



Council Agenda Report

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

Prepared by: Kelsey Pettijohn, Acting City Clerk

Approved by: Reva Feldman, City Manager

Date prepared: April 14, 2021 Meeting date: April 26, 2021

Subject: Second Reading and Adoption of Ordinance No. 483

RECOMMENDED ACTION: Conduct second reading, unless waived, and adopt Ordinance No. 483 amending the LCP Local Implementation Plan (LIP) sign regulations as part of LCPA No. 20-001 and finding the action exempt from the California Environmental Quality Act.

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

WORK PLAN: This item was not included in the Adopted Work Plan for Fiscal Year 2020-2021. This project is part of normal staff operations.

DISCUSSION: On April 12, 2021, the Council introduced on first reading Ordinance No. 483.

ATTACHMENT: Ordinance No. 483

ORDINANCE NO. 483

AN ORDINANCE OF THE CITY OF MALIBU AMENDING THE LOCAL COASTAL PROGRAM LOCAL IMPLEMENTATION PLAN SIGN REGULATIONS AS PART OF LOCAL COASTAL PROGRAM AMENDMENT NO. 21-001 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. Findings.

A. On October 22, 2020, the City of Malibu was served with a lawsuit in federal district court alleging that the sign regulations in the Malibu Local Coastal Program (LCP)—specifically, Section 3.15.3(X) and paragraphs 3, 5, and 9 of Section 3.15.4(C) of the LCP Local Implementation Plan (LIP)—violate residents’ rights to speech under the First Amendment to the United States Constitution.

B. The City does not oppose the right of residents to protect their private property or to exercise their freedom of speech.

C. On November 9, 2020, the City Council adopted Resolution No. 20-60, initiating a Local Coastal Program Amendment (LCPA), to consider the challenged provisions of the LIP in light of private property owners’ constitutionally protected rights, as recognized in the California Coastal Act, and to determine if amendments to the Malibu LCP are necessary.

D. City Council Resolution No. 20-60 also directed the Planning Commission to schedule a public hearing on the proposed amendment in accordance with the requirements of LIP Chapter 19.

E. On February 18, 2021, a Notice of Public Hearing and Notice of Availability of LCP Documents was published in a newspaper of general circulation in the City of Malibu.

F. On March 15, 2021, the Planning Commission held a duly noticed public hearing on LCPA No. 20-001, at which time it reviewed and considered the Commission Agenda Report, public testimony, and related information in the record, and adopted Planning Commission Resolution No. 21-22, recommending that the City Council adopt LCPA No. 20-001, which includes amendments to both the LIP and the LCP Land Use Plan (LUP).

G. On March 25, 2021, a Notice of City Council Public Hearing was published in a newspaper of general circulation within the City of Malibu, stating that the City Council would hold a public hearing on April 15, 2021 to consider the proposed amendments.

H. On April 15, 2021, the City Council held a duly noticed public hearing on LCPA No. 20-001, including Resolution No. 21-16 and Ordinance No. 483, and reviewed and considered the staff report, written reports, public testimony, and other information in the record.

SECTION 2. Local Coastal Program Amendment.

Pursuant to Section 19.5(B) of the Malibu Local Coastal Program (LCP) Local Implementation Plan (LIP), the LIP is amended as follows:

- A. Subsection (X) of Section 3.15.3 of the LIP is hereby repealed and will be marked as such: “[Repealed]”.
- B. Paragraphs 3, 5, and 9 of Subsection (C) of Section 3.15.4 of the LIP are hereby repealed and will be marked as such: “[Repealed]”.

SECTION 3. Local Coastal Program Amendment Findings.

Based on evidence in the whole record, the City Council hereby finds that LCPA No. 20-001 meets the requirements of, and is in conformance with, the LCP and the policies of Chapter 3 of the California Coastal Act (the Act) as follows:

- A. Section 30210 of Chapter 3 of the Act requires the State to advance the public right of access to coastal resources, including through local coastal programs, in a manner consistent with the rights of private property owners.
- B. As relevant here, the Legislature’s statement of goals in Section 30001.5(c) of the Act also declares an intent to maximize public access to the coast “consistent with . . . constitutionally protected rights of private property owners.”
- C. Chapter 2 of the Malibu LUP incorporates the Act’s public access policies, including Section 30210, as qualified by a concern to protect property owners’ constitutional rights.
- D. LIP Section 3.15.3(X) and paragraphs 3, 5, and 9 of LIP Section 3.15.4(C) restrict property owners’ right to post signs on private property, and removing these sections is not inconsistent with the LCP or with Chapter 3 of the Act.

SECTION 4. Environmental Review.

The City Council has analyzed the project proposal described herein and makes the following findings. Pursuant to Public Resources Code Section 21080.9, the California Environmental Quality Act (CEQA) does not apply to activities and approvals by the City as necessary for the preparation and adoption of an LCPA, and thus does not apply to this application. This application is for an amendment to the LCP, which must be certified by the California Coastal Commission before it takes effect.

SECTION 5. Approval.

Subject to the contingency set forth in Section 8, the City Council hereby adopts the amendments to the LIP in this Ordinance as part of LCPA No. 20-001.

SECTION 6. Submittal to California Coastal Commission.

Pursuant to Section 19.7.1 of the LIP, the City Council hereby directs the City Planning Director to submit this Ordinance as part of LCPA No. 20-001 for certification by the California Coastal Commission.

SECTION 7. Severability.

Should any section, subsection, clause, or provision of this Ordinance for any reason be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this Ordinance; it being hereby expressly declared that this Ordinance, and each section, subsection, sentence, clause, and phrase hereof would have been prepared, proposed, approved, and ratified irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

SECTION 8. Effectiveness.

As part of LCPA No. 20-001, this Ordinance shall become effective only upon certification by the California Coastal Commission.

SECTION 9. The City Clerk shall certify the adoption of this ordinance.

PASSED, APPROVED AND ADOPTED this ____ day of ____ 2021.

MIKKE PIERSON, Mayor

ATTEST:

KELSEY PETTIJOHN, Acting City Clerk
(seal)

Date: _____

APPROVED AS TO FORM:

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

JOHN COTTI, Interim 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.