

RESOLUTION NO. 2018-73

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA AUTHORIZING CALIFORNIA LAW ENFORCEMENT OFFICERS AND THOSE CERTIFIED TO ENFORCE ALL OR PORTIONS OF THE CALIFORNIA VEHICLE CODE AND/OR TITLE 10 “VEHICLES AND TRAFFIC” OF THE MARINA MUNICIPAL CODE UPON ALL STREETS WITHIN PRESTON PARK AND ABRAMS PARK GENERALLY HELD OPEN FOR USE BY THE PUBLIC FOR PURPOSES OF VEHICULAR TRAFFIC

WHEREAS, California Vehicle Code Section 21107.5 authorizes a city to adopt a resolution, following a public hearing, finding and declaring that certain privately owned and maintained streets are generally held open for use by the public for purposes of vehicular travel and are so connected with public streets or highways that the public cannot determine that the private roads are not public streets or highways; and

WHEREAS, upon adoption of such a resolution the provisions of the California Vehicle Code become applicable to and enforceable on those streets; and

WHEREAS, the Council hereby intends to utilize that authorization and thereby authorize California law enforcement officers including police officers of the City of Marina and those certified to enforce all or portions of the California Vehicle Code regulations and/or regulations set forth at Title 10 of the Marina Municipal Code including but not limited to vehicular, parking and traffic regulations within the private streets designated herein.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MARINA HEREBY
RESOLVE AS FOLLOWS:**

SECTION 1. Recitals Incorporated, Findings, and Applicable Statutes.

- (a) The recitals herein are true and correct and incorporated herein.
- (b) It is found and declared that the privately owned and maintained streets designated herein are within the City and are generally held open for use by the public for purposes of vehicular travel and that said streets are so connect with public streets or highways that the public cannot determine that they are not public streets or highways.
- (c) It is found and declared that the public health, safety and welfare would be best served by applying California Vehicle Code Section 21107.5 and enforcement of California Vehicle Code regulations and/or of Title 10 “Vehicles and Traffic” of the Marina Municipal Code on the private circulation streets designated herein and same is in the interest of the residents residing along the streets and of the motoring public.
- (d) Except as described in California Vehicle Code Section 21107.5(b), the provisions of the California Vehicle Code and of Title 10 of the Marina Municipal Code shall apply to the private streets designated herein.

- (e) The private streets designated herein shall remain private.
- (f) Notice was given at least 10 days prior to the public hearing.
- (g) A public hearing on this Resolution was held by the City Council pursuant to law on July 3, 2018.

SECTION 2. Designated Roads.

The Council hereby finds and declares that after ten days prior notice given thereof and conclusion of a public hearing thereon, the following streets connecting with public streets are held open for use by the public are so connected with public streets and highways that the public cannot determine that the roads are not public highways:

Preston Park:

1. Arnold Court
2. Bailey Court
3. Bandholtz Court
4. Barth Court
5. Brown Court
6. Horn Court
7. Landrum Court
8. Ready Court
9. Stewart Court
10. Wahl Court

Abrams Park:

1. Brostrom Drive
2. Carpenter Court
3. Clark Court
4. Harvey Court
5. Ingman Court
6. Jordan Court
7. Wilson Court

Pursuant to California Vehicle Code Section 21107.5, the Council hereby intends to utilize that authorization and thereby authorize (but not mandate) California law enforcement officers including police officers of the City of Marina and those certified to enforce all or portions of the California Vehicle Code and/or the Marina Municipal Code to enforce any and all California Vehicle Code regulations and the regulations set forth in Title 10 "Vehicles and Traffic" of the Marina Municipal Code, including but not limited to vehicular, traffic and parking regulations, within these specified private roads.

