

ORDINANCE NO. 2007-02-011

AN ORDINANCE RELATED TO LAND USE REGULATIONS AND ESTABLISHING A SIZE LIMIT AND DESIGN STANDARDS FOR LARGE RETAIL FACILITIES BY AMENDING THE BELLINGHAM MUNICIPAL CODE BY ADDING SUBSECTION 20.10.025, SUBSECTION 20.34.040.C.2 AND SUBSECTION 20.36.040.C; AMENDING SUBSECTION 20.38.050.C(3); ADDING SUBSECTIONS 20.38.050.D(3), 20.25.020.E, AND 20.25.040.D AND ADDING SECTION 20.25.060.

WHEREAS, on September 11, 2006 the City adopted Ordinance No. 2006-09-090 establishing a moratorium on the filing, acceptance, and processing of applications for land use and building permits for retail sales establishments with a floor area greater than 100,000 square feet in size; and

WHEREAS, during the moratorium, the Planning and Community Development Department was directed to study and report back to the City Council as to whether the City's development regulations should be amended to address the impacts of large retail sales establishments; and

WHEREAS, a Determination of Nonsignificance for potential code amendments 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 amendments and the Determination of Nonsignificance was sent to the Dept. of Community, Trade and Economic Development and other reviewing agencies on December 7, 2006; and

WHEREAS, after mailed and published notice as required by Bellingham Municipal Code Chapter 21.10 the Planning Commission held a public hearing on December 14, 2006 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 Bellingham Municipal Code Chapter 21.10 the City Council held a public hearing on the proposed code amendment ordinance on February 5, 2007;

NOW THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN:

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

1. The Growth Management Act requires that development regulations be consistent with and carry out the goals of the City's Comprehensive Plan.

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2. The Comprehensive Plan states that Bellingham's land use pattern should accommodate carefully planned levels of development that promote efficient use of land, reduce sprawl, encourage alternative modes of transportation, safeguard the environment, promote healthy neighborhoods, protect existing neighborhood character, and maintain Bellingham's sense of community.
3. A key strategy outlined in the Comprehensive Plan for managing growth and achieving the desired land use pattern is the development of compact, mixed use, walkable, transit oriented "urban centers" or "villages" throughout the city.
4. The Comprehensive Plan calls for using incentives and zoning regulations to foster development patterns that encourage walking, biking and transit use and allow people to live within walking distance of shopping and employment.
5. It is recognized that land use patterns influence transportation systems. The Comprehensive Plan discourages linear, sprawling commercial development patterns that make inefficient use of land and do not adequately support alternatives to automobile transportation.
6. Comprehensive Plan policies call for the eventual conversion of strip commercial and big box stores to more pedestrian friendly, mixed use urban villages.
7. The Comprehensive Plan specifies that size limits may be placed on commercial buildings.
8. The potential negative land use impacts of large "big box" and "supercenter" retail establishments have been documented in studies and reports across the nation. A number of these reports, as referenced in the Planning Director's January 11, 2007 memo, have been made available to the City Council.
9. There is evidence that the establishment of additional large retail uses of this type in the City is likely to negatively impact the vitality of the City's existing and proposed neighborhood and district centers.
10. The concentration of larger stores in relatively fewer locations rather than in more widely dispersed urban centers closer to where more people live leads to longer vehicle trips for everyday needs, resulting in increased vehicle miles driven and concentration of traffic volumes near the larger stores.
11. Given the trends towards larger and larger stores, it is necessary that the zoning regulations be amended to address their potential impacts on the urban form of the community.

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12. This ordinance, by prohibiting 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.
13. Other jurisdictions in the nation have considered the factors listed herein and have enacted ordinances that limit the size of retail stores.
14. It is part of Bellingham's infill strategy to address both urban form and design as elements that affect the attractiveness and functionality of the urban environment.
15. The Comprehensive Plan infill strategies recommend adopting design guidelines for "big box" retail.
16. It is consistent with the policies of the Comprehensive Plan to develop regulations that reduce the impact of parking on the urban form and pedestrian mobility and decrease the apparent size and visual impact of parking through design and landscaping.
17. It is the intent of the proposed regulations and design standards to promote a more pedestrian friendly environment and help preserve community character.
18. Many of the Comprehensive Plan goals, policies and strategies most pertinent to the issue of large retail establishments and Bellingham's desired urban form are listed in an attachment to the staff report.
19. Based on the information, reports, documents and testimony provided prior to and at the hearings held on the topic of regulating various types of large retail establishments, the Bellingham City Council finds that a citywide size limit on single retail establishments and the adoption of design standards for other large retail establishments protects the public health, safety and general welfare and are necessary to implement the goals and policies of the Comprehensive Plan.

