

PLANNING COMMISSION OF MONTEREY PARK AGENDA

REGULAR MEETING
Monterey Park City Hall Council Chambers
320 West Newmark Avenue

Tuesday
February 28, 2023
6:30 PM

MISSION STATEMENT

The mission of the City of Monterey Park is to provide excellent services to enhance the quality of life for our entire community.

GENERAL INFORMATION

Documents related to an Agenda item are available to the public in the Community Development Department – Planning Division located at 320 West Newmark Avenue, Monterey Park, CA 91754, during normal business hours and the City's website at <http://www.montereypark.ca.gov/AgendaCenter>.

PUBLIC PARTICIPATION

You may speak up to 5 minutes on Agenda item. You may combine up to 2 minutes of time with another person's speaking. No person may speak more than a total of 10 minutes. The Chairperson and Planning Commission Members may change the amount of time allowed for speakers.

Per the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please call City Hall at (626) 307-1359 for reasonable accommodation at least 24 hours before a meeting. Council Chambers are wheelchair accessible.

CALL TO ORDER

Chairperson Sam

FLAG SALUTE

Chairperson Sam

ROLL CALL

Chairperson Tammy Sam, Vice Chairperson Ricky Choi, Jack Chiang, Peter Fung, Jasmine Pesantes

AGENDA ADDITIONS, DELETIONS, CHANGES AND ADOPTIONS

PUBLIC COMMUNICATIONS. While all comments are welcome, the Brown Act does not allow the Commission to take discuss, deliberate, or take action on any item not on the agenda. The Commission may briefly respond to comments after Public Communications is closed. Persons may, in addition to any other matter within the Commission's subject-matter jurisdiction, comment on agenda Items at this time. If you provide public comment on a specific agenda item at this time, however, you cannot later provide comments at the time the agenda Item is considered.

ORAL AND WRITTEN COMMUNICATIONS

[1.] PRESENTATIONS

1-A. GOING GREEN PRESENTATION

[2.] CITY OF MONTEREY PARK- CONSENT CALENDAR

2-A. DISTRIBUTION OF COMMISSONERS' HANDBOOK

Distribution of updated City Commissions, Committees and Boards Handbook

It is recommended that the Planning Commission consider:

- (1) Receive and file the Commissioners' Handbook; and
- (2) Taking such additional, related action that may be desirable.

2-B. APPROVAL OF MINUTES

It is recommended that the Planning Commission consider:

- (1) Approving the minutes form the meeting of the Planning Commission of Monterey Park on December 13, 2022; and
- (2) Taking such additional, related action that may be desirable.

[3.] PUBLIC HEARING

3-A. CONDITIONAL USE PERMIT (CUP-22-03) TO ALLOW A MASSAGE ESTABLISHMENT TO OPERATE AT 301 E. GARVEY AVENUE, #E, IN THE C-B (CENTRAL BUSINESS) ZONE

It is recommended that the Planning Commission consider:

- (1) Opening the public hearing;
- (2) Receiving documentary and testimonial evidence;
- (3) Adopting the Resolution approving CUP-22-03; and
- (4) Taking such additional, related action that may be desirable.

Pursuant to the California Environmental Quality Act ((Public Resources Code §§ 21000, *et seq.*; "CEQA") and the CEQA Guidelines (14 Cal. Code of Regs. §15000, *et seq.*), the proposed use is not subject to additional environmental. This project will not have a significant effect on the environment per CEQA Guidelines § 15301 (Class 1 Existing Facilities) because the Project consists of a conditional use permit to operate a massage establishment within an existing building. Class 1 consists of existing facilities including the negligible expansion of an existing use.

[4.] OLD BUSINESS - None.

[5.] NEW BUSINESS - None.

[6.] COMMISSION COMMUNICATIONS

[7.] FUTURE AGENDA ITEMS

ADJOURN

Next regular scheduled meeting is on March 1, 2023.

City of Monterey Park Commissions Committees and Boards Handbook



"Pride in the Past . . . Faith in the Future"

TABLE OF CONTENTS

INTRODUCTION	1
THE HISTORY OF MONTEREY PARK	2
MONTEREY PARK GOVERNMENT STRUCTURES	4
CITY ORGANIZATIONAL CHART	5
COMMISSION GENERAL REQUIREMENTS	6
BOARDS, COMMISSIONS, AND COMMITTEES IN 2022	8
Library Board of Trustees	8
Planning Commission	8
Personnel Board	8
Design Review Board	9
Traffic Commission	9
Business Improvement District Advisory Committee	10
Commission on Aging	10
Community Participation Commission	11
Economic Development Advisory Commission	11
Environmental Commission	11
Recreation and Parks Commission	12
Sister City Commission	12
ADMINISTRATIVE PROCEDURES	13
Appointments	13
Attendance	14
Terms of Office	14
Residency	14
Removal or Resignations	14
Meetings	15
Quorums	15
Conduct of Meetings	15
Preparation of Agenda	16
Minutes	17
Communications to the Council	17
Disclosure of Economic Interest	18
MAXIMIZING YOUR CONTRIBUTION	19
You and Your Commission	19
Know Your Objectives	19
Be Thorough in Your Recommendations	20
Relations with the Administration	20
APPENDIX	21
Municipal Law Guidebook for Elected and Appointed City Officials	
City Council Meeting Rules and Procedures	

Published by the City Clerk's Office, Adopted April 14, 1980

Revised: September 11, 1995; January 27, 1997; January 20, 2000; September 1, 2003; June 20, 2005; June 1, 2014; March 29, 2017; and May 1, 2020, March 29, 2022, October 17, 2022, November 15, 2022

INTRODUCTION

The purpose of this handbook is to provide a general orientation and guide on the responsibilities and roles that the Council has envisioned in establishing Monterey Park's boards, committees and commissions.

To be selected as an active member of a commission is a high honor, providing a unique opportunity for genuine public service. The specific duties of Monterey Park's boards, committees and commissions vary widely with the purpose for which they are formed; however, there are certain responsibilities that are common to all members.

All commission, board, and committee members and prospective members should familiarize themselves with this handbook. By so doing, they will understand their role more fully and improve the quality of service they provide to the community.

In addition to reviewing this manual, prospective members are encouraged to attend at least one regular meeting and meet with the chairperson or staff liaison of the commission, board or committee for which they wish to apply.

*Ordinance No. 2221, 2217, 2209, 2181, 2156 & 2098
Resolution No. 12226, 11589*

THE HISTORY OF MONTEREY PARK

The original inhabitants of Monterey Park were Shoshone Indians—later renamed Gabrielino by the Spaniards. When Father Angel Somero and Pedro Cambon led the first party of soldiers into the San Gabriel Valley in 1771, there were more than 4,000 Gabrielino residents.

By the early 1800's the area now called Monterey Park was part of the Mission San Gabriel de Arcangel and, later, the Rancho San Antonio. The area first received a separate identity when Alessandro Repetto purchased 5,000 acres of the rancho and built his home, not far from where the Edison substation is located on Garfield Avenue.

Some years later, Richard Garvey, a mail rider for the U.S. Army, whose route took him through Monterey Pass, a trail which is now Garvey Avenue, settled down in the King's Hills, Garvey began developing the land by bringing in spring water from near the Hondo River and by constructing a 54-foot high dam to form Garvey Lake which was located where Garvey Ranch is now.

To pay for his development and past debts, Garvey began selling off portions of his property. In 1906, the first subdivision in the area, Ramona Acres, was developed north of Garvey and east of Garfield Avenues.

In 1916, the new residents of the area initiated action to become a city when the cities of Pasadena, South Pasadena and Alhambra proposed to put a large sewage treatment facility in the area.

The community voted itself into cityhood on May 29, 1916, by a vote of 455 to 33. The City's new board of directors immediately outlawed sewage plants within city boundaries and named the new city Monterey Park. The name was taken from an old government map showing the oak-covered hills of the area as Monterey Hills. In 1920, a large area on the south edge of the city broke away and the separate city of Montebello was established.

Shortly after the incorporation, H. M. Gordon was employed as City Marshal at a salary of \$100 a month and was instructed to apprehend chicken thieves operating in the area. The three northern cities, Pasadena, South Pasadena and Alhambra continued to press for a sewage farm in Monterey Park. It took four years of stormy sessions in the courts and State legislature before Monterey Park became victorious.

By 1920, the white and Spanish-surname settlers were joined by Asian residents who began farming potatoes and flowers and developing nurseries in the Monterey Highlands area. They improved the Monterey Pass trail with a road to aid in shipping their produce to Los Angeles. The nameless pass, which had been a popular location for western movies, was called Coyote Pass by Pioneer Masami Abe.

Throughout the 1920's, as the population increased, the chance that a large pool of oil sat beneath Monterey Park's hills caused the drilling of several ultimately dry wells. Real estate also became a thriving industry during the 1920's, with investors attracted to the numerous subdivisions under development and the increasing commercial opportunities. One such development was the Midwick View Estates, a proposed garden community that was designed to rival Bel-Air and Beverly Hills. The seventy-foot waterfall built for that tract still stands at Atlantic Boulevard and El Portal. However, the Depression brought an abrupt end to the real estate boom and the Midwick proposal. The City had little new development for nearly two decades.

The end of World War II resulted in a revived growth trend and explosive population gains during the 1940's and 1950's. Until this time, the population was concentrated in the northern and southern portions of the city, with the Garvey and Monterey hills forming a natural barrier. With the renewed growth, many new subdivisions were developed, utilizing even the previously underdeveloped central area to allow for maximum growth potential. A series of annexations of surrounding acreage also occurred. At present, Monterey Park is a community of 61,096 residents with a land area of 7.73 square miles. Even as the San Gabriel Valley became more urbanized, Monterey Park retained much of the low density, small town feeling that prompted residents to form a city over a hundred years ago.

In the last decade, Monterey Park has emerged as one of the most diverse communities in the United States and has received much attention as the first city in the country with an Asian-American majority. But Monterey Park is home to many different racial and ethnic groups making it a truly multi-cultural city. According to the 2020 Census, Monterey Park diverse population is composed of 65.8% Asian Americans, 27.4% Hispanics, 14.5% Caucasians, .7% American Indians, .7% African- Americans, and 3.1% multiracial

Monterey Park is an excellent example of the idea of the "melting pot" in this nation. Despite cultural differences, residents of Monterey Park share one thing in common: their love of freedom. Their appreciation and expression of this freedom has led to many awards for the City. One of them being the All American City presented in 1984 by the National Civic League. This award was presented in recognition of achievement through citizen action. In 1984, the City of Monterey Park was awarded a great honor by the Los Angeles Olympic committee. The Committee awarded East Los Angeles College the right to host the Los Angeles Olympic Field hockey games. In 2017, Money Magazine named Monterey Park one of America's Best Places to Live and Raise a Family. The magazine highlighted Monterey Park's outstanding high school graduation rate, library accessibility, kid-friendly activities, cultural diversity, public safety, affordability, and international cuisine as attractive qualities.

Striving to blend residence and commerce, Monterey Park maintains 78% of its space for residential/school facilities, 11% for industrial, 9% for commercial and retail use, and 2% for open space. The City has thirteen parks and recreational facilities, eight public elementary schools, two private elementary schools, one middle school, one community college and one public library.

MONTEREY PARK GOVERNMENT STRUCTURES

There are two types of cities in California: charter cities and general law cities. The city of Monterey Park is a general law city. Consequently, it must generally comply with all provisions of California law enacted by the California Legislature.

There are two types of powers that the City may exercise: police powers derived from the California Constitution and proprietary actions as a municipal corporation. The police power authorizes the City to adopt and enforce local laws; the second allows it to use corporate powers such as executing contracts, filing (and defending against) claims, and providing recreational services.

The City operates under the Council-Manager form of government. This means that the City Council adopts general policies and the City Manager implements such policies. Under this form of government, the City Council adopts general policies and the City Manager implements them on a day-to-day basis. If the City were a private corporation, the City Manager would be the same as the chief executive officer.

The City Council is comprised of five seats representing the City's five voting districts. Council Members are elected by districts for four-year, over-lapping terms of office. No person may serve more than two consecutive terms as a public official. The City Council rotates the mayor and mayor pro tem every 9.5 months in accordance with a City Council resolution. The Mayor presides over all the Council meetings and is the ceremonial head of the City for official functions.

The City Council is responsible to the electorate for keeping pace with changing community needs, for establishing the quality of municipal services through the open conduct of public affairs, and for encouraging constructive citizen participation. The Council determines service levels and revenue obligations through the adoption of an annual budget; authorizes City contracts and expenditures; establishes municipal service goals and operating policies; and adopts such regulatory measures as may be necessary for the mutual protection of the community.

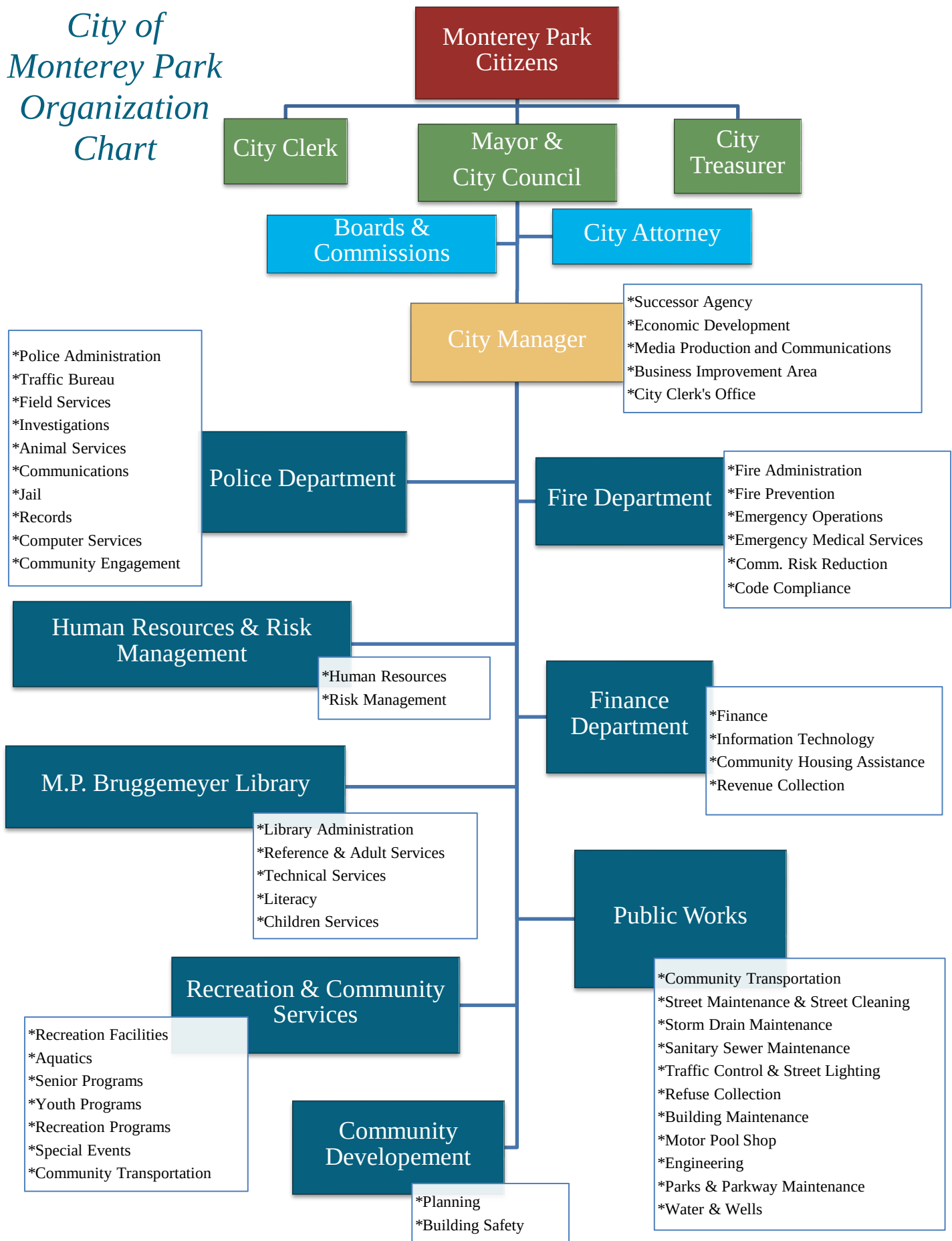
Council Members represent the City on various intergovernmental organizations to achieve governmental cooperation, legislation and programs that are consistent with the needs of Monterey Park citizens.

In addition, the Council appoints two public officials: the City Manager and the City Attorney. As noted above, the City Manager acts as the City's chief executive officer; the City Attorney is the City's general counsel and also prosecutes violations of the Monterey Park Municipal Code.

The City Clerk and City Treasurer are also elected officials of the City. Both are elected to serve four-year terms of office. The City Clerk is the City's elections official and is responsible for maintaining official city records.

The City Treasurer is responsible to the electorate for reporting to the City Council regarding the status of the City's treasury. The City's governmental structure is provided on the next page.

City of Monterey Park Organization Chart



COMMISSION GENERAL REQUIREMENTS

To help in City governance, the City Council established a number of commissions, boards, and committees (collectively, a “commission”) pursuant to the Monterey Park Municipal Code (“MPMC”). In doing so, the City Council either delegated authority to a commission to make legally binding decisions or authorized a commission to provide advice to the City Council or City staff in specific areas of interest. The regulations establishing a commission – whether in the MPMC or by City Council resolution – determine whether it is authorized to make decisions or provide advice.

Service on a commission is voluntary; the City will reimburse commissioners for certain expenses associated with service but does not provide compensation for service. Additionally, there are certain requirements for service on a City commission: a person may serve on only one commission; with some exceptions, a commissioner must be a City resident; and convicted felons may not serve.

Each Council Member may appoint a person to a commission; most such appointments do not require ratification by the entire City Council. Relatedly, the appointing Council Member may also remove a commissioner at any time and for any reason.

By default, commissioners may serve a total of two, four year, terms. But the term will continue until a successor is appointed.

All commissioners must comply with the City’s Code of Conduct. The Core Principles of the Code of Conduct are:

- Commissioners should comply with both the letter and spirit of the laws and policies affecting the operations of government.
- Commissioners are expected by the public to be independent, impartial, and fair in their judgment and actions.
- Serving in public office is a privilege and should be exercised in trust for the public good, not for personal gain.
- Public deliberations and processes should be conducted openly, unless legally confidential, in an atmosphere of respect and civility.

Commissions are strongly encouraged to review the Monterey Park Municipal Code for a detailed analysis of their individual duties and limitations (copies of the Municipal Code are available at the City Clerk’s office or online www.MontereyPark.ca.gov).

As to commission meetings, a brief overview is appropriate:

- Three commission members constitute a quorum, regardless of total membership;
- A staff member may be assigned to a commission;
- Annually, in May, the commission elects a chair and vice-chair for a one-year term;
- Regular meetings may be held on a day and time established by resolution;

- Commissions may establish a procedure for calling special meetings (and otherwise conducting meetings). Otherwise, the City Council's meeting procedures apply;
- All meetings must comply with California law including, without limitation, the Brown Act;
- Regular meetings are those occurring at the dates, times, and location set by formal action of the commission or (for advisory commissions) those held after 72 hours notice (Government Code § 54954);
- Special meetings are those called by the chairperson or majority of the legislative body (Government Code § 54956);
- Regular and special meetings may be "adjourned" in accordance with the Brown Act, e.g., when there is less than a quorum present. If nobody is present, the City Clerk or committee secretary may adjourn the meeting (Government Code § 54955).

