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**BIG -BOX ORDINANCE TOOL-KIT**

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Last updated: July 11, 2006

Midwest Environmental Advocates, Inc. is a nonprofit environmental law center that provides technical assistance and legal representation to communities and groups working to protect the public's right to clean air, clean water and clean government.

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## **I. INTRODUCTION**

A well-constructed big-box ordinance equips a community with tools to make educated decisions about big-box development and preserving community values. Having a big-box ordinance in place *before* a big-box retailer applies for a rezoning or Conditional Use Permit ensures that your government is aware of community's values and standards when processing the big-box retailer's application. This tool-kit includes guidelines that a community should consider when drafting a big-box ordinance.

In addition to the guidelines addressed below, take time to protect your ordinance from efforts to avoid its requirements. Make sure that your big-box ordinance is very clear and precise. Include a glossary so that there is no mistake as to what the ordinance intends. The more measures you include, the clearer your big-box ordinance will be. Make sure you include both case-specific Conditional Use Permit requirements and hardlined size caps. A diverse and complete big-box ordinance will set basic standards while reserving authority to address site-specific impacts that threaten community vision and land use goals. Big-box ordinances are not the only way to ensure wise land use planning in your community. You may also promote wise land use in your community's Zoning Ordinance or Comprehensive Plan. For example, Turlock, California, amended their ordinance to include neighborhood stores.<sup>1</sup>

## **II. DEFINITION OF A BIG-BOX**

### **A. Link Definition of Big-Box Store to Conditional Use Permits**

While it may seem obvious to those drafting the ordinance, make sure to stress the need to specify the big-box development use as a “conditional use” subject to a conditional use hearing process.<sup>2</sup> Conditional Use Permit applications should include a detailed map and description of the development. The Conditional Use Permit application should be subject to individual review and consideration by the planning commission.

Example: Turlock, California, amended its ordinance to specify that a Conditional Use Permit (CUP) is required for certain large-scale retail stores (discount stores and discount clubs).<sup>3</sup>

Example: Mount Shasta, California, requires proposals for stores over 20,000 square feet to obtain a Conditional Use Permit.<sup>4</sup>

### **B. Include a Size Cap**

Size caps are a clear-cut way to reduce the footprint of big-box retail and lessen its impact on your community. The size cap is a recognition that at a certain size retail establishments simply exceed the needs of the community and start to drain its resources. Size caps are vital to any effective ordinance. Without these caps, it is likely that your community will end up with a 250,000 square foot store. That is not the protection that your community deserves.

The exact size that is used in the ordinance is up to the community. Many communities select a size between 25,000 and 80,000 square feet. To give you some perspective, here are some average sizes for typical developments:

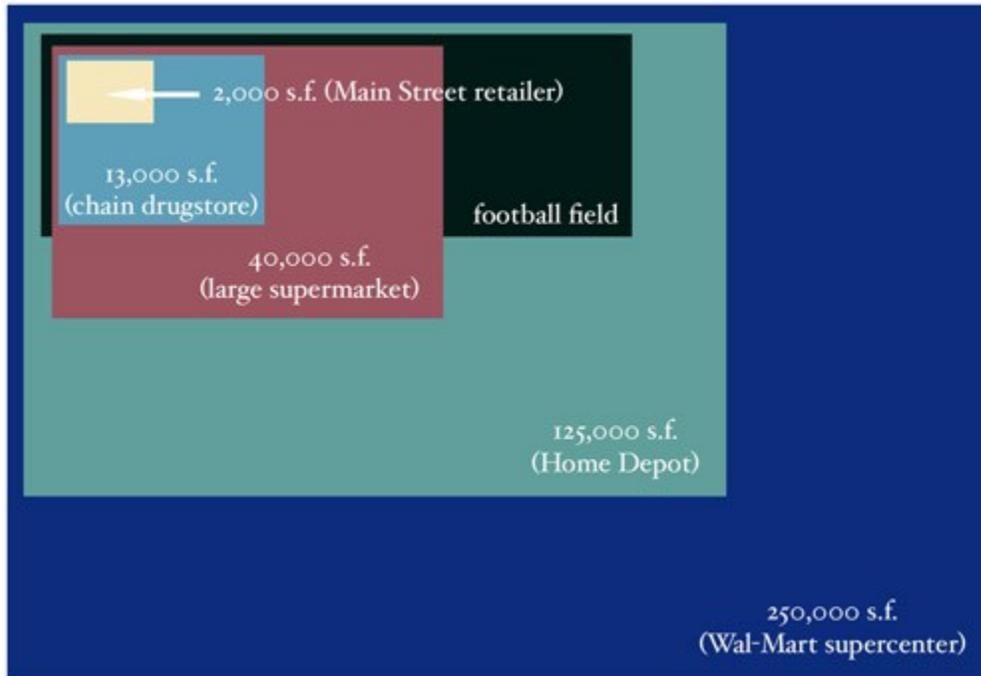


Chart: A normal downtown retailer is 2,000 sq. ft.; a large supermarket is 40,000 sq. ft.; a football field is 57,600 sq. ft. Astonishingly, some big-box developments range from 125,000 - 200,000 sq. ft.<sup>5</sup>

