



CITY OF MARTINEZ

**CITY COUNCIL AGENDA
March 2, 2011**

TO: Mayor and City Council

FROM: Dina Tasini, Contract Planner
Michael Chandler, Senior Management Analyst

SUBJECT: Medical Cannabis Dispensary Licensing Ordinance- Continued public hearing (public testimony closed) to consider Medical Cannabis Dispensaries, and A) Introduce an ordinance repealing Chapter 22.41 (Medical Marijuana Dispensaries) of the Municipal Code; and Repealing Section 22.16.080(N) (C-Commercial Districts, Conditional Uses) of the Municipal Code in its entirety; and amending Section 22.16.030 (C-Commercial Districts, Permitted Uses-Generally) and Section 22.18.010 (I-Industrial Districts, General Provisions and Exceptions) to allow Medical Cannabis Dispensaries as a Permitted Use, subject to the standards and requirements for obtaining a license pursuant Chapter 8.41, now being proposed; **AND** introduce an ordinance adding Chapter 8.41 to the Municipal Code permitting the establishment of Medical Cannabis Dispensaries by license.

DATE: February 27, 2011

RECOMMENDATION:

Conduct further Council discussions concerning the licensing ordinance, review additional maps depicting an alternative measuring scheme and text amendments to the draft Ordinance as proposed by the Planning Commission and City Council. After discussion the Council may decide to make changes to the Draft Ordinance and introduce the Ordinance.

BACKGROUND:

On February 16, 2011, the City Council held a public hearing. Staff presented an overview of the draft Ordinance, citywide maps showing permitted zoning and associated constraints using the proposed measuring method of property line to property line as well as proposed recommendations of the Planning Commission from their public hearing on January 11, 2011. After lengthy public discussion, the City Council brought the item back for discussion and directed staff to return with a number of changes to the draft Ordinance, and to prepare maps showing a new measuring method that relies on a direct vehicular and or pedestrian travel using a 300 foot distance between a dispensary and a residential property.

DISCUSSION:

Staff has reviewed the current Draft Ordinance. Staff has crafted revisions to various provisions of the Draft Ordinance consistent with comments made by some Councilmembers. Staff has crafted revisions to various provisions of the Draft Ordinance to reflect changes and alternative

approaches recommended by the Planning Commission. Those revisions are attached as Attachment A. In general, the City Council recommended inclusion in the indemnification provisions of language regarding suspension and or revocation (Attachment A.1). The Planning Commission provided recommendations to the City Council which were included as part of the staff report and presentation at the public hearing held on February 16, 2011. The recommendations included the inclusion of public noticing during the application process and upon a selection; stringent background investigation requirements; limits on the number of dispensaries; limits on the location of dispensaries; operating requirements and the composition of the appellate body (Attachment A.2). The City Council discussed these recommendations at the February 16, 2011 Public Hearing and a majority of the Council agreed with the Planning Commission recommendations, with the exception of the measurement standards and number of dispensaries, which remain topics for discussion.

In response to the lengthy discussion both at the Planning Commission and City Council regarding measurement standards and the difference in opinion with respect to whether or not dispensaries should be permitted staff was instructed to prepare additional maps and make changes to the proposed Draft Ordinance as requested. Staff has provided additional information and new measurement standards to assist the Council in reviewing the issue. In light of the geographic layout of Martinez whereby the majority of commercial parcels abut residentially zoned parcels staff found that using the property line to property line measurement to separate dispensaries at least 300' from residential properties, the areas available would be primarily centered in the Downtown Core and Sunrise Drive.

The mayor requested that maps be developed to show the areas in the City available for dispensaries were the existing measuring standard in the current Medical Marijuana Dispensary Ordinance be applied to this 300' separation standard. The current Medical Marijuana Dispensary Ordinance uses a measurement standard where the measurement is taken from the dispensary building to the enumerated use using the most direct vehicular or pedestrian route whichever is shorter. Staff suggests that if the Council were to incorporate such a measurement in the proposed licensing ordinance, it be clarified by including verbiage such that the pedestrian and or vehicular routes used as measurements be those that constitute improved public right of ways. In addition, it is recommended by staff that language regarding placement of physical barriers along the perimeter of any proposed dispensary location be required to deter access through any residential property onto the proposed dispensary site. Furthermore, the ordinance could be revised to require that the design of said fence shall be approved by the Planning Manager or his/her designee. Staff has prepared a number of maps showing how the new measurement (that is: these maps only reflect the "300' from residential properties measurement", utilizing the most direct vehicular/pedestrian route on public rights of way) will be applied (Attachments B-D). The sites were picked at random and are not meant to reflect staff's opinion as to their feasibility or propriety for use as a dispensary. They were selected simply to provide examples to explain how the measurement described above is applied. Based on these maps the Council can have a more informed discussion regarding the number of dispensaries permitted within the City.

FISCAL IMPACT:

The fee structure will include the following five (5) components:

- 1) a chargeable deposit for each new application of \$6,000;
- 2) a chargeable deposit for renewal applications of \$2,500;

- 3) a one-time “selection fee” charged to each applicant granted a license of between \$25,000 and \$37,500 (depending upon number of total licenses allowed by the Ordinance, if more than one is authorized) to recover City costs of approximately \$75,000 associated with establishing and implementing the new Ordinance;
- 4) a chargeable deposit “operations fee” for annual monitoring, review, and enforcement costs, to be initially established as \$9,100, but to be revisited periodically after sufficient data is compiled to establish the City’s true costs;
- 5) recovery of costs for all other tasks or services the City may need performed in connection with the implementation, enforcement, and administration of the Ordinance, such as conducting periodic financial audits on a Licensee.

Additional revenue would be generated by Sales Tax and Business License Tax on the operation. Limited data on the approximate gross sales of individual dispensary operations in other jurisdictions for 2009 include \$1.3M in Santa Rosa; \$4M in Sebastopol; \$15M in Berkeley; and \$40M for a large dispensary in Oakland. For point of reference, sales of \$15 million per year in Martinez would equate to Sales Tax back to the City of \$150,000, and a Business License Tax of approximately \$2,500.

ACTION:

Conduct further Council discussions concerning the licensing ordinance, review additional maps depicting an alternative measuring scheme and text amendments to the draft Ordinance as proposed by the Planning Commission and City Council. After discussion the Council may decide to make changes to the Draft Ordinance and introduce the Ordinance.

Attachments:

- A. Draft Medical Cannabis Dispensary Repealing Chapter 22.41
 - A.1 Draft Medical Cannabis Dispensary Licensing Ordinance
 - A.2 Summary of Specific Changes Recommended by Council Members
 - A.3 Summary of Planning Commission Recommendations
- B. Location Map Sites 1-4
 - B.1 3440 Pacheco Blvd
 - B.2 825 Howe Rd
 - B.3 no address- has some storage on it
 - B.4 950 Howe Rd
- C. Location Map Site 5
 - C.1 1124 Arnold Drive
- D. Location Map Sites 7-9
 - D.1 4808 Sunrise Drive
 - D.2 4841 Sunrise Drive
 - D.3 empty field adjacent to Assessors office - 2530 Arnold
- E. City Council Staff Report dated February 16, 2011
- F. Planning Commission staff report, January 11, 2011
- G. Planning Commission minutes January 11, 2011
- H. Draft Selection Criteria
- I. Comparative Chart



APPROVED BY: City Manager

ORDINANCE NO. C.S.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MARTINEZ REPEALING CHAPTER 22.41 OF THE MUNICIPAL CODE AND AMENDING CHAPTER 21.16 COMMERCIAL DISTRICTS PERTAINING TO PERMITTED USES AND 22.18 INDUSTRIAL USES OF THE MUNICIPAL CODE PERTAINING TO PERMITTED USES RELATED TO THE LICENSURE OF MEDICAL CANNABIS DISPENSARIES

WHEREAS, the Planning Commission of the City of Martinez, after a duly notice public hearing on January 11, 2011, recommended to the City Council an amendment to Chapters 22.16, Commercial Zoning Districts and 22.18, Industrial Districts to permit an applicant to operate a medical cannabis dispensary if a license to operate said facility has been obtained pursuant to Chapter 8.41 of the Martinez Municipal Code; and

WHEREAS, the proposed amendment is categorically exempt from CEQA under Section 153061(b)(3) in that the council finds and determines that there is nothing in this ordinance or its implementation that could foreseeably have any significant effect on the environment; and

WHEREAS, the City Council held a duly noticed public hearing on February 2, 2011 to consider the introduction of this ordinance:

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MARTINEZ DOES ORDAIN AS FOLLOWS:

SECTION 1:

Section 22.16.030 of the Martinez Municipal Code is hereby amended to read as follows:

The uses set out in Sections 22.16.040 through 22.16.070 shall be permitted in the commercial districts. Medical Cannabis Dispensaries are allowed in the C- General Commercial, NC- Neighborhood Commercial, CC-Central Commercial, SC- Service Commercial and TC- Thoroughfare Commercial Districts only if the applicant obtains a license pursuant to Martinez Municipal Code Chapter 8.41 (Medical Cannabis Dispensaries).

SECTION 2:

Section 22.18.010 of the Martinez Municipal Code is hereby amended to read as follows:

All uses shall be subject to the general provisions and exceptions prescribed in Chapter 22.34 of the Title. Medical Cannabis Dispensaries are allowed in the LI-Light Industrial District only if the applicant obtains a license pursuant to Martinez Municipal Code Chapter 8.41 (Medical Cannabis Dispensaries).

SECTION 3:

Section 22.16.080 (N) of the Martinez Municipal Code is repealed in its entirety.

SECTION 4:

Chapter 22.41 of the Martinez Municipal Code is repealed.

SECTION 5:

The recitals set forth above are true and correct and constitute the findings of the City Council made in support of the adoption of this Ordinance.

SECTION 6. 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 7. Effective date. This ordinance shall become effective 30 days after the date of adoption.

SECTION 8. Posting. The City Clerk shall cause this ordinance to be posted and/or published containing 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 , 2011, and duly passed and adopted at a Regular Meeting of said City Council held on the day of , 2011, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

RICHARD G. HERNANDEZ
CITY CLERK, CITY OF MARTINEZ

ORDINANCE NO. C.S.

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MARTINEZ
ADOPTING CHAPTER 8.41 OF THE MARTINEZ MUNICIPAL CODE PERMITTING
THE ESTABLISHMENT OF MEDICAL CANNABIS DISPENSARIES BY LICENSE**

SECTION 1:

Chapter 8.41 is added to Title 8 of the Martinez Municipal Code to read as follows:

Chapter 8.41 MEDICAL CANNABIS DISPENSARIES

8.41.010 Findings.

The city council adopts the ordinance codified in this chapter based upon the following findings:

(a) The voters of the State of California approved Proposition 215 (codified as Health and Safety Code Section 11362.5 et seq.) entitled “The Compassionate Use Act of 1996” (Act).

(b) The intent of Proposition 215 was to enable persons residing in the City of Martinez who are in need of cannabis for medical purposes to be able to obtain and use it without fear of criminal prosecution under limited, specified circumstances.

(c) The State enacted SB 420 in 2004, being Sections 11362.7 et seq., of the Health and Safety Code, and called the Medical Marijuana Program Act (MMPA), to clarify the scope of the Compassionate Use Act of 1996 and to allow cities and other governing bodies to adopt and enforce rules and regulations consistent with the MMPA.

(d) To protect the public health, safety, and welfare, it is the desire of the city council to modify the city code consistent with the MMPA, regarding the location and operation of medical cannabis dispensaries.

(e) It is the city council’s intention that nothing in this chapter shall be construed to (1) allow persons to engage in conduct that endangers others or causes a public nuisance; (2) allow the use of cannabis for non-medical purposes; or (3) allow any activity relating to the cultivation, distribution, or consumption of cannabis that is otherwise illegal.

(f) Pursuant to California Health and Safety Code Section 11362.71 et seq., the State Department of Health, through the State’s counties, is responsible for establishing and maintaining a voluntary medical cannabis identification card program for qualified patients and primary caregivers.

(g) California Health and Safety Code Section 11362.71(b) requires every county health department, or its designee, to implement a procedure to accept and process applications from those seeking to join the identification program in the matters set forth in Section 11362.71 et seq.

(h) This chapter is found to be categorically exempt from environmental review pursuant to CEQA Guidelines Section 15061(b) (3) in that the council finds and determines that there is nothing in this chapter or its implementation that could foreseeably have any significant effect on the environment.

8.41.020 Purpose and intent.

It is the purpose and intent of this chapter to regulate medical cannabis dispensaries in order to promote the health, safety, morals, and general welfare of the citizenry and businesses in the community.

8.41.030 Definitions.

For the purpose of this chapter, the following words and phrases shall mean:

(a) “Applicant” means a person who is required to file an application for a license under this chapter, including an individual owner, managing partner, officer of a corporation, or any other operator, manager, employee, or agent of a dispensary.

(b) “Approval authority” shall mean the City manager and/or the Licensing Appeals Board, as the case may be.

(c) “City” means the City of Martinez.

(d) “City Manager” means the city manager of the City of Martinez or the authorized representative thereof.

(e) “Dispensary” shall mean any incorporated or unincorporated cooperative, collective, operator, provider or establishment (collectively sometimes referred to as “cooperative” or “collective”) organized to provide education, referral, or network services, and facilitation or assistance in the lawful possession, cultivation and/or retail distribution of medical cannabis only to members of the cooperative or collective. “Dispensary” also means any facility or location where the primary purpose is to dispense to members of the cooperative or collective medical cannabis (i.e., marijuana) as a medication that has been recommended by a physician and where medical cannabis is made available to and/or distributed by or to two or more of the following: a primary caregiver and/or a qualified patient, in strict accordance with California Health and Safety Code Section 11362.5 et seq. Members of a dispensary may only be qualified patients and/or primary caregivers. A dispensary shall not include dispensing by primary care givers to qualified patients in the following locations and uses, as long as the location of such uses are otherwise regulated by this code or applicable law: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code, a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code, a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code, residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code, a residential hospice, or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code, as long as any such use complies strictly with applicable law including, but not limited to, Health and Safety Code Section 11362.5 et seq., or a qualified patient’s or caregiver’s place of residence.

(f) “Drug paraphernalia” shall have the same definition as California Health and Safety Code Section 11362.5, and as may be amended.

(g) “Identification card” (or “MMIC”) shall have the same definition as California Health and Safety Code Section 11362.5 et seq., and as may be amended.

(h) “Licensee” means the person (1) to whom a dispensary license is issued and (2) who is identified in California Health and Safety Code Section 11362.7, subdivision (c), (d), (e) or (f).

(i) “Person” means any individual, partnership, co-partnership, firm, association, joint stock company, corporation, limited liability company or combination of the above in whatever form or character.

(j) “Person with an identification card” shall have the same definition as set forth in California Health and Safety Code Section 11362.5 et seq., and as they may be amended from time to time.

(k) “Primary caregiver” (“caregiver”) shall have the same definition as set forth in California Health and Safety Code Section 11362.5 et seq., and as may be amended.

(l) “Qualified patient” or “patient” shall have the same definition as set forth California Health and Safety Code Section 11362.5 et seq., and as they may be amended from time to time.

(m) “School” means an institution of learning for minors, whether public or private, offering a regular course of instruction required by the California Education Code. This definition includes an elementary school, middle or junior high school, senior high school, or any special institution of education, whether private or public, but it does not include a vocational or professional institution of higher education, including a community college, any other college or university, and any private school in which education is primarily conducted in private homes.

(n) “Youth-oriented facility” means any school and any establishment that advertises or holds itself out in a manner that identifies the establishment as catering to or providing or an establishment that does, in fact, cater to or provide services primarily intended for minors.

8.41.040 Dispensary license required to operate.

It is unlawful for any person to engage in, conduct or carry on, or to permit to be engaged in, conducted or carried on, in or upon any premises in the city the operation of a dispensary unless the person first obtains and continues to maintain in full force and effect a dispensary license from the city as required in this chapter. Only the licensee(s) identified in the license shall be permitted to operate the dispensary for which the license has been issued, and the dispensary identified in the license shall be permitted to operate only at the location identified in the license.

8.41.050 Annual term of licenses and renewals required.

(a) Licenses issued under this chapter shall expire one year following the date of their issuance.

