and independent fire protection in accordance with the California Building Codes. Each building shall have independent utility meters, sewer, water connections and fire protection systems, subject to the review and approval of the Public Works, Community Development and Fire Departments.
71. All mechanical devices and their component parts, such as air conditioners, evaporative coolers, exhaust fans, vents, transformers, or similar equipment, whether located on the ground or on the roof of the structure, shall be concealed on all sides from public view in a manner that is compatible with the architectural design of the building and to the satisfaction of the Planning Division.
72. All roof-mounted equipment, satellite dish antennas, and other similar apparatus shall be screened from public view in a manner incorporated into the architectural design of the building to the satisfaction of the Planning Division.
73. No soil shall be imported or exported to or from the project site from an adjacent building site or from other sources for construction purposes without first obtaining approval from the City Engineer. A plan satisfactory to the City Engineer shall be prepared showing the proposed haul route within the City. Subject plan shall include provisions for street sweeping and cleanup. Applicant/contractor shall comply with all NPDES requirements. Underground Service Alert shall be notified 48 hours prior to any excavation at (800) 422-4133.
74. All off-site and on-site trenching and excavation shall conform to CAL-OSHA standards. Excavations that exceed five feet in depth require a CAL-OSHA permit.
75. Prior to issuance of a Certificate of Occupancy, the person or corporation responsible for the preparation of the Water Quality Management Plan shall certify, in writing, to the Building Official that all conditions and requirements of the Water Quality Management Plan have been implemented or complied with. For projects, developments, or properties intended to be leased or sold, developer shall also submit evidence to the Building Official that lessee or purchaser has been advised in writing of lessee's or purchaser's on-going maintenance responsibilities with respect to the requirements of the Water Quality Management Plan.

76. Prior to the issuance of the Certificate of Occupancy a Final Grade Certificate shall be provided to the Building Official issued from the Registered Civil Engineer of Record that all on-site improvements have been constructed in accordance with all City Standards, Specifications, Conditions of Approval and approved plans.
77. Certificate of Occupancy is required prior to the occupancy of the building. Issuance of the Certificate of Occupancy shall be contingent upon the Fire Department inspection and the final approvals from all other departments and/or agencies.
78. Temporary construction and storage trailers placed on the property shall first obtain approval from the Planning and Building Divisions. If any trailers will include uses for public access, handicap accessibility requirements shall apply. Before any trailer is set in its location, obtain all permits from the building division. Plans and structural calculations will be required for the tie-down devices. Trailers used for public use (and not used for construction only) are required to be handicapped accessible. The trailer will requires access to the facility by way of ramps, which comply with the California Building Code (CBC) 2019 edition, Chapter 11B, in addition to access to each feature of the trailer.
79. Pay all required school fees directly to the Ontario-Montclair School District and the Chaffey Joint Union High School District.
80. Above-grade concrete support pedestals for all proposed freestanding light poles throughout the project site shall be finished to be consistent with that used on the main building.
81. The applicant and/or property owner shall be responsible for maintaining the building's signs, lighting, landscaping, and all improvements in good working order at all times. Any accumulation of trash, weeds, or debris on the property shall be removed immediately so as not to present a public nuisance. Graffiti on the building or associated improvements shall be removed immediately by the applicant/property owner upon notification by the City.

Environmental/Engineering

82. A Wastewater Discharge Survey must be completed and submitted to the Environmental Manager for review and approval prior to Plan submittal for each tenant that has a food/beverage use. The Environmental Manager shall determine the appropriate grease interceptor capacity for the designated use. Contact Steve Stanton, Engineering Manager (909) 625-9444 for more information.
83. All trash enclosures must be designed in accordance with the provisions of AB 341 Mandatory Commercial Recycling and AB 1826 Mandatory Commercial

Organics Recycling (More) as established by California Department of Resources.

84. Recycling and Recovery (CalRecycle). Sufficient facilities must be provided and maintained for the mandatory recycling of all recyclable materials and food waste/organics. For additional information, contact Engineering Manager, Steve Stanton at (909) 625-9444.
85. Replace all existing lifted or cracked curb gutter, damaged utility pull box lids, and sidewalk adjacent to the property. Additionally remove sidewalk that shows signs of ponding or is pitting, scaling or spalling. Curb Ramps not in compliance with ADA guidelines will be removed and replaced.
86. A grading plan shall be prepared subject to the approval of the City Engineer. An erosion control plan is to be included and considered an integral part of the grading plan. Grading plans shall be designed in accordance with City standards and guidelines, and shall be on 24" by 36" sheets.
87. No soil may be imported or exported to or from the project site from any adjacent building site or from other sources for construction purposes without first obtaining approval from the City Engineer. A plan acceptable to the City Engineer shall be prepared showing proposed haul routes within the City. The plan shall include provisions for street sweeping and cleanup. Contractor(s) shall comply with all National Pollutant Discharge Elimination System (NPDES) requirements.
88. All drainage facilities shall comply with [Low Impact Development \(LID\) manual](#).
89. All off site and on site trenching and excavation shall conform to CAL-OSHA standards. Excavations that exceed five feet in depth require a CAL-OSHA permit.
90. Underground Service Alert shall be notified at least 48 hours prior to any excavation. Contact Underground Service Alert at 800-422-4133.

Police Department

91. In conjunction with the ongoing operation of the business, the premises shall comply with all applicable local, State, and Federal requirements placed upon them by any regulatory or governing entity.
92. This Conditional Use Permit (CUP) Amendment shall be reviewed one year from the date of approval and may be reviewed each year thereafter. The review shall be conducted jointly by the Community Development Director and Police Chief or designees. The purpose of this review shall be to identify uniquely adverse issues such as curfew, loitering, vandalism, criminal activity, noise, or nuisance issues. If such issues are identified, the CUP shall be presented to the

Planning Commission for their consideration of conditions, modifications or revocation.

93. The activity level of the business shall be monitored by the Police Department to establish the level of police services used for the business. Should the level of police services demonstrate that the applicant has not controlled excessive, or unnecessary activity resulting in high use of police services then this Conditional Use Permit shall be reviewed for consideration of further conditions, modifications or revocation.
94. Premises falling within the regulations of the State Alcoholic Beverage Control Board (ABC) shall remain consistent with plans submitted for review by the Planning Commission. No changes to the floor plans will occur unless a permit is issued by the Community Development Department, unless otherwise agreed upon in advance through the Community Development Department.
95. Premises falling within the regulations of the State Alcoholic Beverage Control Board (ABC) shall not allow any consumption of alcoholic beverages on any property adjacent to the licensed premises under the control of the license.
96. There shall be no special promotional events held on the property, unless a written request for such is received and approved by the Community Development Director and the Police Chief or their designee.
97. The parking lot of the premises shall be equipped with lighting of sufficient power to illuminate and make easily discernible the appearance and conduct of all persons on or about the parking lot.
98. The premises shall install and maintain a closed circuit video surveillance (CCVS) system to the new addition. The system shall at minimum be capable of monitoring all entrances/exits to the premises and be positioned as to allow for identification of patron facial features and physical characteristics. A minimum of one camera shall be placed in a position to monitor the parking lot of the premises, positioned in a manner which allows for the widest view from the entrance, without significant lens distortion. Typical acceptable camera angles range from 50-130 degrees. Cameras shall be capable of no less a resolution than 1920×1080 pixels, otherwise known as 1080p. IR (night-vision) is preferred, however cameras shall at minimum be capable of low-light operation.

Audio recording is desirable, but not a requirement. Camera footage shall be retained for a period no less than 90 days. To conserve storage space, cameras may reduce frame-rate when no motion is detected, however must record at no less than 30 frames per second when motion is detected. Motion sensors shall be configured to activate properly in all areas covered including the parking area. Motion sensors may be configured to prevent incidental activation from hanging or moving displays. Depending on the nature of the premises, additional cameras may be required.

99. Alarm systems are encouraged to compliment the CCVS system. Current responsible party information shall be on file with the Police Department for appropriate response and notifications.

Fire Department

100. Prior to the to the issuance of building permits, evidence of sufficient fire flow of 1875 GPM for 3 hours shall be provided to the City of Montclair. Fire flow information can be obtained from Monte Vista Water District. CFC § 507.3.
101. The restaurant and new patio portion of the building shall be provided with fire sprinklers. The design and installation shall be in accordance with NFPA 13. CFC § 903.2.1.2. Alternately, provide a plan for an Alternative Mean and Methods design as allowed by the California Fire Code. This design shall be approved by the Fire Marshal and Building Official.

The Secretary to this Commission shall certify to the adoption of this Resolution.

APPROVED AND ADOPTED THIS 12TH DAY OF JULY, 2021

PLANNING COMMISSION OF THE CITY OF MONTCLAIR, CALIFORNIA

By: _____
Planning Commission Chair

ATTEST: _____
Michael Diaz, Secretary

I, Michael Diaz, Secretary of the Planning Commission of the City of Montclair, do hereby certify that the foregoing Resolution was duly and regularly introduced, passed, and adopted by the Planning Commission of the City of Montclair, at a regular meeting of the Planning Commission conducted on the 12th day of July, 2021, by the following vote, to-wit:

AYES:

NOES:

ABSENT:

Report on Item Number 6.b

PUBLIC HEARING – CASE NUMBER 2019-22

APPLICATION TYPE(S)	Zoning Code Amendment Ordinance No. 21-998
NAME OF APPLICANT(S)	City of Montclair
LOCATION OF PROPERTY	Citywide
ENVIRONMENTAL DETERMINATION	Exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to Categorical Exemptions (Sections 15378(b)(5), 15061(b)(3), 15302, 15303, and 15300.2
PROJECT PLANNER	Yvonne Nemeth, Associate Planner

PROPOSAL

In 2003, the City adopted Ordinance No. 02-829 adding Chapter 11.73 to the Montclair Municipal Code (MMC) addressing Wireless Telecommunication Facilities (WTF) constructed on public and private land within the City. The intent of the Ordinance was to establish standards for review, siting, and development of wireless facilities. To date, there are 14 wireless telecommunication facilities within the City.

The purpose of the proposed Ordinance 21-998 is to (1) ensure the City complies with federal and state regulations (2) address advances in technology (3) minimizes the visual impact of facilities, and (4) promotes comprehensive wireless coverage and capacity in the City of Montclair. As such, Draft Ordinance No. 21-998 proposes the following changes to the MMC:

- Repeal the existing provisions of Chapter 11.73 and replace with new and updated provisions to comply with new regulations issued by the Federal Communication Commission (FCC) and the State;
- Add Chapter 11.77 to allow administrative level review by the Director of Community Development, or designee, for small installations or upgrades involving minor or less complex new construction; and
- Amend Chapter 11.46, Section 11.46.010 under *Purpose and Intent* to add the following language: “This Chapter 11.46 does not apply to wireless telecommunications facilities that are subject to the regulations in Chapter 11.73 of the Code.”

Pursuant to Chapter 11.84, the City Council is the final reviewing authority for all new ordinances. As such, the Planning Commission is requested to consider the proposed Ordinance, take public comments, and then forward its recommendations to the City Council for its consideration and action.

Exhibit A is the full text of Draft Ordinance No. 21-998.

Summary of Proposed Ordinance

As indicated above, new or revised federal and state regulations regarding wireless telecommunication facilities requires several changes to the City's current zoning code adopted in 2003. To keep pace, the proposed changes to Chapter 11.73 apply to large wireless telecommunication, or "macrocell," facilities on public and private land within the City. Draft Ordinance No. 21-998 includes the following key provisions and/or changes:

- Clarifies which antennas (e.g., amateur radio antennas, like-kind equipment, and temporary facilities) are exempt and/or governed by other State and/or Federal laws.
- Updates to or addition of definitions to reflect current standards.
- Maintains the requirement for a Conditional Use Permit (CUP) to establish new wireless telecommunication facilities. Subsequent improvements and antenna upgrades would be subject to administrative review only.
- Introduces a new class of antenna application request described as an "Eligible Facility Request" (as defined by the FCC), to be treated as a permitted use with no discretionary approval permitted if the application meets this definition. Local government is not allowed to deny, and must approve any eligible request for a modification that does not substantially change the physical dimensions of the tower or base station that were legally established. Eligible modifications to a tower or base station include the collocation of new transmission equipment, removal of transmission equipment, the replacement of transmission equipment, and an increase in height.
- Establishes submittal requirements and design criteria for the different types of wireless telecommunications facilities to ensure wireless facilities are located, placed, designed, constructed, and maintained in a manner that meets the aesthetic, public health, and safety requirements. Design criteria is located in a separate document titled *Design Standards for Wireless Telecommunications Facilities on Public and Private Property* (see Exhibit B).
- Widens the opportunity to approve wireless telecommunications facilities on sites located in residential zones, which meet specific qualifying standards.

- Amends specific setback requirements, and prohibits the placement of WTF and associated ground-mounted equipment/enclosures within front and street side setback areas.
- Strengthens requirements for maintenance of wireless telecommunication facilities.
- Adds Chapter 11.77 to streamline less complex projects through an administrative procedure.
- Establishes procedures for removal, reconstruction, expansion, abandonment, and safety concerns.

The proposed new standards would apply to all macrocell wireless telecommunications facilities, existing and new, within the boundaries of the City, except small cell wireless antennas in the public right-of-way addressed in Chapter 9.105, and antennas and satellite dish antennas generally in Chapter 11.46, of the MMC.

Background

- In 2003, the City adopted Ordinance No. 02-829 adding Chapter 11.73 to the Montclair Municipal Code addressing Wireless Telecommunication Facilities constructed within the City. Since adoption, 14 Wireless Telecommunication Facilities have been constructed within the City on private and public sites.
- The proposed new standards would apply to all wireless telecommunications facilities, existing and new, within the boundaries of the City, except small cell wireless telecommunications facilities in the public right-of-way that are subject to Chapter 9.105, and antennas and satellite dish antennas that are subject to Chapter 11.46 of the City Code.
- In 1996, President Clinton signed into law the Telecommunications Act (CFR Title 47 Parts 0-199), which included provisions to ensure that all Americans have access to advanced telecommunications services. Section 704 of the Telecommunications Act of 1996 (47 USC 332) was adopted which preserved local zoning authority but imposed four limitations for local government.
 1. Shall not “unreasonably discriminate” among providers of functionally equivalent services and shall not prohibit or have the effect of prohibiting service.
 2. Must act on a request within “reasonable period of time”. This was further defined in 2009 by the “shot clock” ruling which requires localities to act upon a wireless application within 90 days for collocations and 150 days for new towers.
 3. Decision to deny must be “in writing” and supported by “substantial evidence.”

4. All sites must conform to all published Federal Code and Practices concerning radio frequency (RF) emissions.

- California Assembly Bill No. 57: This bill adds regulations to aforesaid Section 332 that if the local authority fails to act on a wireless telecommunication facilities application within the 90 or 150-day timeframes established by the FCC, the carrier may send the locality a notice that the permit has been deemed approved, and the locality bears the burden of going to court to defend its failure to approve.
- In 2019, the City Council approved Ordinance No. 19–980 adding Chapter 9.105 to the Montclair Municipal Code to address the installation of wireless “small cell” technology within the public right-of-way, and adopted Resolution No. 19–3228 establishing design guidelines for small cell facilities.
- On May 17, 2021, Draft Ordinance No. 21-998 was presented to the Real Estate Committee of the City Council. Prior to the meeting, staff received an inquiry from Bryan Cave Leighton Paisner LLP representing Vertical Bridge, a private owner and operator of a communications infrastructure to consider certain revisions to the Ordinance (see attached Exhibit C Memorandum dated June 1, 2021 “*Bethany Baptist-revisions to siting ordinance*”).

