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October 3, 2006

Honorable Mayor and Members of the City Council
City of Long Beach
333 West Ocean Boulevard, 14th Floor
Long Beach, CA 90802

Re: The City of Long Beach's Proposed Big Box Retail Prohibition

Dear Mayor Foster and Honorable Councilmembers:

This law firm represents Wal-Mart Stores, Inc. We are writing to comment on the City of Long Beach's pending "Superstore" Ordinance (the "Ordinance"), which, if adopted, would preclude the development of large-scale retail stores that exceed one hundred thousand (100,000) square feet of gross floor area and dedicate more than 10% of that floor area to the sale of non-taxable merchandise. This Ordinance would ban the development of any Wal-Mart "Supercenter" combining general retail and grocery sales in Long Beach, effectively making Long Beach (the "City") the only municipality in Los Angeles County to completely prohibit this type of development.

Wal-Mart strongly opposes the proposed Ordinance on numerous procedural, legal, and public policy grounds. While courts have previously found superstore ordinances to be legal in specific contexts,¹ the Ordinance before the City is fraught with problems that render it susceptible to legal challenge. First, adoption of the proposed Ordinance would violate the California Environmental Quality Act ("CEQA"). Second, the Ordinance itself represents an illegal attempt to limit competition through zoning, effectuates a violation of the United States Constitution's Commerce Clause, and violates both federal and state constitution Equal Protection and Due Process Clauses. Procedurally, the City – unlike other cities that have proposed superstore ordinances – has deprived Wal-Mart, one of the few retailers in the country that would be affected by the Ordinance, a basic due process right to be heard on this matter.

¹ *Wal-Mart Stores, Inc. v. City of Turlock*, 138 Cal.App.4th 273 (2006).

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From a public policy perspective, the City would be well-served by at least considering Wal-Mart's position on this very important issue before rushing to judgment. Wal-Mart has retained The Natelson Dale Group, Inc. ("TNDG") to evaluate the economic and social ramifications of the proposed Ordinance on the City. TNDG's preliminary analysis (the "TNDG Report") is attached as Exhibit A. We believe the City Council should consider this report, and all other views, before making a rash decision. Given that Long Beach is one of eighty eight cities in Los Angeles County, all of which compete for tax revenue and often share and externalize environmental impacts, a fair and open discussion between all interested stakeholders, and consideration of the Ordinance in Los Angeles County's regional context, is in order. Because it is unlikely that any superstore could be built by-right (i.e., without discretionary City entitlements), there is no need to pass this Ordinance immediately and render the City susceptible to a lawsuit.

Based on the following legal defects, Wal-Mart strongly urges you to reject the proposed Ordinance, or at least table it to more carefully consider its legal and policy ramifications.

A. THE ORDINANCE IS NOT EXEMPT FROM THE PROVISIONS OF CEQA.

1. THE CITY'S RELIANCE ON CEQA GUIDELINE SECTION 15305 IS MISPLACED.

According to the Notice of Exemption ("NOE") included in the September 19, 2006 Staff Report ("Staff Report"), attached as Exhibit B, the City is relying on CEQA Guideline Section 15305 to exempt it from CEQA. Section 15305 provides that a project is exempt if it:

consists of minor alterations in land use limitations in areas with an average slope of less than 20%, which do not result in any changes in land use or density, including but not limited to: (a) minor lot line adjustments, side yard, and set back variances not resulting in the creation of any new parcel; (b) issuance of minor encroachment permits; or (c) reversion to acreage in accordance with the Subdivision Map Act."

14 Cal. Code Regs. § 15305.

This categorical exemption is of no relevance to the Ordinance. Section 15305 applies to small, discrete projects on a particular plot of land that have a slope falling

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below a certain threshold. It is clearly not intended to exempt the sweeping proscription of an entire land use from a City.

First, Section 15305 was only intended to allow a certain type of minor and environmentally insignificant project to forgo environmental review. The CEQA case law is clear that “exemption categories are not to be expanded or broadened beyond the reasonable scope of their statutory language.” *Dehne v. County of Santa Clara*, 115 Cal.App.3d 827, 842 (1981). “Minor alterations in land use limitations” must be taken at face value, and interpreted within the confines of the statutory language’s reasonable scope. The term “*minor*” cannot be disregarded at the City’s whim. Section 15305 provides three examples of what “minor alterations in land use limitations” may mean: (1) minor lot line adjustments, side yard, and set back variances (i.e., changing the side yards of a lot so that one home can be two feet or so closer to the one next door); (2) issuing minor encroachment permits (i.e., building a fence that encroaches one foot onto City-owned land); and (3) reversion to acreage in accordance with the Subdivision Map Act (i.e., changing the status of subdivided lands back to large blocks of non-divided land).

In the first two examples provided by the CEQA Guidelines, a land use limitation is altered slightly to allow encroachment of uses by a few feet. In the third example, there is no immediate physical change to the environment. Unlike the three examples proffered by the CEQA guidelines, however, the City radically broadens what may be considered “minor.”

While Section 15305 prefaces its examples with “including but not limited to” language, this phrase has never meant “including but not limited to *everything*.” Yet this is precisely what the City purports to do: to ban an entire *type* of development *throughout the entire City*. It is implausible that a land use ordinance radically restricting the way people throughout the City shop for their basic needs – foreclosing an entire type of development that is allowed in most parts of the United States – could fit within the same category as a setback adjustment.² Indeed, the Ordinance bears no similarity to a land use alteration that slightly changes setbacks or allows a minor encroachment.

² Notably, even in relation to something of small magnitude, such as a setback reduction, Section 15305 goes one step further and requires that the setback alteration *itself* be minor. (i.e., a setback alteration is not *de facto* minor).

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Ironically, while the City has previously processed setback variances through the use of Negative Declarations (presumably because they were not “minor”), it now intends to take the radical position that the wholesale banning of an entire type of development is completely exempt from CEQA. If the City’s Procrustean attempt to avail itself of Section 15305 in this context is valid, then nothing prevents it from implementing a total ban on the development of *multi-family* or *affordable* housing without undertaking any form of environmental review whatsoever. Like the proposed Ordinance, this would obviously be inconsistent with the intent of the State Legislature and California Resources Agency in adopting CEQA and its categorical exemptions.

Second, this exemption cannot be used for projects, such as the Ordinance, that are not site-specific. Section 15305 deals with “land use limitations *in areas with an average slope of less than 20%.*” (emphasis added). This exemption pertains to projects that are proposed for a specific parcel of land (i.e., a setback variance for a particular property). Given the language of Section 15305 – “in areas with an average slope of less than 20%” – this categorical exemption is not intended to allow the whole-sale evasion of CEQA review for citywide land use ordinances. Even assuming the City could avail itself of this exemption for a citywide ordinance, the City would need to find that no section of the City has an average slope of less than 20%. If the Ordinance banned the development of a superstore in any portion of the City with a small grade change (i.e., more than 20%), then the City’s use of the exemption would be *de facto* invalid.

Finally, Section 15305 applies only to such “minor alterations” which “*do not result in any changes in land use.*” As discussed in more detail below, the prohibition of a type a land use will change the way land is developed within the City and the surrounding areas, which in turn will result in other changes, such as changes to traffic patterns, economic revitalization, and potential blighting of neighborhoods. Indeed, the very purpose of the Ordinance is to impose a comprehensive change in land use – the prohibition of an entire category of land uses (which, as stated in the Notice of Exemption, will “guide new commercial development”). For the City to find that an Ordinance of this nature does not result in any “changes in land use” is to deny the fundamental purpose for which the Ordinance is proposed.

2. THE CITY FAILED TO SUPPORT ITS FINDING THAT THE PROJECT IS EXEMPT FROM CEQA IN ITS NOTICE OF EXEMPTION.

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The City has also failed to provide any valid reasoning behind its reliance on Section 15305.³ CEQA Guideline Section 15062 requires a notice of exemption to contain the following information: “(1) a brief description of the project; (2) a finding that the project is exempt, including a citation to the relevant CEQA Guideline section under which the project is exempt; and (3) *a brief statement of reasons to support the finding.*” (emphasis added). Shockingly, the City dismisses the legal requirement that an NOE include a brief statement of reasons to support the finding of exemption. Indeed, the City treats the “Statement of Support” line on its standard NOE form as if it were only a blank to be haphazardly filled out with anything that comes to mind.

The City’s purported reason for the exemption as stated in the NOE is that the “[a]mendment will guide new commercial development in Long Beach.” However, it is inconceivable that this statement could in any way be construed as providing support for the proposition that the Ordinance is categorically exempt. An ordinance purporting to allow Superstores in residential neighborhoods by right could also be construed as an “[a]mendment [that] will guide new commercial development in Long Beach.” If anything, the City’s justification – *that the “amendment will guide new commercial development in Long Beach”* – is all the more reason to justify more rigorous environmental review. Not only does an ordinance that “*guides new commercial development*” in the City bear no relation to a setback adjustment, one would expect that such a sweeping ordinance would be more appropriately analyzed in an Environmental Impact Report. At minimum, an Initial Study is required.

3. PASSAGE OF THE ORDINANCE WOULD CREATE SIGNIFICANT ENVIRONMENTAL IMPACTS.

The Ordinance presupposes that CEQA allows a categorical exemption to be relied upon even in the face of a significant environmental effect.⁴ This is patently false. CEQA provides that none of the categorical exemptions apply if there is a “*reasonable*

³ Guideline Section 15061 provides that “[e]ach public agency should include in its implementing procedures a listing of the projects often handled by the agency that the agency determined to be exempt. This listing should be used in preliminary review.” Wal-Mart has made a Public Records Act request for this list, and intends to evaluate whether the proposed Ordinance bears any similarity whatsoever to the sort of projects that the City has historically determined to be exempt.

⁴ Furthermore, CEQA must be interpreted “in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.” *East Peninsula Education Council, Inc. v. Palos Verdes Peninsula Unified School District*, 210 Cal.App.3d 155, 171 (1989).

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possibility that the activity will have a significant effect on the environment due to unusual circumstances.” 14 Cal. Code Regs. § 15300.2. This “exception to the exception” requires a two-pronged analysis: (1) whether the project raises a “reasonable possibility” that a “significant effect on the environment” may occur; and (2) whether this possibility would be due to “unusual circumstances.”

In regards to the first prong, multiple cases have held that a categorical exemption cannot be sustained if a “reasonable probability” exists that a project may have a significant environmental effect. *See Dunn-Edwards Corporation v. Bay Area Air Quality Management District*, 9 Cal.App.4th 644 (1992) (use of a categorical exemption was invalid for the adoption of a rule regulating architectural coatings because the record included evidence that reformulation of coatings might actually lead to increased pollutant emissions). *See also Azusa Land Reclamation Company v. Main San Gabriel Basin Watermaster*, 52 Cal.App.4th 1165 (1997) (a regional water quality control board could not rely on an exemption if its own findings, and the technical analyses cited in those findings, indicated that the project may have a significant effect on the environment).

Similarly, courts have found “unusual circumstances” in cases such as the one presented by this Ordinance – namely, where the categorical exemption which is relied upon bears little relation to the project. One court has held that the applicable legal test is whether “the circumstances of a particular project (i) differ from the general circumstances of the projects covered by a particular categorical exemption, and (ii) those circumstances create an environmental risk that does not exist for the general class of exempt projects.” *Id* at 1207.

The Ordinance will result in a number of significant environmental impacts. First, with respect to traffic, the prohibition of Superstores will result in the development of retail uses that actually generate greater traffic impacts. Substantial evidence to that effect is contained in the traffic analysis prepared by RK Engineering Group, Inc. of Yucaipa, California, attached as Exhibit C. Specifically, discount Superstores result in fewer vehicular trips per 1,000 square feet of sales area than regular discount stores, supermarkets, and multi-tenant shopping centers. The lower trip generation rate is generally attributable to the fact that Superstores provide multiple services allowing customers to reduce the number of traffic trips necessary to fulfill shopping needs. These high trip generating uses will still be permitted under the Long Beach Municipal Code, and will, no doubt, be developed in the future to serve the City’s shopping needs.

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The prohibition of Superstores in Long Beach is also likely to result in such uses being developed outside the City limits, which in turn will exacerbate traffic and air quality impacts. City residents will have to travel longer distances to take advantage of the lower prices and expanded product selection provided by Superstores. Longer vehicle trips will result in greater traffic volumes and roadway congestion within the City. Furthermore, an increase in traffic trips and volume is closely tied to an increase in mobile air emissions. Long Beach is located within the South Coast Air Basin, which has been designated a non-attainment area for carbon monoxide (CO), ozone (O₃) and serious non-attainment for PM₁₀. As a result of reduced traffic trips, Superstores actually generate lower total CO, O₃, and PM₁₀. Consequently, by encouraging the proliferation of land use development patterns that generate greater traffic impacts than Superstores, the Ordinance will ultimately result in higher mobile air emissions.

Although more study is needed, the prohibition of Superstores might also result in an increase in needed public services. Because development of permitted retail uses will result in more and/or longer traffic trips on City roadways, more traffic incidents may occur on City roadways that require police, fire and emergency service response. Moreover, the additional trips may also result in substantial adverse physical impacts associated with the provision of new or physically altered public roadways and related governmental facilities. Improvements and expansion may be necessary for police and fire protection services to maintain acceptable response times.

B. THE PROPOSED ORDINANCE IMPERMISSIBLY RESTRICTS COMPETITION.

A city cannot use zoning laws to restrict competition. See *Friends of Davis*, 83 Cal. App. 4th 1004, 1013 (2000) (stating that “[z]oning and building laws cannot be used unqualifiedly to restrict competition, or simply to shield businesses from competition”) (internal quotations omitted); *Van Slicken v. Browne*, 15 Cal. App. 3d 122, 128 (1971) (“cities may not use zoning powers to regulate competition.”) Furthermore, “a city does not have carte blanche to exclude a retail merchant that it, or some of its residents, do not like.” *Friends* at 1013 (citing *Ross v. City of Yorba Linda*, 1 Cal. App. 4th 954, 964-968 (1991)).

The proposed Ordinance, however, attempts to do just that. In recommending the Ordinance, the Staff Report states that it relied in part on the finding that one of the impacts of Superstore development is that existing supermarkets are driven out of the community. Staff Report at 2. In addition, the October 11, 2005 memorandum attached

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to the Staff Report states that the Ordinance would help prevent “a single retailer from dominating the market.” Disallowing Superstores from being built throughout an entire City is an illegal means of limiting competition with local supermarkets.

C. THE ORDINANCE VIOLATES THE COMMERCE CLAUSE PROHIBITION AGAINST LAWS THAT DISCRIMINATE AGAINST OUT-OF-STATE INTERESTS.

The Commerce Clause of the United States Constitution prohibits state and local laws that discriminate against out-of-state interests in favor of local economic interests. A law that is discriminatory “on its face, in its purpose, or in its effect” is subject to rigorous scrutiny and can only survive if there is “no other means to advance a legitimate local interest.” *Pete’s Brewing Co. v. Whitehead, supra*, 19 F. Supp. 2d at 1010-11 (finding discriminatory effect where, from a practical standpoint, beer-labeling requirement would have placed burden on some out-of-state breweries from states without such a requirement, but would not affect 99.7% of breweries in Missouri); *see also McNeilus Truck & Mfg., Inc. v. State ex rel. Montgomery*, 226 F.3d 429 (6th Cir 2000) (invalidating portion of facially neutral law that would have required out-of-state re-manufacturers to either “start purchasing chassis from in-state dealers, or else stop doing business in Ohio.”)

The Ordinance violates the Commerce Clause because: (1) it has the purpose and effect of protecting local supermarket chains and local trade unions from competing with Wal-Mart, an out-of-state corporation; and (2) cities can ensure responsible zoning practice through other non-discriminatory means. As stated above, the Ordinance will operate to prohibit the development of a Wal-Mart Supercenter within the City. It will apply to no other similarly situated retailer based in California. All corporations that have Supercenters, or would be affected by the statute, would be out-of-state companies. One of the stated purposes of the law is to limit competition with local supermarket chains. As such, the law is discriminatory against Wal-Mart, and similarly situated out-of-state retailers, in favor of local economic interests.

There are various preferable non-discriminatory alternatives that can help the City achieve responsible zoning practice, which at the same time avoid running afoul of the law. For example, as with Inglewood’s recently adopted superstore ordinance, the City can review developments on a project-by-project basis. Specifically, the City has inherent authority through its police powers to regulate land use to promote the general welfare of the community. If the City believes any project under consideration will result

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in unacceptable traffic and/or economic impacts, the City may simply deny the project after the appropriate environmental review.

The City could also follow the approach taken by the City of Los Angeles and require an economic impact analysis that examines potential adverse effects on the economic welfare of the area. In fact, the Staff Report even suggested as much when it presented the option to the City Planning Commission in its July 20, 2006 Report, attached to the Staff Report. There is, therefore, simply no justification for a sweeping discriminatory prohibition against Superstore development in the City.

