


Approved as to Form
RICHARD E. WINNIE, County Counsel

By 

**AN ORDINANCE AMENDING TITLE 17 OF THE ORDINANCE CODE OF THE
COUNTY OF ALAMEDA RELATING TO LARGE-SCALE RETAIL STORES
ORDINANCE NO. 0-2006-18**

The Board of Supervisors of the County of Alameda ordains as follows:

SECTION I

Purpose and Intent

It is the purpose and intent of the Board of Supervisors to limit the negative impacts of large-scale retail "superstores" on traffic circulation, land use patterns, and the economic and social health of the community by making all such uses subject to a conditional use permit in specified zoning districts, and by requiring analysis and consideration of the economic impacts of such uses prior to their approval by the Planning Commission and Board of Supervisors.

SECTION II

Amendment of Ordinance Code

Chapter 17.04 of Title 17 of the Ordinance Code of the County of Alameda is amended by adding the following definitions to Section 17.04.010:

"Superstore" means a single business establishment engaged in retail sales to the general public whose total sales floor area exceeds 100,000 square feet and that devotes more than 10 percent of sales floor area to the sale of non-taxable merchandise. This definition excludes 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.

"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 spaces. 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.

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

Chapter 17.38 of Title 17 of the Ordinance Code of the County of Alameda is amended by adding the following conditional use to Section 17.38.025 [C-1 District reviewed by the Planning Commission]:

- C. Superstore.

Chapter 17.40 of Title 17 of the Ordinance Code of the County of Alameda is amended by adding the following conditional use to Section 17.40.035 [C-2 District reviewed by the Planning Commission]:

- C. Superstore.

Chapter 17.54 of Title 17 of the Ordinance Code of the County of Alameda is amended by adding Section 17.54.132:

Section 17.54.132 Conditional Uses -- Superstores

A. Additional Procedures. An applicant for a conditional use permit for a superstore shall follow the procedures for conditional use permits otherwise provided under this Chapter. In addition, the applicant shall submit to the Planning Director an Economic Impact Analysis prepared by a consultant recommended by the Planning Director and approved by the Planning Commission, and paid for in full by the applicant. The consultant shall be qualified by education, training, and experience to conduct economic and fiscal impact analyses. The Analysis shall include, in addition to any other information requested by the Planning Director and/or Planning Commission, all of the following:

- (i) An assessment of the extent to which the proposed superstore will capture a share of retail sales in the market area.
- (ii) An assessment of how the construction and operation of the proposed superstore will affect the supply and demand for retail space in the market area.
- (iii) An assessment of the number of persons employed in existing retail stores in the market 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 market area.
- (iv) An assessment of how the construction and operation of the proposed superstore will affect wages and benefits, community

income levels in the market area.

- (v) A projection of the costs of public services and public facilities resulting from the construction and operation of the proposed superstore and the incidence of those costs.
- (vi) A projection of the public revenues resulting from the construction and operation of the proposed superstore and the incidence of those revenues.
- (vii) An assessment of the effect that the construction and operation of the proposed superstore will have on retail operations in the same market area, including the potential for blight resulting from retail business closures.
- (viii) An assessment of the effect that the construction and operation of the superstore will have on the ability of the County to implement the goals contained in its general plan.
- (ix) An assessment of the effect that the construction and operation of the proposed superstore will have on average total vehicle miles traveled by retail customers in the same market area.
- (x) An assessment of the potential for long-term vacancy of the property on which the superstore is proposed in the event the superstore vacates the premises.

As used in this section "market area" means a geographical area that is described in independent and recognized commercial trade literature, recognized and established business or manufacturing policies or practices, or publications of recognized independent research organizations, as being an area that is large enough to support the location of the specific superstore proposed.

B. Public Review. Upon receipt of a completed Economic Impact Analysis as described in paragraph A of this section, the Planning Director shall provide public notice of its completion. The Planning Director shall make the completed Economic Impact Analysis available for public review for a period of no less than thirty (30) days prior to any public hearing on the application for a conditional use permit for the superstore.

