

COUNCIL AGENDA: May 21, 2013

SUBJECT: COUNCIL MEMBER REQUESTED AGENDA ITEM – Request for the City Council to Consider Adopting a Resolution of Opposition to AB 667 (Hernandez) Regarding Land Use: Development Project Review: Superstores

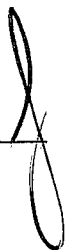
SOURCE: City Manager

COMMENT: City Council Member Ward has requested that the Council consider adopting a Resolution of Opposition to AB 667 (Hernandez), which would regulate local land use decisions by requiring an enhanced economic impact report be prepared prior to permitting construction or altering of any buildings that would create a superstore in an economic assistance area, and that the report must find that the superstore will not materially adversely affect the economic welfare of the impact area which consists of a five-mile radius around the proposed superstore.

RECOMMENDATION: Council Member Ward makes the motion that the City Council authorize the scheduling on the June 4th Council Agenda the consideration of adopting a Resolution of Opposition to AB 667 (Hernandez).

ATTACHMENT: AB 667 Bill Text

C/M



Item No. 13

BILL NUMBER: AB 667 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY MARCH 19, 2013

INTRODUCED BY Assembly Member Roger Hernández

FEBRUARY 21, 2013

An act to ~~amend Section 65950 of~~ add Sections 65928.3, 65928.4, 65928.7, 65935, and 65957.3 to the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

AB 667, as amended, Roger Hernández. Land use: development project ~~review.~~ review: superstores.

The Permit Streamlining Act within the Planning and Zoning Law requires the lead agency that has the principal responsibility for approving a development project, as defined, to approve or disapprove the project within a specified number of days from the date of certification of an environmental impact report, the date of the adoption of a negative declaration, or the determination by the lead agency that the project is exempt from the California Environmental Quality Act.

This bill would, in addition, require a city, county, or city and county, including a charter city, prior to approving or disapproving a proposed development project that would permit the construction of a superstore retailer, as defined, to cause an economic impact report to be prepared, as specified, to be paid for by the project applicant, and that includes specified assessments and projections, including, among other things, an assessment of the effect that the proposed superstore will have on specified designated economic assistance areas, as defined, and an assessment of the effect that the proposed superstore will have on retail operations and employment in the same market area. The bill would also require the governing body to provide an opportunity for public comment on the economic impact report. By increasing the duties of local public officials, the bill would impose a state-mandated local program. The bill would additionally find and declare that these provisions are an issue of statewide concern and not a municipal affair.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~This bill would make technical, nonsubstantive changes to those provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~
yes . State-mandated local program: ~~no~~
yes .

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. It is the intent of the Legislature to

promote economic development in all communities of the state and in particular in identified Economic Assistance Areas, with the goal of creating good jobs, economically self-sustaining communities, and promoting a vibrant small business sector. It is the intent of the legislature to ensure that the superstore retail model meets these goals and does not undermine efforts toward those ends. Therefore, the Legislature finds and declares all of the following:

(a) The state has identified geographically targeted economic development areas. Each of these areas has related tax incentive benefits as well as a variety of locally provided incentives and benefits. The purpose of these benefits is to stimulate business investment and job creation for qualified disadvantaged individuals in state-designated economically distressed areas. Similarly, other redevelopment plan areas have been developed by former redevelopment agencies and their successor agencies pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33300) of Division 24 of the Health and Safety Code), with the purpose of revitalizing the economy of local jurisdictions.

(b) The state and local governments have provided financial assistance to certain businesses to stimulate business development and job creation.

(c) It is in the interest of local governments to promote economic development in their jurisdictions.

(d) Land use decisions are frequently linked to fiscal policy because local governments receive a share of sales tax revenues generated within their borders. California cities thus often seek large sales tax revenue sources, such as superstores, without taking into account all of the external economic effects that superstores bring to communities.

(e) Transformations in the big box retail industry have altered retail business nationwide. The engine of this change is the retail format known as the superstore, a big box retail store that also contains the equivalent of a full-service grocery store, with the total floor space often three to four times as large as that of a conventional supermarket.

