

## **YOUR MALIBU, YOUR DECISION INITIATIVE**

The People of the City of Malibu hereby ordain and enact as follows:

### **Section 1. Title.**

This Act shall be known and may be cited as the “Your Malibu, Your Decision Act.”

### **Section 2. Findings and Declarations.**

The People of the City of Malibu (“City”) find and declare as follows:

1. Our City was founded on the principles of preserving our City’s small-town, rural character and protecting our sensitive coastal environment from overdevelopment. These qualities have made our community a rare and beautiful place to live and visit. The City is an oasis in the midst of urban and suburban sprawl and generic development.

2. These founding principles are expressed in our “constitutional” planning document, the City’s General Plan: “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.”

3. Despite the protections in our General Plan, our way of life is facing new, imminent threats. Politicians, under the sway of developers, are taking steps to radically change our town and open it up to large, generic development. Recently, these politicians have:

(a) begun rushing through approvals for a massive and exclusive hotel-condominium resort in the Civic Center area that would destroy acres of natural habitat, dramatically increase traffic congestion, and threaten an important habitat linkage between the Santa Monica Mountains and the Malibu Bluffs;

(b) begun planning the construction of a massive and expensive wastewater treatment facility, without adequate financial and land use planning, that would open up the Civic Center area to more development and cost at least \$41 million;

(c) begun the approval process for several developments that would increase traffic congestion and change the character of our City; and

(d) refused to pass even the most modest permanent limits on chain store development in our City.

4. The absence of thoughtful, long-term planning would radically alter the nature of our community by:

(a) destroying the small-town, rural character of our City and depriving residents and visitors of a diverse commercial base to serve their needs;

(b) causing unacceptable traffic congestion that will threaten the ability of firefighters and police to timely respond to emergencies;

(c) destroying open space, natural habitats, and important habitat linkages for wildlife;

(d) overtaxing our public resources and services, such as fire and police, water, and wastewater treatment; and

(e) endangering our natural resources through pollution, excessive run-off and sewage, and increased use of water.

5. Large commercial developments and ubiquitous, generic chain stores have adverse impacts on the small-town, rural character of our City and the diversity of our commercial base and therefore require careful consideration and planning.

6. Despite these adverse effects, the politicians have refused to engage in long-term planning, adopt a reasonable formula retail ordinance, or seek voter input. Malibu should engage in responsible land use planning and impose reasonable limits on chain stores, and Malibu voters should have a voice in long-term planning and in deciding whether large development projects that would radically alter the character of our community should proceed.

### **Section 3. Purpose and Intent.**

In enacting this Act, the people of the City do hereby declare it is their purpose and intent to:

1. Preserve our community's unique small-town, rural character and protect natural resources by adopting provisions that will ensure our community remains a unique oasis in the midst of urban and suburban sprawl and generic development while at the same time ensure our City evolves in a sustainable manner that meets the needs of our residents and visitors.

2. Ensure thoughtful and long-term planning by requiring preparation and voter approval of specific plans for large commercial or mixed-use projects (20,000 square feet or more) that would change the small-town, rural character of our City.

3. Limit chain stores in our City to those establishments that promote variety and a diverse commercial base and are consistent with the City's small-town, rural character by requiring that new chain stores obtain a conditional use permit, while ensuring that the needs of residents and visitors for essential services are adequately addressed and that vacancies are discouraged by establishing limited exceptions to the restrictions on formula retail.

### **Section 4. Malibu Zoning Ordinance Amendment – Specific Plan Requirements for Large Commercial or Mixed-Use Projects.**

Section 17.02.045, entitled "The Right to Vote on Specific Plans for Specified Commercial and Mixed-Use Projects," is hereby added to the Malibu Municipal Code to read as follows:

17.02.045

*(a) Purpose.*

*A. The future development or redevelopment of larger commercial projects in the City of Malibu will, if not properly planned, have significant adverse impacts on the City including, but not limited to, the following: traffic generation and resultant congestion; obstruction of important view corridors and vistas; inadequate provision of retail businesses serving local and visitor needs; unsightly parking structures; overly intense commercial development which disrupts the existing residential character of Malibu; loss of open space; excessive construction of large commercial establishments at the expense of retail businesses serving local and visitor needs; and*

