

Malibu City Council
Zoning Ordinance Revisions and
Code Enforcement Subcommittee (ZORACES)
Special Meeting Agenda

Monday, November 14, 2016

4:00 P.M.

City Hall – Zuma Room
23825 Stuart Ranch Road

Mayor Pro Tem Skylar Peak
Councilmember Laura Rosenthal

Call to Order

Approval of Agenda

Report on Posting of the Agenda – November 10, 2016

Public Comment *This is the time for the public to comment on any items not appearing on this agenda. Each public speaker shall be allowed up to three (3) minutes for comments. The Subcommittee may not discuss or act on any matter not specifically identified on this agenda, pursuant to the Ralph M. Brown Act.*

Discussion Items

1. **Approval of Minutes –October 18, 2016**

Recommended action: Approve the minutes of the Zoning Ordinance Revisions and Code Enforcement Subcommittee Special meeting of October 18, 2016.

Staff contact: Planning Director Blue, 310-456-2489, ext. 258

2. **Zoning Text Amendment No. 16-003 to Add Provisions for Display of Art on Residential Property to the Malibu Municipal Code**

Recommended action: Review the proposed amendment and provide recommendations to staff.

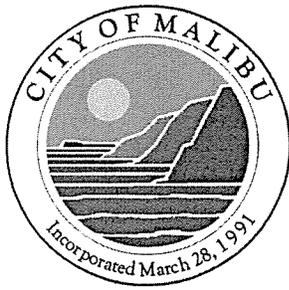
Staff contact: Associate Planner Colvard, 310-456-2489, ext. 234

Adjournment

I hereby certify under penalty of perjury, under the laws of the State of California, that the foregoing agenda was posted in accordance with the applicable legal requirements. Dated November 10, 2016.



Patricia Salazar, Senior Administrative Analyst



Zoning Ordinance
Revisions & Code
Enforcement
Subcommittee Meeting
11-14-16
Item 1

Zoning Ordinance Revisions and Code Enforcement Subcommittee Agenda Report

To: Zoning Ordinance Revisions and Code Enforcement
Subcommittee (ZORACES) Members Peak and Rosenthal

Prepared by: Bonnie Blue, Planning Director *BB*

Date prepared: November 8, 2016 **Meeting date:** November 14, 2016

Subject: Approval of Minutes – October 18, 2016

RECOMMENDED ACTION: Approve the minutes of the Zoning Ordinance Revisions and Code Enforcement Subcommittee (ZORACES) Special meeting of October 18, 2016.

DISCUSSION: Staff has prepared draft minutes for the ZORACES Special meeting of October 18, 2016 and hereby submits the minutes to the Subcommittee for approval.

ATTACHMENTS: Draft Minutes of the October 18, 2016 ZORACES Special meeting

MINUTES
MALIBU ZONING ORDINANCE REVISIONS AND CODE ENFORCEMENT
SUBCOMMITTEE
SPECIAL MEETING
October 18, 2016
CITY HALL - ZUMA ROOM
4:00 P.M.

CALL TO ORDER

Mayor Pro Tem Peak called the meeting to order at 4:03 p.m.

ROLL CALL

The following persons were recorded in attendance:

PRESENT: Mayor Pro Tem Skylar Peak and Councilmember Laura Rosenthal

ALSO PRESENT: Bonnie Blue, Planning Director; Adrian Fernandez, Senior Planner;
and Kathleen Stecko, Senior Office Assistant

APPROVAL OF AGENDA

CONSENSUS

By consensus, the Subcommittee approved the agenda.

REPORT ON POSTING OF AGENDA

Planning Director Bonnie Blue reported that the agenda for the meeting was properly posted on October 6, 2016.

PUBLIC COMMENT

None.

DISCUSSION ITEMS

1. Approval of Minutes – August 23, 2016 and September 27, 2016

Recommended Action: Approves the minutes of the Zoning Ordinance Revisions and Code Enforcement Subcommittee (ZORACES) Special meetings of August 23, 2016 and September 27, 2016.

CONSENSUS

By consensus, the Subcommittee approved the minutes of the minutes of the ZORACES Special meetings of August 23, 2016 and September 27, 2016.

2. Draft Policy for Measuring Building Height on Non-Beachfront Lots

Recommended Action: Review the draft policy for measurement of building height for non-beachfront lots and provide comments.

