

ORDINANCE NO. 1277 C.S.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MARTINEZ REPEALING CHAPTER 22.41, AN URGENCY ORDINANCE REGULATING MEDICAL MARIJUANA DISPENSARIES AND REPLACING IT WITH AN ORDINANCE ESTABLISHING REGULATIONS AND CRITERIA FOR MEDICAL MARIJUANA DISPENSARIES, REPEALING SECTION 22.16.080, COMMERCIAL CONDITIONAL USES, REPLACING IT WITH THE ATTACHED SECTION COMMERCIAL CONDITIONAL USES, AND REPEALING SECTION 22.04.240 HOME OCCUPATION AND REPLACING IT WITH THE ATTACHED SECTION, HOME OCCUPATIONS

WHEREAS, Proposition 215 is a statewide initiative measure passed by the voters at the November 5, 1996 election; and

WHEREAS, Proposition 215 adds Section 11362.5 to the California Health and Safety Code; and

WHEREAS, the act of providing or furnishing marijuana to another person for medicinal purposes poses several serious risks to the safety, health and welfare of both the individual and the people of the city at large because of the absence of regulations and standards on the conduct of selling or providing marijuana, the providers of the marijuana, and the acquisition or cultivation of marijuana by the providers; and

WHEREAS, Proposition 215 fails to provide controls over the quantity or quality of the marijuana grown and distributed pursuant to its provisions; and

WHEREAS, Proposition 215 does not require a person who wishes to use marijuana for medical purposes to have a prior examination by a physician; and

WHEREAS, Proposition 215 fails to impose record keeping requirements and fails to regulate the amount of marijuana which may be dispensed at any given location; and

WHEREAS, any distribution of marijuana for medical purposes in accordance with Proposition 215 must comply with all zoning regulations; and

WHEREAS, while the Zoning Code of the City of Martinez addresses a variety of medical and related uses, it does not address the medicinal distribution of marijuana; and

WHEREAS, the lack of regulations, conditions or limitations on the location of medical marijuana dispensaries may result in the indiscriminate and unrestrained proliferation of businesses without proper controls that are both inappropriate for minors and disturbing to the peace, safety, and comfort of residents in residential zones where such businesses may operate; and

WHEREAS, marijuana is currently classified under federal and state law as a controlled substance; and

WHEREAS, it is a violation of federal law to provide another person with a controlled substance; and

WHEREAS, the effects that may be experienced by individuals using marijuana for medical purposes are so potentially harmful and unknown that federal law has not authorized its use in California even after the adoption of Proposition 215; and

WHEREAS, the city has studied the issue of zoning the operation of medical marijuana dispensaries and has determined that such dispensaries are inappropriate in residential zones or in close proximity to schools or churches; and

WHEREAS, the city's experience has been that certain types of businesses and operations should not be conducted in residential districts because of all of the following effects resulting from the conduct of such businesses and operations: overcrowded residential streets and properties, shortages of parking for residents, the use of hazardous substances and materials, noise, debris, pollution and the tendency of businesses to rapidly increase beyond limits permitted for home occupations; and

WHEREAS, the aforementioned harmful effects result in diminished enjoyment of property for residents entitled to residential use of their property by the city's zoning ordinance; and

WHEREAS, this ordinance is hereby found to be categorically exempt from environmental review, per the provisions of Section 15061(b)(3) of the California Environmental Quality Act of 1970 as amended.

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

SECTION 1. Chapter 22.41 is hereby repealed in its entirety.

SECTION 2. Chapter 22.41 is hereby added to Title 22 of the Municipal Code of the City of Martinez to read as follows:

CHAPTER 22.41

MEDICAL MARIJUANA DISPENSARIES

Section 22.41.010 Purpose.

The purpose of this ordinance is to protect the public safety, health, and welfare of the citizens of the City of Martinez by prohibiting the use of residential districts for medical marijuana dispensaries and restricting the operation of medical marijuana dispensaries to specific commercial zones that permit uses most closely approximating those of medical marijuana dispensaries.

Section 22.41.020 Medical Marijuana Dispensary.

A "Medical Marijuana Dispensary" ("Dispensary") is a facility where marijuana is made available for medical purposes in accordance with Health and Safety Code Section 11362.5 (Proposition 215).

Section 22.41.030 Effect on Federal Law.

