

02/15/2005
Council
Item 11.1 - Interim Ordinance Superstores

11.1

February 15, 2005

Honorable Mayor Heather Fargo
City of Sacramento City Councilmembers
City Hall
730 I Street, Suite 321
Sacramento, CA 95814-2684

Westfield®
SHOPPINGTOWN
DOWNTOWN PLAZA

547 L Street
Sacramento, CA 95814

Telephone (916) 442-4000
Facsimile (916) 442-3117

Re: Interim Ordinance for a Special Permit for Superstores
Law and Legislative Committee Item M04-081

Dear Mayor Fargo and Members of the City Council:

We respectfully disagree with the proposed interim ordinance for a special permit for superstores in the City of Sacramento for the following reasons:

1. The proposed ordinance runs counter to the city's stated goals of fostering development by imposing unnecessary steps in the approval process which could significantly delay or inhibit investment in commercial development activities in the area;
2. The rush to enact interim legislation is unsupported by substantive quantitative and qualitative data. Existing policies governing retail development were enacted after significant study and public input; and,
3. In response to consumer trends, retail is evolving at a rapid pace. This proposal will put the City of Sacramento at a competitive disadvantage to other cities in the greater Sacramento area.

We respectfully request that the proposed interim ordinance be removed. Thank you.

Sincerely,

Larry Green /kk

Larry Green
Vice President of Development

cc: Bob Thomas

LG:kk

From: "Anderson, Paul" <PCA@JMBM.com>
To: "BPannell@cityofsacramento.org" <BPannell@cityofsacramento.org>, "SCohn@cityofsacramento.org" <SCohn@cityofsacramento.org>, "HFargo@cityofsacramento.org" <HFargo@cityofsacramento.org>, "RTretheway@cityofsacramento.org" <RTretheway@cityofsacramento.org>, "SSheedy@cityofsacramento.org" <SSheedy@cityofsacramento.org>, "RKFong@cityofsacramento.org" <RKFong@cityofsacramento.org>, "LHammond@cityofsacramento.org" <LHammond@cityofsacramento.org>, "KMcCarty@cityofsacramento.org" <KMcCarty@cityofsacramento.org>, "RWaters@cityofsacramento.org" <RWaters@cityofsacramento.org>
Date: Thursday, February 10, 2005 2:31PM
Subject: "Superstore Ordinance" & Target Corporation

<<3321990_1.DOC>>

Dear Ms. Pannell,

To follow our conversation today with Brian Treber, Regional Real Estate Manager for Target Corporation in Minneapolis, Target is deeply concerned about the proposed "Superstore Ordinance." In its current form, the draft ordinance would restrict the ability of Target to open any new general merchandise store in the City of Sacramento. We believe, after talking with you and other councilmembers, that this is not the intent of the ordinance.

At your suggestion, I am circulating to the Council the attached alternate language to the ordinance that we believe will cure this problem.

Please consider directing staff as you see fit so that the Council may consider this version of the ordinance at your Tuesday, February 15 meeting perhaps as a "Purple Sheet" supplemental report.

Thank you for the opportunity to express Target's concerns. If you or any Council member or staff member have any questions, please contact me at the following number.

Paul C. Anderson
Jeffer, Mangels, Butler & Marmaro LLP
1900 Avenue of the Stars, 7th Floor
Los Angeles, California 90067-4308

Telephone ----> (310) 201-3573
Fax -----> (310) 712-8541
E-mail -----> pca@jmbm.com
Assistant -----> Paula Perry (310) 203-8080 x. 6609

CC: "JPatterson@cityofsacramento.org" <JPatterson@cityofsacramento.org>, "SJohns@cityofsacramento.org" <SJohns@cityofsacramento.org>, "PBisharat@cityofsacramento.org" <PBisharat@cityofsacramento.org>, "Brian.Treber@target.com" <Brian.Treber@target.com>,

"David.Lima@target.com" <David.Lima@target.com>, "john.dewes@target.com"
<john.dewes@target.com>, "Orlick, Martin H." <MHO@JMBM.com>

ORDINANCE NO.

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF _____

AN INTERIM ORDINANCE ESTABLISHING A SPECIAL PERMIT REQUIREMENT FOR SUPERSTORES

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1.

THE COUNCIL DECLARES AND FINDS AS FOLLOWS:

1. California cities have recently seen an influx of retail stores that sell groceries and other non-taxable merchandise in addition to the stores' regular merchandise; and
2. These stores are often large, exceeding 90,000 gross square feet in size, and are referred to as "superstores"; and
3. These superstores can generate economic impacts on the jurisdiction where they are located that are different from the impacts that are generated by retail stores generally; and
4. The Council of the City of Sacramento is interested in ensuring a healthy business sector, and in particular, a healthy small business sector; and
5. While superstores generate significant sales tax revenues, the extent to which these revenues displace revenues from existing retail stores, as well as cause other economic impacts, requires additional analysis; and
6. The ~~Counsel~~Council of the City of Sacramento is ~~interest~~interested in ensuring that sufficient information regarding the economic impacts of these projects be prepared and presented as part of the project approval process.

FOR CITY CLERK USE ONLY

ORDINANCE NO. _____

DATED ADOPTED: _____

SECTION 2.

- A. Notwithstanding the provisions of Title 17 of the Sacramento City Code (the Zoning Code), a special permit shall be required to establish a superstore in any zone where retail uses are allowed under Chapter 17.24 of Title 17, whether as a matter of right or otherwise. The requirement for a special permit shall apply to proposals to construct a new building or structure for a superstore, and it shall also apply to proposals to utilize an existing building or structure for a superstore.

