



MONTCLAIR

CITY OF MONTCLAIR  
PLANNING COMMISSION AGENDA  
CITY COUNCIL CHAMBERS

5111 Benito Street, Montclair, California 91763

REGULAR ADJOURNED MEETING  
Monday, April 22, 2013  
7:00 p.m.

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*It is respectfully requested that you please silence your cell phones and other electronic devices while the meeting is in session. Thank you.*

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**1. CALL TO ORDER**

**2. PLEDGE OF ALLEGIANCE**

**3. ROLL CALL**

Chair Tenice Johnson, Vice Chair Luis Flores, Commissioner Sergio Sahagun, and Commissioner Don Vodvarka

**4. APPROVAL OF MINUTES**

The minutes of the February 25, 2013 Planning Commission meeting are presented for consideration.

**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's card and submit it to the City Planner. Speaker's cards are available at the entrance to the Council Chambers.

## 6. AGENDA ITEMS

- a. PUBLIC HEARING – CASE NUMBER 2013-6  
Project Address: 4594 San Bernardino Street  
Project Applicant: Chino Basin Water Conservation District  
Project Planner: Michael Diaz, City Planner  
Request: Variance request to allow an electronic message board/identification sign
- b. PUBLIC HEARING – CASE NUMBER 2013-8  
Project Address: Citywide  
Project Applicant: City of Montclair  
Project Planner: Steve Lustro, AICP,  
Community Development Director  
Request: Amendments to Chapters 11.02, 11.42 and 11.78 of the Montclair Municipal Code related to definitions, off-premises sale of alcoholic beverages and conditional use permits

## 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

Materials related to an item on this agenda submitted to the Commission after distribution of the agenda packet are available for public inspection at the Planning Division counter during normal business hours.

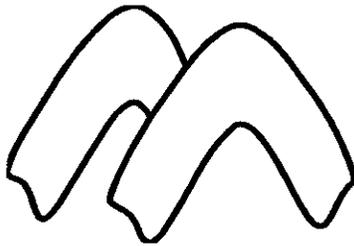
## 9. ADJOURNMENT

The City of Montclair Planning Commission is hereby adjourned to the regularly scheduled meeting of May 13, 2013 at 7:00 p.m. in the Council Chambers, 5111 Benito Street, Montclair, California.

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### CERTIFICATION OF AGENDA POSTING

I, Laura Berke, Administrative Secretary for the City of Montclair, hereby certify that a copy of this agenda was posted on the bulletin board adjacent to the north door of Montclair City Hall on April 18, 2013.



# CITY OF MONTCLAIR PLANNING COMMISSION

**MEETING DATE: 04/22/13**

**AGENDA ITEM 6.a**

## Case No.: 2013-06

**Application:** A variance request to allow an electronic message board/identification sign for regional property use situated on less than 20 acres in size, as required by the Montclair sign code, and for an overall height of 6'-6," which is over the 5-foot height limit of the underlying R-1 Single Family Residential zoning district

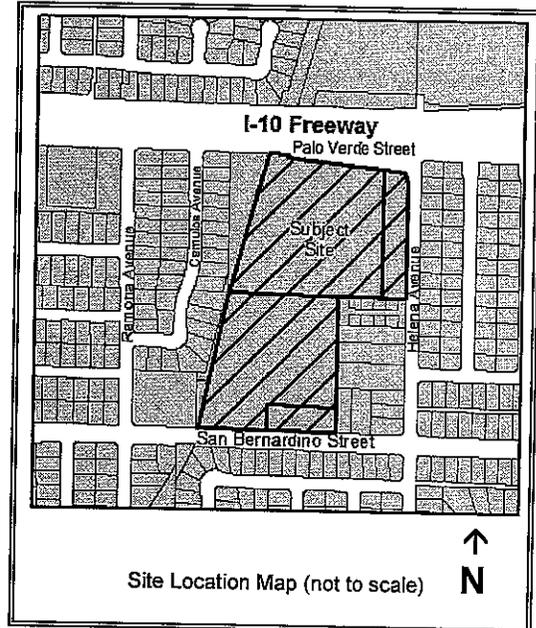
**Project Address:** 4594 San Bernardino Street

**Property Owner:** Chino Basin Water Conservation District (CBWD).

**General Plan:** Neighborhood Park & Public/Quasi-Public

**Zoning:** R-1 (Single-Family Residential)

**Assessor Parcel No.:** 1009-172-32, 1009-182-14 and 16.



### ADJACENT LAND USE DESIGNATIONS AND USES

<i>Direction</i>	<i>General Plan</i>	<i>Zoning</i>	<i>Use of Property</i>
<b>North</b>	Conservation Basins	R-1 (Single-Family Residential)	Conservation Basin
<b>East</b>	Low Density Residential	R-1 (Single-Family Residential)	Single Family Homes
<b>South</b>	Low Density Residential	R-1 (Single-Family Residential)	Single Family Homes
<b>West</b>	Low Density Residential	R-1 (Single-Family Residential)	Church

## Report on Item Number 6.a

### PUBLIC HEARING - CASE NUMBER 2013-6

APPLICATION TYPE(S)	Variance
NAME OF APPLICANT	Chino Basin Water Conservation District (CBWCD)
LOCATION OF PROPERTY	4594 San Bernardino Street
GENERAL PLAN DESIGNATION	Neighborhood Park & Public/Quasi-Public
ZONING DESIGNATION	R-1 (Single-Family Residential)
EXISTING LAND USE	Administrative Offices and Maintenance Facility/Demonstration Garden/Park and Retention Basins
ENVIRONMENTAL DETERMINATION	Categorically Exempt pursuant to Section 15311(a) of the California Environmental Quality Act (CEQA) Guidelines--Minor Accessory Structures.
PROJECT PLANNER	Michael Diaz

#### Project Proposal

The Chino Basin Water Conservation District (CBWCD) is requesting a variance to allow the installation of a new monument identification sign with an electronic message board for the CBWCD main campus at the above address. The proposed electronic message board is intended to promote the various functions and services provided by CBWCD at their facility, and promote water efficiency throughout the community.

According to the Montclair Sign Code, an electronic message board may be allowed for uses or businesses of a regional nature and which are situated on sites that are at least 20 acres or more in size. Although the CBWCD is a use of regional significance, the proposed variance requests are for the following:

- A) A slightly smaller overall property size of 18.44 acres instead of the minimum required 20-acre size; and
- B) A sign height of 6'-6" instead of the maximum 5-foot height limit of the underlying R-1 (Single Family Residential) zoning district.

The proposed electronic message sign would replace the existing monument sign that was constructed in 1995, in the same location as the existing sign, approximately 65 feet east of the existing parking lot driveway and five (5) feet back from the existing

public sidewalk. Like the existing freestanding monument sign, the new sign would be integrated into the existing slope at the front of the subject property.

The overall shape of the proposed monument sign is intended to reflect and tie into the wall and roof angles featured in the design of the new administrative building on the site. The sign incorporates the name and logo of the CBWCD agency, address numerals, and an electronic message area of approximately 13 square feet.

A site plan and monument sign details are included in the Commission packets for reference.

**Background**

- The Chino Basin Water Conservation District (CBWCD) is a public agency founded in 1949. The primary goal of the CBWCD is the protection and replenishment of the Chino Groundwater Basin in order to guarantee that current and future water needs will be met. The District operates and maintains a network of channels, basins and spreading grounds. Water conservation education is provided to individuals and organizations within the service area to further promote the efficient use of water resources. The District's service area includes the cities of Chino, Chino Hills, Montclair, Ontario, Rancho Cucamonga and Upland.
- The subject property is a combined 18.44-acre site bounded on the west by the San Antonio Channel, on the north by Palo Verde Street, on the south by San Bernardino Street and on the east by properties along the west side of Helena Avenue.
- In November 2008, the Planning Commission approved Case No. 2008-31 for the CBWCD's Multi-Phase Master Plan for improvements to its 18.44-acre site. The proposed improvements to the CBWCD campus summarized below have been substantially completed:

<b>Chino Basin Water Conservation District Master Plan</b>		
<i>Phase</i>	<i>Project</i>	<i>Status</i>
1	Wilderness Park Renovation	<i>Completed</i>
2	Construction of Maintenance Building (Approx. 4,000 s.f.) and parking; fire road and security fence construction	<i>Completed</i>
3	Addition to and Renovation of Administration Building (approx. 4,000 s.f.)	<i>May 2013</i>
4	Expansion and Renovation of Demonstration Garden (replanting and new exhibits)	<i>May 2013</i>
5	Parking Lot Renovation (highlighting various permeable surfaces) and possible cistern to capture storm water runoff. No expansion proposed.	<i>May 2013</i>

- CBWCD has approximately 13 employees (eight on-site and five in the field). Office hours are Monday-Friday from 8:00 a.m. to 5:00 p.m. Garden hours are daily (except holidays) from 8:00 a.m. to 5:00 p.m. Board meetings are conducted on the second Monday of each month.

### **Planning Division Comments**

Overall, staff finds the proposed variance requests for the monument sign height and use of an electronic message board to be appropriate for the subject property. The use of a monument sign is not unique in and of itself, but the ability to install an electronic message board is. The Chino Basin Water Conservation District is allowed to install a monument sign to identify its facility subject to City review and approval and conformance with the development standards of the underlying zoning district which includes height limits. In 1994, the City granted approval for the existing monument sign which is 8'-6" in height and exceeds the maximum height of five feet for the zoning district. While staff has been unable to ascertain the rationale for allowing the existing sign, it is safe to assume that it was in recognition of the District's unique and multi-faceted use of the property. In conjunction with the overall improvements being made to the facility, the District wishes to replace the existing sign with an updated and more efficient sign that incorporates an electronic message board component.

### **Regional Use and Minimum Acreage**

The intent of the regional use and property size requirements is to limit the use of such electronic message boards only to bona fide regional uses on any property within the City and to otherwise prevent the proliferation of such signs in the community. The Chino Basin Water Conservation District (hereinafter the District) meets the first criterion for allowing an electronic message board, in that the CBWCD represents a unique use as a public agency with a defined mission to promote water conservation in the region. The District's operates and maintains a network of channels, basins and spreading grounds throughout its six-city service area, with a major portion of the facilities being located in Montclair. City employees, school groups, and residents of the communities within the District's service area are able to take part in the services offered by the District and/or visit its on-site park and demonstration garden. To have and use an electronic message board would enable the District to provide the public with timely information regarding events at the facility in a more efficient manner than is done with the existing marquee sign, which requires sign copy to be manually changed.

With regard to the minimum lot size required for an electronic message board, staff has calculated the combined land area of the San Bernardino Street site to be 18.44 acres, which is 92 percent of the minimum required 20 acres to qualify for such a sign. However, it is important to note that the subject site is part of a much larger, interconnected network of sites owned and operated by the District. The subject property makes up just a portion of an approximately 60-acre network of basins and channels used to capture and store water. When viewed on a map, the network of

basins and channels begins at Arrow Highway on the north and ends at San Bernardino Street on the south. The overall area forms an exceptionally large and nearly contiguous (separated only by Interstate 10 and two streets) land area that is unique to the City. Taken altogether, the total land area forming the core of the District's property and operations in the City far exceeds the 20-acre minimum required to qualify for an electronic message board.

