



Council Agenda Report

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

Prepared by: Tracey Rossine, Environmental Programs Manager

Reviewed by: Yolanda Bundy, Environmental Sustainability Director

Approved by: Steve McClary, City Manager

Date prepared: February 28, 2024 Meeting date: March 25, 2024

Subject: Amendment to Malibu Municipal Code Chapters 15.40, 15.42, and 15.44 To Requires Additional OWTS Requirements for Home Occupation Uses that Place Additional Strain on the OWTS

RECOMMENDED ACTION: 1) After the City Attorney reads the title of the ordinance, introduce on first reading Ordinance No. 517 determining the project is categorically exempt from the California Environmental Quality Act and amending Chapters 15.40, 15.42 and 15.44 of the Malibu Municipal Code (MMC); and 2) Direct staff to schedule second reading and adoption of Ordinance No. 517 for the April 8, 2024 City Council meeting.

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

STRATEGIC PRIORITY: This item is part of the day-to-day operations identified in the Adopted FY 2023-24 Strategic Priority Project List.

DISCUSSION: Since the COVID-19 pandemic there have been significant changes in the workforce, including shifting from working in person at offices, stores, spas, hair and nail salons, and restaurants to teleworking (also known as working from home or remote work). Because Malibu is primarily serviced by onsite wastewater treatment systems (OWTS), when utilizing a private residence in Malibu as a home base for business operations there can be significant impacts on the OWTS. Depending on the type of business, some of these impacts can be a higher volume of water usage, the releasing or rinsing of chemicals, or the dumping of fats, oils, and grease into the OWTS. To prevent OWTS-related issues, and to protect the overall quality of coastal waters and natural resources there is a need to amend OWTS Chapters 15.40, 15.42 and 15.44 of the Malibu Municipal Code (MMC) to create additional requirements related to the OWTS for these home occupation uses. As drafted, the home occupation uses that

would be subject to these additional requirements include, but are not limited to, hair salons, beauty parlors, and barbershops; healing arts that use an excess of lotions, creams, and oils, such as body and facial spas, massage services or physical therapy; adult and child care facilities; commercial harboring or grooming of pets; taxidermy; ceramics, motor vehicle repair, servicing, reconditioning, detailing, and washing; photography studio and dark room, including photo development requiring a large amount of chemicals; laundering services; catering or other food preparation uses in excess of those typically found in a single-family home. In no way does this ordinance legalize or permit uses that otherwise would not be allowed; rather it just ensures that if these uses are present, they must follow these additional OWTS requirements.

A home occupation use is a significant concern due to the increased loading to OWTS. An increase of flow to the disposal system or adding incorrect, unaccounted for items to an OWTS can pose a danger, potentially leading to OWTS failure. In a state of failure, untreated or partially treated sewage may discharge onto the surface, adversely affecting public health, water quality, and the environment.

Currently, the City has established standards for the operation and maintenance of OWTS in compliance with the City's Local Coastal Program and Local Implementation Plan. Further, the City does require wastewater professionals to register and regularly provide proof of industry-specific training to ensure that Malibu is following state and local regulations, including the Local Agency Management Program (LAMP); however, staff has reviewed these current regulations and has determined that even with the above listed regulations in place, there is still a need for additional definitions and incorporation of technical standards from existing policies, including requirements for cumulative impacts, operating permit requirements, and inspections. Ordinance No. 517 will address these items and will allow the City to create a new regulatory program for certain kinds of home occupation uses that place additional strain on the OWTS.

The additional OWTS requirement for certain kinds of home occupation uses will, among other things, require monitored inspections for home occupation use and will apply to any private home or residence used as a home occupation. The following are certain aspects of the proposed ordinance:

- Advanced OWTS can be required for a home occupation use (pending the type of business and the impact on the system)
- OWTS operating permits will be valid for one year (currently it is valid for two)
- An operating permit will be revoked if the OWTS requires repairs, modifications, replacements, and/or upgrades
- Mandatory inspections by a City-registered OWTS Inspector must be conducted annually

- If a complaint comes to the City, a Registered Operations Monitoring and Maintenance provider must provide a report to the City within 15 days of the complaint – The home occupation use cannot be in operation until the report is approved.

