

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MARTINEZ APPROVING A ZONING MAP AMENDMENT AND A ZONING TEXT AMENDMENT TO AMEND THE MARTINEZ MUNICIPAL CODE BY: 1) AMENDING CHAPTER 5.58 (MASSAGE PARLORS AND MASSEURS) TO ADJUST THE PERMITTED HOURS; 2) AMENDING CHAPTER 22.04 (DEFINITIONS) TO REVISE OR ESTABLISH NEW DEFINITIONS FOR AGRICULTURAL ACCESSORY STRUCTURE, ANIMAL BOARDING, CAMPGROUND, CONSERVATION AREA, EMPLOYEE HOUSING, FAMILY, FARM WORKER AND EMPLOYEE HOUSING, LOW-BARRIER NAVIGATION CENTER, OUTDOOR RECREATION, RESIDENTIAL CARE FACILITY, SINGLE ROOM OCCUPANCY, AND TASTING ROOM; 3) REMOVING CHAPTER 22.10 AND REPLACING WITH CHAPTER 22.09 (DISTRICT BOUNDARIES); 4) ADDING CHAPTER 22.10 (A AGRICULTURAL DISTRICT) TO ESTABLISH NEW DEVELOPMENT STANDARDS FOR THE A AGRICULTURAL DISTRICT; 5) AMENDING CHAPTER 22.12 (RESIDENTIAL DISTRICTS) BY ESTABLISHING NEW DEVELOPMENT STANDARDS FOR THE R-7.0 RESIDENTIAL DISTRICT; ESTABLISHING REGULATIONS FOR LOW-BARRIER NAVIGATION CENTERS, RESIDENTIAL CARE FACILITIES, AND SUPPORTIVE HOUSING; AMENDING LOT COVERAGE REQUIREMENTS FOR THE R-2.5 DISTRICT; AMENDING THE STRUCTURE SEPARATION REQUIREMENT; AND AMENDING THE SIDE YARD AND CORNER LOT DEVELOPMENT STANDARDS; 6) AMENDING CHAPTER 22.14 (PROFESSIONAL AND ADMINISTRATIVE OFFICE DISTRICTS) AND CHAPTER 22.16 (COMMERCIAL DISTRICTS) BY ESTABLISHING REGULATIONS FOR LOW-BARRIER NAVIGATION CENTERS AND SUPPORTIVE HOUSING AND REMOVING THE MINIMUM SIZE REQUIREMENT FOR RESIDENTIAL DEVELOPMENT IN THESE DISTRICTS; 7) AMENDING CHAPTER 22.34 (GENERAL REQUIREMENTS) BY AMENDING THE STANDARDS FOR FENCES, WALLS, AND HEDGES; 8) AMENDING CHAPTER 22.39 (WIRELESS TELECOMMUNICATION FACILITIES) BY ELIMINATING THE PERFORMANCE BOND REQUIREMENT FOR WIRELESS TELECOMMUNICATIONS FACILITIES ON PRIVATE PROPERTY; AND 9) APPROVING A ZONING MAP AMENDMENT FROM C COMMERCIAL TO A DUAL-USE ZONING DESIGNATION OF NC NEIGHBORHOOD COMMERCIAL AND SC SERVICE COMMERCIAL FOR APN 377-010-001, -002, -009, -022, -023, -031, -032, AND -034.

WHEREAS, the City of Martinez has historically annexed parcels of land from Contra Costa County that are zoned using designations that do not exist in the Martinez Municipal Code; and

WHEREAS, State law has frequently been amended regarding the provision of services that support the wellbeing and accessibility of individuals with disabilities, the aging population, and other vulnerable communities; and

WHEREAS, these amendments require that local governments incorporate certain definitions and uses into their Municipal Code, pursuant to Government Code Sections 65660 through 65668 and the California Health and Safety Code Sections 17021.5 and 17021.6; and

WHEREAS, the City seeks to ensure consistent and orderly development within its jurisdiction while remaining compliant with State law; and

WHEREAS, the City also seeks to update regulations as necessary to support the evolving needs of local businesses and residents; and

WHEREAS, the City proposes Zoning Text Amendments to establish zoning regulations for the A Agricultural and R-7.0 Residential Districts by removing Chapter 22.10 and replacing with Chapter 22.09 (District Boundaries), adding Chapter 22.10 (A Agricultural), and amending Chapter 22.12 (Residential Districts) of the Martinez Municipal Code (“MMC”); and

WHEREAS, the City proposes additional Zoning Text Amendments, including amending MMC Chapters 5.58 (Massage Parlors and Masseurs); 22.04 (Definitions), 22.12 (Residential Districts), 22.14 (Professional and Administrative Office Districts), 22.16 (Commercial Districts), 22.34 (General Requirements), and 22.329 (Wireless Telecommunication Facilities); and

WHEREAS, the City further proposes a Zoning Map Amendment, to rezone parcels zoned C Commercial to a dual-use zoning designation of NC Neighborhood Commercial and SC Service Commercial; and

WHEREAS, these parcels being rezoned are designated General Commercial (CG) in the Martinez General Plan 2035, which encompasses a broad range of retail, service, amusement, wholesale, restaurant, and office uses and correlates to existing zoning designations of NC Neighborhood Commercial and SC Service Commercial; and

WHEREAS, the Planning Commission held a public hearing on the proposed Zoning Text Amendments on July 25, 2023, during which all interested persons were heard, and adopted Planning Commission Resolution No. 23-10 recommending City Council adoption of the proposed Zoning Map Amendment and Zoning Text Amendments; and

WHEREAS, the City Council held a public hearing on the proposed Zoning Text Amendments on September 6, 2023, at which time all interested parties had the opportunity to be heard; and

WHEREAS, proper notice of said hearing was given in all respects as required by law; and

WHEREAS, the City Council did hear and consider all said reports, recommendations and testimony herein above set forth and used its independent judgement to evaluate the project.

NOW THEREFORE, the City Council of the City of Martinez does hereby ordain as follows:

SECTION I:

Pursuant to Section 22.46.020 of the MMC, the City Council hereby finds that the Zoning Text Amendments and Zoning Map Amendments are consistent with the General Plan 2035 and all applicable Specific Plans in that they are necessary to comply with State law and are consistent with applicable land use regulations and development policies. For instance, Policy LI-P-1.1 from the General Plan commits the City to “maintain[ing] and implement[ing] the General Plan Land Use Map.” Additionally, Goal LU-G-8 “encourage[s] the preservation of existing agricultural businesses.

SECTION II:

The California Environmental Quality Act (“CEQA”), together with State Guidelines require that certain projects be reviewed for environmental impacts and that environmental documents be prepared. Pursuant to the CEQA, the City Council hereby finds the project categorically exempt from the requirements of CEQA pursuant to Section 15305 and Section 15061(b)(3) of the CEQA Guidelines, which exempts adoption of an ordinance entailing minor alterations in land use limitations and under the common-sense exemption as there is no possibility that the ordinance in question will have a significant effect on the environment.

SECTION III:

Chapter 5.58 (Massage Parlors and Masseurs) of Title 5 (Business Taxes and Regulations) of the MMC is hereby amended to read as follows:

5.58.130 – Standards.

- A. No massage parlor or outcall massage service shall perform a massage service prior to 8:00 A.M. and after 10:00 P.M. of any day, or alternatively during such hours as approved by the Chief of Police;
- B. No person under the age of 18 years shall be licensed to perform massages in a massage parlor or for a massage outcall service;
- C. No foods or beverages shall be sold, furnished or available for consumption in any massage parlor;
- D. No non-massage business shall be allowed on the premises that is licensed as a massage parlor.

SECTION IV:

The definitions in Chapter 22.04 (Definitions) of Title 22 (Zoning) of the MMC are hereby amended to read as follows:

22.04.026.5 – Agricultural Accessory Structure.

“Agricultural accessory structure” means an attached or detached subordinate structure which supports agricultural activity; is incidental to the use of the main structure or the main use of the land; and is located on the same site with the main structure or use. Examples of agricultural accessory structures include, but are not limited to, grain silos, water towers, barns, small and large animal structures, and equipment storage structures.

22.04.040.5 – Animal Boarding.

“Animal boarding” means the commercial operation of a facility that provides temporary care, shelter, and accommodation for animals, including but not limited to dogs, cats, birds, and small mammals, for a period exceeding 24 hours. Such facilities may offer services such as feeding, grooming, exercise, and medical care under the supervision of trained personnel. Animal boarding establishments shall comply with all applicable health, safety, and zoning regulations to ensure the well-being and comfort of the boarded animals.

22.04.080.5 – Campground.

“Campground” means real property made available to persons for camping, whether by tent, trailer, camper, cabin, recreational vehicle, or similar device. “Campground” does not include a manufactured home community or mobile home park.

22.04.111 – Conservation Area.

“Conservation area” means an area of land that is intended to be protected and conserved for its natural, cultural, or historical significance.

22.04.163 – Employee Housing.

“Employee Housing” means residential accommodations for individuals employed within a specific geographic area or by a particular employer. Employee housing serving six or fewer employees shall be deemed a single-family structure and shall be subject to the same standards as any single-family residence in the same zoning district. Employee housing is not a business run for profit.

22.04.170 – Family.

