

Planning Commission Minutes
Regular Meeting
January 21, 2014
Martinez, CA

CALL TO ORDER

Chair Rachael Ford called the meeting to order at 7:05 p.m. with all members present except Commissioners Allen and Kelly, who were excused. (Alternate James Blair was not present either.)

Staff present: Senior Planner Corey Simon, Assistant City Attorney Veronica Nebb, Police Chief Gary Peterson

ROLL CALL

PRESENT: Chair Rachael Ford, Vice Chair Sigrid Waggener, Commissioner Dwayne Glemser, Commissioner Kimberley Glover, and Commissioner Jeffrey Keller.
EXCUSED: Commissioner Donna Allen and Commissioner Paul Kelly.
ABSENT: Alternate James Blair.

AGENDA CHANGES

None

PUBLIC COMMENT

Mike Alford questioned why the list of Commissioners given to the public is not up-to-date. Staff noted that the website list is accurate, and provided a copy to him.

CONSENT ITEMS

None

REGULAR ITEMS

1. *Housing Element - General Plan Text Amendments Public hearing to review proposed: 1. General plan text amendments to the 2007-2014 Housing Element adjusting permitted locations for emergency homeless shelters; and 2. Zoning text amendments to the Martinez Municipal Code. The following zoning ordinance chapters would be affected for Federal and State law compliance: A) Density Bonus for Affordable Housing; MMC Chapter 22.57. Compliance with California Government Code Section 65915-65918; B) Homeless Shelters - Emergency and Ongoing & Transitional and Supportive Housing; MMC Chapters 22.04, 22.12, 22.16, 22.18, 22.34, and 22.36. Compliance with California Government code Sections 50675.2, 50675.14, and 65583; and C) Reasonable Accommodation; MMC Chapters 22.04 and 22.34. Compliance with California Fair Employment and Housing Act Government Code Sections 12926 and 12955, and Federal Fair Housing Act (42U.S.C. Section 3601). 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 (AM)*

Senior Planner Corey Simon presented the staff report, noting that the text amendments were necessary due to state legislation requirements related to designating potential locations for emergency homeless shelter, definitions of housing types (transitional and supportive housing), reasonable accommodations for disabled persons, and provision for an affordable housing density bonus. He also discussed potential consequences for noncompliance. City Attorney Veronica Nebb confirmed that noncompliance could affect future funding for transportation projects.

Commissioner Glover asked for more information on the density bonus provisions, which staff provided. She also asked, and Ms. Nebb confirmed the Planning Commission would be the approving body when application is made and that the request for density bonus would need to be applied for when the project is submitted, and that if concessions or incentives are requested, the City has the right to require the applicant to submit documentation proving their economic need..

Chair Ford asked about conditions under which the bonus could be denied, and Ms. Nebb acknowledged the denial option would be very limited. She confirmed, however, that whether the City adds these provisions or not does not change the regulations as stipulated by state law; but the administrative changes will establish the standards and requirements for the process in the City.

Chair Ford opened the public hearing.

MIKE ALFORD asked if state law is requiring the proposed changes, or whether the City has the right to decide not to enact them. He expressed concern that imposing the provisions would limit opportunities to revise them in the future, and he urged the Commission to consider the options carefully.

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

Chair Ford commented on the hierarchy of governments - federal, state, then local, and applicability of each to the City. She acknowledged Mr. Alford's concerns, but deferred to Ms. Nebb to explain further that requirements of state law are set regardless of what Martinez's Code says. She asked, and Ms. Nebb confirmed that the proposed provisions will ensure that the City's Code is consistent with state standards, and will clarify definitions, etc.

Ms. Nebb noted that the numbers on the proposed Resolutions were duplicates - one should be PC #14-02, and the other #14-03.

On motion by Chair Rachael Ford, seconded by Commissioner Jeffrey Keller, adopt PC Resolution No. 14-02, recommending a CEQA exemption and making findings related thereto in accordance with CEQA Guidelines Sections 15301, 15305, and 15061(b) (3) and recommending the City Council adopt General Plan text amendments to the 2007-2014 Housing Element and Zoning text amendments to the Martinez Municipal Code, for the purpose of compliance with state and federal housing laws. Motion unanimously passed 5 - 0. Yes: Chair Rachael Ford Vice Chair Sigrid Waggener Commissioner Dwayne Glemser Commissioner Kimberley Glover, Commissioner Jeffrey Keller.

