
SALT LAKE CITY COUNCIL STAFF REPORT

Date: January 9, 2003

Subject: Petition No. 400-03-23: Department Store Definitions, Main Street Core Overlay District

Affected Council Districts: District 4

Staff Report By: Russell Weeks

Administrative Dept. and Contact Person: Planning Division – Joel Paterson, Senior Planner

This staff report addresses issues pertaining to a proposed ordinance that would: redefine the term “department store” in *City Code* Chapter 21A.62.020; amend sections 21A.30.050 and 21A.31.050 which contain tables of permitted and conditional uses for Downtown and Gateway Districts and enact Chapter 21A.34.110 titled Downtown Main Street Core Overlay District.

The bulk of this staff report is a reprint of a December 31 staff report prepared for a public hearing before the City Council at its January 6 meeting. After the public hearing the City Council adopted a motion to delay action on the proposed ordinance until no later than January 20. This report contains a new section involving issues that were raised during the public hearing. The new section is immediately after the Potential Motions section of this memorandum.

Council staff also has attached the pertinent portion of the Salt Lake City Planning Commission meeting of November 12, 2003 and an electronic mail from Planning Commissioner Peggy McDonald that relate to issues involving the petition. The Planning Commission adopted a motion 5-4 on November 12 to forward a positive recommendation to adopt the proposed ordinance now before the City Council.

POTENTIAL OPTIONS

Any potential option should include denying Petition No. 400-03-20, a petition to allow department stores in the Gateway Mixed-Use District as a permitted use. Council Members may recall that the Council did not close out that petition but continued it until it could act on the current petition – 400-03-23 – the petition to redefine the term “department store.”

OPTIONS

- Adopt the proposed ordinance pursuant to Petition No. 400-03-23. (The option would enact the proposed ordinance.)
- Do not adopt the proposed ordinance. (The option would leave the current definition of “department store” in the *Zoning Ordinance*.)

- Adopt the proposed ordinance but remove the term “conventional department store” as a permitted use in the Gateway Mixed-Use District. (The option would allow Mass Merchandising, Specialty stores, and Superstores and Hypermarkets – as defined in the proposed ordinance – as permitted uses in the Gateway Mixed-Use District but not stores defined as a Conventional Department Store.)
- Adopt the proposed ordinance but address any proposed cap on retail square footage through negotiations with the Gateway Mall developer to amend the developer’s reimbursement contract with the Salt Lake City Redevelopment Agency. (This motion is included because some Council Members have voiced concerns about the total amount of retail square footage available and planned in the downtown.)
- Include an expression of support for the Planning Commission’s efforts to address apparent inconsistencies in the current Zoning Ordinance that allow department stores to locate on 47 downtown blocks but not in the Gateway Mixed-Use District. (Council Members may recall that the Planning Commission has filed a separate petition to further define where department stores may locate throughout the downtown.)

POTENTIAL MOTIONS

- I move that the City Council deny Petition No. 400-03-20 and adopt the ordinance amending the Salt Lake City Zoning Code regarding the definition and location of department stores pursuant to Petition No. 400-03-23.
- I move that the City Council deny Petition No. 400-03-20 and not adopt the proposed ordinance pursuant to Petition No. 400-03-20.
- I move that the City Council deny Petition No. 400-03-20 and adopt the ordinance amending the Salt Lake City Zoning Code regarding the definition and location of department stores pursuant to Petition No. 400-03-23 with the following amendment: That the words “Conventional Department Store” be removed from the proposed “Table of Permitted and Conditional Uses for Gateway Districts” that would amend Section 21A.31.050.
- I move that the City Council deny Petition No. 400-03-20 and adopt the ordinance amending the Salt Lake City Zoning Code regarding the definition and location of department stores pursuant to Petition No. 400-03-23. I further move that the City Council as the Redevelopment Agency Board of Directors enter into negotiations with the Gateway Mall developer to amend the Reimbursement Agreement between the RDA and the Developer to discuss placing a cap on the total square footage available for retail businesses in the development.
- I move that the City Council continue to support the Planning Commission’s efforts to address apparent inconsistencies in the current Zoning Ordinance that allow department stores to locate on 47 downtown blocks.