Analysis

Since the passage of 1996 Telecommunications Act, Congress and the Federal Communications Commission (FCC) have moved to expedite the deployment of wireless telecommunications facilities across the country. In 2003, the City adopted the Wireless Telecommunications Facilities Ordinance (MMC 11.73). Since the adoption of the current Ordinance it has remained unchanged, while there have been major changes in wireless technology, consumer demand, and additional federal and state regulation. Consumers are increasingly relying upon cell phones, smart phones, and the wide range of wireless devices available instead of landline phones and wireline internet connections.

The purpose for the Ordinance update is to provide applicants, service providers, property owners, and City residents a clear guide on the policies of the City regarding WTFs on public and private land. The policies established, and the standards include in or by reference in the Ordinance, are for wireless telecommunications service providers and tower development entities to use as a guide when selecting WTF sites and designs within the City.

New Locations and Standards

Current code prohibits the installation of WTF on residentially-zoned property within the City, with the exception of a WTF in a public park. The two notable locations where a WTF exists at a public park on residentially-zoned property is Alma Hofman Park and MacArthur Park. The remainder of approved WTFs in the City are on private properties in commercial and industrial-zoned properties. However, over the years, property owners or wireless facility developers have approached City staff with requests to install a WTF

on residentially-zoned properties. Some of the requests were for large parcels (two acres or larger) already developed for, utilized, and owned by a religious organization. Most of the City is zoned R-1 Single-Family Residential which primarily allows residential development, but other uses such as public parks and religious uses (e.g., churches with or without parochial/private schools). Additional non-residential use in the R-1 zone include sites belonging to public utilities and conservation districts.

Staff considered the possibility of expanding opportunities into residentially-zoned properties to allow WTFs in limited ways. The first step was to determine minimum criteria for possible site locations. A small number of potential sites in the R1 zones of the City were identified all of which were larger than two acres (a single parcel or multiple adjoining parcels owned by the same party), located on major streets, and not developed with residential structures. The two-acre minimum size is roughly consistent with the smallest park in Montclair, where WTFs exist and operate with no known adverse impact, visual or otherwise. Religious institutions own some of the sites that are large enough to potentially accommodate a WTF with little to no significant impact on required parking, setbacks, etc., for the main use.

Concerning setback requirements, the current 200-foot setback requirement is not easily achievable for most sites unless at a park, so staff is recommending a revision. The proposed Ordinance would reduce setback for freestanding WTF structures, to a minimum of 110 percent of the height of the structure (e.g. faux tree) or less if specifically designed to collapse directly downward should failure occur. To date, there have been no structural problems noted regarding a freestanding WTF structure in the City. At a minimum, no WTF (including ground-mounted equipment and/or enclosure) would be allowed in any street or streetside setback area of the property.

Lastly, the requirement for a CUP would ensure that any proposal for WTF for a particular site is appropriate with respect to its placement, design and appearance, and that compliance with all specific conditions of approval is achievable.

Macrocell Sites

Ordinance No. 21-998 primarily applies to what the wireless industry describes as a "Macrocell" site, in contrast to "Small Cell" sites. Macrocell sites have the highest coverage and capacity capabilities of all system types to deliver voice, text, and broadband communications through high-powered radiofrequency (RF) signals to large geographic areas. A typical macrocell site includes one or more provider antennas affixed to tall, freestanding towers (often designed as faux-trees), the top of tall structures, water tanks, or as an architectural feature attached to an existing building, and a base equipment area within a secured enclosure (often by means of block walls or fences). Despite their capabilities, macrocell sites have capacity limits. As demand for wireless technology increases, capacity of macrocell sites is quickly reaching its limit. As a result, the need for more macrocell sites is likely to increase, especially in areas with higher density populations.

A small cell site system provides small footprint coverage to high traffic areas and acts as a supplemental support to existing macrocell coverage. However, small cell systems are limited to one carrier per unit, and have limited bandwidth. Small cell antennas are typically placed at lower elevations on buildings or poles in the public right-of-ways. Small cell antennas are addressed in Chapter 9, Section 105 of the MMC.

The increasing number of wireless users, wireless devices, and data traffic, including the continued evolution of broadband networks identified by “Generations” or “G”, such as 1G/analog, 2G/cell phone, 3G/smart phone, 4G/universal personal communicator device, and now 5G, will mean more wireless telecommunications facilities will be required to build enough capacity to meet demands. Moreover, recent experience during the COVID-19 pandemic confirms the need for dependable communication access without signal loss.

Stealth Technology

The proposed Ordinance continues to require the use of stealth wireless facilities (camouflage, disguise, concealment). The goals of this requirement is to encourage flexibility in the type of antenna used on a host structure so that the antenna does not dominate the structure, does not exceed the height allowed by the zoning district, and the wireless facility is of an appropriate design and scale in relation to the surrounding setting. The Ordinance also strongly encourages carriers to seek placement, construction, or modification of a WTF on existing host structures such as buildings and utility infrastructure rather than erecting freestanding towers. Except for a few early macrocell facilities, most of the macrocell sites in the City are concealed as faux trees (pine or palm), or within a structure (e.g., Montclair Obelisk at Freedom Plaza). Stealth technology standards would also apply to antenna facilities that may be approved administratively.

Eligible Facilities

In Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012 (47 USC_1455) the FCC was directed to remove obstacles to the modification process of wireless facilities. This Section requires a state or local government to not deny, and approve any eligible request for a modification that does not substantially change the physical dimensions of the tower or base station that were legally established. As defined, “Eligible Facility” means modifications to an existing tower or base station including the collocation of new transmission equipment, removal of transmission equipment, or the replacement of transmission equipment. The FCC went further in allowing a potential increase in the height of facility by more than 10 percent or 20 vertical feet, before a change would be deemed “substantial” and thereby allow a local government to intervene.

The addition of Chapter 11.77 to allow administrative level review by the Director of Community Development, or designee, is in part to quickly process Eligible Facilities requests and other small and/or less complex installations involving minor new construction. This would eliminate the need for a public hearing and streamline the process for timely approvals.

Limits on Consideration of Radio Frequency (RF) Emissions

Concerns about the possible negative health effects of radio frequency (RF) emissions generated by wireless facilities are often raised whenever cities consider approving new wireless regulations or approve new wireless facility applications. However, federal law has preempted the City's ability to consider such matters to the extent wireless facilities comply with RF standards promulgated by the FCC. The Federal Telecommunications Act of 1996 states in part:

“No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the FCC's regulations concerning such emissions.” (47 U.S.C. § 332(c)(7)(B)(iv).

Thus, to deny any request for authorization to place, construct, or modify personal wireless service facilities on the basis of environmental effects of RF emissions to the extent that such wireless facilities comply with the FCC's regulations concerning such emissions is prohibited. All the City can do is to require that such facilities at all times meet the FCC requirements for RF emissions. The Ordinance requires applicants to include an RF exposure compliance report that must be prepared by a certified RF engineer acceptable to the City, that certifies that the proposed small wireless facility, as well as any collocated wireless facilities, will comply with applicable federal RF exposure standards and exposure limits.

Public Comment

One public comment was received on the proposed Ordinance, from James W. Grice, with the law firm of Bryan Cave Leighton Paisner LLP, representing Vertical Bridge, a telecommunication facility developer. In their letter, dated June 1, 2021, Mr. Grice offered suggestions to modify the draft Ordinance proposal (see Exhibit C). Staff discussed the suggested modifications with Mr. Grice, and then reviewed them with special counsel from Best, Best, and Krieger (BBK) assisting staff with this Ordinance.

After consultation BBK and further consideration, staff either maintained the originally proposed language or modified language to address suggested modifications as shown in the Table 1 (Exhibit D).

Conclusion

Adoption of the proposed Wireless Telecommunications Facilities Ordinance is necessary to comply with recent legislation and updates in technology, while requiring stronger standards for facilities. Despite the limitations placed on local government, staff believes the proposed Ordinance update is compliant with federal and state regulations, modestly expands development opportunities, and strengthens specific development

standards. Staff believes the Ordinance represents a reasonable approach to guide the deployment of wireless telecommunication facilities within the City's boundaries.

Moreover, the intent of the new Ordinance No. 21-998 and standards contained in the design guidelines titled *Design Standards for Wireless Telecommunications Facilities on Public and Private Property* are to protect and promote public health, safety, and welfare, and balance the benefits of advanced wireless services while maintaining the aesthetic character of the City's neighborhoods to the greatest extent possible. Accordingly, staff recommends the Planning Commission recommend approval of the proposed Ordinance to the City Council.

Public Notice

A notice of public review was advertised in the Inland Valley Daily Bulletin newspaper on June 4, 2021, inviting public comment. Staff received one inquiry from James W. Grice, of Bryan Cave Leighton Paisner LLP representing Vertical Bridge.

Environmental Determination

Staff has determined that the adoption of the proposed Zone Code amendments are statutorily exempt from the California Environmental Quality Act ("CEQA") Environmental Review. This Ordinance is not a project within the meaning of Section 15378 of the State of California Environmental Quality Act ("CEQA") Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly. The Ordinance establishes an application process for permits to install or modify wireless telecommunications facilities on new and existing structures on public and private property in the City of Montclair. The Ordinance does not authorize any specific development or installation on any specific piece of property within the City's boundaries. Moreover, when and if an application for installation is submitted, the City will – at that time – conduct preliminary review of the application in accordance with CEQA.

Alternatively, even if the Ordinance is a "project" within the meaning of State CEQA Guidelines section 15378, the Ordinance is exempt from CEQA on multiple grounds. First, the Ordinance is exempt from CEQA because the City Council's adoption of the Ordinance is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. (State CEQA Guidelines, §15061(b)(3).) That is, approval of the Ordinance will not result in the actual installation of any facilities in the City. In order to install a facility in accordance with this Ordinance, the applicant would have to submit an application for installation of the wireless facility. At that time, the City will have specific and definite information regarding the facility to review in accordance with CEQA. And, in fact, the City will conduct preliminary review under CEQA at that time.

Moreover, in the event that the Ordinance is interpreted so as to permit installation of wireless facilities on a particular site, the installation would be exempt from CEQA review in accordance with either: (1) State CEQA Guidelines section 15302 (replacement or

reconstruction) because the wireless telecommunications facility installations regulated by the Ordinance involves the replacement or modification of existing structures and facilities on private and public property in the City of Montclair where the replacement support structure will be located on the same site as the structure that it is replacing and will serve substantially the same purpose and capacity as the structure that it is replacing; and/or (2) State CEQA Guidelines section 15303 (new construction or conversion of small structures) because the wireless telecommunications facility installations regulated by the Ordinance involve new structures and/or the replacement or modification of existing structures and consist of: (a) the construction and siting of limited numbers of wireless telecommunications facilities; (b) the installation of associated equipment in ground-mounted cabinets or enclosures not exceeding 10,000 square feet in floor area on sites zoned for such use, not involving the use of significant amounts of hazardous substances; and (3) limited utility extensions to serve such facilities on public and private property where all necessary public services and facilities are available and the surrounding area is not environmentally sensitive. None of the exceptions to the Class 2 or 3 Categorical Exemptions found in State CEQA Guidelines section 15300.2 apply because the Ordinance does not present any unusual circumstances; would not damage scenic resources, including any resources in the area of a Scenic Highway; would not be utilized on a hazardous waste site; and would not impact historic resources of any kind.

Findings

No findings of the Planning Commission or City Council are required for recommending approval of, or approving, the proposed Municipal Code amendment.

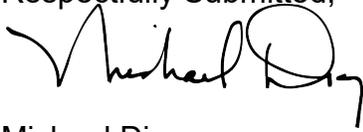
Planning Division Recommendation

Staff recommends the Planning Commission adopt Resolution No. 21-1948 recommending that the City Council adopt Draft Ordinance 21-998, repealing and replacing Chapter 11.73 of the Montclair Municipal Code (MMC), amending Chapter 11.46 to exempt certain wireless telecommunications facilities, and adding a new Chapter 11.77 to establish an administrative permitting process.

Staff recommends the Planning Commission take the following actions:

- A. Move that, based upon evidence submitted, the Planning Commission has reviewed the Planning Division's determination of exemption, and based on its own independent judgment, concurs with staff's determination of exemption and directs staff to prepare a Notice of Exemption; and
- B. Recommend the City Council adopt the proposed Wireless Telecommunications Facilities Ordinance (No. 21-998) as set forth in the Planning Commission Resolution No. 21-1948.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Michael Diaz". The signature is fluid and cursive, with a large initial "M" and "D".

Michael Diaz
Director of Community Development

Attachments: Resolution No. 21-1948 Recommending City Council Approval
Exhibit A – Draft Ordinance No. 21-998
Exhibit B – Design Standards for Wireless Telecommunications Facilities on Public and Private Property
Exhibit C – Memorandum dated June 1, 2021 “Bethany Baptist-revisions to siting ordinance”
Exhibit D – Table 1: Staff’s Response to BCLP’s Suggestions dated June 1, 2021

c: James W. Grice, Bryan Cave Leighton Paisner LLP

RESOLUTION NO. 21-1948

**A RESOLUTION OF THE PLANNING COMMISSION OF
THE CITY OF MONTCLAIR RECOMMENDING CITY
COUNCIL APPROVAL OF ZONING CODE AMENDMENT
CASE NO. 2019-22 TO REPEAL AND REPLACE CHAPTER
11.73 WIRELESS TELECOMMUNICATIONS FACILITY,
ADD CHAPTER 11.77 FOR AN ADMINISTRATIVE REVIEW
PROCESS, AND AMEND CHAPTER 11.46 TO EXEMPT
CERTAIN WIRELESS TELECOMMUNICATIONS
FACILITIES CITYWIDE**

A. Recitals.

WHEREAS, the City of Montclair Municipal Code, establishes regulations governing the installation and operation of wireless telecommunication facilities within the City's boundaries; and

WHEREAS, both federal and state laws have had numerous modifications regarding the regulations of wireless telecommunication facilities both within the public and private property; and

WHEREAS, the City has determined that it is necessary to repeal and replace Chapter 11.73 Wireless Telecommunications Facility, add Chapter 11.77 for the administrative processing of less complex, smaller wireless telecommunication facility projects, and amend Chapter 11.46 to exempt certain wireless facilities in order to provide for the enforcement of these standards and regulations consistent with the federal and state legal requirements; and

WHEREAS, applicable laws requires the Planning Commission to notice and hold a public hearing on the amendments and, following such hearing, to render a decision in the form of a written recommendation to the City Council; and

WHEREAS, the Planning Commission held a public hearing concerning the proposed Ordinance on July 12, 2021, notice of which was published and provided as required by law; and

WHEREAS, the Planning Commission finds that the proposed amendment is required for the public health, safety, and general welfare, and that the amendments are consistent with the goals, objectives, policies and specific actions of the General Plan; and

WHEREAS, the Planning Commission now desires to recommend that the City Council adopt the proposed ordinance.

The Secretary to this Commission shall certify to the adoption of this Resolution.

APPROVED AND ADOPTED THIS 12TH DAY OF JULY, 2021.

