Council Agenda Report

To: Mayor Mullen and the Honorable Members of the City Council

Prepared by: Christi Hogin, City Attorney

Date prepared: July 24, 2018  Meeting date: July 29, 2018

Subject: Adopting amended resolutions to correct the ballot question by adding required information and calling the election for an initiative

RECOMMENDED ACTION: 1) Adopt Resolution No. 18-43A calling for the holding of a General Election to be held on Tuesday, November 6, 2018, for the submission of a proposed ordinance; and 2) Adopt Resolution No. 18-50 amending the text of the ballot statement that was included in Resolution No. 18-44.

FISCAL IMPACT: There is no fiscal impact associated with the recommended action.

DISCUSSION: On July 9, 2018, the City Council received a certificate of sufficiency of a citizen initiative to place an ordinance on the ballot. The Council also adopted Resolution No. 18-43, which called for the election to submit the ordinance to the voters and adopted the ballot question. State law refers to the ballot question as the “ballot statement.”

In 2016, subparagraph (b) was added to Elections Code section 13119, which provides that “[i]f the proposed measure imposes a tax or raises the rate of a tax, the ballot shall include in the statement of the measure to be voted on the amount of money to be raised annually and the rate and duration of the tax to be levied.” The amended resolutions adds to the ballot question the duration of the tax to be levied and the estimated amount of money to be raised annually.

Because the initiative proposes a general excise tax on the sale of cannabis with no limit on its duration, if adopted, the tax will stay in effect unless and until repealed or amended by the voters. That part was straightforward.

The estimated annual revenues pose a more difficult challenge to calculate. Because recreational cannabis has not been sold in retail businesses, projecting the annual revenues from the tax necessarily calls for speculation. Staff has no sales projections for recreational marijuana. Staff based the estimate on the revenue the City receives from the existing dispensaries, although note that the proposed excise tax would not apply to...
medical cannabis or medical cannabis products. The tax would apply to gross receipts from new nonmedical sales. Currently, the City receives approximately $30,000 a year in sales tax from the two medical marijuana dispensaries. Assuming comparable (but slightly higher) sales volumes for nonmedical cannabis, staff estimated that the 2.5% tax of gross receipts will generate an additional $75,000 in tax revenue. The proponents have pointed to data from Nevada and Colorado that suggest that the businesses could more than double the volume of business by adding recreational cannabis products. That would suggest tax revenue closer to $150,000.

The revised question to be submitted to the voters reads as follows:

“Shall the ordinance be adopted to (1) allow and regulate cannabis (marijuana) businesses; (2) permit existing medical marijuana dispensaries to sell and deliver recreational (adult use) cannabis; and (3) impose a new general tax of 2.5% of gross receipts from sales of non-medical cannabis, the revenues from which may be used for general city purposes, until repealed by voters, which tax is estimated to raise approximately $75,000 - $150,000 annually?”

This revised ballot statement must also be submitted to Los Angeles County for inclusion on the general election ballot. Accordingly, Resolution No. 18-50 revises Resolution No. 18-44 (which requested that the Los Angeles County Board of Supervisors consent to the consolidation of the City’s general municipal election with the statewide general election). Resolution No. 18-50 replaces the text of the ballot question for the initiative measure that is to be submitted to the voters with the revised language included in Resolution 18-43A.

Calling the election for a qualifying initiative is a ministerial duty of the City Council. Because the City must submit all election material to the County Registrar in early August for the consolidated election to be held in November of this year, this corrected resolution had to be adopted before the City Council’s next regular meeting. Individual travel and work schedules rendered Sunday, July 29, 2018, at 11:00 a.m. the most viable date and time for the Council to meet to adopt the corrected resolutions. No actions related to the election are affected by this action other than the correction of the ballot question.

ATTACHMENT: Resolution No. 18-43A
Resolution No. 18-50
RESOLUTION NO. 18-43A

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MALIBU CALLING FOR THE HOLDING OF A GENERAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 6, 2018, FOR THE SUBMISSION OF A PROPOSED ORDINANCE

The City Council of the City of Malibu does hereby find, order, and resolve as follows:

SECTION 1. Recitals.

A. The City adopted Resolution No. 18-43 on July 9, 2018, calling for a general election to be held on Tuesday, November 6, 2018, for the submission of a proposed ordinance. This Resolution No. 18-43A supersedes and replaces Resolution No. 18-43 and amends the language of the ballot statement as set forth in Section 2.

B. Pursuant to authority provided by statute a petition has been filed with the legislative body of the City of Malibu, signed by more than 10 percent of the number of registered voters of the City to submit a proposed ordinance to (1) allow and regulate cannabis (marijuana) businesses; (2) permit existing medical marijuana dispensaries to add sale and delivery of recreational (adult use) cannabis; and (3) impose a 2.5% tax on gross receipts for non-medical cannabis sales.

C. The City Clerk examined the records of registration and ascertained that the petition is signed by the requisite number of voters and has so certified.

