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September 15, 2010

REPORT TO THE HONORABLE MAYOR AND CITY COUNCIL

PROPOSED AMENDMENTS TO THE LAND DEVELOPMENT CODE TO REQUIRE A SITE DEVELOPMENT PERMIT AND AN ECONOMIC AND COMMUNITY IMPACT ANALYSIS REPORT FOR SUPERSTORE DEVELOPMENT

INTRODUCTION

On May 26, 2010, Councilmember Gloria issued a memorandum regarding a proposed ordinance to protect small and neighborhood businesses and attached a draft of a proposed ordinance to that memorandum. On June 23, 2010, the Land Use and Housing Committee (Committee) discussed Councilmember Gloria's proposed legislation related to addressing potential threats to the City's small and neighborhood businesses posed by superstores. At the hearing, Councilmember Gloria explained that the ordinance that was attached to his May 26, 2010 memorandum was a draft ordinance that had not been reviewed by City staff, the Independent Budget Analyst (IBA), or the City Attorney, and requested that the Committee refer the item to the IBA and City Attorney for further review and development of an ordinance to be considered by the City Council. The Committee discussed the potential amendments to the San Diego Municipal Code that would require a Site Development Permit (SDP), supplemental SDP findings, and the preparation of an economic and community impact analysis report for proposed superstore development projects, and directed this Office to provide a legal analysis and draft ordinance for consideration. Accordingly, in consultation with Committee staff, this Office has drafted the ordinance attached to this Report as Attachment A (the Ordinance). For the reasons set forth in more detail in this Report, we conclude that the Ordinance is founded upon an appropriate use of the City's police powers, and would likely survive any constitutional legal challenges.

BACKGROUND

The San Diego Municipal Code does not currently define a superstore and does not contain any regulations specific to superstore development. However, the San Diego Municipal Code contains regulations applicable to "large retail establishments." Large retail establishments are required to obtain an SDP decided in accordance with Process Four. SDMC § 126.0502(d)(8). Process Four decisions are made by the Planning Commission and may be appealed to the City Council. SDMC §§ 112.0507, 112.0508. Large retail establishments must also comply with the supplemental regulations for large retail establishments related to minimum setbacks, building articulation, pedestrian paths, and landscaping set forth in San Diego Municipal Code section 143.0355.

A large retail establishment is defined as "a single tenant retail establishment 50,000 square feet or greater *gross floor area* or one multiple tenant retail establishment 50,000 square feet or greater *gross floor area* where the multiple tenants share common check stands, a controlling interest, storage areas, warehouses, or distribution facilities." SDMC § 113.0103. Currently, a superstore would likely fall under the definition of a large retail establishment and, therefore, would be required to comply with all existing regulations applicable to large retail establishments.

Under the Ordinance, a superstore would be defined as:

> "a single tenant retail establishment that exceeds 90,000 square feet *gross floor area* or a multiple tenant retail establishment that exceeds 90,000 square feet *gross floor area* where the multiple tenants share common check stands, a controlling interest, storage areas, warehouses, or distribution facilities, that devotes more than 10 percent of the *sales floor area* to the sale of *nontaxable merchandise*. *Superstore* does not include wholesale clubs or other discount retail establishments that sell primarily bulk merchandise and that charge membership dues or otherwise restrict merchandise sales to customers paying a periodic assessment fee."[1]

Under the Ordinance, a superstore development would be required to obtain an SDP in accordance with Process Four. As discussed above, under the existing San Diego Municipal Code, any superstore development would currently be required to obtain an SDP in accordance with Process Four, and thus, the requirement to obtain the SDP would not be a new requirement. However, the Ordinance would require that additional supplemental findings be made prior to the approval of an SDP for a superstore. Specifically, the decision maker would not be able to approve an SDP for a superstore unless it makes each of the following additional supplemental findings:

- The superstore will not increase the potential for neighborhood blight; and
- The superstore will not adversely affect the City's Business Improvement Districts, Redevelopment Project Areas, or Micro Business Districts; and
- The superstore will not adversely affect the City's neighborhood and small businesses; and
- The superstore will not adversely affect the character of the surrounding neighborhood.

[1] The Ordinance would also add definitions for "sales floor area" and "nontaxable merchandise." Sales floor area would be defined as "the interior building space of a *superstore* devoted to the sale of merchandise, but excludes restrooms, office space, storage space, automobile service areas, or open-air garden sales space" and nontaxable merchandise would be defined as "products, commodities, or items that are bought and sold and that are not subject to California state sales tax."

Additionally, under the Ordinance, to assist the decision maker in determining whether or not the required findings can be made to approve the SDP for a superstore, an applicant for a superstore would be required, at its expense, to submit an economic and community impact analysis report (Impact Analysis Report) prepared by a consultant approved by the Development Services Director. The Impact Analysis Report would be required to include, at a minimum:

- An assessment of the extent to which the proposed superstore will capture a share of retail sales in the economic and community impact area.
- An assessment of how the construction and operation of the proposed superstore will affect the supply and demand for retail space in the economic and community impact area.
- An assessment of the number of persons employed in existing retail stores in the economic and community impact area, an estimate of the number of persons who will likely be employed by the proposed superstore, and an analysis of whether the proposed superstore will result in a net increase or decrease in employment in the economic and community impact area.
- A projection of the costs of public services and public facilities resulting from the construction and operation of the proposed superstore and a description of how those services and facilities will be financed.
- A projection of the public revenues resulting from the construction and operation of the proposed superstore.
- An assessment of the effect that the construction and operation of the proposed superstore will have on retail operations, including grocery or retail shopping centers, in the same economic and community impact area, including the potential for blight resulting from retail business closures.
- An assessment of how the development of the proposed superstore conforms to the Guiding Principles of the General Plan, and the goals and policies in the City's General Plan Economic Prosperity Element.
- An assessment of the effect that the construction and operation of the proposed superstore will have on average total vehicle miles travelled by retail customers in the same economic and community impact area.
- An assessment of whether there will be any restrictions on the subsequent use of the proposed superstore project site, including, but not limited to, any lease provisions that would require the project site to remain vacant for any amount of time.

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

- An assessment of whether the proposed superstore would result in the destruction or demolition of park and other open green space, playground, childcare facility, or community center.

- An assessment of whether the proposed superstore would result in any other adverse or positive impacts to neighborhood and small businesses.

- An assessment of whether any measures are available which would mitigate any materially adverse impacts of the proposed superstore to neighborhood and small businesses.

DISCUSSION

I. EXERCISE OF THE CITY'S POLICE POWERS

"A city's power to enact zoning regulations derives from the police power and, as such, zoning regulations must be reasonably necessary and reasonably related to the health, safety, morals, or general welfare of the community." *Friends of Davis v. City of Davis*, 83 Cal. App. 4th 1004, 1012 (2000). Thus, "a local land use ordinance falls within the authority of the police power if it is reasonably related to the public welfare." *Associated Homebuilders of the Greater Eastbay, Inc. v. City of Livermore*, 18 Cal. 3d 582, 607 (1976). Courts give great deference to an agency's determination that a zoning action is related to the public welfare and will uphold a city's land use laws "if it is fairly debatable that the restriction in fact bears a reasonable relation to the general welfare." *Id.* at 601.

Although the Ordinance regulates – at least in part – economic competition, it is valid. An ordinance that has an incidental effect on competition does not render arbitrary an ordinance that was enacted for a valid purpose, including the urban/suburban decay that can be its effect. *Wal-Mart Stores, Inc. v. City of Turlock*, 138 Cal. App. 4th 273, 302 (2006) (holding that organizing development within its boundaries using neighborhood shopping centers dispersed throughout the city as a means to serve the general welfare to be a valid purpose). Furthermore, even when the regulation of economic competition can be reasonably viewed "as a direct and intended effect of a zoning ordinance or action, so long as the primary purpose of the ordinance or action – that is, its principal and ultimate objective – is not the impermissible *private* anticompetitive goal of protecting or disadvantaging a particular favored or disfavored individual, but instead is the advancement of a legitimate *public* purpose . . . [,] the ordinance reasonably relates to the general welfare of the municipality and constitutes a legitimate exercise of the municipality's police power." *Hernandez v. City of Hanford*, 41 Cal. 4th 279, 296-297 (2007).

