



CITY OF MARTINEZ

**CITY COUNCIL AGENDA
February 5, 2014**

TO: Mayor and City Council
FROM: Mercy G. Cabral, Deputy City Clerk
SUBJECT: Adopting Ordinance 1377 C.S.
DATE: January 29, 2014

RECOMMENDATION:

Adopt Ordinance No. 1377 C.S. amending Chapters 22.04 (Definitions), to provide definitions for bars and restaurants and 22.16 (Permitted Uses and Conditional Uses), to provide conditional use permit regulations for bars and restaurants serving alcohol (other than beer and wine), and to clarify the inclusion of restaurants serving only beer and wine as permitted uses in commercial districts; repealing Urgency Ordinance No. 1371 which extended interim restrictions on development of bars within the downtown established by Urgency Ordinance No. 1369, and finding that the adoption of the ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA), pursuant to CEQA Guidelines Sections 15061(b)(3) and 15305.

BACKGROUND:

At the City Council meeting of January 22, 2014, the above ordinance was introduced and a public hearing was held in accordance with California Government Code. The ordinance is now before you for adoption and will become effective after 30 days.

FISCAL IMPACT:

There is no fiscal impact associated with this action.

ACTION:

Motion to adopt Ordinance No. 1377 C.S. amending Chapters 22.04 (Definitions), to provide definitions for bars and restaurants and 22.16 (Permitted Uses and Conditional Uses); repealing Urgency Ordinance No. 1371 which extended interim restrictions on development of bars within the downtown, and finding that the adoption of the ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA), pursuant to CEQA Guidelines Sections 15061(b)(3) and 15305.

Attachment: Ordinance

APPROVED BY:  Interim City Manager

ORDINANCE NO. 1377 C.S.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MARTINEZ AMENDING CHAPTERS 22.04 (DEFINITIONS), TO PROVIDE DEFINITIONS FOR BARS AND RESTAURANTS AND 22.16 (PERMITTED USES AND CONDITIONAL USES), TO PROVIDE CONDITIONAL USE PERMIT REGULATIONS FOR BARS AND RESTAURANTS SERVING ALCOHOL (OTHER THAN BEER AND WINE), AND TO CLARIFY THE INCLUSION OF RESTAURANTS SERVING ONLY BEER AND WINE AS PERMITTED USES IN COMMERCIAL DISTRICTS; REPEALING URGENCY ORDINANCE NO. 1371 WHICH EXTENDED INTERIM RESTRICTIONS ON DEVELOPMENT OF BARS WITHIN THE DOWNTOWN ESTABLISHED BY URGENCY ORDINANCE NO. 1369, AND FINDING THAT THE ADOPTION OF THE ORDINANCE 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 is 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; and

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

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

WHEREAS, on January 22, 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, but not including beer and wine only, 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, prepared on-site in a full commercial 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. Section 22.04.444.5 of the Martinez Municipal Code is hereby added to read as follows:

"Restaurant" shall means an eating and drinking establishment, including, but not limited to, a Bona-fide public eating place, sandwich shop, café, coffee shop, beer garden or wine bar, but not including a Bar.

SECTION 8. Section 22.16.040 B of the Martinez Municipal Code is hereby amended to read as follows:

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
Clinics
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, but not including restaurants serving alcoholic beverages, except beer and wine only
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;

SECTION 9. 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 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.

4. 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, which are prepared on-site in a full commercial 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.

SECTION 10. Urgency Ordinance Nos. 1369 and 1371 are hereby repealed upon the effective date of this ordinance.

SECTION 11. 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 12. Effective date. This ordinance shall become effective 30 days after the date of adoption.

SECTION 13. Posting. At least five (5) days prior to its final adoption, a certified copy of the full text of this ordinance shall be posted in the office of the City Clerk.

Within 15 days after adoption the City Clerk shall publish a summary of this ordinance with the names of those City Council members voting for and 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

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I HEREBY CERTIFY that the foregoing ordinance was duly and regularly introduced at an Adjourned Regular Meeting of the City Council of the City of Martinez, held on the 22nd day of January, 2014, and duly passed and adopted at a Regular Meeting of said City Council held on the 5th day of February, 2014, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

RICHARD G. HERNANDEZ, CITY CLERK
CITY OF MARTINEZ