D. The City Council has not voted in favor of the adoption of the ordinance.

E. The City Council is authorized and directed by statute to submit the proposed ordinance to the voters.

SECTION 2. Pursuant to the requirements of the laws of the State of California relating to general law cities, there is called and ordered to be held in the City of Malibu on Tuesday, November 6, 2018, a General Municipal Election for the purpose of submitting the proposed ordinance as follows:

| Shall the ordinance be adopted to (1) allow and regulate cannabis (marijuana) businesses; (2) permit existing medical marijuana dispensaries to sell and deliver recreational (adult use) cannabis; and (3) impose a new general tax of 2.5% of gross receipts from sales of non-medical cannabis, the revenues from which may be used for general city purposes, until repealed by voters, which tax is estimated to raise approximately $75,000-150,000 annually? | YES | NO |

SECTION 3. The text of the ordinance submitted to the voters is attached as Exhibit A.
SECTION 4. The vote requirement for the measure to pass is a majority of the votes cast.

SECTION 5. The ballots to be used at the election shall be in form and content as required by law.

SECTION 6. The City Clerk is authorized, instructed and directed to procure and furnish any and all official ballots, notices, printed matter and all supplies, equipment and paraphernalia that may be necessary in order to properly and lawfully conduct the election.

SECTION 7. The polls shall be open at seven o’clock a.m. of the day of the election and shall remain open continuously from that time until eight o’clock p.m. of the same day when the polls shall be closed, pursuant to Elections Code Section 10242, except as provided in Elections Code Section 14401.

SECTION 8. In all particulars not recited in this resolution, the election shall be held and conducted as provided by law for holding municipal elections.

SECTION 9. Notice of the time and place of holding the election is given and the City Clerk is authorized, instructed, and directed to give further or additional notice of the election, in time, form, and manner as required by law.

SECTION 10. The City Council authorizes the City Clerk to administer said election and all reasonable and actual election expenses shall be paid by the City upon presentation of a properly submitted bill.

SECTION 11. The City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

PASSED, APPROVED and ADOPTED this 29th day of July 2018.

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RICK MULLEN, Mayor

ATTEST:

________________________
HEATHER GLASER, City Clerk
(seal)

APPROVED AS TO FORM:

________________________
CHRISTI HOGIN, City Attorney
Text of Proposed Initiative

Section 1.

A new chapter 5.55 is added to Chapter 5 of the Malibu Municipal Code to read as follows:

**Chapter 5.55**

COMMERCIAL CANNABIS REGULATIONS

Sections

5.55.010 Purpose
5.55.020 Definitions
5.55.030 Commercial Cannabis Activity
5.55.040 Commercial Cannabis Activity Retailer-Storefront and Delivery
5.55.050 Commercial Cannabis Activity Regulatory Permit
5.55.060 Conditional Use Permit
5.55.070 Change of Location
5.55.080 Numerical Limit
5.55.090 Regulatory Fees
5.55.100 Renewal
5.55.110 Enforcement
5.55.120 Enforcement, Violations and Penalties
5.55.130 Cannabis Tax
5.55.140 Additional Regulations.
5.55.150 Severability

5.55.010. Purpose.

The purpose of this chapter is to: (1) protect the public health safety and welfare through regulation of commercial cannabis activity as provided for in the California Medical and Adult-Use Cannabis Regulation and Safety Act; (2) create a regulatory permit to implement the commercial cannabis activity retailer provisions of the California Medical and Adult-Use Cannabis Regulation and Safety Act; (3) authorize commercial cannabis retailer-storefronts to engage in the sale of cannabis and cannabis products to natural persons age 21 and over; (4) authorize commercial cannabis retailer-storefronts to engage in retail sales of medical cannabis and medical cannabis products; (5) authorize existing medical marijuana dispensaries permitted under Section 17.66.120 to operate as retailer-storefronts because those businesses have already undergone extensive review through the conditional use permit application process; (6) authorize retailer-storefronts to make delivery retail sales in accordance with the California Medical and Adult-Use Cannabis Regulation and Safety Act; and (7) establish a procedure for retailer-storefronts to relocate their business from their existing location to a new location provided the business complies with the zoning code before commencing operations at the new location; and (8) impose a two and one half (2.5%) percent tax on the retail sale of cannabis and cannabis...
products; (9) amend the conditional use permit standards for medical marijuana dispensaries to include commercial cannabis retailer-storefronts.

5.55.020 Definitions.

“A-license” means a state license for cannabis or cannabis products that are intended for adults 21 years of age and over and who do not possess physician’s recommendations.

“Cannabis” means all parts of the plant Cannabis sativa Linnaeus, Cannabis indica, or Cannabis ruderalis, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Cannabis” also means the separated resin, whether crude or purified, obtained from cannabis. “Cannabis” does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this division, “cannabis” does not mean “industrial hemp” as defined by Section 11018.5 of the Health and Safety Code.

“Cannabis products” means cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing cannabis or concentrated cannabis and other ingredients.

“Commercial cannabis activity” means activities that include the cultivation, dispensing, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale of cannabis and cannabis products, including medical cannabis and medical cannabis products, as provided for in Medical and Adult-Use Cannabis Regulation and Safety Act and its related or successor laws and regulations, Division 10 of the California Business and Professions Code, or any provision of state law that regulates the licensing of cannabis businesses.

“Commercial cannabis business” means any business or operation which engages in medicinal or adult-use commercial cannabis activity, as provided for in the Medical and Adult-Use Cannabis Regulation and Safety Act and its related or successor laws and regulations.

“Customer” means a natural person 21 years of age or over, or a natural person 18 years of age or older who possesses a physician’s recommendation.