(b) Licenses may be renewed by the approval authority for additional one-year periods upon application by the licensee, unless before the renewal period begins the license is suspended or revoked in accordance with the provisions of this chapter.

(c) Applications for renewal shall be made at least 45 days before the annual expiration date of the license and shall be accompanied by the application fees referenced herein. Applications for renewal shall be acted on as provided herein for action upon applications for licenses.

(d) Applications for renewal made less than 45 days before the annual expiration date shall not stay the annual expiration date of the license.

(e) Licenses may be revoked or suspended by the approval authority at any time, as provided in section 8.41.170.

8.41.060 General tax liability.

An operator of a dispensary shall also be required to apply for, obtain and maintain during the life of the license a City Business License and a California Seller's Permit as required by the State Board of Equalization.

8.41.070 Imposition of fees.

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.

8.41.090 Limitations on number of dispensaries.

(a) After the city manager sends the notice described in section 8.41.120(a) for the first time and has completed the investigations, background checks and determinations required under sections 8.41.120 through 8.41.140 with respect to all of the completed applications submitted to the City in response to said section 8.41.120(a) notice, the city manager shall determine which three applicants are the most qualified and most fully comply with each and every applicable requirement specified herein. And of those three applicants, the city manager shall determine the one that demonstrates qualities, experience and/or other characteristics superior to the other two applicants. If the city manager is not able to identify such a superior applicant, then of the three, highest ranked applicants, the city manager shall select one by lot. The one so selected shall be issued a license pursuant to this chapter. The other two applicants shall not then be issued a license but may later be issued licenses in accordance with the procedures set forth in the next subsection.

(b) During the six month period immediately following the effective date of the approval authority's granting of the first license issued under subsection (a) above, no additional licenses to operate a dispensary in the city may be issued by the approval authority. No later than thirty (30) days before said six month period ends, the city manager shall prepare and submit to the city council a written report (a) detailing the experience the city has had with the one licensee, if any, issued a dispensary license pursuant to this chapter and (b) making recommendations as to whether or not additional licenses should be issued to one or both of the other applicants (the "Two Applicants") who were ranked among the three described in subsection (a) above. Said report shall be agendaized for consideration by the city council at a public meeting at which time the council shall determine whether, when and under what circumstances, if any, licenses to one or both of the Two Applicants should be issued.

(c) Under no circumstances shall the total number of licenses, in effect and issued under this chapter, exceed three (3).

8.41.100 Limitation on location of dispensary.

(a) A dispensary may only be located within the Neighborhood Commercial (NC) District, Central Commercial (CC) District, Service Commercial (SC) District, Thoroughfare Commercial (TC) District, General Commercial (C) and the Light Industrial (LI) District (as so defined, designated and located in the city's zoning code).

(b) A dispensary shall be in a visible location that provides good views of the dispensary entrance, windows and premises from the public street and/or parking lot nearest to the dispensary.

(c) A dispensary shall not be allowed in the following areas at the time of its permitted establishment:

- (1) Within 600 feet of a youth-oriented facility, a school, a church that regularly provides classes to minors or contains a child daycare center, or another dispensary; or
- (2) Within any residential zoned parcel, or any property with an underlying residential or mobile homes general plan land use designation; or
- (3) Within 300 feet of a church that does not regularly provide classes to minors and does not contain a child daycare center, any residential zoned parcel, or any property with an underlying residential or mobile homes general plan land use designation.

(d) The distance specified in this section shall be the horizontal distance measured in a straight line from the property line of the above listed uses to the closest property line of the lot on which the dispensary is to be located without regard to intervening structures.

(e) A waiver or modification of the requirements in subsection 8.41.100(c)(3) may be granted if the applicant demonstrates on plans and materials presented in the applicant's application that a physical barrier or similar condition exists which achieves the same purpose and intent as the distance requirements set forth in subsection 8.41.100(c)(3).

8.41.110 Operating requirements.

Dispensary operations shall be established and managed only in compliance with the following standards:

(a) Criminal History. (i) Any applicant, his, her or its officers and directors, and any person exercising managerial authority of a dispensary on behalf of the applicant shall submit to a comprehensive background investigation by the city and shall be disqualified from obtaining or maintaining a license hereunder or from being affiliated in any way with a dispensary should they have been or be convicted of a felony, or any property crime, or of a misdemeanor involving moral turpitude, or engaged in misconduct related to the qualifications, functions or duties of a licensee. Without limiting the generality of the foregoing, said persons shall be disqualified from obtaining or maintaining a license hereunder or from being affiliated in any way with a dispensary should they have been or be convicted of any crime specified in California Penal Code sections 654-678 and/or participation with any group that advocates violence against individuals because of their race, religion, orientation, political affiliation, ethnic origin, nationality, sexual preference or disability. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere.

(ii) Any employee or agent of an applicant not described in section 8.41.110(a)(i), above, shall submit to a comprehensive background investigation by the city and if said employee or agent have been convicted of a felony, or any property crime, or of a misdemeanor involving moral turpitude, or engaged in misconduct related to the qualifications, functions or duties of a licensee, then, it shall be left to the sound discretion of the approval authority as to whether s/he should be permitted to be employed by or act in behalf of the dispensary. Without limiting the generality of the foregoing, said persons shall be disqualified from being employed by or act in behalf of a licensee or from being affiliated in any way with a dispensary licensed hereunder should they have been or be convicted of any crime specified in California Penal Code sections 654-678 and/or participation with any group that advocates violence against individuals because of their race, religion, orientation, political affiliation, ethnic origin, nationality, sexual preference or disability. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere.

(b) Minors.

(1) It is unlawful for any licensee, operator, or other person in charge of any dispensary (who must be at least 21 years of age) to employ any person who is not at least 21 years of age.

(2) Persons under the age of 18 [21] shall not be allowed on the premises of a dispensary unless they are a qualified patient or a primary caregiver and they are in the presence of their parent or guardian.

(3) The entrance to a dispensary shall be clearly and legibly posted with a notice indicating that persons under the age of 18 [21] are precluded from entering the premises unless they are a qualified patient or a primary caregiver and they are in the presence of their parent or guardian.

(c) Operating Hours. A dispensary shall only be operated during the following days and hours:

(1) Monday through Sunday: 9:00 [8:00] a.m. to 8:00 [9:00] p.m.

(d) Dispensary Size and Access.

(1) Dispensary size (namely, its square footage) shall be limited, as deemed appropriate and necessary by the approval authority, to best serve patient needs within the intent of this chapter, assure safety to the dispensary members and the community at large, and reduce potential adverse impacts (to levels of insignificance as determined by the approval authority) that might otherwise occur on surrounding neighborhoods, businesses and demands on city services.

(2) A dispensary shall not be increased in size (i.e., floor area) without a prior approval amending the existing dispensary license.

(3) The entrance into the dispensary building shall be guarded from outside by security personnel who review all patients' identification before allowing entry. The exterior entrance to the dispensary shall at all times be strictly controlled; e.g., a buzz-in electronic/mechanical entry system is highly encouraged. A video camera shall be installed that allows maximum angle of view of the exterior entrance.

(4) Security personnel shall be employed to monitor site activity, control loitering and site access. Said personnel must be licensed and bonded and must be on site during business hours sufficient for the safety of the dispensary's employees and clientele. Some or all of these requirements in this subsection (4) may be waived if the approval authority finds that other on-site surveillance and other methods are adequate to provide the requisite level of safety.

(5) Only dispensary staff, primary caregivers, qualified patients and persons with bona fide purposes for visiting the site shall be permitted into a dispensary.

(6) Potential patients or caregivers shall not gain admittance to a dispensary without first having obtained a valid written cannabis recommendation from the patients' physician recommending use of medical cannabis. Said recommendation must take the form of an original, signed and embossed letter or card recommending the use of medical cannabis that includes a copy of a valid California photo identification. In addition, a patient or caregiver must carry photo identification or driver's license. As pertains the caregiver, s/he must meet one of the criteria specified in Health & Safety Code §11362.7(d) and possesses a written authorization signed by the caregiver's patient attesting to the fact that the caregiver has consistently assumed responsibility for the housing, health or safety of the patient, and said authorization is embossed or imprinted on a copy of the

caregiver's driver's license (or other well-recognized form of photo identification). If a caregiver wishes to pick up medical cannabis for the person for whom s/he is caring, that caregiver must first physically appear at the dispensary with his/her patient and they both must present the written recommendation and authorization in the form(s) described above.

(7) Only members of the dispensary shall be permitted in the designated dispensing area with dispensary personnel. All other authorized visitors shall remain in the designated waiting area in the front entrance/lobby.

(8) [A dispensary shall be the sole occupant of the building in which it is located or operating.][In determining whether or not to issue a license hereunder and in ranking the applications for licenses hereunder, the approval authority shall give preference to those proposed dispensaries that shall be the sole occupant of the building in which they intend to be located and to operate.]

(e) Dispensing Operations.

(1) A dispensary shall dispense medical cannabis to meet monthly medication needs of qualified patients, similar to typical pharmacy operations. The dispensary shall strongly discourage and avoid daily purchases by or distributions to patients or their caregivers as a routine practice.

(2) A dispensary shall only dispense to qualified patients or caregivers who are members of the dispensary's cooperative or collective with a currently valid written physicians' approval or recommendation in compliance with the criteria in California Health and Safety Code Section 11362.5 et seq. and section 8.41.110(d)(6) above.

(3) A dispensary shall not distribute more than the following quantities of cannabis per patient or per caregiver per visit:

- (i) two ounces of dried marijuana;
- (ii) baked or cooked goods or any other product containing more than two ounces of dried cannabis or its equivalent; or
- (iii) 30 capsules or tablets each containing no more than 500 mg's of cannabis.

(4) Prior to dispensing medical cannabis, the dispensary shall obtain verbal and signed verification from the recommending physician (meeting the requirements of section 8.41.110 (d)(6)) that the individual requesting medical cannabis is a qualified patient or qualified caregiver.

(5) A dispensary shall not have a physician on-site to evaluate patients and provide a recommendation for medical cannabis.

(6) Patient records shall be maintained on- or off-site, at the discretion of the licensee. In addition to the licensee's obligations specified in section (e)(4) above, the licensee shall verify the accuracy and completeness of the information

provided in said records with the qualifying patient's or caregiver's patient's physician or doctor of osteopathy at least every six months.

(7) Information on prior year's operations shall be provided to the city annually, as required in this chapter and the license. The operator shall adjust the operations as necessary to address issues.

(8) All patients and caregivers must register with the dispensary and the dispensary must at all times keep and maintain a record of each patient and caregiver to whom the dispensary has dispensed cannabis. Registered patients and caregivers must pick up the medical cannabis in person at the dispensary.

(9) All patients and caregivers must, as a condition to be dispensed medical cannabis, execute a written agreement provided by the dispensary that states:

(i) the patient and/or caregiver shall not use the cannabis for other than medical purposes;

(ii) the patient and/or caregiver shall not distribute the cannabis to persons other than the patient identified on the doctor's recommendation;

(iii) patients may not consume cannabis on-site nor in any public place; and

(iv) the patient and/or caregiver shall be barred from purchasing cannabis from the dispensary if it is determined that that s/he breached the agreement, the rules and/or policies of the dispensary or any applicable law.

(10) A record must be maintained of all distribution transactions and contain the following information: quantity of cannabis dispensed; type and source of medical cannabis dispensed; the recommending physician's name, address, phone number and business name; the patient's name; the patient's MMIC number or the patient's verifying identification type and number assigned to the patient by the dispensary; the name of the caregiver; and the date and time dispensed. In those situations where a person serves as a primary caregiver to more than one patient, the record must also contain the name of each patient and the addresses of the caregiver and each patient. The record shall be readily available for inspection by the city, with only the patients' names, the patients' MMIC numbers (if any) and the caregivers' names redacted.

(11) All dried medical cannabis dispensed at or by the dispensary shall be dispensed in appropriate medical containers with appropriate warnings. Medical cannabis in edible or other forms not suitable for packing in medical bottles or other containers (e.g., brownies, bars, cakes, tinctures, creams) shall be packaged appropriately and labeled with appropriate warnings. Each bottle or other package labeling shall contain an invoice number that can be linked to the member to which it is given. If any bottle or alternatively packaged medical cannabis product obtained from the licensee is found to be in possession of a

person who is not a member of the licensee, the licensee shall terminate the membership of the member to whom it was dispensed, consistent with the law.

(12) The operator must ensure that all medical cannabis and medical cannabis products provided to members be tested for safety (including mold, pesticides and other contaminants), and that strength and dosage be properly labeled. Packaging must be tamper resistant and labeling must comply with Cal. Health & Safety Code sections 110340, 109875 and 108675.

(f) Consumption Restrictions.

(1) Cannabis shall not be consumed on the premises of the dispensary. The term “premises” includes the actual building, vehicles, as well as any accessory structures, parking areas, or other surroundings located within 200 feet of the dispensary’s entrance.

(2) Dispensary operations shall not result in illegal redistribution of medical cannabis obtained from the dispensary, or use in any manner that violates local, state or city codes.

(3) Patients shall not consume cannabis acquired from the dispensary in public places.

(4) There shall not be any on-site consumption of alcohol or tobacco.

(g) Retail Sales Other than to Member Patients and Caregivers Prohibited.

(1) Dispensaries must either be cooperatives, with articles of incorporation filed with the Secretary of State, or collectives. Dispensaries shall comply with all of the recommendations or requirements specified by the State Attorney General in his Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, dated August 2008 (and as it may be modified from time to time). Without limiting the generality of the foregoing, dispensaries may not purchase or acquire cannabis from, or sell or distribute it to, non-members; instead, they may only provide a means for facilitating or coordinating transactions between their members.

(2) A dispensary shall document each member’s contribution of labor, resources, or money to the enterprise. A dispensary shall track and record the source of the dispensary’s cannabis.

(3) No cannabis shall be cultivated on the premises of the dispensary other than immature clones, for cultivation to maturity by patients elsewhere.

(4) No dispensary shall conduct or engage in the commercial sale of any product, good or service, including but not limited to food. Notwithstanding the foregoing to the contrary, the term “commercial sale” does not include (i) the provision of medical cannabis on terms and conditions consistent with this chapter and

applicable law and/or (ii) the sale and/or provision of non-alcoholic beverages, books, paraphernalia for the ingestion or consumption of medical cannabis, massage, yoga instruction and other appropriate and lawful healing modalities.

(5) Intentionally left blank.

(6) A dispensary shall not cultivate, distribute or sell medical cannabis for a profit. Any monetary reimbursement or payment that members of a dispensary provide to the dispensary shall only be an amount necessary to cover overhead costs and operating expenses and community betterment expenses (as defined and permitted in the license).

(7) A dispensary shall not pay any supplier(s) of medical cannabis more than the costs incurred for cultivation and preparation.

(8) A dispensary shall meet all the operating criteria for the dispensing of medical cannabis as is required pursuant to California Health and Safety Code Section 11362.5 et seq.

(9) During non-business hours, all cannabis and all products containing cannabis shall be stored in a locked vault, safe or other secure structure preventing the theft of the cannabis.

(h) Operating Plans.

(1) Floor Plan. A dispensary shall have a lobby waiting area at the entrance to receive clients, and a separate and secure designated area for dispensing medical cannabis to qualified patients or designated primary caregivers. The primary entrance shall be located and maintained clear of barriers, landscaping and similar obstructions so that it is clearly visible from public streets, sidewalks or site driveways.

(2) Storage. A dispensary shall have a suitable locked safe on premises, identified as a part of the security plan, for after-hours storage of medical cannabis.

(3) Minimum Staffing Levels. The premises shall be staffed with at least two persons during hours of operation who shall not be responsible for dispensing medical cannabis.

(4) Odors Control. A dispensary shall have an air treatment system that ensures off-site odors shall not result from the dispensary's operations.

(5) Security Plans. A dispensary shall provide adequate security on the premises, as approved by the approval authority, including lighting, security cameras and alarms, to insure the safety of persons and to protect the premises from theft.

(6) Security Cameras. Security surveillance cameras shall be installed to monitor the main entrance, the exterior and all interior spaces of the premises 24 hours each day.

(7) Security Video Retention. The video tapes covering 30 consecutive days of surveillance must be maintained for at least 30 days and shall be made available to the city's police department pursuant to a search warrant issued upon probable cause.

