



CITY OF MONTCLAIR
PLANNING COMMISSION AGENDA
CITY COUNCIL CHAMBERS
5111 Benito Street, Montclair, California 91763

REGULAR ADJOURNED MEETING
Monday, November 23, 2015
7:00 p.m.

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

1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

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

4. APPROVAL OF MINUTES

The minutes of the November 9, 2015 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. CASE NUMBER 2008-7 'A'
Project Address: 10244 Central Avenue
Project Applicant: Gardner Family Trust
Project Planner: Silvia Gutiérrez, Associate Planner
Request: Conditional Use Permit amendment to allow Los Portales restaurant to upgrade to a Type 47 license
CEQA Assessment: Categorically Exempt (Section 15303)
- b. CASE NUMBER 2010-17 'A'
Project Address: 5461 Holt Boulevard, Unit G
Project Applicant: 1992 Lee Living Trust
Project Planner: Silvia Gutiérrez, Associate Planner
Request: Conditional Use Permit amendment
CEQA Assessment: Categorically Exempt (Section 15303)
- c. CASE NUMBER 2015-18
Project Address: Citywide
Project Applicant: City of Montclair
Project Planner: Michael Diaz, City Planner
Request: Municipal Code amendment to Section 11.10.030 prohibiting medical marijuana dispensaries, cultivation of marijuana and all commercial medical marijuana uses in the City
CEQA Assessment: Categorically Exempt (Sections 15305 and 15061(b)(3))

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

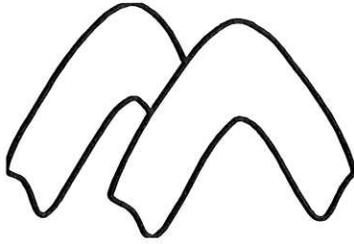
Materials related to an item on this agenda submitted to the Commission after distribution of the agenda packet are available for public inspection at the Planning Division counter during normal business hours.

9. ADJOURNMENT

The City of Montclair Planning Commission is hereby adjourned to the regularly scheduled meeting of December 14, 2015 at 7:00 p.m. in the Council Chambers, 5111 Benito Street, Montclair, California.

CERTIFICATION OF AGENDA POSTING

I, Laura Embree, 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 November 19, 2015.



CITY OF MONTCLAIR PLANNING COMMISSION

MEETING DATE: 11/23/15

AGENDA ITEM 6.a

Case No. 2008-7 “A”

Application: Conditional Use Permit (CUP) Amendment to allow an existing bonafide restaurant to upgrade its current Type 41 (On-Sale Beer and Wine license) to a Type 47 (On-Sale Beer, Wine, and Spirits license) with bar seating in conjunction with meal service.

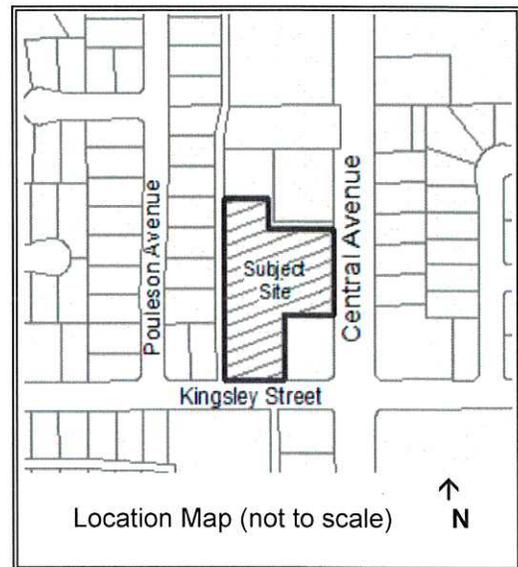
Project Address: 10244 Central Avenue

Property Owner: Gardner Family Trust

General Plan: General Commercial

Zoning: C-2 (Restricted Commercial)

Assessor Parcel No.: 1010-353-14



EXISTING SITE FEATURES

Structures: 4,475-square-foot restaurant in a 19,610-square-foot commercial shopping center

Parking: 161 shared parking spaces and six (6) disabled- accessible parking spaces

ADJACENT LAND USE DESIGNATIONS AND USES

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

Report on Item Number 6.a

PUBLIC HEARING – CASE NUMBER 2008-7 "A"

APPLICATION TYPE(S)	Conditional Use Permit - Amendment
NAME OF APPLICANT	Gardner Family Trust
LOCATION OF PROPERTY	10244 Central Avenue
GENERAL PLAN DESIGNATION	General Commercial
ZONING DESIGNATION	"C-2" (Restricted Commercial) per North Montclair Specific Plan
EXISTING LAND USE	Multi-tenant commercial shopping center
ENVIRONMENTAL DETERMINATION	Categorically Exempt (Section 15301)
PROJECT PLANNER	Silvia Gutiérrez

Project Description

In 2008, the City approved a Conditional Use Permit (CUP) under Case No. 2008-7 to allow an ABC Type 41 ABC (Beer and Wine) license in conjunction with the existing Los Portales Mexican Grill and Seafood Restaurant located at 10244 Central Avenue. With this application, the applicant is requesting to amend their existing CUP to allow an upgrade of the existing ABC Type 41 license to an ABC Type 47 license that would permit the on premise sale of beer, wine, and spirits at the full service restaurant. The applicant has indicated his desire to fulfill customer requests for mixed drinks. The same owner currently operates a second Los Portales restaurant further south on Central Avenue in the City of Chino, which has an ABC Type 47 license.

If the proposed amendment is approved, the applicant intends to build a small bar area (approximately 135 square feet) with a counter at the rear of the northernmost dining room. The bar counter would have room for approximately six bar stools. Patrons would also be able to order drinks with meals with regular table service. Other changes include minor improvements to the main entry area, which includes the addition of a tortilla making area.

Hours of operation at the restaurant would be slightly modified to allow for a one (1) hour later closing time for Fridays and Saturdays – 7:00 am to 11:00 pm.

A site plan, floor plan, and menu are included in the Planning Commission packet for reference.

Background

- Section 11.42.020 of the Montclair Municipal Code requires a CUP for all sales of alcoholic beverages within city boundaries whether for consumption or not.
- Based on City records, the existing commercial center was built in 1965 and was expanded in 1968 and 1972. A Mexican restaurant under different ownership was

established as a major tenant in 1972 and was granted a CUP (CUP Case 353) for on-sale beer and wine in 1973.

- Los Portales Mexican Restaurant began operation in 1998 after a change of ownership lead by Ricardo Ayala and his family. Subsequently, in 2001, Los Portales underwent an interior remodel.
- In 2008, under Case No. 2008-7, Los Portales was granted approval of CUP Amendment allowing an expansion to the southern portion of the building to increase dining capacity.

Planning Division Comments

Staff has reviewed the proposed amendment and supports the request to upgrade the current alcoholic beverage license to allow the service of beer, wine, and spirits in conjunction with meals served at the site. The proposed upgrade would allow the existing restaurant to be on par with other restaurants in the area that offer a full range of alcoholic beverages with their meals to interested customers.

Moreover, the proposed upgrade would not result in a significant change to the overall operation of the full service restaurant or introduce any problematic uses. The restaurant does not propose late closing hours and continually serves a variety of full entree meals made to order for consumption on the premises. The sale of alcoholic beverages would complement meals, but not be a major portion of the business. Staff has visited and patronized the restaurant on many occasions and can confirm that the owners have operated and managed their business in a satisfactory manner and have deemed the premises in good order. As such, the sale and consumption of alcoholic beverages in conjunction with a bona fide restaurant at this location is an appropriate use and compatible with the other commercial retail type businesses in the surrounding area.

Since the project does not involve a building expansion, increase in dining area, or significant change in operations, staff believes that parking at the site will remain largely unaffected by the proposed alcoholic beverage license upgrade. Moreover, parking at the existing retail center is sufficient to support the existing restaurant and other uses within the center. The center has 161 parking spaces on site and the existing restaurant only requires 40 spaces to support its dining capacity of 160 seats. Therefore, adequate on-site parking is readily available to support the proposed restaurant use as well as the other existing retail tenants in the center.

One exterior site condition identified by staff that will be addressed with this project is a need for improved illumination in the parking lot. The center was built in 1965 and has freestanding poles with old and less than effective light fixtures that need to be upgraded to improve evening hour illumination and coverage over the parking lot. Staff has made the property owner aware of this situation and they have begun efforts to install new pole light fixtures, first near the restaurant and then for the remainder of the center. A condition of approval for this issue has been added to the proposed resolution of approval.

Security

According to Police Department records, the subject business and retail center are not major sources of known problems or significant calls for service within the last 12 months. Nevertheless, in an effort to continue improving security and the ability to monitor the premises more appropriately, security cameras have been required as a condition of approval. The restaurant owner and property owner concur with the need to be proactive on security concerns and already have installed security cameras in place but will be making modifications to increase coverage and efficiency with newer equipment. Planning and Montclair Police Department staff visited and met with the applicant at the site to evaluate the existing equipment. Some of the suggested improvements included the upgrading to High Definition digital video and being able to retain video records for a period of 90 days.

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

Concentration of Licenses

The project site is located within Census Tract Number 2.08, which allows up to one (1) on-sale ABC license. According to ABC records, as of November 2015, Los Portales holds the only on-sale within the census tract. Since, this is an upgrade of an existing license, there will not be an increase that would result in an overconcentration. Therefore, ABC does not require a finding of public convenience or necessity in order to issue the license upgrade.

Public Notice

This item was published as a public hearing in the Inland Valley Daily Bulletin newspaper on November 13, 2015, as prescribed by law for this discretionary land use entitlement. Public hearing notices were mailed to all property owners within 300 feet from the boundaries of the subject property. In addition, courtesy notices were distributed to tenants within the adjacent portion of the center in which the property is located. As of the writing of this report, no comments from the public have been received.

Conditional Use Permit Findings

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

- A. That the proposal to upgrade the existing ABC Type 41 License to a new ABC Type 47 License in conjunction with meals and the addition of a bar counter with customer seating within a bona fide eating establishment (restaurant), is essential or desirable to the public convenience and public welfare, in that the addition of distilled spirits would complement the service of meals. Such availability of alcoholic

beverages as proposed with this amendment is common among other restaurants in the vicinity.

