



CITY OF MARTINEZ

**CITY COUNCIL AGENDA
March 19, 2014**

TO: Mayor and City Council

FROM: City Attorney, Planning and Police Departments

SUBJECT: Public Hearing, Consideration and Possible Introduction of an Ordinance Amending Chapter 22.41 (Medical Marijuana Dispensaries) to Amend the Title and Add Sections 22.41.025 And 22.41.065 Relating to Cultivation of Medical Marijuana, and Finding that the Adoption Thereof is Exempt from the Requirements of the California Environmental Quality Act (CEQA), Pursuant To CEQA Guidelines Sections 15304 And 15061(B)(3)

DATE: March 12, 2014

RECOMMENDATION:

Public hearing to introduce an Ordinance amending Chapter 22.41 (Medical Marijuana Dispensaries) to amend the title and add Sections 22.41.025 and 22.41.065 relating to cultivation of Medical Marijuana, and finding that the adoption thereof is exempt from the requirements of the California Environmental Quality Act (CEQA), pursuant to CEQA Guidelines Sections 15304 And 15061(B)(3).

BACKGROUND:

Within the last 6 – 12 months, complaints have 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 associated with outdoor grows.

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.

In the past five years more than 40 cities and 25 counties in California have adopted ordinances regulating the cultivation of medical marijuana within their jurisdictions. Staff has reviewed numerous ordinances that offer varying approaches at regulating the outdoor cultivation of medical marijuana. Attachment 1 summarizes the different approaches other California cities have used to regulate the cultivation of medical marijuana.

DISCUSSION:

Under both state and federal law, it is illegal to possess, distribute, or cultivate marijuana. The Controlled Substance Act (CSA) was enacted in 1970 as part of the federal government's "war on drugs." Congress placed marijuana in Schedule I of the CSA. Under the CSA, it is illegal to manufacture, distribute or possess marijuana (21 U.S.C. §841 and §844). It is also illegal under the CSA to maintain any place for the purpose of manufacturing, distributing, or using any controlled substance, including marijuana (21 U.S.C. §856(a)(1)).

In 1996 California voters approved Proposition 215, known as the Compassionate Use Act (CUA), which provides that certain 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).) With the exception of possession and cultivation, the CUA did not change state criminal prohibitions concerning the transportation, possession for sale, or sale of marijuana.

In 2003, the 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.)

The MMPA expressly immunizes from state criminal liability qualified patients, persons with identification cards, and primary caregivers who transport or process marijuana for the personal medical use of a qualified patient or person with an identification card (Health & Safety Code §11362.765(b) (1) and §11362.765(b) (2)). The MMPA also created an affirmative defense to state criminal liability for qualified patients, persons with identification cards, and primary caregivers who collectively or cooperatively cultivate marijuana (Health & Safety Code §11362.775).

A. Applicable Federal Law

Notwithstanding the CUA and the MMPA, marijuana possession, use and cultivation remains a criminal offense under federal law, which categorizes marijuana as a drug with "no currently accepted medical use."

The U.S. Department of Justice has taken the position that it will not focus its limited resources on seriously ill individuals who use marijuana as part of a medically recommended treatment regimen in compliance with state law. Consequently, we cannot rely on federal authorities to enforce federal law to regulate outdoor cultivation.

B. Legality of Ban on Outdoor Cultivation of Medical Marijuana

i. Reasonable Exercise of Police Power

Under its police power, the City may make and enforce within its limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws. (Cal. Const. Art. XI, Section 7.) A land use regulation lies within the police power if it is

reasonably related to the public welfare. (*Associated Homebuilders, Inc. v. City of Livermore*, 18 Cal.3d 582, 600-01 (1976)). In *Candid Enterprises, Inc. v. Grossmont Union High School District*, (1985) 39 Cal.3d 878, 885, the California Supreme Court addressed the scope of police power held by cities and counties as follows:

Under the police power granted by the Constitution, counties and cities have plenary authority to govern, subject only to the limitation that they exercise this power within their territorial limits and subordinate to state law. Apart from this limitation, the police power [of a city or county]... is as broad as the police power exercisable by the legislature itself.

To summarize, under its police power, the City of Martinez may regulate medical marijuana activities in any manner not preempted by state or federal law. As discussed in detail below, local restrictions on outdoor cultivation of medical marijuana are not preempted. While the MMPA immunizes medical marijuana patients and caregivers from state criminal prosecution relating to the cultivation of medical marijuana, it does not guarantee their right to grow marijuana.

