

MINUTES OF THE REGULAR JOINT MEETING OF THE MONTCLAIR CITY COUNCIL, SUCCESSOR AGENCY AND MONTCLAIR HOUSING CORPORATION BOARDS, MONTCLAIR HOUSING AUTHORITY COMMISSION, AND MONTCLAIR COMMUNITY FOUNDATION BOARD HELD ON MONDAY, AUGUST 1, 2022 AT 7:00 P.M. IN THE CITY COUNCIL CHAMBERS, 5111 BENITO STREET, MONTCLAIR, CALIFORNIA

I. CALL TO ORDER

Mayor/Chair Dutrey called the meeting to order at 7:00 p.m.

II. INVOCATION

Council Member Johnson gave the invocation.

III. PLEDGE OF ALLEGIANCE

Mayor Pro Tem/Vice Chair Ruh led meeting participants in the Pledge.

IV. ROLL CALL

Present: Mayor/Chair Dutrey; Mayor Pro Tem/Vice Chair Ruh; Council Members/Directors Johnson, Martinez, and Lopez

City Manager/Executive Director Starr; Director of Community Development Diaz; Assistant City Manager/Director of Human Services Richter; Executive Director of Public Safety/Police Chief Avels; City Attorney Robbins; City Clerk Myrick

V. PRESENTATIONS — None

VI. PUBLIC COMMENT

- A. **Mrs. Carolyn Raft**, Board Trustee, **West Valley Mosquito and Vector Control District (WVMVCD)**, reported that **WVMVCD** has found mosquitoes that tested positive for West Nile Virus (WNV) in Upland, Rancho Cucamonga, Chino, and Ontario; however, the sample in Montclair tested negative for WNV. She advised residents should be careful and wear protection when enjoying a beer outdoors on these warm summer evenings.
- B. **Mr. Vincent Tsai** introduced himself as a candidate for California State Senate, District 22. He provided his background as a Deputy of the **Los Angeles County Sheriff's Department**, and stated he is running to make a difference in his community, mainly due to an increase in crime. He stated he also would like to reduce the gas tax and stop the state from throwing money away on trying to address homelessness and instead direct the money toward drug abuse and mental illness, which he feels are the root causes of homelessness.

VII. PUBLIC HEARINGS

- A. **Consider Adoption of Resolution No. 22-3374 Ordering the Submission to the Voters of the City of Montclair a Measure to Consider a General Business License Tax on Commercial Retail Sales of Cannabis at the General Municipal Election to be Held on Tuesday, November 8, 2022; Directing the City Attorney to Prepare an Impartial Analysis of the Measure; and Providing for the Filing of Arguments and Rebuttal Arguments in Favor of and Against the Measure**

Consider Adoption of Resolution No. 22-3375 Ordering the Submission to the Voters of the City of Montclair an Advisory Measure for the City Council to Consider and Approve Ordinances Legalizing and Licensing Medical and Adult-Use Cannabis Business in the City of Montclair at the General Municipal Election to be Held on Tuesday, November 8, 2022; Directing the City Attorney to Prepare and Impartial Analysis Of the Advisory Measure; And Providing for the Filing of Arguments and Rebuttal Arguments in Favor of and Against the Advisory Measure

Consider Authorizing the City Attorney to Complete a Final Review of, and Make Any Revisions Necessary to, Resolution Nos. 22-3374 and 22-3375 Prior to Submission to the San Bernardino County Registrar of Voters for Inclusion of the Two Measures on the Ballot at the November 8, 2022 General Municipal Election

First Reading — Consider Ordinance No. 22-999 Adding Chapter 4.76 to Title 4 of the Montclair Municipal Code Related to Imposing a Cannabis Business License Tax (Subject to Final Approval by the Voters at the Tuesday, November 8, 2022 General Municipal Election)

Consider Setting a Public Hearing for Second Reading and Adoption of Ordinance No. 22-999 for Monday, August 15, 2022, at 7:00 p.m.