Issues Raised on January 6

Council Members raised four concerns regarding the proposed ordinance at the January 6 public hearing. According to the audiotape of the hearing, the concerns were:

Given a goal of finding a combination that gives the Main Street and Gateway mall retail areas the opportunity to succeed while remaining consistent with a public policy of focusing on the Main Street retail area as the core retail area of the City, how can one prohibit an existing high-fashion department store from locating in the Gateway retail area but allow every other kind of department store to locate there?

A corollary question to the previous question is: Should some kinds of department stores be allowed in the Gateway retail area but not in the Main Street retail area?

Given the City's goals, should there be a limit on the number of department stores allowed to locate in the Gateway mall retail area?

Should the City Council by policy limit the gross square footage of retail on Main Street and the Gateway mall retail areas to ensure that the amount of retail in both areas does not lead to an overabundance of retail locations that might go unfilled?

Planning Division Position

Since at least the Planning Commission's public hearing November 12, the following section taken from the Commission's minutes (Page 6, Paragraph 3) appears to be the Planning Division's position on the proposed ordinance:

Mr. Zunguze stated that as Staff was reviewing this task they noted that the Gateway Master Plan references large-scale retail uses, in addition to the small-scale retail uses. Staff could not reconcile these two references by excluding all potential large-scale retail uses out of the Gateway District unless one took the position that the large-scale retail uses meant an agglomeration or an aggregation of small-scale retail uses. Staff does not believe that there is any competition between conventional department stores and the high fashion end department stores because they are distinct entities. As such, Staff does not believe that allowing conventional department stores at Gateway will jeopardize Main Street. To that end, he said that Staff does not see contradiction between City Council policies and the proposed amendments. Mr. Zunguze reminded the Commission that they as a Commission had asked Staff to define and indicate what department stores would be appropriate in the Gateway to implement the term "large-scale uses." From Staff's perspective having conventional department stores and other large-scale retail uses in the Gateway District is both a logical interpretation of the Master Plan and supports the City Council's policy to allow certain types of large-scale retailers to locate in the Gateway District so as to add to the vitality of the entire Downtown.

It should be noted that the Planning Commission's motion also included the recommendation that the category of Mass Merchandising department stores be allowed in the proposed downtown main street core overlay district. From the meeting minutes, the motion appears to be based on two things. One is that a representative of Property Reserve Inc. requested that Mass Merchandising department stores be included as a permitted use in the Main Street core overlay district. (Page 3, Paragraph 8.) The request was supported by a representative of The Boyer Company. (Page 4, Paragraph 1.) The other is that the Commission Chair noted that

Property Reserve Inc.'s plans contemplate building multifamily housing as part of its development, and that "the argument of needing a mass merchandising department store in Gateway now may be a similar argument in the future for Main Street." (Page 6, Paragraph 3.)

Stakeholder's Position

The latter two questions were addressed at the City Council's January 6 public hearing by representatives of The Boyer Company and Property Reserve Inc. According to an audiotape of the hearing the representatives made the following points:

- Both are concerned about the total amount of square footage available for retail use in the downtown. However, the market probably should be the final determiner of how much retail square footage becomes available.
- The proposed ordinance without a limit on total square footage would provide flexibility for a unique store that would have only one location in Utah. For instance, if total square footage were limited and filled, and a store of that singularity decided to locate in the Gateway or on Main Street but could not because the gross square footage limit already had been met, it probably would locate outside the City to the detriment of both developments.
- The policy "touchstone" of the proposed ordinance is large-scale, high-fashion department stores belong in the Main Street core area, but other kinds of department stores should be allowed on the core area's periphery.