Finally, note that commissions may only address matters determined by the MPMC or the City Council (by resolution) to be within their subject matter jurisdiction. Accordingly, City staff is not required to place on an agenda, provide resources for, or implement requests, directions, or actions outside that subject matter jurisdiction. Commissions must refrain from considering policy issues that are under active consideration by the City Council; the City Council as a whole (not individual Council Members) will provide direction and guidance to its commissions.

The City conducted a Municipal Academy and provided an overview of Commissions, Boards and Committees. Take a moment to view the [video](#).



BOARDS, COMMISSIONS AND COMMITTEES IN 2022

What follows is an identification and brief description of City commissions in 2022.

Library Board of Trustees (MPMC Chapter 2.80)

This is the only commission that is semi-autonomous from the City Council and City administration pursuant to California law. It consists of five members appointed with City Council approval. The term of office is three years; no person may serve more than two consecutive terms (Education Code § 18911). Regular meeting must be held at least once each month. The commission appoints a president with a one-year term.

Subject-matter jurisdiction is to make policies governing the library and make recommendations on various tasks that benefit library services.

The City Manager appointed the City Librarian as staff liaison.

Planning Commission (MPMC Chapter 2.56)

Besides the Library Board, the Planning Commission is the only other City commission that California statute authorizes to render legally binding decisions. Regular meetings may be set by resolution.

Subject-matter jurisdiction is, except as provided in the MPMC, acting as the Monterey Park Planning Agency per Government Code § 6500, *et seq.*; acting upon assignments provided by the City Council; making recommendations to the City Council regarding land use regulations; and, except as otherwise provided in the MPMC, administering zoning regulations.

It also acts as the Construction Appeals Board for purposes of the California Building Code.

The City Manager appointed the Community Development Director as staff liaison.

Personnel Board (MPMC Chapter 2.28)

Besides the Library Board and Planning Commission, the Personnel Board is the only commission that may render decisions that legally bind the City pursuant to the MPMC. This is a three-member board appointed by a majority of the City Council comprised of an at-large member; a member nominated by non-sworn City employees; and a member nominated by the City Manager.

Two members of the board constitute a quorum. Regular meeting must be held at least once per year.

Subject-matter jurisdiction is, if requested by the City Council or City Manager, advising regarding personnel matters and conduct hearings in accordance with any applicable memoranda of understanding.

The City Manager appointed the Human Resources Director as staff liaison.

Other Boards & Commissions are Advisory Only

Except for the Library Board, Planning Commission, and Personnel Board, all other commissions listed in the MPMC or otherwise established by City Council resolution are advisory only. Those boards and commissions do not have independent legal authority to make decisions on the City Council's behalf.

Design Review Board

(MPMC §§ 2.56.030 and 2.56.040)

Members of the Board may either be City residents or persons maintaining a business license in the City. Members should have a background as an architect, planner, landscape architect, civil engineer, building contractor, or practicing licensed electrician. Meetings are held on an as needed basis.

Subject-matter jurisdiction is, if requested by the City Council, Planning Commission, or City Planner, recommendations regarding design of new and existing structures, etc.; annually recommend methods for implementing the interdependence of land values and aesthetics to increase the value of surrounding properties; recommend reasonable controls over character and design of buildings, etc., to protect public benefits; and expeditiously acting on all assignments from the City Council or Planning Commission.

The City Manager appointed the Community Development Director as staff liaison.

Traffic Commission

(MPMC Chapter 2.90)

The commission may adopt rules and regulations for electing officers and holding regular meetings. It may also set a time and place for regular meetings which must be at least once per month.

There are two responsibilities (MPMC § 2.90.030):

1. "The duty of the commission will be to review request for changes in traffic control conditions as submitted by the city engineer. The city engineer who will maintain the files and records of the commission. The actions taken by the commission will be reflected in written recommendations to the city engineer, with copies to the city manager. Implementation may be accomplished by the city council in accordance with applicable law including, without limitation, this code."

2. "The commission may also make recommendations to the city council for amendments to this code to which may ease traffic congestion and help facilitate transportation throughout the city."

The Commission's responsibilities must be guided via objective standards: "The Traffic Planning Manual published by the State Division of Highways shall be the guide to professional engineering practices used by the commission; however, where extraordinary or peculiar circumstances exist, the commission may vary the standards set forth in the manual so as to produce the best possible solution to serve local conditions.

The City Manager appointed the City Engineer, current the Public Works Director, as staff liaison.

Business Improvement District Advisory Committee (Resolution No. 11589)

The Committee has two responsibilities:

1. "Make recommendations to the City Council regarding operations and marketing for the downtown business area."
2. "Make recommendations to the City Council regarding the methods and ways in which the revenue is derived from the charges, assessments and contributions imposed or authorized by Chapter 5.82 of [the MPMC] and California Streets and Highways Code §§ 36500, et seq."

The City Manager appointed the Economic Development Manager or designee as staff liaison.

Commission on Aging (Resolution No. 11589)

This commission consists of 10 total members. Each Council Member appoints two members per the MPMC.

The Commission is generally authorized to:

- Coordinate among senior citizens and the City regarding aging matters;
- Encourage community interest to improve conditions for seniors;
- Seek resources, including grants, for senior projects;
- Improve the physical and social environment for seniors;
- Inform seniors regarding various resources such as legal aid, medical programs, housing, and transportation;
- Encourage organizations providing aid to seniors to meet the needs of the senior community;
- Provide advice to the City Council regarding matters pertaining to seniors.

The City Manager appointed the Recreation and Community Services Director or Designee as staff liaison.

Community Participation Commission
(Resolution No. 11589)

This commissions consists of 17 total members appointed as follows:

- 10 members appointed by the City Council per the MPMC; each Councilmember appoints two members.
- Seven non-voting youth members. Three of these are appointed by the Alhambra Unified School District; two are appointed by the Montebello Unified School District; and two appointed at large from the community to accommodate private schools. All youth members must be attending high school or attended within the past six months.

The Commission is generally responsible to promote community events; enhance knowledge regarding Monterey Park history and heritage; advise the City Council regarding matters involving community participation in events including youth programs; and provide an annual report to the City Council regarding its activities.

The City Manager appointed the Recreation and Community Services Director or designee as staff liaison.

Economic Development Advisory Commission
(Resolution No. 11589)

Members on this commission must either be a City resident or have business experience with a background in finance, economics, or development. The Commission is generally responsible for monitoring the City Council's economic development strategic plan including recommending any updates; providing the City Council with annual updates regarding the economic development strategic plan; advise the City Council regarding the needs of the local economy.

The City Manager appointed the Economic Development Manager or designee as staff liaison.

Environmental Commission
(Resolution No. 11589)

In addition to the five members appointed by the City Council, the Commission itself appoints two non-voting youth members to the Commission. Members may be a City resident, an individual operating or working in the City, or a professional or scholar in the environmental field.

The Commission is generally responsible for developing policies and procedures relevant to the environment and community sustainability; promote programs for environmental awareness; identify potential funding sources to implement environmental programs;

monitoring legislative activities affecting the City and providing recommendations to the City Council; undertake assignments provided by the City Council; and otherwise advise the City Council regarding environmental issues.

The City Manager appointed the Public Works Director or Designee as staff liaison.

Recreation and Parks Commission

(Resolution No. 11589)

In addition to the five members appointed by the City Council, the City Manager may approve non-voting members to the Commission.

The Commission is generally responsible for providing advice to the City Council and the Recreation and Community Services Director regarding parks and recreation; formulating recommended policies for City Council consideration; assisting with coordination of recreation services with other agencies and volunteer organizations; promoting recreational programs; and coordinating with neighboring school districts for recreational programs.

The City Manager appointed the Recreation and Community Services Director or Designee as staff liaison.

Sister City Commission

(Resolution No. 10281)

The Resolution (adopted June 17, 1998) is a bit ambiguous regarding membership on the Commission. It states that “[m]embers ... shall be the President and one member of each of the four Sister City Associations, constituting an eight-member commission plus a corresponding/minutes secretary [sic].”

Since the Resolution states that the commission is not subject to MPMC Chapter 2.82, it may establish its own regulations, elect its officers and submit an annual report to the City Council.

The Commission’s Mission Statement is “(a) to foster friendship, goodwill and a communication among the Sister Cities of Monterey Park through direct personal contact; (b) to participate in the exchange of cultures bringing about productive and lasting friendships; (c) to participate in the City of Monterey Park’s cultural events and programs promoting the exposure of their culture; [and] (d) to serve as cultural ambassadors to sister city visitors, thus bringing recognition to the City of Monterey Park.”

The City Manager appointed the Recreation and Community Services Director or designee as Minutes Secretary.

ADMINISTRATIVE PROCEDURES

Appointments

Commissioners, Committee and Board Members are appointed by individual City Council Members, with the exception of the Library Board of Trustees, the Personnel Board, and the Sister Cities Commission. Appointments may be announced at a City Council meeting by the appointing council member or by notifying the City Clerk's Office.

The number of seats on the Commission, Board or Committee determines the number of appointees per Council Member. They are as follows:

- Commission on Aging and Community Participation Commission: Each council member can appoint two members.
- Business Improvement District Advisory Committee, Design Review Board, Economic Development Advisory Commission, Environmental Commission, Planning Commission, Recreation & Parks Commission, and Traffic Commission: Each Council Member can appoint one member.

Members on the Library Board of Trustees are appointed by the Mayor with the approval of the City Council. They are limited to two, 3-year terms in office, but serve until their respective successors are appointed. A one-year waiting period is required following the expiration of the second consecutive term.

Members on the Personnel Board are appointed by the City Council in the following manner: One member from the community at large; one member from a list of three persons nominated by the non-sworn employees of the city; and one member proposed by the city manager. A majority vote of the city council is required to appoint an individual to the personnel board.

After selection, each commissioner will need to be fingerprinted to conduct a background check per the California Public Resources Code – PRC § 5164(b)(2). Once an individual's background is cleared, they will be sworn in by the City Clerk and required to sign a loyalty oath at the first available commission meeting.

Every commissioner's term begins January 1 and ends December 31 of the following year. No person may serve more than eight consecutive terms on the same commission. A person cannot serve on more than one commission at the same time.

Residency will be verified annually by the City Clerk's office. Should any members ceased to be a city resident that seat may (with certain exceptions) be deemed vacant and the term of such member terminated.

Attendance

Members are expected to attend all scheduled meetings. The City Council wants the benefit of the full commission's judgment. Whenever possible, commissioners should notify their staff representative, the chairperson, or a person designated by the commission within twenty-four hours of a scheduled meeting if they will be unable to attend.

Unless otherwise provided, if a commission member fails to attend three consecutive meetings, unless excused for cause by the chairperson, that member's office is deemed vacant and the member's term ended. The commission secretary must immediately notify the appointing Council Member and City Clerk of such termination.

Any member of a commission who is removed from the commission cannot be nominated for appointment to any commission for a period of twelve months after said termination became effective.

Terms of Office

Unless otherwise provided by law or resolution, each member may serve two, 4-year terms. If an individual separates from serving on a commission because the individual completed serving terms, such person cannot be reappointed to the same board or commission for at least twelve consecutive months unless authorized by the City Council to extend their terms.

Residency

Residency in Monterey Park is generally required for all members of commissions except for the following: Members on the Business Improvement District Advisory Commission, Design Review Board, Economic Development Advisory Commission, and Environmental Commission. For specific appointment requires refer to the Commission Structure section of this handbook.

Removal or Resignations

Members of city commissions, boards or committees serve at the pleasure of the city council and may be removed at the discretion of the city council member who appointed the Commissioner, except for the members of the Library Board of Trustees, the Personnel Board, and the Sister Cities Commission. Memberships are automatically terminated for absences as described in the prior section and is applicable for all commissions, boards and committees.

In the event an individual is unable to perform as a commissioner for health, business or personal reasons, the member should submit a formal letter of resignation to the City Clerk and appointing Council Member for appropriate action.

Meetings

Regular Meetings. The date and time of a regular meeting is established by each commission, board or committee by minute action and may be amended from time to time. Regular meeting agendas must be posted 72 hours in advance of the meeting to comply with the Brown Act.

Adjourned Meetings. A commission, board or committee may adjourn any special or regular meeting to a time and place specified in the order of adjournment. An adjourned regular meeting is considered a regular meeting for purposes of transacting business. A meeting cannot be adjourned past the next regular meeting date. A notice (notice of adjournment) must be given in the same manner as a notice of special meeting. Notice of adjournment must be posted on or near the door of the meeting room within 24 hours of the adjournment.

Special Meetings. A special meeting may be called by the Chairperson or a majority of the members of a board or commission by delivering personally or by mail written notice to each member and to each newspaper, which has requested such notice. The agenda must be delivered at least 24 hours before the time of such meeting, as specified in the notice. The agenda must specify the time and place of the special meeting and the business to be transacted. No business other than as set forth in the notice may be considered at such a meeting.

Meeting Place. Generally, meetings must be held in a public place within the City limits. The location should be consistent. However, meetings may be adjourned to other locations for limited purposes pursuant to the Brown Act.

Committees. All groups may designate one of its members, or a subcommittee composed of not more than two members to study, review, consider, or make recommendations concerning any matter within the committee's purview. However, members should discuss with their staff liaison before any action being taken.

Quorums

A quorum is essential for the conduct of business. Regardless of the number of commission, committee, or board members, in all instances three members constitutes a quorum. If a quorum is not present, the meeting may be adjourned by the members who are there. If no members are present, the meeting may be adjourned by the assigned staff member. No business may be undertaken without a quorum.

Conduct of Meetings

Each May, a committee will annually organize and elect a chairperson and vice-chairperson from its membership for a one-year term. In the chairperson's or vice-

chairperson's absence or disability, the committee may designate a chairperson or vice-chairperson pro tempore. The commission may establish such rules and regulations as it deems necessary for its government and for the stable performance of its duties. Rules and regulations beyond those found in the establishing resolutions or codes must be kept on file in the office of the City Clerk. In the absence of such rules of procedure, the commission must comply with the City Council's meeting procedures – which is included as an exhibit.

Preparation of Agenda

Agenda Preparation:

One or more administrative staff members may be assigned to each board or commission. Items should be submitted to the staff at least five working days before the meeting in order to ensure their placement on the agenda. Some items may require more than five days notice to satisfy specific noticing requirements. The agenda must specify the time and location of the meeting and a "brief general description" of each item of business to be transacted or discussed. Agenda items generally need not exceed 20 words in length. The agenda must designate and provide the address of a location where members of the public may inspect the agenda and any associated writings, such as staff reports. The agenda must also contain information on how a person may request a disability accommodation to participate in a meeting.

Actions Limited to Posted Agenda:

No discussion or action may occur with respect to any item not appearing on the posted agenda. Limited questions, requests, and responses on matters not appearing on the posted agenda are allowed such as questions for clarification, references to staff or other resources for factual information, requests to agendaize a matter of business for a future meeting or brief announcements can be made.

Consent Calendar:

Items listed under the Consent Calendar are those items that the Staff Liaison believes will not require Commissioners, Board, or Committee member discussion and are routine in content. Items may be pulled for separate discussion or clarification at any Member's request, or upon receipt of a written request for public comment on the item.

Future Agenda Items:

Each Agenda will include an Agenda item entitled "Future Agenda Items." During this section of the Agenda any Member may make a motion only to place an item on a future Agenda. The motion is non-debatable. Placement of an item on a future Agenda requires a majority vote. The Staff Liaison has discretion as to when the item will be placed on the Agenda, unless otherwise directed by the Commission, Board, or Committee.

Minutes

Minutes are to be taken of each meeting in accordance with the following requirements and regulations:

1. Minutes must contain a record of all proceedings, motions and actions Findings, amendments and conditions shall also be recorded into the minutes.
2. Unless specifically provided by Council policy, minutes will not be a verbatim recording.
3. All motions, whether passed or denied, must be recorded with the name of proposer, second and vote.
4. Minutes of hearings must list all persons who speak for or against.
5. Minutes are merely a record of transactions. Personal opinion is not relevant to the commission's proceedings.
6. Minutes must be approved by a majority vote of the members and constitutes an official City record.
7. Amendments and corrections of the minutes submitted to the secretary may be made only in public meetings with the approval of the body and not by the private request of individual members.

In some cases, a Minutes Secretary may be assigned by the staffing department. Otherwise, a Commissioner should be selected to take minutes. Approved minutes from the Planning Commission, Business Improvement District Advisory Committee, Library Board of Trustees, and the Personnel Board must be forwarded to the City Clerk's office for record keeping purposes.

Communications to the City Council

It is considered excellent practice for at least one member of a committee, board or commission to attend an occasional meeting of the City Council regardless of whether the commission has an item on the agenda. The Council encourages commissions to appoint a member to serve as council liaison to keep the other commissioners informed on city activities.

Disclosure of Economic Interests

Pursuant to the City's Conflict of Interest Code, members of the following committees and commissions are required to file an annual Statement of Economic Interests every: Business Improvement District Advisory Committee, Library Board of Trustees, Planning Commission, and Personnel Board. The filed statements become public record and are available for inspection, on demand, at the City Clerk's Office.

Under California law, the above designated board members or commissioners must file within thirty days of assuming office with the City Clerk's Office. All subsequent statements must be filed on or before April 1st of each year. Designated Commissioners must also file a statement within thirty days after leaving office. Forms and instructions are available in the City Clerk's office.

MAXIMIZING YOUR CONTRIBUTION

You and Your Commission

As a commissioner, you should remember that the success or failure of your efforts is largely dependent on the quality of cooperation among the individual members of your commission. To help build a consensus around common goals and objectives, you will often have to first reconcile contradictory viewpoints often results of differing degrees of understanding and shows a willingness to consider objectively the real issues.

Part of this cooperation can be produced by setting the time and place of meeting so that under normal conditions each member and interested citizen can attend. Remember that cooperation begins with mutual respect for each other's problems, as well as opinions. Another way of developing this cooperation is to do your part in ensuring that meetings proceed in an orderly and constructive manner. The chairperson is largely responsible for seeing that consideration of items on the agenda moves along without delay but with reasonable time allocated to each; he or she is to ensure that petitioners, proponents and opponents are heard but not permitted to disrupt the meetings, and that all actions are properly moved, seconded and voted upon. You can assist the chairperson greatly by becoming familiar with the basic rules of parliamentary procedure and devoting some preparation to the presentation you plan to make.

Application of the team concept is always essential to worthwhile and acceptable recommendations. This does not mean that all conflict will or should be eliminated, because controlled conflict, leading to a rational decision, is the heart of our democratic process.

Commissions should establish long and short-range goals to help them meet their objectives. Goals will help members maintain a focus on the purpose of their commission, board, or committee.

Know Your Objectives

One of the first duties as a new commissioner is to be informed about the law in which you will operate. Remember that a commission's responsibility is to advise, suggest, listen, evaluate, and recommend. The responsibility for allocating public resources properly rests with the City's duly elected representatives and cannot be delegated to an outside group.

One method of observing this distinction is for the commission to make its final recommendations in the form of possible alternative courses of action, and to provide the City Council with an evaluation of each of the alternatives proposed. In this matter, it is clear that the proper public official must make the final decision.

Be Thorough in Your Recommendations

In connection with your advisory role, you may often expect to spend many hours in research of a particular problem area and should endeavor to maintain an objective attitude in this fact-find phase.

If necessary, you should visit and inspect locations under consideration before commission meetings and be fully prepared to discuss, evaluate, and act on such matters when they come up. Study based on such practices will materially strengthen the value of your recommendations. Note, however, that you must disclose what research you may have conducted during any special or regular meeting in order to ensure transparency to the public.