PLANNING COMMISSION OF THE CITY OF MONTCLAIR, CALIFORNIA

By: _____

ATTEST: _____
Michael Diaz, Secretary

I, Michael Diaz, Secretary of the Planning Commission of the City of Montclair, do hereby certify that the foregoing Resolution was duly and regularly introduced, passed, and adopted by the Planning Commission of the City of Montclair, at a regular meeting of the Planning Commission conducted on the 12th day of July, 2021, by the following vote, to-wit:

AYES:

NOES:

ABSENT:

Z:\COMMDEV\YVONNE NEMETH\2021\2019-22 ZONING CODE AMENDMENT

EXHIBIT A

ORDINANCE NO. 21-998

AN ORDINANCE OF THE CITY OF MONTCLAIR CALIFORNIA REPEALING AND REPLACING CHAPTER 11.73 OF THE MONTCLAIR MUNICIPAL CODE TO UPDATE REGULATIONS, STANDARDS, AND CREATE DESIGN GUIDELINES FOR WIRELESS TELECOMMUNICATIONS FACILITIES ON PUBLIC AND PRIVATE PROPERTY; ADDING CHAPTER 11.77 TO THE CITY MUNICIPAL CODE TO ESTABLISH AN ADMINISTRATIVE PERMITTING PROCESS; AND AMENDING CHAPTER 11.46 TO EXEMPT CERTAIN WIRELESS TELECOMMUNICATIONS FACILITIES

WHEREAS, the City of Montclair, California (“City”) is a municipal corporation, duly organized under the California Constitution and laws of the State of California; and

WHEREAS, pursuant to the police powers delegated to it by the California Constitution, the City is authorized to enact laws which promote the public health, safety, and general welfare of its citizens; and

WHEREAS, the City currently regulates permitting of wireless telecommunications facilities on public and private property in the City pursuant to Chapter 11.73 which was adopted in 2002; and

WHEREAS, numerous new federal and state laws and regulations have come into force since that time which place restrictions on local permitting including but not limited to establishing short timelines or “shot clocks” for action on applications, establishing “deemed granted” and other remedies for failing to take final action, and preempting local authority to deny certain types of wireless telecommunications facilities applications; and

WHEREAS, the City Council deems it to be necessary and appropriate to update its standards, regulations, and create design guidelines relating to the location, placement, design, construction, and maintenance of wireless telecommunications facilities on public and private property in the City, and providing for the enforcement of said standards and regulations, consistent with federal and state law limitations on that authority; and

NOW, THEREFORE, BE IT ENACTED AND ORDAINED by the Montclair City Council:

SECTION I. The foregoing Recitals are adopted as findings of the City Council as though set forth in fully within the body of this ordinance.

SECTION II. Chapter 11.73 of the Montclair Municipal Code for the City of Montclair (“Code”) shall be repealed and replaced as shown in Exhibit A.

SECTION III. Title 11, Division IV of the Code shall be amended to add new Chapter 11.77, which is contained in Exhibit B.

SECTION IV. Section 11.46.010 of the Code shall be amended to add the following:

“This Chapter 11.46 does not apply to wireless telecommunications facilities that are subject to the regulations in Chapter 11.73 of the Code.”

SECTION V. Environmental Review. This Ordinance is not a project within the meaning of Section 15378 of the State of California Environmental Quality Act (“CEQA”) Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly. The Ordinance establishes an application process for permits to install or modify wireless telecommunications facilities on new and existing structures on public and private property in the City of Montclair. The Ordinance does not authorize any specific development or installation on any specific piece of property within the City’s boundaries. Moreover, when and if an application for installation is submitted, the City will – at that time – conduct preliminary review of the application in accordance with CEQA.

Alternatively, even if the Ordinance is a “project” within the meaning of State CEQA Guidelines section 15378, the Ordinance is exempt from CEQA on multiple grounds. First, the Ordinance is exempt from CEQA because the City Council’s adoption of the Ordinance is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment (State CEQA Guidelines, §15061(b)(3).) That is, approval of the Ordinance will not result in the actual installation of any facilities in the City. In order to install a facility in accordance with this Ordinance, the applicant would have to submit an application for installation of the wireless facility. At that time, the City will have specific and definite information regarding the facility to review in accordance with CEQA. And, in fact, the City will conduct preliminary review under CEQA at that time.

Moreover, in the event that the Ordinance is interpreted so as to permit installation of wireless facilities on a particular site, the installation would be exempt from CEQA review in accordance with either: (1) State CEQA Guidelines section 15302 (replacement or reconstruction) because the wireless telecommunications facility installations regulated by the Ordinance involve the replacement or modification of existing structures and facilities on private and public property in the City of Montclair where the replacement support structure will be located on the same site as the structure that it is replacing and will serve substantially the same purpose and capacity as the structure that it is replacing; and/or (2) State CEQA Guidelines section 15303 (new construction or conversion of small structures) because the wireless telecommunications facility installations regulated by the Ordinance involve new structures and/or the replacement or modification of existing structures and consist of: (a) the construction and siting of limited numbers of wireless telecommunications facilities; (b) the installation of associated equipment in ground-mounted cabinets or enclosures not exceeding 10,000 square feet in floor area on sites zoned for such use, not involving the use of significant amounts of hazardous substances; and (3) limited utility extensions to serve such facilities on public and private property where all

necessary public services and facilities are available and the surrounding area is not environmentally sensitive. None of the exceptions to the Class 2 or 3 Categorical Exemptions found in State CEQA Guidelines section 15300.2 apply because the Ordinance does not present any unusual circumstances; would not damage scenic resources, including any resources in the area of a Scenic Highway; would not be utilized on a hazardous waste site; and would not impact historic resources of any kind. The City Council, therefore, directs that a Notice of Exemption be filed with the San Bernardino County Clerk within five working days of the passage and adoption of the Ordinance.

SECTION VI. Severability. If any section, subsection, provision, sentence, clause, phrase or word of this Ordinance is for any reason held to be illegal or otherwise invalid by any court of competent jurisdiction, such invalidity shall be severable, and shall not affect or impair any remaining section, subsection, provision, sentence, clause, phrase or word included within this Ordinance, it being the intent of the City that the remainder of the Ordinance shall be and shall remain in full force and effect, valid, and enforceable.

SECTION VII. Effective Date. That notice of passage of this Ordinance shall be posted at City Hall and the Montclair Public Library and shall set forth the title and effective date of the Ordinance and a statement that the Ordinance is on file in the office of the Clerk of Council. This Ordinance shall take effect and be in force from and after the earliest period allowed by law and by the City of Montclair, California.

APPROVED AND ADOPTED this __ day of _____, 2021.

ATTEST:

Mayor

City Clerk

I, Andrea M. Myrick, City Clerk of the City of Montclair, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. ___-___ of said City, which was introduced for first reading at a regular meeting of the City Council held on the __ day of _____, 2021, and was adopted at second ready at a regular meeting of the City Council held on the __ day of _____, 2021, by the following vote, to-wit:

AYES: XX
NOES: XX
ABSTAIN: XX
ABSENT: XX

Andrea M. Myrick
City Clerk

Chapter 11.73 - WIRELESS TELECOMMUNICATIONS FACILITIES

11.73.010 - Purpose and intent.

The purpose and intent of this Chapter is to establish standards for the review, siting and development of wireless telecommunications facilities on public and private property throughout the City. A primary intent is to ensure that wireless networks are implemented with the fewest possible facilities, in the least visible manner, and with the least disruptive impact on the City's neighborhoods. This shall be accomplished through allowing collocation of multiple wireless providers at approved locations, requiring creative, stealth facility designs in zones where facilities are allowed, and prohibiting facilities within, and immediately adjacent to, certain limited City zoning districts where such facilities on public and private property would be highly incompatible with the predominant existing uses in those zoning districts. The regulations set forth in this Chapter are intended to protect and promote the public health, safety and general welfare, and to promote and enhance the aesthetic qualities of the community as set forth in the goals, objectives, and policies of the General Plan, while concurrently allowing for the orderly and efficient development of a wireless telecommunications infrastructure in accordance with state and federal law and Federal Communications Commission regulations.

11.73.020 - Applicability.

This Chapter applies to all wireless telecommunications facilities existing and proposed to be located within the corporate boundary of the City of Montclair, except wireless telecommunications facilities in the public right-of-way that are subject to Chapter 9.105 and antennas and satellite dish antennas that are subject to Chapter 11.46 of the City Code.

11.73.030 - Exemptions.

The following facilities are exempt from the requirements of this Chapter 11.73, and may be governed by other laws:

- A. Amateur radio antennas:
 - a. That are completely enclosed within a permitted building; or
 - b. That consist of a single wire not exceeding one-fourth inch in diameter. Such wire antennas may be located in setback areas provided the antenna does not extend above the maximum building height in the district.
 - c. That consist of a single ground-mounted vertical pole or whip antenna not exceeding the maximum building height allowable for the zone measured from finish grade at the base of the antenna, and not located in any required setback area. Support structures or masts for pole or whip antennas shall conform to standards set out in the current California Building Code. A building permit may be required for the support structure or mast.

- B. “Like kind” equipment meaning the replacement or changing of equipment in an existing shroud, cabinet, vault, or secured ground lease area, which was approved by an entitlement and/or permit issued by the City that is substantially similar in appearance, size, dimensions, weight, and RF emissions to the then-existing and approved equipment. This exemption does not apply to generators.
- C. The following temporary facilities that will be placed for less than seven consecutive days, provided any necessary building permit or other approval is obtained and the landowner’s written consent is provided to the Director prior to installation:
 - 1. Facilities installed and operated for large-scale events; and
 - 2. Facilities needed for coverage during the temporary relocation of an existing and already-approved facility.

11.73.040 – Nonconforming Wireless Telecommunications Facilities.

- A. Legal Nonconforming Facility. Any facility that is lawfully constructed, erected, or approved prior to the effective date of Ordinance 21-998, in compliance with applicable laws, and which facility does not conform to the requirements of this chapter shall be accepted and allowed as a legal nonconforming facility. Legal nonconforming wireless telecommunications facilities shall comply at all times with the laws, ordinances, and regulations in effect at the time that the application was granted, and any applicable federal or state laws as they may be amended or enacted from time to time, and shall at all times comply with the conditions of approval. Any legal nonconforming facility which fails to comply with applicable laws, ordinances, regulations, or conditions of approval may be required to conform to the provisions of this chapter.
- B. Illegal Nonconforming Facility. Any facility constructed or erected prior to the effective date of Ordinance 21-998 in violation of applicable laws, ordinances, or regulations shall be considered an Illegal Nonconforming Facility and shall be abated as a public nuisance pursuant to Chapters 1.12 and 7.24.020.H of the Montclair Municipal Code

11.73.050 - Definitions.

For the purposes of this Chapter, the following definitions shall apply:

Administrative Permit means a permit obtained pursuant to Chapter 11.77.

Alternative tower structure means clock or bell towers, steeples, spires, monoliths, light poles, artificial trees and similar alternative design mounting structures that camouflage or conceal the presence of an antenna or antenna arrays.

Antenna means any exterior transmitting or receiving device mounted on a tower, building structure, pole or alternative tower structure and used in communication that

radiate or capture electromagnetic waves, digital signals, analog signals, radio frequencies, wireless telecommunications signals or other communications signals.

Antenna array means a set of one or more antennas.

Applicant means the person filing an application for placement or modification of a wireless telecommunications facility on public or private property in the City of Montclair.

Building-mounted - means mounted to the side or integrated into the façade, but not the roof, of a building or another structure such as a water tank, pump station, church steeple, freestanding sign, or similar structure.

CUP means Conditional Use Permit.

City shall mean the City of Montclair, California, a municipal corporation.

Code means Montclair Municipal Code.

Collocation means (a) for the purposes of any eligible facilities request, the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(2), as may be amended, which defines that term as "[t]he mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes." As an illustration and not a limitation, the FCC's definition means to add transmission equipment to an existing facility and does not necessarily refer to two or more different facility operators in the same location; and (b) for all other purposes, the same as defined in 47 C.F.R. § 1.6002(g)(1) and (2), as may be amended, which defines "collocation" as (1) mounting or installing an antenna facility on a pre-existing structure, and/or (2) modifying a structure for the purpose of mounting or installing an antenna facility on that structure.

Design Standards means those detailed design standards, specifications, and examples adopted by the City Council related to the design and installation of wireless telecommunications facilities.

Director means the Director of Community of Development of the City of Montclair or his or her designee.

Eligible Facilities Request means the same as in 47 C.F.R. § 1.6100(b)(3), or any successor provision.

FCC means the Federal Communications Commission or its lawful successor.

Fall Zone - means the area on the ground within a prescribed radius from the base of a wireless telecommunications facility. The fall zone is the area within which there is a potential hazard from falling debris, collapsing material, or the collapse of the tower itself.

Freestanding telecommunications tower or structure - means any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, such as a monopole tower.

Height means, when referring to a tower or other structure, the vertical distance measured from the finished grade level to the highest point on the tower or other structure, even if said highest point is an antenna. The finished grade shall not be artificially or unnecessarily raised to achieve a taller height for the tower or structure.

Modification means any change to an existing wireless telecommunications facility that involves any of the following: collocation, expansion, alteration, enlargement, intensification, reduction, or augmentation, including, but not limited to, a change in size, shape, color, visual design, or exterior material. Modification does not include repair, replacement, or maintenance if those actions do not involve a change to the existing facility involving any of the following: collocation, expansion, alteration, enlargement, intensification, reduction, or augmentation.

Monopalm means a stealth tower structure resembling a palm tree constructed and designed for the sole purpose of supporting and concealing a wireless telecommunications antenna or antenna array.

Monopine means a stealth tower structure resembling a pine tree constructed and designed for the sole purpose of supporting and concealing a wireless telecommunications antenna or antenna array.

Monopole means a structure comprised of a single spire for the sole purpose of supporting a wireless telecommunications antenna or antenna array.

Roof-mounted means an antenna or antenna array directly attached or affixed to the roof of an existing building, tower or structure other than a lattice tower, monopole, monopalm or monopine.

Stealth, or a stealth facility, means a facility that is designed to look like something other than a wireless tower, base station or facility.

Temporary Facility means a wireless facility intended or used to provide wireless services on a temporary or emergency basis, such as a large-scale special event in which more users than usual gather in a single location or following a duly proclaimed local or state emergency as defined in California Government Code Section 8558 requiring additional service capabilities. Temporary facilities include without limitation, cells on wheels (COW), sites on wheels (SOW), cells on light trucks (COLTs), or other similar wireless facilities: (1) that will be in place for no more than six months (or such other longer time as the City may allow in light of the event or emergency); (2) for which required notice is provided to the FAA; (3) that do not require marking or lighting under FAA regulations; (4) that will be less than 200 feet in height; and (5) that will either involve no excavation or involve excavation only as required to safely anchor the facility, where the depth of previous disturbance exceeds the proposed construction depth (excluding footings and other anchoring mechanisms) by at least two feet.

Wireless telecommunications facility (or wireless facility) means antenna structures and other types of installations used for the provision of wireless services at a fixed location, including, without limitation, any associated tower, support structure(s), and base station(s). Accessory equipment associated with the installation of a wireless telecommunications facility includes, but is not limited to, cabling, generators, air conditioning units, electrical panels, equipment shelters, equipment cabinets, equipment buildings, pedestals, meters, vaults, splice boxes, and surface location markers, service roads and other similar improvements.

11.73.060 - Permit Required.

An Administrative Permit or Conditional Use Permit (CUP) in compliance with the design guidelines, as applicable, processed in accordance with Chapter 11.77 or Chapter 11.78 of the Montclair Municipal Code shall be required for all wireless telecommunications facilities on public and private property within the City that are not exempt pursuant to Section 11.73.030. A CUP is required for installations involving a new freestanding support structure and for certain collocations that the Director has deemed complex based on the nature of the installation. All other wireless installations on public and private property require an Administration Permit.

Building Permits. All improvements associated with a new wireless telecommunications facility and all modifications to existing facilities, shall require City review and the issuance of building permits.

11.73.070 - Primary Land Use Required.

Wireless telecommunications facility shall be permitted only as an accessory use on real property that is presently developed with a legal, conforming primary land use. Applications for facilities on undeveloped parcels shall not be considered unless the application is filed concurrently with an application for development of a conforming land use on the parcel. A variance application requesting that development of the primary land use on the parcel be permitted to deviate from any of the City's development standards solely to accommodate a wireless telecommunications facility on the same parcel shall not be considered.

11.73.080 - Application Requirements.

