



DATE ISSUED: September 14, 2006

REPORT NO: 06-124 Rev.

ATTENTION: Council President and City Council
Docket of September 18, 2006

REPORT TO THE CITY COUNCIL

SUBJECT: In the Matter of Regulating Large Retail Development

REFERENCE: Manager's Report 05-136 (with 12 Attachments)
Planning Commission Memorandum, dated December 9, 2004;
Planning Commission Report PC-04-138;
Planning Commission Memorandum, dated May 7, 2004;
Planning Commission Report PC-04-014;
Manager's Report 03-151; Manager's Report 01-126;
Manager's Report 00-205; Planning Commission Report P-96-180;
Planning Commission Report P-96-080

REQUESTED ACTION: Direct the City Attorney to prepare an ordinance consistent with the Mayor's Recommendation

MAYOR'S RECOMMENDATION: Adopt items 3, 4, and 6 of the former City Manager's recommendations which are included in the former City Manager's proposed strikeout ordinance relating to the review and approval of "*Large retail establishments*" previously defined as retail stores equal to, or larger than, "50,000 square feet of gross floor area." These items include new and additional design and landscape guidelines, as well as approval processes which would permit greater public involvement. Accept the Planning Commission's recommendation of no size limitation. Do not approve a Stock Keeping Unit ("SKU") ordinance.

SUMMARY:

On July 23, 2003 the City Council's Land Use and Housing Committee (LU&H) directed the Planning Department to develop an ordinance that would regulate all large retail development ("Large Retail Ordinance" or "Big Box Ordinance"). LU&H also directed staff to analyze an additional ordinance proposal distributed at that committee meeting by the Joint Labor Management Committee, referred to as the "SKU Ordinance." The SKU Ordinance would prohibit the establishment or enlargement of large retail stores if the following three criteria are met: (1) the facility is larger than 90,000 square feet; (2) contains more than 30,000 SKU's

(Stock Keeping Units); and (3) more than 10% of its revenue comes from non-taxable (e.g., grocery) items ("Superstores" or "Supercenters."¹) To date, staff has not been directed to prepare a SKU Ordinance on behalf of the City. At the June, 22, 2005, LU&H meeting, the City Attorney's office was directed to assess the legality of the SKU Ordinance proposal, which was thereafter addressed in Closed Session. It remains up to City Council to find whether a SKU Ordinance (or any variable thereof) is proper for the City as a matter of policy and should direct City staff accordingly.

FISCAL CONSIDERATIONS:

The Planning Commission directed City staff to prepare a comprehensive fiscal and economic impact analysis of the largest retail establishments, including the so-called "Supercenters." That analysis was completed in August of 2004 (see Attachment 4 to Manager's Report 05-136) and circulated for public review immediately thereafter.

The Planning Department developed a proposed strikeout ordinance ("Large Retail Ordinance") which would:

- (1) allow any sized store (regardless of merchandise content) in the Commercial Regional (CR) zones;
- (2) restrict overall size to 150,000 in the remaining commercial zones and industrial zones (regardless of merchandise content);
- (3) require a Process 2 Neighborhood Development Permit (NDP) for all stores exceeding 50,000 square feet in the Community Commercial (CC) zones, Commercial Regional (CR) zones, Light Industrial (IL) zones and planned districts excluding Centre City;
- (4) require a Process 4 Site Development Permit (SDP) for all stores exceeding 100,000 square feet in CC zones and planned districts;
- (5) allow 10,000 – 20,000 square feet of additional gross floor area, (above the 150,000 square foot limit) for stores which meet certain design guidelines such as using two stories and structured parking (aka "design incentives"), and
- (6) establish additional design and landscape regulations for all stores over 50,000 square feet.

The City's Economic Development Division (Economic Development) evaluated the possible economic impacts of Supercenters being introduced to San Diego in their August 2004 report entitled "Fiscal and Economic Impacts of Large Retail Establishments" (see Attachment 4). Among their findings, Economic Development found that local consumer savings would likely be completely offset by reduced payroll expenditures, resulting in, at best, no positive economic benefits to the City or region as a whole. The impact to small retailers is more difficult to

¹ See Attachment 5 in Manager's Report 05-136.

quantify, but certainly any shifts in merchandise sales away from small retailers towards large retail including Supercenter operators is likely to be somewhat negative due to the fact that all large retail or Supercenters are operated by giant corporate entities which distribute profits to shareholders 99% of whom live outside San Diego. Small retailers by contrast, are more likely to be locally-owned "mom and pop" stores whose owners will spend at least a portion of their profits at other local stores and service providers. The draft economic Prosperity Element includes a provision requiring that applications for discretionary land use approvals to construct retail stores of 120,000 square feet or more include a fiscal and economic impact analysis.