Speakers: Norman Haynie, John Mazza, Lester Tobias, Farshad Azarnoush, Lee Jubas, David Brotman, Edward Niles, Peter Mitsakos, and Douglas Burdge

CONSENSUS

By consensus, the Subcommittee directed staff to develop verbiage to present to ZORACES for a Local Coastal Program Amendment to address the matter.

ADJOURNMENT

CONSENSUS

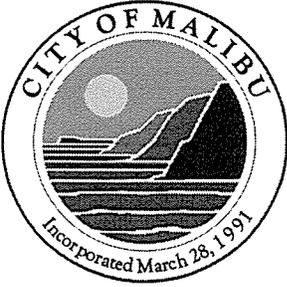
By consensus, the Subcommittee adjourned the meeting at 5:30 p.m.

Approved and adopted by the Zoning Ordinance Revisions and Code Enforcement Subcommittee of the City of Malibu on November 14, 2016.

SKYLAR PEAK, Mayor Pro Tem

ATTEST:

MARY LINDEN, Executive Assistant



Zoning Ordinance Revisions and Code Enforcement Subcommittee Agenda Report

To: Zoning Ordinance Revision and Code Enforcement Subcommittee
(ZORACES) Members Peak and Rosenthal

Prepared by: Jessica Colvard, Associate Planner

Approved by: Bonnie Blue, Planning Director 

Date prepared: November 9, 2016 **Meeting date:** November 14, 2016

Subject: Zoning Text Amendment No. 16-003 to Add Provisions for Display
of Art on Residential Property to the Malibu Municipal Code

RECOMMENDED ACTION: Review the proposed amendment and provide recommendations to staff.

DISCUSSION: The zoning text amendment (ZTA) was submitted by Elkins, Kalt, Weintraub, Reuben Gartside, LLP, following a Planning Commission decision on March 7, 2016 to deny an application for the after-the-fact placement of a 45-foot tall art sculpture, known as *Big Clay #7*. The City Council subsequently denied the applicant's appeal.¹ The proposed ZTA is a separate matter from the appeal and resolution of the code violation.

The proposed ZTA is not project-specific, but would apply citywide. The ZTA proposes a ministerial approval process for private art displayed on a residential property that is at least an acre in size, if the art has been displayed in a museum, does not contain mechanical components or lighting elements, is not artificially illuminated, and is made available for public showings three times a year. All zoning standards would be waived, including the City's by right 18 foot height limit, and discretionary 28 foot height maximum. Private art lower than 18 feet in height and not visible from a public viewing area would be completely exempt; regardless of parcel size. A permit for placement of art that does not meet these requirements would be considered by the Cultural Arts Commission, based on certain findings. The full text of the proposed ZTA is included as an attachment.

¹ City Council Resolution No. 16-30 was adopted on June 13, 2016. Removal of the sculpture is now a code enforcement matter.

This report provides a summary of previous Council legislative action on art, staff's preliminary analysis of the proposed ZTA, followed by options for which staff is requesting recommendation.

Previous Art Legislation

The City Council has demonstrated its support for enhancement of cultural amenities such as public and private art in the community, such as through the establishment of the Cultural Arts Commission² and the Art in Public Places program (MMC Chapter 17.59).³ The Art in Public Places program requires certain development projects valued at \$250,000 to either place public art onsite or pay an in lieu fee to a public art fund, and calls for establishment of Art in Public Places Implementing Guidelines to direct the selection of the art and use of the fund. The guidelines have never been established. The proposed ZTA is narrower in scope than the proposed guidelines, so a separate ordinance would be necessary to address the outstanding guidelines.

ZTA Preliminary Analysis

Staff has analyzed the proposed ZTA for consistency with the LCP, MMC and other potential issues. A summary of the issues associated with ZTA in its current form are summarized below:

- Criteria for approval and exempting art/artwork from zoning - The definition of “art or artwork” encompasses a vast array of structures that would be exempt from zoning and permitting requirements. The most stringent requirement for the approval is that the art must have been displayed in a “museum” which is defined as a museum accredited by the American Alliance of Museums. Currently, there are 1,564 accredited museums, which include art, history, natural history, aquariums, and zoos, among other institutions.⁴ This creates a potentially large loophole for circumventing zoning requirements that would otherwise prohibit placement of structures in certain locations.
- Coastal development permit (CDP) exemption – Conflicts with the LCP by specifying exemption without regard to the exceptions to exemption outlined in Local Implementation Plan (LIP) Section 13.4.1(B) that exclude improvements in or near environmentally sensitive habitat area (ESHA), beaches, bluffs, and other resources areas, or that might be subject to a California Coastal Commission-issued CDP future improvement deed restriction.

