

# Malibu City Council Zoning Ordinance Revisions and Code Enforcement Subcommittee Special Meeting Agenda

**Tuesday, March 22, 2011, 9:00 a.m.**  
Malibu City Hall – Large Conference Room  
23815 Stuart Ranch Road

**Mayor John Sibert  
Councilmember Jefferson Wagner**

## **Call to Order**

## **Approval of Agenda**

## **Public Comment**

This is the time for members of the public to comment on any items not appearing on this agenda. Each public speaker shall be allowed up to 3 minutes each for comments. The Subcommittee may not discuss or act on any matter not specifically identified on this agenda, pursuant to the Ralph M. Brown Act.

## **Discussion Items**

### **1. Code Enforcement Policy**

Staff recommendation: Provide comments and recommendations to staff on updating the City's Code Enforcement Policy.

Staff contact: Planning Manager Parker-Bozylinski, 310-456-2489, ext.265

## **Adjournment**

## **Potential Upcoming Agenda Items**

- Sign Ordinance

*I hereby certify under penalty of perjury, under the laws of the State of California that the foregoing agenda was posted in accordance with the applicable legal requirements. Dated this 16<sup>th</sup> day of March 2011.*

  
Mary Linden, Executive Assistant



Zoning Ordinance  
Revisions & Code  
Enforcement  
Subcommittee Meeting  
03/22/11  
**Item 1**

## Zoning Ordinance Revisions and Code Enforcement Subcommittee Agenda Report

**To:** Zoning Ordinance Revision and Code Enforcement Subcommittee (ZORACES) Members Wagner and Sibert

**Prepared by:** Joyce Parker Bozylinski, AICP, Planning Manager *JPS*  
Lisa Tent, Senior Code Enforcement Officer *LT*

**Approved by:** Victor Peterson, Community Development Director *VP*

**Date prepared:** March 11, 2011                      **Meeting date:** March 22, 2011

**Subject:** Code Enforcement Policy

---

**RECOMMENDED ACTION:** Provide comments and recommendations to staff on updating the City's Code Enforcement Policy.

**DISCUSSION:** The City of Malibu currently has a Code Enforcement Policy (Attachment 1) that was adopted in 2000. The City Council, at the request of Mayor Sibert, directed staff to bring back a discussion on the policy to ensure that it is meeting the current needs of the City. The existing policy has three components. The first establishes that code enforcement is handled on a complaint basis except for those complaints involving health and safety matters or construction and grading without a permit. All other complaints must be in writing. Anonymous complaints will not be investigated.

The second component states that no progress reports will be provided to the complainant. The reason for this policy was to avoid situations where a complaining party or member of the public would constantly call staff for updates on the case. In addition, once an investigation is underway only certain basic information (property owner name, address, violation type, and basic case status i.e., "open" or "closed" or "pending") is public information. Additionally once a case is opened the City becomes the complainant.

The last component of the Code Enforcement Policy deals with enforcement. This section covers home occupations, pre-1993 unpermitted structures, notice of violations (NOVs) and extensions of compliance deadlines. The home occupation provision is obsolete as that section was written at a time when home occupations were not addressed in the Municipal Code. Home occupations are now incorporated into the Zoning Code (Title 17). The pre-1993 provision states that generally there will be no criminal prosecutions or civil actions on structures built before 1993. The exception to that rule is situations where the Building

Official determines that a condition on a property creates a substantial or imminent risk to health and safety, a significant adverse impact on an adjacent property or a discharge of a pollutant or contaminant. The Notice of Violation provision states that nothing in the Code Enforcement Policy shall impact the City's ability to prepare, serve and record a Notice of Violation and the extensions of compliance deadline provision requires the Building Official to provide written notice to violators that the City will consider requests to extend any compliance deadline set after the Code Enforcement Policy goes into effect.

