



CITY OF MARTINEZ

**CITY COUNCIL AGENDA
February 16, 2011**

TO: Mayor and City Council
FROM: Michael Chandler, Senior Management Analyst
SUBJECT: Amend User Fee Schedule
DATE: February 10, 2011

RECOMMENDATION:

Conduct a public hearing to consider changes to the City’s Schedule of Fees for City Services, contingent upon adoption of an Ordinance permitting the establishment of Medical Cannabis Dispensaries by License, to establish an initial Application Fee and an Application Renewal Fee, each to be applied against a chargeable deposit; a one-time flat Selection Fee intended to recover the City’s costs associated with establishing and implementing the new ordinance; and an ongoing flat Operations Fee intended to recover the City’s annual costs of monitoring, reviewing, and enforcing the Ordinance.

BACKGROUND:

For the past 15 months, City staff and contract personnel (including the City Attorney) have been involved in a detailed review of existing Ordinance No. 1277 C.S. regarding the operation of medical marijuana dispensaries in Martinez through a Conditional Use Permit process of the City’s Zoning Code, and possibilities for repealing and replacing the Ordinance with a licensing model. A fee structure for Conditional Use Permits exists in the City’s Fee Schedule. If the new licensing Ordinance is adopted, however, no fee mechanism is presently in place to:

- charge Medical Cannabis Dispensary (MCD) applicants for processing their applications and applications for renewal;
- recover City costs incurred to date for establishing and implementing the new Ordinance;
- recover prospective City costs for the ongoing monitoring, reviewing, and enforcing of the Ordinance for applicants granted a MCD license; and
- recover City costs processing an applicant’s appeal of a rejected application for license.

State law authorizes a public agency to charge up to the full cost of providing a service for most user fees. Section 8.41.070 of the draft MCD Licensing Ordinance, “Imposition of Fees,” allows that, “Every application for a license or renewal of a license shall be accompanied by a fee, as established by resolution of the city council from time to time. This application or renewal fee shall be in addition to any other business license fee or permit fee imposed by this code or other governmental agencies. Said resolution may impose those fees necessary to fully reimburse the City the costs it has incurred and will incur in connection with the establishment, implementation, administration and enforcement of this chapter.” It is the City’s intent to establish fees for MCD licensees that afford the City as much cost recovery as is permissible under both State law and the new Ordinance.

The City recommends establishing four (4) separate fees for MCD licensees: an Application Fee, an Application Renewal Fee; a Selection Fee, and an ongoing Operations Fee. The initial Application Fee is intended to account for the processing, review, and evaluation costs associated with each application, including the costs for appeals of rejected applications. The Application Fee would apply the recently enacted Administrative Review Fee which was established for administrative review of licenses, leases and permits, among other similar requests. By applying the Administrative Review Fee, the Application Fee uses the same hourly rate that is applicable to other review processes already established by the City and maintains consistency with any modifications in the hourly rates applicable to the same or similar personnel providing services under the Administrative Review Fee.

The Application Fee would be a chargeable deposit of \$6,000, subject to replenishment if exhausted or refund if unused, against which the charge of \$130/hour (through application of the Administrative Review Fee hourly rate) for staff time expended in the review of the application would be applied. The Application Fee hourly rate is based on a blend of the productive hourly rates of three positions: City Manager, Assistant City Manager, and Senior Management Analyst. City Planner review would be charged at the established rate of \$130/hour, and for ease of administration, any Chief of Police or Police Department review of the applications would also be charged at the same rate of \$130/hour. Any City Attorney or contract planner fees and costs incurred by the City for administrative review of the application would be included in the Application Fee and charged against the deposit at actual cost.

The Application Renewal Fee would be relevant only to existing dispensary licensees, and established as a chargeable deposit fee of \$2,500, applied in the same manner as for the Application Fee, for the purposes of reviewing the record of the licensee and information provided to the City pursuant to Section 8.41.120 (i) of the new Ordinance to determine if the renewal of the license is merited. Any City costs for processing of appeals of rejected renewal applications would be charged against this deposit.

