



Council Agenda Report

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

Prepared by: Susan Dueñas, Public Safety Manager

Approved by: Steve McClary, Interim City Manager

Date prepared: July 14, 2021 Meeting date: July 21, 2021

Subject: Nuisance Abatement

RECOMMENDED ACTION: 1) After the City Attorney reads the title, introduce on first reading Ordinance No. 490 amending Chapter 8.28 (Nuisance Abatement) of Title 8 of the Malibu Municipal Code (MMC) and finding the same exempt from the provisions of the California Environmental Quality Act; and 2) Direct staff to schedule second reading and adoption of Ordinance No. 490 for the August 9, 2021 Regular City Council Meeting.

DISCUSSION: On April 7, 2021, the Public Safety Commission received a report on MMC Chapter 8.28, of Title 8 Health and Safety (Attachment 2). This Code outlines regulatory, administrative and penalty provisions related to nuisances on property. In reviewing the City's current code and codes in similar cities, staff determined that there are two key sections of the City's code that could be strengthened to enable the City to more quickly and effectively address a nuisance that poses an immediate safety threat to adjacent properties. The two sections that could be strengthened include: 1) the definition of a nuisance; and 2) summary abatement.

The City's current definition lacks enough detail to be clear to property owners what a nuisance is. The current code defines a nuisance as:

... any activity, building, condition, development, installation, land, occupancy, structure or use that violates the municipal code or the City's Local Coastal Program Local Implementation Plan (or any condition of any permit or license approved pursuant thereto), as well as anything which is injurious to health or safety, or that is indecent or offensive to the senses, or an obstruction to the free use of property or injurious to the stability of real property so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any street and affects at

the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.

Most other cities have significantly longer and more detailed definitions of a nuisance. For example, the City of Agoura Hills' nuisance code includes language defining a nuisance as something that has "hazardous or insanitary premises" and "fire hazards." Additionally, the City's current nuisance code does not specifically call out nuisances as conditions that are a threat to adjacent properties and the general welfare of the community.

The City's current nuisance code also lacks a functional "summary abatement" procedure. The current code states:

... the city council may cause a nuisance to be summarily abated if the city manager determines that the nuisance creates an emergency condition involving an immediate threat to the physical safety of the population. Prior to abating the nuisance, the city manager shall attempt to notify the owner or possessor of the property, place, or area involved of the nuisance and request him or her to immediately abate the nuisance. If, in the sole discretion of the city council the owner or possessor of the property, place or area containing the nuisance which creates an emergency condition fails to take immediate and meaningful steps to abate the nuisance, the city may abate the nuisance and charge the cost of abating such nuisance to the owner or possessor of the property, place or area involved.

Requiring the City Council to approve a summary abatement significantly impacts the speed at which an "emergency condition" can be addressed. Staff reviewed summary abate provisions in five other cities and all of them delegated the authority to implement a summary abatement to the city manager or department head. Empowering staff to implement a summary abate greatly increases the speed at which an emergency condition can be addressed.

Staff provided multiple examples from other cities and options for amendments to the Code to address the need for a better definition and summary abatement provision. While the Public Safety Commission agreed in concept to the recommended changes to the code, they continued the item to a future meeting, asking staff to contact other cities to find out what was working well.

After conducting additional research and speaking with staff at other cities, staff returned to the June 2, 2021 Public Safety Commission Regular meeting with a specific recommended action to: 1) Amend the definition of nuisance to include language that also identifies a nuisance as a condition that impacts adjacent properties and the welfare of the general population; and 2) delegate authority to the City Manager or his/her designee to

implement a summary abatement. The Commission voted unanimously to make this recommendation to the City Council.

Staff worked with the City Attorney's office on the specific language of the proposed revised ordinance, and subsequently recommended that the definition also include language regarding fire and bio- hazards, storage of cooking, heating and camping equipment, as well as trash and debris.

By adopting the proposed amendment to the City's nuisance code, private property owners will have a clearer idea of what constitutes a nuisance and staff will be able to address emergency conditions more quickly and effectively.

