



CITY OF MONTCLAIR
PLANNING COMMISSION MINUTES

REGULAR ADJOURNED MEETING
November 23, 2015

COUNCIL CHAMBER
5111 Benito Street, Montclair, California 91763

CALL TO ORDER

Vice Chair Flores called the meeting to order at 7:00 p.m.

PLEDGE OF ALLEGIANCE

Vice Chair Flores led those present in the salute to the flag.

ROLL CALL

Present: Vice Chair Flores, Commissioners Martinez, Sahagun and Vodvarka, Community Development Director Lustro, City Planner Diaz, Associate Planner Gutiérrez, and Deputy City Attorney Holdaway

Excused: Chair Johnson

MINUTES

The minutes from the November 9, 2015 meeting were presented for approval. Commissioner Sahagun moved, Commissioner Vodvarka seconded, and the minutes were approved 4-0.

ORAL AND WRITTEN COMMUNICATIONS

None.

AGENDA ITEMS

- a. PUBLIC HEARING - 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 on-premises sale of beer, wine and distilled spirits (ABC Type 47 license) in conjunction with a bona fide eating establishment |
| CEQA Assessment: | Categorically Exempt (Section 15301) |

Associate Planner Gutiérrez reviewed the staff report and commented the property owner was in attendance to answer any questions.

Vice Chair Flores opened the public hearing.

Hearing no other comments and no one else being present, Vice Chair Flores closed the public hearing.

Commissioner Sahagun commented that Chili's, Elephant Bar, Acapulco, and some of the restaurants on the north end serve alcohol with their meals so he did not see this being a problem.

Commissioner Vodvarka asked if he would be allowed to go into the restaurant to just have a beer at the bar or would he have to order food with the drink. Associate Planner Gutierrez replied that the way it is written under ABC regulations, there must be at least some consumption of a meal item that would need to be ordered from the menu because it isn't approved as a bar, it's approved as an additional amenity to customers within the restaurant.

Vice Chair Flores frequents this restaurant all the time and sees not only customers from Montclair, but people from other cities as well.

Commissioner Sahagun moved 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, seconded by Commissioner Vodvarka, there being no opposition to the motion, the motion passed 4-0.

Commissioner Martinez 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, seconded by Commissioner Vodvarka, there being no opposition to the motion, the motion passed 4-0.

- b. PUBLIC HEARING - 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 to allow on-premises sale of beer, wine and distilled spirits (ABC Type 47 license) in conjunction with a bona fide eating establishment
 - CEQA Assessment: Categorically Exempt (Section 15301)

Associate Planner Gutiérrez reported that she received a call and email from the property owner's representative, Mrs. Patricia Sheehan, regarding the conditions of approval that address the need to restripe and slurry seal the entire parking lot because of its current dilapidated condition as well as the need to address some lighting enhancements in terms of the exterior and the tenant, Culichitown Restaurant. The owner could not come to an agreement with respect to those issues and, therefore, she requested to continue the item to December 14, 2015.

Vice Chair Flores opened the public hearing.

Hearing no other comments and no one else being present, Vice Chair Flores closed the public hearing.

Vice Chair Flores moved to continue the item to the next scheduled Planning Commission meeting on December 14, 2015, seconded by Commissioner Martinez, there being no opposition to the motion, the motion passed 4-0.

- c. PUBLIC HEARING - 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))

City Planner Diaz reviewed the staff report.

Commissioner Sahagun asked if our Police Department commented on this. City Planner Diaz commented that staff went through a webinar with the Police Chief and they are in basic

support of this particular legislation. The back-story of this legislation is that many police officers in the state actually helped draft it so they could have better control over what was happening. Commissioner Sahagun asked about the Fire Department. City Planner Diaz replied there were no comments from the Fire Department. Commissioner Sahagun asked about comments from the City Attorney. Deputy City Attorney Holdaway commented they actually assisted in the drafting of the ordinance and it basically keeps in force the current ordinance which was set by the City Council as policy in the City to prohibit dispensaries in the City. The reason for this action is changes in state law which, unless we take action, would (1) allow deliveries from dispensaries outside of the city, and (2) allow cultivation within the city subject to state regulations only. So, in order to maintain the status quo, which has already been established by the City Council and to prohibit the state from taking charge of the growing of marijuana in the city, we need to adopt this ordinance. So, he recommended the Planning Commission recommend City Council approval.

Commissioner Martinez asked if there are other local cities that have approved a medical marijuana dispensary. City Planner Diaz stated he knew Upland was in litigation over dispensaries and Claremont had some issues early on, but he did not know for sure what the other communities have adopted. When he worked in Rancho Cucamonga, he had to do this very same thing when it first came out so he was pretty sure that Rancho Cucamonga is prohibiting it as well. Deputy City Attorney Holdaway stated that many cities are in the process right now of revamping their ordinances due to the change in state law.

Commissioner Martinez asked about the County of San Bernardino and whether they are doing something or are they allowing medical marijuana dispensaries and cultivation. His reason for asking was because they are such a close nexus to Montclair. City Planner Diaz did not know if they are currently adopting a similar ordinance and he imagined if they haven't, they may be discussing it. He doesn't know if they currently allowed dispensaries. It's a zoning issue and that's why it's before the Commission at this meeting. Cities have addressed them in the past in different ways and counties as well. Commissioner Martinez asked in relation to adult establishments where they have a constitutional right to be zoned somewhere in the city. If the federal government changes its position or changes the law and allows it, then what would we need to do? Deputy City Attorney Holdaway stated at this point, we don't have a concern over that because it's not something we have to allow. In fact, state law is very explicit that we do have the right to prohibit dispensaries, deliveries and cultivation; those are the aspects that we are addressing. He thought it would be unlikely that federal law would change to the extent that it would mandate that the city allow dispensaries.

Commissioner Vodvarka asked what would happen to a person if they were able to buy it, say in San Dimas or La Verne, and bring it in to Montclair for use. If they got caught with it in Montclair, what could happen? Deputy City Attorney Holdaway stated there are certain exemptions from criminal prosecution and state law, but the federal prohibition remains as was discussed a moment ago, those are unlikely to change unless there's legislation that would subject these substances to FDA approval and then it would have to go through the regulatory process. That's unlikely to happen in the near future and if there were steps in that direction, we would know way in advance.

Commissioner Sahagun commented he felt we needed to keep local control of whatever happens.

Vice Chair Flores asked when we recommend approval to the Council, he hopes they make some kind of gesture to get this into the newspaper to let them know that Montclair will not be standing for that kind of stuff and maybe the other surrounding cities will get the idea that not really good for anybody.

Vice Chair Flores opened the public hearing.

Hearing no other comments and no one else being present, Vice Chair Flores closed the public hearing.

Commissioner Sahagun asked if staff heard from anyone after it published in the newspaper. City Planner Diaz stated that it published in the paper 10 days ago and no one has contacted staff.

Commissioner Sahagun moved 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, seconded by Vice Chair Flores, there being no opposition, the motion passed 4-0.

Commissioner Vodvarka moved to recommend the City Council adopt proposed Ordinance No. 15-955, amending Section 11.10.030 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, seconded by Commissioner Sahagun, there being no opposition to the motion, the motion passed 4-0.

INFORMATION ITEMS

Staff wished the Commission and their families a very happy Thanksgiving.

The Commission wished everyone a happy and safe Thanksgiving.

Vice Chair Flores adjourned the meeting at 7:39 p.m.

Respectfully submitted,

Laura Embree
Planning Commission Secretary