~~“Family” means an individual or two or more persons related by blood or marriage, or a group of not more than 6 persons, not including servants, who need not be related by blood or marriage, living as a single housekeeping unit. The limitation of a family to 6 persons who need not be related by blood or marriage shall not be applied to a family, otherwise complying with this Chapter, with adoptive or foster children.~~

“Family” means one or more persons related by blood, marriage, or legal adoption, or a group of persons living together who constitute a single-family housekeeping unit in a dwelling unit, not including a fraternity, sorority, club, or other group of persons occupying a hotel, lodging house, or institution of any kind.

22.04.177 – Farm Worker and Employee Housing.

“Farm Worker and Employee Housing” means housing providing accommodations for up to 36 beds in a group quarters or 12 units or spaces designed for use by a single family or household. All occupants of the housing units must be agricultural employees who are employed in, raising, or harvesting any agricultural commodity. Such employees need not work on the property where the housing is located. Any farm worker and employee housing providing accommodations for six or fewer farm workers or employees shall be deemed a single-family structure. Farm worker and employee housing is not a business run for profit.

22.04.353 – Low-Barrier Navigation Center.

“Low-Barrier Navigation Center” means a Housing First, low-barrier, service-enriched shelter focused on moving people into permanent housing that provides temporary living facilities while case managers connect individuals experiencing homelessness to income, public benefits, health services, shelter, and housing. “Low-barrier” means best practices to reduce barriers to entry, and may include, but is not limited to, the following:

- 1) The presence of partners if it is not a population-specific site, such as for survivors of domestic violence or sexual assault, women, or youth.
- 2) Pets.
- 3) The storage of possessions.
- 4) Privacy, such as partitions around beds in a dormitory setting or in larger rooms containing more than two beds, or private rooms.

22.04.440.5 – Outdoor Recreation.

“Outdoor recreation” means the pursuit of leisure-time activities that occur in an outdoor setting and that are dependent on some element or combination of elements in the natural environment. Examples include, but are not limited to, bicycling, walking, hiking, skating, swimming, horseback riding, archery, boating, fishing, picnicking, studying nature, hedge mazes, and seasonal activities like pumpkin patches and Christmas Tree sales.

22.04.445 – Residential Congregate Care Facility.

“Residential ~~congregate~~ care facility” means a facility operated by a person with all required state and local agency approvals or licenses, where not more than six persons reside or receive care, not including the licensee or members of the licensee's family or persons employed as facility staff, or as defined and regulated by the California Health and Safety Code. Residential care facilities are intended to serve as a residence for individuals in need of assistance with daily living activities.

22.04.465 – Single-Room Occupancy.

“Single-Room Occupancy,” also referred to as a SRO, means a facility providing six or more dwelling units where each unit has a minimum floor area of one hundred fifty (150) square feet and a maximum floor area of four hundred (400) square feet. These dwelling units may have kitchen or bathroom facilities and shall be offered monthly or longer. Units exceeding

two hundred fifty (250) square feet shall provide full individual bathroom facilities. Otherwise, common bathroom facilities shall be provided in accordance with the California Building Code. Each unit shall have a separate closet. If individual kitchen facilities are not provided, common kitchen facilities shall be provided with at least one kitchen per floor. Two hundred (200) square feet of common space shall be provided per floor. Laundry facilities shall be provided in a separate room at the ratio of one washer and dryer for every ten (10) units, with at least one washer and dryer per floor. A cleaning supply room or utility closet with a wash tub with hot and cold running water shall be provided on each floor of the SRO facility. An SRO facility with ten (10) or more units shall have an on-site manager.

22.04.542 – Tasting Room.

"Tasting room" means a room, facility, or outlet for the promotion of a farm's products by providing samples of such products to the public and for the sale of such products at retail for consumption on the premises and for sale in closed packages for consumption off the premises. Samples of products can be given complimentary or for a fee.

SECTION V:

Title 22 (Zoning) of the MMC is hereby amended to remove Chapter 22.10 and replace with Chapter 22.09 (District Boundaries) as follows:

Chapter 22.1009 District Boundaries.

22.1009.010 — Designating Boundary Lines.

Wherever any uncertainty exists as to the boundary of a district as shown on the zoning map, the following regulations shall control:

- A. Where a boundary line is indicated as following a street or alley, it shall be construed as following the right-of-way line (i.e., the property line adjoining the street);
- B. Where a boundary line follows or coincides approximately with a lot line or a property ownership line, it shall be construed as following the lot line or property ownership line;
- C. Where boundary line is not indicated as following a street or alley and

does not follow or coincide approximately with a lot line or property ownership line, the boundary line shall be determined by the use of the scale designated on the zoning map;

- D. Where further uncertainty exists, the Planning Commission, upon written application or on its own motion, shall determine the location of the boundary in question, giving due consideration to the location indicated on the zoning map and the objectives of this Title and the purposes set forth in the district regulations.

SECTION VI:

Title 22 (Zoning) of the MMC is hereby amended to add Chapter 22.10 (Agricultural Districts) as follows:

Chapter 22.10 A AGRICULTURAL DISTRICTS.

22.10.010 — General Provisions and Exceptions.

All uses shall be subject to the general provisions and exceptions prescribed in Chapter 22.34 of this Title.

22.10.020 — Purposes

In addition to the objectives prescribed in Section 22.02.010 of this Title, the A Agricultural District is intended to achieve the following purposes:

- A. To permit reasonable use and to encourage the preservation of agricultural land; and
- B. To provide agricultural employment opportunities for residents of the City.

22.10.030 — Permitted Uses

Permitted Uses: The following uses shall be permitted in all Agricultural Districts:

- A. Agriculture – small scale;
- B. Agriculture – large scale;
- C. Agricultural accessory structures;
- D. Single-family dwelling;

- E. Accessory dwelling units, per Section 22.43.020
- F. Residential accessory structures;
- G. Farm worker and employee housing;
- H. Stable;
- I. Tasting rooms;
- J. Home occupations; and
- K. Conservation area.

22.10.040 — Conditional Uses

Conditional Uses: The following conditional uses shall be permitted upon the granting of a conditional use permit by the Zoning Administrator, in accord with the provisions of Chapter 22.40 of this Title:

- A. Agricultural produce/product processing or retail of agricultural products grown on the premises;
- B. Campground;
- C. Outdoor recreation;
- D. Animal boarding;
- E. Bed and breakfast inn; and
- F. Any other compatible or appropriate use as determined by the Planning Commission.

22.10.050 — Required Conditions

The following conditions shall apply for all uses within the A Agricultural District:

- A. No use shall be permitted and no process, equipment, or materials shall be employed which are found by the Planning Manager, Zoning Administrator, or Planning Commission to be objectionable to persons residing or working in the vicinity or injurious to property located in the vicinity by reason of odor, fumes, dust, smoke, cinders, refuse, dirt, water-carried wastes, noise, vibration, illumination, glare, unsightliness, or heavy truck traffic or to involve a hazard of fire or explosion.
- B. Any agricultural produce/product processing which is not conducted within a completely enclosed structure and which is located on a site abutting on or across a street or alley from property in an R, PA, NC, or CC District, shall be required to be screened either by a solid masonry wall, board fence, or compact evergreen hedge not less than

six feet in height if found by the Planning Manager, Zoning Administrator, or their designee to be unsightly.

22.10.060 — Development Standards

A. Site Area

1. The minimum site area in the A-1 district shall be one half (0.5) acre.
2. The minimum site area in the A-2 district shall be five (5) acres.
3. The minimum site area in the A-5 district shall be five (5) acres.

B. Density

1. In the A-1 and A-2 districts, the maximum density shall be 0.2 dwelling units per every whole acre, rounded up to the nearest whole number. Parcels measuring less than one acre shall be permitted up to one (1) dwelling unit.
2. In the A-5 district, the maximum density shall be 0.15 dwelling units per every whole acre, rounded up to the nearest whole number. Parcels measuring less than one acre shall be permitted up to one (1) dwelling unit.

C. Front Yards

1. The minimum front yard shall be 20 feet.

D. Side Yards

1. The minimum side yard for residential structures shall be 10 feet.
2. The minimum side yard for agricultural accessory structures shall be 20 feet.

E. Rear Yards

1. The minimum rear yard shall be 20 feet.

F. Height of Structures

1. No structure shall exceed 30 feet of height.
2. No agricultural accessory structure shall exceed 25 feet of height.
3. No agricultural accessory structure within 100 feet of a public roadway shall exceed 20 feet of height.

G. Site Coverage

1. The maximum site area to be covered by structures in the A-1 district shall be fifteen (15) percent of the total site area.
2. The maximum site area to be covered by structures in the A-2 district shall be five (5) percent of the total site area.
3. The maximum site area to be covered by structures in the A-5

district shall be five (5) percent of the total site area.

H. Off-Street Parking and Loading Facilities

1. Off-street parking and loading facilities shall be provided in accordance with the requirements specified in Chapter 22.36 of this Title.