2. [Outdoor Growing of Medical Marijuana Public hearing to review proposed zoning text amendments to the Martinez Municipal Code to establish limitations on the Outdoor Growing of Medical Marijuana \(MMC Title 22, Chapter 22.41\), generally prohibiting, within any zoning district in the City, the outdoor cultivation of more than six \(6\) Marijuana plants per property and requiring cultivation to be by patients and primary caregivers only. 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 \(GP\)](#)

Chair Ford detailed information in an email received from Tom & Terri Coleman, in opposition to cultivation of marijuana anywhere in the City limits.

Chief of Police Gary Peterson presented the staff report, including a review of the electorate-approved "Compassionate Care Act" allowing for use of medical marijuana, subsequent state law to ensure equal access/application for the use, the City's right to regulate medical marijuana cultivation under its police powers for public safety reasons; and how other jurisdictions are handling the issue.

Chair Ford asked for clarification on the outdoor limit of 6 plants, which Ms. Nebb provided. She also confirmed it would not allow for anyone to grow who is not a qualified patient or caregiver.

Staff explained that the ordinance only deals with outdoor cultivation because that is the issue most recently raised by the public. Ms. Nebb also explained that the proposed ordinance has prohibitive sections, but none permitting anything.

Commissioner Keller asked about the potential for house fires that could result from moving the cultivation indoors and the special equipment used to do so. Chief Peterson acknowledged that possibility, but he pointed out there could already be indoor grows. Ms. Nebb added that the City does have the right to ban the growing of marijuana altogether, and further changes can be enacted in the future if necessary.

Vice Chair Waggener asked why six plants were recommended as the limit, and Chief Peterson said it is based on the number set in the attorney general's guidelines.

Commissioner Glover asked why not ban outdoor grows altogether, and Ms. Nebb indicated that this is the minimal amount of regulation staff thought would address the issues at hand, based on the direction of the City Council's Public Safety Subcommittee. She acknowledged, though, that the Planning Commission was free to make any changes they thought necessary, and/or could make a negative recommendation to the Council.

Commissioner Glemser commented on regulations from other jurisdictions, with more restrictive regulations.

Chair Ford noted that federal law still considers the growing and use of marijuana for any reason illegal so further restrictions are not necessary; but the state (and even some federal agencies) do not consider prosecution of medical users to be a priority. Ms. Nebb clarified that Martinez

Police do not have authority to enforce state or federal law, but they do have authority for enforcement of City regulations.

Commissioner Glover asked about enforcement issues. Staff confirmed it would be complaint-driven, and they discussed potential charges that could be brought. In response to further questions, Ms. Nebb reviewed the code enforcement process.

Commissioner Glemser asked whether Chief Peterson was aware of any indoor grows in the City currently, and Chief Peterson said there were none that he knew about.

Chair Ford expressed concern that the City not impose a complete ban on medical marijuana.

Chair Ford opened the public hearing.

TOM GREERTY discussed potential issues with the ordinance, noting that restricting outdoor cultivation will necessitate enforcement issues regarding who is allowed to grow, how many plants, and which zoning districts allow it. He thought an outright ban would be easier, which is the trend in many jurisdictions. He was also concerned about the contradiction with federal law, regardless of whether federal or state authorities will enforce or prosecute offenders.

DOUGLAS VAN RAAM expressed concern about misinformation on the issue, and he thought the law should be regulated based on property size, location and/or household size. He also discussed the risks from methamphetamine use, which is not as highly enforced/prosecuted, as well as the health benefits not only for smoking it by patients, but in salads, etc.

RICH VERRILLI agreed with Mr. Greerty's comments. He was concerned about the Planning Commission overlapping into areas under the City Council's purview. He also asked whether the use of a vacant lot by a non-owner would be allowed under the ordinance.

ROBIN [LAST NAME?]... commented on difficulties with regulating medical marijuana use/cultivation, and concerns about loopholes for care providers. She indicated she would also rather see a ban on outdoor growing.

MIKE ALFORD discussed federal law and applicability. He commented that the City should not allow marijuana use or growing as long as it is against federal law. He was concerned about excessive cultivation and questioned how medically beneficial marijuana actually is. He cautioned against approving an ordinance with unintended consequences and future stretching of the regulations.

