



Council Agenda Report

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

Prepared by: Joseph Smith, Contract Planner

Reviewed by: Richard Mollica, Planning Director

Approved by: Steve McClary, City Manager

Date prepared: November 22, 2022 Meeting date: November 28, 2022

Subject: Adopt Urgency Ordinance No. 505U (Farmers' Market)

RECOMMENDED ACTION: Adopt Urgency Ordinance No. 505U (Attachment 1) to temporarily authorize a farmers' market at a publicly-owned park by amending Malibu Municipal Code Chapter 17.68 (Temporary Use Permits), and finding the action exempt from the California Environmental Quality Act (CEQA) and setting forth the facts constituting such urgency.

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

WORK PLAN: This item was included as item #4.h. in the Adopted Work Plan for Fiscal Year 2022-2023.

DISCUSSION: On March 4, 2020, the Governor issued a proclamation declaring a state of emergency due to the COVID-19 pandemic, pursuant to section 8625 of the California Emergency Services Act, and this proclaimed state of emergency currently remains in effect. State or local officials continue to impose or recommend measures to promote social distancing. Pursuant to the latest County of Los Angeles (County) Department of Public Health Order of the Health Officer (Order) issued on September 22, 2022, the primary intent of the Order continues to be to reduce the transmission risk of COVID-19 in the County for those in higher transmission risk settings and protect those persons at elevated risk for severe health outcomes due to COVID-19 infection. The Order provides that additional protective measures based on local conditions may be implemented at the local level.

Farmers' markets are an effective alternative to indoor settings that provide essential health and wellness provisions, including fresh fruits and vegetables, to residents. Due to

its nature in an outdoor setting, farmers' markets reduce the risk of COVID-19 transmission while still providing essential health and wellness provisions. Malibu's farmers' market has operated one day per week at the County site located at 23555 Civic Center Way for many years.

Due to construction of the new Santa Monica College satellite campus at the County site, the use of a farmers' market at this location has run into a myriad of problems. As such, relocation of the farmers' market is necessary in order to continue providing an outdoor option for residents to purchase essential provisions related to health and wellness, including fresh fruits and vegetables, and to provide additional spacing between booths, vendors, and residents.

The MMC limits a farmers' market use to the Institutional Zone and subjects such activity to a conditional use permit (CUP). Farmers' markets are not permitted in any other zone. The County site is an Institutionally-zoned parcel in the Civic Center and is surrounded entirely by parcels in the Community Commercial (CC) and Commercial Visitor Serving 1 (CV-1) zones. The farmers' market has operated on the County site with an approved CUP; however, temporary relocation is needed in order to maintain a continuity of service and provide additional safety. A relocation to Legacy Park would allow a farmers' market to continue operations in the Civic Center, provide sufficient space for vendors to operate, and is large enough to promote social distancing measures in light of the increasing COVID-19 cases in the County.

As Legacy Park is located in the CV-1 Zone, a farmers' market is not allowed as an allowed/conditionally allowed use. Further, the City's TUP allowances in MMC Section 17.68.040 do not include a farmers' market as being eligible for a TUP.

Ordinance No. 505U proposes to add subsection M to MMC Section 17.68.040 to read as follows:

M. Temporary relocation of a permitted farmer's market to a publicly-owned park located within 350 feet of the permitted location so long as such use does not exceed one day per week. The dates for this use shall not count against the maximum sixty (60) calendar days within one (1) calendar year for which a site can be used for temporary uses, nor toward the six (6) events per parcel limit. Any approvals for this use shall be good for six (6) months. The application for a TUP is required to be filed with the Planning Department sixteen (16) days prior to the proposed use. Public notices shall be mailed not less than fourteen (14) days prior to the proposed use. The Planning Director shall render a decision twelve (12) days prior to the proposed use. In addition to a TUP, a Facilities Use Permit must be obtained prior to the relocation of the Farmers Market. This provision shall expire the earlier of the issuance of a certificate of occupancy for Santa Monica College or on January 1, 2024.

To effectuate to the relocation of the Farmers' Market to a publicly-owned park within 350 feet of the County site, the following actions would be required by the City, after which the Farmers' Market Operator (Operator) could begin the process to use Legacy Park temporarily for farmers' market use:

1. City:

- a. Adopt Urgency Ordinance No. 505U to add a temporary farmers' market to the list of temporarily allowed uses at Legacy Park. This would enable the Operator to apply for a TUP.
- b. Authorize the City Manager to sign a waiver on behalf of the City as owner of certain "Benefitted Properties" included in Exhibit B of the "Agreement Containing Covenants and Restrictions" affecting Legacy Park entered into on March 29, 2006 (Document No. 20072289815). The waiver would allow a farmers' market to operate on a portion of Legacy Park without counting as a commercial activity per the Agreement restrictions. The waiver request is included as Agenda Item No. 6.C., with discussion on waivers needed from other Benefitted Property owners.