KEY ELEMENTS

As indicated , the proposed ordinance would do three things:

- Redefine the term "department store" in City Code Chapter 21A.62.020. The proposed ordinance would replace the current single definition of "department store" with seven definitions that would create sub-categories of department stores in an effort to better specify the kinds of department stores that currently exist.
- Amend the tables of permitted and conditional uses in the Downtown (D-1) and Gateway districts in the *Zoning Ordinance* to clarify what kinds of department stores are appropriate uses in the two districts.
- Create an overlay district for the Downtown Main Street Core. The overlay district would define where particular kinds of department stores should locate in what is known as the Central Business District.

The proposed ordinance is one of two that the City Council can expect to see. The Planning Division intends to submit another ordinance to address the extent to which current zoning regulations relating to the location of department stores – presently allowed in the Central Business, Downtown Support, Sugar House Business and Community Shopping districts – are consistent with current policy of making Main Street the primary location of department stores. The second ordinance would deal with the argument that the Zoning Ordinance currently allows department stores to locate on 47 downtown blocks, but not in the Gateway Mixed-Use District. The Planning Commission initiated a petition to address the issue at the Commission's meeting August 27.

TABLE OF DEFINITIONS

Council staff has prepared the following table in an attempt to highlight the major points of the department store sub-category definitions:

Department Store Definitions				
Title	Merchandise Lines	Price Range	Square Footage	Kinds of Stores
Conventional Department Store	Broad range, mainly apparel, home goods	Moderate	More than 100,000 square feet	Kohl's, J.C. Penney, Mervyns
Fashion-Oriented Department Store	Nationally advertised brands; 40 percent sales area for apparel, shoes, cosmetics, accessories; some appliances; some seasonal or special catalogs	Not listed in ordinance	More than 100,000 square feet	Meier & Frank, Bloomingdales, Macy's, Dillards, Marshall Fields, Bon Marche, Broadway, Broadway Southwest, Robinsons-May
Specialty Fashion Department Store	Apparel, fashion accessories, jewelry, limited items for home and housewares – often exclusive offerings	High-end	80,000 to 130,000 square feet	Lord & Taylor, Nieman Marcus, Nordstrom, Saks Fifth Avenue
Mass Merchandising Store	High-volume, fast turnover, variety of merchandise including apparel and home goods	Generally lower prices	More than 80,000 square feet	Wal-Mart, K-Mart, Target, Fred Meyer, Shopko
Specialty Store	Broad range of single category of goods	Competitive prices	20,000 to 100,000 square feet	Home Depot, Toys "R" Us, PetSmart, Michaels, Barnes & Noble, Circuit City, Galyan's, Pep Boys, CompUSA
Superstore & Hypermarket	General line of groceries with general lines of apparel, furniture, appliances	Discount prices	120,000 to 180,000 square feet	Wal-Mart Supercenter; Meijer's; Fred Meyer's (with grocery; Super Target

Warehouse Club Store	General merchandise, packaged and bulk foods, restricted lines of popular merchandise	Not listed in ordinance – paid membership required	120,000 to 150,000 square feet	B.J.'s Wholesale Club; COSTCO; Sam's Club
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The Planning Division prepared the following table to indicate the permitted uses for department stores and other kinds of stores in the proposed ordinance's overlay district and the Gateway Mixed Use District.

Department Store Classification	Zoning Districts	
	Downtown Main Street Core Overlay District	Gateway Mixed-Use District
Conventional Department Store	P	P
Fashion Oriented Department Store	P	
Specialty Fashion Department Store	P	
Mass Merchandising Store	P	P
Specialty Store	P	P
Superstore & Hypermarket		P
Warehouse Club Store		

Matters at Issue/Potential Questions for Consideration

Questions in this section are in *italics* to differentiate them from the expository text and to break up the monotony of type.

It should be noted that according to the Administration transmittal, “representatives of major stakeholders such as Property Reserve Inc., the May Company and the Boyer Company voiced general support for the proposed definitions and the distribution of the different types of department stores in the GMU and the Downtown Main Street Core Overlay District.” (Page 2)

The transmittal went on to say, “The only exception to this was a concern raised by the May Company about allowing conventional department store in the GMU District. However, correspondence provided to the Planning Commission from a May Company representative on November 10, 2003, indicated support for allowing conventional department stores in the GMU District, if allowed as a conditional use.” (Page 2.)

