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. Nr, 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 extenison.

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.)

COMMISSION ITEMS

2. *Election of Planning Commission Chair (position vacant due to resignation from the previous Chair).*

On motion by Michael Marchiano, Commissioner, seconded by Harriett Burt, Commissioner, the Planning Commission voted to approve election of Donna Allen to serve as Chair of the Commission. (Abstain: Kimberly Glover, Alternate.)

On motion by Harriett Burt, Commissioner, seconded by Michael Marchiano, Commissioner, the Planning Commission voted to approve election of Rachael Ford to serve as Vice Chair of the Commission. (Abstain: Kimberly Glover, Alternate.)

Commissioner Burt said she received an e-mail regarding the Freitas property on Vine Hill Way, indicating another effort is being made.

Chair Allen asked whether these minutes will go forward with the Medical Cannabis Draft Ordinance report to the City Council. Staff said yes, they will.

Chair Allen asked about modification of the zoning code for county properties annexed by the City, to match the zoning map. Mr. Blount said it is on the staff work program, but it is a difficult issue. He acknowledged it will be part of the General Plan update process. Chair Allen asked if Council can adopt a policy in the meantime.

Commissioner Burt noted that the last time the Freitas property came up, a statement was made that open space areas would be reviewed during General Plan process too. Mr. Blount confirmed it will be part of the process.

Chair Allen asked when the T-Mobile wireless site will be coming back to the Planning Commission. Mr. Blount said it is not on the calendar yet. Chair Allen said she would like a study session on what the Commission can and cannot do in regulating wireless sites. Mr. Blount said he could provide a memo on the subject to the Planning Commission, but he is not recommending a study session.

Chair Allen asked if anyone from the City attended the meeting in Oakland today. Mr. Blount said no, no one was available.

STAFF ITEMS

Mr. Blount said there may be an application for a medical marijuana facility (under the current ordinance) on the agenda for February 8th, and the Alhambra Highlands project will either be on

February 8th or 22nd.

Mr. Blount stated there will be an important meeting in Walnut Creek on January 31st at 6 pm, presented by ABAG & MTC regarding the next Regional Transportation Plan and its accompanying Sustainable Communities Strategy (transportation and land use planning connection). He encouraged all Commissioners to attend.

COMMUNICATIONS

None.

On motion by Paul Kelly, Commissioner, seconded by Jeffrey Keller, Commissioner, the Planning Commission voted to adjourn at 10:30 p.m., to the next regularly scheduled meeting, February 8, 2011, at 7:00 p.m. (Abstain: Kimberly Glover, Alternate).

Respectfully Submitted,

Approved by the Planning Commission
Vice Chairperson

Transcribed by Mary Hougey

Donna Allen

DRAFT