“Delivery” means the commercial transfer of cannabis or cannabis products to a customer. Delivery also includes the use by a retailer of any technology platform.

“Dispensing” means any activity involving the retail sale of cannabis or cannabis products from a retailer-storefront.

“License” or “state license” means a permit or license issued by the State of California, or one of its departments or divisions, under Medical and Adult-Use Cannabis Regulation and Safety Act
and any subsequent State of California legislation regarding the same, to engage in commercial cannabis activity.

“M-license” means a state license for commercial cannabis activity involving medicinal cannabis or medical cannabis products.

“Medicinal cannabis” or “medicinal cannabis product” means cannabis or cannabis product, respectively, intended to be sold for medical use pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the Health and Safety Code.

“Permittee” means any person to whom a current and valid city-issued regulatory permit for retailer-storefront commercial cannabis activity has been issued.

“Person” means any individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular.

“Physician’s recommendation” means a recommendation by a physician and surgeon that a patient use cannabis provided in accordance with the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the Health and Safety Code.

“Regulatory permit” means the permit issued by the city pursuant to this chapter, to a commercial cannabis business or a medical marijuana dispensary, which is required before any commercial cannabis activity may be conducted in the city.

“Retailer-Storefront” means a facility where cannabis, cannabis products, or devices for the use of cannabis or cannabis products are offered, either individually or in any combination, for retail sale to customers at an on-site fixed location, including an establishment that also offers delivery of cannabis and cannabis products as part of a retail sale, in addition to on-site sales.

5.55.030. Commercial Cannabis Activity

With the exception of retailer-storefront, including delivery, commercial cannabis activity authorized pursuant to this chapter and medical marijuana dispensaries permitted to operate pursuant to Section 17.16.120, commercial cannabis activity, including manufacture, distribution, processing, laboratory testing, packaging, and labeling, is prohibited in the city.

5.55.040. Commercial Cannabis Activity Retailer-Storefront and Delivery.

A. Notwithstanding the prohibition in Section 5.55.030, retailer-storefront commercial cannabis activity, including delivery, is a conditionally permitted use in the city subject to the standards of Section 17.16.120 and this chapter. No person shall establish, operate, maintain, conduct, allow, or engage in retailer-storefront commercial cannabis activity anywhere within the city that is not in compliance with this chapter. A retailer-storefront shall be located on a parcel that has been issued a conditional use permit subject to Section 17.16.120.
B. No person shall make deliveries of cannabis, cannabis products, medical cannabis, or medical cannabis products unless in compliance with this chapter. No person, including a commercial cannabis business with a state license based in another jurisdiction, shall conduct deliveries within the city without first obtaining a regulatory permit pursuant to this chapter. Only retailer-storefronts with a regulatory permit may conduct deliveries in the city. For purposes of this subsection, transportation and deliveries to 1) a retailer-storefront with a regulatory permit and/or 2) medical marijuana dispensaries permitted pursuant to Section 17.16.120, shall be exempt from this prohibition.

5.55.050. Commercial Cannabis Activity Regulatory Permit

A. A regulatory permit for retailer-storefront commercial cannabis activity is required to conduct retailer-storefront commercial cannabis activity in the city. No person or entity shall engage in retailer-storefront commercial cannabis activity, including delivery, in the city without having first obtained a regulatory permit for retailer-storefront commercial cannabis activity from the city manager and a state license.

B. The city manager shall authorize for retailer-storefront commercial cannabis activity any medical marijuana dispensaries permitted to operate pursuant to Section 17.66.120 as of January 1, 2018. Medical marijuana dispensaries permitted to operate pursuant to Section 17.66.120 shall be entitled to a regulatory permit for retailer-storefront commercial cannabis activity if the medical marijuana dispensary was first issued or applied for a Los Angeles County business license for medical marijuana dispensary prior to January 1, 2018. Medical marijuana dispensaries permitted to operate pursuant to Section 17.66.120 shall provide to the city clerk a request for a regulatory permit and proof of their eligibility for a regulatory permit. A Los Angeles County business license for medical marijuana dispensary issued prior to January 1, 2018 or an application for a Los Angeles County business license for medical marijuana dispensary submitted prior to January 1, 2018, and a city of Malibu conditional use permit for medical marijuana dispensary subject to Section 17.66.120 that was in effect on January 1, 2018 shall be prima facie evidence that a medical marijuana dispensary is qualified for a regulatory permit under this section. If a medical marijuana dispensary requesting a regulatory permit is no longer in possession of the location associated with the conditional use permit subject to Section 17.66.120, the city manager shall issue the regulatory permit to the medical marijuana dispensary in accordance with Subsection C and the dispensary may request a change of address pursuant to Section 5.55.070. The city manager shall notify a medical marijuana dispensary if its request for a regulatory permit is denied. The denial notification shall include and list the specific reason or reasons for denial, the factual findings supporting the denial, and the dispensary’s appeal rights.

