



Council Agenda Report

To: Mayor Silverstein and Honorable Members of the City Council

Prepared by: Richard Mollica, Planning Director

Approved by: Steve McClary, City Manager

Date prepared: April 14, 2023

Meeting date: April 24, 2023

Subject: Food and Beverage Sales in the Open Space District

RECOMMENDED ACTION: 1) Adopt, or provide comment on, the attached draft Council Interpretation regarding food and beverage sales in the Open Space District; 2) Adopt Resolution No. 23-19 initiating a Zone Text Amendment (ZTA) and Local Coastal Program Amendment (LCPA) to address food and beverage sales in the Open Space zoning district, or provide alternative direction; and 3) If Resolution No. 23-19 is adopted, provide direction to the Planning Commission to schedule a public hearing regarding the ZTA and LCPA and provide a recommendation to the Council whether to approve, modify, or reject the amendment 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 project was not included in the Adopted Work Plan for Fiscal Year 2022-2023.

DISCUSSION: At the March 27, 2023, City Council Hearing, the Council discussed the replacement of the existing snack shack located adjacent to the ballfields at Malibu Bluffs Park. In addition, the Council directed staff to draft a Council Interpretation allowing for the sale of food and beverage by youth sports rental groups such as Malibu Little League and the American Youth Soccer Organization during their events. Lastly, the City Council also requested that staff return with draft resolutions to initiate a ZTA and LCPA to address food and beverage sales in the open space district.

Proposed LCP and Malibu Municipal Code (MMC) Interpretation

Currently the MMC and LCP Permitted Uses Table state that refreshment stands, ice cream stands, and other fixed location outdoor food vending stands are prohibited uses in the Open Space (OS) Zone. However, recreational facilities are allowed uses and only examples such as swimming pools, sandboxes, slides, swings, lawn bowling, volleyball courts, tennis courts are provided in the MMC and LCP, but no definition of what a recreational facility is provided. At the March 27, 2023, Council Hearing, the Council provided direction that it considered the operation of a snack shack as part of a recreational facility, so long as the food and beverage service was ancillary to the recreational activity at Bluffs Park. Attachment 1 to this report is a draft Council Interpretation for consideration reflecting the direction and discussion by the Council at its last hearing.

Proposed Zoning Text Amendment and Local Coastal Program Amendment

In addition to the Council's discussion related to the above interpretation, the Council also directed staff to return with a resolution to initiate a ZTA and LCPA to modify the MMC and LCP to expressly allow for a snack shack type use in the OS District. The ZTA and LCPA could allow a snack shack to be built in a greater number of forms than an interpretation would. A resolution initiating those amendments is contained as Attachment 2 to this report. The council may adopt the proposed interpretation and also initiate the proposed MMC/LCPA, as they are not mutually exclusive.

Recommendation: Staff recommends that the Council review and adopt, or provide comments on, the attached draft interpretation and/or adopt Resolution No. 23-19 initiating a ZTA and LCPA to address food and beverage sales in Malibu Bluffs Park.

ATTACHMENT:

1. LCP Interpretation No. 21
2. Resolution No. 23-19



LCP Interpretation

Number: 21

Dated: April 27, 2023

Amended: N/A

Planning Director: Richard Mollica

LCP Section: LIP Sections 3.3(M) [Public Open Space] Appendix 1 TABLE B PERMITTED USES

MMC Section: MMC Chapter 17.32

Title: Ancillary Food and Beverages within Recreational Facilities

Issue: The Local Implementation Plan (LIP) and Malibu Municipal Code (MMC) sets forth the permitted uses in the Open Space (OS) zone, the purpose of which is to provide for publicly owned land which is dedicated to recreation or preservation of the City's natural resources, including public beaches, park lands, and preserves. LIP Table B contained in Appendix 1 and MMC Section 17.32 sets forth the permitted uses in the OS Zone: Equestrian and hiking trails (public and private); wildlife preserves; camping; parks, beaches, and playgrounds; public beach accessway; recreation facilities (swimming pools, sandboxes, slides, swings, lawn bowling, volleyball courts, tennis courts and similar uses); and educational (non-profit) activities. Emergency communication and service facilities are conditional permitted (require a CUP). However, both the LIP and MMC do not contain a definition of what is a recreational facility, only examples. Refreshment stands, ice cream stands, and other fixed location outdoor food vending stands are expressly prohibited uses in the OS Zone. The LUP describes the OS land use designation and lists the allowable uses to "include passive recreation, research and education, nature observation, and recreational and support facilities." LUP Policy 2.21 even goes so far as to state that the limited development of commercial recreational facilities may be permitted to serve beach and park visitors.¹

