



CITY OF MARTINEZ

**CITY COUNCIL AGENDA
September 4, 2013**

TO: Mayor and City Council

FROM: Philip Vince, City Manager

PREPARED BY: Veronica Nebb, Assistant City Attorney
Corey Simon, Senior Planner

SUBJECT: Consideration of Urgency Ordinance extending the 45 day moratorium on the establishment of Bars in the Downtown Specific Plan Area, as was imposed with adoption of Urgency Ordinance no.1369 C.S on July 24, 2013

DATE: August 23, 2013

RECOMMENDATION:

Staff recommends that the City Council ratify by motion the *written report* on the efforts undertaken since the adoption of the 45 day moratorium to alleviate the conditions leading to the adoption of said moratorium; and adopt an urgency ordinance extending the 45 day moratorium on the establishment of Bars in the Downtown Specific Plan Area, as was imposed with adoption of Urgency Ordinance no.1369 C.S on July 24, 2013.

The proposed ordinance, if adopted by at least a four-fifths (4/5) vote of the City Council, would become effective upon the expiration of Ordinance no, 1369 and be in effect for a period of ten (10) months and fifteen (15) days, unless terminated or extended by the City Council.

BACKGROUND:

On July 24, 2013, the City Council imposed a 45-day moratorium on the establishment of new bars, which provided the City time to consider permanent regulations to address: a) the impact bars have on Police Department resources due to their disproportionately high generation of incident calls and b) concerns that the downtown area may already have an overconcentration of bar uses.

Pursuant to Government Code Section 65858, the City may establish a forty-five (45) day moratorium prohibiting any uses that may be in conflict with a contemplated general plan, specific plan or zoning proposal that the legislative body, planning commission or the planning department is considering in order to protect and preserve the public safety, health and welfare. After forty-five (45) days and if more time is needed, the City Council can extend the interim urgency ordinance, after public notice and hearing, for an additional ten (10) months and fifteen (15) days, upon: a) the issuance of a *written report* ten (10) days before the expiration of the

forty-five (45) day moratorium and b) provided that the current and immediate threat to the public safety, health and welfare still exists. If still more time is needed an additional one year extension is possible. The total time that the Interim Zoning Ordinance can be in place cannot extend beyond two years.

As outlined in the attached (draft) City Council *written report* on measures taken to alleviate the conditions and concerns over bars' demand on police services and overconcentration, the Police Chief, City Attorney and Planning staff have meet to discuss options for more permanent regulations. The report concludes that the 10 month 45 day extension to the 45 day moratorium is needed for staff to more fully investigate the these options, and analyze the potential consequences of each of these three options in regards to downtown economic development and to property owners' options for building utilization.

It should be noted that the definition of "bar" used in adopted and proposed moratorium does not include those alcohol serving establishments which, among other requirements, operate as a *bona-fide public eating place* as such is defined in the California Business and Professions Code Section 23038. Thus new restaurants which serve alcohol will remain open during the extended moratorium.

FISCAL IMPACT:

As an interim regulation, there is no fiscal impact associated with this action.

ACTION:

Motion to ratify the attached report on the efforts undertaken since the adoption of the 45 day moratorium to develop such regulations, and adopt an urgency ordinance extending the moratorium for an additional ten (10) months and fifteen (15) day period, continuing the temporary ban on the establishment of Bars in the Downtown Specific Plan Area.

Attachments

1. Written Report of the City Council on measures taken since adoption of the forty five (45) day moratorium.
2. Draft Interim Urgency Ordinance, extending moratorium
3. City Council Staff Report, July 24, 2013.

APPROVED BY:


City Manager



REPORT OF THE CITY COUNCIL OF THE CITY OF MARTINEZ

SUBJECT: Draft report issued by the City Council on measures taken to alleviate the conditions which lead to the July 24, 2013 adoption of Ordinance #1369 C.S, imposing a temporary moratorium on the establishment of Bars in the Downtown Specific Plan Area

