

Commercial Cannabis Businesses
Resolution No. 22-3374 (Tax Measure)
Resolution No. 22-3375 (Advisory Opinion - Legalization)
Ordinance No. 22-999 (Imposing a Business License Tax)

CITY OF MONTCLAIR

MONDAY, AUGUST 1, 2022

7:00 P.M.



A Framework for the Legalization of Commercial Cannabis Businesses in Montclair

City Council Commercial Cannabis Special Meetings

- In 2019, the City Council conducted a series of special meetings regarding compliance with Proposition 64 (Adult Use of Marijuana Act, or “AUMA”) and the potential for a series of draft ordinances, collectively known as the Medicinal and Adult–Use Cannabis Regulation and Safety Law (MAUCRSL) of the City of Montclair, regulating commercial cannabis businesses in the City.
 - Proposed Ordinance No. 19-982, the Comprehensive Commercial Cannabis Regulatory Ordinance of the City of Montclair—establishes the primary framework for a regulated commercial cannabis marketplace in the City of Montclair;
 - Proposed Ordinance No. 19-983, the Commercial Cannabis Land Use Ordinance of the City of Montclair—provides for the foundational basis for zoning and land use designations for commercial cannabis activity in the City and provides for a regulatory structure for the cultivation, harvesting, processing, and consumption of cannabis on private property; and
 - Proposed Ordinance No. 19-984, the Comprehensive Second-Hand Smoke Control Ordinance of the City of Montclair—related to the effects of second-hand smoke and addressing those effects by imposing restrictions on smoking tobacco products and cannabis products in work and public places.

City Council Commercial Cannabis Special Meetings (continued)

- At the conclusion of the series of special meetings, the City Council elected to do the following:
 - Table the draft ordinances in order to have staff further evaluate the potential for regulation of commercial cannabis businesses in the City of Montclair, and observe how regulatory process is developing statewide.
 - Provide City staff the opportunity to develop appropriate tax and fee-based revenue scenarios for cannabis businesses; and
 - Survey likely voters on the level of support for legalized medical and adult cannabis use and the taxation of cannabis.

California's Migration to Legalization of Cannabis

Major Cannabis-Related Initiatives and Legislation

- 1996 – Proposition 215 – The Compassionate Use Act (CUA)
 - Voter initiative provides for the medicinal use of cannabis for persons 18 years of age or older, with physician’s recommendation.
- 2004 – SB 420 – The Medical Marijuana Program Act (MMPA)
 - Implements provisions of the CUA.
- 2015 – Medical Marijuana Regulation and Safety Act (MMRSA)
 - Consisted of three interrelated pieces of legislation (SB 643, AB 243, and AB 266) intended to provide a comprehensive regulatory framework for the licensing, control, and taxation of commercial cannabis related businesses.
- 2016 – Proposition 64, the Control, Regulate and Tax Adult-Use of Marijuana Act (AUMA)
 - Initiated state statute providing a regulatory framework for Adult-use commercial cannabis activity.
- 2017 – SB 94 Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA)
 - Repeals MMRSA and incorporates the AUMA into a comprehensive regulatory system for adult-use and medicinal cannabis.

Major Cannabis-Related Initiatives and Legislation (continued)

- 2016 – Proposition 64, the Control, Regulate and Tax Adult-Use of Marijuana Act (the “AUMA”).
 - November 6, 2016, General Election. Approved by California voters—Proposition 64 provides a comprehensive regulatory framework for the licensing, control, and taxation of adult-use commercial cannabis activities in California. Voter results are as follows:
 - Statewide: 57.13% in support
 - San Bernardino County: 57.13% in support
 - City of Montclair: 53.1% in support
 - Authorizes a person 21 years of age or older, for adult-use, to possess and use up to 28.5 grams of cannabis and up to 8 grams of concentrated cannabis, and to possess up to 6 living cannabis plants per household.
 - For Medicinal Purposes, 18 years of age or older, and 12 or more living cannabis plants, per doctor’s recommendation.

