

## ORDINANCE NO. 376

AN ORDINANCE OF THE CITY OF MALIBU ADOPTING NEGATIVE DECLARATION NO. 13-001 AND INITIAL STUDY NO. 13-001 AND AMENDING MALIBU MUNICIPAL CODE TITLE 17 (ZONING) TO PLACE A 45% CAP ON THE NUMBER OF FORMULA RETAIL TENANTS PERMISSIBLE WITHIN ANY SHOPPING CENTER IN THE CIVIC CENTER COMMERCIAL DISTRICT

THE CITY COUNCIL OF THE CITY OF MALIBU DOES ORDAIN 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 Citywide, 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.
- E. 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.
- F. 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.
- G. 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)].

- H. In light of the foregoing considerations, the City Council 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.
- I. On July 29, 2013, the Planning Commission held a duly noticed public hearing, and adopted Planning Commission Resolution No. 13-63, recommending the City Council deny 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.
- J. On September 9, 2013, the City Council continued the public hearing to the September 23, 2013 Regular City Council meeting.
- K. On September 23, 2013, the City Council held a duly noticed public hearing on the subject amendment, considered the recommendation by the Planning Commission, reviewed and considered written reports, public testimony, and related information, and directed staff to come back with a revised ordinance, and continued the public hearing to the October 14, 2013 Regular City Council meeting.
- L. On October 14, 2013, the City Council held a duly noticed public hearing on the subject amendment, considered the recommendation by the Planning Commission, reviewed and considered written reports, public testimony, and related information, and directed staff to come back with a revised ordinance.
- M. On April 21, 2014, the Planning Commission held a duly noticed public hearing to consider the changes recommended by the City Council, and adopted Planning Commission Resolution No. 14-21, recommending the City Council approve Zoning Text Amendment No. 08-003 to amend Title 17 (Zoning) of the Malibu Municipal Code to place a 45% cap on the number of formula retail tenants permissible within any shopping center in the civic center commercial district.
- N. On May 15, 2014, a Notice of City Council Public Hearing was published in a newspaper of general circulation within the City of Malibu indicating that the City Council would hold a public hearing on June 9, 2014 to consider the adoption of Negative Declaration No. 13-001 and Initial Study No. 13-001, and Zoning Text Amendment No. 08-003, amendments to the M.M.C. In addition, on May 15, 2014, a Notice of City Council Public Hearing was mailed to all interested parties;

homeowners' associations on record with the City; regional, state, and federal agencies affected by the amendments; local libraries, and media.

- O. On June 9, 2014, the City Council tabled the matter to a future meeting.
- P. On June 19, 2014, a Notice of City Council Public Hearing was published in a newspaper of general circulation within the City of Malibu indicating that the City Council would hold a public hearing on July 14, 2014 to consider the adoption of Negative Declaration No. 13-001 and Initial Study No. 13-001, and Zoning Text Amendment No. 08-003, amendments to the M.M.C. In addition, on June 19, 2014, a Notice of City Council Public Hearing was mailed to all interested parties; homeowners' associations on record with the City; regional, state, and federal agencies affected by the amendments; local libraries, and media

## Section 2. Environmental Review.

The City Council has analyzed the project proposal described herein. 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 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 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 initial study culminated in a Negative Declaration.

Pursuant to the authority and criteria contained in CEQA, the City Council has exercised its independent judgment and analyzed the proposed zoning text amendment. After reviewing Initial Study No. 13-001, the City Council has determined that the project will not have a significant effect on the environment. Accordingly, a project description, draft ordinance, and Initial Study and Negative Declaration Nos. 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 negative declaration together with any comments received before approving the project. Written responses to comments are not required for an initial study and negative declaration; however, for the benefit of the public and decision makers, staff prepared written responses to those 15 comments that raised CEQA issues. The responses are included as Exhibit C of the initial study and negative declaration.

Based on the entire record and comments received, the City Council determined that: 1) there is no substantial evidence that the project may have a significant effect on the environment; and 2) the negative declaration prepared for the project reflects the City Council's independent judgment and analysis. Modifications made to the circulated draft ordinance and initial study and negative declaration 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 negative declaration have been made.

The proposed ordinance and initial study and negative declaration were reviewed by the Malibu City Council at public hearings on September 23, 2013 and October 14, 2013. After considering all oral and written comments, the City Council directed staff to bring back a modified ordinance that limits the amount of formula retail uses within shopping center to 45 percent maximum, excluding any of the otherwise formula retail uses that are listed as exempt; b) determines the 45 percent maximum by the number of stores in a center, not square footage of stores; c) calculates the 45 percent maximum per shopping center, not per parcel; d) does not require a conditional use permit (CUP) for formula retail uses; e) removes lawyers and architects from the list of exempted uses; f) defines formula retail as 10 or more in the United States, not worldwide; and g) includes a 12-month sunset clause.

A revised draft ordinance was prepared in accordance with the City Council direction described above. Pursuant to CEQA Section 15073.5, an initial study/negative declaration requires recirculation and a new public review only when the initial study/negative declaration must be substantially revised after public notice of its availability has been previously given, but prior to its adoption. A "substantial revision" of the negative declaration means: 1) a new, avoidable significant effect is identified and mitigation measures or project revisions must be added in order to reduce the effect to insignificance; or 2) the lead agency determines that the proposed mitigation measures or project revisions will not reduce potential effects to less than significance and new measures or revisions must be required. Recirculation is not required when a project is revised in response to written or oral comments on the project's effects identified in the originally proposed negative declaration which are not new avoidable significant effects. Recirculation is also not required when new information is added to the negative declaration which merely clarifies, amplifies, or makes insignificant modifications to the negative declaration.