DATE: August 22, 2013

1. On July 24, 2013, the City Council adopted Ordinance #1369 C.S., an urgency interim Ordinance imposing a temporary moratorium on the establishment of bars in the Downtown Specific Plan Area. As approved, the moratorium will provide the City time to consider permanent regulations to address: a) the impact bars have on Police Department resources due to their disproportionately high generation of incident calls and b) concerns that the downtown area may already have an overconcentration of bar uses.
2. The current permanent zoning regulations does not adequately define the terms “bar” and “restaurant,” so the City’s current code does not effectively differentiate the different businesses characteristics between those bars with full meal service (which generate a relatively low percentage of the Police Department’s incident calls) and those with no or limited food service (which generate a disproportionately high percentage of incident calls). The existing zoning regulations allow restaurants as “permitted uses” in the downtown area (i.e. with no discretion in regards to zoning approval), but bars require discretionary use permit hearings, usually by the Planning Commission.
3. The urgency interim ordinance approved on July 24, 2013 more precisely defined a “bar,” and reads as follows:

“Bar” shall mean a business where alcoholic beverages are sold for on-site consumption, with either no or limited food service and includes, but is not limited to, establishments operating with California Department of Alcoholic Beverage Control (“ABC”) License Types 40, 42, 48 and 61, or similar license types which do not include a “bona-fide public eating place.” “Bar” does not include a business where alcoholic beverages are served which business complies with all of the following: a) operates as “a bona-fide public eating place”, b) possesses a license type issued by ABC which is issued only to establishments with a “bona-fide public eating place”; and c) provides meals prepared on-site in a kitchen conforming to all current requirements of the Contra Costa County Health Services Department, the Municipal Code of the City of Martinez and the City Building Official, for not less than 6 hours on each day the establishment is open for business.

“bona-fide public eating place” shall have the same meaning as set forth in California Business and Professions Code Section 23038.

4. Subsequent to the July 24 2013 adoption of the 45 day moratorium, the City Attorney, Police Chief and Planning Staff have meet and discussed the possible options for permanent regulations to alleviate the Council's concerns over the impact bars have in the Downtown area. Options for permanent regulations include:
 - A. Adopting the interim ordinance's definition of "bar," but making no further changes to the zoning code, thus allowing the discretionary use permit review process to address the question of "overconcentration;" or
 - B. In addition to adopting the definition of "bar," adopting a non-discretionary minimum separation requirements (e.g. no new bar within 500 feet of another bar). to mechanically preclude an overconcentration of bars in the future; or
 - C. In addition to adopting the definition of "bar," prohibiting any new bar within the downtown area, or prohibiting new bars within a specific area within the downtown area (e.g. no new bar fronting onto Ferry Street).
5. City staff has advised the Council that a 10 month 45 day extension to the 45 day moratorium is needed for staff to more fully investigate the three options above, and analysis the potential consequences of each of these three options in regards to downtown economic development and to property owners' options for building utilization.

ORDINANCE NO. C.S.

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MARTINEZ
EXTENDING URGENCY ORDINANCE No. 1369 ESTABLISHING INTERIM
RESTRICTIONS ON THE ESTABLISHMENT
OF BARS IN THE DOWNTOWN SPECIFIC PLAN AREA
PENDING THE CONSIDERATION AND STUDY OF ZONING AND
OTHER LAND USE REGULATIONS PERTAINING TO SUCH BUSINESSES

FINDINGS: The City Council of the City of Martinez makes the following findings:

WHEREAS, Martinez is a community with a very special environment. It a City steeped in history with a number of historical structures in the downtown and other areas which are both unique and of great value to the citizens. The City has a unique downtown which attracts countywide visitors and tourism while also preserving the small hometown atmosphere that has made Martinez a special place to live and work. These special qualities of the City must be respected so that the uniqueness of Martinez can flourish without inappropriate changes; and

WHEREAS, Martinez is a vital and active City that retains a small town atmosphere and a strong sense of community. The City has striven to retain this atmosphere and the diverse mix of business establishments while promoting the long-term economic health of the community as a whole; and

WHEREAS, the City has experienced a marked increase in police incidence calls in the downtown area associated with bars which serve little or no food. Between 2010-2012, police incident calls for the bars in the City which serve limited or no food represented more than three times the number of incident calls than establishments serving both liquor and food in the same neighborhoods, as more fully documents in the staff report prepared for the City Council's consideration of the subject interim moratorium; and

WHEREAS, responding to the police calls for these bars represented 81% of the City's calls for police service made to all establishments serving alcoholic beverages, including those which do and do not provide meal service, since 2010, a largely disproportionate percentage when compared to those establishments which do serve meals; and

