



# Council Agenda Report

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

Prepared by: Richard Mollica, Planning Director

Approved by: Steve McClary, Interim City Manager

Date prepared: November 17, 2021 Meeting date: December 13, 2021

Subject: An Amendment to Chapter 17.41 (Malibu Dark Sky) of the Malibu Municipal Code to Extend the Compliance Periods for Development within Commercial, Residential, and Institutional Zoning Districts

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**RECOMMENDED ACTION:** 1) After the City Attorney reads the title of the ordinance, introduce on first reading Ordinance No. 496 (Attachment 1), adopting Zoning Text Amendment (ZTA) No. 21-003 amending Malibu Municipal Code (MMC) Chapter 17.41 (Malibu Darky Sky) to extend the compliance periods for development within the commercial, residential, and institutional zoning districts to October 15, 2022 and finding the action exempt from the California Environmental Quality Act (CEQA); and 2) Direct staff to schedule a second reading and adoption of Ordinance No. 496 for the January 10, 2022 Regular City Council meeting.

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

**WORK PLAN:** This item was included as item #5h in the adopted Work Plan for Fiscal Year 2021-2022.

**DISCUSSION:** On November 1, 2021, the Planning Commission considered the zoning text amendment and proposed that the Council consider the following compliance schedule:

**Planning Commission's Proposed Amendment** (Changes shown in ~~strikethrough~~ and underline) (Staff's analysis is stated below).

1. Outdoor lighting at gas station properties shall comply by October 15, 2019.

2. Outdoor lighting in commercial zones, including, but not limited to, CN, CC, CV, CG, RVP, and RD zoning districts shall comply by ~~October 15, 2020~~ March 30, 2022.
3. Outdoor lighting in institutional zone shall comply by June 15, 2022.
4. Outdoor lighting in all remaining zones, including, but not limited to, SF, MF, MFBF, RR, PD, and MH, ~~and~~ zoning districts shall comply by October 15, 202422.

The Council's initial recommendation was to change the compliance deadlines to October 15, 2022. Though less than a year from the date of this report, this deadline may provide adequate time to conduct public outreach and complete reviews of lighting applications citywide. Staff will need to work aggressively and dedicate various staff members to make this deadline, in conjunction with a lighting expert. Based on experience working with the City's consultant in reviewing the gas station lighting applications, the timeframe proposed by the Planning Commission for commercial and institutional zones may not be practical to accomplish the work necessary for a successful program.

In addition to above recommendations, the Planning Commission recommended the following (Staff's responses are stated below each item).

1. A program educating the public about the implementation of the Dark Sky Ordinance program be funded and implemented immediately.

City staff recommends issuing a Request for Proposals for a public outreach program and plan check services for lighting within commercial, residential, and institutional zoning districts. This agreement will be separate from the City's agreement with Benya Burnett Consultancy for plan check services for review of the gas station properties' applications.

2. The Dark Sky Ordinance be amended to be exempt from City Council Policy No. 43.

The Planning Commission recommended that violations of the subject zoning text amendment be handled proactively by Code Enforcement staff. Currently, the City's Code Enforcement protocols are outlined in City Council Policy No. 43 (Code Enforcement Policy), which states that the violations are handled on a complaint basis except for violations involving health and safety matters or threats to the environment such as water discharge; construction and grading or accessory structures built without permits observed by staff during an onsite inspection; or zoning violations in non-residential zones. Given that the proposed Ordinance is related to lighting, violations of the Ordinance would not fall into the criteria for proactive enforcement. As such, the Commission's recommendation would require a modification to the policy.

The City Council briefly discussed enforcement of the Dark Sky Ordinance at its September 27, 2021 meeting. Since enforcement of this Ordinance may involve additional staff resources and adopted protocols, the Council tabled the discussion to be part of the Fiscal Year 2022-2023 budget work plan. Since the modification of Council Policy No. 43 is beyond the scope of the ZTA, staff recommends this item be discussed as part of the overall enforcement discussion for the Ordinance.

**BACKGROUND:** The City's Dark Sky Ordinance is contained in MMC Chapter 17.41. Since the compliance periods for development within commercial, residential, and institutional properties have passed, on September 27, 2021, the City Council adopted a resolution initiating the proposed ZTA to extend the compliance periods to October 15, 2022. The Council directed staff to present the amendment directly to the Planning Commission, rather than first obtaining review by the City Council Zoning Ordinance Revisions and Code Enforcement Subcommittee.

At its September 27, 2021 meeting, the Council recommended the following compliance periods (Changes shown in ~~strikethrough~~ and underline).

1. Outdoor lighting at gas station properties shall comply by October 15, 2019.
2. Outdoor lighting in commercial zones, including, but not limited to, CN, CC, CV, CG, RVP, and RD zoning districts shall comply by October 15, 202022.
3. Outdoor lighting in all remaining zones, including, but not limited to, SF, MF, MFBF, RR, PD, MH, and I zoning districts shall comply by October 15, 202422.

As stated above, Planning Commission considered the proposed amendment and made recommendations to the Council.