D. THE ORDINANCE VIOLATES THE EQUAL PROTECTION CLAUSE OF THE FEDERAL AND STATE CONSTITUTIONS.

The Equal Protection Clauses of the United States and California Constitutions prohibit laws that arbitrarily discriminate against similarly situated businesses. *See City of Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432 (1985) (invalidating zoning ordinance requiring a special use permit for psychiatric hospitals but not for other intensive uses such as a fraternity house); *Gawzner Corp. v. Minier*, 46 Cal. App. 3d 777, 785 (1975) (invalidating law that regulated advertising by motels but not by hotels). “Although equal protection does not demand that a statute apply equally to *all* persons, it does require that persons *similarly situated* with respect to the legitimate purpose of the law receive equal treatment.” *College Area Renters and Landlord Assoc. v. City of San Diego*, 43 Cal. App. 4th 677, 686 (1996). “If a statute is found to discriminate between similarly situated persons, the classification (in ordinary cases) must bear a rational relationship to a legitimate state purpose” *Id.* (further citations omitted). Under the traditional rational relationship test, the court must conduct a “serious and genuine judicial inquiry into the correspondence between the classification and legislative goals.” *Elysium Institute, Inc. v. City of Los Angeles*, 232 Cal. App. 3d 408, 427 (1991). A zoning ordinance “may not rely on a classification whose relationship to an asserted goal is so attenuated as to render the distinction arbitrary or irrational.” *Id.*

Despite the clear legal requirements set forth above, the proposed Ordinance includes an element of discretion that will create nothing but arbitrary and discriminatory results. In defining “Superstore”, the Ordinance provides that the definition “shall apply to the cumulative sum of related or successive permits which are part of a larger project, such as piecemeal additions to a building, or multiple buildings on a lot *as determined by the Director of Planning and Building.*” (emphasis added). As discussed in detail

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below, the City provides no justification for introducing this element of ad hoc decision-making given that a Superstore could easily be described with precision.

E. THE ORDINANCE VIOLATES THE DUE PROCESS CLAUSE OF THE FEDERAL AND STATE CONSTITUTIONS.

1. THE ORDINANCE IS VAGUE.

Both the United States and California Constitutions contain Due Process Clauses which provide that a statute or regulation that “forbid[s] or require[s] the doing of an act in terms so vague that [persons] of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law.” *Briggs v. City of Rolling Hills Estates*, 40 Cal. App. 4th 637, 642 (1996); *see also Tustin Heights Ass’n v. Board of Supervisors*, 170 Cal. App. 2d 619, 634-35 (1959) (“if the purposes of zoning are to be accomplished, the master zoning restrictions or standards must be definite . . .”). Rather, the statute or regulation “must provide some standard of conduct for those whose activities are proscribed and for the agencies called upon to ascertain compliance.” *Id.*

The Ordinance as written is unconstitutionally vague and provides the Director of Building and Planning with unfettered discretion with respect to the type of development that it purports to prohibit. Specifically, in its definition of “Superstore,” the Ordinance’s definition includes “the cumulative sum of related or successive permits which are part of a larger project, such as piecemeal additions to a building, or multiple buildings on a lot as determined by the Director of Planning and Building.” Ordinance at 5, attached as Exhibit D. Conceivably, the Director could chose to outlaw all Wal-Marts in Long Beach, so long as the particular store is located in a development that also houses a grocery store. The Ordinance presumably also leaves it to the Director’s discretion to clarify whether each “piecemeal addition” or each building on a lot has to have at least 10% floor area dedicated to non-taxable items, or whether a project as a whole must have this allotment. The Ordinance as written is confusing and places no control over the Director’s actions, thereby limiting the predictability of the Ordinance’s application. As a result, the Ordinance is unconstitutional on substantive due process grounds.

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2. WAL-MART'S DUE PROCESS RIGHTS WERE VIOLATED BECAUSE IT DID NOT RECEIVE NOTICE OF THE HEARING

The notice given for the Ordinance also violates Wal-Mart's procedural due process. "The basic elements of procedural due process are notice and the opportunity to be heard." *Litton International Dev. Corp. v. Simi Valley*, 616 F. Supp. 275, 295 (C.D. Cal. 1985). Procedural due process requirements apply to judicial and quasi-judicial proceedings, but not to legislative acts. *San Diego Bldg. Contractors Assn. v. City Council of San Diego*, 13 Cal. 3d 205, 211, 149, 573 (1975). The difference between legislative and judicial acts is that the former applies generally and the latter applies to only a few people. *Id.* (further citations omitted). Public decision-makers "cannot sidestep the dictates of due process by simply giving their actions a legislative moniker." *Hotel & Motel Assoc. of Oakland v. City of Oakland*, 344 F. 3d 959, 969 (9th Cir. 2003). Rather, cases focus on the "character of the action, rather than its label, avoiding formalistic distinctions between 'legislative' and 'adjudicatory' or 'administrative government actions.'" *Id.* (internal citations omitted) (citing *Harris v. County of Riverside*, 904 F.2d 497, 501 (9th Cir. 1990) (holding that notwithstanding an action's outward appearance as a legislative act, greater procedural rights may attach where only a few persons are targeted or affected and the state's action exceptionally affects them on an individual basis.)

The Ordinance is not generally applicable. Rather, it only applies to one or at most, a small group, of retailers that have developed Superstores. Wal-Mart has developed Supercenters throughout California as pointed out by the Spring 2004 Public Law Research Institute Report, attached to the Staff Report. Wal-Mart did not receive any notice of the September 19, 2006 hearing before the Long Beach City Council and therefore did not have the opportunity to present written material or testimony at that hearing. Although Big Box Ordinances have generated significant controversy in municipalities that have considered them, even members of the public did not attend the hearing in connection with the Ordinance. Wal-Mart should legally have been given the opportunity to prepare and speak at a noticed public hearing on an Ordinance that if passed, will drastically affect it. As such, the City violated Wal-Mart's procedural due process rights.

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F. THE ORDINANCE IS UNSOUND ON PUBLIC POLICY GROUNDS

The Staff Report's discussion of the proposed Ordinance relies on limited and incomplete information and a rationale that is factually unsupported. Moreover, it ignores relevant studies that suggest that the Ordinance may cause, rather than prevent, many of the negative impacts the City has associated with Supercenter development.

The Staff Report relies on two studies in its brief discussion of the Ordinance. It relies on a study conducted for the City of Los Angeles by Rodino Associates, entitled "Final Report on Research for Big Box Retail/Superstore Ordinance" (the "Rodino Study"), and a Public Law Research Institute Study entitled "California Responses to Supercenter Development: A Survey of Ordinances, Cases and Elections." The Staff Report does not provide either study in its entirety, but rather provides only the first four pages of each. Presumably based on these studies, Staff recommended approval of the Ordinance based on the alleged belief that it would: (1) prevent large amounts of traffic generated by Superstores; (2) prevent over-burdened public infrastructure; (3) protect the viability of existing commercial areas; (4) prevent the downward effect on wages and benefits that result from Superstore development.

By providing only portions of the cited studies, the Staff Report is misleading. Specifically, the Rodino Study is taken out of context. TNDG Report at 5. As stated in the TNDG Report, the Rodino Study actually recommends **against** a full prohibition of superstores. On page 47 of the study, it states that "it is not recommended that a blanket prohibition of retailers based on size be implemented." It goes on to explain that:

- a. Prohibition based on size is too inflexible as a policy tool and does not allow for situations where a large format store can be beneficial to a low-income community and to the host municipality.
- b. In situations where [a] big box retailer or superstore proposes to occupy an existing vacant retail space in an existing mall, . . . the positive impacts may outweigh negative ones.
- c. Size alone does not get to the issues of potential negative impacts.

Rodino Study at 47. Accordingly, despite the recommendation of the limited research actually provided by Staff, the Staff Report still inexplicably recommends approval of a complete prohibition of Superstores in the City.

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Moreover, the Staff Report fails to include a number of additional studies that are on point and directly dispute Staff's rationale behind the Ordinance. First, as suggested by the Yucaipa study, supermarkets, discount retail stores and shopping centers actually create more traffic per 1000 square feet than Discount Superstores. Moreover, there is no evidence to support the claim that Superstores result in any greater a burden on public services than any other retail use. The Yucaipa traffic analysis actually shows the opposite: that Superstores operate much more efficiently resulting in fewer burdens on public services.

The Ordinance is also not an adequate measure to protect the viability of existing commercial spaces. In 2004, the Los Angeles County Development Corporation (LAEDC) published a report entitled "Wal-Mart Supercenters: What's in Store for Southern California?"⁵ As summarized in the TNDG Report, the LAEDC concludes that much of Wal-Mart's market share in the California grocery market will actually come from growth in regional demand for groceries resulting from substantial population growth expected in the region. The TNDG Report provides additional analysis that supports this finding. It states that within the City of Long Beach alone, the demand for new food sales is projected to increase by more than \$50 million over the next ten years. Due to continued population growth in the City, it concludes that "a new Wal-Mart Supercenter would likely capture a substantial share of the overall market growth in food sales, rather than diverting sales from existing grocers by attracting these stores' existing customers."

Instead of protecting existing commercial developments in the City, the Ordinance may in fact have the precise opposite effect: it may encourage blight. Specifically, the LAEDC Report states that an ordinance prohibiting Supercenters within a particular city will not necessarily prevent Wal-Mart from developing Supercenters to serve the residents of that city. The TNDG Report suggests that:

Wal-Mart supercenters could "ring" the City of Long Beach and cause a substantial number of Long Beach residents to leave the City to shop. Under this scenario, the City would lose the sales tax revenues associated with its own residents expenditures. Worse, the outflow of expenditures could actually cause the very impacts that the proposed ordinance purports

⁵ As noted in the TNDG Report, given that the City of Long Beach is a member of LAEDC, it was especially troubling that the Staff Report did not include even a reference to the study.

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to avoid (i.e., impacts to neighborhood shopping centers resulting in disinvestment and unnecessary traffic impacts.)

TNDG Report at 7. As such, according to the TNDG Report, the Ordinance may actually cause negative impacts given the potential of neighboring cities to permit superstore development.

Finally, with respect to wages and benefits, staff failed to review a recent study entitled "What is the Local Wal-Mart Effect?", attached hereto as Exhibit E, which provides a thorough summary of existing studies on Wal-Mart's socioeconomic impacts. It states that the "largest nominal retail wage reductions attributed to Wal-Mart are still offset by price reductions attributed to Wal-Mart, thus leaving retail workers actually better off in terms of purchasing power." With respect to benefits, it concludes that researchers simply "don't know if Wal-Mart's benefits are different (meaning worse) than similar employers (although the emerging consensus is that there's little difference, even before Wal-Mart's recent improvement in health coverage.)" Id.

In sum, the supporting documentation provided to the City Council in the Staff Report was incomplete and potentially misleading. The Ordinance is simply not the appropriate means to achieve the City's stated policy goals.

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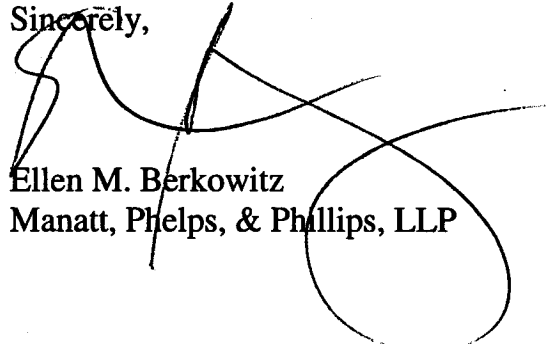
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The proposed ordinance is a drastic, discriminatory prohibition against lawful commercial uses and is premised on unsubstantiated allegations. In addition, the Ordinance strips the City of its discretion to consider projects involving Superstores, even though the circumstances surrounding the project may indicate that the project would benefit the community. There are many feasible alternatives to the proposed Ordinance that could result in responsible zoning practice that come far short of a complete prohibition of a particular type of development. For all of the above-stated reasons, we urge you not to adopt the proposed ordinance.

Sincerely,



Ellen M. Berkowitz
Manatt, Phelps, & Phillips, LLP

cc: George Bacso, Esq.
Kevin McCall
Robert E. Shannon, Esq.
Michael J. Mais, Esq.

MEMORANDUM

TO: Manatt, Phelps & Phillips, LLP **DATE:** October 2, 2006
FROM: The Natelson Dale Group, Inc. (TNDG) **FILE:** #3868
ATTN: Matthew Kanny
 Lisa Weinberger
SUBJECT: **EVALUATION OF "SUPERSTORE" ORDINANCE PROPOSED
 BY THE CITY OF LONG BEACH**

Overview of the Firm's Qualifications to Complete this Review

The Natelson Dale Group, Inc. (TNDG) is an economic and financial consulting firm established in southern California in 1974. The firm has nationally-recognized expertise in the following areas:

- Retail development and related impact analysis;
- Regional economic analysis;
- Economic development strategic planning;
- Workforce development planning;
- Fiscal impact analysis; and
- Downtown and corridor revitalization.

The firm serves both private developers and public agencies, although the majority of its clients are municipalities. The firm has prepared retail attraction and revitalization strategies for cities throughout southern California, with many of these assignments in redevelopment settings and/or communities that have historically been underserved with retail facilities. The firm has also completed more than 20 site-specific economic impact analyses for proposed "big box" retail projects, in some cases working for the municipality and in some cases working for the developer-applicant.

The firm's principal for this assignment, Roger A. Dale, has been a project manager with TNDG for 18 years, and has devoted a substantial portion of his career to retail demand analysis and related community development issues. In the past seven years alone, he has completed retail market studies in the following cities: Arvin, Bakersfield, Barstow, Beaumont, Bell Gardens, Blythe, Buellton, Burbank, Covina, Glendora, Hanford, Hemet, Huntington Park, Indio, Inglewood, Lancaster, La Quinta, Los Angeles, Moreno Valley, Ontario, Palmdale, Palm Desert, Palm Springs, Pasadena, Perris, Phoenix (Arizona), Porterville, Rialto, Rosemead, San Bernardino, San Clemente, San Jacinto, San Manuel (Arizona), Santa Clarita, Santa Maria, Santa Monica, Simi Valley, Sparks (Nevada), Tempe (Arizona), Tulare, Upland, Yucaipa and Yucca Valley.

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and other research on the actual (versus perceived) impacts of big box/supercenter development.

2. Moreover, the “supporting documentation” for the proposed Long Beach Ordinance does not even present the Rodino and PLRI reports in their entirety, but provides just the first four pages of the 72-page Rodino report and the first four pages of the 80-page PLRI report. As such, even the limited information provided from these two reports is presented out of context. Indeed, the proposed ordinance follows a course of action that the Rodino report categorically recommends against (as discussed in greater detail below). Thus, if the City Council members are relying solely on the staff report as the basis for this important decision, their positions may be erroneously influenced by the assumption that the proposed ordinance is in fact based on the presented research.
3. The staff recommendation dated September 19, 2006 refers to “a City Council directive to review the impacts of superstore activity on City infrastructure and the Community.” From the documentation we have reviewed there appears to have been no actual analysis of potential impacts. Instead the staff report presents very generic conclusions that are apparently based on selected findings drawn from the two referenced studies, without any attempt to evaluate either: a) the validity of the other studies’ findings, and b) the extent to which any valid findings are applicable to Long Beach.
4. To enable the City Council and the interested public to complete a balanced analysis of this issue, TNDG believes that other research on the impacts of big box and supercenter development should be included in the record. As it stands now, the staff report – by ignoring a number of prominent studies with different conclusions from the two presented – leaves the City vulnerable to arguments that it failed to do its due diligence and/or that it “handpicked” technical studies to support a predetermined position. A summary of other important research on these topics is provided below.

Issues Related to the Potential Impacts of Big Box/Supercenter Development

In discussing the issues related to the perceived and actual impacts of big box/supercenter development, this section of TNDG’s memorandum will quote substantially from an article entitled “What is the Local Wal-Mart Effect?” by Michael J. Hicks, Ph.D. The article is from the Summer 2006 issue of the *Economic Development Journal* published by the International Economic Development Council (IEDC). IEDC is the world’s largest professional organization for economic development practitioners, with approximately 4,500 members. Dr. Hicks is an associate professor of economics at the Air Force Institute of Technology (Dayton, Ohio) and a research professor at Marshall University (Huntington, West Virginia). He is well known for his research on Wal-Mart, but it is important to note that he has no financial relationship with Wal-Mart or any Wal-Mart affiliate. TNDG believes that his IEDC article is an excellent resource for local decision makers for the following reasons: a) it provides a thorough, up-to-date review of

and presence of a Wal-Mart has no statistically significant effect on small business growth, or the relatively size and profitability of the small business sector in the U.S. (Sobel and Dean, 2006).”

8. “Local policymakers interested in honestly evaluating Wal-Mart should carefully weigh studies on the subject...studies that present unambiguous findings are a fiction. There are no clear national impacts, and local studies should carefully explain the methodology and make their data and statistics publicly available.”

In addition to the Hicks article quoted above, TNDG has reviewed a number of formal academic studies of big box/supercenter impacts (much of it specifically focused on Wal-Mart) as well as a number of policy-oriented documents prepared for government entities (including the Rodino and PLRI reports referenced in the Long Beach staff report). Key points from this additional research are summarized below. In order to avoid redundancy, TNDG’s summary below does not repeat findings that are essentially the same as the points quoted from the Hicks article above.

