



# Supplemental Council Agenda Report

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

Prepared by: Kelsey Pettijohn, Acting City Clerk

Approved by: Steve McClary, Interim City Manager

Date prepared: August 4, 2021 Meeting date: August 9, 2021

Subject: Second Reading and Adoption of Ordinance No. 490

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**RECOMMENDED ACTION:** Conduct second reading, unless waived, and adopt Ordinance No. 490 amending Chapter 8.28 (Nuisance Abatement) of Title 8 of the Malibu Municipal Code and finding the same exempt from the provisions of the California Environmental Quality Act.

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

**WORK PLAN:** This item was included as item 1.j. in the Adopted Work Plan for Fiscal Year 2021-2022.

**DISCUSSION:** On July 21, 2021, the Council introduced on first reading Ordinance No. 490, as amended to:

a) Replace wildfire with fire, b) Add “vacant land” after undeveloped land, c) Revise Malibu Municipal Code (MMC) Section 8.28.100(C) to include “property owners and persons in legal possession of the property are jointly and severally liable”, and d) Clarify that MMC Section 8.28.100 will be applied when there is insufficient time to follow the administrative process described in MMC Section 8.28.050, amending Chapter 8.28 (Nuisance Abatement) of Title 8 of the Malibu Municipal Code and finding the same exempt from the provisions of the California Environmental Quality Act

After publication of the original staff report, it was brought to staff’s attention that not all of these changes had been incorporated correctly into the Ordinance draft attached to the report.

The attached Ordinance has been revised according to the redline changes below and accurately reflects the Council's action.

MMC 8.28.010(A)(4) Any accumulation or storage of trash, biohazards (including human waste), or articles of personal property on undeveloped or vacant land that creates, or creates the conditions for, a fire or safety hazard to nearby persons or properties, including, without limitation, the maintenance or storage of cooking or heating paraphernalia or equipment on undeveloped or vacant land, which facilitates activity that creates a risk of fire or otherwise creates a public health hazard.

MMC 8.28.100 Notwithstanding any other provision of this Chapter to the contrary, if the City Manager determines that a nuisance presents ~~an imminent~~ threat to the public health or safety, or ~~an imminent a~~ danger to life or surrounding property, ~~such that the condition must be immediately removed or otherwise abated~~ and there is insufficient time to follow the administrative process described in Malibu Municipal Code Section 8.28.050, the City Manager may summarily abate the nuisance according to the following procedures:

ATTACHMENT: Ordinance No. 490

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 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 or vacant land that creates, or creates the conditions for, a fire or safety hazard to nearby persons or properties, including, without limitation, the maintenance or storage of cooking or heating paraphernalia or equipment on undeveloped or vacant land, which facilitates activity that creates a risk of fire or otherwise creates a public health hazard.

B. Property owners and other persons in lawful possession of property shall not allow, cause, create, maintain, or permit others to allow, cause, create, or maintain property in the City in such a manner so as to create a nuisance as set forth in Paragraph A of this section.

C. Notwithstanding any provisions of this chapter, the City Council may further 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, if the City Manager determines that a nuisance presents a threat to the public health or safety or a danger to life or surrounding property, and there is insufficient time to follow the administrative process described in Malibu Municipal Code Section 8.28.050, the City Manager may summarily

abate the nuisance according to the following procedures:

- A. *Notice.* Prior to undertaking 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 nuisance 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 such person fails or refuses to act immediately to abate the nuisance, the City Manager or designee is authorized to summarily abate the nuisance, incurring such costs as are reasonably necessary to that effort, including but not limited to the costs of biohazard treatment services or the costs of collecting and storing individuals' personal property.
- C. *Costs.* Property owners and persons in legal possession of the property are jointly and severally liable for the costs of summary 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.

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PAUL GRISANTI, Mayor

ATTEST:

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KELSEY PETTIJOHN, Acting City Clerk  
(seal)

APPROVED AS TO FORM:

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JOHN C. COTTI, Interim City Attorney