Moreover, the District's main campus on San Bernardino Street serves as the center of the District's operations and provides a mixture of complementary uses (administrative offices, public park, demonstration garden, public education, etc.) that is unique to both the community and region. Staff believes, although the 18.44 acres of the main campus is less than the minimum 20 acres required, the interconnected nature of the subject site with upstream properties owned by the District is a logical rationale for making the finding of an exceptional circumstance for the subject site, thereby allowing the use of an electronic message board element with the proposed monument sign.

### Sign Height

Signs of any type are not typically needed or found in R-1 zoning districts that are comprised of single family residences, unless the signs are temporary real estate signs, neighborhood signs, or for complementary non-residential uses such as schools, churches, parks or other institutional uses. When monument signs are allowed they are limited to five feet in height, which is generally appropriate in providing adequate identification for a use in an R-1 zone and to preserve and/or enhance the appearance of the City. The Chino Basin Water Conservation District facility is an example of such a complementary non-residential use in an R-1 zoning district that would be allowed to have a monument sign, but which differs in significant ways. Staff believes that the size of the subject site is unusual as is the use of the property when compared to the residential development that surrounds it. Moreover, the unique nature of the uses on the site provides the basis for considering a slightly taller sign than allowed by the code in order to provide adequate identification that is more in scale with the size of the property and for improved visibility of the sign. The slight increase in height for the sign will not adversely impact the residential character of the street.

The size of the subject site and its unusually long street frontage of 650 feet along San Bernardino Street are greater than any other comparable property in the immediate area except for the Montclair High School property, which has taller sign and electronic message board. The current monument/marquee sign is 8'-6" high, dated looking and not very effective in identifying the site or providing timely public information. While still taller than five feet, the new 6'-6"-high monument sign/electronic message board would be more effective and not visually overwhelming to the adjacent streetscape. In addition, at the proposed height of 6'-6", the sign would remain generally visible to passersby even when vehicles are parked in front of it on the north side of the street.

As indicated above, the new monument sign would be placed at the same location as the existing freestanding sign, so it is not expected to create any adverse impacts to the streetscape, motorists or nearby residences. The new sign would be set perpendicular

to the street and would not directly face the front of any residential properties including the homes on the south side of San Bernardino Street (approximately 80 feet away) that back up to the street. The nearest residential property to the sign on the north side of San Bernardino Street is approximately 230 feet to the east.

Lastly, staff finds the design of the proposed sign to be appropriate and complementary to the unique architectural theme of the new building improvements made on the property. The proposed electronic message board is relatively small in size and is not overwhelming. To ensure that the use of the electronic message board is properly managed, a few standard conditions of approval governing its use have been added to the proposed draft resolution of approval. When the landscaping is restored around the site and the sign, the overall appearance of the facility as viewed from the street will be greatly enhanced.

### **Public Comment from Adjoining Property Owners**

This item was advertised as a public hearing in the Inland Valley Daily Bulletin newspaper on April 12, 2013. 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. 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 11 exemption under Section 15311 of the California Environmental Quality Act (CEQA) Guidelines, which exempts projects that involve the construction or replacement of minor structures accessory (appurtenant to) existing commercial, industrial, or institutional facilities, including but not limited to on-premise signs.

### **Variance Findings for Size of the Property**

Staff believes the necessary findings for the proposed variance from the minimum required lot size to allow an electronic message board can be made as follows:

- A. That because of special circumstances applicable to the subject property, including its size, depth, location and surroundings, the strict application of the provisions of the Montclair Municipal Code is found to deprive the subject property of privileges enjoyed by other properties in the vicinity and under identical zoning classifications. The general intent for the regional use and property size requirements for electronic message boards is to limit their use to bona fide regional uses on any property within the City and to prevent the proliferation of such signs in the community. The CBWCD is a unique use as a public agency with a defined mission to promote water conservation in the region. The District's service area includes the cities of Chino, Chino Hills, Montclair, Ontario, Rancho Cucamonga and Upland, where it operates and maintains a network of channels, basins and spreading grounds, a major portion

of which is located in Montclair. City employees, school groups, and residents of these communities are able to take part in the services offered by the District, and/or visit its on-site park and demonstration garden.

- B. That such variance is necessary for the preservation and enjoyment of a substantial property right of the applicant, which right is possessed by other property owners in the vicinity and under identical zoning classifications. The Chino Basin Water Conservation District facility as a complementary non-residential use in an R-1 zoning district that would be allowed to have a monument sign as would other uses in the zone with similar needs for a monument sign and an electronic message board if they can meet the minimum requirements for it. Although the property on which the monument sign/electronic message board is proposed is 18.44 acres in size (over 92 percent of the minimum required 20 acres), the subject site is part of a much larger land area that includes an interconnected network of channels and basins that are owned and operated by the District. Taken altogether, the total land area forming the core of the CBWCD property and operations within the City is approximately 60 acres, which far exceeds the 20-acre minimum.
- C. That the granting of such variance will not be materially detrimental to the public welfare or injurious to other property or improvements in the vicinity and zone in which the subject property is located. The electronic message board would enable the District to provide the public with timely information regarding events at the facility in a more efficient manner than is currently done with the existing marquee sign that requires sign copy be manually changed. Moreover, the new monument sign/electronic message board will be placed at the same location as the existing freestanding sign, so it is not expected to create any adverse impacts to the streetscape, motorists, or nearby residences. The new monument sign/electronic message board would be set perpendicular to the street and would not directly face the front of any residential properties including the homes on the south side of San Bernardino Street (approximately 80 feet away) that back up to the street.
- D. The granting of such variance will not be contrary to the objectives of any part of the adopted General Plan. The General Plan and Montclair Sign Code place a strong emphasis on maintaining the appearance, character, and vitality of the community, and on implementing the provisions of the Municipal Code in an appropriate fashion.

#### **Variance Findings for Sign Height**

Staff believes the necessary findings for the proposed variance from the five-foot height limit for monument signs in the R-1 zoning district can be made as follows:

- A. That because of special circumstances applicable to the subject property, including its size, depth, location and surroundings, the strict application of the

provisions of the Montclair Municipal Code is found to deprive the subject property of privileges enjoyed by other properties in the vicinity and under identical zoning classifications. The five-foot height limit is appropriate for most uses in the R-1 zone but is not a practical standard for unusually large properties with uncommon uses not typically found in residential neighborhoods such as the District's facility.

- B. The variance is necessary for the preservation and enjoyment of a substantial property right of the applicant, which right is possessed by other property owners in the vicinity and under identical zoning classifications. The CBWCD is allowed to pursue the installation of a monument sign for its facility, and was previously granted approval for the existing monument/marquee sign. The current monument/marquee sign is 8'-6" high, is dated looking, and is not very effective in identifying the site or providing timely public information. The variance to allow a lower monument sign at 6'-6" allows the District to maintain such a sign to identify the facility and provide timely information to the public in a reasonable manner. Moreover, the new sign will not be visually overwhelming to the adjacent streetscape while still remaining generally visible to passersby even if vehicles are parked in front of it along the north side of the street.
- C. That the granting of such variance will not be materially detrimental to the public welfare or injurious to other property or improvements in the vicinity and zone in which the subject property is located. The design of the proposed sign is appropriate and complementary to the unique architectural theme of the new building improvements recently made on the property. The proposed height for the subject monument sign/electronic message board is relatively small in size and scale with the property and use it identifies. In order to ensure that the use of the electronic message board is properly managed, specific conditions of approval governing its use have been included in the proposed draft resolution of approval.
- D. The granting of such variance will not be contrary to the objectives of any part of the adopted General Plan. The General Plan and the Montclair Sign Code promotes good design and orderly development in the community.

### **Planning Division Recommendation**

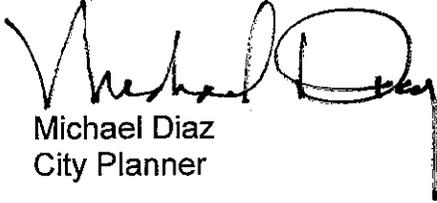
Staff recommends that the Planning Commission find the proposed lot size and sign height variances for the proposed monument sign and electronic message board at the Chino Basin Water Conservation District facility at 4594 San Bernardino Street to be appropriate and to take the following actions:

- A. Move that, based upon evidence submitted, the Planning Commission finds the application for the proposed variance qualifies as a Class 11 exemption under Section 15311 of the California Environmental Quality Act (CEQA) Guidelines, which exempts projects that involve the construction or replacement of minor

structures accessory (appurtenant to) existing commercial, industrial, or institutional facilities, including, but not limited, to on-premise signs. The requested variances for the installation of the monument sign/electronic message board are consistent with this exemption.

- B. Recommend the Planning Commission approve the requested Variances under Case No. 2013-6 to allow a 6'-6" high monument sign with an electronic message board component at 4594 San Bernardino Street, as described in the staff report and subject to the findings and conditions in Planning Commission Resolution No. 13-1776.

Respectfully Submitted,



Michael Diaz  
City Planner

MD/lb

Attachments: Draft Resolution of Approval for Case No. 2013-6

c: Chino Basin Water Conservation District (CBWD)  
Jeff Veenema, Claremont Environmental Design Group

Z:\COMMDEV\MD\CASES\2013-6 CBWCD MONUMENT SIGN\2013-6 PC RPT

**RESOLUTION NO. 13-1776**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MONTCLAIR APPROVING A VARIANCE REQUEST TO ALLOW A MONUMENT SIGN / ELECTRONIC MESSAGE BOARD ON PROPERTY LESS THAN 20 ACRES IN SIZE, AND A VARIANCE FOR AN INCREASE IN SIGN HEIGHT AT 4594 SAN BERNARDINO STREET IN THE R-1 (SINGLE-FAMILY RESIDENTIAL) ZONING DISTRICT (APN 1009-172-32)**

A. Recitals.

**WHEREAS**, on March 21, 2013, the Chino Basin Water Conservation District, property owner of the subject site, filed an application requesting a variance from the required 20-acre minimum property size to allow an electronic message board in conjunction with a new monument sign, and a second variance to allow a 1'-6" increase in the height for said sign to be installed at the District's property at the above referenced address; and

**WHEREAS**, the Chino Basin Water Conservation District (CBWCD) is a public agency founded in 1949 with the goal of protecting and replenishing the Chino Groundwater Basin. The District operates and maintains a network of channels, basins and spreading grounds. Water conservation education is provided to the individuals and organizations within the service area to further promote the efficient use of water resources. The District's service area includes the cities of Chino, Chino Hills, Montclair, Ontario, Rancho Cucamonga and Upland; and

**WHEREAS**, the subject property owned at this location by the District is a combined 18.44-acre site bounded on the west by the San Antonio Channel, on the north by Palo Verde Street, on the south by San Bernardino Street and on the east by properties along the west side of Helena Avenue; and

**WHEREAS**, the subject property is located in the R-1 (Single-Family Residential) Zoning District; and

**WHEREAS**, the District wishes to have and use an electronic message board in conjunction with its monument sign to provide the public with timely information regarding events at the facility and to do so in a more efficient manner than with the existing marquee sign, which requires sign copy be manually changed; and

**WHEREAS**, the Montclair Sign Code states that an electronic message board may be allowed for uses or businesses of a regional nature and that are situated on sites that are at least 20 acres or more in size; and

**WHEREAS**, the Montclair Sign Code limits monument signs to a maximum height of five feet (5'-0") within the R-1 Zoning District; and

**WHEREAS**, in November 2008, the Planning Commission approved Case No. 2008-31 to allow the CBWCD's Multi-Phase Master Plan for improvements to its 18.44-acre site, which as of the date of this Resolution are nearly all completed; and

**WHEREAS**, based upon the facts and information contained in the application, together with all written and oral reports included for the environmental assessment for the application, the Planning Commission finds the variance requests for the proposed monument sign/electronic message board to be exempt from the provisions of the California Environmental Quality Act (CEQA), pursuant to Section 15311 of the CEQA Guidelines, which exempts projects that involve the construction or replacement of minor structures accessory (appurtenant to) existing commercial, industrial, or institutional facilities, including, but not limited to, on-premise signs; and

**WHEREAS**, on April 12, 2013, this variance request was advertised as a public hearing in the Inland Valley Daily Bulletin newspaper. 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. At the time this report was prepared, no comments or inquiries had been received by staff regarding this proposal; and

**WHEREAS**, on April 22, 2013, commencing at 7:00 p.m. in the Council Chamber 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.

