

ORDINANCE NUMBER O-_____ (NEW SERIES)

ADOPTED ON _____

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AMENDING CHAPTER 11, ARTICLE 3, DIVISION 1, BY AMENDING SECTION 113.0103; AMENDING CHAPTER 12, ARTICLE 7, DIVISION 1 BY AMENDING SECTIONS 127.0103(a), TABLE 127-01A, 127.0103(c), TABLE 127.01C, AMENDING SECTION 127.0106(e), AND ADDING SECTIONS 127.0106(f) AND 127.0109(c); AMENDING CHAPTER 13, ARTICLE 1, DIVISION 5, BY AMENDING TABLE 131-05B; AMENDING CHAPTER 13, ARTICLE 1, DIVISION 6, BY AMENDING TABLE 131-06B; AMENDING CHAPTER 14, ARTICLE 1, DIVISION 1, BY AMENDING SECTIONS 141.0101 AND 141.0102(a), AND ADDING SECTION 141.0102(e); AMENDING CHAPTER 14, ARTICLE 1, DIVISION 5, BY ADDING SECTION 141.0505; AMENDING CHAPTER 14, ARTICLE 3, DIVISION 3, BY AMENDING SECTION 143.0302, TABLE 143-03A; AND AMENDING CHAPTER 15, ARTICLE 1, DIVISION 2, BY AMENDING TABLE 151-02C; ALL PERTAINING TO THE PROHIBITION OF SUPERSTORES

WHEREAS, upon finding development consumed the majority of developable vacant City land, the San Diego City Council updated the General Plan and adopted the Strategic Framework Element and City of Villages strategy in 2002;

WHEREAS, California Government Code section 65860 requires that a zoning ordinance be consistent with the City's General Plan;

WHEREAS, the California Government Code also provides that in order for the ordinance to be consistent with the General Plan, the various land uses authorized by the ordinance should be compatible with the objectives, policies, general land uses, and programs specified in the General Plan;

WHEREAS, the Strategic Framework Element and the City of Villages strategy were adopted to direct growth into targeted villages as the City shifted from an era of building upon abundant open land to one of reinvesting in existing communities;

WHEREAS, a key policy underlying the Strategic Framework Element and the City of Villages strategy is the establishment of pedestrian-friendly villages where residential, commercial, employment, and civic uses are integrated;

WHEREAS, the City of Villages strategy calls for a convenient and efficient multi-modal transportation system that encourages trips to be made by pedestrians, bicyclists, and transit riders in order to reduce automobile dependence by locating goods and services conveniently near homes and jobs;

WHEREAS, the City of Villages strategy recommends Neighborhood Village Centers be located in older underutilized shopping centers and strip malls;

WHEREAS, fundamental policies underlying the Strategic Framework Element and City of Villages strategy also include: fostering villages with pedestrian-scaled and accessible centers with diverse shops serving local daily needs; encouraging rural and open space preservation throughout the City; designing and integrating village centers, public facilities, and other new developments into existing neighborhoods through pedestrian-friendly site grading, building orientation and design; designing and locating neighborhood and community uses to be accessible and convenient by foot, bicycle, and transit; promoting new growth with a more compact urban form; taking an active leadership role in promoting rural and open space preservation; fighting urban sprawl by helping older neighborhoods successfully compete with suburbs for investment dollars; and revitalizing neighborhood-serving business areas;

WHEREAS, after several years of public meetings and workshops, including two prior Land Use and Housing Committee meetings, and two Planning Commission meetings, on September 18, 2006, the City Council passed Resolution R-301923 directing an ordinance prohibiting the establishment of "Superstores" (large-scale discount stores offering a diversity of consumers products and a sizable grocery department under one roof), be prepared after finding such ordinance consistent with the City's General Plan, including the policies and objectives of the Strategic Framework Element and City of Villages strategy;

WHEREAS, the land use and environmental impacts associated with Superstore development are well documented in studies conducted both locally and around the nation, including studies previously submitted to all members of the City Council and part of the administrative record;