The justifications for regulating or banning of outdoor medical marijuana cultivation under the City of Martinez's police power include:

- 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.

ii. No State Law Preemption

In a decision issued on February 6, 2013, *Browne v. County of Tehama* (2013) 213 Cal.App.4th 704, the California Court of Appeal considered for the first time whether a city or a county in California may lawfully limit outdoor cultivation of medical marijuana. At issue was Tehama County's 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.

Upholding the ordinance, the court held that Tehama's ban was not preempted by state law. As stated by the court:

The fundamental flaw in Petitioners' argument is their misplaced view that the [Compassionate Use Act] somehow creates or grants unrestricted rights. Petitioners suggest that the CUA grants every qualified patient the right to cultivate...medical marijuana...But the CUA does not create any such right...Since the CUA does not create a right to cultivate medical marijuana, restrictions on such enforcement do not conflict with the CUA.

Further, later in 2013 the California courts again considered the question of regulation of the cultivation of medical marijuana by a city. In *Maral v. City of Live Oak*, 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

On December 2, 2013 the Public Safety Subcommittee recommended that staff propose an amendment to the existing Martinez Municipal Code, Medical Marijuana ordinance that would prohibit any person from cultivating, cloning or growing Marijuana of any kind or type outdoors, or within public view, within any zoning district in the City with the exception of the Cultivation of Medical Marijuana of no more than six (6) plants per property by a Caregiver or Patient.

This approach balances the interests of medical marijuana patients against the interests of the public related to public nuisance and crime related concerns that are presented by the outdoor cultivation of medical marijuana.

Staff crafted a proposed ordinance, which was considered by the Planning Commission at its meeting of January 21, 2013, by a vote of 3-2, the Planning Commission adopted PC Resolution #14-03 recommending that the City Council adopt the proposed amendments. The minority of the Planning Commission not in support of the proposed ordinance favored a complete ban on the cultivation of medical marijuana in the City.

ENVIRONMENTAL IMPACT:

Staff recommends that the City Council find that the adoption of this 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, grown by a caregiver or patient. 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.

Attachments:

- #1: Summary of the different approaches other California cities have used to regulate the cultivation of medical marijuana.
- #2: Draft Ordinance, with Exhibit A, Findings of Consistency with the General Plan

APPROVED BY:


Interim City Manager

ATTACHMENT 1

City of Concord (Contra Costa County)

Ordinance limits marijuana cultivation to occupied dwellings, dwelling units, and housing units, which are defined so as to exclude cultivation both outside and in accessory structures, including but not limited to greenhouses, storage sheds, workshops, gazebos and cabanas.

City of Anderson (Shasta County)

On February 18, 2011, an ordinance took effect in Anderson that prohibits cultivation either inside a dwelling or in an outdoor garden, limits the growing, harvesting and processing of medical marijuana to a 50-square-foot outbuilding that is built to city, state and federal codes, is protected by an audible alarm system, and contains electrical, plumbing and ventilation. A suit was filed against the Anderson ordinance on April 15, 2011.

City of Arcata (Humboldt County)

City Council passed an ordinance allowing no more than 50 square feet for cultivation. In addition, dispensaries will be prohibited from using more than 25% of their property for cultivation and patients must grow in their own homes, which must be mainly residential space. Those with special needs may request more grow space.

City of Berkeley (Alameda County)

Measure JJ, passed by the voters in 2008, repealed Berkeley's plant and possession limits. Outdoor gardens that are observable are limited to 10 plants.

City of Biggs (Butte County)

City code requires marijuana be grown in a "fully enclosed and secure structure."

City of Chico (Butte County)

Chico allows the outdoor, residential cultivation of 50 square feet per parcel by qualified patients or caregivers. Plants must be enclosed, screened and five feet from the property line. Indoor cultivation is also allowed in residential zones with written permission of the property owner, but the area used for cultivation must not exceed 50 square feet and grow lights cannot exceed 1200 watts. Any violation of the ordinance is declared a public nuisance and subject to abatement. States all marijuana grown must be for personal use only.

City of Corning (Tehama County)

The city of Corning prohibits cultivation outdoors or in a residential structure. Gardens must be located in a secure detached structure in the rear yard only, removed ten feet from the property line and with a six foot solid fence and with a mechanical ventilation system and security system approved by a Building Official or the Police Dept.

City of Dunsmuir (Siskiyou County)

On May 19, 2011 the city of Dunsmuir enacted an ordinance (Chapter 17.34 of city code) that disallows outdoor cultivation, and requires anyone growing for more than one person to submit an affidavit to the city manager. A maximum of 100 square feet may be grown per patient, not to exceed three patients per parcel. Patients must live on the property, and growing must take place in a garage.