In *Wal-Mart*, the City of Turlock adopted an ordinance that prohibited the development of superstores (Turlock Ordinance).[2] *Wal-Mart*, 138 Cal. App. 4th at 283. The City of Turlock argued that the Turlock Ordinance was a valid measure "designed to protect against urban/suburban decay, increased traffic, and reduced air quality . . . which . . . can result from the development of discount superstores." *Id.* at 301. More specifically, the whereas clauses set forth in the Turlock Ordinance stated in part that the City's General Plan policies promote and encourage vital neighborhood commercial districts that are evenly distributed throughout the city so that residents are able to meet their basic daily shopping needs at neighborhood shopping centers; that the establishment of superstores is likely to negatively impact the vitality and economic viability of the city's neighborhood commercial centers by drawing sales away from traditional supermarkets located in these centers; that superstores compete directly with existing grocery stores that anchor neighborhood-serving commercial centers; and that smaller stores within a neighborhood center rely upon foot traffic generated by the grocery store for their existence and in neighborhood centers where the grocery store closes, vacancy rates typically increase and deterioration takes place in the remaining center. *Id.* at 283. The court found that the Turlock Ordinance was reasonably related to the public welfare as it was designed to protect against urban/suburban decay, increased traffic, and reduced air quality that could result from the development of superstores, and further, found that the likely incidental anticompetitive effect on the grocery business in the city did not render the ordinance invalid. *Id.* at 301-302.

Hernandez involved the City of Hanford's ordinance that prohibited the sale of furniture in a particular commercial district to protect the economic viability of the City's downtown business district, but that excepted large furniture stores from the prohibition in order to attract and retain large department stores in that particular commercial district. *Hernandez*, 41 Cal. 4th at 283. Although the City of Hanford had conceded that the ordinance was adopted "at least in part, to regulate competition," the court found that the ordinance was "adopted to promote the legitimate public purpose of preserving the economic viability of the Hanford downtown business district, rather than to serve any impermissible private anticompetitive purpose." *Id.* at 298.

If the purpose of the Ordinance is to promote the legitimate public purpose of preserving the economic viability of the City's small and neighborhood businesses, the Ordinance would not serve any impermissible private anticompetitive purpose. Like the Turlock Ordinance, the purpose would be to preserve the economic viability of neighborhood commercial centers which could be negatively impacted by superstores that could draw sales away from the traditional supermarkets that anchor neighborhood-serving commercial centers. Additionally, the Ordinance may also be intended to ensure the public's welfare by protecting against urban and suburban decay, increased traffic, reduced air quality, and a negative impact to the City's ability to provide adequate public services and facilities that could result from the development of superstores. The Ordinance would seek to achieve these goals by requiring an applicant to obtain an SDP and to provide an Impact Analysis Report which would inform the decision maker in making the

[2] The Turlock ordinance defined "discount superstore" as a "discount store that exceeds 100,000 square feet of gross floor area and devotes at least 5 percent of the total sales floor area to the sale of nontaxable merchandise, often in the form of a full-service grocery department." *Wal-Mart*, 138 Cal. App. 4th at 282.

additional findings required for the SDP. Although there are no guarantees, it is likely that a court would find the Ordinance to be a valid exercise of the City's police power.

II. OTHER CONSTITUTIONAL ISSUES

A. Equal Protection

Opponents of the Ordinance may argue that the Ordinance violates the equal protection clauses of the constitutions of the United States and California. The Fourteenth Amendment Equal Protection Clause of the United States Constitution provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, §1. The standard of review under the California Constitution's Equal Protection Clause is the same as that under the United States Constitution's Equal Protection Clause. *Edelstein v. City and County of San Francisco*, 29 Cal. 4th 164, 168 (2002).

When an action involves social and economic policy, and neither targets a suspect class nor impinges on a fundamental right, it is reviewed according to the "rational basis" standard. *Rui One Corp. v. City of Berkeley*, 371 F.3d 1137, 1156 (9th Cir. 2004). Under the "rational basis" standard, an action will be upheld on equal protection grounds so long as the action is rationally related to a legitimate government interest. *City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976); *Christensen v. Yolo County Bd. of Supervisors*, 995 F.2d 161, 165 (9th Cir. 1993). Legislative acts that are subject to the rational relationship test are presumed valid, and such a presumption is overcome only by a "clear showing of arbitrariness and irrationality." *Kawaoka v. City of Arroyo Grande*, 17 F.3d 1227, 1234 (9th Cir. 1994) (quoting *Hodel v. Indiana*, 452 U.S. 314, 331-32 (1981)).

Blight prevention, traffic congestion prevention, and air pollution prevention are legitimate state interests. *Wal-Mart Stores, Inc. v. City of Turlock*, 483 F. Supp. 2d 987, 1006 (E.D. Cal 2006). Rational basis review does not require the government's action actually advance its state purposes, but merely that the government could have had a legitimate reason for acting as it did. *Id.* at 1008-1009 (citing *Currier v. Potter,* 379 F.3d 716, 732 (9th Cir. 2004). As discussed above in Section I of this Report, the purpose of the Ordinance is to preserve the economic viability of the City's small and neighborhood businesses, as well as to prevent urban and suburban decay, traffic congestion and adverse air quality impacts. Requiring an Impact Analysis Report that would identify potential impacts to these objectives prior to allowing superstore development would likely be found to be rationally related to achieving the objectives of the Ordinance.

Opponents may argue that excluding "wholesale clubs or other discount retail establishments that sell primarily bulk merchandise and that charge membership dues or otherwise restrict merchandise sales to customers paying a periodic assessment fee" " (wholesale membership stores) from the definition of a superstore bears no rational relationship to the City's interests in preserving its neighborhood and small businesses, and preventing blight, traffic congestion, and air pollution. However, excluding wholesale membership stores from the proposed draft ordinance likely does not negate the achievement of the City's legitimate

interests. The City's rational basis for such exclusion would be similar to the City of Turlock's rational basis for its ordinance's distinction between wholesale membership stores and superstores. The City of Turlock explained that its legislative record showed that superstores cause more traffic than wholesale membership stores and that superstores have a greater likelihood of threatening the viability of existing neighborhood stores by causing the closure of the neighborhood supermarkets that tend to anchor them, thereby causing blight. *Wal-Mart*, 483 F. Supp. 2d at 1007. Additionally, an ordinance can be intended to "serve *multiple* purposes," *Hernandez*, 41 Cal. 4th at 300, and it is this Office's understanding that while the Ordinance would seek to preserve the City's neighborhood and small businesses, it would seek to do so in a manner that would not threaten or detract from the City's ability to attract and retain wholesale membership stores that provide the opportunity to buy in bulk, which helps small businesses reduce costs. Therefore, the Ordinance likely would not be found to violate equal protection under the state or federal constitutions.

B. Commerce Clause

Opponents may also argue that the Ordinance discriminates against out-of-state interests, and therefore violates the Commerce Clause of the United States Constitution. The Commerce Clause provides that "Congress shall have Power . . . [t]o regulate Commerce . . . among the several States." U.S. Const. art. I, § 8, cl. 3. Congress' ability to regulate commerce pursuant to the Commerce Clause prohibits the States from enacting laws which impede the flow of interstate commerce. *Edgar v. MITE Corp.*, 457 U.S. 624, 640 (1982). This authority is known as the Dormant Commerce Clause. When a state statute directly regulates or discriminates against interstate commerce, or when its effect is to favor in-state economic interests over out-of-state interests, the statute is generally struck down without further inquiry. However, if a statute has only indirect effects on interstate commerce and regulates evenhandedly, the courts will examine whether the state's interest is legitimate and whether the burden on interstate commerce clearly exceeds the local benefits. *S.D. Myers, Inc. v. City and County of San Francisco*, 253 F.3d 461, 466 (9th Cir. 2001) (citing *Brown-Forman Distillers Corp. v. N.Y. State Liquor Auth.*, 476 U.S. 573 579 (1986)).