1. Ironically, the Rodino report prepared for the City of Los Angeles (part of which is presented in the Long Beach staff report) actually recommends against enacting an ordinance that would place size limits on retail stores or that would explicitly prohibit a retail store based on its size and merchandise mix. Instead the Rodino report recommends other measures to mitigate the potential impacts of superstore development, including requiring site-specific impact assessments as part of the approval process for individual projects. These recommendations are presented on pages 44-51 of the Rodino report and are therefore excluded from the brief excerpt included in the Long Beach staff report.
2. Although generally presenting an unfavorable view of Wal-Mart, the Rodino report does acknowledge some circumstances in which Wal-Mart can have a positive impact in terms of both employment opportunities and overall community development. In particular, page 26 of the report (also excluded from the Long Beach staff report) notes: “A caveat must be considered here. In testimony provided at both public hearings [included as part of Rodino’s community outreach process for the City of Los Angeles] examples were provided of Wal-Mart stores locating in retail spaces vacated by other large retailers in the Panorama City Mall and the Baldwin Hills Mall. It was stated that both stores employed several hundred residents of each trade area who had previously been unemployed. It is possible that the number of newly employed persons in such situations is greater than the number of workers who may have lost jobs at other retailers due to the transfer of sales to the new store.”
3. Given the above caveat, the Rodino report includes the following recommendation on page 47:

surprised that the staff report for the proposed superstore ordinance omitted any reference to this study. The LAEDC report raises several valid points which merit consideration here:

- a. Wal-Mart may eventually achieve a 20% market share in the southern California grocery market, but this will happen over many years and will not all come at the expense of existing supermarkets. Much of Wal-Mart's market share will come from *growth* in the regional demand for groceries resulting from the substantial population growth expected in the region. In other words, Wal-Mart is not entering a stagnant market, but a large, high-growth market that can support substantial amounts of new retail space.
- b. An ordinance prohibiting the development of supercenters within a particular city will not necessarily prevent Wal-Mart from developing supercenters to serve the residents of that city. Although LAEDC's finding in this case referred to the City of Los Angeles, the same rationale would apply to Long Beach. In particular, Long Beach is immediately adjacent to the following other cities: Carson, Compton, Paramount, Bellflower, Lakewood, Hawaiian Gardens, Los Alamitos, Cypress, Seal Beach, Signal Hill and Los Angeles. The cities of Lynwood, South Gate, Downey, Norwalk, Cerritos, Artesia, La Palma, Buena Park, Stanton, Garden Grove and Westminster – although not directly abutting Long Beach – are also within competitive proximity of the city. A very real possibility exists that Wal-Mart supercenters could “ring” the City of Long Beach and cause a substantial number of Long Beach residents to leave the city to shop. Under this scenario, the City of Long Beach would lose the sales tax revenues associated with its own residents' expenditures. Worse, the outflow of expenditures could actually cause the very impacts that the proposed ordinance purports to avoid (i.e., impacts to neighborhood shopping centers resulting in disinvestment and unnecessary traffic impacts).

Potential Demand for Additional Grocery Sales in Long Beach Market Area

Given that the City of Long Beach staff report for the proposed ordinance provides no analysis at all of the potential magnitude of impacts of supercenter development in the City, TNDG has prepared some preliminary estimates in order to put this issue into perspective. Provided below is a summary analysis of the potential impacts of a Wal-Mart Supercenter in the City of Long Beach. The analysis covers a ten-year period, from 2006 to 2015. The analysis focuses on demand for grocery sales in the City, since the grocery component is what specifically distinguishes a supercenter from other discount general merchandise stores.

combined, demand for new food sales is projected to increase by more than \$100 million over the next ten years. For the overall RMA, demand for new food sales during this time period is projected to increase by more than \$225 million.

Based on a review of publicly available sales data from Wal-Mart's annual report, TNDG estimates that a typical Wal-Mart Supercenter generates approximately \$85 million in annual retail sales, with the grocery component representing approximately \$30 to \$40 million of this total.² Based on the projected demand for new grocery sales in the City of Long Beach, as shown in Table 1 above, the grocery sales of a typical Wal-Mart Supercenter would capture approximately 55% to 73% of the incremental demand for grocery sales in the City over the next ten years. That is, due to continued population growth in the City, a new Wal-Mart Supercenter would likely capture a substantial share of the overall market growth in food sales, rather than diverting sales from existing grocers by attracting these stores' existing customers.

By examining a larger trade area such as the PMA and SMA combined, the incremental demand for grocery sales could theoretically support the grocery components of approximately three new Supercenters.³ If we extend the trade area to include the RMA, incremental demand for grocery sales could theoretically support the grocery components of six to seven new Supercenters – without impacting the sales of existing grocery stores in the trade area.

In addition to the grocery component, Wal-Mart Supercenters also include a significant amount of space devoted to "GAFO" sales. "GAFO" is a retail industry acronym for the General Merchandise, Apparel, Furniture, and Other/Specialty sales categories. These categories correspond to the typical merchandise mix of a discount department store such as Wal-Mart. Following the same approach as described above for evaluating the demand for new grocery sales, the potential demand for new GAFO sales in the City of Long Beach over the next ten years is projected to increase by \$114.9 million⁴. As discussed above, the GAFO components of a typical Wal-Mart Supercenter generate an average of \$45 to \$55 million in sales per year. Thus, a typical Supercenter's GAFO sales would absorb less than one-half of the incremental demand for new GAFO sales in the City over the next ten years, from 2006 to 2015. As such, the GAFO components of a Wal-Mart Supercenter would not be expected to negatively impact existing retailers in Long Beach.

² There are a number of publications that cite a wide range of average annual sales for a typical Wal-Mart Supercenter. However, many of these publications do not cite sources or how their estimates were derived, and Wal-Mart does not make these sales data by store type/format publicly available.

³ This is derived by dividing the incremental demand for food sales in the SMA over the next ten years (\$106,031,790) by the typical grocery sales of Wal-Mart Supercenter (\$30,000,000 to \$40,000,000). The calculation indicates market support for the grocery component of 2.7 to 3.5 new Supercenters.

⁴ This is derived by multiplying the growth in population (28,461), as shown in Table 1, by taxable GAFO sales per capita in the State of California (\$4,039, based on 2004 taxable sales data).



CITY OF LONG BEACH

THE CITY PLANNING COMMISSION

333 W. Ocean Boulevard Long Beach, California 90802 562-570-8194 FAX 562-570-8068

September 19, 2006

HONORABLE MAYOR AND CITY COUNCIL
City of Long Beach
California

RECOMMENDATION:

Conduct a public hearing on the proposed Amendments to the Zoning Regulations; and

1. A. Receive the supporting documentation into the record, conclude the public hearing and declare the Ordinance, prohibiting stores greater than 100,000 square feet in size that have greater than 10 percent of floor area dedicated to non-taxable merchandise with exemptions for merchandise clubs that sell primarily bulk merchandise, read the first time and laid over to the next regular meeting of the City Council for final reading (Case No. 0601-10)(Citywide);
 - B. Receive the supporting documentation into the record, conclude the public hearing and declare the Ordinance amending PD-25 read the first time and laid over to the next regular meeting of the City Council for final reading;
 - C. Receive the supporting documentation into the record, conclude the public hearing and declare the Ordinance amending PD-29 read the first time and laid over to the next regular meeting of the City Council for final reading;
 - D. Receive the supporting documentation into the record, conclude the public hearing and declare the Ordinance amending PD-30 read the first time and laid over to the next regular meeting of the City Council for final reading;
2. Receive the supporting documentation into the record, conclude the public hearing and declare the Ordinance, establishing new fees associated with Condominium Conversions, read the first time and laid over to the next regular meeting of the City Council for final reading (Case No. 0601-11)(Citywide);
3. Receive the supporting documentation into the record, conclude the public hearing and declare the Ordinance, reclassifying painting contractors from a prohibited use to a permitted use relative to home occupation uses, read the first time and laid over to the next regular meeting of the City Council for final reading (Case No. 0601-13)(Citywide);

HONORABLE MAYOR AND CITY COUNCIL

September 19, 2006

Page 2

4. Receive the supporting documentation into the record, conclude the public hearing and declare the Ordinance, amending the City's residential density bonus standards to conform with the State of California residential regulations, read the first time and laid over to the next regular meeting of the City Council for final reading (Case No. 0601-14)(Citywide); and
5. Approve a Resolution submitting applicable Ordinance Amendments to the California Coastal Commission as Implementing Resolutions for the City's Local Coastal Plan.

DISCUSSION

The Planning Commission held public hearings on various dates (see attached) to consider various amendments to the Zoning and Subdivision regulations. Amendments to Title 20 (Subdivisions) and Title 21 (Zoning) of the Long Beach Municipal Code may be proposed up to three times a year. This is the first package of amendments for 2006. The amendments generally respond to City Council requests, address changing land use issues in the community, update obsolete regulations, correct typographical errors and cross references, and replace vague language with more specific language. The following constitute the proposed amendments:

Big Box Retail Prohibition

In response to a City Council directive to review the impacts of superstore activity on City infrastructure and the community, the proposed Zoning Ordinance amendment prohibits retail establishments over 100,000 square feet that have 10 percent or more of the floor area dedicated to non-taxable merchandise with exemptions for membership clubs that sell primarily bulk merchandise. Staff researched ordinances from various jurisdictions (including the City of Los Angeles; Alameda County; City of Oakland; Fort Collins, CO; Madison, WI; Moscow, ID; County of Pasco, FL; and Maryland Department of Planning) as well as a study commissioned by the Los Angeles County Community Development Department and a study commissioned by the Governor's Office of Planning and Research. Both research studies support the recommendation to prohibit these types of uses based on the economic impacts of superstore retail establishments.

The Planning Commission conducted a public hearing on June 15, 2006 and continued the item to its July 20, 2006 meeting to allow further review. At its July 20, 2006 meeting, the Planning Commission unanimously recommended that the City Council adopt the amendment to the Zoning Ordinance (See Attachment 1- Planning Commission Staff report and minutes for July 20, 2006).

Condominium Conversion Fee

On October 11, 2005, the City Council requested that the City Attorney prepare a condominium conversion fee ordinance for review and recommendation by the Planning Commission. The fee would be created as a funding component of the City's Housing Trust Fund. At its June 15, 2006 meeting, the Planning Commission reviewed three possible condominium conversion fee structures that included tying the fee to a future sales price of the converted unit, a fixed per unit fee, and waiver of the fee subject to deed restricting some of the units as affordable units. The Planning Commission also reviewed several options for the implementation of the fee including future applications (ie., conversions that have not yet been filed), conversions that have been filed but have not received Tentative Map approval and conversions that have received Tentative Map approval but not Final Map approval (See

Attachment 2- Planning Commission Staff report and minutes for July 20, 2006).

After discussing the item at the June 15, 2006 public hearing, the Planning Commission continued the item to the July 20, 2006 meeting to allow a public study session to be held on the issue. At its July 20, 2006 meeting, the Planning Commission recommended with a 5-1 vote (Commissioner Win dissenting) that the City Council adopt the amendment to the zoning ordinance with the following:

- That the condominium conversion fee be 1.5 percent of the sales price of the converted unit, to be applied to new applications and applications not deemed complete as of July 20, 2006;
- That the fee be collected through escrow upon the sale of each individual unit, but not later than 18 months after final map approval;
- That the fee be provided exclusively to the Housing Trust Fund with exemptions listed in the proposed Ordinance; and
- That condominium conversion projects providing state-defined affordable housing units for sale will be exempt from a portion of the fees, dependent on the affordability rate and number of units deed-restricted for such purpose as determined by the Housing Service Bureau.

Density Bonus Standards

The Department of Planning and Building is proposing an amendment to Section 21.63 of the Zoning Ordinance, Incentives for Affordable Housing, to update the qualifications for a density bonus and the density bonus limitations. This request is in response to a change in Section 65915 et seq. of the California Government Code that occurred in January 2005. In the case of incentives for affordable housing, State code preempts City code. Therefore, in order to avoid amending the City's Zoning Ordinance every time the State amends its regulations, the proposed amendment ties the City's incentives for affordable housing to the State Government Code.

The Planning Commission conducted a public hearing on June 15, 2006 and unanimously recommended that the City Council adopt the amendment to the Zoning Ordinance (See Attachment 3 Planning Commission staff report and minutes for June 15, 2006).

Reclassification of Painting Contractors

The Department of Financial Management requested an amendment to the zoning regulations to allow painting contractors as home occupation uses. The request is due primarily to the painting industry moving from oil-based paints to water-based paints that do not require the same use of high flammable and dangerous solvents. This change results in a lower potential threat to residential areas. Both the Fire Department and Building Department have reviewed and concur with the proposal. In addition, the California Franchise Tax Board information indicated that there were at least 112 painting contractors that filed a state income tax return from residential addresses in Long Beach. These businesses represent approximately \$20,000 in annual business license tax for deposit in the City's General Fund.

The Planning Commission conducted a public hearing on April 6, 2006 and unanimously recommended that the City Council adopt the amendment to the Zoning Ordinance (See Attachment 4-Planning Commission staff report and minutes for April 6, 2006).

ENVIRONMENTAL ANALYSIS

In accordance with the Guidelines for Implementation of the California Environmental Quality Act, Categorical Exemptions CE 06-115, CE 06-116, CE 06-120, and CE 06-23 have been prepared for the respective amendments.

TIMING CONSIDERATIONS

The Municipal Code requires the Planning Commission recommendation to be transmitted by the Department of Planning and Building to the City Clerk for presentation to the City Council within 60 days following Planning Commission action. However, since the City is the applicant this time frame is not binding.

FISCAL IMPACT

Staff has estimated that the adoption of a Condominium Conversion fee would provide approximately \$1.25 million annually for the Housing Trust Fund. This calculation uses the 262 units approved for conversion in 2005 as the annual average, and the July 2005 citywide average sales price of \$322,000.

This matter was reviewed by Assistant City Attorney Michael Mais on September 13, 2006 and Budget Management Officer David Wodynski on September 8, 2006.

SUGGESTED ACTION:

Adopt recommendation.

Respectfully submitted,

**MATTHEW JENKINS, CHAIR
CITY PLANNING COMMISSION**

BY: 

**SUZANNE FRICK
DIRECTOR OF PLANNING AND BUILDING**

SF:GC:CB:jw

Attachments:

- 1) Planning Commission Staff Report (Big Box Retail) and minutes dated July 20, 2006 (including attachments)
 - 2) Planning Commission Staff Report (Condominium Conversion fee) and minutes dated July 20, 2006 (including attachments)
 - 3) Planning Commission Staff Report (Density Bonus standards) and minutes dated June 15, 2006)
 - 4) Planning Commission Staff Report (Painting Contractors) and minutes dated April 6, 2006)
- Zone Change Amendment Ordinances
Resolution



AGENDA ITEM No.

CITY OF LONG BEACH Attachment #1

DEPARTMENT OF PLANNING & BUILDING

333 WEST OCEAN BOULEVARD • LONG BEACH, CALIFORNIA 90802 • (562) 570-6194 FAX (562) 570-6068

ZONING DIVISION

July 20, 2006

CHAIRMAN AND PLANNING COMMISSIONERS
City of Long Beach
California

SUBJECT: Proposed Amendments to the Zoning Ordinance regarding large retail establishments with grocery sales.

LOCATION: Citywide

APPLICANT: City of Long Beach
c/o Suzanne Frick, Director of Planning and Building
333 W. Ocean Boulevard
Long Beach, CA 90802

RECOMMENDATION

Planning Commission recommend that the City Council adopt the amendment related to new large retail shopping establishments with grocery sales.

BACKGROUND

At its October 11, 2005 meeting, the City Council directed the Planning Commission to develop zoning regulations to limit the impact of superstore retail on City infrastructure and the community. Specifically, the City Council Memorandum (see attached) sought to ban Superstores, defined as retail establishments over 100,000 square feet that have 10% or more of the floor area dedicated to non-taxable merchandise, with exemptions for membership clubs that sell primarily bulk merchandise in areas where the city has invested substantial state, local, and federal resources in revitalization.

Planning staff researched ordinances from various jurisdictions (including City of Los Angeles, Alameda County, CA, Oakland, CA, Fort Collins, CO, Madison, WI, Moscow, ID, County of Pasco, FL, Maryland Department of Planning) regarding large retail or "big box" developments. The ordinances vary in focus; from those that limit total size of stores and amount of grocery or non-taxable merchandise sold to those that focus on design, site planning, and environmental elements. Based on the breadth of regulations in other areas, staff drafted recommendations to the Planning Commission that deal with both the size of superstores as well as site and sustainability standards for large commercial developments.

On June 15, 2006 the Planning Commission considered both staff recommendations and voted to continue the superstore with grocery sales prohibition to the July 20, 2006 Planning Commission Hearing and to continue the site and sustainability standards to a date uncertain.

CHAIRMAN AND PLANNING COMMISSIONERS

CASE NO. 0601-10

July 20, 2006

Page 2

Prohibit stores greater than 100,000 square feet in size that have greater than 10% of floor area dedicated to non-taxable merchandise, with exemptions for membership clubs that sell primarily bulk merchandise.

The attached research studies support the recommendation based on the economic impacts of superstore retail establishments on smaller retailers, particularly grocery stores. The City of Los Angeles Community Development Department commissioned the Rodino Associates to prepare a report on big box retail/ superstores (see attached report and LA City Attorney Summary Report). The Rodino report cites examples of Superstores driving out existing supermarkets, which may affect the viability of entire local shopping areas. The report also noted the downward effect on wages and benefits on communities where they locate.

One of the conclusions of the Rodino Report was that "Big Box retailers and superstores may negatively impact the retail labor market in an area by converting union-scale retail jobs to a fewer number of lower paying retail jobs. The difference in overall compensation (wages and benefits) may be as much as \$8.00 per hour. Grocers have cited the current grocery store worker's strike and lockout as being partly due to the impact of the labor policies of the non-union superstore retailers." As of July 2005, three of the top 25 largest employers in the Long Beach were groceries (Ralphs, Vons, Albertsons).

This recommendation to prohibit stores greater than 100,000 square feet in size that have greater than 10% of floor area dedicated to non-taxable merchandise, with exemptions for membership clubs that sell primarily bulk merchandise fulfills the intent of the request described in the October 11, 2005 City Council Memorandum. Staff does not believe that there are currently any Superstores located within the City.

The proposed amendment would apply to the commercial and industrial chapters of the zoning ordinance, and to the Atlantic Avenue, Long Beach Boulevard, and Downtown Long Beach Planned Development Districts. Draft language of the amendment is attached for your review.

The City of Los Angeles adopted an ordinance in 2004 that requires an economic impact analysis and findings that the superstore would not adversely affect the economic welfare of the area for any proposed superstores in or within a one-mile buffer of economic assistance areas. If the Planning Commission were to prefer this option, an equivalent implementation method for Long Beach would be to limit the geographic area to a one-mile buffer around Redevelopment areas, which would encompass all but a fraction of the enterprise zone located within the City, and/or to allow superstores only after considering an economic impact analysis.