City of Elk Grove (Sacramento County)

The city of Elk Grove adopted an ordinance banning the cultivation of medical marijuana in all agricultural (except agricultural-residential), commercial, office, industrial, open space, special purpose, and overlay/combining zoning districts. In addition, the ordinance bans outdoor or greenhouse cultivation in residential zones, but allows for cultivation inside a residence or in a detached structure (within residential zones) with a city issued marijuana cultivation permit, and if the property is not owner occupied, the written permission of the property owner. Only qualified patients and primary caregivers may engage in the cultivation of medical marijuana. In addition to complying with the city's building code, detached structures must be fully enclosed, have a complete roof, minimal wall thickness, and be secured against unauthorized entry through one locked door. The ordinance limits the grow area of the detached structure to no more than 120 square feet and requires the yard to be enclosed with a 6-foot high fence. Inside a residence, medical marijuana can be grown in an area of no more than 50-square feet, excluding the bathroom, kitchen, or bedrooms used for sleeping purposes. Grow lights cannot exceed 1200 watts and must comply with building, electrical and fire codes. The gas products (CO2, butane, propane, and natural gas), as well as generators are prohibited for use in cultivation and processing. Cultivation is not permitted within 1,000 feet of any school, child care center or public park, and the growing area must not be accessible to anyone 17 years of age or younger. A ventilation and filtration system is required to be installed and must be approved by the city's building official. In addition, a mechanical or electronic security system must be installed and approved by the city building official and police chief. Any violation of the ordinance is declared a public nuisance and subject to abatement.

City of Eureka (Humboldt County)

On May 3, 2011, Eureka city council approved an ordinance that allows personal cultivation within 50 square feet in area and 10 feet in height, or up to 100 feet with an Exemption Request, only in a residence. Processing area cannot exceed 20 square feet. Also regulates dispensaries, delivery services, and labs.

City of Fort Bragg (Mendocino County)

Cultivation Ordinance allows up to 100 sq. feet, indoors

City of Gridley (Butte County)

The city of Gridley has banned outdoor cultivation.

City of Imperial Beach (San Diego County)

On July 7, 2011, with a 4 to 1 vote, the Imperial Beach City Council approved an ordinance banning collective cultivation of medical marijuana within city limits including in the private homes of qualified patients.

Town of Moraga (Contra Costa County)

The city of Moraga outlaws outdoor cultivation; indoor is allowed only if not visible.

City of Manteca (Merced)

Allows the cultivation of medical marijuana in secured enclosed structures, not visible from the public right-of-way, by qualified patients and caregivers (as defined in the Health & Safety Code). The structures must be fully enclosed by solid walls, a ceiling, roof or top. Also limits the number of plants that can be cultivated to six mature or twelve immature plants, or as otherwise recommended by a doctor in accordance with Health & Safety Code §11362.77. Cultivation by collectives or cooperatives is prohibited in all residential districts within the city or within 1000 feet of any residential district, school, recreation center, or youth center. In addition, collectives and cooperatives are subject to additional requirements, including registering with the Manteca Chief of Police, identifying all participating qualified patients and caregivers, providing a description of the proposed cultivation process, and diagram of the property, including location of the proposed area of cultivation and distance from property lines. All violations of the ordinance are declared a public nuisance subject to summary abatement and misdemeanor criminal penalties.

City of Modesto (Merced)

Cultivation of marijuana is banned, unless the cultivating is by a primary caregiver as defined in the Health and Safety Code or by a qualified patient and complies strictly with Health and Safety Code §11362.5.

10-3.210 Medical Marijuana Uses. The following medical marijuana uses are prohibited in all zones:

- (a) Medical marijuana dispensary.
- (b) Any facility or location, stationary or mobile, used for the purpose of cultivating marijuana unless such cultivating of marijuana is by a primary caregiver as defined in the Health & Safety Code or by a patient and complies strictly with applicable law including, but not limited to, Health & Safety Code Section 11362.5.
- (c) Any facility or location, stationary or mobile, used for the purpose of delivering, giving away, providing, or furnishing of marijuana unless such delivering, giving away, providing, or furnishing of marijuana is by a primary caregiver as defined in the Health & Safety Code and complies strictly with applicable law including, but not limited to, Health & Safety Code Section 11362.765 and Health & Safety Code Section 11362.77.
- (d) Any use which is prohibited by State and Federal law.