(8) Alarm System. A professionally monitored robbery alarm system shall be installed and maintained in good working condition and shall be in operation at all times. The applicant shall obtain any licenses required to be obtained prior to such installation.

(9) Emergency Contact. A dispensary shall provide the City manager, each council member, the chief of police and all neighbors residing or conducting business within 500 feet of the dispensary's premises with the name, phone number (on-site and cellular) and facsimile number of an on-site community relations staff person to whom one can provide notice if there are operating problems associated with the dispensary. The licensee shall immediately update said information each time its community relations staff person changes. The dispensary shall make every good faith effort to encourage neighborhood residents to call this person to try to solve operating problems, if any, before any calls or complaints are made to the city.

(10) Criminal Reporting. The licensee shall immediately notify the city's police department of any criminal activity occurring at, on or near the dispensary.

(11) Parking Requirements. A dispensary must provide parking as required by section 22.36.050(a) unless the requirement is waived pursuant to section 22.36.020(d).

(i) Signage and Notices.

(1) The building entrance to a dispensary shall be clearly and legibly posted with a notice indicating that smoking, ingesting or consuming cannabis on the premises or in the vicinity of the dispensary is prohibited.

(2) Signs on the premises shall not obstruct the entrance or windows.

(3) Address identification shall comply with all applicable rules, ordinances and requirements.

(4) Business identification signage shall be limited to that needed for identification only, consisting of a single window sign or wall sign that shall not exceed six square feet in area or 10 percent of the window area, whichever is less. All signs shall comply with all ordinances and city codes and shall not contain any logos or information that identifies, advertises or lists the services offered.

(5) A prominent and permanent sign stating "NO LOITERING IS ALLOWED ON OR IN FRONT OF THESE PREMISES OR IN THE PARKING LOT" shall be posted in a place that is clearly visible to patrons of the dispensary.

(j) Employee Records. Each owner or operator of a dispensary shall maintain a current register of the names, addresses and telephone numbers of all employees currently employed by the dispensary, and shall disclose such registration for inspection by any city officer or official for purposes of determining compliance with the requirements of this chapter.

(k) Patient Records. A dispensary shall maintain records of all patients by name and address and the identification card number issued by the county, or its agent, pursuant to California Health and Safety Code Section 11362.71 et seq., or a copy of the written recommendation from a physician or doctor of osteopathy stating the need for medical cannabis. A dispensary shall maintain records of all primary caregivers registered with the dispensary by name and address in a manner that conforms with State and federal law.

(l) Staff Training. Dispensary staff shall receive appropriate training for their intended duties to ensure understanding of this chapter, the conditions imposed on their dispensary's license, rules and procedures regarding dispensing in compliance with state and local law.

(m) Site Management.

(1) The operator of the dispensary shall take all reasonable steps to discourage and correct objectionable conditions that constitute a nuisance in parking areas, sidewalks, alleys and areas surrounding the dispensary's premises and adjacent properties during business hours if related to the patrons of the subject dispensary.

(i) "Reasonable steps" shall include calling the police in a timely manner; and requesting those engaging in objectionable activities to cease those activities, unless personal safety would be threatened in making the request.

(ii) "Nuisance" includes but is not limited to disturbances of peace, public consumption of cannabis or alcohol, excessive pedestrian or vehicular traffic, illegal drug activity, harassment of passerby, excessive littering, excessive loitering, illegal parking, excessive loud noises, especially late at night or early in the morning hours, lewd conduct or police detentions and arrests.

(2) The operator shall take all reasonable steps to reduce loitering in public areas, sidewalks, alleys and areas surrounding the premises and adjacent properties during business hours.

(3) The operator shall ensure that the hours of operation shall not be a detriment to the surrounding area.

(4) The operator shall provide patients with a list of the rules and regulations governing medical cannabis use and consumption within the city and recommendations on sensible cannabis etiquette.

(n) Trash, Litter, Graffiti.

(1) Within 100 feet of the premises in which the dispensary is operating, the operator shall clear the sidewalks adjoining the premises plus the street and any parking lots under the control of the operator as needed to control litter, debris and trash.

(2) The operator shall remove all graffiti from the premises and parking lots under the control of the operator within 24 hours of the graffiti's application. The operator shall report the application of the graffiti to the city's police department immediately upon the operator's discovery of same.

(o) Compliance with Other Requirements. The operator shall comply with all provisions of all local and state laws, regulations or orders, as well as any condition imposed on any licenses issued pursuant to applicable laws, regulations or orders.

(p) Confidentiality. The information provided by a dispensary, licensee or applicant for a license under this section shall be maintained by the City manager as confidential information to be shared with only city officials who have a need to know, and shall not be disclosed as public records unless pursuant to subpoena or order issued by a court of competent jurisdiction.

(q) Display of License. Every dispensary shall display at all times during business hours the license issued pursuant to the provisions of this chapter for such dispensary in a conspicuous place so that the same may be readily seen by all persons entering the dispensary.

(r) Reporting and Payment of Fees. By no later than January 15th of each year, each licensee shall file a sworn statement under penalty of perjury with the City manager stating (i) the number of patients and caregivers registered by the dispensary during each of the months in the previous calendar year, (ii) the number of patient and caregiver allowed to enter the dispensary during each of the months in the previous calendar year, (iii) the number of separate deliveries of cannabis to the dispensary during each of the months of the previous calendar year, (iv) the number of times the dispensary has contacted or called the police during each of the months of the previous calendar year, (v) the number of transactions conducted during each of the months of the previous calendar year, and (vi) that the licensee has paid all annual license fees.

(s) [No cash may be used to consummate any transactions consummated on or from the premises of a dispensary. If monetary consideration is to be used to consummate a transaction on the premises, it must be effected through the use of credit cards, debit cards or checks.][Under rules and regulations promulgated by the city manager, there shall be established an amount of cash above which the dispensary shall not be permitted to store or maintain on the premises for more than 24 hours. During each day that the dispensary is open, the licensee shall be required to have all the cash earned by, paid to and/or in the possession of the dispensary in excess of the amount specified in accordance with the rules described in the immediately preceding sentence, picked up and removed from the premises by security personnel and transported from the dispensary in an armored vehicle. No transaction(s) effected by any given individual patient or caregiver during any given day shall involve, cumulatively, the payment of more than \$200 in cash.]

(t) The licensee shall maintain financial records of all transactions engaged in by the licensee for a period of three years and said records shall be subject to audit by the city upon reasonable notice. At a minimum, licensees shall be subject to such audits on a quarterly basis. The licensee shall not refuse to allow authorized representatives of the city to examine the licensee's financial records at reasonable times and places.

8.41.120 Application notice, preparation and filing.

(a) Notice of Commencing Competitive Application Process. For each competitive application process, the city manager shall provide at least sixty (60) days advance notice for the submittal of applications consistent with this chapter. The notice shall be published once in a newspaper of general circulation and posted on the city's web site. The notice shall identify the deadline by which applications are required to be submitted to the city manager, and the location where potential applicants may obtain application forms and additional information regarding the selection criteria and process.

(b) Application Filing. A complete application submittal packet shall be submitted including all necessary fees and all other information and materials required by the city and this chapter. All applications for licenses shall be filed with the city manager, using forms provided by the city. It is the responsibility of the applicant to provide information required for approval of the license. The application shall be made under penalty of perjury.

(c) Eligibility for Filing. Applications may only be filed by the owner of the subject property, a person with a lease signed by the owner or duly authorized agent allowing the applicant to occupy the property for use as a dispensary, or a person to whom a binding letter of intent to lease has been delivered by the owner or duly authorized agent of the owner allowing the applicant to occupy the property for use as a dispensary contingent upon the applicant being granted a license hereunder.

(d) Filing Date. The filing date of any application shall be the date when the city receives the last submission of information or materials required in compliance with the submittal requirements specified herein.

(e) Effect of Incomplete Filing. Upon notification from the city manager that an application submittal is incomplete, the applicant shall be granted an extension of time to submit all materials required to complete the application within 10 days and the deadline for filing the application shall be deemed extended for that 10 day period. If the application remains incomplete (because the applicant fails to submit additional information or the additional information that is submitted is determined inadequate by the city manager) beyond said 10 days, the application shall be deemed withdrawn.

(f) Effect of Other Licenses or Licenses. The fact that an applicant possesses other types of State or city licenses or permits does not exempt the applicant from the requirement of obtaining a dispensary license.

(g) Submittal Requirements. Any application for a license shall include the following information.

- (1) Applicant(s) Name. The full name (including any current or prior aliases, or other legal names the applicant is or has been known by, including maiden names), present address, and all telephone numbers of the applicant and its officers, directors, managers, and managing members (hereinafter collectively and individually referred to as “applicant”);
- (2) Applicant(s) Mailing Address. The address to which notice of action on the application is to be mailed;
- (3) Previous Addresses. Applicant’s previous business and residence addresses for the past five years immediately prior to the present address of the applicant;
- (4) Verification of Age. Written proof that the applicant is (and its officers, directors, and employees are) over the age of 21 years of age;
- (5) Physical Description. Applicant’s height, weight, color of eyes and hair;
- (6) Photographs. Passport quality photographs of each applicant for identification purposes;
- (7) Employment History. All business, occupation, or employment of the applicant for the five years immediately preceding the date of the application;
- (8) Tax History. The dispensary and/or other business tax history of the applicant, including whether such person(s), in previously operating in this or another city, county or state under license or permit has had a business license revoked or suspended, the reason therefor, and the business or activity or occupation subsequent to such action of suspension or revocation;
- (9) Management Information. The name or names and addresses of the person or persons having the management or supervision of applicant’s business;
- (10) Criminal Background. A sworn statement verifying whether the person or person having the management or supervision of applicant’s business has/have been convicted of a crime(s), the nature of such offense(s), and the sentence(s) received therefor;
- (11) Employee Information. Number, names, addresses, and phone numbers of employees, volunteers, and other persons who will work at the dispensary initially;
- (12) Statement of Dispensary Need. A statement and/or information to establish the need for the dispensary to serve qualified patients in the-city area;
- (13) Plan of Operations. A plan of operations describing how the dispensary will operate consistent with the intent of State law and the provisions of this chapter, including but not limited to:

(i) Ensuring cannabis is not purchased or sold by the dispensary in a manner that would generate a profit.

(ii) Controls that will assure medical cannabis will be dispensed to qualifying member patients or caregivers only.

(iii) Intentionally left blank.

(iv) Controls that will ensure access to dispensary premises is adequately monitored and restricted to pre-approved qualified patients and caregivers.

(v) Method for ensuring that a qualified patient's physician is not recommending cannabis for other than medically appropriate reasons;

(14) Written Project Description. A written description summarizing the proposed dispensary use size, operations, number of patients, characteristics and intent;

(15) Written Response to Dispensary Standards. The applicant shall provide a comprehensive written response identifying how the dispensary plan complies with each of the conditions, requirements and standards for review set forth in this chapter, including the limitation on location and this chapter's operating requirements;

(16) Written Response to Criteria for Review Section. The applicant shall provide a written response indicating how each of the criteria for review has been satisfied;

(17) Security Plan. A detailed security plan outlining the proposed security arrangements for insuring the safety of persons and to protect the premises from theft. The plan shall include, at a minimum, installation of security cameras, a robbery alarm system monitored by a licensed operator, and a security assessment of the site conducted by a qualified professional;

(18) Floor Plan. A detailed floor plan or diagram showing the interior configuration of the premises, including a statement of the total floor area occupied by the dispensary. The sketch or diagram need not be professionally prepared, but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches;

(19) Site Plan. A sketch or diagram showing exterior configuration of the premises, including the outline of all structures, parking and landscape areas, and property boundaries. The sketch or diagram need not be professionally prepared, but must be drawn to a designated scale or drawn with marked dimensions to an accuracy of plus or minus six inches;

(20) Neighborhood Context Map. An accurate straight-line drawing depicting the building and the portion thereof to be occupied by the dispensary, all properties and uses within 600 feet of the boundaries of the property on which the dispensary license is requested, and the property lines of all uses and parcels described in section 8.41.100(c);

(21) Lighting Plan. A lighting plan showing existing and proposed exterior premises and interior lighting levels that would be the minimum necessary to provide adequate security lighting for the use and comply with all city standards regarding lighting design and installation;

(22) City Authorization. Written authorization for the city, its agents and employees to seek verification of the information contained within the application;

(23) Statement of Owner's Consent. A statement in writing by the applicant that he or she certifies under penalty of perjury that the applicant has the consent of the property owner and landlord to operate a dispensary at the proposed location;

(24) Applicant's Certification. A statement in writing by the applicant that he or she certifies under penalty of perjury that all the information contained in the application is true, complete, and correct and does not omit any material fact;

(25) Other Information. Such other identification and information as deemed necessary by the approval authority to demonstrate compliance with this chapter and city codes, including operating requirements established in this chapter.

(h) Review by city manager and Police Chief. All applications for a dispensary license shall be examined by the city manager and/or his/her designee. The city manager shall refer all such licenses to the Chief of Police who shall examine the application and, at the request of the city manager, conduct such background and other investigations as the city manager and Chief of Police determine warranted under the circumstances and as otherwise required by this chapter. The Chief of Police shall provide to the city manager the former's recommendations as to each applicant and application.

(i) Annual Renewal. Applications for annual renewal shall be accompanied by the following minimum information (and any other information required by the city manager):

(1) The operator shall report the number of patients served and pay applicable fees, as required by this chapter, and particularly section 8.41.110(r).

(2) The operator shall provide a detailed description of any adjustments and changes proposed or that have occurred in dispensary operations to address issues, or comply with laws.

(3) The operator shall identify any problems encountered during operations and how they have been addressed.

(4) The operator shall identify how the dispensary has managed its operations to comply with the operating requirements of this chapter and with State law.

(j) Indemnification and Insurance.

(1) At the time of submitting an application, the applicant shall agree, as part of the application, and as a condition to the application being deemed complete, to defend, indemnify and hold harmless the City of Martinez and its agents, officers, attorneys, or employees, from any claim, action or proceeding (collectively referred to as "proceeding") brought against the city or its agents, officers, attorneys or employees and attorneys, by any person, including the applicant, to attack, set aside, void or annul any action by the town approving or denying a license which proceeding is brought within the applicable statute of limitations. The indemnification shall include, but not be limited to, damages, fees, and/or costs awarded against the city, if any, and cost of suit, attorney fees, and other costs, liabilities and expenses incurred in connection with such proceeding whether incurred by the applicant, the city and/or the parties initiating or bringing such proceeding.

(2) Defend, indemnify, and hold harmless the city, its agents, officers, attorneys, or employees for all costs incurred in additional investigation or study of, or for supplementing, redrafting, revising, or amending any document, if made necessary by said proceeding and if applicant desires to pursue securing such approvals after initiation of such proceeding, which are conditioned on the approval of such documents.

(3) In the event a proceeding is brought, the city shall promptly notify the applicant of the existence of the proceeding and the city will cooperate fully in the defense of the proceeding. In the event that the applicant is required to defend the city in connection with any said proceeding, the city shall retain the right to (1) approve the counsel to defend the city, (2) approve all significant decisions concerning the matter in which the defense is conducted and (3) approve any and all settlements, which approval shall not be unnecessarily withheld. The city shall also have the right not to participate in said defense, except that the city agrees to cooperate with the applicant in the defense of said proceeding. If the city chooses to have counsel of its own defend any proceeding where the applicant has already retained counsel to defend the city in such matters, the fees and expenses of counsel selected by the city shall be paid by the city. Notwithstanding the immediately preceding sentence, if the city attorney participates in the defense, all city attorney fees and costs shall be paid by the applicant.

(4) In the event the city is required to initiate legal action to enforce the above indemnification conditions, the applicant shall indemnify the city for any and all costs and fees incurred by the city in connection with that enforcement action.

(5) As a condition to the approval of a license by the city, the applicant, prior to commencing operations, shall secure and maintain insurance in the amounts and of the types that are acceptable to the approval authority who must approve such insurance prior to the commencement of operations by the applicant. Such insurance shall name the city, its officers, agents, employees and attorneys as additional insureds.

8.41.130 Criteria for review.

The approval authority shall consider the following criteria in determining whether to grant or deny a dispensary license, and annual renewals:

(a) That the dispensary license is consistent with the intent of Proposition 215 and related State law, the provisions of this chapter and the city code, including the application submittal and operating requirements herein.

