

CITY OF MALIBU PLANNING COMMISSION  
RESOLUTION NO. 17-89

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MALIBU, DETERMINING THE PROPOSED ORDINANCE IS CATEGORICALLY EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, AND RECOMMENDING THAT THE CITY COUNCIL ADOPT ZONING TEXT AMENDMENT NO. 17-003 AMENDING TITLE 17 (ZONING) OF THE MALIBU MUNICIPAL CODE TO REGULATE FORMULA RETAIL ESTABLISHMENTS CITYWIDE

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

SECTION 1. Recitals.

A. More than 23 percent of Malibu's nearly 12,000 acres is public open space and more than 50 percent is designated as environmentally sensitive habitat area (ESHA) pursuant to the City's Local Coastal Program (LCP). Malibu desires to remain unique, not just in its physical setting comprised of approximately 22 miles of scenic coastline nestled between the Santa Monica Mountains and Pacific Ocean, but in its primarily rural nature, its small-town feel, and its low-key commercial character. Maintaining these community characteristics creates a distinct visitor and resident experience. Malibu is primarily a rural residential community. Of its total land area, 3.7 percent is zoned for commercial use, with half of that clustered in the Civic Center neighborhood. The civic center is the City's main commercial district. Maintaining the economic health and unique appeal of the City's commercial districts is vital to the ongoing preservation and enhancement of the City's unique, small-town feel, commercial character, and the needs of its visitors and residents.

B. To help advance those goals, the City seeks to avoid the proliferation of chain store uses that result in an overwhelming sense of sameness and familiarity. Instead, the City desires to encourage elements that promote variety and charm while still leaving opportunities open for all. The City's mission statement includes land use policies intended to maximize these principles. "Malibu is a unique land and marine environment and residential community whose citizens have historically evidenced a commitment to sacrifice urban and suburban conveniences in order to protect that environment and lifestyle, and to preserve unaltered natural resources and rural characteristics. The people of Malibu are a responsible custodian of the area's natural resources for present and future generations." [General Plan, Vision Statement].

C. Maintaining a strong and diverse retail base is critical to the success of its commercial core. The City recognizes that this can be enhanced by a healthy blend of unique and familiar businesses which provide diverse retail opportunities for visitors and residents alike. The City is committed to "manage growth to preserve a rural community character" [General Plan Land Use (LU) Element, Section 1.4.2] and encourage the "... establishment and continued operation of small neighborhood and community serving businesses." [General Plan LU Policy 4.4.1]. Further, the City must ensure that commercial "visitor serving retail uses...fit the character and scale of the surrounding community." [LCP Land Use Plan (LUP) Policy 5.12, in part].

D. Malibu is a world-known destination that draws millions of visitors each year. The City boasts unique environmental, coastal and cultural qualities, historical ties to the original Chumash lands and subsequent Rancho Topanga Malibu Sequit, recreational opportunities, and a rural residential community set within the Santa Monica Mountains National Recreation Area and the Santa Monica Bay. The City desires its commercial uses to likewise promote variety and charm, embrace its relatively rural community, and not detract from its unique qualities. The City has observed an increase in commercial leasing activity City-wide, with a specific increase in the number of formula retail establishments. Formula retail establishments are, by their nature, not unique. Formula retail establishments generally do not offer goods and services that are not readily available at other establishments within a reasonable proximity, especially in the highly-urbanized areas of greater Los Angeles and Southern California, generally. Consequently, the Planning Commission finds that the proliferation of formula retail establishments in the City, if not regulated, will conflict with and frustrate the City's goal of maintaining a distinct community character and promoting a local economy that includes non-standard offerings.

E. An over-abundance of formula retail establishments frustrates the City's ability to promote a diverse retail base within the City. A diverse retail base includes a distinct character that avoids overwhelming familiarity and sameness. A diverse retail base should be comprised of a balanced mix of businesses, small and large, familiar and unique. The Planning Commission finds that an over-abundance of formula retail establishments will unduly limit or possibly eliminate the availability of businesses that tend to be non-traditional or unique.

F. The General Plan Mission Statement states, in part, that "Malibu will maintain its rural character by establishing programs and policies that avoid suburbanization and commercialization of its natural and cultural resources." Further, the overriding goals of the City shall be to "(a) Protect, maintain, and where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and artificial resources; and (b) Assure orderly, balanced utilization and conservation of coastal zone resources taking into account the social and economic needs of the people of the state." [LCP LUP, Section 1(D)].

G. In light of the foregoing considerations, the Planning Commission finds that the public welfare will be served and advanced by regulating the establishment of formula retail establishments.

H. On October 5, 2017, a one-quarter page Notice of Planning Commission Public Hearing was published in a newspaper of general circulation within the City of Malibu and published display ads in local newspapers, and was mailed to all interested parties; regional, state and federal agencies affected by the amendment; local libraries and media; and the California Coastal Commission.