I. Exceptions

1. Exceptions May Be Granted. The Zoning Administrator may grant an exception to height, size, setback, building separation, parking, ingress and egress, privacy, and design standards consistent with the procedures set forth in Section 22.06.020 and subject to the following findings:
 - i. The project will substantially comply with the Zoning Ordinance and the purpose and intent of the zoning district where the property is located.
 - ii. The project will not pose a detrimental impact to the site, adjacent properties, or neighborhood.
 - iii. The project will otherwise comply with applicable Zoning Ordinance standards and requirements.
 - iv. Limitations of this Section. Consistent with California Government Code Section 65852.2, this Section shall not preclude or impede the development of any Statewide Exemption ADU and in compliance with all other local development standards.

SECTION VII:

Chapter 22.12 (Residential Districts) of Title 22 (Zoning) of the MMC is hereby amended to read as follows:

22.12.080 - Permitted Uses.

The following uses shall be permitted:

- A. ~~One~~ Single-family dwellings in which not more than 2 two paying guests may be lodged and/or furnished meals;
- B. In the R-1.5, R-2.5, and R-3.5 district, multifamily dwellings, as follows:

Zoning District	Maximum Building Size (i.e., maximum number of dwelling units permitted in 1 building)
R-3.5	2 dwelling units per building

R-2.5	8 dwelling units per building
R-1.5	Size limits as appropriate shall be established by the Board of Adjustments <u>Planning Commission or Zoning Administrator</u> in design review;

- C. Accessory structures located on the same site as a permitted use including private garages and carports, storehouses, garden structures, greenhouses, recreation rooms, hobby shops and, when the basic structure is a ~~4~~ single-family dwelling, a guest house or accessory living quarters without a kitchen;
- D. Home occupations
- E. Raising of fruit and nut trees, vegetables and horticultural specialties;
- F. Except for the R-1.5, R-2.5, and R-3.5 districts, the raising of poultry, rabbits, chinchillas, hamsters and other small animals on a site not less than 20,000 square feet in area, provided that not more than 20 of any ~~4~~ or combination of such poultry or small animals shall be permitted on any ~~4~~ one acre or smaller site, and provided that no structure housing poultry or small animals shall be closer than 25 feet to a dwelling unit on the site or 50 feet to the property line;
- G. Except in the R-1.5, R-2.5, R-3.5, and all RR districts, private stables for the keeping of not more than ~~3~~ three horses on a site of not less than 80,000 square feet in area, provided that ~~4~~ one additional horse may be kept for each additional 40,000 square feet of the site, and provided that no stable shall be located closer than 50 feet to any property line, closer than 50 feet to any dwelling on the site, or closer than 100 feet to any other dwelling;
- H. In the RR districts, private stables for the keeping of not more than ~~2~~ two horses on a site of not less than 40,000 square feet in area, provided that ~~4~~ one additional horse may be kept for each additional 20,000 square feet of the site, and provided that any stable meets the conditions of subsection G above;
- I. In the R-1.5 district only, lodging houses and apartment hotels;
- J. State authorized, certified or licensed family care, foster home, or group home serving ~~6~~ six or fewer mentally disordered or otherwise handicapped persons;
- K. Family day care homes;
- L. Transitional Housing. Transitional housing shall be considered a residential use of property and shall be subject only to those

restrictions that apply to other residential uses and dwelling types of the same type and in the same zone (e.g., permits single-family dwellings within a single-family zoning district and subject to the same maximum density, minimum lot size and maximum lot coverage, etc. applicable to a single-family dwelling. Also permits multi-family dwellings within a multi-family zoning district and subject to the same maximum density, minimum lot size and maximum lot coverage, etc. applicable to a multi-family dwelling. Does not permit single-family zoning requirements to be applied to multi-family residential units and vice versa);

- M. Supportive Housing. Supportive housing shall be considered a residential use of property and shall be subject only to those restrictions that apply to other residential uses and dwellings of the same type and in the same zone (e.g., permits single-family dwellings within a single-family zoning district and subject to the same maximum density, minimum lot size and maximum lot coverage, etc. applicable to a single-family dwelling. Also permits multi-family dwellings within a multi-family zoning district and subject to the same maximum density, minimum lot size and maximum lot coverage, etc. applicable to a multi-family dwelling. Does not permit single-family zoning requirements to be applied to multi-family residential units and vice versa);

N. Residential Care Facilities.

22.12.090 – Conditional Uses.

The following 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. Temporary real estate offices, construction yards and sheds;
- B. Colleges; nursery schools; private nonprofit schools and colleges, not including art, craft, music or dancing schools or business, professional or trade schools and colleges; churches, parsonages parish houses, monasteries, convents and other religious institutions; public and private philanthropic and eleemosynary institutions, sanitariums and nursing homes; private noncommercial clubs and lodges; golf courses; cemeteries, columbariums and crematories;
- C. 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;

- D. Accessory structures and uses located on the same site as a conditional use;
- E. In the R-1.5 district, mobile home parks;
- F. In the R-1.5, and R-2.5, and R-3.5 districts, state authorized or certified or licensed small group homes (serving 7 seven to 15 mentally disordered or otherwise handicapped persons);
- G. In the R-1.5 and R-2.5 districts, in the proximity of the Contra Costa County Hospital, group care and rehabilitation facilities (other than state authorized, certified or licensed homes serving mentally disordered or otherwise handicapped persons) serving up to 15 persons;
- H. In the R-1.5, R-2.5, and R-3.5 districts, on sites adjoining major thoroughfares, residential office facilities in existing residential structures or newly constructed compatible structures of residential appearance for the following activities:
 - 1. Professional offices including accountants, architects, artists, attorneys, authors, engineers, dentists, doctors;
 - 2. Real estate offices;
 - 3. Antiques, arts, and crafts sales.

Size and staff of residential office activities shall be limited in scope as appropriate for the residential district in which it is located. Signs shall be limited in size to 4 square feet maximum size and 1 sign per site. The ~~Board of Adjustments~~ Zoning Administrator or Planning Commission shall make the following findings in granting a use permit under this subsection that:

- 1. Approval of this use permit will be consistent with objectives of the General Plan;
 - 2. The construction and/or use proposed will be consistent with and compatible with existing structures and uses on adjoining sites and in the immediate neighborhood;
 - 3. Approval of this use permit will not result in any adverse environmental impact;
- I. Except in the R-1.5 and R-2.5 districts, dog fancier's permits on sites of 20,000 square feet or more;
- J. Planned unit developments in accord with the provisions of Chapter 22.42 of this Title;
- K. In the R-1.5, R-2.5, and R-3.5 districts only, multiple-family residential structures on sites up to 9,999 square feet in area

adjoining, on one or both sides, sites with existing multiple-family residential structures, subject to the following conditions that:

1. The maximum density shall be the average density (rounded down to a whole unit) of the improved sites adjoining the side lines of the site; however, in no case shall there be less than 1,500 square feet of site area per living unit. Density for corner lots shall be the average of the adjoining lots in the same block on each street frontage;
2. The architectural and site design of the improvements shall be compatible with existing structures in the neighborhood, and shall be similar in appearance to structures designed to comply with the basic requirements of the zoning district;
3. A use permit for multiple-family residential structures on sites up to 9,999 square feet shall be granted only upon a minimum of $\frac{2}{3}$ vote of the ~~Board of Adjustments~~ Zoning Administrator or Planning Commission;
4. The ~~Board of Adjustments~~ Zoning Administrator or Planning Commission shall make the following findings in granting a use permit under this subsection that:
 - a. Specific adjoining and/or surrounding structures and improvements detrimentally affect the site, and that unnecessary hardship, inconsistent with the objectives of this Title, would result from a strict enforcement of the zoning regulations, absent a conditional use permit under this subsection;
 - b. The structures and improvements detrimentally affecting the site have an apparent remaining usefulness indicating their continued presence and effect on the site for the foreseeable future;
 - c. Approval of this use permit will be consistent with the objectives of the General Plan;
 - d. Approval of this use permit will not result in any adverse environmental impact.
5. In granting of a conditional use permit under this subsection, no condition to this subsection shall be subject to variance.

This subsection is incorporated into the zoning title in recognition of the fact that scattered multiple residential development has occurred over the years within some of the areas zoned R-1.5, R-2.5₊ and R-3.5 and that some of this

existing development can have adverse effects on adjoining or nearby sites. It is the intent of this subsection to provide a mechanism for relief from unnecessary hardships imposed by a combination of the basic zoning provisions and existing developments by providing a means for accomplishing a transition between existing nonconforming multiple residential densities and the planned densities of the zoning district.

- L. "Bed and Breakfast Inns" operated in conjunction with the provisions of Section 22.04.051, subject to the design review approval of exterior improvements and/or alterations pursuant to Sections 22.34.040 through 22.34.070.
- M. Emergency response residential facilities, such as fire stations and ambulance facilities, where staff live on-site.
- N. Wind generator, subject to the conditions listed below:
 - 1. A use permit may only be considered for generators serving as an accessory use to a primary residential use. The use of a generator as a business is prohibited (only the sale of surplus power back to the utility that serves the primary residential use is permitted).
 - 2. A wind generator may not be located in any minimum required yard.
 - 3. The maximum permitted height, measured as the distance from the maximum height reached by the rotor or tip of the propeller blade down to the grade directly below the blade, is 25 feet.
 - 4. The colors and materials of the system shall be of muted earthtones, to the extent practical, ~~so as to~~ minimize the visual intrusion of the equipment into its residential setting.
 - 5. Noise from the system shall not exceed the requirements of Chapter 8.34, Noise Control.
- O. Homeless Shelters, Ongoing. Homeless shelters, ongoing, within permitted religious or eleemosynary institutions. In addition to the applicable conditions of use permit approval pursuant to 22.40.070, Homeless Shelters, Ongoing, within permitted religious or eleemosynary institution, are subject to the development and operational standards of Section 22.34.230, Homeless Shelters.

