

ORDINANCE NO. 434

AN ORDINANCE OF THE CITY OF MALIBU DETERMINING THE PROJECT IS CATEGORICALLY EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT AND AMENDING MALIBU MUNICIPAL CODE TITLE 17 (ZONING) TO REGULATE OUTDOOR LIGHTING CITYWIDE

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

SECTION 1. Recitals.

A. On April 8, 2013, the City Council directed staff to prepare a Zone Text Amendment (ZTA) to establish a citywide outdoor lighting standards ordinance, later referred to as Dark Sky Ordinance. The purpose of the ordinance is to reduce light pollution to preserve enjoyment of the night time sky and the City's rural environment, reduce impacts on wildlife and natural habitats, and promote the City's goal of conserving energy and natural resources.

B. On April 30, 2013, the Zoning Ordinance Revisions and Code Enforcement Subcommittee (ZORACES) provided recommendations on key elements to include in a Request for Proposal (RFP) for the preparation of a comprehensive citywide lighting ordinance (ZTA No. 13-001).

C. On April 16, 2014, the City Council authorized an agreement with the International Dark Sky Association (IDA) to assist staff with the preparation of the citywide lighting ordinance for integration into City codes. The City Council further directed staff, in close coordination with IDA, to prepare a modified version of the MLO, as this model lighting code was determined to be more appropriate overall than previously considered alternative ordinances.

F. On September 8, 2014, the City Council directed staff and IDA to prepare a citywide lighting ordinance based on the MLO that incorporated standards such as light spectrum controls to aid in protecting the City's rural nature.

G. On May 9, 2016, August 23, 2016, and February 28, 2017, staff presented a draft ordinance to ZORACES for recommendations.

J. On June 6, 2017, a duly noticed Special Joint meeting of City Council and Planning Commission was held in order for staff and IDA to conduct a guided nighttime tour of seven locations throughout the City exhibiting a variety of lighting schemes. Approximately 15 members of the public attended.

K. On June 7, 2017, a duly noticed Special Joint meeting of City Council and Planning Commission was held which included a public workshop on the results of tour surveys, an overview of the draft ordinance, known as the Dark Sky Ordinance, and a discussion about community concerns, enforcement and compliance. At the conclusion of the meeting, staff received comments from the public, Councilmembers and Commissioners.

L. On July 17, 2017, the Planning Commission held a duly noticed public hearing on a progress draft of the proposed Dark Sky Ordinance, received public comment and provided recommendations to staff.

M. On February 15, 2018, a Notice of Planning Commission Public Hearing was published in a newspaper of general circulation within the City of Malibu and was mailed to all interested parties.

N. On March 19, 2018, the Planning Commission held a duly noticed public hearing on the draft ordinance, at which time the Planning Commission reviewed and considered the agenda report, reviewed and considered written reports, public testimony, and other information in the record.

O. On March 29, 2018, a Notice of City Council Public Hearing was published in a newspaper of general circulation within the City and was mailed to all interested parties; regional, state and federal agencies affected by the amendments; local libraries and media; and the CCC.

P. On April 23, 2018, the City Council held a duly noticed public hearing on the proposed ordinance, reviewed and considered the staff report, reviewed and considered written reports, public testimony, and other information in the record.

SECTION 2. Environmental Review.

The City Council has analyzed the project proposal described herein and has determined that the project is covered by the general rule that the California Environmental Quality Act (CEQA) applies only to projects which have the potential for causing a significant effect on the environment. Pursuant to CEQA Guidelines Section 15061(b)(3), where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. The City Council has determined that there is no possibility the proposed amendment may have a significant effect on the environment and accordingly, the exemption set forth in Section 15061(b)(3) applies.

SECTION 3. Findings for Zoning Text Amendment No. 13-001.

The City Council hereby finds that ZTA No. 13-001 is consistent with the General Plan and is designed to protect and promote public health, safety, welfare, quality of life and the ability to view the night sky. The ordinance further strives to reduce light pollution, protect the City's rural environment, reduce impacts on wildlife and natural habitats, and promote the City's goal of conserving energy and natural resources. The ordinance will also ensure compatibility between land uses by reducing negative effects of light pollution which conflict with the City's goals of maintaining its unique rural character.

