



Council Agenda Report

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

Prepared by: Patricia Salazar, Senior Administrative Analyst

Reviewed by: Richard Mollica, Acting Planning Director

Approved by: Reva Feldman, City Manager

Date prepared: November 6, 2020 Meeting date: November 23, 2020

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

RECOMMENDED ACTION: 1) Adopt Ordinance No. 476 (Attachment 1) determining the proposed code amendment is categorically exempt from the California Environmental Quality Act (CEQA) and approving Zoning Text Amendment No. 20-002 to amend Malibu Municipal Code (MMC) Section 17.060.020(C) to extend the deadlines by one year to initiate the planning application process, obtain building permits, and the total time allotted for an extension to rebuild a legal nonconforming structure that was damaged or destroyed in the Woolsey Fire; and 2) Direct staff to schedule a second reading and adoption of Ordinance No. 476 for the December 14, 2020 Regular City Council meeting.

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

WORK PLAN: This item was included as item 2a in the Adopted Work Plan for Fiscal Year 2020-2021.

DISCUSSION: The deadline to submit a Planning Verification application to replace a legal nonconforming structure damaged or destroyed in the Woolsey Fire is November 8, 2020. In response to concerns expressed by Woolsey Fire victims wishing to rebuild their homes, the City Council directed staff to process a code amendment to provide additional time to submit in-kind applications.

This report includes a brief background leading up to this meeting, the proposed code amendment, an analysis of the proposed amendment, a summary of the Planning Commission recommendation, followed by procedural considerations.

Background

Following the Woolsey Fire of November 9, 2018, the City Council amended MMC Chapter 17.60¹ (Nonconforming Uses and Structures) to facilitate a streamlined permitting process for reconstruction of destroyed structures. The amendment updated the Planning Verification (PV) process to allow for a period of two years (November 8, 2020) for fire victims to apply for a Planning approval and four years (November 8, 2022) to obtain a building permit to allow for the in-kind replacement of nonconforming structures without having to bring them into conformance with current codes.

On August 24, 2020, the Council discussed delays that Woolsey Fire victims are experiencing in rebuilding their homes or even initiating the process. These difficulties include resolving insurance claims and impacts of the COVID-19 pandemic. Despite the streamlined process created by the code amendments, approximately 50 percent of destroyed homes have obtained planning approvals during the past two years since the fire. Given the lack of submittals for replacement structures, it is expected that many property owners will request an extension from the Planning Commission to seek relief from the deadlines.

On September 14, 2020, the Council considered whether to initiate an amendment to modify the extension process. As a result, the Council directed staff to initiate the subject amendment to add one year to the two- and four-year deadlines as well as the total amount of time for an extension request of Section 17.60.020(C). On September 29, 2020, the Council adopted Resolution No. 20-52 initiating the subject code amendment.

Proposed Amendment

The code amendment before the Council would read as follows, added text underlined and deleted text ~~stricken~~:

MMC Section 17.60.020

C. Any structure described in subsection A of this section², may be remodeled, or may be reconstructed in the general location and to the same

¹ Ordinance No. 445

² 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."

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 ~~threetwo~~ years of the date of damage or destruction, and a building permit is diligently pursued and obtained within ~~fivefour~~ years from the date of damage or destruction and has not expired. A request for an extension of time to the ~~threetwo~~ year or ~~fivefour~~ 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 ~~threetwo~~ or ~~fivefour~~ year limit creates an undue hardship. Extensions may not total more than ~~sixfive~~ years. Any reconstruction shall extend the termination date described in Section 17.60.040 for the use operating within such a structure.

Attached to this report is a timeline graph which displays existing deadlines along with the proposed deadlines (Attachment 2).

Analysis

The current ordinance requires property owners that seek the in-kind replacement of nonconforming structures to submit a Planning Verification application by November 8, 2020 and to obtain building permits by November 8, 2022. If the construction of the replacement structure is not completed by November 8, 2022, the property owner must maintain a valid building permit for the reconstruction.

In addition, the current ordinance allows property owners to request an extension of the two-year Planning Verification submittal deadline and the four-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 create an undue hardship. Multiple extension requests may be applied for; however, the extensions combined may not total more than five years.

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

Planning Commission

On November 2, 2020, the Planning Commission held a duly noticed public hearing and recommended adoption of the code amendment as initiated by the City Council.

During deliberations, an emphasis was made that the Planning Commission would remain the decision-making body to consider extension requests. Concern was expressed over the five- versus six-year total amount of time allotted for extensions.

However, the Commission recommended the extensions combined may not total more than six years.

Lastly, some Planning Commissioners suggested that the extended deadline be restricted to property owners that resided on the affected property during the time of the Woolsey Fire. However, according to Federal and State land use and zoning regulation laws, such provisions cannot legally be adopted.

Procedural Considerations

By the time this report is published, and the Council considers the subject code amendment, the November 8, 2020 deadline to submit a Planning Verification application to allow for the in-kind replacement of a legal nonconforming structure will have passed. In order to accommodate the property owners impacted by this deadline, City staff will conditionally accept Planning Verification applications for legal nonconforming structures. This will ensure that property owners seeking a waiver of fees for their disaster rebuild will meet the December 30, 2020 deadline.³

Lastly, extension requests filed prior to the November 8, 2020 deadline, will be placed on hold until the outcome of the City Council's action is known. If the code amendment is adopted, as proposed, these extensions will be considered moot. Again, these property owners do not need to wait for the City Council's action to submit a Planning Verification application to move forward on their fire rebuild.

