

CITY OF OAKLAND
AGENDA REPORT

OFFICE OF THE CITY CLERK
OAKLAND
2003 SEP 18 PM 3:05

TO: Office of the City Manager
ATTN: Deborah Edgerly
FROM: Community and Economic Development Agency
DATE: September 23, 2003

RE: **SUPPLEMENTAL REPORT ON AN ORDINANCE AMENDING THE OAKLAND PLANNING CODE TO DEFINE "LARGE-SCALE COMBINED RETAIL AND GROCERY SALES COMMERCIAL ACTIVITIES" AND TO PROHIBIT THIS ACTIVITY TYPE IN ALL ZONES**

SUMMARY

The proposed project is an amendment to the Oakland Planning Code that would create a new land use category called "Large-Scale Combined Retail and Grocery Sales Commercial Activities," and place zoning controls on this land use. "Large-Scale Combined Retail and Grocery Sales" are defined as stores over 100,000 square feet in size that devote more than 10% of sales floor area to non-taxable merchandise. In the initial Council Agenda Report, staff recommended prohibiting this use in certain commercial, industrial, and special zoning districts and conditionally permitting it in others. The proposed project has been modified to prohibit "Large-Scale Combined Retail and Grocery Sales Activities" in all zones. This approach will better accomplish the goal of preventing the negative impacts on traffic congestion, transportation mode split, and the vitality of neighborhood commercial districts that this land use is anticipated to generate. It will also provide greater certainty to the development community and be more straightforward to implement. A revised ordinance reflecting the recommended approach is attached.

The Oakland City Planning Commission considered this issue on September 17, 2003 and voted unanimously to forward a recommendation to the Oakland City Council supporting the revised approach of a complete citywide prohibition on "Large-Scale Combined Retail and Grocery Sales."

RECOMMENDATION AND RATIONALE

Due to the negative impacts that large-scale combined retail and grocery stores are expected to have on transportation mode split, traffic congestion and associated air pollution, and on the vitality of Oakland's neighborhood commercial districts, staff recommends adopting the proposed text amendment prohibiting "Large-Scale Combined Retail and Grocery Sales" Commercial Activities" in all zoning districts throughout the city.

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ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council:

1. Affirm staffs environmental determination.
2. Adopt the attached proposed ordinance.

Respectfully submitted,



Claudia Cappio,
Director of Development

Prepared by:
Heather Coleman, Planner III
Community and Economic Development Agency
Planning and Zoning Division

APPROVED AND FORWARDED TO
THE **COMMUNITY** AND ECONOMIC
DEVELOPMENT COMMITTEE:



OFFICE OF THE CITY MANAGER

Item: 3
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September 23, 2003

FILED
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OAKLAND

2003 OCT -9 PM 12:33

APPROVED AS TO FORM AND LEGALITY

INTRODUCED BY COUNCILMEMBER _____


CITY ATTORNEY

ORDINANCE NO. _____ C.M.S.

**AN ORDINANCE AMENDING THE OAKLAND PLANNING
CODE TO DEFINE "LARGE-SCALE COMBINED RETAIL AND
GROCERY SALES COMMERCIAL ACTIVITIES" AND TO
PROHIBIT THIS ACTIVITY TYPE IN ALL ZONES**

WHEREAS, the Land Use and Transportation Element of the Oakland General Plan was adopted by the Oakland City Council in March, 1998 to guide future land use and development in the city; and

WHEREAS, the Estuary Policy Plan, a component of the Land Use and Transportation Element, was adopted by the Oakland City Council in 1999 to provide a framework for future land use and development of the area between Adeline Street, the Nimitz Freeway, 66th Avenue, and the Estuary shoreline; and

WHEREAS, the Land Use and Transportation Element and the Estuary Policy Plan contain goals, objectives, and policies that promote: maintaining and enhancing the vitality of existing neighborhood commercial areas (Policy I/C3.4; Policy T2,3, Objective I/C1.1; Objective NI); reducing air pollutants generated by automobile traffic (Objective T7); and encouraging the use of alternative modes of transportation (Objective T4); and

WHEREAS, recent academic studies and industry reports document a growing trend in which large discount retailers are combining retail sales with full-service grocery sales in "superstores," and a number of recent studies document the negative impact of such "superstores" on existing retail and grocery establishments and the vitality of local commercial districts; and

WHEREAS, large-scale retail stores that devote a substantial portion of their floor area to the sale of non-taxable items generate significant traffic volumes, aggravate traffic congestion and increase associated impacts such as air pollution, and discourage pedestrian travel and other alternative modes of transportation; and

WHEREAS, the establishment of large-scale combined retail and grocery stores in Oakland would have negative impacts on existing neighborhood-serving commercial areas by re-directing business to large retail centers; and on traffic and air quality by increasing the number of vehicle miles traveled; and

WHEREAS, such potential impacts conflict with policies and objectives of the Land Use and Transportation Element and the Estuary Policy Plan; and

WHEREAS, in certain commercial and industrial zones, the Oakland Planning Code currently permits retail sales activities outright, with no limit on the floor area of a single establishment and no specific limit on the amount of floor area devoted to non-taxable grocery items; and

WHEREAS, on September 17, 2003, the Oakland City Planning Commission considered an amendment to the Oakland Planning Code to define “Large-Scale Combined Retail and Grocery Sales” and prohibit this land use throughout the city, and voted unanimously to forward a supporting recommendation for this text amendment to the Oakland City Council; and

WHEREAS, the requirements of the California Environmental Quality Act (CEQA) of 1970, as prescribed by the Secretary of Resources, and the City of Oakland’s environmental review requirements have been satisfied because in accordance with the “General Rule” of Section 15061(b)(3) of the California Code of Regulations, this ordinance is exempt from the provisions of CEQA because it presents no potential significant effect on the environment; and

WHEREAS, the City Council finds and determines that the public safety, health, convenience, comfort, prosperity, and general welfare will be furthered by this ordinance,

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND does ordain as follows:

SECTION 1. The City Council finds and determines the foregoing recitals to be true and correct and hereby makes them a part of this ordinance.

SECTION 2. The City Council finds and determines, for the reasons stated in the recitals, the adoption of this ordinance is exempt from CEQA under Sections 15061(b)(3), and 15307 of the State CEQA Guidelines.

SECTION 3. The Oakland Planning Code is hereby amended to add, delete, or modify sections as set forth below. Section numbers and titles are indicated in **bold type**, additions are indicated by underlining, and deletions are indicated by ~~strike-out type~~. Portions of the code not cited, or not shown in underline or strike-out type, are not changed

Chapter 17.09 DEFINITIONS

17.09.040 Definitions.

“Sales Floor Area” means interior building space devoted to the sale of merchandise, but excludes 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 business establishment, the aggregate square footage of all adjacent stores that share common check stands, management, a controlling ownership interest, warehouses, or distribution facilities shall be considered a single business establishment.

“Non-taxable Merchandise” means products, commodities, or items not subject to California state sales tax.

Chapter 17.10 USE CLASSIFICATIONS

17.10.340 General Retail Sales Commercial Activities.

General Retail Sales Commercial Activities include the retail sale or rental from the premises, primarily for personal or household use, of goods consisting primarily of items other than food and beverages and those convenience items described in Section 17.10.310; but exclude sale or rental of motor vehicles, except for parts and accessories, and sale of materials used in construction of buildings or other structures, except for paint, fixtures, and hardware. They also exclude Large-Scale Combined Retail and Grocery Sales Commercial Activities, as defined in Section 17.10.345. They also include certain activities accessory to the above, as specified in Section 17.10.040. (Prior planning code § 2367)

17.10.345 Large-Scale Combined Retail and Grocery Sales Commercial Activities.

Large-Scale Combined Retail and Grocery Sales Commercial Activities include the retail sale from the premises of goods and merchandise, primarily for personal or household use, from stores whose total sales floor area exceeds 100,000 square feet and which devote more than 10% of sales floor area to the sale of non-taxable merchandise, but exclude wholesale clubs or other establishments selling primarily bulk merchandise and charging membership dues or otherwise restricting merchandise sales to customers paying a periodic access fee. This classification excludes the sale or rental of motor vehicles, except for parts and accessories, and the sale of materials used in construction of buildings or other structures, except for paint, fixtures, and hardware. This classification includes certain activities accessory to the above, as specified in Section 17.10.040.

SECTION 4. Except as specifically set forth herein, this ordinance suspends and supercedes all conflicting resolutions, ordinances, plans, codes, laws, and regulations.

SECTION 5. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council declares that it would have adopted this Ordinance and each section, subsection,

sentence, clause and phrase thereof, irrespective of the fact that any one or more section, subsection, sentence, clause, or phrase be declared invalid.

SECTION 6. This ordinance shall become effective as provided in Section **216** of the City Charter, This ordinance shall be published once with the names of the City Council Members voting for and against it in the Oakland Tribune, a newspaper which is published in this City and in Alameda County.

In Council, Oakland, California, _____, Passed By The Following

Vote:

AYES-

NOTES-


ABSENT-

ABSTENTION-

ATTEST: _____

CEDA FLOYD

City Clerk **and** Clerk of the Council
of the City of Oakland, California



**AN ORDINANCE AMENDING THE OAKLAND PLANNING CODE TO DEFINE
“LARGE-SCALE COMBINED RETAIL AND GROCERY SALES
COMMERCIAL ACTIVITIES” AND TO PROHIBIT THIS ACTIVITY TYPE IN
ALL ZONES**

NOTICE AND DIGEST

By this ordinance, the Oakland City Council amends the Oakland Planning Code to define “Large-Scale Combined Retail And Grocery Sales Commercial Activities” and to prohibit this activity in all zones.

FILED
OFFICE OF THE CITY CLERK
OAKLAND
2003 OCT -9 PM 12:33

**CITY OF OAKLAND
AGENDA REPORT**

OFFICE OF THE CITY CLERK
OF OAKLAND

2003 SEP 11 PM 2:10

TO: Office of the City Manager
ATTN: Deborah Edgerly
FROM: Community and Economic Development Agency
DATE: September 23, 2003

RE: **AN ORDINANCE AMENDING THE OAKLAND PLANNING CODE TO DEFINE "LARGE-SCALE COMBINED RETAIL AND GROCERY SALES COMMERCIAL ACTIVITIES" AND PLACE ZONING CONTROLS ON THIS ACTIVITY TYPE IN CERTAIN COMMERCIAL, MANUFACTURING AND SPECIAL ZONES**

SUMMARY

The proposed zoning text amendment would establish a new land use category called "Large-Scale Combined Retail and Grocery Sales Commercial Activities," which describes retail stores over 100,000 square feet that devote more than 10% of their sales floor area to non-taxable merchandise, but excludes wholesale clubs or other establishments selling primarily bulk merchandise and charging membership dues. The proposed regulations would prohibit "Large-Scale Combined Retail and Grocery Sales Commercial Activities" in the C-5, C-10, C-25, C-27, C-28, C-31, C-52, C-60, M-10, S-1, S-3, and S-15 zones and require a conditional use permit for such activities in the C-20, C-30, C-35, C-36, C-40, C-45, C-51, C-55, M-20, M-30, M-40, S-2, S-16, and S-19 zones. The proposed amendment responds to concerns about the potential for such stores to generate high negative impacts on transportation mode split, traffic congestion and associated air pollution, and on the viability of neighborhood commercial districts. Staff recommends that the Oakland City Council approve the attached ordinance and text amendment.