- B. That granting the CUP for the proposed upgrade to a new ABC Type 47 License (beer wine, and spirits) in conjunction with the service of meals, and the addition of a bar counter with customer seating, will not be materially detrimental to the public welfare and to other property in the vicinity. The existing restaurant is characterized and operates as a family oriented restaurant, which will not significantly be changed or introduce new problematic uses. Moreover, the proposed amendment does not result in the physical expansion of the business or introduces new uses. The proposed amendment to upgrade the existing alcoholic beverage license within the existing restaurant use would be compatible with adjacent commercial uses and not negatively impact any sensitive land uses in the surrounding area.
- C. That the proposed upgrade to a new ABC Type 47 License in conjunction with meals and the addition of a bar counter with customer seating within a bona fide eating establishment (restaurant) at the subject site conforms to good zoning practice, in that the Municipal Code permits the on-sale of beer, wine, distilled spirits in the "Restricted Commercial" zoning district, subject to CUP approval. The existing restaurant is well run and does not have a history of problems associated with its current alcoholic beverage license (beer and wine) and no further issues are anticipated with the upgraded license allowing the sale of beer, wine, and spirits with meals. Moreover, the CUP allows the City to place reasonable conditions to govern the overall operation of the use, including the sale of beer, wine, distilled spirits area so that it does not detract from the general quality of the shopping center and surrounding area.
- D. That such use in such location is not contrary to the objective of any part of the adopted General Plan, in that the adopted General Plan encourages a wide range of retail and service uses within the retail commercial area.

Environmental Assessment

The proposal to upgrade the existing ABC Type 41 License to a new ABC Type 47 License in conjunction with meals and the addition of a bar counter with incidental seating is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15301 of the State CEQA Guidelines. The project qualifies because it is on a fully developed site and involves minor exterior and interior improvements and limited site changes will not involve grading.

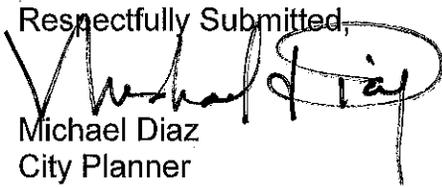
Planning Division Recommendation

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

- A. Move that, based upon evidence submitted, the project is deemed exempt from the requirements of the California Environmental Quality Act (CEQA). Further, the project qualifies as a Class 1 exemption under State CEQA Guidelines Section 15301.

- B. Move to approve a Conditional Use Permit Amendment under Case No. 2008-7 "A", Conditional Use Permit Amendment to upgrade the existing ABC Type 41 License to a new ABC Type 47 License in conjunction with meals and the addition of a bar counter with seating, subject to the conditions of approval contained in attached Resolution No. 15-1849.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Michael Diaz", written over the typed name and title.

Michael Diaz
City Planner

cc: Rick Gardner, 10256 Central Avenue, Montclair, CA 91763

Z:\COMMDEV\SGUTIERREZ\CASES\2008-7 "A" RPT\LOS PORTALES ABC LICENSE UPGRADE TO ABC LICENSE TYPE 47

RESOLUTION NUMBER 15-1849

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MONTCLAIR APPROVING CASE NO. 2008-7 "A" A CONDITIONAL USE PERMIT AMENDMENT TO UPGRADE FROM AN ABC TYPE 41 LICENSE TO AN ABC TYPE 47 LICENSE (BEER, WINE, DISTILLED SPIRITS) IN CONJUNCTION AND THE ADDITION OF A BAR COUNTER WITH CUSTOMER SEATING WITHIN A BONA-FIDE EATING ESTABLISHMENT AT 10244 CENTRAL AVENUE IN THE C-2 (RESTRICTED COMMERCIAL) ZONING DISTRICT (APN 1010-353-14).

A. Recitals.

WHEREAS, on September 17, 2015, the Gardner Family Trust, property owner, filed an application to amend an existing Conditional Use Permit under Case No. 2007-8, to allow the upgrade of the existing ABC Type 41 License to a new ABC Type 47 License in conjunction with meals and the addition of a bar counter with customer seating;

WHEREAS, application applies to an existing full service restaurant use occupying a lease space of approximately 4,475-square-feet and located at 10244 Central Avenue;

WHEREAS, the existing restaurant currently operates with a ABC Type 41 License allowing the sale and service of beer and wine, in conjunction with meals;

WHEREAS, an ABC Type 47 License upgrade would allow the sale of beer, wine, and distilled spirits in conjunction with meals at the restaurant;

WHEREAS, Chapter 11.42.040.A of the Montclair Municipal Code requires a CUP Amendment to allow for the upgrade of the existing ABC License;

WHEREAS, the existing restaurant is consistent with the use and development standards of the underlying C-3 (General Commercial) zoning district and the intent and requirements of the Montclair Municipal Code;

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

WHEREAS, the Planning Division has determined that the proposal to upgrade the existing ABC Type 41 License to a new ABC Type 47 License in conjunction with meals and the addition of a bar counter with customer seating with related site improvements is categorically exempt from the requirements of the California Environmental Quality Act

(CEQA) pursuant to Section 15301 of the State CEQA Guidelines and based on its own independent judgment, concurs with staff's determination of said exemption and finding of no significant effect on the environment. The project qualifies because it is on a fully developed site and involves minor exterior and interior improvements and limited site changes not involving grading;

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

WHEREAS, on November 23, 2015 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 CUP were heard, and said CUP 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 the facts set forth in the Recitals, Part A of this Resolution are true and correct.
2. Based upon the substantial evidence presented to the Planning Commission during the above-referenced public hearing on November 23, 2015, including written and oral staff reports, together with public testimony, this Commission hereby finds as follows:
 - a. The proposal to upgrade the existing Type 41 ABC License to a new ABC Type 47 License in conjunction with meals and the addition of a bar counter with customer seating within a bona fide eating establishment (restaurant), is essential or desirable to the public convenience and public welfare, in that the addition of distilled spirits would complement the service of meals. Such availability of alcoholic beverages as proposed with this amendment is common among other restaurants in the vicinity.
 - b. The granting of the CUP for the proposed upgrade to a new ABC Type 47 License (beer wine, and distilled spirits) in conjunction with the service of meals, and the addition of a bar counter with customer seating, will not be materially detrimental to the public welfare and to other property in the vicinity. The existing restaurant is characterized and operates as a family oriented restaurant, which will not significantly be changed or introduce new problematic uses. Moreover, the proposed amendment does not result in the physical expansion of the business or introduces new uses. The proposed amendment to upgrade the existing alcoholic beverage license within the existing restaurant use would be

compatible with adjacent commercial uses and not negatively impact any sensitive land uses in the surrounding area.

- c. The proposed upgrade to a new ABC Type 47 License in conjunction with meals and the addition of a bar counter with customer seating within a bona fide eating establishment (restaurant) at the subject site conforms to good zoning practice, in that the Municipal Code permits the on-sale of beer, wine, distilled spirits in the "Restricted Commercial" zoning district, subject to CUP approval. The existing restaurant is well run and does not have a history of problems associated with its current alcoholic beverage license (beer and wine) and no further issues are anticipated with the upgraded license allowing the sale of beer, wine, and spirits with meals. Moreover, the CUP allows the City to place reasonable conditions to govern the overall operation of the use, including the sale of beer, wine, distilled spirits area so that it does not detract from the general quality of the shopping center and surrounding area.
 - d. The such use in such location is not contrary to the objective of any part of the adopted General Plan, in that the adopted General Plan encourages a wide range of retail and service uses within the retail commercial area.
3. The Planning Commission has reviewed the Planning Division's determination that the proposed on-sale of beer, wine, and distilled spirits in conjunction with a bona fide eating establishment and related building and site improvements is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15301 of the State CEQA Guidelines, and based on its own independent judgment, concurs with staff's determination of said exemption and finding of no significant effect on the environment. The project qualifies because it is on a fully developed site and involves minor exterior and interior improvements and limited site changes not involving grading.
 4. Based upon the findings and conclusions set forth in paragraphs 1, 2, and 3 above, this Commission hereby approves the application, subject to the conditions set forth below:

Planning

1. This Conditional Use Permit (CUP) Amendment approval is for the following:
 - a. The upgrade of the existing ABC Type 41 Licence to an ABC Type 47 License (beer, wine, and distilled spirits) in conjunction with the operation of the existing bona fide eating establishment at 10244 Central Avenue, per approved plans on file with the Planning Division; and,

- b. The addition of a bar area and counter with customer seating (approximately 135 square feet) at the rear of the northern dining room within the existing 4,475 square-foot lease space.
2. All applicable conditions of approval for Case No. 2007-8 shall be retained and continue to be in effect for as long as the permitted use is operating at the approved location.
3. The restaurant shall be operated, maintained and open to the general public as a full service (bona fide) eating establishment, serving meals at all times that beer, wine, and distilled spirits are offered for sale and consumption on the premises.
4. Any substantial changes to the operation, increase in floor area of the demised space, or physical location shall require prior City review and approval. Any discontinuation or substantial changes to the full service restaurant without City approval shall be a violation of this CUP and may be cause for revocation. Upon transfer, sale or re-assignment of the restaurant to another individual or entity, the applicant shall make full disclosure of the CUP requirements and restrictions to future buyers, transferees or assignees.
5. The ABC Type 47 license may be modified or revoked for failure to abide by the conditions of this approval or in the event the use is determined to be a nuisance to surrounding properties, businesses or the community at large.
6. 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 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.
7. This CUP approval shall be valid for a period of six months (180 calendar days) from the date of Planning Commission approval and shall automatically expire on the six-month anniversary date of Planning Commission action, unless the applicant is diligently pursuing building plan check toward eventual construction or implementation of the project. The applicant and/or property owner shall be responsible to apply for a time extension at least 30 days prior to the approval's expiration date. No further notice from the City will be given regarding the project's CUP expiration date.

8. Approval of this CUP shall not waive compliance with any applicable regulations as set forth by the California Building Code and/or City ordinances, the San Bernardino County Health Department, or the State of California Department of Alcoholic Beverage Control (ABC).
9. This decision or any aspect of this decision may be appealed to the City Council within 15 days from the date of Planning Commission action, subject to filing the appropriate forms and related fees.
10. Prior to the final approval of building permits for interior improvements to add a bar, the property owner shall:
 - a. Prepare and submit a photometric analysis for the subject site to determine what, if any, modifications are necessary to the existing site lighting to comply with the Montclair Security Ordinance.
 - b. Remove unshielded light fixtures attached to freestanding light standards within the parking lot and replace with new energy efficient light fixtures. New light fixtures shall be a fixed 90-degree angle to the ground, fully-cutoff, and complementary to the style of the main building subject to the satisfaction of the City Planner.
 - c. At a minimum the two (2) light fixtures directly in front (east) side of the subject restaurant use shall be completed within 30 days of Planning Commission action on this CUP request. Additional changes to the remaining light fixtures in the center parking lot shall be completed within six months of Planning Commission approval.
11. Approved hours of operation for the restaurant are 7:00 a.m. to 9:00 p.m., Sunday through Thursday, and Friday and Saturdays from 7:00 a.m. to 11:00 p.m. The applicant may close the restaurant earlier than stated herein. Any extension of the restaurant hours beyond the limits stated herein shall require written notification to the Planning Division and are subject to City approval.
12. At no time shall the premises be converted into other uses where minors are generally excluded, such as a bar, sports bar, entertainment venue, night club, dance hall or banquet hall operated by either the restaurant owner or outside vendors or promoters.
13. At no time shall happy hour, drink specials, or private drinking areas be permitted.
14. Live entertainment is not included as part of this approval and shall require separate review and approval from the City.

