



# Council Agenda Report

To: Mayor Grisanti and Honorable Members of the City Council

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Approved by: Steve McClary, Interim City Manager

Date prepared: February 15, 2022 Meeting date: February 28, 2022

Subject: Dark Sky Ordinance Program

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**RECOMMENDED ACTION:** 1) Direct staff to move forward with the proposed strategy for implementing the Dark Sky Ordinance; 2) Provide direction to staff regarding the implementation of the Dark Sky Ordinance as it pertains to service station compliance; 3) Provide direction to staff on how to proceed with enforcement of the ordinance; and 4) Provide direction to staff if Administrative Citation fine amounts should be amended.

**WORK PLAN:** This item was included as Item #5I in the Adopted Work Plan for Fiscal Year 2021-2022.

**FISCAL IMPACT:** The following items were included in the Adopted Budget for Fiscal Year 2021-2022:

- \$50,000 for Account No. 101-2004-5100.00 (Building Safety Division Professional Services) to initiate program.
- \$60,000 for Account No. 101-2004-5100.00 (Building Safety Division Professional Services) to prepare the materials necessary for establishing the permit requirements for the Dark Sky Ordinance and conduct presentations.
- \$25,000 for Account No. 101-2004-5401.00 (Building Safety Division Advertising and Noticing) to design, print and distribute the outreach materials for the Dark Sky Ordinance.

- \$64,000 to evaluate City facilities for compliance with the Dark Sky Ordinance. The Dark Sky Ordinance requires all City facilities to be compliant by October 2022. After the evaluation, staff will develop plans to bring City facilities into compliance. Costs associated with the required upgrades are not included in the evaluation budget as they have yet to be determined. The cost for evaluation is allocated as follows:
  - \$10,000 for Account No. 103-9050-5100.00 (City Hall Professional Services);
  - \$24,000 for Account No. 100-4010-5100.00 (Parks Maintenance Professional Services);
  - \$6,000 for Account No. 100-3007-5100.00 (Stormwater Treatment Facilities Professional Services);
  - \$18,000 for Account No. 500-7008-5100.00 (Legacy Park Professional Services); and
  - \$6,000 for Account No. 515-3010-5100.00 (Civic Center Water Treatment Facility Professional Services)

DISCUSSION: To inform residential, commercial, and institutional property owners about the upcoming compliance deadline, staff proposes a strategy that includes public outreach, citywide workshops, application review, and code enforcement. The following is a breakdown of the measures necessary as the October 15, 2022, compliance deadline approaches and staff is seeking the Council’s direction on several items.

**Background**

The City’s Dark Sky Ordinance is contained in Malibu Municipal Code Chapter 17.41 and became effective on October 15, 2018. On January 13, 2022, the City Council adopted Ordinance No. 496 amending the Dark Sky compliance deadlines for all zoning districts, except for parcels with service stations. The compliance deadlines are as follows:

1. Outdoor lighting at gas station properties shall comply by October 15, 2019.
2. Outdoor lighting in commercial zones, including, but not limited to, CN, CC, CV, CG, RVP, and RD zoning districts shall comply by October 15, 2022.
3. Outdoor lighting in all remaining zones, including, but not limited to, SF, MF, MFBF, RR, PD, MH, and I zoning districts shall comply by October 15, 2022.

To date, staff and Jim Benya, who is serving as the City’s lighting engineer consultant, have been working with service stations to obtain compliance. This is discussed in detail later in the report.

## Public Outreach

A successful public outreach program is critical to achieve citywide compliance of the ordinance. Staff proposes an outreach plan that consists of media display ads, residential and commercial informational postcards, preparation of handouts, and public workshops. In addition, staff will need to obtain assistance from a lighting expert to assist members of the public and to assist in streamlining the application process.

To date, staff has performed the following outreach:

**Website:** The City's website has been updated with the planning application materials including applications and checklists forms, Dark Sky requirements by zoning district, and contact information.

**Social Media Posts:** Numerous social media posts and alerts have been posted to members of the public informing them of the compliance deadlines.

## Future Outreach

Using the funds approved as part of the Fiscal Year 2021-2022 mid-year budget, the Environmental Sustainability Department issued a Request for Proposal (RFP) for public outreach consulting services on February 14, 2022. The consultant will develop a Dark Sky application process, prepare educational materials such as handouts, and coordinate workshops for commercial, institutional and residential property owners.

Once a consultant is retained and an application process is in place, staff will mail correspondence to all properties in city limits regarding the new compliance dates, future workshops, information on submitting an application, and where information is located on the City's Dark Sky website ([malibucity.org/darksky](http://malibucity.org/darksky)).

Additional consultant services will be needed to bring City-owned properties into compliance, review permit applications and plans, provide technical assistance to the community, and perform in-field inspections. Many properties will require electrical permits to change fixtures to comply with the new requirements. At this time, staff anticipates approximately 300 permits of this type will be issued in the remainder of the fiscal year. These numbers will be presented to Council when staff has a clearer understanding of the revenues and costs.