The CPC and Planning Commission rejected any size and content restrictions on large retail establishments but generally recommended in favor of lowering thresholds for discretionary review and increasing design standards such as requiring enhanced building design features and

increased landscaping.

Community Planners Committee Recommendations (9/28/2004):

(1) Process 2 review for structures exceeding 50,000 square feet; (2) Process 4 review for structures exceeding 75,000 square feet in Community Commercial (CC) Zones and Planned Districts;

Planning Commission Recommendations (12/16/2004):

(1) Process 2 review for structures exceeding 50,000 square feet (1) no size limitation; (2) Process 2 review plus additional design requirements for structures exceeding 50,000 square feet; (3) Process 4 review including an economic impact analysis for structures exceeding 100,000 square feet; and (4) structured parking, eating areas and green building requirements for structures over 150,000 square feet.

Land Use & Housing (LU&H) Committee Recommendations (6/29/2005):

The LU&H Committee voted to recommend approval of Nos. 3, 4, and 6 of the City Manager's recommendations (relating to required approval processes and design/landscape standards for stores of 50,000 square feet and larger – see CMR 05-136) and to refer the remaining elements of the City Manager's Recommendation (Nos. 1, 2, and 5 relating to size limitations) and the Stock Keeping Unit ("SKU") Ordinance to the Council without recommendation. Additionally the Committee referred the SKU Ordinance to the City Attorney and asked for a legal review of that proposed Ordinance to be prepared prior to City Council consideration of this issue.

FISCAL CONSIDERATIONS:

The fiscal impact of large retail establishments including Supercenters is almost entirely dependent on the location (or proposed location) of these stores. As explained in Attachment 4, the fiscal impact of one or more Supercenters coming into San Diego are uncertain, but weighted towards the negative. Positive fiscal impacts (net new revenues) will only be realized if the proposed Supercenter were to be located close to City limits and away from small locally-owned retailers which are predominantly congregated in the central part of the City, especially in adopted Redevelopment Areas, Enterprise Zones, and Business Improvement Districts (BID's). The recommended imposition of additional review and approval processes and design standards would not likely have any fiscal impact (positive or negative) on the City.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

During the last ten years there has been considerable public discussion and debate in San Diego regarding both large retail establishments and more recently Supercenters. During the two-year period from 2003-2005 alone, these issues elicited public testimony from a wide range of interest groups and individuals at three Planning Commission workshops, two Planning Commission meetings, two LU&H public hearings and one CPC meeting.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

The business community itself is divided on this issue. Small businesses, chain grocery stores, and their trade organizations are in favor of placing restrictions on large retail establishments including Supercenters. This part of the business community has been represented by the Business Improvement District (BID) Council, the Small Business Advisory Board (SBAB), and the Joint Labor Management Committee (JLMC). Small businesses in particular, have emphasized that many public investments and policies have favored large retailers, while making matters more difficult for small retailers. As one example, small businesses are frequently

subjected to metered parking which discourages customers.

Not surprisingly, Wal-Mart Stores, Inc., is virulently opposed to any size or content restrictions. Wal-Mart is joined by the San Diego Regional Chamber of Commerce which generally opposes any restrictions on businesses, and development organizations including the San Diego County Building Industry Association (BIA), and the National Association of Industrial and Office Properties (NAIOP) which similarly see no need for new restrictions on development.

At least some part of organized labor is in favor of imposing size and content restrictions on large retail establishments including Supercenters. In fact, much of the impetus for the SKU Ordinance proposal comes from the JLMC, which, in addition to the chain grocery stores, also represents the interests of grocery store employees who are organized into the United Food & Commercial Workers Union (UFCW). The Center for Policy Initiatives (CPI), a non-profit public interest research organization which is loosely affiliated with local labor organizations including the UFCW, also expressed support for restrictions on Supercenters.

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WARING/RG

Attachments: [1. Actions for LU&H Meeting on June 29, 2005.](#)
[2. Final Large Retail Strikeout Ordinance prepared by the Planning Department under further legal review by the Office of the City Attorney.](#)
[3. Manager's Report 05-136 \(with 12 Attachments\)](#)