Wal-Mart and Target are currently building "Supercenters," which are 180,000 to 250,000 square feet, or between 4.1 to 5.7 acres. Other earlier-generation big-box retail stores such as Wal-Mart outlets, Home Depot, Lowe's, Office Depot, and Bed Bath & Beyond, are in the 60,000 to 140,000 square foot range. Barnes & Noble and Borders Books stores range from 25,000 to 45,000 square feet and free-standing chain drugstores such as Walgreens are usually from 11,000-15,000 square feet.<sup>6</sup>

- **TIP:** Include language that does not allow the city council simply to change the number of the big-box cap, severely weakening the big-box ordinance. In other words, it may be easy to alter the sq. ft. number in a big-box ordinance. This vulnerability underscores the need for other conditional requirements in your big-box ordinance, as outlined in this tool-kit. For example, if the council later amends the size cap, then certain stormwater regulations or impervious surface limits will be left to ensure that the big-box's impact on the community is limited. [See the Impervious Surface Section below.](#)

Finally, your community may tailor the size cap according to land use designation. If one size does not fit all, then go for the varying size cap.

Example: Bennington, Vermont, defined a big-box as 75,000 square feet in the commercial district and 50,000 square feet in the rest of the town.<sup>7</sup>

### **1. Include Outlots and Multiple Retailers in the Size Cap**

Make sure that the calculated square foot size of the big-box includes outlots,<sup>8</sup> outdoor sale areas, and storage. In Calvert County, Maryland, Wal-Mart is attempting to skirt a size cap law by erecting two adjacent stores, which put together still have the same impact on the community.<sup>9</sup> Communities can avoid this by structuring definitions within their ordinances to treat retailers occupying multiple buildings as a single retail use subject to the size cap.

➤ **TIP**: include multiple retailers under one size cap if applicable.

Example: In Hailey, Idaho, shopping centers with *multiple tenants* are allowed up to 72,000 square feet in the business zone, 36,000 square feet in the limited business zone, and 25,000 square feet in other industrial and commercial zones.<sup>10</sup>

### **2. Cap the Roof Size of the Big-box**

Promote big-box development that considers the "footprint," or the size of the land that the big-box occupies. A larger size big-box has more negative effects than a smaller footprint.

Example: Hailey, Idaho, limits the roof area of all retail stores to 36,000 square feet.<sup>11</sup>

Example: Monona, Wisconsin, approved a Wal-Mart Supercenter on the site of a vacant K-Mart store. Due to lack of available land, the Wal-Mart Supercenter fit a Supercenter into a 14-acre plot of land, roughly half the size of their usual sites.<sup>12</sup>

### **3. Consider Defining a Big-Box by the Number of Vehicle Trips it Will Generate Per Day**

Example: Greenfield, Massachusetts, defines retail that must adhere to their big -box ordinance by their square footage **OR** if they generate more than 500 vehicle trips per day.<sup>13</sup>

## **III. LINKING YOUR BIG-BOX ORDINANCE TO OTHER DOCUMENTS**

Like other land use ordinances, the big-box ordinance should reflect a community's long-term vision. The big-box ordinance is likely not the first time the community has set forth a vision for city growth. Make sure the ordinance supports this greater vision, which is often found in comprehensive plans or other city ordinances.

### **A. Link Big-Box Ordinance to Comprehensive and Land Use Plans**

Linking the big-box ordinance to Comprehensive and Land Use Plans legitimizes these plans, which otherwise are only advisory documents until 2010.<sup>14</sup> This link encourages the town council to consider whether the effects of the development coincide with the community's land use vision.

### **B. Link the Big-Box Ordinance to the Zoning Ordinance**

Linking the big-box ordinance to the zoning ordinance ensures that big-box retailers must conform to parking, stormwater, and other requirements set out in the zoning code.

- **TIP:** Since big-box developments are not average developments, do not treat them as such. Recall that a normal downtown retailer is 2,000 sq. ft.; a large supermarket is 40,000 sq. ft.; a football field is 57,600 sq. ft.; and a big-box development ranges from 125,000 - 200,000 sq. ft! Accordingly, increase the requirements set out by the zoning code and promote innovative techniques for the big-box to reduce stormwater run-off, construction site erosion, and impervious pavement in your big-box ordinance. See [Impervious Pavement](#) section below.

## **IV. REQUIRING A SITE PLAN**

### **A. Require a Detailed Site Plan**

Although it is implicit in a Conditional Use Permit process, it is important that the ordinance specifically describe the kind of detail required in an individual site plan so that the city council makes a well-informed decision.

