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Malibu's measure to slow big box retailers struck down

By Kevin Lee
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Commercial developers have scored a major appellate win in a high-profile legal and political battle over the future of Malibu's land use.

The 2nd District Court of Appeal unanimously struck down Wednesday a 2014 ballot measure that gave voters a larger role in regulating large commercial development in the beach city.

The appellate court's rejection of Measure R clears legal roadblocks for a proposed 38,000-square-foot commercial shopping center, including 24,000 square feet for a Whole Foods store. *The Park at Cross Creek LLC v. City of Malibu*, 2017 DJDAR 5924.

The three-judge panel affirmed a 2015 decision by Los Angeles County Superior Court Judge James C. Chalfant.

"The court's unanimous opinion reflects an extremely careful analysis, and confirms that Measure R exceeded the initiative power and is illegal," said Marshall A. Camp, lead counsel for the victorious developers.

"Now that both the Superior Court and

Court of Appeal have held Measure R to be invalid, our clients look forward to continuing to work with the city to make good things happen for all Malibu residents," continued Camp, a partner at Hueston Hennigan LLP in Los Angeles.

Christi Hogin, the Malibu city attorney and name partner of Jenkins & Hogin LLP in Manhattan Beach, said city officials were evaluating the opinion to determine whether to seek reconsideration or petition the state Supreme Court for review.

Hogin noted that developers have been allowed in recent years to submit development plans directly to voters, a process dubbed "ballot box planning."

"Malibu voters have taken a page from the developers' handbook and sought to require specific plans for large commercial projects," Hogin said. "Since the law says that developers can ask the voters to approve their specific plans, fairness dictates that the voters can ask developers to prepare a specific plan."

Measure R requires the Malibu City Council to prepare a specific plan for each proposed commercial or mixed-use devel-

opment in excess of 20,000 square feet of commercial use. Any plan passed by the city council must be placed on the ballot for voter approval. The initiative also places strict space limits and permitting regulations on commercial chain establishments.

Justice Richard Dennis Aldrich held that the initiative infringes on Malibu's administrative powers of reviewing and approving development proposals.

Measure R "creates a new power — the requirement of a specific plan — and subjects it to voter approval," Aldrich wrote for the panel. "In this respect, Measure R limits Malibu's governing body from carrying out its duties pursuant to its police power."

Hollywood actor and director Rob Reiner has funded efforts to pass and legally defend Measure R, with the ultimate aim of discouraging big chains from entering Malibu, a beach city of about 13,000 residents.

It is uncertain whether Reiner and other backers of Measure R will seek further legal action. Supporters were represented by Robin B. Johansen of Remcho, Johansen & Purcell LLP. Lawyers at that firm did not respond to a request for comment.