City Manager Starr provided a thorough presentation on the matters to be considered, including amendments to the item after the agenda report was published.

Mayor Dutrey declared it the time and place set for public hearing to consider Resolution Nos. 22-3374 and 22-3375 and Ordinance No. 22-999 and invited comments from the public.

Mrs. Raft stated she is glad to see this issue will finally be going to the voters and wished the City luck on the measure's passage. She stated people will sell, purchase, and use cannabis whether or not it is legal, and the City might as well legalize it for the tax revenue.

Mr. Mark Ramos, President, **United Food and Commercial Workers International Union (UFCW) Local 1428**, expressed his support for the City legalizing and taxing cannabis businesses. He proposed lowering the tax cap, noting he feels 10 percent is high. He stated **UFCW** was the only labor union that endorsed Proposition 64 and he would be happy to work with the City to develop the regulations should the measure pass.

Mr. Bruce Culp, resident, stated for clarification that it is currently legal for residents to possess and grow up to a certain amount of cannabis. He emphasized the necessity to be clear that residents are not voting to legalize what is already legal, but that they are voting on the legalization of the sale of cannabis.

Mr. Matthew Nathaniel stated he looks forward to this measure moving forward and reiterated the tax rate cap is high, noting most jurisdictions are setting the taxes at four to six percent or below and some are even suspending the taxes temporarily so that the new businesses can get established. He added cannabis businesses are already heavily tax burdened and they do not have the ability to write off tax deductions like other businesses. He warned setting the tax too high could scare away established businesses and attract new operations that are inexperienced and do not understand how to operate responsibly. He also mentioned the importance of crafting a fair and thorough process for selection.

There being no one else in the audience wishing to speak, Mayor Dutrey closed the public hearing and returned the matter to the City Council for its consideration.

Mayor Dutrey received clarification on the following:

- The City Council can set the tax anywhere from 0 to 10 percent;
- Staff's original franchise fee proposal may still be an option if the tax is not approved, as it is not considered a tax but rather would involve a franchise agreement with an operator as opposed to a business license;
- The City Council could provide operators with the option to apply for a business license or enter into a franchise agreement;
- The regulatory ordinances would be updated and presented for approval if the City Council decides to legalize cannabis businesses; and

- The original regulatory ordinances provided for a community benefit contribution from cannabis business operators.

Mayor Pro Tem Ruh stated his concerns as follows:

- The City should have regulations drafted and ready before asking the residents to vote on legalization or a tax.
- Other cities that have legalized cannabis businesses have included provisions that benefit the community, such as donations to local nonprofits, hiring a percentage of employees who live in the city, restricting payment of wages in product, and providing a living wage.
- The City should not look to legalize something just because the state allows it, comparing it to the upcoming statewide measure proposing to legalize gambling outside of reservations. He suggested the City would not try to do the same if it passes.
- The ballot language is long and confusing and should simply ask if the sale of marijuana should be legal in the City of Montclair.

Mayor Dutrey stated the cannabis industry has changed over the past decade in terms of taxes, regulations, delivery, and public sentiment. He stated the voters put elected officials in office to make decisions, and if legalized sale of cannabis is what the voters want, then the City Council must ensure that the regulations include increased economic opportunities, ensure the businesses don't cause increased crime or other public nuisances, and require the businesses contribute to the community in a positive way.

Council Member Johnson stated the City Council's job is to do what the voters want. She added the voters of Montclair approved Proposition 64 and indicated their support for legalizing and taxing cannabis businesses in the City in the **FM3** survey.