(b) That the dispensary location is not identified as having significant crime issues (e.g., based upon crime reporting district/statistics as maintained by the city's police department).

(c) That there have not been significant numbers of calls for police service, crimes or arrests in the area or to an existing, relevant dispensary location.

(d) That an applicant and all proposed employees are not under 21 [18] years of age.

(e) That all required application materials have been provided and/or the dispensary has operated successfully in a manner that shows it would comply with the operating requirements and standards specified in this chapter.

(f) That all required application or annual renewal fees have been paid and reporting requirements have been satisfied in a timely manner.

(g) That, based on the totality of the facts and circumstances applicable to a given applicant and as determined in the sound discretion of the approval authority, an appropriate limit on the size of the dispensary has been established and granting the requested license would not exceed limitations on the number of licenses allowed by this chapter.

(h) That issuance of a dispensary license for the size requested is justified to meet the needs of the appropriate and applicable community.

(i) That issuance of the dispensary license at the proposed location would serve the needs of the appropriate and applicable community.

(j) That the location is not prohibited by the provisions of this chapter or any local or state law, statute, rule or regulation and no significant nuisance issues or problems are anticipated or have resulted. In this connection, the approval authority shall take into consideration whether or not the dispensary is located within 600 feet (as measured pursuant to

section 8.41.100(d)) of a nursery, and if so, shall determine whether or not the location of the dispensary is appropriate and otherwise permitted under this chapter, based upon criteria established by rules and regulations promulgated by the city manager. Additionally, a license shall not be issued where such issuance will result in dispensaries being unduly concentrated in one area, neighborhood or distinct community.

(k) That the site plan, floor plan, and security plan have incorporated features necessary to assist in reducing potential crime-related problems and as specified in the operating requirements section. These features may include, but are not limited to, security on-site; procedure for allowing entry; openness to surveillance and control of the premises; the perimeter, and surrounding properties; reduction of opportunities for congregating and obstructing public ways and neighboring property; illumination of exterior areas; and limiting furnishings and features that encourage loitering and nuisance behavior.

(l) That no dispensary use, owner, licensee, agent, or employee has violated any provision of this chapter including grounds for suspension, modification or revocation of a license.

(m) That all reasonable measures have been incorporated into the plan and/or consistently taken to successfully control the establishment's patrons' conduct resulting in disturbances, vandalism, crowd control inside or outside the premises, traffic control problems, ingesting cannabis in public, ingesting cannabis on-site, creation of a public or private nuisance, or interference of the operation of another business.

(n) That the dispensary would not adversely affect the health, peace or safety of persons living or working in the surrounding area, overly burden a specific neighborhood with special needs or high impact uses, or contribute to a public nuisance; or that the dispensary has resulted in repeated nuisance activities including disturbances of the peace, illegal drug activity, ingesting cannabis in public and on-site, harassment of passerby, excessive littering, excessive loitering, illegal parking, excessively loud noises, especially late at night or early in the morning hours, lewd conduct, or police detentions or arrests.

(o) That any provision of the city code or condition imposed by a city issued permit, or any provision of any other local, State or Federal law, regulation, or order, or any condition imposed by licenses or permits issues in compliance with those laws has not been violated.

(p) That the applicant has not violated any local or State law, statute, rule or regulation respecting the distribution, possession, or consumption of cannabis.

(q) That the applicant has not knowingly made a false statement of material fact or has knowingly omitted to state a material fact in the application for a license.

(r) That the applicant, his or her agent or employees, or any person who is exercising managerial authority on behalf of the applicant has not been convicted of a felony, a property crime, or of a misdemeanor involving moral turpitude, or has not engaged in misconduct related to the qualifications, functions or duties of a licensee involving moral turpitude, or engaged in misconduct related to the qualifications, functions or duties of a licensee. Without limiting the generality of the foregoing, said persons shall be disqualified from obtaining or maintaining a

license hereunder or from being affiliated in any way with a dispensary should they have been convicted of (i) any crime specified in California Penal Code sections 654-678 and/or (ii) participation with any group that advocates violence against individuals because of their race, religion, orientation, political affiliation, ethnic origin, nationality, sexual preference or disability. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere.

(s) That the applicant has not engaged in unlawful, fraudulent, unfair, or deceptive business acts or practices.

(t) That the applicant has been involved in the community and enjoys a reputation of integrity, civic participation and making important and beneficial contributions to the well-being of the city and its residents and/or businesses.

8.41.140 Investigation and action on application.

After the applicant's making and filing of a complete and timely application for the dispensary license and the applicant's payment of the relevant fees, the city manager and/or his/her designee shall conduct a background check of the applicant and all employees and conduct an investigation of the application, and take action as follows:

(a) The city manager shall refer the application to any other city departments as necessary to complete his or her investigation into the application. Said investigation shall include a background check of the applicant, its employees and all persons proposed to be affiliated with the dispensary. Said background check shall consist of a clearance letter from the Department of Justice and fingerprint verification of the identity and criminal history of the applicant, its employees and all persons proposed to be affiliated with the dispensary. Whenever the applicant proposes to hire or affiliate with a person who was not subjected to said background check, then the applicant (once receiving a license under this chapter) shall immediately notify the city of the applicant's desire to employ or affiliate with said person, giving the city all identifying information about that person that the city reasonably requests. Thereafter, the city shall have the right to conduct an investigation into the background of said persons, and said persons shall execute whatever releases and consents the city requires in order to effect said investigation. Said persons shall not be employed or affiliated with a dispensary or licensee unless and until said persons pass the background investigation conducted by the city.

(b) In the discharge of his/her duties hereunder, the city manager shall develop rules and regulations to administer the provisions of this chapter, including developing and utilizing worksheets and point systems by which to analyze and ascertain the relative and comparative merits and worthiness of each application.

(c) Within 45 days after completion of his or her investigations, the city manager shall determine whether the license should or should not be granted, and if s/he determines to grant the license shall specify the conditions that attach thereto. If s/he determines to deny the license, s/he shall issue a written decision specifying the reasons therefor and deliver said opinion to the applicant within 60 days after completion of his or her investigation.

(d) In approving a dispensary license, the approval authority may impose conditions, restrictions or require revisions to the proposal to comply with the purpose and intent of this chapter.

8.41.150 Appeal from City Manager's determination.

(a) An applicant aggrieved by the city manager's decision to issue or deny a license (or to rank the applications as specified in section 8.41.090) and/or any person who resides or does business in the city may appeal such decision to the Licensing Appeals Board by filing a written notice stating all grounds on which the appeal is based with and paying the applicable appeal fee to the city clerk within 10 working days of the city manager's date of mailing written notice of his/her decision to the applicant. If an appeal is not taken within such time, the city manager's decision shall be final.

(b) The Licensing Appeals Board shall consider the appeal within 45 days of the date of filing the appeal. The city clerk shall give 10 days notice to the person filing the appeal (and to the applicant if the appellant is not the applicant) of the time and place of the meeting scheduled on the appeal by serving notice personally or by depositing it in the United States post office at Martinez, California, postage prepaid, addressed as shown on the appeal papers. The appeal shall be de novo, and the Licensing Appeals Board shall have the authority to determine all questions raised on such appeal. Said decision shall be final. No such determination shall conflict with any substantive provision of this chapter.

(c) A Licensing Appeals Board is hereby created and is vested with the powers and authority specified in this chapter. The Licensing Appeals Board shall be comprised of two councilmembers and the head of one department of the city, excluding the chief of police, as appointed by the mayor.

8.41.160 Effect of Revocation.

When the city manager shall have revoked any license provided for in this chapter and the time for appeal to the Licensing Appeals Board shall have elapsed, or, if after appeal to the Licensing Appeals Board, the decision of the city manager has been affirmed by the Licensing Appeals Board, no new application for a license shall be accepted from the applicant and no such license shall be issued to such person or to any entity in which s/he shall have any interest for a period of three years after the action revoking the license.

8.41.170 Suspension and revocation.

(a) Any license issued under the terms of this chapter may be suspended or revoked by the city manager when it shall appear to him or her that, based upon the preponderance of the evidence submitted to the city manager, the licensee has violated any of the requirements of this chapter, has violated the terms and conditions under which the license was issued or renewed or the dispensary is operated in a manner that violates the provisions of this chapter, including the criteria for review and operating requirements sections, or conflicts with State law. Neighborhood complaints and other sources of information may be relied upon by the city manager in making his/her decision if such evidence is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.

(b) Except as otherwise provided in this chapter, no license shall be revoked or suspended by virtue of this section until written notice of the intent to consider revocation or suspension of the license has been served upon the licensee at least five days prior to the date set for such review. Such notice shall contain a brief statement of the grounds to be relied upon for revoking or suspending such license. Notice may be given either by personal delivery to the person to be notified, or by depositing it in the U.S. mail in a sealed envelope, postage prepaid, return receipt requested, addressed to the person to be notified at his/her address as it appears in his/her application for a license. To be considered, written comments and/or objections by the licensee to the notice shall be served by personal delivery on the city manager no later than two days prior to the date of the proposed revocation or suspension. On the date set for review, the city manager shall review the matter, all facts involved therewith and any comments and/or objections by the licensee and make his/her decision.

(c) If any person holding a license or acting under the authority of such license under this chapter is convicted of a public offense in any court for the violation of any law which relates to his or her license or whenever the Chief of Police determines in writing that the continued operation of a licensed dispensary represents an immediate or imminent threat to public health or safety, the city manager may revoke such license forthwith without any further action thereof, other than giving notice of revocation to the licensee.

(d) The decision of the city manager to revoke or suspend a license shall be appealable to the Licensing Appeals Board by filing a written notice stating all grounds on which the appeal is based with and paying the applicable appeal fee to the city clerk within 10 working days of the city manager's date of mailing written notice of his or her decision to the licensee. If an appeal is not taken within such time, the city manager's decision shall be final. The Licensing Appeals Board shall address and decide said appeal in accordance with the procedures set forth in section 8.41.150(b). During the pendency of such an appeal the city manager's revocation or suspension decision shall not be stayed.

8.41.180 Transfer of licenses.

(a) A licensee shall not operate a dispensary under the authority of a dispensary license at any place other than the address of the dispensary stated in the application for the license.

(b) A licensee shall not transfer ownership or control of a dispensary or transfer a dispensary license to another person. No license issued hereunder is transferrable. Control of a dispensary shall be deemed transferred for purposes of this section where more than 5% of the ownership or control of a dispensary is transferred or conveyed to another person or entity.

(c) Any attempt to transfer a license either directly or indirectly in violation of this section is declared void, and the license shall be deemed revoked.

8.41.190 Time limit for filing applications upon annexation.

Any dispensary that was legally established in the County and which is subsequently annexed into the city must apply for and obtain a dispensary license in compliance with the provisions of this chapter within 90 days from date of annexation. Continued operation of a dispensary without a license more than 90 days after annexation shall constitute a violation of this chapter.

8.41.200 Violations.

(a) It is unlawful for any person, individual, partnership, co-partnership, firm, cooperative, collective, association, joint stock company, corporation, limited liability company or combination of the above in whatever form or character to violate any provision or fail to comply with any of the requirements of this chapter.

(b) A violation of this chapter shall constitute a misdemeanor and be punished in accordance with city code chapter 1.12.

(c) Any licensee and/or his/her/its employees or affiliates who are found to have violated the provisions of this chapter or other applicable law shall be liable for and shall immediately reimburse the city for all costs the city incurs in investigating and prosecuting said persons and should said prosecution lead to a criminal conviction, said persons shall also be liable to and immediately reimburse the city for all costs incurred in incarcerating said persons, booking said persons, storing and/or destroying evidence and providing medical treatment to said persons, along with any and all other costs incurred by the city in enforcing the provisions of this chapter and applicable law against said persons.

8.41.210 Remedies cumulative.

All remedies prescribed under this chapter shall be cumulative and the use of one or more remedies by the city shall not bar the use of any other remedy for the purpose of enforcing the provisions hereof.

8.41.230 Separate offense for each day.

Any person that violates any provision of this chapter shall be guilty of a separate offense for each and every day during any portion of which any such person commits, continues, licenses, or causes a violation thereof, and shall be penalized accordingly.

8.41.240 Public nuisance.

Any use or condition caused or licensee to exist in violation of any of the provisions of this chapter shall be and is declared a public nuisance and may be summarily abated by the city.

8.41.250 Judicial review.

Judicial review of a decision made under this chapter may be had by filing a petition for a writ of mandate with the superior court in accordance with the provisions of the California Code of Civil Procedure Section 1094.5. Any such petition shall be filed within 90 days after the day the decision becomes final as provided in California Code of Civil Procedure Section 1094.6 which shall be applicable to such actions.

SECTION 2. 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 3. Effective Date. This ordinance shall become effective 30 days after the date of adoption.

SECTION 4. Posting. The City Clerk shall cause this ordinance to be posted and/or published containing 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 , 2011, and duly passed and adopted at a Regular Meeting of said City Council held on the day of , 2011, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

RICHARD G. HERNANDEZ, CITY CLERK
CITY OF MARTINEZ

**SUMMARY OF SPECIFIC CHANGES TO ORDINANCE RECOMMENDED
BY SOME COUNCIL MEMBERS**

Section 8.41.110(t):

(t) The licensee shall maintain financial records of all transactions engaged in by the licensee for a period of three years and said records shall be subject to audit by the city upon reasonable notice. At a minimum, licensees shall be subject to such audits on a quarterly basis. The licensee shall not refuse to allow authorized representatives of the city to examine the licensee's financial records at reasonable times and places. A licensee's refusal to allow said examinations shall be grounds for suspension or revocation of the licensee's license.

Section 8.41.120(j)(1):

(j) Indemnification and Insurance.

(1) At the time of submitting an application, the applicant shall agree, as part of the application, and as a condition to the application being deemed complete, to defend, indemnify and hold harmless the City of Martinez and its agents, officers, attorneys, or employees, from any claim, action or proceeding (collectively referred to as "proceeding") brought against the city or its agents, officers, attorneys or employees and attorneys, by any person, including the applicant, to attack, set aside, void or annul any action by the town approving, suspending, revoking or denying a license which proceeding is brought within the applicable statute of limitations. The indemnification shall include, but not be limited to, damages, fees, and/or costs awarded against the city, if any, and cost of suit, attorney fees, and other costs, liabilities and expenses incurred in connection with such proceeding whether incurred by the applicant, the city and/or the parties initiating or bringing such proceeding.

SUMMARY OF PLANNING COMMISSION RECOMMENDATIONS

8.41.120 (a) Notice of Commencing Competitive Application Process.

- (1) With respect to the first time that license applications are accepted and considered under this chapter, For each competitive application process, the city manager shall provide at least sixty (60) days advance notice for the submittal of applications consistent with this chapter. The notice shall be published once in a newspaper of general circulation and posted on the city’s web site. The notice shall identify the deadline by which applications are required to be submitted to the city manager, and the location where potential applicants may obtain application forms and additional information regarding the selection criteria and process.

- (2) In the event that as a result of the City’s solicitation of applications pursuant to section 8.41.120(a), no complete applications are timely submitted or after investigation of the applications no licenses are granted by the approval authority, or in the event that such licenses are granted, but thereafter one or more expire, are not renewed or are revoked, or in the event any license granted hereunder is, at any time, not renewed, is revoked or expires, and, as a consequence, the number of licenses in effect at any given time is not equal to the maximum number of licenses permitted to be in effect hereunder (the “gap event”), the city manager shall not solicit the filing of applications for licenses unless after the gap event occurs, a complete application for a license is filed with the City (the “triggering application”), in which case, the city manager shall provide the sixty (60) day notice described in section 8.41.120(a)(1), and follow the other procedures set forth herein to investigate and determine whether the license applications that are timely filed in response to the city manager’s notice, if any, and the triggering application should or should not be granted consistent with the provisions of this chapter and any and all rules promulgated hereunder.