Example: Homer, Alaska, requires that the site plan submitted with the application show "the location of setbacks, easements, all existing and proposed buildings and structures, access points, buffering, vehicular and pedestrian circulation patterns, parking, loading and delivery areas, mechanical equipment, drainage, landscaping, and the specific location of the use or uses of the development, elevation plans of all proposed structures, and other information necessary to establish that the requirements will be met."<sup>15</sup>

## **V. LIMITING PARKING SPACES AND IMPERVIOUS PAVEMENT**

Impervious pavement leads to rapid stormwater run-off, which is the source of environmental and aquatic degradation. Big-boxes greatly contribute to increased stormwater run-off because they include large amounts of impervious pavement in the form of parking lots, roofs, and roads. These surfaces inhibit stormwater run-off from filtering back into the soil to replenish groundwater. Instead, the run-off is channeled into streams, rivers, and other water bodies, picking up a host of pollutants on the way. Stormwater run-off, like that from big-box parking lots, is currently the largest source of water pollution.<sup>16</sup> You can limit these impacts by including the following requirements.

### **A. Require Smaller Parking Lots in Order to Limit Impervious Pavement**

Many ordinances include standards that explain how many parking stalls should be built for certain land uses. These standards are published by the Institute for Transportation Engineers (ITE). The 1987 ITE standards require no more than 6.25-7 spots per 1,000 square feet. You can advocate that your ordinance include requirements that are more strict than current ITA standards.

Example: Stoughton, Wisconsin, requires 4 spaces/1,000 square feet of gross floor area for buildings 25,000--400,000 square feet.<sup>17</sup>

Example: Vandewalle Associates is drafting an ordinance for Oregon, Wisconsin, that proposes a paved parking ratio of no more than 120% of the minimum parking ratio identified by ITE.<sup>18</sup>

### **B. Require that Parking Lots be Distributed Around the Building**

Requiring that the developer distribute parking lots around the structure reduces the distance between the building and the sidewalk. This encourages pedestrian traffic and will likely lower the footprint (scale) of the building.

Example: Wauwatosa, Wisconsin, requires that no more than 30% of the parking lot be located on any side of the big-box that is facing the street/sidewalk unless approved by the Plan Commission.<sup>19</sup>

Example: Homer, Alaska, requires that more than 50% of the parking between the front façade of the building and abutting streets or adjacent arterials.<sup>20</sup>

### **C. Encourage Businesses to Enroll in Parking Share Programs**

A shared parking program provides efficient use of parking spaces by allowing the same spaces to be “shared” by various land uses, thus reducing the total amount of required parking. This works well when businesses hold different hours, like restaurant and retail.

Example: Hailey, ID promotes their extensive parking share program which includes peak use times and credits for those who participate.<sup>21</sup>

## **VI. LIMITING STORMWATER & RUN-OFF**

Almost all big-box ordinances are linked to the town's stormwater ordinance (located elsewhere in the zoning code). However it is wise to advocate higher standards for big-box development due to their size and impact on the community.

## **A. Require Big-box Developers to Use Innovative Techniques to Mitigate Stormwater**

The DNR's MS4 permits require small cities to reduce uncontrolled stormwater by 20% by 2008 and 40% by 2013.<sup>22</sup> Cities can make zoning decisions that help eliminate the primary cause of stormwater pollution—impervious surfaces.<sup>23</sup> By requiring developers to mitigate their stormwater, the city will save money in the long-run by decreasing the amount of stormwater run-off it must mitigate in the future under the new DNR regulations.

Example: Wauwatosa, Wisconsin, includes the language: "Applicants are encouraged to pursue more innovative stormwater management practices such as bioswales and pervious pavement if they are determined to be appropriate for the site by the City Engineer."<sup>24</sup>

## **B. Require the Use of the Low Impact Development (LID) Model Presented by the 2005 EPA-Commissioned Study on Big-Box Retail and Stormwater Pollution<sup>25</sup>**

EPA includes blueprints and cost figures for more sustainable big-box development in their Low Impact Development (LID) 2005 study. The use of Low Impact Development design helps minimize stormwater impacts of these sprawling developments while lowering energy costs and recharging our declining groundwater supplies. The EPA study highlights the following ten LID strategies:<sup>26</sup>

1. Bioretention Basins (Peak and Volume)
2. Bioretention Cells (Water Quality Only)
3. Bioretention Slopes
4. Bioretention Swales
5. Water Quality Swales
6. Permeable/ Porous Pavements (Asphalt, Concrete, Blocks)
7. Tree Box Filters
8. Planter Boxes
9. Cisterns/ Rain Barrels
10. Green Roofs

- **TIP**: Do not just accept the big-box's word that Low Impact Development techniques are not practical for the site. Have the big-box show the city what efforts were made to reduce impervious surfaces, increase vegetation, and increase stormwater infiltration on the sites. The city engineer should know whether the LID strategy is feasible on a particular site.

### **1. Give Incentive for Big-box Retailers to Install Green Roofs**

Green roofs are aesthetically pleasing, increase the infiltration capacity of a site, and decrease polluted run-off. Rainwater falling on a green roof infiltrates and thus does not become stormwater run-off.<sup>27</sup> Green roofs also filter air, regulate temperature, and make economic sense in the long-run.<sup>28</sup>

Example: Chicago, Illinois, provides incentives to new big-box stores like Target and Wal-Mart who install green roofs, according to Sadhu Johnston, assistant to the mayor for green initiatives.

