



Council Agenda Report

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

Prepared by: Richard Mollica, Planning Director

Approved by: Steve McClary, City Manager

Date prepared: April 11, 2024 Meeting date: April 22, 2024

Subject: Formula Retail Clearance Process

RECOMMENDED ACTION: Receive a presentation from the Planning Department describing the Formula Retail Clearance (FRC) process established by Ordinance No. 431.

FISCAL IMPACT: There is no fiscal impact associated with the recommended action.

STRATEGIC PRIORITY: This item is part of day-to-day operations; however, modifications to the FRC process is not included in the Adopted FY 2023-24 Strategic Priority Project List. At the Council's direction, this item can be brought back to a future Strategic Planning meeting for prioritization if modifications are desired.

BACKGROUND: On October 9, 2023, the City Council directed staff to bring back a report on the Formula Retail Clearance process. This item is for informational purposes.

In 2018, the City Council adopted Ordinance No. 431 (Attachment 1) regulating formula retail businesses citywide in shopping centers having at least 10,000 square feet of gross floor area, whether the shopping center is located on one parcel or multiple parcels. The ordinance went into effect on April 12, 2018 and established Malibu Municipal Code (MMC) Chapter 17.61 (Formula Retail Clearance). The ordinance follows the Council's direction in 2017 to regulate formula retail businesses in a manner consistent with the decision that invalidated Measure R.

The City's goals in adopting the ordinance were to preserve a unique community character, promote a strong and diverse retail base for visitors and residents alike, and to maintain a small-town ambiance consistent with the General Plan. This is emphasized by the City's commitment to "manage growth to preserve a rural community character" [General Plan Land Use (LU) Element, Section 1.4.2], encourage the "...establishment

and continued operation of small neighborhood and community serving businesses” [General Plan LU Policy 4.4.1], and 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]. Further, 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.” Additionally, 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 Council considered that an over-abundance of formula retail establishments would frustrate the City’s ability to promote a diverse retail base within the City – a base comprised of a balanced mix of businesses, small and large, familiar and unique. The Council found that an over-abundance of formula retail establishments would unduly limit or possibly eliminate the availability of businesses that tend to be non-traditional or unique.

The ordinance was designed to limit the homogeneity and sameness that would result from a proliferation of formula retail establishments and to preserve Malibu’s unique community character while avoiding the issues that caused Measure R to be invalidated. By providing a balanced approach of imposing a ratio of distinct businesses and formula businesses, the FRC process was designed to advance the Council’s goal of preserving a distinct community character without placing undue restrictions on commercial property owners.

REVIEW PROCESS: The Planning Department administers the FRC process by using definitions in MMC Section 17.02.060 (Definitions) and the provisions of MMC Chapter 17.61 (Formula Retail Clearance).

1. Definitions. The ordinance added several definitions to MMC Section 17.02.060; however, three key definitions used by staff in the FRC process include:

- “Formula Retail” is defined as any type of retail sales activity and/or retail service activity conducted within a retail establishment which, along with ten or more other existing, operational retail establishments in the world, maintains two or more of the following features: 1) standardized array of merchandise or menu; 2) standardized color scheme; 3) standardized decor; 4) standardized façade; 5) standardized layout; 6) standardized signage, a servicemark, or a trademark; 7) uniform apparel.
- “Retail Establishment” is defined as 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” is defined as a group of retail, retail service, and other commercial establishments operating under common management or having common areas such as walkways, parking, public restrooms, or similar shared amenities, and having at least 10,000 square feet of gross floor area, whether on one parcel or multiple parcels.

Additional definitions are provided for the following terms used in the FRC process: “Array of Merchandise or Menu,” “Color Scheme,” “Décor,” “Façade,” “Layout,” “Servicemark,” “Trademark,” and “Uniform Apparel.”

2. Application. An FRC request must be made on an application provided by the Planning Department (Attachment 2) with payment of fees. The current fee for an FRC is \$3,996.

3. Permit Type. The ordinance is administered by staff through the issuance of a ministerial permit. A ministerial process (as opposed to a discretionary process such as conditional use permitting) is one in which there is no discretion on the part of the decision-maker when applying standards and requirements to an application. This means that MMC Chapter 17.61 must be clear via objective standards and process as to how an applicant could obtain an FRC approval prior to submitting an application. Note that the issuance of an FRC would be in addition to any other ministerial or discretionary permit required for the business as applicable (e.g., health department, tenant improvement, certificate of occupancy, sign permit, temporary use permit, conditional use permit, etc.).

4. Exemptions. Certain types of formula retail establishments are exempt from the FRC process. These types of establishments are not subject to the City’s formula retail requirements. These include:

- Grocery
- Drug stores and pharmacies
- Gas stations
- Banks and financial services
- Real estate offices
- Movie theaters
- Postal service offices
- Medical offices
- Legally established formula retail businesses existing as of November 1, 2017 for as long as the business is in continuous operation and does not relocate and/or expand its gross floor area by 200 square feet or more.