8.41.140 Investigation and action on application.

After the applicant’s making and filing of a complete and timely application for the dispensary license and the applicant’s payment of the relevant fees, the city manager and/or his/her designee shall conduct a background check of the applicant and all employees and conduct an investigation of the application, and take action as follows:

- (a) The city manager shall refer the application to any other city departments as necessary to complete his or her investigation into the application. Said investigation shall include a background check of the applicant, its employees and all persons proposed to be affiliated with the dispensary. Said background check shall minimally consist of a clearance letter from the

Department of Justice, a background investigation by or through the auspices of the Federal Bureau of Investigation and fingerprint verification of the identity and criminal history of the applicant, its employees and all persons proposed to be affiliated with the dispensary. Whenever the applicant proposes to hire or affiliate with a person who was not subjected to said background check, then the applicant (once receiving a license under this chapter) shall immediately notify the city of the applicant's desire to employ or affiliate with said person, giving the city all identifying information about that person that the city reasonably requests. Thereafter, the city shall have the right to conduct an investigation into the background of said persons consistent herewith, and said persons shall execute whatever releases and consents the city requires in order to effect said investigation. Said persons shall not be employed or affiliated with a dispensary or licensee unless and until said persons pass the background investigation conducted by the city.

(b) In the discharge of his/her duties hereunder, the city manager shall develop rules and regulations to administer the provisions of this chapter, including developing and utilizing worksheets and point systems by which to analyze and ascertain the relative and comparative merits and worthiness of each application.

(c) At the time the city manager completes his/her investigation of all the applications that are being investigated and considered at the same time, the city manager shall issue and disseminate a notice of intent to make determinations concerning said applications, giving the date(s) by when said determinations shall be made, giving the locations of each proposed dispensary, stating that citizens have the right to submit to the city manager written comments prior to said date(s) and providing other information specified by the rules and regulations promulgated by the city manager hereunder. Within 45 days after completion of his or her investigations, the city manager shall determine whether the license should or should not be granted, and if s/he determines to grant the license shall specify the conditions that attach thereto. If s/he determines to deny the license, s/he shall issue a written decision specifying the reasons therefor and deliver said opinion to the applicant within 60 days after completion of his or her investigation.;

(d) In approving a dispensary license, the approval authority may impose conditions, restrictions or require revisions to the proposal to comply with the purpose and intent of this chapter.

(e) Upon the granting of any application(s) for a license, the city manager shall issue and disseminate a notice of decision concerning said application(s), giving the date(s) of his/her decision, the effective date of the license, the locations and the names of the owners and/or operators of each dispensary for which a license was granted, summarizing the rights and procedures persons have to appeal the city manager's decisions and providing other information specified by the rules and regulations promulgated by the city manager hereunder.

8.41.090 Limitations on number of dispensaries. (ALTERNATIVE A)

(a) After the city manager sends the notice described in section 8.41.120(a) for the first time and has completed the investigations, background checks and determinations required under sections 8.41.120 through 8.41.140 with respect to all of the completed applications submitted to the City in response to said section 8.41.120(a) notice, the city manager shall determine which application, if any, (1)(i) is superior, (ii) is three applicants are the most qualified and (iii) most fully complies with each and every applicable requirement specified herein and (2) considered alone, should be granted a license pursuant to this chapter. If any such application is submitted, then the city manager shall grant the applicant a license. And of those three applicants, the city manager shall determine the one that demonstrates qualities, experience and/or other characteristics superior to the other two applicants. If the city manager is not able to identify such a superior applicant, then of the three, highest ranked applicants, the city manager shall select one by lot. The one so selected shall be issued a license pursuant to this chapter. The other two applicants shall not then be issued a license but may later be issued licenses in accordance with the procedures set forth in the next subsection.

~~(b) During the six month period immediately following the effective date of the approval authority's granting of the first license issued under subsection (a) above, no additional licenses to operate a dispensary in the city may be issued by the approval authority. No later than thirty (30) days before said six month period ends, the city manager shall prepare and submit to the city council a written report (a) detailing the experience the city has had with the one licensee, if any, issued a dispensary license pursuant to this chapter and (b) making recommendations as to whether or not additional licenses should be issued to one or both of the other applicants (the "Two Applicants") who were ranked among the three described in subsection (a) above. Said report shall be agendaized for consideration by the city council at a public meeting at which time the council shall determine whether, when and under what circumstances, if any, licenses to one or both of the Two Applicants should be issued.~~

~~(be) Under no circumstances shall the total number of licenses, in effect and issued under this chapter, exceed one (1) three (3).~~

8.41.090 Limitations on number of dispensaries. (ALTERNATIVE B)

(a) After the city manager sends the notice described in section 8.41.120(a) for the first time and has completed the investigations, background checks and determinations required under sections 8.41.120 through 8.41.140 with respect to all of the completed applications submitted to the City in response to said section 8.41.120(a) notice, the city manager shall determine which three applicants, if any, (1)(i) are superior to the other applicants, (ii) are the most qualified and (iii) most fully comply with each and every applicable requirement specified herein, and (2) considered individually, should each be granted a license pursuant to this chapter. And of those ~~three~~ applicants (not to exceed three in number), the city manager shall determine the one that demonstrates qualities, experience and/or other characteristics superior to the other ~~two~~ applicants. If the city manager is not able to identify such a superior applicant, then of these ~~three~~, highest ranked applicants, the city manager shall select one by lot. The one so selected shall be issued a license pursuant to this chapter. The other ~~two~~ applicant(s), if any, shall not then

be issued a license but may later be issued licenses in accordance with the procedures set forth in the next subsection.

(b) During the ~~twelve~~ ~~six~~ month period immediately following the effective date of the approval authority's granting of the first license issued under subsection (a) above, no additional licenses to operate a dispensary in the city may be issued by the approval authority. No later than thirty (30) days before said ~~twelve~~ ~~six~~ month period ends, the city manager shall prepare and submit to the city council a written report (a) detailing the experience the city has had with the one licensee, if any, issued a dispensary license pursuant to ~~subsection (a) above this chapter~~ and (b) making recommendations as to whether or not additional licenses should be issued to one or both of the other applicants (the "Two Applicants"), if any, who were ranked among the possible three described in subsection (a) above. Said report shall be agendaized for consideration by the city council at a public meeting at which time the council shall determine whether, when and under what circumstances, if any, licenses to one or both of the Two Applicants should be issued.

(c) Under no circumstances shall the total number of licenses, in effect and issued under this chapter, exceed three (3).

8.41.090 Limitations on number of dispensaries. (ALTERNATIVE C)

(a) After the city manager sends the notice described in section 8.41.120(a) for the first time and has completed the investigations, background checks and determinations required under sections 8.41.120 through 8.41.140 with respect to all of the completed applications submitted to the City in response to said section 8.41.120(a) notice, the city manager shall determine which three applicants, if any, (1)(i) are superior to the other applicants, (ii) are the most qualified and (iii) most fully comply with each and every applicable requirement specified herein, and (2) considered individually, should each be granted a license under this chapter. And of those ~~three~~ applicants (not to exceed three in number), the city manager shall determine the one that demonstrates qualities, experience and/or other characteristics superior to the other ~~two~~ applicants. If the city manager is not able to identify such a superior applicant, then of these ~~three~~, highest ranked applicants, the city manager shall select one by lot. The one so selected shall be issued a license pursuant to this chapter. The other ~~two~~ applicants, if any, shall not then be issued a license but may later be issued licenses in accordance with the procedures set forth in the next subsection.

(b) During the six month period immediately following the effective date of the approval authority's granting of the first license issued under subsection (a) above, no additional licenses to operate a dispensary in the city may be issued by the approval authority. No later than thirty (30) days before said six month period ends, the city manager shall prepare and submit to the city council a written report (a) detailing the experience the city has had with the one licensee, if any, issued a dispensary license pursuant to ~~subsection (a) above this chapter~~ and (b) making recommendations as to whether or not additional licenses should be issued to one or both of the other applicants (the "Two Applicants"), if any, who were ranked among the possible three

described in subsection (a) above. Said report shall be agendized for consideration by the city council at a public meeting at which time the council shall determine whether, when and under what circumstances, if any, licenses to one or both of the Two Applicants should be issued.

(c) Under no circumstances shall the total number of licenses, in effect and issued under this chapter, exceed three (3).

8.41.100 Limitation on location of dispensary.

(a) A dispensary may only be located within the Neighborhood Commercial (NC) District, Central Commercial (CC) District, Service Commercial (SC) District, Thoroughfare Commercial (TC) District, General Commercial (C) and the Light Industrial (LI) District (as so defined, designated and located in the city’s zoning code).

(b) A dispensary shall be in a visible location that provides good views of the dispensary entrance, windows and premises from the public street and/or parking lot nearest to the dispensary.

(c) A dispensary shall not be allowed in the following areas at the time of its permitted establishment:

(1) Within ~~1,000~~600 feet of a youth-oriented facility, a school, a church that regularly provides classes to minors or contains a child daycare center, a park or another dispensary; or

(2) Within any residential zoned parcel, or any property with an underlying residential or mobile homes general plan land use designation; or

(3) Within 300 feet of a church that does not regularly provide classes to minors and does not contain a child daycare center, any residential zoned parcel, or any property with an underlying residential or mobile homes general plan land use designation; or

(4) Within the area encompassed by the Downtown Specific Plan; or

(5) On properties which abut or have vehicular access to Alhambra Avenue.;

(d) The distance specified in this section shall be the horizontal distance measured in a straight line from the property line of the above listed uses to the closest property line of the lot on which the dispensary is to be located without regard to intervening structures.

(e) A waiver or modification of the requirements in subsection 8.41.100(c)(3) may be granted if the applicant demonstrates on plans and materials presented in the applicant's application that a physical barrier or similar condition exists which achieves the same purpose and intent as the distance requirements set forth in subsection 8.41.100(c)(3).

8.41.110 Operating requirements.

(b) Minors.

(1) It is unlawful for any licensee, operator, or other person in charge of any dispensary (who must be at least 21 years of age) to employ any person who is not at least 21 years of age.

(2) Persons under the age of ~~18~~21 shall not be allowed on the premises of a dispensary unless they are a qualified patient or a primary caregiver and they are in the presence of their parent or guardian.

(3) The entrance to a dispensary shall be clearly and legibly posted with a notice indicating that persons under the age of ~~18~~21 are precluded from entering the premises unless they are a qualified patient or a primary caregiver and they are in the presence of their parent or guardian.

(c) Operating Hours. A dispensary shall only be operated during the following days and hours:

(1) Monday through ~~Saturday;unday:~~ 10:00 a.m. to 7 p.m.~~9:00 [8:00] a.m. to 8:00 [9:00] p.m.~~

(2) Sundays: 10:00 a.m. to 5:00 p.m.

(d)(4) Security personnel shall be employed to monitor site activity, control loitering and site access. Said personnel must be licensed and bonded and must be on site

during business hours sufficient for the safety of the dispensary's employees and clientele. ~~Some or all of these requirements in this subsection (4) may be waived if the approval authority finds that other on-site surveillance and other methods are adequate to provide the requisite level of safety.~~

(d)(8) ~~It is preferred that~~ ~~[Aa]~~ dispensary shall be the sole occupant of the building in which it is located or operating. ~~¶~~ In determining whether or not to issue a license hereunder and in ranking the applications for licenses hereunder, the approval authority shall give preference to those proposed dispensaries that shall be the sole occupant of the building in which they intend to be located and to operate. ~~¶~~

(g)(4) No dispensary shall conduct or engage in the commercial sale of any product, good or service, including but not limited to food. Notwithstanding the foregoing to the contrary, the term "commercial sale" does not include ~~(i) the provision of medical cannabis on terms and conditions consistent with this chapter and applicable law and/or (ii) the sale and/or provision of non-alcoholic beverages, books, paraphernalia for the ingestion or consumption of medical cannabis, massage, yoga instruction and other appropriate and lawful healing modalities.~~

(s) ~~[No cash may be used to consummate any transactions consummated on or from the premises of a dispensary. If monetary consideration is to be used to consummate a transaction on the premises, it must be effected through the use of credit cards, debit cards or checks.]~~ Under rules and regulations promulgated by the city manager, there shall be established an amount of cash above which the dispensary shall not be permitted to store or maintain on the premises for more than 24 hours. During each day that the dispensary is open, the licensee shall be required to have all the cash earned by, paid to and/or in the possession of the dispensary in excess of the amount specified in accordance with the rules described in the immediately preceding sentence, picked up and removed from the premises by security personnel and transported from the dispensary in an armored vehicle. ~~No transaction(s) effected by any given individual patient or caregiver during any given day shall involve, cumulatively, the payment of more than \$200 in cash.~~

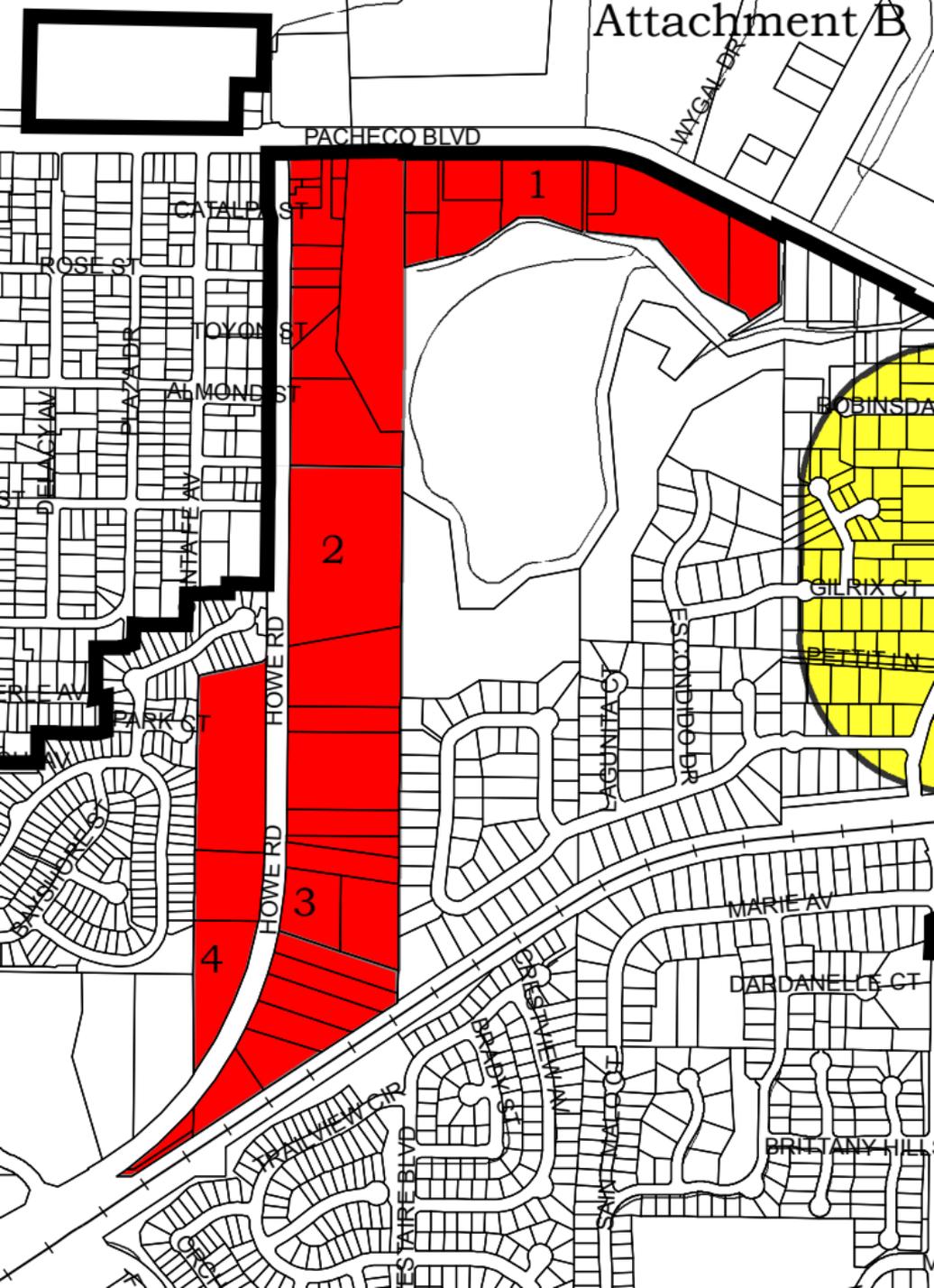
8.41.130 Criteria for review.

