

April 8, 2003

RE: AN URGENCY MEASURE ADOPTING AN INTERIM ORDINANCE PURSUANT TO GOVERNMENT CODE SECTION 65858 IMPOSING A MORATORIUM ON LARGE-SCALE RETAIL STORES WITH MORE THAN 10% OF SALES FLOOR AREA DEVOTED TO NON-TAXABLE MERCHANDISE

Dear Members of the Council:

SUMMARY

The attached Ordinance places a 45-day moratorium on instituting, modifying or expanding retail stores larger than 100,000 square feet with more than 10% of sales floor area dedicated to non-taxable merchandise (“Big Box Grocers”). Recent studies suggest that this type of land use has negative impacts on existing neighborhood-serving commercial areas and on traffic and air quality, particularly when not sufficiently offset by sales tax revenue. This ordinance applies *only* to Big Box Grocers. It would not apply to any other type of big box retail without full-service grocery components (*e.g.*, a regular Target or Home Depot), regular grocery stores (*e.g.*, Safeway or Albertsons), membership stores (*e.g.*, Costco or Sams Club), or multi-vendor markets, (*e.g.* Market Hall or Housewives Market).

Council President De La Fuente and Councilmember Brunner request you adopt the attached Ordinance so that the City can further study the issue and determine whether to recommend adopting permanent controls.

BACKGROUND

Beginning last year, the Community & Economic Development Agency began receiving inquiries from real estate brokers regarding potential sites for a Wal-Mart Supercenter store. This was presumably in response to an earlier announcement by Wal

Mart that it was seeking to expand significantly its Super Store presence in California.¹ Wal-Mart Supercenters, Super K Marts and Super Targets are the three major “Big Box Grocers” – with stores averaging 150,000 square feet and as much as 40% of their sales floor area dedicated to non-taxable groceries and pharmaceuticals. Wal-Mart dominates this market with over 1,000 supercenters nationwide.

Recently, studies demonstrating the negative impacts of Big Box Grocers were brought to the attention of Council President De La Fuente and Councilmember Jane Brunner. This compelling data, along with the information that such a Big Box Grocer was currently looking to locate in Oakland, prompted these Councilmembers to introduce the attached legislation.

KEY ISSUES AND IMPACTS

Research Suggests That Big Box Grocers Contravene Objectives and Policies of Oakland’s General Plan

The City of Oakland’s Land Use & Transportation Element and Estuary Policy Plan contain the following Objectives and Policies:

- Objective I/C1.1: Expand and retain Oakland's job base and economic strength.
- Policy I/C3.4: The vitality of existing neighborhood mixed use and community commercial areas should be strengthened and preserved.
- Policy T2.3: Promote neighborhood-serving commercial development within one-quarter to one-half mile of established transit routes and nodes.
- Objective T4: Increase use of alternative modes of transportation.
- Objective N1: Provide for healthy, vital, and accessible commercial areas that help meet local consumer needs in the neighborhoods.
- Objective T7: Reduce air pollutants caused by vehicles.
- Objective LU-4 (Estuary Policy Plan): Develop the Estuary area in a way that enhances Oakland's long-term economic development.

Recent academic and industry studies have made findings that suggest Big Box Grocers are likely to negatively impact each of the above Policies and Objectives. For example, a 2003 study of potential impacts on Fremont, California concluded a new Big Box Grocer would:

¹ See <http://eastbay.bizjournals.com/eastbay/stories/2002/05/27/story7.html>

- “drain vitality from existing neighborhood retail centers and the downtown,” particularly when “food stores are anchors for their respective commercial centers”; and
- “transfer revenue away from supermarkets located in neighborhood or community serving retail nodes” contravening a General Plan objective for “Viable neighborhood shopping centers meeting the daily convenience shopping needs of City residents.”

The study also cited in-depth consumer research performed by AC Nielsen U.S. on 2001 Wal-Mart supercenter sales growth. It found “the majority of sales growth at Wal-Mart supercenters – 72 percent – came from a ‘direct shift of dollars that had previously gone to other channels.’ Of that majority ‘channel shift’ revenue growth, almost one third came from supermarkets.”²

Another study conducted in Southern California concluded:

- “Large retail sites do impose additional community costs in the form of traffic, security, environmental, and other impacts (e.g., Altshuler and Gomez-Ibanez, 1993). Most grocery sales are not taxed, so the tax base of the host city will suffer as existing retail uses shift to groceries”; and
- “Free-standing food stores would likely yield market share [to Big Box Grocers] and in some cases become vacant, while taxable sales from grocery operations would shift to locations that are much more prone to the impacts of regional business cycles.”³

Finally, another study concludes that the traffic, congestion and air quality impacts of Big Box Grocers is far greater than other types of Big Box retail stores.⁴ This is expected as the average person makes more frequent trips to the grocery store than most other retail establishments.

