



STAFF REPORT

TO: PLANNING COMMISSION

FROM: Corey Simon, Senior Planner

DATE: January 2, 2014

SUBJECT: Public hearing to review proposed zoning text amendments to the Martinez Municipal Code that address the establishment of Bars as Conditionally Permitted Uses with the C – Commercial Zoning Districts (MMC 22.16.080.D & E) Proposed changes would establish a definition of “Bar” that would generally distinguish such a business – as opposed to a restaurant - as being where alcoholic beverages are sold for on-site consumption, with either no or limited food service; and adopt: a) additional standards and criteria for approval of Use Permits for “bars” and b) establish requirements for business management and training of alcoholic beverage serving staff in “bars.” The proposed ordinance would also repeal the existing interim urgency ordinance affecting Bars in the Downtown. The Planning Commission will make its recommendations to the City Council.

RECOMMENDATION:

Adopt PC Resolution No. 14-01 recommending to the City Council adoption of an Ordinance amending the Zoning Ordinance, Title 22, Chapter 4 (Definitions) and Chapter 16 (C-Commercial Districts) of the Martinez Municipal Code.

BACKGROUND for ZONING TEXT AMENDMENT:

Since 1975, when the City’s current zoning code was adopted, “restaurants” have been a permitted use in all Commercial Zoning Districts, while “bars” have been conditionally permitted, subject to discretionary approval of a use permit. Years of precedents have also allowed the permitted restaurant uses to provide beer and wine service without use permit approval. In addition, several restaurants have received use permit approvals over the past decades to add “on-sale liquor” to their businesses. These “bars within restaurants” have attracted little negative attention from our Police Department, as these businesses cause relatively few disturbances requiring calls for service to the Police – when compared to those bars without food service. (Police Department records provided as an Attachment). Although those bars downtown which are not

integral to a restaurant have been open for decades (the most recent use permit for a "bar" was in 1970 at 709 Ferry Street), recent inquiries made to the City and downtown landlords from those wishing to open a new bar have caused the City Council to take recent action to regulate the opening of new bars downtown.

On July 24, 2013, the City Council enacted a 45-day interim urgency ordinance (therefore not needing prior Planning Commission review) to temporarily prohibit any new bar that is not integral to a restaurant. On September 4, 2013, the temporary moratorium was extended for six (6) months, to allow the adoption of permanent regulations to better differentiate restaurants with bars, and bars without food service. The core of the Council's concern was that since the current code does not legislatively define "bar," a new "beer and wine" bar with only minimal or token food service could claim to be a restaurant, and thus open without a Use Permit hearing. In addition, the City Council wanted time to explore options of adopting additional use permit and operational standards for bars without food service, to better address their potential greater public safety risk. With the interim regulations soon to expire, staff has prepared draft permanent regulations to address the Council's and Staff's concerns, as outlined below:

DISCUSSION:

Topic 1: Bars to remain a conditional permitted use, but "bar" now to be formally defined.

As was the case before the Council enacted the interim moratorium, MMC 22.16.080.B will continue to list "Bars" as a conditionally permitted use in all C – Commercial Districts ("Neighborhood," "Central," "Thoroughfare" and "Service"). But to assure that those bars without food service are more thoroughly vetted through the Use Permit review process - and have refined management standards - the following **new added zoning code text** is proposed:

- ***"Bar" shall mean a business where alcoholic beverages are sold for on-site consumption, with either no or limited food service and includes, but is not limited to, establishments operating with California Department of Alcoholic Beverage Control ("ABC") License Types 40, 42, 48 and 61, or similar license types which do not include a "bona-fide public eating place." "Bar" does not include a business where alcoholic beverages are served which business complies with all of the following: a) operates as "a bona-fide public eating place", b) possesses a license type issued by ABC which is issued only to establishments with a "bona-fide public eating place"; and c) provides meals prepared on-site in a kitchen conforming to all current requirements of the Contra Costa County Health Services Department, the Municipal Code of the City of Martinez and the City Building Official, for not less than 6***

hours on each day the establishment is open for business.

- *"Bona-fide public eating place" shall have the same meaning as set forth in California Business and Professions Code Section 23038.*

The proposed addition of the above definitions will allow the City to retain the greatest degree of possible accommodation, as subject to the proposed use permit standards (as discussed below) the opportunity for new bars will be no more limited than before the enacting of the soon to expire interim moratorium.