15. A minimum of 40 parking spaces shall be maintained on the subject property at all times for the subject use.
16. No window signs either inside or outside, or signs placed inside the business directed toward the outside shall advertise the availability of beer, wine, or distilled spirits for purchase.
17. A maximum of 161 seats shall be maintained in the restaurant dining area.
18. No outdoor display areas for merchandise are allowed.
19. All graffiti and vandalism and/or damage to the subject site and/or structure shall be removed or repaired within 72 hours of notice from the City.
20. The following mandatory conditions are hereby imposed as part of the CUP approval:
 - a. The premises shall be maintained at all times in a neat and orderly manner.
 - b. Trash receptacles shall be provided in such number and at such locations as may be specified by the Planning Commission.
 - c. No alcoholic beverages shall be offered for sale for off-premises consumption. Alcoholic beverages shall not be allowed outside of the permitted premises, which shall consist of the demised lease space described herein and the adjoining outdoor dining area as permitted by the Planning Commission. Applicant shall post notification of this limitation within plain view of employees and customers.
 - d. The exterior appearance of the premises shall be maintained in a manner consistent with the exterior appearance of commercial properties already constructed within the immediate neighborhood so as to not cause blight or deterioration, or to substantially diminish or impair property values within the neighborhood.
 - e. The permittee shall comply with all California Department of Alcohol Beverage Control statutes, rules and regulations relating to the sale, purchase, display, possession and consumption of alcoholic beverages.
 - f. The permittee shall acknowledge and agree the City has a legitimate and compelling governmental interest in permittee's strict compliance with all conditions imposed upon the permit, including adherence to State statutes, rules and regulations as specified in subsection (e) above. The permittee shall further acknowledge and agree, in writing, that any violation of a State statute, rule or regulation concerning the

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

- i. The specific land use requested by the permittee and authorized by the City;
 - ii. The compatibility of permittee's authorized land use with adjacent land uses;
 - iii. The welfare and safety of the general public within the City.
 - iv. In view of such deleterious secondary effects, permittee shall acknowledge the City has specifically reserved the right and authority to impose sanctions, including suspension or revocation of the CUP, as a consequence of one or more violations of a State statute, rule or regulation concerning the sale to or consumption of beer and wine by a minor.
- g. The permit shall, after notice to the permittee and an opportunity to be heard, be subject to the imposition of such additional conditions as may be reasonable and necessary to address problems of land use compatibility, security, or crime control that have arisen since the issuance of the permit.
21. All rooftop or roof-mounted equipment shall be fully screened from view to the satisfaction of the City Planner.
 22. All exterior building-mounted lighting shall not create any nuisance glare to the adjacent parking areas, private roadways, public rights-of-way, or neighboring properties. The use of wall packs, barnlighters, or other similar unshielded luminaires on the property shall be prohibited.
 23. All satellite dish antennas, microwave receivers and transmitters, and other forms of communication equipment shall be located in a manner in accordance with the provisions of Chapter 11.46 of the Montclair Municipal Code.
 24. Mechanical equipment including, but not limited to, utility meters, air conditioners, kitchen vents or hoods, repair equipment, etc., shall be located within the building or screened in a manner that is compatible with the architectural design of the building to the satisfaction of the Planning Division. Wooden lattice or fence-like screens/covers are not appropriate within the context of a commercial development and are therefore not allowed.
 25. No surface-mounted exposed conduit or electrical lines shall be allowed. Electrical switchgear, meters, etc. must be screened or housed in an enclosure, to the extent allowed by the utilities.

26. Trash enclosure shall be constructed to City standard drawings, including a roof cover and fire sprinklers if required by the Montclair Fire Department. Trash enclosure shall be completed per approved plans prior to issuance of a Certificate of Occupancy or opening of the restaurant.
27. No public telephones, vending machines, children's rides or other coin-operated machines shall be located on the exterior of any building within the center.
28. Temporary promotional signs shall comply with Chapter 11.72 of the Montclair Municipal Code, including, but not limited to the following:
 - a. Temporary banners for the purpose of announcing the grand opening or advertising promotions shall require banner permits from the Planning Division prior to installation.
 - b. Promotional window signs shall not occupy more than 25 percent of the aggregate window area.
 - c. At no time shall pennants, inflatable signs, "human" signs, or other similar advertising devices be utilized on the property or off-site.
29. Prior to the installation of any new signs, the applicant shall submit an application for a Sign Permit to the Planning Division for review and approval.
30. All signs shall be maintained at all times in a safe and secure manner. Exposed surfaces shall be cleaned and painted as necessary. Broken and defective parts shall be repaired or replaced.
31. A copy of the CUP Amendment approval letter and resolution with all conditions of approval related to the application shall be conspicuously posted alongside the establishment's Business License and Certificate of Occupancy and shall be made available to law enforcement officers, Code Enforcement officers, and/or fire and building inspectors in the course of conducting inspections of said premises.
32. The applicant/property owner shall submit to the Planning Division a signed copy of the Resolution in which he acknowledges acceptance of the conditions of approval within 10 days from the date of approval by the Planning Commission.
33. 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 damages, loss, 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

34. Prior to the installation of new lights fixtures as required in Condition No. 10 above, the applicant shall first obtain building permits for new lighting and electrical.
35. The facility shall be provided with a minimum maintained illumination level of one (1) foot-candle from dusk until termination of business every business day. During all other hours of darkness, a minimum of one-quarter (.25) foot-candles of illumination shall be maintained at grade.
36. The maximum occupancy load of 166 shall be clearly posted near the front door.

Fire

37. An approved, emergency-keyed access system shall be required to facilitate access by Fire Department personnel in the event of an emergency during non-business hours. Forms are available at Montclair Fire Department Headquarters, 8901 Monte Vista Avenue, for those occupancies requiring such a system.
38. Commercial occupancies shall install approved emergency lighting to provide adequate illumination in the event of any interruption of electrical service.
39. Fire extinguisher location(s) to be determined by the Montclair Fire Department.

Environmental/Engineering

40. Discharge of wastewater into the sanitary sewer system shall conform to Chapter 9.20 of the Montclair Municipal Code.

Police

41. In conjunction with the ongoing operation of the business, the premises shall comply with all applicable local, State, and Federal requirements placed upon them by any regulatory or governing entity.
42. The activity level of the business shall be monitored by the Police Department to establish the level of police services used for the business. Should the level of police services demonstrate that the applicant has not controlled excessive, or unnecessary activity resulting in high use of police

services then this Conditional Use Permit shall be reviewed for consideration of further conditions, modifications or revocation.

43. Premises falling within the regulations of the State Alcoholic Beverage Control Board (ABC) remain consistent with plans submitted for review by the Planning Commission. No changes to the floor plans will occur unless a permit is issued by the Community Development Department. None of the floor area shall be converted for dancing or live entertainment unless a subsequent amendment to the approved Conditional Use Permit or Entertainment Permit is approved by the Planning Commission and Police Department.
44. Premises falling within the regulations of the State Alcoholic Beverage Control Board (ABC) shall not allow any consumption of alcoholic beverages on any property adjacent to the licensed premises under the control of the license.
45. There shall be no special promotional events held on the property, unless a written request for such is received and approved by the Community Development Director and the Police Chief or their designee.
46. The parking lot of the premises shall be equipped with lighting of sufficient power to illuminate and make easily discernible the appearance and conduct of all persons on or about the parking lot.
47. The premises shall install and maintain a closed circuit video surveillance (CCVS) system. The system shall at minimum be capable of monitoring all entrances/exits to the premises and be positioned as to allow for identification of patron facial features and physical characteristics. A minimum of one camera shall be placed in a position to monitor the parking lot of the premises, positioned in a manner which allows for the widest view from the entrance, without significant lens distortion. Typical acceptable camera angles range from 50 to 130 degrees. Cameras shall be capable of no less resolution than 1920×1080 pixels, otherwise known as 1080p. IR (night-vision) is preferred; however, cameras shall, at minimum, be capable of low-light operation.

Audio recording is desirable, but not a requirement. Camera footage shall be retained for a period no less than 90 days. To conserve storage space, cameras may be motion activated. When active, cameras shall record no less than 30 frames per second. Motion sensors shall be configured to activate properly in all areas covered, including the parking area. Motion sensors may be configured to prevent incidental activation from hanging or moving displays. Depending on the nature of the premises, additional cameras may be required, but not limited to areas such as cash registers, bars, alcohol serving stations, or access to restroom areas.

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

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

APPROVED AND ADOPTED THIS 23rd DAY OF NOVEMBER, 2015.