All other types of formula retail establishments are considered “non-exempt” and subject to the FRC process. These include establishments that currently have 10 or more operational retail establishments worldwide and maintain two or more of the features listed in the “formula retail” definition in MMC Section 17.02.060.

5. Issuing Authority. Ministerial approval is granted by the Planning Director for eligible non-exempt formula retail establishments requesting to locate within a shopping center. Unless rescinded by the Planning Director, the approval becomes final two days after the FRC is reported to the Planning Commission. FRCs are not appealable to the Planning Commission or City Council.

6. Reporting. All FRCs approved by the Planning Director are noticed on a public agenda and reported to the Planning Commission within 30 days of issuance by the Planning Director. The report includes all calculations and descriptions of businesses used by the Planning Department in making the FRC determination.

7. Criteria. The following criteria is evaluated by staff prior to issuing an FRC. Note that FRCs are required for any shopping center (as defined) citywide with at least 10,000 square feet of gross floor area, whether on one parcel or multiple parcels. An approval will be issued if a non-exempt formula retail establishments complies with all of the following:

- Location does not exceed 4,000 square feet of gross floor area; and
- Issuing the FRC will not result in:
 - Non-exempt formula establishments occupying more than 30 percent of the total gross floor area of a shopping center (excludes floor area occupied by any exempt formula retail establishment(s)); and
 - Non-exempt formula retail establishments occupying more than 40 percent of the total gross floor area of the ground floor of a shopping center where the shopping center is more than one floor (excludes floor area occupied by any exempt formula retail establishment)

Example 1: One-story shopping center with gross floor area of 10,000 square feet. Shopping center includes a 3,000 square foot exempt formula retail establishment. The net square footage is 7,000 square feet.

- The shopping center would have a maximum allowance of 30% (or 2,100 square feet) for non-exempt formula retail. The remaining 70% (or 4,900 square feet) must be comprised of non-formula retail establishments.

Example 2: Two-story shopping center with gross floor area of 10,000 square feet comprised of 5,000 square feet on the first floor and 5,000 square feet on the second floor. The shopping center includes a 3,000 square foot exempt formula retail establishment located on the first floor.

- The first criterion is to set the total allowable formula retail square footage (inclusive of all floors). The net square footage is 7,000 square feet. The shopping center would have a maximum allowance of 30% (or 2,100 square feet) for non-exempt formula retail. The remaining 70% (or 4,900 square feet) must be comprised of non-formula retail.
- The second criterion is to set the maximum allowable formula retail square footage on the first floor. The first floor is 5,000 gross square feet; however, it includes the 3,000 exempt formula retail establishment. The net square footage on the first floor is 2,000 square feet. The shopping center would have a maximum allowance of 40% (or 800 square feet) for non-exempt formula retail on the first floor. The remaining 70% (or 1,200 square feet) must be comprised of non-formula retail on the first floor.
- This means that the shopping center would be limited to 2,100 square feet of formula retail overall, of which up to 800 square feet could be located on the first floor. The remaining allotment could be located on the second floor. In the event all 2,100 square feet were located on the second floor, no additional formula retail could be located on the first floor due to the first criterion.

The calculations made in the examples above will change as exempt and/or non-exempt establishments change. As such, FRC evaluations are based on the conditions in the shopping center at that time. As tenants change and/or building square footage, formula retail allowances may also change.

8. Waiver. The Planning Commission may waive the criteria for an FRC where it finds, based on substantial evidence, that due to unusual circumstances, strict compliance with the standards for an FRC creates an undue hardship. The Planning Commission may impose conditions on any waiver as required so that the formula retail use is compatible with existing surrounding uses and preserves the community's character and ambiance. A waiver is processed under the same City procedures as a variance pursuant to MMC Chapter 17.72 including an application form, fee (currently \$3,578 + public noticing costs), 21-day public notice, and Planning Commission hearing. Waivers are appealable to the City Council.

9. Transferability. An approved FRC 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. While not required by MMC Section

17.61.040, the City's practice has been to require the processing of a Planning Clearance application to determine if the transfer of the FRC to the new business is consistent with the existing clearance.

ATTACHMENTS:

1. Ordinance No. 431
2. FRC Planning Application

ORDINANCE NO. 431

AN ORDINANCE OF THE CITY OF MALIBU DETERMINING THE PROJECT IS CATEGORICALLY EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT AND AMENDING MALIBU MUNICIPAL CODE TITLE 17 (ZONING) TO REGULATE FORMULA RETAIL ESTABLISHMENTS CITYWIDE

The City Council of the City of Malibu does ordain 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. 3.7 percent of its total land area 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 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. 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 City 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 promote 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 City 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 City Council 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 Zoning Text Amendment (ZTA) No. 17-003, at which time the Planning Commission reviewed and considered the agenda report, reviewed and considered written correspondence from the public, public testimony, and other information on the record. At that meeting, the

Planning Commission adopted Planning Commission Resolution No. 17-89 recommending that the City Council approve the amendment subject to several suggested revisions that are set forth in the staff report.