PUBLIC HEARING NOTICE

In accordance with the Noticing Requirements of the Zoning Ordinance, a legal notice appeared in the Press Telegram Newspaper on May 30, 2006. Notices were also sent

to each of the nine City Council representatives as well as all public libraries. In addition, notices were posted at City Hall.

ENVIRONMENTAL REVIEW

The project has been deemed categorically exempt from further environmental review pursuant to the Guidelines of the California Environmental Quality Act. Categorical Exemption (CE 06-115)

IT IS RECOMMENDED THAT THE PLANNING COMMISSION

Recommend that the City Council adopt the amendment to the Zoning Ordinance related to new large retail shopping establishments with grocery sales.

Respectfully submitted,

SUZANNE FRICK,
DIRECTOR OF PLANNING AND BUILDING

By: 

SCOTT MANGUM
PLANNER

Approved: 

ANGELA REYNOLDS
PLANNING OFFICER

Attachments

1. Proposed Amendment
2. October 11, 2005 City Council Agenda Item Memorandum
3. Rodino Report Summary and related studies
4. City of Los Angeles Superstore Ordinance
5. Categorical Exemption

Proposed Amendment Language for the Prohibition of Large Scale Retail with Sale of Substantial Non-Taxable Items

Prohibit stores greater than 100,000 Square Feet in size that have greater than 10% of floor area dedicated to non-taxable merchandise, with exemptions for membership clubs that sell primarily bulk merchandise. Non-taxable sales merchandise generally includes food products for human consumption, but not items such as over-the-counter medicine, alcoholic beverages, carbonated beverages, tobacco products, or dietary supplements. The prohibition would apply to and amend the use tables within all commercial and industrial zones as well as the Atlantic Avenue, Long Beach Boulevard, and Downtown Long Beach Planned Development Districts. As an example, the following change would be made to the Table of uses permitted in commercial zones.

Portion of TABLE 32-1 – Uses in All Other Commercial Zoning Districts										
	Neighborhood			Community				Regional	Other	
Retail Sales	CNP	CNA	CNR	CCA	CCP	CCR	CCN	CHW	CS	
Superstores (Retail > 100,000 SF with > 10% Floor Area non-taxable merchandise)	N	N	N	N	N	N	N	N	N	For Superstores see Footnote (2)

Footnotes: (2)

Membership clubs that sell primarily bulk merchandise are exempt from the Superstore regulations.



City of Long Beach
Working Together to Serve

Office of Tonia Reyes Uranga
Councilmember, 7th District
Memorandum

~~**NB-31**~~

Date: October 11, 2005

To: Honorable Mayor and Members of the City Council

From: Councilmember Bonnie Lowenthal, First District *BL*
Councilman Dan Baker, Second District *DB*
Councilmember Tonia Reyes Uranga, Seventh District *TR*

Subject: **AGENDA ITEM: Zoning Rules to Limit the Impact of "Big Box" Superstores**

A specific objective of the Business Growth and Workforce Development Task Force of the Long Beach 2010 Strategic Plan is, "Revitalize local shopping districts designed to meet the needs of neighborhoods rather than focusing exclusively on large retail ("big box") projects that can disrupt adjacent neighborhoods." (B3.3) Public comments received from the Jobs and Business Strategy workshops continue to cite the need to "improve demographics and income characteristics" to retain more businesses and jobs in Long Beach. (JBS Community Input Report Vol. 4, Page 14, Chamber of Commerce Input - 2.3.1)

As awareness of the negative impacts of "big box" developments has increased throughout the nation, a number of cities have enacted ordinances and zoning rules to ensure adequate review of the economic and community impacts of large-scale retail development, protect the viability of existing commercial areas, and maintain competition by preventing a single retailer from dominating the local market. These zoning rules prohibit stores over a certain size to sustain the vitality of small-scale, pedestrian-oriented business districts, which in turn nurture local business development. Store size caps prevent the many negative impacts of "big box" development, such as increased traffic congestion and overburdened public infrastructure, and they protect the character of the community by ensuring that new development is at a scale in keeping with existing buildings. Such a zoning rule would not ban "big box" retailers from the entire city, but only in those areas where the city has invested substantial state, local and federal resources in economic revitalization. Superstores or "big box" retailer are often defined as a retail establishment over 100,000 square feet that has 10% or more of its floor area dedicated to non-taxable merchandise, with exemptions for membership clubs that sell primarily bulk merchandise.

We would like to request our colleagues' support for referring the matter to the Planning Commission to make the necessary findings in order to develop zoning rules that would limit the impact of "big box" developments.

Suggested Action: Refer to Planning Commission for development of zoning rules to limit impact of superstore retail on City infrastructure and the community.

REPORT NO. R03-0585
December 16, 2003

REPORT RE:

**OPTIONS FOR REGULATING THE
DEVELOPMENT OF SUPERSTORES**

Housing, Community & Economic Development Committee
Room 395, City Hall
200 North Spring Street
Los Angeles, California 90012

Planning & Land Use Management Committee
Room 395, City Hall
200 North Spring Street
Los Angeles, California 90012

(Council File 00-1675-S2 not transmitted herewith)

Honorable Members:

The City Attorney's Office transmits this report to assist the Committees and Council in framing their discussion of the research, analysis and public hearings conducted regarding the issue of regulating big box retail or superstores¹ development. This report identifies three sets of policy choices the Committees should consider in crafting a regulatory approach: (1) defining the focus of regulation, i.e. which uses should be subject to additional development restrictions; (2) deciding on the geographic scope of the regulation; and (3) determining the form of regulation.

¹Academics, researchers and planners variously refer to large retail stores as "big box" stores, "supercenters" or "superstores." For clarity and ease of reference, this report shall use the term "superstore" to refer to large stores combining retail and grocery sales as distinguished from the term "big box" stores, which refers to all large retail stores regardless of whether grocery sales are included under the same roof.

Based on our legal analysis and review of the record, the City Attorney's Office recommends the adoption of an ordinance prohibiting superstore development in Economic Assistance Areas. Superstores would be defined as stores greater than 100,000 square feet which combine retail and grocery sales and which devote more than 10% of sales floor area to the sale of non-taxable merchandise. Wholesale and membership clubs selling primarily bulk merchandise would be excluded. Economic Assistance Areas would be defined as areas encompassing all Community Redevelopment Agency project areas, State and Federal Enterprise Zones, the Empowerment Zone and Renewal Community, and a one-mile radius buffer from these zones. Prohibiting superstores in Economic Assistance Areas would address the particular land use impacts associated with very large combined retail and grocery sales and protect the City's substantial direct and indirect investment in the revitalization and planning of the communities within Economic Assistance Areas.

This report is based on a review of the *Final Report on Research for Big Box Retail/Superstore Ordinance* by Rodino Associates ("Rodino Report"), industry and academic studies, and an analysis of regulations adopted by other jurisdictions in response to the impacts caused by big box retail and superstore development.

I. BACKGROUND

The City currently regulates large retail stores with 100,000 square feet or more of gross floor area by requiring a conditional use permit in the C2, C4, C5, CM, M1, M2, and M3 zones consistent with findings and design guidelines adopted by the City Planning Commission. The existing ordinance is aimed at mitigating the land use impacts of big box retail development within commercial and manufacturing zones, but does not address the particular land use, environmental and economic impacts associated with superstores, which combine retail and grocery sales within one enormous establishment.

In March 2003, the City Council authorized the Community Development Department (CDD) to retain a consultant to assist CDD and the City Attorney's Office in compiling and analyzing background material necessary to draft an ordinance regulating superstore development. CDD retained Rodino Associates and with their assistance conducted two public hearings on the issue. Rodino Associates surveyed available studies and literature and reviewed testimony from the hearings to recommend the appropriate definition to use in a new ordinance, summarized the impacts of big box and superstore development, suggested measures to mitigate those impacts and outlined a procedure for reviewing and analyzing superstore development

proposals in Economic Assistance Areas. The Rodino Report and this report are the

products of this enterprise.

II. MAJOR IMPACTS OF SUPERSTORES

A. Land Use, Traffic, Environmental and Design Impacts

The land use and other environmental impacts associated with superstore development are well documented in studies from across the country. Superstores are characterized as typically windowless, rectangular, single-story buildings with drab standardized facades. They rely on auto-borne shoppers and require acres of surrounding parking. Superstores have unique potential to profoundly disrupt land use patterns because they offer discount retail and full-service grocery retail under one roof. This threatens traditional supermarkets which often anchor neighborhood shopping centers. As a result, the adjacent development of a superstore may potentially threaten the viability of entire commercial districts.

In addition, superstores create particularly high transportation impacts because of the frequency of grocery trips combined with the huge scale of their general merchandise operations. The typical household makes more frequent trips to the grocery store than to a general retail store or to warehouse membership clubs, which primarily sell a limited range of bulk food items. Traffic generation studies indicate that superstores are likely to generate more traffic on a daily or weekly basis than other types of large stores.² This increase in trips increases traffic congestion and air pollution,³ while the acres of parking required to support auto-borne shoppers increase the urban heat-island effect and generate increased amounts of polluted runoff from parking lots.⁴

B. Economic Assistance Areas

The City of Los Angeles has maintained a long-standing and unwavering commitment to revitalizing and eliminating blight in the City's poorest communities by leveraging State and Federal tax credits, economic incentives and the City's own direct

² Report to the Community and Economic Development Agency of the City of Oakland by the Office of the City Manager, An Ordinance Amending the Oakland Planning Code to Define "Large-Scale Combined Retail and Grocery Sales Commercial Activity," September 23, 2003.

³ *Slamdunking Wal-Mart!* (1999) By: Al Norman, p. 18, citing a study by Brian Ketcham, published in a 1995 edition of "Metro Planner", the newsletter of the American Planning Association.

⁴ "The High Cost of Free Parking", 1000 Friends of Wisconsin and the Land Use Institute.

and indirect investment. These programs and initiatives target geographically defined areas including five State Enterprise Zones, two Federal Enterprise Zones, an Empowerment Zone, a Renewal Community and 37 Community Redevelopment Agency Project Areas (collectively, "Economic Assistance Areas"). The City, State and Federal governments created Economic Assistance Areas to eliminate blight, encourage private investment, and revitalize community economic activity. Combined, all three levels of government have expended hundreds of millions of dollars to achieve these economic assistance goals.

Economic Assistance Areas catalyze the development of robust and healthy communities. They aim to provide people with opportunities to obtain stable, good paying jobs and to give individuals the prospect to better their lives in the future, "enjoy the environment of their work, have confidence in the intention of their companies to protect their jobs, embrace self improvement and attainment of better education as a vehicle for such improvement, and have greater economic involvement in their own community by spending more in their own community for a more sustained path of economic growth."⁵

The City provides direct and indirect support to Economic Assistance Areas through grants, loans, tax credits, reinvestment of tax increment funds, facade improvement programs, infrastructure improvements and the implementation and enforcement of focused planning efforts such as designs for development in redevelopment project areas.

Superstores may cause substantial disruption to revitalization and planning efforts in Economic Assistance Areas by driving out existing grocery stores that often anchor the neighborhood shopping centers that are the focus of commercial activity in these communities. The Rodino Report discusses evidence from locales as diverse as Dallas, Texas, the State of Mississippi, and Toronto, Canada, demonstrating the impact of superstores on existing grocery stores. In many communities, supermarkets anchor local commercial districts and shopping centers by allowing local residents to buy day-to-day essentials and encouraging patronage of other nearby local businesses. Numerous studies indicate that the single greatest loss from traditional grocery stores is due to the superstore configuration of grouping discount retail and full-service grocery shopping

⁵ *A Position Paper, Revitalization Zones and the Necessity of Protecting Good Paying Jobs: A Brief Review of Some of the Existing Evidence*, Jamshid Damooei, Ph.D., Professor of Economics and Co-Director of Center for Leadership and Values, California Lutheran University.

under one roof.⁶ Superstores draw customers away from traditional supermarkets, thus threatening the viability of entire local shopping areas. If superstores succeed in eliminating neighborhood supermarkets and grocers, the resultant shuttering of local shopping centers could cause a resurgence of the persistent urban blight that Economic Assistance Areas are designed to combat.

The Rodino Report also notes the damaging practice of superstores negotiating leases that permit them to "go dark," i.e. vacate a location, while maintaining the lease on big box structures and parking areas. This facilitates a pattern of superstores locating in a community, engaging in predatory pricing that drives out competitors, consolidating their operations by shutting down stores once competition is eliminated and then tying up the massive parcels they have assembled through long-term leases that prevent the reestablishment of rival retailers and the recycling of scarce industrial and commercial land. This ultimately results in declining property values for the surrounding community as a hulking vacant structure sits on an enormous parcel attracting graffiti and debris.

The Rodino Report focuses particular attention on the tendency of superstores to drive down wages and benefits in the communities in which they locate. Superstores may increase the ranks of the working poor by paying low wages and providing very limited health care benefits, thus further burdening already strained local social service and health care systems.

C. Regulatory Approaches in Other Jurisdictions

A number of jurisdictions throughout the United States have adopted ordinances controlling development of big box retail/superstores. These ordinances range from restricting the location of these retailers to outright prohibitions. Oakland has become the latest California community to regulate these uses by banning "Large-Scale Combined Retail and Grocery Sales" establishments whose total sales floor exceeds 100,000 square feet and which devote more than 10% of sales floor area to the sale of non-taxable merchandise. An ordinance is pending before the San Diego City Council which would prohibit development of superstores that are greater than 130,000 square feet and which stock more than 30,000 Stock-keeping Units, of which at least 10% are non-taxable items. Bozeman, Montana and Coconino County, Arizona have both adopted size restrictions. The Rodino Report describes regulatory efforts in several other jurisdictions.

⁶ *Economic Analysis of the Proposed Fremont Wal-Mart: Short and Long Term Impacts on Retail and Economic Development*, Prepared for The United Food and Commercial Workers Union Food and Commercial Workers Union, Local 870 by Strategic Economics (March 2003).

III. KEY POLICY OPTIONS FOR CONSIDERATION

A. Defining the Focus of Regulation

In devising a big box or superstore ordinance, the Committees must decide the threshold question of the use to be regulated in terms of store size and/or product mix. Big box retail/superstores are generally characterized by large windowless rectangular single-story buildings, standardized facades, reliance on auto-borne shoppers, acres of parking, and no-frills site development without community or pedestrian amenities. Depending on its location, a big box retail/superstore can range from 50,000 to 1,000,000 square feet in size and offer a product mix including general retail, non-taxable (grocery) or bulk merchandise. The City Attorney's Office suggests the Committees consider the following three options:

1. **Retail Facility Larger than 75,000 Square Feet of Gross Buildable Area, Selling Goods to the General Public**

This definition measures size and is the easiest to determine. It will not however, identify the type of inventory carried since it incorporates all retail types including groceries, clothing and home improvement merchandise. This definition is very broad and would apply to most large retail stores including warehouse clubs like Sam's Club, discount stores such as Wal-Mart, home improvement centers similar to Home Depot and superstores comparable to Target. This definition might also include some supermarkets. The Rodino Report recommends this definition.

2. **Retail Facility Larger than 100,000 Square Feet with More Than 10% of the Gross Floor Area Devoted to Non-Taxable Merchandise (Groceries), Excluding Membership Clubs**

This definition incorporates both store floor area, inventory size, and composition. It will apply to superstores such as Wal-Mart Superstores and Target Superstores. It would exclude wholesale clubs or other establishments selling primarily bulk merchandise and charging membership dues or otherwise restricting merchandise sales to customers paying a periodic fee. These exclusions would focus the regulation on the superstore uses that generate particularly high traffic congestion and air quality impacts and which have the most significant potential to undermine economic revitalization efforts. The City Attorney recommends adoption of this definition.

3. **Retail Facility Exceeding 150,000 Square Feet with 20,000 or Greater Non-Taxable Stock-Keeping Units**

This definition unites store floor area and Stock-keeping Units ("SKU") to describes the retailer's inventory. This definition would capture a very limited universe of stores, principally Super Wal-Mart and possibly Super Target. It would exclude Costco and other bulk merchandise or warehouse clubs, because these stores carry a relatively small number of SKUs (3,500 to 4,500). It would also exclude most supermarkets, because although they carry about 25,000 SKUs, they generally do not exceed 150,000 square feet in size. Employing this definition would require retailers to periodically provide the City with SKU data. This would require review and monitoring by City staff.

B. Defining the Geographic Scope of the Regulation

The City of Los Angeles contains a diversity of communities and land use zones and faces uneven development of its commercial centers. As a result, the Committees may wish to consider tailoring the geographic application of an ordinance to account for this diversity. City Attorney's Office recommends consideration of the following options:

1. Citywide Application

The Committees may wish to apply the regulation uniformly across all Economic Assistance Areas and land use zones.

2. Apply To Economic Assistance Areas, Including a One-Mile Buffer Surrounding Each Zone

By applying the regulation only to Economic Assistance Areas, the City could address the land use and environmental impacts caused by superstores while buttressing the City's efforts to economically revitalize and enhance community planning in the City's poorest neighborhoods. Including a one-mile buffer around each zone would further protect the integrity of community planning efforts and prevent developers from locating superstores just outside the border of each Economic Assistance Area and thus undermining the City's direct and indirect investments in these communities. Limiting application of the regulation recognizes the economic diversity of the City's commercial areas. The City Attorney recommends adopting this geographic approach.

3. Apply the Regulation to C2, C4, C5, CM, M1, M2, and M3 Zones

This approach would build on the existing zoning regulations on big box stores exceeding 100,000 square feet by focusing primarily on the land use impacts associated with development in certain commercial and manufacturing zones of Los Angeles. It would

not distinguish between areas facing differing levels of economic development challenges and would have roughly the same affect as a citywide application.

