

CITY OF MALIBU PLANNING COMMISSION
RESOLUTION NO. 13-63

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MALIBU RECOMMENDING THE CITY COUNCIL ADOPT INITIAL STUDY NO. 13-001 AND NEGATIVE DECLARATION NO. 13-001 AND APPROVE ZONING TEXT AMENDMENT NO. 08-003 TO AMEND TITLE 17 (ZONING) OF THE MALIBU MUNICIPAL CODE TO MAKE FORMULA RETAIL, AS DEFINED, A CONDITIONALLY PERMITTED USE IN THE CIVIC CENTER COMMERCIAL DISTRICT

THE PLANNING COMMISSION OF THE CITY OF MALIBU DOES HEREBY FIND, ORDER AND RESOLVE AS FOLLOWS:

Section 1. Recitals.

A. Malibu desires to remain unique, not just in its physical setting as evidenced by approximately 22 miles of scenic coastline nestled between the Santa Monica Mountains and Pacific Ocean, but in its relatively rural nature, its small-town feel, its commercial character, and its overall visitor and resident experience. With only 3.7 percent of its total land area zoned for commercial use, nearly half is clustered in the Civic Center neighborhood – the City’s main commercial district that has historically served the City’s visitors and residents alike with a variety of retail offerings. Maintaining the economic health and unique appeal of the City’s main commercial district 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 advance those goals, the City seeks to prevent the proliferation of elements that project 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 has bound itself to 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. With more than 23 percent of its nearly 12,000 acres zoned as public open space and more than 50 percent being designated as environmentally sensitive habitat area (ESHA) pursuant to the City’s Local Coastal Program (LCP), the City recognizes the importance land use plays in the planned distribution, location, and intensity of human activity in context to the relatively rural nature of the City. As previously noted, only 3.7 percent of its nearly 12,000 acres is zoned for commercial use, with nearly half of that, or 43.5 percent, being clustered in the Civic Center commercial neighborhood. The City recognizes that retail is the dominant commercial use in this district and maintaining a strong and diverse retail base is most critical to the success and ongoing preservation of its historic commercial core. The City recognizes that this can be enhanced by a healthy blend of local, regional, and national-based businesses which

provide diverse and unique 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 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 Land Use Plan (LUP) Policy 5.12, in part].

D. Commercial amenities aside, Malibu is a world-known destination that draws millions of visitors each year. The City boasts unique environmental, coastal and cultural qualities, historical context 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. That said, the City has observed an increase in commercial leasing activity City-wide, with a specific increase in the number of formula retail establishments being introduced in the Civic Center. It is anticipated that additional formula retail establishments will, in the foreseeable future, continue to find their way into the Civic Center’s rental/lease market. Formula retail establishments are, by their nature, generally not unique in appearance or character. Likewise, formula retail establishments generally do not offer goods and services that are not readily available at other establishments within a reasonable proximity to the City. Consequently, the City finds that the proliferation of formula retail establishments in the Civic Center, if not regulated, will conflict with and frustrate the City’s goal of maintaining a unique community character and correspondingly unique retail amenities.

E. An over-abundance of formula retail establishments frustrates the City’s ability to promote a diverse retail base within the Civic Center. The City considers a diverse retail base to include a unique retailing personality that avoids shifting the City’s character toward familiarity and sameness. A diverse retail base should be comprised of a balanced mix of businesses ranging from small to medium to large and from local to regional to national. The City feels that an over-abundance of formula retail establishments will unduly limit or possibly eliminate the availability of smaller or medium sized businesses, many of which tend to be non-traditional or unique, and unduly skew the mix of businesses towards national retailers in lieu of local or regional retailers.

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 has determined that the public welfare will be served and advanced by regulating the establishment of formula

retail establishments in the Civic Center commercial district. The City has experienced an increase in the presence of formula retail establishments in its Civic Center and anticipates that additional formula retail establishments will, in the foreseeable future, continue to find their way into the Civic Center's rental/lease market – the over-abundance of which threatens to diminish the City's unique character.

H. The Planning Commission finds that while formula retail sales and service uses may currently be permitted within a particular commercial zone, either by-right or conditionally pursuant to the Malibu Municipal Code (M.M.C.) or LCP, no distinction is made between retail uses generally and "formula" retail uses. Formula retail uses may be essential or desirable in the Civic Center, but require individualized assessment and scrutiny to ensure compatibility and to guard against the potential for detrimental secondary effects. By making formula retail a conditionally permitted use in the zone, the ordinance ensures that such uses will be examined for compatibility and their consistency with the City's unique character. The purposes of the new regulations are to ensure adequate public review and input for businesses that have the potential to create a predominant sense of sameness and familiarity in the Civic Center commercial district; ensure that the proposed uses do not impair the integrity of that district; and to provide the opportunity to impose reasonable and necessary conditions to assure compatibility.