Outreach to residents will be essential for implementing these requirements. A key component for compliance will be education, as the health of the ocean and waterways will depend on residents' compliance.

ALTERNATIVES: No alternatives are recommended. In order to maintain water quality compliance, it is recommended that the City introduce on first reading this ordinance with the primary objective of safeguarding water quality by more stringently regulating OWTS for certain home occupation uses.

ATTACHMENTS:

1. Ordinance No. 517
2. Notice of Public Hearing

ORDINANCE NO. 517

AN ORDINANCE OF THE CITY OF MALIBU AMENDING SECTION 15.40.020 (DEFINITIONS); SECTION 15.40.050, (OWTS REQUIREMENTS FOR BUILDINGS); SECTION 15.40.080 (CUMULATIVE IMPACTS); SECTION 15.42.050 (WASTEWATER DESIGN FLOWS) SECTION 15.44.030 (OWTS OPERATING PERMIT REQUIREMENT); SECTION 15.44.040 (RENEWAL OF OWTS OPERATING PERMITS), AND SECTION 15.44.50 (OWTS INSPECTION AND OPERATING PERMIT CRITERIA) OF THE MALIBU MUNICIPAL CODE AND DETERMINING THE PROJECT IS CATEGORICALLY EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

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

SECTION 1. Recitals.

A. Home occupation use (HOU) is a significant concern for the City due to the increased hydraulic loading to Onsite Wastewater Treatment Systems and the threat to the general public health and safety overtaxed Onsite Wastewater Treatment Systems pose to the City.

B. An increase of flow to the disposal system can pose a danger, potentially leading to disposal system failure. In a state of failure, untreated or partially treated sewage may discharge onto the surface, adversely affecting public health, water quality, and the environment in the City.

SECTION 2. Chapters 15.40, 15.42, and 15.44 of the Malibu Municipal Code (MMC) are hereby amended to read as follows:

A. **Section 15.40.020 (Definitions)** is hereby amended by adding the following definition:

“ ‘Home occupation’ has the same meaning as found in section 17.02.060.”

B. **Section 15.40.050 (A) (1) (OWTS Requirements for Buildings)** is hereby amended to read as follows:

A. Commercial buildings, multifamily dwellings, home-occupation use-AOWTS Required.

1. Buildings. Commercial buildings and multifamily dwellings that are newly constructed, or renovated, and properties with a home occupation use that increases the usage and strain on the OWTS by virtue of the use shall have an AOWTS unless otherwise approved by the administrative authority for good cause. Home occupation uses that increase the usage and strain on an OWTS include, but are not limited to, hair salons, beauty parlors, and barbershops; healing arts that use an excess of lotions, creams, and oils, such as body and facial spas, massage services or physical therapy; adult and child care facilities; commercial harboring or grooming of pets; ceramics; taxidermy; motor vehicle

repair, servicing, reconditioning, detailing, and washing; photography studio and dark room, including photo development requiring a large amount of chemicals; laundering services; catering or other food preparation uses in excess of those typically found in a single-family home. In no way does this section permit or allow any kind of use that is not otherwise permitted by this Code.

C. **Section 15.40.080 Cumulative Impacts** is hereby amended to read as follows:

Cumulative impact analysis evaluating the potential impact of the proposed OWTS on groundwater level and quality (i.e., effects of groundwater mounding, nitrate loading and fecal/pathogen contamination), quality of nearby surface drainages (i.e., nitrate loading and fecal/pathogen contamination), and slope stability shall be required for the following development projects:

- A. Individual OWTS with design flow greater than one thousand five hundred (1,500) gallons per day (gpd);
- B. Land divisions;
- C. OWTS for any commercial development;
- D. Any lot which involves two or more OWTSs within one hundred (100) feet of each other with a combined capacity of over one thousand five hundred (1,500) gpd;
- E. OWTS for properties with a home occupation use subject to this Chapter.
- F. OWTS for multifamily residential developments;
- G. OWTS classified as a “community” system, serving multiple property owners;
- H. OWTS which the city or Regional Water Board identified as presenting a potential threat to surface water or groundwater beneficial uses; and
- I. OWTS located within the contributing recharge area of known nitrate groundwater problems.

