

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

2003 OCT -9 PM 12:33

APPROVED AS TO FORM AND LEGALITY

INTRODUCED BY COUNCILMEMBER \_\_\_\_\_

  
CITY ATTORNEY

ORDINANCE NO. 12547 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**

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**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, 66<sup>th</sup> 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 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.

**NOV 04 2003**

In Council, Oakland, California, \_\_\_\_\_, Passed By The Following

Vote:

AYES-

**BROOKS, BRUNNER, CHANG,  
NADEL, REID, QUAN, WAN  
AND PRESIDENT DE LA FUENTE - 7**

NO ~~X~~ES-

**BROOKS - 1**

ABSENT-

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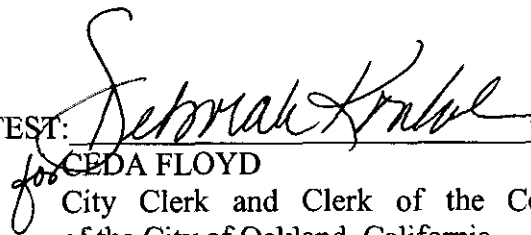
ABSTENTION-

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Introduction Date:

**OCT 21 2003**

ATTEST:

  
CEDA FLOYD  
for

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.

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**Notice of Publication**

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.

This Ordinance was introduced at the City Council meeting, Tuesday evening October 21, 2003, and passed to print 7 Ayes, 1 No. Hearing on final adoption has been scheduled for the City Council meeting Tuesday evening November 4, 2003, 6:00 p.m., at One Frank H. Ogawa Plaza, Council Chambers, on the third floor in Oakland, California.

**THREE FULL COPIES ARE AVAILABLE FOR USE AND EXAMINATION BY THE PUBLIC IN THE OFFICE OF THE CITY CLERK AT ONE FRANK H. OGAWA PLAZA, 1ST FLOOR, OAKLAND, CALIFORNIA.**

**CEDA FLOYD, City Clerk**

The Oakland Tribune, #298777  
November 1, 2003

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