

ORDINANCE NO. _____

AN ORDINANCE RELATED TO LAND USE REGULATIONS, PROVIDING EXCEPTIONS TO THE SIZE LIMIT FOR RETAIL ESTABLISHMENTS WITHIN LIMITED AREAS OF THE CITY BY AMENDING BELLINGHAM MUNICIPAL CODE 20.00.080; 20.00.110; 20.10.025; 20.38.050.C. AND 20.38.050.D.

WHEREAS, on February 12th, 2007 the City adopted an ordinance establishing a 90,000 square foot size cap on individual retail establishments; and

WHEREAS, the Planning and Community Development Director initiated an amendment at the request of the Mayor to provide exceptions the size limit within limited areas of the City if certain standards are met; and

WHEREAS, a Determination of Nonsignificance for the proposed amendment was issued under the State Environmental Policy Act; and

WHEREAS, as required by RCW 36.70A, notice of the City's intent to adopt the proposed code amendment was sent to the Dept. of Community, Trade and Economic Development on May 22, 2009; and

WHEREAS, after mailed and published notice as required by BMC Chapter 21.10, the Planning Commission held a public hearing on June 25, 2009 on the proposed code amendments; and

WHEREAS, the Planning Commission considered the staff report and comments received and thereafter transmitted their recommendation to the City Council; and

WHEREAS, after mailed and published notice as required by BMC 21.10, the City Council held a public hearing on the proposed code amendment on September 21, 2009 and agrees with and adopts the Planning Commission Findings of Fact and Conclusions with additions; and

WHEREAS, the City Council conducted work sessions on January 25, February 8, February 11, February 22 and March 15, 2010 and thereafter directed modifications to the proposed ordinance; and

WHEREAS, after mailed and published notice the City Council held a public hearing on the proposed modified ordinance on April 12, 2010;

NOW THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN:

Section 1. The City Council adopts the following additional findings of fact and conclusions:

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1. There is evidence that proliferation of large stores consisting of a combined discount retail store and a full grocery sales department, sometimes know as “superstores,” may negatively impact the vitality of the City’s existing and proposed neighborhood and district centers.
2. This ordinance, by restricting the location and type of large-scale retail stores, serves as a means to enhance Bellingham’s neighborhood shopping opportunities and urban villages, perpetuating the land use pattern established by the Comprehensive Plan.
3. The proposed regulations recognize that “membership warehouse clubs” typically sell in bulk to both businesses and individual households, have different impacts than “superstores” and should be allowed in the retail size limit exception area.

Section 2. Areas 17C, 18, 19, 20, 25, 26 and 26A of the Guide Meridian/Cordata Neighborhood Zoning Table (BMC 20.00.080) are hereby amended to add a Special Regulation as shown on Exhibit A.

Section 3. Areas 1, 1A, 2, 4, 5, 8, 9, 10, 12, 12A and 12B of the Meridian Neighborhood Zoning Table (BMC 20.00.110) are hereby amended to add a Special Regulation as shown on Exhibit B.

Section 4. Bellingham Municipal Code 20.10.025 is hereby amended as follows:

20.10.025 – Retail Establishments - Maximum Size

A. An individual retail establishment, including but not limited to membership warehouse clubs, discount stores, specialized product stores and department stores, shall not exceed 90,000 square feet of gross floor area. This restriction shall apply in all zones, including all General Use Types and Use Qualifiers; with the following exception: If this Section conflicts with any other provisions of this Title, this Section shall prevail.

In Guide Meridian/Cordata Neighborhood Zoning Map Areas 17C, 18, 19, 20, 25, 26 and 26A and Meridian Neighborhood Zoning Map Areas 1, 1A, 2, 4, 5, 8, 9, 10, 12, 12A and 12B the size limit may be exceeded if the proposal meets all of the following conditions:

1. The facility is not a superstore. “Superstore” means a retail establishment that exceeds 90,000 square feet of gross floor area, sells a wide range of consumer products primarily for household or personal use and devotes more than 10 percent of the total sales floor area to the sale of non-taxable merchandise. “Non-taxable merchandise” means products, commodities, or items the sale of which is not subject to Washington State sales tax. “Sales floor area” means only interior building space devoted to the sale of merchandise, and does not include restrooms, office space, storage space, automobile service areas, or open-air garden sales space. This definition excludes membership warehouse clubs where shoppers pay a membership

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fee in order to take advantage of discounted prices on a wide variety of items such as food, clothing, tires, and appliances and many items are sold in large quantities or bulk; and

2. The proposal satisfies the following environmental mitigation measures:

- a. Leadership in Energy and Environmental Design (LEED)™ certification at the silver level (or equivalent green building system). Projects shall apply for the LEED™ rating system the Director determines is most suitable for the project type; and
- b. Any new or expanded impervious surfacing shall have a Green Factor score of at least 0.3.

B. For the purpose of ~~Subsection~~ Section 20.10.025.A., gross floor area shall consist of the sum of the gross horizontal areas of all floors within the inside perimeter of the exterior walls of the structure or tenant space and roofed or partially walled outdoor areas reserved for the display, storage, or sale of merchandise, including accessory uses inside the primary retail establishment. Structured parking is excluded. The gross floor area of adjacent stores shall be aggregated in cases where the stores (1) are engaged in the selling of similar or related merchandise and operate under common ownership or management; (2) share check stands, a warehouse, or a distribution facility; or (3) otherwise operate as associated, integrated or cooperative business enterprises.

