



**OFFICE OF COUNCILMEMBER TODD GLORIA  
COUNCIL DISTRICT THREE**

**M E M O R A N D U M**

**DATE:** May 26, 2010

**TO:** Honorable Members of the City Council  
Honorable Mayor Jerry Sanders

**FROM:** Councilmember Todd Gloria *Todd Gloria*

**SUBJECT:** Proposed Ordinance to Protect Small and Neighborhood Businesses

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The neighborhoods in my Council District and throughout the City of San Diego rely on healthy commercial districts to add vibrancy and improve the quality of life in the community. The importance of these districts, including small businesses, is recognized by the City throughout the General Plan and related planning documents, and the City and Redevelopment Agency have directed significant resources to renew and revitalize many of these commercial areas.

I have long been concerned about potential threats to San Diego's neighborhood business districts that are posed by supercenters, which are defined as big box stores of over 90,000 square feet with more than 10% of floor sales area dedicated to non-taxable goods. Supercenters have been shown to undermine the usability of local commercial centers, generate increased levels of traffic, and increase the potential for neighborhood blight.

In light of these concerns, I am committed to pursuing legislative protections for small and neighborhood businesses. I am attaching a draft of a proposed ordinance that would promote and preserve small and neighborhood business areas. It would require, as part of the discretionary review process, that superstores prepare an Economic Impact Analysis so that the City Council can make a finding as to whether or not a superstore would create a material adverse economic impact on a neighborhood.

I intend to schedule this issue at the June 23, 2010 meeting of the Land Use and Housing Committee.

TG:sjh

Attachment

DRAFT ORDINANCE NUMBER \_\_\_\_\_

ADOPTED ON \_\_\_\_\_

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO  
AMENDING \_\_\_\_\_ TO REQUIRE AN ECONOMIC IMPACT REPORT TO  
ENSURE DEVELOPMENT CONSISTENT WITH THE FUNDAMENTAL POLICIES  
UNDERLYING THE STRATEGIC FRAMEWORK ELEMENT AND CITY OF  
VILLAGES STRATEGY AND THE CITY PLAN.

WHEREAS, the City of San Diego views small and neighborhood businesses as critical to the quality of life in San Diego neighborhoods.

WHEREAS, the City of San Diego wishes to ensure that land use decisions do not have a negative impact on existing or prospective small and neighborhood businesses and that such decisions promote an environment in which they can succeed.

WHEREAS, the City of San Diego has a long-standing and renewed commitment to revitalizing its communities, and has committed direct and indirect resources to encourage private investment and revitalize economic activity, leveraging Federal, State and City funds to achieve this end including the development of local small businesses and efforts to prevent and eliminate blight;

WHEREAS, the efforts of the City have been aimed at providing opportunities to obtain stable, good paying jobs, and to give individuals the prospect to better their lives

in the future, enjoy the environment of their work, have confidence in the intention of their companies to protect jobs, embrace self-improvement and attainment of better education as a vehicle for such improvement, and have greater economic involvement in their own community by spending more in their own community for a more sustained path of economic growth;

WHEREAS, these efforts have been undertaken pursuant to the City's General Plan;

WHEREAS, the California Government Code requires that a zoning ordinance be consistent with the City's General Plan by authorizing land uses compatible with the objectives, policies, general land uses, and programs specified in the General Plan;

WHEREAS, upon finding development consumed the majority of developable vacant City land, the San Diego City Council updated the General Plan and adopted the Strategic Framework Element and City of Villages strategy in 2002 to direct growth into targeted villages as the City shifted from an era of building upon abundant open land to one of reinvesting in existing communities;

WHEREAS, fundamental policies underlying the Strategic Framework Element and City of Villages strategy include fostering pedestrian-friendly and accessible village centers with diverse shops serving local daily needs and integrating residential, commercial, employment, and civic uses;