Topic 2: Adoption of Additional Use Permit Standards, and Management Requirements.

Given that one of the Council's concerns in adopting the interim moratorium was the potential for a perceived overconcentration of bars near the corner of Main and Ferry Streets (there had been three bars at this location, with one closed, two now remain), additional standards for approval of a use permit for a bar are being proposed – specifically that an overconcentration will not result. The following added text is proposed:

D. Bars [as a condition use in C- Commercial Districts, with the **added text** below]:

Provided that on the basis of the use permit application and the evidence submitted, in addition to the findings required pursuant to Section 22.40.070, a Conditional Use Permit shall be granted only if the Planning Commission, or the City Council, on appeal, makes all of the following additional findings of fact:

- 1. The proposed use will not adversely affect the welfare of the area residents, or result in an undue concentration of establishments dispensing alcoholic beverages in the area.*
- 2. The proposed use is located at an appropriate distance from:*
 - a. Residential Uses;*
 - b. Religious facilities, schools, public parks and playgrounds, and other similar uses; and*
 - c. The size and proposed activity level (i.e. music, entertainment activities, food service, arcade games, or other amusement activities, etc.) will be*

compatible with the uses in and/or character of, the surrounding area.

3. The signs and other advertising on the exterior of the premises will be compatible with the character of the area.

4. The applicant has committed to voluntarily provide a beverage service training program, should one be made available locally on a no-charge basis for employees who sell or dispense alcoholic beverages, and would provide them with the knowledge and skills needed to comply with their responsibilities under state law, including the following topics;

- a. State laws relating to alcoholic beverages, particularly ABC regulations and penal provisions concerning sales to minors and intoxicated persons, driving under the influence, hours of legal operation, and penalties for violations of these laws;
- b. The potential legal liabilities of owners and employees of businesses dispensing alcoholic beverages to patrons who may subsequently injure, kill, or harm themselves or others as a result of the excessive consumption of alcoholic beverages;
- c. Alcohol as a drug and its effects on the body and behavior, including the operation of motor vehicles;
- d. Methods of dealing with intoxicated customers and recognizing underage customers;
- e. Methods to appropriately pace customer drinking to reduce the risk that the customer will leave the premises in an intoxicated manner;
- f. Knowledge of mixology, including marketable alternatives to alcoholic beverages.

5. *Nonconforming Uses.* Establishments which were legally operating prior to (insert ordinance effective date) may continue to operate as nonconforming uses in compliance with the provisions of Chapter 22.38 (*Nonconforming Uses, Structures and Lots*). In addition to those provisions, nonconforming establishments shall be required to apply

for a use permit in compliance with this Section, if any of the following occur after the (effective date):

- a. The existing establishment requests permission for the ABC to change the establishments ABC license in any manner, including a change to the character or type of the license or a change in ownership;
- b. The establishment's license is revoked by the ABC;
- c. The establishment's liquor license is suspended for more than 45 days by the ABC; or
- d. There is a twenty percent (20%) or larger expansion of the area within the establishment that is designated for the sale or consumption of alcoholic beverages.

In addition to the special standards for use permit approval in proposed subsection 1 through 3 (similar to the City's existing special standards for such uses as "Message Parlors," "Check Cashing Shops" and "Billiard Halls," the Chief of Police suggests that the proposed additional management requirements in subsection 4 and 5 will mitigate some of the problems associated with the over-concentration of bars. Moreover, the additional conditions would encourage new *Bars* to provide a beverage service training program to employees who sell or dispense alcoholic beverages. This program will provide new employees with the knowledge and skills needed to comply with their responsibilities under state law.

Topic 3: Clarification of Use Permit Requirement for Restaurants Serving Alcoholic Beverages.

To match to City's long running practice of allowing permitted restaurants uses to offer beer and wine service without use permit review, the following clarification to the zoning code subsection 22.16.080.E [conditional uses in C- Commercial Districts] is recommended:

E. On-sale liquor when alcoholic beverage sales operated in conjunction with a bona-fide public eating place, which provides meals, for not less than 6 hours on each day that the business is open, which are prepared on-site in a kitchen conforming to all current requirements of the Contra Costa County Health Services Department, the Municipal Code of the City of Martinez and the City Building Official, but not including restaurants serving only beer, wine or both beer and wine.

