



**To:** Mayor Schroder and Councilmembers

**From:** Manjit Sappal, Police Chief

**Subject:** Extending Urgency Ordinances Pertaining to Marijuana Cultivation and Proposition 64

**Date:** December 5, 2016

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**Recommendation**

- A. Adopt Ordinance No. 1400 C.S. extending interim Ordinance No. 1396 C.S. imposing a moratorium on the outdoor cultivation of nonmedical marijuana, approving the issuance of the Gov't Code sec. 65858(d) report and making findings that said adoption is exempt under CEQA.
- B. Adopt Ordinance No. 1401 C.S. extending interim Ordinance No. 1397 C.S. imposing moratorium on the indoor cultivation of nonmedical marijuana, except under certain circumstances, approving the issuance of the Gov't Code sec. 65858(d) report and making findings that the adoption of said ordinance is exempt under CEQA.
- C. Adopt Ordinance No. 1402 C.S. extending interim Ordinance No. 1398 C.S. regulating the indoor cultivation of medical marijuana, approving the issuance of the Gov't Code sec. 65858(d) report and making findings that said adoption is exempt under CEQA.

**Background**

On November 8, 2016, the Control, Regulate, and Tax Adult Use of Marijuana Act ("AUMA") went before California voters as Proposition 64. Proposition 64 passed and has legalized the nonmedical use of marijuana by persons 21 years of age and older, and the personal cultivation of up to six marijuana plants. Proposition 64 makes it legal for persons 21 years of age or older to: (1) smoke or ingest marijuana or marijuana products; (2) possess, process, transport, purchase, obtain, or give away to persons 21 years of age or older, without compensation, 28.5 grams of marijuana, or 8 grams of concentrated marijuana; and (3) possess, plant, cultivate, harvest, dry or process up to six living marijuana plants for personal use. Proposition 64 requires that marijuana in excess of 28.5 grams that is produced by plants pursuant to the personal cultivation provisions of Proposition 64 be kept in a locked space on the grounds of a private residence that is not visible from a public place.

Although persons 21 years of age or older may use and possess nonmedical marijuana under Proposition 64, their ability to engage in these activities is not unfettered. Proposition 64 prohibits the smoking of marijuana in certain places. Moreover, individuals cannot possess marijuana on school grounds, and daycare centers, or in youth centers while children are

present, or possess an open container of marijuana or marijuana products while driving, operating or riding in any vehicle used for transportation. Proposition 64 further provides that cities may prohibit possession and smoking in buildings owned, leased or occupied by the city, and that employers, including cities, may maintain a drug and alcohol-free work place by prohibiting the use, consumption, possession, transfer, transportation, sale, display or growth of marijuana in the work place.

Prior to the passage of Proposition 64 the City Council proactively adopted three urgency ordinances:

1. Interim ordinance imposing a moratorium on the outdoor cultivation of nonmedical marijuana and make findings that said adoption is exempt under CEQA.
2. Interim ordinance imposing moratorium on the indoor cultivation of nonmedical marijuana, except under certain circumstances, and make findings that the adoption of said ordinance is exempt under CEQA.
3. Interim ordinance regulating the indoor cultivation of medical marijuana and make findings that said adoption is exempt under CEQA.

The City Council adopted these urgency ordinances (Ordinance Nos. 1396, 1397 and 1398 C.S.) as a means of imposing reasonable regulations on indoor non-commercial marijuana cultivation as well as imposing a moratorium on outdoor cultivation, consistent with the current standards applied to outdoor cultivation for medical marijuana. These ordinances imposed a 45-day, temporary moratorium on the outdoor cultivation of nonmedical marijuana and on the indoor cultivation of medical and nonmedical marijuana, except under specified conditions. In the event that the restrictions imposed by these Ordinances are not extended, there is a current and immediate threat to the public health, safety and welfare of substantial numbers of persons cultivating marijuana indoors and outdoors and creating the complaints, safety problems and enforcement problems already experienced in the City of Martinez and elsewhere and exposing citizens to robberies, potential violence, vandalism of property and theft of marijuana plants.

Now that Proposition 64 has passed, it is more likely than not that the number of individuals who desire to and will cultivate marijuana for personal use will be significant. The cultivation of medical marijuana and nonmedical marijuana in other cities has resulted in (a) calls for service to their police departments, including calls for robberies and thefts, and (b) the increase in criminal activity, and it is reasonable to assume that adoption of the Medical Marijuana Regulation and Safety Act (“MMRSA”) coupled with the passage of Proposition 64, without reasonable controls imposed by the City of Martinez, will generate similar, if not greater, numbers of such incidents pertaining to the cultivation of marijuana in the City of Martinez. In fact, the City of Martinez’ Police Department has previously received multiple complaints about “grow” houses operated in City neighborhoods. In another incident, the operations of indoor cultivation of marijuana resulted in a fire. Furthermore, in commercially zoned districts in the City, tenants and landlords in multi-tenant commercial structures have complained about the noxious smell of marijuana being cultivated indoors by other tenants in neighboring rental units – without the permission of the landlord.

The passage of Proposition 64 has created a complex, state-wide licensing system for commercial production, delivery, marketing, testing and selling of nonmedical marijuana that require adequate study and consideration of its impacts. Proposition 64 does not require the issuance of state-wide licenses until January 2018 and at present, the state has not yet developed regulations for medical marijuana businesses and activities.

The City has not insufficient time and resources available to address the numerous issues implicated by these new laws and additional time is needed to study and assess its impacts. The City will take the following steps to evaluate the impacts of Proposition 64:

- Retain specialists who can provide expert advice to the City regarding these issues;
- Consult with reputable representatives of the marijuana industry as to the practical and other aspects of regulating the industry's activities;
- Conduct workshops and engage in other public outreach efforts in order to obtain the opinions and desires of the City's citizens with respect to the inclusion of marijuana businesses and cultivation of marijuana in the City;
- Consult with other, nearby local entities to ascertain whether there are avenues available for a more coordinated approach to the regulation of marijuana businesses, such that the decisions made in one agency do not operate to undermine or adversely affect the actions of another agency; and
- Educate staff, elected officials, and the community about the nature and impacts of marijuana businesses.

In order to achieve the above-stated objectives, it will be necessary to extend the Ordinances to give the City and its staff the necessary time to address these issues as well as develop proposals for the Council to consider for action in the next year. Additional time will also allow us to examine the consequences of the commercial nonmedical industry with those cities that will allow them to operate in their jurisdictions. The steps the City plans to take in addressing the impacts of Proposition 64 include:

- 1) Within the next 60 to 90 days, experts will be retained to discuss:
  - the commercial cultivation, manufacturing, delivery, and sale of nonmedical marijuana as well as medical marijuana
  - regulations on indoor and outdoor cultivation of marijuana
  - commercial aspects of marijuana and regulatory schemes
  - permitting, fees and taxes associated with the commercial marijuana industry
  - public safety aspects of commercial cultivation, manufacturing, and sale of nonmedical marijuana.
- 2) Within the next 90 to 120 days a public workshop/study session will be held to educate the City Council, city staff, and the public on various aspects of commercial nonmedical marijuana.

- 3) Staff will continually monitor any changes with the state regulatory and permitting scheme for updates.

These ordinances will take effect upon adoption and will become effective immediately. The ordinances will be in effect until the date that is ten (10) months and fifteen (15) days following the last day that Ordinance No. 1396 C.S., Ordinance No. 1397 C.S, and Ordinance No. 1398 C.S. are in effect.

**Environmental Issues**

The adoption of these three urgency ordinances is considered exempt under CEQA, because, inter alia, there is no possibility that their adoption may have a significant negative physical impact on the environment.

