



## STAFF REPORT

**TO:** PLANNING COMMISSION

**FROM:** Corey Simon, Senior Planner

**DATE:** January 7, 2014

**SUBJECT:** Continued 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). 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 and b) establish requirements for business management, training of alcoholic beverage serving staff. The proposed ordinance would also repeal the existing interim urgency ordinance affecting Bars in the Downtown. The Commission will also consider finding that the proposed zoning text amendment is categorically exempt from the requirements of CEQA pursuant to CEQA Guidelines Sections 15061 (b)(3) and 15305. The Planning Commission will make its recommendations to the City Council, which will consider the proposed CEQA determination and possible amendments at a future date to be announced. [ITEM CONTINUED FROM SPECIAL MEETING OF JANUARY 2, 2014].

### **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 & DISCUSSION:**

As per the Commission’s direction, the following modifications have been made to the draft ordinance as presented on January 2, 2014:

## Topic 1: Simplification and clarification of "bar" definition

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** - **as added to** ~~or deleted from~~ - from the ordinance as proposed for the Meeting of January 2, are now 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, for not less than seventy five percent (75%) of the hours on each day that 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 ~~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.** [as per CA Business and professions Code 23038 - "Bona fide public eating place" means a place which is regularly and in a bona fide manner used and kept open for the serving of meals to guests for compensation and which has suitable kitchen facilities connected therewith, containing conveniences for cooking an assortment of foods which may be required for ordinary meals, the kitchen of which must be kept in a sanitary condition with the proper amount of refrigeration for keeping of food on said premises and must comply with all the regulations of the local department of health. "Meals" means the usual assortment of foods commonly ordered at various hours of the day; the service of such food and victuals only as sandwiches or salads shall not be deemed a compliance with this requirement. "Guests" shall mean persons who, during the hours when meals are regularly served therein, come to a bona fide public eating place for the purpose of obtaining, and actually order and obtain at such time, in good faith, a meal therein. Nothing in this section, however, shall be construed to require that any food be sold or purchased with any beverage.]

By referencing the CA code, the City's code will be automatically consistent with State

law, should the State modify its definition of “bona-fide public eating place” in the future.

**Topic 2: Modification to regulation of “bars” and “service of alcoholic beverages” (in restaurants): MMC Section 22.22.16; *Conditional Uses in C – Commercial Districts*.**

The following is more complete excerpt of MMC Section 22.22.16; *Conditional Uses in C – Commercial Districts*, which provides a better context for the proposed **new added zoning code text** - **as added to** ~~or deleted from~~ - the ordinance as it was proposed for the Meeting of January 2 (the whole text of Chapter 22.16 is attached for additional background).

**22.16.080 Conditional Uses [in C – Commercial Districts]**

The following conditional uses shall be permitted upon the granting of a conditional use permit, in accord with the provisions of Chapter 22.40 of this Title.

- A. Pumping stations, power stations, drainage ways...{etc}
- B. Gasoline service stations...{etc}
- C. Accessory structures and uses...{etc}
- 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 Zoning Administrator, or 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:**

~~• Residential Uses;~~

**a. Religious facilities, schools, public parks and playgrounds, and other similar uses; and**

- b. 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

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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 ~~liquor when~~ alcoholic beverage sales operated in conjunction with a bona-fide public eating place establishment, which provides meals, for not less than seventy five percent (75%) of the hours on each day that the establishment is open for business, ~~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.

#### ATTACHMENT:

- ❖ Draft Minutes from January 2, 2014 meeting
- ❖ Draft Resolution, with:
  - Exhibit A, Findings of Consistency with the General and Specific Plan
  - Exhibit B, Draft Ordinance (as revised)
- ❖ CA Department of Alcoholic Beverage Control ("ABC"); Types of Licenses
- ❖ MMC Chapter 22.16 C – Commercial Districts
- ❖ Previous Planning Commission Staff Report, January 2, 2014 (w/out attachments)
- ❖ Police Statistics RE: Bars with and without Food Service

**[DRAFT]**  
**MINUTES OF THE SPECIAL  
PLANNING COMMISSION MEETING  
THURSDAY, JANUARY 2, 2014  
7:00 – 11:00 P.M. (Council Chambers)**

The meeting was called to order by Chair Ford at 7:04 p.m.

**ROLL CALL**

Commissioners Present:

Donna Allen  
Rachael Ford (Chair)  
Jeffrey Keller  
Paul Kelly  
Sigrid Waggener (Vice Chair)  
Dwayne Glemser

Commissioners Absent:

Kimberley Glover  
James Blair (Alternate)

**AGENDA CHANGES**

There were no changes to the agenda.

**PUBLIC COMMENT**

There was no public comment on matters not on the agenda.

Assistant City Attorney Nebb informed the Commission of a change in the Brown Act effective January 1, 2014. She noted that the change requires that the Commission announce the publicly report any action taken and the vote or abstention on that action of each member. She explained that this could be done either by roll call vote or by the chair announcing a recap of the motion and the vote of each member at the conclusion of the vote. Chair Ford stated that she thought that a roll call vote would be the best manner of compliance.

**CONSENT ITEMS**

There were no consent items on the agenda.

## REGULAR ITEMS

### 1. Regulations of Bars as Conditional Uses in C-Commercial Districts

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). 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 and b) establish requirements for business management, training of alcoholic beverage serving staff. 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, which will consider the possible amendments at a future date to be announced.

Applicant: City of Martinez

(CS/GP)

Planner Simon presented the staff report. He outlined the existing zoning ordinance regulations relating to bars and the challenges that the City has faced relating to police service calls for bars that do not serve food. Planner Simon explained the existing moratorium relating to bars and the request that staff consider substantive regulations differentiating between bars that serve food and those that do not.

Planner Simon noted that the proposed regulations include new definition of bar vs restaurants and include additional use permit operational standards for stand alone bars not serving food. He noted that existing regulations call for a use permit for bars and restaurants serving liquor but that the definitions currently in place have rendered the current regulations confusing and difficult to enforce.

Planner Simon explained the need to take action on the substantive regulations before the expiration of the existing moratorium on March 8.

Chair Ford called for questions from the Commission.