In *Wal-mart*, the court found the Turlock Ordinance valid under the Commerce Clause. *Wal-mart*, 483 F. Supp. 2d at 1020. Specifically, the court found that the Turlock Ordinance was neutral – facially and in practical effect – because it applied to all retailers, "whether in-state or out-of-state," it did "not increase the cost of doing business for out-of-state businesses relative to their local competitors," and it did not erect any "economic barrier against out-of-state goods." *Id.* at 1013-1017. Finding that the Turlock Ordinance did not discriminate against interstate commerce, the court then addressed the issue of whether the legislation's interest is legitimate and whether the burden on interstate commerce exceeded the local benefits and held that the purposes of the ordinance were "not so outweighed by any burden on interstate commerce as to render the [Turlock] Ordinance unreasonable or irrational." *Id.* at 1017.

Like the Turlock Ordinance, the Ordinance applies to all retailers, whether in-state or out-of-state, that propose to do business in the superstore format, and would not adversely affect out-of-state businesses relative to local competitors. It would similarly not discriminate against out-

of-state goods as retail goods would continue to be allowed to be sold in other retail formats and within superstores so long as the additional requirements under the Ordinance are met. Furthermore, rather than prohibiting the development of a superstore within the City entirely, the Ordinance requires an applicant to complete an Impact Analysis Report and to obtain an SDP that would require the decision maker to make additional findings. The Ordinance's burden is arguably less than the burden imposed by the Turlock Ordinance and thus, the benefits of the Ordinance would not be outweighed by any burden on interstate commerce. Therefore, the Ordinance likely does not violate the Commerce Clause of the United States Constitution.

C. Due Process

Opponents could argue that the definition of a "superstore" is void for vagueness. A legislative enactment violates due process and is void for vagueness if its prohibitions are not clearly defined. *Wal-Mart*, 483 F. Supp. 2d at 1021. Vague laws, that do not infringe upon First Amendment rights, do not give a person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he or she may act accordingly, and they encourage arbitrary and discriminatory enforcement by not providing explicit standards. *Id.* (citing *United States v. Jae Gab Kim*, 449 F.3d 933, 941-942 (9th Cir. 2006)).

Opponents may be particularly concerned with language defining a superstore in the draft ordinance that was attached to Councilmember Gloria's May 26, 2010 memorandum. That draft ordinance contained the following draft definition of a superstore:

> "a retail establishment that exceeds 90,000 square feet *gross floor area*, sells a wide range of consumer goods, and devotes more than 10 percent of the *sales floor area* to the sale of items not subject to California State sales tax. This definition applies to all tenants within the retail establishment, as well as the cumulative sum of related or successive permits which may be part of a larger project (such as piecemeal additions to a building), so long as consumer goods and non-taxable items are sold under the same roof with shared checkout stands, entrances, and exits. This definition excludes discount warehouses and discount retail stores that sell more than half of their items in large quantities or in bulk, and also require shoppers to pay a membership or assessment fee in order to take advantage of discount prices on a wide variety of items such as food, clothing, tires, and appliance. For example and without limitation, a "bulk" sale may involve the sale of a packaged item that itself contains two or more products that are themselves packaged and labeled in such a way that, if separated from one another, they could be sold on a retail basis without any change in their packaging or labeling. The (insert Appropriate City Agent and Department / Agency) and/or the City Council shall have the discretion to apply this provision to a retail business whose total sales floor area is less than ninety thousand square feet and which devotes more than ten

percent of sales floor area to the sale of nontaxable merchandise, if warranted by the circumstances."

As Councilmember Gloria explained at the June 23, 2010 Committee hearing, the definition of a superstore contained in the attachment to his memorandum was a draft definition that had not yet been reviewed by City staff, the IBA, or this Office. This Office has since reviewed the language provided in Councilmember Gloria's draft ordinance, and has suggested substitute language that will provide the same meaning but that would tighten the definition. The suggested substitute definition of a superstore is provided in the Ordinance attached to this Report as Attachment A. The suggested superstore definition, which would apply to retail establishments greater than 90,000 square feet of gross floor area that devote more than 10 percent of the sales floor area to the sale of nontaxable merchandise, makes it clear when a development would be subject to the Ordinance. Significantly, this Office suggested the removal of the last sentence of the previous draft ordinance's superstore definition which allowed the definition of a superstore to change at the discretion of a City department or the City Council. Under the Ordinance's definition of a superstore, the Ordinance would clearly apply to any retail establishment development that would exceed 90,000 square feet gross floor area that would devote more than 10 percent of sales floor area to the sale of nontaxable food merchandise. Therefore, the definition of a superstore in the Ordinance would likely not be void for vagueness.

CONCLUSION

Whether to adopt the Ordinance is a policy decision. If adopted, for the reasons set forth above, the Ordinance would likely withstand a legal challenge. This Office cautions, however, that if changes to the Ordinance are made, those changes must also be supported by relevant evidence in the record.

Respectfully submitted,

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By Heidi Vonblum

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HKV:cw:nja:cw
Attachment A
RC-2010-33

Attachment A

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE AMENDING CHAPTER 11, ARTICLE 3, DIVISION 1 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTION 113.0103; AMENDING CHAPTER 12, ARTICLE 6, DIVISION 5 BY AMENDING SECTIONS 126.0502 AND 126.0504; AMENDING CHAPTER 12, ARTICLE 7, DIVISION 1 BY AMENDING SECTION 127.0103, TABLE 127-01A, AND SECTION 127.0106; AMENDING CHAPTER 13, ARTICLE 1, DIVISION 5 BY AMENDING SECTION 131.0522, TABLE 131-05B; AMENDING CHAPTER 13, ARTICLE 1, DIVISION 6, BY AMENDING SECTION 131.0622, TABLE 131-06B; AMENDING CHAPTER 14, ARTICLE 3, DIVISION 3 BY AMENDING SECTION 143.0302, TABLE 143-03A, AND ADDING SECTION 143.0365, ALL PERTAINING TO SUPERSTORES.

WHEREAS, on June 23, 2010, the Land Use and Housing Committee of the City Council directed the Independent Budget Analyst and the City Attorney to draft an ordinance regulating superstores to be considered by the City Council; and

WHEREAS, the General Plan's City of Villages Strategy focuses growth into mixed use activity centers that are pedestrian-friendly districts linked to an improvement regional transit system; and

WHEREAS, the General Plan City of Villages Strategy is designed to sustain the long-term economic, environmental, and social health of the City and its many communities; and

WHEREAS, the City's General Plan Economic Prosperity Element identifies the following goals: commercial development which uses land efficiently, offers flexibility to changing resident and business shopping needs, and improves environmental quality; economically healthy neighborhood and community commercial areas that are easily accessible to residents; new commercial development that contributes positively to the economic vitality of the community and

provides opportunities for new business development; a city focused on promoting local entrepreneurship to build locally based industries and businesses; a city with thriving businesses, particularly in urban areas; and a city with opportunities for growth and expansion of small businesses; and

WHEREAS, the City's General Plan Economic Prosperity Element identifies the following policies: to encourage development of unique shopping districts that help strengthen community identity and contribute to overall neighborhood revitalization; to promote economically vital neighborhood commercial districts that foster small business enterprises and entrepreneurship; to retain the City's existing neighborhood commercial activities and develop new commercial activities within walking distance of residential areas; and to recognize and maintain the unique qualities of the different neighborhood business districts, particularly in villages and transit corridors; and