**Attachments**

- Exhibit A: Urgency Ordinance Prohibiting the Outdoor Cultivation of Nonmedical Marijuana
- Exhibit B: Urgency Ordinance Prohibiting the Indoor Cultivation of Nonmedical Marijuana
- Exhibit C: Urgency Ordinance Prohibiting the Indoor Cultivation of Medical Marijuana
- Exhibit D: Urgency Extension Ten Day Report

**APPROVED BY:**   
Brad Kilger, City Manager

**EXHIBIT A**

**ORDINANCE NO. 1399 C.S.**

**AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE  
CITY OF MARTINEZ EXTENDING ORDINANCE NO. 1396 C.S.,  
A TEMPORARY MORATORIUM  
ON THE OUTDOOR CULTIVATION OF NONMEDICAL MARIJUANA**

**WHEREAS**, in 1996 the voters of California approved Proposition 215, codified as California Health and Safety Code Section 11362.5 and entitled “The Compassionate Use Act of 1996;” and

**WHEREAS**, the intent of Proposition 215 was to enable persons who are in need of medical marijuana for specified medical purposes to obtain medical marijuana, and use it under limited, specified circumstances without fear of criminal prosecution under State law; and

**WHEREAS**, in 2003, the State Legislature enacted SB 420, codified as California Health and Safety Code Section 11362.7 et seq. and entitled the “Medical Marijuana Program Act” (“MMPA”) to clarify the scope of The Compassionate Use Act of 1996 (“CUA”); and

**WHEREAS**, effective January 1, 2016, the Medical Marijuana Regulation and Safety Act (“MMRSA”) became effective under which an extensive state regulatory scheme was established providing for the monitoring, inspecting and licensing of commercial medical marijuana businesses. The MMRSA created a dual-licensing system under which medical marijuana businesses have to obtain both state and local licenses in order to conduct such businesses. However, the MMRSA explicitly acknowledged that cities and counties retain the right to not only regulate such activities, but to ban them entirely. The MMRSA also acknowledged that permissive zoning schemes can implicitly prohibit such activities, including the indoor and outdoor cultivation of medical marijuana when those zoning regulations do not expressly list such activities as permitted or conditionally permitted uses; and

**WHEREAS**, the City of Martinez’ zoning code expressly prohibits the cultivation of medical marijuana “outdoors or within public view,” and does not expressly list the indoor cultivation of medical or nonmedical marijuana as a permitted or conditionally permitted use; and

**WHEREAS**, on November 8, 2016, the voters adopted the Control, Regulate and Tax Adult Use of Marijuana Act (“Proposition 64”). Proposition 64 legalizes the recreational use of marijuana in California for individuals 21 years of age and older and sets up an elaborate regulatory scheme governing the nonmedical marijuana from “seed to sale;” and

**WHEREAS**, Proposition 64 authorizes the personal cultivation of up to six marijuana plants within a private residence or upon the “grounds” of that private residence for nonmedical purposes; and

**WHEREAS**, pursuant to Proposition 64, the City can enact reasonable regulations for the cultivation of nonmedical marijuana that occurs inside a residence or accessory structure, and may completely prohibit outdoor nonmedical marijuana cultivation for personal use until such time as the California Attorney General determines that the nonmedical use of marijuana is lawful in California under federal law, at which time any ban on the outdoor cultivation of nonmedical marijuana would be nullified. The California Attorney General has not made a determination that nonmedical use of marijuana is lawful in California under Federal law; and

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**WHEREAS**, Article XI, Section 7 of the California Constitution provides that a city may make and enforce within its limits all local police, sanitary and other ordinances and regulations not in conflict with general laws; and

**WHEREAS**, given Proposition 64's passage, it is more likely than not that the number of individuals who will desire to and will cultivate nonmedical marijuana for personal use will be significant. It is further more likely than not that substantial numbers of persons interested in cultivating nonmedical marijuana will commence doing so immediately after or soon after Proposition 64 passed, unless and until local regulations and/or prohibitions (on outdoor cultivation) are enacted which control such activities; and

**WHEREAS**, the cultivation of medical and nonmedical marijuana in other cities has resulted in calls for service to their police departments, including calls for robberies and thefts, and the increase in criminal activity, and it is reasonable to assume that adoption of MMRSA coupled with the passage of Proposition 64, without reasonable controls imposed by the City of Martinez, will generate similar, if not greater, numbers of such incidents pertaining to the cultivation of nonmedical marijuana in the City of Martinez. Furthermore, in the City of Martinez, complaints have already been made by citizens complaining of smelling marijuana being cultivated outdoors and in residential neighborhoods; and

**WHEREAS**, in response to the threats the above facts represent to the health, safety and welfare of the citizens of the City, on November 2, 2016, the City Council adopted, as an urgency measure, Ordinance No. 1396 C.S. ("Ordinance 1396") which imposed a 45-day, temporary moratorium on the outdoor cultivation of nonmedical marijuana. In the event that the restrictions imposed by Ordinance 1396, are not extended, there is a current and immediate threat to the public health, safety and welfare of substantial numbers of persons cultivating nonmedical marijuana outdoors and creating the same types of complaints and enforcement problems already experienced in the City of Martinez and exposing citizens to robberies, potential violence, vandalism of property and theft of marijuana plants being openly and visibly grown in the yards and grounds of residential properties throughout the City; and

**WHEREAS**, based upon the experience of the State of Colorado and other states in which nonmedical marijuana has been legalized, it is likely that should Proposition 64 pass it will have significant impacts on law enforcement, the medical resources of the State and the regulatory function of local agencies, including the City of Martinez; and

**WHEREAS**, the short period between Proposition 64's qualification for the November 8, 2016, ballot and the November 8, 2016, election and Proposition 64's creation of a complex, state-wide licensing system for the commercial production, delivery, marketing, testing and selling of nonmedical marijuana have impeded and prevented the City from adequately studying its impacts and the most appropriate manner in which to comprehensively address the issues implicated by the Proposition and its implementation. The City needs time to further study the Proposition and whether and to what extent the City's General Plan, zoning code and other regulations will need to be or should be modified to accommodate and/or address the impacts of Proposition 64 on the City and its citizens. Were the City Council to permit the outdoor cultivation of nonmedical marijuana while it studied the means and methods to address such activities, those persons who were engaged in such outdoor cultivation activities may garner rights to continue such activities as grandfathered uses, unaffected by later-enacted legislation by

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the City Council. Such an outcome presents an immediate and current threat to the ability of the City Council to properly plan and regulate such activities and will undermine the purpose of any such plan and regulation as to those persons who were able to commence the outdoor cultivation of nonmedical marijuana before such plans and/or regulations are put into place; and

**WHEREAS**, in order to determine the most appropriate and publicly beneficial manner in which to address the outdoor cultivation of nonmedical marijuana issues implicated by Proposition 64 and the effect of such outdoor cultivation activities should the City determine to permit such uses within the City's corporate boundaries, and in order to protect residents and businesses from the potential harmful effects of some outdoor nonmedical marijuana cultivators, the City needs time to study whether to permanently permit and regulate or prohibit such uses and, if the Council determines to permit such uses, to examine the regulations relating thereto and to permit the public adequate time to review and comment upon the issue in accordance with state law in tandem with the City's consideration of any such regulations or prohibition; and

**WHEREAS**, it would be destructive of and render ineffective any proposed policies, restrictions, ordinances and regulations if, during the period they are being studied and considered by the City, parties seeking to avoid their operation and effect establish such uses, which said operations and activities will defeat, in whole or in part, the objectives of such policies, restrictions, ordinances and regulations; and

**WHEREAS**, absent the adoption of this interim urgency ordinance and the extension of Ordinance 1386, it is likely that the establishment and operation of outdoor nonmedical marijuana cultivations within the City, without appropriate controls in place to regulate outdoor nonmedical marijuana cultivations and their impacts on the community, will result in harmful effects to the businesses, property owners and residents of the City; and

**WHEREAS**, because of the facts set forth above, there exists a current and immediate threat that persons shall commence outdoor nonmedical cultivation operations, that such poses a current and immediate threat to the health, safety and welfare of the citizens of the City and having such uses commence operations and operate in the City before the City has had an opportunity to consider, study and/or adopt regulations (or prohibitions) governing the said outdoor cultivations will render such regulations ineffective and destroy the purpose of engaging in such an analysis and process in the first place, thus constituting a current and immediate threat to the health, safety and welfare of the citizens of the City; and

**WHEREAS**, Ordinance 1396 shall expire at midnight December 17, 2016, unless extended by subsequent ordinance adopted pursuant to Cal. Gov't Code section 65858; and

**WHEREAS**, on or before December 7, 2016, City staff issued the report described in said section 65858(d) ("Report") specifying the measures taken to alleviate the conditions which led to the adoption of Ordinance 1396. In said Report it is stated that the said conditions giving rise to the necessity of adopting Ordinance 1396 have not been alleviated and that more time is necessary in order to study and address the issues involved in deciding whether to continue prohibiting the outdoor cultivation of medical marijuana or regulate such, and, if so, how to regulate those cultivation activities. Said Report is hereby approved and ratified and its dissemination ratified and authorized; and

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**WHEREAS**, based on the findings set forth above, it is the intent of the City Council to extend Ordinance 1396's moratorium on the outdoor cultivation of nonmedical marijuana throughout the City to a date that is ten (10) months and fifteen (15) days following the last day that Ordinance 1396 is in effect; and

**WHEREAS**, the City Council desires to adopt and extend an interim moratorium on the outdoor cultivation of nonmedical marijuana throughout the City; and

**WHEREAS**, pursuant to Section 15001 of the California Environmental Quality Act (CEQA) Guidelines, this ordinance is exempt from CEQA based on the following findings:

(1) This ordinance is not a project within the meaning of Section 15378 of the State CEQA Guidelines, because it has no potential for resulting in physical change in the environment, directly or ultimately.