J. On December 14, 2017, pursuant to Malibu Municipal Code (MMC) Section 17.74.040, a Notice of City Council Public Hearing was published in a newspaper of general circulation within the City of Malibu and was mailed to all interested parties; 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.

K. On January 10, 2018, the City Council heard and considered the evidence and information provided in support of and in opposition to the application, public testimony of all interested persons and the recommendations of the Planning Commission. Council provided direction on changes to the ordinance and continued the item to the February 12, 2018 Regular City Council meeting.

SECTION 2. Environmental Review and Negative Declaration.

The City has analyzed the project proposal described herein and has determined that the project is covered by the general rule that 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 City Council 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. 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. Additional Findings for Zoning Text Amendment No. 17-003.

The City Council 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 MMC 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. This definition is for purposes of Chapter 17.61 only.

“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 other existing, operational retail establishments in the world, 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. This definition is for purposes of Chapter 17.61 only.

“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 or having common areas such as walkways, parking, public restrooms, or similar shared amenities, and having at least

10,000 square feet of gross floor area, whether on one parcel or multiple parcels. This definition is for purposes of Chapter 17.61 only.

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

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. 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

B. A formula retail clearance is not required for 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. These legal nonconforming formula retail businesses shall be considered "non-exempt" formula retail for purposes of Section 17.61.030(B)(3).

17.61.030 Formula Retail Clearance.

A. FRC Required. A formula retail clearance (FRC) is required for all non-exempt formula retail establishments in a shopping center. 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.

B. FRC Criteria for Issuance. The Planning Director or his/her designee shall issue a formula retail clearance if the formula retail use complies with the following requirements:

1. The location does not exceed 4000 square feet of gross floor area
2. Issuing the FRC will *not* result in (a) non-exempt formula retail establishments occupying more than 30 percent of the total gross floor area of a shopping center excluding the floor area occupied by exempt formula retail defined in §17.66.020(A)(1)-(8);¹ or (b), where the shopping center is more than one floor, non-exempt formula retail establishments occupying more than 40 percent of the total gross floor area of the ground floor of the shopping center *excluding the floor area occupied by exempt formula retail defined in §17.66.020(A)(1)-(8)*.

C. Report to Planning Commission. 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. The approval shall become final two days after the clearance is reported to the Planning Commission, unless rescinded by the Planning Director.

D. Waiver by Planning Commission. The Planning Commission may waive the requirements of Paragraph B where it finds, based on substantial evidence, that due to unusual circumstances, strict compliance with the standards for an FRC creates an undue hardship. The Planning Commission may impose conditions on any waiver as required so that the formula retail use is compatible with existing surrounding uses and preserves the community's character and ambiance.

An application for a waiver must be made on a form provided by the Planning Department, shall be governed by the standards in this subparagraph D, and shall be subject to the same fee, notice, and hearing and appeal procedures as a variance under this Title.

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.

C. Appendix 1, included herein as Exhibit A, is hereby added to Title 17 of the Malibu Municipal Code.

¹(Gross Floor Area – Floor Area of Exempt Formula Retail) X .30 = Allowable non-exempt Formula Retail
X .70 = Required non-formula retail

SECTION 5. Effectiveness.

This Ordinance will become effective on the thirty-first day following its passage and adoption.

SECTION 6. Certification.

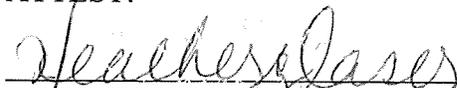
The City Clerk shall certify the adoption of this Ordinance.

PASSED, APPROVED AND ADOPTED this 26th day of February, 2018.



RICK MULLEN, Mayor

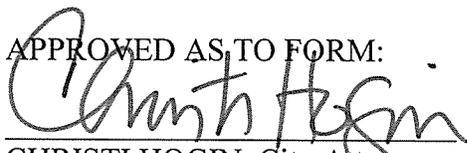
ATTEST:



HEATHER GLASER, City Clerk
(seal)

Date: February 26, 2018

APPROVED AS TO FORM:

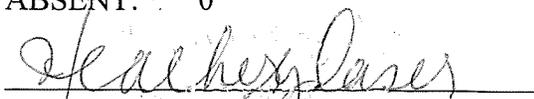


CHRISTI HOGIN, City Attorney

Any action challenging the final decision of the City made as a result of the public hearing on this application must be filed within the time limits set forth in Section 1.12.010 of the Malibu Municipal Code and Code of Civil Procedure.