The proposed text amendment will be brought before the City Planning Commission on September 17, 2003, and any recommendations received from the Planning Commission will be forwarded to the City Council as a supplement to this agenda report.

FISCAL IMPACTS

Direct Fiscal Impacts

The proposed zoning text amendment has no direct fiscal impacts. It does not involve expenditure of city funds or require additional staff to implement. The proposed text amendment will become part of the zoning regulations and will be administered concomitantly with other zoning regulations.

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Indirect Fiscal Impacts

While there are no direct fiscal impacts of the proposed regulations, there are potential indirect impacts to sales tax revenues. The proposed regulations will require a conditional use permit for large-scale combined retail and grocery stores in a number of commercial zones where such stores are currently permitted outright. In these areas, the conditional use permit requirement could add to the time that it takes to establish a store, and until established, the proposed store would not be generating sales tax revenue. This is a short-term potential impact. The processing time for a conditional use permit is likely to be two to three months. In the event that the Planning and Zoning Division denies an application for a proposed large-scale combined retail and grocery store because the proposed project does not conform to the conditional use permit criteria, the failure to establish such a store could create longer-term impacts on sales tax revenues. However, a portion of any potential new tax revenues generated by a new large-scale store would simply reflect a shift of sales from existing businesses in the community. In addition, the proposed ordinance applies only to large-scale combined retail and grocery stores; it does not place new limitations on or require special review for other types of retail or grocery stores, either small or large, which have the potential to generate sales tax revenue. In the industrial zoning districts, a conditional use permit is already required for any retail establishment over 3,000 square feet, so the proposed regulations do not impose any additional review processes or restrictions. In the neighborhood-oriented zoning districts where big box grocers are proposed to be prohibited, the establishment of a big box grocer is considered unlikely anyway, due to the lack of large parcels of land. Overall, the potential fiscal impacts of the proposed regulations are minimal. The proposed regulation is unlikely to have a negative impact on sales tax revenues.

BACKGROUND

On April 8, 2003, the Oakland City Council unanimously adopted Ordinance No. 12482, which established a 45-day moratorium on large retail stores with more than 100,000 of total sales floor area and more than 10% of this sales floor area devoted to non-taxable merchandise (Attachment B). On May 20, 2003, an ordinance to extend the moratorium for an additional ten and a half months and to further study the implementation of more permanent controls was favored by six of the seven councilpersons present, though it failed to meet the 4/5ths of total Council vote required for passage of an urgency ordinance.

While similar in size to other large-scale retailers and to wholesale membership clubs, large-scale combined retail and grocery stores, also referred to as "big box grocers," or "superstores," can generate an intensity of impact that, at the minimum, warrants special review and consideration, and in some areas of the city, warrants prohibition. Because of the particular combination of uses they include, these stores generate high traffic volumes and present a major threat to the vitality of Oakland's neighborhood-serving commercial districts. These impacts are discussed further in the "Key Issues and Impacts" section of this report.

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Establishments that combine discount retail sales and full service groceries in giant “superstores” are the fastest growing sector of the grocery market. While a national trend, the growth of these superstores is also becoming a national concern. Dozens of local jurisdictions have enacted ordinances that either completely prohibit new stores over a certain size or require special permits or impact studies (see Attachment D). Most of these laws were designed to help sustain the vitality of small-scale, pedestrian-oriented shopping districts. California jurisdictions that have recently enacted prohibitions include the Cities of San Luis Obispo, Arroyo Grande, and Martinez, as well as Contra Costa County.

The proposed text amendment will be brought before the City Planning Commission on September 17, 2003, and any recommendations from the Planning Commission will be forwarded to the City Council as a supplement to this report.

KEY ISSUES AND IMPACTS

Neighborhood Commercial Areas

Oakland contains a number of neighborhood commercial districts, such as the Laurel, Dimond, Fruitvale, Rockridge, Piedmont Avenue, Telegraph Avenue, Montclair, and Grand Lake districts. The business and surrounding residential communities have often rallied for zoning regulations that protect the small-scale retail character of the districts. These local commercial areas remain viable in part because they provide for a range of consumer needs, and include businesses such as supermarkets that allow residents to buy essential goods. For example, the Laurel District along MacArthur Boulevard includes a supermarket, bank, and hardware store, as well as small-scale retail establishments, restaurants, and other businesses.

The City of Oakland has policies and programs to promote the vitality of neighborhood commercial districts. The Land Use and Transportation Element of the Oakland General Plan includes policies for maintaining the vitality of neighborhood commercial districts serving a range of consumer needs. The City’s Neighborhood and Commercial Revitalization program includes business attraction and retention efforts, as well as a grant program for commercial façade improvements, while the Blight Abatement program includes clean-up and enforcement activities for blighted and undermaintained properties.

The establishment of large-scale combined retail and grocery stores in Oakland could negatively impact the economic viability of the city’s local commercial districts by drawing sales away from traditional supermarkets located in the districts. While other types of large stores can also draw away sales, big box grocers present a unique threat because of the inclusion of discount retail and full-service grocery under one roof. Industry and academic studies indicate that the greatest loss from traditional grocery stores comes from the big box grocers. A study on the impact of big box grocers in Southern California concluded: “Free-standing food stores would likely yield market share [to Big Box Grocers] and in some cases become vacant, while taxable sales from grocery operations would shift to locations that are much more prone to the impacts of

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regional business cycles.” Another study performed by AC Nielsen U.S. on 2001 Wal-Mart supercenter sales growth found that “the majority of sales growth at Wal-Mart supercenters— 72 percent – came from a ‘direct shift of dollars that had previously gone to other channels.’ Of that majority ‘channel shift’ revenue growth, almost one third came from supermarkets.”²

Where a grocery store serves as an anchor to a local commercial district, the presence of a big box grocer in the city can threaten the viability of the entire commercial district. The proposed text amendment, by prohibiting large-scale combined retail and grocery stores in some commercial zones and requiring a conditional use permit in others, can serve as a means for protecting Oakland’s local shopping districts.

Industrial land preservation

Retail uses are currently prohibited in the M-10 zone and require a conditional use permit if they have more than 3,000 square feet of floor area in the M-20, M-30, and M-40 zones. The existing limitations on retail uses are intended to preserve the integrity of Oakland’s industrial areas by protecting them from shopping traffic incursion and from conversion to other uses through land bidding competition, as non-industrial uses can typically pay more per square foot for land. The proposed regulations do not alter these existing restrictions on retail uses in manufacturing zones. The proposal to add a category called “Large-Scale Combined Retail and Grocery Sales” and require a conditional use permit for this use in manufacturing zones is consistent with existing regulations, and continues to protect industrial lands from inappropriate land conversion and traffic incursion.

Traffic and transportation

Large-scale combined retail and grocery stores can negatively impact traffic congestion and transportation mode split (the proportion of trips by different modes of transportation, such as automobiles, transit, hiking, and walking). Big box grocers have particularly **high** transportation impacts because of the frequency of grocery trips combined with the scale of the establishments. The typical household makes more frequent trips to the grocery store than to a general retail store. The typical household also makes more frequent trips to a grocery store than to a warehouse membership club, which primarily sells bulk food items that are purchased on a more occasional basis. The proposed text amendment, by requiring a conditional use permit for large-scale combined retail and grocery sales, will allow the City to consider potential transportation impacts in determining whether an individual store location is appropriate. The April 8, 2003 report to the Oakland City Council (Attachment A) on the interim moratorium employs figures

¹ *The Impact of Big Box Grocers on Southern California: Jobs, Wages and Municipal Finance*, Prepared for the Orange County Business Council By Marlon Boarnet, Ph.D., Associate Professor UC Irvine and Randall Crane, Ph.D., Associate Professor UCLA (September 1999)

² *Economic Analysis of the Proposed Fremont Wal-Mart: Short and Long Term Impacts on Retail and Economic Development*, Prepared for The United Food and Commercial Workers Union, Local 870 by Strategic Economics (March 2003)

from the Institute of Transportation Engineers' *Trip Generation* manual, a compilation of traffic generation studies, to show that big box grocers are likely to generate more traffic on a daily or weekly basis than other types of large stores. The projections in this table factor the average number of trips generated per 1000 square feet by the average store size.

Retail attraction and economic development goals

The City of Oakland is actively engaged in attracting businesses, including large retail businesses, to Oakland. Oakland has fewer large retail stores than nearby cities like San Leandro and Emeryville, and in effect, loses potential sales activity to these nearby cities. In addition, there is a need for more and better grocery stores in certain parts of the city that are currently underserved. The proposed ordinance is not intended to discourage the establishment of either retail stores or grocery stores, but instead targets a particular form of store which because of its potential for creating high negative impacts to the community, merits special evaluation.

The proposed regulation applies *only* to large-scale combined retail and grocery sales. It would not apply to any other type of large retail establishment without a full-service grocery component, a regular grocery supermarket, a membership store, or a multi-vendor market.

The Oakland General Plan calls for strengthening Oakland's economic and job base. While not directly a land use issue, it is important to note that the presence of big box grocers tends to depress wages. A study of the impacts of big box grocers in Southern California found that wages and benefits at traditional supermarkets are generally fairly good, while at discount retail establishments, wages are lower and benefits more limited. When business is diverted from traditional grocery supermarkets to combined discount retail/grocery establishments, higher-wage jobs are converted to low-wage jobs, as the big box grocers tend to pay their grocery personnel the lower retail wages. The study concludes: "because of differences in pay and benefits in the discount retail and grocery sectors, a shift from traditional grocery stores to supercenters creates the very real risk that high wage jobs will be replaced with low wage jobs."³

General Plan Conformity

The 1998 Land Use & Transportation Element (LUTE) of the Oakland General Plan, and its subcomponent, the Estuary Policy Plan, contain objectives and policies that promote the maintenance and enhancement of Oakland's neighborhood-serving commercial areas:

Objective N1: Provide for healthy, vital, and accessible commercial areas that help meet local consumer needs in the neighborhoods.

Policy I/C3.4: The vitality of existing neighborhood mixed use and community commercial areas should be strengthened and preserved.

³ *The Impact of Big Box Grocers on Southern California: Jobs, Wages and Municipal Finance (September 1999).*

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Policy T2.3: Promote neighborhood-serving commercial development within one-quarter to one-half mile of established transit routes and nodes.

The establishment of large-scale combined retail and grocery establishments can threaten the vitality and viability of Oakland's neighborhood shopping districts, particularly if they draw grocery sales away from traditional supermarkets located in the districts. Many of the local commercial districts are "anchored" by a grocery store that allow local residents to buy day-to-day essentials, and while in the neighborhood, patronize other local businesses. Studies indicate that the "big box grocers" draw significant sales away from traditional supermarkets. The proposed text amendment, by prohibiting large-scale combined retail and grocery stores in some commercial zones and only conditionally permitting them in others, can serve as a means for protecting Oakland's local shopping districts.