(2) This ordinance is categorically exempt from CEQA under Section 15308 of the CEQA Guidelines as a regulatory action taken by the City pursuant to its police power and in accordance with Government Code Section 65858 to assure maintenance and protection of the environment pending the consideration, evaluation and possible adoption of contemplated local legislation, regulation and policies.

(3) This ordinance is not subject to CEQA under the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. For the reasons set forth in subparagraphs (1) and (2), above, and pursuant to CEQA Guidelines Section 15061, it can be seen with certainty that there is no possibility that this ordinance will have a significant effect on the environment:

**NOW THEREFORE**, the City Council of the City of Martinez does ordain as follows:

**SECTION 1. Recitals Made Findings.** The above recitals are hereby declared to be true and correct and represent the findings of the City Council of the City of Martinez, made in the exercise of its independent judgment. Said findings are incorporated by this reference.

### **SECTION 2. Moratorium Imposed.**

#### A. Scope.

In accordance with the authority granted the City of Martinez under Article XI, Section 7 of the California Constitution and California Government Code Section 65858, from and after the effective date of this ordinance, no permit, variance, building permit, approval or any other applicable license or entitlement for use, including, but not limited to any land use entitlement, or the issuance of a business license, shall be approved or issued for the cultivation of nonmedical marijuana outdoors. The cultivation of nonmedical marijuana outdoors is hereby expressly prohibited in all areas and in all zoning districts of the City during the period of time which this ordinance, and any extension thereof, if any, is in effect.

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### B. Definitions.

1. "Fully enclosed and secure structure" means a space within a building that complies with the applicable building code, and has a complete roof enclosure supported by connecting walls extending from the ground to the roof, a foundation, slab or equivalent base to which the floor is secured by bolts or similar attachments, is secure against unauthorized entry, and is accessible only through one or more lockable doors. Walls and roof must be constructed of solid materials that cannot be easily broken through, and must be constructed with non-transparent material. Plastic sheeting, regardless of gauge, or similar products, are not considered solid materials. A fully enclosed and secure structure must be an accessory structure to a private residence located upon the parcel on which that private residence is situated.

2. "Nonmedical marijuana" means marijuana that is intended to be used for nonmedical purposes pursuant to Health and Safety Code section 11362.1 et seq., as those sections may be amended from time to time.

3. "Nonmedical marijuana cultivation" or the "cultivation of nonmedical marijuana" means the planting, growing, harvesting, drying, curing, grading, trimming or processing of marijuana plants or any part thereof pursuant to Health and Safety Code section 11362.1 et seq., as those sections may be amended from time to time.

4. "Marijuana" means all parts of the plant *cannabis sativa* L, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; cannabis; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin.

5. "Outdoors" means any location within the City that is not within a fully enclosed and secure structure or a private residence.

### C. Statutory Findings and Purpose.

This ordinance is declared to be an interim ordinance as defined under California Government Code Section 65858. This ordinance is deemed necessary based on the findings of the City Council of the City of Martinez as set forth in the recitals, incorporated by Section 1 of this ordinance.

### **SECTION 3. Establishment, Maintenance or Operation of Nonmedical Marijuana Cultivation Outdoors Declared Public Nuisance.**

It is unlawful and a public nuisance for any person owning, leasing, occupying, or having possession of any legal parcel or premises within any zoning district in the city to cause or allow such parcel or premises to be used for the outdoor cultivation of nonmedical marijuana. Violations of this ordinance may be enforced by any applicable laws or ordinances, including but not limited to injunctions, or administrative penalties under the Martinez Municipal Code.

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**SECTION 4. Severability.**

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this ordinance are severable. The City Council of the City of Martinez hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

**SECTION 5. Effective Date and Duration.**

This ordinance shall become effective immediately if passed and adopted by at least four-fifths vote of the City Council and shall be in effect until the date that is ten (10) months and fifteen (15) days following the last day that Ordinance No.1396 C.S. is in effect. Ordinance No. 1396 C.S.'s prohibition of uses and other terms and provisions set forth in sections 2 through 3 thereof shall be extended to the date that is ten (10) months and fifteen (15) days following the last day that Ordinance No. 1396 C.S. is in effect.

**SECTION 6. Posting.** The City Clerk shall cause this ordinance to be published and/or posted within fifteen days after its adoption.

APPROVED:

Rob Schroder, Mayor

ATTEST:

Mercy G. Cabral, Deputy City Clerk

\* \* \* \* \*

**I HEREBY CERTIFY** the foregoing ordinance was duly adopted at an Adjourned Regular Meeting of the City Council of the City of Martinez held on the 14<sup>th</sup> day of December 2016, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

RICHARD G. HERNANDEZ, CITY CLERK  
CITY OF MARTINEZ

Approved as to form:

\_\_\_\_\_  
Jeffrey A. Walter, City Attorney

**EXHIBIT B**

**ORDINANCE NO. 1401 C.S.**

**AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE  
CITY OF MARTINEZ EXTENDING ORDINANCE NO. 1397 C.S.,  
A TEMPORARY MORATORIUM  
(EXCEPT UNDER CERTAIN CIRCUMSTANCES) ON THE INDOOR CULTIVATION  
OF NONMEDICAL MARIJUANA**

**WHEREAS**, in 1996 the voters of California approved Proposition 215, codified as California Health and Safety Code Section 11362.5 and entitled “The Compassionate Use Act of 1996;” and

**WHEREAS**, the intent of Proposition 215 was to enable persons who are in need of medical marijuana for specified medical purposes to obtain medical marijuana, and use it under limited, specified circumstances without fear of criminal prosecution under State law; and

**WHEREAS**, in 2003, the State Legislature enacted SB 420, codified as California Health and Safety Code Section 11362.7 et seq. and entitled the “Medical Marijuana Program Act” (“MMPA”) to clarify the scope of The Compassionate Use Act of 1996 (“CUA”); and

**WHEREAS**, effective January 1, 2016, the Medical Marijuana Regulation and Safety Act (“MMRSA”) became effective under which an extensive state regulatory scheme was established providing for the monitoring, inspecting and licensing of commercial medical marijuana businesses. The MMRSA created a dual-licensing system under which medical marijuana businesses have to obtain both state and local licenses in order to conduct such businesses. However, the MMRSA explicitly acknowledged that cities and counties retain the right to not only regulate such activities, but to ban them entirely. The MMRSA also acknowledged that permissive zoning schemes can implicitly prohibit such activities, including the indoor and outdoor cultivation of medical marijuana when those zoning regulations do not expressly list such activities as permitted or conditionally permitted uses; and

**WHEREAS**, the City of Martinez’ zoning code expressly prohibits the cultivation of medical marijuana “outdoors or within public view,” and does not expressly list the indoor cultivation of medical or nonmedical marijuana as a permitted or conditionally permitted use; and

**WHEREAS**, on November 8, 2016, the voters adopted the Control, Regulate and Tax Adult Use of Marijuana Act (“Proposition 64”). Proposition 64 legalizes the recreational use of marijuana in California for individuals 21 years of age and older and sets up an elaborate regulatory scheme governing the nonmedical marijuana from “seed to sale;” and

**WHEREAS**, Proposition 64 authorizes the personal cultivation of up to six marijuana plants within a private residence or upon the “grounds” of that private residence for nonmedical purposes; and