Nothing in this ordinance shall counteract the substance, interpretation, effect, or application of any federal law, statute, regulation, act, administrative or judicial court decision, departmental directive, or guideline promulgated or authorized by any body of the federal government respecting the distribution, use, sale, cultivation or furnishing of marijuana.

Section 22.41.040 Nonconforming Use.

No use which purports to have distributed, sold or provided marijuana to persons covered by the definitional categories listed in Proposition 215 prior to the enactment of this Ordinance shall be deemed to have been a legally established use under the provisions of this Code and such use shall not be entitled to claim legal nonconforming status pursuant to Sections 22.38.010 and 22.38.020.

Section 22.41.050 Conditional Use Permit Required.

- A. No person shall operate or allow or suffer the operation of a Medical Marijuana Dispensary except in compliance with a Conditional Use Permit issued pursuant to Chapter 22.40.

- B. The application for such Conditional Use Permit may be filed by the operator of the Medical Marijuana Dispensary and shall be countersigned by the owner of the subject lot or parcel, or by the authorized agent of the owner, pursuant to the requirements of Section 22.40.030.
- C. All property owners within 1000 feet of the proposed marijuana dispensary shall be noticed of the conditional use public hearing as described in Section 22.40.040B of the Martinez Municipal Code.

Section 22.41.060 Allowed Districts.

Medical Marijuana Dispensaries may be permitted only in the (NC) Neighborhood Commercial, Central Commercial (CC) District, Service Commercial (SC) District and Thoroughfare Commercial (TC) District.

Section 22.41.070 Standards for Medical Marijuana Dispensaries.

- A. No Dispensary shall be located less than one thousand (1000) feet from any park, elementary or secondary school; child daycare center or church which includes an elementary or secondary school or child daycare center, three hundred (300) feet from property used for residential purposes.
- B. Distance shall be measured from the building which contains the Dispensary to the property line of the enumerated use using the most direct vehicular or pedestrian access route, whichever is shorter.

Section 22.41.080 Findings for Conditional Use Permit.

- A. The Planning Commission or City Council, on appeal, shall grant a Conditional Use Permit for a dispensary located a permissible distance from each of the sites listed in section 22.41.070 only if the applicable criteria specified in 22.41.070 are met and each of the findings specified in Section B below can be made as to the proposed dispensary.
- B. In addition to the findings required pursuant to Section 22.40.070, a Conditional Use Permit for a Medical Marijuana Dispensary shall be granted only if the Planning Commission, or the City Council, on appeal, makes all of the following additional findings of fact:
 - 1. The Medical Marijuana Dispensary, as proposed and at the location requested, will not create a potentially adverse impact on surrounding uses; and

2. The Medical Marijuana Dispensary, as proposed and at the location requested, will be compatible with the adjacent zoning districts; and
 3. The proposed Medical Marijuana Dispensary will not result in the substantial aggravation of crime problems or make law enforcement unduly difficult.
- C. The Planning Commission, or City Council, on appeal, shall deny the application where the information submitted by the applicant and/or presented at the public hearing fails to satisfactorily substantiate each such finding.

Section 22.41.090 Conditions.

In addition to any conditions imposed pursuant to Chapter 22.40, a Conditional Use Permit for a Medical Marijuana Dispensaries shall include each of the following additional conditions:

- A. The use shall be conducted in compliance with the provisions of Health and Safety Code Section 11362.5.
- B. No persons under the age of 18 (eighteen) shall be permitted in the Dispensary at any time.
- C. No retail sales of any products other than medical marijuana are permitted at the Dispensary.
- D. The Dispensary shall be operated in strict compliance with regulations adopted by the Chief of Police:
 1. The regulations shall address, but are not limited to, such issues as record keeping, proper identification for patients, storage of marijuana on the site, on-site cultivation, delivery and maximum amount dispensed in any single transaction;
 2. The regulations may be amended from time to time by the Chief. The Dispensary shall be operated in strict compliance with the most currently adopted regulations sent by registered mail to the operator of the Dispensary.
- E. All transactions shall occur at the Dispensary and all medical marijuana shall be dispensed directly to the patient or the designated caregiver. No employee, owner or volunteer of the Dispensary may provide medical marijuana to any patient or designated caregiver at any location other than inside the building of the Dispensary.