B. 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 substantial evidence presented to this Commission during the above-referenced public hearing on April 22, 2013, including written and oral staff reports, together with public testimony, this Commission hereby finds as follows:

### **Variance Findings for Size of the Property**

- a. That because of special circumstances applicable to the subject property, including its size, depth, location and surroundings, the strict application of the provisions of the Montclair Municipal Code is found to deprive the subject property of privileges enjoyed by other properties in the vicinity and under identical zoning classifications. The general intent for the regional use and property size requirements for electronic message boards is to limit their use to bona fide regional uses on any property within the City and to prevent the proliferation of such signs in the community. The CBWCD is a unique use as a public agency with a defined mission to promote water conservation in the region. The District's service area includes the cities of Chino, Chino Hills, Montclair, Ontario, Rancho Cucamonga and Upland, where it operates and maintains a network of channels, basins and spreading grounds, a major portion of which is located in Montclair. City employees, school groups, and residents of these communities are able to take part in the services offered by the District, and/or visit its on-site park and demonstration garden.
  
- b. That such variance is necessary for the preservation and enjoyment of a substantial property right of the applicant, which right is possessed by other property owners in the vicinity and under identical zoning classifications. The Chino Basin Water Conservation District facility as a complementary non-residential use in an R-1 zoning district that would be allowed to have a monument sign as would other uses in the zone with similar needs for a monument sign and an electronic message board if they can meet the minimum requirements for it. Although the property on which the monument sign/electronic message board is proposed is 18.44 acres in size (over 92 percent of the minimum required 20 acres), the subject site is part of a much larger land area that includes an interconnected network of channels and basins that are owned and operated by the District. Taken altogether, the total land area forming the core of the CBWCD property and operations within the City is approximately 60 acres, which far exceeds the 20-acre minimum.
  
- c. That the granting of such variance will not be materially detrimental to the public welfare or injurious to other property or improvements in the vicinity and zone in which the subject property is located. The electronic message board would enable the District to provide the public with timely information regarding events at the facility in a more efficient manner than is currently done with the existing marquee sign that requires sign copy be manually changed.

Moreover, the new monument sign/electronic message board will be placed at the same location as the existing freestanding sign, so it is not expected to create any adverse impacts to the streetscape, motorists, or nearby residences. The new monument sign/electronic message board would be set perpendicular to the street and would not directly face the front of any residential properties including the homes on the south side of San Bernardino Street (approximately 80 feet away) that back up to the street.

- d. The granting of such variance will not be contrary to the objectives of any part of the adopted General Plan. The General Plan and Montclair Sign Code place a strong emphasis on maintaining the appearance, character, and vitality of the community, and on implementing the provisions of the Municipal Code in an appropriate fashion.

#### **Variance Findings for Sign Height**

- a. That because of special circumstances applicable to the subject property, including its size, depth, location and surroundings, the strict application of the provisions of the Montclair Municipal Code is found to deprive the subject property of privileges enjoyed by other properties in the vicinity and under identical zoning classifications. The five-foot height limit is appropriate for most uses in the R-1 zone but is not a practical standard for unusually large properties with uncommon uses not typically found in residential neighborhoods such as the District's facility.
- b. The variance is necessary for the preservation and enjoyment of a substantial property right of the applicant, which right is possessed by other property owners in the vicinity and under identical zoning classifications. The CBWCD is allowed to pursue the installation of a monument sign for its facility, and was previously granted approval for the existing monument/marquee sign. The current monument/marquee sign is 8'-6" high, is dated looking, and is not very effective in identifying the site or providing timely public information. The variance to allow a lower monument sign at 6'-6" allows the District to maintain such a sign to identify the facility and provide timely information to the public in a reasonable manner. Moreover, the new sign will not be visually overwhelming to the adjacent streetscape while still remaining generally visible to passersby even if vehicles are parked in front of it along the north side of the street.
- c. That the granting of such variance will not be materially detrimental to the public welfare or injurious to other property or improvements

in the vicinity and zone in which the subject property is located. The design of the proposed sign is appropriate and complementary to the unique architectural theme of the new building improvements recently made on the property. The proposed height for the subject monument sign/electronic message board is relatively small in size and scale with the property and use it identifies. In order to ensure that the use of the electronic message board is properly managed, specific conditions of approval governing its use have been included in the proposed draft resolution of approval.

- d. The granting of such variance will not be contrary to the objectives of any part of the adopted General Plan. The General Plan and the Montclair Sign Code promotes good design and orderly development in the community.

C. Conditions of Approval.

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. This variance approval is for the installation of a new monument sign with an electronic message board for the Chino Basin Water Conservation District at 4594 San Bernardino Street, as depicted on the approved plans.
2. The maximum height for said monument sign shall be 6'-6" as shown on the approved plans and setback five feet (5'-0") from the inside edge of the existing public sidewalk.
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 \$442.36, 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 variance approval shall be valid for six months from the date of Planning Commission action. If no construction drawings have been submitted to the City for plan review within this time frame, and no

subsequent building permits are issued, then the approval shall automatically expire without further City action.

5. The electronic message board shall be limited to the display of public information related to the mission of the CBWCD. No advertising messages for any off-premise businesses or uses shall be allowed.
6. Images and messages shall be complete and shall not continuously scroll from one image or message to the next.
7. No flashing, pulsing, blinking messages shall be allowed. Electronic messages or images shall not change more than once every ten (10) seconds.
8. The electronic message board shall have a light-sensing device or otherwise have the ability to automatically adjust the sign brightness level to respond to outside ambient conditions as may be required.
9. The use of audio speakers with the electronic sign shall be prohibited.
10. The entire sign, including the electronic message board, shall be maintained in good working order and/or repaired in a timely manner when necessary.
11. The applicant 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 applicant 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 applicant of its obligations under this condition.

Building

12. Submit four complete sets of plans including the following:
  - a. Site/Plot Plan;
  - b. Electrical Plans, including the size of the main switch, number and size of service entrance conductors, panel schedules, and single line diagrams.
13. Submit two sets of structural calculations, if required, and two sets of energy conservation calculations.

14. Architect's/Engineer's stamp and "wet" signature are required prior to plan check approval.
15. 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.
16. Contractors must show proof of State and City licenses and Workers' Compensation coverage to the City prior to permit issuance.
17. All utility services to the project shall be installed underground.
18. Plans shall be submitted for plan check and approved prior to construction. All plans shall be marked with the project file number.
19. Construction activity shall only be permitted from the hours of 7:00 a.m. to 8:00 p.m. daily.
20. 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.
21. Construction drawings submitted to the Building Division for plan review shall comply with the Montclair Security Ordinance No. 357, requiring that the numerical address of the property be installed on the east- and west-facing sides of the monument sign. Address numerals shall be in a font satisfactory to the Planning Division, a minimum of ten inches in height, a minimum of 1½ inches in depth, and be in a color that adequately contrasts with the background to which they are attached.

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

APPROVED AND ADOPTED THIS 22ND DAY OF APRIL, 2013.

PLANNING COMMISSION OF THE CITY OF MONTCLAIR, CALIFORNIA

By: \_\_\_\_\_  
Tenice Johnson, Chair

ATTEST: \_\_\_\_\_  
Steve Lustro, Secretary

I, Steve Lustro, 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 22nd day of April, 2013, by the following vote, to-wit:

AYES:

NOES:

ABSENT:

Z:\COMMDEV\MD\CASES\2013-6 CBWCD SIGN\2013-6 PC RESO

## Report on Item Number 6.b

### PUBLIC HEARING - CASE NUMBER 2013-8

APPLICATION TYPE(S)	Code Amendment (Chapters 11.02, 11.42 and 11.78 MMC)
NAME OF APPLICANT	City of Montclair
LOCATION OF PROPERTY	Citywide
ENVIRONMENTAL DETERMINATION	Categorical Exemption – Section 15301
PROJECT PLANNER	Steve Lustro

### Project Proposal and Background

In late 2012, staff was contacted by a Montclair business owner who desired to offer bottles of wine in conjunction with flower and plant arrangements currently sold by the establishment. Planning staff explained that the off-premises sale of alcoholic beverages requires a Conditional Use Permit (CUP) pursuant to Chapter 11.42 of the Montclair Municipal Code (MMC). However, Section 11.42.050 MMC also states that staff shall not accept a CUP application for a new off-sale establishment unless it is located 500 feet or more from any other off-sale establishment, as measured from property line to property line. Since the property where the subject business is located is only 100 feet from a property where another off-sale establishment currently exists, it was communicated to the business owner that staff was prohibited by the Municipal Code from accepting a CUP application for the request.

The business owner subsequently contacted a member of the City Council regarding the request. At its December meeting, the Code Enforcement Committee discussed the proposal. Community Development staff was directed by the Committee to assemble information related to a possible code amendment, along with information from the Department of Alcoholic Beverage Control (ABC) regarding the type of license that would be required to allow the business owner to offer wine as an ancillary use to the business.

In January 2013, staff contacted ABC to discuss the proposed request. The following information was obtained:

- There is no "special" type of ABC license for the proposed use; the business would require a Type 20 ("off-sale beer and wine") license, the same as what would be required for a convenience store or other retail establishment desiring to sell beer and wine for off-premises consumption.
- The cost of a Type 20 license from ABC is \$354.
- The City cannot place conditions on an ABC Type 20 license that impinge upon the privileges of the license. For example, the City cannot mandate that the sale of alcoholic beverages only be in conjunction with the sale of a flower or plant arrangement.