Commissioner Allen expressed concerns that affected business be notified. She stated her concerns with the proposed definition of bar being tied to ABC license types and confusion relating thereto. Commissioner Allen also expressed concern with setting a specific number of hours of required food service at 6, noting that some restaurants are only open for dinner and may not have food service for 6 hours. She also expressed concerns with the requirements relating to distance from residential uses. Commissioner Allen asked about the definition of Bona fide eating place.

Chair Ford expressed concern with the need for the ordinance and the unintended consequences of regulation. She expressed agreement with the concerns stated by Commissioner Allen.

Commissioner Keller inquired of staff whether the number of food service hours could be stated as a percentage of the operating hours rather than as a set number of 6. Staff responded that such a change could be made.

At the request of Chair Ford, City Attorney Nebb, read the definition of Bona fide public eating place from the California Business and Professions Code.

Chair Ford opened the Public Hearing:

Arash Pakzad, owner of Barrel Aged. Noted that his establishment posses a type 47 license and that such license has numerous requirements relating to the operation of the business , including percentage of food sales. He spoke to his own experience and stated that he agrees that some regulation can be a good thing. He stated that smart business owners will come to the City to find out what the regulations are and whether the proposed business is supported. He expressed concern with regulations which permit the City to make decisions that are not clear. He stated general support for regulation that requires bars to ask for permission to locate in the City

Roy Jeans. Mr. Jeans stated that he does not think that the ordinance proposed is necessary. He expressed his opinion that the City wants more quality bars rather than over the top regulation.

Ashley Afferino stated general support for some regulation. She expressed concern that the ordinance not be vague or discouraging to business. She also expressed concern that the regulation should be drafted to achieve the solutions the City is seeking. She noted her experiences in San Francisco and stated that an ordinance requiring the permission of the Police Chief could be a good thing.

Patty Hector spoke representing the owners of the building where Ferry Street Station had previously been located. Ms. Hector stated that they are looking for a reputable tenant and that some regulation is not off the mark.

There being no further public wishing to speak, Chair Ford closed the public hearing.

City Attorney Nebb noted that the proposed ordinance could be modified to have the permits consider by the Zoning Administrator and that the Commission could recommend the elimination of the references to the ABC license types and such reference was not really necessary to the ordinance.

Commissioner Glemser asked if it is true that they applicants would only have to participated in training pursuant to the ordinance if such training were offered for free. Staff responded by explaining the training opportunities and that yes there ordinance does not require training unless it is provided at no cost.

Commissioner Glemser asked if the police charge for multiple police calls similar to false alarms. Staff responded that such charges are not incurred at this time.

Chair Ford expressed concern with legislating behavior and stated her concerns that the ordinance will not solve the problem. She expressed concerns regarding the City's ability to enforce the ordinance.

Commissioner Allen stated her concerns with the definitions of bar and undue concentration and appropriate distance language being an issue for her.

Commissioner Kelly expressed concern with the license types and confusion with the requirements.

Chair Ford requested staff outline the options for the Commission. Staff responded that there were essentially 3 options available to the Commission. The Commission could make comments and pass those comments on to the City Council, could request specific revisions by staff and bring the ordinance back to the commission on the 7<sup>th</sup>, 8<sup>th</sup> or 9<sup>th</sup>, or the Commission could give a recommendation on the ordinance as is to the City Council.

The Commission briefly discussed the options and it was the consensus of the Commission that the Commission state their requested changes and that staff bring the ordinance back to the Commission on January 7.

Commissioner Waggener stated that she would like to see the percentage of hours open change suggested by Commissioner Keller and would also like to see the ABC permit types removed.

Commissioner Allen stated that she would like the ordinance to be amended to remove the requirement for a distance from residential and add a short definition of bona fide public eating place, while keeping the reference to the Business and Professions Code. She also requested that staff take a look at subsection E. Chair Ford stated that she would like to see the permits go to the Zoning Administrator. The Commission briefly discussed the requested changes and there was general consensus among the commission that the requested modifications be made by staff.

It was moved by Commissioner Glemser and seconded by Commissioner Keller to continue the Public Hearing to January 7, at 7:00 PM. The motion passed unanimously.

## **COMMISSION ITEMS**

There were no Commission Items presented.

## **STAFF ITEMS**

Planner Simon noted that the Commission's regular meeting of January 14, was scheduled to have two items on the agenda for consideration, outdoor cultivation of marijuana and some amendments relating to the Housing Element. He noted that several staff members could not be present for the meeting of the 14<sup>th</sup> and asked the Commission whether it would be possible to meet instead on the 21<sup>st</sup>. The Commission expressed general support for meeting on the 21<sup>st</sup>.

### **COMMUNICATIONS**

No communications were presented to the Commission.

The meeting was adjourned at 8:40 P.M.

**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 and 7, 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 7<sup>th</sup> day of January 2014 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAINED:

BY: \_\_\_\_\_  
Rachael Ford  
Planning Commission Chair

\_\_\_\_\_  
Corey M. Simon  
Senior Planner

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# 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  
REVISION FOR MEETING OF JANUARY 7, 2014

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 AND 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 and 7, 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 \_\_\_\_\_, 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 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 seventy five percent (75%) of the hours on each day that 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 and includes means a place which regularly serves meals and which has suitable kitchen facilities connected therewith. Bona-fide public eating places does not include establishments with only limited food service such as only as sandwiches or salads or pre-prepared foods.

**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 Zoning Administrator, or the Planning Commission, or 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. Religious facilities, schools, public parks and playgrounds, and other similar uses; and
  - b. 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 (insert 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 seventy five percent (75%) of the 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.