PLANNING COMMISSION OF THE CITY OF MONTCLAIR, CALIFORNIA

By: _____
Tenice Johnson, Chair

ATTEST: _____
Steve Lustro, Secretary

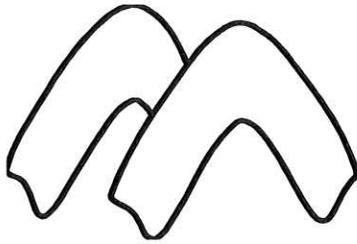
I, Steve Lustro, Secretary of the Planning Commission of the City of Montclair, do hereby certify that the foregoing Resolution was duly and regularly introduced, passed, and adopted by the Planning Commission of the City of Montclair, at a regular meeting of the Planning Commission conducted on the 23rd day of November, 2015, by the following vote, to-wit:

AYES:

NOES:

ABSENT:

Z:\COMMDEV\SG\2008-7"A\LOS PORTALES MEXICAN GRILL AND SEAFOOD RESTAURANT\RESO



CITY OF MONTCLAIR
PLANNING COMMISSION

MEETING DATE: 11/23/15

AGENDA ITEM 6.b

Case No. 2010-17”A”

Application: CUP for on-sale of beer and wine in conjunction with a bona fide eating establishment (ABC License Type 41)

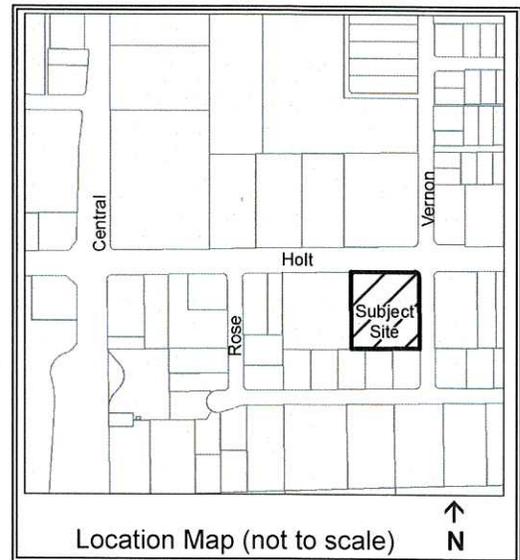
Project Address: 5461 Holt Boulevard, Unit G

Property Owner: Lee Living Trust

General Plan: General Commercial

Zoning: "Business Park" per Holt Boulevard Specific Plan

Assessor Parcel No.: 1011-061-17



EXISTING SITE FEATURES/CONDITIONS

Structure: 24,500 square-foot multi-tenant commercial center

Parking: 107 paved parking spaces, including 3 disabled-accessible stalls

City or other public utility easements: Typical easements

ADJACENT LAND USE DESIGNATIONS AND USES

	<i>General Plan</i>	<i>Zoning</i>	<i>Use of Property</i>
Site	General Commercial	"Business Park" per Holt Blvd. Specific Plan	Multi-tenant commercial center
North	General Commercial	"Auto Mall" per Holt Blvd. Specific Plan	Commercial building
South	Industrial Park	"M-1" (Limited Manufacturing)	Industrial building
East	General Commercial	"Business Park" per Holt Blvd. Specific Plan	Vacant Gas Station
West	General Commercial	"Business Park" per Holt Blvd. Specific Plan	Thrift Store

Report on Item Number 6.b

PUBLIC HEARING - CASE NUMBER 2010-17"A"

APPLICATION TYPE(S)	Conditional Use Permit - Amendment
NAME OF APPLICANT	1992 Lee Living Trust
LOCATION OF PROPERTY	5461 Holt Boulevard, Unit G
GENERAL PLAN DESIGNATION	General Commercial
EXISTING ZONE DISTRICT	"Business Park" per Holt Boulevard Specific Plan
EXISTING LAND USE	Retail Shopping Center
ENVIRONMENTAL DETERMINATION	Categorically Exempt (Section 15301)
PROJECT COORDINATOR	Silvia Gutierrez

Project Description

The applicant, on behalf of the Culichitown Restaurant, is requesting approval of an amendment to a Conditional Use Permit (CUP) granted under Case No. 2010-17"A" for the subject restaurant. The proposed CUP Amendment would allow the following changes:

1. The upgrade the existing ABC Type 41 License to a new ABC Type 47 License allowing the sale of beer, wine, and distilled spirits in conjunction with the operation of bona fide eating establishment located at 5461 Holt Boulevard, Unit G. No bar is proposed with this project and servers will take orders and continue deliver alcoholic beverages directly to patrons at tables with their meals.
2. Expansion of the hours of operation to 10:00 a.m. to 10:00 p.m., Sunday through Thursday; 10:00 a.m. to 11:00 p.m. on Friday and Saturday. The applicants have provided a site plan, floor plan and menu, which have been included in the Commission packets.
3. Modification to the existing live entertainment permit to allow a live musical band with a maximum of eight (8) members on a 100 square-foot performance area raised 6 inches above the finished floor along with karaoke. Live musical entertainment and karaoke would be ancillary the restaurant use and would take place Friday and Saturday from 6:00 p.m. to 11:00 p.m., and Sunday from 6 p.m. to 10 p.m.
4. An increase in the number of seats within the dining area from 96 seats to a maximum of 260 seats.

The Culichitown Restaurant is approximately 5,875 square-feet in size and specializes in seafood prepared in the Culiacan style of Mexico. This restaurant has been in operation at this location since April of 2015.

No exterior remodeling, outdoor seating, or separate bar area are being proposed. A site plan, floor plan, and menu are included in the Planning Commission packet for reference.

Background

- Based on City records, the 24,500 square-foot multi-tenant commercial center was built in 1987.
- In June 1991, the City Council adopted the Holt Boulevard Specific Plan, which rezoned the subject property from C-3 (General Commercial) to "Business Park."
- The overall appearance of the center is dated but generally in sound condition. The building is divided into multiple lease spaces.
- In May 2006, La Casa de Alvarado Mexican Seafood Restaurant moved into the subject tenant space after remodeling the 5,875 square-foot lease space. The restaurant was approved with a maximum of 96 seats. On August 28, 2006, the Planning Commission granted a CUP to the property owner, Susan Lee, to allow the on-sale of beer and wine (ABC Type 41 License) in conjunction with the bona fide restaurant. However, economic difficulties prompted the closure of the restaurant in late 2009.
- In January of 2011, the Planning Commission approved a request to establish on-sale of beer and wine in conjunction with a bonafide restaurant, under the name Mariscos Culiacan, the restaurant that preceded the current Culichitown Restaurant.

Planning Division Comments

Staff has reviewed the proposed amendment and generally supports the request to upgrade the current alcoholic beverage license to allow the service of beer, wine, and spirits in conjunction with meals served at the site. Moreover, the proposed changes appear to be reasonable and designed to allow the existing restaurant to be on par with other restaurants in the area that offer a full range of alcoholic beverages with their meals to interested customers. Staff's inspection of the premises indicates that the existing restaurant use is operating as a bona fide restaurant offering casual sit-down family dining with a full menu.

Moreover, the proposed upgrade would not result in a significant change to the overall operation of the existing full service restaurant or introduce any problematic uses, or requests unusually late closing hours. The sale of alcoholic beverages would complement meals, but would not be the sole focus of the business. As such, the sale and consumption of alcoholic beverages in conjunction with a bona fide restaurant at this location is an appropriate use and compatible with the other commercial retail type businesses in the surrounding area.

Staff has also determined that the proposed upgrade to an ABC Type 47 license with and ancillary live entertainment, including karaoke during limited hours, would be a compatible and consistent land use with other commercial type uses/businesses in the immediate area. The existing commercial center is dated in appearance but is in reasonably sound condition, but could use some sprucing up. One significant condition that needs to be addressed by the property owner is to check/repair the surface of the parking lot and restripe as the existing striping is barely discernible in most areas of the lot. A condition of approval regarding this issue has been added.

Live Entertainment/Karaoke

The live entertainment component proposed with this request will be limited to musical acts, performed by individuals or ensembles/bands of no more than 8 persons. Musical entertainment is a common feature of many restaurants and is not usually a major concern if properly controlled. Moreover, the 100 square-foot "performance area" will be delineated and conditions of approval will require that adequate separation and circulation in front the performance area be maintained. Staff has also added conditions to address potential noise issues. This means the restaurant owner will have the primary responsibility to ensure that proper sound/noise levels are maintained at all times to ensure that adverse noise impacts to the exterior areas of the property or to adjacent uses are not created by the live music occurring within the building. Lastly, since public dancing is not requested nor will be allowed with this the proposed entertainment aspect is less problematic.

Parking

The primary issue related to the request to increase dining capacity at the restaurant is the availability of parking on the site. Parking is evenly distributed around the site, including 28 spaces at the rear of the main building which are largely underutilized except for the spaces at the west end which are used by restaurant staff. When the existing CUP was approved in 2010, the restaurant dining capacity was simply capped at 96 spaces based on the number of parking spaces that would have been normally required by the zoning code for the space as a commercial retail or office use (e.g., 1 space per 250 square feet). Ultimately, dining capacity for restaurant uses is based on the zoning code and actual availability of parking.

According to the applicant their busiest hours of operation are during the evenings, and weekends. Staff's observations of the site during the lunch hour and early evenings appear to confirm the level activity as stated by the restaurant operator, and the general availability of parking spaces in the parking lot. One reason for the availability of spaces is that roughly one third of the center is vacant while the other existing businesses such as the hair salon, chiropractor, and dentist appear to have relatively low volume business activities. The pool hall and car stereo installation businesses appear to be the busiest in the center but not to the point where parking is unavailable for other uses. Most of the existing tenants are closed during the evening hours and are not open or have limited hours during the weekend when the restaurant is the busiest and offers live entertainment. Only the billiard business is open every day. However, staff did observe a number of vehicles parked in the northwest corner

of the subject site during the day which turned out to be patrons of thrift store located on the adjacent property to the west. So far, this activity has not been reported as a problem.

Although the restaurant operator has requested a dining room capacity of 260 persons, staff cannot justify the proposed 171 percent increase this amounts to and its impact on available parking spaces. If approved at 260 persons, the amount of parking this one use would utilize 60 percent of all the available parking spaces in the center. However, based on the current availability of parking in the center, staff believes that dining capacity at the restaurant can be reasonably increased to a total of 150 seats (a 56 percent increase) with little no issue on parking so long as the existing restaurant use continues to operate as a full service restaurant, and limits its entertainment offerings to no more than proposed with this amendment. Moreover, the increase should be made contingent upon the property owner's understanding that allowing the restaurant to utilize more parking for its operation, may limit their ability to attract other uses (e.g., restaurants, medical and dental offices, churches, etc.) with higher parking requirements to their vacant lease spaces. The applicant has been advised of this issue and is aware of the potential limits. A condition of approval related to this issue has been included in the draft resolution of approval for future reference.

Security

According to police department records, the subject business and retail center are not major sources of known problems or significant calls for service within the last 12 months. Planning and Montclair Police Department staff visited and met with the applicant at the site to evaluate the existing equipment. Both Planning Staff and the Police Department are satisfied with the quality and the location of the existing interior and exterior security cameras that have already been installed at the restaurant and as depicted on the submitted floor plan. The existing cameras are High Definition digital video and being able to retain video records for a period of 90 days.

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

Concentration of Licenses

The project site is located within Census Tract Number 3.01, which allows up to 6 on-sale ABC licenses. According to ABC records, as of November 2015, there is currently 15 on-sale license that are active within the census tract, including the subject restaurant. Since, this is an upgrade of an existing license the change does not result in an increase in the current number. Therefore, ABC does not require a finding of public convenience or necessity in order to issue the license upgrade.