ENVIRONMENTAL REVIEW: The Planning Director has analyzed the code amendments described herein and has determined that the proposed 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 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, 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.

³ Fee waiver applications must be received by December 30, 2020, all required Planning Department applications for the project must be deemed complete by December 30, 2020, and all required building permits must be obtained by June 30, 2021. Additional information regarding fee waiver may be found on the City's website at <https://malibucity.org/958/Fee-Waiver-Deadlines>.

PUBLIC NOTICE: On November 12, 2020, a one-quarter page Notice of City Council Public Hearing was published a newspaper of general circulation within the City of Malibu. 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.

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. 476, adopting Zoning Text Amendment No. 20-002, to extend each deadline as contained in MMC Section 17.60.020(C) by one year.

ATTACHMENTS:

1. Ordinance No. 476
2. Proposed Code Amendment Timeline
3. Notice of Public Hearing

ORDINANCE NO. 476

AN ORDINANCE OF THE CITY OF MALIBU DETERMINING THE PROPOSED CODE AMENDMENT IS CATEGORICALLY EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT AND APPROVING ZONING TEXT AMENDMENT NO. 20-002 TO AMEND MALIBU MUNICIPAL CODE SECTION 17.060.020(C) TO EXTEND THE DEADLINES BY ONE YEAR TO INITIATE THE PLANNING APPLICATION PROCESS, OBTAIN BUILDING PERMITS, AND THE TOTAL TIME ALLOTTED FOR AN EXTENSION TO REBUILD A LEGAL NONCONFORMING STRUCTURE THAT WAS DAMAGED OR DESTROYED IN THE WOOLSEY FIRE

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 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 September 29, 2020, the City Council adopted Resolution No. 20-52 initiating a zoning text amendment to Malibu Municipal Code 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. On November 2, 2020, the Planning Commission held a duly noticed public hearing, and adopted Planning Commission Resolution No. 20-81, recommending the City Council adopt the proposed amendment.

D. On November 12, 2020, 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 November 23, 2020, to consider the proposed 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 November 23, 2020, 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.

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 three years of the date of damage or destruction, and a building permit is diligently pursued and obtained within five years from the date of damage or destruction and has not expired. A request for an extension of time to the three year or 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 three or five year limit creates an undue hardship. Extensions may not total more than six 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. 20-002 amending the Malibu Municipal Code.

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

PASSED, APPROVED AND ADOPTED this ____ day of ____ 2020.

MIKKE 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

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.

*Proposed Extended Timeline for Legal Nonconforming Planning Verifications

*proposed changes in yellow

Woolsey Fire
November 9, 2018

Planning Verification
November 8, 2020

Building Permits
November 8, 2022

Planning
2021

Building Permits
2023

11

Extension Requests

Years

1

2

3

4

5

6

7

8

9

10

12



*Extensions may not total more than 5 years combined (proposed – 6 years).

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

The Malibu City Council will hold a public hearing on **MONDAY, November 23, 2020, at 6:30 p.m.** on the project identified below. This meeting will be held via teleconference only in order to reduce the risk of spreading COVID-19 and pursuant to the Governor's Executive Orders N-25-20 and N-29-20 and the County of Los Angeles Public Health Officer's Safer at Home Order (revised October 23, 2020). All votes taken during this teleconference meeting will be by roll call vote, and the vote will be publicly reported.

How to View the Meeting: No physical location from which members of the public may observe the meeting and offer public comment will be provided. Please view the meeting, which will be live streamed at <https://malibucity.org/video> and <https://malibucity.org/VirtualMeeting>.

How to Participate Before the Meeting: Members of the public are encouraged to submit email correspondence to citycouncil@malibucity.org before the meeting begins.

How To Participate During The Meeting: Members of the public may also speak during the meeting through the Zoom application. You must first sign up to speak before the item you would like to speak on has been called by the Mayor and then you must be present in the Zoom conference to be recognized.

Please visit <https://malibucity.org/VirtualMeeting> and follow the directions for signing up to speak and downloading the Zoom application.

Woolsey Fire Non-Conforming Structures Application Deadline

ZONING TEXT AMENDMENT NO. 20-002 – The City Council will consider amendments to the Malibu Municipal Code, and the Planning Commission's recommendation discussed at the November 2, 2020 Regular Planning Commission meeting regarding a proposed amendment to Malibu Municipal Code Chapter 17.60.020 (Nonconforming Uses and Structures) to add one year to the deadlines in Subsection(C) to initiate the planning application process and obtain building permits to rebuild a legal non-conforming structure that was damaged or destroyed in the Woolsey Fire.

NOTE: Staff encourages homeowners to submit their Planning Verification applications for legal nonconforming structures prior to the deadline, November 8, 2020, as the adoption of an ordinance to change the deadline will occur after the deadline. Property owners experiencing unusual circumstances such that meeting the two- and four-year time limits, creates an undue hardship may request an extension. Extensions should be submitted before November 8, 2020.

Applicant:	City of Malibu
Location:	Citywide
Case Planner:	Richard Mollica, Acting 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 Commission has analyzed the 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 Commission has further determined that none of the six exceptions to the use of a categorical exemption apply to this projects (CEQA Guidelines Section 15300.2).

A written staff report will be available at or before the hearing for the projects. All persons wishing to address the Council regarding these matters will be afforded an opportunity in accordance with the Council's procedures.

Copies of all related documents can be reviewed by any interested person by contacting the Case Planner during regular business hours. Oral and written comments may be presented to the City Council at any time prior to the beginning of the public hearing.

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, Acting Planning Director

Publish Date: November 12, 2020