WHEREAS, the report prepared in August 2004 by the City of San Diego Community & Economic Development Department entitled "Fiscal and Economic Impacts of Large Retail Establishment," concludes that a potential cost of Superstores to San Diego residents includes: **"Urban Blight Resulting from Grocery and Other Store Closures;"**

WHEREAS, given the changes in the retail sector and evolution toward ever-bigger stores, it is necessary that the zoning ordinance be amended to regulate larger retail establishments appropriately;

WHEREAS, there is an emerging national trend toward increasing the size of retail outlets and diversity of products offered at such large-scale discount stores;

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

WHEREAS, the establishment of Superstores in the City 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;

WHEREAS, industry and academic studies indicate Superstores rarely add any retail services currently not provided within a community, and that the majority of sales growth at a Superstore comes from direct shift of dollars from existing retailers within a community, primarily from grocery stores;

WHEREAS, Superstores compete directly with existing grocery stores that anchor neighborhood-serving commercial centers;

WHEREAS, smaller stores within a neighborhood center rely upon the 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;

WHEREAS, Superstores often adversely affect the viability of small-scale, pedestrian-friendly neighborhood commercial areas, contributing to blight in these areas;

WHEREAS, this ordinance is intended to preserve the City's existing villages and neighborhood-serving shopping centers centrally located within the community;

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;

WHEREAS, this distribution of shopping and employment creates a land use pattern that reduces the need for vehicle trips and encourages walking and biking for shopping, services, and employment;

WHEREAS, figures from the Institute of Transportation Engineers' *Trip Generation* manual submitted to City Council provide a compilation of traffic generation studies, and show that Superstores are likely to generate more traffic on a daily or weekly basis than other types of large stores;

WHEREAS, large-scale retail stores exceeding 90,000 square feet gross floor area selling a large volume of non-taxable items in a supermarket format significantly increase traffic volumes, strain the existing street network, discourage pedestrian travel, and otherwise aggravate traffic congestion;

WHEREAS, the typically remote locations of Superstores cause local residents to drive further for basic necessities such as groceries, leading to longer and more frequent traffic trips to regional commercial centers to satisfy basic everyday needs, thereby increasing overall traffic and air pollution;

WHEREAS, the development of Superstores within the City would concentrate retail traffic around that store's location, which would create traffic congestion in the City that, thus far, have been developed using the concept of neighborhood-based retail centers;

WHEREAS, this ordinance, by prohibiting Superstores, prevents negative transportation and related air quality impacts the establishment of such stores is likely to have;

WHEREAS, this ordinance, by prohibiting large-scale combined retail and grocery stores, serves as a means for protecting San Diego's neighborhood-serving shopping centers and villages, perpetuating the land use pattern established by the General Plan;

WHEREAS, this ordinance does not affect large retail establishments that do not have similarly adverse potential impacts, including those that do not include a sizeable grocery component, or otherwise sell many items in large quantities or in bulk and charge membership dues;

WHEREAS, this ordinance is intended to protect grocery stores in existing neighborhood centers to prevent a significant change in land use, employment, and traffic patterns throughout the City;

WHEREAS, numerous local jurisdictions in the county and the State of California, taking all of the above considerations in mind, have enacted ordinances that prohibit Superstores;

WHEREAS, the subject ordinance is not a project and no CEQA review is required;

WHEREAS, if the subject ordinance was determined to be a project, further environmental review under the California Environmental Quality Act (CEQA) is not necessary because the zoning amendments are consistent with the City's General Plan

and were adequately covered by the prior environmental impact report (EIR) prepared for the General Plan;

WHEREAS, if the subject ordinance was a project under CEQA, it is exempted from environmental review under the CEQA Guidelines sections in 15308 and 15183;

WHEREAS, further environmental review under CEQA is also not necessary for the reasons set forth in *Wal-Mart Stores, Inc. v. City of Turlock* (2006), 138 Cal. App. 4th 273, a final decision of the Court of Appeal of the State of California, Fifth Appellate District, and fully incorporated by reference herein; and

WHEREAS, upon all the studies, facts, documents, and testimony provided prior to and at the noticed public hearing held on October 24, 2006, the San Diego City Council finds a citywide prohibition of Superstores protects the public health, safety, and general welfare; 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 Roof sign [No change.]