Relations with the Administration

City employees work for and are responsible to the City Manager. The City Manager directed staff to comply to the greatest extent possible with commission requests and within the scope established by the MPMC or City Council. As used here, administrative staff means all City employees except the City Treasurer, City Clerk and City Attorney. The first two are elected officials and the City Attorney is appointed by and reports directly to the City Council.

Within the confines of a commission's subject-matter jurisdiction, staff liaisons and support can be used to provide background and views on important issues, to keep the commission on track and focused, to interpret elected officials and administrative actions and policies, and to coach and help commission members develop their skills. However, to avoid placing the staff in a difficult position and to facilitate effective communications, remember that all your actions as a commissioner must be done with the approval of the commission as a body. In contacting City personnel on commission business, the proper channel is through the commission chairperson to the staff liaison associated with the commission. If there is no staff liaison, a formal request should be submitted by the commission chairperson to the involved Director of the respective City department.

APPENDIX

- Municipal Law Guidebook for Elected and Appointed City Officials
- City Council Meeting Rules and Procedures

CITY OF MONTEREY PARK

MUNICIPAL LAW GUIDEBOOK FOR ELECTED AND APPOINTED CITY OFFICIALS

PRESENTED BY THE
OFFICE OF THE CITY ATTORNEY



SEPTEMBER 16, 2022

(DISCARD VERSIONS BEFORE ABOVE DATE)



Karl H. Berger, City Attorney
Timothy E. Campen, Assistant City Attorney
Joaquin Vazquez, Deputy City Attorney

2600 West Olive Avenue, Ste. 500
Burbank, CA 91505
(818) 333-5120
kberger@hensleylawgroup.com
www.hensleylawgroup.com

INTRODUCTION

The Monterey Park City Attorney's office prepared this Guidebook for elected and appointed City officials (collectively "Officials") to provide an overview of some basic laws and procedures that will affect you while in public service. This Guidebook is not meant to provide an in-depth discussion regarding all these laws; they are complex and the legal outcome in a particular circumstance often depends on the facts surrounding each case.

Since civil and criminal liability can arise in some situations, it is important for you to consult with the City Attorney's office before taking action that may be regulated by the laws and regulations cited in this Guidebook. We hope only to give you a basic understanding. Please note that the City Attorney's office is unable to provide assistance in some circumstances because the nature of an inquiry or concern is private or creates a conflict of interest. Should that occur, we will refer you to the appropriate agency or to your private attorney.

THE CITY ATTORNEY'S OFFICE

"Who is the City Attorney?" That may be the first question that leaps to mind as you begin reading this Manual. The second question may be "What does the City Attorney do?"

We wanted to briefly address these two questions to make sure there is a common understanding from the outset of your public service.

➤ Who is the City Attorney?

The City Attorney is a public official appointed by the City Council. In Monterey Park (it can be different in other cities), the City contracts with a private law firm to act as the City Attorney's office. Karl H. Berger has been the City Attorney since 2020; he was previously the Assistant City Attorney (since 2009). Timothy E. Campen is the Assistant City Attorney and Joaquin Vazquez is a Deputy City Attorney. None of these attorneys are public employees; we work for a separate private law firm.

Unlike every other person working for the City, neither the City Attorney nor any assistant or deputy city attorney work for the City Manager. While we work cooperatively with the City Manager, the City Attorney answers only to the City Council.

Conversely, the City Manager does not work for the City Attorney. The City Manager and the City Attorney are the only two public officials that are appointed by the City Council.

➤ What does the City Attorney do?

The answer to this question is a bit more complicated. Our client is the City of Monterey Park, i.e., we represent the corporate "person" known as the City of Monterey Park. Essentially, we are specialized corporate attorneys. Our client acts through its highest authorized officer (the City

Manager), employee (e.g., Department Directors), and decision-making body (the City Council). Because of this representation, it may be helpful to understand the following:

- The City Attorney is **not** the *City Council's* attorney. We are also **not** an individual *Councilmember's* attorney. We can only implement *legal decisions* made by a City Council majority acting on the City's behalf during a public meeting; we do not take direction from individual Councilmembers.
- Understanding that we represent the City is particularly important when considering attorney-client privilege. The City itself holds the attorney-client privilege. That privilege extends to the City Council (as a body, but not individual Councilmembers); City commissions/boards/and committees (but not individual members holding those positions); appointed public officials (such as the City Manager); and City employees. Such communications must be under the "umbrella" of City business and within the scope of responsibilities (or employment) of the individuals who are acting on the City's behalf. Communications provided to individuals in their personal capacity are not protected by attorney-client privilege.
- We are not policymakers. Our responsibility is to provide legal advice. Consequently, we do not interfere with the City Manager's operation of the City. Nor do we "play politics"; we provide the same objective legal advice to all elected officials. That necessarily means that the answers to an individual Councilmember's questions may be provided to the entire City Council in order to ensure uniformity of advice. We do try to provide policy options based upon our legal advice along with the relative risk of exercising those options. Ultimately, choosing an option is a policy decision.

With these understandings, what we do usually falls into one of these categories:

- **Legality of the City's Conduct.** The City Attorney advises regarding the legality of the City's conduct and acts as a check on potential unlawful conduct. This responsibility is reflected in California law and the Monterey Park Municipal Code ("MPMC").
- **Ethical Duties.** We adhere to both the California Rules of Professional Conduct and the *Ethical Principles for City Attorneys* adopted October 6, 2005 by the City Attorney's Department for the League of California Cities. The work we perform on the City's behalf, therefore, is guided with our ethical obligations in mind.
- **General Counsel.** As the City's corporate attorneys, we provide oral and written legal advice; review and prepare ordinances and resolutions; review and prepare contracts; assist staff in the preparation of staff reports; review Environmental Impact Reports and other environmental documents; handle most types of civil litigation; and keep the City

abreast of new legal developments. We routinely advise regarding the Ralph M. Brown Act; election issues; public works construction contracts; constitutional issues; NPDES compliance; development agreements; personnel matters; land use issues; and the myriad of other issues that the City encounters.

- **Criminal Prosecutorial Duties.** We serve both as the City's general counsel and its prosecutor. Most of the time, the City Council provides direction and it is our responsibility, within the bounds of law and ethics, to try to implement that direction. In the general counsel capacity, we are ethically bound to zealously represent and protect the City's interests. When acting as criminal prosecutors, however, we represent the People of the State of California. As the City's prosecutor, the law requires that we act impartially and without direction, involvement or political pressure from anyone, including Councilmembers. We have always defined our prosecutorial role as acting without passion or prejudice toward any particular individual whose conduct may rise to a criminal violation of the MPMC. Instead, it is our role to determine whether a violation exists, who is responsible for the violation, and the best means of resolving the violation in a fair and reasonable manner.

➤ What won't the City Attorney do?

This is probably the last question that arises.

- **No politics.** We do not play favorites among elected officials; you will all get the same legal advice. Relatedly, we do not contribute to any political campaigns.
- **No unethical or illegal behavior.** This is self-explanatory. We neither engage in such behavior nor implement such actions.
- **No legal work for individuals.** While we do assist individual Councilmembers with crafting policy proposals for the City Council's consideration, we require direction from the entire City Council before undertaking nonroutine legal work that is likely to result in substantial time and effort. Our rule of thumb is 30 minutes, i.e., if an individual Councilmember asks for legal work taking more than 30 minutes, we will seek City Council direction.

➤ How to effectively utilize the City Attorney's office.

The City Attorney's office is part of the City team and we are excited to help implement the City Council's vision. Toward that end, we offer the following thoughts:

- Recognize that the City is a large and complex organization. The policy decisions made by the City Council must be implemented by the City Manager and City Attorney. This may take some time and effort.
- Read the staff reports and other materials provided to the City Council to help formulate informed decisions. If something is missing or ambiguous, please ask us for clarification before the City Council meeting.
- Remember that it is easier (and less expensive) to solve problems earlier rather than later. If an issue arises, alert the City Manager and City Attorney and seek input at an early stage.

THE RALPH M. BROWN ACT

In 1953, the California Legislature enacted the Ralph M. Brown Act (Government Code §§ 54950-54962), commonly referred to as the “Brown Act” or “Open Meeting Law,” to ensure that deliberations and actions of local public agencies are performed at meetings open to the public and free from any veil of secrecy. To further this overall goal, the Brown Act requires that the City’s meetings be properly noticed and generally open to the public.

➤ *Application of the Act*

Under the Brown Act, “legislative bodies” must hold meetings that are open to the public. The City Council and most City commissions, *e.g.*, the Planning Commission, are legislative bodies. Note that Officials who have not yet assumed the duties of office must still conform their conduct to Brown Act requirements and are subject to Brown Act penalties as if they had assumed office.

➤ *What is a Meeting?*

A “meeting” is generally ***any gathering*** of a majority of the members of a legislative body to hear, discuss, or deliberate regarding any issue that is within its subject matter jurisdiction. This includes using direct communication, personal intermediaries, or technological devices to develop a collective concurrence on any matter by members of the legislative body.

Exceptions to this general rule are limited to

- Individual conversations between an Official and any other person;
- A majority of Officials attending a gathering open to the public involving issues of general interest to the public, *e.g.*, a conference, if the Officials do not discuss business;

- Attending an open and publicized meeting organized to address a topic of local community concern if the meeting is not sponsored by the City and Officials do not discuss business;
- Attending one of the City's standing committee if Officials in attendance do not discuss business; or
- Attending a purely social event if the Officials do not discuss business.

It is important to keep this rule in mind whenever a majority of Officials meet, *e.g.*, after a regularly scheduled meeting is adjourned. While such gatherings are not impermissible, Officials must be aware that conversation topics are generally limited to matters other than business.

Remember that a *minority* of Officials may attend any event; such a gathering is not defined as a meeting under the Brown Act. As explained more fully below, however, an Official may be required to disclose his or her attendance at a particular event under some circumstances.

Also remember, however, that serial meetings are prohibited. A serial meeting occurs where less than a quorum of public officials meets in a series of different meetings, but eventually the majority of a legislative body is involved. There are two classic examples of serial meetings.

The first is where Official 1 contacts Official 2 who contacts Official 3 regarding a particular issue that is within the subject-matter jurisdiction of the legislative body. This process creates a quorum and can lead to a collective consensus with regard to action that should be taken.

As can be seen, the advances in technology can present a problem for Officials. In particular, the ease of using the "reply" or "forward" e-mail options can quickly lead to a serial meeting (example: Official 1 sends an e-mail to Official 2 who forwards it to Official 3 along with Official 2's comments, etc.). While a unilateral e-mail may be permissible (*i.e.*, where there is no expectation or solicitation for a response) an electronic "conversation" is not.

The other type of serial meeting is a "hub and spoke" meeting. This occurs where a staff member, for example the city manager, telephones individual Officials and reveals the respective views of the other members. As stated by the Attorney General,

"problems arise when systematic communications begin to occur which involve [Officials] acquiring substantive information for an upcoming meeting or engaging in debate, discussion, lobbying or any other aspect of the deliberative process either among themselves or with staff."

In both of these examples, the Brown Act is violated since the public is deprived of meaningful participation and the collective concurrence of a majority is reached without a public meeting.

Accordingly, it is important to exercise caution when using the convenience of communication technology and social media; while advances in technology can facilitate communication, the very convenience provided by such technology can result in inadvertent violations of the Brown Act.

The mayor or chairperson or a majority of Officials on a particular legislative body may schedule special meetings at any time and location within the City's jurisdiction (with certain exceptions). Note, however, that a minimum of 24 hour notice must be given for special meetings.

➤ *Action Taken*

A legislative body may generally only take action on matters that are included on a properly posted agenda. There are exceptions to this general rule: Officials may briefly respond to statements or questions made during public comment; may ask for clarification on a topic; make brief announcements; report on activities; or direct staff to place a matter on a future agenda.

Taking action is defined as:

1. A collective decision by a majority of the members of a legislative body;
2. A collective commitment or promise by a majority of the members to make a positive or negative decision; or
3. An actual vote by a majority of the members of the legislative body sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance.

Please note that Officials who attend a meeting where action is taken in violation of the Brown Act are subject to criminal penalties.

➤ *Public Attendance and Comments*

With certain specific exceptions, all meetings must be open to the public and attendance cannot be conditioned upon submitting personal information. Officials may adopt reasonable regulations for public comment. Persons attending a meeting may record the proceedings using any reasonable method that does not interrupt the proceeding. This right does not, however, include recording closed sessions.

The Act requires that every agenda provide an opportunity for public comment. As already explained, Officials may respond to public remarks.

MEETING PROCEDURES

Meetings before public bodies are often opportunities for persons to express their displeasure or support for particular matters being considered. Some may regard such meetings the quintessential opportunity to exercise their First Amendment rights.

It is important, however, to remember that meetings held by the City's council and commissions are also government proceedings that are necessary to conduct City business. Accordingly, the City may impose limitations upon persons attending a meeting in order to help facilitate the orderly progression of such meetings.

➤ *Regulation Permitted.*

The right to petition government and free speech are activities protected by the United States and California Constitutions. These protections, however, are not unlimited. The United States Supreme Court recognizes that

“[e]ven protected speech is not equally permissible in all places and at all times. Nothing in the Constitution requires the Government freely to grant access to all who wish to exercise their right to free speech on every type of Government property without regard to the nature of the property or to the disruption that might be caused by the speaker's activities.”

The City Council, and other legislative bodies in the City, may therefore regulate the activities of persons attending a City meeting to facilitate the orderly progression of the meeting. Such regulations, however, must govern the actions of a person; they cannot generally constrain the content of that person's speech. A commission may not, therefore, prohibit public criticism of the policies, procedures, programs, or services of the agency or the acts or omissions of the legislative body. It may, however, prevent members of the public from commenting on matters that are not within the commission's subject matter jurisdiction. It would be improper, therefore, for individuals to speak on matters other than such issues.

➤ *Willful disturbance of a meeting is unlawful.*

Penal Code § 403 states, in relevant part, that “[e]very person who . . . willfully disturbs or breaks up any . . . meeting that is not unlawful in character . . . is guilty of a misdemeanor.” This provision is interpreted as applying to persons who intentionally commit acts that violate implicit customs or explicit rules for a meeting that were actually known, or should have been known. Shouting, yelling, and clapping have all been held to be sufficiently disruptive to permit persons to be removed from and arrested at local government meetings.

The City Council, and other legislative bodies, may adopt rules and procedures for the orderly conduct of its meetings. If a person disrupts a meeting, the legislative body may, in addition to having a person arrested, remove the person disturbing the meeting or clear the meeting room.

The mayor or chairperson is generally in charge of keeping order. They, or a majority of officials on a commission, may impose rules of decorum to facilitate the orderly progression of a meeting.

DECISION-MAKING

Ordinarily, a public decision-making body takes either legislative or adjudicative actions regarding a matter. Legislative actions are mainly political where the public body “declare[s] a public purpose and make[s] provisions for the ways and means of its accomplishment.” In essence, legislative action formulates rules that apply to all future cases.

Adjudicative actions “apply law that already exists to determine specific rights based upon specific facts ascertained from evidence adduced at a hearing.” Examples of legislative actions include plan amendments and rezones; adjudicative actions include decisions regarding conditional use permits and approving tentative maps.

➤ *Due Process*

A quasi-judicial action triggers the procedural due process rights of the United States and California Constitutions. Under such circumstances, a party appearing before the legislative body is entitled to

1. Notice of the proposed action;
2. Reasons for the action;
3. A copy of the evidence on which the action is based; and
4. The right to respond “before a reasonably impartial, noninvolved reviewer.”

The last requirement is one of fundamental fairness. It is a long-standing rule that quasi-judicial bodies can only make decisions based upon the evidence before them; they “cannot act on their own information.” A legislative body acting upon its own information, without a party’s input, does not conduct a fair hearing.

➤ *Independent Investigation*

There is nothing that prohibits an Official from conducting an independent investigation. However, it is important that an Official disclose his or her investigation and *ex parte* contact if information obtained through that contact could influence the Official's decision. Disclosure of this information provides a party with the opportunity to challenge or explain that evidence. Without such disclosure, due process would be violated.

CONFLICT OF INTEREST ISSUES

Conflict of interest issues are one of the most complex areas of law that will affect you as a public Official. There are a myriad of laws and regulations that govern conflicts of interest. While the City Attorney's office is available to discuss conflict of interest issues, the duty is on you to present any information concerning potential conflicts of interest to the City Attorney's office.

While an Official's conflict may render City action in a particular matter ineffective, the Official may be personally liable for criminal and civil penalties. Additionally, under most circumstances, the City Attorney's advice on a particular situation will not safeguard the Official from personal liability; the City Attorney does not represent Officials in their personal capacity – our client is the City itself.

➤ *Common Law Doctrine*

In 1928, the California Supreme Court enunciated the common law doctrine against conflicts of interest as follows: A public officer is impliedly bound to exercise the powers conferred on the officer with disinterested skill, zeal, and diligence and primarily for the benefit of the public.

This common law doctrine was developed through court decisions and is generally secondary to the significant regulations adopted by the Legislature and the Fair Political Practices Commission ("FPPC"). These laws and regulations are part of the Political Reform Act ("PRA").

➤ *Code of Conduct*

Resolution No. 12184, adopted August 5, 2020, establishes the City's Code of Conduct. The Code of Conduct applies to all Monterey Park public officials, whether elected or appointed. There are four Core Principles:

Principle 1: Public Officials should comply with both the letter and spirit of the laws and policies affecting the operations of government;

Principle 2: Public Officials are expected by the public to be independent, impartial, and fair in their judgment and actions;

Principle 3: Serving in public office is a privilege and should be exercised in trust for the public good, not for personal gain; and

Principle 4: Public deliberations and processes should be conducted openly, unless legally confidential, in an atmosphere of respect and civility.

The Code of Conduct implements these Core Principles with mandatory policies applying to all boards and commissions. Among other things, boards and commissions may only address matters determined by the Monterey Park Municipal Code or by the City Council to be within their subject matter jurisdiction. Moreover, unless directed otherwise by the City Council, boards and commissions must refrain from consideration of policy issues that are under active consideration by the City Council. When making public utterances, public officials must make it clear whether they are presenting their own views or those of the body upon which they sit.

Please note that while the Code of Conduct is mandatory, i.e., it applies to all elected and appointed public officials, public officials also acknowledge their voluntary compliance with the Code of Conduct when assuming office by signing the “My Commitment to a Healthy Work Environment” pledge. Those pledges are on file with the City Clerk’s office and available for public review.

➤ *Political Reform Act*

The PRA regulates conflicts of interest by requiring that Officials disclose *potential* conflicts and prohibiting their participation in decision-making where there are *actual* conflicts. The California Attorney General, the FPPC, and local district attorneys are empowered to enforce the PRA through criminal sanctions and civil penalties. Generally, criminal violations of the Act are prosecuted as misdemeanors, but may also be pursued as felonies.

Although the penalties for violations of various provisions of the Act vary, civil penalties are generally based upon the amount of money or value of a gift or contribution not reported; penalties can be as high as ten thousand dollars (\$10,000) or three times the amount not reported, whichever is greater. Because good faith may sometimes be relevant in determining criminal and civil liability, it is particularly important to seek further advice whenever a potential problem appears.

➤ *General Rule for Disqualification*

The PRA states that “[n]o public official at any level of state or local government shall make, participate in making or in any way attempt to use his [or her] official position to influence a

governmental decision in which he [or she] knows or has reason to know he [or she] has a financial interest.”

Under the PRA, an Official participates in making a decision when the Official influences the decision-making process in any manner including, without limitation, proffering advice or making recommendations to a legislative body regarding a matter. With certain exceptions, Officials must refrain from participating in the decision-making process when it is reasonably foreseeable that the decision will have a material effect on the Official’s financial interest distinguishable from that of the general public.