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**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:

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RICHARD G. HERNANDEZ, CITY CLERK  
CITY OF MARTINEZ

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**COMMON ABC LICENSE TYPES  
AND THEIR BASIC PRIVILEGES**

LICENSE TYPE	DESCRIPTION
01	<b>BEER MANUFACTURER - (Large Brewery)</b> Authorizes the sale of beer to any person holding a license authorizing the sale of beer, and to consumers for consumption on or off the manufacturer's licensed premises. Without any additional licenses, may sell beer and wine, regardless of source, to consumers for consumption at a bona fide public eating place on the manufacturer's licensed premises or at a bona fide eating place contiguous to the manufacturer's licensed premises. May conduct beer tastings under specified conditions (Section 23357.3). Minors are allowed on the premises.
02	<b>WINEGROWER - (Winery)</b> Authorizes the sale of wine and brandy to any person holding a license authorizing the sale of wine and brandy, and to consumers for consumption off the premises where sold. Authorizes the sale of all wines and brandies, regardless of source, to consumers for consumption on the premises in a bona fide eating place that is located on the licensed premises or on premises owned by the licensee that are contiguous to the licensed premises and operated by and for the licensee. May possess wine and brandy for use in the preparation of food and beverage to be consumed at the bona fide eating place. May conduct winetastings under prescribed conditions (Section 23356.1; Rule 53). Minors are allowed on the premises.
20	<b>OFF SALE BEER &amp; WINE - (Package Store)</b> Authorizes the sale of beer and wine for consumption off the premises where sold. Minors are allowed on the premises.
21	<b>OFF SALE GENERAL - (Package Store)</b> Authorizes the sale of beer, wine and distilled spirits for consumption off the premises where sold. Minors are allowed on the premises.
23	<b>SMALL BEER MANUFACTURER - (Brew Pub or Micro-brewery)</b> Authorizes the same privileges and restrictions as a Type 01. A brewpub is typically a very small brewery with a restaurant. A micro-brewery is a small-scale brewery operation that typically is dedicated solely to the production of specialty beers, although some do have a restaurant or pub on their manufacturing plant.
40	<b>ON SALE BEER - (Bar, Tavern)</b> Authorizes the sale of beer for consumption on or off the premises where sold. No wine or distilled spirits may be on the premises. Full meals are not required; however, sandwiches or snacks must be available. Minors are allowed on the premises.
41	<b>ON SALE BEER &amp; WINE – EATING PLACE - (Restaurant)</b> Authorizes the sale of beer and wine for consumption on or off the premises where sold. Distilled spirits may not be on the premises (except brandy, rum, or liqueurs for use solely for cooking purposes). Must operate and maintain the licensed premises as a bona fide eating place. Must maintain suitable kitchen facilities, and must make actual and substantial sales of meals for consumption on the premises. Minors are allowed on the premises.
42	<b>ON SALE BEER &amp; WINE – PUBLIC PREMISES - (Bar, Tavern)</b> Authorizes the sale of beer and wine for consumption on or off the premises where sold. No distilled spirits may be on the premises. Minors are not allowed to enter and remain (see Section 25663.5 for exception, musicians). Food service is not required.
47	<b>ON SALE GENERAL – EATING PLACE - (Restaurant)</b> Authorizes the sale of beer, wine and distilled spirits for consumption on the licenses premises. Authorizes the sale of beer and wine for consumption off the licenses premises. Must operate and maintain the licensed premises as a bona fide eating place. Must maintain suitable kitchen facilities, and must make actual and substantial sales of meals for consumption on the premises. Minors are allowed on the premises.
48	<b>ON SALE GENERAL – PUBLIC PREMISES - (Bar, Night Club)</b> Authorizes the sale of beer, wine and distilled spirits for consumption on the premises where sold. Authorizes the sale of beer and wine for consumption off the premises where sold. Minors are not allowed to enter and remain (see Section 25663.5 for exception, musicians). Food service is not required.
49	<b>ON SALE GENERAL – SEASONAL -</b> Authorizes the same privileges and restrictions as provided for a Type 47 license except it is issued for a specific season. Inclusive dates of operation are listed on the license certificate.



LICENSE TYPE	DESCRIPTION
51	<b>CLUB</b> - Authorizes the sale of beer, wine and distilled spirits, to members and guests only, for consumption on the premises where sold. No off-sale privileges. Food service is not required. Minors are allowed on the premises.
52	<b>VETERAN'S CLUB</b> - Authorizes the sale of beer, wine and distilled spirits, to members and guests only, for consumption on the premises where sold. Authorizes the sale of beer and wine, to members and guest only, for consumption off the licensed premises. Food service is not required. Minors are allowed on the premises.
57	<b>SPECIAL ON SALE GENERAL</b> - Generally issued to certain organizations who cannot qualify for club licenses. Authorizes the sale of beer, wine and distilled spirits, to members and guests only, for consumption on the premises where sold. Authorizes the sale of beer and wine, to members and guests only, for consumption off the licensed premises. Food service is not required. Minors are allowed on the premises.
59	<b>ON SALE BEER AND WINE – SEASONAL</b> - Authorizes the same privileges as a Type 41. Issued for a specific season. Inclusive dates of operation are listed on the license certificate.
60	<b>ON SALE BEER – SEASONAL</b> - Authorizes the sale of beer only for consumption on or off the premises where sold. Issued for a specific season. Inclusive dates of operation are listed on the license certificate. Wine or distilled spirits may not be on the premises. Minors are allowed on the premises.
61	<b>ON SALE BEER – PUBLIC PREMISES</b> - (Bar, Tavern) Authorizes the sale of beer only for consumption on or off the licensed premises. Wine or distilled spirits may not be on the premises. Minors are not allowed to enter and remain (warning signs required). Food service is not required.
67	<b>BED AND BREAKFAST INN</b> - Authorizes the sale of wine purchased from a licensed winegrower or wine wholesaler only to registered guests of the establishment for consumption on the premises. No beer or distilled spirits may be on the premises. Wine shall not be given away to guests, but the price of the wine shall be included in the price of the overnight transient occupancy accommodation. Removal of wine from the grounds is not permitted. Minors are allowed on the premises.
70	<b>ON SALE GENERAL – RESTRICTIVE SERVICE</b> - Authorizes the sale or furnishing of beer, wine and distilled spirits for consumption on the premises to the establishment's overnight transient occupancy guests or their invitees. This license is normally issued to "suite-type" hotels and motels, which exercise the license privileges for guests' "complimentary" happy hour. Minors are allowed on the premises.
75	<b>ON SALE GENERAL – BREWPUB</b> - (Restaurant) Authorizes the sale of beer, wine and distilled spirits for consumption on a bona fide eating place plus a limited amount of brewing of beer. Also authorizes the sale of beer and wine only for consumption off the premises where sold. Minors are allowed on the premises.
80	<b>BED AND BREAKFAST INN – GENERAL</b> - Authorizes the sale of beer, wine and distilled spirits purchased from a licensed wholesaler or winegrower only to registered guests of the establishment for consumption on the premises. Alcoholic beverages shall not be given away to guests, but the price of the alcoholic beverage shall be included in the price of the overnight transient occupancy accommodation. Removal of alcoholic beverages from the grounds is not permitted. Minors are allowed on the premises.
86	<b>INSTRUCTIONAL TASTING LICENSE</b> —Issued to the holder of and premises of a Type 20 or Type 21 licensee, authorizes the tasting of alcoholic beverages as authorized to be sold from the off-sale premises, on a limited basis. Requires physical separation from the off-sale premises while tasting is taking place and generally requires the participation of a specifically-authorized manufacturer or wholesaler licensee.



