

Resolution No. 2018-78

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA ORDERING A REPORT PURSUANT TO ELECTIONS CODE SECTION 9212 REGARDING AN INITIATIVE ORDINANCE RELATING TO CANNABIS BUSINESSES

WHEREAS, a General Municipal Election for Tuesday, November 6, 2018, has been called by Resolution 2018-39 adopted on May 1, 2018; and

WHEREAS, the Deputy City Clerk, as the Elections Official, has caused the examination of the signatures on a petition proposing an initiative ordinance relating to cannabis businesses and has certified to the City Council that said petition included the number of signatures required by Elections Code Section 9215; and

WHEREAS, the City Council desires that a report pursuant to Elections Code section 9212 be prepared relating to the proposed ordinance, in accordance with subsection (c) of Elections Code section 9215.

NOW, THEREFORE, the City Council of the City of Marina, California does resolve, declare, determine and order as follows:

Section 1. That, pursuant to section 9212 of the Elections Code, and in accordance with subsection (c) of section 9215 of the Elections Code, the City Manager is directed to prepare a report on the proposed initiative ordinance. The report shall be presented to the City Council on August 2, 2018, but in no event later than 30 days after the City Clerk has certified the sufficiency of the petition.

Section 2. The report shall cover:

- a. Appropriate areas for the various cannabis activities, including dispensaries, research and development, manufacturing, growing, and any other type of activity that is currently on the initiative
- b. Fiscal Impact on internal consistency to the city's general and specific plans
- c. Effect on land use availability
- d. Impact on funding for infrastructure
- e. Ability to attract or retain business
- f. some analysis of the impact of exclusion if there is an impact such as exclusion from the ability to secure federal grants.
- g. What are the risks of forfeiture or adverse impacts resulting from conflict of California Law and Federal Law and
- h. whether those risks are impacted differently for medicinal marijuana and or recreational marijuana and
- i. whether those risks are impacted differently based on your authorizing of cultivation, distribution, manufacturing or retail. But the different types of allowed uses that are being considered.

Section 3. That the Deputy City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions.

PASSED AND ADOPTED by the City Council of the City of Marina this 3rd day of July 2018, by the following vote:

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

NOES, COUNCIL MEMBERS: None

ABSTENTIONS, COUNCIL MEMBERS: None

ABSENT, COUNCIL MEMBERS: None

SIGNED: _____
Bruce C. Delgado, Mayor

ATTEST: _____
Anita Shepherd-Sharp, Deputy City Clerk

June 29, 2018

Item No. **11d**

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of July 3, 2018

INITIATIVE ORDINANCE RELATING TO CANNABIS BUSINESSES

RECOMMENDATION:

It is recommended that the City Council:

1. Receive Certificate of Sufficiency of Initiative Petition with respect to initiative ordinance relating to cannabis businesses (Exhibit D).
2. Take one of the following actions:
 - (a) Adopt Resolution of the City Council of the City of Marina Submitting to the Voters at the November 6, 2018 General Municipal Election an Initiative Ordinance Relating to Cannabis Businesses, Requesting County Elections Officials to Conduct the Election, and Requesting Consolidation of the Election (Exhibit E); or
 - (b) Adopt Resolution of the City Council of the City of Marina Ordering a Report Pursuant to Elections Code Section 9212 Regarding an Initiative Ordinance Relating to Cannabis Businesses (Exhibit F).

BACKGROUND:

On May 31, 2018, a circulated initiative petition regarding cannabis business activity was filed with the Deputy City Clerk, in her role as the City's Election Official. A copy of the Ordinance proposed by the petition is attached hereto as Exhibit A. A copy of the text of the circulated petition (including the title and summary prepared by the City Attorney prior to circulation) is attached hereto as Exhibit B.

The petition included 1,874 signatures. In order to qualify, the petition must be signed by not less than 10 percent of the voters of the City, according to the last report of registration by the county elections official to the Secretary of State. There are 9,969 such voters, so the petition requires 997 valid signatures to qualify.

The Deputy City Clerk submitted the petition to the Monterey County Registrar of Voters to conduct a signature verification using a sampling method. On June 22, 2018 the Registrar certified that, based on the sample, the petition was projected to have 1,358 valid signatures. The certification is attached hereto as Exhibit C. Because this "sample count" exceeds 110% of the required number of qualified signatures, the Deputy City Clerk is required by law to certify the results of the examination to the City Council at its next regular meeting. Tonight's meeting is the next regular meeting of the City Council following the June 22, 2018 certification by the Registrar. A copy of the Deputy City Clerk's certification is attached hereto as Exhibit D.

ANALYSIS:

Elections Code §9215 provides that, upon presentation of a certification of a petition, the City Council must do one of the following:

“(a) Adopt the ordinance, without alteration, at the regular meeting at which the certification of the petition is presented, or within 10 days after it is presented.

(b) Submit the ordinance, without alteration, to the voters....