² Ordinance No. 370

³ Ordinance No. 382

⁴ A list of currently accredited museums can be found at <http://www.aam-us.org/resources/assessment-programs/accreditation/accredited-museums>

- Zoning standard exemption – Exempts art under 18 feet and art otherwise approved under the ordinance from all LIP and MMC zoning standards, such as height, front, side and rear yard setbacks, impermeable coverage, protection of steep slopes that would apply to other accessory structures (such as fences, walls, barbecues, decks, trellises) and provide basic protections of public health, safety and welfare.
- Public view protection – Specifically allows art located in the viewshed of a public viewing area and could allow placement in view corridors, which violates the protections provided by the LCP in Land Use Plan (LUP) Chapter 6 and LIP Chapter 6.
- Private view protection – Potentially allows private art to block private primary views that are protected by MMC Section 17.40.040(A)(17).
- Coastal resource protection – Ignores coastal resource protection policies of the LCP for ESHA (LIP Chapter 4), native trees (LIP Chapter 5), and shorelines and bluffs (LIP Chapter 10).
- Silent on building permit requirements – While some art will be exempt from a building code, some will not, depending on size, height, the need for foundations, and other characteristics.
- Requirements for Planning Commission approval – The findings for approval of art that cannot be approved through the ministerial process require subjective determinations, such as the “cultural significance of the art” and if it is “displayed in a visually pleasing manner.” The finding of compatibility with the surrounding neighborhood is arguably subjective, but could be weighed against objective criteria such as setbacks, color, finish and view impacts.
- Expands Cultural Arts Commission Authority – Without further direction by the City Council, it is not clear that the Cultural Arts Commission is intended to have the authority to waive zoning requirements or to make findings related to public interest, safety, health and welfare, which are more generally the purview of the Planning Commission.⁵

Based on the analysis above, staff believes the ZTA presents significant conflicts with the MMC and LCP, and that an LCP amendment would be necessary. However, due to the conflicts with the LCP, it does not appear that findings to

⁵ Per MMC Section 2.28.060, the duties of the Cultural Arts Commission are to “make recommendations to the city council with respect to matters concerning the cultural arts policy, facility rental fee policies for local cultural arts organizations, cultural arts related general fund grant applications, use of city parks for cultural arts-related events, purchase of art by the city, cultural arts programs sponsored by the city, outreach to Malibu artists and cultural arts organizations, use of cultural spaces at Malibu City Hall, and such other matters as directed by the city council.”

approve the LCPA or obtain certification by the California Coastal Commission could be made.

While the ZTA is not project-specific, consideration of *Big Clay* provides a useful lens through which to view the ordinance. If adopted in its current form, it would provide a mechanism for a structure of this 45-foot size, metallic material, public viewshed siting, and ocean-view obstruction of *Big Clay* to be allowed based on approval by the Planning Director with no public hearing or notice. A building permit would still be required.

Areas for Recommendation

The subject ZTA was applicant-initiated. There are several options the Subcommittee could recommend, individually or in combination, or it could provide other suggestions:

1. Move forward with the ZTA, as is, to the Planning Commission with a recommendation for denial.
2. Proceed with creation of Art in Public Places Implementation Guidelines first, and potentially follow up with Council initiation of a new ZTA to address placement of private art on private property with a scope reflecting the Subcommittee's suggestions.
3. Suggest modifications to the ZTA to address the issues identified, especially:
 - a. Should the ZTA be scaled back to avoid the need for an LCPA?
 - b. What zoning standards should apply to private art and/or what should the parameters for exemption be?

STAFF FOLLOW-UP: Based on the recommendations provided, staff will forward the ZTA to the Planning Commission for consideration, update the ZTA and return to the Subcommittee for additional comments or take other action.

ENVIRONMENTAL REVIEW: The ZTA as proposed would require an initial study to determine the appropriate documentation for compliance with the California Environmental Quality Act.

ATTACHMENT: Draft Ordinance for Art on Residential Property

Draft Ordinance for Public Art on Residential Property

RECEIVED
MAY 23 2016
PLANNING DEPT.

Chapter 17.59.5 Display of Art on Residential Property

17.59.5.010 Intent and Purpose

Cultural and artistic resources enhance the quality of life for individuals living in, working in, and visiting the city of Malibu. Visually pleasing, high-quality art located on residential property and viewable from private or public property contributes to a unique sense of community and enriches the quality of life for residents and visitors alike. Individuals living in, working in, and visiting the city of Malibu also benefit when such art is periodically available for viewings. Therefore, the City Council declares it in the public interest to allow art to be displayed on private, residential property provided that the art meets the requirements of this chapter.