Conditional Use Permit Findings

Staff believes the necessary findings for granting the CUP amendment for the upgraded ABC License, addition of entertainment, modified hours, and increase dining room capacity in conjunction with a bonafide restaurant can be made, as follows:

- A. The proposed upgrade to ABC License Type 47 in conjunction with the full menu and food service provided, addition of karaoke with live entertainment with restricted hours and expanded hours of operation for the bonafide restaurant establishment is beneficial to the public convenience and public welfare, in that the inclusion of beer, wine, and spirits, addition of karaoke and live band music would make the dining experience more enjoyable to the general public of legal drinking age. Such availability of alcoholic beverages is common among other restaurants in the vicinity.
- B. Granting the CUP for the proposed upgrade to ABC License Type 47 license in conjunction with the full menu and food service provided, the addition of karaoke with live entertainment with restricted hours, and expanded hours of operation for the bonafide restaurant establishment on-sale of beer and wine will not be materially detrimental to the public welfare and to other property in the vicinity, in that the proposed use will be conducted in a well-established family restaurant in a shopping center that has adequate security, lighting, and operational maintenance standards with implementation of site improvements required as conditions of approval. Lastly, the use is compatible with surrounding commercial uses and will not negatively impact any sensitive land uses in the surrounding area.
- C. The proposed on-sale of beer and wine at the subject site conforms to good zoning practice, in that the Municipal Code permits the on-sale of beer and wine in the "Business Park" land use district of the Holt Boulevard Specific Plan, subject to CUP approval. The CUP allows the City to place reasonable conditions to govern the overall operation of the use, including the sale of beer and wine, parking lot improvements, and security measures so that it does not detract from the general quality of the commercial center and surrounding area.
- D. The subject use in the proposed location is not contrary to the objective of any part of the adopted General Plan, in that the General Plan encourages a wide range of retail and service uses within the retail commercial area, including restaurant uses.

Comments from the Public

This item was advertised as a public hearing in the Inland Valley Daily Bulletin newspaper on November 13, 2015 as prescribed by law for this discretionary land use entitlement. Public hearing notices were mailed to all property owners within 300 feet from the boundaries of the subject property. In addition, courtesy notices were also distributed to all the tenants at the center. At the time the staff report was completed, staff had not received any comments or correspondence from the public regarding this application.

Environmental Assessment

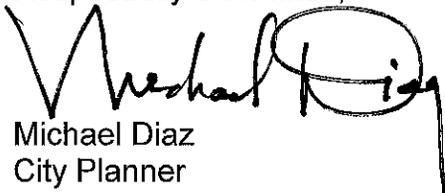
The project qualifies as Class 1 exempt under State CEQA Guidelines Section 15301, which exempts projects involving little to no expansion of existing structures or uses. The proposed project does not involve any site changes. The existing restaurant lease space is designed for an eating establishment and can accommodate the proposed upgrade to an ABC License Type 47, live entertainment including a live band and karaoke.

Planning Division Recommendation

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

- A. Move that, based upon evidence submitted, the project is deemed exempt from the requirements of the California Environmental Quality Act (CEQA). Further, the project qualifies as a Class 1 exemption under State CEQA Guidelines Section 15301.
- B. Move to approve a Conditional Use Permit under Case No., upgrade from a ABC Type 41 License (On-Sale Beer, Wine, Spirits) to an ABC Type 47 On-Sale License (Beer, Wine and Distilled Spirits), and live entertainment including a live band and karaoke within a bona fide eating establishment, and expanded hours of operation for the business at 5461 Holt Boulevard, Unit G, subject to making the required findings, and subject to the conditions of approval as described in attached Resolution No. 1550.

Respectfully Submitted,



Michael Diaz
City Planner

SG/lb

- c: Sonia Huitron, Wellman & Warren, LLP, 24411 Ridge Route, Suite 200, Laguna Hills, CA 92653
Patricia Sheehan, Investors Property Services, 27042 Towne Center Drive, Suite 250,
Foothill Ranch, CA 92610
Lt. Brandon Kumanski, Montclair Police Department

Attachments: Draft Resolution of Approval for Case 2010-17 "A"

RESOLUTION NUMBER 15-1850

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MONTCLAIR APPROVING CASE NO. 2010-17 "A", A CONDITIONAL USE PERMIT AMENDMENT TO UPGRADE FROM AN ABC TYPE 41 LICENSE TO AN ABC TYPE 47 LICENSE (BEER, WINE, DISTILLED SPIRITS) IN CONJUNCTION WITH A BONA FIDE EATING ESTABLISHMENT AND RESTRICTED LIVE BAND ENTERTAINMENT THAT INCLUDES KARAOKE AT 5461 CENTRAL AVENUE, UNIT H IN THE "BUSINESS PARK" LAND USE DISTRICT OF THE HOLT BOULEVARD SPECIFIC PLAN (APN 1011-061-17).

A. Recitals.

WHEREAS, on August 18, 2015 the 1992 Lee Living Trust, property owner, filed and application to amend an existing Conditional Use Permit under Case No. 2010-17, to allow the upgrade of the existing ABC Type 41 License to a new ABC Type 47 License in conjunction with meals and live band entertainment that includes karaoke; and

WHEREAS, application applies to an existing full service restaurant use occupying a lease space of approximately 5,875 square feet in size and located at 5461 Holt Boulevard, Unit H; and

WHEREAS, the existing restaurant currently operates with a ABC Type 41 License license allowing the sale and service of beer and wine, in conjunction with meals; and

WHEREAS, a ABC Type 47 License upgrade would allow the sale of beer, wine, and distilled spirits in conjunction with meals at the restaurant; and

WHEREAS, Chapter 11.42.040.A of the Montclair Municipal Code requires a CUP Amendment to allow for the upgrade of the existing ABC License; and

WHEREAS, the existing restaurant is consistent with the use and development standards of the "Business Park" land use district of the Holt Boulevard Specific Plan and the intent and requirements of the Montclair Municipal Code; and

WHEREAS, staff has determined that the proposed on-premises sale of beer, wine, and distilled spirits in conjunction with a bona fide eating establishment meets the intent and requirements of the ordinance for such use and the applicable development standards of the the "Business Park" land use district of the Holt Boulevard Specific Plan and Chapter 11.42 MMC ("Alcoholic Beverages – Regulation of Sale"); and

WHEREAS, the Planning Division has determined that the proposal to upgrade the existing ABC Type 41 License to a new ABC Type 47 License in conjunction with meals

and the addition of live entertainment in the form of a live band and karaoke with related site improvements is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15301 of the State CEQA Guidelines and based on its own independent judgment, concurs with staff's determination of said exemption and finding of no significant effect on the environment. The project qualifies because it is on a fully developed site and involves minor exterior and interior improvements and limited site changes not involving grading; and

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

WHEREAS, on November 23, 2015 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 CUP were heard, and said CUP 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 the facts set forth in the Recitals, Part A of this Resolution are true and correct.
2. Based upon the substantial evidence presented to the Planning Commission during the above-referenced public hearing on November 23, 2015 including written and oral staff reports, together with public testimony, this Commission hereby finds as follows:
 - a. The proposed upgrade to ABC License Type 47 in conjunction with the full menu and food service provided, addition of karaoke with live entertainment with restricted hours and expanded hours of operation for the bonafide restaurant establishment is beneficial to the public convenience and public welfare, in that the inclusion of beer, wine, and spirits, addition of karaoke and live band music would make the dining experience more enjoyable to the general public of legal drinking age. Such availability of alcoholic beverages is common among other restaurants in the vicinity.
 - b. Granting the CUP for the proposed upgrade to ABC License Type 47 license in conjunction with the full menu and food service provided, addition of karaoke with live entertainment with restricted hours and expanded hours of operation for the bonafide restaurant establishment on-sale of beer and wine will not be materially detrimental to the public welfare and to other property in the vicinity, in that the proposed use will be conducted in a well-established family restaurant in a shopping center that has adequate security, lighting, and operational maintenance

standards with implementation of site improvements required as conditions of approval. Lastly, the use is compatible with surrounding commercial uses and will not negatively impact any sensitive land uses in the surrounding area.

- c. The proposed on-sale of beer and wine at the subject site conforms to good zoning practice, in that the Municipal Code permits the on-sale of beer and wine in the "Business Park" land use district of the Holt Boulevard Specific Plan, subject to CUP approval. The CUP allows the City to place reasonable conditions to govern the overall operation of the use, including the sale of beer and wine, parking lot improvements, and security measures so that it does not detract from the general quality of the commercial center and surrounding area.
 - d. The subject use in the proposed location is not contrary to the objective of any part of the adopted General Plan, in that the General Plan encourages a wide range of retail and service uses within the retail commercial area, including restaurant uses.
3. The Planning Commission has reviewed the Planning Division's determination that the proposed on-sale of beer, wine, and distilled spirits in conjunction with a bona fide eating establishment with outdoor dining and related exterior building and site improvements is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15301 of the State CEQA Guidelines, and based on its own independent judgment, concurs with staff's determination of said exemption and finding of no significant effect on the environment. The project qualifies because it is on a fully developed site and involves minor exterior and interior improvements and limited site changes not involving grading.
 4. Based upon the findings and conclusions set forth in paragraphs 1, 2, and 3 above, this Commission hereby approves the application subject to the conditions set forth below:

Planning

1. This Conditional Use Permit (CUP) Amendment approval is for the following items at 5461 Holt Boulevard Unit H:
 - a. The upgrade of the existing ABC Type 41 Licence to an ABC Type 47 License (beer, wine, and distilled spirits) in conjunction with the operation of the existing bona fide eating establishment, per approved plans on file with the Planning Division; and
 - b. Live entertainment and karaoke on Friday and Saturday evenings between the hours of 6:00 p.m. and 11:00 p.m., and Sunday between

6 p.m. and 10 p.m. Live entertainment/karaoke shall be limited to the 100 square foot performance area depicted on the approved floor plan.