- F. Cultivation of medical marijuana on-site is only allowed if specifically authorized by the Conditional Use Permit.
- G. Hours of Operation shall be limited to the hours between 9:00 a.m. and 8:00 p.m. seven days a week.
- H. The operator and/or property owner shall be required to report any illegal activity occurring on the site or associated with the Dispensary.
- I. Each Dispensary shall display in a manner legible and visible to its clientele:
 - 1. Notice that Persons under the age of 18 (eighteen) are not allowed in the Dispensary; and
 - 2. Notice that all illegal activity will be reported to the police; and
 - 3. A request that there be no smoking of medical marijuana in the vicinity of the Dispensary.

COMMERCIAL CONDITIONAL USES

SECTION 3. Section 22.16.080 is hereby repealed.

SECTION 4. Section 22.16.080 is hereby added to the Municipal Code of the City of Martinez to read as follows:

22.16.080 Conditional Uses.

The following conditional uses shall be permitted upon the granting of a conditional use permit, in accord with the provisions of Chapter 22.40 of this title.

- A. "Pumping stations, power stations, drainage ways and structures, storage tanks and transmission lines found by the City Planning Commission to be necessary for the public health, safety or welfare.
- B. "Gasoline service stations, except as follows:
 - 1. The NC and CC Districts shall not include automotive repair services; all operations except the sale of gasoline and oil shall be conducted within a building enclosed on at least three sides;

2. A gasoline filling station, when permitted on the granting of a use permit, shall be permitted on a corner provided that all signs, gasoline filling pumps and other equipment, including vehicles tending to obstruct the sight distance shall be located at least 25 feet from the street line and side property line;
3. Any existing gasoline service station which, as of the effective date of this section, provides automotive service, repair, maintenance, accessory sales and installation and/or other related services or products as authorized pursuant to this title, or maintains the availability of air and water for tires, batteries, radiators, etc., shall not discontinue such services, product availability or maintenance without first receiving approval of a Conditional Use Permit pursuant to the provisions of Chapter 22.40 of this Title. In considering any such Conditional Use Permit application, the Board of Adjustments shall, in addition to complying with the provisions of Sections 22.40.070 (A)(1) through (3), not grant such permit unless it also finds that:

The proposed discontinuation of service, product availability and/or facility availability and maintenance would not have a significant adverse effect, either by itself or by virtue of the cumulative effects of other similar actions, on the general motoring public, particularly including aged and/or handicapped individuals who may be dependent on such services, products or facilities.

- C. "Accessory structures and uses located on the same site with and necessary for or incidental to the operation of a conditional use.
- D. "Bars.
- E. "On-sale liquor when operated in conjunction with a bona fide eating establishment.
- F. "In the NC-Neighborhood Commercial District:
 1. Private clubs and lodges;
 2. Churches and other religious institutions;
 3. Public and private philanthropic and eleemosynary institutions;
 4. Public and private libraries, art galleries and museums;
 5. Bowling alleys;
 6. Drive-in restaurants;
 7. Take-out restaurants;

8. Bakeries and other specialty food establishments which bake or prepare goods primarily for retail sale from the same location;
 9. Nightclubs;
 10. Child daycare facilities.
- G. "In the TC-Thoroughfare Commercial District:
1. Drive-in restaurant;
 2. Take-out restaurants.
- H. "In the SC-Service District:
1. Light manufacturing uses involving only the assembly, packaging, repairing or processing of previously prepared material, subject to the following limitations:
 - a. All activities, except incidental storage shall be conducted within a completely enclosed building;
 - b. The building shall be so constructed, the machinery and equipment shall be so installed and maintained, and the activity shall be so conducted so that all odor, dust, dirt, smoke, noise, vibration, illumination, glare and all other objectionable factors shall be confined or reduced to the extent that no annoyance or injury shall result to persons residing or working in the vicinity or to property located in the vicinity;
 - c. No machine shall be used which has more than five horsepower capacity;
 - d. No punch press exceeding five tons rated capacity and no drop hammer or automatic screw machine shall be used.
 2. Commercial amusement establishments including amusement parks, carnivals, circuses and other transient amusement enterprises.
- I. Dog fanciers' permit on sites of 20,000 square feet or more.
- J. In NC and CC Districts: Group care and rehabilitation facilities.
- K. In CC Districts: Commercial Amusement establishments in buildings, including card rooms, nightclubs, dance halls, bowling alleys, video arcades, skating rinks, theatres, and auditoriums.