Section 2. A new Bellingham Municipal Code Section 20.10.025 is hereby added 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. If this Section conflicts with any other provisions of this Title, this Section shall prevail.
- B. For the purpose of Subsection 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

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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 co-operative 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.

Section 3. Bellingham Municipal Code Subsection 20.34.040.C regarding Commercial development is hereby amended as follows:

C. Maximum Size/Density.

1. Buildings utilized as retail establishments within neighborhood and auto commercial areas shall not exceed the maximum building size specified within the neighborhood plan land use classification system under "DENSITY." In Neighborhood Commercial areas generally, apartments shall not exceed one unit for every 500 square feet of total site area and offices shall be limited to 2,000 square feet of total gross floor area unless other regulations are stated in the neighborhood plan's land use classifications system which shall then apply.

2. 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.

For the purpose of this Subsection C.2., 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 co-operative business enterprises.

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.

Section 4. Bellingham Municipal Code Subsections C. through E. are hereby renamed D. through F. respectively and a new Subsection 20.36.040.C regarding Industrial development is hereby added as follows:

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C. Maximum Size/Density.

1. 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.

For the purpose of this Subsection C.1., 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 co-operative business enterprises.

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.

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

C. Planned Commercial.

(1) [UNCHANGED]

(2) [UNCHANGED]

(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 stores, shall not exceed 90,000 square feet of gross floor area.

For the purpose of this Subsection C.(3)(b), 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

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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 co-operative business enterprises.

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.

(4) through (12) [UNCHANGED]

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

(1) [UNCHANGED]

(2) [UNCHANGED]

(3) through (11) are renumbered (4) through (12) respectively

(3) Maximum Size/Density.

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.

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 co-operative business enterprises.

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.

Section 7. A new Bellingham Municipal Code Subsection 20.25.020.E regarding design review is hereby added as follows:

E. Large Retail Establishments.

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- (1) All new construction or exterior alterations for a large retail establishment as defined in Subsection E.(2) below shall obtain design review approval unless exempted by this Subsection.
- (2) A "large retail establishment" means an individual retail user that exceeds 60,000 square feet of gross floor area, including but not limited to membership warehouse clubs, discount stores, specialized product stores and department stores.

For the purpose of this definition, 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 co-operative business enterprises.

- (3) Activities that do not require a building permit, interior work which does not alter the exterior of the structure, normal maintenance and repair and minor renovations or additions which the Director determines do not affect the architectural character of the building shall be exempt.

Section 8. A new Bellingham Municipal Code Subsection 20.25.040.D regarding design review is hereby added as follows:

- D. For projects listed in Section 20.25.020.E, Large Retail Establishments, the Director shall base his or her decision on consistency with the standards in Section 20.25.060 unless the proposal is located in the City Center Design Review District or the Fairhaven Design Review District, in which case the standards of those districts shall apply.

Section 9. A new Bellingham Municipal Code Section 20.25.060 regarding design review is hereby added as follows:

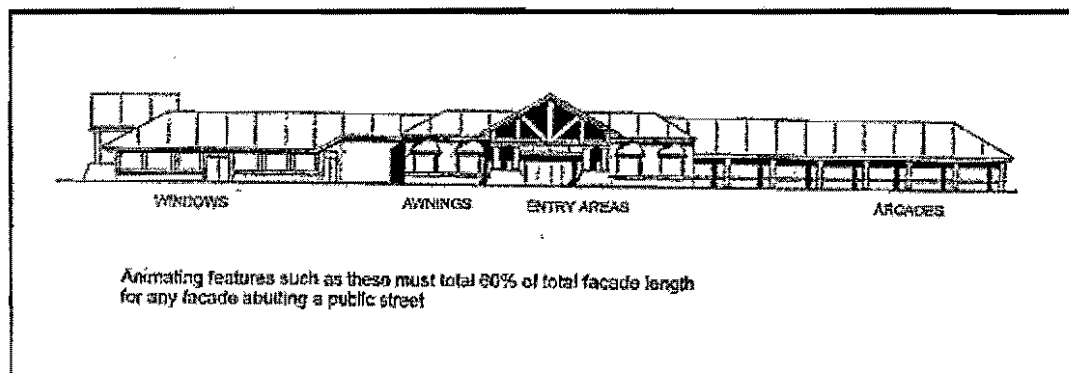
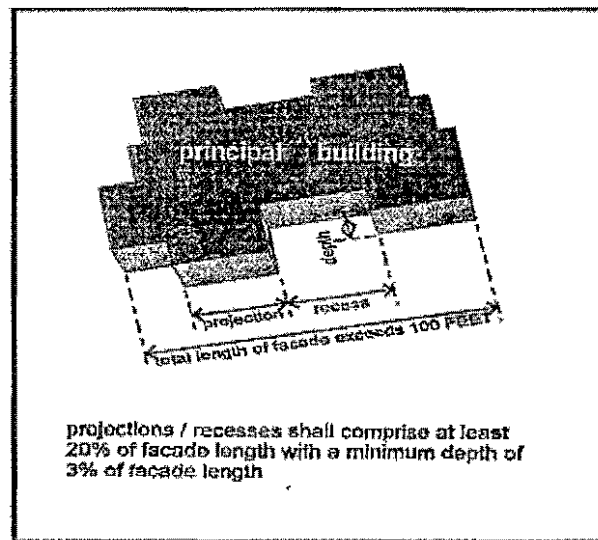
.060 LARGE RETAIL FACILITY DESIGN

- A. The standards contained in this Section are minimum standards and shall not be construed to limit the City's ability to apply more restrictive standards as may be authorized by other provisions of the Bellingham Municipal Code, including but not limited to the Planned Development provisions of BMC 20.38.
- B. Specific Standards
 - (1) Buildings.

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- (a) Facades greater than one hundred (100) feet in length, measured horizontally, shall incorporate wall plane projections or recesses having a depth of at least three (3) percent of the length of the facade and extending at least twenty (20) percent of the length of the facade. No uninterrupted length of any facade shall exceed one hundred (100) horizontal feet. Facades that have no customer entrance, are only visible from service areas and are screened from abutting properties and customer parking are exempt from this requirement. (See Figure 25-3.)
- (b) Facades that face public streets shall have arcades, display windows, entry areas, awnings or other such features along no less than sixty (60) percent of their horizontal length. (See Figure 25-3.)

Figure 25-3 Building Facades



- (c) Small Retail Stores. Where large retail establishments contain additional, separately owned stores with separate, exterior customer entrances, the street

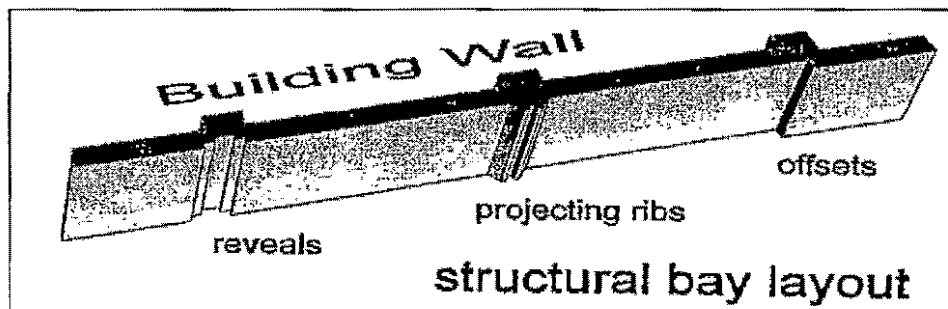
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level facade of such stores shall be transparent between the height of three (3) feet and eight (8) feet above the walkway grade for no less than sixty (60) percent of the horizontal length of the building facade of such additional stores.

- (d) Detail Features. Building facades must include a repeating pattern that includes no less than three (3) of the elements listed below. At least one of elements shall repeat horizontally. All elements shall repeat at intervals of no more than thirty (30) feet, either horizontally or vertically.
- i. color change;
 - ii. texture change;
 - iii. material module change;
 - iv. an expression of architectural or structural bays through a change in plane no less than twelve (12) inches in width, such as an offset, reveal or projecting rib. (See Figure 25-4.)

