



September 1, 2016

**TO:** Honorable Mayor and City Council

**FROM:** Edward C. Starr, City Manager 

**SUBJECT:** CITY MANAGER'S WEEKLY REPORT: August 26-September 1, 2016

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## **CITY MANAGER/ADMINISTRATIVE SERVICES DEPARTMENTS**

- Last week, in a major win for states that have legalized the medical use of marijuana, a three-judge panel of the 9<sup>th</sup> Circuit Court of Appeals banned the Department of Justice (DOJ) from prosecuting medical marijuana cases if no state laws were broken. In *United States v. McIntosh*, the 9<sup>th</sup> Circuit ruled against the DOJ's seeking to enforce provisions of the federal Controlled Substances Act against medical marijuana dispensaries in states where its use has been legalized. In doing so, the Court reaffirmed Congress's intent, through budget bills, to halt federal enforcement measures by restricting the use of federal funds against medical marijuana providers and entities in states that have legalized and regulated the medical use of marijuana.

In its decision, the Court ordered that the ten consolidated cases in California and Washington be remanded to the lower courts to investigate whether the appellants were, in fact, fully compliant with their states' laws regarding medical marijuana. Compliance with state law is turning out to be the lynch pin for protection from criminal prosecution under federal law. The decision may also serve as a counterpoint for local agencies contemplating the regulation of medical marijuana dispensaries in their communities; i.e., dispensaries not in compliance with local regulating and permitting processes may be subject to federal prosecution.

The Court further stated, "If DOJ wishes to continue these prosecutions, Appellants are entitled to evidentiary hearings to determine whether their conduct was completely authorized by state law, by which we mean that they strictly complied with all relevant conditions imposed by state law on the use, distribution, possession, and cultivation of medical marijuana."

Marijuana remains illegal under federal law, but since 2014, through appropriations riders, Congress has barred the Justice Department from spending money to pursue federal enforcement actions that would prevent states from regulating the use or sale of medical marijuana. The relevant language in the budget bills passed in 2014 and renewed in 2015 follows:

*None of the funds made available in this Act to the Department of Justice may be used, with respect to the States of Alabama, Alaska, Arizona, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Hawaii, Illinois, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, Oregon, Rhode Island, South Carolina, Tennessee, Utah, Vermont, Washington, and Wisconsin, to prevent such states from implementing their own state laws that authorize the use, distribution, possession, or cultivation of medical marijuana.*

The question had been whether the federal courts would read this congressional language as a mandate stopping the DOJ from criminally prosecuting state-law compliant medical marijuana businesses. The 9<sup>th</sup> Circuit's ruling represents the highest judicial holding that this omnibus legislation does indeed curb federal crackdowns on states with legalized medical marijuana.

Federal prosecutors argued unsuccessfully before the 9<sup>th</sup> Circuit that Congress meant only to bar the department from taking legal action against states and that it could still prosecute individuals who violate federal marijuana laws. Prosecutors further urged that scattered prosecutions would not block a state from implementing its medical marijuana laws as long as the DOJ did not take legal action against the state itself. The Court rejected the prosecution's argument, saying that medical marijuana-based prosecutions prevent the states from giving full effect to their own measures, and that the DOJ's position was at odds with fundamental notions of the rule of law. Thus, as long as patients, growers and dispensaries adhere to the applicable state law, they may not be prosecuted by the federal government.

Federal prosecutors could ask the 9<sup>th</sup> Circuit to reconsider the case or petition the U.S. Supreme Court to take up the issue.

Marijuana activists and lawyers representing the medical marijuana industry say the ruling is a significant addition to the growing support for broad legalization of marijuana. Presently, marijuana is legal for medicinal and/or recreational use in 25 states and the District of Columbia. In addition, 10 states have marijuana legalization measures on the November ballot, some for medical use and others for adult recreational use, including California's Proposition 64, which would legalize the adult recreational use of marijuana. The Compassionate Use Act (Proposition 215), passed in November 1996, legalized the medical use of marijuana in California—the first state to do so. The 9<sup>th</sup> Circuit ruling is expected to lend support to the passage of Proposition 64, which currently leads in the polls with support from 60+ percent of likely voters.