19.59.5.020 Definitions

"Art" or "artwork" means an original work of a permanent nature in any variety of media produced by an artist and which may include sculptures, murals, photography and original works of graphic art, glass, mosaics, or any combination or forms of media, furnishings or fixtures affixed to the building or its grounds, or a combination thereof. Artwork shall not include decorative, ornamental or functional elements designed by the architect, or other design consultant retained for the design and construction of the subject building, or pieces that are mass produced with a standard design such as fountains and statuary objects.

"Commission" means the Cultural Arts Commission of the city of Malibu.

"Local implementation plan" means the Local Implementation Plan of the City of Malibu Local Coastal Program.

"Museum" means museum accredited by the American Alliance of Museums.

"Planning director" means the planning director of the City of Malibu.

"Public viewing area" means any location on or within a public road, public property, a public trail, a public parkland or a public beach.

"Residential property" means a property located in the rural residential or single family residential zone districts, as specified in chapters 17.08 and 17.10 of the Malibu Municipal Code.

17.59.5.030 Applicability

The provisions of this chapter shall only apply to:

(a) art located on residential, private property when that art is visible from a public viewing area, or

(b) art in excess of 18' in height located on residential, private property. This chapter does not apply to art less than 18' in height displayed on a residential property that is not visible

from a public viewing area. Art less than 18' in height displayed on a residential property that is not visible from a public viewing area is exempt from this application and permitting process.

17.59.5.040 Application Filing

Applications for a permit to display art under this chapter shall be filed in accordance with Sections 17.04.110 through 17.04.150 of the Malibu Municipal Code.

17.59.5.050 Application Requirements

- A. An application for a permit to display art on residential, private property shall be submitted to the planning department on forms furnished for that purpose and shall include the following information, as applicable:
1. Landscape and site plans indicating the location and orientation of the art and the landscaping and architectural treatment, if any, integrating the piece into the residential property.
 2. A sample, model, photograph or drawings of the art proposed to be displayed;
 3. A resume of the artist of the art proposed to be displayed;
 4. A maintenance plan for the art proposed to be displayed.
- B. The application submitted pursuant to subparagraph A shall be referred to the planning director or his/her designee for preliminary review to determine whether the application is complete. The completed application, along with the recommendation of staff and/or consultants, shall be forwarded to the commission for review and consideration.
- C. If the planning director or his/her designee determines that application is complete and the art complies with the requirements of Section 17.59.5.070.A, then the planning director shall approve the application. Under these circumstances, review and decision of the commission is not necessary or required.
- D. Subject to an extension of time agreed upon in writing by the applicant, the commission shall review the permit application within ninety (90) days of receipt of a complete application. The commission may make recommendations regarding possible changes, modifications or additions to the proposal.
- E. The commission shall approve or deny the application in accordance with the requirements referenced in Section 17.59.5.070. The commission may conditionally approve an application subject to such conditions that the commission deems reasonably necessary to conform the art to Section 17.59.5.070.

17.59.5.060 Hearing and Notice

Upon receipt in proper form of an application for a permit to display art on private, residential property, a public hearing shall be set and notice of such hearing given in a manner consistent with the requirements of Sections 17.04.160 through 17.04.210 of the Malibu Municipal Code. Notwithstanding the foregoing, a public hearing shall not be set for applications that comply with the requirements of Section 17.59.5.070.A.

- A. A notice shall be mailed, postage pre-paid, to any organization or homeowners associations that requests in writing and to all property owners and tenants within a five hundred (500) foot radius of the subject property and in no event less than ten (10) developed properties.
- B. Such notice shall state the nature of the request, location and zoning designation of the property, zoning, name of the project proponent, and the time and place of the meeting.
- C. Notices shall be mailed not less than twenty-one (21) days prior to the meeting.

17.59.5.070 Requirements for the Approval of the Display of Art

A. If art complies with the following requirements, then the planning director shall approve the application for a permit to display art on a residential property:

- 1. The art was displayed in a Museum.
- 2. The art does not consist of, or contain, electrical or mechanical components, or changing images (moving structural elements, flashing or sequential lights, lighting elements, or other automated methods that result in movement, the appearance of movement, or change of mural image or message, not including static illumination turned off and back on not more than once every 24 hours).
- 3. The art is available for public showings at least three (3) times per year.
- 4. Artificial light will not be used to illuminate the art.
- 5. The residential property displaying the art is larger than one (1) acre.

