

MINUTES
ZONING ORDINANCE REVISIONS AND CODE ENFORCEMENT
SUBCOMMITTEE (ZORACES)
SPECIAL MEETING
APRIL 14, 2022
TELECONFERENCED – VARIOUS LOCATIONS
3:30 P.M.

CALL TO ORDER

Councilmember Pierson called the meeting to order at 3:30 p.m.

ROLL CALL

The following persons were recorded in attendance:

PRESENT: Councilmember Mikke Pierson and Councilmember Steve Uhring

ALSO PRESENT: Interim City Manager Steve McClary; Planning Director Richard Mollica; Senior Planner Jessica Thompson; and Administrative Assistant Rebecca Evans

APPROVAL OF AGENDA

MOTION Councilmember Uhring moved, and Councilmember Pierson seconded a motion to approve the agenda. The question was called, and the motion carried unanimously.

REPORT ON POSTING OF AGENDA

Administrative Assistant Evans reported that the agenda for the meeting was properly posted on April 11, 2022.

ITEM 1 PRESENTATIONS

None.

ITEM 2 OLD BUSINESS

None.

ITEM 3 NEW BUSINESS

A. Approval of Minutes – August 6, 2020

Staff recommendation: Approve the minutes for the Zoning Ordinance Revisions and Code Enforcement Subcommittee Special meeting of August 6, 2020.

MOTION Councilmember Uhring moved, and Councilmember Pierson seconded a motion to approve the minutes for the Zoning Ordinance Revisions and Code Enforcement Subcommittee Special meeting of August 6, 2020. The question was called, and the motion carried unanimously.

B. Implementation of Land Use Policy 3.18 Addressing the Use of Rodenticides, Insecticides, and Herbicides

Staff Recommendation: Discuss whether a policy or an ordinance to the Local Coastal Program Local Implementation Plan should be prepared to implement Land Use Plan Policy 3.18.

Senior Planner Thompson presented the report.

Joel Schulman expressed concern that the community was confused because they still see poisons in use regularly. He urged the Subcommittee to adopt the staff recommendation and enact something meaningful that could be put into use as soon as possible, whether that be a policy or an ordinance.

Patt Healy expressed concern about how long an ordinance takes to implement. She suggested putting a policy in place first if the Subcommittee's recommendation would be for an ordinance. She stated the ordinance would not require California Coastal Commission (CCC) certification.

John Mazza noted that the CCC had already met extensively and approved the definition of Environmentally Sensitive Habitat Areas (ESHA) in terms of poisons. He stated he provided the citations to Interim City Manager McClary. He stated the CCC did not want to hear this again, and its position was that the City had oversight on its definitions for development. He stated a policy was the preferred method for a Coastal Development Permit (CDP). He stated staff determined that poisons outside of the home could impact ESHA.

Councilmember Uhring asked how the City could legally defend the position of banning outside use of rodenticides if challenged in court.

Planning Director Mollica explained that the basis of the draft policy would be to consider the use of these chemicals as development based on Land Use Policy 3.18 prohibiting development involving use of pesticides, herbicides or rodenticides. He stated if the City moved forward with a policy rather than an ordinance, approvals would be made on a Council-approved interpretation.

In response to Councilmember Uhring, Planning Director Mollica explained the City could argue that it is a form of development by saying that something is being placed on the ground and creating an impact on coastal resources.

Councilmember Uhring stated the City had the ability to define what development is right now. He expressed support for implementing a policy while possibly working on an ordinance for the long-term. He stated the City should obtain a legal opinion on grounds for defending against a challenge to the policy in court prior to the policy coming before the City Council. He expressed strong support for a policy at the earliest possible time.

Planning Director Mollica stated an aggressive timeframe for an ordinance would be 18 to 24 months while a policy could be started tomorrow. He stated the second reading would be likely in mid- to late-September.

Councilmember Uhring suggested having a law firm provide the City with its legal position should it be challenged.

Councilmember Pierson agreed that a policy was the best option. He stated bait boxes and poisons were an intensification of use that could damage ESHA.

MOTION Councilmember Pierson moved, and Councilmember Uhring seconded a motion to provide a recommendation that the City Council direct staff to prepare a policy to implement Land Use Plan Policy 3.18.

FRIENDLY AMENDMENT

Councilmember Uhring requested the motion be amended to add that the City's law firm provide the basis of how the City would defend any challenges and include that legal brief when this item is brought to the City Council.

The Friendly Amendment was accepted by the maker.

In response to Councilmember Uhring, Planning Director Mollica explained the City would respond to a complaint by verifying the violation, and then Code Enforcement would contact the property owner to remove it. He stated the property owner would pay a penalty to cover Code Enforcement costs. In response to Councilmember Uhring, he stated a CDP would never be issued to allow poison use on ESHA. He stated the policy, as written, did not allow any property owner to have the poisons on its property, and a CDP would only be to restore ESHA.

Interim City Manager McClary noted that if a property owner built something without a permit, the City would find them in violation and make them abate the construction.

