



**CITY OF MARTINEZ**

**CITY COUNCIL AGENDA  
May 7, 2008**

**TO:** Mayor and City Council

**FROM:** Commander Gary Peterson

**SUBJECT:** Proposed Amendments to Martinez Municipal Code (MMC)  
Title 9, Chapter 9.52 and Title 1, Chapter 1.12

**DATE:** April 8, 2008

**RECOMMENDATION:**

Introduce an Ordinance amending the Martinez Municipal Code Title 9, Public Peace Morals and Welfare, Chapter 9.52, Drinking Alcoholic Beverages in Public, to include the Consumption and Possession of Alcoholic Beverages in certain public places; and amend Title 1, General Provisions, Chapter 1.12, Violations – Infractions to include the amended provisions of Chapter 9.52.

**BACKGROUND:**

The proposed revision of the ordinance would allow officers to issue citations for possession of an open container of an alcoholic beverage in certain public places. The revised ordinance will support enforcement efforts by authorizing police officers to preemptively deal with individuals before they become so intoxicated they are unable to care for themselves and become subject to arrest.

Currently, the MMC does not address the possession of open containers of alcohol. In order to preserve peace and welfare of the community, staff proposes amending Chapter 9, Section 9.52.010 et seq. and Chapter 1, Section 1.12.030 of the MMC, so as to codify a violation of this section as an infraction. Similar ordinances exist in the City's of Walnut Creek and Concord.

Martinez has visitors from throughout Contra Costa County who come to utilize the marina, or arrive in Martinez via the Amtrak train depot. During the day, the City of Martinez has visitors from all over the county who conduct business at the various county facilities within the city limits. These facilities include Contra Costa County Sheriff's Main Detention Facility (MDF), the Superior Court, Contra Costa Regional Medical Center (CCRMC), Juvenile Hall and several other facilities delivering services to people throughout the county.

In recent times, the Martinez Police Department has partnered with the State of California, Alcohol Beverage Control to enforce alcohol violations and provide education to merchants

with regard to alcohol related laws. This joint effort was made possible by a grant funded by ABC that paid officer overtime during grant-funded operations during fiscal year 2006 (July 2006-June 2007). During the grant period, ABC and the police department enjoyed a cohesive partnership that resulted in a decrease in alcohol related crimes.

Over the past fiscal year, the police department has had a significant reduction in available staff due to injuries and retirements. Because of the personnel shortages, the department was forced to temporarily vacate several special assignment positions to fill patrol vacancies (Community Resource Officer, Traffic Motor Division, and Narcotics Task Force Detective). These vacancies, coupled with the lack of dedicated personnel to educate the public, and proactively combat liquor law violations, are likely the cause of an increase in alcohol related crimes this past year.

Under California Penal Code 647 (f) – Disorderly Conduct/Public Intoxication, a person violates the statute if they become so intoxicated they are unable to care for themselves. Some judges and juries in this county have interpreted the statute narrowly and will not sustain a conviction unless the individual is passed out and blocking public access to the sidewalk.

During the grant year (FY 06), Martinez police officers made 216 arrests for public intoxication. A significant number of these arrests were in the downtown area.

To date, in FY 08, 223 arrests have made for public intoxication. The department is averaging 28 public intoxication arrests per month. At the current rate of arrest, 335 people will be arrested for public intoxication by the end of the fiscal year, which would be a 55% increase.

Many of these arrests were made in response to a citizen or business owner alerting police that a person was in public who was so intoxicated they were unable to care for themselves. Other arrests resulted from verbal conflicts or physical altercations where the arrestee was intoxicated. A fair number of these arrestees were repeat offenders.

The department has applied for another ABC grant for fiscal year 2008 to renew our education efforts for the local merchants and strengthen enforcement efforts of existing liquor laws. We believe this renewed effort and the amended ordinance will ultimately reduce the number of arrests made for public intoxication.

**FISCAL IMPACT:**

There is no fiscal impact to the City of Martinez.

**ACTION:**

Motion to introduce an ordinance amending Title 9 and Title 1 of the MMC.

**APPROVED BY:**   
City Manager

**APPROVED BY:**   
Chief of Police

ORDINANCE NO. C.S.

AMENDING THE MARTINEZ MUNICIPAL CODE TITLE 9, PUBLIC PEACE, MORALS AND WELFARE, CHAPTER 9.52, DRINKING IN PUBLIC, TO PHOHBIT THE POSSESSION OF ALCOHLIC BEVERAGES IN CERTAIN PLACES; AND AMENDING TITLE 1, GENERAL PROVISIONS, CHAPTER 1.12, ENFORCEMENT, TO INCLUDE SECTION 9.52.010

WHEREAS, there has been a significant increase in the number of arrests for public intoxication over the past year; and

WHEREAS, the City of Martinez endeavors to provide a safe environment for residents and visitors; and

WHEREAS, it is the goal of the City of Martinez and the Police Department to deter criminal behavior associated with public intoxication; and

WHEREAS, police officers will be able to issue citations to individuals in possession of an open container of an alcoholic beverage.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Martinez does ordain as follows:

SECTION 1. Section 9.52.010 A and B are amended and Sections C, D, E and F are added to the Martinez Municipal Code.

