



THE CITY OF
SAN DIEGO
AMERICA'S FINEST CITY

OFFICE OF
THE CITY COUNCIL

REPORT TO THE COMMUNITY PLANNERS COMMITTEE

DATE ISSUED: September 21, 2010

SUBJECT: ORDINANCE TO PROTECT SMALL AND NEIGHBORHOOD
BUSINESSES - AMENDMENTS TO THE LAND DEVELOPMENT
CODE TO REQUIRE A SITE DEVELOPMENT PERMIT WITH
ADDITIONAL REQUIRED FINDINGS AND AN ECONOMIC AND
COMMUNITY IMPACT ANALYSIS REPORT FOR SUPERSTORE
DEVELOPMENT. PROCESS 5

REFERENCE: City Attorney Report to the Mayor and Council regarding Proposed
Amendments to the Land Development Code to Require a Site
Development Permit and an Economic and Community Impact Analysis
for Superstore Development

APPLICANT: City Council Committee on Land Use and Housing

SUMMARY:

Issue: Should the Community Planners Committee recommend approval of the proposed amendments to the Land Development Code to require a Site Development Permit with additional required findings and an Economic and Community Impact Analysis Report for superstore development?

Staff Recommendation: Recommend approval of the proposed amendments.

Environmental Review: The adoption of an ordinance in which the term superstore is defined, and the requirement for a Site Development Permit (Process Level Four) for a superstore is established (with additional supplemental findings and the requirement for an Impact Analysis Report) is not subject to CEQA pursuant to CEQA Guidelines Section 15060(c)(2) because it will not result in a direct or reasonably foreseeable indirect physical change in the environment. The ordinance would neither allow nor

prohibit any additional development to occur. Rather, with respect to superstore development, it would impose an additional requirement that the impacts to the surrounding neighborhood be specifically analyzed in an economic and community impact analysis report and would require the decision maker to make additional findings before approving a site development permit for a superstore development. Subsequent development projects subject to the ordinance, if adopted, would be discretionary and subject to CEQA review.

BACKGROUND: On May 26, 2010, Councilmember Todd 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. The memo noted that “neighborhoods throughout the City of San Diego rely on healthy commercial districts to add vibrancy and improve the quality of life in the community. The importance of these districts, including small businesses, is recognized by the City throughout the General Plan and related planning documents, and the City and Redevelopment Agency have directed significant resources to renew and revitalize many of these commercial areas.” The memo expressed a concern that “supercenters have been shown to undermine the usability of local commercial centers, generate increased levels of traffic, and increase the potential for neighborhood blight.”

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, 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 the City Attorney’s office to provide a legal analysis and draft ordinance for consideration.

The City Attorney’s office has prepared an ordinance (the Ordinance) and provided the requested legal analysis. The purpose of the Ordinance is 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. It is also 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.

DISCUSSION:

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.”

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.

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.

Based on information and reports reviewed by Committee staff, Committee staff believes the ordinance would assist in preserving the economic viability of the City's small and neighborhood businesses, which could be negatively impacted by superstores that could draw sales away from the traditional supermarkets that anchor neighborhood-serving commercial centers as well as 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. Committee staff notes that superstores have a greater likelihood of threatening the viability of existing neighborhood stores than wholesale membership stores, and that the ordinance seeks to protect small and neighborhood 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.

CONCLUSION:

The Ordinance fulfills the direction given by the Land Use and Housing Committee. Therefore, Committee staff recommends that the Community Planners Committee recommend approval of the proposed ordinance. In addition, the City Attorney's office has analyzed the Ordinance and determined that it would likely withstand a legal challenge.

Respectfully Submitted

A handwritten signature in black ink, appearing to read "Stephen Hill", is written over a horizontal line.

Stephen Hill

Land Use and Housing Committee Consultant

Attachments:

City Attorney Report to Council Mayor and City Council

Draft Ordinance

Councilmember Gloria 5/26/10 Memo