**WHEREAS**, pursuant to Proposition 64, the City can enact reasonable regulations for the cultivation of nonmedical marijuana that occurs inside a residence or accessory structure; and

**WHEREAS**, Article XI, Section 7 of the California Constitution provides that a city may make and enforce within its limits all local police, sanitary and other ordinances and regulations not in conflict with general laws; and

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**WHEREAS**, now that Proposition 64 has passed, it is more likely than not that the number of individuals who will desire to and will cultivate nonmedical marijuana for personal use will be significant. It is further more likely than not that substantial numbers of persons interested in cultivating nonmedical marijuana will commence doing so immediately after or soon after Proposition 64 passes, unless and until local regulations and/or prohibitions (on outdoor cultivation) are enacted which control such activities; and

**WHEREAS**, the cultivation of medical and nonmedical marijuana in other cities has resulted in (a) calls for service to their police departments, including calls for robberies and thefts, and (b) the increase in criminal activity, and it is reasonable to assume that adoption of MMRSA coupled with the passage of Proposition 64, without reasonable controls imposed by the City of Martinez, will generate similar, if not greater, numbers of such incidents pertaining to the indoor cultivation of nonmedical marijuana in the City of Martinez. In fact, the City of Martinez' Police Department has previously received multiple complaints about "grow" houses operated in City neighborhoods. In another incident, the operations of indoor cultivation of marijuana resulted in a fire. Furthermore, in commercially zoned districts in the City, tenants and landlords in multi-tenant commercial structures have complained about the noxious smell of marijuana being cultivated indoors by other tenants in neighboring rental units – without the permission of the landlord; and

**WHEREAS**, in response to the threats the above facts presented to the health, safety and welfare of the citizens of the City, on November 2, 2016, the City Council adopted, as an urgency measure, Ordinance No. 1397 C.S. ("Ordinance 1397") which imposed a 45-day, temporary moratorium on the indoor cultivation of nonmedical marijuana except under specified conditions. In the event that the restrictions imposed by Ordinance 1397, are not extended, there is a current and immediate threat to the public health, safety and welfare of substantial numbers of persons cultivating nonmedical marijuana indoors and creating the complaints, safety problems and enforcement problems already experienced in the City of Martinez and elsewhere and exposing citizens to robberies, potential violence, vandalism of property and theft of marijuana plants; and

**WHEREAS**, based upon the experience of the State of Colorado and other states in which nonmedical marijuana has been legalized, it is likely that Proposition 64's passage will have significant impacts on the City's police department, the medical resources of the State and the regulatory function of local agencies, including the City of Martinez; and

**WHEREAS**, the short period between Proposition 64's qualification for the November 8, 2016, ballot and the November 8, 2016, election and Proposition 64's creation of a complex, state-wide licensing system for the commercial production, delivery, marketing, testing and selling of nonmedical marijuana have impeded and prevented the City from adequately studying its impacts and the most appropriate manner in which to comprehensively address the issues implicated by the Proposition and its implementation. The City needs time to further study the Proposition and whether and to what extent the City's General Plan, zoning code and other regulations will need to be or should be modified to accommodate and/or address the impacts of Proposition 64 on the City and its citizens. Were the City Council to permit the unregulated, indoor cultivation of nonmedical marijuana while it studied the means and methods to address such activities, those persons who were engaged in such indoor cultivation activities may garner rights to continue such activities as grandfathered uses, unaffected by later-enacted legislation by the City Council. Such an outcome presents an immediate and current threat to the ability of the

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City Council to properly plan and regulate such activities and will undermine the purpose of any such plan and regulation as to those persons who were able to commence the indoor cultivation of nonmedical marijuana before such plans and/or regulations are put into place; and

**WHEREAS**, in order to determine the most appropriate and publicly beneficial manner in which to address the indoor cultivation of nonmedical marijuana issues implicated by Proposition 64 and the effect of such indoor cultivation activities should the City determine to regulate such uses within the City's corporate boundaries, and in order to protect residents and businesses from the potential harmful effects of some indoor nonmedical marijuana cultivators, the City needs time to study whether to permanently regulate such uses and, if so, the City needs time to examine the regulations relating thereto and to permit the public adequate time to review and comment upon the issue in accordance with state law in tandem with the City's consideration of any such regulations; and

**WHEREAS**, it would be destructive of and render ineffective any proposed policies, restrictions, ordinances and regulations if, during the period they are being studied and considered by the City, parties seeking to avoid their operation and effect establish such uses, which said operations and activities will defeat, in whole or in part, the objectives of such policies, restrictions, ordinances and regulations; and

**WHEREAS**, absent the adoption of this interim urgency ordinance, it is likely that the establishment and operation of indoor nonmedical marijuana cultivations within the City, without appropriate controls in place to regulate same and their impacts on the community, will result in harmful effects to the businesses, property owners and residents of the City; and

**WHEREAS**, because of the facts set forth above, there exists a current and immediate threat that persons shall commence indoor nonmedical cultivation operations, that such poses a current and immediate threat to the health, safety and welfare of the citizens of the City and having such uses commence operations and operate in the City before the City has had an opportunity to consider, study and/or adopt regulations governing the said indoor cultivations will render such regulations ineffective and destroy the purpose of engaging in such an analysis and process in the first place, thus constituting a current and immediate threat to the health, safety and welfare of the citizens of the City; and

**WHEREAS**, Ordinance 1397 shall expire at midnight December 17, 2016, unless extended by subsequent ordinance adopted pursuant to Cal. Gov't Code section 65858; and

**WHEREAS**, on or before December 7, 2016, City staff issued the report described in said section 65858(d) ("Report") specifying the measures taken to alleviate the conditions which led to the adoption of Ordinance 1397. In said Report it is stated that the said conditions giving rise to the necessity of adopting Ordinance 1397 have not been alleviated and that more time is necessary in order to study and address the issues involved in deciding whether to continue prohibiting the indoor cultivation of medical marijuana or regulate such, and, if so, how to regulate those cultivation activities. Said Report is hereby approved and ratified and its dissemination ratified and authorized; and

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**WHEREAS**, based on the findings set forth above, it is the intent of the City Council to extend Ordinance 1397's moratorium on the indoor cultivation of nonmedical marijuana (except under certain circumstances) throughout the City to a date that is ten (10) months and fifteen (15) days following the last day that Ordinance 1397 is in effect; and

**WHEREAS**, subject to the provisions of this ordinance, the City Council desires to adopt and extend an interim moratorium on the indoor cultivation of nonmedical marijuana throughout the City; and

**WHEREAS**, pursuant to Section 15001 of the California Environmental Quality Act (CEQA) Guidelines, this ordinance is exempt from CEQA based on the following findings:

(1) This ordinance is not a project within the meaning of Section 15378 of the State CEQA Guidelines, because it has no potential for resulting in physical change in the environment, directly or ultimately.

(2) This ordinance is categorically exempt from CEQA under Section 15308 of the CEQA Guidelines as a regulatory action taken by the City pursuant to its police power and in accordance with Government Code Section 65858 to assure maintenance and protection of the environment pending the consideration, evaluation and possible adoption of contemplated local legislation, regulation and policies.

(3) This ordinance is not subject to CEQA under the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. For the reasons set forth in subparagraphs (1) and (2), above, and pursuant to CEQA Guidelines Section 15061, it can be seen with certainty that there is no possibility that this ordinance will have a significant effect on the environment:

**NOW THEREFORE**, the City Council of the City of Martinez does ordain as follows:

**Section 1. Recitals Made Findings.** The above recitals are hereby declared to be true and correct and represent the findings of the City Council of the City of Martinez, made in the exercise of its independent judgment. Said findings are incorporated by this reference.

**Section 2. Urgency Moratorium Imposed.**

A. Cultivation not in compliance with this ordinance. It is declared to be unlawful and a public nuisance for any person owning, leasing, occupying or having charge or possession of any parcel or premises within any zoning district in the city to cultivate nonmedical marijuana except as provided for in this ordinance. No person other than an individual 21 years of age or older may engage in the cultivation of nonmedical marijuana.

B. Indoor cultivation. Indoor cultivation of nonmedical marijuana is prohibited in all zoning districts of the city, except when such cultivation occurs on a parcel with an approved private residence. All indoor cultivation of nonmedical marijuana must be in compliance with this ordinance.

