



Adjourned Meeting
11-05-20

**Item
3.A.1.**

Council Agenda Report

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

Prepared by: Heather Glaser, City Clerk

Approved by: Reva Feldman, City Manager

Date prepared: October 27, 2020 Meeting date: November 5, 2020

Subject: Second Reading and Adoption of Ordinance No. 473

RECOMMENDED ACTION: Conduct second reading, unless waived, and adopt Ordinance No. 473 requiring the use of face coverings during the COVID-19 pandemic and finding the same exempt from the California Environmental Quality Act.

FISCAL IMPACT: There is no fiscal impact associated with the recommended action.

WORK PLAN: This item was included as item 1a in the Adopted Work Plan for Fiscal Year 2020-2021.

DISCUSSION: On October 12, 2020, the Council introduced on first reading Ordinance No. 473.

ATTACHMENT: Ordinance No. 473

ORDINANCE NO. 473

**AN ORDINANCE OF THE CITY OF MALIBU REQUIRING THE USE OF
FACE COVERINGS DURING THE COVID-19 PANDEMIC AND FINDING
THE SAME EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL
QUALITY ACT**

The City Council of the Malibu does ordain as follows:

SECTION 1. Purpose and Findings.

- A. International, national, state, and local health and governmental authorities are responding to an outbreak of respiratory disease caused by a novel coronavirus named “SARS-CoV-2,” and the disease it causes has been named “coronavirus disease 2019,” abbreviated COVID-19, (“COVID-19”).
- B. On March 4, 2020, the Los Angeles County Board of Supervisors and Department of Public Health declared a local emergency and local public health emergency to aid the regional healthcare and governmental community in responding to COVID-19.
- C. On March 4, 2020, the Governor of the State of California declared a state of emergency to make additional resources available, formalize emergency actions already underway across multiple state agencies and departments, and help the state prepare for the spread of COVID-19.
- D. On March 14, 2020, the City Manager/Director of Emergency Services proclaimed the existence of a local emergency pursuant to Malibu Municipal Code section 2.52.060. At a special meeting on March 16, 2020, the City Council ratified the proclamation of the Director of Emergency Services and declared the existence of a local emergency to ensure the availability of mutual aid and aid the City’s response to COVID-19.
- E. On March 19, 2020, Governor Newsom issued Executive Order N-33-20, a statewide “Stay at Home Order”, which ordered all individuals living in the State to stay home or at their place of residence, except as needed to maintain continuity of operations of the federal critical infrastructure sectors.
- F. The Los Angeles County Health Officer issued a series of orders that mirrored and expanded on the State’s Stay at Home Order, including on March 21, 2020, that (1) prohibit all public and private group events and gatherings, (2) orders all persons to remain in their homes except to travel to and from Essential Businesses, to work at a Healthcare Operation or Essential Infrastructure, to engage in Essential Activities, or to participate in an individual or family outdoor activity, while practicing social distancing. All of the following were ordered closed immediately: (1) Non-Essential Retail Businesses, (2) Indoor Malls and Shopping Centers (including both Essential and Non-Essential Businesses within, except Essential Businesses that can be

accessed from the exterior of the building), (3) Indoor and Outdoor Playgrounds, Flea Markets and Swap Meets, and (4) bars and nightclubs that do not serve food, gyms and fitness centers, movie theaters, live performance theaters, concert halls, arenas, stadiums, bowling alleys, arcades, and wineries, breweries, and tap rooms that provide tastings. On-site dining was prohibited at restaurants and other food facilities. The City is subject to the orders of the County Health Official.

- G. On April 14, 2020, Governor Newsom alongside the State Public Health Officer presented its “Resilience Roadmap”, a four-staged framework that is intended to guide the modification of its Stay-at Home Order and reopen California.
- H. In line with the State’s health guidance, the Los Angeles County Public Health Officer issued a revised order on May 13, 2020 entitled “Continuation of Safer at Home Order that begins to move the County of Los Angeles into Stage 2 of the County’s Roadmap to Recovery,” that authorized some limited retail and outdoor recreation venues to reopen subject to among other things, social distancing measures to prevent the further spread of COVID-19. The Order was updated again on May 26th, May 29th, June 11th and June 18th, 2020 to continue to allow the gradual reopening of additional sectors including bars, hair salons, personal care services, gyms and fitness facilities subject to social distancing measures.
- I. The May 29th Order for example, permitted restaurants and food facilities to remain open and offer limited dine-in seating. The Order also encouraged restaurants to expand outdoor seating where possible in compliance with local zoning codes to comply with social distancing requirements.
- J. To assist in the economic recovery of local businesses and restaurants, on June 8, 2020 the City adopted Urgency Ordinance No. 465U to establish a “Temporary Restaurant Recovery Permit” program to allow City restaurants to operate outdoors subject to requirements set forth therein and in accordance with State COVID-19 industry guidance and State Public Health and County Department of Public Health codes and requirements.
- K. On June 18, 2020, Governor Newsom along with the State Health Officer released mandatory health guidance that requires Californians, subject to limited exceptions to wear face coverings when outside the home. In line with the mandatory guidance, the County Health Officer issued a revised Order on the same date to require all persons to wear a face covering over both the nose and mouth whenever they leave their place of residence and are or can be in contact with or walking near or past others who are non-household members in both public and private places whether indoors or outdoors. According to State and County Health Officials, wearing face coverings reduces the risk of transmission to others who do not have symptoms and do not know that they are infected.