The best advice that we can provide when a conflict issue arises is to contact the FPPC and seek its assistance (www.fppc.ca.gov and 1-866-275-3772). Only FPPC advice can protect an Official from potential enforcement actions concerning conflicts of interest. With that caution, below is a general outline of the current requirements regarding conflicts of interest.

➤ *Determining When a Material Financial Interest Exists*

There is a complex set of FPPC regulations that determine whether an Official has a material interest in a governmental decision that would have a nontrivial and reasonably foreseeable effect on (1) the Official’s financial interest in a business entity; (2) the Official’s financial interest in real property; (3) the Official’s financial interest in a source of income; (4) the Official’s financial interest in a source of gifts; (5) the Official’s personal finances; or (6) the personal finances of a member to the Official’s immediate family:

1. The effect on an Official’s business is material where the business (a) initiated the proceeding pertaining to the governmental decision; (b) offers to sell a service or a product to the Official’s agency; (c) bids on or enters into a contract with the agency; (d) is either the manufacturer of any product purchased by the agency or the sales provider of products which amount to \$1000 or more within a 12-month period; (e) applies for a permit or other entitlement that the agency is authorized to issue; (f) is subject to an action under the agency’s regulatory authority; or (g) is subject to an action taken by the agency that is directed at the entity. If the Official’s only interest in the entity is an investment interest, the decision’s effect will be material if (i) the decision may result in an increase/decrease of the entities annual gross revenues or the value of the entities assets or liabilities; (ii) the decision may cause the entity to incur/avoid additional expenses or to reduce/eliminate expenses; or (iii) there is clear and convincing evidence the decision would have a substantial effect on the property. Additionally, business costs related to travel, food, and lodging, made in the course of carrying out an agency function, are not material if it is authorized by the agency and the business provides the same services to the general public, unless these costs affect the value of the company or stock.

2. Generally, the effect on an Official's real property is material where it involves land use policies, improvements, zoning, or taxes applicable to the property, where it relates to the transfer of an interest in the property, where it involves consideration of a permit pertaining to the property, where it would affect the value, use, income potential, development potential, or character of the property, or would affect the value of property located within 500 feet of the Official's non-commercial property. However, decisions which exclusively concern repair and maintenance of streets, sewers, and similar systems, and certain decisions which solely involve the adoption or amendment of a general plan, are not held to have a material financial effect on the Official.
3. An Official will be materially affected if either the Official or the Official's spouse will receive salary, other payment for goods and services, or a gift from the person or entity that is the subject of a proceeding, or from an individual, nonprofit, or business that will be affected, or which the Official has reason to believe will be affected by the decision. The Official will also be affected if he or she receives income as a result of the sale of real property in which he or she has an ownership interest, where the purchaser is either the subject of the proceeding or has an interest in a business or property that will be affected by the decision. Likewise, there is a material effect where the Official is promised, or receives income so that the source of the income may achieve a goal that is likely to be affected by the decision. Note that certain exceptions may apply with regard to income from retail sales of a business entity including, without limitation, whether or not the retail business is open to the general public, whether the Official can distinguish customers by amount of sales, or whether the clientele of the business is comprised of a broad base of persons representative of the City.
- 4, 5 & 6. The Official will be materially affected where the Official or his or her immediate family will receive a financial benefit or loss as a result of a decision, though certain exceptions apply. As of the writing of this version of the Guidebook, the general dollar limitation for determining materiality is \$500.

➤ *Definition of "Income"*

"Income" includes, without limitation, dividends; rents; capital gains; salary; wages; gifts; loans; and your community property interest in spousal income. Except for gifts, the only income relevant to a conflict situation is income received from a source within the City; from a source presently doing, or planning to do, business within the City; and a source having done business in the City during the last two years.

➤ *Effect of Decision on Official Distinguishable From Effect on Public Generally*

You may participate in a decision, even when it would have a material financial effect, if you are affected in the same manner as the general public. This occurs when a legislative body's decision (1) will affect a significant segment of the public, defined as at least 25% of the business or nonprofit entities, real property, or individuals within the jurisdiction; and (2) the financial effect on the Official is "not unique."

An Official does not have a conflict of interest when a legislative body's decision is indistinguishable from the effect on the public generally. For example, changing the City's sales tax does not create a conflict because it affects all residents, even though it may significantly affect an Official's income. Likewise, where an Official's spouse owns a business located near a major street, and over half of the City's commercial properties are also located near that street, that official may participate in decisions relating to improvements made on the street, because the improvements would affect most businesses in the City and would not "uniquely" affect the Official's spouse.

➤ *Prohibition on Participation or Influencing Decision Once an Official is Disqualified*

If you have a conflict of interest, you are disqualified from participating in the decision-making process for that matter. Accordingly, you may not have any influence over the decision before it comes before your legislative body; you must declare for the record the nature of your conflict; you must leave the room when it comes before the legislative body (unless the matter is on the consent calendar, in which case you need not leave the room); and you may not discuss the matter with other Officials or with City staff members. An Official may, however, for certain defined personal interests make a public appearance before his or her legislative body as a member of the general public, but only in a personal capacity to comment on matters related solely to personal interests.

As noted throughout this Guidebook, the PRA is extremely complex; this paper only provides a summary and is not meant to provide legal advice. Specific questions should be directed to the City Attorney's office for a determination well in advance of when a decision needs to be made.

➤ *Government Code § 1090*

Section 1090 prohibits Officials and City employees from having financial interests in contracts made by them or by any board or body of which they are members. This prohibition applies in two basic situations. First, if the financially interested Official or City employee is a member of a board or other body that actually executes the contract (*e.g.*, the City Council), the potential conflict prohibits the City from entering into the proposed contract, regardless of whether or not the Official

participates in or abstains from the actual decision, unless certain limited exceptions apply. Second, if a staff member has a financial interest in a contract with the City, there is a conflict only if that staff member actually participates in the making of the contract. In either case, if such a contract is made, the City may void it.

You should also understand that the term “contract” is used very broadly and applies to any agreement between the City and another party whether written or oral and whether formal or informal. Additionally, the prohibitions of Section 1090 apply equally to the councilmember who votes on a written contract, a member of an advisory board who makes a recommendation on a contract, and to an employee who advises the council on a particular contract.

Note that a § 1090 violation may result in severe criminal penalties. While there are certain exceptions to the general prohibition, it is better to contact the City Attorney’s office with any questions you may have.

➤ *No Free Passes*

A somewhat dated provision of the California Constitution prohibits any public officeholder from accepting a pass or discount from a transportation company. Specifically, Article XII, § 7, of the Constitution states that

“[a] transportation company may not grant free passes or discounts to anyone holding an office of the State; and the acceptance of a pass or discount by a public officer, other than public utilities commissioner, shall work a forfeiture of that office ...”

Actions by the Southern Pacific Railroad leading to political corruption caused this provision to be added to the Constitution in 1879, but it has rarely been used. The California Attorney General, however, has opined that an official may forfeit their office because of this prohibition even though (1) the official was completely unaware of the provision; (2) the official had no regulatory power or other official influence over the activities of the transportation company or any other transportation company; (3) the transportation company’s activities were not restricted to intrastate business, but included interstate and international operations as well; (4) the official, upon learning of the prohibition, immediately reimbursed the carrier for the transportation received; and (5) the official’s travel was personal travel rather than official business.

It is unlikely that this provision would apply to special rates given to the public generally. Moreover, the Attorney General’s Office has opined that it does not apply to the use of Frequent Flyer miles or to tickets obtained by a public official when the eligibility is based on the fact that the official’s spouse is an airline employee. Finally, this provision does not apply if the ticket is provided by a non-“transportation company,” *i.e.*, provided by your employer, as a gift from a

friend, or to enable you to make an out-of-town speech or attend an out-of-town event. Note, however, that such gifts would need to be disclosed under the PRA.

➤ *AB 1234 Ethics Training*

AB 1234 allows the City to reimburse elected and appointed officials for actual and necessary expenses incurred in the performance of official duties in accordance with a written policy adopted by the City Council. Such a policy identifies the types of expenses for which the City can reimburse a public official relating to travel, meals, lodging, and other actual and necessary expenses. Among other things, AB 1234 requires the person attending activities and receiving reimbursements to give a brief report to the City Council at its next regular meeting regarding those official duties.

Public officials must also receive at least two hours of training in ethics every two years; newly elected public officials must obtain such training within one year after being elected. A local agency or an association of local agencies may offer one or more training courses, or sets of self-study materials with tests, to meet the requirements. The courses may be taken at home, in-person, or online.

If you are interested in the online training, go to localethics.fppc.ca.gov/login.aspx.

➤ *Mass Mailings*

The PRA also regulates “mass mailings” (Government Code §§ 81000-91014). In relevant part, the PRA states: “No newsletter or mass mailing shall be sent at public expense.” The term “mass mailing” means “over two hundred substantially similar pieces of mail, but does not include a form letter or other mail which is sent in response to an unsolicited request, letter or other inquiry.”

The PRA prohibits *any* public money from being spent to *distribute* a mass mailing. Moreover, the law prohibits more than \$50 of public money from being spent to design, produce, or print an otherwise prohibited mass mailing.

Mass mailings are prohibited when they “feature” an elected officer as follows:

“(A) Features an elected officer affiliated with the agency which produces or sends the mailing; or

(B) Includes the name, office, photograph, or other reference to an elected officer affiliated with the agency which produces or sends the mailing, and is prepared or sent in cooperation, consultation, coordination, or concert with the elected officer.”

The phrase “features an elected officer” means that “the item mailed includes the elected officer’s photograph or signature, or singles out the elected officer by the manner of display of his or her name or office in the layout of the document, such as by headlines, captions, type size, typeface or type color.” Note, however, that simply referencing an elected official’s name may be impermissible if the mailing is prepared or sent in “cooperation, consultation, coordination, or concert with the elected officer.”

An item is “sent” if delivered to residences, businesses, or post office boxes by any means (not simply the mail). Items that are publicly available for distribution at meetings, or can be actively obtained by the public from public facilities (*e.g.*, City Hall) are not “sent” for purposes of the PRA. Moreover, the regulation of mass mailings does not apply to solicitations for information; only to unsolicited requests.

The mass mailing regulations affect are written documents, records, videotapes and buttons. However, these regulations do not affect webpages. Further, the PRA’s 200 item limitation applies on a calendar basis, *i.e.*, up to 200 similar items may be sent each calendar month. A mass mailing may not be sent within the 60 days preceding an election by or on behalf of a candidate whose name will appear on the ballot at that election, subject to the exceptions identified in Government Code § 89002.

PUBLIC RECORDS

The Public Records Act (“Records Act”) defines a public record as

“any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any ... local agency regardless of physical form or characteristics.”

A “writing” includes

“handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, and other documents....”

Generally, all public records must be “open to inspection at all times during the office hours of the ... local agency and every person has a right to inspect any public record....” Based on these statutory definitions, virtually every piece of information created, received, or stored in the course of performing City business constitutes a public record and may be inspected by the public upon request.

➤ *Time for responding to a PRA request.*

As stated above, public records must generally be available for public inspection during the City's business hours. If public records are stored on medium other than paper, *e.g.*, *.pdf files, CD-ROMs or microfiche, equipment for viewing these records must be made available for the public.

Persons may also request that the City provided them with copies of public records. Ordinarily, public agencies must respond to requests for copies of public records within 10 days. In "unusual" circumstances, the City may extend the time for responding by an additional 14 days if the city manager, or designee, explains the reasons for the delay to the requestor within the initial 10 day time period.

The definition of "unusual circumstances" includes (1) "[t]he need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request; (2) "[t]he need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request; (3) "[t]he need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein"; and (4) "[t]he need to compile data, to write programming language or a computer program, or to construct a computer report to extract data."

➤ *When may public records be withheld?*

As stated above, virtually everything drafted, received, or kept by the City constitutes a public record. However, although the PRA favors disclosure of public records, cities are generally not required to *create* documents in response to a public record request. Nor must the City comply with requests for documents that are unduly burdensome.

Moreover, there are specific types of documents that may be withheld by public agencies for other reasons. A partial list of exempt City records includes:

- Preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the City in the ordinary course of business, provided that the public interest in withholding those records clearly outweighs the public interest in disclosure.
- Records pertaining to pending litigation to which the City is a party until the pending litigation or claim is finally adjudicated or settled.
- Personnel, medical, or similar files, the disclosure of which would constitute an

unwarranted invasion of personal privacy.

- Geological and geophysical data, plant production data, and similar information relating to utility systems development, or market or crop reports, which are obtained in confidence from any person.
- Other than as specifically required by the Government Code, records of complaints, investigations, intelligence information, or security procedures of the police and fire departments (code enforcement).
- Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination.
- The contents of real estate appraisals or engineering or feasibility estimates and evaluations made for or by the City relative to the acquisition of property, or to prospective public supply and construction contracts, until all of the property has been acquired or all of the contract agreement obtained.
- Information required from any taxpayer in connection with the collection of local taxes that is received in confidence and the disclosure of the information to other persons would result in unfair competitive disadvantage to the person supplying the information.
- Records the disclosure of which is exempted or prohibited pursuant to federal or state law.
- Information contained in applications for licenses to carry firearms that indicates when or where the applicant is vulnerable to attack or that concerns the applicant's medical or psychological history or that of members of his or her family.

➤ *Assistance with identifying public records.*

The City is required to assist persons seeking public records by helping them “make a focused and effective request that reasonably describes an identifiable record....” To fulfill this obligation (with certain exceptions), the City must take the following steps “to the extent reasonable under the circumstances”:

- Help the requestor identify those documents that meet the request “or to the purpose of the request”;
- “Describe the information technology and physical location in which the records

exist”; and

- “Provide suggestions for overcoming any practical basis for denying access to the records or information sought.”

➤ *Records Provided to a Majority of the City Council*

The Government Code provides that

“[A]gendas of public meetings and any other writings, *when distributed to all, or a majority of all, of the members of a legislative body of a local agency by any person in connection with a matter subject to discussion or consideration at an open meeting of the body, are disclosable public records . . . and shall be made available upon request without delay.*”

As seen by the emphasized language, virtually *any writing*, that was distributed to a majority of the City Council (or other legislative body) is a public record and must be available for public inspection. As noted above, such writings include electronic mail correspondence with City Councilmembers. Consequently, if it is obvious (or reasonably certain) that a majority of Councilmembers received a writing, it is important that a copy be provided to the City Clerk for filing and inspection. This is true even if an appointed public official, such as the City Manager, did not receive a copy of the correspondence. Accordingly, please ensure that the City Clerk receives a copy of all writings you may receive where it is apparent that the same writing was provided to a majority of the City Council (or other legislative body).

➤ *Social Media Policy*

The California Supreme Court confirmed in 2017 that electronic communications pertaining to public business and that are conveyed using a personal, nongovernmental account or electronic device, constitute public records subject to disclosure by public agencies. This means communications in your personal email; texts; social media (e.g., Facebook, Instagram, Twitter); Nextdoor.com; Snapchat; Whatsapp; and any other electronic accounts are subject to disclosure under the Public Records Act.

In response to this decision, the City Council updated the City’s Social Media Policy. Among other things, public officials are prohibited from using their title of public office when utilizing social media platforms. Moreover, all public officials should avoid using social media to discuss, deliberate or express opinions within the subject matter jurisdiction of their respective board or commission – even if they wish to do so in a personal capacity. This includes, without limitation, posting comments on social media whether through their own account or on a third-party’s feed.

The reasons for these policies are not only for good government, but also to avoid legal complications for the City of Monterey Park. Among other things, the policies were adopted to help reduce the likelihood that a public official's conduct violates the Brown Act or Conflict of Interest laws; that the City complies with the Public Records Act; that the City complies with its records retention schedule; that due process rights are protected; and to avoid potential City liability in civil lawsuits.

CONCLUSION

As noted earlier, this Guidebook is only a superficial overview of laws and regulations that will affect you while in public service. There may also be more specific memoranda or resolutions regarding subject-matter that is discussed in this Guidebook. Questions or concerns regarding specific facts should be directed to the City Attorney's office.

If you are interested in reviewing any of the legal sources cited in this Guidebook, or would like to contact one of the State Agencies, the following information may be helpful:

For case law - <http://www.findlaw.com/cacases/>; for California Regulations - <http://ccr.oal.ca.gov>; for the FPPC - <http://www.fppc.ca.gov/> and 1-866-275-3772.

City Council Meeting Rules and Procedures

RESOLUTION NO. 12226

A RESOLUTION ESTABLISHING PROCEDURAL RULES FOR CONDUCTING CITY COUNCIL MEETINGS.

BE IT RESOLVED by the Monterey Park City Council as follows:

SECTION 1: The City Council adopts the following procedural rules for conducting City Council meetings:

“RULES OF PROCEDURE

Rule 1: Authority

The City Council establishes these by-laws, entitled “Rules of Procedure,” for conducting its meetings. The following Rules become effect upon the City Council’s adoption and remain effective unless amended or superseded. These Rules are intended to comply with, the Ralph M. Brown Act (Government Code §§ 54950-54962). The Brown Act will supersede any conflicting provision of the Rules.

Rule 2: General Rules

Rule 2.1: Public Meetings

All meetings (except closed sessions as provided by California law) of the Council are open to the public.

Rule 2.2: Rules of Order

- A. City Council proceedings should be governed by common sense and good taste. Pursuant to applicable laws, including, without limitation, the Monterey Park Municipal Code, any issue of procedure relating to the conduct of a meeting or hearing not otherwise provided for in these Rules may be determined by the Mayor, subject to a vote of the entire Council. In addition, the City Council may, upon majority vote, alter or modify any provision of this Policy when appropriate or desirable.
- B. City Council proceedings are generally governed by Rosenberg’s Rules of Order on all matters pertaining to parliamentary law (attached as Exhibit “A,” and incorporated by reference). Notwithstanding Rosenberg’s Rules of Order, motions will be voted upon in the order in which they are made. Moreover, nothing prevents the City Council expressly adopting a rule or procedure that may be inconsistent with Rosenberg’s Rules of Order. No City Council action can be invalidated, or the legality of otherwise affected, by the failure or omission to observe or follow Rosenberg’s Rules of Order or any other City Council approved rule of procedure.

- C. These Rules are adopted to expedite the City Council's business transactions in an orderly fashion and are procedural only. Failure to strictly observe these rules will not affect the Council's jurisdiction or invalidate any Council action conforming with applicable law.
- D. The Council will abide by those Rules of Decorum that may be adopted by the City Council for use by its boards, Councils, and committees.

Rule 2.3: Quorum

Three members of the Council constitute a quorum. Should less than a quorum be in attendance, the City Clerk will list the attendees in the minutes, and they will adjourn the meeting to a later set time. In the event no members of the Council are present the City Clerk will adjourn the meeting to a later set time pursuant to Government Code § 54955.

Rule 2.4: Vote

A majority of a quorum is required to transact business except that three affirmative votes of the Council's members are required to approve the following substantive applications: General Plan Amendments and Amendments to the MPMC, Zone Changes, Variances, Conditional Use Permits, Rezoning for Annexations, Subdivision Maps, and Parcel Maps. If a motion to approve a substantive matter fails because it does not receive three affirmative votes, the matter will be automatically continued to the next regular City Council meeting. If the substantive matter is neither approved nor denied at the next regular meeting, the project is deemed denied unless the applicant requests an additional vote at the next regular meeting. No appeal fee will be charged for an appeal required as a result of a tie vote or due to the lack of four affirmative votes to approve a matter which is not subsequently denied.

Rule 2.5: Minutes of Proceedings

The City Clerk will record an account of all public proceedings of the City Council into the Council's official minutes. These minutes will become public record after Council approval.