I CERTIFY THAT THE FOREGOING ORDINANCE NO. 431 was passed and adopted at the Regular City Council meeting of February 26, 2018, by the following vote:

AYES: 5 Councilmembers: La Monte, Peak, Rosenthal, Wagner, Mullen
NOES: 0
ABSTAIN: 0
ABSENT: 0



HEATHER GLASER, City Clerk
(seal)

Exhibit A

Appendix 1 PERMITTED USES TABLE

In the event of a conflict between the table and the text of Title 17, the text shall control.

KEY TO TABLE (In addition to a coastal development permit, the following permits are required.)	
P	Permitted use
MCUP	Requires the approval of a minor Conditional Use Permit by the Director
CUP	Requires the approval of a Conditional Use Permit
A	Permitted only as an accessory use to an otherwise permitted use
LFDC	Requires the approval of a Large Family Day Care permit
SPR	Requires the approval of a Site Plan Review.
•	Not permitted (Prohibited)

USE	RR	SF	MF	MFBF	MH	CR	CN	CC	CV-1	CV-2	CG	OS	I	PRF	RVP
One single-family residence per lot	P	P	P	P	•	•	•	•	•	•	•	•	A ¹	•	
Manufactured homes pursuant to Government Code Section 65852.3	P	P	P	P	•	•	•	•	•	•	•	•	•	•	•
Multiple-family residential (including duplexes, condominiums, stock cooperatives, apartments, and similar developments)	•	•	CUP	CUP ²	•	•	•	•	•	•	•	•	•	•	•
Second units pursuant to Government Code Section 65852.2	A	A	A	A	•	•	•	•	•	•	•		•	•	•
Mobile home parks in existence as of March 28, 1991	•	•	•	•	P	•	•	•	•	•	•	•	•	•	•
Mobile home park accessory uses (including recreation facilities, meeting rooms, management offices, storage/maintenance buildings, and other similar uses)	•	•	•	•	CUP	•	•	•	•	•	•	•	•	•	•
Mobile home park modifications to number, layout, or density and public or common areas, except for repair and maintenance	•	•	•	•	CUP	•	•	•	•	•	•	•	•	•	•
Temporary mobile home as residence subject to 17.40.040 (A) (18)	P	P	P	MCUP	•	•	•	•	•	•	•	•	•	•	•
Accessory uses (guest units (750 sf max), garages, barns, pool houses, pools, spas, gazebos, storage sheds, greenhouses (non-commercial), sports courts (non-illuminated), corrals (non-commercial), and similar uses)	A	A	A	A ³	•	•	•	•	•	•	•	•	•	•	•
Residential care facilities (serving 6 or fewer persons)	P	P	P	•	•	•	•	•	•	•	•	•	•	•	•

USE	RR	SF	MF	MFBF	MH	CR	CN	CC	CV-1	CV-2	CG	OS	I	PRF	RVP
Small family day care (serving 6 or fewer persons)	P	P	P	•	•	•	•	•	•	•	•	•	•	•	•
Large family day care (serving 7 to 12 persons)	LFDC	LFDC	LFDC	•	•	•	•	•	•	•	•	•	•	•	•
Home occupations	P/ MCUP ⁴	P/ MCUP ⁴	P/ MUP ⁴	P/ MCUP ⁴	•	•	•	•	•	•	•	•	•	•	•
Domestic animals kept as pets or for personal use	A	A	A	A	A	•	•	•	•	•	•	•	•	•	•
Equestrian and hiking trails (public and private)	p ⁵	p ⁵	p ⁵			p ⁵							p ⁵		
Equestrian riding and training facilities and activities including boarding of horses and domestic animals, tournaments, shows and contests (including accessory uses such as club house with food and beverage service, pro shop, tack shop, riding rings, boarding/training/show facilities, barns, parking lots, sports courts, and living accommodations for members, their guests, participants, employees and persons required for the operation and maintenance of such facilities)	•	•	•	•	•	CUP	•	•	•	•	•	•	•	•	•
Grazing of cattle, horses, sheep or goats, including the supplemental feeding of such animals	p ⁷	•	•	•	•	CUP ⁷	•	•	•	•	•	•	CUP ⁶	•	•
Raising of horses, sheep, goats, donkeys, mules and other equine cattle for personal use	A ⁸	A ⁸													
Raising of horses and other equine, cattle, sheep and goats, including the breeding and training of such animals	p ⁹	•	•	•	•	CUP ⁹	•	•	•	•	•	•	CUP ⁶	•	•
Boarding of horses as a commercial use	MCUP ¹⁰	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Raising of hogs or pigs	p ¹¹	•	•	•	•	CUP ¹¹	•	•	•	•	•	•	•	•	•
Raising of poultry, fowl, birds, rabbits, fish, bees and other animals of comparable nature provided the parcel is 1 acre in size	P	•	•	•	•	CUP	•	•	•	•	•	•	CUP ⁶	•	•
Greenhouses (noncommercial) on lots of at least 1 acre	P	•	•	•	•	CUP	•	•	•	•	•	•	CUP ⁶	•	•
Raising of crops (field, tree, bush, berry row, nursery stock, etc.) provided no retail sale from the premises	A	A	•	•	•	•	•	•	•	•	•	•	CUP ⁶	•	•
Horticultural related activities	•	•	CUP	•	•	•	•	•	•	•	•	•	•	•	•
Wildlife preserves	•	•	•	•	•	P	•	•	•	•	•	•	•	•	•
Book stores	•	•	•	•	•	•	P	P	P	P	P	•	•	•	•
Convenience stores	•	•	•	•	•	•	•	•	CUP	CUP	CUP	•	•	•	•
Food markets	•	•	•	•	•	•	P	P	P	P	P	•	•	•	•

