



Special Meeting
08-14-17

**Item
7.C.**

Council Agenda Report

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

Prepared by: Christi Hogin, City Attorney

On behalf of: Mayor Pro Tem Rick Mullen and Councilmember Jefferson Wagner

Date prepared: August 2, 2017 Meeting date: August 14, 2017

Subject: Formula Retail Ordinance and Civic Center Design Standards (Mayor Pro Tem Mullen and Councilmember Wagner)

RECOMMENDED ACTION: At the request of Mayor Pro Tem Mullen and Councilmember Wagner, consider directing staff to: 1) Place an item on an upcoming agenda to initiate a Zone Text Amendment and, if necessary, an LCP amendment to regulate formula retail in a manner consistent with the court's decision; 2) Place an item on an upcoming agenda to initiate a zoning map amendment and any other necessary corollary legislative actions to create a specific plan overlay district for the Civic Center; 3) Research alternative methods of regulating community character in commercial zones employed by other jurisdictions and place a discussion item on a future agenda for the Council to consider options; and 4) Place an item on a future agenda to enable the City Council to evaluate the civic center guidelines that were prepared by the Civic Center Design Standards Task Force.

FISCAL IMPACT: The items requested come within the ambit of the Planning Department's current work plan. There is no fiscal impact associated with the recommended action. Additional expenses for consultants and environmental review may be required in future follow-up actions. Staff will analyze those costs at the time the proposals are presented.

DISCUSSION: The purpose of this item is to get the legislative ball rolling with respect to addressing regulating formula retail and long range planning in the Civic Center. These two topics were, of course, the subject of Measure R, but these topics also have a longer history in the City. In the years before Measure R qualified for the ballot, the City considered various iterations of formula regulation. Initially, the idea was promoted by then-Councilmember Conley Ulich for a citywide chain store ordinance. The City took a step in that direction in its role as a land owner when it negotiated some space in the Lumber Yard be set aside for local, independent businesses. Following a more involved

vetting process, the City Council enacted a formula retail ordinance in September 2014, which was ultimately superseded by Measure R, the initiative that was overwhelmingly approved by the voters in November of that year.

Similarly, going back as far as 1995, the City has considered the Civic Center a prime candidate for a specific plan. For the past couple of years, the City has defended Measure R, which has been in effect since its adoption by the voters. Because of the Court of Appeal's recent decision invalidating the Measure, currently the City does not have any enforceable formula retail regulations or any specific plan requirements. To complicate matters, the ordinances that the City had considered (and adopted) in the past must be reevaluated in light of the specifics of the Court of Appeal's decision.

Mayor Pro Tem Mullen and Councilmember Wagner requested that an item be placed on tonight's agenda that would give the City Council an opportunity to give some direction should the Council want to proceed with regulations in the two main areas left unattended by the invalidation of Measure R.

There are four main actions that the City Council may consider:

1) An ordinance to regulate formula retail in a manner consistent with the court's decision. The process of developing an ordinance generally involves staff generating alternative approaches, which are hashed out either by the Council or the Zoning Ordinance Revisions and Code Enforcement Subcommittee (ZORACES). After the policy choices are identified, an ordinance is prepared that is reviewed by ZORACES, the Planning Commission, and the Council. Where there are particular stakeholders or parties especially affected, the City often creates additional opportunities for input. In this case, the Council should consider consulting with commercial property owners and the Malibu Chamber of Commerce.

2) Designate the Civic Center as a specific plan overlay district. Measure R required voter-approved specific plans. The Court of Appeal determined that voter approval was unconstitutional in that context. However, the City may require a specific plan and, if unsatisfied, the voters may referend them.

The General Plan already creates a specific plan overlay and calls out the Civic Center in particular:

1.5.18 Specific Plan Overlay (SP)

The SP Overlay enables the City to address unique areas within the community which warrant a comprehensive set of land use policies and standards through adoption and implementation of specific plans. The SP Overlay shall be developed according to adopted performance standards, including traffic, geological, hydroelectrical and wastewater impacts and shall at a minimum apply to that area

within the “General Commercial,” “Visitor-Serving Commercial,” “Community Commercial,” and “Commercial Neighborhood” designations as the same is shown on Figures LU-2(B), LU-2(C), LU-2(D), and LU-2(E), and that area within the **Civic Center Overlay Boundary** as shown on Land Use Maps 3 and 5 of the Local Coastal Program - City of Malibu, adopted September 13, 2002. (Ord. 383 § 7, 2014)

And the General Plan specifically calls for a specific plan in the Civic Center as a land use objective:

LU OBJECTIVE 4.3: A SPECIFIC PLAN IN THE CIVIC CENTER AREA.

