

COUNCIL OF THE COUNTY OF MAUI
PLANNING COMMITTEE

June 5, 2009

**Committee
Report No.**

09-42

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Planning Committee, having met on February 23, 2009, makes reference to County Communication No. 07-34, from the Council Chair, transmitting a draft resolution entitled "REFERRING A BILL PERTAINING TO 'SUPERSTORES' TO THE LANAI, MAUI, AND MOLOKAI PLANNING COMMISSIONS".

The purpose of the draft resolution is to refer to the planning commissions an attached draft bill entitled "A BILL FOR AN ORDINANCE TO PROHIBIT 'SUPERSTORES' IN MAUI COUNTY". The purpose of the draft bill is to establish new definitions for retail establishments to set forth limits on retail use, through restrictions on the operation, renovation, or expansion of "superstores", or retail establishments exceeding 90,000 gross square feet that offer for sale more than 25,000 different stockkeeping units, and that dedicate more than 20,000 gross square feet of floor area to the sale of groceries.

Your Committee notes that the Council's Planning Committee (2007-2009 Council term) revised the draft resolution and recommended that the revised resolution be adopted. At its meeting of September 7, 2007, the Council adopted the proposed resolution (Resolution No. 07-108).

The Planning Director transmitted comments and recommendations from the Lanai Planning Commission, Maui Planning Commission, and Molokai Planning Commission on the draft bill entitled "A BILL FOR AN ORDINANCE TO PROHIBIT 'SUPERSTORES' IN MAUI COUNTY", attached to Resolution No. 07-108.

Your Committee notes that the planning commissions all recommended passage of the draft bill, subject to the following revisions suggested by the Department of Planning:

1. Simplify and broaden the definition of "superstores" to include all retail business establishments exceeding 90,000 gross square feet.

COUNCIL OF THE COUNTY OF MAUI
PLANNING COMMITTEE

June 5, 2009
Page 2

Committee
Report No. 09-42

2. Establish the superstores prohibition in each applicable zoning district by amending each relevant chapter within Title 19, Maui County Code, relating to zoning, rather than by establishing the definition by amending Title 19's definitions section.

In addition, the Lanai Planning Commission recommended that the draft bill be revised to provide that retail business establishments exceeding 15,000 square feet be prohibited on the Island of Lanai.

Your Committee and the planning commissions received testimony in opposition to the draft bill from members of the public and business representatives. This testimony expressed the view that consumer choice and business development should not be limited by government regulation. These testifiers said that superstores create economic benefits by offering a wide range of retail products at competitive prices, providing employment opportunities to local residents, and generating business activity.

Your Committee and the planning commissions also received testimony in support of the draft bill from members of the public and business representatives, as well as from community organizations. These testifiers opined that the proliferation of superstores would not be compatible with Maui County's natural environment, community values, or economic goals. The testimony further advised that superstores create urban sprawl and blight, traffic congestion, air pollution, and other forms of environmental degradation.

Your Committee noted that many other municipalities, including the County of Kauai, have enacted ordinances restricting or prohibiting superstores (sometimes also called "big boxes"). Your Committee further noted that, according to a review of research reports available in its files, negative economic and environmental impacts of superstores have been well documented.

Your Committee discussed the planning commissions' recommendations with representatives from the Department of Planning and the Department of the Corporation Counsel. Your Committee voted to revise the draft bill to simplify the definition of "superstores" and to establish a superstore prohibition in a new chapter within Title 19, Maui County Code, relating to zoning. In addition, in recognition of the Island of Lanai's relatively small population and minimal urbanization, your Committee voted to revise the draft bill to prohibit retail business establishments exceeding 15,000 square feet on that island, as recommended by the Lanai Planning Commission. Also, your Committee

COUNCIL OF THE COUNTY OF MAUI
PLANNING COMMITTEE

June 5, 2009
Page 3

Committee
Report No. 09-42

voted to further revise the draft bill to prohibit retail establishments exceeding 75,000 square feet in the Hana Community Plan Area, a predominately non-urban region of the Island of Maui. Additionally, your Committee voted to incorporate nonsubstantive revisions recommended by the departmental representatives.

Your Committee voted to recommend passage of the draft bill, as revised, and filing of the communication.

Your Committee finds that enactment of the revised draft bill is a necessary means of exercising the County's authority and responsibility to prevent urban decay, traffic congestion, and air pollution, and to control and organize development through zoning regulations.

Your Committee voted 7-0 to recommend passage of the draft bill, as revised, and filing of the communication. Committee Chair Kaho'ohalahala, Vice-Chair Johnson, and members Baisa, Medeiros, Molina, Nishiki, and Victorino voted "aye".