### **Local Coastal Program**

The proposed ordinance does not authorize a use other than that already designated in the MMC as a permitted or conditionally permitted use in the zone. The proposed ordinance is consistent with the Coastal Act and the MMC because it protects, maintains and enhances the overall quality of the coastal zone environment. The proposed ordinance 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. Because the proposed ZTA deals only with the MMC and does not alter the permitted and conditionally permitted uses specified for each zoning district, an amendment to the Malibu Local Coastal Program is not necessary.

ENVIRONMENTAL REVIEW: In accordance with the California Environmental Quality Act (CEQA), Public Resources Code Section 21080.9, CEQA does not apply to activities and approvals by the City as necessary for the preparation and adoption of a zoning text amendment to the MMC. Additionally, the ordinance would be exempt from CEQA under the commonsense exemption of Section 15061(b)(3) that states CEQA review is not required when there is no possibility that the ordinance may have a significant adverse effect on the environment.

CORRESPONDENCE: Staff has received correspondence regarding the importance of the dark sky ordinance and concerns regarding the proposed ZTA (Attachment 2).

PUBLIC NOTICE: On November 18, 2021, a Notice of Public Hearing was published in a newspaper of general circulation within the City of Malibu and mailed to all interested parties (Attachment 3).

CONCLUSION: Staff recommends that the City Council direct staff amend the compliance period and direct staff to hold a second reading and adoption of Ordinance No. 496 for the January 10, 2022 Regular City Council meeting.

ATTACHMENTS:

1. Ordinance No. 496
2. Correspondence
3. Public Hearing Notice

## ORDINANCE NO. 496

AN ORDINANCE OF THE CITY OF MALIBU ADOPTING ZONING TEXT AMENDMENT NO. 21-003 AMENDING MALIBU MUNICIPAL CODE CHAPTER 17.41 (MALIBU DARK SKY) TO EXTEND THE COMPLIANCE PERIODS FOR DEVELOPMENT WITHIN THE COMMERCIAL, RESIDENTIAL, AND INSTITUTIONAL ZONING DISTRICTS 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 September 27, 2021, the City Council adopted Resolution No. 21-55: 1) initiating a Zoning Text Amendment (ZTA) to extend the compliance periods for commercial, residential, and institutional development included in MMC Chapter 17.41 to October 15, 2022; and 2) directing the Planning Commission to schedule a public hearing regarding the ZTA and provide a recommendation to the Council whether to approve, modify, or reject the amendment.

B. On October 7, 2021, a Notice of Planning Commission Public Hearing was published in a newspaper of general circulation within the City of Malibu.

C. On November 1, 2021, the Planning Commission held a duly noticed public hearing on the subject ZTA, reviewed and considered the agenda report, reviewed and considered written reports, public testimony, and other information on the record and adopted Resolution No. 21-73 recommending the City Council adopt the proposed ZTA, as amended, and recommended the City Council consider the following recommendations: 1) that a program educating the public about the implementation of the Dark Sky Ordinance program be funded and implemented immediately; and 2) The Dark Sky Ordinance be amended to be exempt from City Council Policy No. 43.

D. On November 4, 2021, 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 public hearing to consider the proposed amendment.

### SECTION 2. Environmental Review.

This Ordinance was assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines (the Guidelines), and the environmental regulations of the City. The City Council hereby finds that this ordinance is not subject to CEQA because the adoption of this ordinance is not a "project" pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations, this Ordinance is exempt from the requirements of CEQA because it can be seen with certainty that the provisions contained herein would not have the potential for causing a significant effect on the environment.

SECTION 3. Findings for Malibu Municipal Code Amendment.

Pursuant to MMC Section 17.74.040, the City Council hereby makes the following findings:

A. The subject zoning text amendment is consistent with the objectives, policies, general land uses and programs specified in the General Plan and is designed to facilitate compliance with Ordinance No. 434 which was adopted to protect and promote public health, safety, welfare, quality of life and the ability to view the night sky in alignment with the City's goals of preserving coastal resources and maintaining its unique rural character.

B. 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 zoning text amendment is consistent and recommends approval.

SECTION 4. Amendments.

MMC Section 17.41.(B) Subsections 2 and 3 are amended to read as follows:

2. Outdoor lighting in commercial zones, including, but not limited to, CN, CC, CV, CG, RVP, and RD zoning districts shall comply by October 15, 2022.
3. Outdoor lighting in all remaining zones, including, but not limited to, SF, MF, MFBF, RR, PD, MH, and I zoning districts shall comply by October 15, 2022.

SECTION 5. Certification.

The City Clerk shall certify the passage and adoption of this Ordinance and enter it into the book of original ordinances.

PASSED, APPROVED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_ 2021.

\_\_\_\_\_  
PAUL GRISANTI, Mayor

ATTEST:

\_\_\_\_\_  
KELSEY PETTIJOHN, City Clerk  
(seal)

Date: \_\_\_\_\_

APPROVED AS TO FORM:

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

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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.