## SPECIAL EVENTS

The Department also issues licenses and authorizations for the retail sale of beer, wine and distilled spirits on a temporary basis for special events. The most common are listed below. Other less common ones are found in Business and Professions Code Section 24045.2, et seq.

**SPECIAL DAILY BEER AND/OR WINE LICENSE** - (Form ABC-221) Authorizes the sale of beer and/or wine for consumption on the premises where sold. No off-sale privileges. Minors are allowed on the premises. May be revoked summarily by the Department if, in the opinion of the Department and/or the local law enforcement agency, it is necessary to protect the safety, welfare, health, peace and morals of the people of the State. In some instances, the local ABC office may require the applicant to obtain prior written approval of the local law enforcement agency. Issued to non-profit organizations. (Rule 59, California Code of Regulations)

**DAILY ON SALE GENERAL LICENSE** - (Form ABC-221) Authorizes the sale of beer, wine and distilled spirits for consumption on the premises where sold. No off-sale privileges. Minors are allowed on the premises. May be revoked summarily by the Department if, in the opinion of the Department and/or the local law enforcement agency, it is necessary to protect the safety, welfare, health, peace and morals of the people of the State. In some instances, the local ABC office may require the applicant to obtain prior written approval of the local law enforcement agency. Issued to political parties or affiliates supporting a candidate for public office or a ballot measure or charitable, civic, fraternal or religious organizations. (Section 24045.1 and Rule 59.5 California Code of Regulations)

**CATERING AUTHORIZATION** - (Form ABC-218) Authorizes Type 47, 48, 51, 52, 57, 75 and 78 licensees (and catering businesses that qualify under Section 24045.12) to sell beer, wine and distilled spirits for consumption at conventions, sporting events, trade exhibits, picnics, social gatherings, or similar events. Type 47, 48 and 57 licensees may cater alcoholic beverages at any ABC-approved location in the State. Type 51 and 52 licensees may only cater alcoholic beverages at their licensed premises. All licensees wishing to cater alcoholic beverages must obtain prior written authorization from the Department for each event. At all approved events, the licensee may exercise only those privileges authorized by the licensee's license and shall comply with all provisions of the ABC Act pertaining to the conduct of on-sale premises and violation of those provisions may be grounds for suspension or revocation of the licensee's license or permit, or both, as though the violation occurred on the licensed premises. (Section 23399 and Rule 60.5 California Code of Regulations)

**EVENT AUTHORIZATION** - (Form ABC-218) Authorizes Type 41, 42, 47, 48, 49, 57, 75 and 78 licensees to sell beer, wine and distilled spirits for consumption on property adjacent to the licensed premises and owned or under the control of the licensee. This property shall be secured and controlled by the licensee and not visible to the general public. *The licensee shall obtain prior approval of the local law enforcement agency.* At all approved events, the licensee may exercise only those privileges authorized by the licensee's license and shall comply with all provisions of the ABC Act pertaining to the conduct of on-sale premises (including any license conditions) and violations of those provisions may be grounds for suspension or revocation of the licensee's license or permit, or both, as though the violation occurred on the licensed premises. (Section 23399)

**WINE SALES EVENT PERMIT** - (Form ABC-239) Authorizes Type 02 licensees to sell bottled wine produced by the winegrower for consumption off the premises where sold and only at fairs, festivals or cultural events sponsored by designated tax exempt organizations. The licensee must notify the city and/or county where the event is being held and obtain approval from ABC for each event (Form ABC-222). The licensee must also comply with all restrictions listed in Business and Professions Code Section 23399.6.

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### Note:

1. "Minor" means any person under 21 years of age.
2. Consult Section 25663(b) regarding age of employees in off-sale premises; consult Sections 25663(a) and 25663.5 regarding age of employees in on-sale premises.
3. In certain situations, ABC may place reasonable conditions upon a license, such as restrictions as to hours of sale, employment of designated persons, display of signs, restrictions on entertainment or dancing, etc. If a license has been conditioned, it will be endorsed as such on the face of the license. (Conditional licenses, Sections 23800-23805.)
4. Licensees whose license allows minors on the premises may have a "house policy" restricting minors from entering certain areas of the premises or prohibiting minors in the premises during certain hours.
5. This handout contains only abbreviated information. Contact your local ABC office for full information before doing anything which may jeopardize your license. Also available from the ABC: Quick Summary of Selected ABC Laws (form ABC-608); Alcoholic Beverage Control Act (complete laws); Rules & Regulations; and P-90 (describes privileges of non-retail licenses).



## CITY OF MARTINEZ MUNICIPAL CODE TITLE 22 - ZONING EXCERPTS

**NOTE:** ZONING CODE EXCERPTS FROM CHAPTER 16; "COMMERCIAL DISTRICTS" HAVE BEEN AGGREGATED IN THIS DOCUMENT FOR EASE OF REFERENCE. ADDITIONAL REQUIREMENTS, **SUCH AS DESIGN REVIEW**, MAY APPLY TO YOUR PROJECT. PLEASE REFER TO THE COMPLETE ZONING CODE FOR ADDITIONAL INFORMATION.

