

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

**Tuesday, April 26, 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 (continued from March 22, 2011)

Staff recommendation: Recommend approval of updated City Code Enforcement Policy to City Council.

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

### 2. Status Report on Zoning Code / LIP Update

Staff recommendation: Receive a status report on the Zoning Code / Local Coastal Program (LCP) Local Implementation Plan (LIP) update.

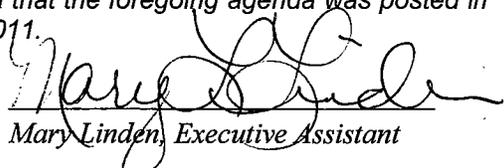
Staff contact: Planning Manager Parker-Bozylinski, 310-456-2489, ext.265

## 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 20<sup>th</sup> day of April 2011.*

  
Mary Linden, Executive Assistant



Zoning Ordinance  
Revisions & Code  
Enforcement  
Subcommittee Meeting  
4/26/11

**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  
Lisa Tent, Senior Code Enforcement Officer

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

**Date prepared:** April 19, 2011      **Meeting date:** April 26, 2011

**Subject:** Code Enforcement Policy

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**RECOMMENDED ACTION:** Recommend approval of updated City Code Enforcement Policy to City Council.

**DISCUSSION:** On March 22, 2011, the City's existing Code Enforcement Policy was discussed and ZORACES provided feedback to staff on the issues outlined in the staff report. The staff report from that meeting is included as Attachment 1. At the March 22<sup>nd</sup> meeting, ZORACES requested staff to return with a new code enforcement policy. The current Code Enforcement Policy (Attachment 2) was adopted in 2000. The proposed Code Enforcement Policy is included as Attachment 3.

Based on comments from ZORACES, several changes are proposed to the existing policy as noted below.

- 1) While zoning violations on residential properties must still be reported in writing, the new policy allows those violations to be reported on a form approved by the City and sent to the City either via mail, fax or email. This will make it easier for violations to be reported.
- 2) Zoning violations in non-residential zones will no longer require a written complaint.
- 3) The provision in the old policy stating that progress reports will not be provided has been eliminated. While only certain types of information can be made available for legal reasons, general information regarding the status of a code enforcement action can be released to the public. In order to keep the general public informed as to whether a code violation has been reported or the status

of an existing code violation, staff will maintain a case log that will be available to the public. In addition, staff will continue the standard practice of placing a notice of existing code violation in the Building and Safety street address file which is accessible to the public.

- 4) A new policy has been added that indicates staff will work with a property owner to clear up any outstanding code violations concurrently with any request for a new permit on the property.
- 5) To avoid confusion about violations to conditions of approval, staff has added a policy stating that violations to conditions of approval on planning permits may be enforced on a proactive basis without a written complaint. This was discussed at the last ZORACES meeting and ZORACES was in agreement with this policy.

One of the items discussed was amending the Malibu Municipal Code to allow Notice of Violations (NOV) to be issued for zoning violations. While this recommendation is not a part of the policy (except as an update to Policy No. 4 which indicates that nothing in the policy affects the authority to issue a NOV), if approved by the City Council, staff will move forward with a code amendment to implement the recommendation.

The one item discussed at ZORACES that staff did not receive clear direction on was whether staff could report code violations observed as part of their daily job duties. Since written complaints will no longer be required for zoning violations on commercial properties and these violations will be investigated on a proactive basis, this question would apply mainly to violations observed on residential properties. If ZORACES felt that staff should be able to pursue code violations observed on residential properties, the policy could be written to allow for a proactive approach in any situation, such as staff driving by the site, or only in certain more narrowly defined situations such as where staff was on the property as part of an inspection related to a permit (building or planning) issued by the City.

Staff has a meeting with the Chamber of Commerce scheduled for April 21<sup>st</sup> to discuss how the City and Chamber can work together on an education program regarding violations on commercial properties such as commercial signage and real estate signage.

In addition, staff completed a survey of surrounding cities regarding how they receive (verbal, written, anonymous) complaints. This survey is included as Attachment 4.