Rule 2.6: Right of Floor

Councilmembers wishing to speak must first be recognized by the Mayor and, with the exception of City Communications, limit any remarks to the agenda matter being considered.

Rule 2.7: City Manager

The City Manager will attend all meetings of the Council unless excused. In his/her absence, the City Manager will designate an Acting City Manager to attend. The City Manager may make recommendations and has the right to take part in all City Council discussions of the Council but cannot vote.

Rule 2.8: City Attorney

The City Attorney or designee should attend all meetings of the Council. The City Attorney, or designee, upon request, may give opinions, either written or oral, on questions of law and act as the Council's parliamentarian.

Rule 2.9: City Clerk

The City Clerk will attend all meetings of the Council unless excused. The City Clerk will record, prepare, and maintain the Council's official record and perform other related duties as prescribed by the Council and/or City Manager.

Rule 3: Mayor – Duties

Rule 3.1: Presiding Officer

The Mayor, if present, will preside at all meetings. In the Mayor's absence, the Vice Mayor will preside. In the absence of both, the Councilmembers present will select a Temporary Presiding Officer by majority vote.

Rule 3.2: Call to Order

The Mayor or Vice Mayor will bring the meeting to order at the time noticed in accordance with applicable law. In the absence of both, the meeting will be called to order by the City Clerk.

Rule 3.3: Point of Order

The Mayor will determine all points of order, subject to the right of any Councilmember to appeal to a vote of a majority of the quorum.

Rule 3.4: Motion to Be Stated

The Mayor will state all motions submitted for a vote and announce the result. A roll call vote must be taken upon the request of any Councilmember.

Rule 4: Preparation of Agenda

Rule 4.1: Agenda Preparation

The Agenda will be prepared in accordance with the procedure directed by the City Manager. The Agenda should be delivered to the Mayor and Councilmembers by 5:00 p.m. on the Friday before the Council's regular Wednesday meeting. In the event of a Special Meeting, Agendas should be delivered as promptly as is practicable.

Rule 4.2: Minutes

Unless requested by a majority of the quorum, minutes may be approved without reading.

Rule 4.3: Consent Calendar

Items listed under the Consent Calendar are those items the City Manager believes will not require Council discussion and are routine in content. Also listed under the Consent Calendar are resolutions confirming action from a previous meeting which are brought back for approval of form rather than approval of action. Items may be pulled for separate discussion or clarification at any Councilmember's request, or upon receipt of a written request for public comment on the item.

Rule 4.4: City Communications

Items of interest that are not on the Agenda, such as conference or meeting reports, may be discussed under this item. No action, other than to "receive or refer to staff" may be taken.

Rule 4.5: Actions Limited to Posted Agenda

The City Council cannot take action on any item not appearing on the posted Agenda except under the conditions permitted by Government Code § 54954.2.

Rule 4.6: Future Agenda Items

Each Agenda will include an Agenda item entitled "Future Agenda Items." During this section of the Agenda any Councilmember may make a motion only to place an item on a future Agenda. The motion is non-debatable. Placement of an item on a future Agenda requires a majority vote. The City Manager has discretion as to when the item will be placed on the Agenda, unless otherwise directed by the City Council.

Rule 5: Citizens' Rights

Rule 5.1: Addressing the Council

A. Any person may address the Council under the following portions of the Agenda:

- (1) Under the Public Comment portion of the Agenda.
- (2) Public Hearings.
- (3) With the consent of a majority of the quorum of the Council.

B. Persons seeking to address the Council must comply with the following:

- (1) Members of the public may address the Council only on items within the subject-matter jurisdiction of the Council. A determination of whether an item is appropriate for discussion will be made by the Mayor with the Council's consent and upon advice by the City Attorney or designee.
 - (2) Each person addressing the Council must submit such written information as the City Clerk may require for the record, step to the podium and give their name and address for the record.
 - (3) Each speaker is limited to five minutes on Public Comment and a total of five minutes on all other items on the Agenda. Exception - See Public Hearing Procedures under Section 7 and following.
 - (4) All remarks must be directed to the Mayor and Council as a body and not to any particular Councilmember.
 - (5) No person, other than Councilmembers and the person having the floor, are permitted to participate in the discussion except as otherwise requested by the Mayor.
 - (6) No question may be asked of Councilmembers or City staff except through the Mayor.
- C. When any identifiable group of persons, as distinguished from the general public, seeks to address the Council on the same agenda item, the Mayor has the discretion to ask that the group select a spokesperson to address the Council. If additional issues are to be presented at the hearing by any other member of such group, the Mayor may limit the number of persons to address the Council to avoid unnecessary repetition of information presented to the Council.

Rule 5.2: Disrupting legal meetings

Any member of the public making disruptive remarks or who becomes disruptive while addressing the Council or attending the Council meeting so as to disrupt, disturb or otherwise impede the orderly conduct of the Council meeting will be removed forthwith by the Presiding Officer and barred from further audience before the Council at that meeting unless permission to continue is granted by a majority vote of the Council.

Rule 6: Document Preparation

Unless otherwise directed by the Council or City Manager, all documents must, before being placed on the Agenda, be approved as to form and legality by the City Attorney or designee. Such approval must be indicated by a signature on the last page of the document.

Rule 7: Procedures Regarding Public Hearings

Rule 7.1: Introduction

Mayor announces subject of the Public Hearing, confirms with the City Clerk that the Public Hearing was correctly noticed, and declares the Public Hearing open. Conflicts, if any, are declared and ex parte contacts, if any, are disclosed.

Rule 7.2: Staff and Written Material Presentation

- A. Staff summary report and other written material included in the Agenda packet is received and filed. Written comments (e.g. protest) are noted for the record.
- B. Written material not in the Agenda packet, if any, is received and filed.
- C. Oral staff report, if any, is presented by staff member.
- D. Staff responds to Councilmember questions.

Rule 7.3: Public Testimony

- A. Purpose is to provide opportunity to interested persons wishing to support or oppose the matter being considered.
- B. Mayor instructs members of the audience:
 - (1) To fill out a form prepared by the City Clerk;
 - (2) To speak from the podium;
 - (3) To give their name and address before speaking;
 - (4) That the time limit for each speaker is generally five minutes; and
 - (5) That repetition should be avoided.
- C. The applicant/representative will normally speak first. Applicant/representative presentation is limited to ten minutes, any portion of which can be used for rebuttal.
- D. Questions by speakers will be noted and, if possible, answered before Council deliberation.
- E. Following public testimony, the applicant/representative will have an opportunity for rebuttal.

Rule 7.4: Council Deliberation

- A. After the Mayor determines that no other member of the audience wishes to speak, the City Council may deliberate.
- B. The Council may ask questions of speakers for clarification.
- C. Staff and/or Council answers prior speakers' questions.
- D. The Council makes a motion and debates.

Rule 7.5: Council Action

- A. The Council may, at this time, continue the open Public Hearing.
 - (1) This should be done if any additional information is requested (e.g., a staff report).
 - (2) Continuing a Public Hearing to a specific date does not require additional notice.
- B. Vote on the item.
- C. Offer amendments or substitute motions allowing additional public comment.
- D. Close the Public Hearing and continue the matter to a later date for a decision (note that no additional reports or testimony may be received if the Public Hearing has been closed).

Rule 8: Miscellaneous Rules

Rule 8.1: Silence

During a collective vote (Ayes and Nays), silence of any Councilmember denotes an affirmative vote.

Rule 8.2: Continuance of an Item

- A. Continuance by a Councilmember.

Upon a Councilmember's request and by majority vote, an item (not subject to a deadline) may be continued to the next agreed upon meeting.

- B. Continuances Requested by Someone Not a Councilmember.

Anyone may request a continuance of an item and the Council, by majority vote, may grant a continuance.

Rule 8.3: Failure to Vote

Every Councilmember should vote unless disqualified by reason of a Conflict of Interest. If a member abstains because of a legal conflict of interest, he/she is not counted as part of the quorum and is not deemed to be voting.

If a member abstains for reasons other than a legal conflict of interest, he/she will be counted in establishing a quorum. Such an abstention will counted with the majority vote of the quorum unless there is no majority in which case it will not be counted as a vote.

Rule 8.4: Lost Motions

A lost motion is one that fails to receive the necessary number of votes to carry. To revive a lost motion at the same meeting, the proper action is a motion to reconsider.

Rule 8.5: Motion to Reconsider

A motion to reconsider any action taken by the Council may be made in accordance with the following:

- A. The motion must be made by a Councilmember the majority vote, or, in the case of a lost motion, by any Councilmember and may be seconded by any Councilmember.
- B. The motion must be made before the adjournment of the meeting at which the original action was taken.
- C. The motion is debatable and has precedence over a pending motion.
- D. Except as otherwise provided, if the action to be reconsidered is a Public Hearing item, it must be re-noticed in the event the motion to reconsider passes. Where it is clearly established that all interested members of the public are still present, the item may be reconsidered without further notice.

Rule 8.6: Tie Votes

If a tie vote occurs when a Member of the Council is absent, the item will be automatically continued once to the next regular meeting of the Council. Except in the event of an appeal to the Council, if a tie vote

occurs as a result of the abstention of a Councilmember, the motion is lost. If a tie vote on an appeal occurs as a result of the abstention of a Councilmember, the appeal is deemed denied.

Rule 8.7: Changing the Vote

A Councilmember may change his/her vote only if the change is made immediately following the announcement of the vote by the Mayor and before the next agenda item is announced.

Rule 8.8: Abstention

A Councilmember who publicly announces that he/she is abstaining from voting on a particular matter will not subsequently be allowed to withdraw the abstention.

Rule 8.9: Presentation of Evidence

A. Oral Evidence

Oral evidence may be taken on oath or affirmation if requested by the Council.

B. Exhibits and Documents

Documentary evidence, exhibits, written communications, and documents used and relied upon by the Council during Council meetings must be made part of the record.

C. Communications and Petitions

All communications and petitions must be read aloud either in full or in summary. A reading in full must be made at the request of a majority of the Council. All such communications and petitions may be placed into evidence at the Council's discretion.

D. Staff Reports

A written staff report should be prepared and orally reviewed as part of the staff presentation. Such report is evidence and part of the record.

E. Large Maps and Displays

Large size maps and displays presented for use at the hearing should be displayed in full view of the Council. When practicable, such maps or displays, or their authentic reductions, will be placed into the record.

F. Admissible Evidence

A Public Hearing need not be conducted according to legal rules of evidence. Any relevant evidence may be accepted if it relevant and the type of evidence upon which reasonable persons rely upon in conducting serious affairs. Irrelevant and unduly repetitious evidence will be excluded.

Rule 8.10: Personal Privilege

The right of a Councilmember to address the Council on a question of personal privilege is limited to cases where the integrity, character, or motives of the Councilmember is in question or where the Council's welfare is concerned. The Councilmember may not interrupt the speaker, however, until recognized by the Mayor.

Rule 8.11: Protests

Any Councilmember has the right to enter into public record reasons for dissent or protests against any motion carried by the majority.

Rule 9: Rules of Debate

Rule 9.1: Mayor as Presiding Officer

The Mayor may move, second, and debate from the Chair, retains all rights and privileges of a Councilmember.

Rule 9.2: Appeals

Any ruling of the Mayor may be appealed at the request of any Councilmember. The Mayor must call for a roll call vote to determine if the ruling is upheld.

Rule 9.3: Motions

A motion may be debated by the Council after it is made. During debate, any Member of the Council may "Call for a second." If a second is not forthcoming, the motion dies for lack of a second. If the motion is seconded, the debate may continue.

Rule 10: Adjournment

At 11:00 p.m., if the business has not concluded, the Mayor will poll all Councilmembers and upon majority vote, the meeting will be extended for a maximum of one hour. If business has not been concluded after a

subsequent hour, the meeting may be further extended by one-hour increments upon a majority vote.

Rule 11: Amendment/Suspension

The Council may amend or suspend these rules at any time upon majority vote of the Council.

Rule 12: Certificates and Proclamations

Rule 12.1: Presentation of Certificates and Proclamations

Presentation of Certificates of Achievement, Appreciation, Recognition, and so forth, will be publicly presented on Tuesday evenings at a special meeting scheduled for 6:00 p.m. and conclude by 6:45 p.m. These meetings are not regular meetings; they are special meetings. Requests for such meetings must be made to the City Manager at least seven days before the requested date.

Rule 12.2: Time Allotment for Certificate Presentations

To provide an equitable time allotment for each Councilmember to present his/her certificates, each Councilmember has accorded nine minutes to conduct his/her presentation(s).

In the event a Councilmember does not wish to use his/her time to conduct a presentation(s), his/her time allotment will then be equally distributed to the remaining Councilmembers, with a maximum time allotment of 15 minutes per Councilmember.

Rule 12.3: Presentations Concerning City-Sponsored Events

The Mayor or Presiding Officer will conduct all presentations concerning events, groups, individuals, and organizations that are sponsored all, or in part, by the City of Monterey Park and/or affiliated with the City of Monterey Park.

Rule 12.4: Proclamation Presentations

The Mayor or Presiding Officer will conduct presentations concerning the announcements of an official position of the City Council at the regularly scheduled City Council meetings commencing at 6:30 p.m.

Rule 12.5: Certificate and Proclamation Signatures

Certificates and proclamations scheduled for City Council regular meeting presentations must include the signatures of all Council Members.

For specific events and galas in which a Councilmember(s) has been invited to attend:

1. One Councilmember is invited – the certificate requires only the attendee's signature.
2. If more than one Councilmember is invited and/or attending a specific event, the certificate requires the signature of all Councilmembers.

Rule 12.6: Specific Events – Requests for Certificates

To ensure timely and appropriate completion of certificates and to avoid duplication of certificate preparation, all requests for certificates should be provided to the City Manager's executive assistant."

SECTION 2: Technology Protocols. This Resolution adopts the "Technology Protocols" promulgated by the City Clerk's office on or about March 31, 2020 attached as Exhibit "B," and incorporated by reference. These Technology Protocols will continue in effect until the cessation of the COVID-19 Pandemic as determined either by the State of California or a subsequent City Council resolution. Upon termination of the Pandemic, the Technology Protocols will be of no further force or effect.

SECTION 3: Supersession. This Resolution supersedes all previous resolutions purporting to establish rules and procedures for conducting City Council meetings. Accordingly, those resolutions are rendered moot upon adoption of this Resolution and are repealed.

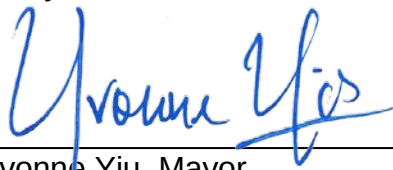
SECTION 4: Severability. If any part of this Resolution or its application is deemed invalid by a court of competent jurisdiction, the City Council intends that such invalidity will not affect the effectiveness of the remaining provision or application and, to this end, the provisions of this Resolution are severable.

SECTION 5: Electronic Signatures. This Resolution may be executed with electronic signatures in accordance with Government Code §16.5. Such electronic signatures will be treated in all respects as having the same effect as an original signature.

SECTION 6: Recordation. The Mayor, or presiding officer, is authorized to sign this Resolution signifying its adoption by the City Council of the City of Monterey Park and the City Clerk, or her duly appointed deputy, may attest thereto.

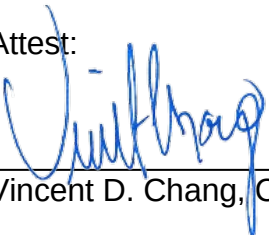
SECTION 7: Effective Date. This Resolution will become effective immediately upon adoption and will remain effective unless repealed or superseded.

PASSED AND ADOPTED this 17th of February, 2021.



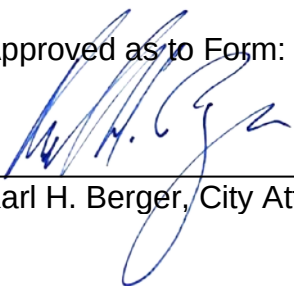
Yvonne Yiu, Mayor

Attest:



Vincent D. Chang, City Clerk

Approved as to Form:



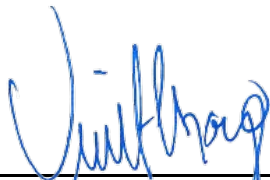
Karl H. Berger, City Attorney

State of California)
County of Los Angeles) ss.
City of Monterey Park)

I, Vincent D. Chang, City Clerk of the City of Monterey Park, California, do hereby certify that the foregoing Resolution No. 12226 was duly and regularly adopted by the City Council of the City of Monterey Park at a regular meeting held on the 17th day of February, 2021, by the following vote:

Ayes:	Council Members: Chan, Liang, Sornoso, Lo, Yiu
Noes:	Council Members: None
Absent:	Council Members: None
Abstain:	Council Members: None

Dated this 17th day of February, 2021.



Vincent D. Chang, City Clerk
Monterey Park, California

Rosenberg's Rules of Order: Simple Parliamentary Procedures for the 21st Century

by Dave Rosenberg

The rules of procedure at meetings should be simple enough for most people to understand. Unfortunately, that hasn't always been the case. Virtually all clubs, associations, boards, councils and bodies follow a set of rules, *Robert's Rules of Order*, which are embodied in a small but complex book. Virtually no one I know has actually read this book cover to cover.

Worse yet, the book was written for another time and purpose. If you are running the British Parliament, *Robert's Rules of Order* is a dandy and quite useful handbook. On the other hand, if you're running a meeting of a five-member body with a few members of the public in attendance, a simplified version of the rules of parliamentary procedure is in order. Hence, the birth of "Rosenberg's Rules of Order."

This publication covers the rules of parliamentary procedure based on my 20 years of experience chairing meetings in state and local government. These rules have been simplified and slimmed down for 21st century meetings, yet they retain the basic tenets of order to which we are accustomed.

"Rosenberg's Rules of Order" are supported by the following four principles:

1. **Rules should establish order.** The first purpose of the rules of parliamentary procedure is to establish a

framework for the orderly conduct of meetings.

2. **Rules should be clear.** Simple rules lead to wider understanding and participation. Complex rules create two classes: those who understand and participate and those who do not fully understand and do not fully participate.
3. **Rules should be user-friendly.** That is, the rules must be simple enough that citizens feel they have been able to participate in the process.
4. **Rules should enforce the will of the majority while protecting the rights of the minority.** The ultimate purpose of the rules of procedure is to encourage discussion and to facilitate decision-making by the body. In a democracy, the majority rules. The rules must enable the majority to express itself and fashion a result, while permitting the minority to also express itself (but not dominate) and fully participate in the process.

The Chairperson Should Take a Back Seat During Discussions

While all members of the governing body should know and understand the rules of parliamentary procedure, it is the chairperson (chair) who is charged with applying the rules of conduct. The chair should be well versed in those

rules, because the chair, for all intents and purposes, makes the final ruling on the rules. In fact, all decisions by the chair are final unless overruled by the governing body itself.

Because the chair conducts the meeting, it is common courtesy for the chair to take a less active role than other members of the body in debates and discussions. This does *not* mean that the chair should not participate in the debate or discussion. On the contrary, as a member of the body, the chair has full rights to participate in debates, discussions and decision-making. The chair should, however, strive to be the last to speak at the discussion and debate stage, and should not make or second a motion unless he or she is convinced that no other member of the body will do so.

The Basic Format for an Agenda Item Discussion

Formal meetings normally have a written, published agenda; informal meetings may have only an oral or understood agenda. In either case, the meeting is governed by the agenda and the agenda constitutes the body's agreed-upon road map for the meeting. And each agenda item can be handled by the chair in the following basic format.

First, the chair should clearly announce the agenda item number and should clearly state what the subject is. The chair should then announce the format that will be followed.

