

RESOLUTION NO. 22-3375

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR ORDERING THE SUBMISSION TO THE VOTERS OF THE CITY OF MONTCLAIR, AT THE GENERAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 8, 2022, AN ADVISORY MEASURE FOR THE CITY COUNCIL TO CONSIDER APPROVING THE LEGALIZATION AND PERMITTING/LICENSING OF MEDICAL AND ADULT USE CANNABIS BUSINESSES IN THE CITY OF MONTCLAIR SUBJECT TO REGULATORY ORDINANCES TO BE ADOPTED BY THE MONTCLAIR CITY COUNCIL; 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

WHEREAS, the City of Montclair provides unmatched neighborhood services, including public safety through the Montclair Police and Fire Departments, repair and maintenance of streets and sidewalks, high-quality parks, community centers, family services and libraries services, seniors and youth programs, low-cost healthcare and education services, and community revitalization; and

WHEREAS, illegal and unregulated commercial cannabis activities represent a drain on valuable public resources, requiring diversion of resources away from other legitimate governmental purposes; and

WHEREAS, illegal and unregulated commercial cannabis activities generate crime, provide unsafe products to consumers, and contribute to juvenile delinquency; and

WHEREAS, Proposition 215, an initiated state statute, was approved by California voters on November 5, 1996, with 55.58 percent of the vote; and

WHEREAS, Proposition 215 legalized medical cannabis use in California; and

WHEREAS, in 2004, the California State Legislature passed the Medical Marijuana Program Act (MMPA) to clarify which specific practices with regard to medical cannabis were to be considered lawful in the state; and

WHEREAS, the MMPA:

- Established a voluntary statewide identification card system;
- Set limits on the amount of medical cannabis each cardholder could possess; and
- Created rules for the cultivation of medical cannabis by collectives and cooperatives; and

WHEREAS, in 2004, the California State Legislature passed the Medical Marijuana Program Act (MMPA) to clarify which specific practices with regard to medical cannabis were to be considered lawful in the state; and

WHEREAS, in January 2010, in *People v. Kelly* the California Supreme Court ruled that the state of California cannot, through the legislative process, impose a state limit on medical cannabis that is more restrictive than what is allowed under Proposition 215; and

WHEREAS, pursuant to Proposition 64, the **California Marijuana Legalization Initiative**, an initiated state statute (also known as the **Control, Regulate and Tax Adult Use of Marijuana Act**), was approved by California voters on November 8, 2016, with 57.13 percent of the vote; and

WHEREAS, Proposition 64:

- Legalizes cannabis under state law for use by adults 21 or older.
- Designates state agencies to license and regulate the cannabis industry, and the Bureau of Medical Cannabis Regulation (renamed the Bureau of Cannabis Control) became responsible for regulating and licensing cannabis businesses.

- Counties and municipalities are empowered to restrict where cannabis businesses can be located, and local governments are allowed to completely ban cannabis establishments from their jurisdictions or "reasonably regulate" the personal growth, possession, and use of cannabis plants allowed by Proposition 64.
- Imposes a state excise tax of 15 percent on retail sales of cannabis, and state cultivation taxes on cannabis of \$9.25 per ounce of flowers and \$2.75 per ounce of leaves, with revenue from the taxes to be spent on drug research, treatment and health and safety grants addressing enforcement, testing, anti-drug programs, youth programs, and preventing environmental damage resulting from illegal cannabis production.
- Businesses are required to acquire a state license to sell cannabis for recreational use and local governments can also require businesses to obtain a local license.
- Businesses are not authorized to sell within 600 feet of a school, day care center, or youth center.
- Exempts medical cannabis from some taxation.
- Establishes packaging, labeling, advertising, marketing, safety and testing standards and restrictions for cannabis products.
- Prohibits marketing and advertising cannabis directly to minors.
- Allows local regulation and taxation of cannabis.
- Authorizes resentencing and destruction of records for prior cannabis convictions.

WHEREAS, pursuant to the Controlled Substances Act of 1970 the use and possession of cannabis remains illegal under federal law for any purpose, however, most states have legalized either or both the medical and recreational use of cannabis; and

WHEREAS, in May 2009, the U.S. Supreme Court declined to hear an appeal of a California state appellate ruling from 2008 that upheld Proposition 215 and concluded that California can decide whether to eliminate its own criminal penalties for medical cannabis regardless of federal law and despite a lawsuit filed by the counties of San Diego and San Bernardino objecting to Proposition 215 on the grounds that it required them to condone drug use that is illegal under federal law and that it required counties to issue identification cards to medical cannabis patients so those patients can identify themselves to law enforcement officials as legally entitled to possess small amounts of cannabis; and