USE	RR	SF	MF	MFBF	MH	CR	CN	CC	CV-1	CV-2	CG	OS	I	PRF	RVP
Hardware, garden supply stores	•	•	•	•	•	•	P	P	P	P	P	•	•	•	•
Liquor stores	•	•	•	•	•	•	CUP	CUP	CUP	CUP	CUP	•	•	•	•
Plant nurseries	•	•	•	•	•	•	P	P	P	P	P	•	•	•	•
Pharmacies	•	•	•	•	•	•	P	P	P	P	P	•	•	•	•
Stationery supplies	•	•	•	•	•	•	P	P	P	P	P	•	•	•	•
Retail sales of recreational equipment and clothing, souvenirs, and similar uses	•	•	•	•	•	•	•	P	P	P	P	•	•	•	•
Bakeries (no on-site seating)	•	•	•	•	•	•	P	P	P	P	P	•	•	•	•
Barber shops, beauty salons	•	•	•	•	•	•	P	P	P	P	P	•	•	•	•
Laundry, dry cleaners	•	•	•	•	•	•	P	P	P	P	P	•	•	•	•
Miscellaneous services including travel agencies, photocopy services, photographic processing and supplies, mailing services, appliance repair, and similar uses	•	•	•	•	•	•	P	P	P	P	P	•	•	•	•
Banks, financial institutions	•	•	•	•	•	•	P	P	P	P	P	•	•	•	•
Health care facilities	•	•	•	•	•	•	•	CUP	CUP	CUP	CUP	•	CUP	•	•
Medical, dental, and physical therapy offices	•	•	•	•	•	•	•	P	P	P	P	•	•	•	•
Professional offices	•	•	•	•	•	•	P	P	P	P	P	•	•	•	•
Veterinary Hospital	•	•	•	•	•	•	CUP	CUP	CUP	CUP	CUP	•	•	•	•
Bars	•	•	•	•	•	•	•	CUP	CUP	CUP	CUP	•	•	•	•
Live entertainment	•	•	•	•	•	•	•	CUP	CUP	CUP	CUP	•	•	•	•
Movie theaters	•	•	•	•	•	•	•	•	•	•	CUP	•	•	•	•
Refreshment stands, ice cream stands, and other fixed location outdoor food vending stands	•	•	•	•	•	•	•	•	CUP	CUP	CUP	•	•	•	•
Restaurants	•	•	•	•	•	•	CUP ¹²	CUP ¹³	CUP ¹³	CUP ¹³	CUP ¹³	•	•	•	•
Vehicle washing/detailing	•	•	•	•	•	•	CUP ¹⁴	CUP ¹⁴			CUP	•	•	•	•
Service stations (without convenience market)	•	•	•	•	•	•	•	CUP	CUP	CUP	CUP	•	•	•	•
Towing and automobile storage	•	•	•	•	•	•	•	•	•	•	CUP	•	CUP	•	•
Community stage theaters	CUP ¹⁵	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Cultural and artistic uses (such as museums, galleries, performing arts venues)	•	•	•	•	•	CUP	CUP	CUP	CUP	CUP	CUP	•	•	•	•
Dance studios	•	•	•	•	•	•	P	P	P	P	P	•	•	•	•
Health clubs	•	•	•	•	•	•	P	P	P	P	P	•	•	•	•
Hotels	•	•	•	•	•	•	•	•	•	CUP	•	•	•	•	•
Motels and bed and breakfast inns	•	•	•	•	•	•	•	•	CUP	•	•	•	•	•	•
Parks and playgrounds	•	•	CUP	CUP	•	•	CUP	CUP	CUP	CUP	CUP	•	•	•	•
Public parks, beaches, and playgrounds	•	•	•	•	•	•	•	•	•	•	•	P	P	•	•
Recreation facilities (swimming pools, sandboxes, slides, swings, lawn bowling, volleyball courts, tennis courts and similar uses)	•	•	•	•	•	P	•	•	•	•	•	•	P ^{16/} CUP	•	•

USE	RR	SF	MF	MFBF	MH	CR	CN	CC	CV-1	CV-2	CG	OS	I	PRF	RVP
Recreational facilities (private) whose members receive membership through deeded rights, property rights, or membership	P	.