(c) Order a report pursuant to Section 9212 at the regular meeting at which the certification of the petition is presented. When the report is presented to the legislative body, the legislative body shall either adopt the ordinance within 10 days or order an election pursuant to subdivision (b).”

The California Constitution requires that ordinances imposing a tax be approved by the voters. This initiative ordinance imposes a tax. Therefore, it is not recommended that the City Council adopt this ordinance without submitting it to the voters.

Attached as Exhibit E is a resolution that would order that the initiative ordinance be placed on the November 6, 2018 ballot. Approval of the resolution requires a 2/3 vote (at least four “yes” votes) of the Council as it pertains to a general tax.

Attached as Exhibit F is a resolution that would order a report. If the Council orders a report, it must be returned to the City Council by staff no later than 30 days after tonight’s meeting. The Council can change the list of matters that the report covers.

FISCAL IMPACT:

The estimated cost for the signature verification of the initiative by the Monterey County Registrar of Voters is to be determined. The estimated election for the consolidated general municipal election is estimated by the County as between \$61,026 and \$81,368.

CONCLUSION:

This request is submitted for City Council consideration and action.

Respectfully submitted,

s/Robert W. Rathie

REVIEWED/CONCUR:

s/Robert R. Wellington
City Attorney

Layne Long
City Manager
City of Marina

EXHIBIT A

[Initiative Ordinance]

EXHIBIT B

[Petition Text]

EXHIBIT C

[County Certification]

EXHIBIT D

CITY OF MARINA

CERTIFICATE OF SUFFICIENCY OF INITIATIVE PETITION

I, Anita Shepherd-Sharp, Deputy City Clerk of the City of Marina, County of Monterey, State of California, hereby certify:

That an initiative to allow cannabis business activity and establish taxes and fees for such businesses within the City of Marina, amending title and chapter establishing cannabis business activities as a use allowed subject to a use permit in specified zones and establishing uses to protect public health, safety & welfare, was filed with the City Clerk's office on May 31, 2018;

That each section contains signatures purporting to be signatures of qualified electors of the City of Marina, California;

That attached to the petition, at the time it was filed, was an affidavit purporting to be the affidavit of the person who solicited the signatures, and containing the dates between which the qualified electors signed the petition;

That after the proponents filed the petition, and based on the County of Monterey Registrar of Voters' "Certificate of Initiative Petition," (attached) I have determined the following facts regarding the petition:

Total number of signatures required to qualify petition:	997
Total number of signatures filed by proponent:	1,874
Total number of signatures verified using random sampling:	500
Total projected number of signatures found sufficient:	1,358
Total number of signatures found insufficient:	132

Based on the above, the petition is deemed to be sufficient.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Marina this ____ day of June 2018.

Anita Shepherd-Sharp
Deputy City Clerk/Elections Official
City of Marina

EXHIBIT E

Resolution No. 2018 - _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA SUBMITTING TO THE VOTERS AT THE NOVEMBER 6, 2018 GENERAL MUNICIPAL ELECTION AN INITIATIVE ORDINANCE RELATING TO CANNABIS BUSINESSES, REQUESTING COUNTY ELECTIONS OFFICIALS TO CONDUCT THE ELECTION, AND REQUESTING CONSOLIDATION OF THE ELECTION

WHEREAS, by its Resolution No. 2018-39, adopted on May 1, 2018, the City Council called a General Municipal Election for November 6, 2018 and requested that such election be conducted by Monterey County elections officials and consolidated with the statewide general election to be held on that date; and

WHEREAS, pursuant to authority provided by statute, a petition has been filed with the City Council of the City of Marina, California, signed by more than ten percent (10%) of the number of registered voters of the City, to submit to the qualified electors a proposed ordinance relating to cannabis businesses; and

WHEREAS, the Monterey County Elections Department examined the petition and the records of registration and ascertained that the petition is signed by the requisite number of voters to qualify to be placed on the ballot, and has so certified; and

WHEREAS, the Deputy City Clerk/Elections Official examined the records of registration and ascertained that, pursuant to Elections Code Section 9215, the petition is signed by the requisite number of voters, and has been so certified; and

WHEREAS, as required by law, the City Council desires to submit the proposed ordinance to the voters at the November 6, 2018 election; and

WHEREAS, pursuant to Elections Code Section 10002, the City Council may by resolution request the Board of Supervisors of the county to permit the county elections official to render specified services to the city or district relating to the conduct of an election; and

WHEREAS, the resolution of the governing body of the city or district shall specify the services requested; and

WHEREAS, pursuant to Elections Code Section 10002, the city or district shall reimburse the county in full for the services performed upon presentation of a bill to the city or district; and

WHEREAS, pursuant to Elections Code Section 10400, whenever two or more elections, including bond elections, of any legislative or congressional district, public district, city, county, or other political subdivision are called to be held on the same day, in the same territory, or in territory that is in part the same, they may be consolidated upon the order of the governing body or bodies or officer or officers calling the elections; and