It should be noted that restaurants seeking use permit approval pursuant to the

subsection above will only be subject to the current Use Permit standards, which may continue to be acted on by the Zoning Administrator.

ATTACHMENT:

Draft Resolution, with:

- Exhibit A, Findings of Consistency with the General and Specific Plan
- Exhibit B, Draft Ordinance

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**MARTINEZ POLICE DEPARTMENTS RECORD OF INCIDENT CALLS
FOR 2010-2012 PERIOD
FROM VARIOUS TYPES OF BUSINESSES SERVING ALCOHOLIC BEVERAGES**

RESTAURANTS WITH FULL BARS

La Tapatia (536 Main Street)

2012 – 10 Incidents

2011 – 6 Incidents

2010 - 22 Incidents

Total Incidents - 38

Creek Monkey/Bertolas (611 Escobar Street)

2012 – 14 incidents

2011 – 13 incidents

2010 – 6 incidents

Total Incidents - 33

Sun Flower Garden/Le Beaus (436 Ferry Street)

2012 – 11 Incidents

2011 – 10 Incidents

2010 – 16 Incidents

Total Incidents - 37

FULL BARS WITH LIMITED MENU

Ray's Lounge (709 Ferry Street)

2012 – 42 Incidents

2011 – 24 Incidents

2010 – 30 Incidents

Total Incidents – 96

Whiskey lane/College lane

2012 – 40 Incidents

2011 – 33 Incidents

2010 – 47 Incidents

Total Incidents – 120

Ferry Street Station

2012 – 45 Incidents

2011 – 50 Incidents

2010 – 53 Incidents

Total Incidents – 148

Cue & Brew (1029 Arnold Drive)

2012 – 38 Incidents

2011 – 29 Incidents

2010 – 49 Incidents

Total Incidents – 116

Total PC 647(f) arrests by exact address 2010-2012

Ray's Lounge – 10
Whiskey Lane/College Lane – 15
Ferry Street Station – 18
Cue & Brew - 4

La Tapatia – 3
Sun Flower Garden/Le Beaus – 1
Creek Monkey/Bertola's – 1

Disturbance Calls by exact address 2010-2012

Ray's Lounge – 26
Whiskey Lane/College Lane – 31
Ferry Street Station – 26
Cue & Brew - 23

La Tapatia – 4
Sun Flower Garden/Le Beaus – 2
Creek Monkey/Bertola's – 8

Assault Cases by exact address 2010-1012

Ray's Lounge – 4
Whiskey Lane/College Lane – 11
Ferry Street Station – 10
Cue & Brew - 4

La Tapatia – 1
Sun Flower Garden/Le Beaus – 1
Creek Monkey/Bertola's – 0

Security Check Requests by exact address 2010-2012

Ray's Lounge – 5
Whiskey Lane/College Lane – 14
Ferry Street Station – 6
Cue & Brew - 15

La Tapatia – 1
Sun Flower Garden/Le Beaus – 0
Creek Monkey/Bertola's – 0

Suspicious Person Calls by exact address 2010-2012

Ray's Lounge – 3
Whiskey Lane/College Lane – 5
Ferry Street Station – 8
Cue & Brew - 5

La Tapatia – 5
Sun Flower Garden/Le Beaus – 0
Creek Monkey/Bertola's – 3

Pedestrian Stops IFO the Locations 2010-2012

Ray's Lounge – 16
Whiskey Lane/College Lane – 24
Ferry Street Station – 31
Cue & Brew - 5

La Tapatia – 3
Sun Flower Garden/Le Beaus – 1
Creek Monkey/Bertola's – 2

AIDE Calls by exact address 2010-2012

Ray's Lounge – 2
Whiskey Lane/College Lane – 8
Ferry Street Station – 1
Cue & Brew - 4

La Tapatia – 2
Sun Flower Garden/Le Beaus – 1
Creek Monkey/Bertola's – 2

Suspicious Circumstance Calls by exact address 2010-2012

Ray's Lounge – 2
Whiskey Lane/College Lane – 4
Ferry Street Station – 6
Cue & Brew - 1