USE	RR	SF	MF	MFBF	MH	CR	CN	CC	CV-1	CV-2	CG	OS	I	PRF	RVP
Recreation facilities (neighborhood - for use by surrounding residents and operated by a non-profit corporation or neighborhood association for non-commercial purposes)	•	•	CUP	CUP	•	•	CUP	CUP	CUP	CUP	CUP	•	•	•	•
Recreation facilities (neighborhood - for use by surrounding residents)		CUP													
Recreational facilities such as equestrian training and boarding facilities tennis and swim clubs and golf driving ranges	•	•	•	•	•	•	•	CUP	CUP	CUP	CUP	•	•	•	•
Recreational vehicle parks	•	•	•	•	CUP	•	•	•	•	•	•	•	•	•	P
Sports courts (lighted)	CUP	CUP	CUP	CUP	•	•	CUP	CUP	CUP	CUP	CUP	•	•	•	•
Sports fields (lighted)	•	•	•	•	•	•	•	•	•	•	•	•	CUP ¹⁷	•	•
Charitable, philanthropic activities and educational (non-profit) activities	•	•	•	•	•	•	p ¹⁸	p ¹⁸	p ¹⁸	p ¹⁸	p ¹⁸	•	CUP	•	•
Churches, temples, and other places of worship	•	•	CUP	•	•	•	CUP	CUP	CUP	CUP	CUP	•	CUP	•	•
Community centers	•	•	•	•	•	•	•	•	•	•	•	•	CUP	•	•
Day care facilities, nursery schools	CUP	CUP	CUP	•	•	•	CUP	CUP	CUP	CUP	CUP	•	CUP	•	•
Educational institutions (public or private)	•	•	•	•	•	•	•	CUP ¹⁹	•	•	•	•	CUP	•	•
Emergency communication and service facilities	•	CUP	CUP	CUP	CUP	CUP	CUP	CUP	CUP	CUP	CUP	CUP	CUP	CUP	CUP
Communication Facilities	•	•	•	•	•	•	•	•	•	•	CUP	•	•	•	•
Farmers' markets operated by a nonprofit charitable organization	•	•	•	•	•	•	•	•	•	•	•	•	CUP	•	•
Helipad sites	CUP ²⁰	•	•	•	•	•	•	•	•	•	•	•	CUP ²¹	•	•
Government facilities, including police and fire stations	•	•	CUP	•	•	•	P	P	P	P	P	•	P	•	•
Libraries, museums	•	•	•	•	•	•	•	•	•	•	•	•	CUP	•	•
Maintenance yards	•	•	•	•	•	•	•	•	•	•	•	•	CUP	•	•
Public utility facilities	CUP	CUP	CUP	CUP	•	•	CUP	CUP	CUP	CUP	CUP	CUP ²²	CUP	•	•
Research institutions	•	•	•	•	•	•	•	•	•	•	CUP	•	•	•	•
Residential care facilities for the elderly	•	•	•	•	•	•	•	CUP	CUP	CUP	CUP	•	CUP ²³	•	•
Wastewater storage and hauling	•	•	•	•	•	•	•	•	•	CUP ²⁴	CUP	•	•	•	•
Wireless telecommunications antennae and facilities subject to Chapter 17.46	SPR/CUP ²⁵	•	•	•	•	SPR	SPR	SPR	SPR	SPR	SPR	SPR/CUP ²⁵	SPR	SPR	SPR/CUP ²⁵