The ZTA further advances the General Plan Vision Statement which reads, "Malibu is a unique land and marine environment and residential community whose citizens have historically evidenced a commitment to sacrifice urban and suburban conveniences in order to protect that

environment and lifestyle, and to preserve unaltered natural resources and rural characteristics. The people of Malibu are a responsible custodian of the area's natural resources for present and future generations." The City is committed to "manage growth to preserve a rural community character" [General Plan LU Element, Section 1.4.2]. The overriding goals of the City are to: "(a) Protect, maintain, and where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and artificial resources; and (b) Assure orderly, balanced utilization and conservation of coastal zone resources taking into account the social and economic needs of the people of the state."

The proposed ordinance does not authorize a use other than that already designated in the MMC as a permitted or conditionally permitted use in the zone. The proposed ordinance is consistent with the Coastal Act and the MMC because it protects, maintains and enhances the overall quality of the coastal zone environment. The proposed ordinance will not alter the utilization or conservation of coastal zone resources, impede public access to and along the coastal zone, or interfere with the priorities established for coastal-dependent or coastal-related development.

#### SECTION 4. Zoning Text Amendments.

Chapter 17.41 (Malibu Dark Sky) is hereby added to Title 17 of the MMC to read as follows:

##### 17.41.010 Title.

This chapter shall be known as the "Malibu Dark Sky Ordinance."

##### 17.41.020 Purpose.

The purpose of this chapter is to implement the goals of the General Plan and protect and promote public health, safety, welfare, quality of life and the ability to view the night sky, by establishing regulations and a process for review of outdoor lighting in order to accomplish the following:

- A. Minimize direct glare and prevent excessive lighting, thereby minimizing light pollution caused by inappropriate or misaligned light fixtures, and promoting common courtesy among neighbors;
- B. Reclaim the ability to view the night sky and thereby help preserve Malibu's rural quality of life and the scenic value of this desirable visual resource;
- C. Promote wildlife habitation and migration by minimizing light pollution into and adjacent to habitat areas;
- D. Prevent light pollution wherever possible in all areas of the city;
- E. Provide sufficient lighting where it is needed to promote safety and security on public and private property;

- F. Allow flexibility in the style of outdoor lighting;
- G. Provide standards for efficient and moderate use of lighting which balance energy use and economic impact;
- H. Provide lighting standards that can evolve according to advancements in technology and
- I. Promote lighting practices and systems which conserve energy, decrease dependence on fossil fuels and limit greenhouse gas emissions consistent with the California Global Warming Solutions Act and other applicable state and federal law.

17.41.030 Definitions.

Notwithstanding the provisions of Section 17.02.060, for the purposes of this chapter only, the following words and phrases are defined as follows:

“Curfew” means the time of day when lighting restrictions, based on zoning district, are in effect.

“Directional lighting” means methods of directing light downward, rather than upward or outward, with the intention of directing light where it is needed.

“Environmentally Sensitive Habitat Area (ESHA),” for purposes of this chapter, shall be defined as in the MMC except in the Point Dume area, where it shall refer only to any slopes of 25 percent or steeper.

“Fully shielded” means a light fixture constructed and installed in such a manner that all light emitted, either directly from the lamp or a diffusing element, or indirectly by reflection or refraction from any part of the fixture, is projected below the horizontal plane through the fixture’s lowest light-emitting part.

“Glare” means light entering the eye directly from a light fixture or indirectly from reflective surfaces that causes visual discomfort or reduced visibility to a reasonable person.

“Kelvin” means the measure of the color temperature of a light source. Warmer temperatures are a lower number, and cooler temperatures are a higher number.

“Lamp” means, in generic terms, a source of optical radiation (i.e., “light”), often called a “bulb” or “tube.” Examples include incandescent, fluorescent, high-intensity discharge (HID) lamps, and low-pressure sodium (LPS) lamps, as well as light-emitting diode (LED) modules and arrays.

“Light pollution” means the material adverse effect of artificial light including, but

not limited to, glare, light trespass, sky glow, energy waste, compromised safety and security, and impacts on the nocturnal environment, including light sources that are left on when they no longer serve a useful function.