Cumulative impact analyses shall be conducted in accordance with guidelines prescribed in the Malibu OWTS Manual and shall be included as an element of the OWTS design report for the proposed project application.

D. **Section 15.42.050 (C) Wastewater Design Flows** is hereby amended to read as follows (there is no change to Table 15.42 (B)-3):

Commercial and Home Occupation Uses Described in section 15.40.050 (A) (1). Wastewater flows used for design of OWTS for uses other than residential shall be estimated based on the projected activities, occupancy and facilities, using wastewater generation guidelines provided in Table 15.42.030(B)-3. For facilities not listed in Table 15.42.030(B)-3 the wastewater design flow shall be estimated based on either: (1) appropriate literature references (e.g., US EPA) for the type of facility proposed; or (2) documented wastewater flow monitoring data for a comparable facility. Additionally, the administrative authority may consider adjustment to the criteria listed in Table 15.42.030(B)-3 for specific facilities based upon documented wastewater flow monitoring data. In all cases, the design proposal shall include sufficient technical

information to support the proposed design flow estimate. Notwithstanding the above, minimum design flow for any OWTS shall not be less than one hundred fifty (150) gpd.

- E. **Section 15.44.030.C(4c) OWTS Operating Permit Requirement** is hereby amended to read as follows:

Multifamily uses, condominiums, and properties with a home occupation use described in section 15.40.050 (A) (1).

- F. **Section 15.44.030.C OWTS Operating Permit Requirement** is hereby amended by adding the following section as item C(8):

“When the city has received an OWTS complaint for a property with a home occupation use, the home occupation use must cease immediately. A Registered OM&M is required to inspect the OWTS and provide an inspection report to the city within fifteen (15) days of the city’s receipt of the complaint. The home occupation use may resume operations once the report has been approved by the administrative authority.

- G. **Section 15.44.040 Renewal of OWTS Operating Permits** is hereby amended to read as follows:

- A. Operating permits for properties with a home occupation use described in section 15.40.050 (A) (1) shall be valid for one (1) year from the date of issuance unless sooner revoked by the administrative authority pursuant to this chapter.
- B. Operating permits for an OWTS serving commercial or multifamily uses shall be valid for two (2) years from the date of issuance unless sooner revoked by the administrative authority pursuant to this chapter.
- C. Operating permits for advanced onsite wastewater treatment systems serving single-family uses shall be valid for three (3) years from the date of issuance unless sooner revoked by the administrative authority pursuant to this chapter.
- D. Operating permits for conventional onsite wastewater treatment systems serving single-family uses shall be valid for five (5) years from the date of issuance unless sooner revoked by the administrative authority pursuant to this chapter.
- E. The owner of real property served by an OWTS is responsible for the timely renewal of the operating permit. It shall be a violation of this chapter for an owner of real property served by an OWTS to allow an operating permit to lapse for a period longer than thirty (30) days unless the property owner has entered into a compliance agreement with the city for any necessary repairs, upgrades or modifications to the OWTS.

- H. **Section 15.44.050 OWTS Inspection and Operating Permit Criteria** is hereby amended to read as follows:

- A. An operating permit will not be issued to a property owner until the OWTS has been inspected by a city approved OWTS inspector and found to be operating in