In addition to complying with the standard application submittal requirements and design guidelines for an Administrative Permit or CUP as provided for in Chapters 11.77, 11.78, and 11.73 of the Montclair Municipal Code, the applicant shall also provide all information required on a form published, and from time to time updated, by the Director.

11.73.090 - Permitted locations.

Wireless telecommunications facilities on public and private property may be located within the following zoning districts, subject to the approval of a CUP and compliance with the design standards of Section 11.73.110:

A. Residential Zones

1. R-1 Zone (Single-Family Residential) - On properties two acres in size or larger where the primary use is not residential such as a religious institution, public utility facility, public park, or other similar non-residential use as determined by the Community Development Director. Qualifying properties may be comprised of one or more abutting parcels under the same ownership.
2. R-3 Zone (Multiple-Family Residential) - When integrated into the existing architectural framework of a building or structure - such as the backside of parapet walls, within towers or wall setbacks, in roof attic space, etc. - so that the presence of an antenna or antenna arrays are concealed. Ground mounted support equipment shall not be located in required parking spaces and/or required setbacks. Freestanding wireless telecommunications facilities shall be not be permitted

B. Non-Residential Zones

1. AP (Administrative Professional Zone);
2. C-3 (General Commercial Zone);
3. MIP (Manufacturing Industrial Zone);
4. M-1 (Limited Manufacturing Zone);
5. M-2 (General Manufacturing Zone).

C. Specific Plans

1. North Montclair Downtown Specific Plan (NMDSP)
2. Montclair Place District Specific Plan (MPDSP)
3. Arrow Highway Mixed-Use District (AHMUD)
4. Auto Mall," "Business Park," "Commercial," "Commercial/Office" and "Industrial" zones of the Holt Boulevard Specific Plan (HBSP).

11.73.100 - Prohibited locations.

Wireless telecommunications facilities on public and private property shall be expressly prohibited within the following zoning district designations:

1. R-1 Zone - where the primary use of the site is residential and the site does not meet the minimum parcel size requirement as identified in Section 11.73.090.A.1;
2. R-2 (Two-Family Residential);
3. C-2 (Restricted Commercial).

11.73.110 - Design and Development standards for Wireless Telecommunications Facilities on Public and Private Property are provided as a separate document which may be updated from time-to-time by the Community Development Director.

11.73.120 - Monitoring and Maintenance.

The owner of the wireless telecommunications facility shall routinely monitor the site to ensure the facility is maintained in good condition at all times in accordance

with all approved plans and conditions of approval. Such maintenance shall include, but shall not be limited to, routine inspections to verify the facility and its components are structurally sound, is free of: general dirt and grease; chipped, faded, peeling or cracked paint; trash, debris, litter, graffiti and other forms of vandalism; cracks, dents, blemishes and discolorations; visible rust or corrosion on any unpainted metal areas; and, the health and operation of associated landscaping and irrigation.

The owner of the facility shall also be responsible for maintaining the integrity and appearance of their facility making sure that any deficiencies (e.g., missing or defective parts, faux branches and foliage, stealth components, etc.) are routinely replaced in a timely manner with matching material and functioning parts, with or without notification from the City.

Any damage from any cause shall be repaired by the Permittee within 30 days of notice. Weathered, faded or missing parts/materials used to disguise/camouflage the facility shall be maintained and/or replaced by the Permittee within 30 days of notice. All graffiti on facilities must be removed at the sole expense of the Permittee within 72 hours after notification from the City. All other forms of vandalism and damage shall be removed and/or repaired within 72 hours of notice by the City.

11.73.130 – Special Standards for Temporary Facilities.

- A. The proposed temporary facility must comply with all applicable laws and regulations, and submit proof of compliance, as proposed for use, with FCC regulations governing radio frequency emissions.
- B. The proposed facility will be placed and protected to prevent hazard to the public and property, and so as not to unreasonably interfere with pedestrian vehicular traffic, and all ADA space and path of travel requirements.
- C. The proposed facility must comply with all conditions for a temporary wireless facility, and there must be an appropriate plan for removal of the facility and restoration of property affected by it.
- D. The permit is sought for the minimum period required, and no greater than the maximum period permitted by the City.
- E. Any permit issued shall identify where the temporary wireless facility will be placed, and the period for which it may remain in place.

11.73.140 - Required Findings for Wireless Telecommunications Facilities.

- A. Other than eligible facilities requests and temporary wireless facilities, the Director, City Manager, or Planning Commission, as the case may be, shall approve the installation or modification of a wireless telecommunications facilities if, on the basis of the application and other materials or evidence provided in review thereof, it finds the following: These are in addition to any applicable findings in Title 11 of the Montclair Municipal Code associated with a Conditional Use Permit, when applicable.

1. There is adequate space on the property for the wireless telecommunications facility without conflicting with existing buildings or other improvements on the property or reducing required parking or landscaping;
 2. The design and placement of the wireless telecommunications facility complies with all applicable design and location standards, and will not adversely impact the use of the property, buildings and structures located on the property, or the surrounding area or neighborhood;
 3. The wireless telecommunications facility as proposed is consistent with the provisions of this Chapter and complies with all other applicable requirements of Title 11 of the Montclair Municipal Code; and
 4. The wireless telecommunications facility meets applicable requirements and standards of state and federal law.
- B. For eligible facilities requests, the Director or Planning Commission, as the case may be, shall approve the installation or modification of a wireless telecommunications facilities if, on the basis of the application and other materials or evidence provided in review thereof, it finds the following:
1. The application qualifies as an eligible facilities requests subject to this Chapter.
 2. The proposed facility will comply with all generally-applicable laws.
- C. For temporary facilities not exempt pursuant to Section 11.73.030(C), the Director, or Planning Commission, as the case may be, shall approve an application if, on the basis of the application and other materials or evidence provided in review thereof, it finds the following:
1. The facility qualifies as a temporary facility;
 2. There is an adequate need for the facility (e.g., wireless facility relocation or large-scale event);
 3. The facility is not detrimental to the public health, safety, and welfare;
 4. The facility complies with all applicable design and location standards; and
 5. The facility meets all applicable requirements of state and federal law.

11.73.150 – Exceptions.

- A. The approving authority may grant an exception to any of the requirements of this Chapter and/or the applicable design and location standards if it determines that the applicant has established that denial of an application would:

1. Within the meaning of federal law, prohibit or effectively prohibit the provision of personal wireless services; or
 2. Otherwise violate applicable laws or regulations; or
 3. Require a technically infeasible design or installation of a wireless telecommunications facility.
- B. If that determination is made, the requirements of this Chapter and/or the applicable design and location standards may be waived, but only to the minimum extent required to avoid the prohibition, violation, or technically infeasible design or installation.

11.73.160 - Conditions of Approval.

- A. Conditions of approval shall be imposed by the approving authority on all permits granted pursuant to this Chapter to ensure compliance with the intent of Title 11 of the City Code, the required standards and findings, and the protection of the public health, safety, general welfare, and aesthetics.
- B. In addition to any supplemental conditions imposed by the approving authority, all permits granted pursuant to this Chapter shall be subject to the following conditions, unless modified by the approving authority:
1. This permit shall be valid for a period of 10 years, unless pursuant to another provision of the Code or these conditions, it expires sooner or is terminated. At the end of 10 years from the date of issuance, this permit shall automatically expire, unless an extension or renewal has been granted. A person holding this permit must either (1) remove the facility within 30 days following this permit's expiration (provided that removal of any support structure owned by City, a utility, or another entity need not be removed, but must be restored to its prior condition, except as specifically permitted by the City); or (2) at least 90 days prior to expiration, submit an application to renew this permit, which application must, among all other requirements, demonstrate that the impact of the wireless telecommunications facility cannot be reduced. The wireless facility must remain in place until it is acted upon by the City and all appeals from the City's decision exhausted.
 2. **Timing of Installation.** The installation and construction authorized by this permit shall begin within one (1) year after its approval, or such approval shall expire without further action by the City. The installation and construction authorized by this permit shall conclude, including any necessary post-installation repairs and/or restoration to the installation site, within 30 days following the day construction commenced. If the wireless facility is to be installed adjacent to residences, construction and maintenance of the facility shall be limited to the hours as per City of Montclair Municipal Code Section 6.12.060.D. Emergency repairs of the wireless facility may occur at any time.

3. The operation of the approved facility shall commence no later than one (1) month after the completion of installation, or this permit will expire without further action by the City.
4. The Permittee shall submit an as-built drawing within 90 days after installation of the facility, in a format acceptable to the City.
5. The wireless telecommunications facility shall be constructed in substantial compliance with plans reviewed and approved by the Director.
6. No advertising, signs or lighting shall be incorporated or attached to the antenna array or support facilities, except as required by the City's Building Division or federal regulations.
7. All electrical and utility connections serving the facility shall be placed underground in accordance with the requirements of the Montclair Municipal Code.
8. A back-up generator authorized by this permit must comply with City Code Chapter 6.12 - "Noise Control".
9. The Permittee shall submit to the City certification of continued use of the approved facility on an annual basis at the time of business license renewal for as long as the facility remains in operation. The certification shall indicate that the facility is operating as approved and that the facility complies with the most current FCC safety standards. Facilities that are no longer in operation shall be completely removed within 90 days after the date cessation of operation.
10. If no annual certification is provided, the permit for the facility may be revoked by the Director. Prior to revoking a permit, the Director shall provide the owners of record written notice of their failure to provide the annual certification and an opportunity for a hearing.
11. Written notice of change of ownership and contact information of the facility shall be provided in writing to the Director within 30 days of said change. Failure to provide the information may cause for grounds to revoke the entitlements by the Director.
12. Radio Frequency Exposure Compliance. All facilities must comply with all standards and regulations of the FCC and any other state or federal government agency with the authority to regulate RF exposure standards. After transmitter and antenna system optimization, but prior to unattended operations of the facility, Permittee or its representative must conduct on-site post-installation RF emissions testing to demonstrate actual compliance with the FCC OET Bulletin 65 RF emissions safety rules for general population/uncontrolled RF exposure in all sectors. For this testing, the transmitter shall be operating at maximum operating power, and the testing shall occur outwards to a distance where the RF emissions no longer exceed the uncontrolled/general population limit.

13. All future changes and modifications to an approved facility shall require prior review and approval by Chapter 11.73.
14. Prior to construction of the facility, the Permittee shall:
 - a. Obtain a building permit that complies with all requirements of the Building and Engineering Divisions and the Montclair Fire Department.
 - b. Remit to the City a performance bond, or other form or surety acceptable to the City in an amount to be determined by the Director for the purpose of removing the subject facility and all associated support equipment in the event the facility becomes abandoned, this permit is revoked by the Director, or the Permittee does not or is unable to remove the facility.
 - c. Submit a copy of the lease with the property owner. If the lease is extended or terminated, notice and evidence thereof shall be provided to the Director. Upon termination or expiration of the lease, this permit for the facility shall become null and void and the facility shall be completely removed within 90 days.
15. Permittee shall undertake all reasonable efforts to avoid undue adverse impacts to adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification, and removal of the facility.
16. If, as a result of the operation of the subject facility, existing or future residential, commercial or industrial properties near the site experience interference difficulties with electronic equipment (such as radios, televisions, telephones, home computers, etc.), or if public safety personnel experience interference with communications systems, the Permittee shall be solely and fully responsible to correct any and all problems upon proof of such interference.
17. The site and the facility, including, but not limited to, all landscaping, fencing, and related transmission equipment, must be maintained in a neat and clean manner and in accordance with all approved plans and shall remain free of: general dirt and grease; chipped, faded, peeling or cracked paint; trash, debris, litter, graffiti and other forms of vandalism; cracks, dents, blemishes and discolorations; visible rust or corrosion on any unpainted metal areas. Any damage from any cause shall be repaired by the Permittee within 30 days of notice. Weathered, faded, or missing parts/materials used to disguise/camouflage the facility shall be maintained and/or replaced by the Permittee within 30 days of notice. All graffiti on facilities must be removed at the sole expense of the Permittee within 72 hours after notification from the City. All other forms of vandalism and damage shall be removed and/or repaired within 72 hours of notice by the City.

18. To ensure compliance with the conditions of the approval, a final inspection is required from the Building and Planning Divisions upon completion of construction and all improvements. The Permittee shall contact the City to schedule an appointment for such inspections. Further, after the initial inspection, the City or its designee may enter onto the facility area to inspect the facility upon 24 hours prior notice to the Permittee. The Permittee shall cooperate with all inspections and may be present for any inspection of its facility by the City. The City reserves the right to enter or direct its designee to enter the facility and support, repair, disable, or remove any elements of the facility in emergencies or when the facility threatens imminent harm to persons or property. The City shall make an effort to contact the Permittee prior to disabling or removing any facility elements, but in any case shall notify Permittee within 24 hours of doing so.
19. The Permittee shall at all times maintain accurate contact information for all parties responsible for the facility, which shall include a phone number, street mailing address, and email address for at least one natural person. The FCC Antenna Structure Registration site number, City permit number, primary leaseholder's, and facility manager's contact information shall be kept current and prominently displayed on the facility where it can be easily viewed from ground level.
20. Testing of any equipment shall take place on weekdays only, and only between the hours of 8:30 a.m. and 4:30 p.m., except that testing is prohibited on holidays that fall on a weekday. In addition, testing is prohibited on weekend days.
21. No possessory interest is created by this permit. However, to the extent that a possessory interest is deemed created by a governmental entity with taxation authority, Permittee acknowledges that City has given to Permittee notice pursuant to California Revenue and Taxation Code Section 107.6 that the use or occupancy of any public property pursuant to this permit may create a possessory interest which may be subject to the payment of property taxes levied upon such interest. Permittee shall be solely liable for, and shall pay and discharge prior to delinquency, any and all possessory interact taxes or other taxes, fees, and assessments levied against Permittee's right to possession, occupancy, or use of any public property pursuant to any right of possession, occupancy, or use created by this permit.
22. The Permittee must maintain complete and accurate copies of all permits and other regulatory approvals issued in connection with the facility, which includes without limitation this approval, the approved plans and photo simulations incorporated into this approval, all conditions associated with this approval and any ministerial permits or approvals issued in connection with this approval. In the event that the Permittee does not maintain such records as required in this condition or fails to produce true and complete copies of such records within a reasonable

time after a written request from the City, any ambiguities or uncertainties that would be resolved through an inspection of the missing records will be construed against the Permittee.

23. The Permittee shall agree to defend, at its sole expense, any action brought against the City, its agents, officers, or employees because of the issuance of this approval; or in the alternative, to relinquish such approval. The Permittee shall reimburse the City, its agents, officers, or employees for any court costs and attorney fees that the City, its agents, officers, or employees may be required by a court to pay as a result of such action. The City may, at its sole discretion, participate at its own expense in the defense of any such action, but such participation shall not relieve Permittee of its obligations under this condition.
24. In the event that the City determines that it is necessary to take legal action to enforce any of these conditions, or to revoke this permit, and such legal action is taken, the Permittee shall be required to pay any and all costs of such legal action, including reasonable attorney's fees, incurred by the City, even if the matter is not prosecuted to a final judgment or is amicably resolved, unless the City should otherwise agree with Permittee to waive said fees or any part thereof. The foregoing shall not apply if the Permittee prevails in the enforcement proceeding.

11.73.170 - Eligible Facilities Requests.