22.12.100 – Distances Between Structures

- A. Garages, carports, and other accessory structures may be attached to and have a common wall with the main structure on a site or may be connected with the main structure by a breezeway.
- B. When there is more than one structure on a site, the minimum distance between a structure used for human habitation and another structure shall be 10 feet unless otherwise approved through a variance granted by the Planning Director Zoning Administrator. ~~The minimum distance between structures shall be increased 1 foot for every 2 feet of height above the lowest 12 feet of height of either structure.~~

22.12.110 Minimum Site Area.

The minimum site area for R residential districts shall ~~be specified~~ comply with the requirements listed in Table B.

Table B

District	Minimum site area
R-1.5*	10,000 square feet
R-2.5	3,500 square feet
R-3.5	4,000 square feet
R-6.0	6,000 square feet
<u>R-7.0</u>	<u>7,000 square feet</u>
R-7.5	7,500 square feet
R-10.	10,000 square feet
R-15	15,000 square feet
R-20 and RR-20	20,000 square feet
R-40 and RR-40	40,000 square feet
R-65 and RR-65	65,000 square feet
R-80 and RR-80	80,000 square feet
R-100 and RR-100	100,000 square feet

Note: *R-3.5 and R-2.5 existing sites with less than the required minimum site area shall be considered in accordance with the provisions of Section 22.12.120.

22.12.190 Frontage, Width, and Depth of Site.

- A. Each site shall have not less than 40 feet of frontage on a public street, except that a corridor access lot having not less than 15,000 square feet of area, exclusive of corridor area, may not have less than 20 feet of frontage.
- B. Each site shall have a depth of not less than 100 feet and shall be of width not less than prescribed in Table E.

TABLE E

District	Minimum Width	Minimum Width Corner Lot
R-1.5	60 feet	70 feet
R-2.5	35 feet	60 feet
R-3.5	40 feet	50 feet
R-6.0	60 feet	70 feet
<u>R-7.0</u>	<u>65 feet</u>	<u>75 feet</u>
R-7.5	70 feet	80 feet
R-10.0	80 feet	90 feet
R-15	100 feet	110 feet
R-20 and RR-20	100 feet	110 feet
R-40 and RR-40	150 feet	150 feet
R-65 and RR-65	150 feet	150 feet
R-80 and RR-80	150 feet	150 feet
R-100 and RR-100	150 feet	150 feet

22.12.210 Maximum Site Area Coverage.

The maximum site area covered by structures shall ~~be as prescribed~~
comply with the requirements listed in Table F.

TABLE F

District	Maximum Coverage
R-1.5	40 percent
R-2.5	35 <u>40</u> percent
R-3.5	40 percent
R-6.0	40 percent
<u>R-7.0</u>	<u>35 percent</u>
R-7.5	35 percent
R-10.0	30 percent
R-15	30 percent
R-20 and RR-20	25 percent
R-40 and RR-40	20 percent
R-65 and RR-65	15 percent
R-80 and RR-80	10 percent
R-100 and RR-100	5 percent

22.12.220 Front Yards.

- A. The minimum front yard shall ~~be prescribed in~~ comply with the requirements listed in Table G subject to the exceptions listed in subsection B.

TABLE G

District	Minimum Front Yard
R-1.5	10 feet
R-2.5	20 feet
R-3.5	20 feet
R-6.0	20 feet

<u>R-7.0</u>	<u>20 feet</u>
R-7.5	20 feet
R-10.0	25 feet
R-15	25 feet
R-20 and RR-20	25 feet
R-40 and RR-40	25 feet
R-65 and RR-65	40 feet
R-80 and RR-80	50 feet
R-100 and RR-100	50 feet

B. Exceptions:

1. On a site situated between sites improved with buildings, the minimum front yard shall be the average depth of the front yards on the improved sites adjoining the side lines of the site.
2. Where a site is not situated between sites improved with buildings and where sites comprising forty percent (40%) of the frontage on a block are improved with buildings, the minimum front yard shall be the average of the existing front yard depths in the block.
3. In computing average front yard depths, a depth 10 feet greater than the minimum required front yard shall be used in lieu of any greater front yard depth.
4. On a site having an average natural slope of thirty percent (30%) or more measured from the established grade of the street at the edge of the existing or proposed pavement to the rear line of the required front yard, a garage or carport may be constructed not less than 15 feet from the edge of the pavement, provided that in no case shall a garage or carport have a front yard of less than 3 feet.
5. For cul-de-sac lots which front upon the turnaround, the minimum front yard shall be 15 feet, providing the driveway is placed in such manner that a standard automobile parked in the driveway will not encroach upon the sidewalk.
6. On corner lots in the R-6.0, R-7.0, and R-7.5 districts, the front yard may be reduced to 15 feet minimum if the structure fronts upon the longer street frontage, provided there is 20 feet between the front of the garage or carport and the front property line. On corner lots in the R-10.0, R-20 and RR-20, and R-40 and RR-40 districts, the front yard may be reduced to 20 feet if the structure fronts upon the longer street

frontage.

22.12.230 Side Yards.

- A. ~~The minimum side yard shall comply with the requirements listed in Table H. The minimum side yard for second stories shall be ten percent (10%) of the average width of the site subject to the exceptions listed in Table H and thereafter in this section or the distance listed in Table H, whichever is greater.~~

TABLE H

District	<u>Minimum Permitted Side Yard</u>	<u>Maximum Required Minimum Side Yard (Second Story)</u>
R-1.5	5 feet	10 feet
R-2.5	5 feet	10 feet
R-3.5	5 feet	10 feet
R-6.0	5 feet	10 feet
<u>R-7.0</u>	<u>5 feet</u>	<u>10 feet</u>
R-7.5	5 feet	10 feet
R-10.0	5 feet	12 feet
R-15	10 feet	15 feet
R-20 and RR-20	10 feet	15 feet
R-40 and R-40	15 feet	25 feet
R-80 and <u>RR-80</u>	25 feet	35 feet
R-100 and RR-100	30 feet	40 feet

~~B. Exceptions:~~

- ~~In the R-1.5 and R-2.5 districts, on the street side of a corner lot the side yard shall be not less than fifteen percent (15%) of the average width of the site, provided that a side yard of more than 20 feet shall not be required; except where required due to the height or length of~~

- ~~structure on the site, as detailed in subdivisions 3, 4 and 5 herein, and a side yard of less than 7 ½ feet shall not be permitted.~~
- ~~2. Except in the R-1.5 and R-2.5 districts, on the street side of a corner lot the side yard shall be not less than twenty percent (20%) of the average width of the site, provided that a side yard less than twice the minimum required interior side yard shall not be permitted and a side yard of more than twice the maximum required interior side yard shall not be required; except where required due to the height or length of structure(s) on the site, as detailed by subdivisions 3, 4 and 5 herein.~~
 - ~~3. Table H sets forth the minimum requirements for structures of 12 feet or less in height. For structures above 12 feet in height, 1 foot shall be added to each side yard for each 2 feet of height above the lowest 12 feet of height of a structure. Second-story additions to existing one story single family structures will be permitted with side yards smaller than specified above, subject to the following limitations:~~
 - ~~a. The second-story addition shall not encroach into the existing side yard areas;~~
 - ~~b. Provisions of Sections 22.34.030 through 22.34.070 shall apply to any such second-story additions.~~
 - ~~4. Table H sets forth the minimum requirements for structures less than 40 feet in length. One foot shall be added to each side yard for each 5 feet by which a wall of a structure within 25 feet of the side property line exceeds 40 feet in length parallel to the property line.~~
 - ~~5. The increases in side yards required by subdivisions 3 and 4 herein shall be additive.~~
 - ~~6. A side yard providing access to more than one dwelling unit shall not be less than 10 feet.~~

22.12.235 – Corner Lots.

- A. In the R-1.5 and R-2.5 districts, on the street side of a corner lot the side yard shall be not less than fifteen percent (15%) of the average width of the site, provided that a side yard of more than 20 feet shall not be required, and a side yard of less than 7 ½ feet shall not be permitted.
- B. Except in the R-1.5 and R-2.5 districts, on the street side of a corner lot the side yard shall be not less than twenty percent (20%) of the average width of the site, provided that a side yard less than twice the minimum required interior side yard shall not be permitted and a side yard of more than twice the maximum required interior side yard shall not be required.

SECTION VIII:

Chapter 22.12 (Professional and Administrative Office Districts) of Title 22 (Zoning) of the MMC is hereby amended to read as follows:

22.14.030 - Permitted Uses.