Sales floor area means only the interior building space devoted to the sale of merchandise, and does not include restrooms, office space, storage space, automobile service areas, or open-air garden sales space.

School through substantial improvement [No change.]

Superstore means a retail establishment that exceeds 90,000 square feet *gross floor area*, sells a wide range of consumer goods, and sells items not subject to California State sales tax from more than 10% of the *sales floor area*. This definition applies to multiple 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, could be sold on a retail basis without any change in their packaging or labeling.

Surface mining through Yard

[No change.]

Section 2. That Chapter 12, Article 7, Division 1 of the San Diego Municipal Code is amended by amending section 127.0103(a), Table 127-01A; amending section

127.0103(c), Table 127-01C; and by adding sections 127.0106(f) and 127.0109(c) to read as follows:

§127.0103 Review Process for Previously Conforming Premises and Uses

[No change in first paragraph.]

(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
Expansion/enlargement, where new construction conforms with all current development regulations.	127.0106(a), (b) and (e)	CP/Process 1
Expansion/enlargement where new construction requests a reduction of up to 20% from required <i>setbacks</i> .	127.0106(c) and (f)	NDP/Process 2

Footnotes to Table 127-01A [No Change.]

- (b) *Previously Conforming Density* [No change.]
- (c) *Previously Conforming Use*

**Table 127-01C
Review Process for Previously Conforming Use**

Type of <i>Development</i> Proposal	Applicable Sections	Required Development Permit/Decision Process
Expansion/enlargement, where new construction conforms with all current development regulations.	127.0106(a), (b) and (e)	NDP/Process 2 ⁽³⁾
Expansion/enlargement where new construction requests a reduction of up to 20% from required <i>setbacks</i> .	127.0106(c) and (f)	NDP/Process 2 ⁽³⁾

Footnotes to Table 127-01C [No Change.]

§127.0106 Expansion or Enlargement of Previously Conforming Structures

- (a)-(d) [No change.]
- (e) [Note to Clerk: The first portion of this section is being added in the companion ordinance O-2007-29. If O-2007-29 is adopted,

the last sentence of this section should read as set forth hereafter.]

No expansion or enlargement under Section 127.0106(e) is permitted if it violates Section 127.0106(f).

- (f) No expansion or enlargement is permitted under Section 127.0106, or any subsection thereof, if it results in a *Superstore*.

§127.0109 Expansion of a Previously Conforming Use

- (a) A 20 percent or less *gross floor area* expansion of a structure with a *previously conforming* use requires a Neighborhood Use Permit.
- (b) [No change.]
- (c) No expansion is permitted under Section 127.0109, including any subsection thereof, if it results in a *Superstore*.

Section 3. 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:

**Table 131-05B
Use Regulations Table for Commercial Zones**

Use Categories/Subcategories <small>[See section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]</small>	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	[No change.]										
Retail Sales											
Building Supplies & Equipment		P			P	P			-	-	-
Food, Beverages and Groceries		P			P	P		P	P		-
Consumer Goods, Furniture, Appliances, Equipment		P			P	P		P ⁽³⁾			-
Pets & Pet Supplies		P			P	P			-	-	-
Sundries, Pharmaceutical, & Convenience Sales		P			P	P		P	P		-
Wearing Apparel & Accessories		P			P	P			-	P	-
Separately Regulated Retail Sales Uses											
Agriculture Related Supplies & Equipment		-			P	P			-	-	-
Alcoholic Beverage Outlets		L			L	L		L	L		-
Plant Nurseries		P			P	P			-	-	-
<i>Superstores</i> (Retail >90,000sf >10% floor area non-taxable merchandise as specifically defined in Section 113.0103)		-			-	-		-	-	-	-
Swap Meets & Other Large Outdoor Retail Facilities		-			C	C			-	C ⁽¹⁰⁾	-
Commercial Services through Signs	[No change.]										
Footnotes for Table 131-05B [No Change.]											

