

CITY ATTORNEY'S IMPARTIAL ANALYSIS

MEASURE R

Ballot Measure R proposes an ordinance that would make two categories of changes affecting commercial property.

1. Require voter-approved specific plans.

Existing law: Any proposed development must comply with Malibu's General Plan, Zoning Ordinance and Local Coastal Program, which together set specific rules for use and development of private property. Commercial development projects must obtain approvals from the City, which can only approve projects that comply with the rules.

Proposed change: The measure would require voter approval of specific plans for commercial and commercial-residential projects over 20,000 square feet.

Effect: Specific plans are planning tools that may establish project-specific development rules. Legally, voter approval may be a prerequisite for specific plans that propose new rules. Measure R is not limited to projects that propose new rules. The measure also mandates specific plans for projects that comply with existing rules. This mandate is legally questionable as applied to proposed projects that otherwise comply with existing rules. Specific plans may be rejected by the voters. Even though required by initiative, the City could face monetary liability should voters fail to allow reasonable development of private property.

2. Change City's formula retail regulations

Existing law: The City defines formula retail businesses (commonly called "chain stores") as businesses with 10 or more stores nationally that share features like merchandise/menu, façade, layout, uniforms, or décor. The City prohibits most formula retail businesses over 3500sf and limits shopping centers to 45% of such tenants.

Proposed change: The measure would (1) change the definition to regulate businesses with 10 or more stores *worldwide*, instead of nationally; (2) decrease the maximum size from 3500sf to 2500sf, and (3) decrease the cap in shopping centers from 45% to 30% of tenants. The measure also would allow unlimited formula retail businesses in existing tenant spaces between 1400sf and 5000sf in five civic center shopping centers.

Effect: If the measure is adopted, its exemptions would allow the five existing civic center shopping centers to increase their formula retail occupancy to as much as 83% of their aggregate retail square footage. The exemptions operate to increase potential formula retail in the civic center contrary to the measure's stated purpose to prevent a "predominate sense of familiarity or sameness." The measure also creates

different rules for new shopping centers than for certain existing ones. Existing civic center shopping centers may increase the number of formula businesses while new ones and those outside the civic center are subject to strict limits. Absent a legitimate basis, California law generally requires similarly situated property owners to be subject to the same laws; consequently, this provision may not withstand judicial scrutiny.

Measure R was placed on the ballot by initiative petition that was signed by a legally sufficient number of registered voters of the City of Malibu. To be adopted, Measure R must be approved by a simple majority the ballots cast in this election.

A “yes” vote on Measure R favors the Measure.

A “no” vote on Measure R opposes the Measure.