## EXHIBIT B

C. Indoor cultivation in private residence. The indoor cultivation of nonmedical marijuana on a parcel with an approved private residence shall only be conducted within a fully enclosed and secure structure or within a residence. Such cultivation shall be in conformance with the following minimum standards:

1. The primary use of the property shall be for a residence. Nonmedical marijuana cultivation is prohibited as a home occupation.
2. All areas used for cultivation of nonmedical marijuana shall comply with Title 15 (Buildings and Construction) of the Martinez Municipal Code, as well as applicable law.
3. Indoor grow lights shall not exceed 1,000 watts per light, and shall comply with the California Building, Electrical and Fire Codes as adopted by the city.
4. The use of gas products (CO<sub>2</sub>, butane, propane, natural gas, etc.) or generators for cultivation of nonmedical marijuana is prohibited.
5. Any fully enclosed and secure structure or residence used for the cultivation of nonmedical marijuana must have a ventilation and filtration system installed that shall prevent marijuana plant odors from exiting the interior of the structure and that shall comply with Title 15 (Buildings and Construction) of the Martinez Municipal Code.
6. A fully enclosed and secure structure used for the cultivation of nonmedical marijuana shall be located in the rear yard area of the parcel, and must maintain a minimum ten-foot setback from any property line. The yard where the fully enclosed and secure structure is maintained must be enclosed by a solid fence at least six feet in height. This provision shall not apply to cultivation occurring in a garage.
7. Adequate mechanical locking or electronic security systems must be installed as part of the fully enclosed and secure structure or the residence prior to the commencement of cultivation.
8. Nonmedical marijuana cultivation shall be limited to six marijuana plants per private residence, regardless of whether the marijuana is cultivated inside the residence or in a fully enclosed and secure structure. The limit of six plants per private residence shall apply regardless of how many individuals reside at the private residence.
9. The residential structure shall remain at all times a residence, with legal and functioning cooking, sleeping and sanitation facilities with proper ingress and egress. These rooms in which these facilities are located shall not be used for nonmedical marijuana cultivation where such cultivation will prevent their primary use for cooking of meals, sleeping and bathing.
10. Cultivation of nonmedical marijuana shall only take place on impervious surfaces.

## EXHIBIT B

11. From a public right-of-way, there shall be no exterior evidence of nonmedical marijuana cultivation occurring on the parcel.

12. Nonmedical marijuana cultivation area, whether in a fully enclosed and secure structure or inside a residence, shall not be accessible to persons under 21 years of age.

13. Written consent of the property owner to cultivate nonmedical marijuana within the residence or in a fully enclosed and secure structure shall be obtained and shall be kept on the premises, and available for inspection by the chief of police or his/her designee.

14. A portable fire extinguisher, that complies with the regulations and standards adopted by the state fire marshal and applicable law, shall be kept in the fully enclosed and secure structure used for cultivation of nonmedical marijuana. If cultivation occurs in a residence, the portable fire extinguisher shall be kept in the same room as where the cultivation occurs.

### D. Definitions.

1. "Fully enclosed and secure structure" means a space within a building that complies with the applicable building code, and has a complete roof enclosure supported by connecting walls extending from the ground to the roof, a foundation, slab or equivalent base to which the floor is secured by bolts or similar attachments, is secure against unauthorized entry, and is accessible only through one or more lockable doors. Walls and roof must be constructed of solid materials that cannot be easily broken through, and must be constructed with non-transparent material. Plastic sheeting, regardless of gauge, or similar products, are not considered solid materials. A fully enclosed and secure structure must be an accessory structure to a private residence located upon the parcel on which that private residence is situated.

2. "Indoors" means inside a fully enclosed and secure structure or within a private residence.

3. "Nonmedical marijuana" means marijuana that is intended to be used for nonmedical purposes pursuant to Health and Safety Code section 11362.1 et seq., as those sections may be amended from time to time.

4. "Nonmedical marijuana cultivation" or the "cultivation of nonmedical marijuana" means the planting, growing, harvesting, drying, curing, grading, trimming or processing of marijuana plants or any part thereof pursuant to Health and Safety Code section 11362.1 et seq., as those sections may be amended from time to time.

6. "Marijuana" means all parts of the plant *cannabis sativa* L, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; cannabis; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin.

## EXHIBIT B

7. "Outdoors" means any location within the City that is not within a fully enclosed and secure structure or a private residence.

8. "Private residence" or "residence" means a house, an apartment unit, a mobile home or other similar dwelling.

9. "Solid fence" means a fence constructed of substantial material, such as wood or metal, that prevents viewing the contents from one side to the other side of the fence.

### E. Statutory Findings and Purpose.

This ordinance is declared to be an interim ordinance as defined under California Government Code Section 65858. This ordinance is deemed necessary based on the findings of the City Council of the City of Martinez as set forth in the recitals, incorporated by Section 1 of this ordinance.

### **Section 3. Except as Provided in this Ordinance, Establishment, Maintenance or Operation of Nonmedical Marijuana Cultivation Indoors Declared Public Nuisance.**

It is unlawful and a public nuisance for any person owning, leasing, occupying, or having possession of any parcel or premises within any zoning district in the city to cause or allow such parcel or premises to be used for the indoor cultivation of nonmedical marijuana except as provided in this ordinance. Violations of this ordinance may be enforced by any applicable laws or ordinances, including but not limited to injunctions, or administrative penalties under the Martinez Municipal Code.

### **Section 4. Severability.**

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this ordinance are severable. The City Council of the City of Martinez hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

### **Section 5. Effective Date and Duration.**

This ordinance shall become effective immediately if passed and adopted by at least four-fifths vote of the City Council and shall be in effect until the date that is ten (10) months and fifteen (15) days following the last day that Ordinance No.1397 C.S. is in effect. Ordinance No. 1397 C.S.'s prohibition of uses and other terms and provisions set forth in sections 2 through 3 thereof shall be extended to the date that is ten (10) months and fifteen (15) days following the last day that Ordinance No. 1397 C.S. is in effect.

**EXHIBIT B**

**Section 6. Posting.** The City Clerk shall cause this ordinance to be published and/or posted within fifteen days after its adoption.

APPROVED:

Rob Schroder, Mayor

ATTEST:

Mercy G. Cabral, Deputy City Clerk

\* \* \* \* \*

**I HEREBY CERTIFY** the foregoing ordinance was duly adopted at a Regular Meeting of the City Council of the City of Martinez held on the 14<sup>th</sup> day of December 2016, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

RICHARD G. HERNANDEZ, CITY CLERK  
CITY OF MARTINEZ

Approved as to form:

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Jeffrey A. Walter, City Attorney

EXHIBIT C

ORDINANCE 1402 C.S.

**AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MARTINEZ EXTENDING ORDINANCE NO. 1398 C.S., A TEMPORARY MORATORIUM (EXCEPT UNDER SPECIFIED CIRCUMSTANCES) ON THE INDOOR CULTIVATION OF MARIJUANA FOR MEDICAL USE BY A QUALIFIED PATIENT OR CAREGIVER**

**WHEREAS**, in 1996 the voters of California approved Proposition 215, codified as California Health and Safety Code Section 11362.5 and entitled “The Compassionate Use Act of 1996” (“CUA”); and

**WHEREAS**, the intent of Proposition 215 was to enable persons who are in need of medical marijuana for specified medical purposes to obtain medical marijuana, and use it under limited, specified circumstances without fear of criminal prosecution under State law; and

**WHEREAS**, in 2003, the State Legislature enacted SB 420, codified as California Health and Safety Code Section 11362.7 *et seq.* and entitled the “Medical Marijuana Program Act” (“MMPA”) to clarify the scope of The Compassionate Use Act of 1996 and to provide qualifying patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes with a limited defense to certain specified State criminal statutes; and

**WHEREAS**, the Federal Controlled Substances Act (“CSA”) provides that the manufacture, cultivation, distribution and dispensing of marijuana is illegal for any purpose, and further provides for criminal penalties for marijuana use; and

**WHEREAS**, the Medical Marijuana Regulation and Safety Act (hereafter “MMRSA”) became effective on January 1, 2016, which sets up a State dual-licensing scheme for commercial medical cannabis activities while protecting local control by requiring that all such businesses must have a local license or permit to operate in addition to a State license, and allows the City to completely prohibit commercial medical marijuana activities; and