WHEREAS, the City's General Plan Economic Prosperity Element identifies the importance of the City's redevelopment project areas and business improvement districts; and

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

WHEREAS, the City Council has considered and reviewed various studies related to the environmental and land use impacts associated with superstores and which document adverse effects on small and neighborhood businesses and communities in general of superstores; and

WHEREAS, superstores have the potential to result the closure of small businesses and other neighborhood-serving businesses resulting in urban and suburban decay; the potential loss of

community stability resulting from small business failures; and potential redevelopment costs resulting from revitalization efforts; and

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

WHEREAS, the City Council has considered and reviewed studies that show that rather than generating additional local sales tax revenue, new superstores tend to shift existing local sales tax revenue from other existing retailers within the City; and

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

WHEREAS, the City seeks to protect neighborhood and small businesses in a manner that would not threaten or detract from the City's ability to attract and retain wholesale membership stores that provide the opportunity to buy in bulk, which helps small businesses reduce costs; and

WHEREAS, smaller stores within a neighborhood center rely upon the foot traffic generated by grocery stores for their existence, such that when a neighborhood grocery store closes, vacancy rates have the potential to increase thereby resulting in urban and suburban decay; and

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

WHEREAS, small and neighborhood businesses reduce the need for vehicle trips and encourage walking and bicycling for shopping, services, and employment; and

WHEREAS, superstores have the potential to generate more vehicular traffic on a daily or weekly basis than other types of small and neighborhood and neighborhood-serving businesses; and

WHEREAS, superstores have the potential to result in local residents driving further for basic necessities such as groceries, resulting in longer and more frequent traffic trips to regional commercial centers to satisfy basic everyday needs, thereby potentially increasing overall traffic and air pollution; and

WHEREAS, San Diego Municipal Code section 11.0205 provides that any section, subsection, sentence, clause, phrase, portion or provision of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Code; NOW THEREFORE,

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

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

§113.0103 Definitions

Abutting property through *Dwelling unit, single* [No change in text.]

Economic and community impact area means a five mile radius surrounding the proposed location of a *superstore*.

Encroachment through *Multiple dwelling unit* [No change in text.]

Nontaxable merchandise means products, commodities, or items that are bought and sold and that are not subject to California state sales tax.

Off-street parking space through *Rooming house* [No change in text.]

Sales floor area means the interior building space of a *superstore* devoted to the sale of merchandise, but excludes restrooms, office space, storage space, automobile service areas, or open-air garden sales space.

School through *Substantial improvement* [No change in text.]

Superstore means a single tenant retail establishment that exceeds 90,000 square feet *gross floor area*, or a multiple tenant retail establishment that exceeds 90,000 square feet *gross floor area,* where the multiple tenants share common check stands, a controlling interest, storage areas, warehouses, or distribution facilities, that devotes more than 10 percent of the *sales floor area* to the sale of *nontaxable merchandise. Superstore* does not include wholesale clubs or other discount retail establishments that sell primarily bulk merchandise and that charge membership dues or otherwise restrict merchandise sales to customers paying a periodic assessment fee.

Surface mining through *Yard* [No change in text.]

Section 2. That Chapter 12, Article 6, Division 5 of the San Diego Municipal Code is amended by amending sections 126.0502 and 126.0504 to read as follows:

§126.0502 When a Site Development Permit is Required

(a) through (c) [No change in text.]

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

(1) through (9) [No change in text.]

(10) *Development* of a *superstore* in all commercial and industrial zones, and in all planned districts.

(e) [No change in text.]

§126.0504 Findings for Site Development Permit Approval

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

(a) through (o) [No change in text.]

(p) Supplemental Findings – *Superstores*

A Site Development Permit required in accordance with Section 143.0365 because of potential impacts to the surrounding neighborhood, may be approved or conditionally approved only if the decision maker makes the following supplemental *findings* in addition to the *findings* in Section 126.0504(a):

(1) The *superstore* will not increase the potential for neighborhood blight; and

(2) The *superstore* will not adversely affect the City's Business Improvement Districts, Redevelopment Project Areas, or Micro Business Districts; and

(3) The *superstore* will not adversely affect the City's neighborhood and small businesses; and

(4) The *superstore* will not adversely affect the character of the surrounding neighborhood.

Section 3. That Chapter 12, Article 7, Division 1 of the San Diego Municipal Code is amended by amending section 127.0103(a), Table 127-01A and by amending section 127.0106 to read as follows:

§127.0103 Review Process for Previously Conforming Premises and Uses

The required review process for different types of proposed *development* or activity, based on the *previously conforming* category, such as existing *structural envelope*, *density*, and uses are shown in Table 127-01A through 127-01C. If the proposed *development* includes more than one *previously conforming* category, all corresponding regulations, as described in Sections 127.0104 through 127.0108 apply.

(a) *Previously Conforming Structural Envelope*

Table 127-01A
Review Process for Previously Conforming Structural Envelope

Type of *Development* Proposal	**Applicable Sections**	**Required Development Permit/Decision Process**
Maintenance, repair or alteration (less than or equal to 50% of *market value* of entire *structure* or improvement) that does not expand the *structural envelope*.	[No change in text.]	[No change in text.]
Maintenance, repair or alteration (greater than 50% of *market value* of entire *structure* or improvement) that does not expand the *structural envelope*.	[No change in text.]	[No change in text.]
Reconstruction (following fire, natural disaster, act of the public enemy) for residential *structures* or for nonresidential *structures* when the cost of reconstruction is less than 50 percent of *market value*.	[No change in text.]	[No change in text.]

Reconstruction (following fire, natural disaster, act of the public enemy) for nonresidential *structures* when the cost of reconstruction is greater than 50 percent of *market value*.	[No change in text.]	[No change in text.]
Expansion/enlargement, where new construction conforms with all current *development* regulations.	127.0106(a), (b), (e), (f) and (g)	CP/Process 1 SDP/Process 4 for *superstores*
Expansion/enlargement where new construction requests a reduction of up to 20% from required *setbacks*.	127.0106(c), (f) and (g)	NDP/Process 2 SDP/Process 4 for *superstores*

Legend to Table 127-01A [No change in text.]

(b) [No change in text.]

(c) [No change in text.]

§127.0106 Expansion or Enlargement of Previously Conforming Structures

(a) through (e) [No change in text.]

(f) Proposed expansion or enlargement of a *previously conforming superstore* is subject to a Site Development Permit in accordance with Section 126.0502(d) and the applicable supplemental regulations in Section 143.0365(b).

(g) Proposed expansion or enlargement of a *previously conforming large retail establishment* that would result in a *superstore* is subject to a Site Development Permit in accordance with Section 126.0502(d) and the applicable supplemental regulations in Section 143.0365(b).

Section 4. That Chapter 13, Article 1, Division 5 of the San Diego Municipal Code is amended by amending section 131.0522, Table 131-05B to read as follows:

§131.0522 Use Regulations Table of Commercial Zones

The uses allowed in the commercial zones are shown in Table 131-05B.

Legend for Table 131-05B [No change in text.]

Table 131-05B
Use Regulations Table for Commercial Zones

Use Categories/Subcategories [See section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	**Zone Designator**	**Zones**									
	1st & 2nd >>	CN[1]-			CR-		CO-		CV-		CP-
	3rd >>	1-			1-	2-	1-		1-		1-
	4th >>	1	2	3	1	1	1	2	1	2	1
Open Space through Institutional, Separately Regulated Institutional Uses, *Wireless communication facility: Wireless communication facility* outside the *public right-of-way* [No change in text.]		[No change in text.]									
Retail Sales											
Building Supplies & Equipment		P[11, 12]			P[11, 12]	P[11, 12]	-		-		-
Food, Beverages and Groceries		P[11, 12]			P[11, 12]	P[11, 12]	P[11, 12]		P[11, 12]		-
Consumer Goods, Furniture, Appliances, Equipment		P[11, 12]			P[11, 12]	P[11, 12]	P[3,11, 12]		-		-
Pets & Pet Supplies		P[11, 12]			P[11, 12]	P[11, 12]	-		-		-
Sundries, Pharmaceutical, & Convenience Sales		P[11, 12]			P[11, 12]	P[11, 12]	P[11, 12]		P[11, 12]		-
Wearing Apparel & Accessories		P[11, 12]			P[11, 12]	P[11, 12]	-		P[11, 12]		-
Separately Regulated Retail Sales Uses											
Agriculture Related Supplies & Equipment		-			P	P	-		-		-
Alcoholic Beverage Outlets		L			L	L	L		L		-
Plant Nurseries		P			P	P	-		-		-
Swap Meets & Other Large Outdoor Retail Facilities		-			C	C	-		C[10]		-
Commercial Services through *Signs*, Separately Regulated *Signs* Uses, Theater *Marquees* [No change in text.]		[No change in text.]									