- c. An increase dining room seating capacity to 150 persons. The applicant shall provide a revised floor plan indicating the arrangement of tables and booths to demonstrate the 150 person capacity for City Planner review and approval.
2. Any substantial changes to the operation, increase in the existing 5,75 square feet of the floor area of the demised space, physical location, or upgrade of license to full alcohol (distilled spirits) sales shall require prior City approval. Any discontinuation or substantial changes to the full service restaurant without City approval shall be a violation of this CUP and may be cause for revocation. Upon transfer, sale or re-assignment of the restaurant to another individual or entity, the applicant shall make full disclosure of the CUP requirements and restrictions to future buyers, transferees or assignees.
 3. All applicable conditions of approval for Case No. 2010-17 shall be retained and continue to be in effect for as long as the permitted use is operating at the approved location.
 4. The restaurant shall be operated, maintained and open to the general public as a full service (bona fide) eating establishment, serving meals at all times that beer, wine, and distilled spirits are offered for sale and consumption on the premises.
 5. The ABC Type 47 license may be modified or revoked for failure to abide by the conditions of this approval or in the event the use is determined to be a nuisance to surrounding properties, businesses or the community at large.
 6. 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 made payable to the "City of Montclair," in the amount 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.
 7. This CUP approval shall be valid for a period of six months (180 calendar days) from the date of Planning Commission approval and shall

automatically expire on the six-month anniversary date of Planning Commission action, unless the applicant is diligently pursuing building plan check toward eventual construction or implementation of the project. The applicant and/or property owner shall be responsible to apply for a time extension at least 30 days prior to the approval's expiration date. No further notice from the City will be given regarding the project's CUP expiration date.

8. Approval of this CUP shall not waive compliance with any applicable regulations as set forth by the California Building Code and/or City ordinances, the San Bernardino County Health Department, or the State of California Department of Alcoholic Beverage Control (ABC).
9. This decision or any aspect of this decision may be appealed to the City Council within 15 days from the date of Planning Commission action, subject to filing the appropriate forms and related fees.
10. Within 30 days of this approval, the property owner shall submit plans for the repair and restriping of the parking stalls throughout the parking lot to the satisfaction of the City Planner and the Building Official. Work on repair and restriping of the parking lot shall be completed within 30 days of City approval and issuance of permits.
11. The business owner shall be responsible to apply for a separate entertainment permit reviewed and approved by the Montclair Police Department. Entertainment Permit applications shall be obtained at the Finance Department at City Hall (909/625-9423). The application shall be submitted along with a signed copy of the Planning Commission's Resolution of Approval for the project. Prior to commencing entertainment activities, a copy of an approved Entertainment Permit must be submitted to the Planning Division.
12. All automobile parking spaces shall be clearly delineated with double-line (e.g. "hairpin") striping. Parking stalls shall be a minimum of 9'-0" in width as measured to the center of the "hairpin," and a minimum of 20'-0" in length.
13. Approved hours of operation for the live entertainment and karaoke are Fridays and Saturdays from 6:00 p.m. to 11:00 p.m. Sundays 6 p.m. to 10 p.m. The applicant may close the restaurant earlier than stated herein. Any extension of the restaurant hours beyond the limits stated herein shall require written notification to the Planning Division and are subject to City approval.
14. Approved hours of operation for the restaurant are 10:00 a.m. to 10:00 p.m., Sunday through Thursday, and Friday and Saturdays from 10:00 a.m. to 11:00 p.m. The applicant may close the restaurant earlier than stated herein. Any extension of the restaurant hours beyond the limits stated

herein shall require written notification to the Planning Division and are subject to City approval.

15. At no time shall the premises be converted into other uses where minors are generally excluded, such as a bar, sports bar, entertainment venue, night club, dance hall or banquet hall operated by either the restaurant owner or outside vendors or promoters.
16. At no time shall happy hour, drink specials, or private drinking areas be permitted.
17. No window signs either inside or outside, or signs placed inside the business directed toward the outside shall advertise the availability of beer, wine, or distilled spirits for purchase.
18. No outdoor display areas for merchandise are allowed.
19. All graffiti and vandalism and/or damage to the subject site and/or structure shall be removed or repaired within 72 hours of notice from the City.
20. The following mandatory conditions are hereby imposed as part of the CUP approval:
 - a. The premises shall be maintained at all times in a neat and orderly manner.
 - b. Trash receptacles shall be provided in such number and at such locations as may be specified by the Planning Commission.
 - c. No alcoholic beverages shall be offered for sale for off-premises consumption. Alcoholic beverages shall not be allowed outside of the permitted premises, which shall consist of the demised lease space described herein and the adjoining outdoor dining area as permitted by the Planning Commission. Applicant shall post notification of this limitation within plain view of employees and customers.
 - d. The exterior appearance of the premises shall be maintained in a manner consistent with the exterior appearance of commercial properties already constructed within the immediate neighborhood so as to not cause blight or deterioration, or to substantially diminish or impair property values within the neighborhood.
 - e. The permittee shall comply with all California Department of Alcohol Beverage Control statutes, rules and regulations relating to the sale, purchase, display, possession and consumption of alcoholic beverages.

- f. The permittee shall acknowledge and agree the City has a legitimate and compelling governmental interest in permittee's strict compliance with all conditions imposed upon the permit, including adherence to State statutes, rules and regulations as specified in subsection (e) above. The permittee shall further acknowledge and agree, in writing, that any violation of a State statute, rule or regulation concerning the sale to or consumption of alcoholic beverages by a minor has been determined by the City to have a deleterious secondary effect upon:
 - i. The specific land use requested by the permittee and authorized by the City;
 - ii. The compatibility of permittee's authorized land use with adjacent land uses;
 - iii. The welfare and safety of the general public within the City.
 - iv. In view of such deleterious secondary effects, permittee shall acknowledge the City has specifically reserved the right and authority to impose sanctions, including suspension or revocation of the CUP, as a consequence of one or more violations of a State statute, rule or regulation concerning the sale to or consumption of beer and wine by a minor.
 - g. The permit shall, after notice to the permittee and an opportunity to be heard, be subject to the imposition of such additional conditions as may be reasonable and necessary to address problems of land use compatibility, security, or crime control that have arisen since the issuance of the permit.
- 21. All rooftop or roof-mounted equipment shall be fully screened from view to the satisfaction of the City Planner.
 - 22. All exterior building-mounted lighting shall not create any nuisance glare to the adjacent parking areas, private roadways, public rights-of-way, or neighboring properties. The use of wall packs, barnlighters, or other similar unshielded luminaires on the property shall be prohibited.
 - 23. All satellite dish antennas, microwave receivers and transmitters, and other forms of communication equipment shall be located in a manner in accordance with the provisions of Chapter 11.46 of the Montclair Municipal Code.
 - 24. Mechanical equipment including, but not limited to, utility meters, air conditioners, kitchen vents or hoods, repair equipment, etc., shall be located within the building or screened in a manner that is compatible with the architectural design of the building to the satisfaction of the Planning Division. Wooden lattice or fence-like screens/covers are not appropriate

within the context of a commercial or industrial development and are therefore not allowed.

25. No surface-mounted exposed conduit or electrical lines shall be allowed. Electrical switchgear, meters, etc. must be screened or housed in an enclosure, to the extent allowed by the utilities.
26. Trash enclosure shall be constructed to City standard drawings, including a roof cover and fire sprinklers if required by the Montclair Fire Department. Trash enclosure shall be completed per approved plans prior to issuance of a Certificate of Occupancy or opening of the restaurant.
27. No public telephones, vending machines, children's rides or other coin-operated machines shall be located on the exterior of any building within the center.
28. Temporary promotional signs shall comply with Chapter 11.72 of the Montclair Municipal Code, including, but not limited to the following:
 - a. Temporary banners for the purpose of announcing the grand opening or advertising promotions shall require banner permits from the Planning Division prior to installation.
 - b. Promotional window signs shall not occupy more than 25 percent of the aggregate window area.
 - c. At no time shall pennants, inflatable signs, "human" signs, or other similar advertising devices be utilized on the property or off-site.
29. Prior to the installation of any new signs, the applicant shall submit an application for a Sign Permit to the Planning Division for review and approval.
30. All signs shall be maintained at all times in a safe and secure manner. Exposed surfaces shall be cleaned and painted as necessary. Broken and defective parts shall be repaired or replaced.
31. A copy of the CUP Amendment approval letter and resolution with all conditions of approval related to the application shall be conspicuously posted alongside the establishment's Business License and Certificate of Occupancy and shall be made available to law enforcement officers, Code Enforcement officers, and/or fire and building inspectors in the course of conducting inspections of said premises.
32. The applicant/property owner shall submit to the Planning Division a signed copy of the Resolution in which he acknowledges acceptance of the

conditions of approval within 10 days from the date of approval by the Planning Commission.

33. 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 damages, loss, 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

34. The facility shall be provided with a minimum maintained illumination level of one (1) foot-candle from dusk until termination of business every business day. During all other hours of darkness, a minimum of one-quarter (.25) foot-candles of illumination shall be maintained at grade.
35. A maximum occupancy load of 161 shall be clearly posted near the front door.

Fire

36. An approved, emergency keyed access system shall be required to facilitate access by Fire Department personnel in the event of an emergency during non-business hours. Forms are available at Montclair Fire Department Headquarters, 8901 Monte Vista Avenue, for those occupancies requiring such a system.
37. Commercial occupancies shall install approved emergency lighting to provide adequate illumination in the event of any interruption of electrical service.
38. Fire extinguisher location(s) to be determined by the Montclair Fire Department.

Environmental/Engineering

39. Discharge of wastewater into the sanitary sewer system shall conform to Chapter 9.20 of the Montclair Municipal Code.

Police

40. In conjunction with the ongoing operation of the business, the premises shall comply with all applicable local, State, and Federal requirements placed upon them by any regulatory or governing entity.

41. The activity level of the business shall be monitored by the Police Department to establish the level of police services used for the business. Should the level of police services demonstrate that the applicant has not controlled excessive, or unnecessary activity resulting in high use of police services then this Conditional Use Permit shall be reviewed for consideration of further conditions, modifications or revocation.
42. Premises falling within the regulations of the State Alcoholic Beverage Control Board (ABC) shall remain consistent with plans submitted for review by the Planning Commission. No changes to the floor plans will occur unless a permit is issued by the Community Development Department. None of the floor area shall be converted for dancing unless a subsequent amendment to the approved Conditional Use Permit or Entertainment Permit is approved by the Planning Commission and Police Department.
43. Premises falling within the regulations of the State Alcoholic Beverage Control Board (ABC) shall not allow any consumption of alcoholic beverages on any property adjacent to the licensed premises under the control of the license.
44. There shall be no special promotional events held on the property, unless a written request for such is received and approved by the Community Development Director and the Police Chief or their designee.
45. The parking lot of the premises shall be equipped with lighting of sufficient power to illuminate and make easily discernible the appearance and conduct of all persons on or about the parking lot.
46. The premises shall install and maintain a closed circuit video surveillance (CCVS) system. The system shall at minimum be capable of monitoring all entrances/exits to the premises and be positioned as to allow for identification of patron facial features and physical characteristics. A minimum of one camera shall be placed in a position to monitor the parking lot of the premises, positioned in a manner which allows for the widest view from the entrance, without significant lens distortion. Typical acceptable camera angles range from 50-130 degrees. Cameras shall be capable of no less a resolution than 1920×1080 pixels, otherwise known as 1080p. IR (night-vision) is preferred, however cameras shall at minimum be capable of low-light operation.
47. Audio recording is desirable, but not a requirement. Camera footage shall be retained for a period no less than 90 days. To conserve storage space, cameras may be motion activated. When active, cameras shall record no less than 30 frames per second. Motion sensors shall be configured to activate properly in all areas covered including the parking area. Motion sensors may be configured to prevent incidental activation from hanging or

moving displays. Depending on the nature of the premises, additional cameras may be required, but not limited to areas such as cash registers, bars, alcohol serving stations, or access to restroom areas.

