

RESOLUTION NO. 115-19

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARTINEZ, APPROVING A GENERAL PLAN AMENDMENT TO CLARIFY MEASURE I, ADOPTED BY THE VOTERS ON JUNE 5, 2018 RELATING TO LAND USE AND DENSITY WITHIN LAND USE DESIGNATIONS AV/OS, ESL, NP, OS, OS&R, OS-S, OS/P&R, OS-P, CUL, P&R, OR PPOS AND FINDING SUCH ACTION EXEMPT FROM THE PROVISIONS OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) PURSUANT TO CEQA GUIDELINES SECTION 15061(B)(3)

WHEREAS, the City of Martinez wishes to amend the General Plan clarifying Measure I, adopted by the voters on June 5, 2018, consistent with the agreement of the proponents of the measure and the stipulated court judgment relating thereto ("Project"); and

WHEREAS, the Planning Commission held a duly noticed public hearing on August 27, 2019, to consider the Project and consider public testimony on the matter and all other substantial evidence in the Record: and

WHEREAS, the Planning Commission voted 4-0 to recommend approval of the General Plan Amendment by the adoption of Resolution PC 19-06 on August 27, 2019; and

WHEREAS, the City Council held a duly noticed public hearing on September 18, 2019, to consider the Project and consider public testimony on the matter and all other substantial evidence in the Record; and

WHEREAS, the Record of Proceedings ("Record") upon which the City Council bases its decision regarding the Project includes, but is not limited to: (1) all staff reports, City files and records and other documents prepared for and/or submitted to the Planning Commission, and the City relating to the Project; (2) the evidence, facts, findings and other determinations set forth in this resolution; (3) the City of Martinez General Plan and the Martinez Municipal Code; (4) all designs, plans, studies, data and correspondence relating to the Project; (5) all documentary and oral evidence received at public hearings or submitted to the City relating to the Project, (6) the Settlement Agreement And Release dated July 10, 2019 relating to the Matter of Martinez v Kilmer et al Contra Costa Superior Court Case No. N18-1809 and the Stipulated Judgment filed by the court relating thereto; and (6) all other matters of common knowledge to the City Council including, but not limited to, City, state and federal laws, policies, rules regulations, reports, records and projections related to development within the City and its surrounding areas.

NOW, THEREFORE, the City Council of the City of Martinez resolves and finds as follows:

- 1) That the above recitals are found to be true and constitute part of the findings upon which this resolution is based.
- 2) The City Council hereby makes the following findings with respect to the proposed action:

General Plan Amendment

In that the clarifications of Measure I, as stipulated between the City and the proponents of Measure I and consistent with the stipulated court judgment do not change the intent of Measure I but rather serve to clarify the measure and assist the City with the implementation thereof. As such the clarifications are consistent with Measure I and the goals and policies of the General Plan

CEQA

The Planning Commission hereby makes the following determination with respect to the applicability of the California Environmental Quality Act (CEQA) to the Project: That this project be found categorically exempt pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines Sections 15061(b)(3), in that it can be seen with certainty that there is no possibility that the clarification of Measure I may have a significant effect on the environment, in that it merely clarifies the voter-approved initiative and provides no substantive changes thereto.

BE IT FURTHER RESOLVED that based on the findings set forth herein and the Record as a whole, the City Council hereby approves the General Plan amendment as set forth in Exhibit 1, attached hereto and incorporated herein by reference.

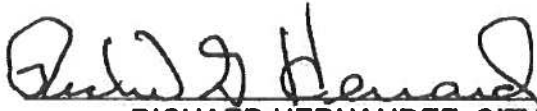
I HEREBY CERTIFY that the foregoing is a true and correct copy of a resolution duly adopted by the City Council of the City of Martinez at a duly noticed Regular Meeting held on the 18th day of September, 2019 by the following vote:

AYES: Councilmembers Lara DeLaney, Debbie McKillop,
Vice Mayor Noralea Gipner, and Mayor Rob Schroder

NOES: None

ABSENT: None

ABSTAIN: Councilmember Mark Ross



RICHARD HERNANDEZ, CITY CLERK
CITY OF MARTINEZ

Exhibit 1

Clarification of Provisions of Measure I

1. Effect on Land Use Designations and Allowable Uses.

(a) Statement of Intent:

Measure I was not intended to and does not change the uses that were allowable as of January 1, 2017, on any lands within the "Protected Open Space and Parks" overlay designation, which is defined in subsection 5(b) of the Initiative and which includes those lands with a General Plan land use designation of AV/OS, ESL, NP, OS, OS&R, OS-S, OS/P&R, OS-P, CUL, P&R or PPOS. Thus, unless a proposed use on property with a "Protected Open Space and Parks" overlay designation would have required a general plan amendment under the General Plan as it existed as of January 1, 2017 (which is the only way to change the allowable uses in the General Plan), Measure I does not require voter approval for that use. Additionally, uses described in subsections 5(c) or 5 (d) of Measure I are allowed on property with a "Protected Open Space and Parks" overlay designation without voter approval. However, voter approval is required either (1) to change the land use designation of any property within the "Protected Open Space and Parks" overlay designation to a land use designation that would permit a use other than a use that was allowable as of January 1, 2017, under its then-existing land use designation, or (2) to change, expand, or intensify the uses that were allowable as of January 1, 2017, under the General Plan on property with a "Protected Open Space and Parks" overlay designation to any type or intensity of uses that were not allowable under the General Plan as of January 1, 2017, on property with that land use designation, unless the changed, expanded, or intensified use is among the allowable uses in the "Protected Open Space and Parks" overlay designation pursuant to subsections 5(c) or 5(d).