C. Within 10 days of the effective date of this ordinance, the city manager shall establish and begin to issue a regulatory permit for retailer-storefront commercial cannabis activity to the medical marijuana dispensaries entitled to a regulatory permit under this section. The regulatory permit for retailer-storefront commercial cannabis activity shall authorize the permitted medical marijuana dispensary to engage in retailer storefront commercial cannabis activity, including delivery, dispensing, and retail sales of cannabis, cannabis products, medical cannabis, and medical cannabis products. The regulatory permit shall clearly state that the Permittee is
authorized to conduct retailer-storefront commercial cannabis activity for adult-use and medical purposes at the location authorized by the regulatory permit. For purposes of this chapter, "adult-use" shall mean retail sales of cannabis and cannabis products to natural persons age 21 and older. The city manager shall ensure the regulatory permit displays the information required for the issuance of a state license. Permittees that are eligible for a regulatory permit pursuant to this section shall not be required to apply for a regulatory permit as a new applicant pursuant to any regulatory scheme subsequently enacted by the city council.

D. The city manager shall notify and identify to the State of California and its agencies that regulate commercial cannabis activity, including but not limited to the Bureau of Cannabis Control: (1) the Permittees the city has authorized to engage in retailer-storefront commercial cannabis activity pursuant to a regulatory permit issued under this chapter; (2) that the regulatory permit authorizes the Permittee for Type 9 or Type 10 state licenses under the Medical and Adult-Use Cannabis Regulation and Safety Act. The notification shall include that a Permittee has been authorized for the issuance of an “A-license” and an “M-license.” The city manager shall provide to state regulators any information necessary to facilitate the issuance of a state license to a Permittee. The city clerk shall only authorize for a state license a retailer storefront and/or medical marijuana dispensary with a regulatory permit. A medical marijuana dispensary without a regulatory permit shall not be authorized for a state license.

E. For purposes of this section, medical marijuana dispensaries permitted to operate pursuant to Section 17.66.120 as of January 1, 2018 may continue to engage in dispensing and retail sales of medical cannabis and medical cannabis products pursuant to an existing state license or temporary permit while a request for a regulatory permit is pending. However, medical marijuana dispensaries established after January 1, 2018 shall not operate without a regulatory permit.

F. A person or entity operating a permitted medical marijuana dispensary permitted under Section 17.66.120 shall be entitled to a regulatory permit for retailer-storefront commercial cannabis activity as a matter of right. The issuance of a regulatory permit pursuant to this section shall be a ministerial action not subject to discretion.

G. It is the intent of the voters to authorize for retailer-storefront commercial cannabis activity any medical marijuana dispensaries permitted to operate pursuant to Section 17.66.120 that were in operation as of January 1, 2018, the day on which the State of California began issuing licenses for commercial cannabis activity. This section and each subsection and paragraph shall be interpreted broadly to ensure any permitted medical marijuana dispensaries authorized to operate on January 1, 2018 are issued a regulatory permit under this section and authorized for retailer-storefront commercial cannabis activity. In authorizing the issuance of regulatory permits to dispensaries under this section, the voters recognize that medical marijuana dispensaries previously permitted under Section 17.66.120 have undergone extensive review, examination, and scrutiny in conditional use permit proceedings and the findings necessary to establish a medical marijuana dispensary have been made. The voters recognize it would be inefficient, duplicative, and inequitable to the businesses and their customers to subject already permitted medical marijuana dispensaries currently in operation to another proceeding to authorize retailer-storefront commercial cannabis activity at their current locations.
H. Nothing in this ordinance shall prohibit the city council from enacting a regulatory framework for retailer-storefront commercial cannabis activity for new applicants.

I. The city council shall have jurisdiction to hear appeals of requests for regulatory permits. A medical marijuana dispensary shall have the right to appeal a denial of a request for regulatory permit to the city council. The request must be made within sixty (60) days after the date of the decision of the city manager by submitting a letter to the city council stating the reason for the appeal. The council shall fix a time and place for hearing such appeal, and the city clerk shall give notice in writing to such appellants at his or her last known place of address. The standard of review on all appeals shall be de novo review. The findings of the council shall be final and conclusive and shall be served upon the appellant by certified U.S. Mail and electronic mail. The city council shall review the appeal on a de novo basis.

5.55.060. Conditional Use Permit.

A. Any medical marijuana dispensary previously issued a conditional use permit subject to 17.66.120 shall be permitted to operate a retailer-storefront under the conditions set forth in their conditional use permit except where any condition conflicts with Section 17.66.120, as amended by this ordinance. In the event any provision of the amended Section 17.66.120 conflicts with a condition on an existing conditional use permit previously issued pursuant to Section 17.66.120, the provision of the amended Section 17.66.120 shall be controlling.

B. The purpose of this section is to authorize existing medical marijuana dispensaries permitted under Section 17.66.120 to engage in retailer-storefront commercial cannabis activity given that those permitted dispensaries have already been found to meet the criteria necessary to engage in medical marijuana dispensary activity in the city. The voters declare that the business operations and impacts of a medical marijuana dispensary and a commercial cannabis retailer-storefront are virtually identical and that the amendments to Section 17.66.120 are not major changes. The voters recognize it would be inefficient, duplicative, and inequitable to the businesses and their customers to subject permitted medical marijuana dispensaries currently in operation to a second conditional use permit proceeding to authorize retailer-storefront commercial cannabis activity.

C. The city shall not enforce any conditions on a previously issued conditional-use permit that is contrary to this chapter or an express provision provided for in Section 17.66.120, as amended by this ordinance.

D. The planning director may modify an existing conditional use permit to incorporate the amended standards set forth in Section 17.66.120. The incorporation of the standards set forth in Section 17.66.120 into an existing conditional use permit shall be deemed a minor change pursuant to Section 17.66.060.C. Nothing contained in this Subsection D shall be considered a significant change involving a major deviation from the original approval of the permit.
5.55.070. Change of Location.

