

## ORDINANCE NO. 2023-14

### AN ORDINANCE OF THE CITY OF MARINA AMENDING TITLE 17, ARTICLE 6, OF THE MARINA MUNICIPAL CODE TO ADD SECTION 17.68 PERTAINING TO TEMPORARY USE PERMITS

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1. The Community Development Department (CDD) for the City of Marina (City), through its regular use and implementation of the Marina Municipal Code (MMC), discovered that an entitlement process for temporary uses has not been established.

2. Through this amendment, staff seeks to modernize the MMC and create a path for temporary uses that are common in other California municipalities including, but not limited to farmer's markets, swap meets, and special holiday and cultural events.

3. The City's adopted fee schedule already includes fees for administrative Temporary Use Permits (TUP). No change to the adopted fee schedule is required to accommodate this amendment to the MMC.

4. The City Council desires to amend the MMC to provide a process for the permitting and regulation of temporary events that do not fall under the purview of either the Recreation & Cultural Services Department (City Parks and Playgrounds) or the Police Department (Parades and Assemblies).

5. The proposed Ordinance adds new Chapter 17.68, Temporary Use Permits, to MMC Title 17, Zoning.

6. The Planning Commission held a duly noticed public hearing on the Ordinance amendment on August 10, 2023.

7. The City Council held a duly-noticed public hearing on the Ordinance amendment on October 17, 2023.

8. This Ordinance is not subject to environmental review pursuant to the State CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, Section 15304(e), which addresses minor, temporary use of land having negligible or no permanent effects on the environment, including carnivals, sales of Christmas trees, etc., and Section 15378(b)(5) for administrative activities of governments that will not result in direct or indirect potentially significant physical impacts on the environment. Therefore, the adoption of this ordinance is exempt from CEQA and no further environmental review is necessary.

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

SECTION 1. The foregoing recitals are adopted as findings of the City Council as though set forth fully herein.

SECTION 2. The City Council hereby amends the MMC to add new Chapter 17.68, as follows:

**Chapter 17.68**

**Temporary Use Permit**

17.68.010 Purpose and intent

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17.68.030 Definitions

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**17.68.010 Purpose and intent**

This purpose of this chapter is to establish a Temporary Use Permit (TUP) process to regulate and manage temporary land uses and activities on a particular parcel within the city. The intent

of this chapter is to ensure temporary uses and activities comply with relevant zoning regulations, health and safety codes, and other applicable laws, while balancing the need for uses and activities that provide benefits to the community.

#### **17.68.020 Application.**

No temporary use shall occur within city limits except as provided in this chapter.

#### **17.68.030 Definitions**

“Temporary Use” means the use of a property for a period of up to sixty (60) contiguous days or less and no more than six (6) months in a calendar year. Temporary uses include but are not limited to activities and events such as, seasonal sales, swap meets, farmers markets, and similar uses. For events and activities proposed to occur within the public street right of way, including the temporary use of the public right of way for staging purposes, applicants shall contact the police dept. and the public works dept. at least sixty (60) days prior to the event. For the temporary use of city-owned properties, applicants shall contact the Recreation Dept. for rental and additional use requirements.

“Temporary Use Permit” (TUP) means a permit issued by the community development director (director) or designee, that grants temporary authorization for a specified land use, event or activity for a limited period of time, subject to conditions and requirements outlined in this chapter.

#### **17.68.040 Applicability**

A. This chapter applies to all temporary land uses within the city unless exempt as described herein.

B. Temporary uses exempt from this chapter include those specifically exempted by state or federal law, those that are authorized by other city ordinances or regulations, and those that are of an emergency or temporary nature, such as disaster relief efforts. MMC provisions that have independent permitting requirements include, but are not limited to, Chapters 8.30 (Parades and Assemblies) and 12.12.050 (City Parks and Playgrounds).

