

CALL TO ORDER

Mayor Schroder called the meeting to order at 6:45 P.M. with all members present except Councilmember Ross who arrived shortly after roll call.

CLOSED SESSION

- A. CONFERENCE WITH LEGAL COUNSEL--ANTICIPATED LITIGATION Initiation of litigation pursuant to Subdivision (c) of Section 54956.9. One potential case.

PUBLIC COMMENT (limited to closed session items only)

There being no one wishing to speak, the Council adjourned to closed session in the City Manager's Office.

RECONVENE - PLEDGE OF ALLEGIANCE - ROLL CALL

Mayor Schroder reconvened the meeting at 7:00 p.m. in the Council Chambers. He reported that closed session was held regarding initiation of litigation pursuant to California Government Code Subdivision (c) of Section 54956.9, one potential case; and requested that the City Attorney report out.

City Attorney Jeff Walter reported that the Council authorized the City to join in litigation to be brought against the County in connection with a case involving the reassessment of real property value for property owned by Chevron in Richmond, which resulted in a tax refund that the City had to pay even though the City had never received any of the taxes. A number of cities will be joining together and litigation will be initiated to reclaim those monies.

PRESENT: Lara DeLaney, Councilmember, Michael Menesini, Councilmember, Mark Ross, Councilmember, Janet Kennedy, Vice Mayor, and Rob Schroder, Mayor.

EXCUSED: None.

ABSENT: None.

PUBLIC COMMENT

(COMPLETE SPEAKER CARD AND GIVE TO CLERK) Reserved only for those requesting to speak on items not listed on the Agenda.

Mike Alford reiterated his past comments on bringing high tech companies to Martinez which would create jobs and revenue to the City. He also wanted to be assured that the video of tonight's meeting would be aired on Comcast without difficulties, and Michael Chandler, Sr. Management Analyst, clarified the past problems, and spoke of the steps the City has taken to ensure proper playback.

Doug Stewart updated the Council on the homeless outreach. During the past month, his team placed three people in the shelter and one in the mental health unit. He stated that they were focusing on the Amtrak Station parking lot.

CONSENT CALENDAR

MOTION WAIVING READING OF TEXT OF ALL RESOLUTIONS AND ORDINANCES.

1. Motion approving City Council Minutes of January 19, 2011. [M.Cabral]
2. Motion accepting Check Reconciliation Register dated 02/03/11 and 02/10/11. [C.Spinella/2.1.1]
3. ~~Motion accepting~~ Resolution No. 021-11 approving the Mid-Year Financial Report for fiscal year 2010-11. [C.Spinella/02.01.00]
4. Motion authorizing entering into an agreement with Jarvis, Fay, Doporto and Gibson for Special Counsel Services and authorizing the City Attorney's Office to execute same. [V.Nebb/42.00.02]
5. Resolution No. 016-11 approving classifying the various components of fund balance as defined in GASB Statement No. 54. [C.Spinella/2.1.0]
6. Resolution No. 017-11 authorizing the City Manager to enter into an agreement with Westamerica Bank for banking services related to receiving, storing, and depositing the revenue generated from parking meters. [C.Spinella/17.02.08]
7. Resolution No. 018-11 establishing a new salary range of \$6,056 to \$7,576 for the classification of Assistant Water Superintendent. [A.Pellegrini/4.5.1]
8. Resolution No. 019-11 authorizing annual destruction of Internal Affairs Investigation files pertaining to the Police Department. [G.Peterson/40.10.01]
9. Resolution authorizing the City Manager to expend an amount not to exceed \$39,910 for the completion and filing of the Alhambra Valley and North Pacheco Annexations applications to the Contra Costa Local Agency Formation Commission (LAFCO). [T.Blount/1.000/1.227/1.229]

Councilmember Lara DeLaney requested that Item #9 be pulled from the Consent Calendar.

On motion by Michael Menesini, Councilmember, seconded by Janet Kennedy, Vice Mayor, to approve Items #1 through #8 of the consent calendar. Motion unanimously passed 5 - 0.

