



City of Philadelphia

Philadelphia, PA 19107

BILL NO. 050216

Introduced March 17, 2005

Councilmembers Cohen, Mariano and DiCicco

**Referred to the
Committee on Rules**

AN ORDINANCE

Enacting a new Section 14-310 of The Philadelphia Code, entitled "Predatory Superstores," and amending Section 14-102 entitled "Definitions," Section 14-1802 entitled "Criteria for Granting Zoning Variances" and Section 14-1704 entitled "Enforcement," to prohibit the development and construction of Predatory Superstores, and the reconstruction, modification or alteration of existing structures to become Predatory Superstores; and further to prohibit zoning variances which would endanger the economic health and vitality of the surrounding community; providing penalties for non-compliance and granting remedies to aggrieved persons; all under certain terms and conditions.

WHEREAS, Large individual retail stores and shopping facilities, in excess of 90,000 square feet, present unique challenges for and demands upon local government and its various agencies and services; and

WHEREAS, Large individual retail stores and shopping facilities, in excess of 90,000 square feet, require a significantly higher commitment of police, fire, and public safety resources in comparison to smaller neighborhood stores; and

WHEREAS, Large retail stores and shopping facilities, in excess of 90,000 square feet, have a demonstrable and identifiable negative and anti-competitive impact on many business enterprises and establishments operating or attempting to operate in the same market area; and

WHEREAS, Large retail stores and shopping facilities, in excess of 90,000 square feet, establish undesirable conditions which foster potential traffic congestion and pollution that tend to strain local streets and highways and contaminate air and water supplies; and

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WHEREAS, Large retail stores and shopping facilities, in excess of 90,000 square feet, must be measurably capable of generating significant municipal revenue from mercantile taxes, property taxes and other public funding sources to offset the added costs and burdens of their existence upon local government; and

WHEREAS, Large retail stores and shopping facilities, in excess of 90,000 square feet, are regional in nature and attract customers and vendors from a broad, non-local region in contravention of the salutary goal of providing a supply of multiple convenience retail establishments and opportunities to serve local neighborhoods; and

WHEREAS, Large retail stores and shopping facilities, in excess of 90,000 square feet are neither pedestrian nor mass transit oriented and instead encourage the unnecessary use of individual personal vehicles and attendant parking, pollution issues along with waste of scarce natural resources; and

WHEREAS, The City of Philadelphia encourages smart growth and planning in all aspects of the development and redevelopment of real property; and

WHEREAS, The City of Philadelphia encourages mixed use development and redevelopment efforts and opportunities to promote combined residential, retail, employment, and entertainment centers; and

WHEREAS, The City Council of Philadelphia finds and declares that this ordinance concerns matters of citywide concern, including tax revenues, traffic, and public safety, health and welfare; now therefore

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Section 14-102 of The Philadelphia Code is hereby amended to read as follows:

§14-102. Definitions.

* * *

(90) Predatory Superstore. A retail store or facility being developed, redeveloped, constructed, reconstructed, modified or substantially altered that will:

a) Contain more than 180,000 square feet of gross buildable area at full build-out; or

b) Contain more than 90,000 and less than 180,000 square feet of gross buildable area at full build-out where in excess of 10 percent of such a proposed

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facility's total square footage is to be devoted to or dedicated to the sale of nontaxable food merchandise and/or cosmetics, soaps, non-prescription drugs and toiletries or where, based upon credible marketing studies prepared on behalf of the proposed facility, in excess of 10 percent of the proposed facility's anticipated gross sales revenues will be from nontaxable food merchandise and/or cosmetics, soaps, non-prescription drugs and toiletries.

For the purposes of this definition, the square footage of adjacent stores or facilities shall be aggregated together to determine the gross buildable area of the Predatory Superstore and the anticipated gross sales revenue of adjacent stores or facilities shall be aggregated together to determine the proposed Predatory Superstore's anticipated gross sales revenues if the adjacent stores or facilities share any of the following:

- 1) check stands; or*
- 2) common management; or*
- 3) a common ownership interest or control group (by way of corporate structures and/or individual shareholders, partners, proprietors or any combination of the same); or*
- 4) warehouse and/or distribution facilities.*

(91) [(90)]	*	*	*
(92) [(91)]	*	*	*
(93) [(92)]	*	*	*
(94) [(93)]	*	*	*
(95) [(94)]	*	*	*
(96) [(95)]	*	*	*
(97) [(96)]	*	*	*

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(98) [(97)]	*	*	*
(99) [(98)]	*	*	*
(100) [(99)]	*	*	*
(101) [(100)]	*	*	*
(102) [(101)]	*	*	*
(103) [(102)]	*	*	*
(104) [(103)]	*	*	*
(105) [(104)]	*	*	*
(106) [(105)]	*	*	*
(107) [(106)]	*	*	*
(108) [(107)]	*	*	*
(109) [(108)]	*	*	*
(110) [(109)]	*	*	*
(111) [(110)]	*	*	*

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(112) [(111)]	*	*	*
(113) [(112)]	*	*	*
(114) [(113)]	*	*	*
(115) [(114)]	*	*	*
(116) [(115)]	*	*	*
(117) [(116)]	*	*	*
(118) [(117)]	*	*	*
(119) [(118)]	*	*	*
(120) [(119)]	*	*	*
(121) [(120)]	*	*	*
(122) [(121)]	*	*	*
(123) [(122)]	*	*	*
(124) [(123)]	*	*	*
(125) [(124)]	*	*	*

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(126) [(125)]	*	*	*
(127) [(126)]	*	*	*
(128) [(127)]	*	*	*
(129) [(128)]	*	*	*
(130) [(129)]	*	*	*
(131) [(130)]	*	*	*
(132) [(131)]	*	*	*
(133) [(132)]	*	*	*
(134) [(133)]	*	*	*
(135) [(134)]	*	*	*

SECTION 2. Chapter 14-300 of The Philadelphia Code, entitled “Commercial Districts” is amended to add a new Section 14-310 to read as follows:

Section 14-310. Predatory Superstore.

