



Council Agenda Report

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

Prepared by: Patricia Salazar, Development and Operations Manager

Reviewed by: Richard Mollica, Planning Director

Approved by: Steve McClary, City Manager

Date prepared: November 15, 2023 Meeting date: December 11, 2023

Subject: Code Amendment to Extend Deadlines for Nonconforming In-kind Disaster Rebuild Projects

RECOMMENDED ACTION: 1) Adopt Ordinance No. 513 (Attachment 1) adopting Zoning Text Amendment (ZTA) No. 23-003 to amend Malibu Municipal Code (MMC) Section 17.60.020(C) to add three years to the deadline to initiate the planning application process and obtain building permits to rebuild a nonconforming structure that was damaged or destroyed in the Woolsey Fire and finding the action exempt for from the California Environmental Quality Act (CEQA); and, 2) Direct staff to schedule a public hearing, second reading of the ordinance, and adoption Ordinance No. 513 on the January 8, 2024 Regular 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: On September 11, 2023, the City Council adopted Resolution No. 23-41 initiating the subject ZTA to MMC Title 17 (Zoning Ordinance) and directing the Planning Commission to hold a public hearing and to make a recommendation. On October 16, 2023, the Planning Commission considered the ZTA and recommended approval. The item before the Council is an ordinance to extend the rebuild deadlines contained in MMC Chapter 17.60.

Background

Following the Woolsey Fire, the City Council amended MMC Chapter 17.60¹ (Nonconforming Structures) to facilitate a streamlined permitting process for fire rebuilds. The amendment updated the Planning Verification process to allow a period of two years (November 8, 2020) for fire victims to apply, and four years to obtain a building permit, to replace nonconforming structures in-kind in the same location on the site and at the same height, without having to comply with the City's current ordinances.

On August 24, 2020, the Council discussed delays that Woolsey Fire victims were experiencing in rebuilding their homes or initiating the rebuild process. These difficulties included financial hardship due to unresolved insurance claims or legal settlements, health issues, and impacts of the COVID-19 pandemic including supply chain issues. Subsequently, on December 14, 2020, the City Council adopted Ordinance No. 476 which added one year to the rebuild deadlines.

On August 14, 2023, City staff provided an update on the City's Woolsey Fire Fee Waiver Program and rebuild efforts. At the time, approximately 100 of the 465 homes destroyed had not initiated the rebuild process. Subsequently, at its September 11, 2023 meeting, the Council considered an item to extend the rebuild deadlines for nonconforming structures damaged or destroyed in the Woolsey Fire. The Council directed staff to proceed with an ordinance to extend the rebuild deadlines by three years to coincide with Assembly Bill 1500, which amends the Revenue and Taxation Code (RTC) Section 70.5 to allow property owners an additional three years to reconstruct improvements on the property substantially damaged or destroyed by the 2018 Woolsey Fire and the 2018 Camp Fire.

Status of Fire Rebuilds

As of the time this report was prepared, of the 465 destroyed homes, approximately 92 properties are in various stages of the development process and 130 are now under construction. Below is a breakdown of the development status of homes destroyed in the Woolsey Fire.

- 369 projects have been submitted:
 - 12 projects in Planning review
 - 33 projects pending submittal for Building Safety review
 - 47 projects in Building Safety review
 - 130 single-family homes under construction
 - 147 single-family homes completed
- 96 projects have not yet been submitted

¹ Ordinance No. 445

Note: It is important to note that the rebuild deadlines are applicable to all destroyed or damaged properties, of which there are over 640 properties. Though the statistics above reflect destroyed homes only, all properties may submit a Planning Verification to maintain nonconforming structures and may be affected by the rebuild deadlines.

Analysis

As stated above, the current ordinance requires property owners, that seek to rebuild nonconforming structures without having to bring the structure into compliance with existing ordinances, to submit a Planning Verification application by November 8, 2021 and to obtain building permits by November 8, 2023.

