

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

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

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, <i>Wireless communication facility: Wireless communication facility outside the public right-of-way</i> [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 <i>Signs</i>, Separately Regulated <i>Signs</i> Uses, Theater <i>Marquees</i> [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
Open Space through Institutional, Separately Regulated Institutional Uses, <i>Wireless communication facility:</i> <i>Wireless communication facility outside the public right-of-way</i> [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 <i>Signs</i>, Separately Regulated <i>Signs</i> Uses, Theater <i>Marquees</i> [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⁾ 16)	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 <i>Signs</i>, Separately Regulated <i>Signs</i> Uses, Theater <i>Marquees</i> [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 <i>Development</i> Proposal	Applicable Sections	Required <i>Development</i> Permit/Decision Process
Affordable/In-Fill Housing Projects with Deviations	[No change in text.]	[No change in text.]

<i>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</i>	[No change in text.]	[No change in text.]
<i>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</i>	[No change in text.]	[No change in text.]
<i>Site Containing Environmentally Sensitive Lands</i>	[No change in text.]	[No change in text.]
<i>Site Containing Historical Resources</i>	[No change in text.]	[No change in text.]
<i>Fences or Retaining Walls Exceeding the Permitted Height</i>	[No change in text.]	[No change in text.]
<i>Relocated Building Onto a Site With an Existing Building</i>	[No change in text.]	[No change in text.]
<i>Site with Previously Conforming Conditions</i>	[No change in text.]	[No change in text.]
<i>Nonresidential Development Exceeding the Maximum Permitted Parking</i>	[No change in text.]	[No change in text.]
<i>Shared Parking for Uses Not Listed in Section 142.0545(c)</i>	[No change in text.]	[No change in text.]
<i>Commercial Development With Tandem Parking</i>	[No change in text.]	[No change in text.]
<i>Previously Conforming Parking for a discontinued use</i>	[No change in text.]	[No change in text.]
<i>Mobilehome Parks in RM Zones</i>	[No change in text.]	[No change in text.]
<i>Mobilehome Parks in RS, RX Zones</i>	[No change in text.]	[No change in text.]
<i>Discontinuance of Mobilehome Park</i>	[No change in text.]	[No change in text.]

Multiple Dwelling Unit <i>Development</i> that Varies from Minimum Parking Requirements	[No change in text.]	[No change in text.]
Nonresidential <i>Development</i> (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.]
<i>Development</i> Within the Urban Village Overlay Zone	[No change in text.]	[No change in text.]
<i>Public improvements</i> 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.]
<i>Condominium Conversions</i> with Deviations from Development Regulations	[No change in text.]	[No change in text.]
<i>Multiple Dwelling Unit Development</i> in RM Zones Involving <i>Lot Consolidation</i> 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.]
<i>Development</i> of a <i>superstore</i>	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 (np) 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 <i>market value</i> of entire <i>structure</i> or improvement) that does not expand the <i>structural envelope</i> .	[No change in text.]	[No change in text.]
Maintenance, repair or alteration (greater than 50% of <i>market value</i> of entire <i>structure</i> or improvement) that does not expand the <i>structural envelope</i> .	[No change in text.]	[No change in text.]
Reconstruction (following fire, natural disaster, act of the public enemy) for residential <i>structures</i> or for nonresidential <i>structures</i> when the cost of reconstruction is less than 50 percent of <i>market value</i> .	[No change in text.]	[No change in text.]
Reconstruction (following fire, natural disaster, act of the public enemy) for nonresidential <i>structures</i> when the cost of reconstruction is greater than 50 percent of <i>market value</i> .	[No change in text.]	[No change in text.]
Expansion/enlargement, where new construction conforms with all current <i>development</i> regulations.	127.0106(a), (b), and (e), (f) and (g)	CP/Process 1 <u>SDP/Process 4 for <i>superstores</i></u>
Expansion/enlargement where new construction requests a reduction of up to 20% from required <i>setbacks</i> .	127.0106(c), (f) and (g)	NDP/Process 2 <u>SDP/Process 4 for <i>superstores</i></u>

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, <i>Wireless communication facility:</i> <i>Wireless communication facility outside the public right-of-way</i> [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
Open Space through Institutional, Separately Regulated Institutional Uses, <i>Wireless communication facility:</i> <i>Wireless communication facility</i> outside the <i>public right-of-way</i> [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)							
Consumer Goods, Furniture, Appliances, Equipment		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)							
Sundries, Pharmaceutical, & Convenience Sales		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	P			P										
Swap Meets & Other Large Outdoor Retail Facilities		-	-	-	-			C										
Commercial Services through <i>Signs</i>, Separately Regulated <i>Signs</i> Uses, Theater <i>Marquees</i> [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, <i>Wireless communication facility: Wireless communication facility</i> outside the <i>public right-of-way</i> [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 <i>Signs</i>, Separately Regulated <i>Signs</i> Uses, Theater <i>Marquees</i> [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 <i>Development</i> Proposal	Applicable Sections	Required <i>Development</i> Permit/Decision Process
Affordable/In-Fill Housing Projects with Deviations	[No change in text.]	[No change in text.]
<i>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</i>	[No change in text.]	[No change in text.]
<i>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</i>	[No change in text.]	[No change in text.]
Site Containing <i>Environmentally Sensitive Lands</i>	[No change in text.]	[No change in text.]
Site Containing <i>Historical Resources</i>	[No change in text.]	[No change in text.]
<i>Fences or Retaining Walls Exceeding the Permitted Height</i>	[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 <i>Previously Conforming</i> Conditions	[No change in text.]	[No change in text.]
Nonresidential <i>Development</i> 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 <i>Development</i> With Tandem Parking	[No change in text.]	[No change in text.]
<i>Previously Conforming Parking</i> for a discontinued use	[No change in text.]	[No change in text.]
<i>Mobilehome Parks</i> in RM Zones	[No change in text.]	[No change in text.]
<i>Mobilehome Parks</i> in RS, RX Zones	[No change in text.]	[No change in text.]
Discontinuance of <i>Mobilehome Park</i>	[No change in text.]	[No change in text.]
Multiple Dwelling Unit <i>Development</i> that Varies from Minimum Parking Requirements	[No change in text.]	[No change in text.]
Nonresidential <i>Development</i> (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.]
<i>Development</i> Within the Urban Village Overlay Zone	[No change in text.]	[No change in text.]
<i>Public improvements</i> 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.]
<i>Condominium Conversions</i> with Deviations from Development Regulations	[No change in text.]	[No change in text.]
<i>Multiple Dwelling Unit Development</i> in RM Zones Involving <i>Lot Consolidation</i> 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.]
<u><i>Development of a superstore</i></u>	<u>143.0303, 143.0305, 143.0365, 143.0375</u>	<u>SDP/Process Four</u>

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
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Or.Dept: Council District 3
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