

ORDINANCE NO. 450

AN ORDINANCE OF THE CITY OF MALIBU DETERMINING THE PROJECT IS EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) AND AMENDING CHAPTER 17.45 (CITYWIDE VIEW PRESERVATION AND RESTORATION ORDINANCE) OF MALIBU MUNICIPAL CODE (MMC) TITLE 17 (ZONING) TO ESTABLISH PROVISIONS TO RESTRICT PRIMARY VIEW DETERMINATIONS WITHIN A 1,000-FOOT RADIUS OF THE WOOLSEY FIRE AFFECTED AREA AND OTHER DISASTER AREAS (CITYWIDE)

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

SECTION 1. Recitals.

A. On May 13, 2019, the City Council approved City Council Resolution No. 19-19 and directed staff to prepare a zoning text amendment (ZTA) to establish an ordinance that places a hold on Primary View Determinations in areas affected by the Woolsey Fire. The purpose of the ordinance is to protect victims of disasters from having artificially restrictive view corridors established over their properties that would limit the size and location of replacement structures and landscaping.

B. On May 14, 2019, 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.

C. On June 17, 2019, 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. The Planning Commission adopted Planning Commission Resolution No. 19-41 recommending approval of Option 2.

D. On July 18, 2019, a Notice of City Council Public Hearing was published in a newspaper of general circulation within the City of Malibu indicating that the City Council would hold a public hearing on August 12, 2019, to consider the proposed amendments.

E. On August 12, 2019, the City Council continued the item to the August 26, 2019 Regular City Council meeting.

F. On August 26, 2019, the City Council held a duly noticed public hearing on the subject amendments, considered the recommendation by the Planning Commission, reviewed and considered written reports, public testimony, and related information.

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 as the restriction only applies to properties that have been damaged or destroyed by a disaster, only preserves the right to build/rebuild that they held before the disaster, and does not permanently restrict the ability to get a primary view determination, and accordingly, the exemption set forth in Section 15061(b)(3) applies.

SECTION 3. Findings for Zoning Text Amendment No. 19-002.

The City Council hereby finds that ZTA No. 19-002 is consistent with the General Plan and is designed to protect and promote public health, safety, welfare, quality of life and the ability to preserve visually impressive views. The ordinance further strives to protect victims of disasters and their ability to rebuild free from having artificially restrictive view corridors established over their properties that may limit the size and location of their replacement landscaping and structures.

The ZTA further advances the General Plan Land Use (LU) Goal to “manage growth to preserve a rural community character” with a “type, amount and location consistent with the Malibu lifestyle.” Land Use Policy 2.1.5 further states that the City shall protect and preserve public and private ocean and mountain views, by striking an equitable balance between the right to reasonable use of one’s property including the maintenance of privacy and the right to protection against unreasonable loss of views. This LU Policy was implemented with the adoption of a view protection ordinance that defines a primary view without unreasonably restricting the property owner’s use of his/her property [LU Implementation Measure 42].

The proposed ordinance does not authorize a use other than that already designated in the MMC. 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.

A. Section 17.45.30 (Definitions) is amended to add the following definitions, inserted in alphabetical order:

“Disaster” means a local emergency proclaimed by the City Manager that broadly affects view determinations.

“Replacement Structure” means any proposed structure sited in the same location and of the same relative size as a previously existing legal structure that was damaged or destroyed by a Disaster.

“Replacement Landscaping” means any proposed landscaping sited in the same location and of the same relative size at maturity as previously existing legal landscaping that was damaged or destroyed by a Disaster.

“Disaster Areas” means the area within a 1,000-foot radius of a property that was damaged or destroyed by a Disaster, as determined by the Planning Director.

B. Section 17.45.150 of the Malibu Municipal Code is added to read as follows:

17.45.150. Primary View Determination Prohibition in Disaster Areas.

- A. Purpose. The purpose of the ordinance is to protect victims of Disasters from having primary view corridors established over their properties that would unfairly limit the size and/or location of future Replacement Structures or Replacement Landscaping damaged or destroyed by a Disaster.
- B. Prohibition. All properties within a Disaster Area are temporarily prohibited from obtaining a new or updated primary view determination unless (1) the request was submitted prior to February 1, 2019, or (2) the primary view determination would not impose any limitation on Replacement Landscaping or Replacement Structures.
- C. Expiration of Prohibition. A temporary prohibition imposed by Section 17.45.150(B) shall expire: (1) for Primary View Determinations that would limit Replacement Structures, four years from the date of the Disaster that created the Disaster Area at issue and (2) for Primary View Determinations that would limit Replacement Landscaping, ten years from the date of the Disaster that created the Disaster Area at issue which can be extended up to five years if the Planning Director determines it is necessary for Replacement Landscaping to fully regrow.

SECTION 5. Certification.

The City Clerk shall certify the adoption of this Ordinance.

PASSED, APPROVED AND ADOPTED this 9th day of September 2019.



JEFFERSON WAGNER, Mayor

ATTEST:

Heather Glaser
HEATHER GLASER, City Clerk
(seal)

Date: 9/9/19

APPROVED AS TO FORM:

[Signature]
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. 450 was passed and adopted at the Regular City Council meeting of September 9, 2019, by the following vote:

AYES: 5 Councilmembers: Mullen, Peak, Pierson, Farrer, Wagner
NOES: 0
ABSTAIN: 0
ABSENT: 0

Heather Glaser
HEATHER GLASER, City Clerk
(seal)