FM3 Public Opinion Survey on Cannabis

Cannabis Public Opinion Survey

- At its March 7, 2022 meeting, the City Council approved Agreement No. 22–15 with Fairbank, Maslin, Maullin, Metz & Associates (FM3) for polling, educational, and outreach services to conduct a community issues survey regarding the legalization and taxation of cannabis in Montclair.
- Surveying the attitude of residents complies with past positions taken by City Council Members to provide voters the right to opine on the legalization of cannabis in Montclair.
 - The survey was conducted between April 24 to May 16, 2022, and the results were presented at a City Council workshop held on July 18, 2022.
 - The overall margin of error for the survey was ± 5.2 percent for the full sample survey, and ± 7.4 percent for the half sample survey.
 - The results of the survey, conducted in both English and Spanish, were generally highly favorable, with a high level of satisfaction for the Montclair City government overall.

Cannabis Public Opinion Survey (continued)

- The Public Opinion Survey found the following:
 - Respondents continue to believe that the City of Montclair is generally headed in the right direction with 57 percent of those agreeing, 21 percent disagreeing, and 21 percent unsure.
 - When respondents were asked the same question in July of 2020, 61 percent believed the City of Montclair was generally headed in the right direction, with 17 percent disagreeing, and 22 percent unsure.
 - FM3 attributes the slight decline to nationwide (not local) issues such as high inflation, interest rates and gas prices.
 - Six-in ten respondents continue to believe things are headed in the right direction in the City of Montclair.

Cannabis Public Opinion Survey (continued)

- The Public Opinion Survey found the following:
 - There is a decrease in the percentage of residents who know that it is illegal to sell cannabis products in the City of Montclair, with 16 percent saying that it is legal to sell cannabis, **27 percent saying no it is not legal to sell cannabis, and 56 percent unsure.**
 - FM3 attributes the decline in voter perception regarding the legal status of cannabis in Montclair to a misunderstanding of how Proposition 64 is applied. The wider perception that cannabis businesses are legal in Montclair is based on the following:
 - Some respondents believe that Proposition 64 made cannabis legal statewide;
 - Cannabis is widely available in Montclair through mobile delivery services; and
 - A significant number of communities in Los Angeles and Riverside counties have legalized cannabis businesses.
 - Overall, support for allowing businesses in Montclair has increased from 54 percent in June/July of 2020 to 60 percent in April/May of 2022.
 - Support appears to increase to as high as ± 70 percent following some degree of education on the purpose and scope of Proposition 64.

Cannabis Public Opinion Survey (continued)

- When asked the following sample ballot question, 70 percent indicated some level of affirmative support for a tax measure, and more than 40 percent indicated they would definitely vote “yes” on a cannabis tax measure:
 - *Shall the measure to fund Montclair’s services such as supporting public safety; recruiting/retaining firefighters, paramedics/police; preventing thefts/property crimes; repairing streets/potholes; helping retain/attract businesses/jobs; addressing homeless; for general government use by taxing cannabis businesses’ gross receipts not exceeding 10% on retail, delivery, cultivation, manufacturing/testing; raising approximately \$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?*
- A 70 percent level of support indicates a proposed general tax measure for cannabis would meet the threshold needed to pass (50 percent plus 1). Furthermore, support for a cannabis tax measure is found across all household income groupings:

Cannabis Public Opinion Survey (continued)

- In addition to FM3’s demonstration of local support for the legalization and taxing of cannabis, national polling continues to demonstrate growing support for the legalization of cannabis at both the federal and state levels.
- The most recent series of national polls, including the following, demonstrate that Americans of all genders, education levels, racial groups, age, and political affiliation support federal and/or state legalization of medical/adult use of cannabis, with younger Americans the most supportive and moderates, liberals and independents more supportive than conservatives:
 - [Marijuana | Economist/YouGov Poll \(July 2022\)](#)—**60 percent** support legalization for medical/recreational use
 - [Cannabis Standards-SICPA.com \(June 2022\)](#)—**78 percent** support legalization of cannabis for medical/recreational use
 - [YouGov America \(May 2022\)](#)—**70 percent** support legalization of cannabis for medical/recreational use
 - [Marijuana and the American Public 2022-SSRS.com \(April 2022\)](#)—**69 percent** support legalization of cannabis for medical/recreational use
 - [CBS News Poll - CBS News \(April 2022\)](#)—**66 percent** support legalization for medical/recreational use
 - [CPEAR-National-Poll \(February 2022\)](#)—**67 percent** support legalization for medical/recreational use; and
- Given the growing strength of support for cannabis legalization, as demonstrated by polling data, City staff has concluded that local ballot measures on the issues of legalization and taxing of cannabis would be viable when placed before the voters for the November 8, 2022, General Municipal Election.