“Light trespass” means light that falls beyond the property it is located on.

“Lumen” means the unit of measure used to quantify the amount of visible light produced by a lamp or emitted from a light fixture (as distinct from “watt,” a measure of power consumption).

“Navigation lights” means a set of lights shown for an aircraft at night to indicate obstacles and hazards such as towers and tall buildings.

“Outdoor light fixtures” means outdoor electrically powered illuminating devices, lamps and similar devices, including solar powered lights, and all parts used to distribute the light and/or protect the lamp, permanently installed or portable; synonymous with “luminaires.”

“Public viewing area” shall be defined as in Local Coastal Program Local Implementation Plan Section 2.1.

“Seasonal lighting” means lighting installed and operated in connection with holidays or traditions.

“Sky glow” means the brightening of the nighttime sky that results from scattering and reflection of artificial light by air molecules, moisture and dust particles in the atmosphere. Sky glow is caused by light directed or reflected upwards or sideways and reduces one's ability to view the night sky.

“String lights” means light sources connected by free-strung wires or inside of tubing resulting in several or many points of light that are unshielded or partly shielded light sources.

#### 17.41.040 Applicability.

A. All outdoor light fixtures installed prior to the effective date of this ordinance are subject to the compliance period of Section 17.41.100(A), however the following requirements must be complied with immediately:

1. Outdoor light fixtures that have the ability to be redirected, shall be directed downward so as to minimize sky glow, glare and light trespass onto adjacent properties.
2. Outdoor light fixtures that have adjustable dimmers with color temperature that exceeds 3000 Kelvin shall be dimmed to comply with

Section 17.41.050(G) to minimize glare and light trespass onto adjacent properties.

3. String lights may be allowed in occupied dining and entertainment areas only and must not exceed 3000 Kelvin. String lights shall not be used as landscape lights. This does not apply to seasonal lighting.

B. All outdoor light fixtures installed after the effective date of this ordinance shall comply with this chapter.

C. For any property subject to this chapter and also regulated by permit conditions pertaining to outdoor lighting, the more restrictive provisions in terms of minimizing light pollution shall apply.

D. Nothing in this chapter shall prohibit a declaration of covenants, conditions and restrictions for private enforcement from further restricting lighting so long as it meets the minimum standards detailed in this chapter.

E. The following lighting and activities are not regulated by this chapter:

1. Indoor lighting
2. Lighting within the public right-of-way for the principal purpose of illuminating public streets or traffic control
3. Lighting solely used to illuminate signs for which a permit has been received
4. Lighting solely used to illuminate address signs
5. Construction or emergency lighting provided such lighting is temporary, necessary, and is discontinued immediately upon completion of the construction work or termination of the emergency
6. Aircraft navigation lights such as those attached to radio/television towers
7. Short-term lighting associated with activities authorized by a valid temporary use permit, special event permit or film permit during the duration of the permit
8. Malibu High School field and parking lot lights

17.41.050 Citywide Requirements.

A. All outdoor light fixtures shall be fully shielded and installed and maintained in such a manner that the shielding does not permit light trespass in excess of those amounts set forth in subsection G below. Lighting shall be directed away from ESHA, ESHA buffer, Pacific Ocean, beaches, and public viewing areas in a manner to ensure no lamp is directly visible from public viewing areas.

B. Lighting around the perimeter of the site, except as required for security lighting purposes and where it is controlled by motion sensor which extinguishes the light no later than 10 minutes after activation, and lighting for aesthetic purposes on any parcel of land that is located along, within, provides views to or is visible from any scenic area, scenic road, public viewing area, ESHA or ESHA buffer is prohibited.

C. Light pollution shall be minimized through the use of directional lighting, fixture location, height, the use of shielding and/or motion sensors and timers.

D. Automated control systems, such as motion sensors and timers, shall be used to meet the curfew requirements of 17.41.060. Photocells or photocontrols shall be used to extinguish all outdoor lighting automatically when sufficient daylight is available. Automated controls should be fully programmable and supported by battery or similar backup.