Use Categories/Subcategories <small>[See section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]</small>	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	[No change.]																		
Retail Sales																			
Building Supplies & Equipment		P			P			P			P			P			P		
Food, Beverages and Groceries		P			P			P			P			P			P		
Consumer Goods, Furniture, Appliances, Equipment		P			P			P			P			P			P		
Pets & Pet Supplies		P			P			P			P			P			P		
Sundries, Pharmaceutical, & Convenience Sales		P			P			P			P			P			P		
Wearing Apparel & Accessories		P			P			P			P			P			P		
Separately Regulated Retail Sales Uses																			
Agriculture Related Supplies & Equipment		-			-			-			P			P			P		
Alcoholic Beverage Outlets		L			L			L			L			L			L		
Plant Nurseries		P			P			P			P			P			P		
<i>Superstores</i> (Retail >90,000sf >10% floor area non-taxable merchandise as specifically defined in Section 113.0103)		-			-			-			-			-			-		
Swap Meets & Other Large Outdoor Retail Facilities		-			-			-			-			-			-		C
Commercial Services through Signs	[No change.]																		
Footnotes to Table 131-05B [No change.]																			

Section 4. 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.

**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	[No change.]									
Retail Sales										
Building Supplies & Equipment	-	-	p ⁽⁶⁾	P	P	P	-	p ⁽⁶⁾	P	
Consumer Goods, Furniture, Appliances, Equipment	-	-	-	p ⁽²⁾	P	P	-	-	p ⁽³⁾	
Pets & Pet Supplies	-	-	-	-	P	P	-	-	-	
Sundries, Pharmaceuticals, & Convenience Sales	-	p ⁽⁵⁾	p ⁽⁵⁾	p ⁽⁵⁾	P	P	p ⁽⁵⁾	p ⁽⁵⁾	p ⁽⁴⁾	
Wearing Apparel & Accessories	-	-	-	p ⁽³⁾	p ⁽³⁾	P	-	-	p ⁽³⁾	
Separately Regulated Retail Sales Uses										
Agriculture Related Supplies & Equipment	-	-	-	P	P	P	P	P	P	
Alcoholic Beverage Outlets	-	-	-	-	L	-	-	-	-	
Plant Nurseries	-	-	-	-	P	-	P	P	P	
Superstores (Retail >90,000sf >10% floor area non-taxable merchandise as specifically defined in Section 113.0103)	-	-	-	-	-	-	-	-	-	
Swap Meets & Other Large Outdoor Retail Facilities	-	-	C	C	C	C	C	C	C	

Footnotes for Table 131-06B [No change.]

Section 5. That Chapter 14, Article 1, Division 1 of the San Diego Municipal Code is amended by amending sections 141.0101 and 141.0102(a), and adding section 141.0102(e), to read as follows:

§141.0101 Purpose of Separately Regulated Use Regulations

This article provides regulations for specific uses that either are prohibited or may be desirable and appropriate in a particular zone if limitations or conditions are placed on the *development* of those uses to minimize detrimental effects to neighboring properties or incompatibility with permitted uses of the base zones.

§141.0102 When the Separately Regulated Use Regulations Apply

- (a) The regulations in this article apply to the *development* of uses that are identified in the Use Regulations Tables in Chapter 13, Article 1 (base Zones) as Prohibited Uses, or as Limited Uses or as uses requiring a Neighborhood Use Permit or a Conditional Use Permit.
- (b)-(d) [No Change.]
- (e) Prohibited Uses are uses that are prohibited in that zone with no available discretionary review.

Section 6. That Chapter 14, Article 1, Division 5 of the San Diego Municipal Code is amended by adding section 141.0505 to read as follows:

§141.0505 Superstores Prohibited

Notwithstanding any other provision of the San Diego Municipal Code, *Superstores* as defined in Section 113.0103 are prohibited in all zones and planned districts with no available discretionary review.