(f) As a result of the restructuring of retail business, particularly the grocery sector in California, the following effects may be seen: local grocers, who yield a greater community return on investment, are driven out of business; anchor stores to other local businesses are closed down impacting many small businesses, and resulting in less community access to viable superstore alternatives; lower wages and benefits paid to grocery workers by superstore retailers; and a host of complex land use, traffic, and fiscal impacts.

(g) Superstores typically combine a large variety of discount general merchandise with full-service grocery sales to the general public under one roof, thereby generating more intense land use and environmental impacts than other large-scale retailers and wholesale membership clubs.

(h) Industry and academic studies indicate superstores rarely add any retail services not currently provided within a community, and the majority of sales growth at a superstore comes from a direct shift of dollars from existing retailers within a community, primarily from grocery stores.

(i) Land use decisions regarding superstores fall to city and county governments, even if the impacts will be regional as well as local and may impact the efforts by the state and regions in economic development areas.

(j) Currently, local governments that desire to perform due

diligence for their constituents by performing an economic analysis are placed at a disadvantage because a neighboring city or county may not perform an economic analysis. This situation may result in the shifting of sales tax and destruction of the business community in a city or county that simply wants to study the impacts of the development project before making a final approval that the permitting of the superstore does not have a material adverse impact on the impact area.

SEC. 2 . Section 65928.3 is added to the Government Code , to read:

65928.3. "Economic assistance areas" means existing economic development areas, that may be amended from time to time by the Legislature, including an enterprise zone established pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1, a local agency military base recovery area established pursuant to Chapter 12.97 (commencing with Section 7105) of Division 7 of Title 1, a manufacturing incentive area designated pursuant to Section 7073.8, a targeted tax area designated pursuant to Section 7097, or any redevelopment area identified by any successor or agency to a former redevelopment agency, or recipients of over one hundred thousand dollars (\$100,000) of financial assistance as defined in this chapter.

SEC. 3. Section 65928.4 is added to the Government Code , to read:

65928.4. "Financial assistance" includes, but is not limited to, any of the following in the amount of one hundred thousand dollars (\$100,000) or greater:

(a) Any appropriation of public funds, including, but not limited to, loans, grants, or subsidies or the payment for or construction of parking improvements.

(b) Any tax incentive, including, but not limited to, tax exemptions, rebates, reductions, or moratoria of a tax, including any rebate or payment based upon the amount of sales tax generated from the superstore.

(c) The sale or lease of real property at a cost that is less than fair market value.

(d) Payment for, forgiveness of, or reduction of fees.

SEC. 4. Section 65928.7 is added to the Government Code , to read:

65928.7. "Impact area" means a five-mile radius surrounding the proposed location of a superstore.

SEC. 5. Section 65935 is added to the Government Code , to read:

65935. "Superstore" means a business establishment that exceeds 90,000 square feet of gross floor area, sells a wide range of consumer goods, and devotes 10,000 square feet or more of the sales floor area to the sale of items that are exempted from the Sales and Use Tax Law (Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code), pursuant to Section 6359 of the Revenue and Taxation Code. "Superstore" shall include a retail establishment with multiple tenants, and the cumulative sum of related or successive permits that may be part of a larger project, including piecemeal additions to a building, where consumer goods and nontaxable items are sold under the same roof with shared checkout stands, entrances, and exits. "Superstore" does not include a discount warehouse or retail store where more than one-half of the items carried by the discount warehouse or retail store are sold in large quantities or in bulk, and the discount warehouse or retail store requires shoppers to pay a membership or assessment fee.

SEC. 6. Section 65957.3 is added to the

Government Code , to read:

65957.3. (a) Prior to the permitting of the construction of, the addition to, or the alteration of, any buildings or structures which would create a superstore in an economic assistance area, in addition to the findings otherwise required by any ordinance or regulation of the city, county, or city and county, the legislative body of the city, county, or city and county shall make a finding that, based on consideration of all economic benefits and costs, the superstore will not materially adversely affect the economic welfare of the impact area. This finding shall be based upon information contained in an economic impact report, any other information received or obtained by the designated agency of the city, county, or city and county, and any other information received before or at a public hearing conducted as required by this section.