Councilmember Lara DeLaney expressed concerns about the amount of funds required to complete the application of the annexations, especially with regard to the consulting and legal costs. City Manager Philip Vince stated that staff could try to rework the numbers. Planning

Manager Terry Blount explained that the maps and legal descriptions had to be put together by a certified engineer, for which the City had solicited bids from three firms, and noted some of the issues that still required consulting services. He added that the \$39,910 was an absolute maximum and the costs would probably not approach that much. Councilmember Menesini agreed that it was costly; he urged staff to move ahead but seek to reduce costs if possible.

Mayor Schroder opened Item 9 for public comment.

Mike Alford questioned why the City wanted to move forward when the process would cost so much and public opinion was against annexation.

Seeing no further speakers, Mayor Schroder closed public comment on the Item.

Councilmember Ross suggested reducing the allocation for consulting to \$3,500.

Councilmember Menesini stated that he wanted to trust staff to complete the process in the most cost-effective way possible.

On motion by Michael Menesini, Councilmember, seconded by Mark Ross, Councilmember, to approve Resolution No. 020-11 authorizing the City Manager to expend an amount not to exceed \$39,910 and if possible reduce the amount for consulting services for the completion and filing of the Alhambra Valley and North Pacheco Annexations applications to the Contra Costa Local Agency Formation Commission (LAFCO). Motion unanimously passed 5 - 0.

PUBLIC HEARING(S)

10. Public hearing to consider Medical Cannabis Dispensaries, and [M.Chandler, A. Mepani, D.Tasini/9.04.04.30]
 - 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 adding Chapter 8.41 to the Municipal Code permitting the establishment of Medical Cannabis Dispensaries by license.
 - B) Adopt a resolution changing the City's Fee Schedule for City Services, contingent upon adoption of an ordinance permitting the establishment of Medical Cannabis Dispensaries by License.

Dina Tasini, Planning Consultant, presented the staff report. She gave background on the issue as discussed at the Public Safety Subcommittee meetings and at the Planning Commission meeting. She differentiated between the previous ordinance for Medical Marijuana Dispensaries, and the new proposed ordinance for Medical Cannabis Dispensaries. She summarized four different areas in which there had been discussion or concern: a limitation on the number of dispensaries allowed, which the Planning Commission had suggested reducing from 3 to 1, at least for the

first year; the locations of the dispensaries, which were limited mainly to the downtown by school zones and residential areas; operating requirements, such as age limits, background checks, operating hours, and other functions of the facility; and public outreach such as notification of the hearings granting licenses. Ms. Tasini presented a list of the selection criteria.

Councilmember Ross asked if the potential income stream would be limited by Proposition 26, which City Manager Vince confirmed it would not. Councilmember Menesini noted that the ordinance would have an impact on many different areas, and Councilmember Ross asked how the fees could be calibrated in advance. Mr. Vince noted that staff had researched the practices of different cities, and Councilmember Menesini suggested that experience would help. He also suggested the use of a licensing schematic. Michael Chandler, Sr. Management Analyst, stated that staff had followed the model of the City of Napa for some of its fees, and the predicted annual ongoing operating cost was \$9,100 which equated to about 70 staff hours. The costs and fees would need to be reevaluated and updated regularly.

Councilmember DeLaney reiterated a suggestion she had made in the Public Safety Subcommittee meetings, which was that any sales tax generated by the dispensary should be allocated to public safety. She added that the Subcommittee had intended for the measurement system limiting available locations to be based on vehicular or pedestrian access routes and not by property lines. Councilmember Menesini agreed, but noted that another suggestion had been included, that the staff be allowed latitude in reviewing applications. Councilmember Ross asked if a license could be revoked, and Councilmember Menesini confirmed it could be at the discretion of the Police Chief and City Manager. Councilmember Ross asked about the City's liabilities if a license was revoked, and Councilmember Menesini stated that the City would be indemnified. He added that the ordinance was intended to be very strict, although someone could still try to sue if they wanted because that is how the system is set up.

Mayor Schroder asked if there was a way to make it clear that the licensee would be assuming 100% of the risk and the license could be revoked at any time. Jeff Walter, City Attorney, stated that the indemnification clause currently applied to cases in the accepting or denying of a license, and could possibly be expanded to revoking or suspending licenses. He stated that unless there was egregious misconduct on the part of the City, the courts would probably support the City.