- The business is required to purchase alcoholic beverages from a licensed wholesale distributor and to maintain stock on hand at all times.

The information above was communicated to the business owner in January 2013, along with information on the base application fee for a CUP (\$2,215). The business owner expressed an objection to the CUP fee, saying that she "only wants to sell wine."

Since the February Code Enforcement Committee meeting was cancelled, discussion of this item resumed at the Committee meeting on March 18, 2013. In addition to the previous direction from the Committee to amend Chapter 11.42 MMC, specifically to relax the separation requirements between off-sale establishments, staff was given additional direction to investigate the implementation of a "Minor" or "Administrative" Conditional Use Permit process that could be applicable to the subject request and would be less costly.

In late March, staff conducted a survey of other California jurisdictions through the League of California Cities' Planners Listserv to determine how many other cities have a "Minor CUP," "Administrative CUP" or other similar process, along with the types of applications to which such a process would apply and the related application fees. Of the 35 cities responding, 32 have such a process, although the types of uses vary greatly. With respect to fees, "Minor" or "Administrative" CUPs in most cities were generally about 50 percent of the cost of a traditional CUP, although the fee difference between the two types of applications ranged from 20-71%.

In June 1994, the City Council adopted Ordinance No. 94-720, which instituted the requirement for businesses engaging in the sale of alcoholic beverages for on- or off-sale consumption to obtain a Conditional Use Permit. The subject Ordinance also instituted the 500-foot separation requirement between establishments selling alcoholic beverages and also a 500-foot separation requirement from schools, parks, playgrounds, houses of worship and hospitals. In making its findings to adopt the Ordinance, the City Council "...found and determined that business establishments engaged in the sale of alcoholic beverages have the potential to "adversely affect the health, peace or safety of the City's residents, property owners, businesses, visitors and workers."

Proposed Ordinance No. 13-933, amending Chapters 11.02, 11.42 and 11.78 of the Montclair Municipal Code, is included in the Commission packets for reference.

### Analysis

There are three components to the proposed code amendment. The following definition is proposed to be added to Chapter 11.02 MMC:

**Off-sale beer and wine establishment as an incidental use** means an establishment that is making application for or has obtained a retail liquor license (Type 20) from the California Department of Alcoholic Beverage Control (ABC) authorizing the sale of alcoholic beverages for consumption

off the premises in original, sealed containers. Such establishments shall be limited to an aggregate display area for alcoholic beverages of four (4) square feet or less within the public area of the demised tenant space or building. Because of the strictly incidental nature of alcoholic beverage sales in such establishments, any business identification signs or temporary promotional signs for such establishments shall not include words, descriptions, inferences, logos, graphics or the like indicating that the business engages in the incidental off-premises sale of alcoholic beverages.

The second component involves the 500-foot separation requirement currently required between off-sale establishments as outlined in Section 11.42.050 MMC. Staff is proposing an exception to the above requirement that would allow off-sale beer and wine establishments as an incidental use to be located within 400 feet of another off-sale liquor establishment, measured as the shortest distance in a straight line between the public entrances of the subject establishments. Staff is not proposing any change to the current 500-foot separation requirement between off-sale establishments and schools, parks, playgrounds, houses of worship and hospitals.

The final component of the code amendment is a comprehensive re-work of Chapter 11.78 related to Conditional Use Permits. The addition of an "Administrative Conditional Use Permit" (ACUP) process necessitated at least some changes to virtually every section in the Chapter. In addition to calling out the specific types of uses where an ACUP or CUP would be required, staff also updated and clarified the types of land uses covered by Chapter 11.78. Further, the zoning districts where specific uses would be conditionally permitted are proposed to be designated for each use or types of uses. The absence of this level of detail in the past has caused consternation for staff and confusion for applicants, so staff saw this code amendment as an opportunity to include more specificity. It should be noted that the proposed amendments to Chapter 11.78 are viewed as interim, as staff has been working on a comprehensive code amendment for some time that would include a user-friendly land use matrix, eliminating the need for the narrative-type of land use lists currently contained in various chapters of the Municipal Code.

Administrative Conditional Use Permits would be reviewed at staff level and acted upon by the Community Development Director. The Director would be expected to make the same required findings the Planning Commission is required to make before granting a traditional CUP, and conditions can be included as part of an ACUP approval. Staff has included the following uses as qualifying for an ACUP in the zoning districts designated in the Ordinance:

- Caretaker quarters
- Residential care facilities for 7 or more persons
- Off-sale beer and wine (ABC Type 20) as an incidental use to a retail business and where display of alcoholic beverages constitutes an aggregate of four (4)

square feet or less of the public area of the demised tenant space and subject to the applicable requirements of Chapter 11.42 MMC

- Co-location of an additional carrier on an existing wireless telecommunications facility, provided the co-location would not result in any major visual changes to the facility or functional changes to the property
- Fruit, vegetable and flower stands where the product is grown on-site
- Mobile recycling and reverse vending units
- Outdoor seating in conjunction with an approved restaurant/food use – 8 seats or more
- Temporary parking lots
- Temporary structures in conjunction with carnivals, farmers' markets, fairs, circuses and religious gatherings
- Temporary use of storage and sea containers in conjunction with a legally established use
- Temporary use of structures, trailers and facilities in conjunction with a legally established use
- Adult day care
- Adult vocational classes, trade schools, computer training, traffic and driving schools
- Children's tutorial classes
- Music, art, dance, gymnastics, martial arts instruction, Pilates, talent/acting studio and yoga – greater than 2,000 square feet

### **Public Notice**

A notice of public review was advertised in the Inland Valley Daily Bulletin newspaper on April 12, 2013, inviting public comment. At the time this report was prepared, no comments or inquiries had been received by staff regarding this proposal.

### **Fiscal Impact**

The cost to publish the public notice in the Inland Valley Daily Bulletin is \$362.28. Implementing a new ordinance would have minimal impact on City resources. While it is anticipated that the application fee for an Administrative Conditional Use Permit would be approximately half that of a Conditional Use Permit, the limited number of the types of applications that would be reviewed under the ACUP process would not result in a discernible negative impact on revenues to the General Fund.

### **Environmental Determination**

The Director has concluded that proposed Ordinance No. 13-933 is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Section 15301 of the State CEQA Guidelines, in that it will not have a significant effect on the environment as the code amendments, in and of themselves, do not approve any construction activities, but instead establish standards and criteria for the establishment of specific types of businesses and uses.

## **Findings**

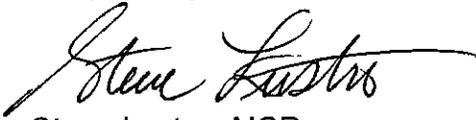
No findings of the Planning Commission or City Council are required for recommending approval of, or approving the proposed Municipal Code amendment.

## **Recommendation**

The Code Enforcement Committee 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 the staff's determination of exemption and directs staff to prepare a Notice of Exemption and a DeMinimis finding of no effect on fish and wildlife; and
- B. Recommend the City Council adopt proposed Ordinance No. 13-933, regulating the off-premises sale of alcoholic beverages, establishing an Administrative Conditional Use Permit process, and establishing criteria for Administrative Conditional Use Permits and Conditional Use Permits as set forth in Planning Commission Resolution No. 13-1775.

Respectfully Submitted,



Steve Lusto, AICP  
Community Development Director

Attachments: Resolution No. 13-1775 Recommending City Council Approval of Ordinance No. 10-933  
Draft Ordinance No. 13-933

Z:\COMMDEV\SL\2013\2013-8 PC RPT

**RESOLUTION NUMBER 13-1775**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MONTCLAIR RECOMMENDING CITY COUNCIL ADOPTION OF PROPOSED ORDINANCE NO. 13-933, AMENDING CHAPTER 11.02 ("DEFINITIONS") OF THE MONTCLAIR MUNICIPAL CODE, CHAPTER 11.42 OF THE MONTCLAIR MUNICIPAL CODE RELATED TO THE OFF-PREMISES SALE OF ALCOHOLIC BEVERAGES, AND CHAPTER 11.78 OF THE MONTCLAIR MUNICIPAL CODE RELATED TO CONDITIONAL USE PERMITS.**

A. Recitals.

**WHEREAS**, in June 1994, the City Council amended the Montclair Municipal Code (MMC) through Ordinance No. 94-720, adding Article 9 to Chapter 6 of Title 9 (now Chapter 11.42 MMC), regulating businesses engaged in the sale of alcoholic beverages for consumption on- or off-site; and

**WHEREAS**, the City Council found and determined that business establishments engaged in the sale of alcoholic beverages have the potential to "adversely affect the health, peace or safety of the City's residents, property owners, businesses, visitors and workers"; and

**WHEREAS**, said code amendment instituted the requirement that all business establishments desiring to engage in the sale of alcoholic beverages for on- or off-site consumption shall obtain a Conditional Use Permit; and

**WHEREAS**, the code amendment included minimum separation requirements for off-sale establishments to avoid an overconcentration of such establishments and also to ensure that off-sale establishments are located a minimum distance from schools, parks, playgrounds, houses of worship and hospitals; and

**WHEREAS**, Section 11.42.050(B) MMC requires that off-sale establishments observe a minimum separation of 500 feet from one another, measured from property line to property line, and that off-sale establishments be located at least 500 feet away from schools, parks, playgrounds, houses of worship and hospitals; and

**WHEREAS**, in response to a request by a Montclair business owner, the Code Enforcement Committee of the City Council has directed staff to review Section 11.42.050(B) MMC and prepare a recommendation relaxing the minimum separation requirements and instituting an alternate review process for businesses desiring to sell alcoholic beverages as a minor, incidental use; and

**WHEREAS**, staff conducted an electronic survey through the League of California Cities' Planning Listserve for the purpose of collecting information from jurisdictions that have provisions for Minor Conditional Use Permits, Administrative Conditional Use Permits or like entitlements, and

**WHEREAS**, staff sees some benefit in instituting an administrative review process and reduced application fees for selected types of land uses; and

**WHEREAS**, implementation of an Administrative Conditional Use Permit (ACUP) process necessitates revisions to Chapter 11.78 of the Montclair Municipal Code, which governs Conditional Use Permits; and

**WHEREAS**, staff remains concerned about overconcentration of alcoholic beverage establishments in Montclair and believes that some separation guidelines should be retained in the Municipal Code; and

**WHEREAS**, public notice of this item was advertised as a public hearing in the Inland Valley Daily Bulletin newspaper on April 12, 2013; and

**WHEREAS**, on April 22, 2013, commencing at 7:00 p.m. in the Council Chamber at Montclair City Hall, the Planning Commission conducted a public hearing at which time all persons wishing to testify in connection with said proposal were heard, and said application was fully studied.

B. 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. This Commission recommends that the City Council adopt the finding that proposed Ordinance No. 13-933 is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 of the State CEQA Guidelines.
3. This Commission recommends the City Council adopt proposed Ordinance No. 13-933, amending Chapter 11.02 ("Definitions") of the Montclair Municipal Code, Chapter 11.42 of the Montclair Municipal Code related to the off-premises sale of alcoholic beverages, and Chapter 11.78 of the Montclair Municipal Code related to Conditional Use Permits.