C. Determining the Form of Regulation

Ordinances controlling big box retail and superstore development cover the entire spectrum from size regulations, requiring conditional use permits, to wholesale prohibition. The City Attorney's Office recommends consideration of the following regulatory approaches:

1. Prohibit Development of Superstores Within Economic Assistance Areas

The Rodino Report and the studies, articles and other materials contained in the record document the land use, environmental and economic impacts of superstores. Economic Assistance Areas are by definition the most economically vulnerable areas within the City and thus are the most susceptible to the destabilizing effects of superstore development. Allowing superstores to undermine the vitality of community shopping districts and disrupt local land use patterns would negate decades of focused economic revitalization programs and planning efforts by the City. A complete prohibition of superstore development within Economic Assistance Areas is the simplest and most direct means of preserving economic stability, protecting tax revenues and promoting the general welfare of these communities. The City Attorney recommends adopting this regulatory approach.

2. Requiring Developer Mitigation Within Economic Assistance Areas

Under this approach, superstore developers, in cooperation with CDD, would conduct a community impact assessment analyzing the employment, retail, municipal revenue, property value, consumer choice, land use and urban design impacts of a proposed superstore development. CDD would then require the developer to undertake measures designed to mitigate negative impacts anticipated by the community impact assessment. Mitigation measures might include mitigation fees, agreements to re-lease closed superstore facilities, superstore-sponsored efforts to promote local hiring, imposing a living wage requirement for workers employed at the superstore, or requiring superstores to provide financial assistance to negatively affected local retailers. This approach would require City staff to review the community impact assessments and devise mitigation measures. The Rodino Report outlines a suggested development application and review process to implement this approach.

**3. Maintain or Enhance Existing Regulations Requiring
Conditional Use Permits in the C2, C4, C5, CM, M1, M2, and M3
Zones**

The municipal code currently requires a conditional use permit for the development of retail stores exceeding 100,000 square feet within certain land use zones in the City. These procedures could be enhanced to require additional findings or mitigation measures to address the particular land use impacts caused by superstores.

CONCLUSION

The City Attorney remains committed to assisting the City Council in devising a regulatory scheme that will preserve the economic vitality of our commercial districts, while encouraging well-designed development that is sensitive to the needs of our neighborhoods. Please direct any questions regarding recommendations contained in this report to Assistant City Attorney Cecilia Estolano at (213) 978-8209. Either she or another member of this office will be available when you consider this matter to answer any questions you may have. The City Attorney's Office looks forward to receiving the Committees' directions regarding the form of a proposed superstore ordinance.

Sincerely,

ROCKARD J. DELGADILLO, City Attorney

By

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Chief Deputy City Attorney

Rodino Associates

Urban Revitalization & Real Estate Services

Final Report on Research for Big Box Retail / Superstore Ordinance

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1. INTRODUCTION AND SUMMARY

The purpose of the study conducted was to:

1. Develop a definition of "big box retailers" and superstores" for application to the "Economic Assistance Zones" of the City of Los Angeles.
2. Identify the possible impacts of big box retailers and superstores if developed within the Economic Assistance Zones.
3. Recommend methods by which such retail projects may be developed and/or regulated within the Economic Assistance Zones to ensure that negative economic and environmental impacts, if any, are substantially mitigated.
4. Assist the City staff in the preparation of an application and review procedure for the development of big box retailers and superstores within the Economic Assistance Zones.
5. Assist the City staff in conducting two public hearings to gather information from the community regarding big box retailers and superstores.

Accordingly, several definitions of big box retailers and superstores used by other municipalities were reviewed and a definition was recommended, as described in Chapter 2 and summarized as follows:

A big box retailer or superstore is a retailer whose facility is larger than 75,000 square feet of gross buildable area from which goods are sold to the general public, that will generate sales tax or use tax (pursuant to Part 1.5, commencing with Section 7200, of Division 2 of the State of California Revenue and Taxation Code).

Chapter 3 provides a discussion of the potential impacts of big box retailers and superstores, and summarizes the experiences of a cross-section of communities in the United States and Canada. Many cities and public agencies have expressed serious concerns over the potential and actual negative impacts of big box retailers and superstores on their communities, with many enacting controlling ordinances. These cities and public agencies include, but are not limited to, the following:

City of San Diego	City of Oakland, California
Contra Costa County, California	Inglewood, California
State of Maryland	New Rochelle, New York
Coconino County, Arizona (Flagstaff)	Rockville, Maryland
Toronto, Canada	

The impacts that are of greatest concern are:

- employment and compensation for labor
- neighboring businesses and consumer choice
- municipal revenues
- municipal investments in low income areas
- property values
- land use and urban design

Various means for mitigating the possible negative impacts of big box retailers and superstores were analyzed and recommendations for the City of Los Angeles were provided in Chapter 4. The mitigation efforts recommended are:

- Impact Assessment Analysis
- Size Limitations and Prohibitions (not recommended)
- Minimum Wage and Benefits Standards
- Local Hiring Requirements
- Land Use and Design Guidelines

- Re-leasing requirements governing closed big box stores
- Promote local retailing
- Regional cooperation among governments on mitigation issues

An application and procedure was developed, similar to the existing Conditional Use Permit process, as described in Chapter 5.

A vigorous community outreach and public hearing process was pursued. As a sub-contractor to Rodino Associates, Estela Lopez Consulting conducted the public outreach. Two public hearings were the result of this effort. The first was held at City Hall on Monday, July 14, 2003 at 10 A.M., and the second was held at Los Angeles City College on Wednesday, July 16, 2003 at 6:30 P.M.

To ensure a robust participation level, a diverse stakeholder database was created with input from multiple sources spanning public and private sector interests. These included:

- Constituent lists from L.A. City Council offices
- Presidents and vice-presidents of all certified neighborhood councils
- Business Improvement Districts
- Los Angeles City Area Planning Commissioners
- Members of Community Redevelopment Agency Project Area Committees (PAC's) and Community Action Councils (CAC's)
- Los Angeles Community Action Agency (CAA) Community Action Board (CAB)
- Labor unions
- Economic development organizations
- Community-based, non-profit organizations, especially those with job training/workforce development specializations
- All state-certified Los Angeles-area chambers of commerce and local merchant organizations
- Ethnic business organizations

Faith-based organizations involved in community and economic development

Representatives of "big box" retailers

California Grocers Association

Additionally, the Community Development Department made available its database of approximately 19,000 small business owners in the Empowerment Zone and Federal "Renewal Community" area.

Flyers announcing the two public hearings were mailed to these stakeholders. Targeted telephone follow-up was conducted to ensure that the individuals and organizations with specific interest in the issue of "super store" development had received the notification. Copies of the hearing announcement and the outreach mailing list are provided in the Appendix.

The analyses and discussions provided in the following chapters are the products of the inputs received from the public hearings and extensive research of documents, reports and studies in the public realm, on big box retailers and superstores.

PUBLIC LAW RESEARCH INSTITUTE

UNIVERSITY OF CALIFORNIA

HASTINGS COLLEGE OF THE LAW

**California Responses to Supercenter Development
A Survey of Ordinances, Cases and Elections**

by

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Prepared at the request of the Governor's Office of Planning and Research

PLRI REPORTS

Spring, 2004

This report was prepared by the Public Law Research Institute at Hastings College of the Law. It does not represent the views or policies of Hastings College of the Law, its Board of Directors or its faculty.

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EXECUTIVE SUMMARY

This report addresses a number of issues relating to supercenter development, with particular attention given to Wal-Mart's goal of building 40 supercenters within California over the next four years. We first discuss the pros and cons of supercenter development in terms of consumer savings, employee wages, tax revenues, and various environmental impacts. We then examine how different communities have either supported or opposed supercenter developments and emphasize the legal tools that have provided the framework for these actions including voter referendums, ballot initiatives, and lawsuits.

Recent controversies over supercenter development in several California cities and counties are discussed and provide the basis for insights about how the issue may be addressed in the future. Tactics successfully used by large-scale retail advocates in California include mounting advertising campaigns for or against ballot measures and donating money to the election campaigns of development friendly officials. However, supercenter opponents have successfully staved off supercenter development in some areas. Based on the results from various campaigns in California, it appears the more concrete the plans for supercenter development are, the more likely communities and decision-makers will be able to identify negative impacts associated with the development. Pending lawsuits will determine the limits or restrictions local government decision makers may employ to control supercenter development in their communities. In the mean time, we hope this report helps to identify the economic, environmental, and social implications involved with supercenter and large scale retail that should be considered by all communities in California where this development is proposed.

I. INTRODUCTION

Wal-Mart and other large retail stores offer communities the prospect of consumer savings, but at the same, time pose potential negative impacts on traffic, the environment, and wages. In balancing the positive and negative effects of large-scale retail developments on local communities, many California cities and counties have approved such stores, while many others have enacted restrictions to limit their construction. This report examines the legal and political battles between developers and local governments in California by providing a history of tools used to encourage or impede the siting of "big box" retailers, and by analyzing which tools have been the most effective, both legally and politically.

Wal-Mart currently operates approximately 3,000 total stores in the U.S., and 1,400 big box supercenters.¹ It is the largest U.S. grocer, with a 19 percent market share, and the third-largest pharmacy, with a 16 percent market share.² By 2007, Wal-Mart is expected to control 35 percent of food and drug sales in the U.S.³ Retail Forward, a global management consulting and research firm, estimated that for every one supercenter that opens, two supermarkets would close.⁴ Indeed, since 1992, the supermarket industry has experienced a nationwide net loss of 13,500 stores.⁵ Over the next five years, Wal-Mart plans to open 1,000 more supercenters in the U.S, including 40 supercenters planned for the state of California.⁶ On March 2, 2004, Wal-Mart opened its first California supercenter, a 225,000 square foot combined retail and grocery store, in La Quinta, California.⁷

The reaction to these developments has been highly contentious. In reaction to Wal-Mart's supercenter development plans in California, many local city and county governments across the state passed, or are considering ordinances that seek to restrict or ban big box developments.⁸ Other locales have welcomed supercenters into their communities.

A. Purpose

This report examines current legal and political issues arising from big box development in the state of California, as well as the tools available for big box opponents and supporters alike to challenge actions taken by city and county governments. While the report analyzes big box development in general, because so much of the current legislation targets Wal-Mart's supercenter program this report will focus on recent developments involving this subcategory of big box retail.

B. Organization

The report is organized into eight parts. The first section explores various bases by which big box stores are defined including overall square footage, items sold, or physical appearance. The section will also delineate in greater detail the definition of the supercenter, a big box subcategory particularly pertinent in California in light of Wal-Mart's future development plans.

The second section examines regional and national reports that study the effects of economic, social, and environmental impacts of big box retail on local communities. This section sets forth the costs and benefits of big box retail faced by local communities, such as lower prices and increased tax revenue contrasted by lower wages and increased traffic. Although the section examines studies conducted both by Wal-Mart supporters and opponents, this report finds that the studies generally highlight the negative aspects of big box retail. Wal-Mart supercenters will provide consumer savings, but these savings are offset by lower paying jobs and negative environmental impacts.

Sections three through six explore the tools available to big box supporters and opponents by highlighting examples of legal and political strategies used in California and other states. Section three addresses the importance of campaign funding and local city council elections. By looking at the Gilroy City Council's approval of a Wal-Mart supercenter in March 2004, this

section describes how campaign efforts by Wal-Mart to elect "development-friendly" city council officials could result in an uphill battle for supercenter opponents challenging such development. This strategy by developers can serve to avoid later, more costly, legal or political battles by ensuring that local legislation preventing big box development plans will not be approved. Tools used by big box opponents to counter the effect of developer-sponsored legislation by highlighting lawsuits brought in Bakersfield and San Marcos, California are also described.

A strategy employed by both sides of the big box debate is the use of ballot initiatives and referendums that override approvals or restrictions made by local government officials. The fourth and fifth sections discuss big box related initiatives and referendums in Contra Costa County, San Marcos, and Inglewood, California. The political and legal tools available before, during, and after initiatives and referendums are examined in depth as are the political implications of ballot measures.

As an alternative to the referendum battles, Wal-Mart has recently challenged local government opposition through litigation, targeting city and county legislation that restricts "supercenter" formats. The sixth section discusses Wal-Mart's use of state and federal lawsuits to challenge the constitutionality of supercenter regulations in Turlock and Alameda County, California. The legal bases of the lawsuits and forecasts on their resolution are discussed.

The final two sections are comparative and prospective, looking at how similar big box battles have been resolved in other states, and what issues local governments should address in considering big box development.

ORDINANCE NO. 176166

An ordinance establishing regulations of "Superstores" in "Economic Assistance Areas" in the City of Los Angeles.

**THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS:**

Section 1. Paragraph (a) of Subdivision 14 of Subsection U of Section 12.24 of the Los Angeles Municipal Code is amended to read:

(a) Definitions. For purposes of this Subdivision the following words and phrases are defined as follows:

Economic Assistance Areas means the existing geographically defined areas: Five State Enterprise Zones, Federal Empowerment Zone, Federal Renewal Community Zone, thirty-seven Community Redevelopment Agency Project Areas, and Earthquake Project Areas, and a one-mile buffer surrounding each of the above-identified zones, as identified by the Community Development Department and as shown on the "Los Angeles Economic Assistance Areas" Map, dated January 2004, which is attached to Council File No. 00-1675 S2 and is on file in the Community Development Department, and which may be amended from time to time.

Major Development Project means the construction of, the addition to, or the alteration of, any buildings or structures which create or add 250,000 square feet or more of warehouse floor area, 250 or more hotel/motel guest rooms, or 100,000 square feet or more of floor area in other nonresidential or non-warehouse uses. The above definition shall apply to the cumulative sum of related or successive permits which are part of a larger project, such as piecemeal additions to a building, or multiple buildings on a lot as determined by the Director of Planning. For the purpose of this subdivision, floor area shall be as defined in Section 12.03 of this Code.

Non-taxable Merchandise means products, commodities, or items not subject to California state sales tax. For purposes of this ordinance, the definition of non-taxable merchandise shall not include, without limitation, Sales Floor Area devoted to any of the following categories: services, including the services of a chiropractor, optometrist, optician, physician, surgeon, podiatrist, dentist, spa, gym, nail salon, and travel accommodation services; theaters and other entertainment uses; and food products sold through vending machines.

Sales Floor Area means the interior building space devoted to the sale of merchandise, but excludes restrooms, office space, storage space, automobile service areas, or open-air garden sales space. For the purpose of determining the total sales floor area of a single business establishment, the aggregate square footage of all adjacent stores that share common check stands, management of the business operation of such adjacent stores, controlling ownership interest in the business operation of such adjacent stores, warehouses, or distribution facilities shall be considered a single business establishment.

Superstore means a Major Development Project that sells from the premises goods and merchandise, primarily for personal or household use, and whose total Sales Floor Area exceeds 100,000 square feet and which devote more than 10% of sales floor area to the sale of Non-Taxable Merchandise. This definition excludes wholesale clubs or other establishments selling primarily bulk merchandise and charging membership dues or otherwise restricting merchandise sales to customers paying a periodic assessment fee. This definition also excludes the sale or rental of motor vehicles, except for parts and accessories, and the sale of materials used in construction of buildings or other structures, except for paint, fixtures, and hardware.

Sec. 2. A new Paragraph (d) is added to Subdivision 14 of Subsection U of Section 12.24 of the Los Angeles Municipal Code to read:

(d) Superstores in Economic Assistance Areas.

(1) Additional Findings. In addition to the findings otherwise required by this Section and set forth in Paragraph (b) of this Subdivision, prior to approval of a Superstore that is located in an Economic Assistance Area, the City Planning Commission or the City Council on appeal shall find, after consideration of all economic benefits and costs, that the Superstore would not materially adversely affect the economic welfare of the Impact Area, based upon information contained in an economic impact analysis report submitted by the applicant, any other information received or obtained by the Community Development Department or the Community Redevelopment Agency, a recommendation by the Community Development Department, or the Community Redevelopment Agency pursuant to Subparagraph (3) below, and any other information received before or at a public hearing required by this Section. The phrase "Impact Area" refers to a three mile radius surrounding the proposed location of the Superstore.

(2) Procedures. An application for approval of a Superstore pursuant to this paragraph shall follow the procedures for conditional use permits otherwise required by this Section. In addition, the applicant shall prepare and submit the economic impact analysis report referenced in subparagraph (1) to the

Community Development Department or to the Community Redevelopment Agency, where appropriate, for review in conjunction with its application to the Department of Planning. The economic impact analysis report shall be reviewed by the Department or Agency and/or a consultant, if deemed necessary by the Department or Agency and paid for in full by the applicant. The Community Development Department and the Community Redevelopment Agency shall complete its review of the report within 60 days after receipt of the report from the applicant. The report shall identify whether:

- (i) Efforts to establish a market larger than 20,000 square feet within the Impact Area have been unsuccessful or whether the proposed use will have an adverse impact or economic benefit on grocery or retail shopping centers in the Impact Area;
- (ii) The Superstore would result in the physical displacement of any businesses, and, if so, the nature of the displaced businesses or would create economic stimulation in the Impact Area;
- (iii) The Superstore would require the demolition of housing, or any other action or change that results in a decrease of extremely low, very low, low or moderate income housing on site;
- (iv) The Superstore would result in the destruction or demolition of any park or other green space, playground, childcare facility, community center;
- (v) The Superstore would provide lower in cost and/or higher in quality goods and services to residents than currently available or that are currently unavailable from a cost benefit perspective within the Impact Area in which the project is proposed to be located;
- (vi) The Superstore would displace jobs within the Impact Area or provide economic revitalization and/or job creation. For purposes of determining this impact, the applicant must identify the number of jobs displaced or created, the quality of the jobs, whether the jobs are temporary or permanent, and the employment sector in which the lost jobs are located;

(vii) The Superstore would have a fiscal impact either positive or negative on City tax revenue;

(viii) Any restrictions exist on the subsequent use of the property on which the Superstore is proposed to be located, including the provisions of a lease if applicable, which, in the event the owner or operator of the Superstore vacates the premises, would require the premises to remain vacant for a significant amount of time;

(ix) The Superstore will result in any materially adverse or positive economic impacts or blight on the Impact Area; and

(x) Any measures are available which will mitigate any materially adverse economic impacts, if any, identified by the applicant, if necessary.