The General Plan also contains objectives to increase the use of alternative modes of transportation and minimize automobile use and associated air pollution:

Objective T4: Increase use of alternative modes of transportation.

Objective T7: Reduce airpollutants caused by vehicles.

Allowing the establishment of large-scale combined retail/grocery stores in Oakland could contravene the above transportation policies. Because of their massive scale, big box grocers typically occupy large sites and have large parking lots, and are not typically located in areas with close and convenient pedestrian connections, which discourages pedestrian and transit trips to the site. While the foregoing can be said of any large-scale store – including general retail, home furnishing, and home improvement stores – the big box grocers tend to generate even more traffic than other large stores because the full-service grocery component encourages more frequent trips.

Precedence

A number of other jurisdictions, including several cities in California, have adopted ordinances prohibiting the establishment of large-scale retail stores or combined retail/grocery stores or requiring special impact studies or review (see Attachment D). Ordinances in Contra Costa County and the Cities of Martinez and Arroyo Grande all specify a maximum size threshold and a maximum percentage of sales floor area that may be devoted to the sale of non-taxable merchandise. Like the proposed ordinance, Contra Costa County's ordinance excludes membership warehouse clubs from these restrictions. A legal analysis from the Nevada Attorney General's Office in response to 1999 Clark County legislation prohibiting new retail stores over 110,000 square feet and more than 2% of sales floor area devoted to grocery sales found that the County had the authority to regulate such stores under its police powers and zoning powers,

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Alternatives

An alternative to the recommended approach would be to completely prohibit “Large-Scale Combined Retail and Grocery Sales Commercial Activities” in Oakland. Complete prohibition would make it easier to prevent the establishment of a big box grocery store. However, the conditional use permit procedure allows evaluation of projects on a case-by-case basis, and also establishes a discretionary permit process that will ensure that most such establishments will go through environmental review under CEQA for a full analysis of potential impacts. While the establishment of a big box grocer in Oakland is generally not desirable due to the amount of traffic generation and the impacts on local retail districts, the retail and grocery industry is in a process of change and could take an unforeseen form. The conditional use permit procedure allows for some flexibility in implementation, the ability to consider the impacts and appropriateness of a particular project, and for future changes in the industry.

PROJECT DESCRIPTION

The proposed project is an amendment to the Oakland Planning Code (zoning ordinance) to add a new land use classification called “Large-Scale Combined Retail and Grocery Sales Commercial Activities” and specify where this use is permitted, conditionally permitted, and prohibited. The proposed classification describes stores with over 100,000 square feet of sales floor area and more than 10% of this sales floor area devoted to the sale of non-taxable goods, such as groceries. These stores, also referred to as “big box grocers,” typically combine discount general merchandise and full-service grocery sales under one roof. The proposed new classification would not affect large retail establishments that do not include a sizable grocery component. The proposed definition also does not include membership clubs that typically sell in bulk to both businesses and individual households. “Large-Scale Combined Retail and Grocery Sales” activities are distinguished from these other commercial uses because they have the potential to create particularly high impacts on traffic and transportation, and on the vitality of neighborhood commercial districts.

The proposed text amendment would require a conditional use permit for “Large-Scale Combined Retail and Grocery Sales” in the C-20, C-30, C-35, C-36, C-40, C-45, C-51, C-55, M-20, M-30, M-40, S-2, S-16, and S-19 zones. These are the higher-intensity or more regionally-serving commercial zones, the light to heavy manufacturing zones, and certain “special” zones that govern land uses. Some ~~of~~ these zones already require a conditional use permit for all retail uses or for those over a certain size; in these areas, the proposed amendment does not represent a change to existing policy. For example, a conditional use permit is already required for retail sales in the S-2 zone, which is intended for areas devoted to government offices and other major public facilities. In the M-20, M-30 and M-40 zones, the existing code requires a conditional use permit for any retail sales establishment over 3,000 square feet. The S-19 zone requires a conditional use permit for retail sales over 10,000 square feet. In the C-51 and C-55 zones, any new project with over 100,000 square feet requires a use permit. (See Attachment C for a detailed comparison of existing and proposed regulations.)

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“Large-Scale Combined Retail and Grocery Sales” activities would be prohibited in the following commercial zones that are intended to create and enhance locally-oriented commercial districts: C-5, C-10, C-27, C-28, and C-31. The proposed regulation would also prohibit such uses in the C-25 zone, which is intended for office uses, and the C-52, which is a downtown historic area emphasizing pedestrian shopping. The proposed regulation would also prohibit big box grocers in the S-15 zone, which is intended to create a pedestrian-friendly environment and encourage transit ridership near major transit stations. “Large-Scale Combined Retail and Grocery Sales” would also be prohibited in the S-1, S-3, C-60 and M-10 zones. In these zones, General Retail Sales *are* already prohibited, so the proposed project does not represent a change to existing policy.

The proposed regulations would apply to new establishment or expansion of or conversion of an existing use to “Large Scale Combined Retail and Grocery Sales.”

SUSTAINABLE OPPORTUNITIES

The following sustainable opportunities are associated with the proposed interim ordinance:

Economic: The proposed ordinance supports the retention and strengthening of local retail and neighborhood-serving commercial areas. A potential indirect impact of the proposed ordinance could be the preservation of higher wage jobs for Oakland workers. Large-scale combined retail/grocery stores tend to displace sales at traditional supermarkets, and when this happens, higher-wage jobs can be replaced by lower-wage jobs or those with more limited benefits. The proposed project provides a process for reviewing the potential impacts of any large-scale combined retail and grocery store.

Environmental: As described in the April 8, 2003 report to Council (Attachment A), large combined retail/grocery establishments generate significant automobile traffic and can contribute to traffic congestion and overall vehicles miles traveled. Both traffic congestion and overall vehicle miles contribute to air pollution. The proposed regulation, by prohibiting big box grocers in certain zones and requiring a conditional use permit in others, will ensure that the transportation and environmental impacts of any proposed superstore can be thoroughly analyzed and considered. The conditional use permit process gives the City the discretion to deny an application that does not meet the established use permit criteria.

Social Equity: A potential indirect effect of the proposed ordinance could be preservation of higher wage and benefit jobs for Oakland workers. The aforementioned study of big box grocers in Southern California finds that discount retail chains that operate supercenters typically offer much less comprehensive health care coverage than major California grocery chains.

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DISABILITY AND SENIOR CITIZEN ACCESS

The proposed text amendment will not impact disability and senior citizen access

RECOMMENDATION AND RATIONALE

Due to the degree of negative impacts that large-scale combined retail and grocery stores may have on transportation mode split, traffic congestion and associated air pollution, and on the vitality of Oakland's neighborhood commercial districts, staff recommends adopting the proposed text amendment prohibiting "Large-Scale Combined Retail and Grocery Sales Commercial Activities" in the C-5, C-10, C-25, C-27, C-28, C-31, C-52, C-60, M-10, S-1, S-3, and S-15 zones and requiring a conditional use permit for such activities in the C-20, C-30, C-35, C-36, C-40, C-45, C-51, C-55, M-20, M-30, M-40, S-2, 5-16, and S-19 zones.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council:

1. Affirm staff's environmental determination.
2. Adopt the attached proposed ordinance.

Respectfully submitted,




Claudia Cappio,
Director of Development

Prepared by:
Heather Coleman, Planner III
Community and Economic Development Agency
Planning and Zoning Division

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September 23, 2003~~

APPROVED AND FORWARDED TO
THE COMMUNITY AND ECONOMIC
DEVELOPMENT COMMITTEE:



OFFICE OF THE CITY MANAGER
OFFICE OF THE CITY M A G R

Attachments:

- A. City Council Agenda Report, April 8, 2003
- B. Ordinance No. 12482, April 8, 2003
- C. Existing and Proposed Regulations for Large-Scale Combined Retail and Grocery Sales
- D. Cities and Counties Limiting Large-Scale Stores


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C&ED Committee
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FILED
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OAKLAND

2003 SEP 11 PM 2:11

APPROVED AS TO FORM AND LEGALITY

INTRODUCED BY COUNCIL MEMBER _____


CITY ATTORNEY

ORDINANCE NO. _____ C.M.S.

AN ORDINANCE AMENDING THE OAKLAND PLANNING CODE TO DEFINE “LARGE-SCALE COMBINED RETAIL AND GROCERY SALES COMMERCIAL ACTIVITIES”; REQUIRE A CONDITIONAL USE PERMIT FOR THIS ACTIVITY TYPE IN CERTAIN COMMERCIAL, MANUFACTURING, AND SPECIAL ZONES; AND PROHIBIT THIS ACTIVITY TYPE IN OTHER COMMERCIAL, MANUFACTURING AND SPECIAL ZONES

WHEREAS, the Land Use and Transportation Element of the Oakland General Plan was adopted by the Oakland City Council in March, 1998 to guide future land use and development in the city; and

WHEREAS, the Estuary Policy Plan, a component of the Land Use and Transportation Element, was adopted by the Oakland City Council in 1999 to provide a framework for future land use and development of the area between Adeline Street, the Nimitz Freeway, 66th Avenue, and the Estuary shoreline; and

WHEREAS, the Land Use and Transportation Element and the Estuary Policy Plan contain goals, objectives, and policies that promote: maintaining and enhancing the vitality of existing neighborhood commercial areas (Policy I/C3.4; Policy T2,3, Objective I/C1.1; Objective N1); reducing air pollutants generated by automobile traffic (Objective T7); and encouraging the use of alternative modes of transportation (Objective T4); and

WHEREAS, recent academic studies and industry reports document a growing trend in which large discount retailers are combining retail sales with full-service grocery sales in “superstores,” and a number of recent studies document the negative impact of such “superstores” on existing retail and grocery establishments and the vitality of local commercial districts; and

WHEREAS, large-scale retail stores that devote a substantial portion of their floor area to the sale of non-taxable items can generate significant traffic volumes, aggravate traffic congestion and increase associated impacts such as air pollution, and discourage pedestrian travel and other alternative modes of transportation; and

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WHEREAS, the establishment of large-scale combined retail and grocery stores in Oakland may have negative impacts on existing neighborhood-serving commercial areas by re-directing business to large retail centers; and on traffic and air quality by increasing the number of vehicle miles traveled; and

WHEREAS, such potential impacts conflict with policies and objectives of the Land Use and Transportation Element and the Estuary Policy Plan; and

WHEREAS, in certain commercial and industrial zones, the Oakland Planning Code currently permits retail sales activities outright, with no limit on the floor area of a single establishment and no specific limit on the amount of floor area devoted to non-taxable grocery items; and

WHEREAS, in order to evaluate the land use compatibility and potential impacts of any proposal for the establishment or expansion of, or conversion of an existing store to a large-scale combined retail and grocery store, a discretionary review process is needed; and

WHEREAS, in some locations, large-scale combined retail and grocery sales establishments are simply incompatible with surrounding land uses and the intent of the zoning district, and should be prohibited outright; and

WHEREAS, the requirements of the California Environmental Quality Act (CEQA) of 1970, as prescribed by the Secretary of Resources, and the City of Oakland's environmental review requirements have been satisfied because in accordance with the "General Rule" of Section 15061(b)(3) of the California Code of Regulations, this ordinance is exempt from the provisions of CEQA because it presents no potential significant effect on the environment; and

WHEREAS, the City Council finds and determines that the public safety, health, convenience, comfort, prosperity, and general welfare will be furthered by this ordinance,

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND does ordain as follows:

SECTION 1. The City Council finds and determines the foregoing recitals to be true and correct and hereby makes them a part of this ordinance.