Use Categories/Subcategories [See section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	**Zone Designator**	**Zones**														
	1st & 2nd >>	CC-														
	3rd >>	1-			2-			3-		4-				5-		
	4th >>	1	2	3	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5
Open Space through Institutional, Separately Regulated Institutional Uses, *Wireless communication facility: Wireless communication facility* outside the *public right-of-way* [No change in text.]		[No change in text.]														
Retail Sales																
Building Supplies & Equipment		P[11, 12]			P[11, 12]			-		P[11, 12]					P[11, 12]				
Food, Beverages and Groceries		P[11, 12]			P[11, 12]			P[11, 12]		P[11, 12]					P[11, 12]				
Consumer Goods, Furniture, Appliances, Equipment		P[11, 12]			P[11, 12]			P[11, 12]		P[11, 12]					P[11, 12]				
Pets & Pet Supplies		P[11, 12]			P[11, 12]			P[11, 12]		P[11, 12]					P[11, 12]				
Sundries, Pharmaceutical, & Convenience Sales		P[11, 12]			P[11, 12]			P[11, 12]		P[11, 12]					P[11, 12]				
Wearing Apparel & Accessories		P[11, 12]			P[11, 12]			P[11, 12]		P[11, 12]					P[11, 12]				
Separately Regulated Retail Sales Uses																
Agriculture Related Supplies & Equipment		-			-			-		P					P				
Alcoholic Beverage Outlets		L			L			L		L					L				
Plant Nurseries		P			P			P		P					P				
Swap Meets & Other Large Outdoor Retail Facilities		-			-			-		-					C				
Commercial Services through *Signs*, Separately Regulated *Signs* Uses, Theater *Marquees* [No change in text.]		[No change in text.]														

Footnotes to Table 131-05B

[1] through [11] [No change in text.]

[12] *Development* of a *superstore* and *development* that would result in a *superstore* is subject to Section 143.0365.

Section 5. That Chapter 13, Article 1, Division 6 of the San Diego Municipal Code is amended by amending section 131.0622, Table 131-06B to read as follows:

§131.0622 Use Regulations Table for Industrial Zones

The uses allowed in the industrial zones are shown in Table 131-06B.

Legend for Table 131-06B [No change in text.]

Table 131-06B
Use Regulations Table for Industrial Zones

Use Categories/Subcategories [See section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	**Zone Designator**	**Zones**							
	1st & 2nd >>	IP-		IL-			IH-		IS-
	3rd >>	1-	2-	1-	2-	3-	1-	2-	1-
	4th >>	1	1	1	1	1	1	1	1
Open Space through Institutional, Separately Regulated Institutional Uses, *Wireless communication facility: Wireless communication facility* outside the *public right-of-way* [No change in text.]		[No change in text.]							
Retail Sales									
Building Supplies & Equipment		-		-	P(6, 15, 16)	P(15, 16)	P(15, 16)	-	P(6, 15, 16)	P(15, 16)
Food, Beverages and Groceries		-		-	-	-	P(15, 16)	-	-	-
Consumer Goods, Furniture, Appliances, Equipment		-		-	-	P(2, 15, 16)	P(15, 16)	-	-	P(3, 15, 16)
Pets & Pet Supplies		-		-	-	-	P(15, 16)	-	-	-
Sundries, Pharmaceuticals, & Convenience Sales		-		P(5, 15, 16)	P(5, , 15, 16)	P(5, 15, 16)	P(15)	P(5, 15, 16)	P(5, 15, 16)	P(4, 15, 16)
Wearing Apparel & Accessories		-		-	-	P(3, 15, 16)	P(3, 15, 16)	-	-	P(3, 15, 16)
Separately Regulated Retail Sales Uses									
Agriculture Related Supplies & Equipment		-		-	-	P	P	P	P	P
Alcoholic Beverage Outlets		-		-	-	-	L	-	-	-
Plant Nurseries		-		-	-	-	P	-	P	P
Swap Meets & Other Large Outdoor Retail Facilities		-		-	C	C	C	C	C	C

Use Categories/Subcategories [See section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	**Zone Designator**	**Zones**							
	1st & 2nd >>	IP-		IL-			IH-		IS-
	3rd >>	1-	2-	1-	2-	3-	1-	2-	1-
	4th >>	1	1	1	1	1	1	1	1
Commercial Services through *Signs*, Separately Regulated *Signs* Uses, Theater *Marquees* [No change in text.]		[No change in text.]							

Footnotes for Table 131-06B

[1] through [15] [No change in text.]

[16] *Development* of a *superstore* and *development* that would result in a *superstore* is subject to Section 143.0365.

Section 6. That Chapter 14, Article 3, Division 3 of the San Diego Municipal Code is amended by amending section 143.0302, Table 143-03A and by adding section 143.0365 to read as follows:

§143.0302 When Supplemental Neighborhood Development Permit and Site Development Permit Regulations Apply

This division applies to any *development* proposal for which a Neighborhood Development Permit or Site Development Permit is required as described in Sections 126.0402 and 126.0502, in accordance with Table 143-03A.

Table 143-03A
Supplemental Neighborhood Development Permit or Site Development Permit Regulations Applicability

Type of *Development* Proposal	**Applicable Sections**	**Required *Development* Permit/Decision Process**
Affordable/In-Fill Housing Projects with Deviations	[No change in text.]	[No change in text.]

Development of a *large retail establishment* of 50,000 or more square feet *gross floor area* in all commercial and industrial zones, and in all planned districts, except the Centre City Planned District	[No change in text.]	[No change in text.]
Development of a *large retail establishment* of 100,000 or more square feet *gross floor area* in all commercial and industrial zones, and in all planned districts	[No change in text.]	[No change in text.]
Site Containing *Environmentally Sensitive Lands*	[No change in text.]	[No change in text.]
Site Containing *Historical Resources*	[No change in text.]	[No change in text.]
Fences or *Retaining Walls* Exceeding the Permitted Height	[No change in text.]	[No change in text.]
Relocated Building Onto a Site With an Existing Building	[No change in text.]	[No change in text.]
Site with *Previously Conforming* Conditions	[No change in text.]	[No change in text.]
Nonresidental *Development* Exceeding the Maximum Permitted Parking	[No change in text.]	[No change in text.]
Shared Parking for Uses Not Listed in Section 142.0545(c)	[No change in text.]	[No change in text.]
Commercial *Development* With Tandem Parking	[No change in text.]	[No change in text.]
Previously Conforming Parking for a discontinued use	[No change in text.]	[No change in text.]
Mobilehome Parks in RM Zones	[No change in text.]	[No change in text.]
Mobilehome Parks in RS, RX Zones	[No change in text.]	[No change in text.]
Discontinuance of *Mobilehome Park*	[No change in text.]	[No change in text.]