# COMMERCIAL ZONING DISTRICTS - USE REGULATIONS & DEVELOPMENT STANDARDS

### 22.16.010 General Provisions and Exceptions.

All uses shall be subject to the general provisions and exceptions prescribed in Chapter 22.34 of this title. (Ord. 822 C.S. § 2 (part), 1975: prior code § 10,105.10)

### 22.16.020 Purposes.

In addition to the objectives prescribed in Section 22.02.010 of this title, the C Commercial Districts are included in the zoning regulations to achieve the following purposes to:

- A. Provide appropriately located areas for retail stores, offices, service establishments, amusement establishments and wholesale businesses offering various ranges of commodities and services scaled to meet the needs of the different geographical areas and various categories of patrons they serve;
- B. Provide opportunities for retail stores, offices, service establishments and wholesale businesses to concentrate for the convenience of the public and in a mutually beneficial relationship to each other;
- C. Provide space for community facilities and institutions which appropriately may be located in commercial areas;
- D. Provide adequate space to meet the needs of modern commercial

development, including off-street parking and truck loading areas;

- E. Minimize traffic congestion and to avoid the overloading of utilities by preventing the construction of buildings of excessive size in relation to the amount of land around them;
- F. Protect commercial properties from noise, odor, dust, dirt, smoke, vibration, heat, glare, heavy truck traffic and other objectionable influences incidental to industrial uses;
- G. Protect commercial properties from fire, explosion, noxious fumes and other hazards. (Ord. 822 C.S. § 2 (part), 1975: prior code § 10,105.0).

**22.16.030 Permitted Uses--Generally.**

The following uses shall be permitted in the commercial districts as set out in Sections 22.16.040 through 22.16.070. (Ord. 822 C.S. § 1 (part), 1975: prior code § 10,105.1 (part))

**22.16.040 Permitted Uses--NC-Neighborhood Commercial District.**

Permitted uses are as follows:

- A. Professional and administrative offices;
- B. Retail stores and service establishments which supply commodities or provide services primarily to meet the needs of residents of a residential neighborhood, including:

- Art and antique stores
- Art and craft schools and colleges
- Artist supply stores
- Bakery goods stores
- Banks
- Barbershops and beauty shops
- Bookstores and rental libraries
- Business, professional, and trade schools and colleges
- Candy stores
- Cleaning and laundry agencies, including the use of one synthetic dry cleaning machine using noninflammable and nonexplosive solvents and having a capacity of not more than 40 pounds per cycle
- Clothing stores
- Department stores
- Drugstores
- Dry goods stores
  
- Florists
- Food lockers
- Food stores, delicatessens and supermarkets

Furniture stores  
 Garden shops  
 Gift shops  
 Gymnasiums  
 Hardware stores  
 Hobby shops  
 Household appliance stores  
 Interior decorating shops  
 Jewelry stores  
 Leather goods and luggage stores  
 Locksmiths  
 Medical and orthopedic appliance stores  
 Messenger offices  
 Millinery shops  
 Music and dance studios  
 Music stores  
 Newsstands  
 Office and business machine stores  
 Offices and office buildings other than professional and  
     administrative offices  
 Optician and optometrist shops  
 Paint and wallpaper stores  
 Pet and bird stores  
 Photographic supply stores  
 Photography studios  
 Picture framing shops  
 Post offices  
 Pressing establishments  
 Radio and television repair shops  
 Realtors and real estate sales offices  
 Restaurants  
 Scientific instrument stores  
 Self-service laundries and/or self-service dry cleaning  
     machines using noninflammable and nonexplosive solvents  
 Shoe repair shops  
 Shoe stores  
 Soda fountains  
 Sporting goods stores  
 Stamp and coin stores  
 Stationery and office supply stores  
 Tailor and dressmaking shops  
 Telegraph offices  
 Telephone exchanges  
 Toy stores  
 Travel bureaus  
 Umbrella repair shops  
 Variety stores  
 Watch and clock repair shops and other uses which are added  
 to this list by the City Planning Commission in accord with the  
 procedure prescribed in Chapter 22.34 of this title;

- C. Dwelling units located above the ground floor of a building shall be permitted on a site with an area of not less than 1,500 square feet for each dwelling unit;

- D. Parking lots improved in conformity with the standards prescribed for required off-street parking facilities in Chapter 22.36 of this title;
- E. Lodging houses and apartment hotels;
- F. Accessory structures and uses, not including warehouses on the same site with and necessary for or incidental to the operation of a permitted use;
- G. Christmas tree sales lots, nurseries, and garden supply stores, provided that all equipment, supplies and merchandise other than plants shall be kept within a completely enclosed building and that fertilizer of any type shall be stored and sold in packaged form only. (Ord. 822 C.S. § 2 (part), 1975: prior code § 10,105.1(a).)

**22.16.050 Permitted Uses--CC-Central Commercial District.**

Permitted uses are as follows:

- A. All the uses permitted in section 22.16.040;
- B. Retail stores and service establishments including:
  - Addressograph stores
  - Auction rooms
  - Bicycle shops
  - Blueprint and Photostat shops
  - Bus depots and transit stations provided that no business or other transit vehicles shall be stored on the site and no repair work or servicing of vehicles shall be conducted on the site
  - Clothing and costume rental establishments
  - Department stores
  - Electrical appliance repair shops
  - Hand laundries
  - Household repair shops
  - Laboratories
  - Musical instrument repair shops
  - Plumbing, heating and ventilating equipment showrooms with storage of floor samples only
  - Printing shops
  - Radio and television broadcasting studios
  - Sign painting shops
  - Soda fountains
  - Taxidermists
  - Telephone exchanges
  - Upholstering shops
  - Wholesale establishments without stocks and other uses added to this list by the Planning Commission in accord with the procedure prescribed in Chapter 22.34 of this title;

- C. Private clubs and lodges;
- D. Churches and other religious institutions;
- E. Public and private philanthropic and eleemosynary institutions;
- F. Public and private libraries, art galleries and museums;
- G. Automobile supply stores; hotels and motels; mortuaries. (Ord. 1042 C.S. § I, 1985: Ord. 822 C.S. § 2 (part), 1975: prior code § 10,105.1(b).)