Placing a Cannabis Tax Measure Before Montclair Voters

Cannabis Tax Ballot Measure

- At its regular meeting following the conclusion of the FM3 presentation on July 18, 2022, the City Council directed the City Manager to present, at its August 1, 2022 meeting, a resolution 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 November 8, 2022.
- In order to place a tax measure on the November 8, 2022 ballot, the City Council must approve a resolution and the City Clerk must provide to the San Bernardino County Register of Voters a certified copy of the approved resolution no later than August 12, 2022.

Cannabis Tax Ballot Measure (continued)

- Pursuant to California Elections Code §9222, the Montclair City Council has authority to place local measures on the ballot to be considered at a Municipal Election.
- Pursuant to Proposition 218 (“The Right to Vote on Taxes Act”—California Constitution, Article XIII C, section 2(b)), the general rule is that any local election for the approval of an increase to a general tax must be consolidated with a regularly scheduled general election for members of the governing body of the local government.
- Pursuant to Government Code section 53724 (Proposition 62 and Revenue and Taxation Code §7285.9), a two-thirds ($\frac{2}{3}$) vote of all members of the City Council (four votes) is required to place a tax measure on the November 8, 2022 ballot.

Municipal Election Ballot Measure Timeline

EVENT	DATE
Assignment of Measure Letters by Registrar of Voters	Monday, August 15, 2022 11:00 a.m.
Deadline to Withdraw Measure	Wednesday, August 17, 2022 5:00 p.m.
Impartial Analysis Submission Deadline	Monday, August 22, 2022 12:00 p.m.
Argument Submission Deadline	Monday, August 22, 2022 12:00 p.m.
Rebuttal Submission Deadline	Thursday, August 25, 2022 6:00 p.m.
End of 10-day Public Examination Period for Arguments	Thursday, September 1, 2022 12:00 p.m.
End of 10-day Public Examination Period for Rebuttals	Monday, September 5, 2022 5:00 p.m.

Resolution No. 22-3374

Resolution No. 22–3374

- Resolution No. 22–3374, if approved by the City Council by four or more votes, would be submitted to voters of the City of Montclair at the General Municipal Election to be held on November 8, 2022, as follows:

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% 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

Resolution No. 22–3374 (continued)

- Resolution No. 22–3374 includes language that would allow staff to complete other legal requirements to facilitate the submission of the proposed measure to the voters of Montclair, including the following:
 - *Impartial Analysis*. The City Clerk is directed to transmit copies of the measure to the City Attorney, who shall prepare an impartial analysis of the measure, not to exceed 500 words in length, showing the effect of the measure on the existing law and the operation of the measure. The impartial analysis shall be filed by 12:00 p.m. on Monday, August 22, 2022.
 - *Arguments and Rebuttals*. Any and all members of the City Council, an individual voter who is eligible to vote on the measure, a bona fide association of citizens, or a combination of voters and associations may file a written argument for or against the measure not exceeding 300 words, which shall be submitted to the City Clerk no later than 12:00 p.m. on Monday, August 22, 2020.
 - Rebuttal arguments not exceeding 250 words concerning this measure shall be submitted to the City Clerk no later than 6:00 p.m. on Thursday, August 25, 2022.

Resolution No. 22–3374 (continued)

- Resolution No. 22–3374 includes language that would allow staff to complete other legal requirements to facilitate the submission of the proposed measure to the voters of Montclair, including the following:
 - Public Examination. The impartial analysis of, and the arguments and rebuttals for and against the measure will be available for public examination for ten (10) calendar days following their respective filing deadlines prior to being submitted for printing in the voter information guide.
 - The end of the 10-day Public Examination Period for Arguments is 12:00 p.m. on Thursday, September 1, 2022.
 - The end of the 10-day Public Examination Period for Rebuttals is 5:00 p.m. on Monday, September 5, 2022.