In relation to adult recreational use, the Court did articulate that its present ruling only applies to medical marijuana, since the cases before the Court related only to its medical use.

Despite its limitation to the medical use of marijuana, *United States v. McIntosh* is ultimately viewed as a favorable ruling for the marijuana industry, both medical and recreational. It recognizes and confirms the intent of Congress to prevent the use of federal funds for enforcement in states that have legally sanctioned and regulated the use of medical marijuana. Furthermore, a bill has been introduced in Congress that would remove marijuana from the purview of the Controlled Substances Act; and at least one of the candidates for President has confirmed a favorable position related to removing marijuana as a Schedule I drug.

Just days before the ruling was issued, the federal Drug Enforcement Agency (DEA) decided against rescheduling marijuana as a Schedule I drug under the Controlled Substances Act. Bowing under pressure from the Food and Drug Administration (FDA), the DEA did, however, agree to open up research on the medical benefits of marijuana. The FDA has taken an interest in developing therapies from marijuana and its components, including childhood epilepsy.

## **COMMUNITY DEVELOPMENT DEPARTMENT/ECONOMIC DEVELOPMENT**

- Demolition has begun at Montclair Place in preparation for the new Food Hall. A pedestrian tunnel has been constructed on the upper level center court. Barricades are nearly completed on the first floor directly below.

The Food Hall will be comprised of nine food tenants that include two restaurants having outdoor patio dining at the northern end. New bi-directional escalators will be added to the center of the Food Hall, providing access to the mall level below.

Construction of the escalators and exterior façade at the main entrance is projected to begin next month with the grand opening of the Food Hall in March 2017.





- TJ Maxx's sales are soaring. In its most recent quarter, the company saw comparable sales rise by 4 percent. It's the company's 30th consecutive quarter of growth—practically an anomaly in the retail industry today.

As sales lag at Macy's and Nordstrom, TJ Maxx is hitting its stride simply because it's a more rewarding place to shop.

Shopping at TJ Maxx is like a "treasure hunt" because you can dig up authentic gems at heavily discounted prices. There are no sales or promotions triggering these bargain-bin prices, the company notes on its website; it simply operates by selling designer apparel at 20 percent to 60 percent off. That is a huge draw for frugal, stylish consumers.

The stores' biggest draw is that the merchandise is constantly changing, a tactic that has driven sales through the roof.

TJ Maxx's success should be concerning for ailing department stores that are fighting to get people to pay full price. Between constant discounts and the success of low-price brands like Zara and Forever 21, it's harder than ever to get consumers to pay a premium.

In response, department stores are leaning heavily on their lower-price outlets. Macy's has its Backstage stores and Nordstrom has the Rack.

Nordstrom's Rack stores have proven to be successful—in fact, they outnumber Nordstrom's full-line stores and have reported positive comparable sales when the full-line stores have reported dropping sales. However, there's a problem: the line between the two brands is getting blurred because of the sheer proliferation of Rack stores.

TJ Maxx doesn't have to worry about this type of conflict because it never was a premier retailer in the first place.

- There is a retail business with 700 stores nationwide that has 22 straight quarters of positive comparable sales growth and 11 straight quarters with comps up 5 percent or more.

It's not Kroger or Costco, but a division of Walmart—Neighborhood Market—that has been quietly crushing the competition. Walmart launched its first Neighborhood Market in 1998, but it began aggressively expanding the concept a few years ago, more than doubling the number of stores between fiscal 2013 and fiscal 2015.

The pace of expansion peaked in fiscal 2015 with 235 Neighborhood Markets opened, but the company plans to open about 90 more stores this year, bringing the total to around 750 stores, about as many as Costco. At an average of 42,000 square feet, Neighborhood Markets are about the size of a typical Whole Foods, and are dedicated grocery stores, unlike Walmart's Supercenters, which carry a wide variety of general merchandise in addition to a full line of groceries.

Walmart does not break out results from its Neighborhood Market chain, but the quick acceleration in expanding the format and its same-store sales growth show how promising the concept has been. For the last five years, including this one, the chain has made up a majority of the company's U.S. store openings.