Council Member Lopez stated his concerns as follows:

- Cannabis businesses are currently lobbying to reduce taxes where they are operating.
- Staff may make it difficult for the City Council to change the tax rate and use delay tactics such as requesting to evaluate the fiscal impact of changing the tax.
- If there is so much confidence, this should be pushed as a special tax requiring 2/3 voter approval to increase funding for the Police and Fire Departments and have 1 percent go toward community benefits.
- Having a high tax cap of 10 percent could make the City less competitive with other cities due to the possibility of raising the tax up to 10 percent at any time.
- He does not like the current Community Benefit Fund application process requiring nonprofits to apply and compete for funds and would want an entirely separate process associated with cannabis business tax revenues.

Mayor Pro Tem Ruh concurred with Council Member Lopez and stated he thinks the City Council should not rush to implement this now and instead take time to develop and adopt the regulations and then put it on the ballot next year at a special election.

City Attorney Robbins advised taxes cannot be placed on the ballot for a special election, but the legalization question could be voted on at a special election.

Council Member Martinez stated her opinion that delaying the vote in favor of implementing regulations is no different than taking away the voters' ability to weigh in on the matter first. She asked for clarification on the advisory measure being included with the tax measure.

City Manager Starr advised the state can issue a cannabis business licenses to businesses that want to operate in a city that allows such businesses but does not have its own local regulations in place. However, often times the state will assume a city is already open for cannabis business if they are putting forth a cannabis tax measure. He noted having the advisory question in conjunction with the tax question will signal to the state that the City Council still maintains the authority of determining whether cannabis businesses can operate in the City.

Council Member Martinez stated, while she likes many of the ideas Mayor Pro Tem Ruh and Council Member Lopez are suggesting, she believes the City Council should let the residents vote on the question of legalization and, when the regulations are drafted, the City Council can ensure the revenues go to support matters that are important to the residents like public safety and addressing homelessness.

*Moved by Mayor Dutrey, seconded by Council Member Johnson, and carried 5-0, the City Council took the following actions:

- (a) Adopted Resolution No. 22-3375 ordering the submission to the voters of the City of Montclair an Advisory Measure for the City Council to consider and approve ordinances legalizing and licensing medical and adult-use cannabis business in the City of Montclair at the General Municipal Election to be held on Tuesday, November 8, 2022; directing the City Attorney to prepare and impartial analysis of the Advisory Measure; and providing for the filing of arguments and rebuttal arguments in favor of and against the Advisory Measure; and
- (b) Authorized the City Attorney to complete a final review of, and make any revisions necessary to, Resolution No. 22-3375 prior to submission to the San Bernardino County Registrar of Voters for inclusion of the Advisory Measure on the ballot at the November 8, 2022 General Municipal Election.

Mayor Pro Tem Ruh stated his “yes” vote was against his better judgment.

*Mayor Dutrey moved to request the City Manager prepare a policy for the procedure to be used to allocate funds generated from cannabis businesses to community benefits, which would be incorporated into the cannabis regulations at a future date if the voters adopt the tax. Council Member Johnson seconded the motion. The motion passed 3-2 (Ruh and Lopez dissenting).

*Moved by Mayor Dutrey, seconded by Council Member Johnson, and carried 4-1 (Ruh opposed), the City Council took the following actions:

- (a) Adopted Resolution No. 22-3374 ordering the submission to the voters of the City of Montclair a Measure to consider a general business license tax on commercial retail sales of cannabis at the General Municipal Election to be held on Tuesday, November 8, 2022; directing the City Attorney to prepare an impartial analysis of the Measure; and providing for the filing of arguments and rebuttal arguments in favor of and against the Measure; with the following revision to the ballot question:

Shall the measure funding general Montclair services, including supporting 911/police/fire response; preventing thefts/property crime; recruiting/retaining firefighters, paramedics; retaining local business/ jobs; repairing streets/potholes; addressing homelessness; by taxing cannabis retail, delivery, cultivation, manufacturing/testing businesses at a rate of not more than 10% <u>7%</u> of gross receipts, raising about \$3,500,000 annually, until ended by voters, requiring audits, spending disclosure, funds used locally, cannabis businesses follow laws protecting public health/safety, be adopted?	YES
	NO