I. On July 4, 2013, a one-quarter page Notice of Planning Commission Public Hearing was published in a newspaper of general circulation within the City of Malibu and was mailed to all interested parties; property owners and occupants within 300 feet of the Civic Center commercial district; homeowner's associations on record with the City; regional, state and federal agencies affected by the amendment; local libraries and media; and the California Coastal Commission (CCC).

J. On July 29, 2013, the Planning Commission held a duly noticed public hearing on ZTA No. 08-003, 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. At that meeting, the Planning Commission adopted Planning Commission Resolution No. 13-63 recommending that the City Council approve the amendment to make formula retail, as defined, a conditionally permitted use in the Civic Center commercial district.

Section 2. Environmental Review and Negative Declaration.

The Planning Commission has analyzed the project proposal described herein. 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 amendment will 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, the City nevertheless undertook an Initial Study (IS) in the interest of providing meaningful information to the City's decision-making body and fostering the most informed decision-making process practicable. As detailed therein, the findings yielded by the IS culminated in a Negative Declaration (ND).

Pursuant to the authority and criteria contained in CEQA, the Planning Commission has exercised its independent judgment and analyzed the proposed zoning text amendment. After reviewing IS No. 13-001, the Planning Commission has determined that the project will not have a significant effect on the environment. Accordingly, a project description, draft ordinance, and IS/ND No. 13-001 were circulated for a 30-day public review period from March 13, 2013 to April 11, 2013 where 117 comments were received. Of the 117 comments, 15 were specific to CEQA with the remaining 102 comments exclusive to the ordinance. CEQA Sections 21091(f) and 15704 require a lead agency to consider the ND together with any comments received before approving the project. Written responses to comments are not required for an IS/ND; however, for the benefit of the public and decision makers, staff has prepared written responses to those 15 comments that raised CEQA issues. The responses are included as Exhibit C of the IS/ND.

Based on the entire record and comments received, the Planning Commission determined that: 1) there is no substantial evidence that the project may have a significant effect on the environment; and 2) the ND prepared for the project reflects the Planning Commission's independent judgment and analysis. Modifications made to March 13, 2013 circulated draft ordinance and IS/ND will not result in new environmental impacts. The modifications were based on further research into the functionality and implementation of the ordinance, and comments received during the 30-day review period. No substantial revisions to the ND have been made. Therefore, recirculation of the ND is not required pursuant to CEQA Guidelines Section 15073.5. The Planning Commission hereby recommends adoption of ND No. 13-001.

Section 3. Zoning Text Amendment Findings.

A. Based on evidence in the whole record, the Planning Commission hereby finds that the amendment 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 within its main commercial district.

B. 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)].

C. In accordance with the LCP Local Implementation Plan (LIP), Chapter 1, Section 1.2, Purpose, (F), the ordinance will promote the public welfare by regulating the establishment of formula retail establishments in the Civic Center commercial district. The ordinance conforms to the City's LCP specific to LUP Policies 2.34 to 2.36, which require lower-cost overnight accommodations to be protected and encouraged and as such, are exempt from the ordinance. As provided in LUP Policy 2.35, the exemption would apply to all lower-cost "hotel/motels, hostels, RV parks, and campgrounds." Other than lower cost overnight accommodations, which are more likely to operate under a formula designation and include more than 2,500 square feet, no other types of feasible "lower-cost coastal recreational and visitor serving use[s] or opportunit[ies]" were identified that would be precluded from operating in the Civic Center commercial district. Formula retail uses, such as those that offer hard/soft goods, services, and food and drinks, are not considered anymore "visitor serving" or "lower cost" than their non-formula counterparts. It is the uniqueness of Malibu, its coastal recreation opportunities and environment that is the primary draw to visitors.

D. The ordinance does not prohibit formula establishments from operating in the Civic Center. The ordinance allows a reasonable percentage of formula establishments to operate in the Civic Center and includes several exclusions for formula uses that are considered essential to local and visitor demand.

E. The 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 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 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 Amendment No. 08-003.

ZTA No. 08-003 includes amendments to Title 17 (Zoning) of the M.M.C. The Planning Commission hereby recommends the City Council amend the M.M.C. as follows.

A. Add the following definition to M.M.C. Section 17.02.060 (Definitions) to read as follows:

“Formula retail” means any type of retail sales activity and/or retail service activity conducted within a retail establishment which, along with 10 or more other existing, operational retail establishments located within the United States, is required to maintain 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; and 7) uniform apparel.

B. Amend M.M.C. Section 17.22.040 (Commercial Neighborhood Zone, Conditionally Permitted Uses) to add Subsection Q to read as follows:

Q. Formula retail, subject to the standards set forth in Section 17.66.130.

C. Amend M.M.C. Chapter 17.66 (Conditional Use Permits) to add Section 17.66.130 to read as follows:

Section 17.66.130 Formula retail.