For background purposes only, staff has include a copy (Attachment 2) of a staff report presented to the City Council in 2008 in which staff recommended several changes to the adopted Code Enforcement Policy. These recommendations were not enacted and therefore, the 2000 Interim Code Enforcement Policy remains in effect.

Staff offers the following options to change the Code Enforcement Policy for consideration by ZORACES:

1. Should the City maintain a solely reactive (complaint driven) code enforcement program or should the program become more proactive? Options to make the program more proactive include:
  - a. Not requiring written complaints for zoning violations in commercial zones. While this would apply to any violation in a commercial zone, this would also allow staff to more uniformly enforce the City's sign ordinance. Residents and other business owners often don't know what the City's rules are for signs and so they may not submit a written complaint yet unpermitted signage can potentially have a negative visual impact on a community.
  - b. Allowing code enforcement action against a zoning violation that is viewed by staff as part of their daily job duties. This could include driving by a site and seeing a new fence or landscaping being installed without the benefit of permits or being on a property for a site inspection and during that site inspection observing a code violation such as an unpermitted structure.
2. The current policy states that no progress reports will be given to the complainant. While there are limits on what types of information can be legally provided, staff could work with the City Prosecutor to develop a better method of informing the public of the status of the investigation. This may help ease the frustration felt by complainants when they report a violation and have no way of knowing that staff is working to resolve the issue. Depending on the nature of the violation, code enforcement cases often take some time to resolve and providing the public with more information may reduce the number of calls to the City and/or to Councilmember's.

For instance, staff is in the process of developing standard templates that will be sent to violators as well as protocols on the timing of each letter. The standard protocol (1<sup>st</sup> letter sent within x days, 2 letter sent within x days, etc.) on handling code enforcement complaints would be public information and staff would be able to tell the public at which stage the investigation was in (i.e. 1<sup>st</sup> letter sent, etc.). Other options include making basic information (address, violation type, etc.) available in the property permit file and on the City's website.

3. Should staff move forward with an ordinance allowing Notice of Violations to be filed on properties for zoning violations? Currently the provision that allows staff to prepare, serve and record a Notice of Violation on a property is only in the Building Code. Amending the Municipal Code to allowing Notice of Violations to be recorded on properties with zoning violations could be a good tool for staff to utilize to ensure compliance with all of the cities regulations.
4. Should the policy provide that no new planning or building permits will be issued on properties that have an active code enforcement case except to correct the violation? The policy could allow an applicant to process a CDP for new development concurrently with a plan to cure the existing code violation.
5. Should the City move to a proactive code enforcement program in which code enforcement staff would actively target certain code violations such as signage or other more visible violations and pursue these violations citywide without a written complaint?

While the Code Enforcement Policy could have a provision that indicates violations of conditions of approval on a planning approval, Coastal Development Permit or any permit issued by the City can be pursued without a written complaint, staff believes this should be standard operating procedure. Any violation of a condition of approval should be pursued proactively without a written complaint. If the City does not enforce the conditions of approval on a permit, those conditions of approval become meaningless.

In terms of the tools available to Code Enforcement to gain compliance and to recover the enforcement costs to the City, the Planning Division has an After the Fact Approval Permit fee that is set at five times the regular fee. The fee can be reduced by the Director to two times the regular fee. Building and Safety has a provision that allows the collection of double the regular permit fee. In addition, the Malibu Municipal Code (Chapter 1.10 in Title 1) allows the Code Enforcement Officer to issue an administrative citation imposing administrative fines for violations of the M.M.C. Once a code enforcement case has been closed, the City also has the ability to require the violator to pay for the time spent by Code Enforcement in resolving the case.

In summary, staff is seeking feedback from ZORACES on updates and changes to the existing code enforcement policy. There are several items in the existing policy that need clarification and clean up which staff will do when we move forward to the City Council but the purpose of this discussion is on what changes should be made to the policies related to code enforcement. The policy that is ultimately developed could become Malibu's Code Enforcement Policy instead of a City Council policy.