I. On October 30, 2017, the Planning Commission held a duly noticed public hearing on ZTA No. 17-003, at which time the Planning Commission reviewed and considered the agenda report, reviewed and considered written reports, public testimony, and other information on the record.

## SECTION 2. Environmental Review.

The Planning Commission has analyzed the project proposal described herein and has determined that the project is covered by the general rule that 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. The Planning Commission has determined that there is no possibility the proposed amendment may have a significant effect on the environment and accordingly, the exemption set forth in Section 15061(b)(3) applies.

Without waiving its right to rely on the above-referenced exemption, when adopting its first formula retail ordinance (Ordinance No. 376) in 2014, the City nevertheless undertook an initial study (Initial Study No. 13-001) in the interest of providing meaningful information to the City's decision-making body and fostering the most informed decision-making process practicable. The original formula retail ordinance did not authorize a use other than that already designated in the LCP and MMC as a permitted or conditionally permitted use in the zone. The project description, initial study and negative declaration were circulated for a 30-day public review period from March 13, 2013 to April 11, 2013.

Following circulation, minor revisions to the March 13, 2013 initial study and negative declaration were made which did not result in new environmental impacts. No substantial revisions to the negative declaration were made and recirculation was not required pursuant to CEQA Guidelines Section 15073.5. The City Council adopted Initial Study No. 13-001 and Negative Declaration No. 13-001 when it approved Ordinance No. 376, based on its determination that (i) there was no substantial evidence that the request set forth in the ordinance would have a significant effect on the environment and (ii) the negative declaration prepared for that request reflected the City's independent judgment and analysis.

While Ordinance No. 376 applied only to the Civic Center area of the City whereas the proposed ordinance applies citywide, this difference is not significant given most commercial activity occurs in the Civic Center and the proposed ordinance again does not change the uses allowed or their intensity or density. While the City could conduct another initial study out of caution, it is not necessary due to the exemption. Planning Department staff has also conducted an initial review of the categories that would be examined in an initial study and cannot identify any potential impacts that would need to be studied.

## SECTION 3. Zoning Text Amendment No. 17-003.

The Planning Commission hereby finds that ZTA No. 17-003 is consistent with the General Plan and LCP. The ordinance would support the objectives and policies of the General Plan intended to preserve and enhance the City's unique, small-town feel, commercial character, and the needs of its visitors and residents. The ordinance will also ensure compatibility between land uses by reducing any potential negative indirect effects that have been associated with an over-abundance of formula retail establishments, such as shifting a community's commercial variety and charm to familiarity and sameness, which conflict with and frustrate the City's goals of remaining unique while promoting a diverse retail base.

The ZTA advances the General Plan Vision Statement which reads, “Malibu is a unique land and marine environment and residential community whose citizens have historically evidenced a commitment to sacrifice urban and suburban conveniences in order to protect that environment and lifestyle, and to preserve unaltered natural resources and rural characteristics. The people of Malibu are a responsible custodian of the area’s natural resources for present and future generations.” The City is committed to “manage growth to preserve a rural community character” [General Plan LU Element, Section 1.4.2] and encouraging the “...establishment and continued operation of small neighborhood and community serving businesses.” [General Plan LU Policy 4.4.1]. Further, the City must ensure that commercial “visitor serving retail uses ... fit the character and scale of the surrounding community.” [LCP LUP Policy 5.12, in part]. The overriding goals of the City are to: “(a) Protect, maintain, and where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and artificial resources; and (b) Assure orderly, balanced utilization and conservation of coastal zone resources taking into account the social and economic needs of the people of the state.” [LCP LUP, Section 1(D)].

The proposed ordinance does not authorize a use other than that already designated in the LCP and MMC as a permitted or conditionally permitted use in the zone. The proposed ordinance is consistent with the Coastal Act and the LCP 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.

#### SECTION 4. Zoning Text Amendments.

A. Section 17.02.060 (Definitions) of Title 17 of the Malibu Municipal Code is amended to add the following new definitions, inserted in alphabetical order:

“Array of merchandise or menu” means 50 percent or more of in-stock merchandise or menu items.”

“Color scheme” means the selection of colors used throughout, such as on the furnishings, wall coverings, or as used on the façade. Standardized lighting is considered part of the color scheme.

“Décor” means the style of interior finishes such as the style of furniture, wall coverings, or permanent fixtures.”

“Façade” means the face of the front of a building or tenant space oriented onto a street or public open space. Awnings are considered part of the façade.

“Formula retail” means any type of retail sales activity and/or retail service activity conducted within a retail establishment which, along with ten or more in the world other existing, operational retail establishments maintains two or more of the following features: 1) standardized array of merchandise or menu; 2) standardized color scheme; 3) standardized décor; 4) standardized façade; 5) standardized layout; 6) standardized signage, a servicemark, or a trademark; 7) uniform apparel.

“Layout” means the interior arrangement of furniture, service area, or permanent fixtures.

“Servicemark” means a word, phrase, symbol, or design, or a combination of words, phrases, symbols, or designs that identifies and distinguishes the source of a service from one party from those of others.