(3) Recommendation. The Community Development Department, or the staff of the Community Redevelopment Agency if the Superstore is proposed to be located in a redevelopment area or in the surrounding one-mile buffer zone, shall review the economic impact analysis report and, after consideration of economic benefits and costs, make a written recommendation as to whether the proposed Superstore will result in a materially adverse economic impact on the Impact Area and, if so, whether conditions are available which will mitigate the economic impact. The written recommendation, including proposed mitigation measures, if any, shall be submitted to the Department of Planning by the Community Development Department, or the staff of the Community Redevelopment Agency, as appropriate, in accordance with the written procedures on file with the Department and the Agency.

Sec. 3. Severability. If any provision of this Ordinance is found to be unconstitutional or otherwise invalid by any court of competent jurisdiction, the invalidity shall not affect the remaining provisions of this Ordinance, which can be implemented without the invalid provisions and, to this end, the provisions of this Ordinance are declared to be severable.

(101768)

Sec. 4. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located in the Main Street lobby to the City Hall; one copy on the bulletin board located at the ground level at the Los Angeles Street entrance to the Los Angeles Police Department; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

I hereby certify that the foregoing ordinance was introduced at the meeting of the Council of the City of Los Angeles of August 11, 2004, and was passed by a vote of not less than two-thirds of all its members, at its meeting of AUG 18 2004

J. MICHAEL CAREY, City Clerk

By Marin Kobanid
Deputy

Approved AUG 19 2004

James Hahn
Mayor

Approved as to Form and Legality

Rockard J. Delgadillo, City Attorney

By Terry Kaufmann Macias
TERRY KAUFMANN MACIAS
Deputy City Attorney

Pursuant to Charter Section 559, I disapprove this ordinance on behalf of the City Planning Commission and recommend it not be adopted

August 9, 2004

see attached report.

Con Howe
CON HOWE
Director of Planning

Date AUG 09 2004

File No(s). CF 00-1675-S1: CPC 2000-4247-CA

DECLARATION OF POSTING ORDINANCE

I, MARIA C. RICO, state as follows: I am, and was at all times hereinafter mentioned, a resident of the State of California, over the age of eighteen years, and a Deputy City Clerk of the City of Los Angeles, California.

Ordinance No. 176166 - Amended Paragraph (a) of Subdivision 14 of Subsection U of Section 12.24 of the L.A.M.C. to establish regulations of "Superstores" in "Economic Assistance Areas" in the City of Los Angeles - a copy of which is hereto attached, was finally adopted by the Los Angeles City Council on Aug. 18, 2004, and under the direction of said City Council and the City Clerk, pursuant to Section 251 of the Charter of the City of Los Angeles and Ordinance No. 172959, on August 25, 2004, I posted a true copy of said ordinance at each of three public places located in the City of Los Angeles, California, as follows: 1) One copy on the bulletin board at the Main Street entrance to Los Angeles City Hall; 2) one copy on the bulletin board at the ground level Los Angeles Street entrance to the Los Angeles Police Department; and 3) one copy on the bulletin board at the Temple Street entrance to the Hall of Records of the County of Los Angeles.

Copies of said ordinance were posted conspicuously beginning on August 25, 2004 and will be continuously posted for ten or more days.

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 25th day of August 2004 at Los Angeles, California.


Maria C. Rico, Deputy City Clerk

Ordinance Effective Date: Oct. 4, 2004

Council File No. 00-1675-91



CITY OF LONG BEACH

DEPARTMENT OF PLANNING & BUILDING

333 WEST OCEAN BLVD., FIFTH FLOOR • LONG BEACH, CALIFORNIA 90802

NOTICE OF EXEMPTION

CATEGORICAL EXEMPTION CE- CE-115

TO: OFFICE OF PLANNING & RESEARCH
1400 TENTH STREET, ROOM 121
SACRAMENTO, CA 95814

FROM: DEPARTMENT OF PLANNING & BUILDING
333 W. OCEAN BLVD., 5TH FLOOR
LONG BEACH, CA 90802

L.A. COUNTY CLERK
ENVIRONMENTAL FILLINGS
12400 E. IMPERIAL HWY. 2ND FLOOR, RM. 2001
NORWALK, CA 90650

PROJECT TITLE: Zoning Text Amendment

PROJECT LOCATION - SPECIFIC: Citywide

PROJECT CITY: Long Beach PROJECT LOCATION - COUNTY: LOS ANGELES

ACTIVITY DESCRIPTION: Zoning Amendment to establish site standards for new commercial establishments and centers over 80,000 s.f. in size and prohibit stores greater than 100,000 s.f. in size that have greater than 10% of floor area dedicated to non-taxable merchandise, with exemptions for membership clubs that sell primarily bulk merchandise.

Name of Public Agency Approving Project: City of Long Beach

Name of Person or Agency Carrying Out Project: Jeff Winklepleck
(Printed Name)

333 W. Ocean Blvd., Long Beach, CA 90802
(Mailing Address)

(562) 570-6607
(Telephone)

[Signature]
(Signature)

(To Be Completed By City Staff Only)

Check One:
 LONG BEACH CITY PLANNING COMMISSION
 DEPARTMENT OF PLANNING AND BUILDING

The above project had been found to be exempt from CEQA in accordance with the State Guidelines Section 15305 (class) Minor Alterations in Land Use Limitations

Statement of Support for this finding: Amendment will guide new commercial development in L

Lead Agency Contact Person: Angela Reynolds Area Code/Telephone: 562-570-6357

Signature: Jill Griffiths Date: 6-7-06 Title: Planner IV

Signed by Lead Agency (Jill Griffiths for Angela Reynolds)
 Signed by Applicant

Chairman Jenkins stated that he did not support the retroactive fee imposition, and said there would have to be more discussion about how to assist in building up low-income housing stock and funding without penalizing developers.

Commissioner Stuhlberg said he did not want to see a retroactive fee, and that he felt more discussion was needed on the item.

Commissioner Sramek agreed that the fee should not be retroactive, and that research was needed to determine the profits of condominium conversion. Mr. Sramek expressed concern that a flat fee would discourage developers, and he encouraged everyone to explore other avenues of funding the Housing Trust Fund.

Commissioner Stuhlberg moved to continue the item to the July 20, 2006 meeting to allow a public study session to be held on the issue. Commissioner Sramek seconded the motion, which passed 4-0. Commissioner Greenberg had left the meeting and Commissioners Winn and Rouse were absent.

8. Case No. 0601-10, Amendment to Zoning Ordinance, CE 06-115

Applicant: City of Long Beach c/o Suzanne Frick
Director of Planning and Building
Subject Site: Citywide
Description: Proposed amendments to the Zoning Ordinance regarding large retail establishments.

Scott Mangum presented the staff report recommending adoption of the amendments to prohibit "super stores" and ensure that large-format retail development promotes the efficient use of land and preserves and enhances the urban fabric through more urban site planning and building design process.

Doug Otto, 111 W. Ocean, Suite 1300, representative of Home Depot, stated that he felt the amendments were problematic because they could put projects currently under long-term development in violation of standards. Mr. Otto added that although his client was working with the City to meet revised standards, using the Site Plan Review process might be a more focused way to work with so-called 'big box' retailers.

Ray Polk, Councilmember representative, stated that their priority was to protect the viability of existing commercial areas and maintain competition by preventing a single retailer

from dominating the local market. Mr. Polk suggested that the Commission take separate actions on the two-part amendment.

Commissioner Sramek agreed that more input was needed on the amendments, because he did not feel they would achieve the City's goals at this point.

Commissioner Sramek moved to recommend that the City Council adopt Part I of the Amendment dealing with the prohibition, but not Part II dealing with design standards. Commissioner Gentile seconded the motion, which failed 2-2. Commissioners Jenkins and Stuhlberg dissented. Commissioners Winn and Rouse were absent.

Commissioner Gentile moved to continue Part I of the item to the July 20, 2006 meeting and Part II to a date uncertain to allow bifurcation of the issues and further review of each. Commissioner Stuhlberg seconded the motion, which passed 4-0. Commissioner Greenberg had left the meeting and Commissioners Winn and Rouse were absent.

9. Case No. 0601-12, Amendments to Downtown Planned Development District, CE 06-114

Applicant: City of Long Beach c/o Suzanne Frick
Director of Planning and Building
Subject Site: Citywide
Description: Proposed amendments to the Downtown Planned Development District related to adaptive reuse of commercial buildings.

Greg Carpenter presented the staff report recommending adoption of the amendments to consolidate all regulations related to adaptive reuse of existing buildings.

Chairman Jenkins stated he felt it was a great idea to recycle old buildings, relieving the City of eyesores.

Commissioner Gentile moved to recommend that the City Council adopt the amendments to the Downtown Planned Development District (PD-30). Commissioner Sramek seconded the motion, which passed 4-0. Commissioner Greenberg had left the meeting and Commissioners Winn and Rouse were absent.

Item #5 was returned to the Agenda for a motion

5. Case No. 0411-07, Site Plan Review, Tentative Tract Map, FEIR 09-04

Applicant: Ben Besley, The Olson Company
Subject Site: 634 W. Broadway (Council District 1)
Description: Request for approval of Site Plan Review, Finding of General Plan Conformity for a proposed alley vacation and Vesting Tentative Map No. 062773 to construct a four-story development with 195 residential units (includes six live/work units) and 404 parking spaces.

Commissioner Greenberg moved to review and consider the Final Environmental Impact Report No. 09-04, and to approve the Site Plan Review, General Plan Conformity Findings and Vesting Tentative Map, subject to amended conditions. Commissioner Winn seconded the motion, which passed 6-0. Commissioner Rouse was absent.

4. Case No. 0601-10, Amendment to Zoning Ordinance, CE 06-115

Applicant: City of Long Beach
Suzanne Frick, Director Planning & Bldg.
Subject Site: Citywide
Description: Proposed amendments to the Zoning Ordinance regarding large retail establishments with grocery sales.

Commissioner Stuhlberg recused himself from voting on the item. Scott Mangum presented the staff report recommending adoption of the amendment based on the economic impacts of superstore retail establishments on smaller retailers, particularly grocery stores.

In response to a query from Commissioner Greenberg as to whether this applied to stores other than Wal-Mart, Deputy City Attorney Mais explained that this ordinance was designed to discourage certain big box retailers, and that courts had upheld similar local legislation throughout the country.

Angela Reynolds noted that it was unclear as to whether Wal-Marts would fall into the listed category since they usually had their grocery sections in less than 10% of the floor space. Ms. Reynolds added that there was no specific information on the impact these retailers had on grocery stores.

Commissioner Greenberg expressed no sympathy for nationally owned grocery stores, saying he felt that from a land-use standpoint, there was an advantage to not having big box retailers with big grocery stores.

Chairman Jenkins pointed out that strategically, Long Beach probably didn't have the land to support the large retailers.

Ms. Frick observed that cities are able to address these issues through zoning ordinances to better manage concentration and effect of uses to maintain compatibility. Ms. Reynolds added that there was a new CEQA law regarding big box effects on adjacencies, which Ms. Frick explained would be a preventative, proactive measure.

John Getz, no address given, UFCW representative, said he felt this was not an anti-Wal-Mart ordinance, but rather a way to regulate business models that could have potential impacts on the infrastructure and nearby businesses.

Commissioner Sramek moved to recommend that the City Council adopt the amendment related to new large retail shopping establishments with grocery sales. Commissioner Winn seconded the motion, which passed 5-0. Commissioner Stuhlbarg had recused himself, and Commissioner Rouse was absent.

M A T T E R S F R O M T H E A U D I E N C E

There were no matters from the audience.

M A T T E R S F R O M T H E D E P A R T M E N T O F P L A N N I N G A N D B U I L D I N G

There were no matters from the Department of Planning and Building.

M A T T E R S F R O M T H E P L A N N I N G C O M M I S S I O N

There were no matters from the Planning Commission.

A D J O U R N

The meeting adjourned at 4:40pm.

Respectfully submitted,

Marcia Gold
Minutes Clerk

RK ENGINEERING GROUP, INC. TRAFFIC ANALYSIS

EXHIBIT A

July 21, 2005

Mr. Donovan C. Collier
GRESHAM SAVAGE ATTORNEYS AT LAW
550 E. Hospitality Lane, Suite 300
San Bernardino, CA 92408

Subject: City of Yucaipa Proposed Ordinance No. 244 (Traffic Review)

Dear Mr. Collier:

Introduction

RK ENGINEERING GROUP, INC. (RK) is pleased to provide Gresham Savage Attorneys at Law this traffic review of the proposed Ordinance No. 244 amending portions of the City of Yucaipa Municipal Code. A copy of the proposed ordinance is included in Appendix A.

According to Ordinance No. 244; the purpose of the ordinance is to "limit the development of large retail establishments by restricting their ability to sell non-taxable items to such an extent that they negatively impact the small town character of the City, generate additional traffic, burden local law enforcement, alter existing land use patterns, and have the potential to blight existing neighborhood commercial areas of the City by impacting small business dependent on local markets".

The proposed Ordinance No. 244 would not allow any new retail establishments to be constructed in excess of 100,000 square feet or an existing store to be expanded if more than 10% of the total square footage would be devoted to non-taxable merchandise.

According to the proposed Ordinance No. 244, Section 88.0410 (b) (4) "large retail establishments have been shown to generate additional traffic and burden local law enforcement services without providing an additional sales tax base with which to provide such services".

The purpose of this traffic analysis is to assess the trip generation characteristics of discount super stores with larger portions devoted to non-taxable sales item in comparison to other commercial retail establishments of similar size. This review is based upon published trip generation characteristics that have been documented by the ITE (Institute of Transportation Engineers) in its *Trip Generation Manual 7th Edition, 2003*, other professional literature, and independent traffic counts at similar facilities. Since one of the

of trip generation that is used for traffic impact studies throughout Southern California. Data for the ITE trip generation manual is scrutinized extensively by the ITE prior to inclusion in their Trip Generation Manual, and the document is updated frequently. The other local source for trip generation data is the *Brief Guide of Vehicular Traffic Generation Rates* for the San Diego Region, published by SANDAG (San Diego Association of Governments). This document provides local data in the Southern California region on trip generation rates for a variety of land uses.

The purpose of this trip generation evaluation is to compare the trip generation rates and traffic volumes produced and attracted by a discount superstore with more than 10% of its area devoted to non-taxable sales, which is being proposed to be prohibited by the City of Yucaipa Ordinance No. 244. Specific freestanding discount superstores that include a full service grocery department under the same roof would be excluded by this ordinance. The ordinance would not prohibit the development of a commercial retail site with a large discount store and a separate supermarket, or other combination of shopping center, discount club, or other uses where the supermarket is located in a separate building from the other major retail components of the shopping center.

In order to make this comparison, RK has utilized the trip generation rates published and established by the ITE in their *Trip Generation Manual, 7th Edition, 2003*.

The following four (4) land use scenarios have been developed to establish a comparison between alternative uses in the same retail commercial site. A total building square footage of 220,000 square feet has been utilized in this example, and the land use scenarios are shown in Table 1:

- Scenario 1: Freestanding discount superstore, such as a Wal-Mart super center
- Scenario 2: Discount store with a separate supermarket
- Scenario 3: Retail/commercial shopping center with a separate supermarket
- Scenario 4: Discount club store with a separate supermarket

In all cases the total square footage within each scenario is 220,000 square feet.

The trip generation rates utilized in this study are shown in Table 2. Trip generation rates are based upon the *ITE Trip Generation, 7th Edition, 2003* and include the following ITE trip codes:

- 813 Freestanding Discount Superstore
- 815 Freestanding Store
- 850 Supermarket
- 820 Shopping Center
- 861 Discount Club

Multi Purpose Trip Making

Multi purpose trip making represents, trips that are made at one facility for several purposes. This typically occurs at mixed use developments that accommodate several types of land uses within the same facility. For example, the freestanding discount superstore includes many uses within the same building. This could include dried goods/services, a grocery department, optical, garden, and food services and other types of uses. A single vehicle trip to and from this type of development can satisfy several functions for the patron as opposed to other single purpose commercial retail centers, where multiple trips are required to accommodate the same function.

This concept is very similar to a regional commercial shopping center that includes multiple types of retail goods and services within one roof. A single vehicle trip is made to the site even though the patron visits several commercial facilities within the same center. Therefore, these types of uses eliminate multiple trips that are required at specialty retail centers that serve a single purpose. A person going to the freestanding discount superstore, such as a Wal-Mart super center, can purchase their dried goods, go to the grocery store, obtain nursery supplies, and have a quick snack all under the same roof without making multiple trips. This phenomenon is shown in the results of the ITE trip generation rates previously discussed.

Wal-Mart Trip Generation Study

In the past, there have been some claims that the ITE trip generation rates for discount super centers are too low and are not representative of actual conditions. In order to evaluate this, trip generation studies have been previously obtained for Wal-Mart super centers by the consulting firm of TJKM Transportation Consultants. TJKM Transportation Consultants prepared trip generation studies for five (5) Wal-Mart super centers in California and Nevada in February, 2005. Their study and evaluation is included in Appendix D.