STAFF FOLLOW UP: Staff will incorporate comments and recommendations into a final Code Enforcement Policy and schedule the item for City Council review and approval.

ATTACHMENTS:

1. Existing Code Enforcement Policy
2. City Council June 23, 2008 Staff Report w/o attachments



# City of Malibu

## City Council Policy

Policy #43

---

Title: Interim Code Enforcement Policy

Purpose: To establish a Code Enforcement Policy for the City of Malibu to be applied while the City is considering, adopting and implementing revisions to the Interim Zoning Ordinance and other city regulations concerning land use as recommended by the Code Enforcement Task Force.

Policy Statement: Policy Statement:

1. Complaints. As code enforcement is handled in the City of Malibu on a complaint basis, all code enforcement complaints, other than those involving (i) threats to public health or safety, or (ii) construction and grading without a permit, shall be submitted in writing to the Building Official or his/her designated staff members. All such complaints shall be subject to inspection by the persons accused of the violation(s), provided the person states in writing, on forms provided by the City, that he/she understands that inspection of the complaint constitutes a waiver by the City of the California Public Records Act provisions which might otherwise apply to that complaint. Complainants shall be informed of this policy at the time the complaint is filed. Anonymous complaints will not be investigated. Once a complaint is investigated and confirmed, the complainant cannot withdraw the complaint. At that point the City of Malibu becomes the complainant.
2. Reports. Progress reports will not be provided to the complainant.
3. Enforcement.
  - a. Home Occupations. No criminal prosecutions or civil actions shall be filed, nor any abatement efforts commenced, which concern an alleged

violation of Malibu Municipal Code § 9.3.03,A,19 (entitled "Home Occupations"), unless the alleged violation would also constitute a violation of the proposed amendment attached to "Resolution of the City Council of the City of Malibu Stating its Intention to Amend the Interim Zoning Ordinance With Regard to Home Occupation Uses" adopted on July 24, 2000.

*Policy #43*

b. Pre-1993 Unpermitted Structures.

(1) General Rule. No criminal prosecutions or civil actions shall be filed, nor any abatement efforts commenced, which concern an allegation that a structure (including, but not limited to, a building, fence, patio, horse corral) was constructed prior to March 1993 without a building permit or, where no building permit was required, in violation of the zoning and planning regulations applicable to the property, except as stated in subsection (2).

(2) Exception. The policy stated in subsection (1) above does not apply where the Building Official reasonably determines that there exists on the property a condition which creates a substantial and imminent risk of (i) impairment of the safety or health of any person, (ii) a significant adverse impact on an adjacent property, or (iii) a discharge of a pollutant or contaminant into the environment, or where the City is legally required to pursue enforcement by state or federal law. Where the Building Official has made such a determination, enforcement of the Municipal Code shall continue so long as necessary to abate the risk.

The phrase "condition which creates a substantial and imminent risk of impairment of the safety or health" shall include, but not be limited to, hazardous electrical wiring, plumbing cross connections, substandard or inoperable septic systems, non-conforming exits, structural hazards, and conditions defined as dangerous in the Malibu Building Regulations (Municipal Code Article VIII) as determined by the Building Official. A septic system which does not have all required permits or which has not passed inspection by the City is presumed to be such a "condition."

c. Notices of Violation.

Nothing contained in this Interim Policy shall affect the authority of the Building Official to prepare, serve and record a Notice of Violation in order to provide notice to prospective buyers, tenants and lenders of conditions relating to the property.

d. Extensions of Compliance Deadlines.