It should be noted that the Planning Commission recommended allowing conventional department stores as a permitted use.

DEPARTMENT STORE DEFINITIONS

The proposed ordinance is the Administration's attempt to address three items contained in a City Council motion adopted October 14. The items are:

1. Recommend sub-categories to the department store definition to include terms used in the retail industry;

2. Express its recommendation regarding which sub-categories of department stores – other than large-scale high-fashion retail uses of greater than 100,000 square feet – would be appropriate for inclusion in the G-MU District; and
3. Recognize that refining the existing definition of department store to permit other appropriate large retail goods establishments which may constitute department stores under the existing zoning law to locate within the G-MU District is desirable for the benefit of downtown and is consistent with the January 2003 *City Council Policy Statement on the Future Economic Development of Downtown*. (Please see Attachment No. 1)

Does the proposed ordinance address the three items?

The City Council also adopted eight legislative intents as part of its October 14 motion. Two of the legislative intents read:

- The City Council urges the Planning Commission that in its evaluation of the term “department store” that the Commission examine the terms “fashion retail,” “large-scale fashion retail,” “value retail,” and other terms used in the retail industry as possible sub-categories of the term “department store.”
- The City Council urges the Planning Commission that in its review of zoning regulations relating to the location of department stores to examine the enactment of specific zones for fashion retail stores based upon criteria such as a store’s square-foot capacity, merchandise, and retail type, and a location’s compatibility with City policies and master plans.

Does the proposed ordinance address the two legislative intents?

Other potential questions the City Council may wish to consider:

- *How did the Planning Division arrive at the definitions of department store sub-categories?*
- *Are the sub-categories used in the retail industry, or do they correspond with retail industry definitions so they would be understandable to retailers and retail developers?*
- *Are the sub-category definitions clear enough so that one department store or retail store would not fit into two or more definitions? Is it necessary that the definitions be that clear?*
- *Is it necessary to have a targeted price range in each definition?*

OVERLAY DISTRICT

According to the Administration’s transmittal, the overlay district in the proposed ordinance would overlay an area bordered by “the centerlines of the following streets: South Temple, State, 500 South and West Temple.”

According to the transmittal, conventional department stores, fashion-oriented department stores, and specialty fashion department stores would be permitted uses in the overlay district. Mass merchandising and specialty stores also would be permitted.

Conversely, the Planning Commission has recommended that conventional department stores and mass merchandising and specialty stores be allowed in the Gateway Mixed-Use District. Superstores and hypermarkets also would be permitted in the Gateway Mixed-Use District.

At the Planning Commission’s public hearing on the proposed ordinance, a representative of the May Company “expressed concern that if conventional department stores were ... allowed in the GMU District it would (should?) be as a conditional use.” (Administration Transmittal, Page 7.)

According to the Administration transmittal, the Planning Division contended “that to restrict conventional, fashion and specialty fashion department stores solely to the proposed Downtown Main Street Core Overlay District” could create “a significant number of non-conforming uses, given that there are a number of conventional department stores currently outside” the proposed overlay district. The Planning Division also contended that restricting conventional department stores to the overlay district could create a perception “of singling out the GMU District for unfair treatment given that other areas within the Downtown ... are allowed to have conventional department stores.”

The issue and response leads, perhaps, to one point and one question:

- According to an August 22 Planning Division staff report, three department stores in Salt Lake City are located outside the proposed ordinance’s overlay district. One is located at 754 South State Street. The other two are located in the Brickyard Plaza mall.
- *Wouldn’t the Planning Commission’s second petition – to address the extent to which current zoning regulations relating to the location of department stores are consistent with current policy of making Main Street the primary location of department stores – address the Planning Division’s concerns about other areas within the downtown that are allowed to have conventional department stores?*

OTHER ISSUES

Page 7 of the Administration’s transmittal contains the following sentence, “If a retail establishment that is classified as a permitted type of department store in the GMU district were to locate in an existing structure, the permitted use designation would streamline the permitting process by avoiding the need for a hearing before the Planning Commission.”