In addition, a City Facility Use Permit to use Legacy Park for an event would be required. If granted, this permit would allow the Operator to use a City park and ensure certain requirements are met such as event duration and timing, trash management, park maintenance, insurance requirements, and other approvals as may be needed from Los Angeles County Environmental Health Department, Fire Department, etc.

This item was considered by the Zoning Ordinance Revisions and Code Enforcement Subcommittee (ZORACES) on November 11, 2022. A recommendation was made by the ZORACES members to proceed directly to the City Council with this urgency ordinance, but also to proceed to the Planning Commission with a draft ordinance for Council consideration (Zoning Text Amendment ZTA No. 21-005) to amend MMC Chapter 17.68 (TUPs), including language addressing farmers' markets. This is anticipated to occur early in 2023 with formal consideration by the City Council before Spring 2023.

If adopted, the subject urgency ordinance would provide an option for the Operator to request a TUP while the City processes ZTA No. 21-005 to amend MMC Chapter 17.68 (TUPs).

ENVIRONMENTAL IMPACT: The adoption of an urgency ordinance is statutorily exempt under California Environmental Quality Act (CEQA) Guidelines Section 15269(c) in that the action is necessary to prevent or mitigate an emergency resulting from impacts to the City as a result of COVID-19.

Furthermore, pursuant to CEQA, the proposed action has been analyzed and determined to be Categorical Exempt pursuant to CEQA Guidelines Section 15304(e) (Class 4 – Minor Alterations to Land). This is appropriate for the proposed action because if the action occurs, it would consist of a temporary event that would not involve the removal of mature, scenic trees and would not have any permanent effects on the environment. It is further determined that none of the six exceptions to the use of a categorical exemption apply to this project (CEQA Guidelines Section 15300.2). Any activity and/or project developed as a result of the City Council's action that requires the City or the City Council's discretionary approval, such as issuance of the temporary use permit or other permit will be analyzed in accordance with CEQA prior to such approval. The current City Council action in no way limits the exercise of the City or the City Council's sole and absolute discretion.

CONCLUSION: Staff recommends that the City Council adopt Ordinance No. 505U.

ATTACHMENTS: Ordinance No. 505U

ORDINANCE NO. 505U

AN URGENCY ORDINANCE OF THE CITY OF MALIBU TO TEMPORARILY AUTHORIZE A FARMERS' AT A PUBLICLY-OWNED PARK BY AMENDING MALIBU MUNICIPAL CODE CHAPTER 17.68 (TEMPORARY USE PERMITS), AND FINDING THE ACTION EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT AND SETTING FORTH THE FACTS CONSTITUTING SUCH URGENCY

The City Council of the City of Malibu does find and ordain as follows:

SECTION 1. Findings.

A. The Governor issued a proclamation declaring a state of emergency on March 4, 2020, due to the COVID-19 pandemic, pursuant to section 8625 of the California Emergency Services Act, and this proclaimed state of emergency currently remains in effect;

B. State or local officials continue to impose or recommend measures to promote social distancing and reduce the risk of community transmission;

C. The City Council finds that there remains a current and immediate threat to the public safety, health, and welfare due to the threat of public health emergencies to residents, including seniors over the age of 65 who are at greater risk for COVID-19 and other illnesses in the winter/spring months;

D. Pursuant to the latest County of Los Angeles Department of Public Health Order of the Health Officer (Order) issued on September 22, 2022, the primary intent of the Order continues to be to reduce the transmission risk of COVID-19 in the County for those in higher transmission risk settings and protect those persons at elevated risk for severe health outcomes due to COVID-19 infection. The Order provides that additional protective measures based on local conditions may be implemented at the local level;

E. Due to the nature of farmers' markets being conducted outdoors with spacing between vendor stalls and walking aisles, this type of use is considered by the City Council as an effective and necessary measure to provide residents an outdoor alternative to obtain essential provisions related to health and wellness, including fresh fruits and vegetables;

F. The operational impacts to the current farmers' market use at the County of Los Angeles site due to construction and its impending inability to continue operations at the site during the winter/spring months will limit residents' ability to obtain essential health and wellness provisions in an outdoor setting and, even if it could continue at the current location, these construction constraints have concentrated the booths, vendors, and patrons and relocation to a site with more space will provide a safer environment;

G. This Ordinance is intended to promote the health, safety, and public welfare of City residents, particularly during the winter and spring months (December to May), that would enable

Legacy Park, a publicly-owned park within 350 feet of the current permitted site for farmers' market use, to be used as an immediate and temporary location for such use;

H. On December 31, 2021, the City Council directed staff to define what is considered a temporary event, particularly for series of events, and bring back a draft ordinance, (Zoning Text Amendment (ZTA) No. 21-005, for Council consideration, to amend Malibu Municipal Code Chapter 17.68 (Temporary Use Permits);

I. Draft language for Urgency Ordinance 505U was presented along draft language for ZTA No. 21-005 to the Zoning Ordinance Revisions and Code Enforcement Subcommittee (ZORACES) on November 11, 2022, at which time public testimony was received and a recommendation was made by the ZORACES members to bring Urgency Ordinance 505U directly to the City Council;

J. While Urgency Ordinance 505U is being processed now, a similar provision will be considered by the Planning Commission as a regular ordinance as part of ZTA No. 21-005 to amend Malibu Municipal Code Chapter 17.68 (Temporary Use Permits);

K. The current farmers' market continues to be impacted by construction; and

L. On November 28, 2022, the City Council held a duly noticed public hearing on Urgency Ordinance 505U reviewed and considered the staff report, materials in the record and public testimony.