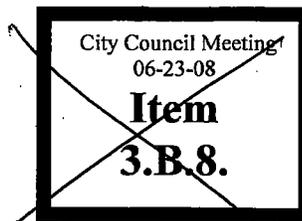
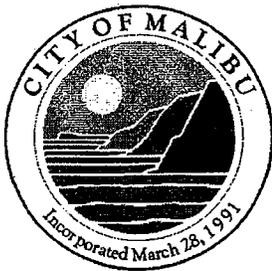
The Building Official shall provide written notice to persons alleged to have violated the Interim Zoning Ordinance or Building Ordinance that the City will receive and consider requests to extend any compliance deadline set after this Policy is in effect, particularly where such an extension is necessary to postpone or avoid eviction of a tenant.

Date Adopted:

February 28, 2000

Date Amended:

August 7, 2000



# Council Agenda Report

To: Mayor Conley Ulich and the Honorable Members of the City Council

Prepared by: Gail Sumpter, Division Manager – Permit Services / Code Enforcement *gp*

Reviewed by: Victor Peterson, Community Development Director

Approved by: Jim Thorsen, City Manager *JT*

Date prepared: May 20, 2008 Meeting date: June 23, 2008

Subject: Interim Code Enforcement Policy

---

**RECOMMENDED ACTION:** Adopt revised Council Policy #43 – Code Enforcement Policy.

**FISCAL IMPACT:** The expansion in proactive enforcement may result in an increase in City Prosecutor involvement and expenditures.

**DISCUSSION:** The purpose of this report is to present a revised Council Policy #43, Code Enforcement Policy. For background, information is provided regarding the Code Enforcement program overall.

## History

During the early 1990's, code enforcement in Malibu was primarily based on complaints received. Proactive enforcement was limited. Many of the early code enforcement issues involved building and grading without permits. Written, verbal, and anonymous complaints were accepted. There was little emphasis on follow-up and providing assistance to property owners with violations.

By the late 1990's, the code enforcement program was more formalized and an emphasis was placed on follow-up to assure abatement. Code enforcement was both reactive and proactive but most new cases were generated by verbal and/or written complaints. Anonymous complaints were accepted but did not comprise a large percentage of complaints. A computer based system was created to track violations to assure that violations were abated. Voluntary compliance was the goal. If compliance

could not be obtained by verbal and written requests, a Notice of Violation could be recorded against title to the property. Cases that were already in the hands of the City Prosecutor were monitored but fewer cases were referred to the City Prosecutor and referrals were limited to only the most egregious, longstanding violations.

### **Current Code Enforcement**

Code enforcement is still handled primarily on a complaint basis. However, code enforcement is proactive with respect to building and grading without a permit and issues that impact health and safety. Additionally, quality of life issues, such as graffiti and illegal dumping, are handled proactively.

Pursuant to the current Council Policy #43 (Attachment 1), complaints are required to be in writing, unless the alleged violation is a health or safety issue, or involves building or grading that is in progress without a permit. If a complaint is required to be in writing, the complainant must use a City form that contains a disclosure that the complainant's name will be disclosed upon request by the alleged violator. Complaints regarding building without a permit or grading without a permit or involving health or safety issues are accepted verbally. In the case of a verbal complaint, the complainant's name is not disclosed.

For the past several years, follow-up has continued to improve to assure that violations are abated and/or documented until abatement occurs. Code enforcement also emphasizes assistance to property owners and property owners are provided with clear directions for abatement.

Currently, enforcement methods may be comprised of one or more of the following:

- Verbal request to stop or correct a violation
- Written Stop Work Order
- Written request (letter) to stop or correct a violation
- Follow up written request(s)
- Meeting(s) between the property owner, Code Enforcement Officer, and relevant staff
- Office Conference with the City Prosecutor
- Referral to the City Prosecutor for filing of a criminal or civil complaint

Depending on the nature of the violation, enforcement may begin or end at any level. For example, if a property owner refuses to obtain a permit for relatively minor work, it is unlikely that the matter would be referred to the City Prosecutor. Conversely, if there is a violation that is ongoing and a threat to public health or safety, a referral might be made to the City Prosecutor immediately.