Your Committee is in receipt of a proposed bill, approved as to form and legality by the Department of the Corporation Counsel, entitled "A BILL FOR AN ORDINANCE AMENDING TITLE 19, MAUI COUNTY CODE, RELATING TO 'SUPERSTORES'", incorporating your Committee's revisions. The purpose of the proposed bill is to prohibit new retail establishments exceeding 15,000 square feet on the Island of Lanai, 75,000 square feet in the Hana Community Plan Area, and 90,000 square feet elsewhere in Maui County.

Your Planning Committee RECOMMENDS the following:

1. That Bill No. _____ (2009), attached hereto, entitled "A BILL FOR AN ORDINANCE AMENDING TITLE 19, MAUI COUNTY CODE, RELATING TO 'SUPERSTORES'", be PASSED ON FIRST READING and be ORDERED TO PRINT; and
2. That County Communication No. 07-34 be FILED.

COUNCIL OF THE COUNTY OF MAUI
PLANNING COMMITTEE

June 5, 2009
Page 4

Committee
Report No. 09-42

Adoption of this report is respectfully requested.


SOL P. KAHO`OHALAHALA, Chair

pc:cr:09004aa:dmr

ORDINANCE NO. _____

BILL NO. _____ (2009)

A BILL FOR AN ORDINANCE AMENDING TITLE 19,
MAUI COUNTY CODE, RELATING TO "SUPERSTORES"

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Purpose. The purpose of this ordinance is to preserve and protect the quality of life, natural beauty, and character of Maui County's island communities from adverse impacts caused by large "superstores" by amending Title 19, Maui County Code, relating to zoning. The establishment of restrictions on the operation, expansion, or reconstruction of retail or wholesale establishments that are or may become "superstores" protects the public from adverse impacts such as urban blight, traffic congestion, air pollution, overburdening of existing infrastructure, and deterioration of fragile ecosystems. This ordinance is not intended to preclude any particular retailer, company, or tenant from doing business in the County of Maui, but rather is intended to control and organize development through the zoning code by restricting "superstore" uses in the County of Maui by any and all retailers, companies, and tenants.

SECTION 2. Section 19.04.040, Maui County Code, is amended by adding a new definition to be appropriately inserted and to read as follows:

"Superstore" means a business with a retail or wholesale element exceeding:

1. Fifteen thousand gross square feet of retail or wholesale space, including any indoor or outdoor on-site storage or display, on the island of Lanai;

2. Seventy-five thousand gross square feet of retail or wholesale space, including any indoor or outdoor on-site storage or display, in the Hana community plan area; and

3. Ninety thousand gross square feet of retail or wholesale space, including any indoor or outdoor on-site storage or display in Maui County in areas other than the island of Lanai and the Hana community plan area."

SECTION 3. Title 19, Maui County Code, is amended by adding a new chapter to be appropriately designated and to read as follows:

"Chapter 19.39

SUPERSTORES

Sections:

19.39.010 Prohibition.

19.39.020 Nonconforming uses.

19.39.010 Prohibition. Superstores shall be prohibited in all zoning districts.

19.39.020 Nonconforming uses. A. A nonconforming superstore use may be continued, even if the superstore changes its name or owner, unless the use is discontinued for twelve consecutive months.

B. Work may be done on any structure devoted in whole or in part to superstore use; provided, that

work is limited to ordinary repairs, including repair or replacement of walls, fixtures, wiring or plumbing, not exceeding fifty percent of the replacement cost of the structure within a twelve-month period, and provided further that the floor area of the structure, as measured at the time the use became nonconforming, is not increased.

C. Notwithstanding subsection A, if a lawfully permitted superstore structure is damaged by natural disaster, accidental means, or other calamity, the structure may be reconstructed or repaired to an extent exceeding fifty percent of its replacement cost, provided such reconstruction or repairs do not increase the gross square footage of the structure, as measured as of the date of the disaster, accident, or calamity. If the reconstruction or repair involves more than fifty percent of the gross square footage of the structure, the urban design review board shall first review and advise the department of planning on the reconstruction plans.

D. Notwithstanding subsection A, any superstore lawfully existing as of the effective date of this chapter may increase its gross square footage of retail or wholesale space, as measured as of the effective date of this chapter, by up to ten percent of such square footage.

E. To the extent that this section conflicts with section 19.500.110 of this code, this section shall prevail."

SECTION 4. New material is underscored. In printing this bill, the County Clerk need not include the underscoring.

SECTION 5. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM
AND LEGALITY:

A handwritten signature in black ink, appearing to read 'M. J. Hopper', written over a horizontal line.

MICHAEL J. HOPPER
Deputy Corporation Counsel
County of Maui

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