Multiple Dwelling Unit *Development* that Varies from Minimum Parking Requirements	[No change in text.]	[No change in text.]
Nonresidental *Development* (With TDM Plan) that Varies from Minimum Parking Requirements	[No change in text.]	[No change in text.]
Community Plan Implementation Overlay Zone	[No change in text.]	[No change in text.]
Mission Trails Design District	[No change in text.]	[No change in text.]
Development Within the Urban Village Overlay Zone	[No change in text.]	[No change in text.]
Public improvements on More Than 3,000 Feet of Frontage or Where City Standards Do Not Apply	[No change in text.]	[No change in text.]
Manufactured Slopes in Excess of 25% Gradient and 25 Feet in Height	[No change in text.]	[No change in text.]
Affordable Housing in RE, RS, RX, RT, AR Zones	[No change in text.]	[No change in text.]
Condominium Conversions with Deviations from Development Regulations	[No change in text.]	[No change in text.]
Multiple Dwelling Unit Development in RM Zones Involving *Lot* Consolidation and Exceeds Number of Units Indicated in Table 126-05A	[No change in text.]	[No change in text.]
Clairemont Mesa Height Limit Overlay Zone	[No change in text.]	[No change in text.]
Development of a *superstore*	143.0303, 143.0305, 143.0365, 143.0375	SDP/Process Four

Legend to Table 143-03A [No change in text.]

§143.0365 Supplemental Site Development Permit Regulations for Superstores

The following supplemental regulations apply to *development* of *superstores*. The purpose of these regulations is to provide standards for the evaluation of *superstores*. The intent of these regulations is to preserve neighborhood and small businesses that are easily accessible to residents and to prevent urban and suburban decay that could result from any adverse impacts to neighborhood and small businesses, as well as to prevent traffic congestion and air quality pollution.

(a) Economic and Community Impact Report Requirement. As part of an application for a Site Development Permit for the *development* of a *superstore*, as required by Section 126.0502(d)(10), an *applicant* shall submit an economic and community impact analysis report, prepared at its expense by a consultant approved by the City Manager. The economic and community impact analysis report shall include, at a minimum:

(1) An assessment of the extent to which the proposed *superstore* will capture a share of retail sales in the *economic and community impact area.*

(2) An assessment of how the construction and operation of the proposed *superstore* will affect the supply and demand for retail space in the *economic and community impact area.*

(3) An assessment of the number of persons employed in existing retail stores in the *economic and community impact area*, an estimate of the number of persons who will likely be employed by the proposed *superstore*, and an analysis of whether the proposed *superstore* will

result in a net increase or decrease in employment in the *economic and community impact area.*

(4) A projection of the costs of public services and public facilities resulting from the construction and operation of the proposed *superstore* and a description of how those services and facilities will be financed.

(5) A projection of the public revenues resulting from the construction and operation of the proposed *superstore.*

(6) An assessment of the effect that the construction and operation of the proposed *superstore* will have on retail operations, including grocery or retail shopping centers, in the same *economic and community impact area*, including the potential for blight resulting from retail business closures.

(7) An assessment of how the *development* of the proposed *superstore* conforms to the Guiding Principles of the General Plan, and the goals and policies in the City's General Plan Economic Prosperity Element.

(8) An assessment of the effect that the construction and operation of the proposed *superstore* will have on average total vehicle miles travelled by retail customers in the same *economic and community impact area.*

(9) An assessment of whether there will be any restrictions on the subsequent use of the proposed *superstore* project site, including, but

not limited to, any lease provisions that would require the project site to remain vacant for any amount of time.

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

(11) An assessment of whether the proposed *superstore* would result in the destruction or demolition of park and other open green space, playground, childcare facility, or community center.

(12) An assessment of whether the proposed *superstore* would result in any other adverse or positive impacts to neighborhood and small businesses.

(13) An assessment of whether any measures are available which would mitigate any materially adverse impacts of the proposed *superstore* to neighborhood and small businesses.

(b) Expansion or Enlargement or Change in Use of Existing Structures. Proposed expansion or enlargement of a *previously conforming superstore* is subject to Section 127.0106(f) and the supplemental regulations in Sections 143.0365 and 142.0410. Proposed expansion, enlargement, or modification to a *previously conforming large retail establishment* that would result in a *superstore* is subject to Section 127.0106(g) and the supplemental regulations in Sections 143.0365 and 142.0410.

(c) Future Application Restriction. If an application for a Site Development Permit for the *development* of a *superstore* is denied, the *applicant* shall not submit an application for the same or substantially same *development* for one year after the date of the denial.

Section 7. That a full reading of this ordinance is dispensed with prior to its passage, a written or printed copy having been made available to the City Council and the public prior to the day of its passage.

Section 8. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage, except that the provisions of this ordinance applicable inside the Coastal Overlay Zone, which are subject to California Coastal Commission jurisdiction as a City of San Diego Local Coastal Program amendment, shall not take effect until the date the California Coastal Commission unconditionally certifies those provisions as a local coastal program amendment.

Section 9. That City departments are instructed not to issue any permit for development that is inconsistent with this ordinance unless application for such permit was submitted and deemed complete by the Mayor prior to the date this ordinance becomes effective.

APPROVED: JAN I. GOLDSMITH, City Attorney

By _____
Heidi K. Vonblum
Deputy City Attorney

HKV:cw
08/27/10
Or.Dept:Council District 3
PL#2010-00533

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of _____.

ELIZABETH S. MALAND
City Clerk

By_____
Deputy City Clerk

Approved: _____ _____
(date) JERRY SANDERS, Mayor

Vetoed: _____ _____
(date) JERRY SANDERS, Mayor

STRIKEOUT ORDINANCE

OLD LANGUAGE: ~~STRIKEOUT~~
NEW LANGUAGE: UNDERLINE

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE AMENDING CHAPTER 11, ARTICLE 3, DIVISION 1 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTION 113.0103; AMENDING CHAPTER 12, ARTICLE 6, DIVISION 5 BY AMENDING SECTIONS 126.0502 AND 126.0504; AMENDING CHAPTER 12, ARTICLE 7, DIVISION 1 BY AMENDING SECTION 127.0103, TABLE 127-01A, AND SECTION 127.0106; AMENDING CHAPTER 13, ARTICLE 1, DIVISION 5 BY AMENDING SECTION 131.0522, TABLE 131-05B; AMENDING CHAPTER 13, ARTICLE 1, DIVISION 6, BY AMENDING SECTION 131.0622, TABLE 131-06B; AMENDING CHAPTER 14, ARTICLE 3, DIVISION 3 BY AMENDING SECTION 143.0302, TABLE 143-03A, AND ADDING SECTION 143.0365, ALL PERTAINING TO SUPERSTORES.

§113.0103 Definitions

Abutting property through *Dwelling unit, single* [No change in text.]

Economic and community impact area means a five mile radius surrounding the proposed location of a *superstore.*

Encroachment through *Multiple dwelling unit* [No change in text.]

Nontaxable merchandise means products, commodities, or items that are bought and sold and that are not subject to California state sales tax.

Off-street parking space through *Rooming house* [No change in text.]

Sales floor area means the interior building space of a *superstore* devoted to the sale of merchandise, but excludes restrooms, office space, storage space, automobile service areas, or open-air garden sales space.

School through *Substantial improvement* [No change in text.]

Superstore means a single tenant retail establishment that exceeds 90,000 square feet *gross floor area* or a multiple tenant retail establishment that exceeds 90,000 square feet *gross floor area*, where the multiple tenants share common check stands, a controlling interest, storage areas, warehouses, or distribution facilities, that devotes more than 10 percent of the *sales floor area* to the sale of *nontaxable merchandise*. *Superstore* does not include wholesale clubs or other discount retail establishments that sell primarily bulk merchandise and that charge membership dues or otherwise restrict merchandise sales to customers paying a periodic assessment fee.

Surface mining through *Yard* [No change in text.]

§126.0502 When a Site Development Permit is Required

(a) through (c) [No change in text.]

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

(1) through (9) [No change in text.]

(10) *Development* of a *superstore* in all commercial and industrial zones, and in all planned districts.

(e) [No change in text.]