*B. It is necessary to delay final approval of projects subject to this measure until specific plans required by this measure are approved in order to preclude preemption of the planning process and the implementation of such plans.*

*(b) Definitions. For purposes of this ordinance, the following words and phrases shall have the following meanings:*

*A. "Commercial Area" shall mean that area within the "General Commercial," "Visitor-Serving Commercial," "Community Commercial," and "Commercial Neighborhood" designations as the same is shown on Figures LU-2(B), LU-2(C), LU-2(D), and LU-2(E) at Page 63 of the Malibu General Plan, the property within the Commercial General, Commercial Neighborhood, Community Commercial, CV-1 Commercial Visitor Serving, and CV-2 Commercial Visitor Serving Districts, and any parcel rezoned to any commercial designation contiguous to the aforementioned Commercial Area.*

*B. "Development project subject to this measure" shall mean any project for which a discretionary approval is sought in the Commercial Area, regardless of the number of parcels or parcel size, which proposes to develop or redevelop in excess of 20,000 square feet of commercial or mixed commercial-residential gross floor area. A "development project subject to this measure" may not be divided into parts, parcels, or phases to avoid being subject to this measure.*

*C. "Specific plan" and "specific plans" shall mean a specific plan or plans as provided by Government Code Section 65450 et seq.*

*D. "Effective date" shall mean the date on which this initiative measure was adopted by the City Council of the City of Malibu or the date on which it was passed by the voters at the polls, whichever occurs first.*

*E. "Discretionary approval" shall mean any discretionary land use entitlement or permit of any type whatsoever issued by the City including, but not limited to, tentative and parcel maps, rezones, General Plan amendments, use permits, variances, grading permits, land conservation permits, specific or precise plans, coastal development permits pursuant to an approved Local Coastal Program, building permits when discretionary, and any other approvals required by the City.*

*(c) Specific Plans Required for Certain Projects; Voter Approval.*

*A. Projects Requiring Specific Plans. A specific plan or plans shall be prepared for every development project subject to this measure. Following adoption of the specific plan or plans for these projects by the City Council, the plan or plans shall be placed on the ballot, as soon as possible, for approval by the voters. One specific plan may be prepared covering more than one development project subject to this measure or a separate specific plan may be prepared for each subject project.*

*B. The popular vote required by subdivision A shall be without prejudice to (1) all other applicable public review requirements, including without limitation, any environmental review or assessments in compliance with the requirements of the California Environmental Quality Act (CEQA), the Malibu Local Coastal Program, and, where applicable, the public access and recreation policies of Chapter 3 of the California Coastal Act of 1976; and (2) any subsequent decision by the California Coastal Commission, as may be required by law. The popular vote required by subdivision A shall not apply to projects involving the development of a public school or hospital.*

*C. Contents of Specific Plans. Each specific plan shall meet all applicable goals, objectives, policies, and requirements of the Malibu General Plan and the Malibu Local Coastal Program. In addition, in developing each specific plan, the City Council shall prepare a report, with full public notice and public hearing, addressing:*

- 1. Floor area proposed in the specific plan;*
- 2. Requirements to ensure the retention of retail businesses serving local residents and visitors;*
- 3. Preservation of important view corridors and vistas;*
- 4. Traffic. The report should undertake a comprehensive analysis of projected traffic generation and circulation that will result from the development project subject to this measure. The study should, at minimum, address the cumulative effect of the development project subject to this measure on existing and projected traffic on the Pacific Coast Highway and other local streets;*
- 5. Public Facilities, Services, and Economic Analysis. A public facilities, services, and economic analysis should be included in the report for each specific plan addressing the availability and adequacy of public facilities and services, individually and cumulatively, for the development projects subject to this measure, taken together with the demands of other existing and proposed development, and addressing the cost to the public, direct and indirect, for providing such facilities and services to the projects;*
- 6. Provision of open space within the development project subject to this measure;*
- 7. The adequacy of parking within the development project subject to this measure and the visual impact of parking structures proposed as a part of the project;*

8. *The extent to which the Commercial Area has been enlarged by the conversion of non-commercially zoned property to commercial designations; and*

9. *Any geological, hydroelectrical, or wastewater impacts of the development project subject to this measure.*