Second, following that agenda format, the chair should invite the appropriate people to report on the item, including any recommendation they might have. The appropriate person may be the chair, a member of the governing body,

There are exceptions to the general rule of free and open debate on motions. The exceptions all apply when there is a desire to move on.

a staff person, or a committee chair charged with providing information about the agenda item.

Third, the chair should ask members of the body if they have any technical questions for clarification. At this point, members of the governing body may ask clarifying questions to the people who reported on the item, and they should be given time to respond.

Fourth, the chair should invite public comments or, if appropriate at a formal meeting, open the meeting to public input. If numerous members of the public indicate a desire to speak to the subject, the chair may limit the time of each public speaker. At the conclusion of the public comments, the chair should announce that public input has concluded (or that the public hearing, as the case may be, is closed).

Fifth, the chair should invite a motion from the governing body members. The chair should announce the name of the member who makes the motion.

Sixth, the chair should determine if any member of the body wishes to second the motion. The chair should announce the name of the member who seconds the motion. It is normally good practice for a motion to require a second before proceeding with it, to ensure that it is not just one member of the body who is interested in a particular approach. However, a second is not an absolute requirement, and the chair can proceed with consideration and a vote on the motion even when there is no second. This is a matter left to the discretion of the chair.

Seventh, if the motion is made and seconded, the chair should make sure everyone understands the motion. This is done in one of three ways:

1. The chair can ask the maker of the motion to repeat it;
2. The chair can repeat the motion; or
3. The chair can ask the secretary or the clerk of the body to repeat the motion.

Eighth, the chair should now invite discussion of the motion by the members of the governing body. If there is no desired discussion or the discussion has ended, the chair should announce that the body will vote on the motion. If there has been no discussion or a very brief discussion, the vote should proceed immediately, and there is no need to repeat the motion. If there has been substantial discussion, it is normally best to make sure everyone understands the motion by repeating it.

Debate on policy is healthy; debate on personalities is not. The chair has the right to cut off discussion that is too personal, too loud or too crude.

Ninth, the chair takes a vote. Simply asking for the “ayes” and then the “nays” is normally sufficient. If members of the body do not vote, then they “abstain.”

Unless the rules of the body provide otherwise or unless a super-majority is required (as delineated later in these rules), a simple majority determines whether the motion passes or is defeated.

Tenth, the chair should announce the result of the vote and should announce what action (if any) the body has taken. In announcing the result, the chair should indicate the names of the members, if any, who voted in the minority on the motion. This announcement might take the following form: “The motion passes by a vote of 3-2, with Smith and Jones dissenting. We have passed the motion requiring 10 days’ notice for all future meetings of this governing body.”

Motions in General

Motions are the vehicles for decision-making. It is usually best to have a motion before the governing body prior to discussing an agenda item, to help everyone focus on the motion before them.

Motions are made in a simple two-step process. First, the chair recognizes the member. Second, the member makes a motion by preceding the member’s desired approach with the words: “I move ...” A typical motion might be: “I move that we give 10 days’ notice in the future for all our meetings.”

The chair usually initiates the motion by:

1. Inviting the members to make a motion: “A motion at this time would be in order.”
2. Suggesting a motion to the members: “A motion would be in order that we give 10-days’ notice in the future for all our meetings.”
3. Making the motion.

As noted, the chair has every right as a member of the body to make a motion, but normally should do so only if he or she wishes a motion to be made but no other member seems willing to do so.

The Three Basic Motions

Three motions are the most common:

1. **The basic motion.** The basic motion is the one that puts forward a decision for consideration. A basic motion might be: “I move that we create a five-member committee to plan and put on our annual fundraiser.”
2. **The motion to amend.** If a member wants to change a basic motion that is under discussion, he or she would move to amend it. A motion to amend might be: “I move that we amend the motion to have a 10-member committee.” A motion to amend takes the basic motion that is before the body and seeks to change it in some way.

- 3. The substitute motion.** If a member wants to completely do away with the basic motion under discussion and put a new motion before the governing body, he or she would “move a substitute motion.” A substitute motion might be: “I move a substitute motion that we cancel the annual fundraiser this year.”

Motions to amend and substitute motions are often confused. But they are quite different, and so is their effect, if passed.

A motion to amend seeks to retain the basic motion on the floor, but to modify it in some way.

A substitute motion seeks to throw out the basic motion on the floor and substitute a new and different motion for it.

The decision as to whether a motion is really a motion to amend or a substitute motion is left to the chair. So that if a member makes what that member calls a motion to amend, but the chair determines it is really a substitute motion, the chair's designation governs.

When Multiple Motions Are Before The Governing Body

Up to three motions may be on the floor simultaneously. The chair may reject a fourth motion until the three that are on the floor have been resolved.

When two or three motions are on the floor (after motions and seconds) at the same time, the *first* vote should be on the *last* motion made. So, for example, assume the first motion is a basic “motion to have a five-member committee to plan and put on our annual fundraiser.” During the discussion of this motion, a member might make a second motion to “amend the main motion to have a 10-member committee, not a five-member committee, to plan and put on our annual fundraiser.” And perhaps, during that discussion, a member makes yet a third motion as a “substitute motion that we not have an annual fundraiser this year.” The proper procedure would be as follows.

First, the chair would deal with the *third* (the last) motion on the floor, the substitute motion. After discussion and debate, a vote would be taken first on the third motion. If the substitute motion *passes*, it would be a substitute for the basic motion and would eliminate it. The first motion would be moot, as would the second motion (which sought to amend the first motion), and the action on the agenda item would be complete. No vote would be taken on the first or second motions. On the other hand, if the substitute motion (the third motion) *failed*, the chair would proceed to consideration of the second (now the last) motion on the floor, the motion to amend.

If the substitute motion failed, the chair would then deal with the second (now the last) motion on the floor, the motion to amend. The discussion and debate would focus strictly on the amendment (should the committee be five or 10 members). If the motion to amend *passed*, the chair would now move to consider the main motion (the first motion) as *amended*. If the motion to amend failed, the chair would now move to consider the main motion (the first motion) in its original format, not amended.

The challenge for anyone chairing a public meeting is to accommodate public input in a timely and time-sensitive way, while maintaining steady progress through the agenda items.

Third, the chair would now deal with the first motion that was placed on the floor. The original motion would either be in its original format (five-member committee) or, if amended, would be in its amended format (10-member committee). And the question on the floor for discussion and decision would be whether a committee should plan and put on the annual fundraiser.

To Debate or Not to Debate

The basic rule of motions is that they are subject to discussion and debate. Accordingly, basic motions, motions to amend, and substitute motions are all eligible, each in their turn, for full discussion before and by the body. The debate can continue as long as members of the body wish to discuss an item, subject to the decision of the chair that it is time to move on and take action.

There are exceptions to the general rule of free and open debate on motions. The exceptions all apply when there is a desire of the body to move on. The following motions are *not* debatable (that is, when the following motions are made and seconded, the chair must immediately call for a vote of the body without debate on the motion):

A motion to adjourn. This motion, if passed, requires the body to immediately adjourn to its next regularly scheduled meeting. This motion requires a simple majority vote.

A motion to recess. This motion, if passed, requires the body to immediately take a recess. Normally, the chair determines the length of the recess, which may range from a few minutes to an hour. It requires a simple majority vote.

A motion to fix the time to adjourn.

This motion, if passed, requires the body to adjourn the meeting at the specific time set in the motion. For example, the motion might be: “I move we adjourn this meeting at midnight.” It requires a simple majority vote.

A motion to table. This motion, if passed, requires discussion of the agenda item to be halted and the agenda item to

be placed on "hold." The motion may contain a specific time in which the item can come back to the body: "I move we table this item until our regular meeting in October." Or the motion may contain no specific time for the return of the item, in which case a motion to take the item off the table and bring it back to the body will have to be taken at a future meeting. A motion to table an item (or to bring it back to the body) requires a simple majority vote.

A motion to limit debate. The most common form of this motion is to say: "I move the previous question" or "I move the question" or "I call for the question." When a member of the body makes such a motion, the member is really saying: "I've had enough debate. Let's get on with the vote." When such a motion is made, the chair should ask for a second to the motion, stop debate, and vote on the motion to limit debate. The motion to limit debate requires a two-thirds vote of the body. Note that a motion to limit debate could include a time limit. For example: "I move we limit debate on this agenda item to 15 minutes." Even in this format, the

the motion fails. If one member is absent and the vote is 3-3, the motion still fails.

All motions require a simple majority, but there are a few exceptions. The exceptions occur when the body is taking an action that effectively cuts off the ability of a minority of the body to take an action or discuss an item. These extraordinary motions require a two-thirds majority (a super-majority) to pass:

Motion to limit debate. Whether a member says, "I move the previous question," "I move the question," "I call for the question" or "I move to limit debate," it all amounts to an attempt to cut off the ability of the minority to discuss an item, and it requires a two-thirds vote to pass.

Motion to close nominations. When choosing officers of the body, such as the chair, nominations are in order either from a nominating committee or from the floor of the body. A motion to close nominations effectively cuts off the right of the minority to nominate officers, and it requires a two-thirds vote to pass.

pend the rules for a particular purpose. For example, the body (a private club) might have a rule prohibiting the attendance at meetings by non-club members. A motion to suspend the rules would be in order to allow a non-club member to attend a meeting of the club on a particular date or on a particular agenda item.

The Motion to Reconsider

There is a special and unique motion that requires a bit of explanation all by itself: the motion to reconsider. A tenet of parliamentary procedure is finality. After vigorous discussion, debate and a vote, there must be some closure to the issue. And so, after a vote is taken, the matter is deemed closed, subject only to reopening if a proper motion to reconsider is made.

A motion to reconsider requires a majority vote to pass, but there are two special rules that apply only to the motion to reconsider.

First is the matter of timing. A motion to reconsider must be made at the meeting where the item was first voted upon or at the very next meeting of the body. A motion to reconsider made at a later time is untimely. (The body, however, can always vote to suspend the rules and, by a two-thirds majority, allow a motion to reconsider to be made at another time.)

Second, a motion to reconsider may be made only by certain members of the body. Accordingly, a motion to reconsider may be made only by a member who voted *in the majority* on the original motion. If such a member has a change of heart, he or she may make the motion to reconsider (any other member of the body may second the motion). If a member who voted *in the minority* seeks to make the motion to reconsider, it must be ruled out of order. The purpose of this rule is finality. If a member of the minority could make a motion to reconsider, then the item could be brought back to the body again and again, which would defeat the purpose of finality.

If you are running the British Parliament, *Robert's Rules of Order* is a dandy and quite useful handbook.

motion to limit debate requires a two-thirds vote of the body. A similar motion is a *motion to object to consideration of an item*. This motion is not debatable, and if passed, precludes the body from even considering an item on the agenda. It also requires a two-thirds vote.

Majority and Super-Majority Votes

In a democracy, decisions are made with a simple majority vote. A tie vote means the motion fails. So in a seven-member body, a vote of 4-3 passes the motion. A vote of 3-3 with one abstention means

Motion to object to the consideration of a question. Normally, such a motion is unnecessary, because the objectionable item can be tabled or defeated straight up. However, when members of a body do not even want an item on the agenda to be considered, then such a motion is in order. It is not debatable, and it requires a two-thirds vote to pass.

Motion to suspend the rules. This motion is debatable, but requires a two-thirds vote to pass. If the body has its own rules of order, conduct or procedure, this motion allows the body to sus-

If the motion to reconsider passes, then the original matter is back before the body, and a new original motion is in order. The matter may be discussed and debated as if it were on the floor for the first time.

Courtesy and Decorum

The rules of order are meant to create an atmosphere where the members of the body and the members of the public can attend to business efficiently, fairly and with full participation. And at the same time, it is up to the chair and the members of the body to maintain common courtesy and decorum. Unless the setting is very informal, it is always best for only one person at a time to have the floor, and it is always best for every

It is usually best to have a motion before the governing body prior to discussing an agenda item, to help everyone focus.

lege relate to anything that would interfere with the normal comfort of the meeting. For example, the room may be too hot or too cold, or a blowing fan might interfere with a person's ability to hear.

Order. The proper interruption would be: "Point of order." Again, the chair would ask the interrupter to "state your point." Appropriate points of order

Withdraw a motion. During debate and discussion of a motion, the maker of the motion on the floor, at any time, may interrupt a speaker to withdraw his or her motion from the floor. The motion is immediately deemed withdrawn, although the chair may ask the person who seconded the motion if he or she wishes to make the motion, and any other member may make the motion if properly recognized.

Motions to amend and substitute motions are often confused. But they are quite different, and so is their effect, if passed.

speaker to be first recognized by the chair before proceeding to speak.

The chair should always ensure that debate and discussion of an agenda item focus on the item and the policy in question, not on the personalities of the members of the body. Debate on policy is healthy; debate on personalities is not. The chair has the right to cut off discussion that is too personal, too loud or too crude.

Debate and discussion should be focused, but free and open. In the interest of time, the chair may, however, limit the time allotted to speakers, including members of the body. Can a member of the body interrupt the speaker? The general rule is no. There are, however, exceptions. A speaker may be interrupted for the following reasons:

Privilege. The proper interruption would be: "Point of privilege." The chair would then ask the interrupter to "state your point." Appropriate points of privi-

relate to anything that would not be considered appropriate conduct of the meeting; for example, if the chair moved on to a vote on a motion that permits debate without allowing that discussion or debate.

Appeal. If the chair makes a ruling that a member of the body disagrees with, that member may appeal the ruling of the chair. If the motion is seconded and after debate, if it passes by a simple majority vote, then the ruling of the chair is deemed reversed.

Call for orders of the day. This is simply another way of saying, "Let's return to the agenda." If a member believes that the body has drifted from the agreed-upon agenda, such a call may be made. It does not require a vote, and when the chair discovers that the agenda has not been followed, the chair simply reminds the body to return to the agenda item properly before them. If the chair fails to do so, the chair's determination may be appealed.

Special Notes About Public Input

The rules outlined here help make meetings very public-friendly. But in addition, and particularly for the chair, it is wise to remember three special rules that apply to each agenda item:

Rule One: Tell the public what the body will be doing.

Rule Two: Keep the public informed while the body is doing it.

Rule Three: When the body has acted, tell the public what the body did.

Public input is essential to a healthy democracy, and community participation in public meetings is an important element of that input. The challenge for anyone chairing a public meeting is to accommodate public input in a timely and time-sensitive way, while maintaining steady progress through the agenda items. The rules presented here for conducting a meeting are offered as tools for effective leadership and as a means of developing sound public policy. ■

EXHIBIT B
TECHNOLOGY PROTOCOLS
CITY OF MONTEREY PARK

City Clerk's Office

The City Clerk's office is implementing the following technology meeting protocols on a temporary basis. These protocols are utilized in accordance with Executive Order No. N-29-20 and Resolution No. 12142 in order to facilitate the City Council's virtual meetings.

➤ **General Notice Regarding Virtual Meetings:**

- All meetings of the City Council will be recorded including, without limitation, public comment.
- Such recordings will include the screen name of individuals who are part of the audience even if you choose not to provide public comment.
- Unless you are providing public comment, your audio will be muted and your video will be stopped.
- If you choose to provide public comment, the City Clerk will identify you, ask that you unmute your audio, and allow your video to be shared.
- Closed sessions of the City Council – if any – will not be recorded.

➤ **Public Communications:**

The following applies to persons wishing to provide public communications regarding agenda items for either a regular meeting or a special meeting:

- At least 24 hours before a meeting, provide the City Clerk's office with an email to mpclerk@montereypark.ca.gov to be read into the record not longer than 50 words; **OR**
- At least 24 hours before a meeting, provide the City Clerk's office with written correspondence -whether email or otherwise – that will be distributed to the City Council without being read into the record; **OR**
- At least 24 hours before a meeting, request to address the City Council electronically via audio/video; **OR**

- During the meeting, utilize the “raise hand” option to be recognized by the City Council at the public comment sections identified on the City Council agenda. You will be recognized in the order that your “raise hand” was received; **OR**
- Public comment may be submitted via telephone during the meeting, before the close of public comment, by calling (877) 853-5247 or (888) 788-0099 and entering the published Zoom Meeting ID provided on the respective agenda then press pound (#). When prompted to enter participation ID number press pound (#) again. If participants would like to make a public comment they will enter “*9” then the Clerk’s office will be notified and you will be in the rotation to make a public comment.

For Regular Meetings: Public Comment regarding any item of public interest within the City Council’s subject-matter jurisdiction will be accepted in the “Public Comment” section of the City Council Agenda.

For Special Meetings: Government Code § 54954.3(a) allows the City to limit public comment to only matters listed on the agenda. No other public comment will be accepted.

➤ **Meeting Decorum:**

- Persons wishing to be audience members to the meeting may do so anonymously. Anonymous participants, however, will not be recognized for public comment.
- Persons with names that violate community standards, e.g., fighting words, will not be admitted into the meeting. The City’s host will notify those persons in the waiting room that they must either change their participation meeting or will not be allowed into the meeting.
- Persons will not be allowed rename themselves upon being admitted to the meeting from the “waiting room.”
- Persons who seek to by-pass the City’s host controls will be dropped from, and blocked, from the meeting.

**UNOFFICIAL MINUTES
MONTEREY PARK PLANNING COMMISSION
REGULAR MEETING
December 13, 2022**

The Planning Commission of the City of Monterey Park held a regular meeting of the Board in the Council Chambers, located at 320 West Newmark Avenue in the City of Monterey Park, Tuesday, December 13, 2022 at 6:30 p.m.

CALL TO ORDER:

Chairperson Sam called the Planning Commission meeting to order at 6:32pm.

FLAG SALUTE:

Commissioner Pesantes led the Flag Salute.

ROLL CALL:

Interim Director of Community Development Jessica Serrano called the roll:

Commission Members Present: Tammy Sam, Ricky Choi, Jack Chiang, Peter Fung,
Jasmine Pesantes

Commission Members Absent: None

ALSO PRESENT: Interim Director of Community Development Jessica Serrano, City Attorney Karl Berger, Senior Planner Beth Chow, Assistant Planner Kevin Tan

AGENDA ADDITIONS, DELETIONS, CHANGES AND ADOPTIONS:

Senior Planner Chow corrected and changed Item 1-A from "Neighborhood Enhancement Team" to "Neighborhood Engagement Team".

ORAL AND WRITTEN COMMUNICATIONS:

Director Serrano announced that there were written comments from TRC and 1 speaker on item 2-B. Comments were deferred to time when item was heard.

[1.] PRESENTATIONS:

Matters listed under presentation are informational content and for discussion only.

1-A NEIGHBORHOOD ENGAGEMENT TEAM PRESENTATION

Officer Tony Huynh presented on the activities of the Police Department's Neighborhood Engagement Team.

MISSION STATEMENT

The mission of the City of Monterey Park is to provide excellent services to enhance the quality of life for our entire community

The Commissioners expressed their gratitude for the presentation and the Neighborhood Engagement Team's effort in addressing homelessness.

[2.] CITY OF MONTEREY PARK - CONSENT CALENDAR:

Matters listed under consent calendar are considered to be routine, ongoing business and are enacted by one motion unless specified.

Commissioner Ricky Choi motioned to approve the consent calendar, as a whole, and Commissioner Fung seconded. Chair Sam questioned how to vote on the items separately and expressed her desire to do so. Commissioner Choi rescinded his motion.

2-A APPROVAL OF MINUTES

Approving the minutes from the regular meeting of November 8, 2022.

Action Taken: The Planning Commission approved minutes from the regular meeting of November 8, 2022.