Notwithstanding any other section of this Title, the following use shall be prohibited in all classes of districts: Predatory Superstore.

SECTION 3. Section 14-1802 of The Philadelphia Code is hereby amended to read as follows:

§14-1802. Criteria for Granting Variances.

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* * *

(k) *that the grant of the variance will not substantially lower the rate of employment, the level of wages and/or health care benefits, the amount of revenue generated by wage and property taxes or otherwise endanger the economic health and vitality of the surrounding community;*

(l) [(k)]

* * *

(m) [(l)]

* * *

(7) *For Predatory Superstores, the Zoning Board of Adjustment shall evaluate all of the following additional evidence, information and factors in determining whether or not to grant a variance:*

(a) *That the applicant has presented a verified statement of economic impact, which shall contain the following:*

(.1) *An accurate and academically sound data-based analysis of the expected economic impact on business establishments that are engaged in the sale of the same or similar products in the same market area as the proposed Predatory Superstore;*

(.2) *An accurate and academically sound data-based analysis on employment diminution resulting from the operations of the proposed Predatory Superstore, detailing the nature and quality of job destruction and dislocation, including the relative pay and benefit scales with respect to the grade and/or classifications of workers so dislocated;*

(.3) *A detailed analysis of the tax impact of the proposed Predatory Superstore upon the City of Philadelphia, including, but not limited to, the effect on wage and property tax revenues for the period of 1 year, 3 years, 5 years and 10 years subsequent to the commencement of the Predatory Superstore's business activities.*

The geographic area to be studied and reported upon in subsections (.1) through (.3) above shall be the same geographic area utilized in the creation of the business and/or marketing plans by the developers, owners and operators of the proposed Predatory Superstore.

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(b) That the applicant has demonstrated, by a preponderance of the evidence, that the proposed Predatory Superstore will not substantially lower the rate of employment, the level of wages and/or health care benefits, the amount of revenue generated by wage and property taxes or otherwise endanger the economic health and vitality of the surrounding community.

(c) That any variance granted to a Predatory Superstore must include the following conditions:

(.1) The owner or operator of the Predatory Superstore cannot alter or modify the structure to increase the total Zoning Board approved square footage of the facility devoted to or dedicated to the sale of nontaxable food merchandise and/or cosmetics, soaps, non-prescription drugs and toiletries without first seeking a new variance.

(.2) The owner or operator of the Predatory Superstore cannot alter or modify its business operations to increase the Zoning Board approved percentage of the facility's gross sales revenues from nontaxable food merchandise and/or cosmetics, soaps, non-prescription drugs and toiletries without first seeking a new variance.

(.3) The owner or operator of the Predatory Superstore shall annually file a report with the Department of Licenses and Inspections, due one month after the anniversary date of the variance. The report shall specify the total current square footage of the Predatory Superstore as well as the total current square footage of the facility devoted to or dedicated to the sale of nontaxable food merchandise and/or cosmetics, soaps, non-prescription drugs and toiletries as well as specify, based upon generally recognized accounting standards, the facility's gross sales revenues from nontaxable food merchandise and/or cosmetics, soaps, non-prescription drugs and toiletries in the previous twelve consecutive month period.

(8) [(7)] The provisions of paragraphs (2), (3), (4), (5), [and] (6) and (7) shall be in addition to the criteria set forth in paragraph (1).

(9) [(8)]

* * *

SECTION 4. Section 14-1704 of The Philadelphia Code is hereby amended to read as follows:

§14-1704. Enforcement.

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* * *

(3) *Notwithstanding any provisions to the contrary in this Title, any person may institute proceedings for injunctive or declaratory relief or writ of mandamus in any court of competent jurisdiction against any alleged violator to enforce the requirements of this Title, any regulation adopted thereunder, or any condition of any permit or variance required thereunder, relating to Predatory Superstores.*

(a) *If the square footage dedicated to the sale of nontaxable food merchandise and/or cosmetics, soaps, non-prescription drugs and toiletries exceeds the dimensions approved by the Zoning Board of Adjustment, the court shall award as damages to the City of Philadelphia, and not the prevailing plaintiff (unless the prevailing plaintiff is the City of Philadelphia), an amount equal to 50 percent of the gross sales revenue associated with such square footage for the previous year or an amount equal to the fair market rental value of 50 percent of the value of the square footage devoted to the sale of nontaxable food merchandise and/or cosmetics, soaps, non-prescription drugs and toiletries, for the previous year whichever is greater.*

(b) *If the percentage of the facility's gross sales revenues from nontaxable food merchandise and/or cosmetics, soaps, non-prescription drugs and toiletries exceeds the percentage approved by the Zoning Board of Adjustment, the court shall award as damages to the City of Philadelphia, and not the prevailing plaintiff (unless the prevailing plaintiff is the City of Philadelphia), an amount equal to 50 percent of the gross sales revenue associated with such sales of nontaxable food merchandise and/or cosmetics, soaps, non-prescription drugs and toiletries for the previous year.*

(c) *The court shall further award court costs and reasonable attorney fees to the plaintiff should the plaintiff prevail in litigation filed pursuant to this ordinance.*

(d) *Any penalties, costs, and/or fees awarded pursuant to this ordinance shall be paid exclusively by the owner or operator of the Predatory Superstore.*

SECTION 5. Effective Date. This Ordinance shall take effect immediately.

Explanation:

[Brackets] indicate matter deleted.
Italics indicate new matter added.

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