- compliance with the city's Guidelines for the Inspection of Onsite Wastewater Treatment Systems in the Malibu OWTS Manual and with any applicable conditions previously stipulated for the system.
- B. All inspections required by this chapter shall be conducted by a city approved OWTS inspector in accordance with the guidelines.
 - C. All residential properties with a home occupation use described in section 15.40.050 (A) (1) shall obtain an inspection annually. The city will revoke the operating permit and suspend home occupation use activities until all required repairs, modifications, replacements, and/or upgrades have been completed to the satisfaction of the administrative authority.
 - D. The results of any inspection required by this chapter shall be reported to the administrative authority by the OWTS inspector on the official inspection form for onsite wastewater treatment systems.
 - E. The administrative authority shall establish and approve the guidelines for the inspection of onsite wastewater treatment systems and the official inspection form for onsite wastewater treatment systems and any amendments thereto.
 - F. It is a violation of this code to falsify, misrepresent, or fraudulently alter or manipulate a system inspection form.

SECTION 3. Environmental Review.

This Ordinance was assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines (the Guidelines), and the environmental regulations of the City. The City Council hereby finds that under Section 15061(b)(3) of the State CEQA Guidelines, this Ordinance is exempt from the requirements of CEQA because it can be seen with certainty that the provisions contained herein would not have the potential for causing a significant effect on the environment. It also finds the Ordinance is exempt from the requirements of CEQA pursuant to CEQA Guidelines Sections 15307 and 15308 as an action by a regulatory agency taken to protect the environment and natural resources.

SECTION 4. Severability.

If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, the remainder of this Ordinance shall remain in full force and effect.

The City Council hereby declares that it would have passed this ordinance and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrases, or clauses be declared unconstitutional.

SECTION 5. Certification.

The City Clerk shall certify the passage and adoption of this ordinance and enter it into the book of original ordinances.

SECTION 6. Effective Date.

In accordance with California Government Code section 36937, this Ordinance shall become effective on the 30th day following its passage and adoption.

PASSED, APPROVED AND ADOPTED this XX day of March 2024.

STEVE UHRING, Mayor

ATTEST:

KELSEY PETTIJOHN, City Clerk

APPROVED AS TO FORM:

THIS DOCUMENT HAS BEEN REVIEWED
BY THE CITY ATTORNEY'S OFFICE
TREVOR RUSIN, Interim City Attorney

**NOTICE OF PUBLIC HEARING
CITY OF MALIBU
CITY COUNCIL**

The Malibu City Council will hold a public hearing on **MONDAY, March 25, 2024, at 6:30 p.m. on the ordinance listed below in the Council Chambers at Malibu City Hall, located at 23825 Stuart Ranch Road, Malibu, CA, and via teleconference.** The ordinance will consider additional regulations for Onsite Wastewater Treatment Systems for single family homes with home occupation uses that increases the usage and strain on the OWTS by virtue of these uses.

Public comment can be submitted ahead of the public hearing to citycouncil@malibucity.org for inclusion in the public record. To view and participate during the public hearing, please review the meeting agenda posted at MalibuCity.org/AgendaCenter and follow the directions for public participation.

HOME OCCUPATION USE ORDINANCE NO. XX

AN ORDINANCE OF THE CITY OF MALIBU AMENDING SECTION 15.40.020 (DEFINITIONS); SECTION 15.40.050, (OWTS REQUIREMENTS FOR BUILDINGS); SECTION 15.40.080 (CUMULATIVE IMPACTS); SECTION 15.42.050 (WASTEWATER DESIGN FLOWS) SECTION 15.44.030 (OWTS OPERATING PERMIT REQUIREMENT); SECTION 15.44.040 (RENEWAL OF OWTS OPERATING PERMITS), AND SECTION 15.44.50 (OWTS INSPECTION AND OPERATING PERMIT CRITERIA) OF THE MALIBU MUNICIPAL CODE AND DETERMINING THE PROJECT IS CATEGORICALLY EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

If there are any questions regarding this notice, please contact Environmental Sustainability Director Bundy at (310) 456-2489, ext. 229. Copies of all related documents can be reviewed by any interested person at City Hall during regular business hours. Oral and written comments may be presented to the City Council on, or before, the date of the meeting.



Yolanda Bundy, Environmental Sustainability Director

Publish Date: March 7, 2024 and March 14, 2024