A. A regulatory permit for retailer-storefront commercial cannabis activity shall authorize retailer-storefront commercial cannabis activity only at the location associated with the regulatory permit. A Permittee may change the location associated with the regulatory permit for retailer-storefront commercial cannabis activity to a new location upon submission of a change of location application.

B. Within 30 days of the effective date, the city manager shall adopt a process (to include any necessary forms and procedures) for the relocation of a retailer storefront and regulatory permit, including allowance for temporary business cessation incidental to a change in location.

C. A Permittee may change the location of a retailer storefront and a regulatory permit to a location that has a pending application for a conditional use permit for activity pursuant to Section 17.66.120, but the Permittee shall not engage in any retailer-storefront commercial cannabis activity at the new location until after the conditional use permit for activity pursuant to Section 17.66.120 has been issued.

D. The city manager shall not deny the renewal of a Permittee’s commercial cannabis regulatory permit for cessation of business operations while the Permittee is applying for a conditional use permit for activity pursuant to Section 17.66.120 at a new location.

5.55.080 Numerical Limit.

No more than two Permittees shall be permitted to operate a retailer-storefront commercial cannabis business in the city at any time. For purposes of this section, the numerical limit is only intended to create a maximum number of two businesses that may be issued regulatory permits for retailer-storefront commercial cannabis activity. The city manager shall not issue additional regulatory permits if there are already two regulatory permits for retailer storefront commercial cannabis activity in the city. The city manager shall not accept applications for regulatory permits for retailer-storefront commercial cannabis activity from new applicants if the maximum number of regulatory permits has been issued. This numerical limit shall not apply to the change in location of an existing regulatory permit where a Permittee applies for a change of location, in which case a new regulatory permit shall be issued to a Permittee contingent upon surrender of an existing regulatory permit. The numerical limit of two is consistent with Malibu’s historical policy of permitting two medical marijuana dispensaries to operate.

5.55.090. Regulatory Fees.

Within 30 days, the city manager may establish a processing fee, a permit fee, and/or a renewal fee for regulatory permits for retailer-storefront commercial cannabis activity. The processing, permit, and/or renewal fee shall not exceed the fee to apply for a conditional use permit.
5.55.100. Renewal.

A. The city manager shall develop and produce a renewal application for regulatory permits. An application for annual renewal of a commercial cannabis regulatory permit shall be filed with the city manager at least 30 calendar days prior to the expiration date of the current permit, on a form designated by the city manager. The city manager shall provide to the Permittee a copy of the application for renewal by certified mail at least 120 days, 90 days, and 30 days prior to the expiration date of the current regulatory permit. The Permittee shall be provided a 60-day grace period after the expiration date in which the Permittee may renew the regulatory permit.

B. Any Permittee submitting an application less than 30 days before the expiration of a regulatory permit shall be required to pay a late renewal application fee, as established by the city council. The late fee shall not exceed 25% of the renewal fee.

C. The Permittee shall include on the renewal application any information that has changed since the filing of the initial application or prior year's renewal application, as applicable.

D. The city manager shall automatically approve an application for renewal of a regulatory permit unless any of the following exists:

1. The commercial cannabis business has not been in regular and continuous operation in the six months prior to the renewal application and the Permittee has not applied for a conditional use permit for activity under Section 17.66.120 at a new location.

2. The Permittee has made a false, misleading or fraudulent statement or omission of fact in the renewal application.

3. The Permittee's state license has been revoked for regulatory violations.

E. Upon approval of an application for renewal of a regulatory permit for retailer-storefront commercial cannabis activity, the city manager shall issue to the Permittee a renewed regulatory permit for retailer storefront commercial cannabis activity.

F. Permittees will be notified in writing of the decision to deny a renewal application. The denial notification shall include and list the specific reason or reasons for denial, the factual findings supporting the denial, and the Permittee's appeal rights.

G. The city council shall have jurisdiction to hear appeals of denials. Permittees shall have the right to appeal a denial of an application for renewal to the city council. The Permittee may appeal the decision on the application for renewal within sixty (60) days after the date of the decision of the city manager by submitting a letter to the city council stating the reason for the appeal. The council shall fix a time and place for hearing such appeal, and the city clerk shall give notice in writing to such Permittee at his or her last known place of address. The standard of review on all appeals shall be de novo review. The findings of the council shall be final and conclusive and shall be served upon the appellant by certified U.S. Mail and electronic mail.
5.55.110 Administrative Enforcement.

A. Nothing in this chapter shall be construed as prohibiting the city council from establishing an administrative enforcement framework to regulate Permittees that is consistent with the purposes of this chapter.

5.55.120 Reserved.

5.55.130 Cannabis tax

A. Each Permittee that is engaged in the sale of cannabis and cannabis products is subject to and shall pay a tax in the amount of two and one half percent (2.5%) of the gross receipts or fractional part thereof on the sale of cannabis and cannabis products. This tax shall not apply to the sale of medical cannabis and medical cannabis products and to any state sales or excise tax collected by the Permittee.

B. Such tax payments shall be made by the Permittee to the city manager no later than the last business day of March, June, September and December for gross receipt taxes incurred during the preceding three months.