Planning Director Mollica discussed a potential fine schedule for violations.

Councilmember Pierson suggested having the City Attorney advise on a plan for penalties for violations of the policy when this was presented to Council.

Planning Director Mollica stated staff would propose options and discuss with the City Attorney whether that would require a modification to Item 4 in the draft policy.

Councilmember Uhring agreed that penalties must be included with the policy. In response to Councilmember Uhring, Planning Director Mollica stated Council Policy No. 43 required the complainant be identified except for health and safety issues. In response to Councilmember Uhring, Planning Director Mollica stated this could be considered a safety issued as related to wildlife.

Councilmember Pierson suggested the City include an education and outreach component to include how to identify if bait traps were poisons or snap traps.

Councilmember Uhring asked if pesticide firms operating in Malibu would be required to obtain a permit.

Interim City Manager McClary stated the City could contact major providers of the new requirements.

The final motion was clarified to be to provide a recommendation that: 1) Staff prepare and the City Council adopt a policy to implement Land Use Plan Policy 3.18 regarding the use of rodenticides, insecticides, and herbicides; 2) the City's law firm provide the basis of how the City would defend any challenges and include that legal brief when the policy was brought to the City Council; 3) the City Council direct staff to create a plan for enforcement and penalties for violations of the policy.

The question was called, and the motion carried unanimously.

C. Zoning Text Amendment No. 21-005 Amending Malibu Municipal Code Chapter 17.68 (Temporary Use Permits)

Staff recommendation: Discuss potential amendments to the temporary use permit (TUP) process, event criteria, and provide feedback for staff to incorporate into a draft ordinance amendment.

Planning Director Mollica presented the report.

Barry Haldeman, a member of the Malibu Film Society Board of Directors, Malibu Arts Commission, and the Chamber of Commerce Arts Commission, noted the Malibu Film Society had operated in the City for thirteen years and offered about sixty screenings per year without any permits required. He stated the City provided grants for the first couple of years. He stated the City's position changed suddenly, which drove it out of Malibu. He requested the City interpret 1768.040(F) to allow

for holding events in appropriate locations without permits. He requested a special exemption in the code for the Malibu Film Society.

Daria Hodko, Chamber of Commerce Arts Committee Chair, agreed with Mr. Haldeman. She requested more opportunities for local artists to showcase their work. She stated she supported relaxing or waiving requirements for TUPs. She stated the Committee's and Malibu Film Society's mission were to bring more arts into Malibu and take advantage of local talent.

Scott Tallal, Malibu Film Society, expressed support for amending the code. He stated typical events had attendance of fewer than 100 people. He stated the code should include both public and private spaces. He discussed certain events that could not meet the 35-day advance noticing requirement. He stated the draft policy had failed to discuss events held in private spaces, such as churches or synagogues. He stated the vast majority were indoor events and were seldom held on consecutive days. He stated he was unaware of any complaints ever filed by the community about any Malibu Film Society event.

John Mazza, former member of the Arts Task Force and a member of the Malibu Arts Foundation, discussed recent car events with over 250 people in the Malibu Lumber Yard shopping center that were internationally advertised and held without permits. He stated they received only a slap on the hand. He stated many events that could be considered art would impact neighborhoods. He stated it needed to be controlled to define a public space. He stated most parks were residentially zoned. He stated neighbors should be notified of events that may impact them. He stated it must focus on impacts to residents, including traffic and parking.

Barbara Freund, Malibu Art Association, thanked the City and staff for their empathy and compassion. She stated the community was extremely supportive of the Art in the Park program. She discussed other groups that wanted to hold events in the City and would donate portions of their proceeds to local organizations or to the City for park maintenance. She expressed support for staff's recommendation to amend the TUP for non-profit organizations that benefitted the community. She discussed the burden on staff to process TUPs for simple, recurring events that did not involve food, tents, music or speakers.

Lotte Cherin, Malibu Arts Commission, requested the TUP be relaxed for the Commission since it was a City group and typically held events at City Hall with low attendance and low impact. She stated the Commission hoped for a waiver of fees and the 14-day notice requirement.

Eduardo del Signore stated he worked with artists on platforms of music, dance, poetry, and art. He stated supported any motion to expand arts in Malibu that would benefit the community. He discussed the loss of art and tradition in Uruguay. He

stated a country not invested in the arts was doomed to mediocrity. He announced a concert on April 23 at City Hall to benefit the Malibu High School orchestra and another event to benefit Ukraine on May 21 at Malibu United Methodist Church. He stated he supported the previous speakers.

Barbara Bruderlin, Chamber of Commerce, stated she would be happy to see changes to this process. She stated the Chamber supported the Malibu Film Society hosting its event at Malibu Pacific Church. She stated arts are suffering in Malibu because shopping centers are worried about using their six TUPs. She expressed support for allowing more art on the street and in the centers.

John Johannessen questioned why the Malibu Film Society was shut down so quickly. He stated the City should be more supportive of the arts community. He stated, on behalf of the Malibu Film Society, he appreciated anything that would allow showing movies in Malibu.