CHAPTER 9.52

DRINKING ALCOHOLIC BEVERAGES IN PUBLIC

9.52.010 Prohibitions Designated.

9.52.010 A - ~~Drinking in Public.~~ **Consumption and Possession of Alcoholic Beverages.**

A. ~~No person shall drink any liquid substance that contains more than one half of one percent of alcohol, by volume, in or upon any street, highway, sidewalk, way, parkway or alley.~~ **Except as provided by Section 9.52.020, it shall be unlawful for any person to consume, drink or imbibe any alcoholic beverage in any quantity in any of the following places:**

1. On any property that is owned by the City and open to public use, including but not limited to, any public park, parking lot or area designated for recreational use of the public, or on any public street, sidewalk, way or alley; or
2. On the posted premises of, including the posted parking lot immediately adjacent to, any retail package off-sale alcoholic beverage licensee; or
3. On other private property open to the public, including but not limited to, parking lots and shopping centers where the sale of alcoholic beverages has not been licensed; or
4. On private property open to public view without the express permission of the owner, his agent, or the person in lawful possession thereof.

9.52.010 B - Drinking in a Public Park or Recreation Area.

~~B. No person shall drink or possess any liquid substance that contains more than one half of one percent of alcohol, by volume in any public park or its parking lot, or recreation area within the City, whether such person(s) is or is not in or upon any automobile, bus, inter urban car, vehicle, or conveyance. (Ord. 1109 C.S. § I, 1988: Prior Code § 3507.)~~

**Except as provided by Section 9.52.020, it shall be unlawful for any person to possess, handle, display, or exhibit any can, bottle or other receptacle containing any alcoholic beverage in any quantity that has been opened or the seal broken or the contents of which have been partially removed, in any of the following places:**

1. On any property that is owned by the City or open to public use, including but not limited to, any public park, parking lot, or area designated for recreational use of the public, or any public street, sidewalk, way, or alley; or
2. On the posted premises of, including the posted parking lot immediately adjacent to, any retail package off-sale alcoholic beverage licensee.

C. The provisions in subsection B above are enacted pursuant to the Business and Professions Code Section 25620 and Penal Code Section 647e and do not make unlawful any act that is expressly made inapplicable under either of these sections.

- D. *Nothing in this section shall make unlawful any act which may be not regulated by a general law city under state law.*
- E. *Any violation of this section shall constitute an infraction and shall be punishable as provided by Section 1.12.030 of this Code.*
- F. *For the purposes of this section, "alcoholic beverage" shall refer to any liquid substance that is intended for consumption and contains more than one-half of one percent of alcohol by volume.*

**Section 2.** Title 1, Chapter 1.12 amended to include Title 9, Section 9.52.010 on the list of infractions codified in the Martinez Municipal Code.

## CHAPTER 1.12

### ENFORCEMENT

#### 1.12.030 Violations - Infractions.

- A. Violation of the following provisions of the Municipal Code and any terms or conditions imposed by the City on a permit or approval issued under the below-specified provisions of the Municipal Code are declared to be public offenses and infractions enforced and punishable in the manner prescribed by the Penal Code and the Government Code of the State of California:
  - 1. Title 5. Business Taxes and Regulations
  - 2. Title 8. Health and Safety
    - Chapter 8.08 - Trees and Shrubs-Planting and Maintenance
    - Chapter 8.16 - Garbage Disposal
    - Chapter 8.20 - Junked or Abandoned Vehicles
    - Chapter 8.24 - Park and Recreation Area Regulations
  - 3. **Title 9. Public Peace, Morals and Welfare**
    - Chapter 9.52.010 - Consumption and Possession of Alcoholic Beverages**

4. Title 12. Public Rights-of-Way  
Chapter 12.28 - Obstruction of Sidewalks  
Chapter 12.36 - Marina Regulations
5. Title 13. Utilities  
Chapter 13.04.040 - Unauthorized Use of Water
6. Title 16. Sign Code
7. Title 17. Swimming Pool Code
8. Title 21. Subdivision
9. Title 22. Zoning Code

- B. Any offense which would otherwise be an infraction is a misdemeanor if a defendant has been convicted of three or more violations of this Municipal Code within the 12 month period immediately preceding the commission of the offense and such prior convictions are admitted by the defendant or alleged in the accusatory pleading. For this purpose, a bail forfeiture shall be deemed to be a conviction of the offense charged.
- C. In addition and supplementary to the provisions of the Penal Code relating to public offenses and the authority of peace officers, the City Council designates the City Engineer, the City Manager and/or their designated representatives as the enforcement authority for the public offenses referenced in Section A of this chapter. Said public officers or employees may issue a citation and notice to appear in the manner prescribed by Chapter 5C of Title 3, Part 2 of the Penal Code (or as the same may hereafter be amended). It is the intent of the City Council that the immunities prescribed in Section 836.5 of the Penal Code be applicable to the public office or employees acting in the course and scope of employment pursuant to this chapter. (Ord. 1186 C.S. § II, 1992; Ord. 1074 C.S. § 2, 1986; Ord. 1069 C.S. § 1, 1986; Ord. 1039 C.S. § 2, 1982.)

**SECTION 3. 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 4. Effective date.** This ordinance shall become effective 30 days after the date of adoption.

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

Within 15 days after adoption the City Clerk shall publish a summary of this ordinance with the names of those City Council members voting for and against the ordinance in a newspaper of general circulation published and circulated in the City of Martinez.

The City Clerk shall post in the office of the City Clerk a certified copy of the full text of the adopted ordinance.

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 \_\_\_\_\_ day of \_\_\_\_\_, 2008, and duly passed and adopted at a Regular Meeting of said City Council held on the \_\_\_\_\_ day of \_\_\_\_\_, 2008, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

RICHARD G. HERNANDEZ  
CITY CLERK, CITY OF MARTINEZ