(d) That an applicant and all proposed employees are not under 21 ~~[18]~~ years of age.

8.41.150 Appeal from City Manager's determination.

(c) A Licensing Appeals Board is hereby created and is vested with the powers and authority specified in this chapter. The Licensing Appeals Board shall be comprised of ~~(1) two councilmembers and (2) a planning commissioner or member of the city at large~~ ~~the head of one department of the city, excluding the chief of police~~, as appointed by the mayor.

Attachment B

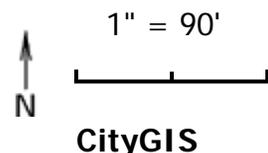


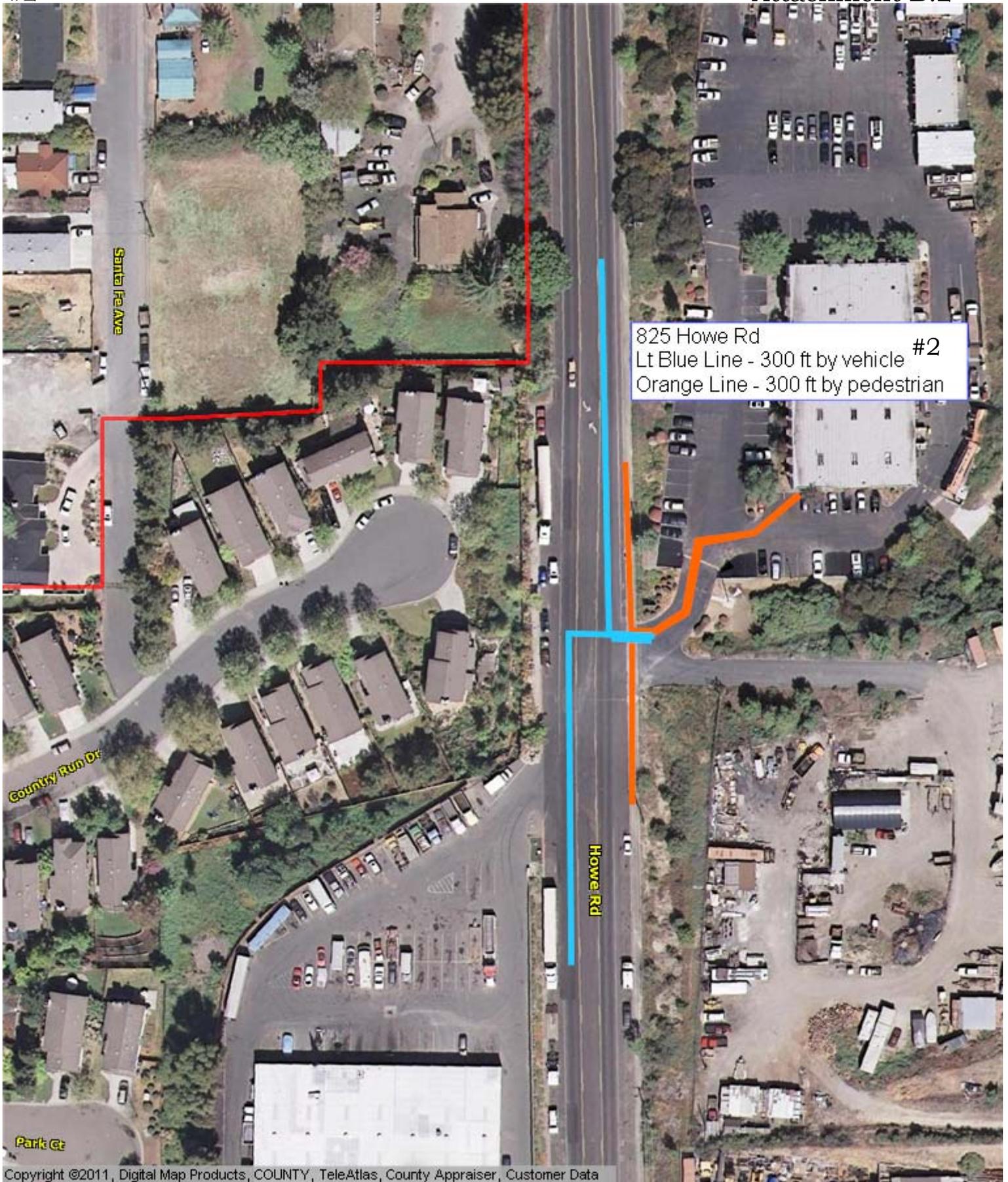


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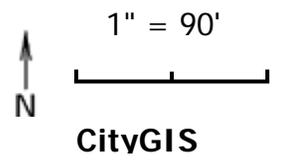


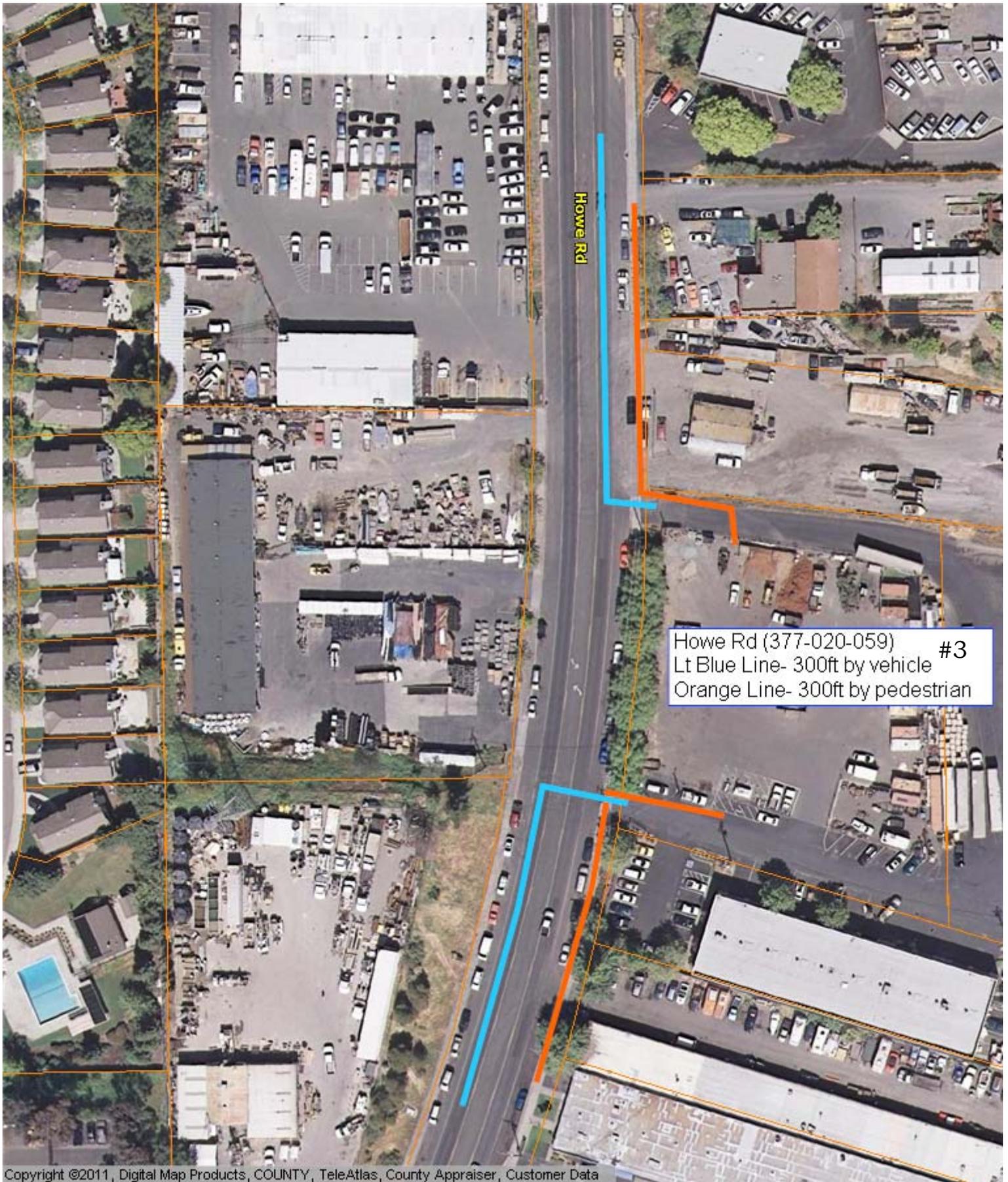
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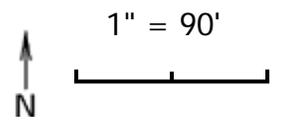




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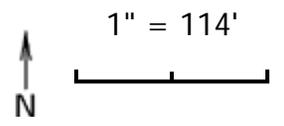
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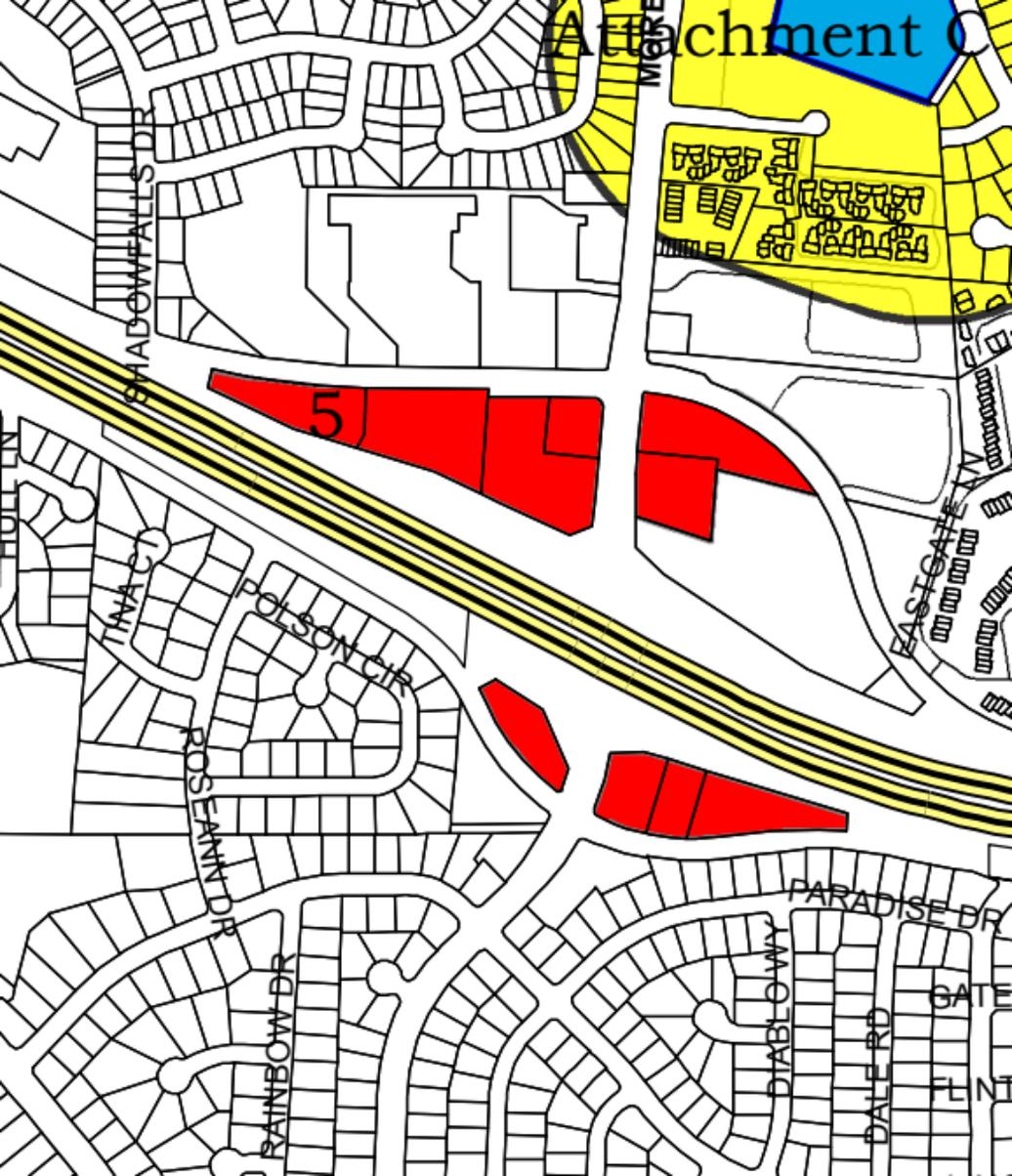
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SHADOWFALLS DR

WILKINSON

HOLLIN

THAA CT

POLSON CIR

ROSEANN DR

RAINBOW DR

DIABLOWY

DALE RD

PARADISE DR

GATE

FLINT

EASTGATE AV

5



1124 Arnold Dr #5
 Lt Blue Line- 300ft by vehicle
 Orange Line- 300ft by pedestrian

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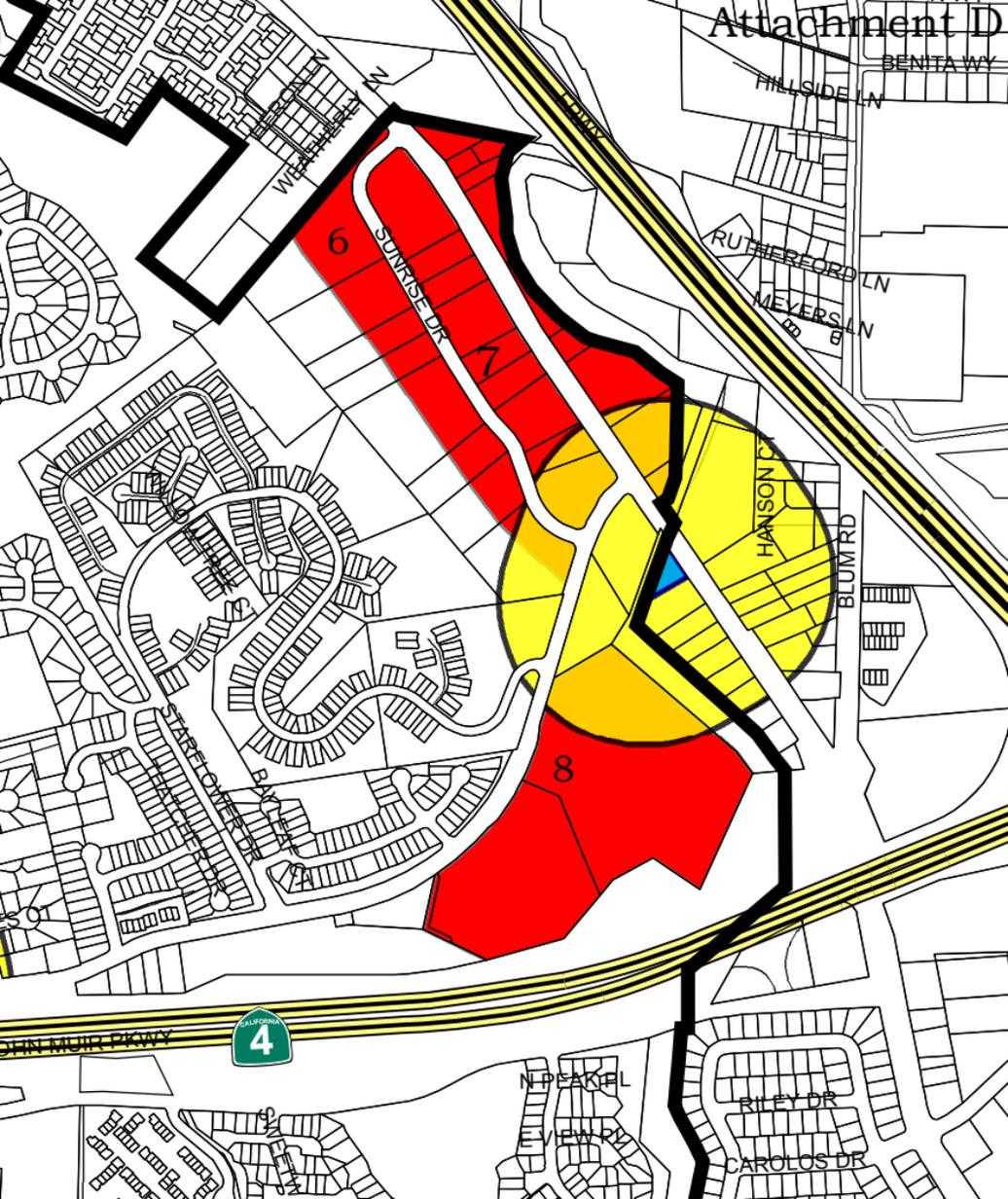