ATTACHMENTS:

1. Ordinance No. 490 amending Chapter 8.28 of Title 8 of the Malibu Municipal Code
2. MMC Chapter 8.28

ORDINANCE NO. 490

AN ORDINANCE OF THE CITY OF MALIBU AMENDING
CHAPTER 8.28 OF TITLE 8 OF THE MALIBU MUNICIPAL
CODE CONCERNING NUISANCE ABATEMENT; AND FINDING
THE SAME EXEMPT FROM THE CALIFORNIA
ENVIRONMENTAL QUALITY ACT

The City Council of the City of Malibu does hereby ordain as follows:

SECTION 1. Findings

1. Local climatic conditions relating to the City's location in a Very High Fire Hazard Severity Zone increase the risk of wildfire from unpermitted open heat sources.
2. More than ten local fires in the past nine months originated with fires started in local homeless encampments, including encampments on private, undeveloped property.
3. Local encampments have been associated with increased levels of trash and bacteria (pollutants) in nearby surface waters. The City is required to prevent these pollutants from being discharged to such waters by maintaining the authorized Total Maximum Daily Load requirements under the Clean Water Act.
4. Property owners' failure to secure undeveloped land against trespassers, or to otherwise maintain their property or timely ameliorate the risk of hazard, has led to the proliferation of encampments and the accumulation of trash and human waste therein, which increases the risk of wildfire and creates a public health and safety hazard for the surrounding community.
5. The City's summary abatement procedures are not suited to the realities of abating immediate fire and safety hazards, as the existing procedures require prior approval by the City Council.
6. On June 2, 2021, during a regular meeting of the Malibu Public Safety Commission, the Commission voted to recommend that the City Council amend Chapter 8.28 of the Malibu Municipal Code (Nuisance Abatement) to specify that certain conditions relating to property maintenance qualify as a public nuisance and to delegate summary abatement authority to the City Manager.
7. The proposed amendments are designed to promote the sound maintenance of private lands located in the City, to protect the life and property of the entire Malibu community, and to allow the public to duly recover any costs incurred by the City to abate dangerous conditions on private property from responsible property owners.

SECTION 2. Section 8.28.010 of Chapter 8.28 of the Malibu Municipal Code is hereby amended in its entirety to read as follows:

8.28.010 Nuisance defined.

- A. For purposes of this chapter, a public nuisance, or “nuisance” includes any one or more of the following:
1. Any activity, building, condition, development, installation, land, occupancy, structure, or use that violates the Malibu Municipal Code or the Malibu Local Coastal Program Local Implementation Plan (or any condition of any permit or license approved pursuant thereto).
 2. Anything which is injurious to health or safety, or is indecent or offensive to the senses, or an obstruction to the free use of property or injurious to the stability of real property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of river, bay, stream, canal, or basin, or any public park or street, and which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.
 3. Any condition of property that is injurious or potentially injurious to the public health, safety, or welfare, or which is injurious or potentially injurious to adjacent properties.
 4. Any accumulation or storage of trash, biohazards (including human waste), or articles of personal property on undeveloped land that creates, or creates the conditions for, a fire or safety hazard to nearby persons or properties, including, without limitation, the storage of cooking or heating paraphernalia or equipment, or camping facilities, on undeveloped land that is not secured against trespassers, which facilitates activity that creates a risk of wildfire or creates a public health hazard.
- B. It is a nuisance and unlawful for any person to allow, cause, create, maintain, or permit others to maintain, property in the City in such a manner that any one or more of the conditions or uses set forth in Paragraph A of this section exist thereon.
- C. Notwithstanding any provisions of this chapter, the city council may define by ordinance any particular condition constituting a nuisance.

SECTION 3. Section 8.28.100 of Chapter 8.28 of the Malibu Municipal Code is hereby amended in its entirety to read as follows.

8.28.100 Summary abatement.

Notwithstanding any other provision of this Chapter to the contrary, the City Manager may summarily abate a nuisance that presents an immediate threat to the public health or safety, or poses an imminent danger to life or surrounding property, according to the following procedures:

- A. *Notice.* Prior to pursuing summary abatement, the City Manager or designee shall reasonably attempt to identify and contact, by telephone or otherwise, the owner, occupant, or tenant of the property to notify such person of the dangerous or hazardous condition and to seek immediate voluntary abatement.
- B. *Abatement.* If the City Manager is unable to reasonably contact the persons specified in Paragraph A of this section, or if the owner, occupant, tenant or other responsible person fails or refuses to act immediately to abate the nuisance, the City Manager or designee is authorized to summarily abate the nuisance conditions, incurring such costs as are reasonably necessary to that effort, including the costs of biohazard treatment services or the costs of collecting and storing individuals' personal property.
- C. *Costs.* Property owners or persons in legal possession of the property are liable for the costs of emergency abatement actions taken pursuant to this section. Such costs shall be charged and collected in accordance with the methods allowed in Sections 8.28.070 through 8.28.090, or as otherwise provided by law.