In a previous meeting, it was suggested that City staff utilize the City of Laguna Beach's handouts. The City has obtained the City of Laguna Beach's "Good Neighbor Outdoor Lighting" brochure and will evaluate which aspects can be incorporated into a City handout. The City of Laguna Beach ordinance can be found

here: <https://www.lagunabeachcity.net/government/departments/community-development/code-enforcement/good-neighbor-lighting-policy>.

## Gas Stations

In late 2019, staff began working with the owners of gas station properties. All six gas stations in the City have submitted planning applications for Dark Sky compliance. One of six gas stations have installed their approved lights. The remaining five gas stations have been able to comply with fixture direction, shielding, 3,000 Kelvin color temperature, and light extinguish timers; however, the proposed plans do not comply with the allowable property boundary light trespass. These gas stations cite the same issue with complying with the trespass limit: that their existing non-conforming gas pump canopies are too close to property boundaries, making them incapable of restricting light trespass onto the adjacent parcels.

In November of 2021, the City obtained the services of Jim Benya of Benya-Burnett Consultancy to review the five remaining gas station applications for feasible alternatives to comply with the light trespass requirements. Mr. Benya applied custom solutions to the light trespass issue which included utilizing different light fixtures and modeling an extrusion method that provided increased directional lighting. After several attempts to achieve compliance with the current light trespass requirement, Mr. Benya confirmed that due to the location of the existing gas pump canopies, which abut the public right-of-way, there is no feasible way for the gas stations to meet the trespass requirement as written in the Dark Sky ordinance without a deviation being issued. In a letter to the Planning Director dated December 16, 2021, he stated the following:

*“However, while the designs appear to be carried out in compliance with the letter of the Malibu Dark Ordinance, none could meet the light trespass requirements. The reason is that the canopies of the service stations are too close to the property line in virtually every case, even when the lighting was dimmed to only 30% of normal output.”* Benya-Burnett then went on to recommend the following, *“I propose the same here, namely that the 0.25 foot-candle trespass line be moved to the outer side (“curb-side”) of the outermost drive lane of PCH. This will enable better illumination of the sidewalk and curb as well as bus stop and entrance/exit merge lanes without encouraging light trespass that might affect nearby residents, including those living directly across the street. In my opinion, this adjustment will permit appropriate lighting design meeting the intent of the Malibu Dark-Sky Ordinance while permitting appropriate illumination at service stations abutting PCH or significant collectors to which it intersects.”*

Another alternative is to move forward with the ordinance as-is and process deviation requests for the five gas stations since it has been demonstrated that they cannot comply with the code, given existing development. The deviation requests for the light trespass

issue requires a Planning Commission public hearing. The only area where light trespass exceeds the allowable limit is on the property boundary adjacent to the right-of-way which is already lit from streetlights. Based on review of the photometric plans, the light trespass from the gas stations may be unnoticeable due to the existing lit roadways and sidewalks. The trespass into adjacent roads is the only compliance issue, otherwise, the sites will be compliant with the rest of the Dark Sky Ordinance.

Staff is seeking direction from the Council on whether to amend the City's light trespass requirements or process a deviation request for the remaining stations. However, should the Council feel that the ordinance should be amended, it would allow staff the opportunity to address another concern raised by the City's lighting consultant. Mr. Benya commented that the City may consider addressing the 850 lumen limit for commercial driveways that are visible from scenic areas because that may be too restrictive as there are legal and safety concerns for commercial properties with the strict application of the current ordinance.

Since the City's ordinance has been compared to the City of Laguna Beach, City staff has reviewed the City of Laguna Beach Good Neighbor Outdoor Lighting Ordinance. Two major differences exist between the two ordinances. The City of Laguna Beach ordinance provides a list of exemptions, one of which allows for the use of fixtures that are not fully shielded if less than three thousand Kelvin and/or 750 lumens per fixture (Laguna Beach Code Section 7.70.060(A)). The City of Malibu ordinance does not allow for the use of non-fully shielded lights regardless of color temperature or light output. Additionally, the Malibu ordinance contains specific light trespass measurements, whereas that does not appear to be addressed by the Laguna Beach ordinance.

Nevertheless, staff has reached out to the City of Laguna Beach to learn more about their outreach effort and code enforcement experience related to this subject. However, at the time of preparing this report, City staff spoke to their Code Enforcement staff but have not received a response from their Planning staff.

### **Enforcement in the Commercial and Institutional Zoning Districts**

All parcels with existing development located in commercial and institutional zoning districts that are not Dark Sky compliant will be required to submit a planning application to install lighting that is in compliance with the Dark Sky Ordinance.

Compliance with the ordinance will be the responsibility of the property owner. If a commercial or institutional parcel owner with existing development does not comply with Dark Sky lighting requirements by the October 15, 2022 deadline, they will be subject to fines and code enforcement action or Administrative Citations as allowed under Malibu Municipal Code Section 1.10.010. The City's current practice is to process a fee to be paid by the property owner of \$354, or two hours of Code Enforcement case time, on the first

day of violation and if compliance is not achieved, the Administrative Citation process is utilized. In addition, the parcel owner will not be able to process new development applications or apply for any Temporary Use Permits until the code violation is resolved.