City of Oakland (Alameda County)

Indoors – 72 plants in maximum 32 sq. ft growing area. Outdoors – 20 plants, no area limit. Weight limit 3 lbs dried marijuana per patient. Collective gardens limited to 3 patients. Dispensaries serving four or more patients are allowed max. 6 mature and 12 immature plants and 1/2 pound per patient.

City of Redding (Shasta County)

An ordinance passed in 2010 restricts medical marijuana gardens to a maximum of 100 square feet of canopy or 10% of home or garden area.

City of Ripon (San Joaquin County)

Outdoor cultivation is not permitted in the city. The ordinance also limits the number of plants that can be grown in accordance with Health & Safety Code §11362.77 for patient cultivation; and collective cultivation at 99 plants, whether mature or immature.

City of Rocklin (Placer County)

2011, the city of Rocklin passed ordinance 970 (Section 1. Chapter 17.81 of Rocklin Municipal Code), which limits cultivation to 50 square feet and ten feet in height per residence only within an enclosed structure. Marijuana cultivation lighting cannot exceed 1200 watts, and the authorized grower must reside in the residence where the marijuana cultivation occurs. Other building and fire codes, issues of privacy, noise, odor, etc. must be observed. With documentation of a second patient living on the premises, up to 100 square feet can be grown. Penalty for violation is \$500/day.

City of San Carlos (San Mateo County)

San Carlos's collective regulation ordinance says a patient may grow medical marijuana for consumption at their residence. It adds: All cultivated marijuana must be secured in structures consisting of at least four walls and a roof, and be held secure to the satisfaction of the police chief.

City of San Diego (San Diego County)

City Municipal Code allows up to 1 lb of marijuana, 24 plants in 64 square feet indoors; no outdoors growing allowed except in enclosed greenhouses.

City of San Francisco (San Francisco County)

Patients allowed up to 24 plants or 25 square feet of canopy; dispensary gardens capped at 99 plants in 100 square feet. Possession limited to 8 oz. dried cannabis per patient. See p. 44 of the ordinance. San Francisco has enacted regulations on edibles.

City of San Mateo (San Mateo County)

San Mateo's city collective ordinance says:

Marijuana cultivated and possessed at a private residence must not be visible from adjacent public areas or neighboring properties, and must be secured within structures consisting of at least four walls and a roof with standard locks.

City of Santa Cruz (Santa Cruz County)

100 sq.ft. canopy and up to 99 plants is allowable under county guidelines, for a patient or a bone fide caregiver.

City of Sebastopol (Sonoma County)

In January 2011, Sebastopol city council enacted an ordinance allowing patients and caregivers to grow up to 30 plants within 100 square feet of their homes. Under the ordinance, patients and caregivers can possess up to 3 lbs. at the garden site. It also allows two secured 750 square-foot gardens for dispensing collectives, and two more for non-dispensing patients and caregivers.

City of Shasta Lake (Shasta County)

In December 2010, city council adopted an ordinance that allows growing only in residential or mixed-used zoning districts, while it would be banned in commercial and industrial districts. The ordinance allows for growing up to 100 square feet inside a garage or adjacent building, but not inside the home. Outdoor growing is limited to 25 square feet on a half-acre parcel, 60 square feet on a parcel between half-acre and one acre and 240 square feet on parcels larger than one acre. Outdoor grows must also be enclosed in a 6-foot high, non-climbable fence with a locking gate. Chain-link fences are not allowed, according to the ordinance.

City of South Lake Tahoe (Eldorado County)

On May 17, 2011, the City of South Lake Tahoe unanimously passed an ordinance “to require that medical marijuana be cultivated in appropriately secured, enclosed, and ventilated structures” in permitted residential structures only; “in compliance with the maximum dimensions permissible for the cultivation of medical marijuana” within 10% of the total residence square footage. Fines for violations start at \$100/day and escalate to \$500 with repeat offenses.

City of St. Helena (Napa County)

St. Helena declares it a public nuisance for any person owning, renting, leasing, occupying, or having charge or possession of any real property within the city limits to cause or allow such real property to be used for the outdoor cultivation of marijuana.

City of Tracy: (San Joaquin County)

Cultivation of medical marijuana is not allowed as a principal use, conditional use, special use, or accessory use in any zone within the City of Tracy.