#### **17.68.050 Permit requirements**

- A. Any person or entity seeking to engage in a temporary land use as defined in this chapter shall obtain a TUP from the city prior to the commencement of the temporary use or activity.
- B. An applicant shall submit an application for a TUP to the city's planning department using the city's standard application form.
- C. The city may impose conditions on the TUP to ensure compliance with applicable laws, protect public health and safety, and mitigate potential impacts on the community, such as noise, traffic, and environmental impacts. Insurance will be required for the use of public property including city right of way.
- D. TUPs shall be valid for the duration specified in the permit, and shall not be transferable or assignable without prior written approval from the city.

#### **17.68.060 Exempt Activities**

The following temporary activities do not require a TUP:

- A. Construction yard – On-site. An on-site contractor's construction yard for a city-approved construction project. The yard shall be removed from the site immediately upon completion of the project, or the expiration of the Building Permit authorizing construction, whichever occurs first.
- B. Emergency activity. Emergency public health and safety activities, as determined by the City Manager, City Council, Fire Chief, Police Chief or other county, state or federal official.
- C. Event on site approved for public assembly. An event on the site of, or within, a public or private meeting facility, school, theater, or similar facility designed and approved by the City for public assembly, and with no amplified outdoor sound.
- D. Parades and assembly events, filming permits, amplified music, or activities on public property. Parades on public streets, events in public parks, or on other publicly owned property that are subject to the requirements of MMC Chapters 8.30 and 12.12 and permitted accordingly.
- E. Garage sales. Garage sales, not to exceed four (4) per year and two (2) consecutive days.

F. Public property or public right-of-way work. Construction and maintenance activities conducted on public property that are authorized by an encroachment permit.

#### **17.68.070 Permitted Uses**

Allowed short-term activities. The following temporary activities may be allowed with a TUP, in compliance with this chapter. A TUP may authorize an activity for the time specified by this chapter, but shall not exceed six (6) months. Other temporary uses and activities not included in following categories shall instead comply with the planning permit requirements and standards that otherwise apply to the site:

A. Caretaker unit temporary dwelling (manufactured home or trailer) used for the temporary accommodation of a person employed as a caretaker, janitor, manager, watchman, security guard or superintendent by an industrial or commercial use operating on the site. An extension may be granted by the Director for good cause.

B. Construction yard – Off-site. An off-site contractor's construction yard for a city-approved construction project. The yard shall be removed immediately upon completion of the project, or the expiration of the Building Permit authorizing construction, whichever occurs first. An extension may be granted by the Director for good cause.

C. Events. Events include but are not limited to art and craft exhibits, carnivals, circuses, concerts, fairs, farmers markets, festivals, flea markets, food events, open air sales, outdoor entertainment/sporting events, rummage sales, secondhand sales, sidewalk sales, swap meets, and other special events, for up to five (5) consecutive days, or four (4) two-day weekends, within a 12-month period, on private, non-residentially zoned property.

D. Location filming. See Exemptions.

F. Model homes. A model home or model home complex may be authorized in compliance with the following standards, and other requirements deemed necessary by the Community Development Director or designee.

1. The sales office and any off-street parking shall be converted back to residential use and/or removed before final building inspection, or within 14 days from the sale of the last parcel in the subdivision, whichever first occurs.

2. The model home complex shall be used only to sell units within the subdivision where the complex is located.
3. Model homes may be open to the public only after final building inspection, and after all subdivision improvements are completed and accepted by the city.

G. Seasonal sales lots. Seasonal product sales (e.g., for Halloween, Thanksgiving, Christmas) including a temporary security trailer, on private property in a nonresidential zone, for up to sixty (60) days.

H. Temporary facilities during construction. One or more temporary structures may be used during the construction of an approved development as offices, or for the storage of equipment and/or tools.

1. Conditions of approval. Permit approval shall include conditions regarding the following matters:
  - a. Requirements for adequate site ingress and egress;
  - b. A prohibition on the use of the facility for any work other than that on the same site;
  - c. Requirements for the temporary storage of construction debris (e.g., asphalt, concrete, dirt) at designated on-site locations; provided, that the applicant shall furnish a schedule, acceptable to the Zoning Administrator, for the periodic disposal or recycling of the materials; and
  - d. Requirements designed to minimize potential conflicts between the work on site and adjacent land uses.
2. Permit time limit. The permit may be approved for up to twelve (12) months following the issuance of a companion Building Permit, or upon completion of the project, whichever occurs first:
  - a. The permit may be extended by the Director for an additional 12 months if a written request for extension is submitted at least 14 days before permit expiration, and the applicant provides justification for the request that is

determined by the Director to be reasonable (e.g., the delay was caused by reasons beyond the applicant's control).