SECTION 2. The City Council finds and determines, for the reasons stated in the recitals, the adoption of this ordinance is exempt from CEQA under Sections 15061(b)(3), and 15307 of the State CEQA Guidelines.

SECTION 3. The Oakland Planning Code is hereby amended to add, delete, or modify sections as set forth below. Section numbers and titles are indicated in **bold type**, additions are indicated by underlining, and deletions are indicated by ~~strike-out type~~.

Portions of the code not cited, or not shown in underline or strike-out type, are not changed:

Chapter 17.09 DEFINITIONS

17.09.040 Definitions.

“Sales Floor Area” means interior building space devoted to the sale of merchandise, but excludes 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 business establishment, the aggregate square footage of all adjacent stores that share common check stands, management, a controlling ownership interest, warehouses, or distribution facilities shall be considered a single business establishment.

“Non-taxable Merchandise” means products, commodities, or items not subject to California state sales tax.

Chapter 17.10 USE CLASSIFICATIONS

17.10.340 General Retail Sales Commercial Activities.

General Retail Sales Commercial Activities include the retail sale or rental from the premises, primarily for personal or household use, of goods consisting primarily of items other than food and beverages and those convenience items described in Section 17.10.310; but exclude sale or rental of motor vehicles, except for parts and accessories, and sale of materials used in construction of buildings or other structures, except for paint, fixtures, and hardware. They also exclude Large-Scale Combined Retail and Grocery Sales Commercial Activities, as defined in Section 17.10.345. They also include certain activities accessory to the above, as specified in Section 17.10.040. (Prior planning code § 2367)

17.10.345 Large-Scale Combined Retail and Grocery Sales Commercial Activities.

Large-Scale Combined Retail and Grocery Sales Commercial Activities include the retail sale from the premises of goods and merchandise, primarily for personal or household use, from stores whose total sales floor area exceeds 100,000 square feet and which devote more than 10% of sales floor area to the sale of non-taxable merchandise, but exclude wholesale clubs or other establishments selling primarily bulk merchandise and charging membership dues or otherwise restricting merchandise sales to customers paying a periodic access fee. This classification excludes the sale or rental of motor vehicles, except for parts and accessories, and the sale of materials used in construction of buildings or other structures, except for paint, fixtures, and hardware. This classification includes certain activities accessory to the above, as specified in Section 17.10.040.

**Chapter 17.38 C-20 SHOPPING CENTER COMMERCIAL ZONE
REGULATIONS**

17.38.040 Conditionally permitted activities.

The following activities, as described in the use classifications in Chapter 17.10, may be permitted upon the granting of a conditional use permit pursuant to the conditional use permit procedure in Chapter 17.134:

- A. Residential Activities:
 - Permanent Residential Care
 - Service-Enriched Permanent Housing
 - Transitional Housing
- B. Civic Activities:
 - Nursing Home
 - Residential Care
 - Health Care
 - Utility and Vehicular
 - Extensive Impact
- C. Commercial Activities:
 - Convenience Market
 - Fast Food Restaurant
 - Alcoholic Beverage Sales
 - Mechanical or Electronic Games, subject to the provisions of Section 17.102.210C
 - Large-Scale Combined Retail and Grocery Sales
 - Consumer Laundry and Repair Service
 - Group Assembly
 - Administrative
 - Automotive Servicing
 - Automotive Repair and Cleaning
 - Automotive Fee Parking
 - Animal Care
- D. Agricultural and Extractive Activities:
 - Plant Nursery
 - Crop and Animal Raising
- E. Off-street parking serving activities other than those listed above or in Section 17.38.030, subject to the conditions set forth in Section 17.102.100.
- F. Additional activities which are permitted or conditionally permitted in an adjacent zone, on lots near the boundary thereof, subject to the conditions set forth in Section 17.102.110 (Ord. 12138 § 5 (part), 1999; prior planning code § 4304).

**Chapter 17.46 C-30 DISTRICT THOROUGHFARE COMMERCIAL ZONE
REGULATIONS**

17.46.060 Conditionally permitted activities.

The following activities, as described in the use classifications in Chapter 17.10, may be permitted upon the granting of a conditional use permit pursuant to the conditional use permit procedure in Chapter 17.134:

- A. Residential Activities:
 - Residential Care, except when occupying a One-Family Dwelling
 - Residential Facility
 - Service-Enriched Permanent Housing
 - Transitional Housing
 - Emergency Shelter
- B. Civic Activities:
 - Extensive Impact
 - Utility and Vehicular (communications equipment installations and exchanges, only)
 - Special Health Care Civic Activities
- C. Commercial Activities:
 - Convenience Market
 - Fast Food Restaurant
 - Alcoholic Beverage Sales
 - Mechanical or Electronic Games, subject to the provisions of Section 17.102.210C
 - Large-Scale Combined Retail and Grocery Sales
 - Group Assembly
 - General Wholesale Sales
 - Automotive Servicing
 - Automotive Repair and Cleaning
 - Animal Care
- D. Manufacturing Activities:
 - Custom
- E. Agricultural and Extractive Activities:
 - Plant Nursery
- F. Additional activities which are permitted or conditionally permitted in an adjacent zone, on lots near the boundary thereof, subject to the conditions set forth in Section 17.102.110 (Ord. 12138 § 5 @art), 1999; Ord. 11854 § 4, 1996; prior planning code § 4454).

Chapter 17.50 C-35 DISTRICT SHOPPING COMMERCIAL ZONE REGULATIONS

17.50.060 Conditionally permitted activities.

The following activities, as described in the use classifications in Chapter 17.10, may be permitted upon the granting of a conditional use permit pursuant to the conditional use permit procedure in Chapter 17.134:

- A. Residential Activities:
 - Residential Care, except when occupying a One-Family Dwelling
 - Residential Facility
 - Service-Enriched Permanent Housing
 - Transitional Housing
 - Emergency Shelter
- B. Civic Activities:
 - Utility and Vehicular
 - Extensive Impact
 - Special Health Care Civic Activities
- C. Commercial Activities:
 - Convenience Market
 - Fast Food Restaurant
 - Alcoholic Beverage Sales
 - Mechanical or Electronic Games, subject to the provisions of Section 17.102.210C
 - Large-Scale Combined Retail and Grocery Sales
 - Group Assembly
 - General Wholesale Sales
 - Automotive Servicing
 - Automotive Repair and Cleaning
 - Automotive Fee Parking
 - Animal Care
- D. Manufacturing Activities:
 - Custom
- E. Agricultural and Extractive Activities:
 - Plant Nursery
 - Crop and Animal Raising
- F. Off-street parking serving activities other than those listed above or in Section 17.50.050, subject to the conditions set forth in Section 17.102.100.
- F. Additional activities which are permitted or conditionally permitted in an adjacent zone, on lots near the boundary thereof, subject to the conditions set forth in Section 17.102.110 (Ord. 12138 § 5 (part), 1999; prior planning code § 4504).

Chapter 17.52 C-36 GATEWAY BOULEVARD SERVICE COMMERCIAL, ZONE REGULATIONS

17.52.060 Conditionally permitted activities.

The following activities, as described in the use classifications in Chapter 17.10, may be permitted upon the granting of a conditional use permit pursuant to the conditional use permit procedure in Chapter 17.134:

- A.** Civic Activities:
 - Utility and Vehicular
 - Extensive Impact

- Nonassembly Cultural
- B.** Commercial Activities:
 - Convenience Market
 - Fast-Food Restaurant
 - Alcoholic Beverage Sales
 - Mechanical or Electronic Games, subject to the provisions of Section 17.102.210C
 - Large-Scale Combined Retail and Grocerv Sales
 - General Wholesale Sales
 - Consumer Laundry and Repair Service
 - Construction Sales and Service
 - Health Care
 - Community Education
 - Community Assembly
 - Warehouse and Transportation, but limited to properties without frontage on Hegenberger Road
 - Group Assembly
 - Automotive Sales, Rental, and Delivery, but limited to properties without frontage on Hegenberger Road
 - Automotive Servicing
 - Transient Habitation, subject to the provisions of Section 17.102.370
- C.** Agricultural and Extractive Activities:
 - Crop and Animal Raising
- D.** Manufacturing Activities:
 - Custom, Light, and General, but limited to properties without frontage on Hegenberger Road
- E.** Off-street parking serving activities other than those listed above or in Section 17.52.050, subject to the conditions set forth in Section 17.102.100.
- E.** Additional activities which are permitted or conditionally permitted in an adjacent zone, on lots near the boundary thereof, subject to the conditions set forth in Section 17.102.110.
- G.** Additional activities not otherwise permitted or conditionally permitted if such activities are part of a Foreign Trade Zone as designated by the United States of America. (Ord. 12266 § 5 (part), 2000; Ord. 12076 § 3 (part), 1998; prior planning code § 4529)

Chapter 17.54 C-40 COMMUNITY THOROUGHFARE COMMERCIAL ZONE REGULATUIONS

17.54.060 Conditionally permitted activities.

The following activities, as described in the use classifications in Chapter 17.10, may be permitted upon the granting of a conditional use permit pursuant to the conditional use permit procedure in Chapter 17.134:

A. Residential Activities:

Residential Care, except when occupying a One-Family Dwelling
Residential Facility
Service-Enriched Permanent Housing
Transitional Housing
Emergency Shelter

B. Civic Activities:

Extensive Impact
Utility and Vehicular (communications equipment installations and
exchanges, only)
Special Health Care Civic Activities

C. Commercial Activities:

Convenience Market
Fast-Food Restaurant
Alcoholic Beverage Sales
Mechanical or Electronic Games, subject to the provisions of Section
17.102.210C
Large-Scale Combined Retail and Grocery Sales
Group Assembly
Transient Habitation
Animal Care
Undertaking Service

D. Manufacturing Activities:

Light

E. Agricultural and Extractive Activities:

Plant Nursery
Crop and Animal Raising

F. Additional activities which are permitted or conditionally permitted in an adjacent zone, on lots near the boundary thereof, subject to the conditions set forth in Section 17.102.110. (Ord. 12450 § 9, 2002; Ord. 12138 § 5 (part), 1999; Ord. 11854 § 6, 1996; prior planning code § 4554)

Chapter 17.56 C-45 COMMUNITY SHOPPING COMMERCIAL REGULATIONS

17.56.060 Conditionally permitted activities.

The following activities, as described in the use classifications in Chapter 17.10, may be permitted upon the granting of a conditional use permit pursuant to the conditional use permit procedure in Chapter 17.134:

A. Residential Activities:

Residential Care, except when occupying a One-Family Dwelling Residential
Facility
Service-Enriched Permanent Housing
Transitional Housing
Emergency Shelter