SECTION 3. Severability. The City Council declares that each section, subsection, paragraph, subparagraph, sentence, clause and phrase of this resolution is severable and independent of every other section, subsection, paragraph, subparagraph, sentence, clause, and phrase of this resolution. If any section, subsection, paragraph, subparagraph, sentence, clause or phrase of this resolution is held invalid, the City Council declares that it would have adopted the remaining provisions of this resolution irrespective of the portion held invalid, and further declares its express intent that the remaining portions of this resolution should remain in effect after the invalid portion has been eliminated.

SECTION 4. Environmental assessment. The City Council declares that the approval of this resolution is not subject to the California Environmental Quality Act (“CEQA”) because pursuant to CEQA Guidelines Sections 15060 (c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment); and, 15060 (c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly. Alternatively, the approval of this resolution is not a “Project” under CEQA Regulation Section 15061(b)(3) because it has no potential for causing a significant effect on the environment.

SECTION 5. Effective date. This ordinance shall go into effect upon its passage.

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held this 3rd day of July by the following vote:

AYES, COUNCIL MEMBERS: Amadeo, Morton, O’Connell, Brown, Delgado

NOES, COUNCIL MEMBERS: None

ABSENT, COUNCIL MEMBERS: None

ABSTAIN, COUNCIL MEMBERS: None

Bruce Delgado, Mayor

ATTEST:

Anita Sharp, Deputy City Clerk

APPROVED AS TO FORM:

City Attorney

REVISED STAFF REPORT

June 11, 2018

Item No. **9a**

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of July 3, 2018

RECOMMENDATION TO OPEN A PUBLIC HEARING, TAKE ANY TESTIMONY FROM THE PUBLIC, AND CONSIDER ADOPTING RESOLUTION NO. 2018-, AUTHORIZING CALIFORNIA LAW ENFORCEMENT OFFICERS AND THOSE CERTIFIED TO ENFORCE ALL OR PORTIONS OF THE CALIFORNIA VEHICLE CODE AND/OR TITLE 10 “VEHICLES AND TRAFFIC” OF THE MARINA MUNICIPAL CODE UPON ALL STREETS WITHIN PRESTON PARK AND ABRAMS PARK GENERALLY HELD OPEN FOR USE BY THE PUBLIC FOR PURPOSES OF VEHICULAR TRAVEL

RECOMMENDATION:

It is recommended that the City Council:

1. Open a public hearing and take any testimony from the public;
2. Consider adopting Resolution No. 2018-, authorizing California Law enforcement officers and those certified to enforce all or portions of the California Vehicle Code and/or Title 10 “Vehicles and Traffic” of the Marina Municipal Code upon all streets within Preston Park and Abrams Park generally held open for use by the public for purposes of vehicular travel.

BACKGROUND:

The California Vehicle Code (“CVC”) authorizes law enforcement officers and others properly certified to enforce traffic laws upon public streets and highways. However, the same authorization may not extend to ostensibly private streets in the absence of enactment by a city or county of an ordinance or resolution per CVC §21107.5, which states:

“21107.5.

(a) Any city or county may, by ordinance or resolution, find and declare that there are privately owned and maintained roads as described in the ordinance or resolution within the city or county that are generally held open for use by the public for vehicular travel and which so connect with highways that the public cannot determine that the roads are not highways. Upon enactment by a city or county of the ordinance or resolution, this code shall apply to the privately owned and maintained road, except as provided in subdivision (b).”

Subdivision (b) deals with private roads that are clearly posted as privately owned and maintained.

Marina Municipal Code, Title 10 entitled “Vehicles and Traffic” sets forth certain provisions determined by the City Council to be necessary for the protection of the health, safety and welfare of the public.

With the exception of Abrams Drive, Preston Drive, and Wittenmyer Court, streets within Abrams Park and Preston Park were not dedicated to the City and included as City streets when the underlying lands were deeded to the City by the Fort Ord Reuse Authority. Following formation of the City of Marina Abrams B Non-Profit Corporation and subsequently the Preston Park Sustainable Non-Profit Corporation, the streets within Abrams Park and Preston Park, with the exception of Abrams Drive, Preston Drive, and Wittenmyer Court, were included in the leases from the City to those non-profit corporations. These streets are not maintained by the City but by Alliance Residential LLC under Management Agreements for both Abrams and Preston Parks.