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

APPROVED AND ADOPTED THIS 22ND DAY OF APRIL, 2013.

PLANNING COMMISSION OF THE CITY OF MONTCLAIR, CALIFORNIA

By: \_\_\_\_\_  
Tenice Johnson, Chair

ATTEST: \_\_\_\_\_  
Steve Lustro, Secretary

I, Steve Lustro, 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 22nd day of April, 2013, by the following vote, to-wit:

AYES:

NOES:

ABSENT:

Z:\COMMDEV\SL\2013\2013-8 PC RESO 13-1775

**ORDINANCE NO. 13-933**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR AMENDING CHAPTER 11.02 ("DEFINITIONS") OF THE MONTCLAIR MUNICIPAL CODE, CHAPTER 11.42 OF THE MONTCLAIR MUNICIPAL CODE RELATED TO THE REGULATION OF SALE OF ALCOHOLIC BEVERAGES, AND CHAPTER 11.78 OF THE MONTCLAIR MUNICIPAL CODE RELATED TO CONDITIONAL USE PERMITS AND ADMINISTRATIVE CONDITIONAL USE PERMITS (CASE NO. 2013-8).**

**WHEREAS**, in June 1994, the City Council amended the Montclair Municipal Code (MMC) through Ordinance No. 94-720, adding Article 9 to Chapter 6 of Title 9 (now Chapter 11.42 MMC), regulating businesses engaged in the sale of alcoholic beverages for consumption on- or off-site; and

**WHEREAS**, the City Council found and determined that business establishments engaged in the sale of alcoholic beverages have the potential to "adversely affect the health, peace or safety of the City's residents, property owners, businesses, visitors and workers"; and

**WHEREAS**, said code amendment instituted the requirement that all business establishments desiring to engage in the sale of alcoholic beverages for on- or off-site consumption shall obtain a Conditional Use Permit; and

**WHEREAS**, the code amendment included minimum separation requirements for off-sale establishments to avoid an overconcentration of such establishments and also to ensure that off-sale establishments are located a minimum distance from schools, parks, playgrounds, houses of worship and hospitals; and

**WHEREAS**, Section 11.42.050(B) MMC requires that off-sale establishments observe a minimum separation of 500 feet from one another, as measured from property line to property line, and that off-sale establishments be located at least 500 feet away from schools, parks, playgrounds, houses of worship and hospitals; and

**WHEREAS**, in response to a request by a Montclair business owner, the Code Enforcement Committee of the City Council has directed staff to review Section 11.42.050(B) MMC and prepare a recommendation relaxing the minimum separation requirements and instituting an alternate review process for businesses desiring to sell alcoholic beverages as a minor, incidental use; and

**WHEREAS**, staff conducted an electronic survey through the League of California Cities' Planning Listserve for the purpose of collecting information from jurisdictions that have provisions for Minor Conditional Use Permits, Administrative Conditional Use Permits or like entitlements, and

**WHEREAS**, staff sees some benefit in instituting an administrative review process and reduced application fees for selected types of land uses; and

**WHEREAS**, implementation of an Administrative Conditional Use Permit (ACUP) process necessitates revisions to Chapter 11.78 of the Montclair Municipal Code, which governs Conditional Use Permits; and

**WHEREAS**, staff remains concerned about overconcentration of alcoholic beverage establishments in Montclair and believes that some separation guidelines should be retained in the Municipal Code.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MONTCLAIR DOES HEREBY ORDAIN AS FOLLOWS:**

**Section I. Amendment of Code.**

The following definition is hereby added to Section 11.02.010 ("Definitions") of the Montclair Municipal Code:

**Off-sale beer and wine establishment as an incidental use** means an establishment that is making application for or has obtained a retail liquor license (Type 20) from the California Department of Alcoholic Beverage Control (ABC) authorizing the sale of alcoholic beverages for consumption off the premises in original, sealed containers. Such establishments shall be limited to an aggregate display area for alcoholic beverages of four (4) square feet or less and ten (10) cubic feet or less within the public area of the demised tenant space or building. Said display(s) shall be located a minimum of ten (10) feet from all storefront windows of the establishment. Because of the strictly incidental nature of alcoholic beverage sales in such establishments, any business identification signs or temporary promotional signs for such establishments shall not include words, descriptions, inferences, logos, graphics or the like indicating that the business engages in the incidental off-premises sale of alcoholic beverages.

**Section II. Amendment of Code.**

Section 11.42.050 ("Conditional use permits for off-sale liquor establishments") of the Montclair Municipal Code is hereby repealed and replaced as follows:

**11.42.050 Conditional use permits for off-sale liquor establishments.**

A. Conditional Use Permit (CUP) or Administrative Conditional Use Permit (ACUP) Required. Any land use that is identified in any Chapter of this Title as a permitted use, and which authorizes a business enterprise to engage in the retail sale of alcoholic beverages as an off-sale liquor establishment, shall be permitted only upon such conditions as the Director of Community Development, Planning Commission or City Council deems necessary and appropriate, which shall include the mandatory conditions set forth in subsection (C) of this Section, as applicable.

B. Restrictions on Concentration of Off-Sale Liquor Establishments.

1. No CUP shall be issued to an off-sale liquor establishment of 8,000 square feet or less, and no application for such CUP shall be accepted, unless the proposed off-sale liquor establishment is located 500 feet or more from any other off-sale liquor establishment, measured from property line to property line of the parcels involved, provided, however, that businesses engaging in the off-sale of beer and wine as an incidental use as defined in this Title and subject to approval of an ACUP shall observe a minimum separation of 400 feet from any other off-sale liquor establishment or any other business engaging in off-sale beer and wine as an incidental use, measured as the shortest distance between the public entrances of the subject establishments.

2. No CUP shall be issued to an off-sale liquor establishment of 8,000 square feet or less, and no application for such CUP shall be accepted, unless the proposed off-sale liquor establishment is located 500 feet or more from any existing house of worship, public or private school, park, playground or hospital, measured from property line to property line of the parcels involved. The 500-foot separation requirement shall not be applicable if the proposed off-sale liquor establishment is located within a retail commercial center of two acres or more.

C. Mandatory Conditions of Approval. In addition to the applicable requirements of Section 25600 et seq. of the Business and Professions (B&P) Code, the following mandatory conditions of approval shall be imposed on any CUP or ACUP issued under this Section:

1. No inventory, materials, merchandise or supplies shall be stored or displayed except within a wholly enclosed building.

2. The premises shall be maintained at all times in a neat and orderly manner.

3. Trash receptacles shall be provided in such number and at such locations as may be specified by the Planning Commission (CUP) or Director of Community Development (ACUP).

4. No exterior security bars and roll-up doors applied to windows and pedestrian building entrances shall be allowed.

5. Exterior lighting of the parking areas shall be modified as necessary to provide a minimum intensity of at least one foot-candle of light throughout the parking area at all times in compliance with the Montclair Security Ordinance.

6. Window signs or displays shall comply with the following requirements:

a. Temporary or permanent window signs, posters, banners, or other applied graphics shall not cover more than 25 percent of each window and shall not be placed in windows in a manner that will obstruct the view into the building by emergency personnel.

b. Window sign placement shall not obstruct the view of the sales transaction area from inside and outside the building.

c. Any window tinting shall allow for physical identification of all persons in the sales transaction area from outside the building.

d. Temporary or permanent window signs, interior or exterior banners, or other signs placed within the store that are visible from outside the store, and advertise the availability of, or offer for purchase alcoholic beverages of any kind at the site shall be prohibited.

7. No video or arcade games, pinball machines, pool tables, jukeboxes, or similar devices shall be allowed within the subject lease space, with the exception of official State lottery machines.

8. No exterior public telephones, vending or other coin-operated machines, children's rides, collection boxes, etc., shall be located on the exterior of the subject lease space or the remainder of the site.

9. No alcoholic beverages, including beer and wine, shall be consumed on the premises.

10. Employees selling alcoholic beverages shall be of such age, and subject to such supervision, as is specified in B&P Code §25663(b).

11. The exterior appearance of the permittee's premises shall be designed and maintained in a manner consistent with the exterior appearance of commercial premises existing or proposed in the immediate neighborhood so as not to cause blight or deterioration, or to substantially diminish or impair property values in the neighborhood.

12. The permittee shall comply with all State statutes, rules and regulations relating to the sale, purchase, display, possession and consumption of alcoholic beverages.

13. The permittee shall acknowledge and agree that 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 (C)(12) of this Section. The permittee shall further acknowledge and agree 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:

a. The specific land use requested by the permittee and authorized by the City;

b. The compatibility of permittee's authorized land use with adjacent land uses; and

c. The welfare and safety of the general public within the City.

In view of such deleterious secondary effects, permittee shall acknowledge that 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 alcoholic beverages by a minor.

14. The permit shall, after notice to the permittee and an opportunity to be heard, be subject to the imposition of additional conditions following its issuance, which additional conditions may be imposed by the Planning Commission or, upon appeal, by the City Council to address problems of land use compatibility, security, or crime control that have arisen since the issuance of the permit.

15. No alcoholic beverages shall be consumed on the site nor shall any person have an open alcoholic beverage container on the site or adjacent sidewalks, streets or alleys. Signs stating, "NO LOITERING. POSSESSION OF OPEN ALCOHOLIC BEVERAGE CONTAINERS ON THESE PREMISES AND ADJACENT PUBLIC AREAS IS PROHIBITED PURSUANT TO SECTION 7.08.010(A) MMC" at each entrance and in the parking lot adjacent to the licensed premises.

### **Section III. Amendment of Code.**

The Table of Contents for Chapter 11.78 ("CONDITIONAL USE PERMITS") of the Montclair Municipal Code is hereby repealed and replaced as follows:

#### **Chapter 11.78**

#### **CONDITIONAL USE PERMITS**

##### **Sections:**

<b>11.78.010</b>	<b>Purpose and authorization.</b>
<b>11.78.020</b>	<b>Qualifications.</b>
<b>11.78.030</b>	<b>Permitted uses.</b>
<b>11.78.035</b>	<b>Permitted uses – administrative review.</b>
<b>11.78.040</b>	<b>Nonconforming structures and uses.</b>
<b>11.78.050</b>	<b>Buildings within planned rights-of-way.</b>
<b>11.78.060</b>	<b>Initiation of proceedings.</b>
<b>11.78.070</b>	<b>Hearing.</b>
<b>11.78.080</b>	<b>Findings, conditions and time limits.</b>
<b>11.78.090</b>	<b>Appeals.</b>
<b>11.78.100</b>	<b>Revocation.</b>

### **Section IV. Amendment of Code.**

Sections 11.78.010 through 11.78.030 of the Montclair Municipal Code are hereby repealed and replaced as follows:

#### **11.78.010 Purpose and authorization.**

This Chapter is intended to provide the flexibility and procedures necessary for certain uses and activities that are not allowed as a matter of right within a zoning district by reason of uniqueness, size, scope or possible negative effect on public facilities or surrounding uses, but may be permitted after special consideration and public review of each request in order to ensure conformity and compatibility with the goals and objectives of the adopted General Plan and zoning code, subject to a Conditional Use Permit (CUP) or Administrative Conditional Use Permit (ACUP). In granting such permits, the Planning Commission (CUP) or Director of Community Development (ACUP) may stipulate conditions, in addition to those required by the provisions of this Title, which would tend to safeguard the health, safety and property value in the area.