SECTION 4. Environmental Review.

The City Council finds that adopting the foregoing amendments to the City's nuisance abatement ordinance is exempt from the California Environmental Quality Act ("CEQA"), pursuant to the common sense exemption and the Class 8 exemption for actions taken to protect the environment. This ordinance establishes summary abatement procedures designed to encourage property owners to mitigate the risks of fire on undeveloped lands and the environmental impacts of encampment activity thereon. As such, there is no possibility that adopting this ordinance would adversely affect the environment in any manner that could be significant under CEQA. 14 Cal. Code Regs. § 15061(b)(3). The measure also qualifies for the Class 8 exemption for agency actions taken to assure the maintenance, restoration, enhancement, or protection of the environment. 14 Cal. Code Regs. § 15308. By authorizing the City to take more effective summary abatement measures and by holding property owners responsible for the fire and safety hazards found on their lands, the ordinance is intended to protect the Malibu community against the risk of wildfire and polluted waters. Staff is directed to file a notice of exemption within five (5) days of the adoption of this ordinance.

SECTION 5. Severability.

If any section, subsection, sentence, clause, or provision of this Ordinance is found to be unconstitutional or otherwise invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council expressly declares that this Ordinance, and each section, subsection, sentence, clause, and phrase hereof would have been prepared, proposed, approved, and ratified irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases may be declared invalid or unconstitutional.

SECTION 6. Effective Date.

This ordinance shall take effect thirty (30) days after its passage and adoption pursuant to California Government Code section 36937.

SECTION 7. Certification.

The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same, or the summary thereof, to be published or posted in the manner required by law.

PASSED, APPROVED AND ADOPTED this _____ day of _____, 2021.

PAUL GRISANTI, Mayor

ATTEST:

KELSEY PETTIJOHN, Acting City Clerk
(seal)

APPROVED AS TO FORM:

THIS DOCUMENT HAS BEEN REVIEWED
BY THE CITY ATTORNEY'S OFFICE

JOHN COTTI, Interim City Attorney

| Malibu Municipal Code | | | | | | | |
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| Title 8 HEALTH AND SAFETY | | | | | | | |

Chapter 8.28 NUISANCE ABATEMENT

8.28.010 Nuisance defined.

For the purposes of this chapter, a nuisance shall be defined as any activity, building, condition, development, installation, land, occupancy, structure or use that violates the municipal code or the City's Local Coastal Program Local Implementation Plan (or any condition of any permit or license approved pursuant thereto), as well as anything which is injurious to health or safety, or that is indecent or offensive to the senses, or an obstruction to the free use of property or injurious to the stability of real property so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any street and affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.

Notwithstanding any provisions of this chapter, the city council may define by ordinance any particular condition constituting a nuisance. (Ord. 453 § 4, 2019; prior code § 4300)

8.28.020 Duty of owner or possessor of property.

Every person who shall own or be in possession of any property, place or area within the boundaries of the city shall, at his or her own expense, maintain the property, place or area free from any nuisance. (Prior code § 4301)

8.28.030 Notice to abate nuisance.

Whenever the city council determines that a nuisance exists upon any property, place or area within the boundaries of the city, the city manager may notify in writing the owner or person in possession of the property, place or area to abate the nuisance within fifteen (15) days from the date of the notice. The notice shall be given by registered or certified mail addressed to the owner or person in possession of the property, place or area at his or her last known address. (Prior code § 4302)

8.28.040 Contents of notice.

The notice shall state that if the nuisance is not abated or good faith efforts towards abatement not been made to the satisfaction of the city manager within fifteen (15) days from the date thereof, a hearing shall be held before the city council to hear any protest of the owner, possessor or other interested person. The notice shall specify the time, date and place of the hearing, which shall be set for the regular meeting of the council next following the expiration of the fifteen (15) day period. (Prior code § 4303)