USE	RR	SF	MF	MFBF	MH	CR	CN	CC	CV-1	CV-2	CG	OS	I	PRF	RVP
Construction services (neighborhood-serving)	•	•	•	•	•	•	•	CUP	•	•	CUP	•	•	•	•
Manufacturing, processing, or treatment of products	•	•	•	•	•	•	•	•	•	•	CUP	•	•	•	•
Masonry supplies	•	•	•	•	•	•	•	•	•	•	P	•	•	•	•
Sculptural and metal art activities	•	•	•	•	•	•	•	•	•	•	P	•	•	•	•
Research and development, testing facilities	•	•	•	•	•	•	•	•	•	•	CUP	•	•	•	•
Self-storage	•	•	•	•	•	•	CUP ²⁶	•	•	•	•				
Wholesale, storage, and distribution	•	•	•	•	•	•	•	•	•	•	CUP	•	•	•	•
Light industrial uses	•	•	•	•	•	•	•	•	•	•	CUP	•	•	•	•
Uses permitted by right that operate between the hours of 11:00 p.m. to 7:00 a.m.	•	•	•	•	•	•	MCUP	P	P	P	P	•	•	•	•
Medical marijuana facilities	•	•	•	•	•	•	CUP ²⁷	•	•	•	•				
New or the expansion over 500 sf of multiple family residential use including duplexes, condominiums, stock cooperatives, apartments and other similar developments	•	•	•	CUP	•	•	•	•	•	•	•	•	•	•	•
Expansion up to 500 sf of existing buildings provided the expansion conforms to Chapter 17.40	•	•	•	P	•	•	P	P	P	P	P	•	•	P	P
Any use permitted in Section 17.26.020 in an existing commercial structure	•	•	•	•	•	•	MCUP	MCUP	MCUP	MCUP	MCUP	•	•	•	•
Any use involving new construction or expansion over 500 sf	•	•	•	•	•	•	CUP	CUP	CUP	CUP	CUP	•	•	•	CUP
Routine maintenance of natural open space areas and existing facilities, provided no construction or grading activity occurs	•	•	•	•	•	P	•	•	•	•	•	•	•	•	•
Any proposed grading or construction related to proposed uses	•	•	•	•	•	CUP	•	•	•	•	•	•	•	•	•

USE	RR	SF	MF	MFBF	MH	CR	CN	CC	CV-1	CV-2	CG	OS	I	PRF	RVP
Temporary real estate and construction signs with new development activity.	•	•	•	•	•	•	P	P	P	P	P	•	•	•	•
Other uses determined by the Planning Director to be of a similar nature to permitted uses	•	•	•	•	•	•	P	P	P	P	P	•	•	•	•

Notes:

1. One single family residence in conjunction with an institutional use and consistent with the provisions of Chapter 17.08.
2. Includes the expansion of over 500 sq. ft. of existing multiple family structures.
3. Barns and corrals not allowed.
4. Subject to Home Occupation Standards Section 17.40.40(A)(19)
5. Public and private hiking trails in CR and I zones and private hiking trails in RR, SF, and MF zones.
6. Accessory uses when part of an educational or non-profit (non-commercial) use.
7. Subject to Section 17.08.020 (D)(2) for RR zone and Section 17.18.030(B)(2) for CR zone.
8. Subject to Section 17.08.020 (C)(5) for RR zone and Section 17.10.020(C)(5) for SF zone.
9. Subject to Section 17.08.020 (D)(1) for RR zone and Section 17.18.030(B)(1) for CR zone.
10. Subject to Section 17.08.030 (B), except that the minimum area required shall be 5 acres.
11. Subject to Section 17.08.020(D)(4) for RR zone and Section 17.18.030(B)(5) for CR zone.
12. Maximum interior occupancy of 125 persons.
13. If exceeding interior occupancy of 125 persons.
14. By hand only.
15. Subject to Section 17.08.040(F).
16. Subject to provisions of Section 17.34.030 when a facility is located within a side or rear yard adjacent to a residentially-zoned parcel.
17. Sports field lighting shall be limited to the main sports field at Malibu High School and subject to the standards of LIP Sections 4.6.2 and 6.5(G).
18. Charitable, philanthropic, or educational non-profit activities shall be limited to permanent uses that occur within an enclosed building.
19. Subject to Section 17.26.030(A)(1).
20. Subject to Section 17.08.040(C).
21. Limited to public agency use only (not for private use).
22. Conditionally permitted only when facilities are ancillary to the Civic Center Wastewater Treatment Facility, including, but not limited to, injection wells, generators, and pump stations.
23. Residential care facilities for the elderly are limited to operation by a non-profit only.
24. This use is conditionally permitted in the Civic Center Wastewater Treatment Facility Institutional Overlay District and only when associated with the existing wastewater treatment facility or with the Civic Center Wastewater Treatment Facility.
25. CUP required unless located in public right-of-way.
26. Subject to Section 17.22.040(N).
27. Subject to Section 17.66.120.



City of Malibu

23825 Stuart Ranch Road · Malibu, California · 90265-4861
Phone (310) 456-2489 · Fax (310) 456-7650 · www.malibucity.org

FRC No. ____ -

FORMULA RETAIL CLEARANCE APPLICATION

The City of Malibu will not accept incomplete applications

General Information

PROPERTY ADDRESS: _____ Unit # _____

BUSINESS NAME: _____

APPLICANT / CONTACT: First: _____ Last: _____

APPLICANT ADDRESS: _____ CITY: _____ STATE: _____ ZIP: _____

APPLICANT PHONE #: _____ APPLICANT EMAIL: _____

PROPERTY OWNER: _____

Fees

Formula Retail Clearance \$ _____

Formula Retail

1. DOES THE PROPOSED RETAIL SERVICE CURRENTLY HAVE 10 OR MORE OPERATIONAL RETAIL ESTABLISHMENTS WORLDWIDE AND MAINTAIN TWO OR MORE OF THE FOLLOWING FEATURES LISTED BELOW? YES NO

If yes, circle the applicable feature below.