#### **11.78.020 Qualifications.**

A Conditional Use Permit may be granted by the Planning Commission, or an Administrative Conditional Use Permit may be granted by the Director of Community Development, for those uses stated in Sections 11.78.030 through 11.78.050 of this Chapter and other uses identified in this Title requiring approval of a Conditional Use Permit or Administrative Conditional Use Permit.

**11.78.030 Permitted uses.**

The Planning Commission may grant a Conditional Use Permit (CUP) for any use listed in this Section as a permitted use only in the zoning districts noted and subject to conditions related to the use, construction, implementation, operation and automatic revocation as the Planning Commission may deem appropriate and necessary for the general welfare of the community:

- A. Residential Uses.
  - 1. Assisted living facilities (AP, C-2, C-3);
  - 2. Convalescent care (AP, C-2, C-3);
  - 3. Student housing, dormitories, group quarters (AP, C-2, C-3).
- B. Commercial Uses (Animal Services).
  - 1. Animal hospitals, boarding facilities and kennels (MIP, M-1, M-2);
  - 2. Animal shelters (M-1, M-2);
  - 3. Feed and tackle supplies with outdoor storage (C-3, M-1, M-2);
  - 4. Pet sales and supplies – retail (MIP).
- C. Commercial Uses (Alcoholic Beverage Sales).

The uses identified in this subsection shall also be subject to the applicable requirements of Chapter 11.42 of this Title.

- 1. Off-sale alcoholic beverages within an overall floor area of less than 15,000 square feet, except those retail businesses specifically identified in Section 11.78.035(B)(1) of this Chapter as requiring an Administrative Conditional Use Permit (C-2, C-3);
- 2. Off-sale alcoholic beverages within an overall floor area of 15,000 square feet or greater (C-2);
- 3. On-sale alcoholic beverages in conjunction with a bona fide eating establishment (C-2, C-3, MIP);
- 4. Micro-brewery with on-site tasting (C-3);
- 5. Micro-brewery in conjunction with a bona fide eating establishment (C-2, C-3).
- D. Commercial Uses (General Merchandise).
  - 1. Antiques – retail (MIP);
  - 2. Auction houses (MIP, M-1, M-2);
  - 3. Carpet and floor covering stores – retail (MIP, M-1, M-2);
  - 4. Cigar/cigarette/smoke shops (C-2, C-3);
  - 5. Commercial plant nursery – wholesale (MIP, M-1, M-2);
  - 6. Construction equipment sales with outdoor storage (C-3, MIP, M-1, M-2);
  - 7. Construction equipment sales without outdoor storage (MIP);
  - 8. Convenience stores (C-2, C-3);
  - 9. Firearms, ammunition and related products as a stand-alone use – retail (C-3, MIP, M-1);
  - 10. Furniture, office and home furnishings (MIP);
  - 11. Garden supply, hardware/home improvement center, plant nursery with outdoor display area (C-2, C-3, MIP);
  - 12. Hobby, toy and game shops with more than four (4) personal computers for customer use (C-2, C-3);
  - 13. Newsstands – staffed (C-2, C-3);
  - 14. Sporting goods and equipment with firearms and/or ammunition sales (C-2, C-3);
  - 15. Swap meets, marketplaces, concession malls (C-3).

- E. Commercial Uses (Lodging Facilities).
  - 1. Bed and breakfast facilities (AP, C-2, C-3);
  - 2. Hotels and motels (AP, C-2, C-3).
- F. Commercial Uses (Medical/Health Services).
  - 1. Hospitals (AP).
- G. Commercial Uses (Motor Vehicle/Watercraft Sales and Service).
  - 1. Automobile/watercraft body and painting as a primary use (MIP, M-1, M-2);
  - 2. Automobile, motorcycle, RV and watercraft sales and service – new and/or used with outdoor display (C-3, MIP);
  - 3. Automobile rental agencies with on-site parking for rental vehicles (C-2, C-3, MIP);
  - 4. Car washes (C-2, C-3, MIP);
  - 5. Commercial parking lots, garages and structures as a primary use (AP, C-2, C-3);
  - 6. Fueling/service stations with or without ancillary uses, such as mini-mart, auto repairs, car wash, or quick-serve food establishment (C-2, C-3, MIP, M-1, M-2);
  - 7. Limousine, charter bus, shuttle or taxi service with on-site fleet vehicle storage (AP, C-2, C-3, MIP, M-1, M-2);
  - 8. Quick lube facilities (C-3, MIP, M-1, M-2);
  - 9. Truck, trailer, moving van and equipment rentals (C-2, C-3, MIP, M-1, M-2).
- H. Commercial Uses (Personal Services).
  - 1. Cemeteries, crematories, mausoleums, columbaria (M-1, M-2);
  - 2. Coin laundries (C-2, C-3);
  - 3. Fortune telling, palm or card reading (C-3);
  - 4. Funeral homes and mortuaries (C-3, MIP);
  - 5. Pawn shops (C-3);
  - 6. Tattoo, dermagraphics or body piercing as a primary use (C-3, MIP).
- I. Commercial Uses (Recreation/Entertainment).
  - 1. Banquet halls as a stand-alone use (C-3, MIP, M-1);
  - 2. Billiards and pool halls (C-2, C-3);
  - 3. Cyber cafés, internet access and electronic game arcades (C-2, C-3);
  - 4. Golf courses and driving ranges (C-3, MIP, M-1, M-2);
  - 5. Hookah establishments as a stand-alone use (C-3);
  - 6. Indoor amusement facilities, batting cages, bike/skate parks, bowling centers, go-kart facilities, karaoke establishments, recreation/sports/gyms/health clubs, roller/ice hockey facilities and skating rinks (C-2, C-3, MIP)
  - 7. Outdoor amusement parks and facilities, bike/skate parks, go-kart facilities, miniature golf, recreation/sports/health clubs, skating rinks, batting cages, roller/ice hockey facilities, miniature and remote control car tracks and remote control hobby facilities (C-2, C-3, MIP, M-1, M-2);
  - 8. Public assembly, auditoriums and meeting halls (C-2, C-3, MIP);
  - 9. Theaters (live stage and motion picture) and concert halls (C-3, MIP).
- J. Commercial Uses (Religious Institutions).
  - 1. Houses of worship (AP, C-2, C-3, MIP, M-1, M-2);
  - 2. Monasteries and religious group quarters as a primary use (C-3, MIP).

- K. Commercial Uses (Special Uses).
  - 1. Wireless telecommunications facilities (AP, C-2, C-3, MIP, M-1, M-2).
- L. Educational/Instructional/Day Care Uses.
  - 1. Colleges (AP, C-3, MIP);
  - 2. Elementary, middle and high schools – private (AP, MIP);
  - 3. Pre-schools and children's day care facilities (AP, C-2, C-3).
- M. Manufacturing and Industrial Uses.
  - 1. Automobile wrecking yards, salvage and junk yards (M-2);
  - 2. Chemical manufacturing and processing (M-2);
  - 3. Concrete batch plants (M-2);
  - 4. Detergent and soap manufacturing (M-2);
  - 5. Explosives and fireworks manufacturing and storage (M-2);
  - 6. Laundries and dry cleaners – commercial (M-1, M-2);
  - 7. Lumber and wood products with outdoor storage (MIP, M-1, M-2);
  - 8. Metal or iron work fabrication (M-1, M-2);
  - 9. Outdoor business operations with permitted manufacturing/industrial use (MIP, M-1, M-2);
  - 10. Recycling/transfer facilities and material recovery facilities (M-2);
  - 11. Research, development and testing of products with outdoor operations (M-1, M-2);
  - 12. Rock, sand, gravel and mineral extraction and recycling (M-2);
  - 13. Stone, clay and glass manufacturing (M-2);
  - 14. Tire retreading (M-2);
  - 15. Vehicle battery manufacturing (M-2);
- N. Warehouse and Storage Uses.
  - 1. Building materials with outdoor storage (MIP, M-1, M-2);
  - 2. Lumber/contractor storage yard as a primary use (MIP, M-1, M-2);
  - 3. Outdoor storage as a primary use (M-1, M-2);
  - 4. Outdoor storage as an ancillary use to a permitted use in a building (MIP, M-1, M-2);
  - 5. Outdoor storage for gardening/landscape companies and contractors (MIP, M-1, M-2);
  - 6. Self-storage, mini-storage warehouse facilities (C-3, MIP, M-1, M-2);

**Section V. Amendment of Code.**

Section 11.78.035 ("Permitted uses – administrative review") of the Montclair Municipal Code is hereby added as follows:

**11.78.035 Permitted uses – administrative review.**

The Director of Community Development may grant an Administrative Conditional Use Permit (ACUP) for any use listed in this Section as a permitted use only in the zoning districts noted and subject to conditions related to the use, construction, implementation, operation and automatic revocation as the Director may deem appropriate and necessary for the general welfare of the community, provided the use is deemed to be exempt from the provisions of the California Environmental Quality Act (CEQA):

- A. Residential Uses.
  - 1. Caretaker quarters (C-3, MIP, M-1, M-2);

2. Residential care facilities – 7 or more persons (AP, C-2, C-3);
- B. Commercial Uses (Alcoholic Beverage Sales).
  1. Off-sale beer and wine (ABC Type 20) as an incidental use to a retail business and where display of alcoholic beverages constitutes an aggregate of four (4) square feet or less of the public area of the demised tenant space and subject to the applicable requirements of Chapter 11.42 of this Title (C-2, C-3).
  - C. Commercial Uses (Temporary and Special Uses).
    1. Co-location of an additional carrier on an existing wireless telecommunications facility, provided the co-location would not result in any of the following (AP, C-2, C-3, MIP, M-1, M-2):
      - a. An increase in height of the existing facility;
      - b. A substantial change to the visual appearance of the existing facility;
      - c. An increase in the area of the ground lease space that results in a reduction of required landscape area or required parking.
    2. Fruit, vegetable and flower stands – product grown on-site (MIP, M-1, M-2);
    3. Mobile recycling and reverse vending units (C-2, C-3, MIP, M-1, M-2);
    4. Outdoor seating in conjunction with an approved restaurant/food use – 8 seats or more (C-2, C-3, MIP);
    5. Temporary parking lots (AP, C-2, C-3, MIP, M-1, M-2);
    6. Temporary structures in conjunction with carnivals, farmers' markets, fairs, circuses and religious gatherings (C-3, MIP, M-1, M-2);
    7. Temporary use of storage and sea containers in conjunction with a legally established use (MIP, M-1, M-2);
    8. Temporary use of structures, trailers and facilities in conjunction with a legally established use (AP, C-2, C-3, MIP, M-1, M-2).
  - D. Educational/Instructional/Day Care Uses.
    1. Adult day care (C-2, C-3);
    2. Adult vocational classes, trade schools, computer training, traffic and driving schools (AP, C-2, C-3);
    3. Children's tutorial classes (AP, C-2, C-3);
    4. Music, art, dance, gymnastics, martial arts instruction, personal fitness, Pilates, talent/acting studio and yoga – greater than 2,000 square feet (AP, C-2, C-3, MIP).