WHEREAS, in August 2013 the Obama Administration/Department of Justice issued the "Cole Memo" which effectively authorized states that legalized cannabis to set up strict regulatory oversight of the industry, thereby conceding to each state the decision to implement their respective policy on cannabis; and

WHEREAS, currently:

- The medical use of cannabis is legal with a doctor's recommendation in 37 states, four out of five permanently inhabited U.S. territories, and the District of Columbia (D.C.).
- Eleven states have laws that limit the psychoactive compound tetrahydrocannabinol (THC) for the purpose of allowing access to products rich in cannabidiol (CBD).
- The recreational use of cannabis has been legalized in 19 states, Guam, the Northern Mariana Islands and Washington D.C., and another 12 states and the U.S. Virgin Islands have decriminalized its use.
- Commercial distribution of cannabis has been legalized in all jurisdictions where possession has been legalized, except for Washington D.C.
- Personal cultivation for recreational use of cannabis is allowed in all jurisdictions where cannabis has been legalized except for Washington State and New Jersey.

WHEREAS, currently, 31 of the 58 counties in California allow for commercial Medicinal/Adult-Use cannabis business operations in their unincorporated areas, including the following counties allowing commercial cultivation, manufacturing, and/or retail:

1. Alameda County
2. Calaveras County
3. Colusa County
4. Contra Costa County
5. Del Norte County
6. El Dorado County
7. Humboldt County
8. Imperial County
9. Inyo County
10. Lake County
11. Lassen County
12. Los Angeles County
13. Marin County
14. Mendocino County
15. Mono County
16. Monterey County
17. Nevada County
18. Riverside County
19. San Benito County
20. San Diego County
21. San Francisco County
22. San Joaquin County
23. San Luis Obispo County
24. San Mateo County
25. Santa Barbara County
26. Santa Cruz County
27. Sonoma County
28. Stanislaus County
29. Trinity County
30. Ventura County
31. Yolo County

WHEREAS, there are 539 cities and counties in California including 482 incorporated cities and, according to the Public Health Institute, an estimated 173 jurisdictions currently allow storefront sales of cannabis, and an additional 108 allow sales by delivery only; and

WHEREAS, in San Bernardino County, commercial cannabis activities are currently legal in Adelanto, Colton, Hesperia, Needles, San Bernardino, Victorville and, by recent press reports, Fontana; and

WHEREAS, in Riverside County commercial cannabis activities are legal in 20 of the county's 28 incorporated jurisdictions; and

WHEREAS, in Los Angeles County commercial cannabis activities are legal in 29 of the county's 88 incorporated jurisdictions; and

WHEREAS, 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

WHEREAS, a survey commissioned by the Montclair City Council, and conducted by FM3 Research from April 24 to May 16, 2022, among a random sample of 398 registered Montclair voters, with a margin of error of ± 5.2 percent for the full sample survey and ± 7.4 percent for the half sample survey, conducted in both English and Spanish, demonstrated favorable support for the legalization of commercial cannabis businesses in Montclair, rising from 54 percent in June/July 2020 to 60 percent in April/May 2022, and 70 percent favorable support for the taxation of cannabis; and

WHEREAS, Resolution No. 22-3374, to be considered by the City Council at its August 1, 2022 meeting, provides for consideration of an Ordinance that would impose a business license tax on persons engaged in cannabis businesses in the City involving cannabis products, subject to voter approval of a ballot measure to be submitted to voters at the General Municipal Election to be held on November 8, 2022, asking the following 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 7% 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

This measure requiring the approval of a simple majority (50% plus 1) of those voting and the full text of the referenced measure (Ordinance No. 22-999), is attached as Exhibit "A" to Resolution No. 22-3374 and incorporated therein by reference; and

WHEREAS, the business license taxes imposed by Ordinance No. 22-999 are to raise revenue and are not for regulation; and

WHEREAS, the measure to impose business license taxes on cannabis is projected to raise an estimated \$3,500,000 annually for the City's General Fund and could be used to maintain and enhance City's existing services such as local public safety, maintaining 911 emergency, police and fire response times, street and infrastructure maintenance, assistance for the individuals experiencing homelessness, city-funded after-school and summer recreational programs which provide healthy alternatives for at-risk youth, keeping communities safe and clean, and quality of life programs; and

WHEREAS, the City Council may submit the Ordinance directly to the voters pursuant to Section 9222 of the California Elections Code; and

WHEREAS, at a properly noticed meeting on June 20, 2022 the City Council adopted Resolution No. 22-3359 to call a general election for November 8, 2022, at which it will submit to the qualified voters of the City the Ordinance to impose a general tax on cannabis businesses in the City; and

WHEREAS, to establish a regulatory program that provides for requirements related to the operation and permitting of cannabis businesses in the City of Montclair, the City Council may submit directly to voters pursuant to Section 9222 of the California Elections Code, an advisory measure on the legalization and permitting of cannabis businesses in Montclair, subject to the Montclair City Council's adoption of regulatory ordinances.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Montclair as follows:

Section 1. Ballot Measure. Pursuant to the laws of the State of California applicable to general law cities, the City Council of the City of Montclair does hereby order submitted to the voters at the General Municipal Election to be held on November 8, 2022, the following advisory question:

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

This advisory measure requires the approval of a simple majority (50% plus 1) of those voting.