(b) The city, county, or city and county may prepare the economic impact report or contract with a private entity, other than the permit applicant, or with another public agency for the preparation of the report. Any private entity or other public agency contracted to prepare the economic impact report shall be qualified by education, training, and experience to conduct economic and fiscal impact analyses.

(c) The applicant for the proposed superstore shall pay the city, county, or city and county for the costs of preparing the economic impact report.

(d) The economic impact report shall include, but is not limited to, all of the following:

(1) An assessment of whether the proposed superstore will meet the purposes of any designated economic assistance areas, including an enterprise zone, a local agency military base recovery area, a manufacturing enhancement area, a targeted tax area, or any plan area administered by a successor agency to a former redevelopment agency, in which the superstore is proposed to be located.

(2) An assessment of whether the proposed superstore will negatively impact any retailer that is the beneficiary of any benefits from any program adopted in connection with any designated economic development area, including an enterprise zone, a local agency military base recovery area, a manufacturing enhancement area, a targeted tax area, or any program adopted by a successor agency to a former redevelopment agency, in which the superstore is proposed to be located.

(3) An assessment of the extent to which the proposed superstore will capture a share of retail sales in the impact area.

(4) An assessment of the extent to which the construction and operation of the proposed superstore will affect the supply and demand for retail space in the impact area.

(5) An assessment of the extent to which the construction and operation of the proposed superstore will affect employment in the impact area, including all of the following:

(A) The number of persons employed in existing retail stores in the impact area.

(B) An estimate of the number of people who will likely be employed by the proposed superstore.

(C) An analysis of whether the proposed superstore will result in a net increase or decrease in employment in the impact area.

(D) The effect on wages and benefits of employees of other retail businesses, and community income levels in the impact area.

(6) A projection of the costs of public services and public facilities resulting from the construction and operation of the proposed superstore and the incidence of those costs, including the cost to the state, city, or county of any public assistance that

employees of the proposed superstore will be eligible for based on the wages and benefits to be paid by the proposed superstore.

(7) A projection of the public revenues resulting from the construction and operation of the proposed superstore retailer and the incidence of those revenues.

(8) An assessment of the effect that the construction and operation of the proposed superstore will have on retail operations, including grocery stores or retail shopping centers, in the impact area, including the potential for blight resulting from retail business closures and the nature of any businesses displaced.

(9) An assessment of the effect that the construction and operation of the proposed superstore will have on the ability of the city, county, or city and county to implement the goals contained in its general plan, including, but not limited to, local policies and standards that apply to land use patterns, traffic circulation, affordable housing, and natural resources, including water supplies, open-space lands, noise problems, and safety risks.

(10) An assessment of the effect that the construction and operation of the proposed superstore will have on average total vehicle miles traveled by retail customers in the same impact area.

(11) An assessment of the potential for long-term vacancy of the property on which the superstore is proposed in the event that the business vacates the premises, including any restrictions that exist on the subsequent use of the property on which the superstore is proposed to be located, including the provisions of any lease that, in the event the owner or operator of the proposed superstore vacates the premises, would require the premises to remain vacant for a significant amount of time.

(12) An assessment of whether the superstore would require the demolition of housing or any other action or change that would result in a decrease or negative impact on the creation of extremely low-, very low-, low-, or moderate-income housing.

(13) An assessment of whether the superstore would result in the destruction or demolition of park or other green space, playgrounds, child care facilities, or community centers.

(14) An assessment of whether the superstore would result in any other adverse or positive economic impacts or blight in the impact area.

(15) An assessment of whether any measures identified by the superstore are available that may mitigate any materially adverse economic impacts of the superstore.