B. Civic Activities:

- Utility and Vehicular
Extensive Impact
Special Health Care Civic Activities
- C. Commercial Activities:
 - Convenience Market
 - Fast-Food Restaurant
 - Alcoholic Beverage Sales
 - Mechanical or Electronic Games, subject to the provisions of Section 17.102.210C
 - Large-Scale Combined Retail and Grocerv Sales
 - Group Assembly
 - General Wholesale Sales
 - Transient Habitation
 - Automotive Sales, Rental, and Delivery
 - Automotive Servicing
 - Automotive Repair and Cleaning
 - Automotive Fee Parking
 - Animal Care
 - Undertaking Service
- D. Manufacturing Activities
 - Light
- E. Agricultural and Extractive Activities:
 - Plant Nursery
 - Crop and Animal Raising
- F. Off-street parking serving activities other than those listed above or in Section 17.56.050, subject to the conditions set forth in Section 17.102.100.
- G. Additional activities which are permitted or conditionally permitted in an adjacent zone, on lots near the boundary thereof, subject to the conditions set forth in Section 17.102.110. (Ord. 12138 § 5 @art), 1999; prior planning code § 4604)

Chapter 17.58 C-51 CENTRAL BUSINESS SERVICE COMMERCIAL ZONE

17.58.060 Conditionally permitted activities.

The following activities, as described in the use classifications in Chapter 17.10, may be permitted upon the granting of a conditional use permit pursuant to the conditional use permit procedure in Chapter 17.134:

- A. Residential Activities:
 - Residential Care, except when occupying a One-Family Dwelling
 - Residential Facility
 - Service-Enriched Permanent Housing
 - Transitional Housing
 - Emergency Shelter
- B. Civic Activities:
 - Extensive Impact

- Utility and Vehicular (communications equipment installations and exchanges, only)
- Special Health Care Civic Activities
- C. Commercial Activities:
 - Convenience Market
 - Fast-Food Restaurant
 - Alcoholic Beverage Sales
 - Mechanical or Electronic Games, subject to the provisions of Section 17.102.210C
 - Large-Scale Combined Retail and Grocery Sales
 - Automotive Sales, Rental, and Delivery
 - Automotive Servicing
 - Automotive Repair and Cleaning
 - Automotive Fee Parking
 - Animal Care
 - Undertaking Service
 - Transient Habitation, subject to the provisions of Section 17.102.370
- D. Manufacturing Activities
 - Light
- E. Agricultural and Extractive Activities
 - Plant Nursery
 - Crop and Animal Raising
- F. Off-street parking serving activities other than those listed above or in Section 17.58.050, subject to the conditions set forth in Section 17.102.100.
- G. Additional activities which are permitted or conditionally permitted in an adjacent zone, on lots near the boundary thereof, subject to the conditions set forth in Section 17.102.110. (Ord. 12266 § 5 (part), 2000; Ord. 12138 § 5 (part), 1999; Ord. 11854 § 8, 1996; prior planning code § 4829)

Chapter 17.62 C-55 CENTRAL CORE COMMERCIAL ZONE REGULATIONS

17.62.060 Conditionally permitted activities.

The following activities, as described in the use classifications in Chapter 17.10, may be permitted upon the granting of a conditional use permit pursuant to the conditional use permit procedure in Chapter 17.134:

- A. Residential Activities:
 - Residential Care, except when occupying a One-Family Dwelling
 - Residential Facility
 - Service-Enriched Permanent Housing
 - Transitional Housing
 - Emergency Shelter
- B. Civic Activities:
 - Utility and Vehicular
 - Extensive Impact
 - Special Health Care Civic Activities
- C. Commercial Activities:

- Convenience Market
- Fast-Food Restaurant
- Alcoholic Beverage Sales
- Mechanical or Electronic Games, subject to the provisions of Section 17.102.210C
- Large-Scale Combined Retail and Grocery Sales
- General Wholesale Sales
- Automotive Sales, Rental, and Delivery
- Automotive Servicing
- Automotive Fee Parking
- Animal Care
- Undertaking Service
- Transient Habitation, subject to the provisions of Section 17.102.370
- D. Manufacturing Activities
 - Light
- E. Agricultural and Extractive Activities
 - Crop and Animal Raising
- F. Off-street parking serving activities other than those listed above or in Section 17.62.050, subject to the conditions set forth in Section 17.102.100.
- G. Additional activities which are permitted or conditionally permitted in **an** adjacent zone, on lots near the boundary thereof, subject to the conditions set forth in Section 17.102.110. (Ord. 12266 § 5 (part), 2000; Ord. 12138 § 5 (part), 1999; prior planning code § 4879)

Chapter 17.68 M-20 LIGHT INDUSTRIAL ZONE REGULATIONS

17.68.040 Conditionally permitted activities.

The following activities, as described in the use classifications in Chapter 17.10, may be permitted upon the granting of a conditional use permit pursuant to the conditional use permit procedure in Chapter 17.134:

- A. Civic Activities:
 - Community Assembly
 - Community Education
 - Utility and Vehicular
 - Extensive Impact
 - Special Health Care Civic Activities
- B. Commercial Activities:
 - Convenience Market
 - Fast-Food Restaurant
 - Alcoholic Beverage Sales
 - Large-Scale Combined Retail and Grocery Sales
 - Consumer Laundry and Repair Service
 - Retail Business Supply
 - Construction Sales and Service
 - Automotive Servicing
 - Transport and Warehousing, except as provided in Section 17.102.210F

- Animal Care
- Scrap Operation, except as provided in Section 17.102.210F
- C. Manufacturing Activities:
 - Custom -- when located within one hundred fifty (150) feet of residential zones
 - Light -- when located within one hundred fifty (150) feet of residential zones
 - General, provided that electroplating activities shall also be subject to the provisions of Section 17.102.340
 - Small Scale Transfer and Storage Hazardous Waste Management when located a minimum of 2,000 feet from a Residential Facility; such facilities when located within 2,000 feet of a Residential Facility are not permitted
- D. Agricultural and Extractive Activities:
 - Plant Nursery
 - Crop and Animal Raising
 - Mining and Quarrying
- E. Additional activities which are permitted or conditionally permitted in an adjacent zone, on lots near the boundary thereof, subject to the conditions set forth in Section 17.102.1 10. (Ord. 12450 § 15, 2002; Ord. 12147 § 3 @art), 1999; Ord. 12072 § 6, 1998; Ord. 11956 § 4, 1996; prior planning code § 5604)

Chapter 17.70 M-30 GENERAL INDUSTRIAL ZONE REGULATIONS

17.70.040 Conditionally permitted activities.

The following activities, as described in the use classifications in Chapter 17.10, may be permitted upon the granting of a conditional use permit pursuant to the conditional use permit procedure in Chapter 17.134:

- A. Civic Activities:
 - Community Assembly
 - Community Education
 - Extensive Impact
 - Utility and Vehicular (communications equipment installations and exchanges, only)
 - Special Health Care Civic Activities
- B. Commercial Activities:
 - Fast-Food Restaurant
 - Alcoholic Beverage Sales
 - Large-Scale Combined Retail and Grocery Sales
 - Consumer Laundry and Repair Service
 - Group Assembly
 - Automotive Sales, Rental, and Delivery
 - Animal Care
 - Scrap Operation, subject to the provisions of Section 17.102.210F
- C. Manufacturing Activities:

General, electroplating activities subject to the provisions of Section 17.102.340

Small Scale Transfer and Storage Hazardous Waste Management when located a minimum of 2,000 feet from a Residential Facility; such facilities when located within 2,000 feet of a Residential Facility are not permitted

Industrial Transfer/Storage Hazardous Waste Management when located a minimum of 2,000 feet from a Residential Facility; such facilities when located within 2,000 feet of a Residential Facility are not permitted

D. Agricultural and Extractive Activities:

Mining and Quarrying

E. Additional activities which are permitted or conditionally permitted in an adjacent zone, on lots near the boundary thereof, subject to the conditions set forth in Section 17.102.110. (Ord. 12450 § 16,2002; Ord. 12147 § 3 (part), 1999; Ord. 12072 § 8,1998; Ord. 11956 § 6, 1996; Ord. 11854 § 12,1996; prior planning code § 5704)

Chapter 17.72 M-40 HEAVY INDUSTRIAL ZONE REGULATIONS

17.72.040 Conditionally permitted activities.

The following activities, as described in the use classifications in Chapter 17.10, may be permitted upon the granting of a conditional use permit pursuant to the conditional use permit procedure in Chapter 17.134:

A. Civic Activities:

Community Assembly

Community Education

Extensive Impact

Utility and Vehicular (communications equipment installations and exchanges, only)

Special Health Care Civic Activities

B. Commercial Activities:

Fast-Food Restaurant

Alcoholic Beverage Sales

Large-Scale Combined Retail and Grocery Sales

Consumer Laundry and Repair Service

Group Assembly

Animal Care

C. Manufacturing Activities:

General, electroplating activities subject to the provisions of Section 17.102.340

Heavy

Small Scale Transfer and Storage Hazardous Waste Management when located a minimum of 2,000 feet from a Residential Facility; such facilities when located within 2,000 feet of a Residential Facility are not permitted

Industrial Transfer/Storage Hazardous Waste Management when located a minimum of 2,000 feet from a Residential Facility; such facilities when located within 2,000 feet of a Residential Facility are not permitted

D. Agricultural and Extractive Activities:

Mining and Quarrying

E. Additional activities which are permitted or conditionally permitted in an adjacent zone, on lots near the boundary thereof, subject to the conditions set forth in Section 17.102.110. (Ord. 12450 § 17,2002; Ord. 12147 § 3 (part), 1999; Ord. 12072 § 10, 1998; Ord. 11889 § 3, 1996; Ord. 11854 § 14,1996; prior planning code § 5804)

Chapter 17.76 S-2 CIVIC CENTER ZONE REGULATIONS

17.76.060 Conditionally permitted activities.

The following activities, as described in the use classifications in Chapter 17.10, may be permitted upon the granting of a conditional use permit pursuant to the conditional use permit procedure in Chapter 17.134:

A. Residential Activities:

Residential Care, except when occupying a One-Family Dwelling

Residential Facility

Service-Enriched Permanent Housing

Transitional Housing

Emergency Shelter

B. Civic Activities:

Health Care

Utility and Vehicular

Extensive Impact

C. Commercial Activities:

General Food Sales

Convenience Market

Fast-Food Restaurant

Alcoholic Beverage Sales

Convenience Sales and Service

General Retail Sales

Large-Scale Combined Retail and Grocery Sales

General Personal Service

Consumer Laundry and Repair Service

Group Assembly

Business and Communication Service

Retail Business Supply

Research Service

Transient Habitation

Automotive Servicing

Automotive Fee Parking

- D. Off-street parking serving activities other than those listed above or in Section 17.76.050, subject to the conditions set forth in Section 17.102.100.
- E. Additional activities which are permitted or conditionally permitted in an adjacent zone, on lots near the boundary thereof, subject to the conditions set forth in Section 17.102.110. (Ord. 12138 § 5 (part), 1999; prior planning code §6154)

**Chapter 17.97 S-19 BROADWAY AUTO ROW INTERIM STUDY
COMBINING ZONE REGULATIONS**

17.97.060 Conditionally permitted activities.

The following activities, as described in the use classifications Chapter 17.10, may be permitted upon the granting of a conditional use permit pursuant to the conditional use permit procedure in Chapter 17.134:

- A. Those Residential Activities listed below, subject to the provision for lots with frontage along Broadway that all permitted residential activities shall be allowed only in the floor levels above ground floor level and only if the ground floor or any lot fronting on Broadway contains a civic, commercial, or manufacturing activity as permitted or conditionally permitted under this chapter; however, any pedestrian residential lobby and/or vehicular access ramp serving the residential activity is permitted on the ground floor:
 - Residential Care, except when occupying a One-Family Dwelling
 - Residential Facility
 - Service-Enriched Permanent Housing
 - Transitional Housing
 - Emergency Shelter
- B. Civic Activities:
 - Community Assembly with a floor area of over ten thousand (10,000) square feet
 - Community Education with a floor area of over ten thousand (10,000) square feet
 - Nonassembly Cultural with a floor area of over ten thousand (10,000) square feet
 - Administrative with a floor area of over ten thousand (10,000) square feet
 - Health Care with a floor area over ten thousand (10,000) square feet
 - Utility and Vehicular with a floor area of over ten thousand (10,000) square feet -- however, if communications equipment installations and exchanges, then any floor area
 - Extensive Impact
- C. Commercial Activities:
 - General Food Sales with a floor area of over ten thousand (10,000) square feet
 - General Retail Sales with a floor area of over ten thousand (10,000) square feet

Large-Scale Combined Retail and Grocery Sales

General Personal Service with a floor area of over ten thousand (10,000) square feet

Convenience Sales and Service with a floor area of over ten thousand (10,000) square feet

Medical Service with a floor area of over ten thousand (10,000) square feet

Consultative and Financial Service with a floor area over ten thousand (10,000) square feet

Consumer Laundry and Repair Service with a floor area of over ten thousand (10,000) square feet

Administrative with a floor area of over ten thousand (10,000) square feet

Business and Communication Service with a floor area of over ten thousand (10,000) square feet

Retail Business Supply

Research Service

General Wholesale Sales

Construction Sales and Service

Automotive Fee Parking

Convenience Market

Fast-Food Restaurant

Alcoholic Beverage Sales

Mechanical or Electronic Games, subject to the provisions of Section 17.102.210C

Group Assembly

Transient Habitation

Animal Care

Undertaking Service

D. Manufacturing Activities:

Custom

Light

E. Agricultural and Extractive Activities:

Plant Nursery

Crop and Animal Raising

F. Additional activities which are permitted or conditionally permitted in an adjacent zone, on lots near the boundary thereof, subject to the conditions set forth in Section 17.102.110. (Ord. 12413 § 3,2002)

**Chapter 17.101 S-16 INDUSTRIAL-RESIDENTIAL TRANSITION
COMBINING ZONE REGULATIONS**

17.101.050 Conditionally permitted activities.

The following activities, as described in the use classifications in Chapter 17.10, may be permitted upon the granting of a conditional use permit pursuant to the conditional use permit procedure in Chapter 17.134 and the special regulations in Section 17.101.090:

- A. Civic Activities:
 - Community Assembly
 - Community Education
 - Nonassembly Cultural (with more than ten thousand (10,000) square feet of new gross floor area)
 - Administrative (with more than ten thousand (10,000) square feet of new gross floor area)
 - Utility and Vehicular
 - B. Commercial Activities:
 - General Food Sales
 - Convenience Market (subject to provisions in Section 17.102.210A)
 - Mechanical or Electronic Games (subject to provisions in Section 17.102.210C)
 - Medical Service
 - Large-Scale Combined Retail and Grocery Sales
 - Consumer Laundry and Repair Service
 - Group Assembly
 - Research Service (with more than ten thousand (10,000) square feet of new gross floor area)
 - General Wholesale Sales (with less than fifty thousand (50,000) square feet of gross floor area)
 - Construction Sales and Service
 - Automotive Fee Parking
 - Animal Care
 - C. Manufacturing Activities:
 - Custom (with more than ten thousand (10,000) square feet of new gross floor area)
 - Light (with more than ten thousand (10,000) square feet of new gross floor area)
 - D. Agricultural and Extractive Activities:
 - Plant Nursery
 - E. Accessory Activities:
 - Joint Living and Working Quarters (as defined in Section 17.10.040C and subject to the provisions in Section 17.102.190 and the special regulations in Section 17.101.090A.)
 - Open Storage
- (Ord. 12289 § 3 (part), 2000)

SECTION 4. Except as specifically set forth herein, this ordinance suspends and supercedes all conflicting resolutions, ordinances, plans, codes, laws, and regulations.

SECTION 5. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council declares that it would have adopted this Ordinance and each section, subsection,

sentence, clause and phrase thereof, irrespective of the fact that any one or more section, subsection, sentence, clause, or phrase be declared invalid.

SECTION 6. This ordinance shall become effective as provided in Section 216 of the City Charter. This ordinance shall be published once with the names of the City Council Members voting for and against it in the Oakland Tribune, a newspaper which is published in this City and in Alameda County.

In Council, Oakland, California, _____, Passed By The Following

Vote:

AYES-

NOTES-

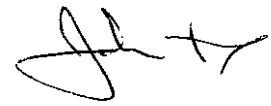
ABSENT-

ABSTENTION-

ATTEST: _____

CEDA FLOYD
City Clerk and Clerk of the Council
of the City of Oakland, California

14.4
ORA/COUNCIL
OCT 21 2003



AN ORDINANCE AMENDING THE OAKLAND PLANNING CODE TO DEFINE “LARGE-SCALE COMBINED RETAIL AND GROCERY SALES COMMERCIAL ACTIVITIES”; REQUIRE A CONDITIONAL USE PERMIT FOR THIS ACTIVITY TYPE IN CERTAIN COMMERCIAL, MANUFACTURING, AND SPECIAL ZONES; AND PROHIBIT THIS ACTIVITY TYPE IN OTHER COMMERCIAL, MANUFACTURING AND SPECIAL ZONES

NOTICE AND DIGEST

By this ordinance, the Oakland City Council amends the Oakland Planning Code to define “Large-Scale Combined Retail And Grocery Sales Commercial Activities”; require a conditional use permit for this activity type in certain commercial, manufacturing, and special zones; and prohibit this activity type in other commercial, manufacturing and special zones.

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OCT 21 2003

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OFFICE OF THE CITY CLERK
OAKLAND

CITY OF OAKLAND



CITY HALL • 1 FRANK H. OGAWA PLAZA • OAKLAND, CALIFORNIA 94612

2003 MAR 27 PM 3:37

IGNACIO De La FUENTE
President of the City Council

510 / 238-7005
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April 8, 2003

**RE: AN URGENCY MEASURE ADOPTING AN INTERIM ORDINANCE
PURSUANT TO GOVERNMENT CODE SECTION 65858 IMPOSING A
MORATORIUM ON LARGE-SCALE RETAIL STORES WITH MORE
THAN 10% OF SALES FLOOR AREA DEVOTED TO NON-TAXABLE
MERCHANDISE**

Dear Members of the Council:

SUMMARY

The attached Ordinance places a 45-day moratorium on instituting, modifying or expanding retail stores larger than 100,000 square feet with more than 10% of sales floor area dedicated to non-taxable merchandise ("Big Box Grocers"). Recent studies suggest that this type of land use has negative impacts on existing neighborhood-serving commercial areas and on traffic and air quality, particularly when not sufficiently offset by sales tax revenue. This ordinance applies *only* to Big Box Grocers. It would not apply to any other type of big box retail without full-service grocery components (*e.g.*, a regular Target or Home Depot), regular grocery stores (*e.g.*, Safeway or Albertsons), membership stores (*e.g.*, Costco or Sams Club), or multi-vendor markets, (*e.g.* Market Hall or Housewives Market).

Council President De La Fuente and Councilmember Brunner request you adopt the attached Ordinance so that the City can further study the issue and determine whether to recommend adopting permanent controls.

BACKGROUND

Beginning last year, the Community & Economic Development Agency began receiving inquiries from real estate brokers regarding potential sites for a Wal-Mart Supercenter store. This was presumably in response to an earlier announcement by Wal

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Mart that it was seeking to expand significantly its Super Store presence in California. Wal-Mart Supercenters, Super K Marts and Super Targets are the three major “Big Box Grocers” – with stores averaging 150,000 square feet and as much as 40% of their sales floor area dedicated to non-taxable groceries and pharmaceuticals. Wal-Mart dominates this market with over 1,000 supercenters nationwide.

Recently, studies demonstrating the negative impacts of Big Box Grocers were brought to the attention of Council President De La Fuente and Councilmember Jane Brunner. This compelling data, along with the information that such a Big Box Grocer was currently looking to locate in Oakland, prompted these Councilmembers to introduce the attached legislation.

KEY ISSUES AND IMPACTS

Research Suggests That Big Box Grocers Contravene Objectives and Policies of Oakland’s General Plan

The City of Oakland’s Land Use & Transportation Element and Estuary Policy Plan contain the following Objectives and Policies:

- Objective I/C1.1: Expand and retain Oakland’s job base and economic strength.
- Policy I/C3.4: The vitality of existing neighborhood mixed use and community commercial areas should be strengthened and preserved.
- Policy T2.3: Promote neighborhood-serving commercial development within one-quarter to one-half mile of established transit routes and nodes.
- Objective T4: Increase use of alternative modes of transportation.
- Objective N1: Provide for healthy, vital, and accessible commercial areas that help meet local consumer needs in the neighborhoods.
- Objective T7: Reduce air pollutants caused by vehicles.
- Objective LU-3 (Estuary Policy Plan): Develop the Estuary area in a way that enhances Oakland’s long-term economic development.

Recent academic and industry studies have made findings that suggest Big Box Grocers are likely to negatively impact each of the above Policies and Objectives. For example, a 2003 study of potential impacts on Fremont, California concluded a new Big Box Grocer would:

¹ See <http://eastbay.bizjournals.com/eastbay/stories/2002/05/27/story7.html>

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- “drain vitality from existing neighborhood retail centers and the downtown,” particularly when “food stores are anchors for their respective commercial centers”; and
- “transfer revenue away from supermarkets located in neighborhood or community serving retail nodes” contravening a General Plan objective for “Viable neighborhood shopping centers meeting the daily convenience shopping needs of City residents.”

The study also cited in-depth consumer research performed by AC Nielsen U.S. on 2001 Wal-Mart supercenter sales growth. It found “the majority of sales growth at Wal-Mart supercenters – 72 percent – came from a ‘direct shift of dollars that had previously gone to other channels.’ Of that majority ‘channel shift’ revenue growth, almost one third came from supermarkets.”²

Another study conducted in Southern California concluded:

- “Large retail sites do impose additional community costs in the form of traffic, security, environmental, and other impacts (e.g., Altshuler and Gomez-Ibanez, 1993). Most grocery sales are not taxed, so the tax base of the host city will suffer as existing retail uses shift to groceries”; and
- “Free-standing food stores would likely yield market share [to Big Box Grocers] and in some cases become vacant, while taxable sales from grocery operations would shift to locations that are much more prone to the impacts of regional business cycles.”³

Finally, another study concludes that the traffic, congestion and air quality impacts of Big Box Grocers is far greater than other types of Big Box retail stores.⁴ This is expected as the average person makes more frequent trips to the grocery store than most other retail establishments.