WHEREAS, the activities at the bars which serve limited or no food and which result in the disproportionate number of police incident calls also result in negative impacts to the surrounding businesses, including trash, disturbances, security concerns and a general atmosphere which discourages visitors and

tourism and thereby economic investment in the downtown; and

WHEREAS, in recent years the City has made a substantial economic investment in the revitalization of the downtown area of the City, installing new streetscape improvements, food control improvements, establishing regulations for the rehabilitation of unreinforced masonry buildings, adopting a comprehensive scheme for outdoor dining opportunities and adopting a Specific Plan aimed at promoting a reinvestment and revitalization of the downtown; and

WHEREAS, recently the bar resulting in the most police service calls in the City (148 incidents between 2010 and 2012), ceased operations, resulting in an easing of the police incident response calls in the downtown area; and

WHEREAS, as a result of the police incident call history, the City is in the process of studying the permitting, location and operational characteristics of bars in order to ascertain whether different or additional permitting requirements could assist the City with permanently reducing the calls for police service to these establishments, encourage tourism and visitors to the area and help to pave the way for economic investment in the downtown; and

WHEREAS, the City needs a reasonable period of time to properly and carefully consider and further study the potential effects of bars on the City's General Plan, its police department, the historic downtown, the City's zoning and other development regulations and on the economic vitality and diversity of the City's business establishments and other land use regulations. Additionally, the City needs a reasonable period of time to consider and study whether further regulating such bars is warranted and, if so, what the scope, nature and form of such regulation should be; and

WHEREAS, the absence of comprehensive regulations and procedures governing bars, combined with the facts recited above and the fact that bars continue to locate and establish in the City, pose a current and immediate threat to the health, safety and/or welfare of the citizens of Martinez. Moreover, the approval of use permits, variances, building permits, grading permits, other permits, licenses or other entitlements for use of land or structures in the areas described below would result in that threat to the public health, safety or welfare of the City and its citizens. The granting or permitting of such entitlements or uses, respectively, will likely be in conflict with, prevent the implementation of and/or seriously impair the efficacy of

any general plan amendment, specific plan, zoning or other land use policies which the City is currently studying, thus rendering such plans and policies ineffectual in providing for the needs, assuring proper and appropriately timed police response to incidents, appropriate business diversity and preserving the unique character of the City and its neighborhoods; and

WHEREAS, the purpose of this ordinance is to prohibit the establishment of bars which serve minimal or no food within the downtown area of the City of Martinez pending the consideration and study of permanent regulations governing such business establishments; and

WHEREAS, on July 24, 2013, the City Council did adopt an urgency interim zoning ordinance pursuant to California Government Code Section 65858 prohibiting the establishment of bars (as defined therein), in the Downtown Specific Plan Area. Said urgency interim zoning ordinance was to remain in effect for 45 days from the date of its adoption; and

WHEREAS, in order to determine the most appropriate and publicly beneficial manner in which to address the establishment of Bars in the Downtown Specific Plan area, the City needs additional time to study and, as deemed necessary, to adopt an ordinance establishing a regulatory process relating thereto. As set forth in the report describing the measures taken to date to alleviate the condition, as attached to the Staff Report of even date herewith, staff has been diligently working on a set of comprehensive regulations. Policy discussions on options are taking place. Such comprehensive procedures, restrictions and regulations will thereafter need to be considered by the Planning Commission at one or more noticed public hearings and thereafter considered by the City Council at one or more noticed public hearings. Such work will not be completed within the 45 day period of Ordinance No. 1369. It is therefore necessary to extend Ordinance No. 1369; and

Whereas, notice of the public hearing on the extension of Ordinance No. 1369 was duly made in accordance with California Government Code Section 65090 and a public hearing was held by the City Council. All written and oral evidence presented to the City Council on the manner was considered by the City Council in taking action to extend ordinance 1369.

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

Section 1. The above recitals and findings are incorporated herein by this reference.

Section 2. The City and its agents, employees and departments shall not approve any subdivision, use permit, variance, building permit, grading permit, other permits, licenses or other entitlements for the use ("Prohibited Uses") of land or structures within the area of the City covered by the Downtown Specific Plan and after the adoption of this ordinance, no person shall commence using land or structures within the area of the City covered by the Downtown Specific Plan, for any of the Prohibited Uses listed below so long as this ordinance is in effect:

A. Prohibited Uses

For purposes of this Ordinance, "Prohibited Uses" shall mean a Bar.