A. Purpose. The purpose of this Section is to regulate the location and operation of formula retail uses within the Civic Center commercial district in order to prevent the proliferation of elements that project a sense of sameness and familiarity and which conflict with and frustrate the City’s goals of remaining unique while promoting a diverse retail base within the Civic Center. This Section is intended to encourage retail elements that promote variety while, contributing to and maintaining the City’s rural charm and small-town feel.

B. Applicability. A conditional use permit under this Chapter shall be required for all new formula retail establishments located within the Civic Center commercial district and for existing formula retail establishments located within the Civic Center that desire to relocate to a new tenant space, expand by 200 square feet or more of gross floor area, or increase service area by 50 square feet or more.

C. Applicable provisions. Formula retail uses shall be subject to all provisions of this Chapter unless otherwise specified in this Section.

D. Definitions. For the purpose of this Section, the following definitions shall apply:

“Civic Center commercial district” means all commercially-zoned/used land generally located between the Pacific Ocean to the south, Malibu Canyon Road to the west, the City boundary to the north, and Malibu Creek to the east. The district also includes commercial use on the parcels comprising Hughes Research Laboratory (HRL).

“Formula retail” means any type of retail sales activity and/or retail service activity conducted within a retail establishment which, along with 10 or more other existing, operational retail establishments located within the United States, is required to maintain 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; and 7) uniform apparel.

- i. “Standardized” means both identical and substantially the same.
- ii. “Array of merchandise or menu” means 50 percent or more of in-stock merchandise or menu items.
- iii. “Color scheme” means the selection of colors used throughout, such as on the furnishings, wall coverings, or wall coverings, or as used on the façade. Standardized lighting is considered part of the color scheme.
- iv. “Décor” means the style of interior finishes such as the style of furniture, wall coverings, or permanent fixtures.
- v. “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.
- vi. “Layout” means the interior arrangement of furniture, service area, or permanent fixtures.
- vii. “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.
- viii. “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.
- ix. “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, luxury overnight accommodations, 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 with this Section 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-orientated or service-oriented.

E. Findings. In lieu of the findings required by Section 17.66.080, the Planning Commission shall make all of the following findings of fact, in a positive manner, in order to approve a formula retail use within the Civic Center commercial district:

1. The nature of the formula retail use is an otherwise permitted or conditionally permitted use within the subject commercial zone and complies with the policies and standards of the General Plan and Local Coastal Program.

2. The formula retail establishment will not impair the City's unique, small-town community character by promoting a predominant sense of familiarity or sameness in the Civic Center commercial district as viewed from its main arterial streets including Pacific Coast Highway, Cross Creek Road, Civic Center Way, Malibu Road, or Malibu Canyon Road.

3. The formula retail establishment will not exceed 2,500 square feet of gross floor area.

4. Approval of the formula retail establishment will not result in more than 50 percent of each floor of a shopping center, as determined by the net percentage of overall square footage or the net number of leasable tenant spaces (excluding the uses described in Section 17.66.130(F)(2)), whichever is greater, from being occupied by formula retail establishments.

F. Exclusions. This Section does not apply to the change of ownership of an existing formula retail establishment, exclusively, or the following uses within the Civic Center commercial district:

1. Grocery;
2. Drug stores/pharmacies;
3. Gas stations;
4. Banks and financial services;
5. Real estate;
6. Insurance;
7. Post offices;

- 8. Medical; and
- 9. Lower-cost overnight accommodations.

G. **Permit Validity.** To assure continued compliance with the provisions of this Section, each approved conditional use permit shall run solely with the operation of the formula retail establishment for which it was approved and continue to be valid upon change of ownership of the formula retail establishment, the land, or any lawfully existing building or structure on the land. The conditional use permit shall expire in the event that a formula retail establishment ceases or suspends operation for a period of six consecutive calendar months, relocates to another tenant space, expands by 200 square feet or more of gross floor area, or increases service area by 50 square feet or more.

Section 5. Certification.

The Planning Commission shall certify the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 29th day of July, 2013.

JEFFREY D. JENNINGS, Planning Commission Chair

ATTEST:

JESSICA BLAIR, Recording Secretary

LOCAL APPEAL - A decision of the Planning Commission may be appealed to the City Council by an aggrieved person by written statement setting forth the grounds for appeal. An appeal shall be filed with the City Clerk within 10 days and shall be accompanied by an appeal form and proper appeal fee. The appellant shall pay fees as specified in the Council adopted fee resolution in effect at the time of the appeal. Appeal forms may be found online at www.malibucity.org, in person at City Hall or by calling (310) 456-2489, extension 245.

I CERTIFY THAT THE FOREGOING RESOLUTION NO. 13-63 was passed and adopted by the Planning Commission of the City of Malibu at the regular meeting thereof held on the 29th day of July 2013, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

JESSICA BLAIR, Recording Secretary