



**CITY OF MARTINEZ**

**CITY COUNCIL AGENDA  
May 7, 2014**

**TO:** Mayor and City Council  
**FROM:** Mercy G. Cabral, Deputy City Clerk  
**SUBJECT:** Adopting Ordinance 1380 C.S. Prohibiting the Cultivation of Outdoor Medical Marijuana  
**DATE:** April 29, 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 and Chapter 8.36 (Property Nuisances) relating to prohibiting the cultivation of outdoor 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 April 16, 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 and Chapter 8.36 (Property Nuisances) relating to prohibiting the cultivation of outdoor 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. C.S.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MARTINEZ AMENDING CHAPTER 22.41 (MEDICAL MARIJUANA DISPENSARIES) AMENDING THE TITLE AND ADDING SECTIONS 22.41.025 AND 22.41.065 AND AMENDING CHAPTER 8.36 (PUBLIC NUISANCES) TO ADD SECTION 8.36.030S.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 4<sup>th</sup> 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.4<sup>th</sup> 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. On March 26, 2014, the California Supreme Court refused to hear an appeal of and denied de-publication of the Court of Appeal decision in *Maral*; 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**, said ordinance was scheduled for seconding reading and adoption at the City Council meeting of April 2, 2014. However, as mentioned above, prior to the April 2, 2014 City Council meeting, on March 26, 2014, the California Supreme Court refused to hear an appeal of and denied de-publication of the Court of Appeal decision in *Maral*. That action effectively upheld the City of Live Oaks' complete ban on the cultivation of marijuana; and

**WHEREAS**, based on the actions of the California Supreme Court, and the public comment received at the March 19, 2014 City Council Meeting, the Public Safety Subcommittee met to reconsider its recommendation on the ordinance. Upon reconsideration, the Public Safety Subcommittee determined to amend its recommendation to the City Council and to instead recommend a complete ban on the outdoor cultivation of marijuana in the City. The Public Safety Subcommittee presented its revised recommendation to the City Council at its meeting of April 2, 2014; and

**WHEREAS**, at the April 2, 2014 meeting, the City Council heard additional public comment and discussed the adoption of the previously proposed and introduced ordinance. The Council unanimously determined not to adopt the previously proposed ordinance and instead directed staff to come back to the City Council with a revised ordinance totally banning the outdoor cultivation of marijuana in the City. Accordingly, staff has prepared a revised ordinance for consideration. Because the Planning Commission already considered a total ban on outdoor cultivation of marijuana, the proposed revised ordinance is not required to be referred back to the Planning Commission for further consideration; and

**WHEREAS**, notices of the public hearing of the City Council on the proposed revised ordinance 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 April 12, 2014, the City Council of the City of Martinez did hold a public hearing on said revised ordinance and the 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 is 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. 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.** Section 8.36.030S. of the Martinez Municipal Code is hereby added to read as follows:

S. The outdoor cultivation of marijuana plants in any stage of growth whatsoever, including, but not limited to, mature or immature plants, clones, seedlings or germinating seeds.

**SECTION 5.**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 6.** 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 any person, including but not limited to a Qualified Patient, Person With an Identification Card or Primary Caregiver. 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. "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 7.** 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 Marijuana - Restrictions

- a. Notwithstanding any other provision of this code to the contrary, no person owning, renting, leasing, occupying, or having charge or possession of any parcel of real property in the City shall cause or allow such parcel to be used for the Cultivation of Medical Marijuana of any kind or type outdoors, or within public view, within any zoning district in the City.
  
- b. Notwithstanding any other provision of this code to the contrary, no person owning, renting, leasing, occupying, or having charge or possession of any parcel of real property in the City shall cause or allow such parcel to be used for the cultivation of marijuana plants of any kind or type, outdoors, or within public view, within any zoning district in the City. 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.

**SECTION 8. 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 9. Effective date.** This ordinance shall become effective 30 days after the date of adoption.

**SECTION 10. 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 16th day of April, 2014, and duly passed and adopted at a Regular Meeting of said City Council held on the 7th day of May, 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 upon property in any zoning district in the City is consistent with the policies of the Martinez General Plan including all elements and components thereof, and 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 encourage and preserve the maintenance of stable residential neighborhoods by prohibiting exposed and visible marijuana plants that could introduce or attract unwanted criminal activity jeopardizing the physical well-being of the citizens of Martinez.