

Planning Commission Staff Report, January 21, 2014
Attachment 2

RESOLUTION NO. PC # 14-03 [DRAFT]

**RESOLUTION RECOMMENDING AN EXEMPTION FROM THE PROVISIONS OF
THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)
PURSUANT TO CEQA GUIDELINES SECTIONS 15304 AND 15061(B)(3)
AND MAKING FINDINGS RELATING THERETO AND
RECOMMENDING THE CITY COUNCIL ADOPT PROPOSED AMENDMENTS
TO MARTINEZ MUNICIPAL CODE (MMC) TITLE 22, CHAPTER 22.41
RELATING TO THE OUTDOOR GROWING OF MEDICAL MARIJUANA**

WHEREAS, complaints have recently been received by the City Council, City Manager and the Chief of Police concerning the nuisance impacts associated with the outdoor cultivation of medical marijuana in residentially zoned areas. The primary nuisance impact of outdoor cultivation is the strong odor associated with a large quantity of mature marijuana plants. Residents have also raised concerns about the proximity of children to areas under cultivation, visibility of grows from the public right-of-way, and the potential for increased neighborhood crime; and.

WHEREAS, at the November 6, 2013, City Council Meeting, a marijuana grower who was apparently unaware of the November 4th public safety subcommittee meeting, chastised the local press for putting him at risk for theft or violence by publishing photos and the location of the grow. The grower's unwitting admission supported the argument that his outdoor residential marijuana grow not only impacted his safety, but the safety of neighboring residents. At the December 2, 2013 Public Safety Subcommittee meeting, the same resident related that, in fact, his residence suffered a theft after the article was published; and

WHEREAS, in 1996 California voters approved Proposition 215, known as the Compassionate Use Act (CUA), which provides that certain state law criminal provisions relating to the possession and cultivation of marijuana "shall not apply to a patient, or a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician." (Health & Safety Code §11362.5(d).); and

WHEREAS, in 2003, the state legislature enacted the Medical Marijuana Program Act (MMPA) to: (1) clarify the scope of the CUA, facilitate the prompt identification of qualified patients and their designated primary caregivers in order to avoid their unnecessary arrest and prosecution, and provide guidance to law enforcement; (2) to promote uniform and consistent application of the CUA; and (3) to enhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects. (Health & Safety Code §§11362.7–11362.83.); and

WHEREAS, the MMPA created an affirmative defense to state criminal liability for qualified patients, persons with identification cards, and primary caregivers who cultivate marijuana (Health & Safety Code §11362.775); and

WHEREAS, under its police power, the City of Martinez may regulate medical marijuana activities in any manner not preempted by state or federal law; and

WHEREAS, the justification for regulating or banning of outdoor medical marijuana cultivation pursuant to the City's police power includes, but is not limited to: 1) The increased risk to public safety, based on the value of marijuana plants and the accompanying threat of break-ins, robbery and theft, and attendant violence and injury; 2) The strong "skunk like" fumes emitted from mature plants which can interfere with the use and enjoyment of neighboring properties by their occupants; and 3) The potential for theft and use by school age children where medical marijuana is cultivated in a visible location, particularly where such location is close to schools; and

WHEREAS, in a decision issued on February 6, 2013, *Browne v. County of Tehama* (2013) 213 Cal.App.4th 704, the California Court of Appeal found that the CUA does not confer a right to cultivate marijuana and that an ordinance limiting the number of medical marijuana plants that may be grown outside, precluding marijuana cultivation within 1000 feet of schools, parks, and churches, and requiring that an opaque fence of at least six feet to be installed around all marijuana grows was not preempted by state law. Further, in *Maral v. City of Live Oak* (2013) a decision issued on November 26, 2013, the Court of Appeal held that the CUA and the MMP do not preempt a city's police power to completely prohibit the cultivation of all marijuana within that City; and

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

WHEREAS, on January 21, 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 15304 and 15061(b)(3). The proposed ordinance regulates new gardening in all zoning districts in the City by limiting the outdoor growing of Marijuana where there are currently in existence no restrictions. 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 bans the outdoor growing of Marijuana with the limited exception of six (6) plants per property. 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 22.41 relating the outdoor growing of medical marijuana 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 21st day of January 2014 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAINED:

Corey M. Simon
Senior Planner/Clerk Pro Tem