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

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

APPROVED AND ADOPTED THIS 23rd DAY OF NOVEMBER, 2015.

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 23rd day of November, 2015, by the following vote, to-wit:

AYES:

NOES:

ABSENT:

Z:\COMMDEV\SG\2010-17*A*\CULICHI TOWN\RESO

PUBLIC HEARING - CASE NUMBER 2015-18

APPLICATION TYPE(S)	Ordinance No. 15-955
NAME OF APPLICANT	City of Montclair
LOCATION OF PROPERTY	City Wide
ENVIRONMENTAL DETERMINATION	Exempt pursuant to Sections 15378 and 15305 of the California Environmental Quality Act.
PROJECT PLANNER	Michael Diaz

Proposal

The City is proposing to amend the current ordinance prohibiting medical marijuana dispensaries in light of the recently approved Medical Marijuana Regulation and Safety Act (MMRSA), which was approved by Governor Brown on October 9, 2015. The MMRSA is comprised of three separate pieces of legislation – Assembly Bill 266, Assembly 243, and Senate Bill 643 – to establish a statewide regulatory scheme headed by the Department of Consumer Affairs for cultivating, processing, testing, distributing and transporting medical marijuana to qualified patients. Each bill has a different function while at the same time containing overlapping, identical language regarding certain aspects of medical marijuana control. The MMRSA does not require the City to provide for medical marijuana dispensaries (fixed or mobile).

The City of Montclair currently has an ordinance (No. 07–891) in effect which bans the establishment of medical marijuana dispensaries within the City. The current ordinance does not prohibit or otherwise address the cultivation or delivery of medical marijuana and, unless the City enacts an ordinance to address those issues, the State Department of Food and Agriculture will be the sole licensing authority for medical marijuana cultivation applicants, and delivery of marijuana will be allowed with a State dispensary license.

The proposed ordinance is intended to affirm and clarify the previously approved prohibition of medical marijuana dispensaries in the City to be consistent with State law and include medical marijuana cultivation and deliveries as specifically prohibited land uses. If the proposed ordinance is approved by the City Council, then Section 11.10.030 of the Montclair Municipal Code would be amended accordingly.

Current Ordinance

On March 5, 2007 the City Council unanimously approved Ordinance No. 07–891, to prohibit medical marijuana dispensaries within any zone within the corporate boundaries

of the City of Montclair. Sections 11.02.010 and 11.10.030 were added to provide a definition of “medical marijuana dispensary” and to prohibit them in any zone within the City.

A Medical Marijuana Dispensary is currently defined in Section 11.02.010 of the Montclair Municipal Code as follows:

“...a facility or location, whether fixed or mobile, which provides, makes available, or distributes marijuana to a primary caregiver, a qualified patient, or a person with an identification card issued in accordance with California Health and Safety Code Sections 11362.5, *et seq.*”

and

Section 11.10.030 of the Montclair Municipal Code currently reads as:

Prohibited Uses

“No medical marijuana dispensary as defined in Section 11.02.010 of the Montclair Municipal Code shall be permitted in any zone within the City of Montclair.”

Key Provisions of the MMRSA Regarding Local Control

The following provisions contained in the Medical Marijuana Regulation and Safety Act (2015) indicates the intent of law to expressly protect local licensing, zoning ordinances, and local actions taken under its constitutional police power.

- **Local authority to prohibit or regulate remains intact under the new law:** AB-266 (Section 19315(a)) states that nothing in the approved legislation shall be interpreted to supersede or limit existing local authority for law enforcement activity, enforcement of local zoning requirements or local ordinances, or enforcement of local permit or licensing requirements; and
- **Deliveries allowed if not prohibited by local authority:** AB-266 (Section 19340(a)) indicates that deliveries can only be made by a dispensary and in a city, county, or city and county that does not explicitly prohibit it by local ordinance; and
- **Cultivation can be prohibited if ordinance is effective by March 1, 2016:** AB-243 (Section 11362 (b)(4)) allows a city or county to adopt land use regulations or ordinances to expressly prohibit the cultivation of marijuana provided that such regulations or ordinance are effective by March 1, 2016, after which the State becomes the sole licensing authority; and

- **Dual licensing (state and local) required:** SB-643 (Section 19322(a)) requires that any medical marijuana application for a state license only be issued to persons that have first obtained a license, permit, or authorization by a local jurisdiction.

Summary of Proposed Ordinance

It is the purpose and intent of the proposed ordinance No. 15-955 to promote the health, safety, and general welfare of the residents and businesses within the City of Montclair by prohibiting the cultivation and distribution of medical marijuana substances or products which are not currently addressed with the existing ordinance. Without the changes, the City would surrender its authority to regulate medical marijuana uses within the City's corporate boundaries and allow the State to be the sole licensing authority for such uses and activities.

With the proposed ordinance, Section 11.10.030 of the Montclair Municipal Code would be amended to read as follows:

Section 11.10.030 Prohibited uses.

- A. **Unlawful Uses.** Uses that are unlawful under federal or state law shall not be treated as permitted uses, and shall not be determined to be similar to any uses permitted pursuant to this Title.
- B. **Dispensaries prohibited.** No medical marijuana or cannabis dispensary as defined in Section 11.02.010 of the Montclair Municipal Code or Business & Professions Code § 19300.5(n) as the same may be amended from time to time shall be permitted in any zone within the City of Montclair. For purposes of this Section, "Dispensary" shall also include a cooperative or a mobile distribution facility. "Dispensary" shall not include the following uses: (1) a clinic licensed pursuant to Chapter 1 of Division 2 of the California Health and Safety Code, (2) a health care facility licensed pursuant to Chapter 2 of Division 2 of the California Health and Safety Code, (3) a residential care facility for persons with chronic life-threatening illnesses licensed pursuant to Chapter 3.01 of Division 2 of the California Health and Safety Code, (4) a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the California Health and Safety Code, or (5) a residential hospice or home health agency licensed pursuant to Chapter 8 of Division 2 of the California Health and Safety Code.
- C. **Commercial marijuana activities prohibited.** Commercial cannabis activities of all types, including the cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transporting, distribution, or sale of medical cannabis or a medical cannabis product all as defined under Business & Professions Code Sec. 19300.5 as the same may be amended from time to time, are expressly prohibited in all zones and all specific plan

areas in the City of Montclair. No person shall establish, operate, conduct or allow a commercial cannabis activity anywhere within the City.

- D. Deliveries of medical marijuana prohibited. To the extent not already covered by subsection C above, all deliveries of medical cannabis are expressly prohibited within the City of Montclair, including the use by a dispensary of any technology platform owned and controlled by the dispensary, or independently licensed, that enables qualified patients or primary caregivers to arrange for or facilitate the commercial transfer by a licensed dispensary of medical cannabis or medical cannabis products. No person shall conduct any deliveries that either originate or terminate within the City.
- E. Cultivation of marijuana prohibited. Cultivation of cannabis for commercial or non-commercial purposes, including cultivation by a qualified patient or a primary caregiver, is expressly prohibited in all zones and all specific plan areas in the City of Montclair. No person, including a qualified patient or primary caregiver, shall cultivate any amount of cannabis in the City, even for medical purposes. Cultivation shall include any activity involving the planting, growing, harvesting, drying, curing, grading or trimming of cannabis.
- F. Intent. This section is meant to prohibit all medical marijuana or commercial cannabis activities for which a State license is required. Accordingly, the City shall not issue any permit, license or other entitlement for any activity for which a State license is required under the Medical Marijuana Regulation and Safety Act.

Background

- In 1996, the voters of the State of California approved Proposition 215, the Compassionate Use Act of 1996 ("the Act"). The Act decriminalized the use of marijuana for medical purposes under State law.
- In 2004, Gov. Gray Davis signed SB 420, the Medical Marijuana Protection Act (MMP), which established an identification card system for medical marijuana patients as codified in Health and Safety Code Section 11362.5, et seq.
- The United States Supreme Court decision in *Gonzales v. Raich* (June 6, 2005), declares that Congress, under the Commerce clause of the United States Constitution, has the authority and, under the CSA, power to prohibit local cultivation and use of marijuana even though it would be in compliance with California law.
- In 2013 the California Supreme Court ruled unanimously in the *City of Riverside v. Inland Empire Patient's Health & Wellness Ctr., Inc.*, 56 Cal. 4th 729 (2013), that the Compassionate Use Act of 1996 and the Medical Marijuana Act (Health & Safety Code 11362.7) do not preempt local ordinances that completely prohibit medical marijuana dispensaries within a local jurisdiction's borders. Additionally, in Maral v.

City of Live Oak (2013) 221 Cal.App.4th 975, the Court of Appeal held that “there is no right – and certainly no constitutional right – to cultivate medical marijuana. . . .” The Court in Maral affirmed the ability of a local governmental entity to prohibit the cultivation of marijuana under its land use authority.

- On October 9, 2015, the Governor signed into law the Medical Marijuana Regulation and Safety Act (MMRSA) comprised of three pieces of legislation – Assembly Bill 266, Assembly 243, and Senate Bill 643.
- AB-266 (Section 19315(a)) specifically states that nothing in the approved legislation shall be interpreted to supersede or limit existing local authority for law enforcement activity, enforcement of local zoning requirements or local ordinances, or enforcement of local permit or licensing requirements

Analysis

Staff believes the proposed ordinance to affirm the current prohibition of medical marijuana dispensaries, including the added provisions to prohibit the cultivation of and delivery of medical marijuana substances or products within the City is appropriate. Since the passage of Proposition 215 in 1996, medical marijuana dispensary uses have been the source of much controversy for counties and cities seeking to prohibit and/or regulate their operations. The City of Montclair has avoided much of the adverse impacts associated with this use in large part because dispensaries are not a permitted use to begin with. Fortunately, the MMRSA retains the right of local jurisdiction authorities to determine what uses of land are appropriate within its borders.