- A. Eligible Facilities Requests. In addition to the conditions provided in Section 11.73.150 of this Chapter (with the exception of 11.73.150(b) which shall not apply to eligible facilities requests) and any supplemental conditions imposed by the Director, all permits for eligible facilities requests granted pursuant to this Chapter shall be subject to the following additional conditions, unless modified by the approving authority:
 1. Permit subject to conditions of underlying permit. Any permit or wireless telecommunications facility authorization granted in response to an application qualifying as an eligible facilities request shall be subject to the terms and conditions of the underlying permit;
 2. No permit term extension. The City's grant or grant by operation of law of an eligible facilities request permit constitutes a federally-mandated modification to the underlying permit or approval for the subject tower or base station. Notwithstanding any permit duration established in another permit condition, the City's grant or grant by operation of law of a eligible facilities request permit will not extend the permit term for the underlying permit or any other underlying regulatory approval, and its term shall be coterminous with the underlying permit or other regulatory approval for the subject tower or base station.
 3. No waiver of standing. The City's grant or grant by operation of law of an eligible facilities request does not waive, and shall not be construed to waive, any standing by the City to challenge Section 6409(a) of the

Spectrum Act, any FCC rules that interpret Section 6409(a) of the Spectrum Act, or any modification to Section 6409(a) of the Spectrum Act.

Chapter 11.77 – Administrative Permit.

11.77.010 – Purpose.

This chapter is intended to allow for administrative review and decisions for: (1) specific projects involving less complex installations, smaller installations, or less new construction; or (2) applications for which there is no discretion.

11.77.020 – Scope.

The following permit and application types shall undergo an administrative review pursuant to this Chapter rather than requiring a Conditional Use Permit pursuant to Chapter 11.78:

- A. Applications to install or modify wireless facilities on public or private property; except for proposed installations requiring new support structures and,
- B. At the Director’s discretion, certain collocations based on their complexity.

11.77.030 – Review Authority.

The Director of Community Development (Director), or its designee, is responsible for administering this Chapter. As part of the administration of this Chapter, the Director may:

- A. Interpret the provisions of this Chapter and related chapters in Title XI – Zoning and Development;
- B. Develop forms and procedures for submission of applications consistent with this Chapter;
- C. Determine the amount of and collect, as a condition of the completeness of any application, any fee established by this Chapter;
- D. Establish deadlines for submission of information related to an application, and extend or shorten deadlines where appropriate and consistent with state and federal laws and regulations;
- E. Issue any notices of incompleteness, requests for information, or conduct or commission such studies as may be required to determine whether a permit should be issued;
- F. Require, as part of, and as a condition of completeness of any application, notice to members of the public that may be affected by proposed work or project;

- G. Determine whether to approve, approve subject to conditions, or deny an application; and
- H. Take such other steps as may be required to timely act upon applications, including issuing written decisions and entering into agreements to mutually extend the time for action on an application.

11.77.040 – Appeal.

- A. Any person adversely affected by the decision of the Director pursuant to this Chapter may appeal the Director’s decision to the City Manager, who may decide the issues *de novo*, and whose written decision will be the final decision of the City.
- B. Where the Director grants an application based on a finding that denial would result in a prohibition or effective prohibition under applicable federal law, the decision shall be automatically appealed to the City Manager.
- C. All appeals must be filed within two (2) business days of the issuance of the written decision of the Director, unless the Director extends the time therefore. An extension may not be granted where extension would result in approval of the application by operation of law.

11.77.050 – Applications.

- A. Submissions. Applicant shall submit a paper copy and an electronic copy of any application, amendments, or supplements to an application, or responses to notices of incompleteness and requests for information regarding an application to: Director of Community Development, at City Hall.
- B. Content. An applicant shall submit an application on the form approved by the Director, which may be updated from time-to-time. If no form has been approved, applications must contain all required fee(s), documents, information, and any other materials necessary to allow the Director to make required findings and ensure that the proposed project will comply with applicable federal and state law, the City Code, and will not endanger the public health, safety, or welfare (including proof of compliance with the FCC’s radio frequency emissions standards) and must specify whether the applicant believes state or federal law requires action on the application within a specified time period. If applicant contends that denial of the application would prohibit or effectively prohibit the provision of service in violation of federal law, or otherwise violate applicable law, the application must provide all information on which the applicant relies on in support of that claim.
- C. Fees. Application fee(s) shall be required to be submitted with any application for an administrative permit. The City Council is hereby authorized to determine, or cause to be determined, the amount, type, and other terms of such fee(s) from time to time by means of resolution. Notwithstanding the foregoing, no

application fee shall be refundable, in whole or in part, to an applicant for an administrative permit unless paid as a refundable deposit.

- D. Waivers. Requests for waivers from any application requirement shall be made in writing to the Director or his or her designee. The Director may grant or deny a request for a waiver pursuant to this subsection. The Director may grant a request for waiver if it is demonstrated that, notwithstanding the issuance of a waiver, the City will be provided all information necessary to understand the nature of the project or other activity to be conducted pursuant to the permit sought. All waivers approved pursuant to this subsection shall be (1) granted only on a case-by-case basis, and (2) narrowly-tailored to minimize deviation from the application requirements.

11.77.060 – Findings, Decisions, and Consultants.

- A. The findings required for approval can be found in the respective sections of the Code for each application or project type.
- B. Decisions. Decisions on an application shall be in writing and include the reasons for the decision.
- C. Independent Consultants. The Director or City Manager, as the case may be, is authorized, in its discretion, to select and retain independent consultant(s) with expertise in relevant fields in connection with the review of any application under this Chapter. Such independent consultant review may be retained on any issue that involves specialized or expert knowledge in connection with an application.

11.77.070 – Conditions of Approval.

- A. The Director or City Manager, as the case may be, may impose conditions of approval on all permits granted pursuant to this Chapter.

11.77.080 – Breach; Termination of Permit.

- A. An administrative permit may be revoked for failure to comply with the conditions of the permit and applicable law. Upon revocation, any construction or installations made under the permit must be removed; provided that removal of a support structure owned by a City, a utility, or another entity authorized to maintain the support structure need not be removed, but must be restored to its prior condition, except as specifically permitted by the City. All costs incurred by the City in connection with the revocation and removal shall be paid by entities who own or control any part of the project or installation.
- B. For projects or installations without a permit. Any work or installations performed without an administrative permit (except for those exempted by this Chapter or respective chapters for a specific project type) must be removed; provided that removal of support structure owned by City, a utility, or another entity authorized to maintain a support structure in the right-of-way need not be removed, but must be restored to its prior condition, except as specifically permitted by the City. All

costs incurred by the City in connection with the revocation and removal shall be paid by entities who own or control any part of the project or installation.

- C. **Municipal Infraction.** Any violation of this Chapter will be subject to the penalties set forth in Chapter 1.12 of the City Code.

Draft

EXHIBIT B



**Design Standards for Wireless
Telecommunications Facilities on Public and
Private Property**

Effective: XX/XX/2021

SECTION A: PURPOSE

The purpose of these Standards is to establish general aesthetic requirements and standards that all wireless telecommunications facilities installed within the public and private property must meet. The intent of these requirements and standards complements the criteria established in Chapter 11.73 of the Montclair Municipal Code. Be informed that small cell facilities not installed within the public ROW are subject to the provisions of the City's Wireless Telecommunications Ordinance in Chapter 11.73 of the Montclair Municipal Code. These Standards are subject to amendment from time to time.

SECTION B: LOCATION CRITERIA

The City recognizes that the siting of wireless telecommunications facilities is largely dictated by wireless providers in response to customers' needs, terrain, and radio frequency modeling results. However, the City seeks to stealth and ensure that any proposed wireless infrastructure is well integrated to its surroundings. Any wireless telecommunications facility will be review for context in design, scale, color, and materials. To that end, the City recommends the following criteria for placement:

1. The City encourages network providers to co-locate new equipment onto existing infrastructure wherever technically feasible. The City recognizes each carrier owns rights to a spectrum of operating frequency and requires some separation with competing antennas to avoid signal interference.
2. Any wireless telecommunications facilities and/or equipment shall be located such that they do not:
 - Impede, obstruct, or hinder any neighboring properties,
 - Impact pedestrian or vehicular travel;
 - Affect public safety;
 - Obstruct the legal access to or use of the public ROW;
 - Violate any federal or state laws;
 - Violate or conflict with public ROW design standards, specifications, or design district requirements;
 - Violate Americans with Disabilities Act (ADA) requirements; and/or
 - Create a risk to public health, safety, or welfare.
3. In any Specific Plan Area (i.e., North Montclair Downtown Specific Plan, Arrow Highway Mixed-Use District), or a neighborhood with unique infrastructure assemblies, any wireless telecommunications facilities may only be allowed if the applicant can demonstrate that the proposed installation can effectively match and complement the existing aesthetics in terms of the design, colors, height, materials, and size. Unique assemblies may include, without limitation, decorative brickwork, trim, architectural luminaires, mounting heights, and pole colors.

SECTION C: CONSIDERATION OF ALTERNATIVE LOCATIONS

The Applicant must identify alternative locations in the vicinity of the proposed wireless

telecommunications facility and explain why the proposed location was selected. The City may propose an alternative location to the one proposed in the application if that the alternative location:

1. Is substantially similar in physical characteristics to the proposed structure;
2. The visual impacts that may be suffered by the public are no greater than the impact if installed on the proposed structure; and
3. The alternative infrastructure can accommodate the proposed wireless telecommunications facility without creating any risk to the public health or safety.
4. Allows for an installation that is technically feasible.

SECTION D: DESIGN CRITERIA

The general intent for these standards is to preserve the character of the City's neighborhoods and corridors by encouraging installations that blend into the existing surroundings and/or streetscape as much as possible. To achieve this goal the City has developed the following general criteria for the applicant to work towards achieving with their respective requests for approval.

Applicants are strongly encouraged to consult with City staff early on in the process prior to formally submitting an application.

Standard Design Elements

Applicants shall take into consideration the following criteria:

- Integration and Concealment

All wireless telecommunications facilities and modifications should be well integrated and concealed to a level that all components are hidden from view. It is a function of the appearance, placement, context, and level of visibility of a wireless telecommunications facility. Every aspect of a site is considered an element of concealment including (but not limited to) the dimensions, build and scale, offset, azimuth, height, location, color, tree shape, branch count, materials and texture. Future modifications to a site must not defeat concealment.

- Balance

All visible elements should have symmetry in all visible dimensions. Antennas and concealment elements should not dominate the element they are placed on. For example, visible antennas should be equal in length, width, depth, and should be evenly spaced on their support structure. Visible equipment should be grouped in like size and should also be evenly spaced on the support structure in a way that compliments the symmetry of antennas. Visible concealment elements should observe the bilateral symmetry of faux architectural elements or screen boxes, such as adding cupolas or faux chimneys to both sides of a façade instead of one, or raising parapets at two corners of a façade instead of one, etc. Antennas and shrouds should not dominate the element they are placed on.

- Context

Take note of the surrounding conditions such as character, topography of the area, existing materials and construction techniques to determine the best design solutions. For example, a

faux tree may be appropriate if there are other nearby mature trees of similar heights, a cupola or façade-mounted antennas for certain style architectures; a faux chimney may look good but not too many; and a rooftop box may look appropriate on a three-story industrial building, but not on a one-story shopping center.

The following development standards shall be applicable to all wireless telecommunications facilities on public and private property, to the extent allowed by applicable law:

- A. Minimal Visual Impact. All wireless telecommunications facilities shall utilize all practical means and designs to minimize the visual impact of these facilities to surrounding area in which the facility is located, including, but not limited to, the following:
1. Applicants are encouraged to utilize the smallest facility components and support structure necessary to meet the applicant's defined service objectives. Collocations on existing structures are preferred over the use of new freestanding structures. All new facilities and structures, including collocations, must be "stealth," as defined in Section 11.73.050.
 2. All wireless telecommunications facilities shall be stealth, or designed to employ screening and/or camouflage design techniques to ensure that the facility is as visually compatible and/or inconspicuous as feasibly possible. Proposed telecommunication facilities shall consider the surrounding context in determining the type of facility, its design, scale, colors, and materials.
 3. Artificial "trees." The use of an artificial monopalm or monopine design facility may be permitted in specific physical settings, but are not encouraged if other alternative stealthing methods are available.
 1. If an artificial tree is proposed, the design shall meet the following requirements:
 - a. The selection of an artificial tree style shall be compatible with existing natural trees in the immediate areas of the installation. If no natural trees exist within the immediate area, the applicant shall create a landscape setting that integrates the artificial tree with added species of a similar variety. In these cases, the City reserves the right to require the installation of live trees having a height equivalent to 75 percent of the height of the artificial "tree."
 - b. Branching patterns for "monopine" or similar shall begin a minimum of 12 feet from the base of the structure. Further, antennas and/or array of antennas shall not extend beyond in any direction from the end of branches or fronds.
 - c. Antennas, support arms, foot pegs, shrouds and other hardware elements shall be painted, coated, and/or covered in a manner to blend in with colors and finishes of the artificial tree.
 - d. Ample branch pattern and foliage shall be provided to conceal antennas from view and achieve the appearance of a natural tree or palm to the greatest extent possible, subject to the approval of the Community Development Director. If deemed necessary by the Director, an additional 5 to 10 feet in height may be granted to achieve a more natural appearing tree. The additional height shall not be utilized for increasing the height of any antenna or antenna array.
 - e. Faux bark cladding shall be provided from the ground to five feet beyond where the faux branches begin; above the faux bark shall be flat non-reflective paint to match the bark.

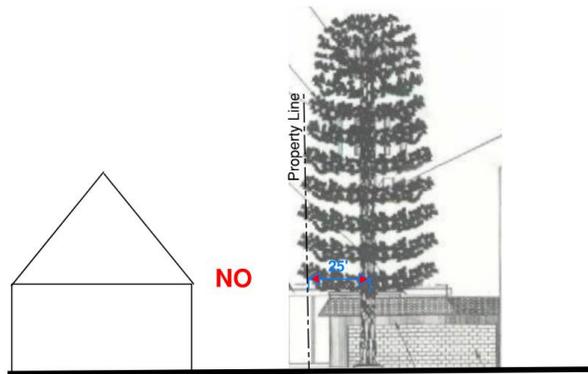
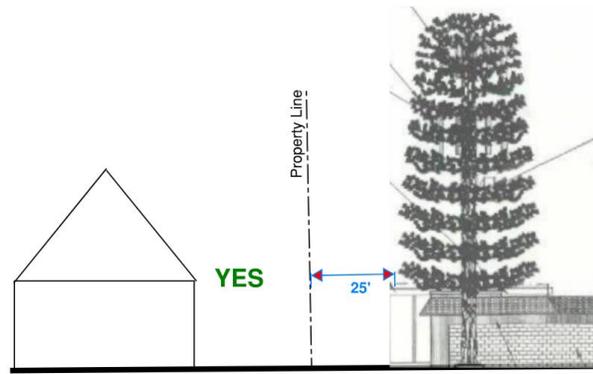
f. A maximum of nine (9) antenna panels may be installed per carrier permitted to collocate on any type of freestanding wireless telecommunication tower or structure.