What is the likelihood that a department store would locate in an existing structure in the GMU District?

Pages 8 and 9 contain a number of excerpts from the Gateway Development Master Plan and the Salt Lake City Downtown Plan. Council Members may wish to consider how the proposed ordinance meets the goals and principles outlined in the excerpts, particularly:

Relevant excerpts from the *Creating an Urban Neighborhood* outlining the guiding development principles:

New Land Use Patterns

- **Civic, Cultural, Community:** Large-scale facilities include a variety of museums, arts and cultural uses that are local and regional attractions. These include a children’s museum, planetarium, art and history center, natural history museum, galleries and exhibits, performing arts facilities, ethnic cultural halls and exhibits, an educational campus or complex and a theme retail shopping center. (page 6)
- **Retail:** Retail and other small commercial uses reinforce the street life of neighborhoods and provide essential services and conveniences to people. (page 6)

- **Commercial:** These are larger scale uses, such as retail uses that are part of a center or complex. (page 6)

Union Pacific Sub-district

- The focus will be on visitor attractions, museums, educational facilities, shopping, theme entertainment/retail, open space, major employment, residential, and hotel and cultural uses. It is essential that housing become part of a mixed-use urban neighborhood with a large component of high density and varied housing types. Together, these uses will provide a 24-hour population in the area. (page 8)

Relevant excerpts from the *Gateway Specific Plan* outlining the objectives and policies to implement the urban neighborhood:

Guiding Principles:

- Create a positive and clear identity for Salt Lake City and the Gateway District.
- Encourage development which strengthens and compliments the Central Business District.

Land Use:

Objective 4 – Provide for the development of a diverse mixture of uses that complement downtown, encourage a variety of housing opportunities, and facilitate the enhancement and revitalization of the Gateway District.

Policy 4.4 – Create a special zoning district, or approval process, which encourages and compliments the Central Business District.

Objective 5 – Provide opportunities for housing within the Gateway District to reinforce downtown as a place to live, work, and shop. (Page 21)

Commercial:

Objective 1 – Strengthen the downtown Central Business District as the region’s principal employment center. (Page 29)

Policy 1.2– Strengthen Main Street as the primary retail core with the Gateway District as a secondary retail area having a different appeal and character.

Policy 1.4 – provide a strong residential component to support development in the Gateway District as well as the CBD.

The Salt Lake City Downtown Plan (1995): The purpose of the Downtown Plan is to articulate the “vision” of Downtown with its essential goals and objectives to direct the future of Downtown. This plan defines the downtown core as the area extending from South Temple to 400 South from West Temple to 200 East. Furthermore, the Plan defines “downtown” to include a larger area located between North Temple and 900 South from I-15 to 700 East. (Page 1)

Relevant excerpts from the Salt Lake City Downtown Master Plan:

Retail – Diversify Downtown retail and broaden its market to include goods and services not normally sold in regional malls and suburban areas. (Page 9)

- Develop a critical mass of retail along Main Street that can successfully draw and compete with other commercial areas in the region.
 - Foster and reinforce existing business along Main Street.
 - Establish a large retail anchor at the southern end of Downtown.

- Reinforce the southern end of the business district.
- Encourage a compact Downtown
 - Discourage large retail centers outside the Downtown area.

A few potential questions the City Council may wish to consider:

- *Would the proposed ordinance alter the “theme” of the Gateway shopping center?*
- *How would the proposed ordinance reinforce the objective that “housing become part of a mixed-use urban neighborhood with a large component of high density and varied housing types” in the Union Pacific Sub-district?*
- *How would the proposed ordinance reinforce creating “a different appeal and character” for the Gateway district?*
- *How would the proposed ordinance “diversify Downtown retail and broaden its market to include goods and services not normally sold in regional malls and suburban areas,” and “discourage large retail centers outside the Downtown area.”*

DISCUSSION/BACKGROUND

One might see from the *Zoning Districts* table in the *Key Points* sections that, under the proposed ordinance, the two districts would share the potential for locating conventional department stores, mass merchandising stores and specialty stores. The proposed overlay district would be the sole location for fashion oriented and specialty fashion department stores. The Gateway Mixed-Use District would have the potential to locate a superstore and hypermarket within its borders.