WHEREAS, fundamental policies underlying the Strategic Framework Element and City of Villages strategy include encouraging rural and open space preservation throughout the City;

WHEREAS, fundamental policies underlying the Strategic Framework Element and City of Villages strategy include designing and integrating village centers, public facilities, and other new developments into existing neighborhoods through pedestrian-friendly site grading, building orientation and design; designing and locating neighborhood and community uses to be accessible and convenient by foot, bicycle, and transit;

WHEREAS, fundamental policies underlying the Strategic Framework Element and City of Villages strategy include reducing automobile dependence by locating goods and services conveniently near homes and jobs;

WHEREAS, fundamental policies underlying the Strategic Framework Element and City of Villages strategy include promoting new growth with a more compact urban form; taking an active leadership role in promoting rural and open space preservation;

WHEREAS, fundamental policies underlying the Strategic Framework Element and City of Villages strategy include fighting urban sprawl by helping older neighborhoods successfully compete with suburbs for investment dollars; and revitalizing neighborhood-serving business areas;

WHEREAS, the City wishes to ensure that new development or expansions of existing structures occurs in a manner consistent with the overall goals and objectives of the General Plan and City of Villages strategy, with the objectives of the Zoning Code, and with the neighborhood or area in which the development of a superstore is proposed;

WHEREAS, the land use and environmental impacts associated with superstore development are well documented in studies conducted locally and around the nation, including studies previously submitted to all members of the City Council and comprising part of the administrative record;

WHEREAS, the report prepared in August 2004 by the City of San Diego Community and Economic Development Department entitled "Fiscal and Economic Impacts of Large Retail Establishments," concludes that potential costs of Superstores to San Diego residents include "Urban Blight Resulting from Grocery and Other Store Closures;"

[add additional reports]

WHEREAS, studies have revealed a devastating practice of superstores negotiating leases that permit the retailer to vacate the store, while maintaining the lease on the big box structure and parking areas, leaving the property empty and abandoned, thereby preventing competition and creating blight in communities;

WHEREAS, given the ongoing trend toward ever-bigger retail stores, it is necessary that the zoning and land use ordinances be amended to regulate larger retail establishments appropriately;

WHEREAS, superstores typically combine a large variety of discount general merchandise with full-service grocery sales to the general public under one roof, thereby generating more intense land use and environmental impacts than other large-scale retailers and wholesale membership clubs;

WHEREAS, industry and academic studies indicate superstores rarely add any retail services not currently provided within a community, and the majority of sales growth at a superstore comes from direct shift of dollars from existing retailers within a community, primarily from grocery stores;

WHEREAS, superstores weaken the vitality and economic viability of the City's neighborhood commercial centers by drawing sales away from the existing, traditional supermarkets that anchor these commercial centers;

WHEREAS, smaller stores within a neighborhood center rely upon the foot traffic generated by grocery stores for their existence, such that when a neighborhood grocery store closes, vacancy rates typically increase and deterioration takes place in the remaining center;

WHEREAS, the City's current distribution of neighborhood shopping centers provides convenient shopping and employment in close proximity to most residential neighborhoods in San Diego, consistent with the General Plan, including the Strategic Framework Element and City of Villages strategy;

WHEREAS, this distribution of shopping and employment creates a land use pattern that reduces the need for vehicle trips and encourages walking and biking for shopping, services, and employment;

WHEREAS, a compilation of traffic generation studies provided in the Institute of Transportation Engineers' Trip Generation manual submitted to City Council shows that superstores are likely to generate more vehicular traffic on a daily or weekly basis than other types of large stores;

WHEREAS, superstores significantly increase traffic volumes, strain the existing street network, discourage pedestrian travel, and otherwise aggravate traffic congestion and undermine the usability of local commercial centers;

WHEREAS, superstores in remote locations cause local residents to drive further for basic necessities such as groceries, leading to longer and more frequent traffic trips to regional commercial centers to satisfy basic everyday needs, thereby increasing overall traffic and air pollution;