If there is no compelling reason to pursue the matter with the City Prosecutor's office, a Notice of Violation (NOV) may be filed against the property title (after due notice to the property owner.) A Notice of Violation can interfere with a property owner's ability to re-finance or sell the property and Code Enforcement staff will wait until the property owner needs the NOV released and abatement will be required at that time. Note that NOV's are authorized by the Building Code and therefore may only be used if there is a Building Code violation.

Referrals are ordinarily made to the City Prosecutor's office only in those cases where the nature of the violation is one which requires immediate abatement and the property owner refuses to cooperate.

### **Code Enforcement Task Force**

In late 1999 and early 2000, a group of residents addressed the Council regarding perceived code enforcement policies and procedures in Malibu. Their complaints resulted in the Council's creation of a task force, which was composed of 16 active members. The Task Force met weekly beginning in March, 2000 and delivered its report to Council at the November 27, 2000 Council meeting.

The Code Enforcement Task Force (CETF) prepared a report that consisted of reports from three sub-committees: IZO<sup>1</sup>, Ancillary Structures, and Code Enforcement Policy. In addition, a Minority report was submitted. A copy of the Code Enforcement Policy report is attached. (Attachment 4)

The CETF IZO report was broad and included recommendations for changes in the zoning laws and processes. Some of the recommendations in that report have been made moot by the subsequent implementation of the Local Coastal Program. The Ancillary Structure report proposed a program for legalizing existing, unpermitted structures. The recommendations contained in these two reports will not be discussed in this report, pending further direction from Council.

An Interim Code Enforcement Policy was adopted by Council on February 28, 2000 and revised August 7, 2000. (Attachment 1). After operating under the Interim Code Enforcement Policy for several years, the policy was brought back to Council in October 2006 for discussion. Council referred the issue to the Zoning Ordinance Revision and Code Enforcement Subcommittee (ZORACES). The Code Enforcement Policy report was reviewed at several ZORACES meetings in 2006 and 2007 and suggestions were made for changes in the code enforcement policy and direction was given to bring a revised policy and proposed Administrative Citation Ordinance to Council.

<sup>1</sup> IZO stands for Interim Zoning Ordinance; note that in 2003 (Ordinance No. 254) the word "interim" was removed from the portion of the Malibu Municipal Code that contains zoning laws – Title 17, Zoning.

## Code Enforcement Policy

Attached are copies of the current Interim Code Enforcement Policy (Attachment 1), a redline version of the proposed new policy (Attachment 2) and a "clean" version of the proposed new policy (Attachment 3). Agenda Item No. 4.A. is submitted in conjunction with this agenda item.

The proposed new policy has been re-formatted to provide clarity. Other changes in the proposed policy are highlighted below:

1. The new policy provides that code enforcement will be primarily reactive and continues to allow proactive enforcement of violations that pose a threat to public health or safety, threats to the environment, and violations that involve construction or grading without permits. [¶ 1.A., 1.C.]
2. The policy adds a statement allowing proactive enforcement for violations of conditions of planning approvals, Coastal Development Permits, or any other permit issued by the City. The policy also allows for proactive enforcement of zoning violations in non-residential zones. [¶ 1.C.]
3. The policy continues to require that complaints must be in writing but provides exceptions for health and safety issues, construction and grading without permits, violations of specified approvals, and zoning violations in non-residential zones. [¶ 1.C.]
4. The policy retains a requirement that written complaints be provided on request by the person accused of the violation. [¶ 1.D.]
5. The statement about home occupation enforcement has been deleted. That provision was added at a time when the home occupation rules were in the process of being adopted. They have since been added to the Municipal Code and there is no longer a need for the language in the policy.
6. The policy regarding extensions of compliance deadlines has been re-worded to reflect current practice. [¶ 5]

### ATTACHMENTS:

1. Interim Code Enforcement Policy
2. Proposed Code Enforcement Policy (redline)
3. Proposed Code Enforcement policy
4. Code Enforcement Task Force Policy and Procedure Report