- (b) Authorized the City Attorney to complete a final review of, and make any revisions necessary to, Resolution No. 22-3374 prior to submission to the San Bernardino County Registrar of Voters for inclusion of the Measure on the ballot at the November 8, 2022 General Municipal Election;
- (c) Revised Ordinance No. 22-999 as follows:
 - C. The maximum rate of the cannabis tax shall be calculated as follows:
 - 1. For every person who engages in commercial cannabis cultivation shall be subject to the maximum tax rate not to exceed ~~ten percent (10%)~~ seven percent (7%) of gross receipts.
 - 2. For every person who engages in the operation of a testing laboratory for cannabis or cannabis products shall be subject to the maximum tax rate not to exceed ~~ten percent (10%)~~ seven percent (7%) of gross receipts.
 - 3. For every person who engages in the retail sales of cannabis as a retailer (dispensary) or non-store front retailer (delivery business), or microbusiness (retail sales activity) shall be subject to the maximum tax rate not to exceed ~~ten percent (10%)~~ seven percent (7%) of gross receipts.
 - 4. For every person who engages in a cannabis distribution business for cannabis or cannabis products shall be subject to the maximum tax rate not to exceed ~~ten percent (10%)~~ seven percent (7%) of gross receipts.
 - 5. For every person who engages in cannabis manufacturing, processing, or microbusiness (non-retail activity) or any other type of cannabis business not described in Section 4.76.040 (C) (1), (2), (3) or (4), the maximum tax rate shall not exceed seven percent (7%) of gross receipts.
- (d) Conducted the first reading of revised Ordinance No. 22-999 adding Chapter 4.76 to Title 4 of the Montclair Municipal Code related to imposing a cannabis business license tax (subject to final approval by the voters at the Tuesday, November 8, 2022 General Municipal Election) by number and title only and waived further reading;
- (e) Set a public hearing for Monday, August 15, 2022, at 7:00 p.m. to consider second reading and adoption of Ordinance No. 22-999.

First reading of Ordinance No. 22-999 was approved by the following 4-1 vote:

AYES: Lopez, Martinez, Johnson, Dutrey
 NOES: Ruh
 ABSTAIN: None
 ABSENT: None

Council Member Lopez stated his difficulty voting for this motion, reiterating that he supports cannabis businesses that are conducted in a legal manner that benefit and contribute to the community; however, his hesitance to support moving forward with the tax lies in what he feels is a lack of assurances.

VIII. CONSENT CALENDAR

Mayor Pro Tem Ruh requested Item C-2 be pulled from the Consent Calendar.

Council Member Johnson asked for clarifications on Item C-1.

Mayor Dutrey entertained discussion on Item C-1 prior to vote on the Consent Calendar.

Moved by Council Member/Director Lopez, seconded by Mayor/Chair Dutrey, and carried unanimously 5-0, the City Council pulled Item C-2 and approved the remainder of the Consent Calendar as presented, with discussion on Item C-1:

A. Approval of Minutes

1. Regular Joint Meeting — July 18, 2022

The City Council, Successor Agency Board of Directors, Montclair Housing Corporation Board of Directors, Montclair Housing Authority Commissioners, and Montclair Community Foundation Board of Directors approved the minutes of the July 18, 2022 regular joint meeting.

B. Administrative Reports

1. Approval of City Warrant Register and Payroll Documentation

The City Council approved the Warrant Register dated August 1, 2022, totaling \$2,245,025.07; and the Payroll Documentation dated June 19, 2022, amounting to \$882,130.81 gross, with \$588,432.27 net being the total cash disbursement.

2. Authorizing the Use of State Asset Forfeiture Funds for the Purchase and Installation of Additional Shelves and Shelf Dividers for the Police Department Evidence Storage Room

The City Council authorized the use of State Asset Forfeiture Funds for the purchase and installation of additional shelves and shelf dividers for the Police Department evidence storage room.