E. Lighting Color (Chromaticity). The correlated color temperature of all outdoor lighting shall be 3000 Kelvin or less except:

1. Amber colored sources of a lower temperature necessary to protect beach and ESHA, as determined by the planning director
2. Seasonal lighting

F. Seasonal lighting shall be allowed from November 15 to January 15 only.

G. Allowable light trespass. Outdoor lighting shall not cause light trespass exceeding the following amounts, measured with a light meter oriented vertically or horizontally at the property line of the property on which the light is trespassing:

1. From any property onto a residential property, ESHA, ESHA buffer, Pacific Ocean, beaches, and public viewing areas, the maximum allowable light trespass shall be 0.1 foot-candles
2. From any property onto a non-residential property other than ESHA, ESHA buffer, Pacific Ocean, beaches, and public viewing areas, the maximum allowable light trespass shall be 0.25 foot-candles

H. Permanently installed lighting that blinks, flashes or is of unusually high intensity or brightness is prohibited.

I. Lighting of the shore is prohibited, except as required for security lighting purposes and where it is controlled by motion sensor which extinguishes the light no later than 10 minutes after activation.

17.41.060 Additional Lighting Requirements by Zoning District.

A. Public Open Space (OS) zoning district

1. The lighting curfew for all outdoor lighting, other than security lighting as detailed in Section (2)(b) below, shall be one hour after sunset.

2. Lighting shall be minimized, restricted to outdoor light fixtures meeting the following standards:

a. Walkways: The minimum necessary to light walkways used for entry to and exit from structures and parking areas, utilizing fixtures that are shielded, directed downward, and do not exceed two feet in height and 850 lumens.

b. Security lighting shall be attached to buildings and controlled by motion sensors which extinguish no later than 10 minutes after activation, with fixtures that do not exceed 850 lumens.

c. Driveways: The minimum necessary for safe vehicular use of the driveway, utilizing fixtures that do not exceed 850 lumens.

d. An outdoor light fixture, not to exceed 850 lumens, at the entrance of buildings.

B. Residential zoning districts, including SF, MF, MFBF, RR, PD, and MH

1. Curfew: All outdoor lighting shall be extinguished by 11:00 p.m. or when people are no longer present in exterior areas, whichever is later, except for lighting activated by motion sensor which extinguishes 10 minutes after activation and lighting at building entrances, parking areas and driveways.

2. Each outdoor light fixture shall be fully shielded, directed downward and shall not exceed 850 lumens. Outdoor light fixtures shall not be mounted higher than 18 feet above ground level. For the portion(s) of a property containing ESHA or ESHA buffer or located in or adjacent to ESHA or ESHA buffer or visible from public viewing areas, lighting shall comply with the OS zone standards detailed in subsection (A)(2) above instead of this subsection (B)(2).

3. Outdoor lighting shall only be used within 50 feet of a residentially habitable building or swimming pool except that security lighting, driveways and walkways may include outdoor lighting which complies with Section 17.41.060(A)(2).

C. All other zoning districts including, but not limited to Commercial and Institutional zoning districts (CN, CC, CV, CG, I, RVP, and RD)

1. All outdoor lighting shall comply with California Building Code Title 24 Lighting Zone One (LZ1).

2. Curfew: All outdoor lighting shall be extinguished by 11:00 p.m. or close of business, whichever is later, except for lighting activated by motion sensor which extinguishes 10 minutes after activation and lighting at the building entrances and driveway egress points.

3. Lighting for ATMs and exterior accessways to hotel/motel rooms are not subject to the curfew.

4. For the portions of a property containing ESHA or ESHA buffer or located in or adjacent to ESHA or ESHA buffer, on any parcel of land that is located along, within, provides views to or is visible from any scenic area, scenic road, public viewing area, lighting shall comply with the standards of subsection (A)(2) under the OS zone standards instead of this subsection (C)(4).

17.41.070 Deviation.

A. Deviations from the lighting standards provided in this chapter may be approved pursuant to an application processed according to the same procedures as a site plan review under this Title. The application shall be made on a form provided by the Planning Department, and shall be accompanied by accurate plans, a legal description of the subject property and the following information:

1. Plans depicting the proposed lighting;

2. Detailed description of the circumstances which necessitate the deviation;

3. Details on the use of the proposed light fixtures for which the deviation is requested, including the type of outdoor light fixtures to be used, the light output and character of the shielding, if any; and

4. Such other data and information as may be required by the planning director.

B. The deviation may be granted by the planning director (for all residential zoning districts) and by the planning commission (for all other zoning districts or if an application is referred to the planning commission by the planning director) if the City makes the following four findings, based on substantial evidence.