## VII. REQUIRING A MANDATORY COMMUNITY IMPACT ANALYSIS <sup>29</sup>

Big-box stores affect a community's economic vitality, traffic, and environment. These effects are felt community-wide, but many communities do not have a planning process to weigh the costs and benefits of big-box stores. Establishing a Community Impact Review process offers a solution to this problem. Community Impact Analyses include an independent analysis of the economic, fiscal, and community impacts of big-box development.

A major misconception about big-box development is that additional development will only bring increased revenue and bolster a community's economy. In fact, additional development is a burden on communities and often requires communities to pay for expanded police and fire services, road expansion and maintenance, increased demand on schools, and extension of sewer and water lines. These costs are captured through a Cost of Community Services (COCS) study, which measures a snapshot in time of costs versus revenues for each type of land use.<sup>30</sup> A Community Impact Analysis should include a Cost of Community Services (COCS) study. COCS studies are used to examine differences in the impacts of farmland, residential land, commercial land, and industrial land on a community's annual budget.<sup>31</sup> COCS studies are fairly straightforward to execute.<sup>32</sup>

- **TIP:** consider including a region-wide analysis that the Regional Planning Commission needs to sign off on before the big-box proceeds with their application.

Example: Cape Cod Commission requires a regional planning agency to approve or reject proposals for new construction larger than 10,000 square feet and changes of use for commercial sites that exceed 40,000 square feet. This review process includes a public hearing.<sup>33</sup>

Example: New Jersey just introduced a bill to require regional impact analyses.<sup>34</sup>

### A. Require an Independent Consultant to Perform Impact Analysis

Independent consultants are more likely to conduct impartial impact analyses than those hired by the big-box developer. Impact analyses by their nature are impartial and informative. Make sure that your community requires that the analysis be conducted in an impartial and informative manner.

- **TIP:** Remember, just because the big-box developer confirms that they will pay for the study does not mean that the consultant will be impartial. To maintain credibility, the big-box should fund a consultant that is selected by the city.

### B. Require that Developers to Pay for the Impact Analysis

Communities should not have to bear the cost of an impact analysis since it is the developer who is applying for a permit.

Example: Bennington, Vermont Community Impact review for stores over 30,000 sq. ft. must be conducted by an independent consultant chosen by the city and that developer pays the cost.<sup>35</sup>

➤ **TIP**: Include the words: "Applicant bears all cost of impact studies."

Example: Middletown, Rhode Island, requires that developers submit detailed impact statements and pay a fee to cover the town's cost of hiring consultants to review the impact statements and offer independent analyses. For shopping centers and other commercial development, the fee is \$100 per 1,000 square feet of gross floor space.<sup>36</sup>

### **C. Include Specific Requirements for the Community Impact Analysis**

Example: Homer, Alaska, requires the following data:<sup>37</sup>

- Estimated cost to a city for increased demand for infrastructure
- Net impacts on current business district
- Net change in sales tax and property tax base, revenues, and overall land values
- The estimated net impacts to local employment, wages and salaries, locally retained profits, property taxes, and sales taxes.

Example: Wauwatosa, WI requires<sup>38</sup>:

- Traffic and parking conditions on site and surrounding area
- Municipal utilities and services
- The physical and ecological characteristics of the site and the surrounding land, including wetlands, floodplain vegetation, wildlife habitat, and other environmental conditions
- The scenic, historic, and archeological character of the community
- The economic impact of the project on local businesses and residents, including number and types of jobs created, amount of local labor to be used
- The amount, type and location of potential spin-off development, impact of changing land use patterns and potential for development pressure on surrounding neighborhoods.

### **D. Require the Community Impact Analysis With the Application**

The promise of a future impact statement is not as effective as when the developer hands the impact statement in with their application. Require that the Council see the impact statement with the application so that they may make a reasonable decision on a complete set of information.

Example: Wauwatosa, Wisconsin, requires Community Impact Study at the time of Conditional Use Permit (CUP) application submission.<sup>39</sup>

### **E. Include 10-20 Year Horizon for Community Impact Study**

Some impacts that result from big-boxes are not felt until a few years after they have moved into the community, such as the economic effects of the big-box store. However, these impacts are long-lasting. Make sure that your big-box ordinance requires that impact analyses have comprehensive data for an extended time frame.

Example: Homer, Alaska, requires a 10-year horizon.<sup>40</sup>

### **VIII. REQUIRING A MANDATORY ENVIRONMENTAL IMPACT ANALYSIS**

An Environmental Impact Analysis identifies the community's natural resources and the impact that the development may have on these resources. An Environmental Impact Analysis will give the city an early look at the potential environmental impacts so that preventative measures can be taken. The big-box ordinance should require that the applicant (big-box) pay for and supply an independent analysis with their application. There is no reason why a city should turn down the opportunity to gather more information that will help development decisions reflect the range of community values including economic values.