§126.0504 Findings for Site Development Permit Approval

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

(a) through (o) [No change in text.]

(p) Supplemental Findings – *Superstores*

A Site Development Permit required in accordance with Section 143.0365 because of potential impacts to the surrounding neighborhood, may be approved or conditionally approved only if the decision maker makes the following supplemental *findings* in addition to the *findings* in Section 126.0504(a):

(1) The *superstore* will not increase the potential for neighborhood blight; and

(2) The *superstore* will not adversely affect the City's Business Improvement Districts, Redevelopment Project Areas, or Micro Business Districts; and

(3) The *superstore* will not adversely affect the City's neighborhood and small businesses; and

(4) The *superstore* will not adversely affect the character of the surrounding neighborhood.

§127.0103 Review Process for Previously Conforming Premises and Uses

The required review process for different types of proposed *development* or activity, based on the *previously conforming* category, such as existing *structural envelope*, *density*, and uses are shown in Table 127-01A through 127-01C. If the proposed

development includes more than one *previously conforming* category, all corresponding regulations, as described in Sections 127.0104 through 127.0108 apply.

(a) *Previously Conforming Structural Envelope*

Table 127-01A
Review Process for Previously Conforming Structural Envelope

Type of *Development* Proposal	Applicable Sections	Required Development Permit/Decision Process
Maintenance, repair or alteration (less than or equal to 50% of *market value* of entire *structure* or improvement) that does not expand the *structural envelope*.	[No change in text.]	[No change in text.]
Maintenance, repair or alteration (greater than 50% of *market value* of entire *structure* or improvement) that does not expand the *structural envelope*.	[No change in text.]	[No change in text.]
Reconstruction (following fire, natural disaster, act of the public enemy) for residential *structures* or for nonresidential *structures* when the cost of reconstruction is less than 50 percent of *market value*.	[No change in text.]	[No change in text.]
Reconstruction (following fire, natural disaster, act of the public enemy) for nonresidential *structures* when the cost of reconstruction is greater than 50 percent of *market value*.	[No change in text.]	[No change in text.]
Expansion/enlargement, where new construction conforms with all current *development* regulations.	127.0106(a), (b), ~~and~~ (e), (f) and (g)	CP/Process 1 SDP/Process 4 for *superstores*
Expansion/enlargement where new construction requests a reduction of up to 20% from required *setbacks*.	127.0106(c), (f) and (g)	NDP/Process 2 SDP/Process 4 for *superstores*

Legend to Table 127-01A [No change in text.]

(b) [No change in text.]

(c) [No change in text.]

§127.0106 Expansion or Enlargement of Previously Conforming Structures

(a) through (e) [No change in text.]

(f) Proposed expansion or enlargement of a *previously conforming superstore* is subject to a Site Development Permit in accordance with Section 126.0502(d) and the applicable supplemental regulations in Section 143.0365(b).

(g) Proposed expansion or enlargement of a *previously conforming large retail establishment* that would result in a *superstore* is subject to a Site Development Permit in accordance with Section 126.0502(d) and the applicable supplemental regulations in Section 143.0365(b).

§131.0522 Use Regulations Table of Commercial Zones

The uses allowed in the commercial zones are shown in Table 131-05B.

Legend for Table 131-05B [No change in text.]

Table 131-05B
Use Regulations Table for Commercial Zones

Use Categories/Subcategories [See section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	**Zone Designator**	**Zones**									
	1st & 2nd >>	CN[1]-			CR-		CO-		CV-		CP-
	3rd >>	1-			1-	2-	1-		1-		1-
	4th >>	1	2	3	1	1	1	2	1	2	1
Open Space through Institutional, Separately Regulated Institutional Uses, *Wireless communication facility: Wireless communication facility* outside the *public right-of-way* [No change in text.]		[No change in text.]									
Retail Sales											
Building Supplies & Equipment		P[11,12]			P[11,12]	P[11,12]	-		-		-
Food, Beverages and Groceries		P[11,12]			P[11,12]	P[11,12]	P[11,12]		P[11,12]		-
Consumer Goods, Furniture, Appliances, Equipment		P[11,12]			P[11,12]	P[11,12]	P[3,11,12]		-		-
Pets & Pet Supplies		P[11,12]			P[11,12]	P[11,12]	-		-		-
Sundries, Pharmaceutical, & Convenience Sales		P[11,12]			P[11,12]	P[11,12]	P[11,12]		P[11,12]		-
Wearing Apparel & Accessories		P[11,12]			P[11,12]	P[11,12]	-		P[11,12]		-
Separately Regulated Retail Sales Uses											
Agriculture Related Supplies & Equipment		-			P	P	-		-		-
Alcoholic Beverage Outlets		L			L	L	L		L		-
Plant Nurseries		P			P	P	-		-		-
Swap Meets & Other Large Outdoor Retail Facilities		-			C	C	-		C[10]		-
Commercial Services through *Signs*, Separately Regulated *Signs* Uses, Theater *Marquees* [No change in text.]		[No change in text.]									

Use Categories/Subcategories [See section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	**Zone Designator**	**Zones**														
	1st & 2nd >>	CC-														
	3rd >>	1-			2-			3-		4-				5-		
	4th >>	1	2	3	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5
Open Space through Institutional, Separately Regulated Institutional Uses, *Wireless communication facility: Wireless communication facility* outside the *public right-of-way* [No change in text.]	[No change in text.]															
Retail Sales																
Building Supplies & Equipment	$P^{(11, 12)}$			$P^{(11, 12)}$			-			$P^{(11, 12)}$					$P^{(11, 12)}$				
Food, Beverages and Groceries	$P^{(11, 12)}$			$P^{(11, 12)}$			$P^{(11, 12)}$			$P^{(11, 12)}$					$P^{(11, 12)}$				
Consumer Goods, Furniture, Appliances, Equipment	$P^{(11, 12)}$			$P^{(11, 12)}$			$P^{(11, 12)}$			$P^{(11, 12)}$					$P^{(11, 12)}$				
Pets & Pet Supplies	$P^{(11, 12)}$			$P^{(11, 12)}$			$P^{(11, 12)}$			$P^{(11, 12)}$					$P^{(11, 12)}$				
Sundries, Pharmaceutical, & Convenience Sales	$P^{(11, 12)}$			$P^{(11, 12)}$			$P^{(11, 12)}$			$P^{(11, 12)}$					$P^{(11, 12)}$				
Wearing Apparel & Accessories	$P^{(11, 12)}$			$P^{(11, 12)}$			$P^{(11, 12)}$			$P^{(11, 12)}$					$P^{(11, 12)}$				
Separately Regulated Retail Sales Uses																
Agriculture Related Supplies & Equipment	-			-			-			P					P				
Alcoholic Beverage Outlets	L			L			L			L					L				
Plant Nurseries	P			P			P			P					P				
Swap Meets & Other Large Outdoor Retail Facilities	-			-			-			-					C				
Commercial Services through *Signs*, Separately Regulated *Signs* Uses, Theater *Marquees* [No change in text.]	[No change in text.]															

Footnotes to Table 131-05B

[1] through [11] [No change in text.]

[12] *Development* of a *superstore* and *development* that would result in a *superstore* is subject to Section 143.0365.

§131.0622 Use Regulations Table for Industrial Zones

The uses allowed in the industrial zones are shown in Table 131-06B.

Legend for Table 131-06B [No change in text.]