- L. As additional business, recreation areas, and other industries gradually reopen, members of the public are likely to be in contact with persons who are not part of the same household. Federal and State health authorities report that the use of face coverings can help reduce the community transfer of the disease by reducing the release of infectious particles into the air when someone speaks, coughs, or sneezes, including someone who has COVID-19 but feels well. The use of face coverings is commonly referred to as “source control.”
- M. This Ordinance is intended to promote the health, safety and public welfare of City residents during the COVID-19 pandemic by requiring members of public to wear face coverings, thereby reducing the continued spread of the disease.
- N. In the interest of public health and safety, as affected by the emergency caused by the spread of COVID-19, it is necessary to exercise authority to adopt this ordinance related to the protection of life and property, to require members of the public to wear face coverings to help reduce the spread of the disease.
- O. On September 14, 2020, the City Council held a duly noticed public hearing on Urgency Ordinance No. 470U.
- P. On October 12, 2020, the City Council held a duly noticed public hearing on Ordinance No. 473, reviewed and considered the staff report, materials in the record and public testimony.

SECTION 2. The following measures are adopted:

- A. All persons shall wear a face covering over both the nose and mouth whenever they leave their place of residence, except for:
 1. Persons younger than two years old;
 2. Persons who have been instructed by a medical provider not to wear face covering due to a medical condition, mental health condition, or disability that prevents wearing a face covering;
 3. Persons who are hearing impaired, or communicating with a person who is hearing impaired, where the ability to see the mouth is essential for communication;
 4. Persons who are swimming or engaged in other water-based activities; and
 5. Persons in a residential zone or vehicle who are six feet away or more from any person who is not a member of their single “household” or “living unit” as those terms are used in the Los Angeles County Health Officer’s order.

- B. Use of face coverings by persons between the ages of two and eight shall be under adult supervision to ensure that the child can breathe safely and avoid choking or suffocation.
- C. For purposes of this Ordinance, “face covering” shall mean: fabric coverings such as cloth masks, neck gaiter (only if it covers both the nose and mouth and is secured under the chin), scarves, bandanas, tightly woven fabric such as cotton t-shirt, and some types of towels that cover the nose and mouth. A “face covering” does not include face shields without a mask underneath, open-chin triangle bandanas, masks with exhaust valves or vents and masks that have any openings.
- D. Persons who are seated at a restaurant or other establishment that offers food or beverage service shall wear a face covering over both the nose and mouth unless they are eating or drinking.
- E. In addition to all other enforcement remedies, violations of this ordinance are subject to the penalty provisions of Chapter 1.10 of the City of Malibu Municipal Code except that violations shall be subject to a fine of \$50 per violation and individuals shall be issued a warning and given an opportunity to immediately comply with the requirements of this ordinance before a citation is issued.

SECTION 3. Severability .

If any section, subsection, sentence, clause, phrase or word of this Chapter is found to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such decision shall not affect the remaining provisions of this Ordinance.

SECTION 4. Environmental Review.

The City Council finds that adoption and implementation of this ordinance is categorically exempt per Section 15304(e) of the California Environmental Quality Act (CEQA) guidelines regarding minor temporary uses of land. The City Council also alternatively finds that the adoption and implementation of this ordinance is exempt from the provisions of CEQA as an administrative activity by the City of Malibu, in furtherance of its police power, that will not result in any direct or indirect physical change in the environment, per sections 15061(b)(3), and 15378(b)(5) of the CEQA Guidelines, as well as CEQA Guidelines section 15064(e) (economic regulations). Further, the City Council finds that the adoption and implementation of this ordinance is categorically exempt per Section 15269 of the CEQA guidelines regarding emergency projects as this action is necessary to prevent or mitigate an emergency by allowing for greater protection to limit the spread of COVID-19.

SECTION 5. Certification.

The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same, or the summary thereof, to be published or posted in the manner required by law.

PASSED, APPROVED AND ADOPTED this 5th day of November 2020.

MIKE PIERSON, Mayor

ATTEST:

HEATHER GLASER, City Clerk
(seal)

Date: _____

APPROVED AS TO FORM:

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

CHRISTI HOGIN, City Attorney