**To: Members of the City Council**  
**From: Malibu Coalition for Slow Growth by Patt Healy**  
**Re : Item 6C Dark Sky Ordinance**  
**Date 9-27-21**

<b>FILED</b> City of Malibu Office of the City Clerk Meeting Date <u>9-27-21</u> Agenda Item # <u>6C</u>
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**Honorable Members of the City Council,**

**The following are MCSG's recommendations regarding the proposed changes to the DARK SKY Ordinance.**

- 1. Commercial Implementation be delayed for one year only.**
- 2. Residential Implementation be delayed for one year only, not two more years as staff suggests.**
- 3. Staff begin outreach to the Commercial establishments and Residents now notifying them in easy to understand terms what the regulations are and how to comply. Outreach should be positive in nature and continual so everyone is on board when the implementation date arrives.**
- 4. Jim Benja should be hired to work with staff, residents and commercial owners as needed in preparing for the implementation of the ordinance.**
- 5. Important to direct staff now to include an amount in the appropriate years budget for enforcement of the Dark Sky Ordinance rather than waiting for it to be discussed as part of the Fiscal Year 2022-2023 budget work plan.**
- 6. This ordinance has been thoroughly vetted. There is no need to send it again to Zoraces for further amendments. The Council can decide on the extension dates at the 9-27-21<sup>1</sup>meeting.**
- 7. Residents want Malibu's Dark Sky protected. Each year with more development our dark sky is being eroded and it is harder to see the evening stars. Also, many animals and insects need a dark sky for their survival.**

**Thank you for considering these recommendations..**



**Aaron Gribben**

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**Subject:** FW: Item %A Dark Sky Ordinance  
**Attachments:** pc Dark Sky time extension 11-1-21 f.docx

Received

11/1/21

Planning Dept.

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**From:** [healypatt](#) [REDACTED]  
**Sent:** Sunday, October 31, 2021 2:50 PM  
**To:** [Jeffrey D Jennings](#); [Kraig Hill](#); [John Mazza](#); [REDACTED]  
**Cc:** [Patricia Salazar](#)  
**Subject:** Item %A Dark Sky Ordinance

Hello, Planning Commission, attached are Slow Growth's comments on Item 5A

Date Received 11/1/21 Time 7:30AM  
Planning Commission meeting of 11/1/21  
Agenda Item No. 5A  
Total No. of Pages 2

CC: Planning Commission, PD,  
Recording Secretary, File

**To: Members of the Planning Commission**  
**From: Malibu Coalition for Slow Growth by Patt Healy**  
**Re: Item 5A Dark Sky Ordinance**  
**Date 11-1-21**

**Honorable Members of the City Council,**

**The following are MCSG's recommendations regarding the proposed changes to the DARK SKY Ordinance.**

- 1. Commercial Implementation be delayed for one year only.**
- 2. Residential Implementation be delayed for one year only.**
- 3. Staff begin outreach to the Commercial establishments and Residents now notifying them in easy to understand terms what the regulations are and how to comply. Outreach should be positive in nature and continual so everyone is on board when the implementation date arrives.**
- 4. Jim Benja should be hired to work with staff, residents and commercial owners as needed in preparing for the implementation of the ordinance.**
- 5. Meaningful fines be issued for non-compliance to ensure the ordinance is followed.**
- 6. Important to direct staff now to include an amount in the appropriate years budget for outreach and enforcement of the Dark Sky Ordinance rather than waiting for it to be discussed as part of the Fiscal Year 2022-2023 budget work plan.**
- 7. Residents want Malibu's Dark Sky protected. Each year with more development our dark sky is being eroded and it is harder to see the evening stars. Also, many animals and insects need a dark sky for their survival. Thank you for considering these recommendations.**

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

The Malibu City Council will hold a public hearing on **Monday, December 13, 2021 at 6:30 p.m.** on the code amendment identified below. This meeting will be held via teleconference only in order to reduce the risk of spreading COVID-19 and pursuant to AB 361 and the County of Los Angeles Public Health Officer's Order. All votes taken during these teleconference meetings 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](mailto:citycouncil@malibucity.org) before the meeting begins.

**How to Participate During the Meetings:** Members of the public may also speak during the meeting through the Zoom application. The City requests that you 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.

**ZONING TEXT AMENDMENT NO. 21-003** - Consider an amendment and the Planning Commission's recommendations to amend Malibu Municipal Code Chapter 17.41 (Malibu Dark Sky) to extend the compliance periods for development within commercial, residential, and institutional zoning districts

Location:	Citywide
Applicant:	City of Malibu
Application Filed:	September 27, 2021
Case Planner:	Richard Mollica, Planning Director (310) 456-2489, extension 346 <a href="mailto:rmollica@malibucity.org">rmollica@malibucity.org</a>

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. After analyzing the code amendment listed above, the Planning Director determined that there is no possibility the amendment will have a significant effect on the environment and accordingly, the exemption set forth in Section 15061(b)(3) applies.

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 meetings.

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 HEARINGS 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 18, 2021