**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. May 22<sup>nd</sup> ZORACES Staff Report

2. Existing Code Enforcement Policy
3. Proposed New Code Enforcement Policy
4. Survey of Surrounding Cities



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

**Purposes:** 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:**

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.**

**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



# City of Malibu

## *City Council Policy*

Title: Code Enforcement Policy

Purpose: To establish a Code Enforcement Policy for the City of Malibu

Policy Statement:

1. Complaints.

- a) Code enforcement will be handled in the City of Malibu primarily on a complaint basis.
- b) All code enforcement complaints shall be submitted in writing, on a form provided by the City, via mail, fax or email to the Planning Director or his/her designated staff members.
- c) Notwithstanding the provisions of paragraphs 1A. and 1B., above, the following complaints are not required to be in writing and may be investigated by City staff on a proactive basis;
  - i) Violations or possible violations involving threats to public health or safety or threats to the environment;
  - ii) Recent or on-going construction or grading without a permit;
  - iii) Zoning violations in non-residential zones.
- d) All written complaints shall be subject to inspection on request by the person(s) accused of the violation(s).
- e) The complainant must state in writing, on forms provided by the City, that he/she understands that the complaint form is not protected from disclosure by any provision of the California Public Records Act. Complainants shall be informed of this policy at the time the complaint is filed; a disclosure in writing on the complaint form shall fulfill this requirement. For purposes of this section, a written complaint by any State, County or local agency shall be considered to be a written complaint that may be acted upon.
- f) Anonymous complaints relating to zoning violations on residential properties will be not investigated.
- g) Once a complaint is investigated and confirmed, the complainant cannot withdraw the complaint. At that point, the City of Malibu becomes the complainant.

2. Pre-1993 Unpermitted Structures.

- a) General Rule. No criminal prosecution or civil action shall be filed, nor any abatement efforts commenced, which concern an allegation that a structure was constructed prior to May 1993 without a building permit or, where no building permit was required, in violation of the zoning and planning regulations applicable to the property at the time of construction, except as stated in subsection (b) below.
- b) Exception. The policy stated in subsection (a) 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 contaminate 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 Municipal Code Title VIII, as determined by the Building Official. An onsite wastewater treatment system (OWTS) which does not have all required permits or which has not passed inspection by the City is presumed to be such a "condition".

3. Notices of Violation. Nothing in this Policy shall affect the authority of the Building Official/Planning Director to prepare, serve and record a Notice of Violation, pursuant to the provisions of Title 15 (Building) and Title 17 (Zoning Code), in order to provide notice to prospective buyers, tenants and lenders of conditions relating to the property.
4. Extensions of Compliance Deadlines. To the extent possible, the City's goal is to obtain voluntary compliance. The Planning Director and his/her designated code enforcement staff shall provide reasonable compliance deadlines and shall extend compliance deadlines if the person responsible for the violation is attempting to comply. In making a determination regarding a compliance deadline, City staff shall consider factors including, but not limited to, the nature of the violation, whether there is a threat to public health or safety, whether there is a risk of damage to the environment, and the degree or cooperation on the part of the person responsible for the violation.
5. Violations of conditions of approval of a Coastal Development Permit or any other Planning permit issued by the City can be pursued proactively without a written complaint.
6. Property owners with existing open code violations shall work with City staff to clear up the violation concurrently with any request for a new permit on the same property.

## Code Enforcement Practices of Surrounding Cities

	City of Agoura Hills	City of Calabasas	City of Moorpark	City of Thousand Oaks	City of Ventura
<b>Do you require complaints to be made in writing or do you take phone calls?</b>	<i>Complaints are received by mail, telephone, e-mails, and front counter walk-ins.</i>	<i>Reporting parties are not required to submit complaints in writing.</i>	<i>Both.</i>	<i>Both written complaints (including email) and those received over the phone are investigated.</i>	<i>Complaints can be made in writing as well as via phone and the City's website.</i>
<b>Does it depend on the type of complaint?</b>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>
<b>If you take phone calls, do you document/confirm the calling party's information?</b>	<i>All complaints are verified.</i>	<i>The calling party's information is documented, but not routinely verified by returning the call.</i>	<i>As much as possible.</i>	<i>All complaints are documented, but not necessarily verified by a return call.</i>	<i>At minimum, the reporting party's phone number and name are recorded.</i>
<b>Do you take anonymous complaints?</b>	<i>Only if requested.</i>	<i>Yes. In fact, all reporting parties remain anonymous, regardless.</i>	<i>Yes.</i>	<i>No.</i>	<i>Only if the complaint is regarding a health and safety violation that is confirmed with a site visit.</i>
<b>Is the name of the complainant public information?</b>	<i>Only when the case is officially closed can anyone request case information.</i>	<i>Technically, yes. However, the City refrains from revealing the reporting parties' identity unless a judgement in court requires otherwise.</i>	<i>The name of the reporting party is. Although a person would have to formally request this information through the City Clerk and City Attorney first. The complainant's information is not public information, however, because all cases can be criminal so that remains confidential.</i>	<i>No. Under City Council Resolution, this is something which cannot legally be given out to the public.</i>	<i>No. Only under court order, as supported by the City Attorney's office.</i>