C. The Permittee shall submit a statement of the total amount of adult use retail sales of cannabis and cannabis products for the prior three months of each quarter, to the city manager, on forms provided by the city manager. This total amount will not include any sales tax and state excise tax collected on those adult use retail sales of cannabis and cannabis products.

D. Nothing shall prohibit the city from enacting regulations to administer and collect the tax.

E. The proceeds from the cannabis tax shall be used for general city purposes.

5.55.140 Additional Operational Regulations.

A. Nothing in this chapter shall prohibit the city council from adopting additional regulations for retailer-storefront commercial cannabis activity that are consistent with the Medical and Adult-Use Cannabis Regulation and Safety Act and any regulations adopted thereto. However, the city shall not prohibit or effectively prohibit Permittees from operating a retailer-storefront.

B. Nothing in this chapter shall prohibit the city council from adopting regulations for delivery consistent with Medical and Adult-Use Cannabis Regulation and Safety Act and any regulations adopted thereto. However, the city shall not prohibit or effectively prohibit Permittees from making retail deliveries of cannabis and cannabis products.

5.55.150 Severability.

If any section, subsection, sentence, clause, portion, or phrase of this chapter is for any reason held to be invalid or unconstitutional by a decision of any court of any competent jurisdiction.
such decision shall not affect the validity of the remaining sections, subsections, sentences, clauses, portions, or phrases of this ordinance. The citizens of Malibu hereby declare that they would have passed this ordinance and each and every section, subsection, sentence, clause, portion, or phrase without regard to whether any other section, subsection, sentence, clause, portion, or phrase of this chapter would be subsequently declared invalid or unconstitutional.

Section 2.

Malibu Municipal Code Section 17.66.120 is hereby amended to read in its entirety:

A. Location Criteria. A medical marijuana dispensary and/or a retailer-storefront engaged in commercial cannabis activity shall be located in compliance with the following requirements:

1. The interior walls of the dispensary and/or retailer-storefront tenant space shall not be located within one thousand (1,000) feet, using a straight line radius, of the interior walls of any other medical marijuana dispensary or retailer-storefront located within or outside the city.

2. The interior walls of the dispensary and/or retailer-storefront tenant space shall not be located within one thousand (1,000) feet, using a straight line radius, of the property lines of a property containing a church, temple, or other places used primarily for religious worship, or a playground, public park, public library, licensed child day care facility, nursery school or school that is located within or outside the city. For the purposes of this requirement, "school" shall mean any property containing a structure which is used for education or instruction, whether public or private, at grade levels preschool and kindergarten through 12.

3. A dispensary and/or retailer-storefront tenant space located above the ground floor shall be accessible to persons with disabilities in conformance with the California Building Code and Los Angeles County Building Code. If such tenant space does not meet this requirement, a condition of approval shall be included requiring the modifications necessary to achieve such accessibility.

4. For purposes of determining compliance with paragraphs 1 through 3 of this subsection A, the date of determination for compliance for an existing medical marijuana dispensary permitted under Section 17.16.120 engaging in retailer/storefront activity at its original location shall be the date on which the conditional use permit under Section 17.66.120 was issued in the first instance. A previously issued conditional use permit subject to 17.66.120 shall be prima facie evidence that a medical marijuana dispensary and/or retailer storefront is in compliance with paragraphs 1 through 3 of this subsection A. Nothing contained in this subsection A shall prohibit the city from conducting inspections and other legally applicable actions to enforce the conditions in subsection B to which a medical marijuana dispensary and/or retailer-storefront is subject.
13. Development and Performance Standards. The purpose of this Subsection B is to assure that the operations of medical marijuana dispensaries and/or retailer-storefronts are in compliance with California law and to mitigate the adverse secondary effects from operations of dispensaries and/or retailer-storefronts. Medical marijuana dispensaries and/or retailer-storefronts shall operate in compliance with the following standards:

1. Dispensaries and/or retailer-storefronts shall install lighting to illuminate the exterior of the building and all entrances and exits to the facility. Exterior lighting shall be one foot candle, and shall remain on until at least one hour after the closing of the dispensary.

2. Security guards shall be provided at all entrances and exits of the dispensary and/or retailer-storefront tenant space during all hours of operation. Any security guards employed by or provided at any dispensary and/or retailer-storefront shall be currently licensed by the Department of Consumer Affairs, shall possess a valid “Security Guard Card” at all times while on the premises, and shall be in full compliance with all laws and regulations governing security guards.

3. If determined necessary by the city manager at any time, dispensaries and/or retailer-storefronts shall provide a neighborhood security guard patrol for a two-block radius surrounding the dispensary during all or specified hours of operation.

4. No doctor shall issue a recommendation within the dispensary and/or retailer-storefront tenant space for medical cannabis.

5. There shall be no sales of alcohol or tobacco, and there shall be no smoking, vaporization or consumption of alcohol, tobacco, cannabis, or medical cannabis in any form within the dispensary and/or retailer-storefront tenant space.

6. Hours of operation shall be limited to Monday through Saturday, between the hours of ten a.m. and eight p.m. and Sunday between the hours twelve p.m. and seven p.m.

