



STAFF REPORT

TO: PLANNING COMMISSION

MEETING DATE: January 11, 2011

PREPARED BY: Dina Tasini, Contract Planner

RE: Public Hearing on (1) Repealing Chapter 22.41 (Medical Marijuana Dispensaries) of the Municipal Code; and Repealing Section 22.16.080(N) (Conditional Uses) of the Municipal Code in its entirety; and amending Section 22.16.030 (Permitted Uses-Generally) and Section 22.18.010 (General Provisions and Exceptions) to allow Medical Cannabis Dispensaries upon obtaining a license pursuant Chapter 8.41 (draft ordinance (Exhibit A), and (2) Adding Chapter 8.41 to the Municipal Code permitting the establishment of Medical Cannabis Dispensaries by license (draft ordinance (Exhibit B)).

GENERAL INFORMATION:

Applicant: City of Martinez

Location: Citywide and in Commercial and Light Industrial Districts

ACTIONS FOR CONSIDERATION:

Recommend to the City Council as follows:

- a) Repeal Chapter 22.41 (Medical Marijuana Dispensaries); and
- b) Repeal Section 22.16.080(N) in its entirety; and
- c) Amend Sections 22.16.030 and 22.18.010 to allow Medical Cannabis Dispensaries to establish and operate in certain commercial and light industrial districts upon obtaining a license pursuant to Chapter 8.41 (draft ordinance (Exhibit A)); and
- d) Add Chapter 8.41 to the Martinez Municipal Code creating a licensing scheme for the regulation of Medical Cannabis Dispensaries (Exhibit B).

BACKGROUND:

Proposition 215 was passed by California voters in November 1996. This proposition

created a limited exception from criminal liability for seriously ill persons who are in need of medical marijuana for specified medical purposes and who obtain and use medical marijuana under limited, specified circumstances. SB 420, known as the “Medical Marijuana Program Act,” was subsequently enacted by the State legislature and went into effect on January 1, 2004. The intent of SB 420 was to clarify the scope of Proposition 215, promote uniform application of the law among counties and to enhance the access of patients and caregivers to medical marijuana through “collective, cooperative cultivation projects.” The City Council adopted an interim moratorium ordinance on May 7, 1997, which temporarily prohibited medical marijuana dispensaries. The moratorium was extended on June 18, 1997, and again on April 15, 1998. Only two extensions of the moratorium are permitted and, due to the continued uncertainties surrounding the legislation regarding the distribution of medical marijuana, the City adopted an urgency ordinance on April 7, 1999. The urgency ordinance was an interim measure to adopt regulations and standards for the establishment of medical marijuana dispensaries until such time as the current ordinance was to be adopted. The current ordinance No. 1277 C.S. which authorizes the issuance of use permits to qualified medical marijuana dispensaries was introduced on June 21, 2000 and adopted on July 2, 2000. Until late 2010, no medical marijuana dispensaries have applied for a use permit under the current ordinance, which has been in place for a decade.

The City Council requested that staff review the current ordinance and hold public meetings to discuss its continued viability and efficacy. Proposals were made to change the structure of the regulatory process from use permit to license.

The Public Safety Committee of the City Council held a number of lengthy public meetings to discuss the existing ordinance and directed staff to draft an ordinance that included a licensing procedure. The draft ordinance was completed and posted on the City website for 30 days and public comment was received via online questionnaire monitored by staff. The comments were compiled and the Public Safety Committee met a number of times to discuss comments and hear public testimony on the draft from April 2010 through January 2011. A draft ordinance has now been prepared and is scheduled for a first reading before the City Council on February 2, 2011. Adoption of the ordinance requires several Municipal Code text amendments and action by the Planning Commission.

DISCUSSION:

For consideration by the Planning Commission is a proposal to amend the Municipal Code to permit the establishment and operation of medical cannabis dispensaries (sometimes referred to as “MMD’s”) through obtaining a license from the City.