- **TIP**: Require that your community pick the contractor that conducts the Environmental Impact Statement and make sure that the developer pays.

### **IX. REQUIRING A MANDATORY TRAFFIC DEMAND MANAGEMENT REPORT (TDM)**

Big-Box supercenters bring and attract an estimated 11,000 car trips daily. Often, this traffic is being diverted to areas that had not previously served heavy traffic flow. The increased traffic can also turn small downtown streets into traffic jams with new cars that are heading to and from the new big-box retailer. Traffic impacts affect public safety and welfare and need to be addressed before the city issues a Conditional Use Permit.

Transportation Demand Management (TDM) is a set of specific strategies that help maintain efficient, sustainable use of roadways. These strategies may improve mobility and minimize the negative impacts of vehicular travel by modifying travel behavior around development.

Example: Madison, Wisconsin, requires a Traffic Demand Management Report (TDM) for a store with more than 40,000 sq. ft. or more than 100 employees.<sup>41</sup>

Traffic and congestion are a result of land use patterns. New development can be planned so that the resulting traffic demand is consistent with its existing infrastructure. The Institute of Traffic Engineers (ITE) evaluates the performance or "level of service" of a roadway depending on road type, traffic volumes and speeds, and lengths of backups at intersections.<sup>42</sup>

Level of Service (LOS) is a range from A to F, with LOS A representing the best traffic operating conditions because there is little or no delay and LOS F characterizing the worst conditions with significant delay. LOS A through D are usually considered acceptable and LOS E is usually considered representative of conditions where improvements are needed. An operating condition of LOS F is unacceptable and improvements are required. Specifically, LOS criteria for traffic signals are stated in terms of the average control delay per vehicle, typically for a 15-minute analysis period.

- **TIP**: make sure that your elected officials rely on an independent study to determine level of service for incoming development.

- **TIP:** Ask your planning commission to set a condition that the new development requires a level of service B or C. It is unwise to begin at LOS D and traffic congestion since this leaves no room for growth.
- **TIP:** Tell your planning board that it should prohibit any single commercial development that will incrementally increase the existing level of traffic on affected roadways by more than 5%.<sup>43</sup>

By setting a minimum level of service, the community will send a clear message to big-box retailers: Find a way to join our community and maintain our way of life or find another location.

## **X. LIGHTING REGULATIONS**

Big-box lighting is bright and generally shines 24-hours a day. This can become a nuisance for adjacent landowners. Help minimize lighting impact by requiring the lighting be less bright, that the lights have hoods on them, and have a certain maximum height.

Example: Stoughton, Wisconsin, requires a maximum brightness: "At a minimum, as measured over ambient lighting conditions on a clear night, exterior lighting shall not exceed more than one-half foot-candles above ambient levels along all property lines, and shall not exceed an average illumination level of 3.6 foot-candles nor provide below a minimum of 0.9 foot-candles in public parking and pedestrian areas."<sup>44</sup> Stoughton also requires a maximum height of 20 feet for all lamp poles.

## **XI. REGULATING SIGNS**

The large signs and billboards included in the design of big-boxes often ruin scenic vistas. Communities can create scenic overlays to protect vistas in their zoning code or set conditions on the size and design of big-box signs.

Example: North Elba, New York, requires that applicants show that the proposed project "will not result in a clearly adverse aesthetic impact" in their Land Use Code. The court upheld the planning board's decision to deny Wal-Mart a Conditional Use Permit based on the visual character of the town, which is dependent on tourism.<sup>45</sup>

Example: Stoughton, Wisconsin, limits the number of signs allowed in a big-box development. The ordinance also includes logos in their definition of a "permitted sign." Stoughton also gives guidelines that the signage be "modest, coordinated, and complimentary. . ."<sup>46</sup>

Certain big-boxes allow campers to park in their unused parking lots overnight. This extra use increases oil and grease accumulation on the parking lot, which exacerbates storm-water run-off pollution coming from big-box impervious surface. A community can rectify this situation by

including a stipulation in the big-box ordinance that excludes campers from parking overnight in big-box parking lots and requires big-boxes to post such signs.

Example: Homer, Alaska, requires "No overnight camping signs" in large retailer's parking lots.<sup>47</sup>

## **XII. LANDSCAPING**

In addition to green roofs and a restriction of impervious pavement, landscaping requirements such as berms can help reduce stormwater run off from a big-box development.

Example: Homer, Alaska, requires buffers, landscaped islands, and native vegetation.<sup>48</sup>

Example: Stoughton, Wisconsin, lists certain species of trees that are acceptable.<sup>49</sup>

Example: Wauwatosa, Wisconsin, requires salt-resistant and native vegetation.<sup>50</sup>

## **XIII. OUTDOOR SALES, STORAGE AND TEMPORARY OR SEASONAL USES**

### **A. Require that Outdoor Sales Areas be Considered Part of the Gross Floor Area of the Retail Store**

Sometimes the calculation of the big-box square footage does not include outdoor storage or sale space. This is just a way that big-boxes try to get around a size cap aimed at lessening their footprint. Make sure that this is not happening in your community.