**WHEREAS**, the City Council finds that unregulated, commercial medical marijuana activities, as well as the indoor cultivation for personal medical use as allowed by the CUA and MMPA can adversely affect the health, safety, and well-being of City residents; and

**WHEREAS**, the limited immunity from specified state marijuana laws provided by the CUA and MMPA does not confer a land use right or the right to create or maintain a public nuisance; and

**WHEREAS**, the MMRSA contains language that requires the city to prohibit or regulate medical marijuana cultivation either expressly or otherwise under the principles of permissive zoning, or, under limited circumstances, the State will become the sole licensing authority of such activities; and

**WHEREAS**, the City therefore should adopt an express indoor cultivation ordinance to ensure the State is not the sole regulator of indoor cultivation activities pursuant to the terms of the MMRSA; and

## EXHIBIT C

**WHEREAS**, on November 8, 2016, the voters adopted the Control, Regulate and Tax Adult Use of Marijuana Act (“Proposition 64”). Proposition 64 legalizes the recreational use of marijuana in California for individuals 21 years of age and older and sets up an elaborate regulatory scheme governing the nonmedical marijuana from “seed to sale;” and

**WHEREAS**, Proposition 64 authorizes the personal cultivation of up to six marijuana plants within a private residence or upon the “grounds” of that private residence for personal use for medical and/or nonmedical purposes; and

**WHEREAS**, the City Council prohibited the outdoor cultivation of marijuana for medical use in any zoning district within the City limits through its adoption of Ordinance No. 1380 on May 7, 2014; and

**WHEREAS**, the City Council finds that it has expressly prohibited the outdoor cultivation of marijuana for medical purposes anywhere within the City and at any time, such that since the enactment of Ordinance No. 1380 and continuing through the present date the outdoor cultivation of medical marijuana as that term is defined by Ordinance No. 1380 has been and continues to be strictly prohibited within the City limits; and

**WHEREAS**, the City has a permissive zoning scheme which makes any use of property prohibited except as it is expressly permitted or expressly conditionally permitted within Title 22 (Zoning) of the Martinez Municipal Code; and

**WHEREAS**, the City Council believes that cultivation of medical marijuana is and has been prohibited under the City’s permissive zoning regulations, and it desires to adopt this ordinance to expressly make clear that such use has been prohibited through the date of the adoption of this ordinance; however, on and after the adoption of this ordinance, the indoor cultivation of medical marijuana shall temporarily continue to be prohibited except under certain circumstances and conditions as specified in this ordinance; and

**WHEREAS**, California Government Code Section 65858(a) provides that the City Council may, to protect public safety, health or welfare, adopt as an urgency measure an interim ordinance prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the legislative body is considering or studying or intends to study within a reasonable time; that adoption of such urgency measures requires a four-fifths vote of the legislative body; and that such measures shall be of no effect after 45 days from the date of adoption, but may be extended a maximum of two times and have a maximum total duration of 2 years; and

**WHEREAS**, California Government Code Section 65858, subdivision (c), provides that legislative bodies may not adopt or extend such interim ordinances unless they contain findings that there is a current and immediate threat to the public health, safety, or welfare, and that the approval of additional entitlements to use property in ways identified in the ordinance would result in that threat to the public health, safety or welfare; and

## EXHIBIT C

**WHEREAS**, given the above facts, including the provisions in the MMRSA that would deny the City authority to establish a licensing or permitting scheme that would enable the City to regulate and/or prohibit the indoor cultivation of marijuana for medical purposes if the City does not enact an ordinance regulating or prohibiting such activities before the State adopts regulations and/or begins issuing licenses pertinent to indoor cultivation of medical marijuana; and

**WHEREAS**, the cultivation of medical and nonmedical marijuana in other cities has resulted in (a) calls for service to their police departments, including calls for robberies and thefts, and (b) the increase in criminal activity, and it is reasonable to assume that adoption of MMRSA coupled with the passage of Proposition 64, without reasonable controls imposed by the City of Martinez, will generate similar, if not greater, numbers of such incidents pertaining to the indoor cultivation of marijuana in the City of Martinez. In fact, the City of Martinez' Police Department has already received multiple complaints about "grow" houses operated in City neighborhoods. In another incident, the operations of indoor cultivation of marijuana resulted in a fire. Furthermore, in commercially zoned districts in the City, tenants and landlords in multi-tenant commercial structures have complained about the noxious smell of marijuana being cultivated indoors by other tenants in neighboring rental units – without the permission of the landlord; and

**WHEREAS**, in response to the threats the above facts presented to the health, safety and welfare of the citizens of the City, on November 2, 2016, the City Council adopted, as an urgency measure, Ordinance No. 1398 C.S. ("Ordinance 1398") which imposed a 45-day, temporary moratorium on the indoor cultivation of medical marijuana except under specified conditions. In the event that the restrictions imposed by Ordinance 1398, are not extended, there is a current and immediate threat to the public health, safety and welfare of substantial numbers of persons cultivating medical and nonmedical marijuana indoors and creating the complaints, safety problems and enforcement problems already experienced in the City of Martinez and elsewhere and exposing citizens to robberies, potential violence, vandalism of property and theft of marijuana plants; and

**WHEREAS**, the City Council finds that allowing the use of property within the City for the indoor cultivation of marijuana for medical purposes without the City having any authority to establish conditions, regulations, restrictions, limitations or prohibitions upon such activities presents a current and immediate threat to the public health, safety, or welfare, including but not limited to the harmful effects associated with such activities, such as: the spread of malodorous smells; indoor electrical fire hazards; inadequate ventilation; excessive use of water; health hazards from mold and water damage; criminal activity such as robberies, burglaries, and trespassing, which have been experienced by other communities and/or are significant risks resulting from such activities; and increased nuisance conditions in neighborhoods, among others; and

**WHEREAS**, the City is considering how best to address the issues presented by the indoor cultivation of medical marijuana within the City, including the consideration of a regulatory permit or other process or a prohibition on some or all of such activities, in order to limit the potential impacts of indoor cultivation activities and preserve the public health, safety and welfare of the City and its residents and businesses; and

## EXHIBIT C

**WHEREAS**, in the event that the City does not timely adopt an ordinance regulating or prohibiting indoor cultivation of medical marijuana, the City will largely be deprived of its regulatory authority as to indoor medical marijuana cultivation land uses and the only regulatory, licensing or permitting authority that will exist will belong to the state, thus, potentially wresting away from the City local control over these important and potentially adverse activities; and

**WHEREAS**, it remains unclear how Proposition 64 will affect the MMRSA, the CUA and how the state will regulate medical and nonmedical marijuana activities; and the City needs time to determine how these enactments inter-relate and impact local control over the cultivation of marijuana. There is presently insufficient time for the City and its citizens to fully consider all of the policy, safety and land use issues that are raised when considering whether to, and how to, authorize indoor cultivation of marijuana for medicinal or nonmedical purposes in the City; and

**WHEREAS**, it would be destructive of and, to some degree, render ineffective any proposed policies, restrictions, ordinances and regulations if, during the period they are being studied and considered by the City, parties seeking to avoid their operation and effect establish and operate such uses, which said operations and activities will defeat, in whole or in part, the objectives of such policies, restrictions, ordinances and regulations; and

**WHEREAS**, absent the adoption of this interim urgency ordinance and the extension of Ordinance 1398, it is likely that the establishment and operation of indoor cultivation activities within the City, without appropriate controls in place to regulate these activities and their impacts on the community, will result in harmful effects to the businesses, property owners and residents of the City; and

**WHEREAS**, because of the facts set forth above, there exists a current and immediate threat that additional indoor cultivation activities may be located, or will be sought to be located, within the City. These activities pose a current and immediate threat to the health, safety and welfare of the citizens of the City because having such uses locate, commence operations and operate in the City before the City has had an opportunity to consider, study and/or adopt regulations governing the location and operations of indoor cultivation activities will render such regulations ineffective and destroy the purpose of engaging in such an analysis and process in the first place; and

**WHEREAS**, Ordinance 1398 shall expire at midnight December 17, 2016, unless extended by subsequent ordinance adopted pursuant to Cal. Gov't Code section 65858; and

**WHEREAS**, on or before December 7, 2016, City staff issued the report described in said section 65858(d) ("Report") specifying the measures taken to alleviate the conditions which led to the adoption of Ordinance 1398. In said Report it is stated that the said conditions giving rise to the necessity of adopting Ordinance 1398 have not been alleviated and that more time is necessary in order to study and address the issues involved in deciding whether to continue prohibiting the indoor cultivation of medical marijuana or regulate such, and, if so, how to regulate those cultivation activities. Said Report is hereby approved and ratified and its dissemination ratified and authorized; and

## EXHIBIT C

**WHEREAS**, based on the findings set forth above, it is the intent of the City Council to extend Ordinance 1398's moratorium on the indoor cultivation of medical marijuana (except under certain circumstances) throughout the City to a date that is ten (10) months and fifteen (15) days following the last day that Ordinance 1398 is in effect; and

**WHEREAS**, pursuant to Section 15001 of the California Environmental Quality Act (CEQA) Guidelines, this ordinance is exempt from CEQA based on the following findings:

(1) This ordinance is not a project within the meaning of Section 15378 of the State CEQA Guidelines, because it has no potential for resulting in physical change in the environment, directly or ultimately.