## **FIRE DEPARTMENT**

- Sadly, former Fire Chief Harold G. Duncan passed away last week after 87 years of life. Harold Duncan retired as Fire Chief in August 1983, after more than 30 years of continuous service to the Montclair community. He was one of the founding members of the Montclair Fire Department.

Prior to January 1, 1967, the Montclair Fire Department was known as the Monte Vista County Fire Protection District, formed by a special election in July 1948. At the time of the District's formation, Montclair was an unincorporated area of San Bernardino County, known both as Narod and Monte Vista. To oversee the District's operations, the County Board of Supervisors appointed a 5-person Board of Commissioners. One of the Commission's first acts was to administer \$50,000 in bond funds, approved by voters in September 1949 for the purchase of fire equipment and the construction of a fire station at 10585 Central Avenue. The station, which opened in October 1950, still exists and is on property owned and occupied by the Monte Vista Water District.

Fire Chief William O'Hara and Fire Fighters Harold Duncan and Elmer Snyder served as the first full-time employees of the Fire Protection District, assisted by 8 volunteers. Apparatus used to provide fire protection services included a 1943 Chevrolet, 500 gpm pumper; a 1948 Ford high-pressure unit; and the chief's vehicle—a 1950 Ford pickup with a 15 gpm high-pressure pump and a 65-gallon water tank.

The 3 full-time employees worked a separate alternating schedule of 24 hours on and 48 hours off. When an incident alarm was received, the employee on duty would write the address of the incident on a blackboard, sound the recall siren, and respond by himself in the 1948 Ford high-pressure unit. Volunteers would group at the station, read the address on the blackboard, and respond with the 1943 pumper.

Harold Duncan was promoted to Fire Chief on July 1, 1953, following the resignation of Chief O'Hara. At the time of his appointment, Chief Duncan was 24 years of age—California's youngest serving fire chief at that time.



On January 1, 1967, following joint discussions between representatives from the Fire District and City of Montclair, the City assumed operations of the Fire District, including service responsibility for the unincorporated area in the City's southern sphere of influence. Montclair officials then moved forward to develop plans for the construction of 2 new fire stations (Stations 151 and 152), a training tower, and new City Yard facilities by the end of December 1969.

In January 1969, the Montclair City Yard was relocated from the southeast corner of Arrow Highway and Monte Vista Avenue (8901 Monte Vista Avenue) to its present location at 10825 Monte Vista Avenue, behind Fire Station 152. Relocation of City Yard facilities was the first step in making way for construction of Station 151, headquarters for the Montclair Fire Department. Dedication ceremonies for the new facilities were held in February 1970.

Construction of the new fire stations was made possible through the formation of a joint powers agreement between Montclair, San Bernardino County, and the Monte Vista Fire Protection District. The Montclair Fire Authority was formed to finance the fire facilities portion of the project. Montclair, acting for the authority through a joint powers agreement, obligated itself for the construction debt, using a

\$1,411,295 bond to finance the improvements. County officials agreed to pay their proportionate share for fire services provided by the City to County area in the City's southern sphere of influence. Montclair leased the land for the fire facilities to the Authority and the Authority, in turn, was responsible for construction of the improvements. Montclair then paid rent on the newly completed buildings for use by the Montclair Fire Department. The Montclair City Council had committed sales tax revenues from the newly completed Montclair Plaza to make bond payments. In addition to the two new fire stations, the City purchased two 1970 Crown 1,500 gpm pumpers and an 85-foot Crown aerial platform. Completion of the new fire stations and addition of new equipment witnessed the birth of the region's most modern fire service program.

The City Council and staff extend their deepest sympathies to Chief Duncan's family and are grateful for his long and formational service to the Montclair community. He placed his indelible mark on the history of the Montclair Fire Department.



## HUMAN SERVICES DEPARTMENT

- Last Thursday, Director of Human Services Marcia Richter and Senior Human Services Supervisor Michelle Castillo attended Ontario-Montclair School District's (OMSD) "HealthierUS School Challenge" recognition ceremony held at Euclid Elementary School in Ontario.