7. Retailer-storefronts and/or dispensaries may dispense medical cannabis to qualified patients and their caregivers as defined by California Health and Safety Code Section 11362.5 (Proposition 215). Qualifications shall include, but not necessarily be limited to, possession of a valid doctor’s recommendation, not more than one-year old, for medical marijuana use by the patient or a medical marijuana identification card issued as part of the medical marijuana ID program for Los Angeles County.

8. Retailer-storefronts and/or dispensaries shall notify patrons of the following through posting of a sign in a conspicuous location within the retailer-storefront and/or dispensary tenant space:

   a. Use of medical cannabis shall be limited to the patient identified on the doctor’s recommendation. Secondary sale, barter or distribution of medical marijuana is a crime and can lead to arrest.
b. No smoking, vaporization or consumption of cannabis or medical cannabis in any form is permitted within the facility tenant space or onsite.

c. Forgery of medical documents is a felony.

9. Dispensaries shall not provide medical cannabis or medical cannabis products to any individual in an amount not consistent with personal medical use. Retailer-storefronts shall not provide cannabis or cannabis products to any individual in an amount not consistent with personal use.

10. Retailer-storefronts and dispensaries shall not store more than two hundred dollars ($200.00) in cash reserves overnight on the premises.

11. Any patient under eighteen (18) years of age shall be accompanied by a parent or legal guardian.

12. Retailer-storefronts and dispensaries shall maintain a community relations staff person at the retailer-storefront and/or dispensary tenant space during operating hours, and shall provide law enforcement and all interested neighbors with the name and phone number of the community relations staff person to notify if there are operational problems with the establishment.

13. The exterior appearance of the dispensary and/or retailer-storefront structure shall be compatible with commercial structures already constructed or under construction within the immediate neighborhood, to ensure against blight, deterioration, or substantial diminishment or impairment of property values in the vicinity.

14. Malibu code enforcement officers, sheriff’s deputies or other agents or employees of the city requesting admission for the purpose of determining compliance with these standards shall be given unrestricted access.

15. The proposed use shall comply with all other applicable property development and design standards of the Malibu Municipal Code, the Medical and Adult Use Cannabis Regulation and Safety Act and any related regulations enacted, and with the provisions of Health and Safety Code Section 11362.5 (adopted as Proposition 215, the “Compassionate Use Act of 1996”) or any state regulations adopted in furtherance thereof.

16. Numerical Limit. No more than two conditional use permits for medical marijuana dispensaries and/or retailer-storefront commercial cannabis activity shall be issued and active at one time in the city. This numerical limit shall not apply to the change in location of an existing retailer-storefront where a retailer-storefront permitted pursuant to Chapter 5.55 applies for a conditional use permit subject to this section at a new location as part of a lawful relocation pursuant to Section 5.55.070. This numerical limit shall not be used as a ground for not processing an application for conditional use permit subject to this section or for not issuing a conditional use permit as part of a lawful relocation of a retailer-storefront permitted pursuant to Chapter 5.55.
17. Indemnification and Disclaimer Provision.

    a. To the fullest extent permitted by law, the city of Malibu shall assume no liability whatsoever, and expressly does not waive sovereign immunity, with respect to cannabis and cannabis products, medical cannabis and medical cannabis products, or for the activities of any medical marijuana dispensary and/or retailer-storefront. Upon receiving possession of a conditional use permit, the operator of the dispensary shall sign an agreement:

        i. Indemnifying the city of Malibu;

        ii. Carrying insurance in the amounts and of the types that are acceptable to the city manager; and

        iii. Naming the city as an additionally insured.

    b. As a condition of approval of a conditional use permit, the applicant, property owner, business operator, and their respective successors in interest, agree to indemnify, defend, and hold harmless city and its officers, officials, employees and volunteers from and against any and all claims, demands, damages, costs, and expenses of liability (including without limitation attorney’s fees and costs of litigation) of every nature arising out of or in any way connected with the issuance of the conditional use permit and the operation of the use authorized thereby. The applicant, property owner, business operator, and their respective successors in interest shall be jointly and severally obligated for purposes of this subsection.

    c. Approval and inspection processes conducted pursuant to this chapter shall preserve to the maximum extent possible all legal protections and privileges, consistent with reasonably verifying the qualifications and status of qualified patients and primary caregivers. Disclosure of any patient information to assert facts in support of a qualified status shall not be deemed a waiver of confidentiality of that information under any provision of law.

    d. Should any medical marijuana dispensary and/or retailer-storefront be determined by a court of competent jurisdiction to be in violation of any state or federal laws, the city may seek modification or revocation of the conditional use permit. Medical marijuana dispensaries and/or retailer-storefronts shall be entitled to applicable due process and appeal proceedings.

    e. Should any medical marijuana dispensary or retailer-storefront be determined to be in violation of any local law or cannabis-related state regulation, the planning commission may initiate proceedings to impose conditions on the conditional use permit to prevent the violation of law from occurring again. Upon the determination of a second violation, the planning commission may initiate proceedings to impose additional conditions or commence proceedings to suspend or revoke the conditional use permit. Medical marijuana dispensaries and/or retailer storefronts shall be entitled to applicable due process and appeal proceedings.
C. Supplemental Submittal Requirements:

1. California Department of Justice (DOJ) Live Scan: Criminal background check for the operator.

2. Photocopies of government issued identification for each applicant and operator. These may include a state driver’s license, state ID, or passport. These will be used to confirm identity and that the age of the applicant and operator is twenty-one (21) years of age or older. Minors, persons under the age of twenty-one (21) years of age, are not permitted to operate a dispensary or retailer-storefront.