La Tapatia – 5
Sun Flower Garden/Le Beaus – 2
Creek Monkey/Bertola's – 1

PC 647(f) Arrests by Street Name 2010-2012

600-700 Blocks of Ferry Street– 88 (Borders Ray's Lounge, Ferry Street Sta, Whiskey Lane)

400 Block of Ferry Street - 20 (Sun Flower Garden)
500 Block of Main Street /700 block Castro – 13 (La Tapatia)
Marina Vista/Castro Street – 2 (Creek Monkey)

Incidents at associated Intersections

(Vehicle/Ped Stops, Traffic Collisions, Disturbances, Aide, Suspicious Peron/Circumstances)

Ferry Street/Escobar Street – 136 (Ferry Street Station/Whiskey Lane)
Ferry Street/Main Street – 111 (Ray's Lounge)

Ferry Street/Marina Vista – 78 (Sun Flower Garden)
Main Street/Castro Street – 93 (La Tapatia)
Marina Vista/Castro Street – 16 (Creek Monkey)

RESOLUTION NO. PC 14-01 [DRAFT]

**RESOLUTION RECOMMENDING AN EXEMPTION FROM THE PROVISIONS OF
THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)
PURSUANT TO CEQA GUIDELINES SECTIONS 15061(B)(3), AND 15305
AND MAKING FINDINGS RELATING THERETO AND
RECOMMENDING THE CITY COUNCIL ADOPT PROPOSED AMENDMENTS
TO MARTINEZ MUNICIPAL CODE (MMC) TITLE 22, CHAPTER 22.04 AND 22.16
RELATING TO BARS AS A CONDITIONALLY PERMITTED USE**

WHEREAS, Martinez is a community with a very special environment. It a City steeped in history with a number of historical structures in the downtown and other areas which are both unique and of great value to the citizens. The City is a unique destination which attracts countywide visitors and tourism while also preserving the small hometown atmosphere that has made Martinez a special place to live and work. These special qualities of the City must be respected so that the uniqueness of Martinez can flourish without inappropriate changes; and

WHEREAS, Martinez is a vital and active City that retains a small town atmosphere and a strong sense of community. The City has striven to retain this atmosphere and the diverse mix of business establishments while promoting the long-term economic health of the community as a whole; and

WHEREAS, the City has experienced a marked increase in police incidence calls associated with bars which serve little or no food. Between 2010-2012, police incident calls for the bars in the City which serve limited or no food represented more than three times the number of incident calls than establishments serving both liquor and food in the same neighborhoods; and

WHEREAS, responding to the police calls for these bars represented 81% of the City's calls for police service made to all establishments serving alcoholic beverages, including those which do and do not provide meal service, since 2010, a largely disproportionate percentage when compared to those establishments which do serve meals; and

WHEREAS, the activities at the bars which serve limited or no food and which result in the disproportionate number of police incident calls also result in negative impacts to the surrounding businesses, including trash, disturbances, security concerns and a general atmosphere which discourages visitors and tourism and thereby economic investment in the City; and

WHEREAS, in recent years the City has made a substantial economic investment in the revitalization of the downtown area of the City, installing new streetscape improvements, food control improvements, establishing regulations for the rehabilitation of unreinforced masonry buildings, adopting a comprehensive scheme for

outdoor dining opportunities and adopting a Specific Plan aimed at promoting a reinvestment and revitalization of the downtown; and

WHEREAS, on July 24, 2013, the City Council did adopt Ordinance 1369, an urgency interim zoning ordinance pursuant to California Government Code Section 65858 prohibiting the establishment of bars (as defined therein), in the Downtown Specific Plan Area. Said urgency interim zoning ordinance was to remain in effect for 45 days from the date of its adoption; and

WHEREAS, on September 4, 2013, the City Council did adopt Ordinance 1371 extending the interim urgency ordinance for a period of six (6) months, expiring on March 8, 2014; and

WHEREAS, the City has studied the effect of Bars on the health, safety and welfare of the citizens of Martinez and has determined that properly defining Bars as those establishments with limited or no food service and providing additional conditional use permit regulations aimed at appropriate location of bars, neighborhood compatibility and the training of bar service personnel will serve to alleviate the impact of Bars within the community; and

WHEREAS, having adopted the substantive regulations contained in this Ordinance, the interim moratorium ordinance will no longer be necessary.