The Police Department requests Council action per CVC §21107.5 to ensure its authority for the enforcement of the California Vehicle Code on streets within both Preston Park and Abrams Park. Staff determined implementation of a resolution, which would include the enforcement of Title 10 “Vehicles and Traffic” of the Marina Municipal Code was preferable to enacting an ordinance as changes that may become necessary in the future would be more expedient for the City and the parties involved. Expediency in the ability to alter provisions of a resolution in this case would also be a public safety issue.

It is a matter of the public safety to ensure the application of the CVC and the Municipal Code to the enforcement of regulations on the private streets in Preston Park and Abrams Park.

ANALYSIS:

Staff examined the streets in both Preston Park and Abrams Park and determined they may meet the criteria of CVC §21107.5(a) as, with the exception of Abrams Drive, Preston Drive, and Wittenmyer Court, they have never been dedicated to the City and are leased and privately maintained roads that are generally held open for use by the public for vehicular travel and are so connected with highways that the public cannot determine that the roads are not highways. CVC §360 defines a “highway” as a publicly maintained street open to the use of the public for vehicular traffic and as streets within Preston Park and Abrams Park are not publicly maintained they should be considered private streets.

The City, through the respective non-profit corporations for Preston Park and Abrams Park may designate and retain selected streets within their respective areas upon passage of the proposed resolution by posting signs giving notice that the street is privately owned and maintained and is not subject to public traffic regulation or control. (CVC §21107.5(b)). Streets subject to the Criteria of California Vehicle Code Section 21107.5 in Preston Park and Abrams Park are the following:

Preston Park:

1. Arnold Court
2. Bailey Court
3. Bandholtz Court
4. Barth Court
5. Brown Court
6. Horn Court
7. Landrum Court
8. Ready Court
9. Stewart Court
10. Wahl Court

Abrams Park:

1. Brostrom Drive
2. Carpenter Court
3. Clark Court
4. Harvey Court
5. Ingman Court
6. Jordan Court
7. Wilson Court

Pursuant to CVC §21107.5, the Council in approving the attached resolution would confirm the authority of (but not mandate) California law enforcement officers including police officers of the City of Marina and those City employees certified with limited enforcement ability, to enforce all California Vehicle Code and Marina Municipal Code vehicular, traffic and parking regulations within the streets listed above.

The proposed resolution is not subject to the California Environmental Quality Act (“CEQA”) because pursuant to CEQA Guidelines Sections 15060 (c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment); and, 15060 (c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly. Additionally, the approval of the resolution would not be a “Project” under CEQA Regulation Section 15061(b)(3) because it has no potential for causing a significant effect on the environment.

Failure to enact the proposed resolution could directly impact the public safety of the residents, visitors and workers of Preston Park and Abrams Park. Lack of traffic enforcement authority could lead to increased speed on the roadways and other unsafe driving practices that can lead to an increase in vehicular accidents and vehicle versus vehicle, vehicle versus bicycle and vehicle versus pedestrian accidents. Illegal parking would increase without oversight by the Police Department to control it. Overall, and in summary, the quality of life in Preston Park and Abrams would be directly affected for families, visitors and the public at large.

The City Attorney’s office reviewed this matter and believes adoption of the proposed resolution is in the best interest of the City.

FISCAL IMPACT:

None

CONCLUSION:

This request is submitted for City Council consideration and possible action.

Respectfully submitted,

Richard J. Janicki, Jr., Management Analyst
Police Department
City of Marina

REVIEWED/CONCUR:

Tina Nieto
Chief of Police
City of Marina

Layne Long
City Manager
City of Marina