² *Economic Analysis of the Proposed Fremont Wal-Mart: Short and Long Term Impacts on Retail and Economic Development*, Prepared for The United Food and Commercial Workers Union, Local 870 by Strategic Economics (March 2003)

³ *The Impact of Big Box Grocers on Southern California: Jobs, Wages and Municipal Finance*, Prepared for the Orange County Business Council By Marlon Boarnet, Ph.D., Associate Professor UC Irvine and Randall Crane, Ph.D., Associate Professor UCL4 (September 1999)

⁴ *Trip Generation, 6th Edition*, by the Institute of Transportation Engineers (1997); also see generally *Regulation for Revenue: The Political Economy of Land Use Exactions*. by Alan A. Altshuler and Jose-Gomez-Ibanez (1993).

The following table shows the different numbers of car trips generated by Big Box Grocers (referred to as Discount Superstore) versus other retail establishments not covered by this ordinance:

Comparison of Trip Generation by Land Use Category

	#850 Supermarket (e.g. Safeway)	#861 Discount Club (e.g., Costco)	#815 Freestanding Discount Store (e.g. Home Depot)	#813 Discount Superstore (e.g. Super Wal-Mart)
Weekday Trips	3,010	4,682	6,059	7,232
Saturday Trips	4,794	6,074	7,491	8,479
Sunday Trips	4,494	3,771	5,984	6,691
Total Trips per Week	24,338	33,255	43,770	51,330

Each of these studies suggest that Big Box Grocers are likely to contravene several of Oakland's land use goals regarding preserving and promoting neighborhood-serving commercial areas and minimizing traffic and air quality impacts, particularly when such contravention is not sufficiently offset by sales tax revenue.

It Is Appropriate for Oakland to Place A Moratorium On Big Box Grocers Or Otherwise Restrict This Land Use

Dozens of communities have enacted zoning ordinances that either prohibit new retail stores over a certain size or require special permitting requirements, including impact studies. Most of these laws were designed to help sustain the vitality of small-scale, pedestrian-oriented shopping districts. Some communities bar only massive "big box" stores, such as in Roswell, Georgia where all stores that exceed 100,000 square feet are prohibited. While in Greenfield, Massachusetts, for example, all new stores that either exceed 20,000 square feet or are expected to generate more than 500 vehicle trips per day are required to submit to a review before being granted a permit.'

The cities of Martinez, California and Tuscon, Arizona have recently adopted ordinances nearly identical to the one proposed for **Oakland**, which restrict the sales of nontaxable merchandise to a certain percentage in large-scale retail stores.

While such laws are not unusual in cities, they can be controversial once they are passed. Controls similar to the one proposed for Oakland were passed and then later overturned by voter referendums in Inglewood, CA, Calexico, CA and Clark County, NV (Las Vegas). Also, the California State Legislature passed an identical moratorium statewide in 1999 (AB84 and SB95), but Governor Davis vetoed the legislation.

⁵ For a wealth of information on this type of legislation, see <http://www.newrules.org/retail/index.html>. This website contains links to big box retail regulations from 21 municipalities.

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Government Code Section 65358 expressly permits a city, including a charter city, to adopt an interim ordinance prohibiting any uses that may be in conflict with a contemplated general plan or zoning proposal that the legislative body is considering or intends to study within a reasonable time. The attached Ordinance will provide Oakland time to study the potentially negative impacts of Big Box Grocers for the purpose of considering permanent controls.

FISCAL IMPACT

This is a policy decision with no direct fiscal impact. Indirectly, this policy could have the effect of maximizing sales tax revenue.

SUSTAINABLE OPPORTUNITIES

Economic: This ordinance supports the retention and strengthening of local retail and neighborhood-serving commercial areas. It is also designed to maximize sales tax revenues for the City of Oakland.

Environmental: Restricting Big Box Grocers should reduce car trips, thereby reducing polluting car emissions.

Social Equity: A potential indirect effect of this ordinance could be preservation of higher wage and benefit jobs for Oakland workers.⁶

DISABILITY AND SENIOR CITIZEN ACCESS

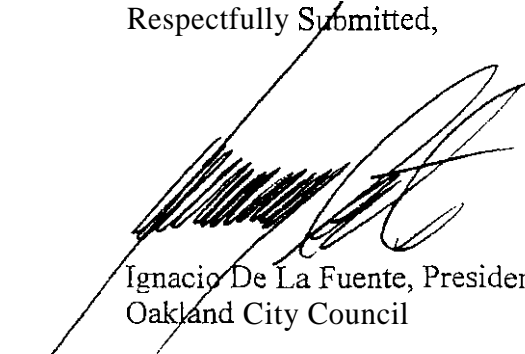
Disabled and Senior Citizens have easier access to local, neighborhood-serving retail that do not require traveling long distances or by car. Since Big Box Grocers have the potential of putting these more accessible stores out of business, this policy could indirectly help preserve more accessible, pedestrian-oriented retail options for Oakland disabled and seniors.

ACTION REQUESTED OF THE CITY COUNCIL

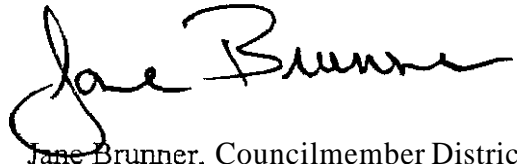
We request the Council adopt the attached Emergency Ordinance imposing an interim moratorium on large-scale retail stores with more than 10% of sales floor area devoted to non-taxable merchandise.

⁶ See the studies referred to in footnotes 2 & 3 above.

Respectfully Submitted,



Ignacio De La Fuente, President
Oakland City Council



Jane Brunner, Councilmember District 1
Oakland City Council

Prepared by:

Libby Schaaf, Legislative Aide to
Council President De La Fuente

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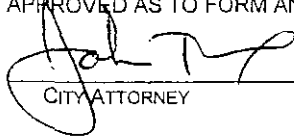
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FILED
OAKLAND CITY CLERK
OAKLAND
MAY 27 PM 3:16

4/5 VOTE REQUIRED FOR PASSAGE

APPROVED AS TO FORM AND LEGALITY

INTRODUCED BY COUNCILMEMBER _____


CITY ATTORNEY

ORDINANCE NO. 12482 C.M.S.

**AN URGENCY MEASURE ADOPTING AN INTERIM ORDINANCE
PURSUANT TO GOVERNMENT CODE SECTION 65858 IMPOSING A
MORATORIUM ON LARGE-SCALE RETAIL STORES WITH MORE
THAN 10% OF SALES FLOOR AREA DEVOTED TO NON-TAXABLE
MERCHANDISE**

WHEREAS, large retail stores over 100,000 square feet in size present unique challenges for local government; and

WHEREAS large retail stores over 100,000 square feet in size require a significantly higher commitment of police, fire, and public safety resources as opposed to smaller neighborhood stores; and

WHEREAS, large retail stores over 100,000 square feet in size create more traffic congestion and pollution that tend to strain local streets and highways; and

WHEREAS, large retail stores over 100,000 square feet in size must generate significant moneys from sales tax revenues to offset the added costs to local government; and

WHEREAS, in certain commercial, industrial and special zones, the Oakland Planning Code currently permits General Retail Sales Commercial Activities with no limit on the floor area of a single retail establishment and no specific limit on the amount of floor area devoted to non-taxable grocery items for combined retail/grocery establishments; and

WHEREAS, an updated Land Use and Transportation Element of the Oakland General Plan was adopted by the Oakland City Council in March, 1998 to guide future land use and development in the city; and

WHEREAS, the Estuary Policy Plan, a component of the Land Use and Transportation Element, was adopted by the Oakland City Council in 1999 to

provide a framework for future land use and development of the area between Adeline Street, the Nimitz Freeway, 66th Avenue, and the Estuary shoreline; and

WHEREAS, the Land Use and Transportation Element and the Estuary Policy Plan contain goals, objectives, and policies that promote: maintaining and enhancing the vitality of existing neighborhood commercial areas (Policy I/C3.4; Policy T2,.3, Objective I/C1.1; Objective N1); reducing air pollutants generated by automobile traffic (Objective T7); and encouraging the use of alternative modes of transportation (Objective T4); and

WHEREAS, recent academic studies and industry reports document a trend in which large discount retailers are combining retail sales with full-service grocery sales in "superstores" and a number of recent studies document the deleterious impact of such "superstores" on existing retail and grocery establishments, the vitality of local commercial districts, and traffic congestion; and

WHEREAS, the establishment of large retail centers offering discount general merchandise combined with full-service grocery sales in Oakland may have negative impacts on existing neighborhood-serving commercial areas by re-directing business to large retail centers; and on traffic and air quality by increasing the number of vehicle miles traveled; and

WHEREAS, such potential impacts may conflict with some of the policies and objectives of the Land Use and Transportation Element and the Estuary Policy Plan; and

WHEREAS, the City is conducting an update of the Oakland Planning Code to comply with the Land Use and Transportation Element and Estuary Policy Plan; and

WHEREAS, the City is investigating modifications to the Planning Code and General Plan to protect the public health, safety, and welfare from the negative effects of the establishment of superstores offering discount general merchandise combined with full-service grocery sales; and

WHEREAS, until such time that the City institutes land use controls over such superstores, the community is in jeopardy that said superstores could be instituted, modified, or expanded prior to the imposition of controls necessary for the protection of public health and welfare; and

WHEREAS, issuance or approval of any building, planning or other permit for such uses (newly instituted, modified, or expanded) prior to the City's completion of such investigation would result in a current and immediate threat to the public health, safety or welfare: and

WHEREAS, pursuant to Government Code Section 65858 a city, including a charter city, may adopt an interim ordinance prohibiting any uses that may be in conflict with a contemplated general plan or zoning proposal that the legislative body is considering or intends to study within a reasonable time; and

WHEREAS, for the reasons set forth above, this ordinance is declared by the Council to be necessary for preserving the public peace, health, or safety and to avoid a current, immediate and direct threat to the health, safety, or welfare of the community, and the "Whereas" clauses above taken together constitute the City Council's statement of the reasons constituting such necessity and urgency.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND does ordain as follows:

SECTION 1. The City Council finds and determines the foregoing recitals to be true and correct and hereby makes them a part of this ordinance.

SECTION 2. The City Council finds and determines, for the reasons stated in the recitals, the adoption of this ordinance is exempt from CEQA under Sections 15061(b)(3), and 15307 of the State CEQA Guidelines.

SECTION 3. The City of Oakland hereby declares a moratorium on the permitting or approval of any new, modified, or expanded Large-Scale Retail Store, as defined below, that devotes more than ten percent (10%) of its total sales floor area to the sale of non-taxable merchandise.