Figure 25-4

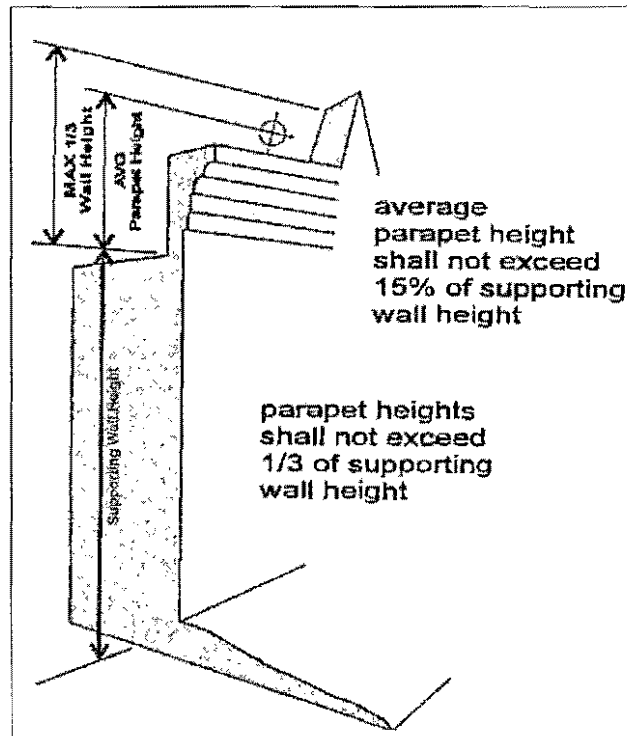
Expression of Architectural or Structural Bay



- (e) Parapets, mansard or other sloping roofs shall be used to conceal flat roofs and rooftop equipment such as HVAC units from public view. The average height of such parapets shall not exceed fifteen (15) percent of the height of the supporting wall and such parapets shall not at any point exceed one-third (1/3) of the height of the supporting wall. (See Figure 25-5.)

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Figure 25-5
Parapet Standards



(f) Rooflines shall be varied with a change in height at least every 100 linear feet.

(g) Materials and colors.

- i. Predominant exterior building materials shall be high quality materials, including, but not limited to, brick, sandstone, other native stone and tinted and textured concrete masonry. Materials shall have a low level of reflectivity.
- ii. Facade colors shall be low reflectance. The use of high-intensity colors, metallic colors, black or fluorescent colors shall be prohibited.
- iii. Building trim and accent areas may feature brighter colors, including primary colors, but neon tubing shall not be an acceptable feature for building trim or accent areas.

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- iv. Exterior building materials shall not include smooth-faced concrete block, smooth-face tilt-up concrete panels or prefabricated steel panels.

(h) Entryways.

- i. Each large retail establishment on a site shall have clearly defined, highly visible customer entrances. All public entrances shall feature no less than three (3) of the following:

1. canopies or porticos;
2. overhangs;
3. recesses/projections;
4. arcades;
5. raised corniced parapets over the door;
6. peaked roof forms;
7. arches;
8. outdoor patios;
9. display windows;
10. architectural details such as tile work and moldings which are integrated into the building structure and design;
11. integral planters or wing walls that incorporate landscaped areas and/or places for sitting.

- (ii) Where additional stores will be located in the large retail establishment, each such store shall have at least one (1) exterior customer entrance, which shall conform to the above requirements.

- (iii) All sides of a building that face an abutting street, customer parking or public park or plaza shall have at least one customer entrance providing ingress and egress with at least double width doors. Where a building faces two or more abutting streets, this requirement shall apply to a minimum of two such sides of the building, including the primary street. A corner entrance may count as serving two building sides.

If additional stores will be located in the building, each store shall have at least one customer entrance that conforms to this requirement.

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(2) Parking lots.

- (a) Parking lot location. No more than fifty (50) percent of the off-street parking area for the lot, tract or area of land devoted to the large retail establishment shall be located between the front facade of the large retail establishment and the abutting streets.
- (b) Break large parking lots into smaller lots divided by landscaping and/or pedestrian walkways.
- (c) Provide for bicycle access, including bike lanes where appropriate.
- (d) Provide customer trash receptacles throughout the parking lot.

(3) Landscaping.