(e) At any regularly scheduled meeting or meetings of the legislative body of a city, county, or city and county, following the completion and approval of the economic impact report required by this section, and 30 days prior to the issuance of any entitlement, including, but not limited to, a building permit, a city, county, or city and county shall provide the opportunity for public comment on the economic impact report and its findings.

(f) This section shall not preclude a city, county, or city and county from conducting additional studies of the effects of the construction and operation of a proposed superstore.

(g) (1) The Legislature finds that the construction and operation of a superstore has land use, environmental, economic, fiscal, and social equity effects that extend beyond the boundaries of the city, county, or city and county in which it is located and may impact the goals and objectives of economic development areas, including enterprise zones, local agency military base recovery areas, manufacturing enhancement areas, targeted tax areas, and any plan area administered by a successor agency to a former redevelopment agency, and beyond the borders of the city, county, or city and

county, where financial assistance is provided to a superstore.

(2) The Legislature finds that it is essential for the statewide public health, safety, and welfare to require cities, counties, and cities and counties to understand the potential spillover effects of approving the construction and operation of superstores.

(3) The Legislature further finds and declares that the review and regulation of superstores is a matter of statewide concern and not merely a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution. Therefore, this section shall apply to charter cities and to charter cities and counties.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

~~SECTION 1. Section 65950 of the Government Code is amended to read:~~

~~65950. (a) Any public agency that is the lead agency for a development project shall approve or disapprove the project within whichever of the following periods is applicable:~~

~~(1) One hundred eighty days from the date of certification by the lead agency of the environmental impact report, if an environmental impact report is prepared pursuant to Section 21100 or 21151 of the Public Resources Code for the development project.~~

~~(2) Ninety days from the date of certification by the lead agency of the environmental impact report, if an environmental impact report is prepared pursuant to Section 21100 or 21151 of the Public Resources Code for the development project and all of the following conditions are met:~~

~~(A) At least 49 percent of the units in the development project are affordable to very low or low income households, as defined by Sections 50105 and 50079.5 of the Health and Safety Code, respectively. Rents for the lower income units shall be set at an affordable rent, as that term is defined in Section 50053 of the Health and Safety Code, for at least 30 years. Owner occupied units shall be available at an affordable housing cost, as that term is defined in Section 50052.5 of the Health and Safety Code.~~

~~(B) Prior to the application being deemed complete for the development project pursuant to Article 3 (commencing with Section 65940), the lead agency received written notice from the project applicant that an application has been made or will be made for an allocation or commitment of financing, tax credits, bond authority, or other financial assistance from a public agency or federal agency, and the notice specifies the financial assistance that has been applied for or will be applied for and the deadline for application for that assistance, the requirement that one of the approvals of the development project by the lead agency is a prerequisite to the application for or approval of the application for financial assistance, and that the financial assistance is necessary for the project to be affordable as required pursuant to subparagraph (A).~~

~~(C) There is confirmation that the application has been made to the public agency or federal agency prior to certification of the environmental impact report.~~

~~(3) Sixty days from the date of adoption by the lead agency of the negative declaration, if a negative declaration is completed and adopted for the development project.~~

~~(4) Sixty days from the determination by the lead agency that the project is exempt from the California Environmental Quality Act~~

~~(Division 13 (commencing with Section 21000) of the Public Resources Code), if the project is exempt from that act.~~

~~(b) This section does not preclude a project applicant and a public agency from mutually agreeing in writing to an extension of any time limit provided by this section pursuant to Section 65957.~~

~~(c) For purposes of paragraph (2) of subdivision (a), "development project" means a use consisting of either of the following:~~

~~(1) Residential units only.~~

~~(2) Mixed use developments consisting of residential and nonresidential uses in which the nonresidential uses are less than 50 percent of the total square footage of the development and are limited to neighborhood commercial uses and to the first floor of buildings that are two or more stories. As used in this paragraph, "neighborhood commercial" means small scale general or specialty stores that furnish goods and services primarily to residents of the neighborhood.~~

~~(d) For purposes of this section, "lead agency" and "negative declaration" have the same meaning as defined in Sections 21067 and 21064 of the Public Resources Code, respectively.~~