WHEREAS, the subject ordinance is not a project and no CEQA review is required;

WHEREAS, if the subject ordinance was determined to be a project, further environmental review under the California Environmental Quality Act (CEQA) is not necessary because the zoning amendments are consistent with the City's General Plan and were adequately covered by the prior environmental impact report (EIR) prepared for the General Plan;

WHEREAS, if the subject ordinance is a project under CEQA, it is exempted from environmental review under the CEQA Guidelines sections in 15308 and 15183;

WHEREAS, further environmental review under CEQA is also not necessary for the reasons set forth in *Wal-Mart Stores, Inc. v. City of Turlock* (2006), 138 Cal. App. 4th 273, a final decision of the Court of Appeal of the State of California, Fifth Appellate District;

WHEREAS, the City wishes to regulate superstore development to preserve the City's existing villages and neighborhood-serving shopping and grocery centers pursuant to the purposes of the General Plan;

WHEREAS, these considerations have led numerous municipalities in the State of California to enact ordinances that regulate superstores;

WHEREAS, it is the purpose and intent of the City to limit the negative impacts of superstores on land use, employment, and traffic patterns, and the economic and social health of the community including a vibrant small business community by making all such uses subject to a Site Development Plan, by requiring analysis and consideration of the economic impacts of such uses, and by allowing the public and relevant City Departments and Agencies the opportunity to review and comment on such Development Plans prior to their approval by the \_\_\_\_\_ and City Council;

WHEREAS, upon all the studies, facts, documents, and testimony provided prior to and at the noticed public hearing held on \_\_\_\_\_, the San Diego City Council finds this regulation will protect public health, safety, and general welfare;

NOW, THEREFORE,

BE IT ORDAINED by the Council of the City of San Diego as follows:

§126.0502. When a Site Development Permit is Required

(d) A Site Development Permit decided in accordance with Process Four is required for the following types of *development*.

Add:

(10) Development of a Superstore, or expansion

or modification of a previously conforming Use to a Superstore, which would require any other City permit.

§126.0504. Findings for Site Development Permit Approval

A Site Development Permit may be approved or conditionally approved only if the decision maker makes all of the *findings* in Section 126.0504(a) and the supplemental *findings* in Section 126.0504(b) through (n) that are applicable to the proposed *development* as specified in this section.

San Diego Municipal Code Chapter 12: Land Development Reviews 12-2008)

(a) Findings for all Site Development Permits

(1) The proposed *development* will not adversely affect the applicable *land use plan*;

(2) The proposed *development* will not be detrimental to the public health, safety, and welfare; and

(3) The proposed *development* will comply with the applicable regulations of the Land Development Code. . . .

Add:

(o) A Site Development Permit required in accordance with Section \_\_\_\_ because of potential impacts from a superstore may be approved or conditionally approved only if the decision maker makes the following supplemental *findings* in addition to the *findings* in Section 126.0504(a) that the Superstore project has been found to not have a material adverse economic impact on the City, taking into consideration all proposed mitigation measures. If mitigation measures can be identified to avoid a material adverse economic impact, the (insert appropriate City agent) shall specify all such mitigation measures and they shall be made conditions of such grant.

i) To permit the City to properly evaluate an application for a site development permit that proposes a superstore, the applicant shall submit an economic impact analysis report with its application. The economic impact report shall be prepared by a consultant approved by (insert appropriate City agent) and paid for in full by the applicant. The consultant shall be qualified by education, training, and experience to conduct economic and fiscal impact analyses. The analysis shall include, in addition to any other information requested by the City, all of the following:

1. An assessment of the extent to which the proposed superstore will capture a share of retail sales in the market area;

2. An assessment of how the construction and operation of the proposed superstore will affect the supply and demand for retail space in the market area;