- (a) A planting bed with a minimum width of 10 feet shall be located between parking lots and the street right of way. The Director may require this width be increased to address specific site and street characteristics.
- (b) Landscaping shall be used along site boundaries as required to screen blank walls, service and loading areas and open parking.
- (c) An evergreen or mixture of evergreen and deciduous vegetation designed to be maintained at a height of at least 2.5 feet and not more than 3.5 feet is required along the street frontage of any open parking lot.
- (d) Surface parking lots shall provide internal landscaping at the rate of a minimum of 10 square feet of landscaped area per parking stall. This is a minimum requirement and may be increased to meet other criteria contained in this Title. The landscaping shall include at least one shrub for every 20 square feet of landscaped area and 1 shrub per enclosed bed. One tree shall be required for every 10 open parking spaces. Vegetation ground cover shall be provided for all landscaped areas that will provide 90% coverage within 2 years. Landscaping designs shall include evergreen materials.
- (e) Drought tolerant materials shall be used for all plantings unless an irrigation system is provided. A two-year maintenance bond or other financial guarantee acceptable to the City shall be provided in the amount of 50 percent of the value of the landscaping materials and installation.

(4) Safety.

Strategies to enhance public safety and deter crime shall be incorporated into the design of the building and associated parking areas. These include adequate lighting, increasing visibility of pedestrian areas and other techniques commonly known as "Crime Prevention Through Environmental Design."

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(5) Pedestrian Circulation.

- (a) Public sidewalks shall be provided along all public streets.
- (b) Continuous internal pedestrian walkways shall be provided from the public sidewalk or right-of-way to the principal customer entrance of all large retail establishments on the site. The walkways shall have a minimum width of 6 feet, exclusive of vehicle overhang area. At a minimum, walkways shall connect focal points of pedestrian activity such as, but not limited to, transit stops, street crossings, building and store entry points, and shall feature adjoining landscaped areas that include trees, shrubs, benches, flower beds, ground covers or other such materials for no less than fifty (50) percent of the length of the walkway.
- (c) Sidewalks shall be provided along the full length of the building along any facade featuring a customer entrance, and along any facade abutting public parking areas. The sidewalk shall have a minimum width of 6 feet, exclusive of vehicle bumper overhang area. Such sidewalks shall be located at least six (6) feet from the facade of the building to provide planting beds for foundation landscaping, except where features such as arcades or entryways are part of the facade.
- (d) Awnings, canopies, marquees, arcades, building overhangs or similar forms of pedestrian weather protection, at least 4.5 feet wide shall be provided over a pedestrian walkway along at least 80 percent of any facade with a customer entrance. Such weather protection shall be at least 8 feet above the sidewalk. If placed more than 8 feet above the walkway, the weather protection shall be at least an additional 6 inches in width for each additional foot of height, or portion thereof.
- (e) All internal pedestrian walkways shall be distinguished from driving surfaces through a change in material. Durable, low maintenance surface materials such as pavers, bricks or scored concrete shall be used to enhance pedestrian safety and comfort, as well as the attractiveness of the walkways.
- (f) Walkways shall be designed for pedestrian safety and shall avoid or mitigate vehicle and pedestrian route conflicts through lighting, bollards and other features.
- (g) Cart corrals shall not encroach on walkways.
- (h) Bike racks shall be located in a well-lighted area close to building entrances.

(6) Lighting.

- (a) All outdoor lighting shall be sized and directed to avoid adverse impact and spillover onto adjacent properties. Upward directed lighting is prohibited. Outside parking lot lighting shall not be less than 1 foot candle per IES minimum lighting standards at the property line, and shall be designed to minimize glare and spillover onto adjacent properties. Building and aesthetic lighting must be shielded to prevent direct glare and/or light trespass in excess of 1 footcandle at the property line.
- (b) Night lighting shall be provided for all pedestrian walkways.

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(c) All exterior lighting shall utilize cutoff shields or otherwise be designed to conceal the light source from adjoining uses and streets.

(d) The maximum height of light poles in parking lots abutting residential zones shall not exceed 18 feet.

(7) Signs.

(a) Blinking, animated, moving or changeable copy signs (reader or electronic message boards) are prohibited.

(b) Signs on the building shall not extend above the parapet or roof line. Parapet walls may not be erected for the sole purpose of extending sign heights and when they are not in character with the rest of the building or complex.