Councilmember DeLaney, referencing the audit process described in the ordinance, asked if a clause could be included noting that failure to comply with an audit could result in revocation of the license. Mr. Walter agreed that it was possible. Mayor Schroder also suggested a clause about recovery of costs related to the audit for the City. Councilmember Menesini stated that it was included in the general recovery of costs, but agreed that it could be made explicit.

Councilmember Ross asked about the City's liability if more than three applications were found to meet the requirements. Mr. Walter stated that the courts would defer to the City's decisions. Councilmember Menesini added that the second and third applications would have to be approved by a vote of the Council. Mr. Walter also noted that while the City Council had flexibility, any time the Council used their own discretion would open the possibility for litigation. He added that if the maximum of three was not met, the City did not have the obligation to solicit more applications until someone filed an application on their own.

Vice Mayor Kennedy asked how the process was exempt from the California Environmental Quality Act. Mr. Walter stated that though the amendment was exempt, an individual license would still trigger a CEQA analysis. Vice Mayor Kennedy asked about the public process, and Mr. Walter stated that the Planning Commission had suggested including a public notice in the ordinance, but none was now included. Vice Mayor Kennedy asked if the requirement for a use permit needed to be removed, and Councilmember Menesini stated that the requirement of a use permit would place two authorizing schematics in conflict with each other. He added that a use permit would be more difficult to revoke and would give the facility more protection than the Subcommittee wanted to give it. He also stated that without the use permit, a public hearing could be given by the City Manager, while a use permit would require the involvement of the Planning Commission and possibly the City Council. Vice Mayor Kennedy asked why the appellate process was changed for this issue, and Councilmember Menesini stated that this was a public safety issue instead of a land use issue. He added that the appealing body could be the City Council, although the Commission's suggestion included members of the Council and the Commission.

Councilmember Ross noted that for the dispensary to bring in the expected level of revenue, it would also have to generate a lot of traffic, so he questioned the lack of a CEQA requirement. Mr. Vince suggested that a CEQA analysis could be part of the application selection criteria. Mayor Schroder closed the public hearing.

Council recessed and returned to the dais with all members present.

Mayor Schroder opened the Item for public hearing.

Ron Kirkish, representing Californians for a Drug-Free Youth, stated that according to the Department of Justice, the dispensary ordinance is against federal law, and the federal government would be able to confiscate the taxes. He also expressed concern about an increase in crime and drug-induced psychoses.

Richard Verrilli expressed agreement with Mr. Kirkish and concern about the source of the marijuana being sold at the dispensaries. Mayor Schroder read a portion of the staff report to provide clarification on the ordinance.

James Dean described his positive experience with medical cannabis and expressed frustration with the way the dispensaries are viewed.

Lynn Bond emphasized the medical purposes of the dispensaries and pointed out the lack of danger associated with marijuana.

John Orum, a professional in the field of medical marijuana, expressed support for the ordinance.

Bob Burman expressed concerns about negative effects of marijuana.

James Anthony provided American for Safe Access handouts and commended the Council for creating responsible regulations.

Steven Francis expressed concern that allowing the medicinal use of marijuana would make it easier to legalize recreational uses.

Doug Herbert expressed concern that the City could not afford to use limited resources on the necessary regulation.

Larry Flick, of Greenleaf Wellness Center, suggested the use of holistic wellness centers instead of "pot shops."

Bill Harrison expanded on the idea of holistic wellness centers.

Farahnaz Mazandarani discussed the importance of healthy lifestyles, of which medical marijuana is only one aspect.

Devlyn Swell commended the Council for their efforts to show compassion for hurting people and shared some of her experiences.

Michael Regan expressed concern about negative impacts on the community.

Mayor Schroder read the comment of Hank Snavely, who noted a lack of negative effects on health by marijuana.

Dr. Robert Martin discussed the importance of providing safe and available pain relief to patients.

Nathan Jensen described some of the negative effects of marijuana.

Carol Jensen stated that the Council did not have the authority to go against the will of the voters or the judgment of the Supreme Court, and mentioned negative effects on Martinez businesses.

Robin Hodenshell stated that she did not support the ordinance.