WHEREAS, on January 2, 2014, the Planning Commission of the City of Martinez did hold a public hearing on said proposed amendments and did consider all staff reports, all written and oral communication submitted to the City on or before such public hearing, and the Record as a whole prior to taking action on the proposed amendments; and

WHEREAS, the Record of Proceedings ("Record") upon which the Planning Commission bases its decision regarding the proposed amendments includes, but is not limited to: (1) all staff reports, city files and records and other documents prepared for and/or submitted to the Planning Commission and the City relating to the proposed amendments; (2) the evidence, facts, findings and other determinations set forth in the this Planning Commission Resolution; (3) the City of Martinez General Plan, the 2006 Downtown Specific Plan and related EIRs and the Martinez Municipal Code; (4) all documentary and oral evidence received at public hearings or submitted to the City prior to the public hearings relating to the proposed amendments; (5) all other matters of common knowledge to the Planning Commission including, but not limited to, City, State and Federal laws, policies, rules regulations, reports, records and projections related to the subject matter of the proposed ordinance.

NOW, THEREFORE, BE IT RESOLVED that, the Planning Commission hereby recommends that the City Council find that the adoption of the proposed ordinance is exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to Title 14, Chapter 3, California Code of Regulations (CEQA Guidelines), Sections 15061(b)(3) and 15305 and the proposed ordinance clarifies the applicability

and regulation of bars, which are already conditional permitted use in all C- Commercial Districts. There are no unusual circumstances that would lead to a significant impact. It can be seen with certainty that there is no possibility that the adoption of this ordinance will have a significant effect on the environment. The ordinance requires additional management and staff training requirements of those who serve alcoholic beverages in the bars subject to the proposed regulations. Placing such a restriction on the use of property will not result in a permanent alteration of property nor the construction of any new or expanded structures.

BE IT FURTHER RESOLVED that, the Planning Commission hereby finds that the proposed zoning amendments are consistent with the General Plan and applicable Specific Plans as set forth in Exhibit A, attached hereto and incorporated herein by reference.

BE IT FURTHER RESOLVED that, the Planning Commission hereby recommends that the City Council adopt the proposed ordinance of the City Council of the City of Martinez amending Martinez Municipal Code (MMC) Title 22, Chapter 22.04 and 22.16 relating to bars as a conditionally permitted use in all C- Commercial Districts as set forth in Exhibit B, attached hereto and incorporated herein by this reference.

* * * * *

I HEREBY CERTIFY that the foregoing is a true and correct copy of a resolution duly adopted by the Planning Commission of the City of Martinez at a regular meeting of said Commission held on the 2nd day of January 2014 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAINED:

BY: _____
Rachael Ford
Planning Commission Chair

Corey M. Simon
Senior Planner

EXHIBIT A

PLANNING COMMISSION RESOLUTION NO. PC 14-01

Zoning Code Amendments to Define Bars and establish Standards for Use Permit Approval

FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN & DOWNTOWN SPECIFIC PLAN

The proposed zoning code amendments, which provide for conditional use permit regulations for the establishment of new bars is consistent with the policies of the Martinez General Plan and Downtown Specific Plan, components thereof, including, but not limited to the following:

21.41 - Land Use Element, Residential Uses: ***The City should provide adequate land area of appropriate type and location to meet the marketing requirements of the merchant and the shopping needs of the community and central Contra Costa County. All commercial development, both present and future, must meet the highest standards of existing neighborhoods shall retain their present housing roles and the design, safety and convenience.***

Facts in Support: The proposed use permit standards, and requirements for staff training, will allow additional bars to open, but only where appropriate and with added management requirements to further enhance public safety.

30.21 - Land Use Element, Central Martinez Specific Area Goal #1: ***Preserve and enhance the environment, physical structure and services in a manner which respects the small town character, quality and amenity of "old" Martinez.***

Facts in Support: The proposed use permit standards will prevent the possibility of "over concentration" of bar uses the downtown and central neighborhoods, preserving the small town character, quality and amenity of "old" Martinez by fostering a balanced mix of eating and drinking establishments, containing a variety of restaurants, restaurants with bars, and stand alone bars.