M. This Ordinance is adopted for the protection of life, property, health, safety, and welfare of the public and is adopted pursuant to the powers vested in the City of Malibu under the laws and the Constitution of the State of California, including the police powers vested in the City pursuant to Article XI, section 7 of the California Constitution. This Ordinance is approved pursuant to section 36937 of the California Government Code, allowing for ordinances of immediate presentation of the public peace, health, or safety. As set forth below, the immediate preservation of the public peace, health and safety requires that this Ordinance be enacted as an urgency ordinance pursuant to Government Code section 36937 and take effect immediately upon adoption by four-fifths of the City Council.

SECTION 2. Amendments.

A. Title 17 of the Malibu Municipal Code Chapter 17.68.040 (Temporary Use Permits) is amended to add section "M" which shall read as follows to allow farmers markets as an allowed temporary use:

M. Temporary relocation of a permitted farmer's market to a publicly-owned park located within 350 feet of the permitted location so long as such use does not exceed one day per week. The dates for this use shall not count against the maximum sixty (60) calendar days within one (1) calendar year for which a site can be used for temporary uses, nor toward the six (6) events per parcel limit. Any approvals for this use shall be good for

six (6) months. The application for a TUP is required to be filed with the Planning Department sixteen (16) days prior to the proposed use. Public notices shall be mailed not less than fourteen (14) days prior to the proposed use. The Planning Director shall render a decision twelve (12) days prior to the proposed use. In addition to a TUP, a Facilities Use Permit must be obtained prior to the relocation of the Farmers Market. This provision shall expire the earlier of the issuance of a certificate of occupancy for Santa Monica College or on January 1, 2024.

SECTION 3. Severability.

If any section, subsection, provision, sentence, clause, phrase or word of this Ordinance is for any reason held to be illegal or otherwise invalid by any court of competent jurisdiction, such invalidity shall be severable, and shall not affect or impair any remaining section, subsection, provision, sentence, clause, phrase or word included within this Ordinance, it being the intent of the City that the remainder of the Ordinance shall be and shall remain in full force and effect, valid, and enforceable.

SECTION 4. Environmental Review.

The City Council finds that adoption and implementation of this urgency ordinance is statutorily exempt under the California Environmental Quality Act (CEQA) Guidelines 15269(c) in that the action is necessary to prevent or mitigate the threat of an emergency resulting from potential impacts to the City as a result of COVID-19 and other illnesses during the coming winter/spring months.

Furthermore, pursuant to CEQA, the proposed action has been analyzed and determined to be Categorically Exempt pursuant to CEQA Guidelines Section 15304(e) (Class 4 – Minor Alterations to Land). This is appropriate for the proposed action because if the action occurs, it would consist of a temporary event that would not involve the removal of mature, scenic trees and would not have any permanent effects on the environment. It is further determined that none of the six exceptions to the use of a categorical exemption apply to this project (CEQA Guidelines Section 15300.2). Any activity and/or project developed as a result of the City Council's action that requires the City or the City Council's discretionary approval, such as issuance of the temporary use permit or other permit will be analyzed in accordance with CEQA prior to such approval. The current City Council action in no way limits the exercise of the City or the City Council's sole and absolute discretion.

SECTION 5. Urgency Declaration; Effective Date.

The City Council finds and declares that the adoption and implementation of this Ordinance is necessary for the immediate preservation and protection of public health and safety as detailed above. The operation impacts to the current farmers' market use at the County of Los Angeles site due to construction and its impending inability to continue operations at the site in the winter/spring months will limit residents' ability to obtain essential provisions related to health and wellness in an outdoor setting and poses a serious threat to the public health and safety. Without a farmers' market operation in the City, residents would not have access to essential provisions, including fresh fruits and vegetables, available in an outdoor setting and risk exposure

to COVID-19 and other illnesses during the winter/spring months by having to shop in indoor settings. Relocating the existing farmers' market use within 350 feet of its current location will allow for continuity of operations and keep the farmers' market in an area accustomed to such activity by residents, and provide more distance and spacing between booths, vendors, and patrons. The City Council therefore finds and determines that the immediate preservation of public health and safety, and protection of life, require that this Ordinance be enacted as an urgency ordinance pursuant to Government Code section 36937 and take effect immediately upon adoption by four-fifths of the City Council.

SECTION 6. 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 28th day of November 2022.

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

TREVOR RUSIN, 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.