



**CITY OF MARTINEZ**

**CITY COUNCIL AGENDA  
June 6, 2012**

**TO:** Mayor and City Council  
**FROM:** Jeffrey Walter, City Attorney  
**SUBJECT:** Appeal of Planning Commission's Determination that Lice Removal Salons are Permitted Uses in the Commercial Districts (NC, CC and SC)  
**DATE:** May 31, 2012

**RECOMMENDATION:**

Grant the appeal causing the Planning Commission's decision to be overturned.

**BACKGROUND**

At its May 2, 2012, meeting the Council took action to grant the appeal of the Planning Commission's decision to permit lice removal salons to operate in the commercial zoning districts, NC, CC and SC, as permitted uses (permitted as of right). In granting the appeal, the Council directed staff to return to the Council with a resolution memorializing the Council's findings in support of its decision.

Attached is a proposed resolution accomplishing the objective of the Council.

**FISCAL IMPACT:**

No fiscal impact.

**ACTION:**

Motion adopting a resolution granting an appeal and overturning the Planning Commission's determination that lice removal salons should be permitted uses in the commercial districts, NC, CC and SC.

Attachment:  
Resolution

**APPROVED BY:**

  
City Manager

RESOLUTION NO. -12

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARTINEZ  
GRANTING AN APPEAL AND OVERTURNING THE PLANNING COMMISSION'S  
DETERMINATION THAT LICE REMOVAL SALONS ARE PERMITTED USES  
WITHIN THE COMMERCIAL DISTRICTS

**WHEREAS**, on March 13, 2012, the Planning Commission held a public hearing to determine and did determine that lice removal salons are within the classification for and are similar to beauty salons and barber shops and therefore such uses are permitted within the Commercial Districts (NC, CC and SC); and

**WHEREAS**, on March 23, 2012, the appellants (David Fisher, Charlene West, Ernie Guerrero, Pat English and Anne Mobley) filed a timely appeal of the Planning Commission's decision; and

**WHEREAS**, on April 18, 2012, the City Council held a duly noticed public hearing to consider the appeal and considered public testimony and other evidence adduced pertaining to the matter; and at the conclusion of said hearing continued same to May 2, 2012, for further deliberation; and

**WHEREAS**, the appellants, save one, retained an attorney who provided further facts and argument bearing on the propriety of the Planning Commission's decision:

**NOW, THEREFORE, BE IT RESOLVED** that:

1. The above recitals are found to be true and constitute part of the findings upon which this Resolution is based.
2. Under the City of Martinez' zoning code, "barbershops and beauty shops" are permitted as of right in the neighborhood commercial (NC), central commercial (CC) and service commercial (SC) districts. Martinez Muni. Code (MMC) §§ 22.16.040 (B), 22.16.050(A), 22.16.070 (A). However, lice removal salons are not specifically listed in any of these zoning districts as a permitted or conditionally permitted use.
3. The Planning Commission determined that even though lice removal salons are not expressly permitted or conditionally permitted in any of these zoning districts, because they are similar to barbershops and beauty shops, lice removal salons should be permitted in these three zoning districts, as a matter of right.

4. However, under the City's zoning code, in order to add a use to the list of permitted uses found in each of the NC, CC and SC districts, the Planning Commission is vested with the authority, in the first instance, to do so, provided that it follows the "procedure prescribed in Chapter 22.34 of [the municipal code]." MMC §§22.16.040 (B), 22.16.050(B), 22.16.070 (B).
5. Chapter 22.34, and specifically, section 22.34.100, sets forth the required procedures and findings, which if followed and made, respectively, authorize the Planning Commission to "add" another use to one or more of the lists of permitted uses found in the NC, CC and/or SC districts. In order to add such a use to these lists, the Planning Commission must make six, separate findings, none of which require that the proposed use be "similar" to those already permitted. For example, in order to be added to a zoning district's list of permitted uses, facts would have to be presented to the Planning Commission establishing that the proposed use "will be an appropriate addition to the list of permitted uses because the use has the same basic characteristics as the uses permitted in the district". Additionally, the Commission must find, based on substantial evidence in the record, that the use "will not create more odor, dust, dirt, smoke, noise, vibration, illumination, glare, unsightliness or any other objectionable influence than the amount normally created by any of the uses permitted in the district." MMC, §22.34.100 (B), (F).
6. The Planning Commission did not consider these findings nor make any of them as part of its deliberative process. Moreover, even if the Council could cure the Commission's pretermission, the Council could do so only if, as part of the record and evidence before the Council, there were facts showing that each of the six findings required by section 22.34.100 could be made. However, the record is bereft of many of such facts or evidence, and thus, the required findings cannot be made by the Council in support of adding lice removal salons to the list of permitted uses in any of the zoning districts NC, DD and SC.
7. Consequently, the Planning Commission's decision cannot be upheld and the appeal is granted, thereby setting aside the Planning Commission's decision.

8. The time within which judicial review must be sought is governed by Cal. Code of Civil Procedure, §1094.6 unless a shorter statute of limitations is applicable.

\* \* \* \* \*

**I HEREBY CERTIFY** that the foregoing is a true and correct copy of a resolution duly adopted by the City Council of the City of Martinez at a Regular Meeting of said Council held on June 6, 2012, by the following vote:

AYES:

NOES:

ABSENT:

RICHARD G. HERNANDEZ, CITY CLERK  
CITY OF MARTINEZ