Section 2. Impartial Analysis. The City Clerk is directed to transmit copies of the measure to the City Attorney. The City Attorney 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 include a statement indicating the Measure was placed on the ballot by the City Council. The impartial analysis shall be filed by 12:00 p.m. on August 22, 2022.

Section 3. Arguments and Rebuttals. Pursuant to Elections Code Section 9282(b), the City Council authorizes any and all members of its body, an individual voter who is eligible to vote on the measure, a bona fide association of citizens, or a combination of voters and associations, to file a written argument for or against the measure not exceeding 300 words regarding the City measure as specified above, which shall be submitted to the City Clerk no later than 12:00 p.m. on August 22, 2022.

Pursuant to Elections Code Section 9285, the City Council authorizes the filing of rebuttal arguments for and against measures in the Election. Rebuttal arguments not exceeding 250 words concerning this measure shall be submitted to the City Clerk no later than 6:00 p.m. on August 25, 2022. This Section 3 shall expire with the Election, and shall not authorize rebuttal arguments as to measures presented at any future election.

Section 4. Public Examination. Pursuant to Elections Code Section 9295, this Measure will be available for public examination for no fewer than ten (10) calendar days prior to being submitted for printing in the voter information guide. The City Clerk shall post notice in the Clerk's office and City website (www.cityofmontclair.org) of the specific dates that the examination period will run.

Section 5. CEQA. The adoption of this Resolution is exempt from the California Environmental Quality Act (Public Resources Code Section 21000 et. seq. ("CEQA") and 14 Cal. Code Reg. §15000 et. seq. ("CEQA Guidelines"). The noticing of a Municipal Election is not a project within the meaning of CEQA Guidelines Section 15378, subsection (b)(3).

Section 6. Certification. The City Clerk shall certify to the passage and adoption of this Resolution and its approval by the City Council and shall cause the same to be listed in the records of the City and entered into the book of original Resolutions; and shall file with the Board of Supervisors and the Registrar of Voters of the County of San Bernardino, California, a certified copy of this Resolution.

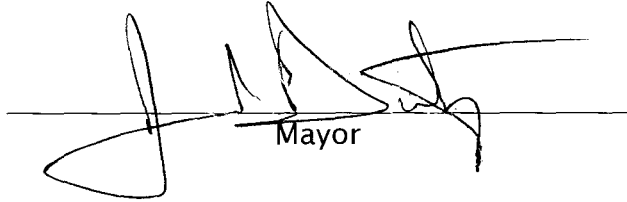
The City Clerk is authorized and directed to take all other steps necessary to conduct the election on the Measure and to cooperate with the County Elections Official to consolidate it with the November 8, 2022 Statewide General Election.

Section 7. Severability. If any section, subsection, sentence, clause, phrase or portion of this Resolution or its application to any person or circumstance is for any reason held to be invalid or unconstitutional by the decision of any court of competent

jurisdiction, such decision shall not affect the validity of the remaining portions of this Resolution or its application to other persons and circumstances. The City Council of the City of Montclair hereby declares that it would have adopted this Resolution and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional and, to that end, the provisions hereof are hereby declared to be severable.

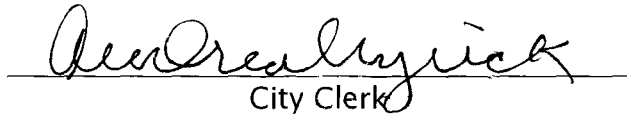
Section 8. Effective Date. This Resolution shall take effect immediately upon its adoption as a measure affecting an election.

APPROVED AND ADOPTED this 1st day of August, 2022.



Mayor

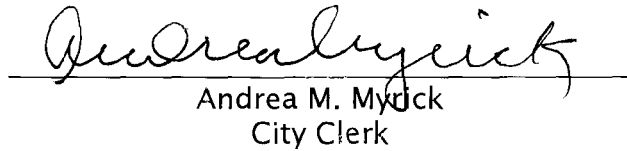
ATTEST:



City Clerk

I, Andrea M. Myrick, City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 22-3375 was duly adopted by the City Council of said city and was approved by the Mayor of said city at a regular meeting of said City Council held on the 1st day of August, 2022, and that it was adopted by the following vote, to-wit:

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



Andrea M. Myrick
City Clerk