## **Section VI. Amendment of Code.**

Sections 11.78.040 through 11.78.120 of the Montclair Municipal Code are hereby repealed and replaced as follows:

### **11.78.040 Nonconforming structures and uses.**

#### **A. Nonconforming structures.**

All structures, including main buildings, accessory structures, walls, fences, signs, and other structures, that do not comply with height, setback, density, and/or lot coverage standards specified by this Title, or for which the number of parking spaces provided is less than required, or any residential structures within any Commercial or Industrial zone, except as may be permitted

by this Title, are hereby deemed to be nonconforming structures, and the following provisions shall apply:

1. Enlargement and extension. No enlargement, extension, or expansion shall be made to a nonconforming structure unless otherwise permitted by this Title. Building additions to a single-family residence in the R-1 Zone shall be permitted, provided that the addition observes the setbacks currently required by this Title and that all other development standards of the underlying zone can be met.

2. Building additions to single-family residences without required covered parking. In the R-1 Zone, single-family residences without required covered parking pursuant to Chapter 11.66 of this Title may be expanded as follows:

a. The floor area of the main residential structure is not increased by more than 25 percent or 500 square feet, whichever is less, over a period of five years or less.

b. The new construction shall not occupy the only available area(s) suitable for required parking and access thereto.

3. Construction of accessory structures and second dwelling units on R-1 lots without required covered parking. The construction of a detached accessory structure pursuant to Chapter 11.19 of this Title, or an attached or detached second dwelling unit pursuant to Chapter 11.23 of this Title, on a lot in the R-1 Zone developed with a single-family residence upon which required covered parking is not provided shall be prohibited unless the required covered parking is constructed prior to, or concurrently with, said accessory structure or second dwelling unit. A certificate of occupancy for an accessory structure or second dwelling unit shall not be issued by the Building Official until a certificate of occupancy has been issued for the structure providing the required covered parking.

4. Maintenance and repairs. General maintenance and necessary repairs that are not structural in nature may be made to legal nonconforming structures in all zoning districts. Structural repairs to a legal nonconforming structure may be authorized by the Building Official if it is determined that said repairs are necessary to protect the health and safety of the occupants, public at-large, or adjacent property and the cost does not exceed 50 percent of the replacement cost of the legal nonconforming structure. Improvements required to strengthen unreinforced masonry structures shall be permitted without replacement cost limitations, provided that such work is limited strictly to compliance with seismic safety standards.

5. Abandonment of nonconforming structures. Any nonconforming building, structure, sign, or improvement that has been vacated or not utilized for a continuous period of 180 days or more shall be deemed to have lost its nonconforming status and shall, at the discretion of the Director of Community Development, be demolished, removed, or modified to such extent that it would be in conformance with the current development standards for the zone in which the building, structure, sign, or improvement is located. Additionally, any sign that became nonconforming on March 21, 2001, pursuant to Ordinance No. 94-733 and the criteria set forth in Section 11.72.140 of this Title, or any sign that has been subsequently determined to be nonconforming, shall not be re-faced or re-established to identify a different business than was identified on the previously legal nonconforming sign.

6. Replacement of nonconforming structures. Any nonconforming single-family residential, commercial, industrial, or institutional structure that is involuntarily damaged by fire or other catastrophic event may be restored or re-constructed to its original condition provided that the cost of such restoration/re-construction does not exceed 50 percent of the replacement value of the structure as determined by the Director of Community Development and that the restoration shall commence within one year from the date the damage occurred.

7. Replacement of nonconforming multifamily structures. Any nonconforming multifamily residential dwelling unit that is involuntarily damaged or destroyed by fire or other catastrophic event may be restored subject to the provisions set forth in California Government Code Section 65852.25.

8. Relocation of a nonconforming structure. A nonconforming structure shall not be moved to any other lot or to any other portion of the lot on which it is located unless, as a result of the move, the structure would then conform to the regulations of the zoning district.

9. Nonconforming historic structures. Repairs, alterations, and additions necessary for the preservation, restoration, rehabilitation, or continued use of a nonconforming historic structure may be made when authorized by the Director of Community Development and Building Official or their designees, provided that:

- a. The structure has been designated as having significant historical or architectural significance by the City Council, State of California, or federal government, or was constructed in, or prior to, 1940;
- b. Any unsafe conditions are corrected; and
- c. The use(s) therein shall be in conformance with all applicable provisions of this Chapter.

B. Nonconforming uses.

Nonconforming uses are those that were legally established but that are not currently listed as permitted or conditionally permitted in the zoning district in which they are located, or those that currently require a Conditional Use Permit but at the time of their initiation did not require a Conditional Use Permit. The following provisions shall apply to legal nonconforming uses:

1. No nonconforming use shall be expanded or moved in whole or part to any portion of the lot or parcel upon which it is located, or other structure other than that occupied by such use at the time it was established.
2. No nonconforming use shall be changed to a different nonconforming use.
3. If a nonconforming use is discontinued or abandoned for a continuous period of 180 days or more, such use shall be deemed to have lost its nonconforming status and shall not be re-established.

4. Adult-oriented businesses. The amortization of nonconforming adult-oriented businesses shall be subject to the provisions set forth in Section 11.40.060 of this Title.

C. Permits or certificates of occupancy prohibited. When any nonconforming structure or use is no longer permitted pursuant to the provisions of this Title, no building or sign permit or certificate of occupancy shall thereafter be issued for further continuance, alteration, or expansion. Any

permit or certificate of occupancy issued in error shall not be construed as allowing the continuation of the nonconforming structure or use.

D. Removal of illegal nonconforming structures and uses. Nothing contained in this Section shall be construed or implied so as to allow for the continuation of illegal nonconforming structures and uses.

E. Burden of proof. The burden of proof regarding nonconforming structures and uses shall be with the property owner to the satisfaction of the Director of Community Development.

#### **11.78.050 Buildings within planned rights-of-way.**

The Director of Community Development may grant an Administrative Conditional Use Permit as follows:

A. For temporary structures within planned rights-of-way when the property owner applying for such permit signs an agreement with the City to remove any such temporary building or structure at his/her expense whenever so requested by the City for street widening or opening; or

B. Upon evidence that the entire property of the owner, of which the area of the planned right-of-way forms a part, cannot reasonably be used for a permitted use and yield a reasonable return to the owner without a new or improved structure within such planned right-of-way.

#### **11.78.060 Initiation of proceedings.**

A. Any property owner or his/her authorized representative desiring a Conditional Use Permit or Administrative Conditional Use Permit may file an application for such permit with the Planning Division on forms furnished by the City. Additional submittal requirements as designated by Planning Division staff shall accompany said application form in order to constitute a complete application. The additional submittal requirements may include, but not be limited to, the following:

1. A legal description of the subject property;
2. A site plan, floor plans, elevations, and other appropriate drawings illustrating existing and proposed buildings or facilities;
3. A narrative describing the nature of the proposed use, hours of operation, estimated occupancy, and other relevant information;
4. A reference to the specific provisions of this Title that are applicable to the Conditional Use Permit or Administrative Conditional Use Permit sought;
5. A filing fee, the amount of which is determined by resolution of the City Council;
6. Conditional Use Permit justification form;
7. Environmental assessment form;
8. Names and mailing addresses, printed on mailing labels, of all owners of real property within 300 feet of the external boundaries of the subject property, as shown on the latest adopted, publicly available tax roll of the County of San Bernardino.

B. No application for the same general purpose concerning the same property, which application has been recommended for denial by the Planning Commission or denied by the Director of Community Development, Planning Commission and/or City Council on appeal, shall be received or processed by the

Planning Division within 12 months after such denial except by the consent of at least four members of the Planning Commission present at a regular meeting of the Planning Commission.

**11.78.070 Hearing.**

A. Upon the acceptance of a completed application for a Conditional Use Permit (CUP) or Administrative Conditional Use Permit (ACUP), Planning Division staff shall forward the application to the Development Review Committee for review and comments and shall communicate to the applicant said recommendations and comments from the Development Review Committee. If no major changes are recommended, then the City Planner shall, in the case of a CUP, set a date for a public hearing before the Planning Commission. For an ACUP, the City Planner shall forward the application to the Director of Community Development for consideration and action. If major changes to the proposal are recommended or required, then the submitted plans shall be returned to the applicant for revision and re-submittal. When the necessary corrections have been made, the application shall be deemed complete. For CUPs, the City Planner shall set a date for a public hearing; for ACUPs, the application shall be forwarded to the Director for consideration and action.

B. For Conditional Use Permits, the Secretary of the Planning Commission shall give notice of such requested CUP and of the time and place of such public hearing as follows:

1. By one publication in a newspaper having a general circulation in the City at least 10 days, but no more than 15 days, prior to the date set for the public hearing; and

2. By mailed notice not less than 10 days prior to the date set for the public hearing to all owners of real property within a radius of 300 feet of the external boundaries of the property described in the application, using the last known name and mailing address of such owners as shown on the most recent available tax roll for the County of San Bernardino. Notice may be given to property owners within a greater radius at the discretion of the Planning Commission or the Director of Community Development.

3. The Planning Commission shall cause to be made by its own members, or members of staff, such investigation of facts bearing upon such application set for hearing, including an analysis of precedent cases as in the opinion of the Planning Commission will serve to provide the necessary information to enable the Commission to act.

4. A copy of the staff report shall be made available to the applicant and to the general public upon request prior to the hearing.

5. At the time and place so fixed and noticed, the public hearing shall be conducted before the Planning Commission. The Commission shall consider all pertinent oral and written evidence and information prior to adoption of a formal and numbered resolution granting or denying such Conditional Use Permit. A summary of all pertinent testimony offered at the hearing, the names and addresses of persons testifying, copies of all notices, affidavits of newspaper publication(s), and records of action taken shall be a part of the permanent case file.

C. For Administrative Conditional Use Permits, the Director of Community Development shall give notice of such requested ACUP as follows:

1. By mailed notice not less than 10 days prior to the date set for a final decision by the Director to all owners of real property within a radius of 300 feet of the external boundaries of the property described in the application, using the last known name and mailing address of such owners as shown on the most recent available tax roll for the County of San Bernardino. Notice may be given to property owners within a greater radius at the discretion of the Director of Community Development.

2. The Director of Community Development shall conduct an investigation of facts bearing upon such application, including an analysis of precedent cases as, in the opinion of the Director, will serve to provide the necessary information to enable him/her to act.

3. The Director of Community Development shall consider all pertinent oral, written and electronic communications received by Planning Division staff related to the subject application prior to granting or denying such Administrative Conditional Use Permit. A summary of all pertinent communication received by staff, copies of all notices, affidavits of newspaper publication(s), and records of action taken shall be a part of the permanent case file.