Sal Perez stated that he did not support the ordinance.

Ken Beyries stated that there is already marijuana in the City, and that it is important to regulate it.

Justin Whitburn mentioned the importance of ensuring that patients are informed about their medical needs and how to take care of themselves.

Nancy Crosby described her experiences being addicted to prescription drugs and how cannabis had helped to relieve the pain.

Mark Schrader described his positive experiences with medical marijuana.

Micky Martin commended the patients who had shared their experiences and commended the Council and staff for their efforts.

Ahmir Olae asked the Council not to pass another ordinance and discussed the importance of community-run alternative medicine groups.

Warren Rupf expressed his opposition to the ordinance.

Steve Ball described his positive experiences with medical marijuana.

Dimitrio Ramirez described his experiences as an administrator of a dispensary, and the regulations and supervision in place.

Doug Hutchens expressed support of the ordinance.

Tom Greerty expressed concern that the City did not have the necessary resources for regulation.

Brian Smith discussed his experiences as owner of a dispensary in Sacramento.

Larry Lippow provided a copy of a publication from the Department of Justice showing problems with marijuana dispensaries.

Scott Busby stated that it would be a good idea for the City to move forward and make progress on this.

Mayor Schroder read the following comments from Speaker Cards: Jake Duran, Jimmy Payne, Paul Bello, and Brandon Simeon who expressed support for the dispensaries.

Michael Marshall noted that marijuana was safer than addictive prescription painkillers, and expressed concern with some of the proposed regulations.

An unidentified speaker discussed his experiences as a medical marijuana patient, and stated that legalized regulation is better than outlawing it.

Mike Alford expressed his opposition to the ordinance.

Kit Greerty discussed some of the dangers of marijuana, especially on children. Ms. Greerty noted that if the Council passed this ordinance, she would make every effort to remove the Council from office.

Curtis Olson discussed his experiences as a medical marijuana patient and urge support of the ordinance.

Russell expressed concern about law enforcement, and suggested that only Martinez residents be allowed to purchase from the dispensaries.

Mike Tomada stated that patients like himself need marijuana and those who do not need it do not understand.

Michael Marshall, of Liberty Patients Collective, stated that the Council should find local residents to run the dispensary.

Scott Alstad suggested that the County look for alternatives so that the City did not have to have a dispensary.

An unidentified speaker described her experiences with medical marijuana; she thanked the patients who had spoken and the Council for listening.

Luke McCann suggested that the City wait until marijuana can legally be dispensed from a pharmacy.

An unidentified speaker expressed concern with the message being sent to the City's children.

Ricky Lopez encouraged people to educate themselves on the issue.

Anita Frias thanked the Council for considering the issue, and encouraged parents to protect their children from marijuana.

Sue Perez expressed sympathy for people with chronic pain but stated that there were other ways to manage it.

Emily Marshall expressed her support for the ordinance.

Lisa Harrison described her experiences with medical marijuana, and urged others to have compassion.

Councilmember Menesini thanked all of the speakers for being courteous. In response to those who had asked why the County hospital could not be responsible for dispensing cannabis, he suggested that a letter be sent to the County and the legislature to ask if this is possible. He described problems with the current ordinance, such as the lack of details. He stated that the new ordinance the Council wanted to draft would be stricter with regard to the licensing process and other regulations, would allow discretion on the part of the City Manager and the Police Chief, and would provide for public input. He stated that although many people do not believe marijuana has any medicinal benefit, the latest studies have shown differently. Given that fact and given the presence of Martinez residents who are medical cannabis patients, it is best to provide a well-regulated place where safe and quality cannabis can be provided. He stated that many of the dangers of medical marijuana were also found with other prescription drugs, and that the new ordinance would have detailed requirements as to how the dispensaries would operate. He suggested some changes to the ordinance with regards to the cost to the City and the indemnification clause.