² *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, Local 870 by Strategic Economics (March 2003)

³ *The Impact of Big Box Grocers on Southern California: Jobs, Wages and Municipal Finance*, Prepared for the Orange County Business Council By Marlon Boarnet, Ph.D., Associate Professor UC Irvine and Randall Crane, Ph.D., Associate Professor UCLA (September 1999)

⁴ *Trip Generation, 6th Edition*, by the Institute of Transportation Engineers (1997); also see generally *Regulation for Revenue: The Political Economy of Land Use Exactions*, by Alan A. Altshuler and Jose Gomez-Ibanez (1993).

The following table shows the different numbers of car trips generated by Big Box Grocers (referred to as Discount Superstore) versus other retail establishments not covered by this ordinance:

Comparison of Trip Generation by Land Use Category

| | #850 Supermarket (e.g. Safeway) | #861 Discount Club (e.g., Costco) | #815 Freestanding Discount Store (e.g. Home Depot) | #813 Discount Superstore (e.g. Super Wal-Mart) |
|-----------------------------|---------------------------------|-----------------------------------|--|--|
| Weekday Trips | 3,010 | 4,682 | 6,059 | 7,232 |
| Saturday Trips | 4,794 | 6,074 | 7,491 | 8,479 |
| Sunday Trips | 4,494 | 3,771 | 5,984 | 6,691 |
| Total Trips per Week | 24,338 | 33,255 | 43,770 | 51,330 |

Source: Institute of Traffic Engineers, *Trip Generation*, 6th Edition.

Each of these studies suggest that Big Box Grocers are likely to contravene several of Oakland’s land use goals regarding preserving and promoting neighborhood-serving commercial areas and minimizing traffic and air quality impacts, particularly when such contravention is not sufficiently offset by sales tax revenue.

It Is Appropriate for Oakland to Place A Moratorium On Big Box Grocers Or Otherwise Restrict This Land Use

Dozens of communities have enacted zoning ordinances that either prohibit new retail stores over a certain size or require special permitting requirements, including impact studies. Most of these laws were designed to help sustain the vitality of small-scale, pedestrian-oriented shopping districts. Some communities bar only massive "big box" stores, such as in Roswell, Georgia where all stores that exceed 100,000 square feet are prohibited. While in Greenfield, Massachusetts, for example, all new stores that either exceed 20,000 square feet or are expected to generate more than 500 vehicle trips per day are required to submit to a review before being granted a permit.⁵

The cities of Martinez, California and Tuscon, Arizona have recently adopted ordinances nearly identical to the one proposed for Oakland, which restrict the sales of nontaxable merchandise to a certain percentage in large-scale retail stores.

While such laws are not unusual in cities, they can be controversial once they are passed. Controls similar to the one proposed for Oakland were passed and then later overturned by voter referendums in Inglewood, CA, Calexico, CA and Clark County, NV (Las Vegas). Also, the California State Legislature passed an identical moratorium statewide in 1999 (AB84 and SB95), but Governor Davis vetoed the legislation.

⁵ For a wealth of information on this type of legislation, see <http://www.newrules.org/retail/index.html>. This website contains links to big box retail regulations from 21 municipalities.

Government Code Section 65858 expressly permits a city, including a charter city, to adopt an interim ordinance prohibiting any uses that may be in conflict with a contemplated general plan or zoning proposal that the legislative body is considering or intends to study within a reasonable time. The attached Ordinance will provide Oakland time to study the potentially negative impacts of Big Box Grocers for the purpose of considering permanent controls.

FISCAL IMPACT

This is a policy decision with no direct fiscal impact. Indirectly, this policy could have the effect of maximizing sales tax revenue.

SUSTAINABLE OPPORTUNITIES

Economic: This ordinance supports the retention and strengthening of local retail and neighborhood-serving commercial areas. It is also designed to maximize sales tax revenues for the City of Oakland.

Environmental: Restricting Big Box Grocers should reduce car trips, thereby reducing polluting car emissions.

Social Equity: A potential indirect effect of this ordinance could be preservation of higher wage and benefit jobs for Oakland workers.⁶

DISABILITY AND SENIOR CITIZEN ACCESS

Disabled and Senior Citizens have easier access to local, neighborhood-serving retail that do not require traveling long distances or by car. Since Big Box Grocers have the potential of putting these more accessible stores out of business, this policy could indirectly help preserve more accessible, pedestrian-oriented retail options for Oakland disabled and seniors.

ACTION REQUESTED OF THE CITY COUNCIL

We request the Council adopt the attached Emergency Ordinance imposing an interim moratorium on large-scale retail stores with more than 10% of sales floor area devoted to non-taxable merchandise.

⁶ See the studies referred to in footnotes 2 & 3 above.

Respectfully Submitted,

Ignacio De La Fuente, President
Oakland City Council

Jane Brunner, Councilmember District 1
Oakland City Council

Prepared by:

Libby Schaaf, Legislative Aide to
Council President De La Fuente