Section 7. That Chapter 14, Article 3, Division 3 of the San Diego Municipal Code is amended by amending section 143.0302, Table 143-03A to read as follows:

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

[No change to first paragraph.]

**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 through Clairemont Mesa Height Limit Overlay Zone	[No change.]	[No change.]

Type of <i>Development</i> Proposal	Applicable Sections	Required <i>Development</i> Permit/Decision Process
[No change.]		
[Note to Clerk: If O-2007-29 is adopted, the last sentence of this new provision should state as set forth below.] These provisions do not apply to the <i>development of Superstores</i> which are prohibited with no available discretionary review.	[No change to O-2007-29]	[No change to O-2007-29]
[Note to Clerk: If O-2007-29 is adopted, the last sentence of this new provision should state as set forth below.] These provisions do not apply to the <i>development of Superstores</i> which are prohibited with no available discretionary review.	[No change to O-2007-29]	[No change to O-2007-29]

Section 8. That Chapter 15, Article 1, Division 2 of the San Diego Municipal Code is amended by amending section 151.0238, Table 151-02C to read as follows:

Use Categories/Subcategories [See Land Development Code Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	Zone Designator	Zones								
	1st & 2nd >>	CU-								
	3rd >>	1 ⁽¹⁾		2-			3-			
	4th >>	1	2	3	4	5	3 ⁽²⁾⁽¹²⁾	6	7	8
Open Space through Institutional	[No change.]									
Retail Sales										
Building Supplies & Equipment	-				P					-
Food, Beverages and Groceries	P				P					P
Consumer Goods, Furniture, Appliances, Equipment	N				P					P
Pets & Pet Supplies	-				P					P
Sundries, Pharmaceutical, & Convenience Sales	N				P					P
Wearing Apparel & Accessories	P				P					P
Separately Regulated Retail Sales Uses										
Agriculture Related Supplies & Equipment	-				P					-
Alcoholic Beverage Outlets	-				C					C
Plant Nurseries	-				P					P
Superstores (Retail >90,000sf >10% floor area non-taxable merchandise as specifically defined in Section 113.0103)	-				-					-
Swap Meets & Other Large Outdoor Retail Facilities	-				C					-
Commercial Services through Signs	[No change.]									

Footnotes to Table 151-02C [No change.]

Section 9. In the event of a conflict between any provision of this ordinance and any other provision of the San Diego Municipal Code, this ordinance shall be controlling. If a court of competent jurisdiction determines that any provision of this ordinance is invalid or otherwise unenforceable, that provision shall be severed from the remainder of the ordinance in a manner that preserves the remainder to the fullest extent possible. Prior to severing any provision, however, the court shall attempt to interpret and apply the provision in a manner that achieves the ordinance's intent and purpose to the fullest extent possible consistent with the law.

Section 10. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 11. This ordinance shall take effect and be in force on the thirtieth day after its passage. However, this ordinance will not apply within the Coastal Zone until the

California Coastal Commission unconditionally certifies this ordinance as a Local Coastal Program Amendment.

Section 12. 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 City Manager prior to the date this ordinance becomes effective.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By: 
Jana L. Garmo
Deputy City Attorney

JLG:asl
10/17/06
Or.Dept:Planning
O-2007-41

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at its 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: ~~Struck Out~~
NEW LANGUAGE: Underlined

(O-2007-41)

ORDINANCE NUMBER O-_____ (NEW SERIES)