(2) This ordinance is categorically exempt from CEQA under Section 15308 of the CEQA Guidelines as a regulatory action taken by the City pursuant to its police power and in accordance with Government Code Section 65858 to assure maintenance and protection of the environment pending the consideration, evaluation and possible adoption of contemplated local legislation, regulation and policies.

(3) This ordinance is not subject to CEQA under the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. For the reasons set forth in subparagraphs (1) and (2), above, and pursuant to CEQA Guidelines Section 15061, it can be seen with certainty that there is no possibility that this ordinance will have a significant effect on the environment:

**NOW, THEREFORE, the City Council of the City of Martinez does ordain as follows:**

**Section 1. Recitals Made Findings.** The above recitals are hereby declared to be true and correct and represent the findings of the City Council of the City of Martinez, made in the exercise of its independent judgment. Said findings are incorporated by this reference.

**Section 2. Moratorium Imposed.**

A. Cultivation not in compliance with this ordinance. It is declared to be unlawful and a public nuisance for any person owning, leasing, occupying or having charge or possession of any parcel or premises within any zoning district in the city to cultivate medical marijuana except as provided for in this ordinance. No person other than an individual 21 years of age or older may engage in the cultivation of medical marijuana. No person other than a qualified patient, person with an identification card or primary caregiver may engage in the cultivation of medical marijuana, and such cultivation shall only be for the personal, non-commercial use of the qualified patient or person with an identification card. No qualified patient, person with an identification card or primary caregiver may receive remuneration for cultivating medical marijuana.

B. Indoor cultivation. Indoor cultivation of medical marijuana is prohibited in all zoning districts of the city, except when such cultivation occurs on a parcel with an approved private residence. All indoor cultivation of medical marijuana must be in compliance with this ordinance.

## EXHIBIT C

C. Indoor cultivation in private residence. The indoor cultivation of medical marijuana on a parcel with an approved private residence shall only be conducted within a fully enclosed and secure structure or within a residence. Such cultivation shall be in conformance with the following minimum standards:

1. The primary use of the property shall be for a residence. Medical marijuana cultivation is prohibited as a home occupation.

2. All areas used for cultivation of medical marijuana shall comply with Title 15 (Buildings and Construction) of the Martinez Municipal Code, as well as applicable law.

3. Indoor grow lights shall not exceed 1,000 watts per light, and shall comply with the California Building, Electrical and Fire Codes as adopted by the city.

4. The use of gas products (CO<sub>2</sub>, butane, propane, natural gas, etc.) or generators for cultivation of medical marijuana is prohibited.

5. Any fully enclosed and secure structure or residence used for the cultivation of medical marijuana must have a ventilation and filtration system installed that shall prevent marijuana plant odors from exiting the interior of the structure and shall comply with Title 15 (Buildings and Construction) of the Martinez Municipal Code.

6. A fully enclosed and secure structure used for the cultivation of medical marijuana shall be located in the rear yard area of the parcel, and must maintain a minimum ten-foot setback from any property line. The yard where the fully enclosed and secure structure is maintained must be enclosed by a solid fence at least six feet in height. This provision shall not apply to cultivation occurring in a garage.

7. Adequate mechanical locking or electronic security systems must be installed as part of the fully enclosed and secure structure or the residence prior to the commencement of cultivation.

8. Marijuana cultivation shall be limited to six marijuana plants per private residence, regardless of whether the marijuana is cultivated inside the residence or in a fully enclosed and secure structure. The limit of six plants per private residence shall apply (a) regardless of how many individuals reside at the private residence (b) regardless of how many residents are qualified patients, persons with an identification card or primary caregivers; and (c) regardless whether some or all of the marijuana plants are being cultivated for nonmedical purposes.

9. The residential structure shall remain at all times a residence, with legal and functioning cooking, sleeping and sanitation facilities with proper ingress and egress. The rooms in which these facilities are located shall not be used for medical marijuana cultivation where such cultivation will prevent their primary use for cooking of meals, sleeping and bathing.

10. Cultivation of medical marijuana shall only take place on impervious surfaces.

## EXHIBIT C

11. From a public right-of-way, there shall be no exterior evidence of medical marijuana cultivation occurring on the parcel.

12. The medical marijuana cultivation area(s), whether in a fully enclosed and secure structure or inside a residence, shall not be accessible to persons under 21 years of age.

13. Written consent of the property owner to cultivate medical marijuana within the residence or in a fully enclosed and secure structure shall be obtained and shall be kept on the premises, and available for inspection by the chief of police or his/her designee.

14. A portable fire extinguisher, that complies with the regulations and standards adopted by the state fire marshal and applicable law, shall be kept in the fully enclosed and secure structure used for cultivation of medical marijuana. If cultivation occurs in a residence, the portable fire extinguisher shall be kept in the same room as where the cultivation occurs.

15. The qualified patient, person with an identification card or primary caregiver shall reside in the residence on the parcel upon which marijuana is being cultivated and such residence must be the qualified patient's, person with an identification card's or primary caregiver's primary place of residence.

### D. Definitions.

1. "Caregiver" or "primary caregiver" shall have the meaning as set forth in Health & Safety Code Section 11362.7 as the same may be amended from time to time.

2. "Fully enclosed and secure structure" means a space within a building that complies with the applicable building code, and has a complete roof enclosure supported by connecting walls extending from the ground to the roof, a foundation, slab or equivalent base to which the floor is secured by bolts or similar attachments, is secure against unauthorized entry, and is accessible only through one or more lockable doors. Walls and roof must be constructed of solid materials that cannot be easily broken through, and must be constructed with non-transparent material. Plastic sheeting, regardless of gauge, or similar products, are not considered solid materials. A fully enclosed and secure structure must be an accessory structure to a private residence located upon the parcel on which that private residence is situated.

3. "Indoors" means inside a fully enclosed and secure structure or within a private residence.

4. "Medical marijuana" means marijuana that is intended to be used for medical purposes pursuant to Health and Safety Code section 11362.5.

5. "Medical marijuana cultivation" or the "cultivation of medical marijuana" means the planting, growing, harvesting, drying, curing, grading, trimming or processing of marijuana plants or any part thereof for medicinal use pursuant to Health and Safety Code section 11362.5.

## EXHIBIT C

6. "Marijuana" means all parts of the plant cannabis sativa L, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; cannabis; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin.

7. "Private residence" or "residence" means a house, an apartment unit, a mobile home or other similar dwelling.

8. "Qualified patient" and "person with an identification card" shall have the same meaning as set forth in Health & Safety Code Section 11362.7 as the same may be amended from time to time.

9. "Solid fence" means a fence constructed of substantial material, such as wood or metal, that prevents viewing the contents from one side to the other side of the fence.

### E. Statutory Findings and Purpose

This ordinance is declared to be an interim ordinance as defined under California Government Code Section 65858. This ordinance is deemed necessary based on the findings of the City Council of the City of Martinez as set forth in the recitals, incorporated by Section 1 of this Ordinance.