“Trademark” means a word, phrase, symbol, or design, or a combination of words, phrases, symbols, or designs that identifies and distinguishes the source of the goods from one party from those of others.

“Uniform apparel” means standardized items of clothing such as aprons, pants, shirts, dresses, hats and pins (other than name tags), as well as standardized colors of clothing.

“Retail establishment” means a commercial establishment that provides goods and/or services directly or indirectly to the consumer such as general retail, eating and drinking places, beauty, personal services, professional office, amusement, health, fitness and galleries.

“Shopping center” means a group of retail, retail service, and other commercial establishments operating under common management and having at least 10,000 square feet of gross floor area. Shopping centers that occupy more than one legal parcel will be evaluated for conformance on a per parcel basis even where the whole of the shopping center is under common management. No differentiation shall be made between centers that are product-oriented or service-oriented. This definition is for purposes of Section 17.61 only.

B. Chapter 17.61 (Formula Retail Clearance) is hereby added to Title 17 of the Malibu Municipal Code to read as follows:

#### Section 17.61.010 Purpose.

The purpose of this chapter is to promote and maintain a distinct community character and a diverse retail base. This chapter is intended to encourage retail elements that promote variety while contributing to and maintaining the City’s small-town atmosphere and to prevent the proliferation of businesses that create a homogenized retail experience.

#### 17.61.020 Applicability.

A formula retail clearance under this chapter shall be required for all new formula retail establishments and for existing formula retail establishments that relocate to a new tenant space or expand by 200 square feet or more of gross floor area, except for the following types of formula retail establishments which are exempt:

- (1) Grocery
- (2) Drug stores/pharmacies
- (3) Gas stations
- (4) Banks and financial services
- (5) Real estate offices
- (6) Movie theaters
- (7) Postal service offices
- (8) Medical offices

- (9) Legally established formula retail businesses existing as of November 1, 2017, for as long as the business is in continuous operation and does not expand its gross floor area. This category of exemption shall be considered “non-exempt” formula retail for purposes of Section 17.61.030(C).

#### 17.61.030 Formula Retail Clearance.

A formula retail clearance is required for all non-exempt formula retail establishments. Prior to initiation of any such permitted or conditionally permitted use or issuance of a certificate of occupancy for such retail establishment, the property owner must obtain a formula retail clearance. The planning director or his/her designee shall issue a formula retail clearance if the formula retail use complies with the following requirements:

A. The gross floor area of the establishment does not exceed 2,500 square feet of gross floor area.

1. Notwithstanding the provisions of this section, if the formula retail business demonstrates that over half of its goods, services and menu are available only in the City and are not substantially similar to offerings available online or in other locations of the same business, the limit shall instead be 3,500 square feet of gross floor area.

2. Formula retail clearances issued for locations occupying a space that exceeds 2,500 square feet of gross floor area must submit to a yearly audit to certify compliance. In addition, the business owner must preserve and provide records as required by the City to monitor compliance.

B. Approval of the proposed formula retail establishment will not result in formula retail establishments occupying more than 30 percent of: (a) the overall square footage of each floor of a shopping center, (b) the total number of leasable tenant spaces of each floor of a shopping center, and (c) the total gross floor area of a parcel or shopping center. The calculation of the 30 percent limit pursuant to this paragraph shall include the proposed formula retail establishment and all existing formula retail establishments, including the formula retail establishments described in paragraphs (1) through (9), inclusive, of Section 17.61.020.

C. If not located in a shopping center, issuing the clearance will not result in non-exempt formula retail establishments being located within 500 feet of a formula retail establishment not located in a shopping center” to Section 17.61.030(C).

D. All formula retail clearances approved by the planning director shall be noticed and reported to the Planning Commission within 30 days of issuance. Such report shall include all calculations and descriptions of businesses used in making the determination.

17.61.040 Transferrable.

A formula retail clearance is transferrable to a new business in the same land use category located at the exact same location or tenant space, so long as the square footage of the gross floor area is not increased.

SECTION 5. Additional Planning Commission Recommendation.

The Planning Commission recommends that staff develop a land use category table similar to Table B in the LCP Local Implementation Plan to be included in the ordinance.

SECTION 6. The Planning Commission shall certify the adoption of this resolution.

PASSED, APPROVED AND ADOPTED this 30<sup>th</sup> day of October 2017.



MIKKE PIERSON, Planning Commission Chair

ATTEST:

  
KATHLEEN STECKO, Recording Secretary

I CERTIFY THAT THE FOREGOING RESOLUTION NO. 17-89 was passed and adopted by the Planning Commission of the City of Malibu at the Special meeting held on the 30<sup>th</sup> day of October 2017 by the following vote:

AYES: 4 Commissioners: Mazza, Uhring, Marx, Pierson

NOES: 1 Commissioner: Jennings

ABSTAIN:

ABSENT:

  
KATHLEEN STECKO, Recording Secretary