Motion: Moved, by Commissioner Chiang and seconded by Commissioner Choi, motion carried by the following vote:

Ayes:	Commissioners:	Sam, Chiang, Choi, Fung, Pesantes
Noes:	Commissioners:	None
Absent:	Commissioners:	None
Abstain:	Commissioners:	None

2-B COMPLIANCE REVIEW – CONDITIONAL USE PERMIT 19-13 FOR RAISING CANE'S – 1970 SOUTH ATLANTIC BOULEVARD

Director Serrano provided a summary of the written comments provided by TRC Retail, owners of Atlantic Square. The commenter indicated that Raising Cane's is in violation of Conditional Use Permit ("CUP") 19-13 and their operations result in trespasses onto Atlantic Square, among others.

Byron de Arakal, representing TRC, provided comments to the Commission to determine that Raising Cane's is out of compliance with CUP 19-13, among others.

Raising Cane's commenced operations as of June 1, 2022 after the City issued a Temporary Certificate of Occupancy. CUP 19-13 requires that the Planning Commission review Raising Cane's compliance with the CUP six months after operations commence. This item was scheduled before the Planning Commission to satisfy this requirement.

MISSION STATEMENT

The mission of the City of Monterey Park is to provide excellent services to enhance the quality of life for our entire community

Discussion ensued among commissioners. Commissioners asked for clarification of Police Department Memo, traffic management plan, and approved drive-through plan, among others.

Director Serrano and Attorney Berger clarified those items for the commissioners.

Action Taken: The Planning Commission voted to receive and file the Compliance Review for Conditional Use Permit 19-13 for Raising Cane's.

Motion: Moved, by Commissioner Choi and seconded by Commissioner Chiang, motion carried by the following vote:

Ayes:	Commissioners:	Sam, Chiang, Choi, Fung, Pesantes
Noes	Commissioners:	None
Absent:	Commissioners:	None
Abstain:	Commissioners:	None

[3.] PUBLIC HEARING: None

[4.] OLD BUSINESS: None

[5.] NEW BUSINESS: None

[6.] COMMISSION COMMUNICATIONS AND MATTERS:

Commissioner Choi wished everyone a Happy Holidays.

Commissioner Chiang inquired about short term rentals and the maximum cap on rental time. Senior Planner Chow responded to the inquiry. Director Serrano stated that they will create a presentation on the city's ordinance on short term rentals for the commissioners.

Director Serrano introduced Assistant Planner Tan to the commissioners.

Senior Planner Chow informed the commissioners about the City's sustainability survey for the Going Green campaign, presented them with stickers from the campaign, and indicated that a presentation about the campaign would occur at a future meeting.

Director Serrano announced that she had been recently appointed as the Interim Director of Community Development to the commissioners.

[7.] FUTURE AGENDA ITEMS:

Chairperson Sam asked if there will be any future agenda items. Director Serrano said that the commissioners can expect items on short term rental and the Going Green program.

ADJOURNMENT:

MISSION STATEMENT

The mission of the City of Monterey Park is to provide excellent services to enhance the quality of life for our entire community

There being no further business for consideration, the Planning Commission meeting was adjourned at 7:57 p.m.

Jessica Serrano
Interim Director of Community Development

MISSION STATEMENT

The mission of the City of Monterey Park is to provide excellent services to enhance the quality of life for our entire community



Planning Commission Staff Report

DATE: February, 28, 2023

AGENDA ITEM NO: 3-A

TO: The Planning Commission
FROM: Jessica Serrano, Interim Director of Community Development
SUBJECT: A Public Hearing to consider Conditional Use Permit (CUP-22-03), a request to allow a massage establishment to operate within the Central Business (C-B) Zone on property located at 301 East Garvey Avenue, Unit E.

RECOMMENDATION:

It is recommended that the Planning Commission consider:

- (1) Opening the public hearing;
- (2) Receiving documentary and testimonial evidence;
- (3) Closing the public hearing;
- (4) Adopting the Resolution approving the requested Conditional Use Permit (CUP-22-03), subject to conditions of approval contained therein; and
- (5) Taking such additional, related, action that may be desirable.

CEQA (California Environmental Quality Act):

The proposed project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA), per CEQA Guidelines § 15301 (Class 1 – Existing Facilities), because the proposed project consists of permitting of an existing private structure and therefore involves a negligible expansion of an existing use. The project does not propose any physical improvements to the site or any physical changes to the existing building.

EXECUTIVE SUMMARY:

The Applicant, Ms. Qing Zhao, requests approval of a CUP to allow the operation of a new massage establishment at 301 E. Garvey Avenue, Unit E, pursuant to the Monterey Park Municipal Code ("MPMC") §21.12.030(F)(2). The proposed business would occupy a tenant space, approximately 894 square feet in size, within an existing commercial development known as Jade Plaza.

Staff finds that the proposed massage establishment is consistent with the City's Municipal Code and the General Plan and recommends approval of Conditional Use Permit (CUP-22-03), subject to the conditions contained in the Resolution.

TYPE OF ACTION (QUASI-JUDICIAL)

The recommended action is to adopt a CUP. In considering such actions, the Planning Commission acts in a quasi-judicial role. When doing so, the Planning Commission acts like a court: it applies facts gathered during a public hearing to existing law. Just like a court, the Planning Commission can only consider facts that are relevant to the case. A party appearing before the legislative body is entitled to

- Notice of the proposed action;
- Reasons for the action;
- A copy of the evidence on which the action is based; and
- The right to respond before a reasonably impartial, noninvolved reviewer.

The Planning Commission must base its decisions upon substantial evidence within the record. "Substantial evidence" generally means enough relevant information and reasonable inferences from information gathered during a public hearing that a fair argument can be made to support a conclusion, even though other conclusions might also be reached. Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts does not constitute substantial evidence. Substantial evidence includes facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts. If the Planning Commission asks irrelevant questions and bases its decision-making on such questions, a court may overturn the Planning Commission's decision and potentially hold the City liable for violating the applicant's constitutionally protected due process rights.

To approve the CUP (per MPMC §§ 21.32.020(B)) the Planning Commission must find that:

- The site is adequate in size, shape and topography for the proposed use including without limitation, any required yards, walls, fences, parking and loading facilities, landscaping, setbacks, and other development standards prescribed in the MPMC;
- The site has sufficient access to streets and highways, adequate in width and pavement type to carry the quantity and quality of traffic generated by the proposed use;
- The proposed use is consistent with the General Plan and any applicable specific plan;
- The proposed use will not create unusual noise, traffic, or other conditions that may be objectionable, detrimental, or incompatible with surrounding properties or other permitted uses in the City;

BACKGROUND:

The property at 301 East Garvey Avenue, Unit E (“Subject Property”) is within an existing commercial development known as Jade Plaza, located at the northeast corner of N. Nicholson Avenue and E. Garvey Avenue. It has a zoning designation of Central Business (C-B) and a General Plan land use designation of Mixed Use. The Subject Property is rectangular in shape, approximately 34,255.08 square feet in size, and consists of a single parcel, Assessor’s Parcel Number 5255-018-021. It is currently developed with a one-story commercial center comprised of multiple tenant spaces and accessible off both Nicholson Avenue and Garvey Avenue.

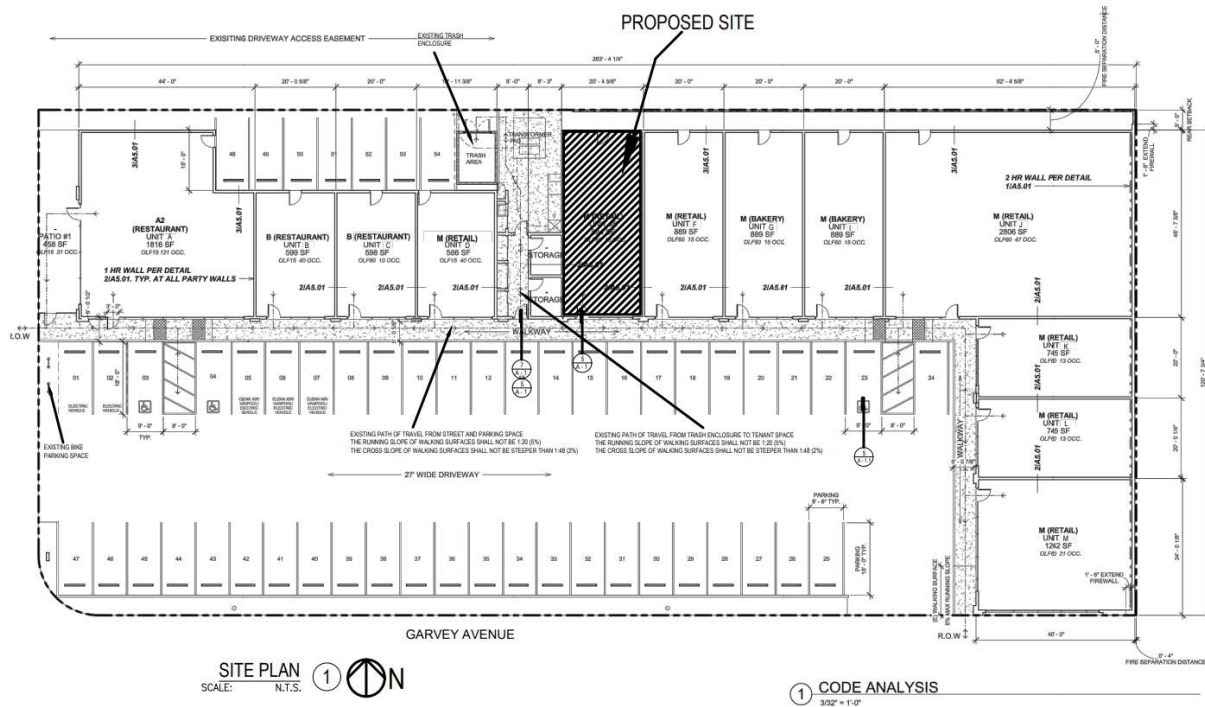


Figure 1: Site Plan

Located to the north of the Subject Property is a multi-family residential lot, east is a one-story retail store, south (across Garvey Avenue) is an auto sales lot, and west (across Nicholson Avenue) is retail sales for auto supplies and parts.

The proposed massage establishment will be located within Unit E of the Subject Property (“Unit E”) and is a conditionally allowed use in the C-B zone. Unit E is 894 square feet, which will be relatively small and generate minimal impacts to traffic and parking demands. Further, the previous use of this unit was also a massage establishment and therefore, staff deemed the property to have adequate parking for the proposed use. No physical changes are proposed to Unit E other than interior tenant improvements.

The Applicant proposes to provide foot and body massage services with business operating hours on Monday through Sunday from 10:00 a.m. to 10:00 p.m. Unit E will

have a lobby, four massage rooms, one employee breakroom, a reception counter, a washer & dryer, a service sink, and an all-gender restroom.

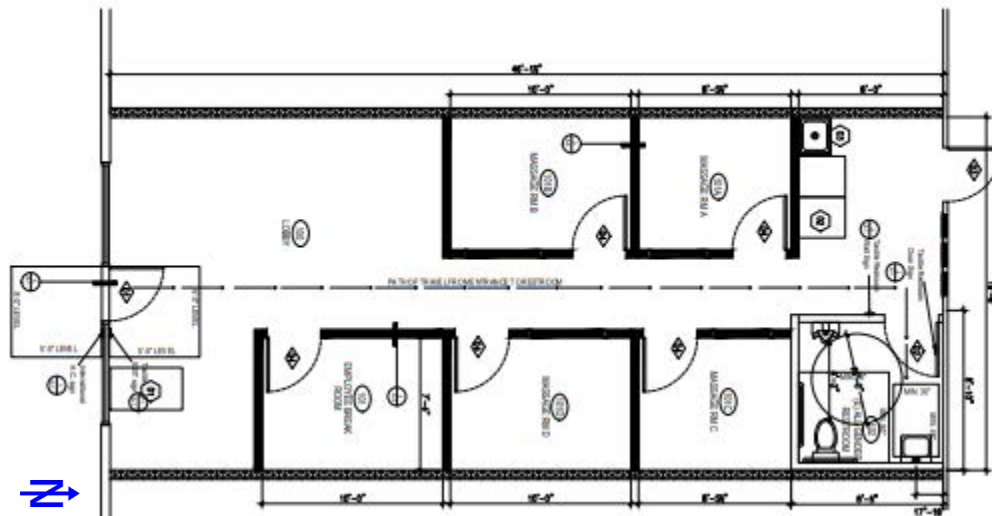


Figure 2: Proposed Floor Plan

According to MPMC § 21.10.030, a massage establishment is subject to the approval of a conditional use permit and must comply with the regulations in MPMC Chapter 5.28. Specifically, per MPMC § 5.28.110, massage businesses must comply with a list of specified requirements including, without limitation, minimum lighting, necessary ventilation, and the provision of mandatory restrooms, in accordance with the California Building Code.

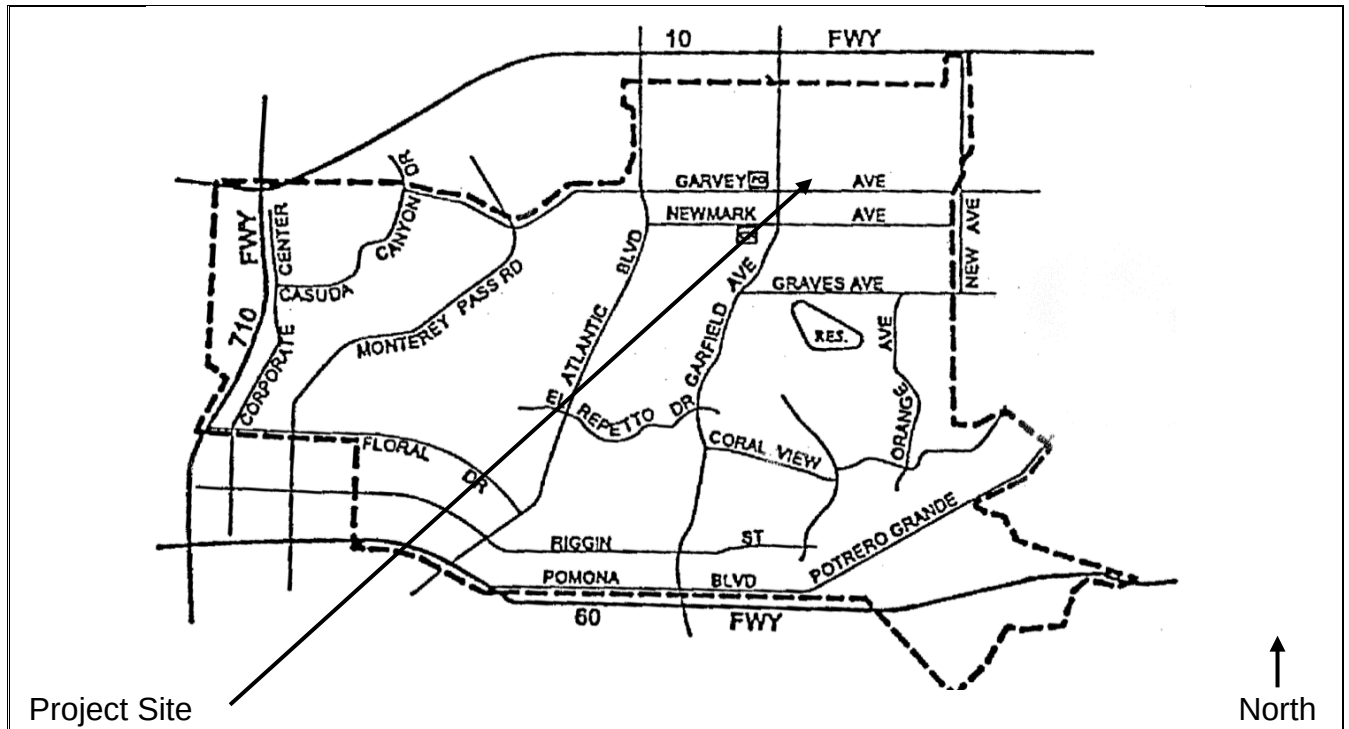
MPMC Chapter 5.28 also dictates standards for the owners, operators, or employees of massage establishments. The owner or owners, with at least a 5-percent interest in the business, must maintain certification from the California Massage Therapy Council ("CAMTC") or pass a background check. Additionally, every person or employee conducting massage services must hold a valid certification with the CAMTC.

The Police Department has incorporated conditions for the operation of a massage establishment of the attached Resolution. Condition numbers 19 through 25 of the Resolution have been recommended by the Police Department to include appropriate lighting, compliance with the Massage Therapy Act, and that all payment for services, including gratuities, must be exchanged in the reception room or other central area, if any, and not within the massage rooms. Lastly, the business owner must be responsible for maintaining an up-to-date roster of employees and copies of all required licenses from the California Massage Therapy Council for each technician administering massage services prior to the issuance of a business license. At this time, the Applicant will operate as a sole proprietor, however, the conditions above allow for additional employees as the business is established, which is in line with the request by the Applicant.

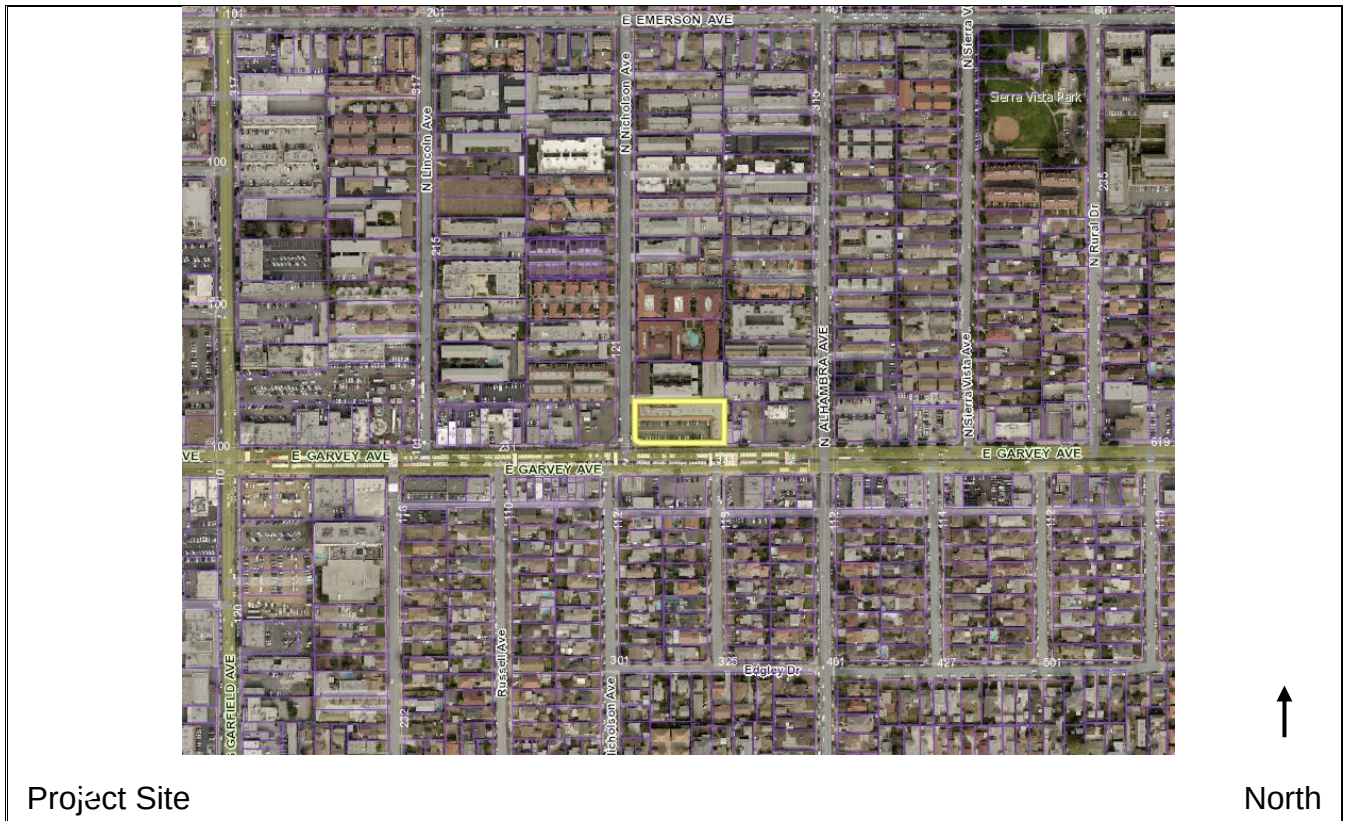
Legal Notification

The legal notice of this hearing was posted at City Hall, Monterey Park Bruggemeyer Library, and Langley Center on **February 16, 2023**, with affidavits of posting on file. The legal notice of this hearing was mailed to **88** property owners within a 300-foot radius of the property concerned on **February 16, 2023**.