The following uses shall be permitted:

- A. All uses permitted in an R-1.5 district, ~~provided that the minimum site area per dwelling unit shall be not less than 1,500 square feet;~~
- B. Professional and administrative offices not including any of the uses prescribed in Sections 22.16.040B and 22.16.070B of this Title;
- C. Public administration buildings and grounds excepting schools;
- D. Parking lots improved in conformity with the standards prescribed for required off-street parking facilities in Section 22.36.020 of this title;
- E. Churches, parsonages, parish houses, monasteries, convents and other religious institutions;
- F. Public and private philanthropic and eleemosynary institutions;
- G. Hospitals, sanitariums and nursing homes, not including hospitals, sanitariums or nursing homes for mental or drug addict or liquor addict cases;
- H. Private, noncommercial clubs and lodges;
- I. Union halls;
- J. Public and private libraries, museums and art galleries;
- K. Telephone exchanges;
- L. Accessory structures and uses located on the same site with and necessary for or incidental to the operation of a permitted use;
- M. Low-barrier navigation centers;
- N. Supportive housing.

SECTION IX:

Chapter 22.16 (Commercial Districts) of Title 22 (Zoning) of the MMC is hereby amended to read as follows:

22.16.040 Permitted Uses – NC – Neighborhood Commercial District.

Permitted uses are as follows:

- A. Professional and administrative offices;

B. Retail stores and service establishments which supply commodities or provide services primarily to meet the needs of residents of a residential neighborhood, including:

Art and antique stores

Art and craft schools and colleges

Artist supply stores

Bakery goods stores

Banks

Barbershops and beauty shops

Bookstores and rental libraries

Business, professional, and trade schools and colleges

Candy stores

Cleaning and laundry agencies, including the use of one synthetic dry-cleaning machine using nonflammable and nonexplosive solvents and having a capacity of not more than 40 pounds per cycle

Clothing stores

Department stores

Dispensary—cannabis; subject to Chapter 5.29 Commercial Cannabis

Drugstores

Dry goods stores

Florists

Food lockers

Food stores, delicatessens, and supermarkets

Furniture stores

Garden shops

Gift shops

Gymnasiums

Hardware stores

Hobby shops

Household appliance stores

Interior decorating shops

Jewelry stores

Leather goods and luggage stores

Locksmiths

Low-barrier navigation centers

Medical and orthopedic appliance stores

Messenger offices

Millinery shops

Music and dance studios
Music stores
Newsstands
Office and business machine stores
Offices and office buildings other than professional and administrative offices
Optician and optometrist shops
Paint and wallpaper stores
Pet and bird stores
Photographic supply stores
Photography studios
Picture framing shops
Post offices
Pressing establishments
Radio and television repair shops
Realtors and real estate sales offices
Restaurants, but not including restaurants serving alcoholic beverages, except beer and wine only
Scientific instrument stores
Self-service laundries and/or self-service dry-cleaning machines using nonflammable and nonexplosive solvents
Shoe repair shops
Shoe stores
Soda fountains
Sporting goods stores
Stamp and coin stores
Stationery and office supply stores
Supportive housing
Tailor and dressmaking shops
Telegraph offices
Telephone exchanges
Toy stores
Travel bureaus
Umbrella repair shops
Variety stores
Watch and clock repair shops and other uses which are added to this list by the City Planning Commission in accord with the procedure prescribed in Chapter 22.34 of this Title;

- C. Dwelling units located above the ground floor of a building ~~shall be permitted on a site with an area of not less than 1,500 square feet for each dwelling unit;~~
- D. Parking lots improved in conformity with the standards prescribed for required off-street parking facilities in Chapter 22.36 of this Title;
- E. Lodging houses and apartment hotels;
- F. Accessory structures and uses, not including warehouses on the same site with and necessary for or incidental to the operation of a permitted use;
- G. Christmas tree sales lots, nurseries, and garden supply stores, provided that all equipment, supplies and merchandise other than plants shall be kept within a completely enclosed building and that fertilizer of any type shall be stored and sold in packaged form only.

22.16.040 Permitted Uses – CC – Central Commercial District.

Permitted uses are as follows:

- A. All the uses permitted in Section 22.16.040;
Except that no dispensary—cannabis businesses are allowed on either Main Street or Ferry Street.
- B. Retail stores and service establishments including:
 - Addressograph stores
 - Auction rooms
 - Bicycle shops
 - Blueprint and photostat shops
 - Bus depots and transit stations provided that no business or other transit vehicles shall be stored on the site and no repair work or servicing of vehicles shall be conducted on the site
 - Clothing and costume rental establishments
 - Department stores
 - Electrical appliance repair shops
 - Hand laundries
 - Household repair shops
 - Laboratories
 - Low-barrier navigation centers
 - Musical instrument repair shops
 - Plumbing, heating, and ventilating equipment showrooms with storage of floor samples only
 - Printing shops
 - Radio and television broadcasting studios
 - Sign painting shops

Soda fountains

Supportive housing

Taxidermists

Telephone exchanges

Upholstering shops

Wholesale establishments without stocks and other uses added to this list by the Planning Commission in accord with the procedure prescribed in Chapter 22.34 of this Title;

- C. Private clubs and lodges;
- D. Churches and other religious institutions;
- E. Public and private philanthropic and eleemosynary institutions;
- F. Public and private libraries, art galleries and museums;
- G. Automobile supply stores; hotels and motels; mortuaries.

SECTION X:

Chapter 22.34 (General Requirements) of Title 22 (Zoning) of the MMC is hereby amended to read as follows:

22.34.090 – Fences, Walls, and Hedges

Fences, walls, and hedges not exceeding six feet in height shall be permitted, except that they may not exceed 3 ½ feet in height within a required front yard area, with the following exceptions:

- A. In the R Residential Districts, on a site having a natural downslope of 20% or more in the required front yard, a fence, wall or hedge not exceeding six feet in height shall be permitted in the front yard;
- B. In the R, I, and PA districts, fences, walls and hedges shall not exceed 3 ½ feet in height anywhere within 50 feet within a street intersection;
- C. In the C Commercial Districts, fences, walls, and hedges shall not exceed 3 ½ feet anywhere within 15 feet of a street intersection.
- D. Chain link fences shall only be permitted in the HI district.
- E. Fences and walls placed directly on or adjacent to one or more other fences and walls shall not exceed a combined height of six feet. Fences and walls are considered separate structures and may each be up to six feet tall provided that a minimum separation distance equal to or greater than the height of the shorter structure exists.

SECTION XI:

Chapter 22.39 (Wireless Telecommunication Facilities) of Title 22 (Zoning) of the MMC is hereby amended to read as follows:

22.39.100 – Conditions of Approval for All Facilities

- A. In addition to compliance with the requirements of this Chapter, upon approval all facilities shall be subject to each of the following conditions of approval, as well as any modification of these conditions or additional conditions of approval deemed necessary by the reviewing authority:
1. Before the permittee submits any application for a building permit or other permits required by the Martinez Municipal Code, the permittee must incorporate the wireless telecommunication facility permit granted under this Chapter, all conditions associated with the wireless telecommunications facility permit and the approved plans and any photo simulations (the “approved plans”) into the project plans. The permittee must construct, install and operate the wireless telecommunications facility in strict compliance with the approved plans. The permittee shall submit an as built drawing within 90 days after installation of the facility.
 2. Where feasible, as new technology becomes available, the permittee shall:
 - a. Place above-ground wireless telecommunications facilities below ground, including, but not limited to, accessory equipment that has been mounted to a telecommunications tower or mounted on the ground; and
 - b. Replace larger, more visually intrusive facilities with smaller, less visually intrusive facilities, after receiving all necessary permits and approvals required pursuant to the Martinez Municipal Code.
 3. The permittee shall submit and maintain current at all times basic contact and site information on a form to be supplied by the City. The permittee shall notify the City of any changes to the information submitted within seven days of any change, including change of the name or legal status of the owner or operator. This information shall include, but is not limited to, the following:
 - a. Identity, including the name, address and 24-hour local or

- toll-free contact phone number of the permittee, the owner, the operator, and the agent or person responsible for the maintenance of the facility.
- b. The legal status of the owner of the wireless telecommunications facility, including official identification numbers and FCC certification.
 - c. Name, address, and telephone number of the property owner if different than the permittee.
4. The permittee shall not place any facilities that will deny access to, or otherwise interfere with, any public utility, easement, or right-of-way located on the site. The permittee shall allow the City reasonable access to, and maintenance of, all utilities and existing public improvements within or adjacent to the site, including, but not limited to, pavement, trees, public utilities, lighting, and public signage.
 5. At all times, all required notices and signs shall be posted on the site as required by the FCC and California Public Utilities Commission, and as approved by the City. The location and dimensions of a sign bearing the emergency contact name and telephone number shall be posted pursuant to the approved plans.
 6. At all times, the permittee shall ensure that the facility complies with the most current regulatory and operational standards including, but not limited to, radio frequency emissions standards adopted by the FCC and antenna height standards adopted by the Federal Aviation Administration.
 7. Every five years a technically sufficient written report certified by a qualified radio frequency emissions engineer, certifying that the facility follows the radio frequency emissions guidelines or standards of the FCC shall be submitted to the Community and Economic Development Director. Additionally, if at any time while the permit is in effect the Community and Economic Development Director determines there is good cause to believe that the facility may emit radio frequency emissions that are likely to exceed FCC standards, the Community and Economic Development Director may require the permittee to submit a report described by this Section. Failure to comply with this Section shall be grounds for revocation of the conditional use permit. The report shall also include an acoustical analysis that demonstrates compliance with the noise requirements

herein.