**22.16.060 Permitted Uses--TC-Thoroughfare Commercial District.**

Permitted uses are as follows:

- A. All the uses permitted in Sections 22.16.040F, G and 22.16.050G;
- B. Automobile sales and services
  - Bowling Alleys
  - Repair garages
  - Restaurants
  - Trailer sales and service
  - Veterinarians' offices and small animal hospitals including short-term boarding of animals and incidental care such as bathing and trimming, providing that all operations are conducted within a completely enclosed building which complies with the standards of sound proof construction which shall be prescribed by the Board of Adjustments.

Other uses which may be added to this list by the City Planning Commission in accord with the procedure prescribed in Chapter 22.34 of this title.

(Ord. 822 C.S. § 2 (part), 1975: prior code § 10,105.1(c).)

**22.16.065 [CR-Commercial Recreation District - RESERVED]**

**22.16.066 [CR-Commercial Recreation District - RESERVED]**

**22.16.070 Permitted Uses--SC-Service Commercial District.**

Permitted uses are as follows:

- A. All the uses permitted in Section 22.16.050A and B;
- B. Commercial service establishments, including:
  - Automobile repairing, overhauling, rebuilding and painting
  - Automobile sales and service

Automobile upholstery and top shops  
 Automobile washing including the use of mechanical conveyors,  
     blowers and steam cleaning  
 Bakeries  
 Blacksmith shops  
 Boat sales and service  
 Bookbinding  
 Bottle works  
 Building materials yards other than gravel, rock or cement  
     yards  
 Cabinet shops  
 Carpenters' shops  
 Carpet and rug cleaning and dyeing  
 Catering shops  
 Cleaning and dyeing  
 Cold storage plants  
 Contractors' equipment rental yards  
 Contractors' storage yards  
 Dairy products plants  
 Diaper supply services  
 Electrical repair shops  
 Exterminators  
 Feed and fuel stores  
 Freight forwarding terminals  
 Glass shops  
 Heating and ventilating shops  
 Household and office equipment and machinery repair shops  
 Ice storage houses  
 Kennels located not closer than 500 feet to an R District or  
     a PA District  
 Laundries  
 Linen supply services  
 Live storage, killing or dressing of poultry or rabbits for  
     retail sale on the premises, located not closer than 500  
     feet to an R District or a PA District  
 Lumberyards not including planing mills or saw mills  
 Machinery sales and rentals  
 Mattress repair shops  
 Motorcycle sales and services  
 Nurseries and garden supply stores  
 Packing and crating  
 Parcel delivery service  
 Photographic developing and printing  
 Plumbing shops  
 Printing, lithographing and engraving  
 Public utility structures and installations  
 Railroad stations  
 Refrigeration equipment  
 Repair garages  
 Safe and vault repairing  
 Sheet metal shops  
 Small animal boarding located not closer than 500 feet to an  
     R District or a PA District  
 Stone and monument yards

Storage yards for commercial vehicles  
Tire sales, retreading and recapping  
Tool or cutlery sharpening or grinding  
Trailer sales and services  
Transit yards  
Trucking terminals  
Used car sales  
Veterinarians' offices and small animal hospitals located not  
closer than 500 feet to an R District or PA District  
Veterinarians' offices and small animal hospitals including  
short-term boarding of animals and incidental care such as  
bathing and trimming, provided that all operations are  
conducted entirely within a completely enclosed building  
which complies with specifications of soundproof  
construction which shall be prescribed by the Board of  
Adjustments  
Warehouses except for the storage of fuel or flammable  
liquids  
Welding shops  
Wholesale establishments and other uses which are added too  
this list by the City Planning Commission in accord with  
the procedure prescribed in Chapter 22.34 of this title;

- C. Parking lots improved in conformity with the standards  
prescribed for off-street parking facilities in Chapter 22.36 of  
this title;
- D. Accessory structures and uses on the same site with and  
necessary to the operation of a permitted use. (Ord. 822 C.S. §  
2 (part), 1975: prior code § 10.105.1(d).)

## 22.16.080 Conditional Uses.

The following conditional uses shall be permitted upon the granting of a conditional use permit, in accord with the provisions of Chapter 22.40 of this Title.

A. Pumping stations, power stations, drainage ways and structures, storage tanks and transmission lines found by the City Planning Commission to be necessary for the public health, safety or welfare.

B. Gasoline service stations, except as follows:

1. The NC and CC Districts shall not include automotive repair services; all operations except the sale of gasoline and oil shall be conducted within a building enclosed on at least 3 sides;
2. A gasoline filling station, when permitted on the granting of a use permit, shall be permitted on a corner provided that all signs, gasoline filling pumps and other equipment, including vehicles tending to obstruct the sight distance, shall be located at least 25 feet from the street line and side property line;
3. Any existing gasoline service station which, as of the effective date of the ordinance codified in this Section, provides automotive service, repair, maintenance, accessory sales and installation and/or other related services or products as authorized pursuant to this Title, or maintains the availability of air and water for tires, batteries, radiators, etc., shall not discontinue such services, product availability or maintenance without first receiving approval of a conditional use permit pursuant to the provisions of Chapter 22.40 of this Title. In considering any such conditional use permit application, the Board of Adjustments shall, in addition to complying with the provisions of Sections 22.40.070 (A) (1) through (3), not grant such permit unless it also finds that:

The proposed discontinuation of service, product availability and/or facility availability and maintenance would not have a significant adverse effect, either by itself or by virtue of the cumulative effects of other similar actions, on the general motoring public, particularly including aged and/or handicapped individuals who may be dependent on such services, products or facilities.

C. Accessory structures and uses located on the same site with and necessary for or incidental to the operation of a conditional use.