### **Section 3. Violations.**

Any indoor cultivation of marijuana committed, maintained, permitted, or existing in violation of this ordinance is hereby declared a public nuisance and each person or responsible party is subject to abatement proceedings under Chapter 1.13 of the Martinez Municipal Code or as otherwise authorized under state law. The failure to abate a public nuisance committed, maintained, or existing in violation of any of the provisions of this ordinance shall constitute a criminal offense and be punishable in accordance with the penalties prescribed for a misdemeanor under Section 1.12.010 of the Martinez Municipal Code. In addition, any violation of this ordinance shall be subject to the administrative citation proceedings set forth by Chapter 1.15 of the Martinez Municipal Code.

### **Section 4. Severability.**

If any provision of this ordinance or the application hereof to any person or circumstance is held invalid, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this ordinance are severable. The City Council of the City of Martinez hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

**EXHIBIT C**

**Section 5. Effective Date and Duration.**

This ordinance shall become effective immediately if passed and adopted by at least four-fifths vote of the City Council and shall be in effect until the date that is ten (10) months and fifteen (15) days following the last day that Ordinance No. 1398 C.S. is in effect. Ordinance No. 1398 C.S.'s prohibition of uses and other terms and provisions set forth in sections 2 through 3 thereof shall be extended to the date that is ten (10) months and fifteen (15) days following the last day that Ordinance No. 1398 C.S. is in effect.

**Section 6. Posting.** The City Clerk shall cause this ordinance to be published and/or posted within fifteen days after its adoption.

APPROVED:

Rob Schroder, Mayor

ATTEST:

Mercy G. Cabral, Deputy City Clerk

\* \* \* \* \*

**I HEREBY CERTIFY** the foregoing ordinance was duly adopted at a Regular Meeting of the City Council of the City of Martinez held on the 14<sup>th</sup> day of December 2016, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

RICHARD G. HERNANDEZ, CITY CLERK  
CITY OF MARTINEZ

Approved as to form:

\_\_\_\_\_  
Jeffrey A. Walter, City Attorney

EXHIBIT D

**REPORT ON STEPS BEING TAKEN TO ALLEVIATE CONDITIONS WHICH LED TO ADOPTION OF MORATORIA ON CULTIVATION OF MEDICAL AND NONMEDICAL MARIJUANA (PER GOV'T CODE SEC. 65858(d))**

Now that Proposition 64 has passed, it is more likely than not that the number of individuals who will desire to and will cultivate marijuana for personal use will be significant: whether it is used for medicinal or recreational purposes. It is further more likely than not that substantial numbers of persons interested in cultivating marijuana will commence doing so immediately after or soon after Proposition 64 passes, unless and until local regulations and/or prohibitions (on outdoor cultivation) are enacted which control such activities.

The cultivation of medical and nonmedical marijuana in other cities has resulted in (a) calls for service to their police departments, including calls for robberies and thefts, and (b) the increase in criminal activity, and it is reasonable to assume that adoption of the Medical Marijuana Regulation and Safety Act (“MMRSA”) coupled with the passage of Proposition 64, without reasonable controls imposed by the City of Martinez, will generate similar, if not greater, numbers of such incidents pertaining to the cultivation of marijuana in the City of Martinez. In fact, the City of Martinez’ Police Department has previously received multiple complaints about “grow” houses operated in City neighborhoods. In another incident, the operations of indoor cultivation of marijuana resulted in a fire. Furthermore, in commercially zoned districts in the City, tenants and landlords in multi-tenant commercial structures have complained about the noxious smell of marijuana being cultivated indoors by other tenants in neighboring rental units – without the permission of the landlord.

In response to the threats the above facts present to the health, safety and welfare of the citizens of the City, on November 2, 2016, the City Council adopted, as urgency measures, Ordinance Nos. 1396, 1397 and 1398 C.S. which imposed a 45-day, temporary moratorium on the outdoor cultivation of nonmedical marijuana and on the indoor cultivation of medical and nonmedical marijuana, except under specified conditions. In the event that the restrictions imposed by these Ordinances are not extended, there is a current and immediate threat to the public health, safety and welfare of substantial numbers of persons cultivating marijuana indoors and outdoors and creating the complaints, safety problems and enforcement problems already experienced in the City of Martinez and elsewhere and exposing citizens to robberies, potential violence, vandalism of property and theft of marijuana plants.

Based upon the experience of the State of Colorado and other states in which nonmedical marijuana has been legalized, it is likely that Proposition 64’s passage will have significant impacts on the City’s police department, the medical resources of the State and the regulatory function of local agencies, including the City of Martinez.

The short period between Proposition 64’s qualification for the November 8, 2016, ballot and the November 8, 2016, election and Proposition 64’s creation of a complex, state-wide licensing system for the commercial production, delivery, marketing, testing and selling of nonmedical marijuana have impeded and prevented the City from adequately studying its impacts and the most appropriate manner in which to comprehensively address the issues implicated by the Proposition and its implementation. By its own terms, Proposition 64 does not require state-wide regulations and the issuance of such licenses to be adopted or commenced, respectively, until January 2018. Furthermore, the state regulators have not developed regulations governing the issuance of state licenses for medical marijuana businesses and activities.

## EXHIBIT D

In the face of such a vacuum of state guidance, and the uncertainties created by these enactments, the City needs time to further study MMRSA, Proposition 64 and whether and to what extent the City's General Plan, zoning code and other regulations will need to be or should be modified to accommodate and/or address their impacts on the City and its citizens. In order to determine the most appropriate and publicly beneficial manner in which to address the cultivation of marijuana issues implicated by these laws and the effect of such cultivation activities should the City determine to regulate or prohibit (if permitted) such uses within the City's corporate boundaries, and in order to protect residents and businesses from the potential harmful effects of some marijuana cultivators, the City needs time to study whether to permanently regulate or ban (where permitted) such uses and to examine the regulations relating thereto and to permit the public adequate time to review and comment upon the issue in accordance with state law in tandem with the City's consideration of any such regulations.

Some of the issues that will need to be addressed from the perspective of a local agency such as the City are: (a) whether the outdoor cultivation of nonmedical marijuana and the indoor cultivation of medical marijuana should be banned or regulated; (b) whether the indoor cultivation of nonmedical marijuana should be regulated and, if so, how; (c) whether the deliveries of marijuana should be prohibited or regulated, and, if the latter, how; (d) whether commercial cultivation, manufacturing, and sale of nonmedical marijuana and, in some cases, medical marijuana should be allowed and, if so, under what conditions; (e) if the City permits commercial activities pertaining to marijuana, what procedures should be instituted in processing and acting upon applications for City permits to operate commercial marijuana businesses; (f) should there be limits placed on the number and locations of commercial marijuana businesses; and (g) if such businesses are to be allowed, what types of fees and taxes can and should be assessed for allowing such activities.

Although as of the date this Report is prepared, there has been insufficient time and resources available to initiate any significant steps to address these and other myriad issues implicated by these new laws, it is appropriate for the City to take the following steps in doing so:

- 1) Retain specialists who can provide expert advice to the City regarding these issues;
- 2) Consult with reputable representatives of the marijuana industry as to the practical and other aspects of regulating the industry's activities;
- 3) Conduct workshops and engage in other public outreach efforts in order to obtain the opinions and desires of the City's citizens with respect to the inclusion of marijuana businesses and cultivation of marijuana in the City;
- 4) Consult with other, nearby local entities to ascertain whether there are avenues available for a more coordinated approach to the regulation of marijuana businesses, such that the decisions made in one agency do not operate to undermine or adversely affect the actions of another agency; and
- 5) Educate staff, elected officials and the community about the nature and impacts of marijuana businesses.

In order to achieve the above-stated objectives, it will be necessary to extend the Ordinances described above to give the City and its staff the necessary time to address these issues and develop proposals for the Council to consider and take action on next year. The steps the City plans to take in addressing the impacts of Proposition 64 include:

## EXHIBIT D

- 1) Within the next 60 to 90 days, experts will be retained to discuss:
  - the commercial cultivation, manufacturing, delivery, and sale of nonmedical marijuana as well as medical marijuana
  - regulations on indoor and outdoor cultivation of marijuana
  - commercial aspects of marijuana and regulatory schemes
  - permitting, fees and taxes associated with the commercial marijuana industry
  - public safety aspects of commercial cultivation, manufacturing, and sale of nonmedical marijuana.
- 2) Within the next 90 to 120 days a public workshop/study session will be held to educate the City Council, city staff, and the public on various aspects of commercial nonmedical marijuana.
- 3) Staff will continually monitor any changes with the state regulatory and permitting scheme for updates.