Ordinance No. 22-999

Ordinance No. 22-999

- Proposed Ordinance No. 22–999 would establish the structure and procedures for the implementation of the "Montclair Cannabis Business License Tax" and other legal requirements that would follow its approval.
- Ordinance No. 22–999 contains the following sections:

Title	Audits
Purpose	Refunds
Definitions	Tax Administration
Cannabis Business License Tax	Appeals
Tax Payment Does Not Authorize Activity	Consistency with Business License
Cannabis Tax Is Not a Sales Tax	Constitutionality and Legality
Returns and Remittances	

Ordinance No. 22-999 (continued)

- Under provisions of enabling ordinances adopted by the City Council at a future date, Ordinance No. 22-999 would impose a gross receipts tax on the following commercial cannabis businesses within the City's jurisdiction:
 - Cultivation,
 - Manufacturing
 - Testing,
 - Delivery, and
 - Selling.
- The cannabis tax would be imposed on gross receipts of commercial cannabis businesses, up to a maximum of ten percent.
- The tax would not apply to cannabis sales for medicinal-use.
- Montclair does not currently have enabling ordinances regulating the conduct of commercial cannabis businesses in the City; therefore, unless and until enabling ordinances are enacted, the City is unable to license the operation of cannabis businesses nor derive tax revenue pursuant to Ordinance No. 22-999.
 - Furthermore, without enabling ordinances for cannabis businesses, the City lacks a range of enforcement capabilities that would otherwise be available thru a licensing program.

Ordinance No. 22-999 (continued)

- The maximum rate of the cannabis tax shall be calculated as follows:

Permit Type	Rate
Cultivation	10%
Testing	10%
Retail (Dispensary, Delivery)	10%
Distribution	10%
Manufacturing, Processing	10%
All other cannabis related activities	10%

- City Council, by resolution, would have the authority to implement a cannabis tax rate lower than the maximum rate of ten percent, and/or establish differing cannabis tax rates for each of the different categories of commercial cannabis businesses, also per adoption of a resolution.

Placing a Cannabis Legalization and Licensing Advisory Measure Before Montclair Voters

Resolution No. 22-3375

Resolution No. 22–3375

- Resolution No. 22–3375 is an advisory measure. If the Resolution is approved by the City Council by three votes or more, the Advisory Measure would be submitted to voters of the City of Montclair at the General Municipal Election to be held on November 8, 2022, as follows:

Shall the Montclair City Council consider and approve ordinances legalizing and licensing medical and adult-use cannabis businesses in the City?	YES
	NO

Resolution No. 22–3375 (continued)

- Resolution No. 22–3375 includes language that would allow staff to complete other legal requirements to facilitate the submission of the proposed advisory measure to the voters of Montclair, including the following:
 - *Impartial Analysis*. The City Clerk is directed to transmit copies of the measure to the City Attorney, who shall prepare an impartial analysis of the advisory measure, not to exceed 500 words in length, showing the effect of the measure on the existing law and the operation of the measure. The impartial analysis shall be filed by 12:00 p.m. on Monday, August 22, 2022.
 - *Arguments and Rebuttals*. Any and all members of the City Council, an individual voter who is eligible to vote on the measure, a bona fide association of citizens, or a combination of voters and associations may file a written argument for or against the advisory measure not exceeding 300 words, which shall be submitted to the City Clerk no later than 12:00 p.m. on August 22, 2020.
 - Rebuttal arguments not exceeding 250 words concerning this advisory measure shall be submitted to the City Clerk no later than 6:00 p.m. on Thursday, August 25, 2022.

Resolution No. 22–3375 (continued)

- Resolution No. 22–3375 includes language that would allow staff to complete other legal requirements to facilitate the submission of the proposed advisory measure to the voters of Montclair, including the following:
 - Public Examination. The impartial analysis of, and the arguments and rebuttals for and against the advisory measure will be available for public examination for ten (10) calendar days following their respective filing deadlines prior to being submitted for printing in the voter information guide.
 - The end of the 10-day Public Examination Period for Arguments is 12:00 p.m. on Thursday, September 1, 2022.
 - The end of the 10-day Public Examination Period for Rebuttals is 5:00 p.m. on Monday, September 5, 2022.