4. **Building Mounted Facilities.** Building mounted wireless telecommunication facilities are preferred wherever feasible. Such installations shall be integrated architecturally with the existing building or structure and may be integrated into new or existing architectural elements such as, but not limited to, cupolas, chimneys, towers, steeples, attic spaces, behind parapet walls, or on the side wall of a building not visible to the street or adjacent properties. All building mounted installations are subject to the review of Community Development Director and may be approved upon the finding that subject proposal is exceptional in design and architecturally appropriate with the existing building or structure to which the facility is affixed.
5. **Cables and Wiring.** All cables and wiring must be within the structure, or if not feasible, within conduit on the exterior of the structure. The conduit must be a color that matches the pole and of the smallest size technically feasible.
6. **Electric.** Applicants must use flat rate electric metering, if available. In any case where a meter would be ground-mounted or pole-mounted and cannot be completely concealed within the building or proposed structure, applicant shall use the smallest form factor metering device available.
7. **No logos, decals, or advertising of any type may be affixed to any element of the wireless telecommunications facility or equipment or pole, except as required by federal or state law. However, the City shall require a decal or placard measuring no more than 4" x 6" in size, which lists the facility owner's name and emergency contact phone number. The placard shall be placed in an inconspicuous manner area on an element of the equipment.**
8. **The use of any cooling system associated with the wireless telecommunications facility shall comply with all applicable local regulations and federal and state laws.**

B. **Height.**

1. **For Building Mounted facilities on an existing, legally permitted, building or structure, the maximum height shall not exceed the applicable height limit for structures in the applicable zone. Any increase in height of an existing structure to accommodate a building mounted facility shall be designed to be in scale and proportion to the existing building or structure as originally configured.**
2. **For a freestanding wireless facility the maximum height shall be as low as possible to meet the applicant's defined service objectives and shall not exceed 55 feet. The Planning Commission may consider an exception for up to an additional 15-foot increase in height provided that the applicant can demonstrate the technical necessity of such extension and provided that the performance and design standards of this chapter are met. The applicant shall pay for the City to hire an independent qualified radio frequency engineer to substantiate the applicant's claim of technical necessity.**
3. **No rooftop-mounted facilities shall be allowed, unless a proposed facility is designed to architecturally integrate into the existing building or structure and the antennas and support equipment are completely concealed. The use of a wood or metal screen panels are not considered to be sufficient to meet the above requirement. Equipment shall not be placed on a rooftop where the rooftop is less than 20 feet above ground level.**

- C. Setbacks. Freestanding facilities, guy wires, accessory buildings and other ancillary improvements associated with the facility shall comply with the minimum setbacks of the underlying zoning district or Specific Plan, as further clarified below:
1. No freestanding tower or ground mounted support equipment and enclosures shall be permitted in the front and/or street side setback areas.
 2. In no case shall a freestanding tower, or any part thereof, be located within 25 feet of any property line of an abutting property with a residential use, including multi-family developments. Setbacks shall be measured from the most projected element (i.e., branches) to the nearest property line. At no point, shall any elements of the wireless telecommunications facility (fronds, antennas, faux branches, etc.) encroach into any neighboring properties.
 3. In addition to the aforesaid provisions, a freestanding telecommunications tower or structure allowed in the R-1 Zone shall be setback from the nearest property line(s) of a residential property the lesser distance as determined by the one of the two following methods:
 - a. A distance equal to 120 percent of the permitted height of the freestanding antenna tower or structure; or
 - b. The distance identified as the "fall zone," an area within the prescribed radius from the base of a wireless telecommunications facility in which there is a potential hazard from falling debris, collapsing material or the collapse of the tower itself, as calculated and stamped by a California licensed structural engineer. In no case, shall the freestanding telecommunications tower or structure be located closer than 25 feet from any adjacent property lines. To clarify, below is an example of a diagram to provide visual understanding of setback buffers:



- D. Separation. The following separation requirements shall apply to all wireless telecommunications facilities, provided, however, that the Community Development Director or Planning Commission, as the case may be, may consider a reduction in the minimum separation requirement if: (1) the goals of this Chapter would be better served by granting such approval; or (2) doing so would prevent a violation of law.

Type of Facility	Minimum Required Separation
Freestanding → Freestanding	750 feet
Freestanding → Facade/roof-mounted	500 feet
Facade/roof-mounted → Facade/roof-mounted	500 feet

- E. Traffic Safety. All facilities shall be designed and located in such a manner as to avoid adverse impacts on traffic safety.
- F. Parking. Placement of a wireless telecommunications facility in a parking lot or parking structure may not cause a reduction in the required parking spaces to less than the number required for the existing use(s) on the subject property.
- G. General Orders. All installations shall fully comply with the California Public Utilities Commission ("CPUC") General Orders, including, but not limited to General Order 95 ("GO 95"). None of the design standards are meant to conflict with or cause a violation of GO 95, including, but not limited

to, its standards for a safe installation on a utility pole. Accordingly, the standards can be adjusted at the City's discretion to ensure compliance with CPUC rules on safety.

H. Landscaping. In addition to any landscaping used for concealment or screening purposes, the applicant shall install additional landscaping to replace any existing landscaping displaced during construction or installation of the applicant's facility, including but not limited to add, fix, and/or replace any permanent irrigation system. Landscaping should be used to offset the overall visual impacts of the wireless telecommunications facilities. Existing and proposed landscape materials and design techniques should be utilized to integrate and soften the look of the facility with the surrounding environment to improve views from neighboring properties and the public right-of-way. Existing, mature trees should be retained when feasible. Any trees proposed for removal should be replaced in-kind or with sufficient replacements. All landscaping elements shall conform with MMC's Chapter 11.60 Water-Efficient Landscaping and Conservation Sections.

1. The applicant's landscaping plan shall be subject to the City's review and approval but shall, at a minimum, match the existing landscaping and foliage surrounding the installation site.
2. All landscaping and permanent irrigation plans shall include a long-term maintenance and irrigation schedule.
3. All landscaping shall be maintained by owner of the facility in a neat, orderly, disease- and weed-free condition at all times.

I. Fencing/Gates/Ladders.

1. Gates should be constructed of similar or complimentary materials as the enclosure but should maintain opaque qualities. Locate gates away from public areas if possible.
2. Fences should be constructed of decorative materials that compliment and blend with the surroundings. Chain-link and barbed wire fencing are not permitted. Anti-graffiti finishes should be applied to all solid fences, walls, and gates. Employ design techniques to reduce the opportunities for graffiti.
3. Caged access ladders should be located away from street views and placed in an area of the building where visibility is minimized.

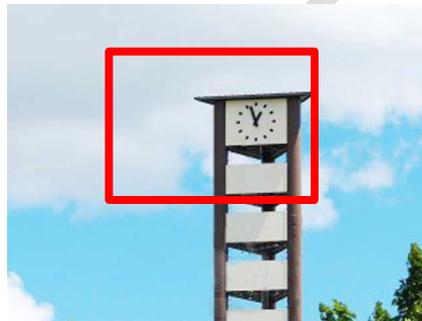
SECTION E: EXAMPLES ON TYPES OF INSTALLATIONS



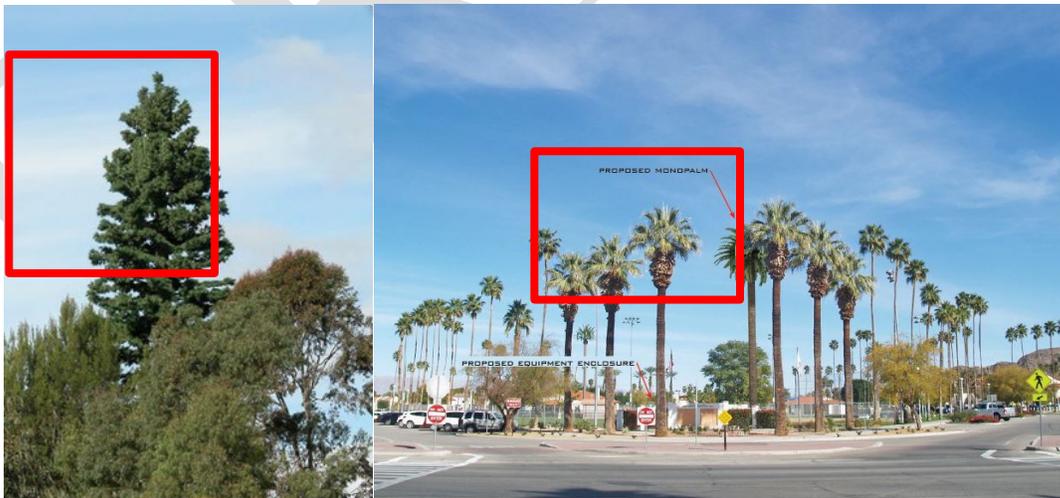
Side mounted facilities shall blend with existing architectural features of the building or structure. Architectural features must be developed in order to create a balanced appearance.



Roof-mounted facilities shall be screened from view by a treatment that compliments the architecture of the building or structure, or be designed to be visually integrated with the host structure.



Alternative antenna support structures shall be used in lieu of monopoles where the opportunity exists or where visibility impacts are a concern. Facility antennas shall be integrated into existing or new developed facilities that are functional for other purposes to the extent practical. Whenever possible, antennas shall be concealed within features such as clock towers or similar structures that are compatible with the surrounding land uses.



Monopine or monopalm design facilities shall be compatible with existing natural trees in the immediate areas of the installations. Any reduced number of fronds defeats concealment and is not allowed. Any increase in size or number of any visible element (antenna, equipment, or foliage) is considered defeating concealment and is not allowed if it cannot be stealth. For any modifications, if fronds are replaced, they should all match each other and should meet or exceed the level of concealment to the satisfaction of the Community Development

Director. If to faux palms, these components should be concealed within the growth pod, hula skirt, or in the equipment enclosure to the satisfaction of the Community Development Director.

DRAFT

EXHIBIT C



MEMORANDUM

Date: June 1, 2021
To: Michael Diaz
City of Montclair CA
From: James W. Grice
Email: james.grice@bcplaw.com
Direct: +1 816 374 3245
Re: Bethany Baptist—revisions to siting ordinance

We and Vertical Bridge Development LLC appreciate the city's cooperation and consideration of Vertical Bridge's needs and concerns. We have carefully reviewed the ordinance's text from a developer's perspective and would like to request the amendments provided below:

Citation	Prior Language	Amended Language	Reason for Alteration
11.73.010	A primary intent is to ensure that wireless networks are implemented with the fewest possible facilities, in the least visible manner and with the least disruptive impact on the City's neighborhoods.	A primary intent is to ensure that wireless networks are implemented in the least visible manner and with the least disruptive impact on the City's neighborhoods.	The FCC prevents dictation of a cell provider's number and placement of facilities. This language may lead to conflict with that pre-empted space if utilized improperly. <i>See</i> 47 C.F.R. Section 24.103.
11.73.110(B)(3)	The use of an artificial monopalm or monopine design facility may be permitted in specific physical settings, but are not encouraged if other alternative stealthing methods are available.	The use of an artificial monopalm, design facility may be permitted in specific physical settings, but is not encouraged if other alternative stealthing methods, including other monotree designs, are available.	The changes just clarify that other tree designs are acceptable and that only monopalm designs are disfavored.

11.73.110(B)(3)(b)	Branching patterns for "monopine" or similar shall begin a minimum of 12 feet from the base of the structure.	Branching patterns for "monopine" or similar shall begin a minimum of 18 feet from the base of the structure.	It is much easier to reach (and climb) a tower with a 12-foot ladder than with an 18-foot ladder. For added safety and security, the bottom branches should begin at least 18 feet from the base. We will provide images of tree designs with branches beginning at his height.
11.73.110(B)(3)(f)	A maximum of nine (9) antenna panels may be installed per carrier permitted to collocate on any type of freestanding wireless telecommunication tower or structure.	Recommend deletion.	Most providers require more than 9 antenna panels. This requirement will often not be feasible. We will provide images of towers with more than 9 panels. Because this requirement is often not feasible, it could have the effect of prohibiting cell service in violation of 47 USC section 332(c)(7)(B)
11.73.110(C)(2)	For a freestanding wireless facility the maximum height shall be as low as possible to meet the applicant's defined service objectives and shall not exceed 55 feet.	For a freestanding wireless facility the maximum height shall be as low as possible to meet the applicant's defined service objectives and shall not exceed 60 feet.	Even though the landscape is relatively flat in Montclair, an additional five feet will better permit co-locators on the tower to provide service to the surrounding area and to rise above the surrounding trees and buildings.

11.73.110(D)(1)	No freestanding tower or ground mounted support equipment and enclosures shall be permitted in the front and/or street side setback areas.	Recommend deletion.	On many properties, the only feasible location for a tower is in the front or side street setback areas. Assuming all camouflaging and safety requirements are satisfied, there will be no negative impact from permitting a tower in these areas of a property.
11.73.110(D)(2)	In no case shall a freestanding tower, or any part thereof, be located within 25 feet of any property line of an abutting property with a residential use, including multifamily developments.	In no case shall the base of the monopole tower be located within 25 feet of any property line of an abutting property with a residential use, including multifamily developments.	The change simply clarifies where the setback should be measured from on the tower. Typically, this measurement is conducted from the base of the tower. The concern with the prior language would be that the setback might be measured from the end of the longest branch of a monotree or the ground installations associated with the tower.

11.73.110(N)	Ground-Mounted Facilities. Outdoor ground-mounted equipment associated with support structures and base stations shall be avoided whenever feasible. In locations visible or accessible to the public, applicants shall conceal outdoor ground-mounted equipment, including ancillary power generation equipment...	Ground-Mounted Facilities. In locations visible or accessible to the public, applicants shall conceal outdoor ground-mounted equipment, including ancillary power generation equipment...	Most towers utilize outdoor ground-mounted equipment. It will never be feasible to avoid outdoor ground-mounted equipment.
11.73.150(1)(2)	The design and placement of the wireless telecommunications facility complies with all applicable design and location standards, and will not adversely impact the use of the property, buildings and structures located on the property, or the surrounding area or neighborhood;	The design and placement of the wireless telecommunications facility complies with all applicable design and location standards, and will not adversely impact the surrounding area or neighborhood;	Typically, the property owner protects the use of the property, buildings, and structures located on the property through private negotiations of leases.

Again, we appreciate your willingness to take our input into consideration and for all of your assistance throughout this process. We look forward to being a good corporate citizen of Montclair. As always, we are happy to schedule a call to discuss any of the above suggestions (or any other questions or concerns you may have).

EXHIBIT D

Table 1

**STAFF’S RESPONSE (IN GRAY COLUMN) TO BCLP’S SUGGESTIONS
DATED JUNE 1, 2021**

Section	Prior Language	Suggested Amended Language	Reason for Alternative	Staff Responses
11.73.010	A primary intent is to ensure that wireless networks are implemented with the fewest possible facilities, in the least visible manner and with the least disruptive impact on the City's neighborhoods.	A primary intent is to ensure that wireless networks are implemented in the least visible manner and with the least disruptive impact on the City's neighborhoods.	The FCC prevents dictation of a cell provider's number and placement of facilities. This language may lead to conflict with that pre-empted space if utilized improperly. See 47 C.F.R. Section 24.103.	Staff made no changes to draft Ordinance
11.73.110 (B)(3)	The use of an artificial monopalm or monopine design facility may be permitted in specific physical settings, but are not encouraged if other alternative stealthing methods are available.	The use of an artificial monopalm, design facility may be permitted in specific physical settings, but is not encouraged if other alternative stealthing methods, including other monotree designs, are available.	The changes just clarify that other tree designs are acceptable and that only monopalm designs are disfavored.	Staff developed alternative language <i>Carrier has the option of using a stealth monotree design when its design fits into the visual context of the site and surrounding vistas.</i>
11.73.110 (B)(3)(b)	Branching patterns for "monopine" or similar shall begin a minimum of 12 feet from the base of the structure.	Branching patterns for "monopine" or similar shall begin a minimum of 18 feet from the base of the structure.	It is much easier to reach (and climb) a tower with a 12-foot ladder than with an 18-foot ladder. For added safety and security, the bottom branches should begin at least 18 feet from the base. We will provide images of tree designs with branches beginning at his height.	Staff modified language Branching patterns for "monopine" or a similar tree style shall be at least 12 feet above finished grade or higher depending on the design of the monotree and immediate visual context of the site, subject to approval by the Director of Community Development.