Interpretation: The purpose of the above-mentioned permitted uses is to assure that publicly owned property designated and zoned OS is predominately used for the limited uses set forth in Table B of Appendix 1 of the LIP and MMC Section 17.32. As part of the allowed use, recreational facilities are permitted so long as the uses allowed are visitor serving, conducive to public recreation, and support the recreation uses taking place. Pursuant to the LIP and MMC, recreational facilities such as ballfields, volleyball courts, soccer fields, and skate parks are permitted uses, it is also reasonable to conclude that ancillary structures that support the operation of these facilities are also permitted. While refreshment stands and outdoor food vending stands are prohibited, the code does not preclude the provision of food service from within and ancillary to recreational facilities.

¹ 2.21 The limited development of visitor-serving commercial recreational facilities designed to serve beach or park users may be permitted on non-sand areas of public beaches or beach parks. Developments designed or sized to serve a larger market than park users shall be prohibited in public beaches and parks.

The following food service would be considered ancillary and part of the operation of a recreation facility so long as the food and beverage are offered from within the structure:

- The sales of food or drinks from vending machines located within a recreational facility, and
- Fund raising activity that includes the sale of prepared or heated to order food by an authorized non-profit user group of the recreational facility during their rental period.

The purpose of this interpretation is not to allow for standalone food sales or commercial for-profit food sales within recreational facilities or for the primary use of the recreational facility to become food and beverage sales.

RESOLUTION NO. 23-19

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MALIBU INITIATING AN AMENDMENT TO THE MALIBU MUNICIPAL CODE (MMC) CHAPTER 17.32 AND INITIATING AN AMENDMENT TO THE LOCAL COASTAL PROGRAM (LCP) LOCAL IMPLEMENTATION PLAN (LIP) SECTION 3.3(M) AND APPENDIX 1 TABLE B ADDRESSING FOOD AND BEVERAGE SALES IN THE OPEN SPACE ZONING DISTRICT IN THE CITY AND FINDING THE ACTION EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.

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

SECTION 1. Recitals.

A. On April 24, 2023, the City Council held a duly noticed public hearing and approved a motion to 1) initiate a Zone Text Amendment (ZTA) and Local Coastal Program Amendment (LCPA) to address food and beverage sales in the Open Space zoning district and 2) direct the Planning Commission to schedule a public hearing regarding the ZTA and LCPA and provide a recommendation to the Council whether to approve, modify, or reject the amendment.

SECTION 2. Initiation.

Pursuant to MMC Chapter 17.32, the City Council hereby initiates an amendment to address food and beverage sales in the Open Space zoning district.

Pursuant to LIP Chapter 19, the City Council hereby initiates an amendment to the LCP and directs staff to issue a Notice of Availability consistent with LIP section 19.3.1. The amendment shall address food and beverage sales in the Open Space zoning district.

SECTION 3. Hearings.

A. The Zoning Ordinance and Code Enforcement Revisions Subcommittee is hereby directed to consider the amendments and provide direction to staff.

B. The Planning Commission is hereby directed to conduct a duly noticed public hearing in accordance with Chapter 19 of the Malibu LIP. Following the public hearing, the Planning Commission shall recommend to the City Council whether it should approve, modify, or deny the proposed amendments. The Planning Commission's recommendation shall be made by resolution carried by the affirmative vote of not less than the majority of the entire Planning Commission.

SECTION 4. Certification.

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 24th day of April 2023.

Bruce Silverstein, Mayor

ATTEST:

KELSEY PETTIJOHN, City Clerk
(seal)

APPROVED AS TO FORM:
THIS DOCUMENT HAS BEEN REVIEWED
BY THE CITY ATTORNEY'S OFFICE

Trevor Rusin, Interim City Attorney