C. A building space occupied by an existing single retail establishment larger than 90,000 square feet may change occupancy to a different retail establishment of the same or smaller size: except the space may not be converted to a superstore as defined in BMC 20.10.025.A.1.

D. If this Section conflicts with any other provisions of this Title, this Section shall prevail.

Section 5. Bellingham Municipal Code Subsection 20.38.050.C. regarding Planned Commercial zones is hereby amended as follows:

[1. and 2. No change.]

3. Maximum Size/Density.

- a. For planned projects within a commercial general use type, the maximum size of the floor area for retail buildings shall comply with any floor area restriction contained within the applicable Neighborhood Zoning Table under "Density".
- b. An individual retail establishment, including but not limited to membership warehouse clubs, discount stores, specialized product stores and department

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stores, shall not exceed 90,000 square feet of gross floor area—unless the proposal meets all of the following conditions:

- (1) It is located in an Area specifically exempted from the size limit in the Neighborhood Tables of Zoning Regulations; and
 - (2) The facility is not a superstore. "Superstore" means a retail establishment that exceeds 90,000 square feet of gross floor area, sells a wide range of consumer products primarily for household or personal use and devotes more than 10 percent of the total sales floor area to the sale of non-taxable merchandise. "Non-taxable merchandise" means products, commodities, or items the sale of which is not subject to Washington State sales tax. "Sales floor area" means only interior building space devoted to the sale of merchandise, and does not include restrooms, office space, storage space, automobile service areas, or open-air garden sales space. This definition excludes membership warehouse clubs where shoppers pay a membership fee in order to take advantage of discounted prices on a wide variety of items such as food, clothing, tires, and appliances and many items are sold in large quantities or bulk; and
 - (3) The proposal satisfies the following environmental mitigation measures:
 - (a) Leadership in Energy and Environmental Design (LEED)[™] certification at the silver level (or equivalent green building system). Projects shall apply for the LEED[™] rating system the Director determines is most suitable for the project type; and
 - (b) Any new or expanded impervious surfacing shall have a Green Factor score of at least 0.3.
- c. For the purpose of ~~this~~ Subsections C.3.b. and C.3.d., gross floor area shall consist of the sum of the gross horizontal areas of all floors within the inside perimeter of the exterior walls of the structure or tenant space and roofed or partially walled outdoor areas reserved for the display, storage, or sale of merchandise, including accessory uses inside the primary retail establishment. Structured parking is excluded. The gross floor area of adjacent stores shall be aggregated in cases where the stores (1) are engaged in the selling of similar or related merchandise and operate under common ownership or management; (2) share check stands, a warehouse, or a distribution facility; or (3) otherwise operate as associated, integrated or cooperative business enterprises.
- d. A building space occupied by an existing single retail establishment larger than 90,000 square feet may change occupancy to a different retail

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establishment of the same or smaller size. except the space may not be converted to a superstore as defined in BMC 20.38.050.C.3.b.(2).

[4. through 12. No change.]

Section 6. Bellingham Municipal Code Subsection 20.38.050.D. regarding Planned Industrial zones is hereby amended as follows:

[1. and 2. No change.]

3. Maximum Size/Density.

a. An individual retail establishment, including but not limited to membership warehouse clubs, discount stores, specialized product stores and department stores, shall not exceed 90,000 square feet of gross floor area. unless the proposal meets all of the following conditions:

(1) It is located in an Area specifically exempted from the size limit in the Neighborhood Tables of Zoning Regulations; and

(2) The facility is not a superstore. "Superstore" means a retail establishment that exceeds 90,000 square feet of gross floor area, sells a wide range of consumer products primarily for household or personal use and devotes more than 10 percent of the total sales floor area to the sale of non-taxable merchandise. "Non-taxable merchandise" means products, commodities, or items the sale of which is not subject to Washington State sales tax. "Sales floor area" means only interior building space devoted to the sale of merchandise, and does not include restrooms, office space, storage space, automobile service areas, or open-air garden sales space. This definition excludes membership warehouse clubs where shoppers pay a membership fee in order to take advantage of discounted prices on a wide variety of items such as food, clothing, tires, and appliances and many items are sold in large quantities or bulk; and

(3) The proposal satisfies the following environmental mitigation measures:

(a) Leadership in Energy and Environmental Design (LEED)™ certification at the silver level (or equivalent green building system). Projects shall apply for the LEED™ rating system the Director determines is most suitable for the project type; and

(b) Any new or expanded impervious surfacing shall have a Green Factor score of at least 0.3.

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- b. For the purpose of ~~this~~ Subsection D.3., gross floor area shall consist of the sum of the gross horizontal areas of all floors within the inside perimeter of the exterior walls of the structure or tenant space and roofed or partially walled outdoor areas reserved for the display, storage, or sale of merchandise, including accessory uses inside the primary retail establishment. Structured parking is excluded. The gross floor area of adjacent stores shall be aggregated in cases where the stores (1) are engaged in the selling of similar or related merchandise and operate under common ownership or management; (2) share check stands, a warehouse, or a distribution facility; or (3) otherwise operate as associated, integrated or cooperative business enterprises.

- c. A building space occupied by an existing single retail establishment larger than 90,000 square feet may change occupancy to a different retail establishment of the same or smaller size. except the space may not be converted to a superstore as defined in BMC 20.38.050.D.3.a.(2).

PASSED by the Council this _____ day of _____, 2010.

Council President

APPROVED by me this _____ day of _____, 2010.

Mayor

ATTEST: _____

Finance Director

APPROVED AS TO FORM:

Office of the City Attorney

Published:

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