ADOPTED ON _____

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AMENDING CHAPTER 11, ARTICLE 3, DIVISION 1, BY AMENDING SECTION 113.0103; AMENDING CHAPTER 12, ARTICLE 7, DIVISION 1 BY AMENDING SECTIONS 127.0103(a), TABLE 127-01A, 127.0103(c), TABLE 127.01C, AMENDING SECTION 127.0106(e), AND ADDING SECTIONS 127.0106(f) AND 127.0109(c); AMENDING CHAPTER 13, ARTICLE 1, DIVISION 5, BY AMENDING TABLE 131-05B; AMENDING CHAPTER 13, ARTICLE 1, DIVISION 6, BY AMENDING TABLE 131-06B; AMENDING CHAPTER 14, ARTICLE 1, DIVISION 1, BY AMENDING SECTIONS 141.0101 AND 141.0102(a), AND ADDING SECTION 141.0102(e); AMENDING CHAPTER 14, ARTICLE 1, DIVISION 5, BY ADDING SECTION 141.0505; AMENDING CHAPTER 14, ARTICLE 3, DIVISION 3, BY AMENDING SECTION 143.0302, TABLE 143-03A; AND AMENDING CHAPTER 15, ARTICLE 1, DIVISION 2, BY AMENDING TABLE 151-02C; ALL PERTAINING TO THE PROHIBITION OF SUPERSTORES

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 Roof sign

[No change.]

Sales floor area means only the interior building space devoted to the sale of merchandise, and does not include restrooms, office space, storage space, automobile service areas, or open-air garden sales space.

School through substantial improvement [No change.]

Superstore means a retail establishment that exceeds 90,000 square feet gross floor area, sells a wide range of consumer goods, and sells items not subject to California State sales tax from more than 10% of the sales floor area. This definition applies to multiple 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, could be sold on a retail basis without any change in their packaging or labeling.

Surface mining through Yard

[No change.]

Section 2. That Chapter 12, Article 7, Division 1 of the San Diego Municipal Code is amended by amending section 127.0103(a), Table 127-01 A; amending section 127.0103(c), Table 127-01C; and by adding sections 127.0106(f) and 127.0109(c) to read as follows:

§127.0103 Review Process for Previously Conforming Premises and Uses

[No change in first paragraph.]

(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
Expansion/enlargement, where new construction conforms with all current development regulations.	127.0106(a), (b) <u>and (e)</u>	CP/Process 1
Expansion/enlargement where new construction requests a reduction of up to 20% from required <i>setbacks</i> .	127.0106(c) <u>and (f)</u>	NDP/Process 2

Footnotes to Table 127-01A [No Change.]

(b) *Previously Conforming Density* [No change.]

(c) *Previously Conforming Use*

**Table 127-01C
Review Process for Previously Conforming Use**

Type of <i>Development</i> Proposal	Applicable Sections	Required Development Permit/Decision Process
Expansion/enlargement, where new construction conforms with all current development regulations.	127.0106(a), (b) <u>and (e)</u>	NDP/Process 2 ⁽³⁾
Expansion/enlargement where new construction requests a reduction of up to 20% from required <i>setbacks</i> .	127.0106(c) <u>and (f)</u>	NDP/Process 2 ⁽³⁾

Footnotes to Table 127-01C [No Change.]

§127.0106 Expansion or Enlargement of Previously Conforming Structures

(a)-(d) [No change.]

(e) [Note to Clerk: The first portion of this section is being added in the companion ordinance O-2007-29. If O-2007-29 is adopted, the last sentence of this section should read as set forth hereafter.]

No expansion or enlargement under Section 127.0106(e) is permitted if it violates Section 127.0106(f).

(f) No expansion or enlargement is permitted under Section 127.0106 if it results in a *Superstore*.

§127.0109 Expansion of a Previously Conforming Use

(a) A 20 percent or less ~~gross floor area~~ gross floor area expansion of a structure with a *previously conforming* use requires a Neighborhood Use Permit.

(b) [No change.]

(c) No expansion is permitted under Section 127.0109, including any subsection thereof, if it results in a Superstore.