3. A state of California seller’s permit.

4. Site plan accurately showing property lines, parking areas and existing and proposed structures and uses on the subject.

5. Architectural Plan—Tenant Space Floor Plan and Building Elevations. A dispensary and/or retailer-storefront shall have a lobby waiting area at the entrance, a designated area for dispensing, and a separate and secure designated area for storage. All entrances and exits to the tenant space and the building must be identified.

6. One Thousand (1,000) Foot Radius Map and Address List. This list must include verified mailing information for property owners, and all occupants within those properties, for those properties within a one thousand (1,000) foot radius, using a straight line radius, of the dispensary and/or retailer-storefront tenant space. The map must show all property boundaries within one thousand (1,000) feet of dispensary tenant space. Provide a digital, mail-merged version of the mailing information.

C. Nothing in this section shall be construed as prohibiting the city from amending the operating standards contained herein in a manner that is consistent with the Medical and Adult-Use Cannabis Regulation and Safety Act and any regulations adopted thereto. However, the city shall not prohibit or effectively prohibit retailer-storefront commercial cannabis activity and delivery.

D. The terms and definitions set forth in Section 5.55.020 shall be applicable to this Section 17.66.120.

Section 3.

Malibu Municipal Code Section 17.75.030 is hereby repealed in its entirety.

Section 4.

Malibu Municipal Code Section 17.75.040 is hereby amended to read in its entirety:
Except for medicinal cannabis dispensaries permitted to operate pursuant to Section 17.66.120 and Chapter 5.55 and retailer-storefronts permitted to operate pursuant to Chapter 5.55., all commercial cannabis activities are prohibited in all zones in the City.

Section 5.

Malibu Municipal Code Section 17.22.040.P is hereby amended to read in its entirety:

P. Medical marijuana dispensaries and/or commercial cannabis retailer-storefront subject to the standards set forth in Section 17.66.120.

Section 6. Severability.

If any section, subsection, sentence, clause, portion, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of any competent jurisdiction, such decision shall not affect the validity of the remaining sections, subsections, sentences, clauses, portions, or phrases of this ordinance. The voters hereby declare that it would have passed this ordinance and each and every section, subsection, sentence, clause, portion, or phrase without regard to whether any other section, subsection, sentence, clause, portion, or phrase of this ordinance would be subsequently declared invalid or unconstitutional.

Section 7. Certification

The City Clerk shall certify the adoption of this ordinance.
RESOLUTION NO. 18-50

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MALIBU AMENDING SECTIONS 1(A) AND 3 OF RESOLUTION NO. 18-44 TO REPLACE THE BALLOT STATEMENT FOR THE INITIATIVE MEASURE THAT IS TO APPEAR ON THE CONSOLIDATED GENERAL MUNICIPAL ELECTION AND GENERAL ELECTION TO BE HELD ON NOVEMBER 6, 2018, PURSUANT TO ELECTIONS CODE SECTION 10403

The City Council of the City of Malibu does hereby find, order, and resolve as follows:

SECTION 1. The City adopted Resolution No. 18-44 on July 9, 2018, requesting that the Board of Supervisors for the County of Los Angeles consent to the consolidation of the City’s general municipal election with the statewide general election to be held on Tuesday, November 6, 2018, for the purpose of electing two members of the City Council and submitting a proposed initiative ordinance to the voters. This resolution amends Section 1(A) and Section 3 of Resolution No. 18-44 without altering the remainder of remainder of Resolution No. 18-44. The amendments replace the text of the ballot statement for the initiative ordinance.

SECTION 2. Section 1(A) of Resolution No. 18-44 is hereby amended in its entirety to read as follows:

The City Council of the City of Malibu called a General Municipal Election to be held on November 6, 2018, for the purpose of the election of two members of the City Council for the full term of four years and submitting to the voters a question the question ‘Shall the ordinance be adopted to (1) allow and regulate cannabis (marijuana) businesses; (2) permit existing medical marijuana dispensaries to sell and deliver recreational (adult use) cannabis; and (3) impose a new general tax of 2.5% of gross receipts from sales of non-medical cannabis, the revenues from which may be used for general city purposes, until repealed by voters, which tax is estimated to raise approximately $75,000-$150,000 annually?’.

SECTION 3. Section 3 of Resolution No. 18-44 is hereby amended in its entirety to read as follows:

The initiative measure is to appear on the ballot as follows:

| Shall the ordinance be adopted to (1) allow and regulate cannabis (marijuana) businesses; (2) permit existing medical marijuana dispensaries to sell and deliver recreational (adult use) cannabis; and (3) impose a new general tax of 2.5% of gross receipts from sales of non-medical cannabis, the revenues from which may be used for general city purposes, until repealed by voters, which tax is estimated to raise approximately $75,000-$150,000 annually? | YES | NO |
| --- | --- |

SECTION 4. Other than as described in Sections 2 and 3, above, Resolution No. 18-44 shall remain in effect as adopted by the City Council on July 9, 2018.

SECTION 5. The City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

PASSED, APPROVED and ADOPTED this 29th day of July 2018.
ATTEST:

HEATHER GLASER, City Clerk
(seal)

APPROVED AS TO FORM:

CHRISTI HOGIN, City Attorney