The establishment of this new license process requires changing two distinct portions of the municipal code:

- a) Amending the Municipal Code’s Zoning Title 22, by repealing Chapter 22.41 (Medical Marijuana Dispensaries) and removing Medical Marijuana Dispensaries

from the list of conditionally permitted uses in Commercial Districts and adding Medical Cannabis Dispensaries (MCD's) as a permitted use in Commercial and Industrial Districts, subject to the newly proposed licensing procedure; and

- b) Amending the Municipal Code's Health & Safety Title 8, by adding the new licensing procedure, Chapter 8.41; Medical Cannabis Dispensaries.

1. Proposed Zoning Code Changes

The proposed zoning code amendment has, as one of its purposes, the deletion of Section 22.16.080 (N) that permits the establishment of a medical marijuana dispensary with the benefit of a conditional use permit in the NC, CC, SC and TC Districts. Since the proposed MCD licensing ordinance pertaining to medical cannabis dispensaries requires a license, not a use permit, this section is no longer germane. The proposed zoning code ordinance includes additional proposed text amendments to add language to Sections 22.16.030 and 22.18.010 allowing the establishment of medical cannabis dispensaries, if an applicant is granted a license, within the C-General Commercial, NC- Neighborhood Commercial District, CC-Central Commercial District, TC-Thoroughfare Commercial District, SC-Service Commercial District and LI-Light Industrial District. Finally, the proposed zoning code ordinance repeals chapter 22.41 of the zoning code. Chapter 22.41 sets forth the use permit process and criteria that allow dispensaries to be established in designated zoning districts, provided a use permit is first applied for by the proposed operator and granted by the City. By repealing chapter 22.41, use permits can no longer be processed or issued to permit the establishment and operation of dispensaries.

2. Adoption of Medical Cannabis Dispensary licensing procedure

Conditional uses are specific uses, appropriate to a particular zoning district, which due to their characteristics, require special consideration to minimize their effect on surrounding properties, and the Planning Commission/City Council are empowered to grant and deny applications for use permits and to impose reasonable conditions on their approval. Once a Use Permit is granted its approval generally runs with the land, and the rights granted to one owner can be transferred without the benefit of any additional public review. Furthermore, the revocation of a use permit can be lengthy, costly and detrimental to the community.

Therefore, the licensing procedures that are memorialized in the proposed medical cannabis dispensary (MCD) ordinance require yearly review, do not permit transfer of a dispensary license to another party and provide oversight and access to the dispensary operations by City staff and the Police Department. Additionally, the MCD licensing ordinance requires that MCD's must be located a prescribed minimum distance from certain land uses (such as schools, parks and residences). Furthermore, the proposed MCD licensing ordinance would establish limitations with respect to the hours of operation, terms of the license including renewal, limitation on the number of dispensaries, age of employees, size of dispensary, method of operation and security

(includes security employees and plans), noise, odors, numbers of customers, employees and employee age, site management this includes cleanliness of the site as well as what types of activities can take place at the site (yoga, massage, sale of food and drink) and ongoing compliance issues.

Staff is recommending that the Planning Commission review and discuss this Ordinance and provide its recommendations to the City Council. The recommendations of the Planning Commission may include revisions, modifications and or wholesale removal of sections, recommendation to not repeal the current ordinance or acceptance of the ordinance as proposed. All of the recommendations will be brought forward to the City Council for its consideration.

CONCLUSIONS:

Staff, the Public Safety Committee and the public have met for the past fifteen months to discuss and formulate a review process for medical cannabis dispensaries. The elimination of a use permit process for approval of medical cannabis dispensaries and initiating a licensing process is appropriate since it provides the City with more oversight and control of the location, number and the method of operation of medical cannabis dispensaries within the community.

ATTACHMENTS:

- A: Planning Commission Resolution PC 11-01, containing Draft Ordinance (Exhibit A)
- B: Licensing Ordinance for Medical Cannabis Dispensaries (Exhibit B)
- C: Copy of Section 22.41 of the Martinez Municipal Code