In cities where medical marijuana dispensaries are allowed, evidence shows that they are often targets for violent crime as well as fronts for drug traffickers and money laundering for organized crime. Anecdotal evidence suggests that medical marijuana dispensaries are subject to significantly higher incidences of burglaries and robberies at a site than other businesses, including robberies of patrons leaving the dispensaries, loitering and nuisance activities in and around the sites, and persons without medical need attempting to purchase marijuana at the sites.

Although dispensaries have been prohibited since 2007, approximately 10-12 illegal dispensaries were set up at various locations within the City. In each case, the dispensary was opened in a surreptitious manner. In a few cases, a dispensary opened under false pretenses by describing itself as another type of business, suggesting that provision of medical marijuana to qualified patients was not their top priority or focus.

Medical marijuana dispensaries also pose a number of other impacts to adjacent properties and uses. Usually the City becomes aware of an illegal dispensary when a complaint is received or unusual activity is noticed by city staff. When City staff investigates the matter further, staff typically observes the following: inordinately high numbers of vehicles and pedestrians entering and leaving a site, various parking

violations, strong odors, the presence of intimidating security personnel guarding doors, and unpermitted building modifications.

Cultivation

With regard to cultivation of medical marijuana, staff believes the prohibition is necessary to be consistent with the prohibition of dispensaries. Many of the same adverse characteristics surrounding dispensaries would also be potential issues if the cultivation of marijuana was permitted. Given the high cash value of marijuana and its products being potential for theft, trespassing, and other criminal activities is highly probable whether marijuana is cultivated outdoors or within an enclosed structure/building. As such, the level of security utilized by these businesses would also be a concern. Some of the security measures that would likely be utilized to protect cultivation operations include the use of armed security guards, cameras, walls/fences, etc. Except for some banks, most, if not all, other businesses within the City do not require such extensive security measures.

Other potential issues include the high use of energy and, in particular, water needed to grow marijuana plants. According to the Mendocino County *Press Democrat*, "Researchers estimate each plant consumes 6 gallons of water a day... over the average 150-day growing cycle for outdoor plants (Apr. 16, 2014)." The high use of water is an important factor to consider given the water conservation measures being mandated to address California's current drought and expected climate change impacts.

Conclusion

The secondary effects associated with the operation of dispensaries and cultivation of and distribution of medical marijuana substances and products would adversely impact the health, safety, and welfare of the City's residents and businesses. Citywide prohibition is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, high water usage, malodorous smells and indoor electrical fire hazards that may result from such activities. Further, as recognized by the Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, marijuana cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that surrounding homes or businesses may be negatively impacted by nuisance activity such as loitering or crime. Adopting the proposed ordinance would reinforce the City's ability to maintain local control and determine for the purposes of public health, safety, the appropriate types of land uses allowed with the City's jurisdiction.

Public Notice

A notice of public review was advertised in the Inland Valley Daily Bulletin newspaper on November 13, 2015, inviting public comment. At the time this report was prepared, no comments or inquiries had been received by staff regarding this proposal.

Environmental Determination

Staff finds that the adoption of the proposed ordinance prohibiting medical marijuana dispensaries, cultivation, and delivery is exempt from CEQA pursuant to CEQA Guidelines section 15305, minor alterations in land use limitations in areas with an average slope of less than 20% that do not result in any changes in land use or density and section 15061(b)(3) which is the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment and CEQA does not apply where it can be seen with certainty that there is no possibility that the activity may have a significant effect on the environment. The City's permissive zoning provisions already prohibit all uses that are being expressly prohibited by this ordinance. Therefore, this ordinance has no impact on the physical environment as it will not result in any changes.

Recommendation

Staff recommends the Planning Commission take the following actions:

- A. Move that, based upon evidence submitted, the Planning Commission has reviewed the Planning Division's determination of exemption, and based on its own independent judgment, concurs with staff's determination of exemption and directs staff to prepare a Notice of Exemption; and
- B. Recommend the City Council adopt proposed Ordinance No. 15-955, amending Section 11.10.30 of the Montclair Municipal Code to prohibit the establishment of medical marijuana dispensaries, the cultivation of medical marijuana, and all commercial medical marijuana uses within the corporate boundaries of the City of Montclair, as set forth in Planning Commission Resolution No. 15-1848.

Respectfully Submitted,



Michael Diaz
City Planner

Attachments: Ordinance 07-891
Draft Ordinance No. 15-955

C:

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RESOLUTION NUMBER 15-1848

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MONTCLAIR RECOMMENDING CITY COUNCIL ADOPTION OF ORDINANCE NO. 15-955 UNDER CASE NO. 2015-18, AMENDING SECTION 11.10.030 OF THE MONTCLAIR MUNICIPAL CODE PROHIBITING MEDICAL MARIJUANA DISPENSARIES, CULTIVATION OF MARIJUANA AND ALL COMMERCIAL MEDICAL MARIJUANA USES IN THE CITY.

A. Recitals.

WHEREAS, in 1996 the voters of the State of California approved Proposition 215 (codified as Health & Safety Code Sections 11362.5, *et seq.*, and entitled "The Compassionate Use Act of 1996" (or "CUA"); and

WHEREAS, the State enacted Senate Bill 420 (SB 420) in 2003 (Health & Safety Code Sections 11362.7 to 11362.83) and referred to as the "Medical Marijuana Program" (or "MMP") to clarify the scope of the Compassionate Use Act of 1996 and to allow cities and other governing bodies to adopt rules and regulations consistent with SB 420; and

WHEREAS, on March 5, 2007 the Montclair City Council unanimously adopted Ordinance No. 07-891, to prohibit medical marijuana dispensaries within any zone within the corporate boundaries of the City of Montclair; and

WHEREAS, Section 11.10.030 of the Montclair Municipal Code was amended to add medical marijuana dispensaries as prohibited uses as follows:

Prohibited uses.

No medical marijuana dispensary as defined in Section 11.02.010 of the Montclair Municipal Code shall be permitted in any zone within the City of Montclair.

WHEREAS, in City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc. (2013) 56 Cal.4th 729, the California Supreme Court held that "[n]othing in the CUA or the MMP expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land. . . ." Additionally, in Maral v. City of Live Oak (2013) 221 Cal.App.4th 975, the Court of Appeal held that "there is no right – and certainly no constitutional right – to cultivate medical marijuana. . . ." The Court in Maral affirmed the ability of a local governmental entity to prohibit the cultivation of marijuana under its land use authority; and

WHEREAS, the Federal Controlled Substances Act, 21 U.S.C. § 801 *et seq.*, classifies marijuana as a Schedule 1 Drug, which is defined as a drug or other substance that has a high potential for abuse, that has no currently accepted medical use in

treatment in the United States, and that has not been accepted as safe for use under medical supervision. The Federal Controlled Substances Act makes it unlawful under federal law for any person to cultivate, manufacture, distribute or dispense, or possess with intent to manufacture, distribute or dispense, marijuana. The Federal Controlled Substances Act contains no exemption for medical purposes, although there is recent case law that raises a question as to whether the Federal Government may enforce the Act where medical marijuana is allowed; and

WHEREAS, on October 09, 2015, the Governor signed into law the "Medical Marijuana Regulation and Safety Act (MMRSA)" which is comprised of three pieces of legislation – Assembly Bill 266, Assembly 243, and Senate Bill 643. The MMRSA set up a State licensing scheme for commercial medical marijuana uses while protecting local control by requiring that all such businesses must have a local license or permit to operate in addition to a State license. The MMRSA allows the City to completely prohibit commercial medical marijuana activities.; and

WHEREAS, until such inconsistency is resolved between the federal and state laws with respect to medical marijuana, it is the recommendation of the Planning Commission to continue to prohibit medical marijuana dispensaries , and to prohibit cultivation of marijuana, and all commercial medical marijuana uses, including the delivery of medical marijuana substances or products within the City of Montclair; and

WHEREAS, the Planning Commission finds that commercial medical marijuana activities, as well as cultivation for personal medical use as allowed by the CUA and MMP can adversely affect the health, safety, and well-being of City residents. Citywide prohibition is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, high water usage, malodorous smells and indoor electrical fire hazards that may result from such activities. Further, as recognized by the Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, marijuana cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that surrounding homes or businesses may be negatively impacted by nuisance activity such as loitering or crime; and

WHEREAS, the limited immunity from specified state marijuana laws provided by the Compassionate Use Act and Medical Marijuana Program does not confer a land use right or the right to create or maintain a public nuisance; and

WHEREAS, the MMRSA contains language that requires the city to prohibit cultivation uses by March 1, 2016 either expressly or otherwise under the principles of permissive zoning, or the State will become the sole licensing authority. The MMRSA also contains language that requires delivery services to be expressly prohibited by local ordinance, if the City wishes to do so. The MMRSA is silent as to how the City must prohibit other type of commercial medical marijuana activities; and

WHEREAS, the proposed amendment to the Municipal Code is consistent with the City's General Plan and each element thereof; and

WHEREAS, the Planning Commission has determined that the proposed amendment to the Montclair Municipal Code is exempt from CEQA pursuant to CEQA Guidelines section 15305, minor alterations in land use limitations that do not result in any changes in land use or density and section 15061(b)(3) providing that CEQA does not apply where there is no possibility that the activity may have a significant effect on the environment; ; and

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

WHEREAS, on November 23, 2015, commencing at 7 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 code amendment were heard, and said code amendment 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. 15-955 is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15305 and 15061(b)(3) of the State CEQA Guidelines.
3. This Commission recommends the City Council adopt proposed Ordinance No. 15-955, approving the amendment of Section 11.10.030 of the Montclair Municipal Code prohibiting medical marijuana dispensaries, cultivation of marijuana, and all commercial medical marijuana uses in the City.

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

APPROVED AND ADOPTED THIS 23RD DAY OF NOVEMBER, 2015.

PLANNING COMMISSION OF THE CITY OF MONTCLAIR, CALIFORNIA

By: _____
Tenice Johnson, Chair

ATTEST: _____
Steve Lusto, 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 23rd day of November, 2015, by the following vote, to-wit:

AYES:

NOES:

ABSENT:

Z:\COMMDEV\MD\2015-17 PC RESO 15-1848