Alternatively, the code allows property owners to request an extension of the three-year Planning Verification submittal deadline and the five-year building permit deadline. Extensions may be granted by the Planning Commission where it finds, based on substantial evidence, that due to unusual circumstances, strict compliance of the deadlines creates an undue hardship. Multiple extension requests may be applied for, however, the extensions combined may not total more than six years.

The proposed amendment extends each deadline by three years. Staff does not anticipate the amendment to have a consequential effect with the exception to further assist Woolsey Fire victims that are facing challenges in their rebuild efforts.

At this time, pursuant to MMC Section 17.60.020(C), the City is not accepting any applications for Planning Verifications for nonconforming replacement structures, except those previously extended by the Planning Commission². However, if the three-year deadline to submit a Planning Verification is retroactively modified by three years to accommodate those who have not yet submitted applications, the new deadline would be November 8, 2024.

Pursuant to MMC Section 17.60.020(C), the deadline to obtain building permits to maintain nonconforming structures is November 8, 2023. If the five-year deadline to obtain building permits is modified by three years, the new deadline would be November 8, 2026.

² In 2022, the Planning Commission granted sixteen time extensions, of which 12 property owners have not initiated the rebuild process.

Below is the proposed amendment to MMC Section 17.60.020(C), with added text underlined and deleted text ~~stricken~~:

C. Any structure described in subsection A of this section, may be remodeled, or may be reconstructed in the general location and to the same height as it existed prior to damage or destruction, subject to obtaining planning verification and provided that the application for the reconstruction is initiated with the city within six ~~three~~ years of the date of damage or destruction, and a building permit is diligently pursued and obtained within eight ~~five~~ years from the date of damage or destruction and has not expired. A request for an extension of time to the six ~~three~~-year or eight ~~five~~-year periods may be granted by the Planning Commission where it finds, based on substantial evidence, that due to unusual circumstances, strict compliance with the six ~~three~~ or eight ~~five~~-year limit creates an undue hardship. Extensions may not total more than nine ~~six~~ years. Any reconstruction shall extend the termination date described in Section 17.60.040 for the use operating within such a structure.

As a reference, Subsection A of MMC Section 17.60.40 states “Any structure which was lawfully erected and which does not conform to the current design and development standards or lot development criteria of this title may be continuously maintained and shall be treated in all respects as though in full compliance with this title.”

Procedural Consideration

The November 8, 2023 deadline to obtain a building permit for Planning Verification applications to allow for the in-kind replacement of a legal nonconforming structure has passed. Property owners were encouraged to submit their time extension request prior to the November 8, 2023 deadline. Approximately 60 time extensions were filed by property owners by this deadline. These extension requests will be placed on hold until the outcome of the City Council’s action is known. After the final adoption of the ordinance, City staff will notify property owners who filed a time extension that the extensions are considered moot.

ENVIRONMENTAL REVIEW: The Planning Director 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 that have the potential to cause 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 Planning Director 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, and only preserves the right to build/rebuild that which they held before the disaster, and accordingly, the exemption set forth in Section 15061(b)(3) applies.

PUBLIC NOTICE: On November 23 and December 14, 2023, a Notice of City Council Public Hearing will be published in a newspaper of general circulation within the City of Malibu. In addition, posts will be made on the City's social media platforms and emails will be sent to Woolsey Fire property owners and representatives on file.

Should the amendment be approved, City staff will conduct robust public outreach to notify property owners of the code amendment changes.

SUMMARY: Staff recommends the City Council adopt Ordinance No. 513, adopting Zoning Text Amendment No. 23-003, to extend each deadline as contained in MMC Section 17.60.020(C) by three years.

ATTACHMENTS:

1. Ordinance No. 513
2. Notice of Public Hearing

ORDINANCE NO. 513

AN ORDINANCE OF THE CITY OF MALIBU APPROVING ZONING TEXT AMENDMENT NO. 23-003 TO AMEND MALIBU MUNICIPAL CODE SECTION 17.60.020(C) TO ADD THREE YEARS TO THE DEADLINE TO INITIATE THE PLANNING APPLICATION PROCESS AND OBTAIN BUILDING PERMITS TO REBUILD A NONCONFORMING STRUCTURE THAT WAS DAMAGED OR DESTROYED IN THE WOOLSEY FIRE AND FINDING THE ACTION EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

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

SECTION 1. Recitals

A. On February 25, 2019, the City Council adopted Ordinance No. 445, amendments to the Malibu Municipal Code (MMC) Title 17 (Zoning Ordinance) and the Local Coastal Program, to facilitate the rebuilding of structures damaged or destroyed by the 2018 Woolsey Fire.