LU Policy 4.3.1: The City shall, prior to adoption of a specific plan, review any proposed development in the **Civic Center Area** to ensure safety, health and circulation impacts are mitigated to the extent feasible, including but not limited to high water table, threat of liquefaction, flooding and traffic congestion.

LU Policy 4.3.2: The City shall require buildings within the **Civic Center Area** to reflect (a) the uniqueness of this location as the City’s town center, (b) its close proximity to the beach and ocean, and (c) a “community village” character with small-scale, low-rise buildings. Development in the **Civic Center** will be guided by those policies and implementation measures in the Plan that are generally applicable to commercial development.

Indeed, the City has made several serious attempts at preparing a specific plan for the Civic Center, but none was ultimately adopted, so the idea would be to implement this General Plan objective.

3) Research alternative methods of regulating community character in commercial zones employed by other jurisdictions. The Planning Department could survey other jurisdictions and research planning innovations for regulating commercial areas. Alternatively, the City could create a citizen’s committee to develop ideas or hire a consultant to task with generating options.

4) Reevaluate the Civic Center Guidelines that were prepared by the Civic Center Design Standards Task Force. In October 2014, the City Council established the Civic Center Design Standards Task Force, an ad hoc citizens committee, to provide feedback to staff and the City’s consultant on the Civic Center Design Standards Project. The Task Force held an open house in October 2014 and a series of three meetings between January and May 2015 to solicit public input. The Council considered but did not formally adopt the Guidelines.

The General Plan intended for design standards to be adopted for the civic center as a means of maintaining the community character:

LU Implementation Measure 52: Adopt community design standards that recognize Pacific Coast Highway (PCH) as a residential corridor with centers at Las Flores, **Civic Center**, Point Dume and Trancas. Each **center** should have its own character, identity and scale with landscaping along PCH having an overall unifying theme.

LU Implementation Measure 66: Develop comprehensive commercial design guidelines that respect Malibu's rural character including building design of a residential low-rise, small-scale, arcades and/or courtyards or other pedestrian scaled elements, designs that compliment surrounding natural areas and parking that includes native landscaping, on-site water retention and natural drainage courses where feasible.

The idea here is to direct staff to place the Guidelines on a future Council agenda to give the Council an opportunity to reevaluate them and decide whether to take further action to implement this part of the General Plan.

The City Manager's office prepared the following chronological summary of the City's actions related to formula retail and a Civic Center Design Standards / Specific Plan:

- August 11, 2014 – Council adopted Ordinance No. 376 (Attachment 1) amending Malibu Municipal Code (MMC) Title 17 – Zoning to limit formula retail in the City.
- October 13, 2014 – Council established the Civic Center Design Standards Task Force (Task Force) to provide feedback to staff and the City's consultant on the Civic Center Design Standards Project. The Task Force held an open house in October 2014 and a series of three meetings between January and May 2015 to solicit public input.
- November 4, 2014 – Malibu voters approved Measure R, which defined and placed citywide restrictions on formula retail establishments and required voter-approved specific plans for certain commercial and mixed use projects.
- January 5, 2015 – Complaint was filed against the City in the US District Court challenging the legality of Measure R.
- January 12, 2015 – Council adopted Ordinance No. 384 (Attachment 2) repealing Ordinance No. 376 in its entirety.
- December 15, 2015 – Superior Court declared Measure R invalid.
- February 10, 2016 – Council and Planning Commission held a joint meeting to receive a presentation on work completed by the Task Force and make recommendations on a Civic Center Design Standards Project. Council directed

staff to return with options for expedited preparation of a specific plan for the Civic Center area in lieu of completing design standards.

- May 23, 2016 – Council directed the City Attorney to file an appeal of the court's decision on Measure R.
- June 21, 2017 – Appellate Court upholds Superior Court's decision that Measure R is invalid.
- July 11, 2017 – Council directed the City to file an appeal of the courts' decisions on Measure R to the State Supreme Court.

ATTACHMENTS: None.