WHEREAS, pursuant to Elections Code Section 10400, such election for cities and special districts may be either completely or partially consolidated; and

WHEREAS, pursuant to Elections Code Section 10403, whenever an election called by a district, city or other political subdivision for the submission of any question, proposition, or office to be filled is to be consolidated with a statewide election, and the question, proposition, or office to be filled is to appear upon the same ballot as that provided for that statewide election, the district, city or other political subdivision shall, at least 88 days prior to the date of the election, file with the board of supervisors, and a copy with the elections official, a resolution of its governing board requesting the consolidation, and setting forth the exact form of any question, proposition, or office to be voted upon at the election, as it is to appear on the ballot. Upon such request, the Board of Supervisors may order the consolidation; and

WHEREAS, the resolution requesting the consolidation shall be adopted and filed at the same time as the adoption of the ordinance, resolution, or order calling the election; and

WHEREAS, various district, county, state and other political subdivision elections may be or have been called to be held on November 6, 2018; and

NOW, THEREFORE, BE IT RESOLVED AND ORDERED that the following measure be submitted to the voters at the November 6, 2018 General Municipal Election and that such election be consolidated with any and all elections also called to be held on November 6, 2018, insofar as said elections are to be held in the same territory or in territory that is in part the same as the territory of the City of Marina, and the City of Marina requests the Board of Supervisors of the County of Monterey to order such consolidation under Elections Code Section 10400 and 10403

Shall the ordinance permitting operation in the City of Marina of certain cannabis businesses and establishing a business license tax for such businesses at rates not to exceed 5% of gross receipts, to continue until repealed by the voters and potentially generating \$40,000 to \$200,000 annually be adopted?

YES _____
NO _____

BE IT FURTHER RESOLVED AND ORDERED that pursuant to Elections Code Section 10002 the City Council hereby requests the Board of Supervisors to permit the Monterey County Elections Department to provide any and all services necessary for conducting an election and agrees to pay for said services in full, and

BE IT FURTHER RESOLVED AND ORDERED THAT Monterey County Elections Department is requested to print the Ordinance attached hereto as Exhibit 1 in the Voter Guide for the November 6 2018 election. Cost of printing and distribution of the measure text will be paid for by the City of Marina.

In addition, the full measure text will be available at the following web site address: www.ci.marina.ca.us.

BE IT FURTHER RESOLVED AND ORDERED THAT

1. Voter approval requirement is a majority.
2. Arguments for and against the ballot measure may be filed consistent with Elections Code Section 9282, *et seq.* The last day for submission of direct arguments for or against the ballot measure shall be by 5:00 P.M. on August 16, 2018. Direct arguments shall not exceed three hundred words and shall be signed by not more than five persons.
3. Rebuttals to arguments for and against the ballot measure may be filed. The last day for submission of rebuttal arguments for or against the ballot measure shall be by 5:00 P.M. on August 23, 2018. Rebuttal arguments shall not exceed two hundred-fifty words and shall be signed by not more than five persons; those persons may be different persons than the persons who signed the direct arguments.
4. Pursuant to Election Code Section 9280, the City Council hereby directs the City Attorney to prepare by August 16, 2018, an impartial analysis of the ballot measure.

5. The Deputy City Clerk hereby is designated as the Elections Official and is directed to do all things required by law to effectuate the Regular Municipal Election and to present the ballot measure submitted herein to the electorate, including, but not limited to, required publications, postings, noticing and filings. Further, the Deputy City Clerk is hereby directed to forward a copy of this resolution to the City Attorney for preparation of impartial analyses of the ballot measure submitted. Pursuant to Election Code section 9285, when the Deputy City Clerk has selected the arguments for and against the ballot measure, which will be printed and distributed to voters, the Deputy City Clerk shall send copies of the arguments in favor of the ballot measure to the authors of the argument against, and copies of the argument against to the authors of the argument in favor. Rebuttal arguments shall be printed in the same manner as the direct arguments. Each rebuttal argument shall immediately follow the direct argument which it seeks to rebut.

6. The Deputy City Clerk is hereby directed to submit forthwith a certified copy of this resolution to the Board of Supervisors, to the Registrar of Voters and to the County Clerk of the County of Monterey. The Deputy City Clerk shall certify as to the passage and adoption of this Resolution and enter it into the book of original Resolutions.

7. The City Council finds, pursuant to Title 14 of the California Code of Regulations, Sections 15061(b)(3) and 15378(a), that this resolution is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project which has the potential for causing a significant effect on the environment. This action is further exempt under the definition of "Project" in Section 15378(b)(3) in that it concerns general policy and procedure making. The Council therefore directs that a Notice of Exemption be filed.

PASSED AND ADOPTED by the City Council of the City of Marina this ____ day of _____ 2018, by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

SIGNED: _____
Bruce C. Delgado, Mayor

ATTEST: _____
Anita Shepherd-Sharp, Deputy City Clerk

Exhibit 1 to Resolution

[Ordinance]