### **Enforcement in the Residential Zoning Districts**

Parcels with existing development within any residential zoning district will not be required to submit an application but are still required to comply with the Dark Sky Ordinance by the October 15, 2022 deadline.

A parcel may already have light fixtures that conform to the ordinance and the owner may only need to change out light bulbs to the correct 850 lumen and 3,000 Kelvin color temperature light specifications. This does not require a building permit nor Planning Department approval. However, if a resident must change out light fixtures in order to comply with the ordinance, they will be required to submit an application to the Planning Department and obtain a permit from Building Safety. It is assumed that the majority of properties within residential zoning districts will need to change out light fixtures and thus, an application will need to be submitted to the City. Currently, the planning application fee is \$177 for residential properties, however, this will be reassessed once a consultant is obtained. The building permit fee is based on project scope and will also be reassessed once the consultant is obtained.

If a residential parcel owner with existing development does not bring their site into compliance by the October 15, 2022 deadline, they will be subject to fee cost recovery and code enforcement action or Administrative Citations as allowed under Malibu Municipal Code Section 1.10.010. The City's current practice is to charge the property owner a fee of \$354, or two hours of Code Enforcement case time, on the first day of violation and if compliance is not achieved, the Administrative Citation process is utilized. A parcel owner with a Dark Sky code violation will not be able to process new development applications or apply for any Special Event Permits until the code violation is resolved.

### **Code Enforcement for All Zoning Districts**

Currently, the City's Code Enforcement protocols are outlined in City Council Policy No. 43 (Code Enforcement Policy), which states that the violations are handled on a complaint basis except for violations involving health and safety matters or threats to the environment such as water discharge; construction and grading or accessory structures built without permits observed by staff during an onsite inspection; or zoning violations in non-residential zones. Given that the potential violations will be in residential zones, City Council Policy No. 43 will remain the practice unless amended by the City Council. At this time, staff does not have the resources to proactively conduct field evaluations to verify Dark Sky code compliance. In addition, the City does not possess a staff member with

light meter training and an understanding on how to conduct field evaluations with respect to photometrics.

Since compliance will need to be achieved by property owners in Fiscal Year 2022-2023, in next year's budget, consideration should be given to obtaining a firm or employee with a specific skill set necessary for enforcement services which will include field evaluations and case management. Enforcement services will be separate from the plan check consulting and outreach programs which are included in the current budget.

At the last Council meeting it was suggested that the City contact the City of Laguna Beach to learn more about their compliance process and outreach. The City of Laguna Beach's approach to enforcement is similar to the City of Malibu's View Restoration Ordinance where the affected property owner must initiate a resolution with the owner of the problematic lighting. Below is an excerpt from the City of Laguna Beach's Code Section 7.70.040(c):

Compliance with this chapter shall be administered and enforced by the City of Laguna Beach community development department pursuant to the provisions of Chapter 1.15 of the Municipal Code. Any adjacent neighboring property owner affected by glare or trespass shall first discuss the concern with the owner of the light fixture prior to filing a service request with the city. The filing of service requests shall be limited to adjacent neighboring property owners directly impacted by light trespass.

### **Administrative Citations**

The City Council directed staff to explore increasing fines for lighting violations. Currently, the violations of the City's Zoning Ordinances are handled through Code Enforcement fees and if needed, Administrative Citations. Code Enforcement fees are based on an hourly rate of Code Enforcement staff's time to address the violation and the property owner is subject to hourly fees until the violation is resolved. Administrative Citations are a fine that is defined in MMC Section 1.16.010(B) and the various amounts have been adopted by ordinance. It has been the City's practice to utilize Code Enforcement fees in situations where the offender is willing to comply because unlike Administrative Citations, they are not appealable and must be paid as part of the review and correction process.

While the hourly rate for Code Enforcement is based on actual staffing costs<sup>1</sup>, the Council can direct staff to bring back an item to amend MMC Section 1.16.010(B) to increase Administrative Citations fine amounts which are currently as follows:

1. A fine not exceeding one hundred dollars (\$100.00) for a first violation;

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<sup>1</sup> Local Government Authority: Article 13C of the California Constitution and Section 66014 of the California Government Code.

2. A fine not exceeding two hundred dollars (\$200.00) for a second violation of the same provision of this code within one year;
3. A fine not exceeding five hundred dollars (\$500.00) for each additional violation of the same provision of this code within one year.

SUMMARY: Staff is seeking direction on the following items: 1) input on the proposed strategy for implementing the Dark Sky Ordinance; 2) provide direction to staff regarding the implementation of the Dark Sky Ordinance as it pertains to service station compliance; 3) provide direction to staff on how to proceed with enforcement of the ordinance; and 4) provide direction to staff if Administrative Citation fine amounts should be amended.

ATTACHMENTS: None.