- ~~8. Permittee shall pay for and provide a performance bond, which shall be in effect until the facilities are fully and completely removed and the site reasonably returned to its original condition, to cover permittee's obligations under these conditions of approval and the Martinez Municipal Code. The bond coverage shall include, but not be limited to, removal of the facility, maintenance obligations and landscaping obligations. The amount of the performance bond shall be set by the Community and Economic Development Director in an amount rationally related to the obligations covered by the bond and shall be specified in the conditions of approval.~~
98. Indemnification shall be made a condition of approval and shall include the following responsibilities: permittee shall defend, indemnify, protect and hold harmless the City, its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees, and volunteers from and against any and all claims, actions, or proceedings against the City and its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees and volunteers to attack, set aside, void or annul, an approval of the City, Planning Commission or City Council concerning this permit and the project. Such indemnification shall include damages, judgments, settlements, penalties, fines, defensive costs or expenses, including, but not limited to, interest, attorneys' fees and expert witness fees, or liability of any kind related to or arising from such claim, action, or proceeding. The City shall promptly notify the permittee of any claim, action, or proceeding. Nothing contained herein shall prohibit City from participating in a defense of any claim, action or proceeding. The City shall have the option of coordinating the defense, including, but not limited to, choosing counsel for the defense at permittee's expense. The indemnification responsibilities in a condition of approval shall also be inclusive of claims related to, connected with, or arising out of the construction, maintenance, operation, repair, alteration, or improvement of the wireless telecommunications facility if located within a public right-of-way.
409. All conditions of approval shall be binding as to the applicant

and all successors in interest to permittee.

- ~~41~~10. A condition setting forth the permit expiration date in accordance with this Chapter shall be included in the conditions of approval.
- ~~42~~11. A condition setting forth the modification requirement stated in accordance with this Chapter shall be included in the conditions of approval.

22.39 110 – Additional Conditions of Approval for Facilities in the Public Right-of-Way

- A. In addition to compliance with the requirements of this Chapter, upon approval all facilities in the public right-of-way shall be subject to each of the conditions of approval set forth above, each of the following conditions of approval, and any modification of these conditions or additional conditions of approval deemed necessary by the reviewing authority:
 - 1. The wireless telecommunications facility shall be subject to such conditions, changes or limitations as are from time to time deemed necessary by the City engineer for the purpose of: (a) protecting the public health, safety, and welfare, (b) preventing interference with pedestrian and vehicular traffic, and (c) preventing damage to the public right-of-way or any property adjacent to it. The City may modify the permit to reflect such conditions, changes, or limitations by following the same notice and public hearing procedures as are applicable to the grant of a wireless telecommunications facility permit for similarly located facilities, except the permittee shall be given notice by personal service or by registered or certified mail at the last address provided to the City by the permittee.
 - 2. The permittee shall not move, alter, temporarily relocate, change, or interfere with any existing structure, improvement, or property without the prior consent of the owner of that structure, improvement, or property. No structure, improvement or property owned by the City shall be moved to accommodate a wireless telecommunications facility unless the City determines that such movement will not adversely affect the City or any surrounding businesses or residents, and the permittee pays all costs and expenses related to the relocation of the City's structure, improvement, or property. Prior to

commencement of any work pursuant to an encroachment permit issued for any facility within the public right-of-way, the permittee shall provide the City with documentation establishing to the City's satisfaction that the permittee has the legal right to use or interfere with any other structure, improvement or property within the public right-of-way to be affected by applicant's facilities.

3. The permittee shall assume full liability for damage or injury caused to any property or person by the facility.
4. The permittee shall repair, at its sole cost and expense, any damage including, but not limited to subsidence, cracking, erosion, collapse, weakening, or loss of lateral support to City streets, sidewalks, walks, curbs, gutters, trees, parkways, street lights, traffic signals, improvements of any kind or nature, or utility lines and systems, underground utility line and systems, or sewer systems and sewer lines that result from any activities performed in connection with the installation or maintenance of a wireless telecommunications facility in the public right-of-way. The permittee shall restore such areas, structures, and systems to the condition in which they existed prior to the installation or maintenance that necessitated the repairs. In the event the permittee fails to complete such repair within the number of days stated on a written notice by the Community and Economic Development Director, the Community and Economic Development Director shall cause such repair to be completed at permittee's sole cost and expense.
5. Prior to issuance of a building permit, the applicant shall obtain the Community and Economic Development Director's approval of a tree protection plan prepared by a certified arborist if the installation of the wireless telecommunication facility will be located within the canopy of a street tree, or a protected tree on private property, or within a ten-foot radius of the base of such a tree. Depending on site specific criteria (e.g., location of tree, size, and type of tree, etc.), a radius greater than ten feet may be required by the Community and Economic Development Director.
6. Should any utility company offer electrical service that does not require the use of a meter cabinet, the permittee shall at its sole cost and expense remove the meter cabinet and any related

- foundation within 30 days of such service being offered and reasonably restore the area to its prior condition.
7. The permittee shall modify, remove, or relocate its facility, or portion thereof, without cost or expense to City, if and when made necessary by:
 - a. Any public improvement project, including, but not limited to, the construction, maintenance, or operation of any underground or aboveground facilities including but not limited to sewers, storm drains, conduits, gas, water, electric or other utility systems, or pipes owned by City or any other public agency;
 - b. Any abandonment of any street, sidewalk, or other public facility;
 - c. Any change of grade, alignment or width of any street, sidewalk, or other public facility; or
 - d. A determination by the Community and Economic Development Director that the wireless telecommunications facility has become incompatible with public health, safety or welfare or the public's use of the public right-of-way.
 8. Any modification, removal, or relocation of the facility shall be completed within 90 days of written notification by City unless exigencies dictate a shorter period for removal or relocation. Modification or relocation of the facility shall require submittal, review and approval of a permit amendment pursuant to the Martinez Municipal Code. The permittee shall be entitled, on permittee's election, to either a pro-rata refund of fees paid for the original permit or to a new permit, without additional fee, at a location as close to the original location as the standards set forth in the Martinez Municipal Code allow. In the event the facility is not modified, removed, or relocated within said period of time, the City may cause the same to be done at the sole cost and expense of permittee. Further, due to exigent circumstances as provided in the Martinez Municipal Code, the City may modify, remove, or relocate wireless telecommunications facilities without prior notice to permittee provided permittee is notified within a reasonable period thereafter.
 9. The permittee shall pay for and provide a performance bond, which shall be in effect until the facilities are fully and completely removed and the site reasonably returned to its

original condition, to cover permittee's obligations under these conditions of approval and the Martinez Municipal Code. The bond coverage shall include, but not be limited to, removal of the facility, maintenance obligations and landscaping obligations. The amount of the performance bond shall be set by the Community and Economic Development Director in an amount rationally related to the obligations covered by the bond and shall be specified in the conditions of approval.

22.39.140 – Wireless Telecommunications Facilities Covered Under Section 6409(a) of the Middle-Class Tax Relief and Job Creation Act of 2012.

- A. Purpose. Section 6409(a) of the Middle-Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96, codified in 47 U.S.C. § 1455(a), generally requires that state and local governments "may not deny, and shall approve" requests to collocate, remove or replace transmission equipment at an existing tower or base station. Federal Communication Commission regulations interpret this statute and create procedural rules for local review, which generally preempt certain subjective land-use regulations, limit permit application content requirements and provide the applicant with a potential "deemed granted" remedy when the State or local government fails to approve or deny the request within 60 days after submittal (accounting for any tolling periods). Moreover, whereas Section 704 of the Telecommunications Act of 1996, Pub. L. 104-104, codified in 47 U.S.C. § 332, applies to only "personal wireless service facilities" (e.g., cellular telephone towers and equipment), Section 6409(a) applies to all "wireless" facilities licensed or authorized by the FCC (e.g., cellular, Wi-Fi, satellite, microwave backhaul, etc.).

The overlap between wireless deployments covered under Section 6409(a) and other wireless deployments, combined with the different substantive and procedural rules applicable to such deployments, creates a potential for confusion that harms the public interest in both efficient wireless facilities deployment and carefully planned community development in accordance with local values. A separate permit application and review process specifically designed for compliance with Section 6409(a) contained in a section devoted to

Section 6409(a) will mitigate such potential confusion, streamline local review and preserve the City's land-use authority to the maximum extent possible.