**11.78.080 Findings, conditions, and time limits.**

A. Findings. The Planning Commission, prior to approval of a request for a Conditional Use Permit, shall adopt a resolution stating that the evidence presented shows that each of the findings below have been made. In the case of an Administrative Conditional Use Permit, the Director of Community Development shall prepare an approval letter stating the evidence presented shows that each of the following findings have been made:

1. That the use is essential or desirable to the public convenience and public welfare;

2. That granting the permit will not be materially detrimental to the public welfare and to other property in the vicinity;

3. That the use conforms to good zoning practices and development standards; and

4. That the use is not contrary to any of the objectives of the adopted General Plan.

B. Finding of Public Convenience and Necessity.

1. In the event that a CUP is granted for a business establishment engaged in the sale of alcoholic beverages for on- or off-site consumption, and that establishment is located in a census tract where there is "undue concentration" pursuant to Section 23958.4 of the Business and Professions Code, then the Planning Commission shall also make a finding of Public Convenience and Necessity in addition to the findings in Subsection (A) of this Section.

2. In the event that an ACUP is granted for a business establishment engaged in the sale of beer and wine as an incidental use as defined in this Title, and that establishment is located in a census tract where there is "undue concentration" pursuant to Section 23958.4 of the Business and Professions Code, then the Director of Community Development shall also make a finding of Public Convenience and Necessity in addition to the findings in Subsection (A) of this Section. In the alternative, the Director, at his/her sole discretion, may refer

the application to the Planning Commission to make the required Finding of Public Convenience and Necessity.

C. Conditions.

1. The Planning Commission may grant the requested Conditional Use Permit, or the Director of Community Development an Administrative Conditional Use Permit, in whole or in part upon such items and conditions as he/she/it may deem necessary to safeguard and protect the public health, safety, and general welfare, the existing and possible future uses on adjoining land in the neighborhood, the proper handling and regulation of traffic, and to ensure the eventual development of the property with respect to which the permit is granted.

2. Prior to the issuance of any building or occupancy permit, the owner and anyone applying on his/her behalf shall agree, in writing, to meet and abide by all the conditions and requirements imposed on the Conditional Use Permit or Administrative Conditional Use Permit.

D. Time Limit.

1. Each determination of the Planning Commission or Director of Community Development granting a Conditional Use Permit or Administrative Conditional Use Permit shall be conditioned upon the privileges being utilized within six months after the effective date thereof unless a shorter or longer time period is established by the Planning Commission or Director, and if they are not utilized, or preliminary construction work is not begun within such time and/or progressing adequately to the satisfaction of the Director of Community Development, this authorization shall become void, and any privilege or permit granted shall be deemed to have lapsed. The Planning Commission, however, shall have the authority to extend the time limit required for a Conditional Use Permit for good cause and in the case of unavoidable delay upon submittal of a written request and the required time extension filing fees by the applicant at least 10 days prior to the expiration date. Similarly, the Director shall have the authority to extend the time limit required for an Administrative Conditional Use Permit for good cause and in the case of unavoidable delay upon submittal of a written request and the required time extension filing fees by the applicant at least 10 days prior to the expiration date.

2. As a condition for granting an extension of time, the Planning Commission (CUP) or Director of Community Development (ACUP) may revise existing conditions or impose additional conditions to ensure that the project will be in compliance with City standards in effect at the time such extension is granted.

3. Once any portion of the Conditional Use Permit or Administrative Conditional Use Permit is utilized, the other portions thereof shall become immediately operative and shall be strictly complied with.

4. When a land use for which a Conditional Use Permit or Administrative Conditional Use Permit was granted is discontinued for a period of six continuous months, such use shall not be re-established unless a new CUP or ACUP, as applicable, is approved for the subject use. Further, if any land use legally established without the benefit of a CUP or ACUP is discontinued for six continuous months, but, under the current requirements of this Title would require approval of a CUP or ACUP, said land use shall not be re-established unless a CUP or ACUP, as applicable, is approved for the subject use.

**11.78.090 Appeals.**

**A. Conditional Use Permits.**

1. The action of the Planning Commission shall become final on the date the Planning Commission makes its final determination on the application. However, within 15 days after the date of the Planning Commission's decision, a written appeal therefrom may be taken to the City Council by any person aggrieved by the determination of the Planning Commission in connection with the application. Such appeal shall be accompanied by the required appeal fee, which shall be one-half of the initial Conditional Use Permit filing fee. The City Council, on its own motion, may appeal any determination of the Planning Commission within 15 days of the Planning Commission decision or at the next regularly scheduled City Council meeting, whichever occurs later. An appeal fee shall not be required in the event of such City Council appeal.

2. The appeal request shall stay any proceedings associated with the action appealed from. Upon receipt of the request for the appeal, Planning Division staff shall transmit to the City Council the appeal request and copies of all other papers constituting the official record, together with a written report stating why the appeal should or should not be granted.

3. The City Council may, by resolution, affirm, reverse, or modify in whole or in part, any decision, determination, or requirement of the Planning Commission, but before conducting a public hearing on granting any appeal of a Planning Commission decision, the City Council shall set the matter for hearing and give the same notice as that provided in Section 11.78.070(B) of this Chapter.

4. The appeal hearing by the City Council shall be based upon the record of the Planning Commission. In the event any new information or evidence is produced for consideration, the City Council shall refer the matter back to the Planning Commission for review and recommendation.

**B. Administrative Conditional Use Permits.**

1. The action of the Director of Community Development shall become final on the date he/she makes a final decision on the application. However, within 15 days after the date of the Director's decision, a written appeal therefrom may be taken to the Planning Commission by any person aggrieved by the determination of the Director in connection with the application. Such appeal shall be accompanied by the required appeal fee, which shall be one-half of the initial Administrative Conditional Use Permit filing fee. The Planning Commission or City Council, on its own motion, may appeal any decision of the Director within 15 days of his/her decision or at the next regularly scheduled Planning Commission or City Council meeting, whichever occurs later. An appeal fee shall not be required in the event of such appeal by the Planning Commission or City Council.

2. The appeal request shall stay any proceedings associated with the action appealed from. Upon receipt of the request for the appeal, Planning Division staff shall transmit to the Planning Commission the appeal request and copies of all other papers constituting the official record, together with a written report stating why the appeal should or should not be granted.

3. The Planning Commission may, by resolution, affirm, reverse, or modify in whole or in part, any decision, determination, or requirement of the

Director of Community Development, but before conducting a public hearing on granting any appeal of the Director's decision, the Planning Commission shall set the matter for hearing and give the same notice as that provided in Section 11.78.070(B) of this Chapter.

4. The appeal hearing by the Planning Commission shall be based upon the record of the administrative decision by the Director of Community Development. In the event any new information or evidence is produced for consideration, the Planning Commission shall refer the matter back to the Director for review and recommendation.

5. The action of the Planning Commission on an appeal of the Director's decision shall become final on the date the Planning Commission makes its determination on the appeal. Any person aggrieved by the determination of the Planning Commission in connection with the appeal, or the City Council on its own motion, may appeal the Planning Commission's decision, subject to the time frame, fees and criteria set forth in Section 11.78.090(A) of this Chapter.

#### **11.78.100 Revocation.**

##### **A. Conditional Use Permits.**

1. The Planning Commission, on its own motion or upon the direction of the City Council, may conduct a hearing upon the question of the revocation of a Conditional Use Permit granted under or pursuant to the provisions of this Title.

2. Notification of such public hearing shall be given in accordance with Section 11.78.070(B) of this Chapter; provided, however, the owner of the subject property shall have his/her notice mailed by certified mail, postage paid, return receipt requested.

3. A Conditional Use Permit granted pursuant to a hearing may be revoked, and a nonconforming use may be terminated, if the Planning Commission and City Council make any of the following findings:

a. That any condition of a Conditional Use Permit or an amended Conditional Use Permit has not been complied with or has been violated;

b. That the use is detrimental to the public health or safety or is a nuisance;

c. That the Conditional Use Permit was obtained by fraud;

d. That the use for which the permit was granted is not being exercised;

e. That the use for which the permit was granted has ceased or been suspended for six months or more; or

f. That the condition of the improvements, if any, involved in a legal nonconforming use is such that the property, with or without alteration of any existing improvements, can be used for a nonconforming use without impairing the constitutional rights of any person.

4. After a hearing upon the revocation of a Conditional Use Permit, the Planning Commission shall report its findings of fact and recommendations to the City Council by a formal and numbered resolution, and upon receipt of such recommendations, the City Council shall determine the facts at a public hearing and may revoke, modify, or allow to remain unchanged the Conditional Use Permit in accordance with the City Council's final determination in such matters.

##### **B. Administrative Conditional Use Permits.**

1. The Planning Commission, on its own motion, upon the recommendation of the Director of Community Development or upon the direction of the City Council, may conduct a hearing upon the question of the revocation of an Administrative Conditional Use Permit granted under or pursuant to the provisions of this Title.

2. Notification of such public hearing shall be given in accordance with Section 11.78.070(B) of this Chapter; provided, however, the owner of the subject property shall have his/her notice mailed by certified mail, postage paid, return receipt requested.

3. An Administrative Conditional Use Permit may be revoked, and a nonconforming use may be terminated, if the Planning Commission and City Council make any of the following findings:

a. That any condition of an Administrative Conditional Use Permit or an amended Administrative Conditional Use Permit has not been complied with or has been violated;

b. That the use is detrimental to the public health or safety or is a nuisance;

c. That the Administrative Conditional Use Permit was obtained by fraud;

d. That the use for which the permit was granted is not being exercised;

e. That the use for which the permit was granted has ceased or been suspended for six months or more; or

f. That the condition of the improvements, if any, involved in a legal nonconforming use is such that the property, with or without alteration of any existing improvements, can be used for a nonconforming use without impairing the constitutional rights of any person.

4. After a hearing upon the revocation of an Administrative Conditional Use Permit, the Planning Commission shall report its findings of fact and recommendations to the City Council by a formal and numbered resolution, and upon receipt of such recommendations, the City Council shall determine the facts at a public hearing and may revoke, modify, or allow to remain unchanged the Administrative Conditional Use Permit in accordance with the City Council's final determination in such matters.

#### **Section VII. Severability.**

If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this Ordinance or any part thereof is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be declared unconstitutional.

**Section VIII. Effective Date.**

This Ordinance shall be in full force and effect thirty (30) days after passage.

**Section IX. Posting.**

The City Clerk shall certify to the passage of this Ordinance and cause the same to be posted pursuant to Government Code Section 36933.

**APPROVED AND ADOPTED** this XX day of XX, 2013.

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Mayor

**ATTEST:**

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Deputy City Clerk

I, Yvonne L. Smith, Deputy City Clerk of the City of Montclair, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 13-933 of said City, which was introduced at a regular meeting of the City Council held on the XX day of XX, 2013, and finally passed not less than five (5) days thereafter on the XX day of XX, 2013, by the following vote, to-wit:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

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Yvonne L. Smith  
Deputy City Clerk