Applicants selected for an MCD license upon granting of an initial license would be subject to a flat Selection Fee, based upon the City's cumulative costs establishing and implementing the new Ordinance. The costs as of February 10, 2011, were calculated to be \$74,132, which consists of \$55,934 in staff time at each position's productive hourly rate; \$4,100 in contract planner time; and \$14,098 in City Attorney time.

Staff hours are comprised of 102 hours for the City Manager; 100 hours for the current and former Chief of Police combined; 119 hours for the Senior Management Analyst; 20 hours for the Assistant City Manager; 15 hours for the Planning Manager; and 30 hours for the Associate Planner. Additional contract City Attorney time not yet billed to the City will put the figure over \$75,000 and for ease of administration, the City recommends establishing \$75,000 as the baseline for the Selection Fee.

The number of applicants authorized under the new Ordinance for an MCD license will determine the amount of the Selection Fee, as all will equally share in the recovery of these costs. For example, if the Ordinance authorizes no more than three (3) dispensaries, the Selection Fee will be \$25,000 per licensee. If the Ordinance authorizes no more than two (2) dispensaries, the fee will be \$37,500 per licensee, and so on. As a point of reference, at least one other city (the City of Napa) is currently working on a fee resolution which will require any

selected dispensaries to share in the costs already incurred to establish and implement their Ordinance. This fee will be paid by the selected licensee on a schedule as determined by the City Manager.

Also recommended for adoption is an ongoing flat Operations Fee intended to recover the City's annual costs monitoring, reviewing, and enforcing the Ordinance. This fee is recommended to start at \$9,100 as an estimate of the various administrative, police, and planning staff oversight required over the course of a year. The basis for the \$9,100 estimate is as follows: Staff review (all departments) of 70 hours per year at \$130/hour = \$9,100. The Operations Fee is to be revisited periodically after sufficient data is compiled to establish the City's actual ongoing costs.

None of the proposed fees are development fees and as such, the fees in question will go into effect upon the effective date of the new Medical Cannabis Dispensary Licensing Ordinance, if adopted.

FISCAL IMPACT:

Revenue generated from implementation of the Medical Cannabis Dispensary fees is dependent upon the number and scope of applications in a given fiscal year, as well as the number of applicants selected for an MCD license.

ACTION:

Motion adopting a resolution contingent upon adoption of an Ordinance permitting the establishment of Medical Cannabis Dispensaries by License, to establish an initial Application Fee and an Application Renewal Fee, each to be applied against a chargeable deposit; a one-time flat Selection Fee intended to recover the City's costs associated with establishing and implementing the new Ordinance; and an ongoing flat Operations Fee intended to recover the City's annual costs of monitoring, reviewing, and enforcing the Ordinance.

Attachments:

Resolution

Exhibit A (Medical Cannabis Dispensary Licensing Fees)



APPROVED BY: City Manager

RESOLUTION NO. -11

AMENDING THE SCHEDULE OF FEES FOR CITY SERVICES, CONTINGENT UPON ADOPTION OF AN ORDINANCE PERMITTING THE ESTABLISHMENT OF MEDICAL CANNABIS DISPENSARIES BY LICENSE, TO INCLUDE VARIOUS FEES TO RECOVER CITY COSTS ASSOCIATED WITH THE ESTABLISHMENT, IMPLEMENTATION, ADMINISTRATION, AND ENFORCEMENT OF THE LICENSING ORDINANCE

WHEREAS, it is the policy of the City Council of the City of Martinez to establish fees in regard to governmental services specifically authorized by statute or ordinance as well as certain services and functions performed by the City in a proprietary capacity; and

WHEREAS, it has been the policy of the City Council of the City of Martinez to review and adjust the fees periodically to ensure they are equitable and justifiable; and