- B. Applicability. This Section applies to all collocations or modifications to an existing wireless tower or base station submitted with a written request for approval pursuant to Section 6409(a).
- C. Approval Required. Any request to collocate, replace or remove transmission equipment at an existing wireless tower or base station submitted with a written request for a 6409(a) approval shall be subject to the Community and Economic Development Director's approval, conditional approval or denial without prejudice pursuant to the standards and procedures contained in this Chapter.
- D. Other Regulatory Approvals. No collocation or modification approved under any Section 6409(a) approval may occur unless the applicant also obtains all other applicable permits or regulatory approvals from the City and state or federal agencies. Furthermore, any Section 6409(a) approval granted under this Chapter shall remain subject to any and all lawful conditions or requirements associated with such other permits or regulatory approvals from the City and state or federal agencies.
- E. Application Requirement. The City shall not approve any wireless facility subject to this Section except upon a duly filed application consistent with this Section and any other written rules the City or the Community and Economic Development Director may establish from time to time. An application must include the information required by this Chapter and the following additional information:
 - 1. A title report prepared within the six months prior to the application filing date in order for the City to verify the property owner's identity. If the applicant does not own the subject property, the application must include a written authorization signed by the property owner that empowers the applicant to file the application and perform all wireless facility construction, installation, operation and maintenance to the extent described in the application.
 - 2. A written statement that explains in plain factual detail whether and why Section 6409(a) and the related FCC regulations at 47

C.F.R. § 1.40001 et seq. require approval for the specific project. A complete written narrative analysis will state the applicable standard and all the facts that allow the City to conclude the standard has been met. Bare conclusions not factually supported do not constitute a complete written analysis. As part of this written statement the applicant must also include (i) whether and why the support structure qualifies as an existing tower or existing base station; and (ii) whether and why the proposed collocation or modification does not cause a substantial change in height, width, excavation, equipment cabinets, concealment or permit compliance.

F. Procedures for a Duly Filed Application. The City shall not review any application unless duly filed in accordance with this Section, as follows:

1. Pre-Submittal Conference. Before application submittal, applicants must schedule and attend a pre-application meeting with the Community and Economic Development Director for all proposed modifications submitted for approval pursuant to Section 6409(a). The pre-submittal conference is intended to streamline the review process through informal discussion that includes, without limitation, the appropriate project classification, including whether the project qualifies for Section 6409(a); any latent issues in connection with the existing tower or base station; potential concealment issues (if applicable); coordination with other City departments responsible for application review; and application completeness issues. To mitigate unnecessary delays due to application incompleteness, applicants are encouraged (but not required) to bring any draft applications or other materials so that City staff may provide informal feedback about whether such applications or other materials may be incomplete or unacceptable. The Community and Economic Development Director may, in the Community and Economic Development Director's discretion, grant a written exemption to the submittal appointment under this Chapter or for a specific requirement for a complete application to any applicant who (i) schedules, attends and fully participates in any pre-submittal conference and (ii) shows to the Community and Economic Development Director's satisfaction that such specific requirement duplicates information already provided in other materials to be submitted

or is otherwise unnecessary to the City's review under facts and circumstances in that particular case. Any written exemption will be limited to the project discussed at the pre-submittal conference and will not be extended to any other project.

2. Submittal Appointment. All applications must be filed with the City at a pre-scheduled appointment. Applicants may generally submit one application per appointment, but may schedule successive appointments for multiple applications whenever feasible and not prejudicial to other applicants. Any application received without an appointment, whether delivered in-person or through any other means, will not be considered duly filed unless the applicant received a written exemption from the Community and Economic Development Director at a pre-submittal conference.
3. Appointment Scheduling Procedures. For any event in the submittal process that requires an appointment, applicants must submit a written request to the Community and Economic Development Director. The Community and Economic Development Director shall endeavor to provide applicants with an appointment as soon as reasonably feasible and within five business days after a written request is received.
4. Applications Deemed Withdrawn. To promote efficient review and timely decisions, an application will be automatically deemed withdrawn by the applicant when the applicant fails to tender a substantive response to the City within 90 calendar days after the City deems the application incomplete in a written notice to the applicant. The Community and Economic Development Director may, in the Community and Economic Development Director's discretion, grant a written extension for up to an additional 30 calendar days when the applicant submits a written request prior to the 90th day that shows good cause to grant the extension. Delays due to circumstances outside the applicant's reasonable control will be considered good cause to grant the extension.
5. Departmental Forms, Rules and Other Regulations. The City Council authorizes the Community and Economic Development Director to develop and publish permit application forms, checklists, informational handouts and other related materials that the Community and Economic Development Director finds necessary, appropriate or useful for processing requests for

Section 6409(a) approvals. Without further authorization from the City Council, the Community and Economic Development Director may from time-to-time update and alter any such permit application forms, checklists, informational handouts and other related materials as the Community and Economic Development Director deems necessary, appropriate or useful to respond to regulatory, technological or other changes related to this Chapter. The City Council authorizes the Community and Economic Development Director to establish other reasonable rules and regulations, which may include without limitation regular hours for appointments with applicants, as the Community and Economic Development Director deems necessary or appropriate to organize, document and manage the application intake process.

- G. Administrative Review; Decision Notices. The Community and Economic Development Director shall administratively review an application for a Section 6409(a) approval and act on such an application without prior notice or a public hearing. Within five working days after the Community and Economic Development Director conditionally approves or denies an application submitted for Section 6409(a) approval or before the FCC timeframe for review expires (whichever occurs first), the Community and Economic Development Director shall send a written notice to the applicant. In the event that the Community and Economic Development Director determines that an application submitted for approval pursuant to Section 6409(a) does not qualify for approval, the Community and Economic Development Director will send written notice to the applicant that includes the reasons to support the review authority's decision and states that the application will be automatically denied without prejudice on the 60th day after the date the application was filed unless the applicant withdraws the application.
- H. Required Findings for 6409(a) Approval. The Community and Economic Development Director may approve or conditionally approve an application submitted for Section 6409(a) approval when the Community and Economic Development Director finds that the proposed project:
 - 1. Involves collocation, removal, or replacement of transmission equipment on an existing wireless tower or base station; and
 - 2. Does not substantially change the physical dimensions of the

existing wireless tower or base station.

- I. Criteria for Denial Without Prejudice. Notwithstanding any other provisions in this Chapter, and consistent with all applicable federal laws and regulations, the Community and Economic Development Director may deny without prejudice an application submitted for approval pursuant to Section 6409(a) when it finds that the proposed project:
 1. Does not satisfy the criteria for approval;
 2. Violates any legally enforceable standard or permit condition reasonably related to public health and safety then in effect; or
 3. Involves the replacement of the entire support structure.
- J. Conditional 6409(a) Approvals. Subject to any applicable limitations in federal or state law, nothing in this Chapter is intended to limit the City's authority to conditionally approve an application for a Section 6409(a) approval to protect and promote the public health, safety, and welfare.
- K. Appeals. Notwithstanding any provision of the Martinez Municipal Code to the contrary, an applicant may appeal a decision by the Community and Economic Development Director to deny without prejudice a Section 6409(a) application. The appeal must be filed within ten days from the Community and Economic Development Director's decision. The appeal must state in plain terms the grounds for reversal and the facts that support those grounds. The City Manager shall serve as the appellate authority for all appeals of all actions of the Community and Economic Development Director taken pursuant to this Section. The City shall provide notice for an administrative hearing by the City Manager. The City Manager shall limit its review to whether the project should be approved or denied in accordance with the provisions in paragraphs (H) and (I) of this Section. The decision of the City Manager shall be final and not subject to any further administrative appeals.
- L. Standard Conditions of Approval. In addition to all other conditions adopted by the Community and Economic Development Director, all Section 6409(a) approvals, whether approved by the Community and Economic Development Director or deemed approved by the operation of law, shall be automatically subject to the following conditions in this Section; provided, however, that the Community and Economic Development Director shall have discretion to modify or amend these conditions on a case-by-case

basis as may be necessary or appropriate under the circumstances:

1. **Approved Plans.** Before the permittee submits any application for a building permit or other permits required by the Martinez Municipal Code, the permittee must incorporate the wireless telecommunications facility permit granted under this Section, all conditions associated with the wireless telecommunications facility permit and the approved plans and any photo simulations (the "approved plans") into the project plans. The permittee must construct, install, and operate the wireless telecommunications facility in strict compliance with the approved plans. The permittee shall submit an as built drawing within 90 days after installation of the facility.
2. **Permit Term.** The City's grant or grant by operation of law of a Section 6409(a) approval constitutes a federally-mandated modification to the underlying permit or other prior regulatory authorization for the subject tower or base station. The City's grant or grant by operation of law of a Section 6409(a) approval will not extend the permit term, if any, for any conditional use permit, or other underlying prior regulatory authorization. Accordingly, the term for a Section 6409(a) approval shall be coterminous with the underlying permit or other prior regulatory authorization for the subject tower or base station.
3. **Accelerated Permit Terms Due to Invalidation.** In the event that any court of competent jurisdiction invalidates any portion of Section 6409(a) or any FCC rule that interprets Section 6409(a) such that federal law would not mandate approval for any Section 6409(a) approval, such 6409(a) approvals shall automatically expire one year from the effective date of the judicial order, unless the decision would not authorize accelerated termination of previously approved Section 6409(a) approvals or the Community and Economic Development Director grants an extension upon written request from the permittee that shows good cause for the extension, which includes without limitation extreme financial hardship. Notwithstanding anything in the previous sentence to the contrary, the Community and Economic Development Director may not grant a permanent exemption or indefinite extension. A permittee shall not be required to remove its improvements approved under the invalidated Section 6409(a) approval when

it has applied for a conditional use permit for those improvements before the one-year period ends.