Councilmember Uhring expressed confusion about what the Subcommittee was asked to do. He stated nobody shut down the Malibu Film Society. He stated they were simply asked to follow the same rules as others. He stated a TUP allowed events at a location not built for that and protected the residents' quality of life. He asked if newer staff understood everything necessary to determine if an over the counter (OTC) permit should be issued. He questioned who determined what was an educational, art or cultural event. He expressed support for clearing a path for arts and cultural events at Legacy Park, City Hall and Bluffs Park. He stated he did not want to see an overhaul of the TUP rules and process without having it go back to the nearby residents to make sure they would not be impacted.

Councilmember Pierson agreed with Councilmember Uhring about small, non-impact events. In response to Councilmember Pierson, Planning Director Mollica confirmed that the City's public parks were limited to six events per year. He explained the TUP ordinance did not have an exemption for City-owned properties and Section G required a permit for art or cultural events, exhibits and displays. He stated the Malibu Municipal Code did not allow the City to exempt itself.

Councilmember Pierson suggested the City Council discuss promoting public spaces as the locations for these events. He stated he had no issue with art events every week in public spaces. He expressed support for allowing a series with a threshold, providing there was low or no impact. He stated the Malibu Film Society should be able to host events in any space built, permitted and designed for a certain number of people with sufficient parking. He stated events like the Music at Trancas should be encouraged. He stated not having more than six art events in a public park made no sense. He stated art events had lower impact than a series of weekly soccer games.

In response to Councilmember Pierson, Planning Director Mollica stated the Subcommittee was suggested to consider recommendations for events on consecutive dates and non-event temporary uses or structures. Councilmember Pierson stated extra space during construction, including parking, should go through the Planning Commission. Planning Director Mollica stated the Planning Commission could consider that rather than going through the TUP process. In response to Councilmember Pierson, Planning Director Mollica discussed multi-day events and non-consecutive events and whether they could be all under one permit. Councilmember Pierson stated those could be considered a series. He stated the City may have unintentionally abandoned its art community. Planning Director Mollica discussed Conditional Use Permits (CUP).

Councilmember Uhring stated there needed to be a clear understanding that he and Councilmember Pierson did not agree with one another on all facets of this topic. He expressed concern about opening it up to any type of event and potential negative impacts on nearby residents. He stated it was necessary to clearly define everything for staff.

Councilmember Pierson stated he agreed that a CUP would stand, particularly in its impact to neighbors. Councilmember Uhring questioned who would make the determination. He stated the City needed a clear definition of what was a low- or non-impact event. He stated there was no control over TUPs.

Councilmember Uhring stated he supported art events at City parks without a TUP. Councilmember Pierson stated he would support an OTC permit for those events.

Councilmember Pierson stated the TUP system was failing residents. Councilmember Uhring stated implementation and enforcement of the TUP system was what was failing the residents.

In response to Councilmember Pierson, Planning Director Mollica stated staff presented a TUP mechanism for people who wanted approval on a series. He suggested further discussion on what threshold would require a public hearing.

Interim City Manager McClary stated he understood Councilmember Uhring's concern about enforcement. He stated staff did respond to complaints and had issued citations this year when there was evidence of violations or events held without TUPs.

CONSENSUS

By consensus, the Subcommittee agreed to recommend that the City Council look at different rules for permitting art events at public places, such as events at Legacy Park, City Hall, Bluffs Park, or Trancas summer concerts.

Councilmember Pierson stated the City needed to address the art community's concerns and frustration. Councilmember Uhring stated there was a path for that through the TUP process.

Planning Director Mollica stated staff could bring back a proposal for series of events that would exceed six times per year. He suggested it might require going to the Planning Commission for a public hearing. Councilmember Pierson stated it still required determination of the impact.

Planning Director Mollica suggested construction yard issues should be part of the Planning Commission approval process. Councilmember Uhring and Councilmember Pierson agreed.

Planning Director Mollica stated staff would draft a policy for presentation to the Planning Commission for recommendations. He stated a Zoning Text Amendment (ZTA) would be brought to the City Council.

CONSENSUS

By consensus, the Subcommittee requested the draft policy be brought back to ZORACES prior to going to the Planning Commission.

In response to Councilmember Pierson, Planning Director Mollica stated a TUP for the Malibu Film Society required a 32-day public notice and would be limited to six events per parcel per year. In response to Councilmember Pierson, Planning Director Mollica confirmed a film series for 10 straight nights would be allowed.

In response to Interim City Manager McClary, Planning Director Mollica confirmed the series could be held at a facility with a CUP in place allowing that type of event.

ADJOURNMENT

MOTION At 5:23 p.m., Councilmember Uhring moved, and Councilmember Pierson seconded a motion to adjourn the meeting. The question was called, and the motion carried unanimously.

Approved and adopted by the Zoning Ordinance Revisions and Code Enforcement Subcommittee of the City of Malibu on October 12, 2022.


STEVE UHRING, Councilmember

ATTEST:

MARY LINDEN, Executive Assistant