- D. Bars.
- E. On-sale liquor when operated in conjunction with a bona fide eating establishment.
- F. In the NC-Neighborhood Commercial District:
  - 1. Private clubs and lodges;
  - 2. Churches and other religious institutions;
  - 3. Public and private philanthropic and eleemosynary institutions;
  - 4. Public and private libraries, art galleries and museums;
  - 5. Bowling alleys;
  - 6. Drive-in restaurants;
  - 7. Take-out restaurants;
  - 8. Bakeries and other specialty food establishments which bake or prepare goods primarily for retail sale from the same location;
  - 9. Nightclubs;
  - 10. Child daycare facilities.
- G. In the TC-Thoroughfare Commercial District:
  - 1. Drive-in restaurant;
  - 2. Take-out restaurants.
- H. In the SC-Service District:
  - 1. Light manufacturing uses involving only the assembly, packaging, repairing or processing of previously prepared material, subject to the following limitations:
    - a. All activities, except incidental storage shall be conducted within a completely enclosed building;
    - b. The building shall be so constructed, the machinery and equipment shall be so installed and maintained, and the activity shall be so conducted so that all odor, dust, dirt, smoke, noise, vibration, illumination, glare and all other objectionable factors shall be confined or reduced to the extent that no annoyance or injury shall result to persons residing or working in the vicinity or to property located in the vicinity;
    - c. No machine shall be used which has more than 5 horsepower capacity;
    - d. No punch press exceeding 5 tons rated capacity and no drop hammer or automatic screw machine shall be used.
  - 2. Commercial amusement establishments including amusement parks, carnivals, circuses and other transient amusement enterprises.
- I. Dog fanciers' permit on sites of 20,000 square feet or more.

- J. In N-C and C-C Districts: Group care and rehabilitation facilities.
- K. In CC Districts: Commercial Amusement establishments in buildings, including card rooms, nightclubs, dance halls, bowling alleys, video arcades, skating rinks, theatres, and auditoriums.
- L. In CC Districts: Retail stores listed in Section 22.16.050 (B) which have a regional market area.
- M. Lunch wagons, except downtown (north of Green Street, south of Marina Vista, between Berrellesa and Court Streets) provided that on the basis of the use permit application and the evidence submitted, the Planning Commission makes the following findings:
  - 1. The use will not be detrimental to other businesses in the area;
  - 2. The use will not create a safety hazard;
  - 3. The use will meet the Design Review Criteria and Standards, Section 22.34.045;
  - 4. The use will not be a nuisance to neighboring properties especially residences.
- N. In the NC, CC, SC and TC Districts: Medical Marijuana dispensaries which shall only be permitted in accordance with Chapter 22.40.
- O. In the NC District:
  - 1. Clinics;
  - 2. Liquor stores;
  - 3. Massage Parlors. 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:
    - i. The use will not be detrimental to other businesses in the area.
    - ii. The use as proposed and at the location requested, will not create a potentially adverse impact on surrounding uses.
    - iii. Approval of the use will not constitute an over-concentration of this use within a given commercial area.
    - iv. The proposed use will not result in the substantial aggravation of crime problems or make law enforcement unduly difficult.
    - v. The operation of the use will not be a nuisance to neighboring properties or businesses.

P. In the CC Districts, retail stores and service establishments, subject to the findings listed in subsection (O) of this Section including:

1. Gunsmith shops;
2. Secondhand stores and pawnshops;
3. Bail bond shops (on or above the second floor, not on sites with frontage on Main Street or Ferry Street);
4. Check cashing shops;
5. Tattoo and body piercing parlors;
6. Billiard halls;
7. All conditional uses in the NC District.

Q. In the CC District:

1. Parcel delivery services including garage facilities for delivery trucks but excluding repair shop facilities;
2. Storage buildings for household goods (including mini-storage and self-storage facilities);
3. Storage garages;
4. Hotels and motels;
5. Dwelling units (located above the ground floor of a building, or at the rear of the ground floor, if the site fronts on Main Street or Ferry Street) may be allowed, with a site area per unit of not less than 1000 square feet.

R. In the SC District, all Conditional Uses, in the NC or CC Districts, subject to the same findings as required by the NC or CC District.

S. DN-N-C, CC, SC and TC Districts activities devoted primarily to the sale or exchange of tobacco-related products. (Ord. 1328 C.S. § 6, 2006; Ord. 1290 C.S. § 2, 2001; Ord. 1284 C.S. § 3, 2001; Ord. 1277 C.S. § 4, 2000.)

#### **22.16.090 Required Conditions-Generally.**

The following conditions shall be required of uses within the C-Commercial Districts as set out in Sections 22.16.100 through 22.16.160. (Ord. 822 C.S. § 2 (part), 1975: prior code § 10,105.3 (part).)

#### **22.16.100 Required Conditions-Specifications Generally.**

No use shall be permitted and no process, equipment or materials shall be employed which are found by the City Planning Commission to be objectionable to persons residing or working in the vicinity

or injurious to property located in the vicinity by reason of odor, fumes, dust, smoke, cinders, refuse, dirt, water-carried wastes, noise, vibration, illumination, glare, unsightliness or heavy truck traffic or to involve a hazard of fire or explosion. (Ord. 822 C.S. § 2 (part), 1975: prior code § 10,150.3(a).)

**22.16.110 Required Conditions--NC and CC Districts.**

In the NC and CC Districts, all businesses, services and processes shall be conducted entirely within a completely enclosed structure, except for off-street parking and loading areas, gasoline service stations, outdoor dining areas, nurseries, garden shops and Christmas tree sales lots. A use not conducted entirely within a completely enclosed structure, on a site abutting on or across a street or alley from an R District or a PA District shall be screened by a solid masonry wall, board fence or compact evergreen hedge not less than 6 feet in height if found by the Board of Adjustments to be unsightly. (Ord. 822 C.S. § 2 (part), 1975: prior code § 10,105.3(b).)

**22.16.120 Required Conditions--TC and SC Districts.**

In the TC and SC Districts, a business, service or process which is not conducted within a completely enclosed structure and which is located on a site abutting on or across a street or alley from property in an R, PA, NC or CC District, shall be required to be screened either by a solid masonry wall, board fence or compact evergreen hedge not less than 6 feet in height if found by the Board of Adjustments to be unsightly. (Ord. 822 C.S. § 2 (part), 1975: prior code § 10,105.3(c).)

**22.16.130 Required Conditions--SC District.**

In the SC District, open storage or materials and equipment shall be permitted only within an area surrounded by a solid masonry wall, board fence or compact evergreen hedge (with gates where necessary) not less than 6 feet in height, provided that neither the area nor the wall, fence or hedge shall be located in any required front yard or any required side yard on the street side of a corner lot and provided further that no materials or equipment shall be stored to a height greater than that of the wall, fence or hedge. (Ord. 822 C.S. § 2 (part), 1975: prior code § 10,105.3(d).)