B. If art does not comply with the requirements of Section 17.59.5.070.A, then the commission may approve and/or modify an application for a permit to display art on residential, private property in whole or in part, with or without conditions, provided that it makes all of the following findings of fact:

- 1. The cultural significance of the art justifies its display on the residential property;
- 2. The owner of the residential property displaying the art agrees to allow public viewings at least three (3) times per year for as long as the piece is displayed at the private parcel.

3. The art is not detrimental to the public interest, safety, health and welfare.
4. The art is compatible with the surrounding neighborhood.
5. The art is displayed in a visually pleasing manner.
6. Artificial light will not be used to illuminate the art.
7. Any noise emanating from or associated with the art does not constitute a nuisance or otherwise inappropriately disturb the quiet enjoyment of neighboring parcels.

17.59.5.080 Exemption from Zoning Requirements

If the planning director, or his/her designee, or the commission approves an application for a permit to display art on a residential property, then, for the purposes of the local implementation plan, the approved art shall be considered an improvement to an existing single-family residence and, therefore, shall be exempt from the requirement to obtain a Coastal Development Permit. The approved art also shall be exempt from the zoning requirements specified in Title 17 of the Municipal Code, except for the requirements set forth in this Chapter.

17.59.5.090 Revocation of Approval

- A. If it has cause to believe that grounds for revocation or modification may exist, the commission shall hold a public hearing upon the question of modification or revocation of a permit granted under or pursuant to the provisions of this chapter. Notice of such hearing shall be the same as would be required for a new permit to display art on a residential property.
- B. A permit issued under this chapter shall be revoked if the commission finds that one or more of the following conditions exists:
 1. The permit was obtained in a fraudulent manner.
 2. The use for which the permit was granted had ceased or was suspended for at least six successive calendar months.
 3. One or more of the conditions of the permit have not been substantially met.

17.59.5.100 Appeal of Action

- A. Any person aggrieved by a decision or any portion of the decision made by the planning director under the provisions of this Chapter may appeal such action to the commission. Any person aggrieved in a similar manner by such a decision made by the commission may appeal such action to the city council.

B. Appeals shall be addressed to the appellate body on a form prescribed by the City. The appeal shall state the basis of the appeal. Only matters raised in the appeal shall be subject to review. Any matter not raised in the appeal shall not be subject to consideration by the appellate body. This provision provides adequate notice to all parties with respect to the issues on appeal and eliminates the necessity of rehearing matters not subject to challenge. Although the issues on appeal will be limited by the appeal, the appellate body will accept new evidence (de novo appeal) and will not be bound by the previous record.

C. An appeal shall be filed with the city clerk within ten (10) days following the date of action for which an appeal is made. Appeals shall be accompanied by the filing fee as specified in Section 17.04.120, and shall be processed and noticed in the same manner as the original application. An appeal must identify the decision or portion of the decision being appealed and state the specific grounds for the appeal. An appellant shall have an additional ten (10) days following the date of filing the appeal to submit to the city clerk in writing, the specific grounds for the appeal. If the appellant does not submit grounds for the appeal within the time allowed by this section, the city clerk shall return the filing fee and the appeal shall be deemed to have been withdrawn.

D. A copy of the appeal form shall be sent by the city to the applicant, if they are two separate parties, by certified mail to the address listed on the application within one week of its filing.

E. An action of the planning manager/director appealed to the planning commission shall not become effective unless and until final action by the planning commission. An action of the planning commission appealed to the city council shall not become effective unless and until final action by the city council.

F. In the event an appeal from an action of the planning director results in a deadlock vote by the commission, the decision of the planning director shall be reinstated unless appealed to the city council.

G. In the event that an appeal from an action of the commission results in a deadlock vote by the city council, the action of the commission shall be final.

H. In the event an aggrieved party appeals the decision of the planning director made pursuant to Section 17.59.5.070.A, the only grounds for appeal shall be that the planning director improperly determined that the application for a permit to display art on residential property met the requirements set forth in Section 17.59.5.070.A.

17.59.5.110 Reapplication

An application or appeal may be denied with prejudice. If such denial becomes final, no further application for the denied request shall be filed in the ensuing twelve (12) months, except as otherwise specified at the same time of denial. An application may be denied with prejudice on the grounds that two or more similar applications have been denied in the past two years, or, that

another good cause exists for limiting the refiling of the application. There shall be no such limitation on refiling placed upon a project denied without prejudice.