The proposed ordinance is the result of comment and action by the City Council and the Planning Commission. Both bodies indicated that although what was termed “large-scale high fashion retail” department stores was an inappropriate land use in the Gateway Mixed-Use District, there may be some large-scale retail uses that could locate in that district. In particular, part of the City Council’s October 14 motion reads that the Planning Commission in its evaluation of department store definitions “Recognize that refining the existing definition of department store to permit other appropriate large retail goods establishments which may constitute department stores under the existing zoning law to locate within the G-MU District is desirable for the benefit of downtown and is consistent with the January 2003 *City Council Policy Statement on the Future Economic Development of Downtown*.”

The central issue before the City Council, then, may be: *Do the proposed ordinance’s definitions meet the City Council’s intent?*

It should be noted that the Chamber of Commerce/Downtown Alliance’s Downtown Development Committee adopted a motion November 19 to support the proposed ordinance’s definitions. The definitions also were submitted to the Downtown Merchants Association for review earlier in November.

PLANNING COMMISSION HEARING AND ACTION

The Planning Commission held a public hearing on the proposed ordinance on November 12. (Council Members may wish to refer to the complete Planning Commission draft minutes contained in the Administration transmittal.)

According to the draft minutes of the hearing and meeting, the Commission adopted a motion 5-4 to forward a positive recommendation to:

1. Create new definitions of the term “department store” under Chapter 21A.62, *Definitions*.
2. Allow certain types of department stores in the Downtown and Gateway districts by amending the tables of permitted and conditional uses.
3. Create a Downtown Main Street Core Overlay District under Chapter 21A.34 that defines the geography within the Central Business District where certain types of department stores will be allowed.
4. Amend the Salt Lake City Zoning Map by adding a Downtown Main Street Core Overlay District in the area generally located between South Temple and 500 South from West Temple to State Street.

An earlier motion that contained a fifth item, “add mass merchandising department stores as a permitted use in the Downtown Main Street Core to the table of permitted and conditional uses in the Zoning Ordinance,” was defeated 5-4.

Before that vote a motion that contained a different fifth item, “Amend the table of permitted uses to allow only mass merchandising, specialty store, super store, hypermarket department stores in the Gateway Mixed-Use District,” was defeated 5-3.

In the first two votes on motions the Commission Chair had to vote to break 4-4 ties.

Some issues raised in the hearing and discussed by the Commission in speaking to the motions included:

- The need for greater clarity between the definitions of “conventional” and “fashion oriented” department stores to eliminate perceived overlaps and ambiguity between the two definitions.
- An argument that conventional department stores should be allowed in the Gateway Mixed-Use District as a conditional use instead of a permitted use to ensure that the Planning Commission retain flexibility in reviewing proposals.
- An argument to allow mass merchandising department stores as a permitted use in the proposed overlay district and the Gateway Mixed-Use District.
- An argument to “strike a definitive line” between the Main Street core and the Gateway Mixed-Use District by restricting conventional, fashion retail and specialty department stores to the proposed overlay district and permitting mass merchandising, specialty store, super store, hypermarket department stores only in the Gateway Mixed-Use District.
- An argument that allowing a conventional department store in the Gateway Mixed-Use District would not meet Gateway Master Plan policies to: A.) Strengthen Main Street as the primary retail core with the Gateway District as a secondary retail area having different appeal and character. B.) “Larger-scale uses such as retail uses that are part of a center or complex, an example of which is a moderately sized neighborhood center with a supermarket, hardware and garden store.”

- An argument that the overlay zone ought to require department stores to front on Main Street “only or principally” instead of allowing them to face West Temple or State Street.

Cc: Cindy Gust-Jenson, Rocky Fluhart, David Nimkin, Alison Weyher, Louis Zunguze, Gary Mumford, Joel Paterson

File Location: Downtown, Gateway