City of Willits (Mendocino County)

Requires cultivation of medical marijuana to take place only within a fully enclosed and secure structure, which may or may not be the residence of a qualified patient (as defined in the CUA) for personal use. Qualified structures are defined as having a permanent foundation, a complete roof, a minimal wall thickness and being accessible only through one or more locked doors. The use of indoor grow lights or air filtration systems must comply with all applicable building, electrical and fire codes. The Willits ordinance also requires that the structure be adequately sealed to significantly reduce the emission of odor associated with mature marijuana plants; and limits the number of plants which may be cultivated at one time to six.

ORDINANCE NO. C.S.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MARTINEZ AMENDING CHAPTER 22.41 (MEDICAL MARIJUANA DISPENSARIES) TO AMENDING THE TITLE AND ADDING SECTIONS 22.41.025 AND 22.41.065 RELATING TO CULTIVATION OF MEDICAL MARIJUANA, AND FINDING THAT THE ADOPTION THEREOF IS EXEMPT FROM THE REQUIREMENTS OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA), PURSUANT TO CEQA GUIDELINES SECTIONS 15304 AND 15061(B)(3)

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, on January 21, 2014, the City of Martinez Planning Commission held a duly noticed public hearing to consider the proposed amendments to Chapter 22.41 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 PC #14-03, recommend that the City Council adopt the proposed amendments to Chapter 22.41 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 were sent all parties having requested notice and were published in a newspaper of general circulation in the City in accordance with law; and

WHEREAS, on March 19, 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.

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 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.

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. The Title of Chapter 22.41 of the Martinez Municipal Code is hereby amended to read as follows:

CHAPTER 22.41 - MEDICAL MARIJUANA DISPENSARIES AND CULTIVATION

SECTION 5. Chapter 22.41 of the Martinez Municipal Code is hereby amended to add Section 22.41.025 to read as follows:

22.41.025 - Cultivation of Medical Marijuana

"Cultivation of Medical Marijuana" shall mean the growing of marijuana for medical purposes pursuant to California Health and Safety Code Section 11362.5, by a Qualified Patient, Person With an Identification Card or Primary Caregiver only when said cultivation is conducted solely for the personal medical purposes of Qualified Patients or Persons With an Identification Card. Cultivation includes the cultivation and possession of both female and male plants at all stages of growth, mature or immature, clones, seedlings, and germinating seeds subject to the limitations described in this Chapter. "Qualified Patient", "Primary Caregiver", "Person With an Identification Card" and "Identification Card" shall have the same meaning as set forth in California Health and Safety Code Section 11362.7.

SECTION 6. Chapter 22.41 of the Martinez Municipal Code is hereby amended to add Section 22.41.065 to read as follows:

22.41.065 - Outdoor Cultivation of Medical Marijuana -
Restrictions

Notwithstanding any other provision of this code to the contrary, with the exception of the Cultivation of Medical Marijuana of no more than six (6) plants of any variation or size or in any stage of growth, per property, no person shall cultivate, clone or grow Marijuana of any kind or type outdoors, or within public view, within any zoning district in the City.

SECTION 4. **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 5. Effective date. This ordinance shall become effective 30 days after the date of adoption.

SECTION 6. 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 19th day of March, 2014, and duly passed and adopted at a Regular Meeting of said City Council held on the ____ day of _____, 2014, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

RICHARD G. HERNANDEZ, CITY CLERK
CITY OF MARTINEZ

EXHIBIT A

ZONING CODE AMENDMENTS TO LIMIT OUTDOOR GROWING OF MEDICAL MARIJUANA

FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN

The proposed zoning code amendments, which would ban the outdoor growing of Marijuana with the limited exception of six (6) plants per property is consistent with the policies of the Martinez General Plan and Housing Element, components thereof, including, but not limited to the following:

21.322 - Land Use Element, Residential Uses, Residential Areas: **Existing neighborhoods shall retain their present housing roles and the existing residential character preserved and enhanced. Non-residential uses, other than those providing services primarily to residents within the neighborhoods, shall be prohibited.**

Facts in Support: The proposed limitations on outdoor growing of medical marijuana will preserve and strengthen the quality of life in residential neighborhoods, be eliminating the potential for the strong “skunk like” fumes emitted from mature plants, which can interfere with the use and enjoyment of neighboring properties by their occupants.

30.25 - Land Use Element, Central Martinez Specific Area Goal: **Guarantee all citizens physical well being, intellectual, social and cultural development, and a choice of stable residential neighborhoods and personal privacy.**

Facts in Support: The proposed limitations on outdoor growing of medical marijuana will engender the maintenance of stable residential neighborhoods by prohibiting large exposed groves that could introduce attract unwanted criminal activity into neighborhoods that would others have little or no crime problems.