8.28.050 Hearing and decision.

If the nuisance is not abated or good faith efforts towards abatement have not been made within the time set forth in Section [8.28.030](#), the city council shall conduct a hearing at the time and place fixed in the notice at which evidence may be submitted by interested persons. Upon consideration of the evidence, the council may declare the condition to constitute a public nuisance and order the abatement thereof. The decision of the city council shall be final. The city clerk shall notify all owners and possessors of the subject property, place or area of the decision of the council. (Prior code § 4304)

8.28.060 Abatement by city—Notice of charge.

Upon failure, neglect or refusal by a person notified pursuant to Section [8.28.050](#), to abate a nuisance within thirty (30) days after the date of notice, the city council is authorized to cause the abatement of the nuisance and pay for the abatement. A warrant shall be obtained prior to abating the nuisance where required by law. The city council shall notify, in writing, the owner or possessor of the property, place or area upon which a nuisance has been abated by the city, of the cost of said abatement. Such notice shall be given in the same manner as required by Section [8.28.030](#). The notice shall also offer the property owner the opportunity to appear before the council to protest the cost amount. (Prior code § 4305)

8.28.070 Lien.

If the total cost of the abatement of the nuisance by the city is not paid to the city in full within ten (10) days after the date of the notice of the cost of the abatement, or within ten (10) days after the council has heard a protest from the property owner, if any, and has confirmed the final cost, the city clerk shall record, in the office of the county recorder, a statement of the total balance due to the city, a legal description of the property, place or area involved, and the name of the owner or possessor concerned. From the date of such recording, the balance due will constitute a lien on the property. The lien will continue in full force and effect until the entire amount due, together with interest at the maximum legal rate accruing from the date of the completion of the abatement, is paid in full. (Prior code § 4306)

8.28.080 Charges to be billed on tax bill.

The city may also, in accordance with the provisions of the laws of the state of California, cause the amount due to the city by reason of its abating a nuisance together with interest at the maximum legal rate, accruing from the date of the completion of the abatement, to be charged to the owners of the property, place or area on the next regular tax bill. All laws of the state of California applicable to the levy, collection and enforcement of city taxes and county taxes are made applicable to the collection of these charges. (Prior code § 4307)

8.28.090 Court action.

The city council may bring appropriate actions, in a court of competent jurisdiction, to collect any amounts due by reason of the abatement of a nuisance by the city and to foreclose any existing liens for such amounts. Notwithstanding the provisions of this chapter, the city may bring the appropriate civil and criminal actions in a court of competent jurisdiction for abatement of any nuisance existing within the city pursuant to any other provision of law. (Prior code § 4308)

8.28.100 Summary abatement.

Notwithstanding any provisions of this chapter, the city council may cause a nuisance to be summarily abated if the city manager determines that the nuisance creates an emergency condition involving an immediate threat to the physical safety of the population. Prior to abating the nuisance, the city manager shall attempt to notify the owner or possessor of the property, place, or area involved of the nuisance and request him or her to immediately abate the nuisance. If, in the sole discretion of the city council the owner or possessor of the property, place or area containing the nuisance which creates an emergency condition fails to take immediate and meaningful steps to abate the nuisance, the city may abate the nuisance and charge the cost of abating such nuisance to the owner or possessor of the property, place or area involved. The city shall notify in writing the owner or possessor of the property, place or area upon which a nuisance has been abated by the city, of the cost of said abatement. Such notification shall be given in the same manner as required by Section [8.28.030](#). The provisions of Sections [8.28.070](#) through [8.28.090](#) shall be applicable. (Prior code § 4309)

8.28.110 Attorney fees.

A. The prevailing party of any action, administrative proceeding, or special proceeding to abate a nuisance or to cause the abatement of a nuisance shall be entitled to recover attorney fees. Attorney fees shall not be recoverable unless the city elects in writing, at the initiation of that individual action or proceeding, to seek recovery of its own attorney fees. In no action, administrative proceeding, or special proceeding shall an award of attorney fees to a prevailing party exceed the amount of reasonable attorney fees incurred by the city in the action or proceeding.

B. Unpaid attorney fees shall be collectible in any manner allowed by law. (Ord. 387 § 1, 2015)

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