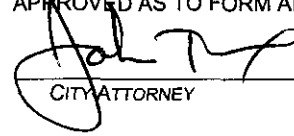


4/5 VOTE REQUIRED FOR PASSAGE

OAKLAND  
03 MAR 27 PM 3:16

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, 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 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