11.73.110 (B)(3)(f)	A maximum of nine (9) antenna panels may be installed per carrier permitted to collocate on any type of freestanding wireless telecommunication tower or structure.	Recommend deletion.	Most providers require more than 9 antenna panels. This requirement will often not be feasible. We will provide images of towers with more than 9 panels. Because this requirement is often not feasible, it could have the effect of prohibiting cell service in violation of 47 USC section 332(c)(7)(B)	<p>Staff developed alternative language</p> <p><i>No limit on the number of antenna panels for a wireless telecommunication tower or structure provided they fully integrated and/or concealed within a stealth design facility approved by the Director of Community Development.</i></p>
11.73.110 (C)(2)	For a freestanding wireless facility the maximum height shall be as low as possible to meet the applicant's defined service objectives and shall not exceed 55 feet.	For a freestanding wireless facility the maximum height shall be as low as possible to meet the applicant's defined service objectives and shall not exceed 60 feet.	Even though the landscape is relatively flat in Montclair, an additional five feet will better permit co-locators on the tower to provide service to the surrounding area and to rise above the surrounding trees and buildings.	<p>Staff developed alternative language</p> <p><i>For a freestanding wireless facility the maximum height shall be as low as possible to meet the applicant's defined service objectives and shall be limited to 60 feet in overall height as measured from the immediate finished grade of the facility to the highest finished point of the structure/facility.</i></p>
11.73.110 (D)(1)	No freestanding tower or ground mounted support equipment and enclosures shall be permitted in the front and/or street side setback areas.	Recommend deletion.	On many properties, the only feasible location for a tower is in the front or side street setback areas. Assuming all camouflaging and safety requirements are satisfied, there will be no negative impact from permitting a tower in these areas of a property.	<p>Staff made no changes to draft Ordinance</p>

11.73.110 (D)(2)	In no case shall a freestanding tower, or any part thereof, be located within 25 feet of any property line of an abutting property with a residential use, including multifamily developments.	In no case shall the base of the monopole tower be located within 25 feet of any property line of an abutting property with a residential use, including multifamily developments.	The change simply clarifies where the setback should be measured from on the tower. Typically, this measurement is conducted from the base of the tower. The concern with the prior language would be that the setback might be measured from the end of the longest branch of a monotree or the ground installations associated with the tower.	Staff made no changes to draft Ordinance
11.73.110 (N)	Ground-Mounted Facilities. Outdoor ground-mounted equipment associated with support structures and base stations shall be avoided whenever feasible. In locations visible or accessible to the public, applicants shall conceal outdoor ground-mounted equipment, including ancillary power generation equipment...	Ground-Mounted Facilities. In locations visible or accessible to the public, applicants shall conceal outdoor ground-mounted equipment, including ancillary power generation equipment...	Most towers utilize outdoor ground-mounted equipment. It will never be feasible to avoid outdoor ground-mounted equipment.	Staff developed alternative language <i>Outdoor ground-mounted equipment associated with support structures and base stations shall be avoided whenever feasible. All ground-mounted equipment must be stealth. The wireless facility shall be concealed within an existing structure, behind a decorative solid masonry wall enclosure, or other means of concealment consistent with the applicable standards of the Section as approved by the Director of Community Development.</i>
11.73.150 (1)(2)	The design and placement of the wireless telecommunication s facility complies	The design and placement of the wireless telecommunications facility complies with all	Typically, the property owner protects the use of the property, buildings, and	Staff made no changes to draft Ordinance

	with all applicable design and location standards, and will not adversely impact the use of the property, buildings and structures located on the property, or the surrounding area or neighborhood;	applicable design and location standards, and will not adversely impact the surrounding area or neighborhood;	structures located on the property through private negotiations of leases.	
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CITY OF MONTCLAIR
PLANNING COMMISSION

MEETING DATE: 7/12/2021

AGENDA ITEM 6.c

Case No.: 2021-18

Application: A request for a Conditional Use Permit (CUP) to operate a tattoo and piercing studio in an existing 2,654 square foot tenant space within the multi-tenant “Montclair Village Plaza.”

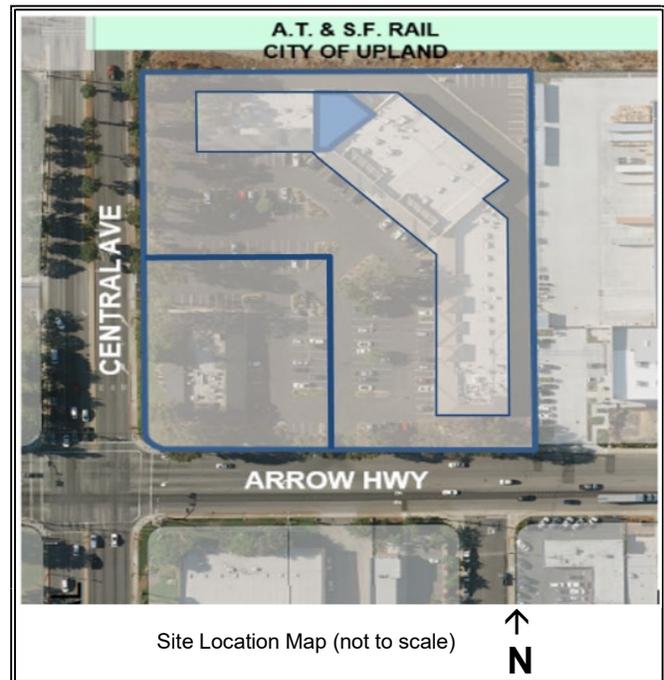
Project Address: 8801 Central Avenue, Unit F

Property Owner: Lee Pan Montclair, LLC on behalf of Esperanza Ink Tattoos

General Plan: General Commercial

Zoning: "C-3"
North Montclair Specific Plan (NMSP)

Assessor Parcel No.: 1007-661-18-0000
1007-661-19-0000



ADJACENT LAND USE DESIGNATIONS AND USES

	General Plan	Zoning	Actual Use of Property
Site	General Commercial	C3 – General Commercial (North Montclair Specific Plan)	Multi-Tenant Commercial Retail Center
North	City of Upland	City of Upland	City of Upland AT&SF Railway
East	Business Park	Manufacturing Industrial Park - MIP (North Montclair Specific Plan)	Industrial/Warehouse Use
South	General Commercial	C3 – General Commercial (North Montclair Specific Plan)	Commercial / Industrial Uses
West	Business Park	Town Center (TC)/Transition Overlay (North Montclair Downtown SP)	John’s Incredible Pizza Co.

Report on Item Number 6.c

PUBLIC HEARING – CASE NUMBER 2021-18

APPLICATION TYPE(S)	Conditional Use Permit
NAME OF APPLICANT(S)	Lee Pan Montclair LLC on behalf of Esperanza Ink Tattoos
LOCATION OF PROPERTY	8801 Central Avenue, Unit F
GENERAL PLAN DESIGNATION	General Commercial
ZONING DESIGNATION	C-3 - North Montclair Specific Plan
EXISTING LAND USE	Vacant tenant space
ENVIRONMENTAL DETERMINATION	Categorically Exempt (Section 15301)
PROJECT PLANNER	Yvonne Nemeth, Associate Planner

Project Description

The applicant is requesting approval of a Conditional Use Permit (CUP) to establish a tattoo and piercing studio in a lease space within the Montclair Village Plaza at the northeast corner of Central Avenue and Arrow Highway. The proposed business, "Esperanza Ink Tattoos," would occupy a lease space of approximately 2,654 square feet in size. The subject lease space is currently vacant. The scope of the proposed business is to provide tattoo and piercing services and sell art pieces, custom attire, and jewelry.

The tenant space is proposed to be improved with a waiting area, reception area, private office stations, restrooms, lounge, small conference room, hand washing station, and a retail area to display art paintings and prints, custom attire, and jewelry for sale. A total of eight (8) stations will be provided where tattoo and piercing services are performed are proposed, along with a clean room for sterilization of equipment and instruments. Services are by appointment only, during the hours of 10 a.m. to 8 p.m., daily. The business plan is designed to have up to eight (8) licensed tattoo artists with sessions that ranges between 2-8 hours per day.

The applicant also proposes to use the conference room for occasional family community activities one to two days a month such as paint nights, drawing classes, and art shows with approximately 5-15 attendees.

A booklet is provided showing a site plan and floor plan of the subject property, and includes a business description and the County of San Bernardino Health Permits for each tattoo artists are enclosed in the Commission packets for reference.

Background

- The subject site is located in the C-3 (General Commercial) zoning district of the North Montclair Specific Plan.
- The existing shopping center known as Montclair Village Plaza, contains a variety of uses, including a bakery, restaurants, auto supply, urgent care, and physical therapy businesses.
- Section 11.78.030.H.6 of the Montclair Municipal Code requires approval of a Conditional Use Permit for businesses engaging in dermagraphic services, including tattooing, body art, body piercing, and similar. By law, these services are only available to adults 18 and over unless parental consent is provided.
- According to California law, Health and Safety Code 119306(b), every person engaged in the business of tattooing, body piercing, or permanent cosmetics is required to register with the County Health Department in which they are doing business.
- Tattoo services are regulated by Sections 119300 through 119315 of the State Health and Safety Code, including the requirement that minors under 18 years of age have written parental consent before engaging in such services. Furthermore, the operator and technicians providing these services must be certified and licensed by the San Bernardino County Department of Health Services.

Planning Division Comments

Staff finds the proposed tattoo and piercing studio to be generally appropriate for the proposed location. The proposed salon is very similar to the tattoo studio/art gallery that was approved for a location in the 5600 block of Moreno Street, in that this business also offers fine art work and selected apparel items for sale. What differentiates this business from other salons is the desire of the owner to host small community-oriented activities a few times a month. The events would be held in a conference room during late afternoon or evenings when many of the other uses in the center are closed and parking is ample. Moreover, staff notes that tattoo salons have not generated any significant issues as a use and staff does not anticipate this particular business to be different. The shopping center where the proposed use will be located appears to be well managed and maintained.

As mentioned in previous reports for tattoo shops, the manner in which the business is operated has everything to do with how it is perceived. As with any business, professional appearance and management always makes a good impression. The owner of the business has indicated her commitment to operating the business in a manner that meets or exceeds all professional standards for their profession in terms of staff training and supervision, strict adherence to age guidelines and parental consent, cleanliness, Health Code, and waste disposal policy. According to the County of San Bernardino's Public

Environmental Health Department records, the applicant's current business in Upland at 912 N. Central Avenue has maintained a score between an A to A+ for the years 2017-2020. The applicant anticipates to close the Upland studio and relocate to Montclair. Staff is confident that the business owner is committed to operating the establishment in Montclair in the same professional manner. Further, it is in the property owner's best interest that this operation does not create a nuisance to the neighboring businesses in the center. With regard to public health and safety, the tattoo industry is regulated by the state.

Each business must be licensed and inspected by the County to ensure that it is legitimate, safe and clean. To comply with California law regarding tattooing or piercing, practitioners must verify that a client is at least 18 years of age with either valid photo identification or a notarized authorization letter from the legal parent or guardian. Violation of this penal code section is a misdemeanor.

According to the Police Department, there is nothing to indicate increased crime activity or other negative effects associated with this type of use in the City. However, one potential concern is with regard to loitering, or "hanging out" around the business. It is the City's expectation that the business owner and property owner will make every effort to discourage clients or would-be clients from loitering on or about the property. A condition of approval regarding loitering has been included to address this issue. Staff believes that if operated properly per the conditions of approval, the proposed tattoo salon will be appropriate and not detrimental to the surrounding area.

Conditional Use Permit Findings

Staff finds the request to operate a tattoo and piercing (dermagraphics) studio within the existing multi-tenant commercial center is consistent with the Montclair Municipal Code and believes the necessary findings for granting a CUP can be made as follows:

- A. The proposed tattoo and piercing studio is essential or desirable to the public convenience and public welfare, in that the use will provide the public with an approved and licensed venue to receive tattoos (including body art and/or piercing services) from a legitimate and properly licensed business.
- B. That granting of the permit will not be materially detrimental to the public welfare and to other property in the vicinity, in that the tattoo and piercing studio will be generally compatible with the mix of established businesses in the center and along Central Avenue, and poses no significant adverse impact. Further, conditions of approval have been added to address concerns regarding the operation of the business and appearance of the center in which it is located.
- C. The proposed tattoo and piercing studio at the subject location conforms to good zoning practice, in that such use is consistent with the C-3 (General Commercial) zoning district of the North Montclair Specific Plan and the requirements of Montclair Municipal Code, including, but not limited to, the requirement to obtain

approval of a CUP. The existing shopping center contains a variety of commercial uses that would be compatible to the proposed tattoo and piercing studios and retail sales of art and clothing. The proposed use as described will not generate any significant issues or conflicts with other adjacent uses so long as the subject use is well managed and operated.

- D. That such use at such location is not contrary to the objective of any part of the adopted General Plan, in that the General Plan recognizes the need for a variety of commercial uses and specialized personal services that cater to the diverse desires and needs of the community.

Public Notice

This item was advertised as a public hearing in the Inland Valley Daily Bulletin newspaper on July 2, 2021. Public hearing notices were mailed out to property owners within a 300-foot radius of the subject property in accordance with State law for consideration of this discretionary zoning entitlement. Courtesy notices were also mailed to surrounding tenants within the retail commercial center. At the time this report was prepared, no comments or inquiries had been received by staff regarding this proposal.

Environmental Assessment

The project qualifies as a Class 1 exemption under Section 15301 of the California Environmental Quality Act (CEQA) Guidelines, which exempts projects involving little to no expansion of existing structures or uses. The project does not involve an expansion of the existing structure or a fundamental change in the type of uses permitted by the underlying zoning code.

Planning Division Recommendation

Staff finds the proposed development to be consistent with the General Plan and Montclair Municipal Code and the adopted; therefore, approval of Case No. 2021-18 is recommended by taking the following actions:

- A. Move 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 1 exemption under State CEQA Guidelines Section 15301, because it is on a fully developed site and involves minor interior improvements and no changes to the site involving grading.
- B. Move to approve a Conditional Use Permit under Case No. 2021-18, approving the proposed tattoo and piercing studio, including related tenant improvements at 8801 Central Avenue, Unit F, per the submitted plans and as described in the staff report, subject to the conditions of approval in attached Resolution No. 21-1950.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Michael Diaz". The signature is fluid and cursive, with the first name "Michael" written in a larger, more prominent script than the last name "Diaz".

Michael Diaz
Director of Community Development

Attachments: Draft Resolution of Approval for Case No. 2021-18

c: Lee Pan Montclair, LLC, 3212 Orlando Rd., Pasadena, CA 91107-5538
Elena Maldonado, 912 N. Central Avenue, Upland, CA 91786

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RESOLUTION NUMBER 21-1950

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MONTCLAIR APPROVING A CONDITIONAL USE PERMIT UNDER CASE NO. 2021-18 TO ALLOW A DERMAGRAPHS (TATTOO) AND PIERCING STUDIO WITH LIMITED RETAIL IN THE "C-3" (GENERAL COMMERCIAL) ZONE OF THE NORTH MONTCLAIR SPECIFIC PLAN AT 8801 CENTRAL AVENUE, UNIT F (APN 1007-661-18-0000 & 1007-661-19-0000)

A. Recitals.

WHEREAS, on May 27, 2021, Lee Pan Montclair, LLC, property owner, filed an application for a Conditional Use Permit (CUP) on behalf of Elena Madonado, proprietor of Esperanza Ink Tattoos Studio, to allow a dermagraphics (tattoo) studio, piercing, and art gallery; and

WHEREAS, the application applies to a 2,654 square-foot commercial tenant space located at 8801 Central Avenue, Unit F; and

WHEREAS, Section 11.78.030.H.6 of the Montclair Municipal Code requires approval of a Conditional Use Permit for businesses engaging in dermagraphics which includes tattooing, body art, body piercing and the like; and

WHEREAS, the tattoo business operator and technicians providing said services must be certified and licensed by the San Bernardino County Department of Health Services; and

WHEREAS, The business owner/operator has indicated her commitment to operating the business in a manner that meets or exceeds all professional standards in terms of staff training and supervision, strict adherence to age guidelines and parental consent, cleanliness, health code, and waste disposal policy; and

WHEREAS, the business owner/operator is prohibited from rendering tattoo services to minors under 18 years of age without written parental consent per State Health and Safety Code Sections 119300 through 119315, inclusive; and

WHEREAS, staff has determined that the proposal meets the intent and requirements of the ordinance for such use and the applicable development standards of the "C-3" zoning district of the North Montclair Specific Plan (NMSP); and

WHEREAS, Planning Division staff has determined that the project is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15301 (Class 1), in that the proposal would not involve an expansion of the existing structure or result in a fundamental change in the type of uses

permitted by the underlying zoning code. In addition, there is no substantial evidence that the project will have a significant effect on the environment. The Planning Commission has reviewed the Planning Division's determination of exemption, and based on its own independent judgment, concurs with staff's determination of exemption and directs staff to prepare a Notice of Exemption; and

WHEREAS, a notice of public hearing was duly given and posted in the manner and for the time frame prescribed by law; and

WHEREAS, on July 12, 2021, commencing at 7:00 p.m. in the Council Chambers at Montclair City Hall, the Planning Commission conducted a public hearing at which time all persons wishing to testify in connection with said application were heard, and said application was fully studied.