(b) Modification or Amendment:

Consistent with the foregoing statement of intent, Section 5(a) of Measure I is hereby modified to provide as follows (new text underscored; deleted text shown with strikeouts):

5.a. Approval by Martinez Voters

~~Approval by Martinez voters is required to change land use designations of allowable uses of Protected Open Space and Parks to uses or designations not permitted under Protected Open Space and Parks.~~ For all property in the 'Protected Open Space and Parks' overlay designation, approval by Martinez voters is required to change the General Plan land use designations or allowable uses in effect on January 1, 2017, or to permit uses not consistent with the General Plan designations in effect on that date, except as otherwise provided for

in this Initiative. The 'Protected Open Space and Parks' overlay designation is defined in subsection (b) below.

In order to further clarify the meaning and effect of Section 5 of Measure I, the following is added to Section 5 as subsection 5(l):

5.l. Effect on Allowable Uses

"Nothing in this Initiative, including but not limited to subsection 5(a), or subsections 5(b), 5(c), 5(d) and 5(f), imposes any new limitation, restriction, or voter approval requirement on the type or intensity of uses that were, as of January 1, 2017, permissible on lands now designated as "Protected Open Space and Parks." Nor does this Initiative remove any limitations or restrictions on the type or intensity of uses that were applicable to such lands as of that date. Sections 5(c) and 5(d) describe uses that the City Council may, without requiring a vote of the people, permit to occur on "Protected Open Space and Parks" lands (including through amendment of the General Plan). Section 5(f) allows the continuance of legal, but non-conforming, existing or vested uses as of the date of adoption of the Initiative (June 6, 2018). If a type or intensity of use was, as of the date of adoption of the Initiative, permissible on land now designated as "Protected Open Space and Parks," such type and intensity of use remains permissible irrespective of whether such use is existing or vested."

2. Conflicts with Federal or State Law.

(a) Statement of Intent:

Section 5(k) of Measure I was intended to confirm that the provisions of the Initiative may not be applied to a specific proposed use in a manner that would result in deprivation of constitutional rights or would otherwise violate state or federal law as determined by a court of competent jurisdiction. It was not, however, intended to require the City to apply the Initiative in a manner that it has determined is inconsistent with federal or state law (currently or as it may exist in the future) unless it has first obtained a prior court judgment confirming that inconsistency.

(b) Modification or Amendment:

Consistent with the foregoing statement of intent, Section 5(k) of Measure I is hereby modified as follows (new text underscored; deleted text shown with strikeouts):

5.k. Protection of Constitutional Rights

If a court of competent jurisdiction rules that the application of this Initiative to a specific proposed use or project would deprive a person of Constitutional rights or privileges, or if the City Council makes the initial determination that application of this Initiative to a specific proposed use or project otherwise would be contrary to Federal or State law, the Initiative shall not apply to the extent required to allow that use or project. This explicit limitation on applicability is to make certain that the provisions do not infringe any person's legal rights or privileges, violate the law in any respect, or subject the City to legal liability. Nothing in this subsection 5(k) is intended to require the City to interpret or apply the provisions of the Initiative in a manner that conflicts with federal or state law.

3. Inconsistent Provisions of the General Plan.

(a) Statement of Intent:

Section 6(b) of Measure I was not intended to create a "precedence clause" under which the provisions of the Initiative would automatically prevail over conflicting provisions of the General Plan regardless of whether those provisions were amended by the Initiative to conform to its provisions. Nor was it intended to prevent future voter-approved amendments of the General Plan that change its provisions.

(b) Modification or Amendment:

Consistent with the foregoing statement of intent, Section 6(b) of Measure I is hereby modified as follows (new text underscored; deleted text shown in strikeouts):

6.b. If the provisions of this General Plan Amendment would conflict or be inconsistent with any ~~other existing or proposed future provision of the Martinez General Plan (including any proposed future map, diagram, or chart within the Martinez General Plan), except those approved by the voters of the City of Martinez, or with any existing or proposed future map, diagram, or chart within the Martinez General Plan,~~ or with any zoning provision, specific plan, or other City law or regulation, those conflicting provisions, maps, diagrams, charts, laws or regulations are, to the extent they are in conflict with or inconsistent with the provisions of this Initiative, hereby declared void and unenforceable.

4. Future Land Use Approvals Must Be Consistent.

(a) Statement of Intent:

The City shall not grant, or allow to be approved by operation of law, any permits or approvals that are inconsistent with the provisions of the Initiative.

(b) Modification or Amendment:

Consistent with the foregoing statement of intent, Section 6(c) of Measure I is hereby modified as follows (new text underscored; deleted text shown with strikeouts):

6.c. Other than as provided herein, upon the effective date of this General Plan Amendment (June 6, 2018), the City and its departments, boards, commissions, officers and employees shall not grant, or by inaction allow to be approved by operation of law, any General Plan amendment, rezoning, specific plan, subdivision map, conditional use permit, building permit or any other ministerial or discretionary entitlement, which is inconsistent with ~~the purposes of~~ this Initiative or its included General Plan Amendment.