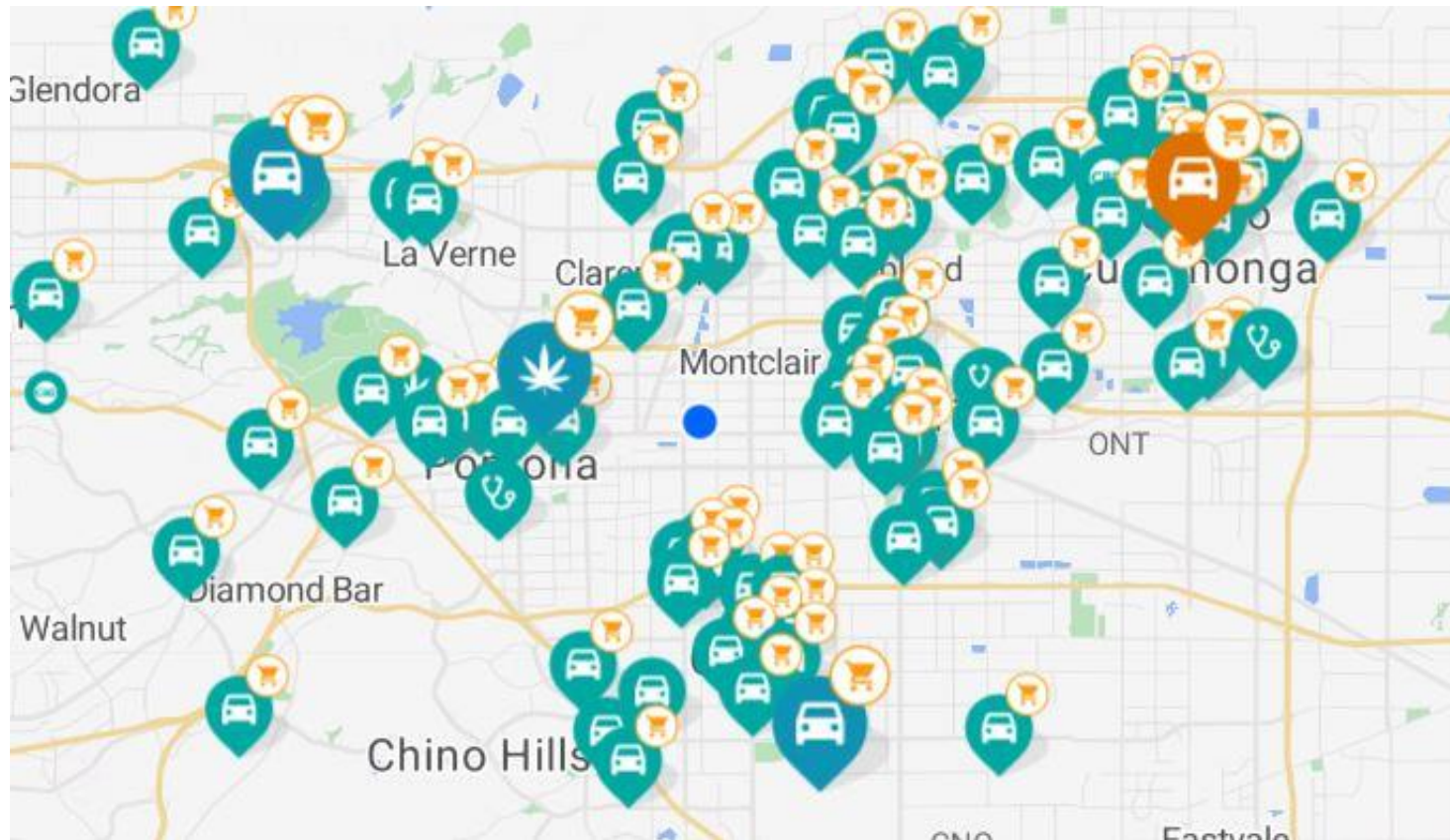
Current Status of Commercial Cannabis Activity in Montclair

Current Status of Commercial Cannabis Activity in Montclair

- In March of 2017, the Montclair City Council adopted Ordinance No. 17–968 adding Chapter 11.11 to Title 11 of the Montclair Municipal Code prohibiting uses related to medical cannabis dispensaries, cultivation and processing, commercial cannabis activities, delivery of cannabis and cannabis– related products, and outdoor cultivation of cannabis in the City
- Under Proposition 64, prohibitions against the delivery of cannabis no longer apply; i.e., the City cannot prohibit the use of public roads for the delivery of cannabis to customers in Montclair for adult or medical use by cannabis vendors operating inside or outside of the City.