30.21 - Land Use Element, Central Martinez Specific Area Goal #3: ***Establish adequate controls for the location, function and design of structures and facilities required to improve the economic and social life of the community.***

Facts in Support: The proposed use permit standards will allow additional bars to open at appropriate locations, potentially broadening the range of viable businesses where residents can socially gather in a public setting.

EXHIBIT B

PLANNING COMMISSION RESOLUTION NO. PC 14-01

ORDINANCE NO. _____ [DRAFT]

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MARTINEZ AMENDING CHAPTERS 22.04 (DEFINITIONS) AND 22.16 (CONDITIONAL USES) TO PROVIDE FOR CONDITIONAL USE PERMIT REGULATIONS FOR BARS AND REPEALING URGENCY ORDINANCE NO. 1369 WHICH ESTABLISHED AN URGENCY ORDINANCE NO. 1371 WHICH EXTENDED INTERIM RESTRICTIONS ON DEVELOPMENT OF BARS WITHIN THE CITY AND FINDING THAT THE ADOPTION THEREOF IS EXEMPT FROM THE REQUIREMENTS OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA), PURSUANT TO CEQA GUIDELINES SECTIONS 15061(B) (3) and 15305

FINDINGS: The City Council of the City of Martinez makes the following findings:

WHEREAS, Martinez is a community with a very special environment. It a City steeped in history with a number of historical structures in the downtown and other areas which are both unique and of great value to the citizens. The City is a unique destination which attracts countywide visitors and tourism while also preserving the small hometown atmosphere that has made Martinez a special place to live and work. These special qualities of the City must be respected so that the uniqueness of Martinez can flourish without inappropriate changes; and

WHEREAS, Martinez is a vital and active City that retains a small town atmosphere and a strong sense of community. The City has striven to retain this atmosphere and the diverse mix of business establishments while promoting the long-term economic health of the community as a whole; and

WHEREAS, the City has experienced a marked increase in police incidence calls associated with bars which serve little or no food. Between 2010-2012, police incident calls for the bars in the City which serve limited or no food represented more than three times the number of incident calls than establishments serving both liquor and food in the same neighborhoods; and

WHEREAS, responding to the police calls for these bars represented 81% of the City's calls for police service made to all establishments serving alcoholic beverages, including those which do and do not provide meal service, since 2010, a largely disproportionate percentage when compared to those establishments which do serve meals; and

WHEREAS, the activities at the bars which serve limited or no food and which result in the disproportionate number of police incident calls also result in negative impacts to the surrounding businesses, including trash, disturbances, security concerns and a general atmosphere which discourages visitors and tourism and thereby economic investment in the City; and

WHEREAS, in recent years the City has made a substantial economic investment in the revitalization of the downtown area of the City, installing new streetscape improvements, food control improvements, establishing regulations for the rehabilitation of unreinforced masonry buildings, adopting a comprehensive scheme for outdoor dining opportunities and adopting a Specific Plan aimed at promoting a reinvestment and revitalization of the downtown; and

WHEREAS, on July 24, 2013, the City Council did adopt Ordinance 1369, an urgency interim zoning ordinance pursuant to California Government Code Section 65858 prohibiting the establishment of bars (as defined therein), in the Downtown Specific Plan Area. Said urgency interim zoning ordinance was to remain in effect for 45 days from the date of its adoption; and

WHEREAS, on September 4, 2013, the City Council did adopt Ordinance 1371 extending the interim urgency ordinance for a period of six (6) months, expiring on March 8, 2014; and

WHEREAS, the City has studied the effect of Bars on the health, safety and welfare of the citizens of Martinez and has determined that properly defining Bars as those establishments with limited or no food service and providing additional conditional use permit regulations aimed at appropriate location of bars, neighborhood compatibility and the training of bar service personnel will serve to alleviate the impact of Bars within the community; and

WHEREAS, having adopted the substantive regulations contained in this Ordinance, the interim moratorium ordinance will no longer be necessary.