*(d) Preparation of Specific Plans. The specific plans required by this measure shall be prepared by the City Council, or under its direction, with full notice and public hearing. The plans shall be prepared as quickly as possible to minimize delay or inconvenience to landowners and developers. The City Council may utilize materials or drafts prepared by landowners provided any such materials or drafts are subject to the required public review prior to Council adoption. The City Council shall ensure that the required specific plans are prepared in such a manner that they can be placed on the ballot and easily understood by the voters. Each ballot measure required by this Act shall clearly identify and accurately describe the development project subject to this measure, including the square footage of gross floor area of the proposed structure and how much will be devoted to commercial and residential purposes, in such manner as to avoid confusing or misleading the voters concerning project definition, scope, and location.*

*(e) No Final Approval Until Specific Plans Approved. The City shall take no final action on any discretionary approval relating to any development project subject to this measure until the specific plan for that development project has been approved by the voters.*

*(f) Consistency with Approved Specific Plan. Following voter approval of a specific plan, no discretionary or non-discretionary approval shall be granted or issued unless the same is consistent with the specific plan and the City body or individual exercising final approval authority makes a written finding to that effect supported by substantial evidence. Under no circumstances shall any subsequent permit or approval issued by any City department or official authorize, allow, or otherwise approve higher square footage, density, or intensities of uses, or less landscaping, open space, or mitigation requirements, including traffic mitigation and safety requirements, than were finally approved by the voters. No certificate of occupancy for any structure built as part of a development project subject to this measure shall issue until all mitigations of traffic impacts, including offsite mitigations, required by the specific plan have been developed and fully implemented, and the Public Works Director/City Engineer has certified completion and operation of all traffic impact mitigations in full compliance with the voter-approved specific plan.*

*(g) Processing Prior to Plan Approval. In order to minimize delay for developers of affected parcels, the City may hold any required hearings prior to voter approval of a specific plan or specific plans provided that no final action is taken on any discretionary approval until after the applicable specific plan receives voter approval, and provided further that any such final approval is consistent with such specific plan.*

*(h) Rejection of Specific Plan. Rejection by the voters of one or more specific plans required by this measure shall not preclude the City Council from preparing and the voters from considering an alternate specific plan for the affected development project subject to this measure.*

**Section 5. Malibu Zoning Ordinance Amendment – Amendments to Specified Commercial Districts.**

A. Section 17.22.060, entitled “Voter Approval of Specific Plans,” is added to the Malibu Municipal Code, Chapter 17.22 CN COMMERCIAL NEIGHBORHOOD DISTRICT, to read as follows:

*17.22.060 All lots in the CN district are subject to the requirements of Section 17.02.045, if applicable.*

B. Section 17.24.050, entitled “Voter Approval of Specific Plans,” is added to the Malibu Municipal Code, Chapter 17.24 CC COMMUNITY COMMERCIAL DISTRICT, to read as follows:

*17.24.050 All lots in the CC district are subject to the requirements of Section 17.02.045, if applicable.*

C. Section 17.26.050, entitled “Voter Approval of Specific Plans,” is added to the Malibu Municipal Code, Chapter 17.26 CV-1 COMMERCIAL VISITOR SERVING DISTRICT, to read as follows:

*17.26.050 All lots in the CV-1 district are subject to the requirements of Section 17.02.045, if applicable.*

D. Section 17.28.050, entitled “Voter Approval of Specific Plans,” is added to the Malibu Municipal Code, Chapter 17.28 CV-2 COMMERCIAL VISITOR SERVING DISTRICT, to read as follows:

*17.28.050 All lots in the CV-2 district are subject to the requirements of Section 17.02.045, if applicable.*

E. Section 17.30.050, entitled “Voter Approval of Specific Plans,” is added to the Malibu Municipal Code, Chapter 17.30 CG COMMERCIAL GENERAL DISTRICT, to read as follows:

*17.30.050 All lots in the CG district are subject to the requirements of Section 17.02.045, if applicable.*

**Section 6. Malibu Zoning Ordinance Amendment – Limits on Formula Retail.**

Section 17.66.130, entitled “Limits on Formula Retail,” is added to the Malibu Municipal Code, to read as follows:

*17.66.130(a) A conditional use permit under this Chapter shall be required for all new formula retail establishments located in the City and for existing formula retail establishments located within the City 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. Formula retail*

*establishments shall be subject to all provisions of this Chapter unless otherwise specified in this Section.*