TJKM Transportation Consultants studied five (5) Wal-Mart super centers including: Hemet, Pahrump, Stockton, La Quinta, and Reno. The study sites range in size from 164,038 to 225,000 square feet. TJKM Transportation Consultants studied the Wal-Mart super centers during the hours of 4:00 to 6:00 PM. They counted the inbound and outbound traffic movements to the Wal-Mart super center to establish PM peak hour trip generation rates. A summary of their inbound/outbound counts and trip generation rates is included in Table 5. As shown in Table 5, the average measured PM peak hour trip generation rate (two-way) was 3.56 vehicles per hour per 1,000 square feet. The ITE PM peak hour trip generation rate for a discount super center was 3.87 vehicles per hour per 1,000 square feet. As noted in the TJKM Transportation Consultants report, the average measured rates were consistent with the rates being utilized by the ITE in their *Trip Generation Manual, 7th Edition, 2003*. Therefore, this study verified that the trip generation rates utilized for the discount super stores are valid in comparison to local data at actual Wal-Mart stores.

Tables

TABLE 2
Trip Generation Rates¹

Land Use	Units ²	Peak Hour				Daily
		AM		PM		
		In	Out	In	Out	
Wal-Mart Super Center	TSF	0.94	0.90	1.90	1.97	49.21
Discount Store	TSF	0.57	0.27	2.53	2.53	56.02
Supermarket	TSF	1.98	1.27	5.33	5.12	102.24
Shopping Center (160,000 TSF)	TSF	0.79	0.51	2.56	2.77	57.61
Discount Club	TSF	0.40	0.16	2.12	2.12	41.80

¹ Source: Institute of Transportation Engineers (ITE), *Trip Generation, 7th Edition, 2003*, (Trip Codes 813, 815, 850, 820, and 861).

² TSF = Thousand Square Feet

TABLE 4
Trip Generation Comparison

Scenario	Land Use	Peak Hour				Daily
		AM		PM		
		In	Out	In	Out	
1	Wal-Mart Super Center	207	198	418	433	10,826
2	Discount Store					
	Supermarket	210	119	725	712	15,097
3	Shopping Center					
	Supermarket	246	157	730	751	15,366
4	Discount Club Store					
	Supermarket	183	102	659	646	12,822

1 TSF= Thousand Square Feet
DU = Dwelling Unit

Appendices

ORDINANCE NO. 244

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF YUCAIPA, CALIFORNIA, ADDING SECTIONS 88.0410 AND 812.18048 TO VOLUME II OF THE YUCAIPA MUNICIPAL CODE, REGULATING THE SALE OF NON-TAXABLE GOODS IN LARGE RETAIL ESTABLISHMENTS

THE CITY COUNCIL OF THE CITY OF YUCAIPA DOES ORDAIN AS FOLLOWS:

WHEREAS, on September 13, 2004, the City Council adopted a General Plan Amendment to include a new Action providing that the City should "Establish limitations on the total amount of floor area devoted to the sale of non-taxable merchandise for any retail establishment exceeding 100,000 square feet of total area", and

WHEREAS, the Land Use Element of the General Plan of the City identifies as an objective the maintenance of the existing, small town character of the City, and it states that the City will "Respect the unique character of existing individual neighborhoods", and

WHEREAS, the City has a responsibility to assure adherence to the General Plan in meeting the needs and desires of residents and the community, and

WHEREAS, the Planning Commission of the City considered this proposed amendment to the Development Code at a duly noticed meeting on July 6, 2005, and recommends that the City Council adopt the proposed amendment, and

WHEREAS, the City has conducted an environmental review for adoption of an ordinance establishing procedures to provide for the limitation of development of retail stores in the City, and has found that it can be seen with certainty that there is no possibility that the proposed zoning regulations will have a significant adverse effect on the environment, and therefore, it is exempt from the provisions of the California Environmental Quality Act, Public Resources Code Sections 21000 et seq., and

WHEREAS, the City Council has properly considered and made findings which are described in this Ordinance in support of adoption of hereof, and

WHEREAS, the City Council has reviewed and considered the information in the Agenda Report, as well as public testimony presented at the hearing.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF YUCAIPA DOES ORDAIN AS FOLLOWS:

Section 1. Adding Section 88.0410 to Chapter 4 of Division 8 of Volume II of the Yucaipa Municipal Code, to add the following:

ORDINANCE NO. 244

Page 3

- (1) If total square footage for sales is to exceed 100,000 square feet, no more than ten percent (10%) of total square footage may be devoted to non-taxable merchandise.
- (2) For purposes of the above calculation, only enclosed sales area will be considered. "Enclosed sales area" does not include restrooms, office areas, break rooms, backrooms, storage space, etc. Conversions of such space to enclosed retail sales space shall bring the project under the restrictions of the above-described limit. The total square footage and percentage for non-taxable sales shall include subleased and subcontracted departments."

Section 2. Adding Section 812.18048 to Chapter 18 of Division 12 of Volume II of the Yucaipa Municipal Code, to add the following:

"812.18048 Retail Establishment, Large

"Large Retail Establishment": A retail establishment (store), a retail grocery establishment, or an establishment with a combination of both uses, comprised of more than one hundred thousand (100,000) square feet of floor area which includes gross floor area, outdoor storage areas, and any outside area which provides associated services to the public, such as, but not limited to, outdoor merchandise displays, snack bars, etc. The floor area does not include motor vehicle parking or loading areas.

For the purposes of determining the applicability of the 100,000 square foot of floor area maximum, the aggregate square footage of all adjacent stores which share check stands, management, a controlling ownership interest, or storage areas, shall be considered one establishment, e.g., a plant nursery associated with a general merchandise store such as a home improvement store."

Section 3. Severability.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance or any part thereof is for any reason held to be unlawful, such decision shall not affect the validity of the remaining portion of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsection, subdivision, paragraph, sentence, clause or phrase be declared unlawful.

Section 4. Effective Date; Publication

Appendix B

**ITE (Institute of Transportation Engineers)
(Trip Codes 813, 815, 850, 820, and 861)
Land Use Descriptions**

Land Use: 815

Free-Standing Discount Store

Description

The discount stores in this category are free-standing stores with off-street parking. They usually offer a variety of customer services, centralized cashiering and a wide range of products. They typically maintain long store hours 7 days a week. The stores included in this land use are often the only ones on the site, but they can also be found in mutual operation with a related or unrelated garden center and/or service station. Free-standing discount stores are also sometimes found as separate parcels within a retail complex with their own dedicated parking. Free-standing discount superstore (Land Use 813) is a related use.

Additional Data

Truck trips accounted for approximately 2 percent of the weekday traffic at one site.

Vehicle occupancy was 1.46 persons per automobile at one of the sites.

Peak hours of the generator—

The weekday peak hour varied between 10:00 a.m. and 4:00 p.m. The weekend peak hour varied between 11:00 a.m. and 3:00 p.m.

The sites were surveyed from the 1970s to the 2000s throughout the United States.

To assist in the future analysis of this land use, it is important to collect and include information on the presence of garden centers and/or service stations in trip generation data submissions.

Source Numbers

87, 113, 124, 245, 305, 340, 353, 368, 376, 386, 417, 504, 528, 579

Land Use: 850 Supermarket

Description

Supermarkets are free-standing retail stores selling a complete assortment of food, food preparation and wrapping materials and household cleaning items. Supermarkets may also contain the following products and services: ATMs, automobile supplies, bakeries, books and magazines, dry cleaning, floral arrangements, greeting cards, limited-service banks, photo centers, pharmacies and video rental areas. Some facilities may be open 24 hours a day. Discount supermarket (Land Use 854) is a related use.

Additional Data

Caution should be used when applying daily trip generation rates for supermarkets, as the database contains a mixture of facilities with varying hours of operation. Future data submissions should specify a site's hours of operation.

The sites were surveyed from the 1960s to the 2000s throughout the United States.

Source Numbers

2, 4, 5, 72, 98, 203, 213, 251, 273, 305, 359, 385, 438, 442, 447, 448, 514, 520, 552, 577

Appendix C

ITE Trip Generation Calculations

City of Yucaipa - Ordinance No. 244 Traffic Review
 Summary of Trip Generation Calculation
 For 160,000 Th.Gr.Sq.Ft. of Free-Standing Discount Store
 July 19, 2005

	Average Rate	Standard Deviation	Adjustment Factor	Driveway Volume
Avg. Weekday 2-Way Volume	56.02	19.45	1.00	8963
7-9 AM Peak Hour Enter	0.57	0.00	1.00	91
7-9 AM Peak Hour Exit	0.27	0.00	1.00	43
7-9 AM Peak Hour Total	0.84	0.97	1.00	134
4-6 PM Peak Hour Enter	2.53	0.00	1.00	405
4-6 PM Peak Hour Exit	2.53	0.00	1.00	405
4-6 PM Peak Hour Total	5.06	2.60	1.00	810
Saturday 2-Way Volume	71.19	15.69	1.00	11390
Saturday Peak Hour Enter	3.87	0.00	1.00	619
Saturday Peak Hour Exit	3.71	0.00	1.00	594
Saturday Peak Hour Total	7.58	3.07	1.00	1213

Note: A zero indicates no data available.
 Source: Institute of Transportation Engineers
 Trip Generation, 7th Edition, 2003.

TRIP GENERATION BY MICROTRANS

City of Yucaipa - Ordinance No. 244 Traffic Review
 Summary of Trip Generation Calculation
 For 160,000 T.G.L.A. of Shopping Center
 July 19, 2005

	Average Rate	Standard Deviation	Adjustment Factor	Driveway Volume
Avg. Weekday 2-Way Volume	57.61	0.00	1.00	9218
7-9 AM Peak Hour Enter	0.79	0.00	1.00	127
7-9 AM Peak Hour Exit	0.51	0.00	1.00	81
7-9 AM Peak Hour Total	1.30	0.00	1.00	207
4-6 PM Peak Hour Enter	2.56	0.00	1.00	410
4-6 PM Peak Hour Exit	2.77	0.00	1.00	444
4-6 PM Peak Hour Total	5.34	0.00	1.00	854
Saturday 2-Way Volume	77.65	0.00	1.00	12424
Saturday Peak Hour Enter	3.82	0.00	1.00	611
Saturday Peak Hour Exit	3.52	0.00	1.00	564
Saturday Peak Hour Total	7.34	0.00	1.00	1175

Note: A zero indicates no data available.
 The above rates were calculated from these equations:

24-Hr. 2-Way Volume: $LN(T) = .65LN(X) + 5.83, R^2 = 0.78$
 7-9 AM Peak Hr. Total: $LN(T) = .61LN(X) + 2.29$
 $R^2 = 0.52, 0.61$ Enter, 0.39 Exit
 4-6 PM Peak Hr. Total: $LN(T) = .66LN(X) + 3.4$
 $R^2 = 0.81, 0.48$ Enter, 0.52 Exit
 AM Gen Pk Hr. Total: 0
 $R^2 = 0, 0$ Enter, 0 Exit
 PM Gen Pk Hr. Total: 0
 $R^2 = 0, 0$ Enter, 0 Exit
 Sat. 2-Way Volume: $LN(T) = .63LN(X) + 6.23, R^2 = 0.82$
 Sat. Pk Hr. Total: $LN(T) = .65LN(X) + 3.77$
 $R^2 = 0.84, 0.52$ Enter, 0.48 Exit
 Sun. 2-Way Volume: $T = 15.63(X) + 4214.46, R^2 = 0.52$
 Sun. Pk Hr. Total: 0
 $R^2 = 0, 0$ Enter, 0 Exit

Source: Institute of Transportation Engineers
 Trip Generation, 7th Edition, 2003.

TRIP GENERATION BY MICROTRANS

Appendix D

**Wal-Mart Super Center
Trip Generation Study
(TJKM Transportation Consultants)**

with S_1 and S_2 being the variances of the ITE and the TJKM samples respectively. Then the 95% two-sided confidence interval on the difference of the two means of the two distributions, $\mu_1 - \mu_2$, is computed as follows:

$$X_1 - X_2 - t_{\alpha/2, n_1+n_2-2} S_p (1/n_1 + 1/n_2)^{.5} \leq \mu_1 - \mu_2 \leq X_1 - X_2 + t_{\alpha/2, n_1+n_2-2} S_p (1/n_1 + 1/n_2)^{.5}$$

(X_1 and X_2 are the two sample rates)

Then using the ITE rate $X_1 = 3.96$ and the TJKM rate $X_2 = 3.59$ and finding the value from the t distribution table for level of significance $\alpha = 1 - 0.95 = 0.05$ with $n_1 + n_2 - 2 = 9 + 5 - 2 = 12$ degrees of freedom (the t distribution reduces to the standard normal distribution when the degree of freedom approaches infinity), the 95% confidence interval of the mean difference becomes the following:

$$3.96 - 3.59 - t_{0.025, 12} (.95)(1/9 + 1/5)^{.5} \leq \mu_1 - \mu_2 \leq 3.96 - 3.59 + t_{0.025, 12} (.8)(1/9 + 1/5)^{.5}$$

$$3.96 - 3.59 - 2.179(.95)(1/9 + 1/5)^{.5} \leq \mu_1 - \mu_2 \leq 3.96 - 3.59 + 2.179(.95)(1/9 + 1/5)^{.5}$$

$$-0.78 \leq \mu_1 - \mu_2 \leq 1.52$$

Since the confidence interval of the mean difference includes 0, we have found no statistical evidence that the ITE trip generation rate for free-standing discount superstores is different from the average trip generation rate of Wal-Mart Super Centers in the sample collected by TJKM and subcontractors of TJKM. The trip generation data from the TJKM surveys follow this page.

TJKM concludes that the ITE trip generation rates are valid for application to the Wal-Mart super center planned for Turlock, California.

The survey data for both ITE trip generation surveys and ITE trip generation studies follows. Please note that one of the data points used in the ITE Land Use 813 for assessing trip generation rates was omitted because it is not included in the graph of data points in the reference, *Trip Generation, 7th Edition*. The effect of omitting this one data point is to raise the average rates for Discount Superstores (ITE Land Use 813) from 3.87 trips per 1,000 square feet of gross sales area to 3.96 trips per 1,000 square feet of gross sales area.

	IN	OUT				Trip Gen Rate		
La Quinta				5 months old				
4:00	68	68						
4:15	55	62						
4:30	54	62						
4:45	85	85	537					
5:00	92	96	591					
5:15	68	68	608					
5:30	71	75	638					Percentage
5:45	51	52	571					In Out
	318	322	638		221694 Sq Ft	2.88	50%	50%
	IN	OUT						
Reno				4 years				
4:00	92	102						
4:15	81	112						
4:30	84	86						
4:45	73	69	679					
5:00	93	86	664					
5:15	84	85	640					
5:30	80	101	671					Percentage
5:45	68	85	682					In Out
	328	357	682		205700 Sq Ft	3.32	48%	52%

Analysis			
ITE Samples			
Sample No.	Kilo Sq. Ft	Veh Trip Ends	Rate
1	123	641	5.21
2	128	502	3.98
3	128	380	2.97
4	146	705	4.83
5	168	417	2.48
6	181	780	4.31
7	182	630	3.46
8	202	851	4.21
9	220	918	4.17
		Avg. Rate	3.98
		Range of Rates	2.48 5.21
		Sample STD	0.86
		Sample Variance	0.75
TJKM Samples			
Sample No.	Kilo Sq. Ft	Veh Trip Ends	Rate
1	225	593	2.64
2	184	605	3.89
3	207.5	1122	5.41
4	221.7	638	2.88
5	205.7	682	3.32
		Avg. Rate	3.89
		Range of Rates	2.64 5.41
		Sample STD	1.10
		Sample Variance	1.20

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ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF LONG BEACH AMENDING THE LONG BEACH
MUNICIPAL CODE BY AMENDING TABLES 32-1 AND 33-2;
AND BY ADDING SECTION 21.15.2985, RELATING TO
SUPERSTORES

WHEREAS, General Plan policies promote and encourage vital
neighborhood commercial districts that are evenly distributed throughout the city so that
residents are able to meet their basic daily shopping needs at neighborhood shopping
centers; and

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

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; and

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

WHEREAS, the Long Beach zoning ordinance (Title 21 of the Long Beach
Municipal Code) has not kept pace with the evolution of the retail sector and fails to
adequately distinguish the size, scale and scope of various retail activities; and

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

WHEREAS, large-scale discount superstores typically combine discount

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1 use pattern that reduces the need for vehicle trips and encourages walking and biking
2 for shopping, services, and employment;

3 WHEREAS, discount superstores have particularly high transportation
4 impacts because of the frequency of grocery trips combined with the overall scale of the
5 establishments, since a typical household makes 2-3 grocery-related trips weekly; and

6 WHEREAS, figures from the Institute of Transportation Engineer's *Trip*
7 *Generation* manual, a compilation of traffic generation studies, shows that discount
8 superstores are likely to generate more traffic on a daily or weekly basis than other
9 types of large stores; and

10 WHEREAS, large-scale retail stores of more than 100,000 square feet in
11 floor area that sell a large volume and variety of non-taxable grocery and pharmacy
12 items in a supermarket format significantly increase traffic volumes, strain the existing
13 street network, promote traffic intrusion into nearby neighborhoods, discourage
14 pedestrian travel, and otherwise aggravate traffic congestion; and

15 WHEREAS, numerous local jurisdictions in the country and the State of
16 California, taking all of the above considerations in mind, have enacted ordinances that
17 either completely prohibit new retail stores over a certain size or require special impact
18 studies; and

19 WHEREAS, the proposed amendments, by prohibiting large-scale
20 combined retail and grocery stores, can serve as a means for protecting Long Beach's
21 neighborhood-serving shopping centers and perpetuate the land use pattern
22 established by the City's General Plan; and

23 WHEREAS, the proposed new regulations would not affect large retail
24 establishments that do not include a sizeable grocery component ("discount clubs");
25 and

26 WHEREAS, discount superstore activities are distinguished from the
27 above-mentioned large-scale retailers because they have the potential to create
28 particularly high impacts on traffic and transportation, and on the vitality of

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1 2. That the proposed amendments to the Long Beach Municipal Code will
2 implement the goals, objectives, and policies of the General Plan; and

3 3. That the proposed amendments are consistent with the purposes of
4 the Zoning Ordinance; and

5 4. That the proposed amendments to the Long Beach Municipal Code
6 are reasonably related to the public interest, and that public necessity, convenience and
7 general welfare require the proposed amendments.