3. An assessment of the number of persons employed in existing retail stores in the market area, an estimate of the number of persons who will likely be employed by the proposed superstore, and an analysis of whether the proposed superstore will result in a net increase or decrease in employment in the market area;

4. An assessment of how the construction and operation of the proposed superstore will affect wages and benefits, community income levels in the market area. For purposes of determining this impact, the applicant must identify the number of jobs displaced or created, the quality of the jobs, whether the jobs are temporary or permanent, and the employment sector in which the lost jobs are located;

5. A projection of the costs of public services and public facilities resulting from the construction and operation of the proposed superstore and the incidence of those costs;

6. A projection of the public revenues resulting from the construction and operation of the proposed Superstore and the incidence

of those revenues;

7. An assessment of the effect that the construction and operation of the proposed superstore will have on retail operations, including grocery or retail shopping centers, in the same market area, including the potential for blight resulting from retail business closures and the nature of any businesses displaced;

8. An assessment of the effect that the construction and operation of the superstore will have on the ability of the city to implement the goals contained in its general plan;

9. An assessment of the effect that the construction and operation of the proposed superstore will have on average total vehicle miles traveled by retail customers in the same market area;

10. An assessment of the potential for long-term vacancy of the property on which the superstore is proposed in the event the superstore vacates the premises including any restrictions that exist on the subsequent use of the property on which the superstore is proposed to be located, including the provisions of a lease if applicable, which, in the event the owner or operator of the superstore vacates the premises, would require the premises to remain vacant for a significant amount of time;

11. An assessment of whether the superstore would require the demolition of housing, or any other action or change that results in a decrease or negative impact on the creation of extremely low, very low, low or moderate-income housing in the City;

12. An assessment of whether the superstore would result in the destruction or demolition of park or other green space, playground, childcare facility, community center;

13. An assessment of whether the superstore will result in any other adverse or positive economic impacts or blight;

14. An assessment of whether any measures are available which will mitigate any materially adverse economic impacts, if any, identified by the applicant, if necessary.

Following the denial of any application of superstore, no application for the same or substantially same approval shall be filed within one year after the date of denial.

Section 1. That Chapter 11, Article 3, Division 1 of the San Diego Municipal Code is amended by amending section 113.0103 to read as follows:

§113.0103 Definitions

*“Nontaxable merchandise”* means products, commodities, or items not subject to California state sales tax.

*“Sales floor area”* means only the interior building space devoted to the sale of merchandise, and does not include restrooms, office space, storage space, automobile service areas, or open-air garden sales space. For the purpose of determining the total sales floor area of a single retail business establishment, the aggregate square footage of all retail stores, warehouses, or distribution facilities on the same or adjacent lots, that share common controlling ownership interest shall be considered a single retail business.

*“Superstore”* means a retail establishment that exceeds 90,000 square feet *gross floor area*, sells a wide range of consumer goods, and devotes more than 10 percent of the *sales floor area* to the sale of items not subject to California State sales tax. This definition applies to all tenants within the retail establishment, as well as the cumulative sum of related or successive permits which may be part of a larger project (such as piecemeal additions to a building), so long as consumer goods and non-taxable items are sold under the same roof with shared checkout stands, entrances, and exits. This definition excludes discount warehouses and discount retail stores that sell more than half of their items in large quantities or in bulk, and also require shoppers to pay a membership or assessment fee in order to take advantage of discount prices on a wide variety of items such as food, clothing, tires, and appliance. For example and without limitation, a “bulk” sale may involve the sale of a packaged item that itself contains two or more products that are themselves packaged and labeled in such a way that, if

separated from one another, they could be sold on a retail basis without any change in their packaging or labeling. The [insert Appropriate City Agent and Department/Agency] and/or the City Council shall have the discretion to apply this provision to a retail business whose total sales floor area is less than ninety thousand square feet and which devotes more than ten percent of sales floor area to the sale of nontaxable merchandise, if warranted by circumstances.