Current Status of Commercial Cannabis Activity in Montclair (continued)

- State licensed cannabis delivery services serving the Montclair Community.



Current Status of Commercial Cannabis Activity in Montclair (continued)

- The City's current Municipal Code also expressly prohibits all personal cannabis outdoor cultivation, all nonmedical commercial cannabis cultivation, uses and services, and smoking and ingesting cannabis or cannabis products in public places within the City of Montclair.
 - Under Proposition 64, the above prohibitions under the Montclair Municipal Code are no longer valid:
 - Each household can cultivate up to six cannabis plants for personal use and for gifting; or 12 or more cannabis plants, based on a doctor's recommendation, for medicinal use for a patient under a doctor's care.
 - The Medical and adult-use and consumption of cannabis is permitted in non-public places.

Current Status of Commercial Cannabis Activity in Montclair (continued)

- Voter approval of the proposed cannabis tax measure would not permit commercial cannabis activities to operate in the City without having first obtained City- and State-issued permits.
 - The City would be required to enact enabling ordinances for the licensing of cannabis businesses.
- Excluding cannabis delivery services, the City Council would first have to adopt enabling ordinances and notify the state of their adoption prior to the issuance of licenses for operators to engage in commercial cannabis activities in the City.
 - The approval of cannabis businesses in the City would need to be a separate policy action of the City Council at a future date to approve enabling ordinances.

Recent State Activity Related to Promotion of Commercial Cannabis Businesses

Recent State Activity Related to Promotion of Commercial Cannabis Businesses

- California's Fiscal Year 2022-23 Budget attempts to stabilize the legal cannabis market by eliminating the cultivation tax.
 - In three years, the state could begin raising other cannabis taxes to make up for that lost revenue, which funds child care slots, environmental cleanup programs and impaired driving prevention efforts.
- Recipients of social equity licenses, intended to diversify dispensary ownership, are eligible to claim \$10,000 tax credits for the next several years to help their businesses establish a foothold.
- [Senate Bill 827](#) would deny cities that prohibit commercial marijuana cultivation and sales from receiving law enforcement grants from state taxes on legal cannabis.
- The State Legislature is also considering other measures that would either penalize local agencies for failing to legalize commercial cannabis activities or impose requirements that would create opportunities for commercial cannabis sales statewide.

Fiscal Impact

Fiscal Impact

- Preparation of two ballot measures will entail publication and ballot consolidation costs through the San Bernardino County Registrar of Voters. General Fund costs assessed by the San Bernardino County Registrar of Voters are not expected to exceed \$50,000 (\$25,000 each).
- Staff estimates that if commercial cannabis activities were to be allowed in the City of Montclair, the General Business License Tax on Commercial Retail Sales of Cannabis Measure would produce an estimated annual revenue stream of up to \$3.5 million.
- Funds generated by the General Business License Tax on Commercial Retail Sales of Cannabis would be deposited in the City's General Fund and used to support, maintain and improve general government services.

Recommendation

Recommendation

- Consider adoption of Resolution No. 22-3374:
 - Ordering submission to the voters 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 First Reading of 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 of voter at the 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.
- Consider adoption of Resolution No. 22-3375:
 - Ordering submission to the voters of Montclair an Advisory Measure for the City Council to consider and approve ordinances legalizing and licensing medical and adult-use cannabis businesses in the City.
 - Directing the City Attorney to prepare an Impartial Analysis of the Advisory Measure; and
 - Providing for the Filing of Arguments and Rebuttal Arguments in favor of and against the Advisory Measure.

End of Presentation