3. Authorizing the Destruction of Certain Obsolete Public Records Pursuant to the City of Montclair Records Retention Schedule

The City Council authorized the destruction of certain obsolete public records pursuant to the City of Montclair Records Retention Schedule.

4. Approval of the Payment for a One-Year Subscription Renewal of Zengine Application Software for the Montclair to College Program Through Wizehive, Inc.

The City Council acting as successor to the Montclair Community Foundation Board approved the payment for a one-year subscription renewal of Zengine application software for the Montclair to College Program through Wizehive, Inc.

C. Agreements

1. Approval of Agreement No. 22-54 Amending Agreement No. 17-30 with Mariposa Landscapes, Inc. for Landscape Maintenance Services, Subject to Any Revisions Deemed Necessary by the City Attorney

Council member Johnson asked if trash around the City would be picked up daily.

City Manager Starr stated trash would be picked up on the medians during days Mariposa is working, Monday through Friday.

Council Member Lopez asked if the Pacific Electric Trail is only to be cleaned and maintained once per month.

City Manager Starr stated that is correct, however City staff also ensures the trail is kept clean and the City is responsible for a very short segment of the trail.

The City Council approved *Agreement No. 22-54* amending *Agreement No. 17-30* with Mariposa Landscapes, Inc. for landscape maintenance services, subject to any revisions deemed necessary by the City Attorney.

3. **Approval of *Agreement No. 22-82* with Liebert Cassidy Whitmore for Participation in the East Inland Empire Employment Relations Consortium and Premium Liebert Library Subscription, Subject to Any Revisions Deemed Necessary by the City Attorney**

The City Council approved *Agreement No. 22-82* with Liebert Cassidy Whitmore for participation in the East Inland Empire Employment Relations Consortium and Premium Liebert Library Subscription, subject to any revisions deemed necessary by the City Attorney.

D. Resolutions

1. **Adoption of Resolution No. 22-3369 Authorizing Placement of Assessments on Certain Properties for Delinquent Sewer and Trash Accounts**

The City Council adopted Resolution No. 22-3369 authorizing placement of assessments on certain properties for delinquent sewer and trash accounts.

IX. PULLED CONSENT CALENDAR ITEMS

C. Agreements

2. **Approval of *Agreement No. 22-70* with Pivotal Strategies LLC for Community Education and Outreach Services Related to a Proposed Ballot Measure to Establish a Commercial Cannabis Tax Subject to Any Revisions Deemed Necessary by the City Attorney**

Mayor Pro Tem Ruh asked about the funding source and whether the educational materials would consist of pros and cons of the measure.

City Manager Starr indicated the contract would be paid from the Economic Development Fund, and concurred that the type of educational materials would be similar to those produced for Measure L in 2020.

Council Member Lopez stated he has concerns with extrapolating polling data for the educational materials and emphasized he does not want to see any mention of “protecting drinking water sources.”

City Attorney Robbins advised she would carefully review and ensure the materials are focused on educating rather than advocating for the measure.

Mayor Pro Tem Ruh stated he would like to receive a copy of the materials to review before they are published.

City Manager Starr stated that could be provided to all Council Members.

Moved by Mayor Dutrey, seconded by Council Member Martinez, and carried 3-2 (Lopez and Ruh dissenting), the City Council approved *Agreement No. 22-70* with Pivotal Strategies LLC for community education and outreach services related to a proposed ballot measure to establish a commercial cannabis tax subject to any revisions deemed necessary by the City Attorney.

X. COMMUNICATIONS

A. Department Reports

1. **Police Department — National Night Out**

Executive Director of Public Safety/Police Chief Avels invited the City Council and the community to National Night Out taking place at Alma Hofman Park the following evening at 6:30 p.m.