- L. In CC Districts: Retail stores listed in Section 22.16.050B which have a regional market area.
- M. Lunch wagons, except Downtown (north of Green Street, south of Marina Vista, between Berrellesa and Court Streets) provided that on the basis of the use permit application and the evidence submitted, the Planning Commission makes the following findings:
 - 1. The use will not be detrimental to other businesses in the area.
 - 2. The use will not create a safety hazard.
 - 3. The use will meet the Design Review Criteria and Standards, Chapter 22.34.045.
 - 4. The use will not be a nuisance to neighboring properties especially residences.
- N. In NC, CC, SC and TC Districts: Medical Marijuana Dispensaries which shall only be permitted in accordance with Chapter 22.40.

HOME OCCUPATION

SECTION 5 Section 22.04.240 of the Municipal Code of the City of Martinez is hereby repealed:

SECTION 6 Section 22.04.240 is hereby added to the Municipal Code of the City of Martinez to read as follows:

22.04.240 Home Occupation

- A. "Home occupation" means the conduct of an art or profession, the offering of a service or the conduct of a business, or the handcraft manufacture of products, but not including any of the following:
 - 1. Appliance repair, other than repair of small household appliances;
 - 2. Motorized garden tool repair such as, but not limited to, lawnmowers;
 - 3. Massage parlor, as defined in Chapter 5.58;

4. Pest control;
5. Vehicle production and services such as, but not limited to, the following: cleaning, dismantling, embellishment, installation, manufacture, repair or service, sale, lease or rental, and towing, excluding the dispatching of vehicles such as limousines, taxicabs, and ambulances; Welding;
6. Any use which requires a hazardous materials permit from the Fire Department;
7. Medical Marijuana Dispensary, as provided in Chapter 22.41;
8. Any other use which does not comply with any of the conditions listed in subsection B.

B. All home occupations are subject to the following conditions:

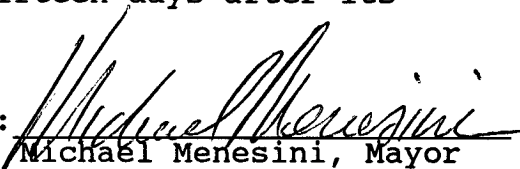
- 1 The home occupation shall be conducted within a dwelling by an inhabitant thereof and shall be clearly incidental to the use of the structure as a dwelling;
- 2 There shall be no external alteration of the dwelling in which the home occupation is conducted;
- 3 No sign shall be displayed other than a nameplate in which the home occupation is conducted;
- 4 No one other than a resident of the dwelling shall be employed in the conduct of a home occupation, except that a doctor, dentist, osteopath or chiropractor may employ one assistant;
- 5 There shall be no noisy or otherwise objectionable machinery or equipment used in the conduct of the home occupation;
- 6 There shall be no storage, keeping or display of equipment, supplies or merchandise outside or in the vicinity of the dwelling. No goods, merchandise or products shall be sold or offered for sale inside of, outside of, or in the vicinity of, the dwelling. As used in this subsection (B)(6), vicinity includes any private property located in the same street block as the dwelling.
- 7 The conduct of the home occupation shall not create excessive pedestrian, automobile or truck traffic in the vicinity or on the property of any other residence.

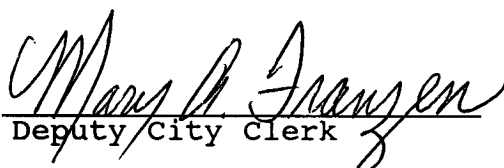
SECTION 7. Severability. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

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 8. Effective date. This ordinance shall become effective 30 days after the date of adoption.

SECTION 9. Posting. The City Clerk shall cause this ordinance to be published and/or posted within fifteen days after its adoption.

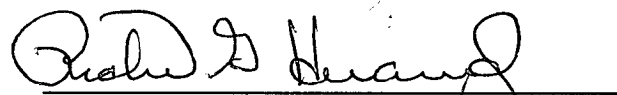
APPROVED: 
Michael Menesini, Mayor

ATTEST: 
Deputy City Clerk

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I HEREBY CERTIFY that the foregoing ordinance was duly and regularly introduced at a Regular Meeting of the City Council of the City of Martinez, held on the 21st day of June, 2000, and duly passed and adopted at a Regular Meeting of said City Council held on the 5th day of July, 2000, by the following vote:

- AYES: Councilmembers Lewis, Schroder, Woodburn, Vice Mayor Ross and Mayor Menesini
- NOES: None
- ABSENT: None
- ABSTAIN: None


RICHARD G. HERNANDEZ
City Clerk, City of Martinez