Section 3. 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

**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	[No change.]											
Retail Sales												
Building Supplies & Equipment	P	P	P	-	-	-	-	-	-	-	-	
Food, Beverages and Groceries	P	P	P	P	P	P	P	P	P	P	-	
Consumer Goods, Furniture, Appliances, Equipment	P	P	P	P ⁽³⁾	-	-	-	-	-	-	-	
Pets & Pet Supplies	P	P	P	-	-	-	-	-	-	-	-	
Sundries, Pharmaceutical, & Convenience Sales	P	P	P	P	P	P	P	P	P	P	-	
Wearing Apparel & Accessories	P	P	P	-	-	-	-	P	P	P	-	
Separately Regulated Retail Sales Uses												
Agriculture Related Supplies & Equipment	-	P	P	-	-	-	-	-	-	-	-	
Alcoholic Beverage Outlets	L	L	L	L	L	L	L	L	L	L	-	
Plant Nurseries	P	P	P	-	-	-	-	-	-	-	-	
<u>Superstores (Retail) >90,000sf >10% floor area non-taxable merchandise as specifically defined in Section 113.0103)</u>	-	-	-	-	-	-	-	-	-	-	-	
Swap Meets & Other Large Outdoor Retail Facilities	-	C	C	-	-	-	-	C ⁽¹⁰⁾	C ⁽¹⁰⁾	C ⁽¹⁰⁾	-	
Commercial Services through Signs	[No change.]											

Footnotes for Table 131-05B [No Change.]

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	[No change.]																		
Retail Sales																			
Building Supplies & Equipment	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Food, Beverages and Groceries	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P

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
Consumer Goods, Furniture, Appliances, Equipment		P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Pets & Pet Supplies		P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Sundries, Pharmaceutical, & Convenience Sales		P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Wearing Apparel & Accessories		P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Separately Regulated Retail Sales Uses																			
Agriculture Related Supplies & Equipment		-	-	-	-	-	-	P	P	P	P	P	P	P	P	P	P	P	P
Alcoholic Beverage Outlets		L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L
Plant Nurseries		P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
<u>Superstores (Retail >90,000sf >10% floor area non-taxable merchandise as specifically defined in Section 113.0103)</u>		=	=	=	=	=	=	=	=	=	=	=	=	=	=	=	=	=	=
Swap Meets & Other Large Outdoor Retail Facilities		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	C	C	C
Commercial Services through Signs [No change.]																			

Footnotes to Table 131-05B [No change.]

Section 4. 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.

**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-	3-	1-	2-	3-	1-	2-	1-
	4th >>	1	1	1	1	1	1	1	1	1
Open Space through Institutional Retail Sales	[No change.]									
Building Supplies & Equipment		-	-	P ⁽⁶⁾	P	P	-	P ⁽⁶⁾	P	
Consumer Goods, Furniture, Appliances, Equipment		-	-	-	P ⁽²⁾	P	-	-	P ⁽³⁾	
Pets & Pet Supplies		-	-	-	-	P	-	-	-	
Sundries, Pharmaceuticals, & Convenience Sales		-	P ⁽⁵⁾	P ⁽⁵⁾	P ⁽⁵⁾	P	P ⁽⁵⁾	P ⁽⁵⁾	P ⁽⁴⁾	
Wearing Apparel & Accessories		-	-	-	P ⁽³⁾	P ⁽³⁾	-	-	P ⁽³⁾	
Separately Regulated Retail Sales Uses										
Agriculture Related Supplies & Equipment		-	-	-	P	P	P	P	P	
Alcoholic Beverage Outlets		-	-	-	-	L	-	-	-	
Plant Nurseries		-	-	-	-	P	-	P	P	
<u>Superstores (Retail >90,000sf >10% floor area non-taxable merchandise as specifically defined in Section 113.0103)</u>		=	=	=	=	=	=	=	=	
Swap Meets & Other Large Outdoor Retail Facilities		-	-	C	C	C	C	C	C	

Footnotes for Table 131-06B [No change.]

Section 5. That Chapter 14, Article 1, Division 1 of the San Diego Municipal Code is amended by amending section 141.0101, amending section 141.0102(a), and adding section 141.0102(e), to read as follows:

§141.0101 Purpose of Separately Regulated Use Regulations

This article provides regulations for specific uses that either are prohibited or may be desirable and appropriate in a particular zone if limitations or conditions are placed on the *development* of those uses to minimize detrimental effects to neighboring properties or incompatibility with permitted uses of the base zones.