B. City Attorney

City Attorney Robbins requested the City Council meet in closed session concerning the following:

1. Closed Session Pursuant to Government Code Section 54957.6 Regarding Conference with Designated Labor Negotiator Edward C. Starr

Agency: City of Montclair

Employee Management

*Organizations: Montclair City Confidential Employees Assn.
Montclair General Employees Association
Montclair Fire Fighters Association
Montclair Police Officers Association*

2. Closed Session Pursuant to Government Code Section 54957 Regarding Public Employee Discipline/Dismissal/Release

3. Closed Session Pursuant to Government Code Section 54956.9(d)(1) Regarding Pending Litigation

Garcia v. Lopez, City of Montclair, et al.

Fuentes v. Lopez, City of Montclair, et al.

C. City Manager/Executive Director — None

D. Mayor/Chair

Mayor Dutrey stated this evening’s meeting would be adjourned in memory of **Mr. Robert “RC Bob” Dutton, Ms. Linda Elaine Camacho, and Mr. Fred “Lico” M. Rodela.**

E. Council Members/Directors

1. Council Member/Director Martinez encouraged everyone to donate blood tomorrow before National Night Out, noting the blood drive runs from 2:00 p.m. through 8:00 p.m. in the Community Center.

2. Council Member/Director Johnson announced **OPARC** will be holding a two-day hiring event at its office located at 9029 Vernon Avenue, Montclair, on August 9th and 11th from 9:00 a.m. to noon and 4:00 p.m. to 7:00 p.m. on each day.

3. Council Member/Director Lopez stated he was personally acquainted with **Mr. Dutton** and **Ms. Camacho** and was sad to hear of their passing.

4. Mayor Pro Tem/Vice Chair Ruh made the following comments:

(a) He stated **Rhino Records** in Montclair will be holding a grand opening event on August 5th.

(b) He spoke fondly of **Mr. Dutton**, having worked with him when **Mr. Dutton** was president of the Inland Empire’s **Building Industry Association** in 1988.

(c) He stated he was happy to learn that **Mr. George Tellez**, a former member of the Community Activities Commission, is now helping to run the **Golden Girls** softball league.

F. Committee Meeting Minutes

1. Minutes of Personnel Committee Meeting of July 18, 2022

The City Council received and filed the minutes of the Personnel Committee meeting of July 18, 2022, for informational purposes.

XI. CLOSED SESSION

At 10:13 p.m., the City Council went into closed session to discuss labor negotiations, public employee discipline/dismissal/release, and pending litigation.

After the City Council discussed labor negotiations and public employee discipline/dismissal/release, Council Member Lopez left the closed session and the remaining four Council Members discussed the pending litigation matter.

XII. CLOSED SESSION ANNOUNCEMENTS

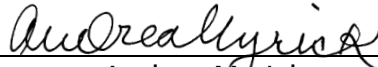
At 10:45 p.m., the City Council returned from closed session. Mayor Dutrey announced the City Council met in closed session to discuss labor negotiations, public employee discipline/dismissal/release, and pending litigation; information was received and direction given to staff in connection with the labor negotiations and the pending litigation; in regard to the public employee discipline/dismissal/release, it was announced that the resignation of the Director of Administrative Services and Human Resources had been accepted; and no further announcements would be made at this time.

XIII. ADJOURNMENT

At 10:46 p.m., Mayor/Chair Dutrey adjourned the City Council, Successor Agency Board, Montclair Housing Corporation Board, Montclair Housing Authority Commission, and Montclair Community Foundation Board in memory of the following individuals:

- **Mr. Robert “RC Bob” Dutton**, San Bernardino County Assessor-Recorder-Clerk, former California State Senator, and former Rancho Cucamonga City Council Member.
- **Ms. Linda Elaine Camacho**, a longtime Montclair resident.
- **Mr. Fred “Lico” M. Rodela**, father-in-law of Community Activities Commissioner Richard A. Escalante.

Submitted for City Council/Successor Agency Board/Montclair Housing Corporation Board/ Montclair Housing Authority Commission/Montclair Community Foundation Board approval,



Andrea Myrick,
City Clerk