- b. A permit for temporary construction facilities may be extended by the Director as needed; provided that all construction facilities and equipment shall be removed from the site prior to the approval of a Certificate of Occupancy.
- 3. Condition of site following completion. Each temporary structure and related use shall be completely removed from the site following the expiration of the TUP, or within thirty (30) days of completion of the development project, whichever occurs first.
  - I. Temporary real estate sales office. A temporary real estate sales office may be approved within an approved subdivision, solely for the first sale of homes within the subdivision. The sales office shall be completely removed from the site prior to issuance of a Certificate of Occupancy.
  - J. Similar temporary activities. A temporary activity that the director determines is similar to the other activities listed in this subsection, and compatible with the applicable zoning and surrounding land uses.

#### **17.68.080 Review and Approval**

- A. The director shall review TUP applications for compliance with this chapter and other applicable laws, including environmental review, and may refer the application to other departments or agencies for review as needed.
- B. The director shall notify the applicant in writing of the decision to approve, deny, or conditionally approve the TUP within a reasonable time frame after receipt of the complete application.
- C. Applicants have the right to appeal any decision made by the director regarding a TUP to the City's Planning Commission or other designated appeal body, in accordance with the appeal procedures set forth in MMC Chapter 17.70.

D. The director shall consider potential short-term traffic, noise, and nighttime lighting impacts in their review of the TUP application.

E. In order to grant any TUP, the director must determine that the establishment, maintenance or operation of the use or activity applied for will not under the circumstances of the particular case be detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the city. If the use is located in the Coastal Zone, the use must be consistent with all applicable local coastal land use plan recommendations and requirements.

#### **17.68.090 Revocation**

A. Where one or more of the conditions of the granting of a TUP have not been or are not being complied with, or when a TUP was granted on the basis of false material information, written or oral, given willfully or negligently by the applicant, the appropriate authority may revoke or modify such use permit following a hearing thereon. Notice of such hearing shall be given in writing to the permittee at least ten days prior to said hearing. Notice of such hearing shall be given as described in Section [17.58.030](#). Following the hearing, the appropriate authority may revoke or modify the TUP.

B. An appeal may be taken from such revocation or modification in the same manner as described in Section [17.58.050](#).

C. Temporary uses that are not in compliance with the chapter are considered a violation of the code, and subject to enforcement under Chapters 1.08, 1.10 and 1.12.”

SECTION 3. Environmental. The City Council determines this Ordinance is not subject to environmental review pursuant to the State CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, Section 15304(e), which addresses minor, temporary use of land having negligible or no permanent effects on the environment, including carnivals, sales of Christmas trees, etc., and Section 15378(b)(5) for administrative activities of governments that will not result in direct or indirect potentially significant physical impacts on the environment.

SECTION 4. Severability. If any portion of this Ordinance is found to be unconstitutional or invalid the City Council hereby declares that it would have enacted the remainder of this Ordinance regardless of the absence of any such invalid part.

SECTION 5. The City Manager is directed to execute all documents and to perform all other necessary acts to implement this Ordinance.

SECTION 6. Effective Date. This Ordinance shall be in full force and effect thirty (30) days after its final passage and adoption.

The foregoing Ordinance was introduced at a regular meeting of the City Council on the 17<sup>th</sup> day of October 2023, and was passed and adopted by the City Council of the City of Marina at a meeting thereof on November 7, 2023, by the following vote:

AYES: COUNCIL MEMBERS: Visscher, Biala, Medina Dirksen, Delgado

NOES: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: McCarthy

ABSTAIN: COUNCIL MEMBERS: None

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Bruce C. Delgado, Mayor

ATTEST:

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Anita Sharp, Deputy City Clerk