Example: Wauwatosa, Wisconsin, requires that all outdoor sales areas be included in the sq. ft. calculation of the big-box retail store.<sup>51</sup>

## **XIV. OUTLOTS**<sup>52</sup>

Include proposed outlots as part of the big-box, in both square footage and mobility. Outlots and buildings within outlots should not be planned as isolated parcels. The location of outlots/buildings should be carefully planned to promote pedestrian connections to other uses and buildings on the site and to minimize the need to make multiple trips within a site by car.

Example: Stoughton, Wisconsin's big-box ordinance requires that outlots be considered in the planning of a big-box development and that the outlot design be comparable with the main store.<sup>53</sup>

## **XV. DEVELOPER AGREEMENTS**

A clear and definite big-box ordinance outlines the infrastructure and service costs that the big-box or developer will pay.

## **A. Require that Agreements List all Developer Costs**

It is essential that a community be clear as to what costs the community requires of big-box developers to cover. As mentioned in the [Requiring a Mandatory Community Impact Analysis](#) above, big-box developments increase community costs. These costs, which can be found through a Cost of Community Services (COCS) study, should be included as costs the developer should cover within the developer agreement.

Example: Stoughton, Wisconsin includes a **developer's agreement** in their big-box ordinance. "The developer shall enter into a development agreement with the city, which shall include the payment of all utilities including but not limited to storm water, sanitary sewer, and street infrastructure, and the commitment to adhere to the policy on vacation of existing sites per subsection (20), above. Off-site improvements may also be required."<sup>54</sup>

Additionally, make sure the community knows that the city is considering big-box development. A public hearing should be held before a city enters discussion of a developer agreement. Finally, the agreement should assure maintenance of all stormwater reduction features. The city should have on-going influence on the vast quantities of stormwater that is collected and/or treated on the sites.

The agreement should not assume or promise permit approval and should be clearly enforceable in court.

## **XVI. INCLUDING A PLAN FOR WHEN/IF THE SITE IS VACATED**

Some big-boxes are known for vacating old stores and leaving the community with an empty site. Empty big-box sites can escalate the dilapidation of an area. These vacant sites waste large areas of commercial space, create an unsafe and unlit area and continue to amass large quantities of polluted stormwater.

Example: Wauwatosa, Wisconsin requires that "if the facility is vacated, the owner or operator, within twelve months, shall submit, to the Plan Commission, a plan contemplating the removal or reuse of the facility." If the plan is not "acceptable to the Plan Commission" then the Commission can find funds to re-use the site in any way permitted by law.<sup>55</sup>

## **XVII. LIMITING HOURS OF OPERATION**

### **A. Communities Can Specify Hours of Operation as a Condition in Use Permits**

Many big-box companies like to be open 24 hours a day. Overnight stores use more energy and hold the possibility of crime. Wal-Mart and other big-boxes are no different than large malls. When towns consider the cost impact of a mall on their local budget, they factor in the added cost of additional police patrols. Similarly, towns should consider creating a condition that big-boxes not be open 24 hours a day, since late business hours exacerbates crime.<sup>56</sup>

## **XVIII. CONCLUSION**

In conclusion, preventative measures are the best way to guide land use towards your community's vision. Big-box ordinances clearly spell out what is acceptable and what is not. This dispels confusion as to what the community expects of the developer. The best time to make these changes to your zoning code is when a big-box development has not yet approached the community. Without deadlines, the community can focus adequate attention to each aspect of the big-box ordinance to ensure that it is in line with community values. However, it is never too late to put in place a big-box ordinance that accurately details community values.

## **XIX. LINKS TO EXAMPLE BIG-BOX ORDINANCES**

This section includes links to big-box ordinances to give a general idea of their composition. Note that not one of these ordinances is the “perfect big-box ordinance,” however, they each have specific well-constructed components.