Councilmember DeLaney thanked all of the speakers, stating that she understood people's fear, but that she agreed with those who had spoken in support. She stated that during the process of crafting the ordinance, she had done research on other cities' regulations as well as the effects on crime in other cities, and she felt that the City has a responsibility to be progressive and open-minded with regard to this issue, and that the issue does not need to inspire as much fear as it does. She expressed agreement with some of the Planning Commission's input such as FBI background checks, age restrictions, and on-site security, but expressed reservations with the recommendation of limited operating hours. She added that limiting the use of the facility might not be advisable because it would exclude holistic wellness facilities. She suggested, if the appellate body was composed of councilmembers and department heads, that they be chosen randomly. She concluded that marijuana is already an issue in the City and that the best way to deal with it is to regulate it.

Vice Mayor Kennedy thanked all the speakers and everyone else in attendance, and the committee and staff for their hard work. She noted that many of the proponents who had spoken were affiliated with a collective or with a business, and stated that she had reservations with regard to this issue. She stated that she was not sure why the City was focusing on this, and noted how important public safety was. She expressed compassion for those with chronic pain, but noted her concerns about drug problems. She added that in the years the old ordinance had been on the books, no one had applied to open a dispensary, so she was not sure why it is necessary to change it or what the benefit is to the City. She concluded that she did not support the ordinance.

Councilmember Ross compared the ordinance to the regulations now in place limiting the sale of alcohol. He stated that he had personally seen the benefits of medicinal marijuana in the lives of people close to him. He thanked all the speakers for their eloquence and passion, and agreed that holistic wellness is important. He also stated that he did not think Martinez had to be the sole provider of medical marijuana for the area, and asserted that if it is medicine, it should be provided by the medical community, although the County hospitals do not want to be in conflict with the federal government since they receive federal funds. He also noted that the ordinance would not bring a lot of revenue, and it would have to be added to the tax code in order to benefit the City at all. He stated that he did not think it was important for Martinez to take the lead on this issue, and that he did not feel a dispensary was right for this City, especially because of air quality, crime, and the effect on the community. He expressed sympathy for those with chronic pain but felt that practical issues were a problem.

Mayor Schroder stated that he would like the federal government to regulate medical marijuana like any other medicine, but unfortunately, that was not happening. He noted that the reason there is so much activity at this point in time is because the Attorney General has stated they will not pursue charges against medical marijuana dispensaries. He stated that he understood that some people need marijuana for their chronic or debilitating pain. Mayor Schroder noted that Martinez was the first city in the county to have a medical marijuana ordinance, but agreed that there were many flaws with the existing ordinance, adding that he had done a great deal of research on the issue. He expressed his surprise that the Planning Commission had approved the ordinance unanimously, and noted that the Council took the Commission's recommendations seriously. He stated that he wanted a stricter ordinance that would be better for the community and would regulate the marijuana that was already in the City, and he wanted to limit the possibility of abuse. He stated that he wanted to see a clean, professional facility that would mitigate the effects on the neighborhood as much as possible. Finally, he stated that the indemnification clause was important because after a trial period, the Council would review the situation, and if the dispensary was not working out or was negatively impacting the community, he did not want the City to be hurt.

The Council directed staff to review specifics of the ordinance including recommended changes from the Planning Commission; additional map that shows the recommendations by the Planning Commission excluding the Downtown Specific Plan area; revisions by the Subcommittee not using the straight line concept on the 300 foot distance on residential; and legal exposure pertaining to revoking licenses and not granting licenses.

CITY MANAGER

11. City Manager Comment(s)/Update(s)/Report(s).

City Manager Phil Vince commented on the State budget and redevelopment outcome.

CHIEF OF POLICE

12. Chief of Police Comment(s)/Update(s)/Report(s).

No comments made.

APPOINTMENTS TO COMMISSIONS AND/OR AGENCIES

CITY COUNCIL

13. City Council Comments.

Councilmember Michael Menesini shared past memories of Kathy Radke, former Councilmember.

Mayor Rob Schroder spoke on the passing of Kathy Radke and Phyllis Wainwright, prominent citizens of Martinez, and adjourned in their memory.

ADJOURNMENT

Adjourned at 11:45 p.m. *in memory of Kathy Radke and Phyllis Wainwright*, to a Regular City Council Meeting on March 2, 2011 at 7:00 p.m. in the Council Chambers, 525 Henrietta Street, Martinez, California.

Approved by the City Council,

Rob Schroder, Mayor

Mercy G. Cabral, Deputy City Clerk 3/16/11