B. Definitions

For the purposes of this Ordinance, the following phrases shall have the following meanings:

"Bar" shall mean a business where alcoholic beverages are sold for on-site consumption, with either no or limited food service and includes, but is not limited to, establishments operating with California Department of Alcoholic Beverage Control ("ABC") License Types 40, 42, 48 and 61, or similar license types which do not include a "bona-fide public eating place." "Bar" does not include a business where alcoholic beverages are served which business complies with all of the following: a) operates as "a bona-fide public eating place", b) possesses a license type issued by ABC which is issued only to establishments with a "bona-fide public eating place"; and c) provides meals prepared on-site in a kitchen conforming to all current requirements of the Contra Costa County Health Services Department, the Municipal Code of the City of Martinez and the City Building Official, for not less than 6 hours on each day the establishment is open for business.

"bona-fide public eating place" shall have the same meaning as set forth in California Business and Professions Code Section 23038.

Section 3. During the effective life of this ordinance, the City shall process any and all applications for the Prohibited Uses in the City, but if those applications are acted upon prior to the expiration of this ordinance, they shall be denied. Any Prohibited Uses proposed to be located in the City for which there exists no formal land use application procedure shall not be considered by the City unless such Prohibited Uses are applied for and processed under the City's conditional use permit regulations and standards.

Section 4. This ordinance shall not apply to: (a) those land use applications (namely, subdivisions, use permits, variances, design review, general plan amendment, rezoning, building or grading permits) which were deemed complete prior to the adoption of this ordinance; (b) construction required to comply with fire and/or life safety requirements; and (c) disability accessibility work.

Section 5. This ordinance is categorically exempt from CEQA under: (a) Section 15308 of the State CEQA Guidelines because it is a regulatory action taken by the City in accordance with Cal. Gov't Code §65858 to assure maintenance and protection of the environment; (b) Section 15060(c)(2) because it will not result in a direct or reasonably foreseeable indirect physical change in the environment; and (c) section 15060(c)(3) because it is not a project within the meaning of CEQA since it has no potential for resulting in physical changes in the environment.

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. The moratorium as adopted by Ordinance No. 1369 shall be extended by this ordinance to the date that is ten (10) months and fifteen (15) days following the last day that Ordinance No. 1369 is in effect, if adopted by at least four-fifths of the City Council, as provided for in

California Government Code Section 65858. This ordinance shall become effective at midnight on September 7, 2013.

Section 8. Posting. Within 15 days after adoption the City Clerk shall publish 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 passed and adopted at an Adjourned Regular Meeting of the City Council of the City of Martinez, held on the 4th day of September, 2013, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

RICHARD G. HERNANDEZ
CITY CLERK, CITY OF MARTINEZ

ORDINANCE NO. 1369 C.S.

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MARTINEZ
ESTABLISHING INTERIM RESTRICTIONS ON THE ESTABLISHMENT
OF BARS IN THE DOWNTOWN SPECIFIC PLAN AREA
PENDING THE CONSIDERATION AND STUDY OF ZONING AND
OTHER LAND USE REGULATIONS PERTAINING TO SUCH BUSINESSES

FINDINGS: The City Council of the City of Martinez makes the following findings:

WHEREAS, Martinez is a community with a very special environment. It a City steeped in history with a number of historical structures in the downtown and other areas which are both unique and of great value to the citizens. The City has a unique downtown which attracts countywide visitors and tourism while also preserving the small hometown atmosphere that has made Martinez a special place to live and work. These special qualities of the City must be respected so that the uniqueness of Martinez can flourish without inappropriate changes; and

WHEREAS, Martinez is a vital and active City that retains a small town atmosphere and a strong sense of community. The City has striven to retain this atmosphere and the diverse mix of business establishments while promoting the long-term economic health of the community as a whole; and

WHEREAS, the City has experienced a marked increase in police incidence calls in the downtown area associated with bars which serve little or no food. Between 2010-2012, police incident calls for the bars in the City which serve limited or no food represented more than three times the number of incident calls than establishments serving both liquor and food in the same neighborhoods, as more fully documents in the staff report prepared for the City Council's consideration of the subject interim moratorium; and