C. Additional Findings. In addition to any other findings required for a Conditional Use Permit provided under this Chapter, a Conditional Use Permit for a superstore shall not be approved unless the Planning Commission, or the Board of Supervisors on appeal, finds that the superstore will not have a net adverse economic impact within the market area. Such finding shall be based on the Economic Impact Analysis described in paragraph A of this section, any

public comments on the Economic Impact Analysis received during the public review period specified in paragraph B of this section, and any other information submitted to and received by the Planning Director, Planning Commission, and/or Board of Supervisors prior to the close of any public hearing(s) on the application.

SECTION III

This ordinance shall take effect and be in force thirty (30) days from and after the date of passage and before the expiration of fifteen (15) days after its passage it shall be published once with the names of the members voting for and against the same in the Inter-City Express, a newspaper published in the County of Alameda.

SECTION II

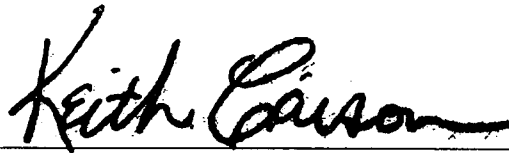
This Ordinance shall take effect and be in force thirty (30) Days from and after the date of its passage and before the expiration of fifteen (15) days after its passage it shall be published once with the names of the members voting for and against the same in THE INTER-CITY EXPRESS, a newspaper published in the said County of Alameda.

Adopted by the Board of Supervisors of the County of Alameda, State of California, on April 6, 2006, by the following called vote:

AYES: Supervisors Lai-Bitker, Miley, Steele and President Carson - 4

NOES: None

EXCUSED: Supervisor Haggerty - 1



President of the Board of Supervisors of the
County of Alameda, State of California

ATTEST: CRYSTAL H. GRAFF, Clerk
of the Board of Supervisors of the County of
Alameda, State of California



Approved as to form, RICHARD E. WINNIE
County Counsel

O-2006-18
Agenda 4/6/06
Item 18
F20646

EXHIBIT A – HISTORY OF CONSIDERATION OF SUPERSTORE ORDINANCE

First Draft: The Alameda County Board of Supervisors adopted an ordinance in December 2003 regulating the development of large-scale retail stores. Large scale retail stores were defined as a single business establishment with a total sales floor area exceeding 100,000 square feet, excluding warehouse clubs and bulk sales where a membership fee was charged. Sales floor was defined to include the interior area devoted to the sale of merchandise, and non-taxable merchandise included all products, commodities or items not subject to California state sales tax.

The ordinance was framed as an amendment to Chapter 3 of the General Ordinance Code (Business Licenses and Regulations), and provided that “No large-scale retail store shall devote more than 10 percent of its total sales floor area to the sale of non-taxable merchandise.” The amendment was found to be exempt from review under the California Environmental Quality Act (CEQA). The ordinance would only be effective within the unincorporated area.

Complaints were registered by Wal-Mart Stores, Inc. and by its representatives in advance of the Board’s adoption of the ordinance, and a lawsuit was filed against the County to challenge the ordinance after its adoption. Included among the allegations was a challenge to the CEQA determination, and a challenge to the process of adopting the ordinance because it was not considered first by the Planning Commission and was not codified as a zoning regulation.

In March 2004 the Board of Supervisors considered the lawsuit and the advice of County Counsel, and found that, while the County had legal grounds to defend itself against the lawsuit, the time and expense of the litigation could be avoided by repealing the ordinance and referring the matter to the Planning Commission, thereby also providing additional opportunity for public input.

Second Draft: A revised ordinance was drafted and presented to the Planning Commission in May 2005. That version incorporated several modifications from the prior version, including: it would be codified in Chapter 17 (Zoning) of the General Ordinance Code as a land use regulation in the zoning code; require a Conditional Use Permit (CUP) approved by the Planning Commission for development of large-scale retail stores in the H-1, C-1, C-2, M-1, and M-2 zoning districts, and *prohibit* any large-scale retail store from devoting more than 10 percent of its total sales floor area to the sale of non-taxable merchandise.

The Planning Commission heard testimony in favor and against the ordinance at the hearing on May 16, 2005, and recommended approval of the ordinance. The Commission’s recommendation was forwarded to the Board of Supervisors’ Transportation and Planning Committee, where Supervisor Lai-Bitker (the sponsor of the ordinance) requested that the draft ordinance not be further considered in that form, and that the Planning Commission be given an opportunity to consider a second revised ordinance addressing additional concerns.