B. On December 14, 2020, the City Council adopted Ordinance No. 476 amending MMC Chapter 17.60 (Nonconforming Uses and Structures) to add one year to the deadlines in Subsection (C) to initiate the application process and obtain building permits to rebuild a legal nonconforming structure that was damaged or destroyed by the Woolsey Fire.

C. The City of Malibu continues to issue Planning Verification approvals to property owners whose homes were damaged or destroyed in the 2018 Woolsey Fire, pursuant MMC Section 17.060.020(C).

D. The Malibu community has been rebuilding steadily in the aftermath of the Woolsey Fire and during the COVID-19 pandemic. structure.

E. On September 11, 2023, the City Council adopted Resolution No. 23-41 initiating a code amendment to MMC Section 17.60.020(C) to add three years to the deadlines to initiate the application process and obtain building permits to rebuild a legal nonconforming structure that was damaged or destroyed by 2018 Woolsey Fire.

On September 21, 2023, a Notice of Planning Commission Public Hearing was published in a newspaper of general circulation within the City of Malibu indicating that the Planning Commission would hold a public hearing on October 16, 2023. In addition, posts were made on the City's social media platforms and emails were sent to Woolsey Fire property owners and representatives on file.

F. On October 16, 2023, the Planning Commission held a duly noticed public hearing on the amendment, reviewed and considered the agenda report, reviewed and considered written reports, public testimony, and other information in the record., and adopted Resolution No. 23-45 recommending approval of the amendment.

D. On November 23, 2023, a Notice of City Council Public Hearing was published in a newspaper of general circulation within the City of Malibu indicating that the Council will hold public hearings on December 11, 2023 and January 8, 2024, on the subject code amendment. In addition, posts were made on the City's social media platforms and emails were sent to Woolsey Fire property owners and representatives on file.

E. On December 11, 2023, the City Council held a duly noticed public hearing on the subject amendment, considered the recommendation by the Planning Commission, reviewed and considered written reports, public testimony, and related information. In addition, the Council introduced on first reading and adopted the Ordinance.

F. On December 14, 2023, a Notice of City Council Public Hearing was published in a newspaper of general circulation within the City of Malibu indicating that the Council will hold a second public hearing on January 8, 2024, on the subject code amendment. In addition, posts were made on the City's social media platforms and emails were sent to Woolsey Fire property owners and representatives on file.

F. On January 8, 2024, the City Council held a duly noticed public hearing on the subject amendment, considered the recommendation by the Planning Commission, reviewed and considered written reports, public testimony, and related information and conducted a second reading of the Ordinance.

SECTION 2. Environmental Review

The City Council has analyzed the proposed code amendment described herein and has determined that the proposed code amendment 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 accordingly, the exemption set forth in Section 15061(b)(3) applies.

SECTION 3. Amendment

A. Section 17.60.020(C) of the Malibu Municipal Code is hereby amended to read as follows:

Any structure described in subsection A of this section, may be remodeled, or may be reconstructed in the general location and to the same height as it existed prior to damage or destruction, subject to obtaining Planning Verification and provided that the application for the reconstruction is initiated with the city within six years of the date of damage or destruction, and a building permit is diligently pursued and obtained within eight years from the date of damage or destruction and has not expired. A request for an extension of time to

the six-year or eight-year periods may be granted by the Planning Commission where it finds, based on substantial evidence, that due to unusual circumstances, strict compliance with the six- or eight-year limit creates an undue hardship. Extensions may not total more than nine years. Any reconstruction shall extend the termination date described in Section 17.60.040 for the use operating within such a structure.