WHEREAS, on January 2, 2014, the City of Martinez Planning Commission held a duly noticed public hearing to consider the proposed amendments to Chapters 22.04 and 22.16 and did consider all staff reports, all written and oral communication submitted to the City on or before such public hearing, and the Record as a whole and did by the adoption of Resolution NO. PC 14-01, recommend that the City Council adopt the proposed amendments to Chapters 22.04 and 22.16 and find same exempt from the provisions of CEQA as set forth in the Planning Commission Resolution; and

WHEREAS, notices of the public hearing of the City Council on the proposed amendments and all parties having requested notice and were published in a newspaper of general circulation in the City in accordance with law; and

WHEREAS, on [REDACTED], 2014, the City Council of the City of Martinez did hold a public hearing on said proposed amendments and did consider all staff reports, all written and oral communication submitted to the City on or before such public hearing, and the Record as a whole prior to taking action on the proposed amendments; and

WHEREAS, the Custodian of Records in the City Clerk of the City of Martinez, 525 Henrietta Street, Martinez, CA.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MARTINEZ DOES ORDAIN AS FOLLOWS:

SECTION 1. Record of Proceedings.

The Record of Proceedings ("Record") upon which the City Council bases its decision regarding the proposed amendments includes, but is not limited to: (1) all staff reports, City files and records and other documents prepared for and/or submitted to the Planning Commission, the City Council and the City relating to the proposed amendments; (2) the evidence, facts, findings and other determinations set forth in the Planning Commission Resolution and this ordinance; (3) the City of Martinez General Plan, the 2006 Downtown Specific Plan and related EIRs and the Martinez Municipal Code; (4) all documentary and oral evidence received at public hearings or submitted

to the City prior to the public hearings relating to the proposed amendments; (5) all other matters of common knowledge to the City Council including, but not limited to, City, State and Federal laws, policies, rules regulations, reports, records and projections related to the subject matter of this ordinance.

SECTION 2. **CEQA Findings.** The City Council finds that the adoption of the proposed ordinance is exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to Title 14, Chapter 3, California Code of Regulations (CEQA Guidelines), Sections 15061(B)(3) and 15305. The proposed ordinance regulates the establishment of Bars in the City by more precisely defining Bars and adding additional requirements relating to the location thereof and the training of Bar employees. Bars are already conditionally permitted uses in the commercial zoning districts in the City and the proposed regulations do not permit Bars to be established in any new or different zoning districts in the City but merely establish additional regulations for the granting of permits allowing same. It can therefore be seen with certainty that there is no possibility that the adoption of this ordinance will have a significant effect on the environment.

SECTION 3. **General Plan Consistency Findings.** The City Council hereby finds that the proposed zoning amendments are consistent with the General Plan and applicable Specific Plans as set forth in Exhibit A, attached hereto and incorporated herein by reference.

SECTION 4. Section 22.04.052 of the Martinez Municipal Code is hereby amended to read as follows:

"Bar" shall mean a business where alcoholic beverages are sold for on-site consumption, with either no or limited food service and includes, but is not limited to, establishments operating with California Department of Alcoholic Beverage Control ("ABC") License Types 40, 42, 48 and 61, or similar license types which do not include a "bona-fide public eating place." "Bar" does not include a business where alcoholic beverages are served which business complies with all of the following: a) operates as "a bona-fide public eating place", b) possesses a license type issued by ABC which is issued only to establishments with a "bona-fide public eating place"; and c) provides meals, for not less than 6 hours on each day the establishment is open for business, which are prepared on-

site in a kitchen conforming to all current requirements of the Contra Costa County Health Services Department, the Municipal Code of the City of Martinez and the City Building Official.

SECTION 5. Section 22.04.054 of the Municipal Code is hereby added to read as follows:

"Bed and Breakfast Inn" means a business operated as part of a dwelling in which lodging or lodging and meals are provided for compensation for more than two but not more than six persons other than members of the resident family, excluding a nursing home as defined in this Chapter, where the following conditions are met:

- A. The business is conducted within a dwelling by an inhabitant thereof.
- B. No signage is displayed other than a name plate not exceeding six (6) square feet in area.
- C. No noisy or otherwise objectionable machinery or equipment is used in the conduct of the business.
- D. No storage of equipment or supplies takes place outside of the dwelling.
- E. Off-street parking is provided at the rate of two spaces plus one space for each guest room.
- F. The conduct of the business does not create excessive pedestrian, automobile or truck traffic in the vicinity.