1. There are unique circumstances affecting the subject property that make it infeasible or impractical to comply with strict application of the lighting standards detailed in this chapter.
2. The proposed deviation will achieve the purpose and intent of this chapter.
3. The levels of light pollution will not exceed the level anticipated to be produced by a project compliant with this chapter.
4. The proposed project will not be contrary to or in conflict with the general plan.

17.41.080 Street Lighting. (RESERVED)

17.41.090 Conflicts with other Laws.

In the event the provisions in this chapter conflict with federal or state law, this section shall be applied in a manner intended to carry out all provisions of law to the maximum extent feasible. When there is an irreconcilable conflict between the provisions of this chapter and the requirements of federal or state law, the provisions of federal or state law shall prevail over the provisions contained in this section only to the extent necessary to avoid a violation of those laws.

17.41.100 Application of Ordinance to Legal Non-conforming Lighting.

- A. Effective Date. The effective date of this chapter shall be October 15, 2018.
- B. Compliance Period. Notwithstanding the provisions in Chapter 17.60 (Non-conforming Structures and Uses) and Section 17.04.070, a property owner shall comply with the requirements of this chapter by the following compliance deadlines. Any non-compliant lighting still in place after the compliance deadline shall remain extinguished at all times.
  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, 2020.
  3. Outdoor lighting in all remaining zones, including but not limited to

SF, MF, MFBB, RR, PD, MH, and I zoning districts shall comply by October 15, 2021.

C. Extension. A property owner may apply for an extension of this deadline by submitting a request to the planning director thirty days before the compliance deadline detailing why an extension is needed. With the exception of lighting provided for security purposes, any non-compliant lighting shall remain extinguished while the request is pending. Upon demonstration of good cause for providing a property owner additional time to comply with the requirements of this section, the planning director may extend the property owner's time to comply and/or may require a plan for compliance that requires partial compliance in advance of full compliance. For purposes of this section, the term "good cause" shall mean a significant financial or other hardship which warrants an extension or conditional extension of the time limit for compliance established herein. In no instance shall the planning director issue an extension of the compliance period in excess of one year's time. The planning director's decision shall be appealable pursuant to the provisions of Section 17.04.220.

D. Change of Use. If a property with non-compliant lighting changes use after the effective date, then all outdoor lighting shall be brought into compliance with this chapter, either by the property owner or tenant, before the new use begins.

17.41.110 Enforcement and Penalties.

Any violation of the provisions of this chapter by any person shall be subject to the administrative penalty provisions of Title 1 chapter 1.10 of this Code.

SECTION 5. Certification.

The City Clerk shall certify the adoption of this Ordinance.

PASSED, APPROVED AND ADOPTED this 29<sup>th</sup> day of May, 2018.

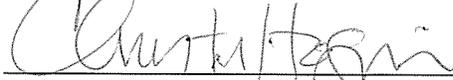
  
RICK MULLEN, Mayor

ATTEST:

  
HEATHER GLASER, City Clerk  
(seal)

Date: May 29, 2018

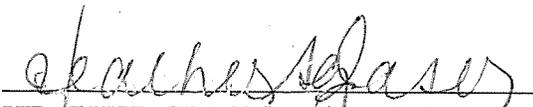
APPROVED AS TO FORM:

  
CHRISTI HOGIN, City Attorney

Any action challenging the final decision of the City made as a result of the public hearing on this application must be filed within the time limits set forth in Section 1.12.010 of the Malibu Municipal Code and Code of Civil Procedure.

I CERTIFY THAT THE FOREGOING ORDINANCE NO. 434 was passed and adopted at the Regular City Council meeting of May 29, 2018, by the following vote:

AYES:	5	Councilmembers:	La Monte, Peak, Rosenthal, Wagner, Mullen
NOES:	0		
ABSTAIN:	0		
ABSENT:	0		

  
HEATHER GLASER, City Clerk  
(seal)