WHEREAS, responding to the police calls for these bars represented 81% of the City's calls for police service made to all establishments serving alcoholic beverages, including those which do and do not provide meal service, since 2010, a largely disproportionate percentage when compared to those establishments which do serve meals; and

WHEREAS, the activities at the bars which serve limited or no food and which result in the disproportionate number of police incident calls also result in negative impacts to the surrounding businesses, including trash, disturbances, security concerns and a general atmosphere which discourages visitors and tourism and thereby economic investment in the downtown; and

WHEREAS, in recent years the City has made a substantial economic investment in the revitalization of the downtown area of the City, installing new streetscape improvements, food control improvements, establishing regulations for the rehabilitation of unreinforced masonry buildings, adopting a comprehensive scheme for outdoor dining opportunities and adopting a Specific Plan aimed at promoting a reinvestment and revitalization of the downtown; and

WHEREAS, recently the bar resulting in the most police service calls in the City (148 incidents between 2010 and 2012), ceased operations, resulting in an easing of the police incident response calls in the downtown area; and

WHEREAS, as a result of the police incident call history, the City intends to study the permitting, location and operational characteristics of bars in order to ascertain whether different or additional permitting requirements could assist the City with permanently reducing the calls for police service to these establishments, encourage tourism and visitors to the area and help to pave the way for economic investment in the downtown; and

WHEREAS, the City needs a reasonable period of time to properly and carefully consider and further study the potential effects of bars on the City's General Plan, its police department, the historic downtown, the City's zoning and other development regulations and on the economic vitality and diversity of the City's business establishments and other land use regulations. Additionally, the City needs a reasonable period of time to consider and study whether further regulating such bars is warranted and, if so, what the scope, nature and form of such regulation should be; and

WHEREAS, the absence of comprehensive regulations and procedures governing bars, combined with the facts recited above and the fact that bars continue to locate and establish in the City, pose a current and immediate threat to the health, safety and/or welfare of the citizens of Martinez. Moreover, the approval of use permits, variances, building permits, grading permits, other permits, licenses or other entitlements for use of land or structures in the areas described below would result in that threat to the public health, safety or welfare of the City and its citizens. The granting or permitting of such entitlements or uses, respectively, will likely be in conflict with, prevent the implementation of and/or seriously impair the efficacy of any general plan amendment, specific plan, zoning or other land use policies which the City is considering or intends to study

within a reasonable time for the City, thus rendering such plans and policies ineffectual in providing for the needs, assuring proper and appropriately timed police response to incidents, appropriate business diversity and preserving the unique character of the City and its neighborhoods; and

WHEREAS, the purpose of this ordinance is to prohibit the establishment of bars which serve minimal or no food within the downtown area of the City of Martinez pending the consideration and study of permanent regulations governing such business establishments.

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

Section 1. The above recitals and findings are incorporated herein by this reference.

Section 2. The City and its agents, employees and departments shall not approve any subdivision, use permit, variance, building permit, grading permit, other permits, licenses or other entitlements for the use ("Prohibited Uses") of land or structures within the area of the City covered by the Downtown Specific Plan and after the adoption of this ordinance, no person shall commence using land or structures within the area of the City covered by the Downtown Specific Plan, for any of the Prohibited Uses listed below so long as this ordinance is in effect:

A. Prohibited Uses

For purposes of this Ordinance, "Prohibited Uses" shall mean a Bar.

B. Definitions

For the purposes of this Ordinance, the following phrases shall have the following meanings:

"Bar" shall mean a business where alcoholic beverages are sold for on-site consumption, with either no or limited food service and includes, but is not limited to, establishments operating with California Department of Alcoholic Beverage Control ("ABC") License Types 40, 42, 48 and 61, or similar license types which do not include a "bona-fide public eating place." "Bar" does not include a business where alcoholic beverages are served which business complies

with all of the following: a) operates as "a bona-fide public eating place", b) possesses a license type issued by ABC which is issued only to establishments with a "bona-fide public eating place"; and c) provides meals prepared on-site in a kitchen conforming to all current requirements of the Contra Costa County Health Services Department, the Municipal Code of the City of Martinez and the City Building Official, for not less than 6 hours on each day the establishment is open for business.

"bona-fide public eating place" shall have the same meaning as set forth in California Business and Professions Code Section 23038.