Wauwatosa, WI <http://www.wauwatosa.net/display/router.asp?docid=2057>

Stoughton, WI: Section is 78-467

<http://www.municode.com/resources/gateway.asp?sid=49&pid=13831>

Turlock, CA

<http://www.turlock.ca.us/citydepartments/communityplanning/bigboxordinance.asp>

- <sup>1</sup> City of Turlock, California, General Plan Land Use Element p. 2-22 (2004) (available at: <http://www.ci.turlock.ca.us/pdfink.asp?pdf=documents/communityplanning/walmart/TurlockGeneralPlanLandUseElement.pdf>) (last visited June, 2006) (stating that the Zoning Ordinance was amended in 1997 to allow for neighborhood stores in residential districts).
- <sup>2</sup> A conditional use permit (CUP) is a permit for uses that are not normally allowed in a certain site because of the community's zoning ordinance. CUPs require a public hearing and subject the applicant-developer certain conditions made by the community in order to ensure that this abnormal use of the site is for the public good. Approval of a CUP is *not* a change in zoning.
- <sup>3</sup> City of Turlock, California's Big-box ordinance, available at: <http://www.turlock.ca.us/citydepartments/communityplanning/bigboxordinance.asp> (last visited June, 2006)
- <sup>4</sup> Mt. Shasta Planning Department, <http://ci.mt-shasta.ca.us/Departments/Planning> (last visited June, 2006)
- <sup>5</sup> New Rules Org., *How Big is Too Big?*, available at: <http://www.newrules.org/retail/howbigisbig.html> (last visited June, 2006)
- <sup>6</sup> *Id.*
- <sup>7</sup> New Rules Org. *Bennington, VT Big-box Ordinance* (Adopted Jan 2005), [http://www.newrules.org/retail/news\\_slug.php?slugid=281](http://www.newrules.org/retail/news_slug.php?slugid=281) (Last Visited June, 2006)
- <sup>8</sup> An outlot is a lot that is not a buildable lot at the time of subdivision development, but is an excess piece of land.
- <sup>9</sup> New Rules Org., *Wal-Mart Tries to Skirt Maryland Size Cap*, available at: [http://www.newrules.org/retail/news\\_slug.php?slugid=289](http://www.newrules.org/retail/news_slug.php?slugid=289) (last visited June, 2006)
- <sup>10</sup> Hailey Indiana Zoning Code, Article 4.7 (2005) available at: [http://www.haileycityhall.org/p\\_z/zoning\\_ord\\_article4.asp](http://www.haileycityhall.org/p_z/zoning_ord_article4.asp) (last visited June, 2006)
- <sup>11</sup> RETAIL CAPS FOR RETAIL GLUT: SMART GROWTH TOOLS FOR MAIN STREET pg. 2 (National Trust of Historic Preservation 2002) Available at: [http://www.nationaltrust.org/smartgrowth/toolkit\\_retailcaps.pdf](http://www.nationaltrust.org/smartgrowth/toolkit_retailcaps.pdf) (last visited June, 2006)
- <sup>12</sup> Mayor Robb Kahl *Wal-Mart Press Release*, Monona, Wisconsin (May, 2005) available at: [http://www.monona.wi.us/administration/Wal-Mart\\_Press\\_Release.pdf](http://www.monona.wi.us/administration/Wal-Mart_Press_Release.pdf) (last visited June, 2006)
- <sup>13</sup> City of Greenfield Municipal Code, available at New Rules.org: <http://www.newrules.org/retail/greenfield.html>
- <sup>14</sup> In Wisconsin, comprehensive plans are considered advisory until January 1, 2010. *See Step Now Citizens Group v. Town of Utica Planning & Zoning Comm.*, 2003 WI App 109, P38 (Wis. Ct. App. 2003) (concluding that a land use plan is not mandatory but merely advisory).
- <sup>15</sup> Homer, Alaska, Municipal Code: Title 21.61.105(d) (2003).
- <sup>16</sup> According to EPA's National Water Quality Inventory: 2000 Report, prepared under Section 305(b) of the Clean Water Act, urban storm water runoff and discharges from storm sewers are a primary cause of impaired water quality in the United States.
- <sup>17</sup> Stoughton, Wisconsin, Municipal Ordinance Ch. 78 § 467(17) (2004).
- <sup>18</sup> Vandewalle & Associates, Madison, Village of Oregon Draft Zoning Ordinance Section 17-7049(7)(a) (2006).
- <sup>19</sup> Wauwatosa, Wisconsin's Big-box Ordinance, available at <http://www.wauwatosa.net/ImageLibrary/Internet/BigBoxOrdinanceFinal.pdf> (last visited June, 2006)
- <sup>20</sup> Homer, Alaska, Municipal Code: Title 21.61.105(d).
- <sup>21</sup> Hailey, Indiana, Zoning Code, Article IX § 9.4.8 Shared Parking
- <sup>22</sup> *See* Wis. Adm. Code § NR 151.12. "Uncontrolled" stormwater refers to stormwater that would enter the City's storm sewer system if there were no stormwater controls in place.
- <sup>23</sup> *See, e.g.*, Environmental Protection Agency (EPA), USING SMART GROWTH TECHNIQUES AS STORMWATER BEST MANAGEMENT PRACTICES (December 2005).
- <sup>24</sup> Wauwatosa, Wisconsin's Big-box Ordinance, available at <http://www.wauwatosa.net/ImageLibrary/Internet/BigBoxOrdinanceFinal.pdf> (last visited June, 2006)
- <sup>25</sup> LOW IMPACT DEVELOPMENT FOR BIG-BOX RETAILERS (prepared by Low Impact Development Center for the EPA, November 2005) available at: [http://www.lowimpactdevelopment.org/bigbox/lid%20articles/bigbox\\_final\\_doc.pdf](http://www.lowimpactdevelopment.org/bigbox/lid%20articles/bigbox_final_doc.pdf) (last visited June, 2006)
- <sup>26</sup> *Id.*
- <sup>27</sup> Green roofs generally retain the first ½ inch of a rainstorm, however if manufactured as they were in Ford Motor Company's Rouge River Plant, a roof can hold the first inch of rainfall. *See* Greenroofs.com, available at <http://www.greenroofs.com/projects/pview.php?id=12> (Last visited June, 2006)
- <sup>28</sup> Green Roofs Net *Facts about Green Roofs*: <http://www.greenroofs.net/>
- <sup>29</sup> Community Impact Analyses are also called Community Impact Assessments and Community Impact Models
- <sup>30</sup> For more information See American Farmland Trust Cost of Community Services Fact Sheet: [http://www.farmlandinfo.org/documents/27757/FS\\_COCS\\_8-04.pdf](http://www.farmlandinfo.org/documents/27757/FS_COCS_8-04.pdf) (last visited June, 2006)
- <sup>31</sup> *Id.*