A. Resolution.

NOW, THEREFORE, it is hereby found, determined, and resolved by the Planning Commission of the City of Montclair as follows:

1. This Commission hereby specifically finds that all of the facts set forth in the Recitals, Part A, of this Resolution are true and correct.
2. Based upon the substantial evidence presented to this Commission during the above-referenced public hearing on July 12, 2021, including written and oral staff reports, together with public testimony, this Commission hereby finds as follows:

Conditional Use Permit Findings

- A. The proposed tattoo and piercing studio is essential or desirable to the public convenience and public welfare, in that the use will provide the public with an approved and licensed venue to receive tattoos (including body art and/or piercing services) from a legitimate and properly licensed business.
- B. That granting of the permit will not be materially detrimental to the public welfare and to other property in the vicinity, in that the tattoo and piercing studio will be generally compatible with the mix of established businesses in the center and along Central Avenue, and poses no significant adverse impact. Further, conditions of approval have been added to address concerns regarding the operation of the business and appearance of the center in which it is located.
- C. The proposed tattoo and piercing studio at the subject location conforms to good zoning practice, in that such use is consistent with the C-3 (General Commercial) zoning district of the North Montclair Specific Plan

and the requirements of Montclair Municipal Code, including, but not limited to, the requirement to obtain approval of a CUP. The existing shopping center contains a variety of commercial uses that would be compatible to the proposed tattoo and piercing studios and retail sales of art and clothing. The proposed use as described will not generate any significant issues or conflicts with other adjacent uses so long as the subject use is well managed and operated.

- D. That such use at such location is not contrary to the objective of any part of the adopted General Plan, in that the General Plan recognizes the need for a variety of commercial uses and specialized personal services that cater to the diverse desires and needs of the community.
3. Planning Division staff has determined that the project is categorically exempt from the requirements of the California Environmental Quality Act (CEQA). The project qualifies under the Class 1 exemption under State CEQA Guidelines Section 15301, which exempts projects involving little to no expansion of existing structures and no fundamental change in the type of uses permitted by the underlying zoning code. In addition, there is no substantial evidence that the project will have a significant effect on the environment. The Planning Commission has reviewed the Planning Division's determination of exemption and, based on its own independent judgment, concurs with staff's determination of exemption and directs staff to prepare a Notice of Exemption.
4. Based upon the findings and conclusions set forth in the paragraphs above, this Commission hereby approves the application subject to each and every condition set forth below.

Planning

1. The Conditional Use Permit (CUP) shall be granted to allow the operation of a dermagraphics (tattoo) and piercing studio as described in the staff report. The business shall be limited to a 2,654 square-foot lease space at 8801 Central Avenue, Unit F. Any substantial changes to the operation, increase in floor area, or physical location shall require prior review and approval from the City of Montclair.
2. Conditional Use Permit (CUP) approval shall be valid for a period of six (6) months from the date of Planning Commission approval. The applicant and/or property owner shall be responsible to apply for a time extension at least 30 days prior to the approval's expiration date. No further notice from the City will be given regarding the project's CUP expiration date. Suspension of the approved use for a period of six months or more voids the CUP for the specified use.
3. Within five (5) days of approval by the Planning Commission, the applicant shall submit the following payments to the Planning Division:

- a. A check in the amount of **\$50**, payable to “Clerk of the Board of Supervisors,” to cover the County administrative fee for filing a Notice of Exemption as required by the California Environmental Quality Act (CEQA).
 - b. A check in the amount of **\$843.05**, payable to the “City of Montclair,” to cover the actual cost of publishing a Notice of Public Hearing in a newspaper of general circulation (Inland Valley Daily Bulletin) as required by state law.
4. This permit may be modified or revoked, after the Planning Commission has conducted a public hearing, for failure to abide by any conditions of this CUP or the Montclair Municipal Code, or in the event that the use is determined to be a nuisance to surrounding properties, businesses, or the community at large.
5. The applicant and property owner shall sign an Affidavit of Acceptance form and submit the document to the Planning Division within 30 days of receipt of the Planning Commission Resolution.
6. The applicant and/or property owner shall ensure that a copy of the Planning Commission Resolution is posted on the premises and available for viewing upon request by Police and/or Code Enforcement personnel.
7. Approval of this CUP shall not waive the requirement for compliance with any regulations as forth in the California Building Code, City ordinances, or by the San Bernardino County Health Department.
8. All applicable federal, state and local health department requirements and rules (Chapter 7 of Part 15, of Division 104 of the Health and Safety Code, commencing with Section 119300) regulating such tattoo and body piercing operations shall be strictly adhered to, such as, but not limited to, maintaining proper sterilization, sanitation, and safety standards; provision of wash basins, containers for needle disposal, first aid kit, and CPR certification.
9. The operator of the establishment shall obtain and maintain a current City business license at all times.
10. Notice of change of ownership of the facility shall be provided in writing to the Director within 30 days of said change. In the event of transfer of ownership of the property involved in this application, the new owner shall be fully informed of the permitted use and development of said property as set forth by this permit together with all conditions which are a part thereof.

11. Hours of operation shall be limited to, by appointment only, between 10:00 a.m. to 8:00 p.m., daily. Any changes in the approved hours shall be subject to the review and approval of the Community Development Director and/or Planning Commission.
12. Persons under 18 years of age shall not be permitted to receive tattoo or body-piercing services without written consent of a parent or legal guardian pursuant to the requirements of California law. Posting of such age restriction in English and Spanish shall be conspicuous to the public.
13. No tattooing shall be administered unless the patrons are wearing appropriate clothing and/or towels that fully cover genitals. The breasts of female patrons shall be covered.
14. The conference room shall be limited to a maximum of 15 individuals for any family community activities for paint nights, drawing classes, and/or art shows. All attendees are encouraged to carpool. Applicant shall conduct due diligence to strongly observe parking issues when planning for any family community activities.
15. No form of alcoholic beverages are allowed to be served or sold to customers inside or outside of the tattoo and piercing studio. The sale and serving of alcoholic beverages for consumption is strictly prohibited for this use.
16. No window tinting, paint, or other similar devices which obstruct views into the tenant space shall be allowed on the storefront glass of the subject lease space. Operable window coverings may be installed on the interior partition windows of the work areas to provide privacy for clients when services are being performed.
17. No permanent facade-mounted or monument signs are approved as part of this entitlement. Should the applicant desire to install any business identification signs, plans shall be submitted by a duly licensed sign contractor to the Planning and Building Divisions for review and approval prior to installation of said sign(s). The applicant shall comply with the adopted sign program for the subject property and with sign regulations of the City of Montclair. All work shall be professionally installed by a duly licensed sign contractor, to the satisfaction of the City Planner.
18. Temporary promotional signs shall comply with Chapter 11.72 of the Montclair Municipal Code, including, but not limited to, the following:
 - a. Temporary banners for the purpose of announcing the grand opening or advertising promotions shall require banner permits from the Planning Division prior to installation.

- b. Promotional window signs shall not occupy more than 25 percent of the aggregate window area.
 - c. At no time shall pennants, inflatable signs, "human" signs, other similar advertising devices be utilized on the property or off-site.
19. No portable signs (e.g., A-frames) shall be permitted on the exterior of the building or mounted/attached to vehicles.
 20. Graffiti on the building or associated improvements shall be removed immediately by the applicant/property owner upon notification by the City. Paint utilized in covering such graffiti shall be of a color that matches, as closely as possible, the color of the adjacent surfaces.
 21. Any sign that identifies a business that is no longer in operation, or that identifies an activity or event that has already occurred, or a product that is no longer made, shall be considered abandoned and shall be removed by the owner, agent, or person having use of the building or structure. Upon vacating a commercial or industrial establishment, the property owner shall be responsible for removal of all signs (including patch, repair, and repaint) used in conjunction with former businesses.
 22. The applicant and/or property owner shall maintain the area surrounding the business in a clean and orderly manner at all times. The property owner and business operator shall be responsible to monitor the area outside the dermagraphics studio.
 23. The on-site manager of the dermagraphics studio shall take whatever reasonable steps are deemed necessary to prevent loitering and/or assure the orderly conduct of its employees, patrons, and visitors on the premises. A minimum of one (1) 'No Loitering' sign(s) shall be installed in plain view at the business.
 24. No public telephones, vending machines, or other coin-operated machines shall be located on the exterior of the building.
 25. To ensure compliance with the conditions of the approval, a final inspection is required from the Building and Planning Divisions upon completion of construction and all improvements. The applicant shall contact the City to schedule an appointment for such inspections.
 26. The applicant shall indemnify, protect, defend, and hold harmless, the City, and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, from any and all claims, demands, law suits, writs of mandamus, and other actions and proceedings (whether legal, equitable, declaratory, administrative, or

adjudicatory in nature), and alternative dispute resolutions procedures (including, but not limited to arbitrations, mediations, and other such procedures), (collectively “Actions”), brought against the City, and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, that challenge, attack, or seek to modify, set aside, void or annul, the any action of, or permit or approval issued by the City and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities, thereof (including actions approved by the voters of City), for or concerning the project, whether such actions, are brought under the California Environmental Quality Act, the Planning and Zoning Law, the Subdivision Map Act, Code of Civil Procedure Section 1085 or 1094.5, or any decision of a court of competent jurisdiction. It is expressly agreed that the City shall have the right to approve, which approval will not be unreasonably withheld, the legal counsel providing the City’s defense, and that applicant shall reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. City shall promptly notify the applicant of any action brought and City shall cooperate with the applicant in the defense of the Action.

Building

27. Prior to issuance of building permits, the applicant shall complete the following Building Division requirements:

Submit 3 complete sets of plans for any Tenant Improvement project including the following:

- a. Site/Plot Plan.
- b. Floor Plan.
- c. Reflected Ceiling Plan.
- d. Electrical Plans including the size of the main switch, number and size of service entrance conductors, panel schedules, and single line diagrams.
- e. Plumbing plans, including isometrics, underground diagrams, water and waste diagram, fixture units, gas piping, and heating and air conditioning.
- f. Provide an existing plan of the building including all walls to be demolished.
- g. Waste recycling plan, recycling 65 percent of all construction debris.

28. The applicant shall comply with the latest adopted California Building Code, and other applicable codes, ordinances, and regulations in effect at the time of permit application. These applicable codes shall be indicated on the first page of submitted plans.
29. Submit two sets of structural calculations, if required, and two sets energy conservation calculations.
30. Architect's/Engineer's stamp and "wet" signature are required prior to plan check approval.
31. Clearly indicate on submitted plans disabled-accessible path(s) of travel to the public right-of-way from the affected area of new construction or renovation. All required disabled-accessible parking lot signs, sidewalks, paths-of-travel, and curb cuts shall comply with the requirements of the California Building Code, Title 24. The maximum cross-slope on a sidewalk or path-of-travel shall not exceed two percent (2%).
32. Exposed raceways shall be prohibited on all building-mounted and freestanding signs. An architectural sign backing/raceway may be allowed on the commercial building subject to review and approval by the City Planner.
33. All construction work carried out under the review of the Building Division shall be of good quality. The Building Official shall have the authority to enforce the installation of work that is straight, level, plumb, square, etc., as the situation requires. All work shall be well fit and of a durable nature. Paint and stucco in all cases shall not be below standard for the use applied.
34. Decorative foam trim shall not be used in areas subject to damage such as entry doors, garage doors, etc. Use of decorative foam shall not be allowed to be used below the second story.
35. Each unit shall have individual and independent one-hour separation walls enveloping each assigned airspace or unit and independent utility meters, sewer and water connections and fire protection systems, subject to the review and approval of the Public Works, Community Development and Fire Departments.
36. Construction drawings submitted to the Building Division for plan check review shall comply with Montclair Security Ordinance No. 357.
37. All roof-mounted equipment, satellite dish antennas, and other similar apparatus shall be screened from public view in a manner incorporated into the architectural design of the building to the satisfaction of the Planning Division.

38. Fire sprinkler risers and roof access ladders shall be located entirely within the enclosed buildings. Double-detector check facility shall be adequately screened by landscaping or an architectural screen wall.

Police

39. In conjunction with the ongoing operation of the business, the premises shall comply with all applicable local, State, and Federal requirements placed upon them by any regulatory or governing entity.
40. The activity level of the business shall be monitored by the Police Department to establish the level of police services used for the business. Should the level of police services demonstrate that the applicant has not controlled excessive, or unnecessary activity resulting in high use of police services then this Conditional Use Permit shall be reviewed for consideration of further conditions, modifications or revocation.
41. There shall be no special promotional events held on the property, unless a written request for such is received and approved by the Community Development Director and the Police Chief or their designee.
42. If applicable, the parking lot of the premises shall be equipped with lighting of sufficient power to illuminate and make easily discernible the appearance and conduct of all persons on or about the parking lot.
43. The premises shall install and maintain a closed circuit video surveillance (CCVS) system. The system shall at minimum be capable of monitoring all entrances/exits to the premises and be positioned as to allow for identification of patron facial features and physical characteristics. Typical acceptable camera angles range from 50-130 degrees. Cameras shall be capable of no less a resolution than 1920×1080 pixels, otherwise known as 1080p. Cameras shall be capable of no less a resolution than 1920×1080 pixels, otherwise known as 1080p. All cameras shall have IR or low light capability.
44. Audio recording is desirable, but not a requirement. Camera footage shall be retained for a period no less than 90 days. To conserve storage space, cameras may reduce frame-rate when no motion is detected, however must record at no less than 30 frames per second when motion is detected. Motion sensors shall be configured to activate properly in all areas covered including the parking area, if applicable. Motion sensors may be configured to prevent incidental activation from hanging or moving displays. Depending on the nature of the premises, additional cameras may be required.

45. Alarm systems are encouraged to compliment the CCVS system. Current responsible party information shall be on file with the Police Department for appropriate response and notifications.

The Secretary to this Commission shall certify to the adoption of this Resolution.

APPROVED AND ADOPTED THIS 12TH DAY OF JULY, 2021.

PLANNING COMMISSION OF THE CITY OF MONTCLAIR, CALIFORNIA

By: _____

ATTEST: _____
Michael Diaz, Secretary

I, Michael Diaz, Secretary of the Planning Commission of the City of Montclair, do hereby certify that the foregoing Resolution was duly and regularly introduced, passed, and adopted by the Planning Commission of the City of Montclair, at a regular meeting of the Planning Commission conducted on the 12th day of July, 2021, by the following vote, to-wit:

AYES:

NOES:

ABSENT:

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