



CITY OF MARTINEZ

**CITY COUNCIL AGENDA
April 2, 2014**

TO: Mayor and City Council
FROM: Mercy G. Cabral, Deputy City Clerk
SUBJECT: Adopting Ordinance 1380 C.S.
DATE: March 21, 2014

RECOMMENDATION:

Adopt Ordinance No. 1380 C.S. 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:

At the City Council meeting of March 19th, 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:

No fiscal impact associated with this action.

ACTION:

Motion to adopt Ordinance No. 1380 C.S. 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).

Attachment: Ordinance

APPROVED BY:


Interim City Manager

ORDINANCE NO. 1380 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 7. 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 8. **Effective date.** This ordinance shall become effective 30 days after the date of adoption.

SECTION 9. **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

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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, by 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 otherwise have little or no crime problems.