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1" = 124'

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Attachment D





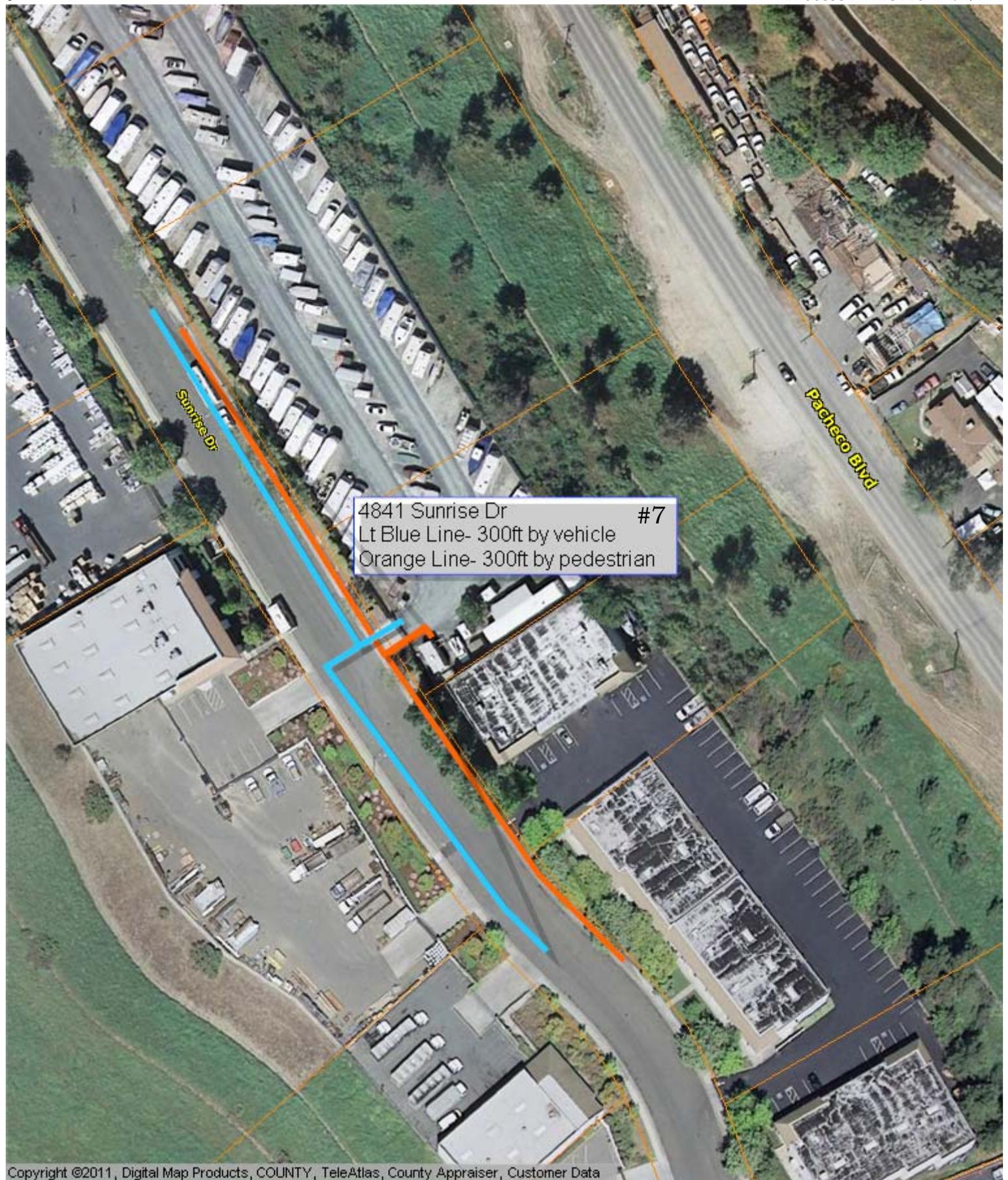
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1" = 119'

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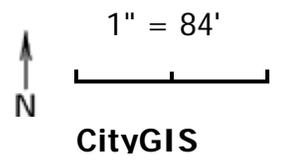
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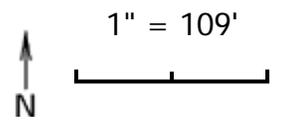


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CITY OF MARTINEZ

**CITY COUNCIL AGENDA
February 16, 2011**

TO: Mayor and City Council

FROM: Dina Tasini, Contract Planner
Michael Chandler, Senior Management Analyst
Anjana Mepani, Associate Planner

SUBJECT: Medical Cannabis Dispensary Licensing Ordinance

DATE: February 10, 2011

RECOMMENDATION:

Hold a public hearing and take public testimony, discuss the recommendations of the Planning Commission, and decide whether to amend the Martinez Municipal Code by introducing an ordinance repealing Chapter 22.41 (Medical Marijuana Dispensaries) Section 22.16.080(N) (C-Commercial Districts, Conditional Uses) in its entirety; and amending Section 22.16.030 (C-Commercial Districts, Permitted Uses-Generally) and Section 22.18.010 (I-Industrial Districts, General Provisions and Exceptions) to allow Medical Cannabis Dispensaries as a Permitted Use, subject to the standards and requirements for obtaining a license; and adding Chapter 8.41 to the Municipal Code permitting the establishment of Medical Cannabis Dispensaries by license.

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 Martinez 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 had applied for a use permit under the existing Ordinance.

ATTACHMENT E

The Public Safety Subcommittee of the City Council requested that staff review the current Ordinance and hold public meetings to discuss its continued viability and efficacy. A number of proposals from dispensary advocates were made to change the structure of the regulatory process from a use permit to licensing schematic. The Public Safety Committee met on January 6, 2010, to discuss the existing Ordinance. The Subcommittee directed staff to draft a revised ordinance that includes a licensing procedure. The draft Ordinance was completed in March 2010 and posted on the City website for 30 days. Public comment was received via an online questionnaire monitored by staff. The comments were compiled and the Public Safety Committee subsequently met a number of times to discuss comments and hear public testimony on the draft from April 2010 through January 2011. The Planning Commission held a duly noticed public hearing on January 11, 2011.

DISCUSSION:

Planning Commission Hearing

On January 11, 2011, the Planning Commission held a public hearing to repeal Chapter 22.41 (Medical Marijuana Dispensaries); to repeal Section 22.16.080(N) in its entirety; and recommend the addition of Chapter 8.41 to the Martinez Municipal Code creating a licensing schematic for the regulation of Medical Cannabis Dispensaries; and 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. After taking public testimony, the Planning Commission discussed the proposed Ordinance and recommended its adoption with the following amendments with respect to the number of dispensaries, location, public noticing, and processing of applications:

A. Limitations on number of dispensaries

The Planning Commission discussed the number of dispensaries that should be licensed within the City. They decided based on the City's population, and concerns of the public that three dispensaries may be too many and recommended a reduction in the number of permitted dispensaries to be limited to one (1). They further recommended that if a greater number of dispensaries is determined to be appropriate, then the initial Medical Cannabis Dispensary be subject to trial or probationary period of one year prior to approval of any additional licenses to operate are granted, rather than the six month trial period currently proposed within the draft Ordinance.

B. Location of Dispensary

The Planning Commission recommended adoption of the location limitations provided in the draft ordinance (Section 8.41.100, (c) and (d)); however, they requested that staff produce maps to determine if the measurements as proposed are appropriate and would result in any viable dispensary sites. They further recommended removal of Section 8.41.100(e), which allows for a waiver or modification of the measurement requirements of Section 8.41.100 (c)(3); namely, the 300 foot distance from a church, residentially zoned parcel, or property with underlying residential or mobile homes general plan land use designation, if the applicant could demonstrate that a mitigating physical barrier or similar condition exists to achieve the same purpose and intent of the distance requirement. Additionally, the Planning Commission recommended the prohibition of MCD's within the Downtown Specific Plan Area and Alhambra Avenue.

C. Operating Requirements

The Planning Commission reviewed all the operating requirements section (8.41.110) of the proposed draft Ordinance and recommended the following list of revisions and or amendments:

- Background check to be expanded to include an FBI background check.
- Age Limit of 21 for both employees and patients.
- Operating hours of 10 a.m. – 7 p.m. Monday-Saturday; and 10 a.m. – 5 p.m. on Sundays.
- Security on site with no exceptions or waivers.
- Patients are permitted to pay in cash without limit since limitations have already been placed on permitted quantities of medical cannabis.
- No other uses on site other than sale of medical cannabis.
- Recommend dispensary location be in a building which is the sole occupant of the building and a dispensary located within a sole occupant building should also receive preference as part of the selection criteria.

D. Criteria for Review

Concern was expressed by both the public and Planning Commission with respect to the lack of public notification for both the selection process and decisions regarding MCD's. The Planning Commission recommended inclusion of public noticing requirements of decisions regarding medical cannabis dispensary licensure. The recommendation for public noticing is similar to the process followed for the sale of alcoholic beverages, which includes notification in a local newspaper and posting of the proposed site.

The Planning Commission also opined that the City does not need to continually solicit applications for new dispensaries after the initial RFP process for the first group of applicants is completed. The draft ordinance as written proposes solicitation from the City Manager for all new applications. The Planning Commission recommended the responsibility of initiating future applications beyond the initial set of applications solicited by the City Manager fall on prospective applicants (if less than the maximum number of permitted licensees exists), as is common practice for all development applications.

Finally, the Planning Commission recommended changes to the composition of the appellate body to include a member of the Planning Commission or community member at large in place of the proposed City staff department head.

As a point of reference for discussion, staff has included sample Selection Criteria (Exhibit D). The expectation is for the City Manager to use a score sheet similar to what is attached as Exhibit D; however, the score sheet will not necessarily reflect all of the criteria relied upon by the City Manager to reach a decision to grant or deny a license.

FISCAL IMPACT:

The fee structure will include the following four (4) components:

- 1) a chargeable deposit for each new application of \$6,000;
- 2) a chargeable deposit for renewal applications of \$2,500;

ATTACHMENT E

- 3) a one-time “selection fee” charged to each applicant granted a license of between \$25,000 and \$37,500 (depending upon number of total licenses allowed by the Ordinance, if more than one is authorized) to recover City costs of approximately \$75,000 associated with establishing and implementing the new Ordinance;
- 4) a flat ongoing Operations Fee for annual monitoring, review, and enforcement costs, to be initially established as \$9,100, but to be revisited periodically after sufficient data is compiled to establish the City’s true costs; and

Additional revenue would be generated by Sales Tax and Business License Tax on the operation. Limited data on the approximate gross sales of individual dispensary operations in other jurisdictions for 2009 include \$1.3M in Santa Rosa; \$4M in Sebastopol; \$15M in Berkeley; and \$40M for a large dispensary in Oakland. For point of reference, sales of \$15 million per year in Martinez would equate to Sales Tax back to the City of \$150,000, and a Business License Tax of approximately \$2,500.

ACTION:

Consider the proposed recommendations by the Planning Commission. The City Council may then conduct the first readings of the proposed ordinances (Repealing Chapter 22.41 and adding Chapter 8.41) as presented, or with any proposed amendments.

Attachments:

- A. Ordinance repealing Chapter 22.41
- B. Draft Medical Cannabis Dispensary Licensing Ordinance, January 7, 2011
- C. Planning Commission staff report, January 11, 2011
- D. Planning Commission minutes January 11, 2011
- E. Draft Selection Criteria



APPROVED BY: City Manager



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

Planning Commission
 Regular Meeting
 January 11, 2011
 Martinez, CA

CALL TO ORDER

The meeting was called to order by Acting Chair Donna Allen at 7:00 p.m.

ROLL CALL

PRESENT: Donna Allen, Commissioner, Harriett Burt, Commissioner, Rachael Ford, Commissioner, Jeffrey Keller, Commissioner, Paul Kelly, Commissioner, Michael Marchiano, Commissioner, Sigrid Waggener, Commissioner, and Kimberly Glover, Alternate.

EXCUSED: None.

ABSENT: None.

Staff Present: Planning Manager Terry Blount, Senior Planner Corey Simon, City Attorney Jeff Walter, Contract Planner Dina Tasini

Mr. Blount performed the swearing-in of Planning Commissioner Sigrid Waggener and Alternate Kimberley Glover.

AGENDA CHANGES

None.

PUBLIC COMMENT

None.

CONSENT ITEMS

None.

REGULAR ITEMS

1. *Medical Cannabis Ordinance 11PLN-0008 Public hearing to consider (1) Repealing Chapter 22.41 (Medical Marijuana Dispensaries) of the Municipal Code; and Repealing Section 22.16.080(N) (C-Commercial Districts, Conditional Uses) of the Municipal Code in its entirety; and amending Section 22.16.030 (C-Commercial Districts, Permitted Uses-Generally) and Section 22.18.010 (I-Industrial Districts, General Provisions and Exceptions) to allow Medical Cannabis Dispensaries as a Permitted Use, subject to the standards and requirements for obtaining a license pursuant Chapter 8.41, now being proposed; and (2) Adding Chapter 8.41 to the Municipal Code permitting the establishment of Medical Cannabis Dispensaries by license. The Planning commission will make its recommendations to the City Council, which will consider the possible amendments at a future date to be announced. Applicant: City of Martinez (DT)*

Contract Planner Dina Tasini presented the staff report, explaining the purpose of the proposed changes to the Municipal Code. She discussed the process thus far with staff and the City

Council Public Safety Subcommittee, as well as the options before the Planning Commission tonight.

Ms. Tasini also read a statement from Chief of Police Gary Peterson, in which he stated his belief that the proposed ordinance will improve public safety as it provides more regulation and controls than the current ordinance.

City Attorney Jeff Walter noted that the Planning Commission's role is advisory, and he highlighted some of the issues related to the ordinance: determination of the first dispensary to be licensed, appeals of that selection, locations, license term, renewals, number of allowed dispensaries, zoning districts, distance from schools, etc., age limits for employees and customers/patients/caregivers, hours of operation, dispensary size limitations, allowable ancillary uses, dispensed amounts, restrictions on onsite consumption, cultivation, clearing of litter and debris, restriction on cash sales, annual review, indemnification of the City, criteria for review, and the license revocation process. He also raised the issue of delivery services, noting it is illegal by state law for delivery by other than the caregiver.

Commissioner Burt asked where the model for the ordinance originated - Mr. Walter said from the city of Santa Rosa. Commissioner Burt asked how well it has worked. Mr. Walter said it seems to be working - it has been in effect for 3 or 4 years and there are 2 or 3 dispensaries. But he confirmed this draft ordinance has been modified considerably from the Santa Rosa example.

Commissioner Keller asked how an application that has been submitted under the current ordinance and how it will be impacted by this ordinance. Mr. Walter said it depends on the type of action by the Planning Commission. He acknowledged an application has been submitted and will come to the Planning Commission on February 8th, but hopefully this will go to the City Council before then. He cited a similar situation in San Francisco where the Planning Commission denied an application pending the outcome of an ordinance under consideration. He indicated the courts upheld the city's action.

Commissioner Marchiano asked who sets the fees and what the process is. Mr. Walter said the Council will set the fees.

Commissioner Ford asked how public the application review process will be, and she expressed that the cash/credit card/check options seem discriminatory and have a potential "paper trail" that might make buyers uneasy. She also stated that the Department of Justice background check will not reflect out of state issues. Mr. Walter said this may be something for the Planning Commission to discuss further.

Commissioner Marchiano said he would like to have a one-year trial period rather than 6 months.

Commissioner Burt asked why this is under consideration now when there is only one application before the City. She also asked what determines what makes a community optimum for a medical cannabis dispensary. She noted that neither Kaiser nor the county hospital support cannabis prescriptions, yet many in the community use Kaiser and the county hospital for medical services. Mr. Walter clarified that the cannabis use is recommended by physicians, but is not given by prescription.

Chair Allen asked about limiting the number of dispensaries to three, and she questioned the process of the City inviting applications. She also asked what will happen if one leaves - how and when do new ones apply?