(c) Signs shall be designed and located to minimize impacts on residential uses. Signs shall not be located on any wall, canopy or building façade facing abutting Residential zones.

(d) Sign area on buildings shall be proportional to the façade and not dominate it. Signs on the primary building façade shall not exceed 7 percent of the façade's total area and signs on other facades shall not exceed 3 percent of the façade's total area.

(8) Outdoor Storage and Service Areas.

(a) Areas for outdoor storage, truck parking, trash collection or compaction, loading, or similar uses shall not be visible from public or private streets.

(b) No service areas for outdoor storage, trash collection or compaction, loading or similar uses shall be located within 20 feet of any public or private street, public sidewalk, or internal pedestrian way.

(c) Service functions shall be incorporated into the overall design of the building and the landscaping so that the visual and acoustic impacts of these functions are fully contained and out of view from adjacent properties and the public streets. Screening materials shall be consistent with the principal materials of the building and landscape.

(d) Mechanical or HAVAC equipment shall not be installed at ground level along any portion of a building facing a public or internal street unless there is no reasonable alternative. Fencing or landscaping shall be installed to screen ground level equipment.

(e) Non-enclosed areas for the storage and sale of seasonal inventory shall be permanently defined and screened with walls and/or fences. Screening materials shall be consistent with the principal materials of the building. If non-enclosed areas are to be covered or roofed, materials shall be used that are consistent with those used on the building.

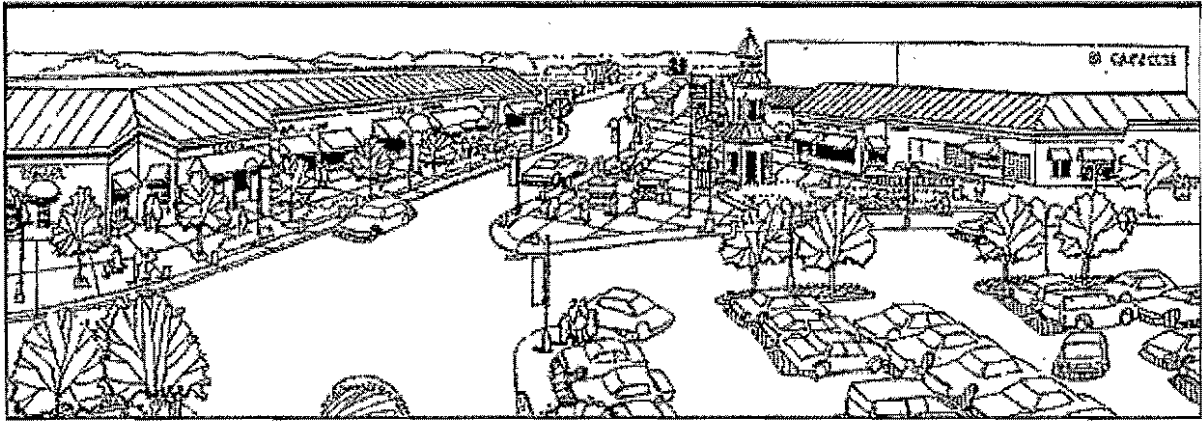
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(9) Central Features and Community Space.

- (a) Each retail establishment subject to these standards shall contribute to the establishment or enhancement of community and public spaces by providing at least two (2) of the following: patio/seating area, pedestrian plaza with benches, transportation center, window shopping walkway, outdoor playground area, kiosk area, water feature, clock tower or other such deliberately shaped area and/or a focal feature or amenity that, in the judgment of the appropriate decision maker, adequately enhances such community and public spaces. Any such areas shall have direct access to the public sidewalk network and such features shall not be constructed of materials that are inferior to the principal materials of the building and landscape. (See Figure 25-6.)

Figure 25-6

Center With Community Features



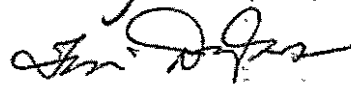
PASSED by the Council this 12th day of February, 2007.



Council President

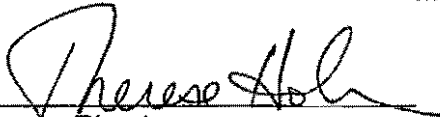
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APPROVED by me this 21st day of February, 2007.



Mayor

ATTEST:



Finance Director

APPROVED AS TO FORM:



Office of the City Attorney

Published:

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