Definitions: For purposes of this ordinance, the term "superstore" means a retail store where the use will occupy more than 90,000 gross square feet ~~of~~**based on the exterior footprint of the store** and where more than 20% of the gross ~~floor area~~**square feet of the store** is devoted to the sale of non-taxable merchandise. Notwithstanding the foregoing, the term "superstore" shall exclude wholesale clubs or other establishments selling primarily bulk merchandise and charging membership dues or otherwise restricting merchandise sales to customers paying a periodic assessment or fee.

The measurement of gross square feet of the store devoted to the sale of non-taxable merchandise shall include the floor area actually taken up by sale or display fixtures devoted to the sale of such merchandise, plus one half of the adjacent aisle space. With respect to an adjacent aisle that constitutes a major walk way or "racetrack", which is wider than a typical aisle (a typical aisle being the aisles between parallel sale or display fixtures), such racetrack adjacent aisle space shall be included, but only to the same extent includable if such aisle had been a typical aisle, that is one-half the width of a typical aisle shall be included.

- B. Prior to approving or disapproving a special permit pursuant to Section 2-A above, and in addition to any other requirements of Title 17 of the Zoning Code, an Economic Impact Analysis ("EIA") shall be prepared for the proposed project. **The City and the Applicant shall enter into an agreement which shall address, among other things, that the EIA shall be prepared by the City, or by another qualified entity or consultant retained by the City, and shall be an expense of the applicant, and provide procedures for applicant and City review of the draft EIA. The EIA may not be prepared by the applicant. Within six months, written guidelines and procedures shall be developed for the EIA process by a committee consisting of members of planning and economic development**

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staff, redevelopment representatives and representatives from the retail and business community.

The EIA shall be a report that analyzes the potential economic impacts of the proposed superstore, shall be considered by the Planning Commission at the time of consideration of the special permit application, and shall include at least the following:

1. A survey of existing retail stores in that area of the City reasonably likely to be materially impacted or affected by the proposed superstore. A survey of the number of persons employed by existing retail stores in the City, an estimate of the number of persons who will likely be employed by the proposed superstore, and an analysis of whether the proposed superstore will result in a material net increase or decrease of jobs in the City.
2. A survey of the wage and benefit differentials, if any, between the proposed superstore and existing retail stores in the City.
3. An analysis of the effects of the proposed superstore on retail sales and whether there will be a material net increase or decrease in net retail sales in the City.
4. An analysis of the sales tax revenues that are likely to be generated by the proposed superstore, and an analysis of the effect of the proposed superstore on sales tax revenues generated by existing ~~retails~~retail stores in the City, including an analysis of the sales tax revenues that are likely to be lost by existing retail stores in the City, either due to loss of business or from closure.

- C. This ordinance is enacted by the City Council as an interim ordinance, without notice and hearing before the Planning Commission and City Council as otherwise required by Section 17.208.010 of the City's Zoning Code. It is anticipated that permanent, comprehensive regulations governing superstores, consisting of amendments to Title 17 of the City Code, will be processed in the manner required by Section 17.208.010 within 180 days, and that this interim ordinance will be repealed at that time.

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ORDINANCE NO. _____

DATED ADOPTED: _____

PASSED FOR PUBLICATION:

DATE ENACTED:

DATE EFFECTIVE:

MAYOR

ATTEST:

CITY CLERK

FOR CITY CLERK USE ONLY

ORDINANCE NO. _____

DATED ADOPTED: _____

From: "Brian.Treber" <Brian.Treber@target.com>
To: "Anderson, Paul" <PCA@JMBM.com>, <BPannell@cityofsacramento.org>, <SCohn@cityofsacramento.org>, <HFargo@cityofsacramento.org>, <RTretheway@cityofsacramento.org>, <SSheedy@cityofsacramento.org>, <RKFong@cityofsacramento.org>, <LHammond@cityofsacramento.org>, <KMcCarty@cityofsacramento.org>, <RWaters@cityofsacramento.org>
Date: Friday, February 11, 2005 6:59AM
Subject: RE: "Superstore Ordinance" & Target Corporation

Dear Council Members:

I apologize for the repeated emails. It is our hope that you understand the criticality of this ordinance to Target and therefore the reason for our efforts to achieve some clarification in the Superstore Ordinance.

After further review I wanted to clarify that the modifications we have suggested actually represent two distinct issues.

The first modification in the first major paragraph as it relates to the definition of floor area is absolutely the most critical to Target as it is this currently vague language that a regular, general merchandise Target store could be (inadvertently) captured into this restriction.

The further modifications we have suggested in the following paragraphs will not be relevant to Target provided the clarifications to the definition of what is floor area and what areas within are selling non-taxable goods. However we are suggesting these based on our experience in the retail arena and we believe that these changes will insure that the EIA's that are completed are "fair" and therefore less likely to be challenged in court over their validity. We believe this will assist the city in obtaining what it is actually intending to obtain.

Again, please feel free to call me if you need any additional information.

Brian D. Treber
Regional Real Estate Manager
Target Corporation
612.761.1567

-----Original Message-----

From: Anderson, Paul [mailto:PCA@JMBM.com]
Sent: Thursday, February 10, 2005 4:31 PM
To: 'BPannell@cityofsacramento.org'; 'SCohn@cityofsacramento.org'; 'HFargo@cityofsacramento.org'; 'RTretheway@cityofsacramento.org'; 'SSheedy@cityofsacramento.org'; 'RKFong@cityofsacramento.org'; 'LHammond@cityofsacramento.org'; 'KMcCarty@cityofsacramento.org'; 'RWaters@cityofsacramento.org'