KIT GREERTY strongly advised against approving outdoor cultivation, discussing concerns about the potential increase in crime and/or too easy access to marijuana use due to the "medical" exception. She asked the Commission to consider the community's best interests and recommend a ban on outdoor growing.

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

Chair Ford responded to Mr. Verrilli's concern about the Planning Commission potentially usurping the City Council's authority, noting that the Planning Commission will make recommendation on the issue, but the City Council will have the final decision. She also asked about Mr. Verrilli's question regarding a non-owner using his land, and Chief Peterson confirmed that as long as there were no more than six plants total an owner could allow someone else to grow on his/her property.

Commissioner Keller asked how the six-plant limit would apply to apartment complexes, and staff said only six would be allowed per property, unless each unit is independently owned, then it would allow six plants per unit.

Commissioner Glover asked if there was another compromise option, and Chief Peterson said the proposed ordinance is the compromise. He added that currently, state law would allow for more than six plants.

Vice Chair Waggener noted that any outdoor cultivation poses a theft risk, regardless of how many plants there are, and could present a threat to public safety. She thought outdoor cultivation should be banned altogether.

Commissioner Keller said he was concerned about potential house fires that could occur from indoor growing. He would prefer limiting to six plants altogether, whether grown inside or out. He noted that another jurisdiction had provisions limiting growing to owner-occupied properties, as well as regulating lighting types and wattage.

Chair Ford said she could not support a ban on outdoor growing, and discussed the importance of balancing the valid needs of medical patients with public safety concerns. She agreed with Commissioner Keller's recommendation to limit to six plants, indoor or outdoor grown, but Chief Peterson explained that enforcement is easier for outdoor grows than indoor ones, because of difficulties with searching homes, etc. He also indicated that the District Attorney will not prosecute offenders with six or fewer plants.

Commissioner Glover expressed agreement with Mr. Greerty, although she acknowledged it is a tough call. She stated she would favor a complete ban on outdoor growing.

Commissioner Glemser acknowledged there are valid needs for medical marijuana, but he wasn't convinced that personal cultivation was necessary since many clinics offer home delivery.

Commissioner Keller asked if an outright ban would be enforceable with the current police force. Ms. Nebb explained it would then be a land use issue, and would still be complaint-driven, but prosecution would be less likely however. Chief Peterson confirmed there has not been excessive need for the ordinance, but there has been complaints from neighborhoods with excessive grows. Chair Ford agreed it is more difficult to regulate what is happening inside versus outside.

Ms. Nebb also discussed the difference between licensing vs. permitting.

Commissioner Glemser asked if Chief Peterson had any feedback from other jurisdictions with different regulations. Chief Peterson said Concord does have a ban, and also a ban on marijuana

dispensaries.

Commissioner Glemser also asked about penalties, which staff discussed.

Chair Ford asked for a straw vote on the issue, and three Commissioners were in favor of the ordinance with minor changes, and two were opposed. Ms. Nebb acknowledged the majority favored it, but she also noted it could go to the Council with the explanation that vote was close, with dissenters favoring an outright ban on cultivation.

On motion by Commissioner Jeffrey Keller, seconded by Chair Rachael Ford, adopt PC Resolution #14-03 and recommend an exemption from the provisions of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Sections 15304 and 15061(B) (3) and making findings relating thereto and recommending the City Council adopt proposed amendments to Martinez Municipal Code (MMC) Title 22, Chapter 22.41 relating to the outdoor growing of medical marijuana. Motion passed 3 - 2. Yes: Chair Rachael Ford Commissioner Dwayne Glemser, Commissioner Jeffrey Keller, No: Vice Chair Sigrid Waggener, Commissioner Kimberley Glover, Absent:.

The Commission asked, and staff discussed when the Council hearing on this issue would be - probably sometime in February.

COMMISSION ITEMS

None

STAFF ITEMS

Staff discussed the new policy to use electronic delivery of agendas and reports, but plans will be mailed to the Commission, when available.

COMMUNICATIONS

Chair Ford announced the Kraft Beer Festival, sponsored by Main Street. Vice Chair Waggener mentioned the upcoming Wine & Chocolate Stroll also.

Staff indicated the next meeting could be February 11, 2014, but at this point there are no pending items yet.

Chair Ford adjourned the meeting at 8:50 p.m.

Respectfully Submitted

Approved by the Planning Commission
Chairperson

Mary Hougey

Rachael Ford