**22.16.140 Required Conditions--NC District--Products to be Sold Where Produced.**

In the NC District, all products produced on the site of any of the permitted uses shall be sold primarily at retail on the site where produced. (Ord. 822 C.S. § 2 (part), 1975: prior code § 10,105.3(e).)

**22.16.150 Required Conditions--NC District--Number of Employees Limited.**

In the NC District, not more than five (5) persons shall be engaged in the production, repair or processing of materials, except that this provision shall not apply to bars, restaurants and soda fountains. (Ord. 822 C.S. § 2 (part), 1975: prior code § 10,105.3(f).)

**22.16.160 Required Conditions--CC District.**

In the CC District, not more than ten (10) persons shall be engaged in the production, repair or processing of materials, except that this provision shall not apply to bars, restaurants and soda fountains. (Ord. 822 C.S. § 2 (part), 1975: prior code § 10,105.3(g).)

**22.16.165 Required Conditions--CR District.**

In the CR District, a commercial recreation use which is not conducted within a completely enclosed structure and which is located on a site abutting or across a street from a property in the R or PA district, shall be required to be screened by a 6 foot solid masonry wall or board fence or landscaping or a combination thereof in order to minimize potential noise, odor and visual impacts. Additionally, increased setbacks may be required. No building(s) shall cover more than twenty-five percent (25%) of the lot area and all areas not covered by buildings, parking and loading and vehicular access, shall be landscaped. (Ord. 931 C.S. § 3, 1980.)

**22.16.170 Front Yard.**

A. The minimum front yard shall be as prescribed in Table J, subject to the exceptions listed below:

**TABLE J**

District	Minimum Front Yard
NC	.15 feet
CC	.5 feet
TC	.15 feet
SC	.5 feet

B. Exceptions:

1. In the NC and TC Districts, on a site abutting on property in an R District and fronting on the same street, the minimum front yard shall be not less than

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the required front yard of the adjoining site in the R District.

2. In the CC and SC Districts, no structure shall be closer than 15 feet to a street intersection, except that portions of a structure which are less than 3 1/2 feet or more than 8 feet above sidewalk grade and one column not exceeding 1 foot in any horizontal dimension shall not be subject to this requirement.
3. In the CC and SC Districts, on a site abutting on property in an R District and fronting on the same street, the minimum front yard shall be not less than one-half the required front yard on the adjoining site in the R District.
4. In the CR District the front yard setback shall be 20 feet. The front yard shall increase 1 foot for every 2 feet of height above the lowest 12 feet of the height of the structure.  
(Ord. 931 C.S. § 4, 1980; Ord. 822 C.S. § 2 (part), 1975; prior code § 10,105.4.)

#### 22.16.180 Side Yards.

The minimum side yard shall be as follows:

- A. In the NC and TC Districts, a 15-foot side yard shall be required subject to the following exceptions:
  1. Where the side property line of a site adjoins property in an R or a PA district, a solid decorative masonry wall or decorative board fence 6 feet in height shall be located on the property line.
  2. Interior side yards may not be required where adjoining commercial properties are master planned, site planned and architecturally designed as a single unit.
- B. In the CC and SC districts, no side yards shall be required, subject to the following exceptions:
  1. On a reversed corner lot adjoining property in an R District or a PA District, the minimum side yard shall be not less than 1/2 the required front yard on the adjoining key lot.
  2. Where the side property line of a site adjoins property in an R District or a PA District, the minimum side yard adjoining the R district or PA District shall be 10 feet.  
Where the side property line of a site adjoins property in an R District, a decorative masonry wall or decorative board fence 6 feet in height or screen planting shall be

located on the property line or planting area.

- C. One foot shall be added to each required side for each 3 feet of height above the lowest 12 feet of height of a structure.
- D. In the CR District the side yards shall be 20 feet. The side yards shall increase 1 foot for every 2 feet of height above the lowest 12 feet of height of the structure. (Ord. 931 C.S. § 5, 1980: Ord. 822 C.S. § 2 (part), 1975; prior code § 10,105.5.)

#### **22.16.190 Rear Yards.**

The minimum rear yards shall be as follows:

- A. In the NC and TC districts, a 15-foot rear yard shall be required in addition to the following conditions:
  - 1. Where the rear property line of a site adjoins property in an R District, a solid masonry wall or board fence 6 feet in height shall be located on the property line.
  - 2. Interior rear yards may not be required where adjoining commercial properties are master planned, site planned and architecturally designed as a single unit.
- B. In the CC and SC Districts, no rear yard shall be required subject to the following exceptions:
  - 1. Where the rear property line of a site adjoins property in an R district or a PA District, the minimum rear yard shall be 10 feet. Where the rear property line of a site adjoins property in an R district, a solid masonry wall or board fence 6 feet in height shall be located on the property line.
  - 2. One foot shall be added to the rear yard for each 3 feet of height above the lowest 12 feet of height of a structure.
- C. In the CR District the rear yard shall be 20 feet. The rear yard shall increase 1 foot for every 2 feet of height above the lowest 12 feet of height of the structures. (Ord. 931 C.S. § 6, 1980: Ord. 822 C.S. § 2 (part), 1975; prior code § 10,105.6.)

#### **22.16.200 Height of Structures.**

No structure shall exceed 30 feet in height in the NC, CR, TC or SC Districts. In the CC District, the height of structures shall not exceed 40 feet, or 3 stories. The Planning Commission may approve taller buildings by use permit. (Ord. 1328 C.S. § 7, 2006: Ord. 931 C.S. § 7, 1980: Ord. 822 C.S. § 2 (part), 1975; prior code § 10, 105.7.)

**22.16.210 Landscaped Areas.**

Areas between the property line and structures or off-street parking or loading facilities shall be landscaped with plant material and permanently maintained. (Ord. 822 C.S. § 2 (part), 1975: prior code § 10,105.8.)

**22.16.220 Off-Street Parking and Loading Facilities.**

Off-street parking and loading facilities shall be provided in accordance with the requirements of Chapter 22.36 of this title. (Ord. 822 C.S. § 2 (part), 1975: prior code § 10,105.9.)

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## 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 black 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)