§141.0102 When the Separately Regulated Use Regulations Apply

(a) The regulations in this article apply to the *development* of uses that are identified in the Use Regulations Tables in Chapter 13, Article 1 (base Zones) as Prohibited Uses, or as Limited Uses or as uses requiring a Neighborhood Use Permit or a Conditional Use Permit.

(b)-(d) [No Change.]

(e) Prohibited Uses are uses that are prohibited in that zone with no available discretionary review.

Section 6. That Chapter 14, Article 1, Division 5 of the San Diego Municipal Code is amended by adding section 141.0505 to read as follows:

§141.0505 Superstores Prohibited

Notwithstanding any other provision of the San Diego Municipal Code, Superstores as defined in Section 113.0103 are prohibited in all zones and planned districts with no available discretionary review.

Section 7. That Chapter 14, Article 3, Division 3 of the San Diego Municipal Code is amended by amending section 143.0302, Table 143-03A to read as follows:

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

[No change to first paragraph.]

**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 through Clairemont Mesa Height Limit Overlay Zone [No change.]	[No change.]	[No change.]
[Note to Clerk: If O-2007-29 is adopted, the last sentence of this new provision should state as set forth below.] <u>These provisions do not apply to the development of Superstores which are prohibited with no available discretionary review.</u>	[No change to O-2007-29]	[No change to O-2007-29]
[Note to Clerk: If O-2007-29 is adopted, the last sentence of this new provision should state as set forth below.] <u>These provisions do not apply to the development of Superstores which are prohibited with no available discretionary review.</u>	[No change to O-2007-29]	[No change to O-2007-29]

Section 8. That Chapter 15, Article 1, Division 2 of the San Diego Municipal Code is amended by amending section 151.0238, Table 151-02C to read as follows:

Use Categories/Subcategories [See Land Development Code Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	Zone Designator	Zones								
	1st & 2nd >>	CU-								
	3rd >>	1-(1)		2-			3-			
	4th >>	1	2	3	4	5	3 ⁽²⁾ (12)	6	7	8
Open Space through Institutional	[No change.]									
Retail Sales										
Building Supplies & Equipment		-			P				-	
Food, Beverages and Groceries		P			P				P	
Consumer Goods, Furniture, Appliances, Equipment		N			P				P	
Pets & Pet Supplies		-			P				P	
Sundries, Pharmaceutical, & Convenience Sales		N			P				P	
Wearing Apparel & Accessories		P			P				P	
Separately Regulated Retail Sales Uses										
Agriculture Related Supplies & Equipment		-			P				-	

Use Categories/Subcategories [See Land Development Code Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	Zone Designator	Zones								
	1st & 2nd >>	CU-								
	3rd >>	1-(1)		2-			3-			
	4th >>	1	2	3	4	5	3 ⁽²⁾⁽¹²⁾	6	7	8
Alcoholic Beverage Outlets	-					C				C
Plant Nurseries	-					P				P
<u>Superstores (Retail >90,000sf >10% floor area non-taxable merchandise as specifically defined in Section 113.0103)</u>	-					-				-
Swap Meets & Other Large Outdoor Retail Facilities	-					C				-
Commercial Services through Signs [No change.]										

Footnotes to Table 151-02C [No change.]

Section 9. In the event of a conflict between any provision of this ordinance and any other provision of the San Diego Municipal Code, this ordinance shall be controlling. If a court of competent jurisdiction determines that any provision of this ordinance is invalid or otherwise unenforceable, that provision shall be severed from the remainder of the ordinance in a manner that preserves the remainder to the fullest extent possible. Prior to severing any provision, however, the court shall attempt to interpret and apply the provision in a manner that achieves the ordinance's intent and purpose to the fullest extent possible consistent with the law.

Section 10. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 11. This ordinance shall take effect and be in force on the thirtieth day after its passage. However, this ordinance will not apply within the Coastal Zone until the California Coastal Commission unconditionally certifies this ordinance as a Local Coastal Program Amendment.

Section 12. 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 City Manager prior to the date this ordinance becomes effective.

JLG:asl
10/17/06
Or.Dept:Planning
O-2007-41