



# Council Agenda Report

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

Prepared by: Christi Hogin, City Attorney

Date prepared: October 23, 2020 Meeting date: November 9, 2020

Subject: Resolution to Initiate Amendments to the Local Coastal Program

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**RECOMMENDED ACTION:** 1) Adopt Resolution No. 20-60 initiating a Local Coastal Program Amendment (LCPA) to consider revising provisions of the Local Implementation Plan (LIP) that may infringe on residents' First Amendment speech rights; and 2) Direct the Planning Commission to schedule a public hearing regarding the same.

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

**DISCUSSION:** Absent an exemption, Chapter 3.15 of Malibu's LIP requires a Coastal Development Permit (CDP) before persons may post a sign within the City.<sup>1</sup> The LIP is part of the Local Coastal Program (LCP), which the California Coastal Commission drafted, adopted, and certified as the LCP for Malibu.<sup>2</sup> Upon certification of the LCP, the City assumed responsibility for processing development permits.<sup>3</sup>

Parts of the LIP's sign regulations have been challenged because they may violate the first amendment to the United States Constitution. The first amendment, as applied to the states through the fourteenth amendment, prohibits state and local governments from enacting laws "abridging the freedom of speech." In a recent lawsuit filed against the City, Plaintiffs allege that sections 3.15.3(X) and 3.15.4(C) of the LIP infringe on their first amendment protected speech rights by prohibiting them from posting a sign on private property.<sup>4</sup> Plaintiffs' proposed signage would purport to demarcate the boundary between a public access easement along the coast and unencumbered, private beach.

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<sup>1</sup> LIP § 3.15.4(A).

<sup>2</sup> Pub. Resources Code, § 30166.5(b).

<sup>3</sup> Pub. Resources Code, §§ 30166.5(b), 30519(a)

<sup>4</sup> *Dennis Seider and Leah Seider, as Trustees of the Seider Family Trust v. City of Malibu* (Case No. 2:20-cv-8781).

Section 3.15.3(X) of the LIP reads as follows: “Signs which restrict public access to State tidelands, public vertical or lateral access easement areas, or which purport to identify the boundary between State tidelands, and private property shall not be permitted.”

Section 3.15.4(C) of the LIP enumerates criteria that the City “shall” use to review applications for a sign permit. Plaintiffs allege that three of the enumerated criteria are inherently subjective and give City officials “unbridled discretion to deny a sign CDP,” which results in an unconstitutional prior restraint on speech. The challenged criteria read as follows:

3. That the sign is not detrimental to the public health, safety, or welfare;
5. That the size, shape, color, and placement of the sign is compatible with the neighborhood and other lawful signs in the area;
9. That the location and design of a proposed sign in close proximity to any residential district does not adversely affect the quality or character of such residential area.

Prior to filing the present lawsuit, Plaintiffs had posted two signs on a part of their property facing the beach that read “PRIVATE BEACH.” The signs were posted without the benefit of a CDP. On April 29, 2020, the Coastal Commission issued Plaintiffs a Notice of Violation of the California Coastal Act, which states that “[t]hese types of signs are expressly prohibited by the LCP.” The Commission found that the signs restricted public access to public beach and state tidelands and purported to identify the boundary between state tidelands and private property. Accordingly, “[e]ven if a CDP for the signs had been applied for . . . it is unlikely that Commission staff would recommend approval of the signs since [they] are inconsistent with the Coastal Act and City of Malibu LCP public access policies. . . .”<sup>5</sup>

To initiate an amendment to the LCP, the City Council adopts a Resolution of Intention, directing the Planning Commission to hold a public hearing on the proposed amendment.<sup>6</sup>

Approval of this item will authorize and direct the staff to prepare an LCP amendment as described herein and in the attached resolution and to notice the matter for public hearing before the Planning Commission.

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<sup>5</sup> California Coastal Commission, April 29, 2020 Notice of Violation of the California Coastal Act, p. 3 [citing Chapter 12 of the LIP, Public Access Ordinance, the stated purpose of which is “to achieve the basic state goals of maximizing public access to the coast and public recreational opportunities, as set forth in the California Coastal Act . . .”].

<sup>6</sup> LIP § 19.2.1(A)(1), Chapter 19.3.

ATTACHMENT: Resolution No. 20-60

## RESOLUTION NO. 20-60

### A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MALIBU INITIATING A LOCAL COASTAL PROGRAM AMENDMENT TO CONSIDER CHANGES TO THE MALIBU LOCAL COASTAL PROGRAM THAT MAY BE NECESSARY TO RECONCILE COASTAL COMMISSION DRAFTED POLICY WITH CONSTITUTIONALLY PROTECTED RIGHTS OF PRIVATE PROPERTY OWNERS

The City Council of the City of Malibu does hereby find, order, and resolve as follows:

#### SECTION 1. Recitals.

- A. On October 22, 2020, the City of Malibu was served with a lawsuit in federal district court alleging that section 3.15.3(X) and paragraphs 3, 5, and 9 of section 3.15.4(C) of the Malibu Local Coastal Program (LCP) Local Implementation Plan violate residents' speech rights protected by the first amendment to the United States constitution.
- B. The challenged language was drafted by and certified by the California Coastal Commission pursuant to a special law and without the consent of the City Council.
- C. The purpose of the proposed amendment would be to consider the language in light of constitutionally protected rights of private property owners, as codified in California Public Resources Code section 30001.5(c), to determine if amendments to the Malibu LCP are necessary.
- D. Although available to the plaintiffs and to any interested person, no application for an LCP amendment has been filed.

#### SECTION 2. Initiation.

Pursuant to Chapter 19 of the Malibu Local Implementation Plan (LIP), the City Council hereby initiates amendments to the LCP to ensure that sign regulations in Chapter 3.15 of the LIP are consistent with private property owners' constitutionally protected rights and directs staff to issue a Notice of Availability consistent with LIP section 19.3.1. The proposed amendments would remove section 3.15.3(X) and paragraphs 3, 5, and 9 of section 3.15.4(C) from the Malibu LIP, to avoid any implementation wherein these provisions result in impermissible content-based regulations of speech or an unconstitutional prior restraint on speech.

#### SECTION 3. Planning Commission Hearing.

The Planning Commission is hereby directed to conduct a duly noticed public hearing in accordance with Chapter 19 of the Malibu LIP. Following the public hearing, the Planning Commission shall recommend to the City Council whether it should approve, modify, or deny the proposed amendments. The Planning Commission's recommendation shall be made by resolution carried by the affirmative vote of not less than the majority of the entire Planning Commission.

SECTION 4. Certification

The City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

PASSED, APPROVED, and ADOPTED this 9<sup>th</sup> day of November 2020.

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MIKKE PIERSON, Mayor

ATTEST:

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HEATHER GLASER, City Clerk  
(seal)

APPROVED AS TO FORM:

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

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CHRISTI HOGIN, City Attorney