*(b) In lieu of the findings required by Section 17.66.080, the Planning Commission shall make all of the following findings of fact in order to approve a conditional use permit for a formula retail establishment, and shall impose such conditions as are deemed necessary to insure that such use will be in accord with the following findings:*

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

*(2) The proposed formula retail establishment will not impair the City's unique, small-town community character by promoting a predominant sense of familiarity or sameness, with consideration for all existing formula retail establishments, including the uses described in subdivision (c) of this Section, as viewed from any main street.*

*(3) The proposed formula retail establishment will promote a diverse commercial base.*

*(4) The proposed formula retail establishment will not exceed 2,500 square feet of gross floor area.*

*(5) Approval of the proposed formula retail establishment will not result in formula retail establishments occupying more than 30 percent of: (a) the overall square footage of service area of each floor of a shopping center, (b) the total number of leasable tenant spaces of each floor of a shopping center, and (c) the total gross floor area of a parcel or shopping center. The calculation of the 30 percent limit pursuant to this paragraph shall include the proposed formula retail establishment and all existing formula retail establishments, including the formula retail establishments described in paragraphs (1) through (10), inclusive, of subdivision (c) of this Section.*

*(c) The conditional use permit required by subdivision (a) of this Section shall not be required for a change of ownership of an existing formula retail establishment, exclusively, or for the following types of formula retail establishments:*

*(1) Grocery;*

*(2) Drug stores/pharmacies;*

*(3) Gas stations;*

*(4) Banks and financial services;*

*(5) Real estate offices;*

*(6) Movie theaters;*

- (7) Postal service offices;*
- (8) Medical offices;*
- (9) Low-cost overnight accommodations; and*
- (10) A formula retail establishment:*

*(A) located in a shopping center in existence as of April 1, 2014 in the Civic Center commercial district, provided that the addition of the formula retail establishment to the shopping center does not cause the gross floor area of the shopping area to increase beyond the gross floor area of the shopping center in existence as of April 1, 2014; and*

*(B) that occupies a space that is at least 1,400 square feet of gross floor area but does not exceed 5,000 square feet of gross floor area, provided that since April 1, 2014 the space has not been reconfigured or combined with another space to fit within the parameters established by this paragraph (B).*

*(d) 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 thirty (30) days, 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.*

*(e) For the purpose of this Section, the following definitions shall apply:*

*(1) "Formula retail" means any type of retail sales activity and/or retail service activity conducted within a retail establishment that, 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; and 7) uniform apparel.*

*(2) "Array of merchandise or menu" means 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 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.

(10) “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.

(11) “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-oriented or service-oriented.

(12) “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.

## **Section 7. General Plan Text Amendments.**

A. LU Implementation Measure 43.1 of the Land Use Element of the City of Malibu General Plan, dated November 1996 (part of the Malibu General Plan’s Land Use Element Goal 2, LU Objective 2.1) is added to read as follows:

*LU Implementation Measure 43.1: Amend the Malibu Zoning Ordinances to require preparation of specific plans for projects in excess of 20,000 square feet of commercial or mixed commercial-residential gross floor area and placement of such specific plans on the ballot for approval by the voters.*

B. Section 1.5.18 of the Land Use Element of the City of Malibu General Plan, dated November 1996, entitled “Specific Plan Overlay (SP),” is amended to read as follows:

The SP Overlay enables the City to address unique areas within the community which warrant a comprehensive set of land use policies and standards through adoption and implementation of specific plans. The SP overlay shall be developed according to adopted performance standards, including traffic, geological, hydroelectrical and wastewater impacts: *and shall at a minimum apply to that area within the “General Commercial,” “Visitor-Serving Commercial,” “Community Commercial,” and “Commercial Neighborhood” designations as the same is shown on Figures LU-2(B), LU-2(C), LU-2(D), and LU-2(E), and that area within the Civic Center Overlay Boundary as shown on Land Use Maps 3 and 5 of the Local Coastal Program – City of Malibu, adopted September 13, 2002.*

## **Section 8. General Plan Land Use Policy Map Legend Amendment.**

This initiative hereby amends the City of Malibu General Plan, dated November 1996, as follows:

Figure LU-2(A), Land Use Policy Map – Legend (a copy of which is attached hereto as Exhibit A), is hereby amended as set forth in Exhibit B, attached hereto. This amendment expands the Specific Plan Districts to encompass the “General Commercial,” “Visitor-Serving Commercial,” “Community Commercial,” and “Commercial Neighborhood” designations. (See Exhibit C for City of Malibu General Plan Figures LU-2(B)-(E), Land Use Policy Maps Sections 1-4.)