SECTION 4. Findings

Pursuant to the Malibu Municipal Code Section 17.74.040, the City Council hereby makes the following findings:

A. The City Council hereby finds that the proposed amendment 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 zoning text amendment further strives to protect victims of disasters and their ability to rebuild free from having artificially restrictive deadlines that may limit the ability to rebuild non-conforming structures damaged by the Woolsey Fire.

B. The proposed amendment does not authorize a use other than that already designated in the Malibu Municipal Code. The proposed amendment is consistent with the Coastal Act and the Malibu Municipal Code because it protects, maintains and enhances the overall quality of the coastal zone environment. The proposed amendment 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.

C. The City Council held a public hearing, reviewed the subject zoning text amendment application for compliance with the City of Malibu General Plan, Malibu Municipal Code and the Malibu Local Coastal Program, and finds that the proposed amendment is consistent.

SECTION 5. Approval

The City Council hereby adopts Zoning Text Amendment No. 23-003 amending the Malibu Municipal Code.

SECTION 6. The City Clerk shall certify the adoption of this ordinance.

PASSED, APPROVED AND ADOPTED this ____ day of ____ 2024.

STEVE UHRING, Mayor

ATTEST:

KELSEY PETTIJOHN, City Clerk
(seal)

Date: _____

APPROVED AS TO FORM:

THIS DOCUMENT HAS BEEN REVIEWED
BY THE CITY ATTORNEY'S OFFICE

TREVOR RUSIN, City Attorney

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

The Malibu City Council will hold public hearings on **MONDAY, December 11, 2023 and January 8, 2024, at 6:30 p.m.** on the project identified below in Council Chambers at Malibu City Hall, 23825 Stuart Ranch Road, and via teleconference.

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.

Woolsey Fire Non-Conforming Structures Deadlines

Zoning Text Amendment No. 23-003 – Consider an amendment and the Planning Commission’s recommendation to extend the deadlines contained in Malibu Municipal Code (MMC) Section 17.60.020(C) to rebuild non-conforming structures destroyed or damaged in the Woolsey Fire, without having to bring the structure into compliance with existing ordinances

The November 8, 2023 deadline to obtain building permits for a previously approved Planning Verification (PV) application, to rebuild non-conforming structures damaged or destroyed in the Woolsey Fire without having to bring the structure into compliance with existing ordinances, has passed. However, in an effort to continue to assist Woolsey Fire victims, on September 11, 2023, the City Council initiated an amendment to extend the deadlines contained in MMC Section 17.60.020(C), to initiate the application process and to obtain building permits, by three years. Pursuant to the Council, the purpose of the 3-year extension of the deadlines is to coincide with Assembly Bill 1500, which amends the Revenue and Taxation Code (RTC) Section 70.5 to allow property owners an additional three years to reconstruct improvements on a property substantially damaged or destroyed by the 2018 Woolsey Fire.

Applicant:	City of Malibu
Location:	Citywide
Case Planner:	Richard Mollica, Planning Director (310) 456-2489, extension 346 rmollica@malibucity.org

Pursuant to the authority and criteria contained in the California Environmental Quality Act (CEQA), the Planning Director has analyzed this proposed project and found that it is listed among the classes of projects that have been determined not to have a significant adverse effect on the environment. Therefore, the project is categorically exempt from the provisions of CEQA. The Planning Director has further determined that none of the six exceptions to the use of a categorical exemption apply to this project (CEQA Guidelines Section 15300.2).

A written staff report will be available at or before the hearing for the project. All persons wishing to address the Council regarding this matter will be afforded an opportunity in accordance with the Council’s procedures.

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.

IF YOU CHALLENGE THE CITY'S ACTION IN COURT, YOU MAY BE LIMITED TO RAISING ONLY THOSE ISSUES YOU OR SOMEONE ELSE RAISED AT THE PUBLIC HEARING DESCRIBED IN THIS NOTICE, OR IN WRITTEN CORRESPONDENCE DELIVERED TO THE CITY, AT OR PRIOR TO THE PUBLIC HEARING.

Richard Mollica, Planning Director

Publish Date: November 23, 2023 and December 14, 2023