Section 3. During the effective life of this ordinance, the City shall process any and all applications for the Prohibited Uses in the City, but if those applications are acted upon prior to the expiration of this ordinance, they shall be denied. Any Prohibited Uses proposed to be located in the City for which there exists no formal land use application procedure shall not be considered by the City unless such Prohibited Uses are applied for and processed under the City's conditional use permit regulations and standards.

Section 4. This ordinance shall not apply to: (a) those land use applications (namely, subdivisions, use permits, variances, design review, general plan amendment, rezoning, building or grading permits) which were deemed complete prior to the adoption of this ordinance; (b) construction required to comply with fire and/or life safety requirements; and (c) disability accessibility work.

Section 5. This ordinance is categorically exempt from CEQA under: (a) Section 15308 of the State CEQA Guidelines because it is a regulatory action taken by the City in accordance with Cal. Gov't Code §65858 to assure maintenance and protection of the environment; (b) Section 15060(c)(2) because it will not result in a direct or reasonably foreseeable indirect physical change in the environment; and (c) section 15060(c)(3) because it is not a project within the meaning of CEQA since it has no potential for resulting in physical changes in the environment.

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 is an urgency ordinance and it shall become effective immediately upon its adoption if adopted by at least four-fifths of the City Council and shall be in effect for forty five days from the date of adoption unless extended by the City Council as provided for in Cal. Gov't Code section 65858.

Section 8. Posting. At least five (5) days prior to its final adoption, a certified copy of the full text of this ordinance shall be posted in the office of the City Clerk.

Within 15 days after adoption the City Clerk shall publish 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: Mercy G. Cabral,
Deputy City Clerk

* * * * *

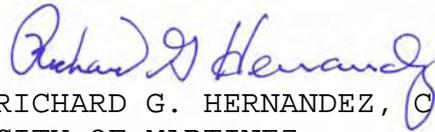
I HEREBY CERTIFY that the foregoing ordinance was duly passed and adopted at an Adjourned Regular Meeting of the City Council of the City of Martinez, held on the 24th day of July, 2013, by the following vote:

AYES: Councilmembers AnaMarie Avila Farias, Michael Menesini, Mark Ross, Vice Mayor Lara DeLaney, and Mayor Rob Schroder

NOES: None

ABSENT: None

ABSTAIN: None



RICHARD G. HERNANDEZ, CITY CLERK
CITY OF MARTINEZ



CITY OF MARTINEZ

**CITY COUNCIL AGENDA
July 24, 2013**

TO: Mayor and City Council

FROM: Philip Vince, City Manager

PREPARED BY: Veronica Nebb, Assistant City Attorney
Corey Simon, Senior Planner

SUBJECT: Consideration of Urgency Ordinance imposing a temporary moratorium on the establishment of Bars in the Downtown Specific Plan Area

DATE: July 24, 2013

SUMMARY & RECOMMENDATION:

Staff recommends that the City Council adopt an urgency ordinance imposing a moratorium on the establishment of additional bars in the Downtown Specific Plan Area. Adoption of the proposed temporary moratorium will provide the City time to consider permanent regulations to address: a) the impact bars have on Police Department resources due to their disproportionately high generation of incident calls and b) concerns that the downtown area may already have an overconcentration of bar uses.

The proposed ordinance, if adopted by at least a four-fifths (4/5) vote of the City Council, would become effective immediately and be in effect for a period of forty-five (45) days, unless terminated or extended by the City Council.

BACKGROUND:

Within the past two years, the City has experienced a marked increase in police incidence calls in the downtown area associated with bars which serve little or no food. Between 2010-2012, police incident calls for the bars in the City which serve limited or no food represented more than three times the number of incident calls than establishments serving both liquor and food in the same neighborhoods, (Police Department statistics of calls for service are provided as Attachment 1). Responding to the police calls for these bars represented 81% of the City's calls for police service made to all establishments serving alcoholic beverages, including those which do and do not provide meal service, since 2010, a largely disproportionate percentage when compared to those establishments which do serve meals.

Within recent weeks, inquires have been made to the City staff as to the establishment of additional bars within the downtown area. Current zoning regulations do not adequately define the terms "bar" and "restaurant," so the City's current code does not effectively differentiate the different businesses characteristics between those bars with full meal service (which generate a relatively low percentage of the Police Department's incident calls) and those with no or limited food service (which generate a disproportionately high percentage of incident calls). Current

zoning regulations allow restaurants as a “permitted uses” in the downtown area (i.e. with no discretion in regards to zoning approval), but bars require discretionary use permit hearings, usually by the Planning Commission. But since neither term is precisely defined in the current zoning code, unwelcome ambiguities could arise if applicants and/or bar operators claim to be permitted “restaurant” uses but in fact have, or plan to have, limited food service.