SECTION 6. Section 22.04.063 of the Martinez Municipal Code is hereby added to read as follows:

"Bona-fide public eating place" shall have the same meaning as set forth in California Business and Professions Code Section 23038.

SECTION 7. Sections 22.16.080 D and E of the Martinez Municipal Code are hereby amended to read as follows:

D. Bars.

Provided that on the basis of the use permit application and the evidence submitted, in addition to the findings required pursuant to Section 22.40.070, a Conditional Use Permit shall be granted only if the Planning Commission, or

the City Council, on appeal, makes all of the following additional findings of fact:

1. The proposed use will not adversely affect the welfare of the area residents, or result in an undue concentration of establishments dispensing alcoholic beverages in the area.
2. The proposed use is located at an appropriate distance from:
 - a. Residential Uses;
 - b. Religious facilities, schools, public parks and playgrounds, and other similar uses; and
 - c. The size and proposed activity level (ie., music, entertainment activities, food service, arcade games, or other amusement activities, etc.) will be compatible with the uses in and/or character of, the surrounding area.
3. The signs and other advertising on the exterior of the premises will be compatible with the character of the area.
4. The applicant has committed to voluntarily provide a beverage service training program, should one be made available locally on a no-charge basis for employees who sell or dispense alcoholic beverages, and would provide them with the knowledge and skills needed to comply with their responsibilities under state law, including the following topics;
 - a. State laws relating to alcoholic beverages, particularly ABC regulations and penal provisions concerning sales to minors and intoxicated persons, driving under the influence, hours of legal operation, and penalties for violations of these laws;
 - b. The potential legal liabilities of owners and employees of businesses dispensing alcoholic beverages to patrons who may subsequently injure, kill, or harm themselves or others as a result of the excessive consumption of alcoholic beverages;

- c. Alcohol as a drug and its effects on the body and behavior, including the operation of motor vehicles;
- d. Methods of dealing with intoxicated customers and recognizing underage customers;
- e. Methods to appropriately pace customer drinking to reduce the risk that the customer will leave the premises in an intoxicated manner;
- f. Knowledge of mixology, including marketable alternatives to alcoholic beverages.

5. Nonconforming Uses. Establishments which were legally operating prior to (insert ordinance effective date) may continue to operate as nonconforming uses in compliance with the provisions of Chapter 22.38 (Nonconforming Uses, Structures and Lots). In addition to those provisions, nonconforming establishments shall be required to apply for a use permit in compliance with this Section, if any of the following occur after the (effective date):

- a. The existing establishment requests permission for the ABC to change the establishments ABC license in any manner, including a change to the character or type of the license or a change in ownership;
- b. The establishment's license is revoked by the ABC;
- c. The establishment's liquor license is suspended for more than 45 days by the ABC; or
- d. There is a twenty percent (20%) or larger expansion of the area within the establishment that is designated for the sale or consumption of alcoholic beverages.

E. On-sale alcoholic beverage sales operated in conjunction with a bona-fide public eating place, which provides meals, for not less than 6 hours on each day that the business is open, which are prepared on-site in a kitchen conforming to all current requirements of the Contra Costa County Health Services Department, the Municipal Code of the City of Martinez and the City Building Official, but not including restaurants serving only beer, wine or both and wine.

SECTION 8. Urgency Ordinance Nos. 1369 and 1371 are hereby repealed upon the effective date of this ordinance.

SECTION 9. Severability. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

The City Council hereby declares that it would have passed this and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrase or clauses be declared unconstitutional on their face or as applied.

SECTION 10. Effective date. This ordinance shall become effective 30 days after the date of adoption.

SECTION 11. Posting. The City Clerk shall cause this ordinance to be published within fifteen days after its adoption, at least once, with the names of those city council members voting for or against the ordinance, in a newspaper of general circulation published and circulated in the City of Martinez.

APPROVED: _____
Rob Schroder, Mayor

ATTEST: _____
Deputy City Clerk

* * * * *

I HEREBY CERTIFY that the foregoing ordinance was duly and regularly introduced at a Regular Meeting of the City Council of the City of Martinez, held on the ____ day of _____, 2014, and duly passed and adopted at a Regular Meeting of said City Council held on the ____ day of _____, 2014, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

RICHARD G. HERNANDEZ, CITY CLERK
CITY OF MARTINEZ