8 NOW, THEREFORE, the City Council of the City of Long Beach ordains
9 as follows:

10 Section 1. The Long Beach Municipal Code is amended by adding
11 Section 21.15.2985 as follows:

12 21.15.2985 Superstore.

13 "Superstore" means a major development retail project that sells
14 from the premises goods and merchandise, primarily for personal or
15 household use, and whose total Sales Floor Area exceeds 100,000
16 square feet and which devote more than 10% of sales floor area to the
17 sale of Non-Taxable Merchandise. This definition excludes wholesale
18 clubs or other establishments selling primarily bulk merchandise and
19 charging membership dues or otherwise restricting merchandise sales to
20 customers paying a periodic assessment fee. This definition also
21 excludes the sale or rental of motor vehicles, except for parts and
22 accessories, and the sale of materials used in construction of buildings or
23 other structures, except for paint, fixtures, and hardware. The above
24 definition shall apply to the cumulative sum of related or successive
25 permits which are part of a larger project, such as piecemeal additions to
26 a building, or multiple buildings on a lot as determined by the Director of
27 Planning and Building.

28 For the purpose of this definition, "Sales Floor Area" means the

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Sec. 3. Section 21.33 of the Long Beach Municipal Code is amended by amending Table 33-2 (Uses in Industrial Districts) under "Retail Trade" by adding the following use:

Table 33-2
Uses in Industrial Districts

Use	IL	IM	IG	IP	* Notes and Exceptions
Retail Trade					
Superstores (Retail > 100,000 sf with > 10% Floor Area non-taxable merchandise)	N	N	N	N	For Superstore definition, see 21.15.2985

Sec. 4. The City Clerk shall certify to the passage of this ordinance by the City Council and cause it to be posted in three conspicuous places in the City of Long Beach, and it shall take effect on the thirty-first day after it is approved by the Mayor.

I hereby certify that the foregoing ordinance was adopted by the City Council of the City of Long Beach at its meeting of _____, 2006, by the

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what is the local

WAL-MART EFFECT?

By Michael J. Hicks, Ph.D.

Picture courtesy of Wal-Mart, Inc.



Wal-Mart's ubiquitous presence has subjected the retailer to considerable attention over its effect on local economic activity. Wal-Mart's home office (pictured here) is located in Bentonville, Arkansas, the home of the first store in 1962.

■ INTRODUCTION

In March 2004, as a debate raged in the Chicago City Council over the permitting of a Wal-Mart on the West Side, three researchers at the University of Illinois – Chicago's Center for Urban Economic Development released a study predicting a negative economic impact of Wal-Mart in the region. Almost two years later,

the store finally opened (after a 32 to 15 vote on the City Council) and was swamped by almost 4,000 applicants for its 300 jobs. This followed closely on the heels of the opening of a Southside Chicago store (in Evergreen Park), which saw roughly 25,000 applicants for 325 jobs. As former Clinton Administration economist Jason Furman has noted, this makes Wal-Mart more selective than the most elite universities in the nation. It also raises questions about Wal-Mart focused research and its impact on policy.

Clearly, Wal-Mart could be an attractive employment location and still reduce net employment in Chicago, as the UIC study essentially assumed. However, the UIC study is notable in that its estimates of job losses are just about the opposite of the only two available econometric studies at the time, which each estimated short run net employment gains of roughly 50 and 55 jobs each.¹ How much this UIC study informed local decision makers is unnecessary speculation, but it is certain that these types of studies are often the only mechanism for policy makers to assess objectively the potential impacts of development options. Further, it is clear that whatever economic models say about working conditions at Wal-Mart, potential workers view these conditions as an improvement over existing options. And, no self respecting economic developer would summarily oppose an employer which attracts such employee interest.

As this vignette illustrates, understanding Wal-Mart's impact is difficult. The ubiquitous nature of Wal-Mart stores – either the traditional big-box or the newer super centers – raises considerable questions over what Wal-Mart's presence means to local communities. Unfortunately, it is difficult for even

AN ANALYSIS OF THE RESEARCH

This article reviews the existing research on Wal-Mart's local impact on overall employment, wages, retail structure, prices, sprawl, and local taxes and expenditures. In these areas there are few impacts that are common to all communities. Instead, the impact is likely to vary dramatically based upon local wage structure, retail productivity, and clustering. The article describes what are appropriate study designs and argues that there is need for more local evaluation of Wal-Mart, with a more sophisticated approach to the analysis of local impacts than is commonly employed.

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The views expressed in this article are those of the author and do not reflect the official policy or position of the United States Air Force, Department of Defense or the United States government.

lagging retail sales or wages (say a rural area), then it will be correlated with economic declines.

Thus, by the turn of the century, all studies of Wal-Mart were plagued by two potential problems: failure to account for other factors that might influence a region's economy and the possibility that Wal-Mart was choosing its locations that would bias a subsequent study. Thus, it is the research since 2000 which addresses these problems that really speaks to Wal-Mart's impact. Researchers have taken two different approaches to the problem, which more or less emerged within just a few years of each other.

One approach is to specifically test whether or not Wal-Mart's entrance within a county is correlated with predicted economic growth (in retail, wage, etc.). Several researchers, including this author and the largest economic study of Wal-Mart, used this method and were able to forcefully reject statistical 'endogeneity' in Wal-Mart's entrance decision.¹¹¹

A second approach is to construct a statistical model which corrects for 'endogeneity' in Wal-Mart's entrance decision. This is a challenging prospect, as the researcher has to find data that might be correlated with Wal-Mart's entrance decision but which displays other statistical properties that cannot always be confirmed. Thus, this is not a simple statistical test but also one in which the qualitative aspects of the model matter deeply. Not surprisingly, these types of studies are highly contentious. Three main methods of correcting for this problem have been used. The first method was the use of the announced entrance date, which accounts for possible 'interim' economic changes to the local economy that materialize between Wal-Mart's announced opening and actual opening. The second method uses the timing and distance from Bentonville, Arkansas (the first Wal-Mart location), to isolate Wal-Mart's impact. The third method, recently introduced by this author, uses a measurement of local market size to explain Wal-Mart's entrance decision. This method is used to account for a prime location decision criterion.

Each of these methods has some potential drawbacks and has suffered some criticism. However, in a recent paper, this author compared all three methods in a single state (Maryland) and found all three methods provided nearly identical results. However, for Maryland there was some weak evidence that Wal-Mart was systematically making entrance decisions. This argues for the use of the more sophisticated but unfortunately more contentious statistical techniques.

Sadly, with the exception of the comparative study, there is nothing like a consensus of the impact of Wal-Mart. However, it is useful to understand what economic theory would argue are the potential impacts of Wal-Mart entering a market.

Economists call the income effect the impact on the quantity of goods demanded, holding constant the mix of goods when the price for one good falls. The substitution effect measures the change in the quantity of goods demanded when the mix of goods is allowed to adjust, holding constant the real income. Both effects accompany a price change.

Economists have long noted that firms often locate proximate to a natural resource or access to common labor and technologies. This happens in retail, but may also be true for manufacturing search costs. On the manufacturing side, think of the auto industry in Detroit, and furniture in western North Carolina. Retail stores, malls and automobile dealer clusters.

The overall economy grows through two mechanisms. The first is the addition of more workers, new natural resources, more machinery, and a more intense production process, so work is done with the same number of inputs. Increasing productivity is achieved by worker training, better and more available technology, and the widespread adoption of information technology. The second is the sole source of per capita economic growth just increases the type of economic growth just increases individual standards of living.

WHAT DOES THEORY SAY?

The theoretical treatment of Wal-Mart by all of these studies has been simple. The reason is that the potential impacts are fairly run-of-the-mill economics. Economic theory can speak to both general retail trends (such as the declining share of retail as a share of the total economy since the Great Depression) and to the differences in local economies that may be spawned by Wal-Mart. These trends are likely to occur whether or not Wal-Mart enters a market. What is of interest here is the difference between what would have happened if Wal-Mart entered a market as compared to its absence. For reasons of space it is better to leave general retail trends for another day.

What has been notably absent is the acknowledgement that the way markets respond to Wal-Mart might vary dramatically by location. This doesn't mean that economists haven't recognized such facets as urban and rural differences, merely that in most instances the geography of the studies has included several states and rural and urban areas, and largely different time periods over all of which Wal-Mart's entrance decision and impact may vary.¹¹² Understanding how the change in consumer demand follows Wal-Mart's entrance may help explain some of the divergent results. There are three stylized descriptions of Wal-Mart effects that may occur during retail market adjustment periods.

First, if Wal-Mart enters a market and significantly lowers prices, both for goods sold directly from the store and across competitors (one area in which the research is in agreement), consumers will experience an income effect for retail goods.¹¹³ This means that the reduction in overall prices acts as a *de facto* income boost. Under this scenario, it is indeed plausible that consumer demand for retail

which suggests any agreement in method across these is the comparative study of methods on Maryland. This study (which has not yet been subjected to peer review) is evidence that among the modern studies, it is location and timing, not methodology which generates differences in the results. (See Table 1.)

The sum of all these findings may be a suggestion which would be unsurprising to local economic developers: There is no 'nationwide' impact of Wal-Mart. The local labor market impacts are going to be affected by the existing competitiveness of the retail sector and whether or not there are changes to local retail clusters. The same is true in grocery store markets when a Super Center opens. This means that, at the county level, Wal-Mart's impact will be heavily influenced by the existing economic conditions, and studies that fail to account for these factors and treat smaller geographic regions will yield different results.

What might a local community expect to happen to labor markets when Wal-Mart comes to town? The short answer is that unless there's a single easily measurable impact (like a productivity increase) then there's no single answer. What's likely to occur is some combination of factors such as a retail productivity increase (meaning fewer, but modestly higher paid workers) combined with some retail clustering (meaning more, but likely modestly lower paid workers). The net effect employment effect will be determined by which of these effects dominates.

This suggests that economic developers and other policy makers interested in understanding Wal-Mart's impact should think hard about how academic studies influence their decision making. What might be the impact of Wal-Mart in areas other than local labor markets? Happily, researchers have not isolated their analyses to labor markets only. They have also focused on retail prices, entrepreneurship, sprawl, and fiscal effects.

LOWER PRICES (THROUGH PRODUCTIVITY AND COMPETITIVE PRESSURE)

One area in which even Wal-Mart's severest critics agree is that Wal-Mart's prices are indeed lower. Ironically, the earliest critics of Wal-Mart contended that the low price claim was a fallacy, that Wal-Mart simply advertised loss leaders. Since that claim has been dropped, it is indeed interesting to see what the research says about actual retail prices.

Two sets of researchers, one at MIT and the USDA (Jerry Hausman and Ephraim Leibtag) the other Emek Basker (from the University of Missouri), used two different data sources to estimate the role Wal-Mart played on influencing local prices. Interestingly, the MIT researchers were targeting the Bureau of Labor Statistics for over estimating inflation, going so far as to offer the

provocative title of "CPI Bias from Supercenters: Does the BLS Know that Wal-Mart Exists?" What these authors found, using retail scanner data, was that in a number of product areas, Wal-Mart's prices were dramatically lower than other retail stores. This was attributed by some critics as simply the result of lower quality goods. To this response, the authors produced a second study that identified identical goods (primarily food) which were substantially lower cost (as much as 25 percent lower). In all, these two economists concluded that due to failure to account for Wal-Mart, the BLS is consistently overstating inflation by as much as 15 percent a year.

Emek Basker looked at a smaller set of prices from the well known ACCRA local price data, finding that Wal-Mart produced as much as a 6 percent long run price reduction on selected goods. Interestingly, the impact is not just on Wal-Mart stores, but almost certainly (based on the study design) more widespread than just at Wal-Mart – arguing that Wal-Mart is causing competitors to cut prices. Happily, at least in one area, Wal-Mart's impact is pretty conclusive. It not only charges lower prices, but causes competitors to do so as well.

ENTREPRENEURSHIP

No economic developer has failed to hear the claim that Wal-Mart affects local firms. Yet, research on this matter largely suggests little impact. Two previously mentioned studies (Hicks and Wilburn, 2001 and Basker, 2005) find either very modest two to three business increases or losses respectively, and that is over several years. Both find positive impacts on retail sub-sectors not competing directly with Wal-Mart. So the overall impact is uncertain and subject to the same caveats as the labor market studies. By far the most extensive study is by two economists at West Virginia University's Entrepreneurship Center. Using a carefully crafted analysis of Wal-Mart's impact on small businesses (including entrepreneurial type firms), they find the entrance and presence of a Wal-Mart has no statistically significant effect on small business growth, or the relative size and profitability of the small business sector in the US (Sobel and Dean, 2006).

WAL-MART, EQUITY AND SPRAWL

Despite considerable popular rhetoric about Wal-Mart's impact on individuals, little research (except perhaps the evidence of lower prices) speaks directly to the effect of Wal-Mart on the distribution of income across racial or gender lines. Of course, the pay disparity between Wal-Mart's managers and its lowest paid employees has received plenty of attention (if not useful analysis).

One interesting study, which is soon to be published in the *Review of Regional Studies*, estimated

State	Wal-Mart Employees Receiving Medicaid	Medicaid Costs (per worker)	Source
Arizona			Arizona Daily Star (confirmed by author's calculations)
Arkansas			AFL-CIO (reporting data from Arkansas Human Services Department)
California		\$586 per worker*	AFL-CIO reporting data from state
Florida			Orlando Business Journal, April 2005
Georgia			Associated Press, Aug 2005
Illinois		\$246 per worker*	AFL-CIO reporting data from state
Indiana		\$67 per worker†	Hicks, 2005
Iowa		\$101 per worker†	Carlson, 2005
Mississippi			Memphis Commercial Appeal and author's calculations
Washington			AFL-CIO reporting data from Washington Health Care Authority
Wisconsin			AFL-CIO reporting data from state
West Virginia		\$172 per worker*	AFL-CIO reporting data from state

that have directly collected data, or had estimates performed.

WHAT TO LOOK FOR IN WAL-MART RESEARCH

Local policymakers interested in honestly evaluating Wal-Mart should carefully weigh studies on the subject. As most studies have some informational content, it is not typically what is included in a study that's a problem, but rather what is left out that generates the bias. Also, study design in general ought to be carefully weighed. Here are some suggestions about plausible courses of action.

First, studies that present unambiguous findings are a fiction. There are no clear national impacts, and local studies should carefully explain their methodology and make their data and statistics publicly available. Any study purported to be local should explain which of the effects are likely to occur: income, productivity or clustering (though they need not use these terms). These studies should be rigorous in admitting what may be uncertain (especially when describing other studies). Also, some care as to the credentials and affiliation of the authors is needed. There are fine researchers without Ph.D.s and unaffiliated with universities, but careful examination of their earlier studies might be helpful. A researcher who has always found Wal-Mart effects to be the same, without regard to local conditions, ought to be questioned.

Second, the study design ought to avoid some of the more common models used in economic development. The favored input-output model especially is sensitive to the initial assumptions. So, while it might be part of a study design, it should be supplemented with additional research. Also, in a case

study approach (or a heavily non-statistical study), examples of other local impacts drawn from similar types of locations (same retail characteristics, per capita income and degree of urbanness) probably provide some of the best evidence.

Finally, willingness to submit a study to peer review is a necessary element of a good research project. The reviewers need not be Wal-Mart experts but could be on economics and finance faculty of almost any college or university. In the end, these types of processes insure a better understanding of Wal-Mart's impact.

CONCLUSION

The state of the research today offers only a tantalizing clue as to Wal-Mart's potential impact on local communities. The structure and design of the dozens of existing studies render the vast majority simply unable to speak clearly to Wal-Mart's impact. The few that have attempted to address the problems inherent in estimating Wal-Mart's impact have yet to reach a consensus. However, economists are beginning to agree on a few issues.

First, Wal-Mart's entrance in a larger urban center will have something between no impact to a perhaps small positive impact on total employment, though it might cause some job shifting between sectors. Some of this will be real while some will be simply due to the higher degree of vertical integration of Wal-Mart resulting in transition of wholesale to retail jobs in the NAICS code.

Second, rural areas could see net employment increases due to the entrance of a Wal-Mart. While this is the weakest of the consensus arguments, it is an emerging consensus (which is likely due to a reduction in retail leakages or a small local retail cluster).

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FOOTNOTES

- i These studies were Hicks and Wilburn, 2001, which had appeared in a peer reviewed journal in 2001, and Emek Basker, 2001/5, a doctoral dissertation from MIT which was undergoing peer review (the working paper which was available from a number of sources from about early 2003.) See Villareal, 2005 for a review of these studies.
- ii For earlier studies see Artz [1999], Artz and McConnon [2001], Barnes and Connell [1996], Franz and Robb [1989], Hornbeck [1994], Ketchum and Hughes [1997], McGee and Gresham [1995], Stone [1988, 1995, 1995a, 1997], Stone, Deller and McConnon [1992].
- iii See Hicks and Wilburn, 2001; Franklin, 2001 and Global Insight, 2005.
- iv For example, a very interesting technical paper by Dube, Eidlin and Lester (2005) found different rural/urban impacts.
- v See Hausman and Leibtag, 2004 and Basker, 2005b.
- vi The real estate research literature describes this as demand externalities. See Eppli and Benjamin [1994] "The Evolution of Shopping Center Research: A Review and Analysis, *The Journal of Real Estate Research*, 9(1). Pp 5-32. This is also highly consistent with the findings of Hicks and Wilburn, 2001 and Basker, 2005.
- vii See Keil and Spector, 2006.