- <sup>32</sup> Mary Edwards, *Community Guide to Development Impact Analysis, Cost of Community Services* Shaping Dane Project, Land Information and Computer Graphics Facility, available at: [http://www.lic.wisc.edu/shapingdane/facilitation/all\\_resources/impacts/analysis\\_cost.htm](http://www.lic.wisc.edu/shapingdane/facilitation/all_resources/impacts/analysis_cost.htm) (Last visited June, 2006)
- <sup>33</sup> Cape Cod Commission <http://www.capecodcommission.org/act.htm> (last visited June, 2006)
- <sup>34</sup> See New Rule Org Website listing of NJ Bill: <http://www.newrules.org/retail/mirnj.pdf> (last visited June, 2006)
- <sup>35</sup> Bennington, Vermont Big-box Ordinance (Adopted Jan 2005).
- <sup>36</sup> New Rules Org. Middletown, Rhode Island, available at: <http://www.newrules.org/retail/middletown.html> (last visited June, 2006).
- <sup>37</sup> Homer, Alaska, City code: Title 21.61.105(I)(2)(a)
- <sup>38</sup> Wauwatosa, Wisconsin Big-Box Ordinance (2005) Section 24.25, available at: <http://www.wauwatosa.net/ImageLibrary/Internet/BigBoxOrdinanceFinal.pdf> (last visited June, 2006)
- <sup>39</sup> *Id.*
- <sup>40</sup> Homer Alaska Municipal Code: Title 21.61.105(d)
- <sup>41</sup> City of Madison Legislative File Number 00418 (Version 5).
- <sup>42</sup> Department of Transportation Appendix C, Attachment B, available at: [http://www.dot.state.ny.us/reg/r5/stcboh\\_files/appendices/app\\_c/appendix\\_c\\_attachment\\_b.pdf](http://www.dot.state.ny.us/reg/r5/stcboh_files/appendices/app_c/appendix_c_attachment_b.pdf) (last visited June, 2006)
- <sup>43</sup> Wal-Mart Watch, *Comprehensive Plans*, available at: [http://walmartwatch.com/battlemart/go/cat/comprehensive\\_plans](http://walmartwatch.com/battlemart/go/cat/comprehensive_plans) (last visited June, 2006)
- <sup>44</sup> Stoughton Municipal Ordinance, Ch. 78 § 467(16).
- <sup>45</sup> John R. Nolon, *Protecting Scenic Assets: Regulations Based on Study, Expert Reports and Rationality* (New York Law Journal), available at: <http://www.law.pace.edu/landuse/scennyj.htm> (last accessed June, 2006); *See also Wal-Mart Stores Inc. v. Planning Board of the Town of North Elba*, NYS 2d 774 (1998).
- <sup>46</sup> Stoughton, Wisconsin, Municipal Ordinance Ch. 78 § 467(17)
- <sup>47</sup> Homer, Alaska, Municipal Code: Title 21.61.105(d)
- <sup>48</sup> *Id.*
- <sup>49</sup> Stoughton, Wisconsin, Municipal Ordinance Ch. 78 § 467(17)
- <sup>50</sup> Wauwatosa, Wisconsin, Big-Box Ordinance, Section 24.25, available at: <http://www.wauwatosa.net/ImageLibrary/Internet/BigBoxOrdinanceFinal.pdf> (last visited June, 2006)
- <sup>51</sup> *Id.*
- <sup>52</sup> Definition of an outlot is that it is not a buildable lot at the time of subdivision development, but is an excess piece of land.
- <sup>53</sup> Stoughton, Wisconsin, Municipal Ordinance, Section 78-467(23).
- <sup>54</sup> Stoughton Ordinance at Ch 78 § 467 (12).
- <sup>55</sup> Wauwatosa, Wisconsin, Big-Box Ordinance, Section 24.25, available at: <http://www.wauwatosa.net/ImageLibrary/Internet/BigBoxOrdinanceFinal.pdf> (last visited June, 2006)
- <sup>56</sup> AL NORMAN, *SLAM-DUNKING WAL-MART: HOW YOU CAN STOP SUPERSTORE SPRAWL IN YOUR HOMETOWN.* (Raphel Marketing Publishing, July, 1999).