Commissioner Kelly discussed his research, and he questioned why limit a patient's daily amount to a \$200 cash transaction when that amount could not pay for 2 oz transaction. He also asked about on-site cultivation and whether the product can be grown onsite other than from clones. Commissioner Marchiano said a cooperative could, but not a dispensary.

Commissioner Kelly expressed concern about the limitations on setbacks from some public venues etc - he questioned whether there would be any site that would meet the limitations on square footage and setbacks. He was also concerned about security personnel and/or monitoring of the facility.

Commissioner Ford agreed with Commissioner Kelly, especially with the required setback from residential uses. She indicated she would hesitate to proceed with a 300' setback from residential uses.

Chair Allen opened the public hearing.

JOHN OREM, C W Analytical Laboratories, expressed appreciation for the City considering the issue. His business analyzes composition of medical marijuana to ensure a safe product.

JAMES ANTHONY, land-use attorney working with CANNBE, noted he met with Commissioner Marchiano and toured a working dispensary in Oakland. He acknowledged a 300-foot setback from residential areas could be difficult. Overall, he thought it was a comprehensive ordinance. He reported Santa Rosa's ordinance is working, and this one seems to be an improvement on that one. He commented that cultivation is a local land-use matter, essentially a light industrial use, while a dispensary is more retail oriented, but it is possible to combine the two uses if it is situated in a light industrial district. He cited other jurisdictions that are considering allowing cultivation.

LARRY FLICK, representing Greenleaf, expressed concern about the preference given for free-standing buildings. He also said most dispensaries do allow for ancillary uses, and he agreed that restricting cash sales could be discriminatory.

JOHN FULLER suggested repealing the current ordinance without instituting the new one. He thought Martinez is too small, and it is not appropriate for a city the size of Martinez (36,000) nor for one that is family-oriented. If approved, he suggested a 1000 foot minimum from the school district sites, locating them in light industrial areas and not in downtown, 600 ft from parks (including the John Muir homesite), limit the number to one and make it compatible with state or federal law, and not on major transportation arteries.

The Commission recessed for 5 minutes.

Hank Snavely submitted a written comment, in which he stated that the ordinance should emphasize green values.

MIKE ALFORD agreed with Mr. Fuller. He asked why there is such a push to get the ordinance in place without feedback from the school district and parents in the community. He questioned how much an ounce of cannabis costs, and Commissioner Marchiano said the cost would be equivalent to street values (and it depends on the variety) - between \$200 and \$300 per ounce. Mr. Alford questioned whether people who can't work would have money to purchase it. He acknowledged the prevalence of residential areas abutting commercial areas, which could make it difficult to find an appropriate location. He suggested less populated areas. He also reiterated the need to communicate with the public, parents and the school district.

GUS KRITIKOS, retired DEA agent, expressed concern about negative impacts similar to Amsterdam, as well as who will get rich from this.

CINDY ERICKSON, resident, expressed surprise about the speed with which this is being considered, adding that it needs to have citizen input. She noted that if this is safe and legal, the children should not need to be protected from it. She also asked about limits to smoking and its negative effects. She thought this was a greed issue - not a real health issue. She expressed that the notification for this meeting was very inadequate. She also added that the police have enough issues already without adding monitoring of dispensaries to their job description. She was equally concerned that those with valid permits for medical marijuana will sell them to others, and she was concerned about the element that could come in as a result. She urged the Planning Commission to carefully consider the matter. She also asked why the City needs this now.

MICHAEL MOORE, resident, said some people like to choose their own relaxation, and California is setting a trend; he acknowledged it is about the money, given the current economy, why not? He also noted that not all marijuana users are a bad element. He acknowledged 3 dispensaries could be too many for Martinez, and the adults need to make the decisions.

DEMETRIO RAMIREZ, MARICARE, said for those who have medical needs with inadequate finances; help is available to get them the product they need. He commented that the world is changing, noting he has provided care for 18-yr olds to senior citizens who have needed cannabis. He thanked the City for considering the issue.

ROBERT MARTIN commented on the process with the City since 2009 - he noted that aspirin kills but marijuana does not. He indicated he would like to provide a community service for those who need pain relief. He pointed out that marijuana is not addictive, and its use is supported by every major religion.

JUSTIN WHITBURN, resident, commented on how he came to use medical cannabis and its little negative effects. He stated that most users are responsible people who don't want to travel to Richmond or Oakland to get their product. He added that there are more positives than negatives from dispensaries coming to the City.

ANGIE SILVIOS, resident, expressed strong opposition to the ordinance, especially for more than one dispensary. She agreed the main issue has to be monetary. She also mentioned that CaliforniaWatch.org has an article that says how many California cities have banned dispensaries or placed moratoriums on the number. She strongly urged notifying the public of proposed areas for dispensaries.

RICKY KNOTT, business licensee for medical cannabis dispensary, noted that regulation will improve safety for users and the community. He also thought that the recommended provisions should come from a doctor rather than an attorney or politician.

TONY TREVINO said he is not a user, but he would hate to see his future need be restricted, requiring him to go to Richmond.

Seeing no further speakers, Chair Allen closed the public hearing.

Commissioner Waggener asked for clarification as to whether the "no dispensary" option is available to the Commission or whether the choice is between the current ordinance and the proposed new ordinance.

Commissioner Burt asked how this ordinance came up so fast and why there was less opportunity for public input. Mr. Walter said the Public Safety Subcommittee had numerous meetings over more than one year, and each was publicly noticed. Staff also noted this is not the last opportunity for the public to speak on the issue, as there will be at least two more City Council hearings, and the February 8th Planning Commission meeting will include a hearing on the one pending application under the current ordinance. Ms. Tasini said there will be the normal 10-day notice in the newspaper of each hearing.

Commissioner Burt asked about any outreach to the public or the school board by the Subcommittee. Mr. Walter said he didn't think there was any. Ms. Tasini said there is no record in the file that indicates specific outreach to schools or the school board

Commissioner Burt asked about the current sales tax rules for medical marijuana and Board of Equalization requirements - Mr. Walter said yes, they are required to meet all sales tax requirements.

Commissioner Keller asked if a special use tax would be instituted, as in Oakland. Mr. Walter said it would have to be approved by the voters.

Chair Allen asked why 3 dispensaries are being considered rather than another. Mr. Walter said it was what the Subcommittee recommended. He also indicated that the findings for the Council will probably include information on per capita studies, based on the ordinances in other cities.

Chair Allen asked if the current use permit applicant could request a delay of his hearing. Ms. Tasini said staff could ask the applicant for an extension.

Mr. Orem said they support the City completely in this process, and he would consider delaying the hearing on their application until this ordinance is decided but he needs to consult his co-

applicant. Ms. Tasini said the request for the delay would need to be in writing.

Commissioner Burt asked about crime levels around dispensaries and whether private security is really needed. Mr. Walter discussed statistics that show some cities have experienced an increase in crime, but others have not. Commissioner Marchiano agreed that the well-run, licensed facilities have not, but unlicensed ones are more likely to result in increased crime.

Commissioner Keller commented on his experience in the pharmacy business and the potential for addiction to alcohol, pain medications, etc. He said he was not opposed to medical marijuana and agreed the background check for employees should be national, not just statewide. He also thought employees should be 21 years old at least, and there should be a one-year trial period for the first dispensary. He questioned whether the hours of operation really need to be 8:00 am to 9:00 pm. He did not think that onsite security should be allowed to be reduced without consent from the police chief, and he thought the amount of cash transactions should be allowed to be higher.

Commissioner Marchiano noted that the armored car provision was not for transporting marijuana, but for dealing with the cash deposits. He also would not think a waiver of the onsite security provision should be allowed, but cash transactions should be, and the operating hours should be more restrictive more. He agreed that a one year trial period should be required for the first dispensary, and he did not think there should be more than one in the City. He agreed with the proposed setbacks and would not reduce them, adding that most residential areas would not want a dispensary nearby. He was strongly concerned about the reputation of the City.

Commissioner Waggener agreed with the one year trial period for analyzing the impacts and that the proposed ordinance provides more control over the dispensaries than the current one. She liked the concept of a stand-alone building, and she agreed only one dispensary should be considered at a time.

Chair Allen asked why the cannabis could not be dispensed by a pharmacy (as asked by audience member). Commissioner Marchiano said it was set according to the statute passed by voters. Mr. Walter added that it would be against federal law for a pharmacy to dispense it.

Commissioner Ford said she thought the application review process should be public, and there should be no dispensaries in the downtown or on Alhambra location. She would prefer a stand-alone building, and only one dispensary in the City. She acknowledged this is a difficult issue for parents, and money is not the only issue - having access to medical care (especially for cancer patients) is very necessary. She acknowledged that much work has gone into the process thus far; she would support moving forward with a recommendation to the Council from this meeting.

Commissioner Burt agreed with Commissioner Ford; she acknowledged that substance abuse is a problem in our society (especially abuse of prescription drugs) but she is not willing to deny those with health issues the access to something they may need for pain control, etc. She reiterated there will be many more opportunities for the public to speak.

Commissioner Kelly agreed with a one-year trial period. He asked whether a dispensary operator can rent a building or whether they will need to own the building. As a resident and

parent, he had some concerns, but he was pleased to see how strict and well-written the ordinance is. He supports the proposed ordinance.

Alternate Commissioner Kimberly Glover agreed with Commissioner Ford's statements - the ordinance is restrictive, but she would like to see still more restrictive hours and a one-year moratorium before additional dispensaries are allowed.

Chair Allen also agreed with the other Commissioners. She thought parks should be included, and the approval process should allow for public input at some point (perhaps with a notice of intent and/or a notice of decision). She was unsure about the makeup of the review board; she thought it should be the City Council, especially if there is only one dispensary. She recommended the ordinance go to the school board before it is submitted to the Council. She also thought a map of potential locations should be circulated first.

Mr. Walter reviewed different options and received input from the Planning Commission, as follows:

There was no support from the Commission for a restriction on transactions by cash only, or for a limit of \$200 cash/per transaction or an onsite nursery (childcare).

The Commission unanimously agreed there should be greater public notice about the decision-making process, a more extensive background check, a maximum of one dispensary, a one year trial period, and a repeat of the earlier process if a new applicant makes the request, no onsite cultivations except for clones, the operating hours should be 10-7 Monday - Saturday, and 10-5 on Sunday, there should be no exceptions to the requirement for onsite security, parks should be included in the required list of uses with a minimum setback requirement, a department head should not be included in the appellate body, employees should be at least 21 years old, non-alcoholic beverages can be sold onsite, and the setback requirements should be left as they are, provided there is a map showing there are some workable sites.

A majority of commissioners supported removing the provision for a waiver of the setback requirements (4:3), giving preference to a dispensary that will be the sole occupant of a building (4:3), the members of the appellate board should be either Planning Commissioners, City Council members or a citizen-at-large, and that no other goods or services should be offered at the dispensary other than marijuana and marijuana products.

Chair Allen said there should be a review of the ordinance in one year as well.

On motion by Harriett Burt, Commissioner, seconded by Michael Marchiano, Commissioner, the Planning Commission voted to recommend that the City Council repeal the current Medical Marijuana Ordinance and add the new Medical Cannabis Ordinance, with the modifications suggested by the Planning Commission. (Abstain: Kimberly Glover, Alternate.)

EXHIBIT H

Medical Cannabis Dispensary Draft Selection Criteria

Applicant: _____

	Max Score	Applicant Score
Applicant's resume/applicable experience/criminal history/background check	200	<input type="text"/>
Proof of capitalization (liquid assets available to the applicant) <i>(Based upon applicant's projection of income and start-up and monthly costs as shown in budget. Capital should be sufficient to cover costs through breakeven point)</i>	100	<input type="text"/>
Facility Plans	200	<input type="text"/>
Floor plan	25	
Site plan	25	
Single Occupant	25	
Photos of all exterior and visible interior aspects of the facility	25	
Suitability of facility for medical patients	25	
Degree of ADA compliance	25	
Parking plan	25	
Exterior lighting plan	25	
Form of organization		<input type="text"/>
Non-profit	200	
Patient collective	50	
Statutory cooperative	50	
For profit	not allowed	
Proposed services/business plan	200	<input type="text"/>
What services will be offered to patients in addition to sales of medical cannabis?		
What contribution would your business make to the community in addition to the sales of medical cannabis?		
Fees for planned services		

	Max Score	Applicant Score
Operations Plan	150	<input type="text"/>
Days and hours of proposed operation – On application form		
Number of patients and caregivers dispensary will be capable of serving – On application form		
Patient screening process		
Caregiver screening process		
Quantity limits per patient/caregiver, applicable time period, and method of control		
Methods of mitigating adverse effects on neighbors		
Inventory plan	100	<input type="text"/>
How do you plan to produce cannabis?		
How do you plan to store cannabis?		
Quality control plan	100	<input type="text"/>
Staffing plan	100	<input type="text"/>
Security plan	150	<input type="text"/>
Points will be given for security measures in excess of the minimum		
Record-keeping plan for: (indicate software/system and data to be maintained)	100	<input type="text"/>
Financial records		
Patient/caregiver/member records		
Quality control system		
		Applicant Total
MAXIMUM POINTS	1600	<input type="text"/>

Comparative Survey of Existing vs. Proposed Medical Cannabis Dispensary Ordinances

Ordinance	Permit Required	Deciding Authority	Distance Restrictions	Zoning Restrictions	Number Restrictions	Operating Requirements	Supply/Dispensing Limits	Age Limit
Current Ordinance	Conditional Use Permit; all property owners within 1,000 feet of proposed dispensary must be noticed	Planning Commission or City Council (on appeal), grants only if finding of fact that presence will have no adverse impact	>1,000 feet from parks, elementary or secondary schools, child daycare centers or churches, measured, and >300 feet from property used for residential purposes; measurements conducted from Dispensary building to property line of aforementioned uses, using most direct vehicular or pedestrian access route, whichever is shorter	Commercial Districts only (excluding General Commercial Districts)	No restriction on number of dispensaries or patients.	Hours of operation limited to 9 a.m. - 8 p.m., seven days a week; no retail sales of products other than medical cannabis	Permissible on-hand quantity not specified; Chief's guidelines for dispensing are 1/8 oz per patient per visit; cultivation allowed only if authorized by Conditional Use Permit	Must be at least 18 years old to enter premises
Proposed Ordinance (as of 1/7/11)	Dispensary License (annual); potential for additional 12 month extensions	City Manager determination regarding granting of dispensary license; appeals to "Licensing Appeals Board" comprised of two Council and one Dept Head	>600 feet from youth-oriented facility, schools, churches w/daycare center, or other Dispensary; and > 300 feet from residentially zoned parcel or church w/o daycare center, with caveat that waiver could be granted if mitigating physical barrier or similar condition exists; distances measured from property line to property line	Same as existing Ordinance, but adds Light Industrial and General Commercial Districts	During first 6 months, no more than one dispensary permit allowed; total licenses may never exceed 3. No limit on number of patients.	Hours of operation limited to 8 a.m. - 9 p.m., seven days a week; no retail sales other than medical cannabis, but allowance for non-alcoholic beverages, literature, and other services (i.e. massage, yoga)	No limits on total supply; per visit dispensing limits are 2 oz dried cannabis or 2 oz in baked or cooked goods allowed; 30 capsules or tablets with 500mg's; only immature clones may be cultivated on premises; cash transactions limited to \$200	Under 18 allowed if qualified patient or primary caregiver, and parent or legal guardian present; employees must be 21
Proposed Ordinance, with Planning Commission recommendations (as of 1/11/11)	Same as 1/7/11 Ordinance above, but recommends public noticing of decisions regarding licensure	Same as above, except Appeals Board to consist of two Council and one Planning Commissioner or community member at large	Distances same as above, but include parks as one of the uses from which a minimum setback requirement is determined, and remove the waiver provision	Same as above, but prohibit dispensaries in Downtown and Alhambra Ave.	Maximum of one dispensary permit allowed. If more than one authorized, make initial trial period 12 months instead of 6 months.	Hours of operation limited to 10 a.m.-7 p.m. Mon. to Sat, 10 a.m.- 5 p.m. on Sunday; no provision for other goods or services	Same as above, but no limit to cash transaction amounts	Patients and employees must be 21