SECTION 4. For purposes of this Ordinance, the following definitions shall apply:

- a) "Large-Scale Retail Store" means a single business establishment engaged in retail sales to the general public whose total sales floor area exceeds 100,000 square feet, but excluding wholesale clubs or other business establishments selling primarily bulk merchandise and charging membership dues or otherwise restricting merchandise sales to customers paying a periodic access fee. For the purpose of determining whether total sales floor area of a single business establishment exceeds 100,000 square feet, the aggregate square footage of all adjacent stores which share common check stands, management, a controlling ownership interest, warehouses, or distribution facilities shall be considered a single establishment.
- b) "Sales Floor Area" means interior building space devoted to the sale of merchandise, but excluding restrooms, office space, storage space, automobile service areas, or open-air garden sales space.

- c) "Non-taxable Merchandise" means products, commodities, or items not subject to California state sales tax.

SECTION 5. In accordance with Government Code Section 65858, this Ordinance shall be in full force and effect for a period of 45 days from the date of its adoption. This 45-day period may be extended by the City Council in accordance with the provisions of California Government Code § 65858.

SECTION 6. During the term of this ordinance as set forth in Section 5 hereof, no building, zoning or other permit that has been issued for any development project, facility or activity, for which rights to proceed with the development, facility or activity have not vested pursuant to the provisions of State law shall proceed, and no building, zoning or other permit for any development project, facility or activity, shall be issued by any department, agency, employee or agent of the City of Oakland to allow for any development, facility or activity. Only development projects, facilities, or activities which have vested, pursuant to the provisions of State law, prior to the date of this Ordinance shall proceed in violation of the provisions of this Ordinance.

SECTION 7. The City Clerk shall certify to the passage and adoption of this Ordinance causing it to be posted, as required by law, and it shall thereafter be in full force and effect. This Ordinance shall become effective immediately as an interim urgency ordinance, in order to protect the public health, safety and welfare.

SECTION 8. For the term of this ordinance, as set forth in Section 5 hereof, the provisions of this ordinance shall govern, to the extent there is any conflict between the provisions of this ordinance and the provisions of any other City code, ordinance, resolution or policy, and all such conflicting provisions shall be suspended.

SECTION 9. This Ordinance is enacted pursuant to the City of Oakland's general police powers, Section 106 of the Charter of the City of Oakland, Article XI of the California Constitution and Government Code section 65858.

SECTION 10. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council declares that it would have adopted this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more section, subsection, sentence, clause, or phrase be declared invalid.

SECTION 11. The City, on a case by case basis, shall have the authority upon a showing of good cause by an applicant, to waive the interim controls

imposed by this Ordinance and to allow for the granting of permits to said applicant pursuant to the Major Variance provisions of the Oakland Planning Code. Good cause shall mean a factual and evidentiary showing by the applicant that the interim controls, if not waived, will deprive the applicant of substantially all reasonable use of his/her property. All such applications for waiver shall be filed with the City Planning Department. Said applications shall be reviewed and decided by the City Planning Commission. Within 10 calendar days after the date of a decision by the City Planning Commission, an appeal from said decision may be taken to the City Council by the applicant, the permit holder, or any other interested party. In event the last date of appeal falls on a weekend or holiday when City offices are closed, the next date such offices are open for business shall be the last date of appeal. Such appeal shall be made on a form prescribed by the Commission and shall be filed with the City Clerk. The appeal shall state specifically wherein it is claimed there was an error or abuse of discretion by the Commission or wherein its decision is not supported by the evidence in the record. Upon receipt of the appeal, the Council shall set the date for consideration thereof. The City Clerk shall notify the Secretary of the City Planning Commission of the receipt of said appeal and of the date set for consideration thereof; and said Secretary shall, not less than ten days prior thereto, give written notice to: the applicant, the appellant in those cases where the applicant is not the appellant; adverse party or parties, or the attorney, spokesperson, or representative of such party or parties; other interested groups and neighborhood associations who have requested notification; and to similar groups and individuals as the Secretary deems appropriate, of the date and place of the hearing on the appeal. The decision of the City Council shall be made by resolution and shall be final. The City Council shall vote on the appeal within thirty (30) days after its first hearing of the appeal. If the Council is unable to decide the appeal at that meeting, it shall appear for a vote on each regular meeting of the Council thereafter until decided. Fees for waiver applications and associated appeals shall be the same as those charged for Major Variance.

In Council, Oakland, California, April 8, 2003, Passed By The Following Vote:

AYES- BROOKS, BRUNNER. CHANG, NADEL, QUAN, REID, WAN and
PRESIDENT DE LA FUENTE - 8

NOTES- Ø

ABSENT- Ø

ABSTENTION- Ø

ATTEST:



CEDA FLOYD

City Clerk and Clerk of the Council
of the City of Oakland, California

Comparison of Existing and Proposed Regulations for Large-Scale Combined Retail and Grocery Sales

Zone	Purpose and intent of zone, as stated in Planning Code	Existing allowance for General Retail Sales*	Proposed allowance for Large-Scale Combined Retail and Grocery Sales (over 100,000 sq. ft.)
C-5	not generate significant amounts of traffic or parking...and are (compatible with adjacent residential uses..."	Permitted	Not Permitted
C-10	recurring needs... typically appropriate to small shopping clusters located within residential communities..."	Permitted	Not Permitted
C-20	"integrated centers devoted primarily to retail shopping... appropriate to locations near major thoroughfares within or near residential communities..."	Permitted	/Conditionally Permitted
C-25	"mixture of professional and administrative offices and high-density residences... typically appropriate along major thoroughfares running through residential communities..."	Permitted up to 3,000 sq. ft.; conditionally permitted if over 3,000 sq. ft.	Not Permitted
C-27	"areas with a selective range of retail establishments... compact locations oriented toward pedestrian comparison shopping..."	Permitted	Not Permitted
C-28	"major boulevards of medium-scale retail establishments... oriented to pedestrian comparison shopping..."	Permitted	Not Permitted
C-30	"areas with a wide range of retail establishments serving both short and long term needs... typically appropriate along major thoroughfares..."	Permitted	Conditionally Permitted
C-31	"areas with a wide range of retail establishments... onented to pedestrian comparison shopping... typically appropriate along important shopping streets having a special or particularly pleasant character..."	Permitted if under 7,500 sq. ft.; Conditionally Permitted if over 7,500 sq. ft.	Not Permitted
C-35	"areas with a wide range of retail establishments serving both short and long term needs in compact locations oriented to pedestrian comparison shopping... typically appropriate to commercial clusters near intersections of major thoroughfares..."	Permitted	Conditionally Permitted
C-36	related consumer and business services activities needing visually prominent and attractive locations and abundant vehicular access... along major thoroughfares in areas identified as gateway and coliseum showcase districts..."	Permitted	Conditionally Permitted
C-40	"areas with a wide range of both retail and wholesale establishments... typically appropriate along major thoroughfares..."	Permitted	Conditionally Permitted
C-45	"areas with a wide range of both retail and wholesale establishments... in compact locations oriented toward pedestrian comparison shopping, typically appropriate to commercial clusters near intersections of major thoroughfares..."	Permitted	Conditionally Permitted
C-51	"medium-intensity development of offices and business service activities, typically appropriate to the service commercial areas immediately adjoining the core of the central dismct..."	Permitted up to 100,000 sq. R.; conditionally permitted if over 100,000 sq. ft.	Conditionally Permitted
C-52	"preserve and enhance an area of historically or architecturally valuable structures of moderate scale for office, retail, and other appropriate uses along streets oriented to pedestrian movement..."	Permitted	Not Permitted

Zone	Purpose and intent of zone, as stated in Planning Code	Existing allowance for General Retail Sales*	Proposed allowance for Large-Scale Combined Retail and Grocery Sales (over 100,000 sq. ft.)
C-55	"very high-intensity regional center of employment, shopping, culture, and recreation..."	ft.; conditionally permitted if over 100,000 sq. ft.	Conditionally Permitted
C-60	"variety of commercial services which are essential to the economy of the city, but frequently incompatible with the operation of a retail shopping or office area... centralized areas near industrial concentrations..."	Not Permitted	Not Permitted
M-10	"areas containing manufacturing and related establishments with limited external impact, typically appropriate to locations near major thoroughfares and nonmanufacturing areas..."	Not Permitted	Not Permitted
M-20	"areas containing manufacturing and related establishments with limited external impact, typically appropriate to locations adjacent to residential communities..."	Permitted up to 3,000 sq. ft.; conditionally permitted if over 3,000 sq. A.	Conditionally Permitted
M-30	establishments, typically appropriate to areas providing a wide variety of sites with good rail or highway access..."	conditionally permitted if over 3,000 sq. ft.	Conditionally Permitted
M-40	"areas containing manufacturing or related establishments which are potentially incompatible with most other establishments... which have extensive rail or shipping facilities..."	Permitted up to 3,000 sq. ft.; conditionally permitted if over 3,000 sq. ft.	Conditionally Permitted
S-1	"areas devoted primarily to medical facilities and auxiliary uses... typically appropriate to compact areas around large hospitals..."	Not Permitted	Not Permitted
S-2	"areas devoted primarily to major public and quasi-public facilities and auxiliary uses... appropriate to portions of the Oakland Central District..."	Conditionally Permitted	Conditionally Permitted
S-3	"areas devoted primarily to conference, research, administrative, and recreational activities... typically appropriate to relatively secluded locations..."	Not Permitted	Not Permitted
S-15	"a balance of pedestrian-oriented activities, transit opportunities, and concentrated development... encourage a safe and pleasant pedestrian environment near transit stations..."	Permitted	Not Permitted
S-16	"compatible transition between residential and industrial zones..."	Permitted	Conditionally Permitted
S-19	"automobile dealership activities and small, local-serving retail, food, and personal service uses..."	Permitted up to 10,000 sq. ft.; conditionally permitted if over 10,000 sq. ft.	Conditionally Permitted

* In current code, a large-scale combined retail and grocery establishment would be classified as "General Retail Sales."

Cities and Counties Limiting Large-Scale Stores

Jurisdiction	Size threshold for special review or standards (sq. ft.)	Size threshold for prohibition (sq. ft.)	Limit on portion of store devoted to non taxable goods
Bozeman, MT		75,000	
Cococino County (Flagstaff), AZ	25,000	70,000	
Easton, MD		65,000	
Northampton, MA	20,000	90,000	
Rockville, MD	25,000	65,000	
Santa Fe, NM	30,000	150,000	
Taos, NM	30,000	80,000	
Walpole, NH		40,000	
Warwick, NY		60,000	
Westford, MA	30,000	60,000	
Stratham, NH		80,000	
Old Saybrook, CT		80,000	
Clermont, FL		100,000	
Waukegan, WI		20,000	
Ashland, OR		45,000	
Hailey, ID		36,000	
Mamaroneck, NY	100,000		
Clark County, NV		110,000	2%
Arroyo Grande, CA		90,000	1%, 2%, or 3%, depending on store size-
Martinez, CA		105,000	10%
Contra Costa County, CA		90,000 ¹	54
San Luis Obispo, C	In general commercial zones, stores above 60,000 sq.ft. up to a maximum size of 140,000sq.ft. require a use permit and must comply with special design criteria	commercial or tourist-oriented commercial zones, stores over 45,000 sq. ft. prohibited. In other commercial zones, stores over 140,000 sq. ft. prohibited.	

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ATTACHMENT D