

ORDINANCE NO. 2017-07

A ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MARINA INITIATING AMENDMENTS TO THE ZONING ORDINANCE AMENDING SECTIONS 17.04, DEFINITIONS, AND 17.06, GENERAL ZONING REGULATIONS, TO BAN ALL MARIJUANA SALES, CULTIVATION AND DELIVERY WITHIN THE CITY OF MARINA,

WHEREAS, the City Council of the City of Marina conducted a duly noticed public meeting to consider initiating amendments to the Marina Zoning Ordinance, considered all public testimony, written and oral, presented at the public meeting, received and considered the written information and recommendation of the staff report for the October 31, 2017 meeting related to the proposed amendments to the Marina Zoning Ordinance; and

WHEREAS, the City Council finds that the proposed amendments to the Marina Municipal Code are consistent with the goals, policies and programs of the Marina General Plan; and

WHEREAS, the approval of the amendments are 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 ordinance is not a “Project” under CEQA Regulation Section 15061(b)(3) because it has no potential for causing a significant effect on the environment.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Marina to initiate amendments to the zoning ordinance to ban all marijuana sales, cultivation and delivery within the City of Marina in substantially the form set forth in Exhibit “A.”

The forgoing ordinance was introduced at a regular meeting of the City Council of the City of Marina duly held on November 7, 2017, and was passed and adopted at a regular meeting duly held on November 21, 2017, by the following votes:

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

NOES, COUNCIL MEMBERS: Brown, Delgado

ABSENT, COUNCIL MEMBERS: None

ABSTAIN, COUNCIL MEMBERS: None

David W. Brown, Mayor Pro-Tem

ATTEST:

Anita Sharp, Deputy City Clerk

EXHIBIT "A"

Add to Definitions:

17.04.462 Marijuana Dispensary.

(A) "Marijuana Dispensary" is defined as any facility; clinic; cooperative; club; business; retail facility; group or location, whether fixed or mobile; including any type of operation which could be licensed for commercial adult-use cannabis activity and/or commercial medicinal cannabis activity, including those operations for which licenses may be obtained as set forth in California Business and Professions Code Sections 26050 and 26061; and, where marijuana, or any marijuana infused product is produced, made available to, sold, exchanged, or distributed to any person. A marijuana dispensary shall not include the following uses, as long as the location of such use is otherwise in accordance with this code and other applicable law:

- (1) A clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code.
- (2) A health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code.
- (3) A residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code.
- (4) A residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code.
- (5) A hospice or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code, as long as any such use complies strictly with applicable law including, but not limited to, Health and Safety Code Section 11362.5 et seq.
- (6) Personal use, cultivation or exchange of marijuana, as legally permitted by Health and Safety Code Section 11018.

Replace Section 17-06-020, Paragraph P with:

P. No person(s) shall locate; operate; own; suffer; allow to be operated; or aid, abet or assist in the operation of any fixed or mobile marijuana dispensary, including any type of operation for which a license could be obtained from the State of California for commercial adult-use cannabis activity and/or commercial medicinal cannabis activity, inclusive of those operations for which licenses may be obtained such as set forth in California Business and Professions Code Sections 26050 and 26061; within the City in any zone. No permit, whether conditional or otherwise, shall be issued for the establishment of such activity. The operation of a Marijuana Dispensary in the City of Marina shall constitute a public nuisance. Delivery of Marijuana or marijuana infused products for retail purposes to locations inside of the City of Marina, is prohibited, except for the delivery of medicinal marijuana or medicinal marijuana infused products to adults with the appropriate authorization.

Add the language in italics to Section 17-06-020, Paragraph Q:

Q. Marijuana cultivation is a prohibited use and/or activity, except for marijuana cultivation by a qualified patient with an identification card on a property on which he or she resides, for a limited noncommercial purpose; *or as permitted by the Adult Use of Marijuana Act, which provides that not more than six (6) living marijuana plants may be planted, cultivated, harvested, dried, or processed by a person over the age of twenty one (21) inside a private residence, or inside an accessory building to a private residence that is fully enclosed and secure and located upon the grounds of the private residence, as an incidental use to the primary private residential use.*

Marijuana cultivation by any person or entity, including clinics, collectives, cooperatives and dispensaries, is prohibited in all zones within the city's jurisdictional limits, except as set forth herein. No permit, whether conditional or otherwise, shall be issued for the establishment of such activity, except that a qualified patient, with an identification card, as defined in California Health and Safety Code Section [11362.7](#), may cultivate cannabis for noncommercial, personal purposes as set forth in Health and Safety Code Section [11362.77](#) per each qualified patient with an identification card, upon property he or she rents or owns and inhabits, either inside the dwelling or on land included in such rented or owned property *or as permitted by the Adult Use of Marijuana Act, which provides that not more than six (6) living marijuana plants may be planted, cultivated, harvested, dried, or processed by a person over the age of twenty one (21) inside a private residence, or inside an accessory building to a private residence that is fully enclosed an secure and located upon the grounds of the private residence, as an incidental use to the primary private residential use.* Nothing in this chapter is intended to, nor shall it be construed to, preclude any landlord from limiting or prohibiting marijuana cultivation by its tenants. The cultivation shall be at a location on the property that is secluded so that it cannot be observed by a member of the public who passes by the property. This chapter shall be administratively enforced.