WHEREAS, the City Council is presently considering adopting an Ordinance to permit the establishment of Medical Cannabis Dispensaries by license; and

WHEREAS, the Ordinance allows for the recovery of the City's costs it has incurred and will incur in connection with the establishment, implementation, administration, and enforcement of the Ordinance; and

WHEREAS, as a result, the City wishes to adopt various fees associated with the Ordinance; and

WHEREAS, the City wishes to adopt an Application Fee and Application Renewal Fee, to be established as chargeable deposits of \$6,000 and \$2,500, respectively, subject to replenishment if exhausted or refund if unused; and

WHEREAS, staff time will be charged against the Application Fee and Application Renewal Fee at the Administrative Review Fee rate as set forth in the City's Fee Schedule, and any City Attorney or contract planner fees and costs incurred by the City for administrative review of the application or renewal application shall be charged at actual cost; and

WHEREAS, the City wishes to adopt a Selection Fee intended to recover the City's estimated costs of \$75,000 associated with establishing and implementing the new Ordinance, to be shared equally among the number of authorized licensees permitted by the new Ordinance and paid on a schedule as determined by the City Manager; and

WHEREAS, the City wishes to adopt an ongoing Operations Fee intended to recover the City's annual costs monitoring, reviewing, and enforcing the Ordinance, to be initially set at \$9,100 per year as a reasonable estimation of 70 hours per year of staff time charged at the Administrative Review Fee rate; and

WHEREAS, the Operations Fee is to be revisited periodically after sufficient data is compiled to establish the City's actual ongoing costs per year relevant to the licensee; and

WHEREAS, notice was published as required by Government Code sections 66018(a) and 6062(a); and

WHEREAS, on February 16, 2011, the City Council held a public hearing in compliance with Government Code Section 66018 where all oral and written presentations were heard.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Martinez adopts the proposed fees as stated in the attached staff report and listed in the attached Exhibit A: Medical Cannabis Dispensary Licensing Fees, to recover City costs associated with establishment, implementation, administration, and enforcement of the licensing process, contingent upon adoption of an Ordinance permitting the establishment of medical cannabis dispensaries by license.

BE IT FURTHER RESOLVED, that this Resolution shall become effective upon the effective date of the Ordinance permitting the establishment of Medical Cannabis Dispensaries by license.

* * * * *

I HEREBY CERTIFY that the foregoing is a true and correct copy of a resolution duly adopted by the City Council of the City of Martinez at a Regular Meeting of said Council held on the 16th day of February, 2011, by the following vote:

AYES:

NOES:

ABSENT:

RICHARD G. HERNANDEZ, CITY CLERK
CITY OF MARTINEZ

Exhibit A

**CITY OF MARTINEZ
MEDICAL CANNABIS DISPENSARY LICENSING FEES**

*Fees effective xxxx, 2011
Resolution No. xxx-11*

SERVICE	FEE
Application Fee Deposit (replenish/refund as needed)	\$6,000 chargeable deposit, against which Administrative Review Fee* is to be applied for staff time, and actual costs to be applied for contract City Attorney or planner time. If appeal is filed, the costs of the appeal will be charged against the deposit on the same basis as the Administrative Review Fee and actual costs to be applied for contract City Attorney or planner time.
Application Renewal Fee Deposit (replenish/refund as needed)	\$2,500 chargeable deposit, applied as above.
Selection Fee	\$75,000, divided by number of licenses authorized by Ordinance, and paid on schedule as determined by City Manager.
Operations Fee	\$9,100

Notes:

1. Application Fee Deposit shall apply to applicants without valid licenses in effect on the date the application is received by the City
2. Application Renewal Fee Deposit shall apply to applicants for renewal of a valid license in effect on the date the application is received by the City
3. Selection Fee shall apply to first-time licensees
4. Operations Fee shall apply to licensees upon issuance of a first-time license or renewal license

**Please see the General Administrative Services section of the City's Fee Schedule for information on the Administrative Review Fee*