Prior to an applicant’s submittal of any formal business license and/or use permit approval request, staff is requesting that the Council approve the proposed interim urgency ordinance to impose the forty-five (45) day moratorium on new bar uses, as not to exacerbate current concern over policing resources while permanent regulations are developed to clarify the different operational characteristics between restaurant and bar uses.

STAFF ANALYSIS:

Pursuant to Government Code Section 65858, the City may establish a forty-five (45) day moratorium prohibiting any uses that may be in conflict with a contemplated general plan, specific plan or zoning proposal that the legislative body, planning commission or the planning department is considering in order to protect and preserve the public safety, health and welfare. After forty-five (45) days and if more time is needed, the City Council can extend the interim urgency ordinance, after public notice and hearing, for an additional 10 months and 15 days, upon the issuance of a written report and provided that the current and immediate threat to the public safety, health and welfare still exists. If still more time is needed an additional one year extension is possible. The total time that the Interim Zoning Ordinance can be in place cannot exceed two years.

Staff has prepared the attached interim urgency ordinance for the City Council’s consideration. This interim urgency ordinance would establish a forty-five (45) day moratorium on the establishment, development and/or operation of new bars in the downtown area, defined as being within the Downtown Specific Plan area. The interim urgency ordinance would establish a temporary moratorium on the issuance of any permit or any applicable license or entitlement for bars, including but not limited to, the issuance of a business license, business permit, building permit, and conditional use permit.

For the purposes of the attached draft interim urgency ordinance, the following would apply:

Prohibited Uses:

For purposes of this Ordinance, “Prohibited Uses” shall mean a Bar.

Definitions:

For the purposes of this Ordinance, the following phrases shall have the following meanings:

“Bar” shall mean a business where alcoholic beverages are sold for on-site consumption, with either no or limited food service and includes, but is not limited to, establishments operating with California Department of Alcoholic Beverage Control (“ABC”) License Types 40, 42, 48 and 61, or similar license types which do not include a “bona-fide public eating place.” “Bar” does not include a business where alcoholic beverages are served which business complies with all of the following: a) operates as “a bona-fide public eating place”, b) possesses a license type issued by ABC which is issued only to establishments with a “bona-fide public eating place”; and c) provides meals prepared

on-site in a kitchen conforming to all current requirements of the Contra Costa County Health Services Department, the Municipal Code of the City of Martinez and the City Building Official, for not less than 6 hours on each day the establishment is open for business.

“bona-fide public eating place” shall have the same meaning as set forth in California Business and Professions Code Section 23038.

As defined above, for the purposes of interim ordinance, only those alcohol beverage serving establishments that fail to meet the three requirements for food service are legally defined as “Bars.” Restaurants and those alcoholic beverage serving establishments that operate integrally as restaurants would be unaffected by the moratorium. During the moratorium, the City could develop permanent regulations which adopt the above definitions, which, unlike current regulations, better address the different operational characteristics of those alcoholic beverage serving establishments that operate integrally as restaurants, and those that do not. In addition, the proposed moratorium can allow the City to consider whether the Downtown area already has an overconcentration of bars, and what, if any, additional bars (operating other than a “bona-fide public eating place”) should be allowed.

FISCAL IMPACT:

As an interim regulation, there is no fiscal impact associated with this action.

ACTION:

Motion adopting an Urgency Ordinance imposing a temporary moratorium on the establishment of Bars in the Downtown Specific Plan Area.