Vicinity Map



Aerial Map



ALTERNATIVE COMMISSION CONSIDERATIONS:

None.

FISCAL IMPACT:

There may be an increase in sales tax revenue and business license tax revenue. Calculations of the exact amount would be speculative.

Respectfully submitted,



Jessica Serrano
Interim Director of Community
Development

February 28, 2023

Prepared by:

Kevin Tan

Kevin Tan
Assistant Planner

Reviewed by:



Justin Tamayo
Deputy City Attorney

Attachments:

Attachment 1: Draft Resolution

Attachment 2: Notice of Exemption

ATTACHMENT 1

Draft Resolution

RESOLUTION NO. _____

**A RESOLUTION APPROVING CONDITIONAL USE PERMIT (CUP-22-03)
TO ALLOW A MASSAGE BUSINESS WITHIN THE CENTRAL
BUSINESS (C-B) ZONE ON PROPERTY LOCATED AT 301 EAST
GARVEY AVENUE, UNIT E**

The Planning Commission of the City of Monterey Park does resolve as follows:

SECTION 1: The Planning Commission finds and declares that:

- A. On October 29, 2022, Ms. Qing Zhao (“Applicant”), submitted an application, pursuant to Monterey Park Municipal Code (“MPMC”) §§ 5.28.050 and 21.32.020, requesting approval of Conditional Use Permit (CUP-22-03) to allow a massage establishment at 301 E. Garvey Avenue, Unit E (“Project”);
- B. The proposed Project is located in the C-B (Central Business) zone, where such massage use is permitted with a CUP for the zoning district.
- C. The proposed Project was reviewed by the City of Monterey Park, Community Development Department for, in part, consistency with the General Plan, and conformity with the MPMC and California Environmental Quality Act (Public Resources Code §§ 21000, *et seq.*, “CEQA,” and the regulations promulgated thereunder (14 California Code of Regulations §§ 15000, *et seq.*, the “CEQA Guidelines”));
- D. The Community Development Department completed its review and scheduled a public hearing regarding the Project before the Planning Commission for February 28, 2023;
- E. Notices of Public Hearing before the Planning Commission was duly given and published in the time, form, and manner as required by law; and
- F. On February 28, 2023, the Planning Commission held a public hearing to receive public testimony and other evidence regarding the proposed Project including, without limitation, information provided to the Planning Commission by City staff and public testimony; and
- G. This Resolution and its findings are made based upon the testimony and evidence presented to the Commission at its February 28, 2023 hearing including, without limitation, the staff report submitted by the Community Development Department.

SECTION 2: *Factual Findings and Conclusions.* The Planning Commission finds that the following facts exist and makes the following conclusions:

- A. The Applicant is requesting approval of CUP-22-03 to establish a massage establishment within an existing multi-tenant commercial property. The tenant space is approximately 894 square feet and will feature a lobby, four massage rooms, one employee breakroom, a reception counter, a washer & dryer, a service sink, and an

**PLANNING COMMISSION
RESOLUTION NO.
PAGE 2 OF 6**

all-gender bathroom. The business operating hours will be Monday through Sunday from 10:00 a.m. to 10:00 p.m.;

- B. The property located at 301 East Garvey Avenue, Unit E has a zoning designation of Central Business (C-B) and a General Plan land use designation of Mixed Use. A massage business is a conditionally allowed use in the C-B zone.
- C. The property is rectangular in shape, and approximately 34,255.08 square feet in size, consisting of a single parcel, Assessor's Parcel Number 5255-018-021. The subject property is situated located at the northeast corner of N. Nicholson Avenue and E. Garvey Avenue. It is currently developed with a one-story commercial building comprised of multiple tenant spaces, known as Jade Plaza, which is accessible off both Nicholson Avenue and Garvey Avenue.
- D. Located to the north of the Subject Property is a multi-family residential lot, east is a one-story retail store, south (across Garvey Avenue) is an auto sales lot, and west (across Nicholson Avenue) is retail sales for auto supplies and parts.
- E. The proposed tenant space is 894 square feet, which will be relatively small and generate minimal impacts to traffic and parking demands, additionally, the previous use of this unit was also a massage establishment, therefore, the site will have adequate parking for the proposed use.
- F. Condition numbers 19 through 25 in the attached Resolution have been recommended by the Police Department to address lighting and compliance with the Massage Therapy Act. The Police Department will monitor the subject property relative to safety considerations including, without limitation, such as hours of operation and required certifications.

SECTION 3: *Environmental Assessment.* The proposed project is categorically exempt from the provisions of the California Environmental Quality Act ("CEQA"), per State CEQA Guidelines § 15301 (Class 1 – Existing Facilities), because the proposed project consists of permitting of an existing private structure and therefore involves a negligible expansion of an existing use. It can be seen with certainty that no special circumstances exist that would create a reasonable possibility that the proposed project will have a significant adverse effect on the environment.

SECTION 4: *Conditional Use Permit Findings.* Pursuant to MPMC § 21.32.020(B), the Planning Commission finds as follows:

- A. The site is adequate in size, shape, and topography for the proposed use in that the proposed use is a massage business within an existing commercial development with multiple tenant spaces. The tenant space of approximately 894-square feet is adequate in size and shape to accommodate the operation of the proposed massage

**PLANNING COMMISSION
RESOLUTION NO.
PAGE 3 OF 6**

business. No additional square footage would be added to the building footprint and no physical changes are proposed to the site;

- B. The site has sufficient access to streets and highways, adequate in width and pavement type to carry the quantity and quality of traffic generated by the proposed use. Garvey Avenue and Nicholson Avenue will continue to be able to accommodate the amount of traffic generated by the proposed massage use that is to occupy tenant space within an existing commercial building. The proposed use is not expected to significantly increase traffic;
- C. The proposed use is consistent with the General Plan and conforms to objectives of the General Plan and the Monterey Park Municipal Code zoning regulations. The subject property is designated Mixed Use in the General Plan. The Mixed Use Land use category allows for a broad range of retail and service commercial uses, hospitality, entertainment, medical, professional offices, and residential uses. The proposed use is a massage establishment within an existing commercial building;
- D. The proposed use will not create unusual noise, traffic, or other conditions that may be objectionable, detrimental, or incompatible with surrounding properties or other uses in the City. The proposed use, as conditioned, will not have an adverse effect on the use, enjoyment or valuation of property in the neighborhood as required security measures will minimize the potential for any negative impacts. The massage business is to provide distinctive and appropriate use within the C-B zone and it is professional in nature and consistent with the low-impact businesses nearby.
- E. The proposed use will not have an adverse effect on the public health, safety, and general welfare because security measures and the limited size of the use will limit any potential adverse effects to neighboring properties. Conditions have been included in the Resolution to address concerns relating to safety and security and the massage business will be designed and operated in accordance with City standards. Additionally, the Police Department will monitor the subject property relative to safety considerations including, without limitation, hours of operation and required certification.
- F. The proposed use applied for at the location is properly one authorized by conditional use permit pursuant to the Zoning Code. MPMC §§ 5.28.050 and 21.10.030 specifically allow for a massage establishment in the C-B (Central Business) Zone with CUP approval.

SECTION 5: Approval. Subject to the conditions listed on the attached Exhibit "A," which are incorporated into this Resolution by reference, the Planning Commission approves Conditional Use Permit (CUP-22-03).

**PLANNING COMMISSION
RESOLUTION NO.
PAGE 4 OF 6**

SECTION 6: *Notice of Exemption.* The Director of Community and Economic Development, or designee, is directed to file a Notice of Exemption in accordance with CEQA §§ 15062, and any other applicable law.

SECTION 7: *Reliance on Record.* Each and every one of the findings and determinations in this Resolution are based on the competent and substantial evidence, both oral and written, contained in the entire record relating to the project. The findings and determinations constitute the independent findings and determinations of the Planning Commission in all respects and are fully and completely supported by substantial evidence in the record as a whole.

SECTION 8: *Construction.* This Resolution must be broadly construed in order to achieve the purposes stated in this Resolution. It is the Planning Commission's intent that the provisions of this Resolution be interpreted or implemented by the City and others in a manner that facilitates the purposes set forth in this Resolution.

SECTION 9: *Limitations.* The Planning Commission's analysis and evaluation of the project is based on the best information currently available. It is inevitable that in evaluating a project that absolute and perfect knowledge of all possible aspects of the project will not exist. One of the major limitations on analysis of the project is the Planning Commission's lack of knowledge of future events. In all instances, best efforts have been made to form accurate assumptions. Somewhat related to this are the limitations on the City's ability to solve what are in effect regional, state, and national problems and issues. The City must work within the political framework within which it exists and with the limitations inherent in that framework.

SECTION 10: *Severability.* If any part of this Resolution or its application is deemed invalid by a court of competent jurisdiction, the Planning Commission intends that such invalidity will not affect the effectiveness of the remaining provisions or applications and, to this end, the provisions of this Resolution are severable.

SECTION 11: *Preservation.* This Resolution does not affect any penalty, forfeiture, or liability incurred before, or preclude prosecution and imposition of penalties for any violation occurring before, this Resolution's effective date. Any such amended part will remain in full force and effect for sustaining action or prosecuting violations occurring before the effective date of this Resolution.

SECTION 12: *Summaries of Information.* All summaries of information in the findings, which precede this section, are based on the substantial evidence in the record. The absence of any particular fact from any such summary is not an indication that a particular finding is not based in part on that fact.

**PLANNING COMMISSION
RESOLUTION NO.
PAGE 5 OF 6**

SECTION 13: *Electronic Signatures.* This Resolution may be executed with electronic signatures in accordance with Government Code §16.5. Such electronic signatures will be treated in all respects as having the same effect as an original signature.

SECTION 14: This Resolution will remain effective until superseded by a subsequent resolution.

SECTION 15: A copy of this Resolution will be mailed to Qing Zhao and to any other person requesting a copy.

SECTION 16: This Resolution is the Planning Commission's final decision and will become effective immediately upon adoption, and will remain effective unless the action is appealed within ten days pursuant to MPMC § 21.32.060, and MPMC § 1.10.

SECTION 17: The Planning Commission Chairperson, or presiding officer, is hereby authorized to affix his signature to this Resolution signifying its adoption by the Planning Commission of the City of Monterey Park, and the Planning Commission Secretary is directed to attest thereto.

PASSED, APPROVED, AND ADOPTED BY THE PLANNING COMMISSION OF THE CITY OF MONTEREY PARK THIS 28TH DAY OF FEBRUARY 2023.

Tammy Sam, Chairperson

I hereby certify that the foregoing Resolution was duly adopted by the Planning Commission of the City of Monterey Park at the regular meeting held on the 28th day of February 2023, by the following vote of the Planning Commission:

AYES:

NOES:

ABSTAIN:

ABSENT:

Jessica Serrano, Secretary

**APPROVED AS TO FORM:
Karl H. Berger, City Attorney**

**PLANNING COMMISSION
RESOLUTION NO.
PAGE 6 OF 6**

By: _____
Justin Tamayo,
Deputy City Attorney

RESOLUTION NO.

Exhibit A

CONDITIONS OF APPROVAL

301 EAST GARVEY AVENUE, UNIT E

In addition to all applicable provisions of the Monterey Park Municipal Code ("MPMC"), Ms. Qing Zhao, agrees that he will comply with the following conditions of approval for Conditional Use Permit (CUP-22-03) ("Project Conditions").

PLANNING:

1. Ms. Qing Zhao (the "Applicant"), agrees to indemnify and hold the City harmless from and against any claim, action, damages, costs (including, without limitation, attorney's fees), injuries, or liability, arising from the City's approval of CUP-22-03 except for such loss or damage arising from the City's sole negligence or willful misconduct. Should the City be named in any suit, or should any claim be brought against it by suit or otherwise, whether the same be groundless or not, arising out of the City approval of CUP-22-03, the Applicant agrees to defend the City (at the City's request and with counsel satisfactory to the City) and will indemnify the City for any judgment rendered against it or any sums paid out in settlement or otherwise. For purposes of this section "the City" includes the City of Monterey Park's elected officials, appointed officials, officers, and employees.
2. The conditional use permit expires twelve months after its approval if the use has not commenced or if improvements are required, but construction has not commenced under a valid building permit. A total of a one year extension may be granted by the Planning Commission upon finding of good cause. An application requesting an extension must be filed with the Community Development Director, or designee.
3. The applicant and/or business operator successors must comply with the provisions established in Monterey Park Municipal Code Chapter 5.28.
4. The property owner is responsible for maintaining the area adjacent to the business location and the site in general, including any parkways and alleys.
5. The property must remain well maintained and free of graffiti. Failure of the applicant/property owner to remove graffiti within 24 hours written notice by the City will cause the City to abate the graffiti at the cost of the applicant/property owner.
6. A copy of the Conditions of Approval for Conditional Use Permit (CUP-22-03) must be kept on the premises of the establishment and presented to any authorized City official upon request.

**PLANNING COMMISSION
RESOLUTION NO.**

7. The massage establishment must maintain the layout and floor plans as submitted as part of this application. The Community Development Director, or designee, is authorized to approve minor modifications to the approved preliminary plans or any of the conditions if such modifications achieve substantially the same results as would strict compliance with said plans and conditions.
8. A list of all persons providing massage services at the establishment, including each person's full true name and other names used, photograph, and certificate from the California Massage Therapy Council ("CAMTC") must be displayed prominently on the premises in a location that can be readily viewed by customers or City representatives.
9. The permitted hours of operation of the business are from Monday through Sunday from 10:00 am to 10:00 pm. Customers are not allowed within the business outside of these business hours.
10. No persons may give, or assist in giving of any massage to any other person under the age of 18 years, unless the parent or guardian of such minor person has given consent thereto in writing.
11. Physical facilities for the massage establishment must be maintained in good repair and in clean and sanitary condition. The restroom utilized in the operation must be cleaned each day.
12. Massage Practitioners operating as independent contractors, not employees, within an establishment must obtain a business license from the City of Monterey Park before commencing any activity within the City.
13. Any changes to the services provided or business plan must be submitted to an approved by the Community Development Director, or designee, before any change taking effect. Any changes that significantly alter the use may be referred to the Planning Commission for review.
14. No persons other than those receiving a massage, parents or guardians of a minor who is receiving a massage, and those administering a massage shall enter or remain within a room where a massage is being given.
15. Massage beds or tables used in conjunction with the business must be a table designed and manufactured for medical and massage uses. No mattresses or sleeping beds allowed.

**PLANNING COMMISSION
RESOLUTION NO.**

POLICE:

16. Lighting must be provided in accordance with the building laws and, in addition, at least one artificial light must be provided in each room or enclosure where massage services are performed on patrons.
17. Dressing areas, and toilet facilities must be provided for patrons. Lockers must be provided whenever patrons are required to undress or disrobe. Male and female patrons may not be served simultaneously in the same room. Male and female patrons may not simultaneously use massage rooms, dressing areas, lockers and toilet facilities.
18. The inside of doors to individual massage rooms or enclosures may not be fitted with locks or any device intended to prevent the opening of such doors. Doors of individual massage rooms must not be locked at any time during a massage therapy session.
19. The permittee must comply with all applicable laws including without limitation, labor and health and safety laws and building codes.
20. Permittee must comply with the Massage Therapy Act (Business and Professions Code §4600, *et seq.*) including, without limitation, regulations governing the display of certificates, sexual acts, advertising, and dressing requirements.
21. Except in emergencies, patrons must be directed to use the front or street facing entrance and exit.
22. All payment for services, including gratuities, must be exchanged in a reception room or other central area, if any, and not within any of the massage rooms.

FIRE:

23. All conditions identified by the Fire Chief, or designee, are subject to review and approval by the Fire Chief for determination of applicability and extent to which any condition may be required.
24. Permittee must provide an approved automatic fire sprinkler system and fire alarm as set forth by Fire Code 903 and 907 for the existing structure under deferred submittals.
25. Fire Department vehicular access roads must be installed and maintained in a serviceable manner prior to and during the time of construction. CFC 501.4
26. A Knox box and keys must be provided at entrance. CFC 506.1
27. If "As-built" plans are required, additional fees will be due for the review of the drawings.

**PLANNING COMMISSION
RESOLUTION NO.**

By signing this document, Ms. Qing Zhao, certifies that the Applicant read, understood, and agrees to the Project Conditions listed in this document.

Ms. Qing Zhao, Applicant

ATTACHMENT 2

Notice of Exemption

Notice of Exemption

From: City of Monterey Park Planning
320 W. Newmark Avenue
Monterey Park, CA 91754

To:

- ☐ Office of Planning and Research
1400 Tenth Street, Room 121
Sacramento, CA 95814
- ☐ Los Angeles, County Clerk
Environmental Filings
12400 Imperial Highway #1201
Norwalk, CA 90650
Attn: Business Filings and Registration

Project Title: Conditional Use Permit (CUP 22-03)
Project Location - Specific: 301 East Garvey Avenue, Unit E
Project Location - City: Monterey Park
Project Location - County: Los Angeles

Description of Project:
Approval of a massage establishment to operate at 301 East Garvey Avenue, Unit E.

Name of Public Agency Approving Project: City of Monterey Park
Name of Person or Agency Carrying Out Project: City of Monterey Park

Exempt Status: (*check one*)

- ☐ Ministerial (Sec. 21080(b)(1); 15268);
- ☐ Declared Emergency (Sec. 21080(b)(3); 15269(a));
- ☐ Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- ☒ Categorical Exemption. State type and section number: § 15301 (Class 1 – Existing Facilities)
- ☐ Statutory Exemptions. State code number: _____

Reasons why project is exempt:

Pursuant to the California Environmental Quality Act ((Public Resources Code §§ 21000, *et seq.*; “CEQA”) and the CEQA Guidelines (14 Cal. Code of Regs. §15000, *et seq.*), the proposed use is not subject to additional environmental review. This project will not have a significant effect on the environment per CEQA Guidelines § 15301 (Class 1 Existing Facilities) because the proposed project consists of permitting of an existing private structure and therefore involves a negligible expansion of an existing use. The project does not propose any physical improvements to the site or any physical changes to the existing building.

Lead Agency Contact Person: Kevin Tan Telephone (626) 307-1315

If filed by applicant:

1. Attach certified document of exemption finding.
2. Has a notice of exemption been filed by the public agency approving the project? ☐ Yes ☐ No

Signature: _____ Date: _____ Title: Assistant Planner

- ☐ Signed by Lead Agency Date received for filing at OPR:
- ☐ Signed by Applicant