## **Section 9. Exemptions for Certain Projects.**

A. Section 4 of this initiative shall not apply to any development project or ongoing activity that has obtained, as of the effective date of this initiative, a vested right pursuant to state or local law.

B. This initiative shall not be interpreted to apply to any development, land, or use that, under state or federal law, is beyond the power of the local voters to affect by the initiative power reserved to the people via the California Constitution.

C. Nothing in this initiative shall be construed or applied to prevent the City from complying with its housing obligations under state law. The City Council may, without voter ratification, approve a change to the amendments of the General Plan or Zoning Ordinance set forth in this initiative for the sole purpose of complying with the City’s housing obligations if it (1) makes a finding that such change is necessary to comply with the City’s housing obligation and there is no suitable land available elsewhere in the City that may be used to satisfy the obligation; and (2) makes such a change or approves a project only to the extent necessary to comply with the applicable state law housing obligation.

## **Section 10. Implementation.**

A. The date the notice of intention to circulate this initiative measure was submitted to the City’s elections official is referenced herein as the “submittal date.” The City General Plan and Zoning Ordinance in effect on the submittal date and the General Plan as amended by this initiative comprise an integrated, internally consistent, and compatible statements of policies for the City. In order to ensure that nothing in this initiative measure would prevent the City General Plan from being an integrated, internally consistent, and compatible statement of the policies of the City, as required by state law, and to ensure that the actions of the voters in enacting this initiative are

given effect, any amendment to the General Plan that is adopted between the submittal date and the date that the General Plan is amended by this initiative measure shall, to the extent that such interim-enacted provision is inconsistent with the General Plan provisions of this initiative, be amended as soon as possible and in the manner and time required by state law to ensure consistency between the provisions adopted by this initiative and other elements of the General Plan.

B. The City Council is hereby authorized and directed to amend the City General Plan, all specific plans, the City Zoning Ordinance, the Zoning Map, and any other ordinances and policies, and to request Coastal Commission approval of any amendments to the Local Coastal Program, if necessary, to implement this initiative and to the extent any of the foregoing are affected by this initiative as soon as possible and in the manner and time required by any applicable state law, to ensure consistency between the policies adopted in this initiative and other elements of the foregoing laws and policies.

**Section 11. Liberal Construction.**

The provisions of this Act shall be liberally construed to effectuate its purposes. Nothing herein shall be construed to make illegal any lawful use being made of any land in compliance with all required permits in force before the effective date of this Act.

**Section 12. Effective Date.**

If the City Council approves this measure, or if a majority of the voters pass this Act, it shall become a valid enactment of the City, binding on the City Council and all other City officials, as of the earliest date allowed by law.

**Section 13. Conflicting Law.**

If this initiative measure and another measure on the same subject matter appear on the same ballot, and a majority of the voters vote in favor of both measures but this measure receives more votes than the other measure, this measure alone shall become valid, binding, and adopted in its entirety, and the other measure shall be null and void in its entirety. If a majority of the voters vote in favor of both measures but this measure receives less votes than the other measure, only those provisions of the other measure that are in direct and irreconcilable conflict with the provisions of this measure shall control, and all other provisions of this measure shall become valid, binding, and adopted. The voters expressly declare this to be their intent, regardless of any contrary language in any other ballot measure.

**Section 14. Amendment.**

This Act may be amended only by a vote of the People at a municipal election.

**Section 15. Judicial Enforcement.**

Any aggrieved person or Malibu registered voter shall have the right to maintain an action for equitable relief to restrain any violation of this Act, or to enforce the duties imposed on the City by this Act.

**Section 16. Severability.**

This Act shall be interpreted and applied so as to be consistent with all federal, state, and local laws, rules, and regulations, including the Local Coastal Program. If any provision of this Act or part thereof, or any application thereof, is for any reason held to be invalid or unconstitutional, the remaining sections and applications shall not be affected but shall remain in full force and effect, and to this end, the provisions of this Act are severable.