4. No Waiver of Standing. The City's grant or grant by operation of law of a Section 6409(a) approval does not waive, and shall not be construed to waive, any standing by the City to challenge Section 6409(a), any FCC rules that interpret Section 6409(a) or any Section 6409(a) approval.
5. Build-out Period. The Section 6409(a) approval will automatically expire one year from the issuance date unless the permittee obtains all other permits and approvals required to install, construct and operate the approved wireless facility, which includes without limitation any permits or approvals required by any federal, state or local public agencies with jurisdiction over the subject property, the wireless facility or its use. The Community and Economic Development Director may grant one written extension to a date certain when the permittee shows good cause to extend the limitations period in a written request for an extension submitted at least 30 days prior to the automatic expiration date in this condition. Any further extensions may be granted by the Planning Commission.
6. Maintenance Obligations; Vandalism. The permittee shall keep the site, which includes without limitation any and all improvements, equipment, structures, access routes, fences and landscape features, in a neat, clean and safe condition in accordance with the approved plans and all conditions in this Section 6409(a) approval. The permittee shall keep the site area free from all litter and debris at all times. The permittee, at no cost to the City, shall remove and remediate any graffiti or other vandalism at the site within 48 hours after the permittee receives notice or otherwise becomes aware that such graffiti or other vandalism occurred.
7. Compliance with Laws. The permittee shall maintain compliance at all times with all federal, state and local statutes, regulations, orders or other rules that carry the force of law ("laws") applicable to the permittee, the subject property, the wireless facility or any use or activities in connection with the use authorized in this Section 6409(a) approval. The permittee expressly acknowledges and agrees that this obligation is intended to be broadly construed and that no other specific requirements in these conditions are intended to reduce, relieve

or otherwise lessen the permittee's obligations to maintain compliance with all laws.

8. Adverse Impacts on Other Properties. The permittee shall use all reasonable efforts to avoid any and all undue or unnecessary adverse impacts on nearby properties that may arise from the permittee's construction, installation, operation, modification, maintenance, repair, removal or other activities at the site. The permittee shall not perform or cause others to perform any construction, installation, operation, modification, maintenance, repair, removal, or other work that involves heavy equipment or machines on any day and at any time prohibited under the Martinez Municipal Code. The restricted work hours in this condition will not prohibit any work required to prevent an actual, immediate harm to property or persons, or any work during an emergency declared by the City. The Community and Economic Development Director may issue a stop work order for any work that violates this condition.
9. Noise Complaints. The permittee shall conduct all activities on the site in compliance with the noise standards listed in this Chapter. In the event that any person files a noise complaint and the City verifies that such complaint is valid, the permittee must remedy the violation within ten days after notice from the City, which may include a demonstration that the permittee has amended its operational guidelines in situations where the violation arises from the permittee's personnel rather than the permittee's equipment.
10. Inspections; Emergencies. The permittee expressly acknowledges and agrees that the City or its designee may enter onto the site and inspect the improvements and equipment upon reasonable prior notice to the permittee; provided, however, that the City or its designee may, but will not be obligated to, enter onto the site area without prior notice to support, repair, disable or remove any improvements or equipment in emergencies or when such improvements or equipment threatens actual, imminent harm to property or persons. The permittee will be permitted to supervise the City or its designee while such inspection or emergency access occurs.
11. Contact Information. The permittee shall furnish the City with accurate and up-to-date contact information for a person

responsible for the wireless facility, which includes without limitation such person's full name, title, direct telephone number, facsimile number, mailing address and email address. The permittee shall keep such contact information up-to-date at all times.

12. Indemnification. The permittee and, if applicable, the property owner upon which the wireless facility is installed shall defend, indemnify and hold harmless the City, its agents, officers, officials, employees and volunteers from any and all (1) damages, liabilities, injuries, losses, costs and expenses and from any and all claims, demands, law suits, writs and other actions or proceedings ("claims") brought against the City or its agents, officers, officials, employees or volunteers to challenge, attack, seek to modify, set aside, void or annul the City's approval of this Section 6409(a) approval, and (2) other claims of any kind or form, whether for personal injury, death or property damage, that arise from or in connection with the permittee's or its agents', directors', officers', employees', contractors', subcontractors', licensees', or customers' acts or omissions in connection with this Section 6409(a) approval or the wireless facility. In the event the City becomes aware of any claims, the City will use best efforts to promptly notify the permittee and the private property owner and shall reasonably cooperate in the defense. The permittee expressly acknowledges and agrees that the City shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the City's defense, and the property owner or permittee (as applicable) shall promptly reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. The permittee expressly acknowledges and agrees that the permittee's indemnification obligations under this condition are a material consideration that motivates the City to approve this Section 6409(a) approval, and that such indemnification obligations will survive the expiration or revocation of this Section 6409(a) approval.
13. Performance Bond. For wireless facilities in the public right-of-way. Before the City issues any construction permit in connection with the wireless facility, the permittee shall post a performance bond from a surety and in a form acceptable to the

City Manager in an amount equal to or greater than a written estimate from a qualified contractor with experience in wireless facilities removal. The written estimate must include the cost to remove all equipment and other improvements, which includes without limitation all antennas, radios, batteries, generators, utilities, cabinets, mounts, brackets, hardware, cables, wires, conduits, structures, shelters, towers, poles, footings, and foundations, whether above ground or below ground, constructed or installed in connection with the wireless facility. In establishing or adjusting the bond amount required under this condition, and in accordance with California Government Code § 65964(a), the City Manager shall take into consideration information provided by the permittee regarding the cost to remove the wireless facility.

14. Record Retention. The permittee must maintain complete and accurate copies of all permits and other regulatory approvals issued in connection with the wireless facility, which includes without limitation this approval, the approved plans and photo simulations incorporated into this approval, all conditions associated with this approval and any ministerial permits or approvals issued in connection with this approval. In the event ~~that~~ the permittee does not maintain such records as required in this condition, any ambiguities or uncertainties that would be resolved through an inspection of the missing records will be construed against the permittee.
15. Compliance Obligations. An applicant or permittee will not be relieved of its obligation to comply with every applicable provision in the Martinez Municipal Code, any permit, any permit condition or any applicable law or regulation by reason of any failure by the City to timely notice, prompt or enforce compliance by the applicant or permittee.

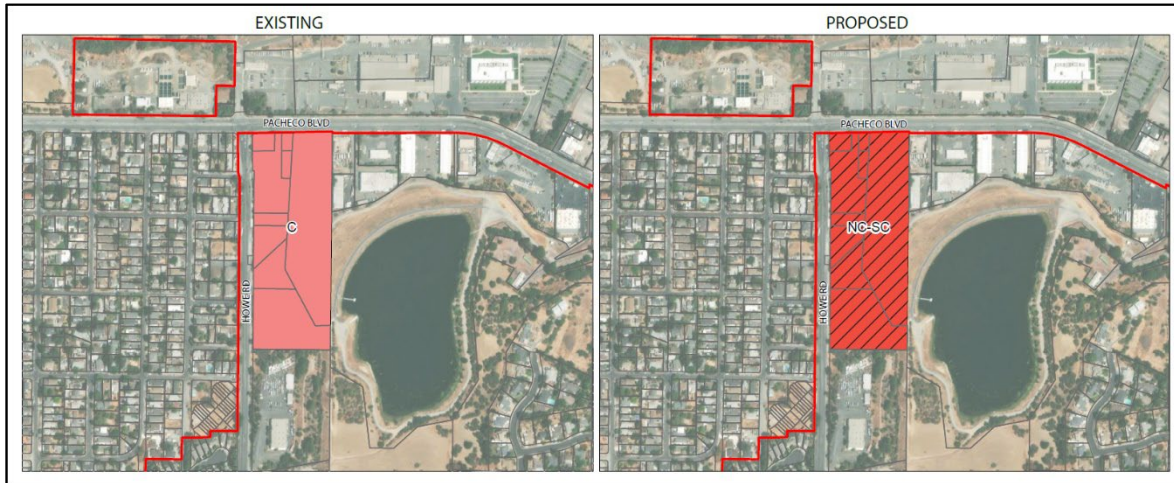
SECTION XII: ZONING MAP AMENDMENT.

The Zoning Map is hereby amended to rezone the following parcels, identified by their Assessor's Parcel Number ("APN") and by the map below, from C Commercial zoning to a dual-use zoning designation of NC Neighborhood Commercial and SC Service Commercial, incorporated herein by reference:

APN 377-010-032-3

APN 377-010-031-5

APN 377-010-023-2
 APN 377-010-022-4
 APN 377-010-034-9
 APN 377-010-002-6
 APN 377-010-001-8
 APN 377-010-009-1



SECTION XIII: SEVERABILITY.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this ordinance, or its application to any other person or circumstance. The City Council of the City of Martinez hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases hereof be declared invalid or unenforceable.

SECTION XIV: PUBLICATION AND EFFECTIVE DATE.

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

At least five 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 fifteen days after adoption, the City Clerk shall publish a summary of this ordinance with the names of those City Council members voting for or 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

BRIANNE ZORN
MAYOR

ATTEST

KAT GALILEO
ASSISTANT CITY CLERK

* * * * *

I HEREBY CERTIFY that the foregoing is a true and correct copy of an Ordinance that was duly introduced at a Regular Meeting of the City Council of the City of Martinez, held on the 6th day of September, 2023, and adopted at a regular meeting of the City Council of the City of Martinez, held on the 27th day of September, 2023, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

RICHARD G. HERNANDEZ
CITY CLERK

Approved as to form:

TERRI HIGHSMITH
CITY ATTORNEY