Attachment

1. Martinez Police Department’s Record of Incident Calls for 2010-2012 Period

APPROVED BY:



City Manager

ATTACHMENT 1

MARTINEZ POLICE DEPARTMENTS RECORD OF INCIDENT CALLS FOR 2010-2012 PERIOD FROM VARIOUS TYPES OF BUSINESSES SERVING ALCOHOLIC BEVERAGES

RESTAURANTS WITH FULL BARS

La Tapatia (536 Main Street)

2012 – 10 Incidents

2011 – 6 Incidents

2010 - 22 Incidents

Total Incidents - 38

Creek Monkey/Bertolas (611 Escobar Street)

2012 – 14 incidents

2011 – 13 incidents

2010 – 6 incidents

Total Incidents - 33

Sun Flower Garden/Le Beaus (436 Ferry Street)

2012 – 11 Incidents

2011 – 10 Incidents

2010 – 16 Incidents

Total Incidents - 37

FULL BARS WITH LIMITED MENU

Ray's Lounge (709 Ferry Street)

2012 – 42 Incidents

2011 – 24 Incidents

2010 – 30 Incidents

Total Incidents – 96

Whiskey lane/College lane

2012 – 40 Incidents

2011 – 33 Incidents

2010 – 47 Incidents

Total Incidents – 120

Ferry Street Station

2012 – 45 Incidents

2011 – 50 Incidents

2010 – 53 Incidents

Total Incidents – 148

Cue & Brew (1029 Arnold Drive)

2012 – 38 Incidents

2011 – 29 Incidents

2010 – 49 Incidents

Total Incidents – 116

Total PC 647(f) arrests by exact address 2010-2012

Ray's Lounge – 10
Whiskey Lane/College Lane – 15
Ferry Street Station – 18
Cue & Brew - 4

La Tapatia – 3
Sun Flower Garden/Le Beaus – 1
Creek Monkey/Bertola's – 1

Disturbance Calls by exact address 2010-2012

Ray's Lounge – 26
Whiskey Lane/College Lane – 31
Ferry Street Station – 26
Cue & Brew - 23

La Tapatia – 4
Sun Flower Garden/Le Beaus – 2
Creek Monkey/Bertola's – 8

Assault Cases by exact address 2010-1012

Ray's Lounge – 4
Whiskey Lane/College Lane – 11
Ferry Street Station – 10
Cue & Brew - 4

La Tapatia – 1
Sun Flower Garden/Le Beaus – 1
Creek Monkey/Bertola's – 0

Security Check Requests by exact address 2010-2012

Ray's Lounge – 5
Whiskey Lane/College Lane – 14
Ferry Street Station – 6
Cue & Brew - 15

La Tapatia – 1
Sun Flower Garden/Le Beaus – 0
Creek Monkey/Bertola's – 0

Suspicious Person Calls by exact address 2010-2012

Ray's Lounge – 3
Whiskey Lane/College Lane – 5
Ferry Street Station – 8
Cue & Brew - 5

La Tapatia – 5
Sun Flower Garden/Le Beaus – 0
Creek Monkey/Bertola's – 3

Pedestrian Stops IFO the Locations 2010-2012

Ray's Lounge – 16
Whiskey Lane/College Lane – 24
Ferry Street Station – 31
Cue & Brew - 5

La Tapatia – 3
Sun Flower Garden/Le Beaus – 1
Creek Monkey/Bertola's – 2

AIDE Calls by exact address 2010-2012

Ray's Lounge – 2
Whiskey Lane/College Lane – 8
Ferry Street Station – 1
Cue & Brew - 4

La Tapatia – 2
Sun Flower Garden/Le Beaus – 1
Creek Monkey/Bertola's – 2

Suspicious Circumstance Calls by exact address 2010-2012

Ray's Lounge – 2
Whiskey Lane/College Lane – 4
Ferry Street Station – 6
Cue & Brew - 1

La Tapatia – 5
Sun Flower Garden/Le Beaus – 2
Creek Monkey/Bertola's – 1

PC 647(f) Arrests by Street Name 2010-2012

600-700 Blocks of Ferry Street– 88 (Borders Ray's Lounge, Ferry Street Sta, Whiskey Lane)

400 Block of Ferry Street - 20 (Sun Flower Garden)
500 Block of Main Street /700 black Castro – 13 (La Tapatia)
Marina Vista/Castro Street – 2 (Creek Monkey)

Incidents at associated Intersections

(Vehicle/Ped Stops, Traffic Collisions, Disturbances, Aide, Suspicious Peron/Circumstances)

Ferry Street/Escobar Street – 136 (Ferry Street Station/Whiskey Lane)
Ferry Street/Main Street – 111 (Ray's Lounge)

Ferry Street/Marina Vista – 78 (Sun Flower Garden)
Main Street/Castro Street – 93 (La Tapatia)
Marina Vista/Castro Street – 16 (Creek Monkey)