Five schools in the OMSD received awards from Mr. Jesus Mendoza, a representative from the United States Department of Agriculture (USDA). Buena Vista Arts-Integrated, Haynes, Montera, and Monte Vista Elementary Schools all received the Silver Award. Euclid Elementary School received the Gold Award.

The USDA says fewer than 2 out of every 100 schools across the nation receive a silver or gold award. The honor is in recognition of participating in a variety of healthy eating and active living programs, such as the Harvest of the Month Club, having a school salad bar, maintaining a site garden, and having a walking or running club.

Congratulations to OMSD for receiving this outstanding national recognition!

- Conservation Specialist David Schroeder from Chino Basin Water Conservation District presented an Organic Gardening and Composting class at the Senior Center on Tuesday. Participants learned the importance of composting and how to correctly plant in their gardens to achieve fruitful harvests. They also witnessed live red worms in action.

Photos on shared on Page 15.

- The L.A. County Fair opens on Friday, September 2 at Fairplex in Pomona and runs through Sunday, September 25. The Fair is open on Monday, September 5 (Labor Day), but is closed subsequent Mondays and Tuesdays.

Starting next week, City employees and the community may again purchase discounted Fair tickets from the Recreation Center. Tickets are good any day the Fair is open. Adult tickets are \$12 and child tickets (6-12 years old) are \$6. Children 5 and under are free. Tickets must be purchased with cash only.

Montclair Day at the Fair is Thursday, September 22. The day's activities will include a parade featuring Montclair groups and a special ceremony for Montclair's Community Heroes. Coupons for \$5 admission to the Fair on Montclair Day are available at the Senior Center, Recreation Center, and City Hall, and on the City's website. Discounted tickets can be purchased online or at the gate with a coupon.

The Montclair Golden Express will be providing free transportation for those 18 and older on Montclair Day only, beginning at 11 a.m. To make reservations, call the Senior Center at (909) 625-9483.

For additional information on discounted tickets, call the Recreation Center at (909) 625-9479.

## POLICE DEPARTMENT

- Montclair High School's opening game for football season last Friday night was dedicated to the service of Montclair Police and Fire personnel as honorary team captains. They also participated in the coin toss to see which team, the Montclair Cavaliers or the San Gabriel Matadors, would kick off the game.

The invitation for Police and Fire to participate came from Montclair High School's head football coach, Eric Kennedy, whose grandfather is a retired police chief from Anaheim Police Department (pictured below in the blue jacket). Police Chief Robert Avels was one of the honorary captains, and he stayed to watch the Cavaliers defeat the Matadors, 21-7. Go Cavaliers!



Pictured at the football game, L-R, are: Police Chief Robert Avels, Fire Captain Sergio Mejia, Fire Engineer Rusty Vidal, and Fire Captain/Paramedic Chris Jackson,





Reserve Officer Joe Kuskie had the most fun of all

ECS:spa

"A little nonsense now and then is relished by the wisest men."

~ Gene Wilder

# SEPTEMBER 2016



2	L.A. County Fair Opens	
5	Labor Day – City Offices Closed	
6	City Council Workshop – David Turch & Associates Federal Legislative Advocate Presentation Council Chambers	5:45 p.m.
6	City Council Meeting Council Chambers	7:00 p.m.
7	Community Action Committee Meeting Council Chambers	7:00 p.m.
12	Planning Commission Meeting Council Chambers	7:00 p.m.
13	City Manager’s Staff Meeting City Hall Conference Room	9:00 a.m.
15	Public Works Committee Meeting City Hall Council Chambers	4:00 p.m.
19	Real Estate Committee Meeting City Hall Conference Room	5:30 p.m.
19	Code Enforcement/Public Safety Committee Meeting City Hall Conference Room	6:15 p.m.
19	City Council Meeting Council Chambers	7:00 p.m.
21	Safety Committee Meeting City Hall Conference Room	10:30 a.m.
22	Autumn begins	
26	Planning Commission Meeting Council Chambers	7:00 p.m.
27	City Manager’s Staff Meeting City Hall Conference Room	9:00 a.m.

# Senior Center Organic Gardening & Composting Class