Table 131-06B
Use Regulations Table for Industrial Zones

Use Categories/ Subcategories [See section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	**Zone Designator**	**Zones**							
	1st & 2nd>>	IP-		IL-			IH-		IS-
	3rd >>	1-	2-	1-	2-	3-	1-	2-	1-
	4th >>	1	1	1	1	1	1	1	1
Open Space through Institutional, Separately Regulated Institutional Uses, *Wireless communication facility: Wireless communication facility* outside the *public right-of-way* [No change in text.]		[No change in text.]							
Retail Sales									
Building Supplies & Equipment		-	-	P(6, 15, 16)	P(15, 16)	P(15, 16)	-	P(6, 15, 16)	P(15, 16)
Food, Beverages and Groceries		-	-	-	-	P(15, 16)	-	-	-
Consumer Goods, Furniture, Appliances, Equipment		-	-	-	P(2, 15, 16)	P(15, 16)	-	-	P(3, 15, 16)
Pets & Pet Supplies		-	-	-	-	P(15, 16)	-	-	-
Sundries, Pharmaceuticals, & Convenience Sales		-	P(5, 15, 16)	P(5, 15, 16)	P(5, 15, 16)	P(15)	P(5, 15, 16)	P(5, 15, 16)	P(4, 15, 16)
Wearing Apparel & Accessories		-	-	-	P(3, 15, 16)	P(3, 15, 16)	-	-	P(3, 15, 16)
Separately Regulated Retail Sales Uses									
Agriculture Related Supplies & Equipment		-	-	-	P	P	P	P	P
Alcoholic Beverage Outlets		-	-	-	-	L	-	-	-
Plant Nurseries		-	-	-	-	P	-	P	P
Swap Meets & Other Large Outdoor Retail Facilities		-	-	C	C	C	C	C	C
Commercial Services through *Signs*, Separately Regulated *Signs* Uses, Theater *Marquees* [No change in text.]		[No change in text.]							

Footnotes for Table 131-06B

[1] through [15] [No change in text.]

[16] *Development* of a *superstore* and *development* that would result in a *superstore* is subject to Section 143.0365.

§143.0302 When Supplemental Neighborhood Development Permit and Site Development Permit Regulations Apply

This division applies to any *development* proposal for which a Neighborhood Development Permit or Site Development Permit is required as described in Sections 126.0402 and 126.0502, in accordance with Table 143-03A.

Table 143-03A
Supplemental Neighborhood Development Permit or Site Development Permit Regulations Applicability

Type of *Development* Proposal	**Applicable Sections**	**Required *Development* Permit/Decision Process**
Affordable/In-Fill Housing Projects with Deviations	[No change in text.]	[No change in text.]
Development of a *large retail establishment* of 50,000 or more square feet *gross floor area* in all commercial and industrial zones, and in all planned districts, except the Centre City Planned District	[No change in text.]	[No change in text.]
Development of a *large retail establishment* of 100,000 or more square feet *gross floor area* in all commercial and industrial zones, and in all planned districts	[No change in text.]	[No change in text.]
Site Containing *Environmentally Sensitive Lands*	[No change in text.]	[No change in text.]
Site Containing *Historical Resources*	[No change in text.]	[No change in text.]
Fences or *Retaining Walls* Exceeding the Permitted Height	[No change in text.]	[No change in text.]

Relocated Building Onto a Site With an Existing Building	[No change in text.]	[No change in text.]
Site with *Previously Conforming* Conditions	[No change in text.]	[No change in text.]
Nonresidental *Development* Exceeding the Maximum Permitted Parking	[No change in text.]	[No change in text.]
Shared Parking for Uses Not Listed in Section 142.0545(c)	[No change in text.]	[No change in text.]
Commercial *Development* With Tandem Parking	[No change in text.]	[No change in text.]
Previously Conforming Parking for a discontinued use	[No change in text.]	[No change in text.]
Mobilehome Parks in RM Zones	[No change in text.]	[No change in text.]
Mobilehome Parks in RS, RX Zones	[No change in text.]	[No change in text.]
Discontinuance of *Mobilehome Park*	[No change in text.]	[No change in text.]
Multiple Dwelling Unit *Development* that Varies from Minimum Parking Requirements	[No change in text.]	[No change in text.]
Nonresidental *Development* (With TDM Plan) that Varies from Minimum Parking Requirements	[No change in text.]	[No change in text.]
Community Plan Implementation Overlay Zone	[No change in text.]	[No change in text.]
Mission Trails Design District	[No change in text.]	[No change in text.]
Development Within the Urban Village Overlay Zone	[No change in text.]	[No change in text.]
Public improvements on More Than 3,000 Feet of Frontage or Where City Standards Do Not Apply	[No change in text.]	[No change in text.]
Manufactured Slopes in Excess of 25% Gradient and 25 Feet in Height	[No change in text.]	[No change in text.]

Affordable Housing in RE, RS, RX, RT, AR Zones	[No change in text.]	[No change in text.]
Condominium Conversions with Deviations from Development Regulations	[No change in text.]	[No change in text.]
Multiple Dwelling Unit Development in RM Zones Involving *Lot* Consolidation and Exceeds Number of Units Indicated in Table 126-05A	[No change in text.]	[No change in text.]
Clairemont Mesa Height Limit Overlay Zone	[No change in text.]	[No change in text.]
Development of a *superstore*	143.0303, 143.0305, 143.0365, 143.0375	SDP/Process Four

Legend to Table 143-03A [No change in text.]

§143.0365 Supplemental Site Development Permit Regulations for Superstores

The following supplemental regulations apply to *development* of *superstores*. The purpose of these regulations is to provide standards for the evaluation of *superstores*. The intent of these regulations is to preserve neighborhood and small businesses that are easily accessible to residents and to prevent urban and suburban decay that could result from any adverse impacts to neighborhood and small businesses, as well as to prevent traffic congestion and air quality pollution.

(a) Economic and Community Impact Report Requirement. As part of an application for a Site Development Permit for the *development* of a *superstore*, as required by Section 126.0502(d)(10), an *applicant* shall submit an economic and community impact analysis report, prepared at its expense by a consultant approved by the City Manager. The economic and community impact analysis report shall include, at a minimum:

(1) An assessment of the extent to which the proposed *superstore* will capture a share of retail sales in the *economic and community impact area.*

(2) An assessment of how the construction and operation of the proposed *superstore* will affect the supply and demand for retail space in the *economic and community impact area.*

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

(4) A projection of the costs of public services and public facilities resulting from the construction and operation of the proposed *superstore* and a description of how those services and facilities will be financed.

(5) A projection of the public revenues resulting from the construction and operation of the proposed *superstore.*

(6) An assessment of the effect that the construction and operation of the proposed *superstore* will have on retail operations, including grocery or retail shopping centers, in the same *economic and community impact area*, including the potential for blight resulting from retail business closures.

(7) An assessment of how the *development* of the proposed *superstore* conforms to the Guiding Principles of the General Plan, and the goals and policies in the City's General Plan Economic Prosperity Element.

(8) An assessment of the effect that the construction and operation of the proposed *superstore* will have on average total vehicle miles travelled by retail customers in the same *economic and community impact area.*

(9) An assessment of whether there will be any restrictions on the subsequent use of the proposed *superstore* project site, including, but not limited to, any lease provisions that would require the project site to remain vacant for any amount of time.

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

(11) An assessment of whether the proposed *superstore* would result in the destruction or demolition of park and other open green space, playground, childcare facility, or community center.

(12) An assessment of whether the proposed *superstore* would result in any other adverse or positive impacts to neighborhood and small businesses.

(13) An assessment of whether any measures are available which would mitigate any materially adverse impacts of the proposed *superstore* to neighborhood and small businesses.

(b) Expansion or Enlargement or Change in Use of Existing Structures. Proposed expansion or enlargement of a *previously conforming superstore* is subject to Section 127.0106(f) and the supplemental regulations in Sections 143.0365 and 142.0410. Proposed expansion, enlargement, or modification to a *previously conforming large retail establishment* that would result in a *superstore* is subject to Section 127.0106(g) and the supplemental regulations in Sections 143.0365 and 142.0410.

(c) Future Application Restriction. If an application for a Site Development Permit for the *development* of a *superstore* is denied, the *applicant* shall not submit an application for the same or substantially same *development* for one year after the date of the denial.

HKV:cw
08/24/10
Or.Dept: Council District 3
PL#2010-00533