The final initial study and negative declaration for the previously proposed ordinance did not identify any potentially significant environmental impacts or the need to adopt any mitigation measures as a result of implementation of the proposed formula retail ordinance. The modified ordinance will be slightly less restrictive overall as compared to the previously proposed ordinance. Consequently, the modified ordinance is not expected to result in any new potentially significant environmental impacts.

The previously proposed formula retail ordinance would have imposed a maximum floor area for individual formula retail businesses of 2,500 square feet. The revised ordinance would have allowed individual formula retail businesses with up to 3,500 square feet of floor area. The previously proposed ordinance would have prohibited formula retail uses from occupying more than 50 percent of the overall square footage of any shopping center or 50 percent of the net number of tenant spaces in a shopping center. The revised ordinance would limit formula retail uses to 45 percent of a shopping center, based on the number of stores and without regard to aggregate square footage. Most significantly, the revised ordinance eliminates the CUP requirement that was contemplated in the previously proposed ordinance. Removing the CUP requirements eliminates the potential for delay associated with the CUP permitting process and any potential impacts that some commenters speculated could be occasioned by such delays.

On April 21, 2014, the Planning Commission held a public hearing and recommended, among other changes, eliminating the 3,500 square foot cap. This recommendation will result in a less restrictive ordinance overall as compared to the previously proposed ordinance. Consequently, the modified ordinance is not expected to result in any new potentially significant environmental impacts.

The proposed formula retail ordinance revisions described above are not considered to be substantial and implementation of the revised ordinance would not result in new impacts to the environment or the need to adopt any mitigation measures. Therefore, the conclusion in the initial study and negative declaration that the proposed formula retail ordinance would not have an adverse impact on the environment is unaffected by the proposed modifications and recirculation is not required in accordance with CEQA Section 15073.5.

### Section 3. Zoning Text Amendment Findings.

A. Based on evidence in the whole record, the City Council 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 zoning text amendment 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, 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 M.M.C. 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, Amendments to Title 17 of the Malibu Municipal Code.

The City Council hereby amends the M.M.C. as follows:

- A. Add M.M.C. Section 17.22.020.E to read as follows:

Q. Formula retail, subject to the standards set forth in Section 17.40.085.

- B. Add M.M.C. Section 17.40.085 to read as follows:

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 commercial district. 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. Prior to opening, each formula retail use located in the Civic Center commercial district shall obtain a planning clearance as set forth in Section 17.04.030. Not more than forty-five (45) percent of each floor of a shopping center or forty-five (45) percent of any retail component of a commercial building, as determined by the net percentage of overall square footage (excluding the uses described in Section 17.40.85(E)), shall be occupied by formula retail establishments. The maximum size of each formula retail establishment shall be limited to three thousand five hundred (3,500) square feet.

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 ten (10) or more other existing, operational retail establishments located in United States, that is required to contractually or by other agreement 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.

1. "Standardized" means both identical and substantially the same.
2. "Array of merchandise or menu" means fifty (50) percent or more of in-stock merchandise or menu items.
3. "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.
4. "Décor" means the style of interior finishes such as the style of furniture, wall coverings, or permanent fixtures.
5. "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.
6. "Layout" means the interior arrangement of furniture, service area, or permanent fixtures.
7. "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.
8. "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.
9. "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 ten thousand (10,000) square feet of gross floor area. No differentiation shall be made between centers that are product-orientated or service-oriented.

E. 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. Banks and financial services;
2. Drug stores/pharmacies;
3. Gas stations;
4. Grocery;
5. Insurance offices;
6. Lower-cost overnight accommodations;
7. Medical uses;
8. Movie theaters;
9. Post offices; and
10. Real estate offices.

F. Permit Validity. To assure continued compliance with the provisions of this Section, each approved planning clearance 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 planning clearance 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 two hundred (200) square feet or more of gross floor area, or increases service area by fifty (50) square feet or more.

Section 5. Severability.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance, or its application to any other person or circumstance. The City Council hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

Section 6. Effectiveness.

The amendments approved in this ordinance shall become effective 30 days after adoption.

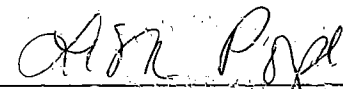
Section 7. Certification.

The City Clerk shall certify the adoption of this Ordinance.

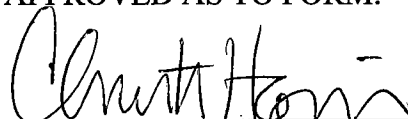
PASSED, APPROVED AND ADOPTED this 11<sup>th</sup> day of August 2014.

  
\_\_\_\_\_  
SKYLAR PEAK, Mayor

ATTEST:

  
\_\_\_\_\_  
LISA POPE, City Clerk  
(seal)

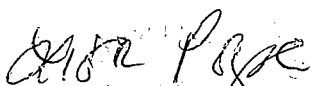
APPROVED AS TO FORM:

  
\_\_\_\_\_  
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. 376 was passed and adopted at the regular City Council meeting of August 11, 2014, by the following vote:

AYES: 5 Councilmembers: House, La Monte, Rosenthal, Sibert, Peak  
NOES: 0  
ABSTAIN: 0  
ABSENT: 0

  
\_\_\_\_\_  
LISA POPE, City Clerk  
(seal)