



Council Agenda Report

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

Prepared by: Mayor Silverstein and Councilmember Stewart

Approved by: Steve McClary, City Manager

Date prepared: December 30, 2022

Meeting date: February 13, 2023

Subject: Proposed Elimination of the Fee for an Appeal to the City Council from a Decision of the Planning Commission that Would be Appealable Directly to the California Coastal Commission if There Were a Fee for an Appeal to the City Council (Mayor Silverstein and Councilmember Stewart) (Continued from January 23, 2023)

RECOMMENDED ACTION: At the request of Mayor Silverstein and Councilmember Stewart, consider eliminating the fee for an appeal to the City Council from a decision of the Planning Commission that would be appealable directly to the California Coastal Commission if there were a fee for an appeal to the City Council.

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 2022-2023.

DISCUSSION: City Manager's Note: The analysis in this report was provided by Mayor Silverstein and Councilmember Stewart. This report does not contain analysis or recommendations prepared by the City staff.

As a general matter, before a party can appeal a local agency's decision respecting a Coastal Development Permit (CDP) to the California Coastal Commission (CCC), the appellant must first exhaust all local appeals. There is an exception to this rule where the local agency charges a fee for the local appeal – on the theory that a party should not have to pay a fee to be heard in opposition to the grant of a CDP.

All decisions by the Planning Commission to approve or deny a CDP are appealable to the City Council. Depending on the location and/or the nature of the proposed

development subject to a CDP, certain decisions by the Planning Commission to grant a CDP also are appealable to the CCC. Additionally, decisions respecting major public works projects are appealable to the CCC without regard to whether the application was approved or denied by a local agency. Otherwise, there is no right to appeal the denial of a CDP to the CCC.

The City of Malibu charges a fee for an appeal to the City Council from a decision of the Planning Commission. Accordingly, where a decision respecting an application for a CDP is granted by the Planning Commission and is appealable to the CCC, some objectors appeal directly to the CCC – thereby bypassing the City Council and denying the City Council an opportunity to decide whether it agrees or disagrees with the decision of the Planning Commission. This removes an element of local control that is the object of Malibu being a city with its own Local Coastal Program.

By eliminating the fee for an appeal to the City Council from a decision of the Planning Commission that would be appealable directly to the CCC if there were a fee for an appeal to the City Council, the City of Malibu could improve its local control over local development issues because there would be no right to appeal to the CCC until after an appeal has first been taken to and decided by the City Council.

The financial consequences of this proposal would be minimal, as this type of appeal represents a small portion of the appeals that are heard by the City Council. The benefit of this proposal is that it allows the City Council to have greater control over development decisions in the City – both pro and con.

Should the Council agree to the proposed elimination of the Appeal Fee, it would direct staff to bring back a resolution at the next Council meeting for adoption. A draft resolution prepared by Mayor Silverstein and Councilmember Stewart is attached for reference.

ATTACHMENTS: Draft Resolution

RESOLUTION NO. 23-__

A RESOLUTION OF THE CITY OF MALIBU ELIMINATING THE FEE FOR AN APPEAL TO THE CITY COUNCIL FROM A DECISION OF THE PLANNING COMMISSION THAT WOULD BE APPEALABLE DIRECTLY TO THE CALIFORNIA COASTAL COMMISSION IF THERE WERE A FEE FOR AN APPEAL TO THE CITY COUNCIL

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

SECTION 1. Recitals

A. As a general matter, before a party can appeal a local agency's decision respecting a Coastal Development Permit (CDP) to the California Coastal Commission (CCC), the appellant must first exhaust all local appeals, but there is an exception to this rule where the local agency charges a fee for the local appeal.

B. All decisions by the Planning Commission to approve or deny a CDP are appealable to the City Council, and certain decisions by the Planning Commission to grant a CDP also are appealable to the CCC (depending on the location and/or the nature of the proposed development subject to a CDP).

C. The City of Malibu currently charges a fee for an appeal to the City Council from a decision of the Planning Commission.

D. Where a decision respecting an application for a CDP is granted by the Planning Commission and is appealable to the CCC, some objectors appeal directly to the CCC – thereby bypassing the City Council and denying the City Council an opportunity to decide whether it agrees or disagrees with the decision of the Planning Commission.

E. When appeals from decisions of the Planning Commission are appealed directly to the CCC, it removes an element of local control that is the object of Malibu being a city with its own Local Coastal Program.

F. By eliminating the fee for an appeal to the City Council from a decision of the Planning Commission that would be appealable directly to the CCC if there were a fee for an appeal to the City Council, the City of Malibu could improve its local control over local development issues because there would be no right to appeal to the CCC until after an appeal has first been taken to and decided by the City Council.

SECTION 2. The City Council hereby eliminates the fee for an appeal to the City Council from a decision of the Planning Commission that would be appealable directly to the California Coastal Commission if there were a fee for an appeal to the City Council.

SECTION 3. 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 __ day of _____ 2023.

BRUCE LEE SILVERSTEIN, Mayor

ATTEST:

KELSEY PETTIJOHN, City Clerk
(seal)

APPROVED AS TO FORM:

TREVOR RUSIN, Interim City Attorney

DRAFT