- | | |
|--|--|
| a. Standardized array of merchandise or menu | e. Standardized layout |
| b. Standardized color scheme | f. Standardized signage, service mark or trademark |
| c. Standardized décor | g. Uniform apparel |
| d. Standardized signage | |

2. WILL THE PROPOSED LOCATION EXCEED 4,000 SQUARE FEET OF GROSS FLOOR AREA?

YES NO

3. PROPOSED BUSINESS: NEW BUSINESS OTHER: _____

4. BUSINESS DESCRIPTION (PROVIDE ADDITIONAL PAGES IF NECESSARY):

5. TOTAL GROSS FLOOR AREA OF SHOPPING CENTER: _____

6. PROPOSED FLOOR AREA: _____

***ISSUING THE FRC WILL NOT RESULT IN (A) NON-EXEMPT FORMULA RETAIL ESTABLISHMENTS OCCUPYING MORE THAN 30 PERCENT OF THE TOTAL GROSS FLOOR ARE OF A SHOPPING CENTER EXCLUDING THE FLOOR AREA OCCUPIED BY EXEMPT FORMULA RETAIL DEFINED IN 17.66.020(A)(1)-(8) ONLY, OR (B), WHERE THE SHOPPING CENTER IS MORE THAN ONE FLOOR, NON-EXEMPT FORMULA RETAIL ESTABLISHMENTS OCCUPY MORE THAN 40 PERCENT OF TOTAL GROSS FLOOR AREA OF THE GROUND FLOOR OF THE SHOPPING CENTER.**

REPORT TO PLANNING COMMISSION

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. The approval shall become final two days after the clearance is reported to the Planning Commission, unless rescinded by the Planning Director.

ADDITIONAL PERMITS

Approval of this Formula Retail Clearance is to clear the tenant space to be occupied by a formula retail establishment. It does not eliminate the need for other permits, licenses, or certificates required. Additional permits may be required (e.g., Health Permit, Certificate of Occupancy, Sign Permit, Tenant Improvement Permit, Temporary Use Permit, Conditional Use Permit, etc.). See the Department of Environmental Sustainability to verify which construction permits may be required.

INDEMNIFICATION CLAUSE

The property owners, and their successors in interest, shall indemnify and defend the City of Malibu and its officers, employees and agents from and against all liability and costs relating to the City's actions concerning this project, including (without limitation) any award of litigation expenses in favor of any person or entity who seeks to challenge the validity of any of the City's actions or decisions in connection with this project. The City shall have the sole right to choose its counsel and property owners shall reimburse the City's expenses incurred in its defense of any lawsuit challenging the City's actions concerning this project.

PROPERTY OWNER SIGNATURE

PROPERTY OWNER NAME (PRINT)

DATE

APPLICANT STATEMENT

I hereby certify under penalty of perjury that I have read and understand all of the sections above and that the information provided on this form is true and correct to the best of my knowledge. I also state that I have read and familiarized myself with the portions of the Malibu Municipal Code which apply to my business in this location. I agree to comply with these regulations and any other local, state, and federal regulation that my relation to this proposed business.

Property Owner, or Applicant Signature: _____

Date: _____

Staff Use Only

FORMULA RETAIL CALCULATION

PROPOSED FORMULA RETAIL FLOOR AREA: _____

EXEMPT FORMULA RETAIL FLOOR AREA: _____

SHOPPING CENTER **TOTAL** GROSS FLOOR AREA: 1st FLOOR: _____ 2nd FLOOR: _____ TOTAL: _____

TOTAL GFA: _____ - _____ EXEMPT FORMULA RETAIL = _____

_____ x 30% = _____ ALLOWABLE FORMULA RETAIL

NON-EXEMPT FORMULA RETAIL GFA (including applicant): _____ COMPLIES YES NO

SHOPPING CENTER - GROSS FLOOR AREA OF FIRST FLOOR:

TOTAL GFA FIRST FLOOR: _____ - _____ EXEMPT FORMULA RETAIL = _____

_____ x 40% = _____ ALLOWABLE FORMULA RETAIL

NON-EXEMPT FORMULA RETAIL GFA (including applicant): _____ COMPLIES YES NO

Approved FRC: _____
Planning Staff

Date: _____

NOT Approved for FRC: _____
Planning Staff

Date: _____

Reason not approved or additional information required:

