

Small Box Retail Diversity Study

City of New Orleans



City Planning Commission

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Prepared on: **November 27, 2018**

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A. Executive Summary

Introduction

Small box discount stores, commonly known as “dollar” stores, have operated across the United States for well over a century. These original “five and dime” stores, such as Woolworths, have since closed, but newer iterations such as Dollar General, Family Dollar, and Dollar Tree, all of which emerged in the 1950s, have filled the gap. The small box discount industry is well-established in New Orleans and has been for decades. According to Dollar General, for example, the chain opened its first store in New Orleans in 1983.

Following national trends, small box discount stores have rapidly proliferated across the city in recent years. New Orleans East, in particular, contains a disproportionate number of these stores compared to other retail options—most notably full-line grocery stores. Currently, two grocery stores and 12 small box discount stores operate in New Orleans East.

In an effort to address this rapid expansion citywide, but particularly in the East, including the hypothesis that small box discount stores may impede the entry of full-line grocery stores, which are a source for fresh food, City Council adopted Motion (As Corrected) M-18-256 on June 21, 2018 directing the City Planning Commission to produce this Small Box Retail Diversity Study. The scope of the Small Box Retail Diversity Study is outlined in the motion and directs the City Planning Commission to explore the following subject matter in its study:

- Define “small box discount stores”
- Explore regulations such as the following:
 - Use standards:
 - Requirements to provide fresh food
 - Limitations on the sale of alcohol
 - Restrictions based on spacings/block-face
 - Any necessary restrictions to assist in curbing the proliferation of small box discount stores that fail to offer fresh fruits and vegetables
 - Appropriate zoning districts where “small box discount stores” may be permitted by right, conditional, and prohibited
- For the purposes of the study, “small box discount stores” include businesses that have a floor area of 5,000 to 10,000 square feet, which sells at retail physical goods, products, or merchandise directly to the consumer, including food or beverages for off-premises consumption, household products, personal grooming and health products, and other consumer goods, with the majority of items being offered for sale at lower than the typical market price, but does not:
 - Dedicate at least 15% of floor area to fresh foods and vegetables
 - Contain a prescription pharmacy, or
 - Offer for sale gasoline or diesel fuel

Key Findings

Based on the review of practices in other communities and the analysis of the current situation in New Orleans, the following key findings informed the proposed Small Box Retail Diversity Study recommendations:

Small Box Discount Store Findings

- Small box discount stores are prolific in New Orleans. There are 36 stores citywide, including 12 in New Orleans East. Small box discount stores tend to cluster.
- All retail uses, including small box discount stores, fall into the retail goods establishment category; small box discount stores are permitted or conditional anywhere that the retail goods establishment use is permitted or conditional.
- Small box discount stores such as Dollar General, Family Dollar, and Dollar Tree range in size from 7,800 to 12,000 square feet in floor area.
- With the 2008 economic recession, small box discount stores began to attract more customers outside of the low-income demographic.
- Major small box discount store chains are continuing to open new stores and develop new types of store formats.
- Some small box discount stores poorly manage store exteriors, resulting in litter, uncontained refuse in the dumpster area, and poorly maintained landscaping.
- With one exception, existing small box discount stores in New Orleans that sell food products do not provide fresh fruit and vegetables.¹
- A retail goods establishment may not sell alcoholic beverages unless retail sales of packaged alcoholic beverages is allowed within the district or if it is conditional upon receiving conditional use approval. Only four districts (C-3 Heavy Commercial, LI Light Industrial, HI Heavy Industrial and MI Maritime Industrial) allow retail goods establishments to sell packaged alcoholic beverages by right.

Grocery Stores

- Full-line grocery stores generally range from 25,000 to 60,000 square feet, though smaller versions are also located in New Orleans.
- Larger retail goods stores, such as grocery stores, are prohibited in districts such as HMC-1 and other districts with low maximums for total floor area. The HU-B1, HU-B1A, HU-MU, S-B1, S-LB1, S-LB2, and S-MU Districts permit uses up to 5,000 square feet of total floor area, but uses exceeding that threshold are subject to conditional use approval. In HMC-2, non-residential uses over 10,000 square feet, such as a grocery store, are conditional uses. HU-B1, HU-B1A, HU-MU, S-LB1 and S-LB2 prohibit uses over 10,000 square feet, effectively eliminating larger full-line grocery stores from those districts.
- Grocery stores have a wide range of location selection criteria in determining the best areas to locate, including area demographics, existing and planned food sale

¹ Dollar General Market at 2001 St. Bernard Avenue

developments, median home sales price, median incomes, location and size of competitors, traffic counts, violent and property crime, and policy presence.

Public Health & Food Access

- Obesity and associated diseases such as diabetes have increased threefold since 1990 as a result of increased consumption of calorie-dense foods paired with insufficient physical activity. African Americans are disproportionately more obese and suffer from associated diseases than their white and Latino counterparts.
- Many New Orleans residents have low access to healthy, nutritious food.
- Studies are mixed when it comes to the linkage between availability of fresh food and overall health as well as the availability of fresh food and the purchase of fresh food.
- Stores can implement changes to the in-store environment to influence purchasing behaviors, such as placing particular items in prime locations and promotional advertising within the store.
- All store types, including traditional, full-line grocery stores, devote more shelf space to unhealthy items than to healthy items.
- Local small box discount retailers such as Family Dollar, Dollar General, and Dollar Tree all accept SNAP, but none accept WIC.
- No causal link has been found between childhood obesity and the existence of small box retail stores in their communities
- Toxic chemicals have been found in the products of major small box discount store chains. While many of these companies have yet to implement comprehensive chemical management policies, unfortunately the presence of hazardous chemicals in retail products is not limited to these types of stores.

General Land Use

- New Orleans East, Gentilly, and parts of Algiers are more suburban and automobile-centric in their development pattern than older parts of New Orleans; therefore, any policy changes may need to be tailored to different areas of the city.
- Current Comprehensive Zoning Ordinance regulations prevent retail sales associated with an agricultural use not located in an Open Space, Rural Development, or non-residential districts despite the fact that agriculture is permitted or conditional in several residential districts, including the historic core, historic urban, and suburban residential districts.
- There is a discrepancy in the interpretation of Section 21.6.A, which prohibits detached accessory structures from being constructed prior to construction of the principal building to which it is accessory. As agricultural uses typically rely on “accessory” structures such as sheds and chicken coops and do not typically require a traditional principal structure, this interpretation could negatively impact agricultural uses.

Case Studies

- With the implementation of Tulsa’s Healthy Neighborhood Overlay, which requires at least a one mile distance between small box discount stores, several small box discount

stores have located just outside the boundary of the overlay in order to avoid this restriction.

- Zoning is one tool that can assist in increasing the availability of healthy food in areas with low access; however, for best results other initiatives or incentives should be incorporated.
- Research shows that Minneapolis' Staple Foods Ordinance has not increased the purchase of healthy "staple" foods. In addition, it has not been linked to an increase in healthy food availability as retailers in St. Paul, which does not have a Staple Foods Ordinance, are also getting healthier.
- Programs with financial incentives, such as the Fresh Food Retailer Initiative and the Healthy Corner Store Collaborative are providing access to fresh food in low-access areas.

Enforcement

- Existing small box discount stores are currently classified under four different occupational license categories which may create inconsistencies with enforcement especially if the City desires a change in policy that would specifically target this use.
- Code Enforcement and the Department of Sanitation can also only enforce the City Code on property owners and cannot write violations to the tenants of a property. This is an issue, specifically as it relates to small box discount stores, because small box discount stores are typically not the property owners of the buildings where they operate in New Orleans.

Crime

- Violent crime and property crime data retrieved from the New Orleans Police Department indicates that perceptions of crime in New Orleans East may be just that, a matter of perception and related to the image of this area of the city. The crime data reflects that the violent and property crime rates per 100,000 residents is actually lower in New Orleans East than in Orleans Parish as a whole.

Recommendations

Comprehensive Zoning Ordinance

Definitions (Article 26)

Small Box Variety Store: A retail store between 5,000 and 15,000 square feet that sells at retail an assortment of physical goods, products, or merchandise directly to the consumer, including food or beverages for off-premises consumption, household products, personal grooming and health products, and other consumer goods. Small box variety stores do not include small box stores that:

1. contain a prescription pharmacy;
2. sell gasoline or diesel fuel;

3. primarily sell specialty food items (e.g. meat, seafood, cheese, or oils and vinegars);
4. dedicate at least 15% of shelf space to fresh or fresh frozen foods; or
5. dedicate less than 5% of shelf space to food sales.

Other Definitions

Fresh or Fresh Frozen Food: Food for human consumption that is unprocessed, or otherwise in its raw state; food that was quickly frozen while still fresh.² This includes unprocessed meat and seafood.

Grocery Store: A retail establishment primarily engaged in the sale of items in multiple of the following categories: a general line of groceries, packaged frozen food, dairy products, poultry and poultry products, confectioneries, fish and seafood, meats and meat products, fresh fruits and vegetables, and other grocery and related products where fresh or fresh foods including fresh meat, poultry, seafood, and produce make up 25 percent or more of the shelf space and display area. A grocery store with at least 20,000 square feet of gross floor area may sell packaged alcoholic beverages.

Home Processed Food Products: “Low-risk foods” in accordance with LA Rev Stat § 40:4.9. Home processed food products do not include animal products.

Agriculture. Land on which crops are grown and/or livestock are raised for sale, commercial use, personal food production, donation, or educational purposes. **Retail sales and home food processing are permitted for all agriculture uses, subject to Section 20.3.C.**³

Use Standards (Article 20)

Article 20.3.MMM – Small Box Variety Store

1. In the Neighborhood Conservation District, a small box variety store is prohibited within one (1) mile, or 5,280 feet, of any other small box variety store. Outside of the Neighborhood Conservation District, a small box variety store is prohibited within two (2) miles or 10,560 feet, of any other small box variety store. The required separation distance must be measured in a straight line from the nearest point on the lot line of the other property occupied by a small box variety store.
2. One litter can shall be placed for every thirty (30) linear feet of street frontage. The litter can shall be placed directly outside the primary entrance. Where more than one (1) litter can is required, the operator may place additional cans according to their discretion.
3. The operator of the small box variety store shall provide daily litter clean-up of the site and along the public rights-of-way abutting the property.

² The proposed definition for *fresh and fresh frozen food* is based on the U.S. Food and Drug Administration’s *fresh, freshly frozen, fresh frozen, and frozen fresh* definitions as described in Sec. 101.95 “Fresh,” “freshly frozen,” “fresh frozen,” “frozen fresh,” Title 21, Volume 2 (Revised as of April 1, 2018), “Subchapter B: Food for Human Consumption.”

³ Proposed text to the Comprehensive Zoning ordinance is noted in **bold, underlined font**. Proposed deletions from existing language of the Ordinance is noted with a ~~strike through~~.

4. Outside storage is prohibited except for propane tanks. All business, servicing, processing, and storage operations shall be located within the structure.

Article 20.3.C – Agriculture

[...]

20.3.C.1 – Additional Bulk & Yard Regulations

All structures and other improvements are subject to the bulk and yard regulations of the district, except as provided below:

- a. There are no yard requirements for the planting of crops.
- b. All structures used for the keeping of livestock shall be located a minimum of twenty-five (25) feet from any lot line. This does not apply to apiaries, chicken coops, pigeon coops, and aquaponic structures, which shall meet the accessory structure requirements of Section 21.6.
- c. **Accessory structures associated with agricultural uses are permitted on lots without a principal structure.**

[...]

Article 20.3.C.3 – Food Preparation, Processing, and Packaging

- a. ~~No food or other products of any plants or livestock may be prepared, processed, or packaged in any residential district, except in the R-RE District. However, the canning of plants or plant products~~ **Home food processing** is permitted as part of any agricultural use.
- b. Food may be prepared, processed, or packaged at an agricultural use located in any ~~non-residential zoning~~ district in which food processing is a permitted use, **or in any zoning district where food processing is a conditional use, upon approval.**
- c. In any zoning district in which food processing is classified as a conditional use, a property owner may apply for a conditional use to permit the preparation, processing, or packaging of food or other products of any plants or livestock raised on the agricultural use.

[...]

Article 20.3.C.6 – Retail Sales

Retail sales for an agricultural use are permitted at farm stands ~~within the Open Space Districts, Rural Development Districts, and any non-residential district,~~ **in all zoning districts in which agriculture is a permitted use, or, where it is a conditional use, upon approval,** subject to the following standards:

- a. Farm stands shall conform to the provisions of Section 21.6.
- b. Retail sales are limited to the following:
 - i. Crops grown and/or livestock raised on the farm where the farm stand is located.
 - ii. Other unprocessed food products, or home processed food products such as jams, jellies, pickles, sauces, or baked goods created on the farm where the farm stand is located.

Permitted & Conditional Uses (Articles 7 to 17)

Small Box Variety Stores and Grocery Stores

Below are the use tables that show the zoning districts where the small box variety store and grocery store uses are proposed as permitted (“P”), conditional (“C”), and prohibited uses (blank space). The table also lists the retail goods establishment use. The retail goods establishment use is not currently permitted in Open Space Districts (Article 7), Rural Development Districts (Article 8), Historic Core Neighborhoods Residential Districts (Article 9), Historic Urban Neighborhoods Residential Districts (Article 11), and Suburban Neighborhoods Residential Districts (Article 13), and thus the use tables for these districts are not shown below.

In addition, the below use tables show the zoning districts where agricultural uses (with and without livestock) are proposed as permitted (“P”), conditional (“C”), and prohibited uses (blank space).

Table 1: Permitted & Conditional Uses – Small Box Variety Stores, Grocery Stores, and Retail Goods Establishments District Permissions

Use Table: Historic Core Neighborhoods Non-Residential Districts (Article 10)											
Uses	District										Use Standards
	VCC-1	VCC-2	VC E	VC E-1	VCS	VCS -1	VC P	HMC -1	HM C-2	HM - MU	
	[...]										
Retail Goods Establishment	P	P	P	P	P	P		P	P	P	
Grocery Store	P	P	P	P	P	P		P	P	P	
Small Box Variety Store	P	P	P	P	P	P		P	P	P	Section 20.3.M MM
	[...]										

Use Table: Historic Urban Neighborhoods Non-Residential Districts (Article 12)				
Uses	District			Use Standards
	HU-B1A	HU-B1	HU-MU	
[...]				
Retail Goods Establishment	P	P	P	
Grocery Store	P	P	P	
Small Box Variety Store	P	P	P	Section 20.3.MMM
[...]				

Use Table: Suburban Neighborhoods Non-Residential Districts (Article 14)									
Uses	District								Use Standards
	S-B1	S-B2	S-LB1	S-LB2	S-LC	S-LP	S-LM	S-MU	
[...]									
Retail Goods Establishment	P	P	P	P	P			P	
Grocery Store	P	P	P	P	P			P	
Small Box Variety Store	P	P	P	P	P			P	Section 20.3. MM M
[...]									

Use Table: Commercial Center & Institutional Campus Districts (Article 15)										
Uses	District									Use Standards
	C-1	C-2	C-3	MU-1	MU-2	EC	M C	MS	LS	
[...]										
Retail Goods Establishment	P	P	P	P	P	P	P	P	P	
Grocery Store	P	P	P	P	P	P	P	P	P	
Small Box Variety Store	P	P	P	P	P	P	P	P	P	Section 20.3 .M MM
[...]										

Use Table: Centers for Industry (Article 16)					
Uses	District				Use Standards
	LI	HI	MI	BIP	
[...]					
Retail Goods Establishment	P	P	P	P	
Grocery Store	P	P	P	P	
Small Box Variety Store	P	P	P	P	Section 20.3.MM M
[...]					

Use Table: Central Business Districts (Article 17)								
Uses	District							Use Standards
	CBD-1	CBD-2	CBD-3	CBD-4	CBD-5	CBD-6	CBD-7	
[...]								
Retail Goods Establishment	P	P	P	P	P	P	P	
Grocery Store	P	P	P	P	P	P	P	
Small Box Variety Store	P	P	P	P	P	P	P	Section 20.3.M MM
[...]								

Maximum Total Floor Area for Commercial Uses

- In food desert areas, the CPC staff recommends allowing an additional 5,000 square feet of floor area by right in grocery stores on major streets, where the commercial zoning district may restrict it to 5,000, 10,000, or 25,000 square feet. The CPC staff recommends that a grocery store wishing to take advantage of this additional floor area allowance should also provide an additional 5% shelf space to fresh and freshly frozen foods beyond the grocery store definition.

Occupational Licenses

- The Department of Safety & Permits and the Bureau of Revenue shall standardize the small box variety store occupational license category to maintain consistency across all existing and future small box variety stores;
- The City Council shall budget adequate resources for personnel and training to the Department of Safety & Permits and the Bureau of Revenue for occupational license reviews and renewals; and
- The One Stop Shop shall modify the occupational/general business license application to include requests for floor area, percentage of shelf space dedicated to

- fresh or frozen foods, and whether the store will offer gasoline or diesel fuel or contain a prescription pharmacy;
- The Department of Safety & Permits staff tasked with determining occupational licenses categories prior to issuance of the licenses by the Department of Revenue shall receive additional training about small box variety stores.

Enforcement

- Provide more staffing power to the Department of Safety and Permits to hire and train inspectors to enforce floor plans and site plans to ensure “small box discount stores” are in compliance with submitted plans.
- Allow the Department of Safety and Permits and the Department of Code Enforcement the ability to enact multiple fines for multiple violations. A \$500 fine for each violation should be heard at the same adjudication hearing.
- Define clear roles for the Department of Sanitation and the Department of Code Enforcement to ensure proper minimum property maintenance upkeep for property owners.
- Promote the passage of the state law pertaining to right-of-way maintenance in order to grant the Department of Sanitation, the Department of Public Works, and other enforcement agencies the authority to issue citations for violations such as littering or driving in the bike lane.

Other Recommendations

Fresh Food Retailer Initiative

In order to encourage grocery stores, and healthy food in general, to locate in the communities that most need them, the staff recommends:

- Continue the Fresh Food Retailer Initiative and examine the possibility of providing additional incentives to areas with low food access, such as New Orleans East and the Lower Ninth Ward.

Healthy Corner Store Program

In order to encourage sales of fresh produce within communities, the staff recommends:

- Continue to fund the Healthy Corner Store Program, contributing \$100,000 for years three through five of the program, with the possibility of extension beyond five years.

Plastic Bags Ordinance

Litter is often mentioned as a major problem in New Orleans and around retail locations. Plastic bags are often seen clogging gutters and trapped in tree branches, though this is certainly not the only type of litter. To combat litter and for environmental benefits, many cities and some states have enacted ordinances prohibiting the use of disposable plastic bags. Members of a previous

City Council including the current Mayor considered sponsoring a motion that would require retailers to charge customers for both plastic and paper bags, thereby encouraging shoppers to bring their own reusable bags. If such a law were enacted, it would best be implemented on a state level to ensure a level playing field; however, a citywide ordinance may still be effective.

Next Steps

The Small Box Retail Diversity Study, directed by City Council Motion (As Corrected) M-18-256, will be presented to the City Planning Commission on December 11, 2018. Before it considers the Study, the CPC must first hold a public hearing. Taking public input into mind, the CPC can choose to forward the Study to the City Council with or without changes to the staff recommendations. If the CPC chooses to modify the recommendations, the staff will incorporate those recommendations and forward the revised Study to the City Council by the deadline of January 14, 2019. The City Council may choose to hold its own public hearing on the Study, though it is not required. The City Council may then direct the City Planning Commission to consider all or part of the recommendations as text changes to the Comprehensive Zoning Ordinance. If that is done, CPC staff will docket the request and write a staff report with recommendations for specific zoning text changes. The zoning docket would require an additional public hearing before the City Planning Commission. The Commission may choose to recommend text changes to the City Council with or without modification of the staff recommendations, or they could recommend denial of the proposal. The City Council must hold a public hearing before considering adoption of zoning text changes. Finally, the Council may adopt, adopt with modifications, or deny the City Planning Commission's recommendations.

The Small Box Retail Diversity Study also makes recommendations for changes to the permitting, licensing, and enforcement process, regulations for which are contained in the City Code, as well as State-level law changes. The City Planning Commission would not be formally involved in implementation of those changes.

B. Scope of Study

Motion (As Corrected) No. M-18-256

**MOTION
(AS CORRECTED)
NO. M-18-256**

CITY HALL: June 21, 2018

BY: COUNCILMEMBERS NGUYEN, GISLESON PALMER AND MORENO

WHEREAS, there are a significant number of smaller stores in the City of New Orleans that conduct retail sales of consumer goods at a discount price, but fail to offer fresh fruits and vegetables – hereafter called small box discount stores; and

WHEREAS, the number of currently existing small box discount stores exceed twenty in the New Orleans area, with many being in close proximity to another; and

WHEREAS, a concentration of small box discount stores may negatively impact the plans of conventional grocery stores, which offer full food choices including a variety of fresh fruits and vegetables, within a community; and

WHEREAS, communities desire a greater diversity of retail shopping choices, including but not limited to conventional grocery stores, and

WHEREAS, the City Council desires to study recommendations regarding the establishment and regulation of this use, to encourage balanced development and greater diversity of retail options – including conventional grocery stores and other retail establishments that offer fresh produce; **NOW THEREFORE**

BE IT MOVED BY THE COUNCIL OF THE CITY OF NEW ORLEANS, That the City Planning Commission (CPC) is hereby directed to conduct a study to appropriately classify, define and regulate “small box discount stores”, including but not limited to: recommended use-standards – including requirements to provide fresh food and limitations on the sale of alcohol, proper restrictions (spacing/block-face), and recommendations as to the appropriate zoning

districts whereby said use is to be permitted by-right, conditional, and prohibited. For purposes of this study, "small box discount stores" include businesses that have a floor area of 5,000 to 10,000 square feet, which sells at retail physical goods, products, or merchandise directly to the consumer, including food or beverages for off-premises consumption, household products, personal grooming and health products, and other consumer goods, with the majority of items being offered for sale at lower than the typical market price, but does not: dedicate at least 15% of floor area to fresh foods and vegetables, contain a prescription pharmacy or offer for sale gasoline or diesel fuel. In the course of the study, CPC is encouraged to review similarly situated cities, like Tulsa, Oklahoma to determine appropriate standards to govern this use and any necessary restrictions to assist in curbing the proliferation of small box discount stores in New Orleans that fail to offer fresh fruits and vegetables.

BE IT FURTHER MOVED BY THE COUNCIL OF THE CITY OF NEW ORLEANS, That the City Planning Commission is hereby directed to conduct and complete the study within 150 days of the passage of this motion and conduct the public hearing within 90 days of the passage of this motion.

BE IT FURTHER MOVED BY THE COUNCIL OF THE CITY OF NEW ORLEANS, That in the process of conducting a public hearing and study on defining and regulating "small box discount stores" in the City of New Orleans as provided herein, the City Planning Commission and staff are directed and granted the flexibility to expand the scope of the study and make any and all legal and appropriate recommendations deemed necessary in light of study, review, and public testimony resulting from this motion.

THE FOREGOING MOTION WAS READ IN FULL, THE ROLL WAS CALLED ON THE ADOPTION OF THEREOF, AND RESULTED AS FOLLOWS:

YEAS: Banks, Giarrusso, Gisleson Palmer, Moreno, Nguyen, Williams - 6

NAYS: 0

ABSENT: Brossett - 1

AND THE MOTION WAS ADOPTED.

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**THE FOREGOING IS CERTIFIED
TO BE A TRUE AND CORRECT COPY**

Lera W. Johnson
CLERK OF COUNCIL

Study Goals

- Define “small box discount store;”
- Determine zoning districts where small box discount stores should be permitted, conditional, or prohibited;
- Develop use restrictions for small box discount stores, including possible requirements to provide fresh food or limit the sale of alcoholic beverages;
- Determine whether a requirement for small box discount stores to sell fresh food is practical and impactful;
- Determine whether a spacing requirement is warranted for small box discount stores;
- Determine whether small box discount stores negatively impact the plans of conventional grocery stores;
- Encourage healthy food access in underserved communities;
- Ensure the safety of customers, employees, and neighbors;
- Promote exterior property and premises of commercial uses to be maintained in clean, safe, and sanitary conditions;
- Propose enforceable regulations;
- Prioritize enforcement; and
- Create a balance between short-term goals, such as healthy food access, and long-term goals such as ensuring conventional grocery stores in all neighborhoods.

C. Small Box Discount Retail Overview

Definition

For the purposes of the Small Box Retail Diversity Study, staff examined small box discount stores that met the following definition, as outlined in Motion (As Corrected) No. M-18-256:

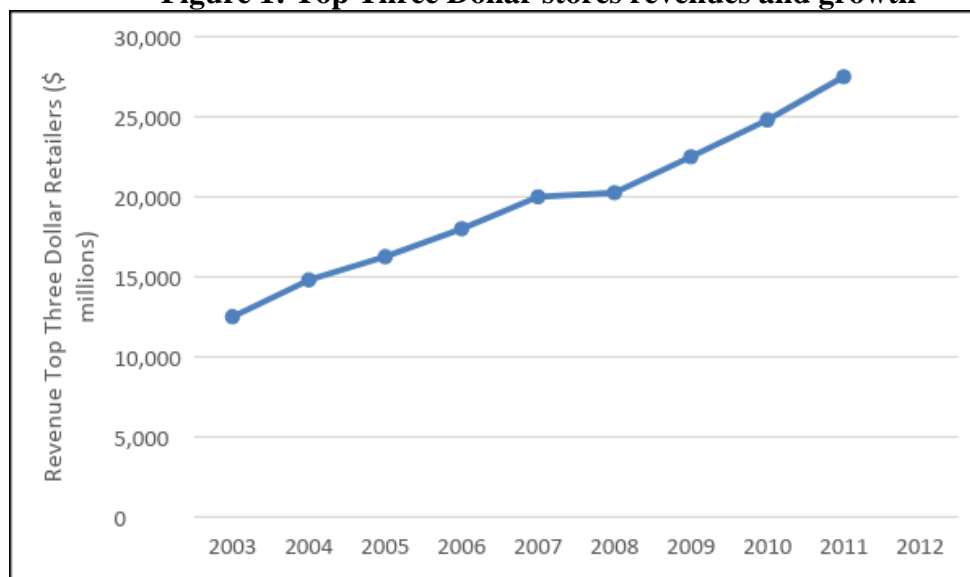
Small Box Discount Store: Businesses that have a floor area of 5,000 to 10,000 square feet, which sell at retail physical goods, products, or merchandise directly to the consumer, including food or beverages for off-premises consumption, household products, personal grooming and health products, and other consumer goods, with the majority of items being offered for sale at lower than the typical market price. Small box discount stores do not include businesses that:

1. dedicate at least 15% of floor area to fresh foods and vegetables;
2. contain a prescription pharmacy; or
3. offer for sale gasoline or diesel fuel.

Small Box Discount Store Expansion & Economic Impacts

Small box discount retailers have grown rapidly throughout the country in recent years, despite the general decline of the retail industry. According to a 2012 study prepared by Deloitte consulting firm, “the 2008 recession and post-recessionary consumer habits have contributed to the success of dollar stores, which appeal to primarily low- and fixed-income consumers but also growingly appeal to consumers of all incomes.”⁴

Figure 1: Top Three Dollar stores revenues and growth⁵



⁴ Pat Conroy, Anupam Narula, Kash Muthuranam, Rich Nanda, Dan Kinzler, “Dollar Store Strategies for national brands. The evolving dollar channel and implications for CPG companies,” Deloitte, 2012.

⁵ Source: Company 10-Ks and 10Qs, 2003-2012. Retrieved from “Dollar Store Strategies for national brands. The evolving dollar channel and implications for CPG companies,” Deloitte, 2012.

In its report from 2012, Deloitte states that the dollar store industry is a 55.6 billion dollar industry in the United States, in which the top three dollar-store retailers (Dollar General, Dollar Tree, and Family Dollar) account for a little over half of that share. It indicates that sales for these three retailers have grown an average rate of 10 percent annually between 2003 and 2012, and the number of stores has increased from 13,403 to over 21,000 in the same time period.

Additional data show that this trend has continued since 2012 and that dollar stores are still thriving today. Overall, dollar stores in the U.S. have seen their sales increase approximately 50% between 2010 and 2015, from 30.4 billion dollars to 45.3 billion dollars.⁶ Dollar General CEO Todd Vasos stated at a Goldman Sachs retailing conference in September 2017 that as “the middle-class continues to go away, unfortunately, to the lower end of the economic scale versus the higher end”, and “as this economy continues to chug along and creates more of our customer, [...] there’s going to be more and more opportunities for us to get in and build more stores.”^{7, 8}

According to Dollar General, the fastest growing retailers in the U.S. are discount retailers. While the revenues of department stores in suburban middle-class malls are declining, Dollar General and Dollar Tree, which are the two major competitors of the dollar store format, were growing at 6.4% and 7.5% respectively in 2017. Dollar Tree reported an average growth rate of 8.6 percent from 2015 to 2017, excluding sales from Family Dollar, which it bought in 2015. All together, these three chains have opened more than 1,800 stores in 2017 alone. Dollar General finished the first quarter of 2018 with 14,761 stores in 44 states, up from 13,601 a year earlier, according to the company’s own data. Dollar Tree opened its 15,000th store in 2018, on par with the number of McDonald’s in the U.S. These two main dollar chains combined have more stores than the six biggest retailers in the country – Walmart, Kroger, Costco, Home Depot, CVS, and Walgreens.⁹

Louisiana is particularly affected by the rapid expansion of dollar stores, as it counts much more dollar stores per capita than other states. “The mid South is one region where dollar stores are becoming prominent features of the retail environment. [...] Arkansas, Mississippi, and Louisiana each have more than 140 dollar stores per million residents. This compares to only 14 stores per million residents in California, 37 stores per million residents in New York State, [...] and 86 stores per million residents in Texas.”¹⁰

⁶ Mary Hanbury, “Dollar General is dominating America. Here’s how it keeps its prices low”, Business Insider, August 30, 2018, <https://www.businessinsider.com/dollar-general-low-price-strategy-2018-8> (accessed October 11, 2018)

⁷ Taylor Pipes, “How Dollar Stores Are Staying Competitive In A Changing Retail Climate”, Shiftonomics by Branch Messenger, December 22, 2017, <https://blog.branchmessenger.com/how-dollar-stores-are-staying-competitive-in-a-changing-retail-climate-2/> (accessed October 11, 2018)

⁸ Kate Taylor, “Dollar stores are dominating retail by betting on the death of the American middle class”, Business Insider, December 8, 2017, <https://www.businessinsider.com/dollar-general-sales-soar-death-of-american-middle-class-2017-12> (accessed October 11, 2018)

⁹ Warren Shoulberg, “Are Dollar Stores The True Retail Disrupters?”, Forbes, July 22, 2018, <https://www.forbes.com/sites/warrenshoulberg/2018/07/22/are-dollar-stores-the-true-retail-disrupters/#25efd8467a6e> (accessed October 11, 2018)

¹⁰ Andreas C. Drichoutis, Rodolfo M. Nayga, Jr., Heather L. Rouse and Michael R. Thomsen, “Food Environment and Childhood Obesity: The Effect of Dollar Stores”, Health Economics Review, 2015.

In rural towns, the development of dollar stores is a two-faced issue. On one hand, the dollar store companies claim that it benefits the communities because it offers customers more affordable prices for everyday goods and employment in rural areas that might lack jobs. In remote areas where customers would have to drive over 20 miles to reach a supermarket, a new dollar store provides a more accessible way to find essential household and food items. As declining small towns have seen their businesses close in recent years, a new dollar store is sometimes the first commercial investment they have seen in many years.¹¹ On the other hand, critics often say that “the stores hurt local businesses, drain money from local economies because profits leave town, and contribute little to the communities where it does business.”¹² The few small grocery stores that may still exist in these towns struggle to compete with the lower prices offered by dollar stores.

In cities, mom-and-pop independent dollar stores, neighborhood corner stores, and small grocery stores often struggle to survive as large chain dollar stores move in. Dollar stores’ growth impacts other retailers by pressuring them to reduce their prices and by reducing their margins. While in response some supermarkets have started to offer more dollar items in special sections stocked with deals and generally inexpensive products, this disruption of the market can force other retailers to sell some products at a loss, which eventually can drive them to close down.

Location Criteria / Marketing Model

Historically, dollar stores have predominantly served rural and suburban low-income communities, and smaller communities where larger retailers like Walmart cannot implant because of their footprint and/or the low population density. More specifically, Dollar General tends to focus on rural areas, while Dollar Tree and Family Dollar are often found in urban and suburban areas. All three chains try to open their stores closer to lower-income neighborhoods than superstore rivals such as Walmart. The target shopper for Dollar General, for example, is a household making \$40,000 or less a year, and is often living several miles away from grocery stores, in areas referred to as food deserts. “The strategy in the early 2000s, when Dollar General started to grow, was to go where Walmart wasn’t, David Perdue, Dollar General’s chief executive from 2003 to 2007, told *The Wall Street Journal*”.¹³

The current CEO of Dollar General, Todd Vasos, indicated that because the U.S. economy is facing stagnant wages and decreased job opportunities, the company has started to attract higher income shoppers as well. Discount stores have growingly appealed to middle-class customers who have become more conscious about spending. Typically, dollar stores, which are smaller

¹¹ Frank Morris, “How Dollar General Is Transforming Rural America,” NPR, December 11, 2017, <https://www.npr.org/2017/12/11/569815331/loving-and-hating-dollar-general-in-rural-america> (accessed October 17, 2018)

¹² Blake Gumpercht, “Dollar General creates worry in small towns”, *The Bismarck Tribune*, December 10, 2017, <file:///H:/My%20studies/Small%20Box%20Retail/chain%20stores/Dollar%20General%20creates%20worry%20in%20small%20towns%20%20%20bismarcktribune.com.html> (accessed October 17, 2018)

¹³ Mary Hanbury, “Dollar General is dominating in America. Here’s how it keeps its prices so low,” *Business Insider*, August 30, 2018, <https://www.businessinsider.com/dollar-general-low-price-strategy-2018-8> (accessed October 12, 2018)

than supermarkets or big box discounters, have targeted consumers seeking to quickly fill some of their weekday foods or toiletries, and party supply needs.¹⁴

The Retailer Expansion Guides of Spring 2015 and Spring 2016, which are published by the retail advisor ChainLinks, provide information about the type of market that different discount stores are looking at to expand their number of stores, as well as minimum and maximum square footage of the buildings they wish to implant in.

Table 2: Small Discount Chain Retailers Market Information

RETAILER	# OF STORES 2015	# OF STORES 2016	# OF STORES PROJECTED IN 12 MONTHS (2017)	MIN SQ. FT.	MAX SQ. FT.	EXPANSION COMMENTS	SUMMARY OF EXPANSION
99 Cents Only	350	316	120	10,000	25,000	Downtown, free standing, neighborhood strip, power center, high volume markets, drug and discount stores	West coast, Texas
Dollar General	12,000	12,195	1,460	9,000	12,000	Downtown, freestanding, neighborhood strip, regional strip, special strip, co-tenancy (if strip center) consisting of frequently visited stores (grocery, drug store, auto parts store, video store, etc)	Nationally
Dollar Tree	4,000	4,900	600	8,000	12,000	Strong traffic counts, free standing,	Nationally

¹⁴ Sruthi Ramakrishnan, "U.S. dollar stores stand their ground in escalating retail price war," Reuters, August 18, 2017, <https://www.reuters.com/article/us-usa-retail-dollarstores-idUSKCN1AY1XY> (accessed October 12, 2018).

						neighborhood strip, regional strip, special strip, regional or neighborhood centers, anchored by big box discounters or dominant grocery stores	
Family Dollar	7,500	7,847	600	7,800	10,000	Downtown, free standing, neighborhood strip, regional strip, special strip, co-tenants with strong retail synergy, preferably with a grocery anchor. 5 year with 5 year options	Nationally
Five Below	200	192	50	7,000	10,000	Lifestyle center, neighborhood strip, outlet mall, power center, regional mall, regional strip, special strip, regional and super-regional power centers anchored by national big box and junior anchor	South, Southeast, Northeast

						tenants. Lifestyle centers anchored by value-oriented big box retailers. Regional and super regional enclosed malls that feature value-oriented big box retailer.	
--	--	--	--	--	--	---	--

According to this table, the dollar store retailer chains found in New Orleans look to locate in buildings that are between 7,800 square feet and 12,000 square feet. Overall, while each chain has its own formula for determining what population and demographics are needed to support a store, dollar store location criteria resemble those of other retailers: regional or neighborhood centers, freestanding locations in a strong retail corridor with street presence, maximum street frontage, easy ingress/egress, and ample parking, shopping centers that are highly visible and have strong traffic counts, and acquisitions rather than ground-up construction.¹⁵

Economic Impacts

The majority of small box discount stores are located in rural and suburban areas where they cost less to operate. According to Dollar General's senior vice president of real estate and development, it costs the company around \$250,000 to open a new leased space. The stores are smaller than supermarkets, typically locate in metal buildings rather than masonry, and invest a minimal amount of money in store aesthetics and design with typically metal shelving, strip lighting, and inexpensive signage.

In a meeting that CPC staff held with representatives of Rouses Supermarkets on September 14th, 2018, Steve Black, CEO, and Charles Merell, Vice President of Real Estate, indicated that in comparison, Rouses needs 4 to 5 million dollars to open a supermarket (which includes refrigeration, lighting, etc.). As a result of the low cost of construction, dollar stores benefit from the highest return on investment of any other retail, and they do not face the same risk of failure since the company would not lose a significant amount of money in the event of a store's failure. Since the companies do not own real estate, they have much more flexibility to move less successful stores to other locations. The cost of operation is also very low since smaller stores require less staff, and there is less emphasis on service than in larger retailers or supermarkets.

Additionally, dollar stores operate on small margins, carrying a limited number of items, rather than every brand and size of the same product, which allows them to have more buying power

¹⁵ <https://www.dollartree.com/real-estate/>

with suppliers by buying in bulk.¹⁶ According to Rouses representatives, the low cost of merchandise sold in dollar stores disrupts the market, forcing other retailers to sell the same goods for less, and sometimes without profit.

While some products are sold in smaller quantities at higher prices in dollar stores than in larger supermarkets, other items are more economical at dollar stores, and the dollar stores are still cheaper for locals than the convenience stores and liquor shops they compete with. They have the advantage of being more accessible to locals who do not own personal vehicles and are not within reach of a larger supermarket. Dollar stores' success is based on their ability to provide what lower-income households need when they have no other options. Instead of selling items in bulk, allowing for long-term savings, dollar stores sell small quantities of items that customers can afford — even if they end up paying more on a per-ounce or per-item basis in the long run. Ultimately if people are budget constrained, they do not have the luxury to make better choices in terms of spending. “Seen one way, dollar stores, like a layaway plan or payday loan, are yet another manifestation of people of limited means getting around an unaffordable cost-of-entry by paying more to get less.”¹⁷

In a meeting with staff, Tom Hadir, a property owner who has been looking for a grocery store operator to occupy a vacant commercial space in his shopping center in New Orleans East, shared that a grocery store located on Michoud Boulevard closed down when a Dollar General store opened next to it. He added that small grocery stores and corner stores cannot compete with dollar stores because of the cost of operations. The cost of providing 15 employees and security for a large, full-service grocery store is prohibitive when it has to compete with dollar stores that often operate with minimal employees on-site and provide really inexpensive products. He added that dollar stores on average lose approximately 40 shopping carts a month, at a cost of 150 dollars each, which is a loss that small, independent supermarkets cannot afford. Existing small grocery stores on Bullard, Crowder and Read Avenues have allegedly all declined in sales since dollar stores have multiplied in New Orleans East. According to him, the lack of existing large grocery stores, and the lack of transportation options benefit dollar stores because people in the area without access to reliable transportation rarely have the means to get to a large grocery store.

Current / Future Marketing Efforts

While at the moment, the majority of dollar stores do not offer fresh food or perishable items, both Dollar General and Dollar Tree are planning on developing their food and beverage offerings with healthier consumable options, according to CEO Todd Vasos¹⁸. Dollar General

¹⁶ Mary Hanbury, “Dollar General is dominating in America. Here’s how it keeps its prices so low.” Business Insider, August 30, 2018, <https://www.businessinsider.com/dollar-general-low-price-strategy-2018-8> (accessed October 12, 2018)

¹⁷ Joe Eskenazi, “Dollar stores are thriving – but are they ripping off poor people?” the Guardian, June 2018, <https://www.theguardian.com/us-news/2018/jun/28/dollar-store-ripping-people-off-poverty-inequality> (accessed October 12, 2018)

¹⁸ Russell Redman, “Dollar stores eyeing bigger helping of food,” Supermarket News, June 1, 2018, <https://www.supermarketnews.com/retail-financial/dollar-stores-eyeing-bigger-helping-food> (accessed October 12, 2018).

plans to focus on upgrading its existing stores with more cooler doors. “These store remodels typically drive amongst the highest returns” Vasos said. In fiscal year 2018, Dollar General was planning to open 900 new stores, remodel 1,000 mature stores and relocate about 100 stores. About 400 of the 1,000 planned remodels will be to the Dollar General Traditional Plus format (DGTP), which is a traditional size store with expanded space dedicated to coolers that can accommodate more perishable items.

One hundred and twenty five (125) of the stores that Dollar General remodeled in its first quarter of 2018 followed the DGTP format, which added a fresh produce section in 45 stores in the U.S. According to Dollar General’s CEO, the company now has more than 400 stores throughout the chain which carry produce. Approximately half of these stores are Market format stores, while the other half of these stores are DGTP format stores with a fresh produce section. The company aims to bring these categories to more locations. In an archived conference call from May 2018, Dollar General’s CEO stated that the company has experience in treating produce within its Market stores, but that it is still learning to apply that experience to smaller store formats. “We see it as a competitive advantage, especially in rural areas where there isn't a lot of competition and/or food choices — especially healthy food choices — for our core consumers. I would tell you it's not going to be for every store, somewhere down line, but could it be for thousands eventually? Yes, it could.” This last statement indicates that the company seems to already plan on expanding their healthy food options to stores located in areas where there is not much competition in terms of food choice.

Small Box Discount Store Data

During the course of the study, staff identified 36 small box discount stores in New Orleans, including 12 operating in New Orleans East.

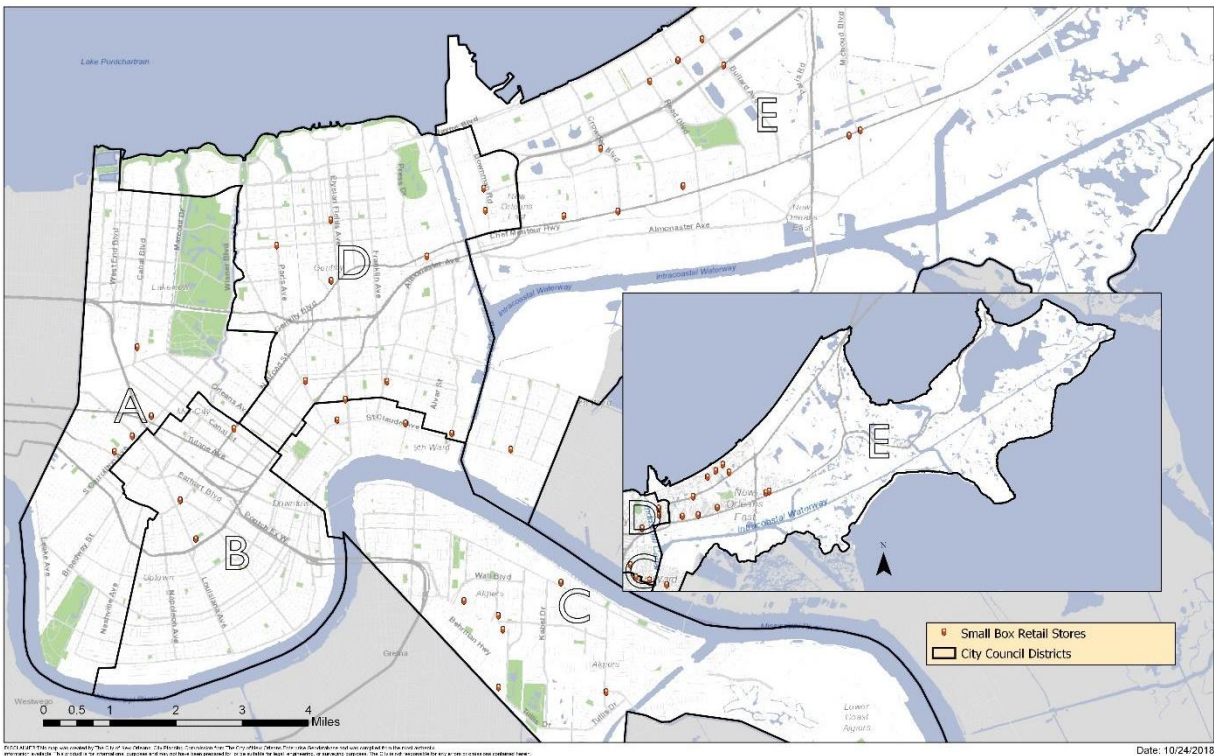
Table 3: Existing Small Box Discount Stores by Council District

LOCATION	NEIGHBORHOOD	COUNCIL DISTRICT
3612 S. Carrollton Avenue	Hollygrove	A
8201 Earhart Boulevard	Hollygrove	A
4115 S. Carrollton Avenue	Mid-City	A
5201 Canal Boulevard	Navarre	A
2650 S Broad Street	Hoffman Triangle	B
2841 S Claiborne Avenue	Hoffman Triangle	B
230 N. Broad Street	Mid-City	B
3157 St Claude Avenue	St. Claude	C
2900 General De Gaulle Drive	Algiers	C
3620 Macarthur Boulevard	Algiers	C
3771 General De Gaulle Drive ¹⁹	Algiers	C

¹⁹ Permit status is “not operating-pending approval by Safety & Permits.”

4021 Behrman Place	Algiers	C
4300 Woodland Drive	Algiers	C
4840 General Meyer Avenue	Algiers	C
1919 St. Claude Avenue	New Marigny Seventh Ward	C
2130 N. Claiborne Avenue	New Marigny Seventh Ward	C
2125 Caton Street	Gentilly	D
2170 Filmore Avenue	Gentilly	D
4525 Old Gentilly Road	Gentilly	D
4774 Paris Avenue	Gentilly	D
1841 Almonaster Avenue	New Marigny Ninth Ward	D
2001 St. Bernard Avenue	Seventh Ward	D
1111 Poland Avenue	Upper Ninth Ward	D
4314 Downman Road	New Orleans East	D
6500 Downman Road	New Orleans East	D
11020 Morrison Road	New Orleans East	E
11701 Morrison Road, Suite 106	New Orleans East	E
11902 I-10 W. Service Road	New Orleans East	E
13100 Chef Menteur Highway	New Orleans East	E
4511 Michoud Boulevard	New Orleans East	E
5700 Crowder Boulevard	New Orleans East	E
7300 Read Boulevard, Suite A	New Orleans East	E
7313 Chef Menteur Highway	New Orleans East	E
8400 Chef Menteur Highway	New Orleans East	E
9711 Chef Menteur Highway	New Orleans East	E
5523 Saint Claude Avenue	Lower Ninth Ward	E

Figure 2: Small Box Discount Retail by Council District



History of Small Box Discount Stores in New Orleans

In the post-Hurricane Katrina environment, the development of small box discount stores was accelerated by the Great Recession a few years later. This development trend is not unique to New Orleans, as small box variety stores have proliferated exponentially nationwide. Locally, the phenomenon is especially acute in New Orleans East and other neighborhoods with affordable commercial real estate.

The image below maps median household income against the locations of small box discount stores. This map image suggests a strong correlation between median household income and where small box discount stores choose to locate; specifically, small box discount stores are most prevalent in areas where median household income is lowest. It is noteworthy that more affluent neighborhoods such as Lakeview and Uptown have not been developed with small box discount stores. Due to the heavy saturation of these small box retail stores in low-income areas in particular, and the concomitant problems reported with their operations and management, the present study has focused on those areas of greatest overlap between median household income and small box retail locations.

The prevalence of discount stores in New Orleans East, for example, is partially a function of the area's Euclidean zoning and the separation of uses, which is autocentric in character, as the East lacks the granular development pattern conducive to the traditional corner stores common in so

many of the City's historic urban neighborhoods.²⁰ Small box discount stores tend to locate on larger parcels with greater automotive access. Historic urban properties are more difficult to retrofit in conformity with the building footprints and parking demands associated with their business model.

Figure 3: Small Box Retail Stores & Median Household Income



However, Euclidean zoning is but one factor with repercussions for the prevalence of discount stores. At some indeterminate threshold, the socioeconomic and demographic profiles of a community may supersede the role of Euclidean zoning where real estate values are conducive to the discount stores' business model. A perception among stakeholders and interview subjects implies that the stigmatizing ubiquity of discount stores is precluding full-service grocery stores from penetrating markets in New Orleans East. This stigma is associated principally with crime rates, lackluster operations and management, poorly maintained grounds and parking lots, and the perception that discount stores only cater to low-income market segments of the population. Because discount stores exhibit a penchant for locating in distressed communities, their inordinate presence sometimes contributes to the conflation of cause and effect, but like most highly visible signifiers of distressed communities, discount stores are oftentimes symptomatic of more underlying structural physical design and socioeconomic conditions: correlation does not imply causation.

²⁰ Euclidean zoning is a zoning regime based on the landmark U.S. Supreme Court decision in *Village of Euclid, Ohio v. Ambler Realty Co.* which inaugurated the principle of the separation of uses. This zoning regime sorts particular uses into more generic land use categories such as residential, commercial, industrial, agricultural, etc.

D. Public Input

Public Comments Summary

Throughout the research and composition of this special study, the City Planning Commission staff received public comments regarding the adverse impacts – perceived and actual – of discount stores. Staff received both written comments, which are posted on the City Planning Commission website and included in this report, as well as public testimony at the September 11, 2018 hearing. Comments can be tentatively categorized under complaints about products, use standards, economy, and store operations and maintenance. There follows a synopsis of the most common themes that emerged during the exploratory conversations and interviews with diverse stakeholders.

Products

- Inferior products
- Discount stores purvey expired, damaged, or toxic goods
- Unhealthy and processed foods

Use Standards

- Parking lots are poorly maintained
- Stores are poorly illuminated at night
- Inadequate landscaping
- Aesthetically unappealing buildings

Economy

- Perception that discount stores adversely impact property values
- Promote low-wage jobs
- Market saturation of discount stores precludes larger grocery retailers from entering the market
- The prevalence of discount stores stymies the diversification of the retail economy in New Orleans East

Operations and Maintenance

- Poor customer service
- Untrained staff
- Insufficient staffing which results in excessive queuing at points of purchase
- Litter
- Inadequate security
- Crime
- Loitering
- Parking lots of discount stores function as a staging area for a second market of illegal vendors

All written public comments may be found beginning on page 123.

Stakeholder Meetings

In studying small box discount store issues, the City Planning Commission staff met with the following offices, organizations, groups, and individuals:

- City of Tulsa (phone conference)
- City of Minneapolis (phone conference)
- Tulane Prevention Research Center
- Propeller
- Hope Credit Union
- Top Box Foods
- Eastern New Orleans Neighborhood Advisory Commission
- Robert Fresh Market
- Rouses
- Tom Hadir, Fresh Food Retailers Initiative Recipient
- University of Minnesota School of Public Health - STaple foodsORDinance Evaluation (STORE) study
- Sanitarian Services, Louisiana Department of Health
- Department of Sanitation, City of New Orleans
- Department of Health, City of New Orleans
- Department of Code Enforcement, City of New Orleans
- Department of Safety & Permits, City of New Orleans
- Bureau of Revenue, Department of Finance, City of New Orleans

E. Current Regulations

Comprehensive Zoning Ordinance

The Comprehensive Zoning Ordinance does not generally differentiate between different types of retail; however, it does provide a comprehensive definition of a generalized retail zoning category. Retail Goods Establishments are defined by Article 26 of the Comprehensive Zoning Ordinance as “a business that provides physical goods, products, or merchandise directly to the consumer, where such goods are typically available for immediate purchase and removal from the premises by the purchaser. A retail goods establishment does not include any adult uses. A retail goods establishment may not sell alcoholic beverages unless retail sales of packaged alcoholic beverages is allowed within the district and a separate approval is obtained for such use. A retail goods establishment that sells food products, such as a delicatessen, bakery, or grocery, may offer ancillary seating areas for consumption of food on the premises.”

Retail goods establishments are permitted by right in a preponderance of the City’s zoning districts. No use standards currently exist for Retail Goods Establishments.

Permitted and Conditional Uses – Retail Goods Establishments (Articles 7 to 17)

Below are use tables showing the zoning districts where Retail Goods Establishment are permitted (“P”), conditional (“C”), and prohibited uses (blank space). Because discount stores are currently classified as Retail Goods Establishments, such stores would be allowed in any of the districts tabulated below which permit Retail Goods Establishments by right and conditional in any district which limits Retail Goods Establishments to conditional use review.

Table 4: Permitted & Conditional Uses – Retail Goods Establishment

Use Table: Open Space Districts (Article 7)					
Uses	District				
	OS-N	OS-G	OS-R	NA	GPD
	[...]				
Retail Goods Establishment					
	[...]				

Use Table: Rural Development Districts (Article 8)		
Uses	District	
	R-RE	M-MU
	[...]	
Retail Goods Establishment		
	[...]	

Use Table: Historic Core Neighborhoods Residential Districts (Article 9)					
Uses	District				
	VCR-1	VCR-2	HMR-1	HMR-2	HMR-3

[...]					
Retail Goods Establishment					
[...]					

Use Table: Historic Core Neighborhoods Non-Residential Districts (Article 10)										
Uses	District									
	VCC-1	VCC-2	VCE	VCE-1	VCS	VCS-1	VCP	HMC-1	HMC-2	HM-MU
[...]										
Retail Goods Establishment	P	P	P	P	P	P		P	P	P
[...]										

Use Table: Historic Urban Neighborhoods Residential Districts (Article 11)					
Uses	District				
	HU-RS	HU-RD1	HU-RD2	HU-RM1	HU-RM2
[...]					
Retail Goods Establishment					
[...]					

Use Table: Historic Urban Neighborhoods Non-Residential Districts (Article 12)			
Uses	District		
	HU-B1A	HU-B1	HU-MU
[...]			
Retail Goods Establishment	P	P	P
[...]			

Use Table: Suburban Neighborhoods Residential Districts (Article 13)											
Uses	District										
	S-RS	S-RD	S-RM1	S-RM2	S-LRS1	S-LRS2	S-LRS2	S-LRD1	S-LRD2	S-LRM1	S-LRM2
[...]											
Retail Goods Establishment											
[...]											

Use Table: Suburban Neighborhoods Non-Residential Districts (Article 14)									
Uses	District								
	S-B1	S-B2	S-LB1	S-LB2	S-LC	S-LP	S-LM	S-MU	
[...]									

Retail Goods Establishment	P	P	P	P	P			P
[...]								

Use Table: Commercial Center & Institutional Campus Districts (Article 15)									
Uses	District								
	C-1	C-2	C-3	MU-1	MU-2	EC	MC	MS	LS
[...]									
Retail Goods Establishment	P	P	P	P	P	P	P	P	P
[...]									

Use Table: Centers for Industry (Article 16)				
Uses	District			
	LI	HI	MI	BIP
[...]				
Retail Goods Establishment	P	P	P	P
[...]				

Use Table: Central Business Districts (Article 17)							
Uses	District						
	CBD-1	CBD-2	CBD-3	CBD-4	CBD-5	CBD-6	CBD-7
[...]							
Retail Goods Establishment	P	P	P	P	P	P	P
[...]							

Maximum Total Floor Area for Commercial Uses by District

Below is a tabulation of the maximum total floor area requirements for commercial uses in each applicable zoning district. Larger retail goods stores are prohibited in districts such as HMC-1 and other districts with low maximums for total floor area. Elsewhere, HU-B1, HU-B1A, HU-MU, S-B1, S-LB1, S-LB2, and S-MU Districts permit uses up to 5,000 square feet of total floor area, but uses exceeding that threshold are subject to conditional use approval. Some of the tabulated district regulations can have the unintended consequence of problematizing conditions for grocery stores; for example, non-residential uses over 10,000 square feet, such as a full-service grocery store are conditional uses in HMC-2. Even more draconian for grocery stores are those districts, such as HU-B1, HU-B1A, HU-MU, S-LB1 and S-LB2 which prohibit uses over 10,000 square feet, effectively eliminating larger full-service grocery stores from those districts.

**Table 5: Maximum Total Floor Area
for Commercial Uses by District**

District	Maximum Total Floor Area – Commercial Use
HMC-1	3,000 SF
HMC-2	Any non-residential use over 10,000 SF is conditional
HU-B1A	Permitted up to 5,000sf of total floor area Conditional use approval required for 5,000sf to 10,000sf of total floor area Uses with over 10,000sf of total floor area are prohibited
HU-B1	Permitted up to 5,000sf of total floor area Conditional use approval required for over 5,000sf of total floor area Uses with over 10,000sf of total floor area are prohibited
HU-MU	Permitted up to 5,000sf of total floor area Conditional use approval required for over 5,000sf of total floor area Uses with over 10,000sf of total floor area are prohibited
S-B1	Permitted up to 5,000sf of total floor area

	Conditional use approval required for 5,000 or more square feet of total floor area
S-B2	Permitted up to 25,000sf of total floor area Conditional use approval required for 25,000 or more square feet of total floor area
S-LB1	Permitted up to 5,000sf of total floor area Conditional use approval required for 5,000 or more square feet of total floor area
S-LB2	Permitted up to 5,000sf of total floor area Conditional use approval required for 5,000 or more square feet of total floor area
S-LC	None
S-MU	Permitted up to 5,000sf of total floor area (ground floor only) Conditional use approval required for 5,000 or more square feet of total floor area No stand-alone commercial uses are allowed unless on the same lot as multi-family residential

Permitted and Conditional Uses – Retail Sales of Packaged Alcoholic Beverages (Articles 7 to 17)

Below are use tables itemizing the zoning districts where Retail Sales of Packaged Alcoholic Beverages are permitted (“P”), conditional (“C”), and prohibited uses (blank space). The CZO’s definition of Retail Goods Establishment stipulates that “a retail goods establishment may not sell alcoholic beverages unless retail sales of packaged alcoholic beverages is allowed within the district and a separate approval is obtained for such use.” Only four of the districts tabulated below (C-3 Heavy Commercial, LI Light Industrial, HI Heavy Industrial and MI Maritime Industrial) allow Retail Goods Establishments to sell packaged alcoholic beverages by right; a preponderance of the districts below either prohibit the use or subject it to the conditional use process.

Table 6: Permitted and Conditional Uses – Retail Sales of Packaged Alcoholic Beverages

Use Table: Open Space Districts (Article 7)					
Uses	District				
	OS-N	OS-G	OS-R	NA	GPD
[...]					
Retail Sales of Packaged Alcoholic Beverages					
[...]					

Use Table: Rural Development Districts (Article 8)		
Uses	District	
	R-RE	M-MU
[...]		
Retail Sales of Packaged Alcoholic Beverages		
[...]		

Use Table: Historic Core Neighborhoods Residential Districts (Article 9)					
Uses	District				
	VCR-1	VCR-2	HMR-1	HMR-2	HMR-3
[...]					
Retail Sales of Packaged Alcoholic Beverages					
[...]					

Use Table: Historic Core Neighborhoods Non-Residential Districts (Article 10)										
Uses	District									
	VCC-1	VCC-2	VCE	VCE-1	VCS	VCS-1	VCP	HMC-1	HMC-2	HM-MU
[...]										
Retail Sales of					C	C		C	C	C

Packaged Alcoholic Beverages										
[...]										

Use Table: Historic Urban Neighborhoods Residential Districts (Article 11)					
Uses	District				
	HU-RS	HU-RD1	HU-RD2	HU-RM1	HU-RM2
[...]					
Retail Sales of Packaged Alcoholic Beverages					
[...]					

Use Table: Historic Urban Neighborhoods Non-Residential Districts (Article 12)			
Uses	District		
	HU-B1A	HU-B1	HU-MU
[...]			
Retail Sales of Packaged Alcoholic Beverages		C	C
[...]			

Use Table: Suburban Neighborhoods Residential Districts (Article 13)											
Uses	District										
	S-RS	S-RD	S-RM1	S-RM2	S-LRS1	S-LRS2	S-LRS2	S-LRD1	S-LRD2	S-LRM1	S-LRM2
[...]											
Retail Sales of Packaged Alcoholic Beverages											
[...]											

Use Table: Suburban Neighborhoods Non-Residential Districts (Article 14)								
Uses	District							
	S-B1	S-B2	S-LB1	S-LB2	S-LC	S-LP	S-LM	S-MU
[...]								
Retail Sales of Packaged Alcoholic Beverages	C	C	C	C	C			C
[...]								

Use Table: Commercial Center & Institutional Campus Districts (Article 15)									
Uses	District								
	C-1	C-2	C-3	MU-1	MU-2	EC	MC	MS	LS
[...]									
Retail Sales of Packaged Alcoholic Beverages	C	C	P	C	C				C
[...]									

Use Table: Centers for Industry (Article 16)				
Uses	District			
	LI	HI	MI	BIP
[...]				
Retail Sales of Packaged Alcoholic Beverages	P	P	P	C
[...]				

Use Table: Central Business Districts (Article 17)							
Uses	District						
	CBD-1	CBD-2	CBD-3	CBD-4	CBD-5	CBD-6	CBD-7
[...]							
Retail Sales of Packaged Alcoholic Beverages	C	C	C	C	C	C	C
[...]							

Off-Street Parking and Loading (Article 22)

The parking requirements for Retail Goods Establishments are 1 space per 500 square feet of gross floor area (GFA). Table 22-1 further requires one short-term bicycle space per 5,000 square feet of GFA, and 50% long-term bicycle parking. One loading space is required for 10,000-100,000 square of GFA for commercial uses.

Table 7: Article 22, Section 22.4.A General Requirements – Parking

Table 22-1: Off-Street Vehicle and Bicycle Parking Requirements			
Use	Minimum Required Vehicle Spaces	Minimum Required Bicycle Spaces	
		Required Short-Term Bicycle Spaces	Percentage of Long-Term Bicycle Spaces
[...]			
Retail Goods Establishment	1 per 500 SQF. of GFA	1 per 5,000 SQF. of GFA	50%

Plan for the 21st Century

Because Motion No. M-18-256 introduces the regulatory option of requiring fresh food sales in small box discount stores, this section analyzes pertinent sections of the Master Plan. The City has an existing mandate in the *Plan for the 21st Century*, also known as the Master Plan, to enhance access to healthy food and diversify fresh food choices. This mandate is specifically articulated in *Chapter 8, Health and Human Services* and *Chapter 13, Land Use Plan*. The complexities of food access require the deployment of an interdisciplinary, holistic approach synthesizing land use and other areas of expertise, as reflected in the Master Plan's policy goals and sub-goals summarized below.

Each goal is accompanied by a recommended action or strategy; recommended actions for implementation are assigned to the relevant public agency or organization. Those strategies and implementation actions most pertinent to the City Planning Commission and the present special study are summarized below. This study serves as a preliminary research background informing the development and implementation of these policy goals and their attendant sub-goals. Implementation of the action items and strategies in Chapters 8 and 13 may require developing more nuanced zoning definitions and categories that recognize the distinctness of small box retail and the exigencies of healthy food access.

Chapter 8 – Health and Human Services

Goal 4 of Chapter 8 prioritizes access to fresh, healthy food choices for all residents. Goal 4 is in turn subdivided into four sub-goals, which are adumbrated below.

4.A. – *Establish and promote fresh produce retail outlets within walking distance of all residents*

Sub-goal 4.A is supported by several recommended actions which are assigned to the CPC for implementation of Goal 4.

- Identify areas that are underserved by fresh food access.
- Remove zoning and regulatory barriers to farmers' markets and other temporary/mobile fresh food vending.
- Support urban agriculture and community gardens.
- Explore and implement incentives to encourage sale of fresh and local food.

Sub-goal 4.A further appoints the CPC to “work with local partners, including the Tulane Prevention Research Center, to establish a walkability standard for access to fresh produce outlets for all residents (80 percent of households within a half mile of outlets) and identify geographic areas throughout the city that are underserved by fresh food outlets according to this standard. An example of this type of study is the New York City Supermarket Need Index, which determines areas in the city with the largest populations with limited opportunities to purchase fresh food.”²¹

²¹ City of New Orleans, City Planning Commission, *Plan for the 21st Century*, 2010, New Orleans.

4.B. – Support access to healthy nutrition opportunities at government-run or supported facilities, including (but not limited to) healthy foods and beverages, availability of breastfeeding spaces, and availability of fresh water.

- Amenities to be included (but not limited to) healthy foods and beverages, availability of breastfeeding spaces, and availability of fresh water.

4.C. – Explore avenues to address unhealthy food choices

- Explore land use and zoning policies that restrict fast food establishments near school grounds and public playgrounds.
- Explore local ordinances to restrict mobile vending of calorie-dense, nutrient-poor foods near schools grounds and public playgrounds.
- Promote consumer education and programming to facilitate healthy eating habits and support demand for fresh and local produce.
- Educate residents about and promote advocacy to limit proliferation of fast food and drive-thru establishments.

4.D. – Promote business development for farmers and processors of locally grown fresh food

- Reduce zoning and regulatory barriers to processing and distribution of value added local food products.
- Promote training and instruction in food and plant production and processing.
- Encourage and support urban agriculture and community gardens through linkages with land use, water management, and economy opportunity plans.

Chapter 13 – Land Use Plan

The Land Use Plan constitutes the policy framework for the regulation of the city’s physical development and serves as a guide for city decision-makers in directing the pattern, distribution, and intensity of land uses that will, over time, best achieve the goals of livability, opportunity, and sustainability embodied throughout the Master Plan, while providing sufficient land to meet demands for various future land uses.

Goal 1 of Chapter 13 enjoins the City to “promote smart growth land use patterns in New Orleans and the region.”²² The sub-goal below, in support of this broad land use policy goal specifies a vision for implementation through interventions on the supply-side of enhanced healthy food access.

1.E. – Adopt Sustainable Land Use and Zoning Principles

Sub-goal 1.E.7 enjoins the City to increase access to healthy food at a lower environmental cost by supporting the production, processing and distribution of locally grown food.

²² Ibid

Opportunity Sites

Chapter 13 also identifies large opportunity sites across the city that could support significant strategic redevelopment and master-planned urban infill. Located along existing or proposed transit corridors, these vacant or underutilized light-industrial and commercial areas are prime real estate for reinvestment and enhancing access to fresh and healthy local food options. Each opportunity site synopsis analyzes the housing and retail markets potential.

Opportunity Sites 1 and 4 are of particular relevance to the present study. Opportunity Site 1 is located in New Orleans East. Redevelopment of the former Plaza at Lake Forest mall is cited as critical for enhancing the livability and sustainability of New Orleans East. The profile for Opportunity Site 1 summarizes the results of an analysis of the site's housing, office and retail market potentials. The opportunities identified at this site for full-service grocery stores make its retail market potential especially germane to the scope and mandate of the present study.

A retail market analysis of the site concluded that residents had approximately \$686 million in spending potential as of 2013, and that the designated trade area could support one of the following options:

- A large super-community “neighborhood center” of 500,000-800,000 square feet that would include a general merchandise store (*e.g.*, Wal-Mart), a large supermarket, big-box retailers, a movie theater complex, supportive chain retail, and eating and drinking establishments. (Under this option, the supercenter should be incorporated into a “town center” setting near one of the I-10 Interchanges, and target needs of local residents, and not a regional population.)
- Up to three neighborhood-serving retail centers of approximately 60,000-80,000 square feet, each anchored by a medium-sized supermarket, drug store and smaller service establishments. (Under this option, these neighborhood centers should be dispersed

Figure 4: Opportunity Site: New Orleans East



Opportunity Site 4

Figure 5: Boundaries and Future Land Use of Opportunity Site 4



23 Ibid

Figure 6: Rendering of Earhart Boulevard as Urban Big Box Boulevard



City Code Regulations

Permitting & Licensing

Permitting and licensing are integral to the present study of small box discount stores because they are subparts of the bureaucratic systems regulating and administering this specific use. Moreover, permitting and licensing can be thoughtfully and strategically utilized to effectuate and support certain outcomes regarding healthy food access and the progressive regulation of small box discount stores.

Section 150, Article VII of the City Code mandates and regulates occupational license taxes for businesses conducting business in Orleans Parish. This section stipulates rules for the licensing of new businesses, remuneration of taxes, changes of ownership or lessee, business classification, recordkeeping, license applications, tax delinquency, fees, public utilities, exemptions, deductions and other special provisions. Section 150 also mandates a separate license for each location, based on the majority of business transacted. The Department of Revenue will issue a new license subsequent to Department of Safety & Permits review.

Department of Safety & Permits

The Department of Safety & Permits receives occupational/general business license applications for new businesses desiring to conduct general commercial/retail sales or operate home-based businesses in Orleans Parish. New businesses initiate the process with the Department of Safety & Permits because occupational license applications trigger the need for zoning inspections to confirm the proposed use.

Bureau of Revenue

The Bureau of Revenue is tasked with collecting occupational license tax annually. Revenue field agents are assigned to zones in the city for which they are responsible. Because occupational licenses are based on the majority of a business' income, half or more of a discount stores' business would have to be in food sales before being classified as a grocery store. The Bureau of Revenue has more than six-hundred codes used in the classification of sundry business operations. The most common code types for discount stores are General Merchandise, Miscellaneous Store Retailers (Except Tobacco), Department Stores, and Durable Goods Wholesalers, Other Miscellaneous.

Occupational licenses renew automatically on an annual basis. Annual renewals, which can be transacted online or by mail, include reporting of gross sales and receipts. The Department of Revenue mails reminders prior to the renewal deadline and occupational licenses are deemed delinquent on March 1st with a grace period of 60 days. The penalty for delinquency is 5% per month plus 1.25% interest per month.

F. Current Enforcement

Public comments provided during the September 11, 2018 hearing highlighted concerns over the public health and safety of New Orleans discount retailers. Complaints of unkempt parking lots and landscaping, unscreened dumpsters, and security issues were common themes brought up both during the hearing and during individual stakeholder meetings. General maintenance to both the interior and site appear to be an issue for discount retailers. Maintenance issues included specifics such as required landscaping at sites falling in disrepair with dead or non-existent plant materials. Speakers cited trash and litter as visible in the parking lots, in areas behind the stores, and extending into the public right-of-way beyond the property. Security was another issue brought up multiple times by the community, which included complaints of a lack of staffing at stores, theft and shoplifting during store hours, and activity outside the stores such as loitering and selling illegal materials.

Section 66 of the City Code includes regulations on environmental issues within the City pertaining to the smoke free air act, removal and disposition of abandoned and nuisance motor vehicles, noise, nuisances, and abandoned property. Section 66 gives the Department of Health, Department of Property Management, Department of Safety and Permits, Department of Parks and Parkways, the New Orleans Recreation Development Commission, the Fire Department, and Code Enforcement the authority to enforce provisions within Section 66 which regulate the maintenance of public and private property.

Section 66 of the City Code

The nuisances article of Section 66 includes general nuisances, litter, weeds, and abandoned property. General nuisances pertain to property issues such as dumping, debris removal, burning of trash or debris on site, and removal of unhealthy or foul material found on site. Section 66-287 states “the owner, his agent, or occupant of all premises shall be responsible to take up or cause to be taken up all aggregate sweeping of garage, trash, litter, grass cuttings, leaves and all other waste materials from the premises, sidewalks and abutting property including the space between the property line and the curblin in front, extending 18 inches from the curblin into the street or roadway and in the rear and alongside thereof of such premises owned or occupied so that such sweepings shall not under any circumstances reach the drains, gutters, street, or roadways. The owner, his agent, or occupant shall be responsible to have all sweepings placed into containers sufficient to prevent such sweeping from being scattered by the wind and placed out on the days designated for collection.” This regulation gives the City authority to regulate litter in the public right-of-way up to 18 inches. Section 66-291 provides the City to enforce these regulations through the adjudication process. Chapter 6 of the City Code further details the administrative procedures of enforcing public health, housing, environment, historic district, fire, vegetation, zoning, nuisance, and building code. Details of the enforcement process, including noticing property owners and the adjudication process are provided below.

Department of Safety & Permits

The Department of Safety and Permits performs inspections on properties during the inspection period for a property prior to the issuance of certain permits and licensing. Inspections and

enforcement after the Certificate of Occupancy is issued are usually performed due to complaints. Inspectors will visit a property for inspection based on complaints about properties violating the zoning code. Complaints are first filed by contacting 311, the City's Service Center. Complaint based inspections follow the same process as inspections done by sweeps, or standard permitting inspections. Property owners will receive a warning which can lead to an adjudication hearing with fines if no actions are taken to remedy the issue.

Sweeps

The Department of Safety and Permits' Zoning Administration Division has started performing sweeps throughout the City along major corridors. To date in 2018, the department has performed sweeps along Broad Street, Claiborne Avenue from the Interstate 10 intersection to Napoleon, and along Crowder Boulevard. St. Claude Avenue is scheduled as the next sweep. The Mayor's office has identified Wall Boulevard, South Carrollton Avenue, Chef Menteur Highway, North Claiborne Avenue, North Robertson Street, St. Bernard Avenue, Elysian Fields Avenue, and an additional section of South Claiborne and North Claiborne Avenue from Poydras Street to Poland Avenue. These sweeps are designed to identify zoning and code violations throughout the City and promote a cleaner and safer city. Zoning violations that Safety and Permits inspectors identify can include illegal signs and screening violations. Signs violations could include signs that were installed without permits, signs with animation and illegal illumination, and temporary signs or banners. These sweeps deal with infractions on the outside of properties. Improperly screened dumpsters and trash refuse areas are included in the sweeps. The sweeps are a part of the Mayor's CleanUpNOLA initiative. Safety and Permits inspectors do not go inside buildings during the sweeps.

Discount Retailers Sweeps

Prior to the start of the study, inspectors for the Department of Safety and Permits performed sweeps on all 36 discount retailers in New Orleans and found several violations which included property maintenance, working on the property without permits, illegal signs, unscreened dumpsters, as well as additional building and zoning code violations. The sweeps included 10 Family Dollar stores with improperly screened dumpsters. **Article 23, Section 23.13.A** of the New Orleans Comprehensive Zoning Ordinance requires all dumpsters and trash refuse areas be fully enclosed on three (3) sides by a solid fence, masonry wall, or principal structure wall seven (7) feet in height.

Citation and Adjudication Hearings

The inspectors will visit the property and identify any violations to the zoning code regarding premises maintenance, appropriate signage, dumpster screening and maintenance, and appropriate addressing. At this visit, the inspectors will give the business owners a "Field Observation" alerting them to any issues the inspector observed and providing information on how to abate those issues. After this initial inspection, if no corrective action is taken within 14 days, a violation letter will be mailed to the property owner giving 14 days to abate the issue. If, after that 14 day period the violations are not abated, the inspectors will submit the case for an adjudication hearing. Property owners have until the morning of the hearing to show proof that

the violation has been remedied. The adjudication hearings may result in fines on the property owner of up to \$500 per violation. If the fines are not paid in the proscribed time, the property owner may be subject to a lien on their property in the amount of the judgement, and the property may be brought back for a second adjudication if the violations remain unabated.

Figures 7 and 8: Department of Safety & Permits Field Observation Forms

City of New Orleans Department of Safety & Permits
Field Observation
Location: _____
Date: _____ Time: _____
This is intended to inform the owner/operator of these premises of a failure to comply with one or more of the City's laws, regulations, or rules. Visit nola.gov/business or call (504) 658-7125 to find out more.
<input type="checkbox"/> A dumpster or other container on this property is not properly maintained, enclosed, or permitted. (CZO 23) <input type="checkbox"/> A parking lot or other area on this property is not properly maintained or lacks a required permit. (CCNO 26) <input type="checkbox"/> This property has illegal or unpermitted signs or signage. (CZO 24) <input type="checkbox"/> A temporary storage container on this property has been in place for longer than permitted. (CZO 21) <input type="checkbox"/> These premises are not maintained in a clean, safe, or sanitary condition. (CCNO 26) <input type="checkbox"/> This property is operating as an unlicensed tire dealer or is displaying or storing tires improperly. (CCNO 26-418) <input type="checkbox"/> A building on this property does not have its address number placed appropriately. (CCNO 26-168) <input type="checkbox"/> This property has recently or is currently engaging in unpermitted construction (CCNO 26)
All compliance issues should be corrected immediately. Please contact the inspector listed below to submit evidence of compliance. Failure to come into compliance within 14 days of this notice may cause a violation case to be opened which may subject you to adjudication, fines, or other penalties allowed by law.
Inspector: Dennis Marcott 658-7144 djmarcott@nola.gov

City of New Orleans Department of Safety & Permits
Field Observation Abatement
For complete information on abatement and compliance, please visit nola.gov/business , call (504) 658-7125, contact the inspector identified on the reverse of this page, or visit the One Stop Shop at 1300 Perdido St, 7 th Floor.
Dumpster screening/maintenance (CZO 23) Abatement: enclose the container on 3 sides by a 7-foot fence or wall in the required manner
Parking lot maintenance/permitting (CCNO 26) Abatement: ensure appropriate paving, painting, maintenance, and permitting
Unpermitted or illegal signs/signage (CZO 24) Abatement: remove unpermitted signs and/or apply for the appropriate sign permit
Unpermitted temporary storage container (CZO 21) Abatement: remove the temporary storage container and/or apply for the appropriate permit
Premises maintenance (CZO 26) Abatement: clear away any trash, litter, waste or similar material, make use of appropriate trash containers, and ensure that all structural elements are in good condition
Unlicensed tire shop/tire storage (CCNO 26) Abatement: apply for an occupational license and/or store/display tires appropriately.
Municipal addressing (CCNO 26) Abatement: ensure the address number is appropriately displayed
Unpermitted construction (CCNO 26) Abatement: cease any unpermitted construction and apply for the appropriate construction permit including, if needed, a construction dumpster permit
NOTES:

Department of Sanitation

The Department of Sanitation is in charge of trash collection and street cleaning throughout the City. Many commercial uses and businesses are required to set up their own private trash collections outside of the City's contracted trash collection for residences. In addition to overseeing waste disposal throughout the city, Sanitation also requires property owners to maintain lots and remove or abate weeds, grass, and other vegetation on the public right-of-way in front of their property.²⁴ Detailed in Section 66, the Department has the right to enforce property owners to maintain the first 18 inches of land that projects into the public right-of-way. Article IV, Division 4 of the City Code outlines the requirements for private property owner maintenance.

²⁴ Interoffice Memorandum Advice Response No. 18-07-15 Right-of-Way Maintenance, City of New Orleans Law Department.

Litter Abatement Plans

The Department of Sanitation requires a litter abatement plan for all newly issued permits on all commercial uses. A litter abatement plan details how the owners of the property propose handling waste collection and disposal. The plan exempts property owners from the fees collected from the City for municipal trash collection.

Complaint Based

Sanitation can respond to complaint based reports of specific properties, but can only issue warnings pertaining to litter. Complaints about the state of private property cannot be enforced by Sanitation. Only litter within the public right of way and code violations such as unscreened dumpsters can be monitored. A severe offense can eventually go to either Code Enforcement or Safety and Permits for citation and adjudication.

Sweeps

Currently, the Department of Sanitation has three sanitation rangers for the whole City that issue sanitation warnings. These warnings are based on non-compliance of litter abatement plans, unscreened dumpsters, and visible trash in the public-right-of-way. With these rangers, the sanitation department issues thousands of warnings, but no action beyond these warnings can be taken by the rangers. New state legislation could allow for these rangers to take actions beyond issuing warnings.

Department of Code Enforcement

The Department of Code Enforcement works on property based violations with a mission to decrease blight and properties that pose a public nuisance. The general upkeep of properties is included within Code Enforcement's responsibilities. The Department works with Sanitation as some property violations overlap. Unkempt properties with violations ranging from tall weeds and grass, unscreened dumpsters, and the harboring of rodents are grounds for citations. Code Enforcement has thirteen inspectors who focus mainly on blighted properties, but also on rodent harboring, unkempt properties or vacant lots, and unscreened dumpsters. Code Enforcement can only cite the property owner. If a tenant such as a retailer is not in compliance with the upkeep of a property, the owner ultimately is the one in violation of the City Code.

Adjudication Hearings

After notification to the property owners, the department will hold an adjudication hearing. These adjudication hearings bring the property owners into a hearing to remedy non-compliance issues. Fees and eventually liens can result from these hearings. Similar to the adjudication hearing held by the Department of Safety and Permits, property owners can submit proof of compliance up to the day of the hearing. Proof of compliance can include recently executed contracts for repairs, permits covering the scope of work intended, Certificate of Completion showing work was performed under a permit, as well as additional applications filed with HDLC, another City department, or any federal, state, or local renovation rebuilding program.

CleanUpNOLA

CleanUpNOLA is a multi-agency initiative from the Mayor’s Office which aims to create a cleaner and healthier New Orleans. To do so, it has identified 12 major corridors throughout the city and is deploying resources from the Departments of Sanitation, Public Works, Health, Safety and Permits, Code Enforcement, the Office of Neighborhood Engagement, Parks & Parkways, and Mosquito, Termite & Rodent Control. The “Tiger Team” is walking each corridor to both identify violations as well as to educate residents and businesses on how to respond to violations.

Table 8: CleanUpNOLA Corridors

MAJOR CORRIDOR	SEGMENT START	SEGMENT END
S. Claiborne Avenue	Martin Luther King	Napoleon Ave.
S./N. Broad Street	Poydras Street	Gentilly Boulevard
Crowder Boulevard	Hayne Blvd.	Chef Menteur Highway
St. Claude Avenue	St. Bernard Avenue	Delery Street
Wall Boulevard	General DeGaulle	Holiday Drive
S. Carrollton Avenue	Canal Street	Earhart Boulevard
Chef Menteur Highway	Press Drive	France Road
N. Claiborne Avenue	Jourdan Ave.	Delery Street
N. Robertson Street	Elysian Fields Avenue	Poland Avenue
St. Bernard Avenue	St. Claude Avenue	Gentilly Boulevard
Elysian Fields Avenue	N. Peters Street	Leon C. Simon Boulevard
S. Claiborne/N. Claiborne Avenue	Poydras Street	Poland Avenue

CleanUpNOLA consists of two components. The first component will provide, among other things, street cleanings, maintaining the City’s public litter cans, a public awareness campaign, the placement of 100 additional litter cans in areas with high volumes of litter, installation of cameras to deter illegal dumping, and the City’s Transfer Station will open to the public to help reduce illegal dumping. As part of this component, the Department of Sanitation is hiring two additional sanitation rangers that will be dedicated to enforcement.

The second component focuses more on enforcement action, such as fines and adjudication. It also includes work in the public right-of-way, such as enforcing blighted properties, repairing pot holes, removing abandoned vehicles, and removing graffiti on public litter cans.

Small box discount stores are located along many of these corridors, including St. Claude Avenue, Crowder Boulevard, and South and North Claiborne Avenues. Due to this, CleanUpNOLA will check these properties for violations.

Louisiana Department of Health

The Louisiana Department of Health (LDH) works to protect and promote health and to ensure access to medical, preventive, and rehabilitation services for Louisiana citizens. Sanitarian Services, within the LDH’s Office of Public Health, enforces laws, rules, and regulations designed to maintain and promote community hygiene, in accordance with the Louisiana

Sanitary Code.²⁵

Retail Food Program

Sanitarian Services manages the Retail Food Program, designed to prevent and minimize food-borne disease outbreaks. As part of the program, licensed State Sanitarians consult, monitor, issue permits, and regulate all retail food establishments in the state as governed by the Louisiana Administrative Code Title 51 Part XXIII Retail Food Code. Per the Retail Food Code, *Retail Food Stores* are defined as the following:

All types of food markets including convenience, fixed, mobile and temporary food stores. These may also be referred to as groceries. Larger retail food stores may also include bakeries and delicatessens.

Because they sell food at retail, small box discount stores are considered retail food establishments/stores and must meet Retail Food Program requirements in order to legally operate in the state. Small box discount stores that sell food items at retail are classified as “grocery – packaged only,” in contrast to “grocery – deli (kitchen).” Stores that also sell intact produce (e.g. not peeled, cut, etc. on-site) in addition to packaged food would also be classified as “grocery – packaged only. Packaged food includes items such as milk, eggs, frozen fruit and vegetables, frozen pizza, and prepared foods.

Any proposed retail food establishment must submit an application to Sanitarian Services prior to the construction, renovation, or use of a structure.²⁶ The application includes details on the proposed type of operation, anticipated volume and types of food products to be stored, prepared, packaged and/or served along with the proposed layout of the facility, mechanical plans, construction materials, and the types, location and specifications of equipment. A licensed State Sanitarian may also conduct preoperational inspections to ensure compliance with approved plans. Upon determining compliance, a permit for operations is issued. Should any change in operations occur, the applicant is required to notify the Louisiana Department of Health Environmental Office, which may require submission of modified plans, subject to review.

All retail food establishments are assigned a risk category ranging from 1 to 4. Risk categories are determined based on a number of factors including, but not limited to, the type of food service, activity, past violations, and the population served. Small box discount stores that fall into “grocery – packaged only” are the lowest risk level – 1. Sites with a risk category of 1 typically receive one inspection per year. However, inspections that yield one or more critical violations or five or more non-critical violations require re-inspections until such time that the business corrects the violations. In addition to routine inspections, complaints can also generate further inspections for these types of stores beyond the one per year.

²⁵ The Louisiana Sanitary Code is located in the Louisiana Administrative Code under Title 51, Public Health – Sanitary Code, which was last amended in July of 2018.

²⁶ At the municipal level, the Department of Safety & Permits advises proposed retail food establishments that they must receive Louisiana Department of Health approval prior to final approval for the occupational license. The applicant must submit LDH approval to the Department of Safety & Permits.

Small box discount stores classified as “grocery – packaged only” may introduce “intact” produce for sale without the risk level increasing. An existing store’s risk levels would change if processing is introduced and would be based on the equipment necessary to do so.

Areas for Potential Non-Compliance

Food Storage

Chapter 15 of Title 51 outlines requirements for food storage in retail food stores. In short, food must be stored in such a way as to prevent contamination, including being at least six (6) inches above the floor. Due to the reported congestion and limited space that already exists within some small box discount stores, it is foreseeable that a requirement to provide fresh food, such as produce, in existing stores could increase the risk of improper food storage and/or congestion in aisles.²⁷ However, this is intrinsically a store management issue and could be mitigated through proper management.

As noted previously, some small box discount store chains are moving towards providing healthier options in select stores. Presumably as a result of this, either the store would be modified or any new stores would be built in such a way as to meet these requirements.

Garbage, Rubbish, and Refuse

Chapter 33. cites specific regulations pertaining to garbage, rubbish, and refuse management. In general, this material must be contained in order to prevent spilling, insects, rodents, and health hazards in general. Outside receptacles, such as dumpsters, must have tight-fitting lids and be kept closed. There must also be sufficient receptacle space on the premises to hold all garbage and refuse that accumulates at the business.

The accumulation of litter and trash on the property and in the right-of-way in front of the property is a primary complaint directed toward small box discount stores. Many of these stores have been cited at the municipal level for violations that include open dumpsters and trash. Requirements for fresh food could exacerbate this situation for those stores that are unable to properly manage their sites. The addition of fresh food sales, specifically the improper disposal of spoiled food, could attract insects and rodents.

²⁷ U.S. Department of Labor, Occupational Safety and Health Administration, *OSHA cites Dollar Tree Stores for exposing workers to serious hazards for second time in Delaware: Inspectors witness New Castle, Delaware, worker struck by falling boxes, issue \$103K fine*, 2014, <https://www.osha.gov/news/newsreleases/region3/12172014> (accessed Oct. 10, 2018).

Figure 9: Family Dollar dumpster enclosure (7300 Read Blvd.)



Source: Department of Safety & Permits photo

Insects and Rodent Control

Chapter 35 outlines measures that retail food stores should take to secure the physical store as well as products from insect and rodent infestation. Most relevant is the requirement that the premises be kept free from litter. As noted above, certain small box discount stores in New Orleans are known bad actors or otherwise unable to maintain the premises free from litter. The addition of

fresh food sales could add to

the responsibilities of store employees, further reducing their ability to remove litter from the premises. Improved management is needed.

Summary

A change in policy requiring small box discount stores to sell fresh, intact produce would change neither the type of business nor the number of inspections associated with the state's Retail Food Program.²⁸ However, stores would need to notify the Louisiana Department of Health and likely provide additional information such as revised floor plans for review. City-mandated fresh food requirements have the potential for improper food storage, particularly if applied to existing stores which could be less able to accommodate the change in policy due to existing store sizes or other limitations. In other words, it may be unwise to impose fresh food requirements on existing stores due to the difficulty in retrofitting appropriately. However, uncontrolled garbage and refuse areas and insect and rodent harboring are mostly the result of poor management and are not fundamentally linked to fresh food sales.

²⁸ As noted, inspections that yield violations or complaints can trigger additional inspections beyond the one per year.

G. Food Retail & Public Health

Land use regulation has enormous potential where it intersects with public health—specifically access to nutritious food. Though many zoning policies aimed at restricting certain types of uses (e.g. fast food) have been challenged in court, these laws have been upheld when there is a clear linkage between the policy and the public’s health, safety, morals, or general welfare.²⁹

Health Landscape

The World Health Organization (WHO) identifies overweight and obesity as major risk factors for a number of chronic diseases, including diabetes, cardiovascular diseases, and cancer. Despite these legitimate risks, obesity is preventable. “Energy imbalance between calories consumed and calories expended” is the leading cause of obesity and overweight.³⁰ In other words, the consumption of energy-dense foods that are high in fat or sugar, paired with physical inactivity, is the primary cause of obesity and overweight.

Since the mid-1970s, obesity in the United States (and worldwide) has dramatically increased—almost two out of every three adults are either overweight or obese. Southern states typically have higher rates of obesity. Louisiana is among the top states in the nation for adult obesity at 36.2% for 2017, an increase from 12.3% in 1990.³¹ African Americans in Louisiana are disproportionately obese (42.6%) than their white (33.4%) and Latino (32.3%) counterparts.³² The rates of obesity-associated diseases are also among the highest in the country. Louisiana is the 4th highest for adult diabetes (13.6%), an increase from 5.3% since 1990, and 6th for high blood pressure (39.0%), an increase from 16.5% since 1990.³³

Orleans Parish-level data, indicates consistent outcomes for obesity and related diseases. According to 2017 data from the Behavioral Risk Factor Surveillance System (BRFSS), 32.7% of Orleans Parish adults reported being overweight, and 31.7% reported being obese. 13.5% reported having diabetes, and 38% reported high blood pressure.^{34,35}

The WHO pinpoints several ways to reduce overweight and obesity, thereby ameliorating the risk for related chronic diseases. Though individuals must take fundamental steps to improve their own diets, including the reduction of fats and sugars, increase in fruit and vegetable, legume, whole grain, and nut consumption, and regular exercise or physical activity, the food industry and policymakers must also play a role.

²⁹ Lauren M. Rossen and Keshia M. Pollack, “Making the Connection Between Zoning and Health Disparities,” *Environmental Justice*, Vol. 5, No. 3 (2012): 120.

³⁰ World Health Organization, <http://www.who.int/en/news-room/fact-sheets/detail/obesity-and-overweight>. (accessed Oct. 12, 2018)

³¹ State of Obesity, <https://stateofobesity.org/states/la/> (accessed Oct. 12, 2018).

³² Ibid.

³³ Ibid.

³⁴ The Behavioral Risk Factor Surveillance System (BRFSS) is the nation's premier system of health-related telephone surveys that collect state data about U.S. residents regarding their health-related risk behaviors, chronic health conditions, and use of preventive services.

³⁵ BRFSS

Health Department Goals

At the municipal level, the New Orleans Health Department identified in their New Orleans Community Health Improvement Plan a goal to improve physical activity, nutrition, and quality of life for all residents with several relevant sub-goals:

- Increase access to physical activity and healthy eating opportunities for youth in New Orleans;
- Increase awareness and opportunities for physical and nutritional activities and resources in Orleans Parish;
- Implement early childhood obesity prevention strategies by developing new and supporting existing initiatives design to: increase physical activity, promote healthy eating, and encourage and support breastfeeding for children in New Orleans;
- Facilitate access to nutritional and physical activity by way of community design and environment

These sub-goals are linked to the Small Box Retail Diversity study as it has the capacity to influence policy decisions to improve nutrition for Orleans Parish residents.

Food Access

Food access is a major factor that determines a person's ability to consume affordable and nutritious food, which is key to overall health. The U.S. Department of Agriculture, while noting there are many ways to measure food access, outlines three primary lenses through which to view food access:

- Accessibility to sources of healthy food, as measured by distance to a store or by the number of stores in an area.
- Individual-level resources that may affect accessibility, such as family income or vehicle availability.
- Neighborhood-level indicators of resources, such as the average income of the neighborhood and the availability of public transportation.³⁶

Proximity to sources of food is the most apparent indicator for food access. Populations that are more physically removed from healthy sources of food may experience additional barriers including the availability of a vehicle or public transportation. Alternatively, close proximity to fresh food does not necessarily result in access. Other factors can come into play such as income level (e.g. a high-priced grocery store may not be financially accessible by lower income residents), disability, language barriers, and crime/crime perception, all of which may hinder or prevent access.

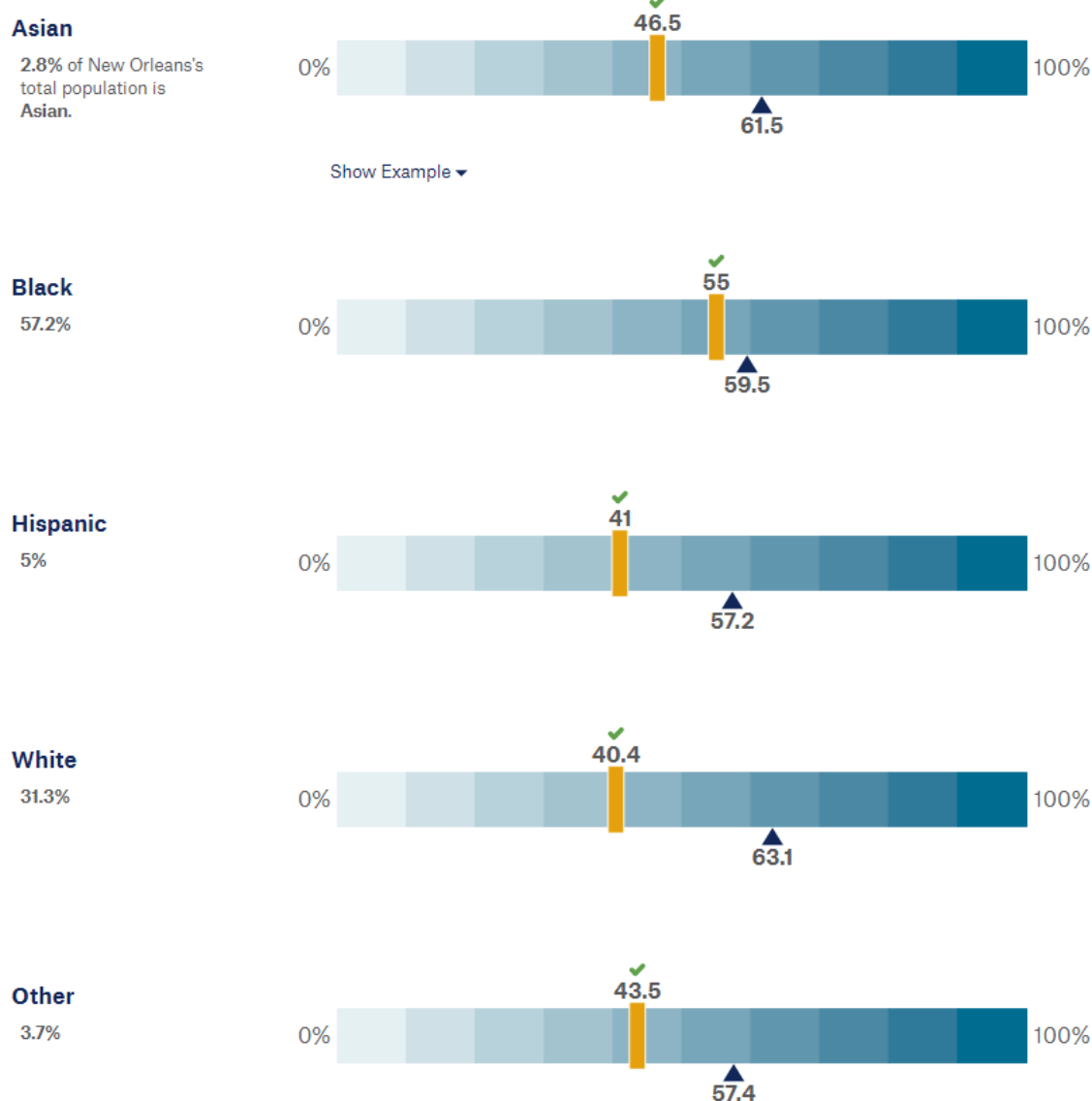
As of 2016, New Orleans had one supermarket for every 11,800 residents; at a national level, this ratio is one supermarket for every 8,440 residents.³⁷ Almost half (49.5%) of Orleans Parish

³⁶ United States Department of Agriculture Economic Research Service, <https://www.ers.usda.gov/data-products/food-access-research-atlas/documentation/> (accessed Oct. 12, 2018).

³⁷ Jodi Dyer, "New Orleans Community Health Improvement Plan: Second Revision November 2016," 2016.

residents have limited access to healthy food, which City Health Dashboard defines as the percentage of the population living more than half a mile from the nearest supermarket, supercenter, or large grocery store.³⁸ Food access, like health outcomes, is not equally distributed across all racial and ethnic groups. White residents in Orleans Parish had the highest access to healthy food (40.4% had limited food access) while Black residents had the lowest access to healthy food (55% had limited food access).

Figure 10: Limited Access to Healthy Foods by Race/Ethnicity in New Orleans



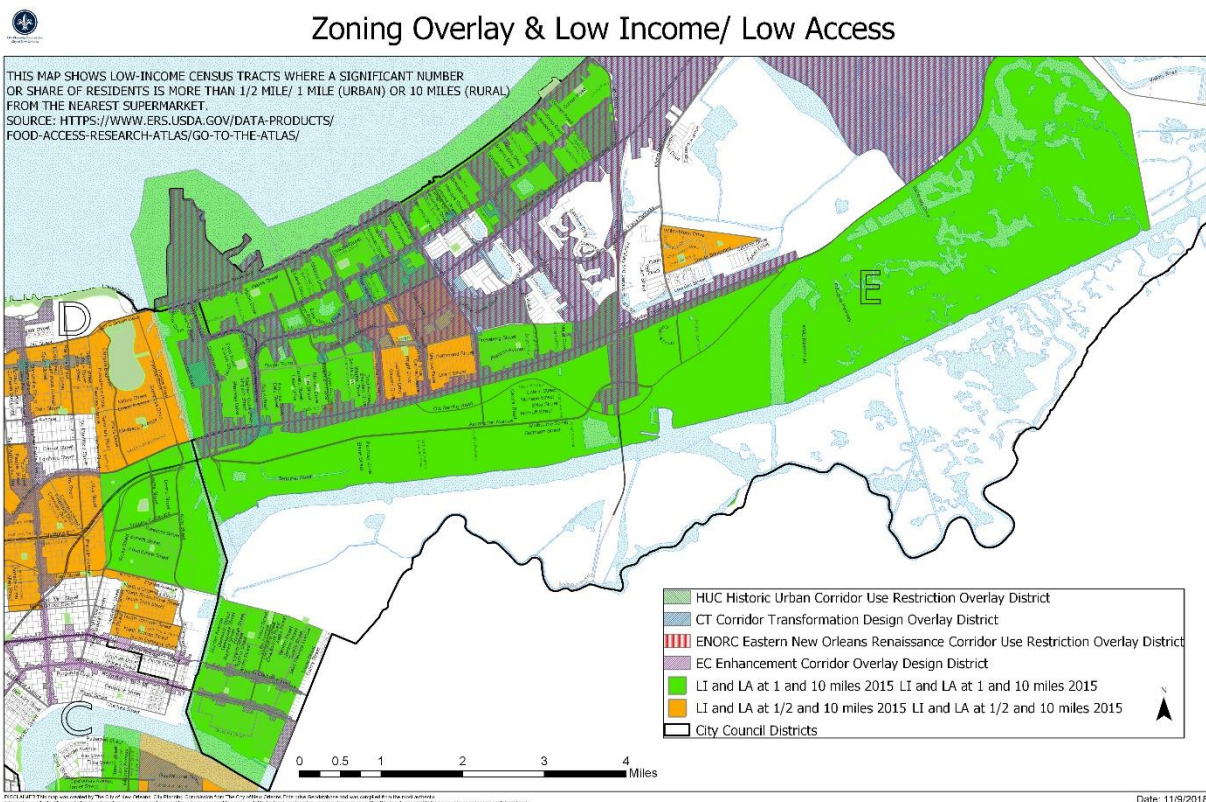
Source: City Health Dashboard

³⁸ United States Department of Agriculture Economic Research Service, <https://www.ers.usda.gov/data-products/food-access-research-atlas/documentation/> (accessed Oct. 12, 2018).

Likewise, food access is worse for low-income communities than for others. One reason for this is that full-service grocery stores tend to locate in higher income areas, leaving low-income areas more likely to be food deserts and/or food swamps. The term *food desert*, which has commonly appeared in public health and food access literature, refers to a residential area with limited access to affordable and nutritious food such as fruits, vegetables, and whole grains. Conversely, the term *food swamp* refers to an area with an abundance of less healthy, energy-dense foods, such as fast food and convenience stores, without similar or greater access to healthy foods. Notably, these options are typically less expensive and quicker to obtain than healthier meals, which often must be prepared.³⁹ According to the USDA, “This twist on the metaphor of a food desert is particularly important for understanding high rates of obesity. The problem may not be that healthy food is not accessible or that families do not have strategies to get to stores that offer healthy options. Rather, the problem may be that, in some areas, less healthy food is much easier to access.”⁴⁰

Food Access in New Orleans East, the Lower Ninth Ward, & Algiers/English Turn

Figure 11: Overlap of Low Income and Low Food Access in New Orleans



As noted, parts of New Orleans are underserved when it comes to full-line grocery stores. In Figure 11, the orange area indicates where low-income census tracts are more than half a mile from the nearest supermarket; the green indicates where they are more than one mile from the

³⁹ United States Department of Agriculture Economic Research Service, <https://www.ers.usda.gov/amber-waves/2010/march/access-to-affordable-nutritious-food-is-limited-in-food-deserts/> (accessed Oct. 22, 2018).

⁴⁰ Ibid.

nearest supermarket. As the map indicates, the intersection between low-income census tracts and low access to healthy, nutritious food is most concentrated in parts of New Orleans East, Algiers, and the Lower Ninth Ward.

New Orleans has an estimated population of 393,292.⁴¹ New Orleans East, for example, consists of 21% of the city's total population and approximately 65% of the city's total land area; yet, only three full-line grocery stores operate there.

Table 9: New Orleans East Full-Service Grocery Stores

GROCERY STORE	ADDRESS
Wal-Mart #912	6000 Bullard Ave.
Winn Dixie #1439	9701 Chef Menteur Hwy.
Save-A-Lot	9999 Lake Forest Blvd.

Algiers and English Turn on the West Bank of the Mississippi River have just four (4) full-line grocery stores.

Table 10: Algiers/English Turn Full-Service Grocery Stores

GROCERY STORE	ADDRESS
Rouses Market #36	4001 Gen. De Gaulle Dr.
Winn Dixie #1426	3008 Holiday Dr.
Walmart #1163	4001 Behrman Hwy.
Save-A-Lot	3640 Macarthur Blvd.

The Lower 9th Ward has no full-line grocery stores; however, neighboring St. Bernard Parish does have several including Canseco's (6723 St. Claude Avenue) and Walmart (8101 W. Judge Perez Drive).

Entrance of Fresh Food in the Market & Purchasing Behaviors

Studies are generally mixed when it comes to the linkage between availability of fresh food and overall health, including healthy weights and healthy diets among nearby residents. In addition, the introduction of supermarkets into neighborhoods that were previously food deserts results in inconsistent, and sometimes statistically insignificant findings. While presumably the entrance of a grocery store into a new market would significantly elevate the purchasing of fresh fruits and vegetables, and healthful foods in general, studies on this topic have generated mixed results. Research has shown that consumers may prefer to shop at one grocery store over another, despite having a longer trip, as shown in a 2014 Philadelphia study where only "one-quarter (approximately 26%) of the residents adopted the new supermarket as their main store." As noted, lack of financial means may limit food access even for nearby residents. In summary,

⁴¹ 2017 Population Estimate (as of July 1, 2017)

studies indicate that the availability of healthy food does not necessarily translate to the purchase of healthy food.

- After a new neighborhood grocery store opened in Philadelphia, a study found that it “moderately improved residents’ perceptions of food accessibility.” However, this awareness did not translate to changes in reported fruit and vegetable intake or body mass index (BMI).⁴²
- Researchers found that a new supermarket in a low-income, racially-isolated area of Pittsburgh *may* improve residents’ health. Study results show fewer new diagnoses of high cholesterol as well as a marginally less increase in diabetes prevalence after the supermarket opened (compared to the control neighborhood).⁴³
- Another study in Pittsburgh shows the introduction of a new supermarket in a low-income neighborhood can improve perceptions surrounding access to healthy food, associated with regular shopping at the new supermarket.

Healthy Food Marketing Strategies

Similarly, other studies show that the provision of fresh foods in small neighborhood stores is not proven effective enough to substantially change purchasing behaviors. In order to change purchasing behaviors, stores must implement proven marketing strategies.

In “The Rationale behind Small Food Store Interventions in Low-Income Urban Neighborhoods: Insights from New Orleans,” Tulane Prevention Research Center cites several studies that provide evidence for a significant link between the in-store environment and purchasing behavior.⁴⁴ “[I]n particular, changing shelf space has been shown to have significant effects...” In an experimental study, researchers examined purchases following the doubling of shelf space length of select fresh fruits and vegetable categories in four (4) supermarkets. The experiment found that sales of hard fruits (e.g. apples, oranges, limes), soft fruits (e.g. pears, bananas, pineapple, grapes), and cooking vegetables (e.g. eggplant, corn, potatoes, and squash) each increased by 44, 49, and 59% respectively.” Other in-store marketing tactics that researchers have highlighted include promotional advertising inside the store, “special” displays, and placing particular items in prime locations. If done correctly, placement of items such as fresh produce in these prime locations can significantly increase their purchase.⁴⁵

⁴² Cummins, Steven, Flint, Ellen, Matthews, Stephen A. “New Neighborhood Grocery Store Increased Awareness of Food Access But Did Not Alter Dietary Habits or Obesity,” *Health Affairs*, Vol. 33, No. 2 (2014): 283-291.

⁴³ Richardson, Andrea S. MPH, PHD., Ghosh-Dastidar, Madhumita PhD, Beckman, Robin MPH, Flórez, Karen R. PhD, DeSantis, Amy PhD, Collins, Rebecca L. RhD, Dubowitz, Tamara ScD. “Can the introduction of a full-service supermarket in a food desert improve residents’ economic status and health?” *Annals of Epidemiology*, 27 (2017): 771-776.

⁴⁴ Bodor, J. Nicholas, Ulmer, Vanessa M., Dunaway, Lauren Futrell, Farley, Thomas A., Rose, Donald. Department of Community Health Sciences, Tulane University School of Public Health and Tropical Medicine. “The Rationale behind Small Food Store Interventions in Low-Income Urban Neighborhoods: Insights from New Orleans.” April 21, 2010.

⁴⁵ Ibid.

Shelf Space

A 2009 study examined shelf space of fruits, vegetables, and snack foods across food stores of varying sizes (small food stores, medium food stores, supermarkets, convenience stores, drug stores, and liquor stores, though excluded general merchandise stores such as Walmart and small box discount stores) in southern Louisiana and Los Angeles County. One finding that is particularly relevant to the Small Box Retail Diversity study is that stores of all types, including traditional, full-service grocery stores, devote more shelf space to unhealthy items than to healthy items. In light of this finding, authors of the 2009 study encourage policymakers to consider the following:

Policymakers seeking to improve health through dietary change or to reverse the obesity epidemic have an interest in increasing access to fruits and vegetables. While this may be translated into a desire to increase the number of food stores in low-income neighborhoods, a policy to accomplish this could have unintended adverse effects if it further increases the overabundance of unhealthy snack foods. Focusing only on increasing the number of supermarkets could have this effect because supermarkets offer more shelf space for unhealthy than healthy items. A better policy approach may be to increase the number of food stores of any size that meet criteria for the healthfulness of their mix of items.⁴⁶

Federal Nutrition Programs

Federal Nutrition Programs such as the Supplemental Assistance Program (SNAP) and Women, Infant Children (WIC) play an important role in food access in food insecure neighborhoods, especially low-income areas by providing additional funds for individuals and families to purchase food. Research of cities that passed and implemented food policies to increase food access, such as Minneapolis, utilized the guidelines and resources of WIC and SNAP require vendors provide healthy food. To model a similar healthy foods policy in New Orleans and to help define “healthful fresh foods,” the two programs and their presence in New Orleans are detailed below.

SNAP

SNAP provides nutrition assistance to participants who qualify based on income. The program provides funds commonly referred to as (EBT) Electronic Benefits Transfer funds. SNAP limits the types of products that can be bought using EBT. These products are limited to foods that are intended for at home consumption and not ready made meals bought ready to consume. The foods that qualify for EBT purchases are broad and only exclude hot prepared meals, alcoholic beverages, tobacco products, medicines, vitamins, and household products. Recipients can purchase seeds intended to grow produce using SNAP benefits.

⁴⁶ Thomas A. Farley, Janet Rice, J. Nicholas Bodor, Deborah A. Cohen, Ricky N. Bluthenthal, and Donald Rose, “Measuring the Food Environment: Shelf Space of Fruits, Vegetables, and Snack Foods in Stores,” *Journal of Urban Health: Bulletin of the New York Academy of Medicine*, Vol. 86, No. 5 (2009): 672-6821, https://www.researchgate.net/publication/225416401_Measuring_the_Food_Environment_Shelf_Space_of_Fruits_Vegetables_and_Snack_Foods_in_Stores (accessed Oct. 18, 2018).

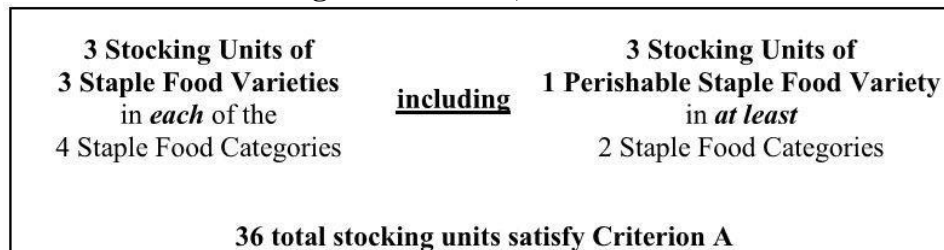
SNAP is widely accepted throughout many New Orleans food retail stores and can be accepted at qualifying food markets such as farmer's markets. Approximately 351 retailers in New Orleans accept SNAP benefits. These retailers include full-service grocery stores, convenience stores, specialty grocery stores, retailers selling food items such as gas stations and pharmacies, and area farmer's markets. Small box discount retailers such as Family Dollar, Dollar General, and Dollar Tree all accept SNAP locally.

Staple Foods

To qualify as a SNAP vendor, a vendor must meet one of two criteria: either stocking a percentage of staple foods under Criterion A, or Criterion B which is a calculation of all sales for the retailer minus the non-food sales, prepared foods, and accessory foods.

Staple food categories include fruits, or vegetables, meat, poultry or fish, dairy products, and breads or cereals. These differing criteria allow for a wide variety of retailers to qualify for SNAP benefits. Vendors qualifying under Criterion A are generally full-line grocery stores or retailers who stock a wider variety of food. Three of the staple food categories are considered "fresh foods" and require refrigeration. Vendors qualifying under Criterion B are generally convenience stores, corner stores, and retail goods establishments, pharmacies, and gas stations with accessory foods. Even restaurants selling some staple foods can qualify for SNAP based on the Criterion B formula as long as the staple food sales equal the total gross retail sales after taking the non-food sales, prepared/heated food sales, and accessory food sales out of the total sales.

Figure 12: Chart, Criterion A



Source: USDA SNAP: <https://fns-prod.azureedge.net/sites/default/files/snap/Retailer-Eligibility-Clarification-Criterion-A-and-B.pdf>

Figure 13: Chart, Criterion B

Total Gross Retail Sales	-	Non-food Sales (Gasoline, Lottery, Tobacco, Alcohol, Other Nonfood)	-	Prepared/ Heated Foods Sales	-	Accessory Foods Sales	=	Staple Food Sales
If Staple Food Sales are more than 50 percent of Total Gross Retail Sales , then the store meets Criterion B eligibility requirements .								

Source: USDA SNAP: <https://fns-prod.azureedge.net/sites/default/files/snap/Retailer-Eligibility-Clarification-Criterion-A-and-B.pdf>

WIC

WIC is a federal nutrition program meant to supplement pregnant women, breastfeeding women, non-breastfeeding postpartum women, infants (up to first birthday), and children (up to 5th birthday) who are nutritionally at risk. WIC provides additional nutritional assistance to qualifying individuals based on income. If recipients already receive and qualify for SNAP, Medicaid, or Temporary Assistance for Needy Families (TANF), then those individuals also meet the eligibility requirements for WIC⁴⁷.

Based on state data which shows all WIC retailers in Orleans Parish, no Family Dollar, Dollar Tree, or Dollar General stores are certified WIC vendors. While SNAP benefits do have vendor constraints to the types of foods that are available, WIC mandates more stringent types of food that vendors must stock to qualify as WIC retailers, and which foods WIC recipients may purchase. The foods approved by WIC were selected based on nutritional value and include foods high in calcium, protein, iron, fiber, Vitamin A, Vitamin C, and Vitamin D.

WIC Vendor Requirements

The WIC program is managed by each state. Louisiana's Department of Health reviews and accepts vendor applications for WIC. To qualify as a WIC vendor, vendors must first meet the requirements of the SNAP program and be a registered SNAP benefits vendor. WIC vendors must have competitive prices that match up with similar retailers and must not have exorbitant food costs in stores. Louisiana WIC allows both grocery retailers and convenience stores to apply for WIC authorization, as long as those vendors meet the definition of "full-line grocery store." WIC Louisiana defines a "full-line" grocery store as: "a store that stocks, and has on hand at all times at least: (1) 3 varieties of bread or tortillas with 5 or more units of each variety; (2) 4

⁴⁷ <https://www.fns.usda.gov/wic/about-wic-wic-glance>

varieties of fresh fruits with 5 or more units of each variety; (3) 4 varieties of fresh vegetables with 5 or more units of each variety; (4) 4 varieties of fresh or frozen meat, poultry or fish with 5 or more units of each variety; and (5) 2 varieties of rice with 6 or more units of each variety.⁴⁸ Vendors must apply to be an authorized WIC retailer, they are required to stock according to requirements and must agree to have the stocked items in their stores at all times.

Figure 14: Infant Formula Minimum Stock Requirements by Peer Group

Peer Group	Minimum Number of 12.0 or 12.4 oz Cans by Peer Group					
	1	2	3	4	5	6
Number of Cash Registers	1 to 3	4 to 7	8 to 11	12 to 15	16+	A50
Similac Advance Powder (6 cans per case)	12	12	24	24	24	Based on the infant formula minimum stock requirements shown for the vendor's number of cash registers
Similac Soy Isomil Powder (6 cans per case)	12	12	12	12	24	Based on the infant formula minimum stock requirements shown for the vendor's number of cash registers
Similac Total Comfort Powder (6 cans per case)	12	12	24	24	24	Based on the infant formula minimum stock requirements shown for the vendor's number of cash registers
Similac For Spit-Up Powder (6 cans per case)	12	12	12	12	24	Based on the infant formula minimum stock requirements shown for the vendor's number of cash registers
Similac Sensitive Powder (6 cans per case)	12	12	24	24	24	Based on the infant formula minimum stock requirements shown for the vendor's number of cash registers
<i>Note: A vendor with infant formula theft concerns may keep infant formula in a secure area to meet the minimum stock requirement. A notice of the location, varieties, and prices of infant formula must be posted in the area where shoppers would expect to find infant formula.</i>						

Source: Louisiana WIC Vendor Guide:

<http://ldh.la.gov/assets/oph/nutrition/WIC/Jereld/2016VendorReauthorizationDocuments/LAWICVendorGuide.pdf>

Figure 15: Non-Infant Formula Minimum Stock Requirements

PRODUCT	SIZE	MINIMUM STOCK REQUIREMENT
Infant Cereal – plain dry ²	8 oz. container	15 containers
Infant fruits ^{2,3}	4 oz. container	96 containers, 3 varieties
Infant vegetables ²	4 oz. container	96 containers, 3 varieties
Infant meats ^{2,3}	2 ½ oz. container	31 containers, 2 varieties
Peanut butter ²	16 – 18 oz. container	15 containers
Dried beans/peas ^{2,3}	16 oz. (1 lb.) container	6 containers, 2 varieties
Eggs ²	Dozen	10 dozen
Whole milk ²	Gallon (128 oz.)	2 gallons
Whole milk ²	Quart (32 oz.)	4 quarts
Low fat (1%) milk ²	Gallon (128 oz.)	4 gallons
Skim milk ²	Gallon (128 oz.)	4 gallons
Skim milk ²	Quart (32 oz.)	4 quarts
Cheese ²	8 ounce package	5 packages
Cheese ²	16 oz. package	5 packages
Canned salmon ²	5 – 6 oz. can	5 cans
Tuna fish ²	5 – 6 oz. can	10 cans
Whole grains ² (brown rice; whole wheat bread; whole wheat tortillas; corn tortillas; or whole wheat pasta)	16 oz.	10 packages, 2 varieties, 2 packages per variety
Breakfast cereals ^{2,3,4}	Various allowed (12, 18 oz.)	15 boxes, 5 varieties
Single strength juice ^{2,3}	48 oz.	6 containers, 2 flavors
Single strength juice ^{2,3}	64 oz.	6 containers, 2 flavors
Frozen concentrate juice ^{2,3}	11.5 – 12 oz.	6 containers, 2 flavors
Fresh fruits & vegetables ^{2,3}	At least \$20 worth	2 varieties of fruits and 2 varieties of vegetables
Notes: <ol style="list-style-type: none"> 1. For the current Louisiana WIC Approved Food List (WIC-23), see: http://ldh.louisiana.gov/index.cfm/page/999 2. When a specific number of varieties or flavors are identified in the Minimum Stock Requirement column, the required quantity need not be carried in each of all varieties, but the total required quantity must consist of at least the number of varieties or flavors indicated in the Minimum Stock Requirement column. 3. At least one variety must be whole grain. 4. Any WIC-approved food that has exceeded its "sell by," "best if used by," or other date limiting the sale or use of the food item will not be considered for minimum stock purposes. 5. Any WIC-approved food stocked by a vendor with pricing that exceeds CPC established by the State agency will not be considered for the purposes of meeting minimum stock requirements. 6. All vendors authorized to accept FIs must meet Infant Formula and Non-Infant Formula Minimum Stock Requirements listed above in the Vendor Guide. 		

Source: Louisiana WIC Vendor Guide:

<http://ldh.la.gov/assets/oph/nutrition/WIC/Jereld/2016VendorReauthorizationDocuments/LAWICVendorGuide.pdf>

**Figure 16: Additional Minimum Stock Requirements for Vendors
Electing to Provide Homeless Food Package**

A store seeking Louisiana WIC Authorization may elect to provide service to homeless WIC participants in addition to traditional participants by selecting that option in Part 4 of the Vendor Application. When a store elects to provide service to homeless WIC participants, additional stock requirements apply in order to ensure that homeless participants are able to obtain authorized food items for homeless participants with limited refrigeration and cooking facilities. Stores serving the homeless must maintain the stock below in addition to the MSR for all Vendors (see previous section). These items must be maintained in the customer area of the store at all times.

HOMELESS FOOD PACKAGE PRODUCT	SIZE	MINIMUM STOCK REQUIREMENT
Similac Advance RTU formula (6 containers per case)	32 oz. container	12 containers
Infant Cereal – plain dry ¹	3 oz. box	5 boxes
Peanut butter ¹	18 oz. container	1 additional container
Canned beans/peas ²	7 – 8 oz. cans OR 15 – 16 oz. cans	5 cans
Beans: Baked, Pork and beans, Beans with bacon, Great Northern, Kidney, Lima, Soy, Pinto & White Peas: Chick and Black-Eyed NOT ALLOWED: with beef, franks, brown sugar, and bacon, or spiced		
Powdered milk Unflavored only, any brand	25.6 oz. box	2 boxes
Evaporated milk No sweetened or condensed	5 oz. or 12 oz. can	5 cans
Canned fish (tuna or salmon) ¹	5 – 6 oz. can	2 additional cans
Breakfast cereals, cold (see Minimum Stock Requirements chart above for list of cold breakfast cereals)	12 oz. box/bag	5 boxes/bags
Single-strength juice ^{1,2} Brands and Flavors as follows: Ocean Spray Grapefruit Juice	12 oz. bottle (4-pack)	(2) two 4-packs
Dole Pineapple	5.5 – 6 oz. can (6-pack)	(1) one 6-pack
Nestle Juicy Juice	4.23 oz. box (8 pack)	(1) one 8-pack
Fresh fruits & vegetables ^{1,2}	Additional \$10 worth	2 varieties ready to eat (not in need of cooking)
Notes on Homeless Food Package Minimum Stock Requirements: 1. For the current Louisiana WIC Approved Food List (WIC-23), see: http://ldh.louisiana.gov/index.cfm/page/990 2. When a specific number of varieties or flavors are identified in the Minimum Stock Requirement column, the required quantity need not be carried in each of all varieties, but the total required quantity must consist of at least the number of varieties or flavors indicated in the Minimum Stock Requirement column. 3. Any WIC-approved food that has exceeded its "sell by," "best if used by," or other date limiting the sale or use of the food item will not be considered for minimum stock purposes. 4. Any WIC-approved food stocked by a vendor with pricing that exceeds CPC established by the State agency will not be considered for the purposes of meeting minimum stock requirements.		

Source: Louisiana WIC Vendor Guide:

<http://ldh.la.gov/assets/oph/nutrition/WIC/Jereld/2016VendorReauthorizationDocuments/LAWICVendorGuide.pdf>

The WIC stocking requirements eliminate many retailers in the New Orleans area as fresh foods, produce, and infant formula are required stocking items. In talks with local grocers, infant formula is an item retailers say is commonly shop-lifted from stores. New Orleans has approximately 124 grocery stores throughout the city.⁴⁹ However, only 42 retailers in New Orleans are qualified WIC vendors which accept WIC benefits. Of these retailers, only 14 are large full-scale grocery stores with square footage over 5,000 square feet. Some of these WIC vendors are smaller corner stores or convenience stores that are smaller in scale with some food items. Though not on the same scale as a full grocery store, they still meet the requirements of WIC's definition of a "full-line grocery store."

WIC Enforcement and Evaluation

The authorized state agencies for WIC do routine announced and unannounced visits to the approved retailers to ensure vendors are complying with the regulations. In addition to checking inventory, inspectors may also ask for records showing purchases made by WIC recipients and additional data on WIC purchases. Any newly approved vendors must go through training to receive WIC authorization. Vendors must then continue training every three years to comply.

WIC and SNAP Impacts in Louisiana

WIC stocking requirements in Louisiana could provide a guideline to encourage or enforce retailers to stock healthier products. Minneapolis utilized the WIC guidelines in Minnesota⁵⁰ to create their Staple Foods Ordinance. The infant formula requirement could be the deterrent that keeps many grocers and food retailer in New Orleans from complying with WIC stocking requirements. As stated earlier, meetings with local grocers stated that infant formula is an item commonly shoplifted in stores and cuts into a grocer's profits. Robert's grocery stores do not stock infant formula and are not WIC approved vendors. Additionally, not all Rouses grocery stores are WIC vendors. Following the guidelines of WIC's non-infant food stocking requirements, similar to Minneapolis' ordinance, could provide a guideline to encourage or require healthier products. In addition to requiring a limited amount of fresh fruits and vegetables, the guidelines could encourage healthier dried goods such as canned fish, whole grain products (brown rice, bread, whole wheat pasta), and dried beans which can be easier to stock and maintain floor area in a store.

Urban Agriculture

What is urban agriculture?

Urban agriculture can be defined as the growing, processing, and distribution of food through

⁴⁹ The number of grocery store retailers in New Orleans comes from licensing data from the Department of Revenue. Not all grocery retailers get licensed as grocery stores and retailers who sell food were added to this list.

⁵⁰ Hennepin County in Minnesota, which includes Minneapolis, has its own WIC stocking requirements which are the same as the rest of the state, but require slightly larger volumes of produce be stocked based on large populations. Retail food vendors with a population of 250,000 or more residents are required to follow these specific stocking guidelines.

plant cultivation and raising livestock within cities for feeding local populations.⁵¹ With the increase of urban food deserts in many part of the USA and the world, urban agriculture is providing a way to complement urban food needs, and to achieve food security and improved nutrition.

Tulsa Healthy Neighborhood Overlay Regulations pertaining to urban agriculture

As part of the case studies provided below in Section G of this report, staff looked into the regulations recently put in place in Tulsa, Oklahoma. These regulations are meant to restrict “small box discount stores” in a section of the city where the proliferation of such stores is said to “leave no room – or incentive – for traditional supermarkets to build in the area,” which, according to Tulsa’s District 1 Councilor, “helps explain why north Tulsa has become a food desert.”

A “Healthy Neighborhood Overlay District” was created to address these concerns, which are specific to this section of the city. The purpose and intent statement of the Tulsa’s Healthy Neighborhood Overlay not only includes that the overlay regulations are intended to avoid and reduce overconcentration of the small box discount stores within the boundary of the overlay, (this is discussed in Section G of this report), but also that they are intended to encourage and streamline grassroots access to fresh meats, fruits and vegetables, allow and encourage a community-based approach to distributing and purchasing these fresh foods, and encourage a greater diversity of purchasing options within the area.

A subsection of the article regulating the Healthy Neighborhood Overlay District pertains specifically to community gardens. While typically, on-site sale of community garden products is prohibited unless permitted by the underlying zoning district, that prohibition is lifted for community gardens located in all zoning districts within the boundary of the overlay district. A detailed list of use standards apply to community gardens, which is applicable throughout the city. It includes restrictions on hours of operations, use of motorized equipment, on-site trash storage, garden waste drainage, signage, notice to abutting landowners, and other operational standards.⁵²

Current regulations of agriculture uses in the City

The City of New Orleans has taken steps to remove barriers to agriculture when creating its current Comprehensive Zoning Ordinance. The definition for agriculture in the CZO is as follows:

⁵¹ Goldstein, M., “Urban agriculture: a sixteen city survey of urban agriculture practices across the country,” 2011 and Hendrickson M. K., & Porth M., “Urban Agriculture —Best Practices and Possibilities,” University Of Missouri Division of Applied Social Sciences, 2012, retrieved from <https://sustainabledevelopment.un.org/content/documents/5764Urban%20Agriculture.pdf> (accessed October 10, 2018)

⁵² Section 40.090 of Tulsa Zoning Code

“Agriculture. Land on which crops are grown and/or livestock are raised for sale, commercial use, personal food production, donation, or educational purposes.”

Permitted and Conditional Uses (Article 7 to 17)

Below is a summary of the use tables found in Articles 7 through 17 of the CZO that show the zoning districts where Agriculture is permitted (“P”), conditional (“C”), and a prohibited use (blank space). The Agriculture use is divided into two sub-categories “Agriculture – No Livestock” and “Agriculture – With Livestock”. Agriculture without livestock is more widely permitted in the city than agriculture with livestock. Agriculture without livestock is permitted by right in almost all zoning districts except Natural Areas Districts, General Planned Development District (GDP), Lake Area General Commercial District (S-LC), General Commercial Districts (C-1), Auto-Oriented Commercial District (C-2), Heavy Commercial Districts (C-3), Medical Service Districts (MS), and all Centers for Industry Districts. Agriculture with livestock is often a conditional use, except in Rural Residential Estate Districts (R-RE), in which it is permitted by right, and in Historic Core Districts and some Commercial Centers Districts, in which it is prohibited. While the New Orleans CZO does not include food processing as part of the definition of the agriculture use, urban agriculture or urban farming generally refers to the growing, processing and distributing of food in and around cities. For that reason, staff included Food Processing in the table below for reference. Food processing is classified as an industrial use in the CZO, while agriculture is classified as an open space use.

Table 11: Permitted and Conditional Uses Agriculture – No Livestock, Agriculture – With Livestock, and Food Processing

ZONING DISTRICTS	AGRICULTURE – NO LIVESTOCK	AGRICULTURE – WITH LIVESTOCK	FOOD PROCESSING
Open Space Districts			
OS-N Neighborhood Open Space	P		
OS-G Greenway Open Space	P		
OS-R Regional Open Space	P	C	
NA Natural Areas			
GDP General Planned Development	C	C	<i>C only in PD 9 and 10</i>
Rural Development Districts			
R-RE Rural Residential Estate	P	P	C
M-MU Maritime Mixed-Use	P	C	C
Historic Core Residential Districts	P		
Historic Core Non-Residential Districts	P		<i>P in HM-MU only</i>
Historic Urban Residential Districts	P	C	
Historic Urban Non-Residential Districts	P	C	<i>C in HU-MU only</i>
Suburban Residential Districts	P	C	

Suburban Districts	Non-Residential	P (except in S-LC)	C (except in S-LC)	
Commercial & Institutional Campus Districts	Centers	P (except in C-1, C-2, C-3 and MS)	C (except in C-1, C-2, C-3 and MS)	P (except in EC, MC, MS and LS) and C in MU-1
Centers for Industry Districts				P

Use Standards (Article 20)

The use standards for Agriculture are found in **Article 20, Section 20.3.C** and listed below:

20.3.C AGRICULTURE

20.3.C.1 ADDITIONAL BULK AND YARD REGULATIONS

All structures and other improvements are subject to the bulk and yard regulations of the district, except as provided below:

- a. There are no yard requirements for the planting of crops.
- b. All structures used for the keeping of livestock shall be located a minimum of twenty-five (25) feet from any lot line. This does not apply to apiaries, chicken coops, pigeon coops, and aquaponic structures, which shall meet the accessory structure requirements of Section 21.6.

20.3.C.2 SOIL TESTING

- a. Prior to the establishment of an agricultural use, soil testing from an accredited analytical laboratory is required to measure nutrients, heavy metals and any other harmful contaminants that may be present. The laboratory shall follow the testing protocol established by the Louisiana State University Agricultural Center. The soil samples shall be representative samplings from the entire portion of the site to be used for agricultural purposes. The applicant shall provide a written report showing the results of such testing.
- b. Soil testing is not required for sites already in agricultural use, as of the effective date of this Ordinance.
- c. Alternatively, the operator may use raised planter boxes for all plants, in which case soil testing is not required. Raised planters shall have a minimum height of one (1) foot, constructed of materials that will not contaminate the crops or soil, and have an impermeable barrier between on-site and imported soil.

20.3.C.3 FOOD PREPARATION, PROCESSING, AND PACKAGING

- a. No food or other products of any plants or livestock may be prepared, processed, or packaged in any residential district, except in the R-RE District. However, the canning of plants or plant products is permitted as part of any agricultural use.
- b. Food may be prepared, processed, or packaged at an agricultural use located in any non-residential district in which food processing is a permitted use.

- c. In any non-residential district in which food processing is classified as a conditional use, a property owner may apply for a conditional use to permit the preparation, processing, or packaging of food or other products of any plants or livestock raised on the agricultural use.

20.3.C.4 OPERATIONAL STANDARDS

- a. Dead plants, produce, and trash not used for composting or other gardening functions shall be removed from the site within forty-eight (48) hours.
- b. Except in the R-RE District and any Centers of Industry District, mechanical equipment may only be used during daylight hours.
- c. Regulated materials, such as chemicals, fertilizers, and toxins, shall not drain onto adjacent properties, into waterways, or onto public rights-of-way. Chemicals and other flammable materials shall be disposed of in accordance with federal and state requirements. If stored on-site, such chemicals or flammable materials shall be kept in waterproof containers in a locked structure when unattended.
- d. A sign containing the contact information for the agricultural use operator shall be posted at or within five (5) feet of the front lot line consistent with required setbacks. For any lots that constitute a portion of an agricultural use as a whole, but are not contiguous with the lot on which the owner or licensed operator of the farm resides, or where any lot in agricultural use does not include a resident or licensed operator of the farm present daily, an additional sign is required. Such signs shall not exceed a height of seven (7) feet and shall not exceed one (1) square foot in area.

20.3.C.5 PRESENCE OF ON-SITE LICENSED OPERATOR

An agricultural use shall be located on a single lot of record where a resident or licensed operator of the agricultural use is present daily, with the following exception. In the Historic Urban Neighborhood Districts and MU-1 and MU-2 Districts, an agricultural use, operated as a whole, may be multiple non-contiguous lots, provided that all lots are located within three-hundred (300) feet of the nearest point of the lot where the resident resides or licensed operator of the agricultural use is present daily. All lots constituting the agricultural use shall be indicated on any permit or license for the agricultural use.

20.3.C.6 RETAIL SALES

Retail sales for an agricultural use are permitted at farm stands within the Open Space Districts, Rural Development Districts, and any non-residential district, subject to the following standards:

- a. Farm stands shall conform to the provisions of Section 21.6.
- b. Retail sales are limited to the following:
 - i. Crops grown and/or livestock raised on the farm where the farm stand is located.
 - ii. Other unprocessed food products, or home processed food products such as jams, jellies, pickles, sauces, or baked goods created on the farm where the farm stand is located.

20.3.C.7 STANDARDS FOR LIVESTOCK

20.3.C.7.a GENERAL REQUIREMENTS

- i. A minimum site size of one (1) acre is required to keep livestock.
- ii. The maximum number of the following types of livestock animals that may be permitted on an agricultural use shall be in accordance with the standards provided below in Table 20-1: Minimum Lot Area for Livestock. As part of the conditional use approval, these standards will be used as the basis for establishing a standard for any animal not included in the table.

Figure 17: Minimum Lot Area for Livestock

Table 20-1: Minimum Lot Area for Livestock	
TYPE OF LIVESTOCK	MINIMUM LOT AREA PER ANIMAL
Horse, mule, cow, or llama	43,560 square feet (1 acre)
Goat or sheep	14,520 square feet (1/3 acre)
Swine	4,356 square feet (1/10 acre)
Rabbit	50 square feet
Duck or other fowl (excluding chickens)	50 square feet
More than 6 chickens	50 square feet per chicken after first 6

- iii. All livestock shall be kept so as not to cause any adverse impact, including but not limited to odor, noise, drainage, or pest infestation, on any other property. The presence of any such impact constitutes a violation of this Ordinance and a public nuisance that the Director of the Department of Safety and Permits and/or the Director of the Department of Health may require to be abated at the expense of the owner of the livestock and/or the owner of the property on which the livestock is kept.
- iv. All livestock shall be kept in accordance with the provisions of Chapter 18 of the City Code.

20.3.C.7.b ADDITIONAL INFORMATION FOR CONDITIONAL USE APPLICATIONS

Any application for a conditional use to permit livestock shall indicate the following information, in addition to all other information required as part of the conditional use application:

- i. The location, size, height, and materials of all structures, shelters, enclosures, and any other improvements proposed to be provided for the keeping, raising, care, maintenance, and/or other activities associated with the livestock.

- ii. The maximum number of each type of animal proposed to be kept at the farm for any period of time.
- iii. The storage and disposal of animal waste.

20.3.C.7.c ENCLOSURE AND SHELTER

- i. All livestock shall be kept within fences, corrals, barns, enclosures, or pens.
- ii. All livestock shall be provided sanitary and sound shelter, in accordance with Chapter 18 of the City Code.
- iii. All agricultural uses with livestock shall provide an appropriate method of protecting livestock in the event of flooding.
- iv. Agriculture use operators may include office and meeting spaces within structures on lots with an agriculture use, so long as such structures are ancillary to the agriculture operation and not the primary function of the land, and must be less than 20% of the entire land space occupied by the agriculture operation.

Temporary Uses (Article 21)

While farm stands are not allowed in residential districts, farmers market are allowed in any zoning districts at a maximum of one event per week per premise from 7 am to 8 pm. The sale of food for consumption on or off the premises requires licensing by the City and approval by the Department of Health.

Accessory Structures (Article 21)

According to **Section 21.6.A**, no detached accessory structure may be constructed prior to construction of the principal building to which it is accessory. Therefore a lot that is being used for agriculture use only, and does not contain any principal structure, could not contain any structure accessory to that use such as sheds, chicken coops or other ancillary structure associated with agriculture. The Department of Safety and Permits has interpreted the zoning ordinance as such in the past.

Small Box Discount Stores & Public Health Impacts

Childhood Obesity

Small box discount stores are typically located in and serve low-income communities. These communities statistically experience worse health outcomes than middle- or high-income populations. As noted, obesity and its related diseases have risen dramatically over the last several decades, which is caused in part by consumption of excessive amounts of calorie-dense foods. Most small box discount stores sell largely calorie-dense foods without also providing healthier options such as fresh produce. A hypothesis is that these stores may contribute to increased rates of obesity.

A 2015 study examined whether “dollar stores” have an impact on childhood obesity. While these stores do typically provide more unhealthy options and less healthy options than traditional grocery stores, they do stock certain healthier staple foods on their shelves, such as dried beans and oatmeal. As the study discusses, “... when residents have ready access to dollar stores, they may be in a better position to procure supplies for at-home meals. These meals, even if not perfectly balanced, are likely to be healthier and lower-calorie than the fare found on fast-food value menus.”⁵³ Because areas with denser concentrations of small box discount stores also tend to have higher childhood obesity rates, study authors considered several recommendations for how using these stores could contribute in positive ways to the health of the community.

- Educational interventions about how to shop for healthy items at small box discount stores;
- Community incentives for dollar stores that sell healthier foods; and
- Marketing/public relations campaigns for “health on a budget.”⁵⁴

In summary, the study found no causal link between childhood obesity and the existence of small box retail stores in their communities. In addition, it should be restated that traditional grocery stores also stock many unhealthy items.

Hazardous Chemical Regulation

As noted previously, small box discount stores traditionally serve low-income populations and communities of color, targeting shoppers in households making \$40,000 a year or less who live in food deserts. Forty percent of small box discount store customers are on some sort of public assistance.⁵⁵ Unfortunately, these same communities are most at-risk of exposure to unhealthy and toxic environments. Particularly in light of the 2008 economic recession, small box discount stores have begun attracting more middle-income customers, widening their market.

Health and environmental activists, including the group Campaign for Healthier Solutions based in San Diego, have begun holding discount stores accountable for the products they sell. Despite minimal federal and state requirements, a 2015 report identified toxic chemicals in the four largest chains (Dollar Tree, Family Dollar, Dollar General, and 99 Cents Only) following a testing of 164 products.^{56,57,58} The most illuminating finding revealed that 71% of the products tested from each chain contained one or more hazardous chemicals above concern levels.⁵⁹ A number chronic diseases and health conditions are associated with chemical exposure, including attention-deficit/hyperactivity disorder (ADHD), autism spectrum disorders, leukemia and primary brain cancer in children, asthma in children, major birth defects, and breast cancer. The report goes on to say that health issues such as asthma and learning disabilities have been linked

⁵³ Andreas C. Drichoutis, Rodolfo M. Nayga, Jr., Heather L. Rouse, and Michael R. Thomsen, “Food environment and childhood obesity: the effect of dollar stores,” *Health Economics Review*, Vol. 5, No. 37 (2015).

⁵⁴ *Ibid.*

⁵⁵ Campaign for Healthier Solutions, “A Day Late and a Dollar Short,” *Coming Clean*, February 2015.

⁵⁶ At this time, 99 Cents Only has no locations in New Orleans.

⁵⁷ Products were tested in California, Kentucky, Maine, New Mexico, Texas, and West Virginia.

⁵⁸ Products were tested for antimony, arsenic, bromine, chlorine, lead, mercury, and tin. Products determined to contain polyvinyl chloride plastic (PVC or vinyl) were further tested for phthalate and non-phthalate plasticizers.

⁵⁹ Campaign for Healthier Solutions, “A Day Late and a Dollar Short.”

to lead poisoning, and heart disease to arsenic exposure. Further, the economic costs of treating these diseases is both astronomical and largely preventable.

The issue of toxic chemical exposure extends beyond discount stores. Safeway, Costco, CVS, Target, Walgreens, Walmart, Sony, Mattel, and Johnson & Johnson have all been subject to fines for failure to properly manage known hazardous chemicals in their products. Unknown hazardous chemicals are another matter altogether. Since U.S. Congress passed the Toxic Substances Control Act (TSCA) in 1976, only about 200 out of 80,000 chemicals used in consumer products have been fully screened; only five (5) chemicals have been restricted, and 20% of these 80,000 chemicals are confidential, allowable under TSCA.

In response to consumer demands, many competitors such as Target and Walmart have adopted comprehensive chemical policies that disclose chemicals or use safer alternatives. Though the major dollar store chains have taken actions to remove some harmful products from their shelves, they have yet to adopt comprehensive chemical management policies. Dollar Tree, for example, has made claims that its practices go beyond the minimum federal requirements. According to its 2013 Sustainability Report, Dollar Tree advises vendors to “not use heavy metals in any products supplied to Dollar Tree.” In addition, the chain tests for phthalates and PVC plastic, and has advised its suppliers to cease using PVC in raingear as well as BPA in infant drinking containers.⁶⁰ Family Dollar has declared that they have “established a higher set of requirements than required by the 2008 Consumer Products Safety Improvement Act.”⁶¹

In June 2018, Dollar Tree’s CEO announced that the company had requested that its suppliers reduce and ultimately eliminate 17 highly toxic chemicals by 2020. This action came in response to concerns over several hazardous chemicals in Dollar Tree’s products. Bisphenol-A, commonly known as BPA, has been found in the liners of canned food purchased from Dollar Tree. BPA is an endocrine-disrupting chemical known to contribute to breast and prostate cancer, type-2 diabetes, obesity, and asthma, among other health problems. Per/polyfluoroalkyl substances (PFAS), also known to be endocrine-disruptors linked to a number of health issues, have been discovered in microwave popcorn bags at Dollar Tree stores. Arsenic, which has been associated with numerous types of cancer, developmental issues, diabetes, pulmonary disease, and cardiovascular disease, has been found in infant rice cereal sold by Dollar Tree.

Despite these companies moving in the right direction, the Campaign for Healthier Solutions is demanding comprehensive policies to identify and ultimately phase out harmful chemicals.

In summary, while many major small box discount store companies have yet to implement comprehensive chemical management policies, issues with hazardous chemicals in products is not limited to these types of stores. As noted, many well-known retailers have experienced issues with hazardous chemicals present in their products—and paid the price. In order to be more effective, the federal government should strengthen existing laws that regulate hazardous and potentially hazardous chemicals across all sectors, including retail.

⁶⁰ Ibid.

⁶¹ Ibid.

H. Case Studies

Motion (As Corrected) No. M-18-256 directs the City Planning Commission to research similarly situated cities, like Tulsa, Oklahoma, “to determine appropriate standards to govern this use and any necessary restrictions to assist in curbing the proliferation of small box discount stores in New Orleans that fail to offer fresh fruits and vegetables.”

The CPC staff examined several cities with policies designed to restrict and/or regulate small box discount stores and other related policies put in place to improve health outcomes based on healthy food access. In addition, staff examined existing policies in New Orleans that can contribute to improved healthy food access in communities with concentrations of small box discount stores.

Tulsa, Oklahoma

Tulsa, Oklahoma established regulations on discount retailers, by targeting these retailers through a specific “discount retailer” definition. Demand for stricter regulations of small box discount stores came out of the need to address the lack of full-service grocery stores in the Northern Tulsa area, a USDA-identified food desert, which exhibited the largest concentration of discount retailers. Concerned residents, as well as City Councilor Vanessa Hall-Harper, cited a high concentration of discount stores. They argued these stores offer limited food options, take away business from full-line grocery stores, and discourage other retailers from opening stores, furthering the food insecurity of the affected communities.

Small Box Discount Moratorium

The first step in limiting these discount stores was a Tulsa City Council-approved moratorium to halt applications for new discount stores in North Tulsa where high concentrations of existing stores already existed. The moratorium blocked “Small Box Discount Stores” from receiving permits to open less than 5,280 feet from any other small box discount store. The moratorium was set at 180 days from September 25, 2017 and eventually was replaced with the Tulsa Healthy Neighborhoods Overlay in April, 2018.

Tulsa Healthy Neighborhoods Overlay

The Tulsa Metropolitan Area Planning Commission heard the proposal for the Healthy Neighborhoods Overlay first. Staff for the Indian Nations Council of Governments (INCOG), Land Development Services Division wrote the proposed regulations for the Tulsa Metropolitan Area Planning Commission. Staff recommended approval of the overlay to limit the development of discount retailers, as well as to incentivize and promote fresh food recommendations. At the public hearing, members of the community commented on the need for more grocery stores within the overlay district and requested language to bring in more grocery stores. The Planning Commission did not vote to approve the overlay, stating that theft and safety keep stores from opening in the area and that over time the market will determine whether grocery stores will open in a particular area. Commissioners also stated that limiting development in North Tulsa would be too strict and would decrease sales tax revenue for the

City. Additional comments from commissioners included that convenience stores have just as much of a negative impact on the neighborhoods and an ordinance aimed at limiting those developments could play a similar role.

Ultimately, the Tulsa City Council, to whom the Tulsa Metropolitan Area Planning Commission forwarded its recommendation for denial, voted to approve the Tulsa Healthy Neighborhoods Overlay and accept staff recommendations. The overlay replaced the 180 day moratorium on discount retail and went into effect in April, 2018. While no longer an outright ban on the retailers, the overlay works to space them and provides more incentives for food stores with healthier options.

Zoning Code Changes

The Healthy Neighborhoods Overlay District included several modifications to the zoning ordinance, with, among things, a new definition for small box discount store. New use standards for discount retailers also amended the zoning ordinance.

Tulsa CZO Language:

Section 20.060 HNO, Healthy Neighborhoods Overlay

1. Purpose and Intent

The regulations of this section are established for properties located within the boundaries of the healthy neighborhoods overlay (HNO) district. The purpose of the healthy neighborhoods overlay (HNO) is to modify and supplement regulations in a specified area where there is a desire for greater diversity in retail options and convenient access to fresh meats, fruit and vegetables. These regulations are intended to:

- a. Avoid and reduce over-concentration of small box discount stores in the area.
- b. Encourage and streamline grassroots access to fresh meats, fruits and vegetables
- c. Encourage a greater diversity of retail activity and purchasing options within the area.
- d. Allow for a more community-based approach to distributing and purchasing fresh meats, fruits and vegetables in specified area.
- e. Promote investment and development in a community where change is desired.

20.060-B Applicability

Except as otherwise expressly states, the regulations of this section apply within the boundaries of the HNO district to all new uses and structures and all building alterations and site modifications that require a building permits.

20.060-C Exemptions

- a. Uses that contain a prescriptions pharmacy or offer for sale gasoline or diesel fuel are exempt from the dispersal standards established in Section 20.060-D.
- b. Uses that dedicate a minimum floor area of 500 square feet to the sale of fresh meat, fruits or vegetables are exempt from the dispersal standards established in Section 20.060-D.
- c. Grocery Stores are exempt from the dispersal standards established in Section 20.060-D.

20.060-D Dispersal Standards for Small Box Discount Stores

To avoid over-concentration, a small box discount store, as defined in Section 35.050-LF, within the overlay area must be separated from another small box discount store within or outside the overlay area by a minimum distance of 5,280 feet. The required separation distance must be measured in a straight line from the nearest point on the lot line of the other property occupied by a small box discount store. The separation distance requirements of this section may be reduced if approved through the special exception approval process.

20.060-E Community Gardens

Community gardens within the boundaries of the of the HNO district are governed by the regulations of Section 40.090, unless expressly stated by this section. On-site sale of community garden products is permitted by right in all zoning districts within the boundaries of the HNO district.

20.060-F Grocery Store

The minimum parking ratios established in Section 55.020, Table 55-1 for a Grocery Store use are reduced by 50% in the HNO district.

20.060-G Nonconformities

Nonconformities that exist within the HNO district are governed by the regulations of Chapter 80.

In addition to restrictions put on small box discount stores, Tulsa's HNO district provides incentives to create a larger diversity of retailers that promote healthier food options. Incentives meant to encourage the development of full-line grocery stores within the overlay include parking requirement alleviations. Community gardens within the overlay are also allowed to sell produce from gardens within all zoning districts in the overlay.

Tulsa CZO Definitions

Tulsa planners created a definition for *small box discount store* to differentiate this type of retail from the retail sales of convenience goods, consumer shopping goods, building supplies and

equipment, and grocery stores. To be sure that small box discount store regulations would not include grocery stores, Tulsa also created a definition for *grocery store*.

35.050-L Retail Sales

Uses involving the sale, lease or rental of new or used goods to the ultimate consumer. Specific retail use types include the following:

Convenience Goods

Retail sales uses that sell or otherwise provide (1) sundry goods; (2) products for personal grooming and for the day-to-day maintenance of personal health or (3) food or beverages for off-premise consumption, retail bakeries and similar uses that provide incidental and accessory foods and beverage service as part of their primary retail sales business. Typical uses include convenience stores, drug stores, specialty food stores, wine or liquor stores, gift shops, newsstands, florists and tobacco stores. Does not include small box discount stores or grocery stores.

Consumer Shopping Goods

Retail sales uses that sell or otherwise provide wearing apparel, fashion accessories, furniture, household appliances and similar consumer goods, large and small, functional and decorative, for use, entertainment, comfort or aesthetics. Typical uses include clothing stores, department stores, appliance stores, TV and electronic stores, bike shops, book stores, costume rental stores, stationary stores, art galleries, hobby shops, furniture stores, pet stores and pet supply stores, shoe stores, antique shops, secondhand stores, record stores, toy stores, sporting goods stores, variety stores, video stores, musical instrument stores, medical supplies, office supplies and office furnishing stores and wig shops. Does not include small box discount stores or grocery stores.

Building Supplies and Equipment

Retail sales uses that sell or otherwise provide goods to repair, maintain or visually enhance a structure or premises. Typical uses include hardware stores, home improvement stores, paint and wallpaper supply stores and garden supply stores.

Small Box Discount Store

Retail sales uses with floor area less than 12,000 square feet that offer for sale a combination and variety of convenience shopping goods and consumer shopping goods; and continuously offer a majority of the items in their inventory for sale at a price less than \$10.00 per item.

Grocery Store

Retail sales uses that sell or otherwise provide assorted goods; products for personal grooming and for the day-to-day maintenance of personal health; and that sell food and beverages for off-premise consumption; and that have a minimum floor area of 500 square feet dedicated to the sale of fresh meat, fruits and vegetables. A principal use Grocery Store may include an accessory use restaurant or dining area for on-premises consumption of food and beverage items.

The new definition of small box discount stores enables the zoning to regulate them separately. This use varies from the other retail definitions in several ways, including the discount nature of their pricing in which a majority of items are priced under \$10.00. Building supplies, equipment stores, and grocery stores are not captured by this definition as they supply specific items such as hardware and building materials. Stores are not included if they provide 500 square feet of floor area to the sale of fresh meat, fruits and vegetables. The definition does not include any specifics of the “fresh” category beyond listing the meats, fruits and vegetable categories. In addition to targeting the price of consumer goods, the small box discount store also targets the square footage of these stores by capturing retailers with less than 12,000 square feet in area. The consumer shopping goods definition provides a larger variety of items and includes some specialty retailers which focus on a particular category of consumer goods. Land use patterns within Tulsa generally do not include corner commercial stores, and convenience stores are usually attached to a gas station, keeping them from being included in the square footage and pricing distinction.

Issues

Since the initial moratorium went into effect, no small box discount stores have expanded their retail offerings to include fresh foods to bring them into the “grocery” definition, which would include 500 square feet of fresh foods. Small box discount retailers are continuing to open up in Tulsa, including two just outside of the overlay’s boundary, indicating that these retailers are continuing to expand and are working around the boundaries. Nothing in the zoning code prevents these retailers from opening just outside of the overlay. Based on conversations with city planners and Councilmember Vanessa Hall-Harper, there has been no legal pushback on these measures to-date. In addition, no applications for small box discount stores within the overlay have been submitted since the regulations went into effect. The permitting office would enforce these definitions by asking questions of new retail uses within the overlay.

Tulsa’s Food Desert Task Force

Similar to the initiative taking place in New Orleans, a Tulsa-based non-profit, the Healthy Community Store Initiative helps provide fresh foods to corner and convenience stores throughout North Tulsa and expand fresh foods access in the city’s food deserts. Started in 2010, the initiative works with local farmers and retailers to harvest excess food surplus to bring to the local food bank. Hands to Harvest partners with local farmers, grocery stores, and food services to harvest excess food and distribute to the local food bank. Part of the initiative includes the R&G Family Grocer, a mobile grocery store on a 36-foot long horse trailer converted to grocery

store.⁶² The truck travels throughout the Northern Tulsa area to different scheduled stops providing better food access within food desert defined areas. The mobile truck participates in the Double Up Oklahoma (DUO) program which doubles SNAP benefits when used at participating food retailers to purchase up to \$20 worth of fresh fruits and vegetables.⁶³ The DUO program is also offered at participating farmer's markets throughout Oklahoma.

Analysis

While still new, the Tulsa Healthy Neighborhoods Overlay District provides a zoning and land use regulation to limit small box discount stores. The new regulations can discourage and prevent discount retail stores from opening new locations unless they provide 500 square feet of fresh foods sales area. However, several discount stores in North Tulsa have opened just outside of the overlay, effectively bypassing the distance restriction. The distance restriction provided in the use standards prevents any new discount store from opening within 5,280 feet from another discount store. If a retailer does not propose a location within the overlay, a discount retailer could potentially continue to open new stores just outside of the boundary which may still impact the community within the overlay and create another high concentration area of discount retailers just outside of the overlay. A city or county-wide distance requirement from each discount retailer could prevent stores from skirting around this regulation.

At this point, Tulsa has not received applications for any new small box discount store within the Overlay and has therefore not gone through a review process. One issue that may come to light is the fact that fresh food is not specifically defined. Specifically, “fresh meat, fruits or vegetables” does not specify whether this food can be frozen.

Kansas City, Kansas

In 2016, following public outcry concerning the maintenance and upkeep of existing discount retail stores, Kansas City restricted small box discount stores by requiring a special use permit for small, discount dollar stores. The Kansas City Urban Planning & Land Use department was tasked with reviewing an ordinance to limit the concentration of these stores. As part of the proposal, staff introduced a new definition to the zoning code to define “dollar retail store.”

Proposed Language

The ordinance directed Kansas City's Urban Planning & Land Use department to study limitations to dollar retail stores, including creating measures to define their use, similar to the motion directing the New Orleans City Planning Commission staff to define and regulate discount retailers.

Sec. 27-340. – Definitions

Dollar retail stores means a store with a wide variety of merchandise for sale of five dollars or less, limited fresh produce, and buildings of less than 15,000 square feet. Examples include but

⁶² <http://www.tulsarealgoodfood.org/rgfamilygrocers>

⁶³ <https://csctulsa.org/double-up-oklahoma/>

are not limited to Family Dollar, Dollar General, Dollar Tree, 99 Cent Deals, Five Below, dime stores, or 5 & dime stores.

Sec. 27-593. – Allowable special uses.

- b) The following uses are permitted only on approval of a special use permit regardless of the zoning district of the proposed location:

(21) Dollar retail stores only in C-2 general business district, C-3 commercial district, M-1 light industrial and industrial park district, M-2 general industrial district, and M-3 heavy industrial district subject to the following criteria:

a. Separation Requirements

1. No dollar retail store shall be located within 10,000 feet of any other dollar store or within 200 feet of any property used primarily for a single-family residence, a two-family residence, a town home, or any apartment building. The separation distances shall be measured from property line of the dollar retail store to the property line of the property containing the residential use. This separation provision shall not apply to any dollar store that can demonstrate to the Unified Government that they were in operation at the location requested in the license application prior to the effective date of this article, and that they have operated continuously under the same name since that time.

b. Signage

1. Following all permanent sign requirements under section 27-727.

c. Façade, Landscaping, and Screening

1. All commercial design guidelines must be met for all facades including, but not limited to, the creation of quality development with respect to site planning, architectural design and landscaping.

2. Commercial uses in industrial district shall be subject to commercial design guidelines.

Zoning Code Amendments

Kansas City included a new definition that targets both the price of the merchandise at these stores, items for \$5 or less, the lack of fresh produce, and building sizes less than 15,000 square feet. The definition also calls out dollar retailers by name. A spacing requirement of at least 10,000 feet between stores is included within the new regulations. Similar to a conditional use, a special use permit goes before the City Planning Commission with a recommendation from a Unified Government staff planner. At the time of the ordinance, Wyandotte County, the county within Kansas City, Kansas, had approximately 20 discount dollar stores which included Family, Dollar General, and Dollar Tree.

Analysis

The Kansas City policy change predates the Tulsa Healthy Neighborhoods Overlay. The City

Planning Commission voted to approve staff recommendations, and the new zoning language has been in place since April 2016.

At the time that the ordinance passed, two dollar stores were in the process of opening within close proximity to each other, which would not be allowed under the current regulations, and have since opened. Dollar retail stores can still open, provided they meet the distance requirement and go through the special use permit process.

Minneapolis, Minnesota

Staple Foods Ordinance

2008 Ordinance

Minneapolis' Staple Foods Ordinance, originally implemented in 2008, is the first of its kind in the United States. Created to address poor food access, particularly in low-income areas, the Staple Foods Ordinance identified specific “staple” foods and required any store licensed as a grocery store to stock these items. The ordinance applied not only to new but also existing stores. The 2008 ordinance outlined four categories of staple foods—dairy, bread or cereal, meat, poultry, fish, or vegetable proteins, and fresh fruits and vegetables.⁶⁴ In Minneapolis, licensed grocery stores may include gas stations, corner stores, dollar stores, pharmacies, and any other store that sells food for off-premises or home consumption.

This initial ordinance had a low compliance rate of 28%. Several issues limited its success. The language of the ordinance was vague; it allowed for significant exemptions from the requirements. The City of Minneapolis had little enforcement ability and stores needed additional support to help them adapt to the policy changes.⁶⁵

To address these issues, the Minneapolis Health Department (MHD) implemented a Healthy Corner Store Program, a voluntary initiative which provided assistance to store owners with the goal of Staple Foods compliance.

2015 Amended Ordinance

Realizing that policy changes were necessary to adequately address the weaknesses of the original ordinance, the City amended the Staple Foods Ordinance in 2014, and it went into effect on April 1, 2015. Based on the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), the amended Staple Foods Ordinance increases the number of staple foods categories to ten, setting minimum variety and quantity amounts for food items.⁶⁶ These revised

⁶⁴ These categories were based on the U.S. Department of Agriculture's Supplemental Nutrition Assistance Program (SNAP) requirements in place at the time.

⁶⁵ Office of Disease Prevention and Health Promotion, *Counting Carrots in Corner Stores: The Minneapolis Staple Foods Ordinance: A Law and Health Policy Project Bright Spot*, <https://www.healthypeople.gov/2020/law-and-health-policy/bright-spot/counting-carrots-in-corner-stores-the-minneapolis-staple> (accessed Sept. 28, 2018).

⁶⁶ The Women, Infants & Children (WIC) Program has specific requirements for the state of Minnesota, which the Minneapolis Health Department modified to better address community needs.

categories emphasize healthy foods, a policy change from the original Staple Foods Ordinance, which focused on food access in general. In particular, the Ordinance aims to improve the availability of fresh fruits and vegetables, as well as whole grains.

All licensed grocery stores must stock and offer for sale specified foods across the following ten categories: milk, cheese, eggs, meat and vegetable proteins, fruit and vegetables, 100% juice, whole grain cereal, whole grains, canned beans, and dried peas, beans, and lentils. As noted, the revised requirements set both quantity standards for required foods as well as identity specific foods that may *not* count towards each particular category. The meat and vegetable proteins category, for example, requires at least three varieties of meat, poultry, canned fish packed in water, or vegetable proteins like nut butter and tofu. The stocking of canned fish or meat in oil does not count toward fulfillment of this category. The canned beans category requires at least three varieties of canned beans. Not counted toward this requirement are canned beans that have added fats, oils, or meats, baked beans, pork, and beans, chili beans, or refried beans, soup mixes, or green or wax beans.

Table 12: Staple Foods Ordinance Required Food Categories & Quantities

CATEGORY	REQUIREMENT	NOT PERMITTED
Milk	<ul style="list-style-type: none"> ▪ 5 gallons total ▪ Any combination of gallon or half-gallon containers ▪ At least 2 of the following varieties: skim/nonfat, 1%, or 2% milk, or “plain” or “original” milk alternatives 	<ul style="list-style-type: none"> ▪ Buttermilk, chocolate, or flavored milk ▪ Items not in gallon or half gallon containers
Cheese	<ul style="list-style-type: none"> ▪ 6 pounds total ▪ Packages of at least one-half pound (8 oz.) ▪ At least 3 varieties 	<ul style="list-style-type: none"> ▪ Cheese food ▪ American cheese or individually wrapped slices ▪ String cheese singles
Eggs	<ul style="list-style-type: none"> ▪ 6 one dozen containers total ▪ Large size only 	<ul style="list-style-type: none"> ▪ 6-count or 18-count containers ▪ Medium or extra large-sized eggs
Meat & Vegetable Proteins	<ul style="list-style-type: none"> ▪ At least 3 varieties of meat, poultry, canned fish packed in water, or vegetable proteins such as nut butter and/or tofu ▪ Nut butter containers up to 18 oz. 	<ul style="list-style-type: none"> ▪ Single serving packs or freshly sliced deli meat ▪ Canned fish or meat in oil ▪ Nut butters that contain other foods such as jelly, jam, chocolate, or honey
Fruits & Vegetables	<ul style="list-style-type: none"> ▪ 30 lbs. or 50 items fresh and/or frozen total ▪ At least 7 varieties; at least 5 must be fresh ▪ No more than 50% from a single variety 	<ul style="list-style-type: none"> ▪ Added ingredients like sweeteners, salt, or spices ▪ Shelf-stable fruit cups or cans in syrup or juice ▪ Dried fruits or herbs ▪ Vegetables or fruit with

		dressings, dip, or cheese
100% Juice	<ul style="list-style-type: none"> ▪ 6 containers total of 100% juice; at least 2 must be citrus ▪ Frozen/non-frozen concentrate: 11.5-12 oz. containers ▪ Juice: 59 oz. or larger containers 	<ul style="list-style-type: none"> ▪ Containers smaller than 59 fluid oz. or smaller than 11.5 oz. concentrate ▪ Fresh-squeezed juices or smoothies
Whole Grain Cereal	<ul style="list-style-type: none"> ▪ 4 boxes or bags total, 12 oz. or larger, whole grain cereal or cereal grains ▪ At least 3 varieties 	<ul style="list-style-type: none"> ▪ Cereals that list the following as the first ingredient: enriched flour, wheat flour, milled corn, rice, bran, farina
Whole Grains	<ul style="list-style-type: none"> ▪ 5 pounds total ▪ At least 3 varieties such as 100% whole grain bread, corn tortillas, brown rice, or oatmeal 	<ul style="list-style-type: none"> ▪ Products with “enriched wheat flour” as first ingredient ▪ Popcorn with butter, salt, or added fat/oil ▪ White flour tortillas
Canned Beans	<ul style="list-style-type: none"> ▪ 192 oz. total of canned beans or legumes (approx. 13 cans) ▪ At least 3 varieties 	<ul style="list-style-type: none"> ▪ Added fats, oils, meats ▪ Baked beans, pork and beans, chili beans, or refried beans ▪ Soup mix ▪ Green or wax beans
Dried Peas, Beans, Lentils	<ul style="list-style-type: none"> ▪ 4 packages total ▪ Packages up to 16 oz. 	<ul style="list-style-type: none"> ▪ Seasonings or other added ingredients ▪ Soup mixes

Licensed grocery stores may be exempt only under the following circumstances:

1. Accessory use grocery stores that accept neither SNAP nor WIC⁶⁷
2. Gas stations with under 300 square feet of retail floor space
3. Stores located in the Central Commercial District of downtown Minneapolis

When the amended Staple Foods Ordinance went into effect on April 1, 2015, the City allowed a one year grace period—until April 1, 2016—for stores to come into compliance. During this time, the Health Department, which enforces the ordinance, provided education and technical assistance to retailers with grocery licenses.

On April 1, 2016, the City of Minneapolis began enforcement, which includes penalties for non-compliance. If a store is found non-compliant, City health inspectors issue a written violation which allows the retailer time (typically between 30 and 90 days) to address the issue and come into compliance. If a follow-up inspection reveals the store is still not in compliance, the store is subject to a citation and a \$200 fine, with a maximum fine of \$2,000. For stores refusing to come into compliance with Staple Foods, the City could revoke the business license; however, despite

⁶⁷ Minneapolis defines an *accessory use grocery store* as a retail establishment that sells staple foods as an accessory use to its primary business, or sells only specialized types or classes of staple foods and accessory foods, including, but not limited to, such establishments as imported food stores and gift shops. These stores do not include stores that accept government supplemental nutrition programs.

low compliance rates, the City has not taken this action. The MHD's Healthy Living Team, which focuses on obesity and chronic disease prevention, conducts annual visits to all eligible stores and provides technical assistance in reaching compliance. The Healthy Living Team does not take enforcement actions.

Issues

While the impact of the Staple Foods Ordinance is currently under review, several issues are immediately apparent. The low fine for non-compliance, an apparent result of a City leadership that is pro-small business, does little to dis-incentivize larger retailers or corporate chains which may view a maximum fine of \$2,000 as a small price to pay to do business in Minneapolis.

In addition, the Staple Foods Ordinance applies to all stores with grocery store licenses (with the three previously noted exemptions); however, license renewals are not tied to store compliance. Because of this, a non-compliant store may renew its occupational license without real consequences. As noted, the enforcement arm allows for revocation of occupational licenses; however, this has not been done in practice.

Specific problems have arisen with small box discount stores and compliance with the Staple Foods Ordinance. Dollar Tree's four Minneapolis stores ceased accepting SNAP benefits in Minneapolis in order to be eligible for the exemption from the Staple Foods Ordinance.⁶⁸ Dollar Tree operators claimed that compliance would require stores to receive shipments more frequently than once per week—a practice that allows for the \$1.00 price tag on all items—in order to maintain the supply of fresh foods. The City has fined Family Dollar, which accepts SNAP, for non-compliance.

Impacts & Outcomes

The University of Minnesota's Department of Public Health has completed a three-year Staple foods Ordinance Evaluation (STORE) study looking at the impacts of the Minneapolis Staple Foods Ordinance in "high-risk stores" (e.g. dollar stores, gas stations). The study addressed high-risk stores due to the expectation that the Ordinance would present a greater challenge to these stores vs. those stores that likely already meet or exceed the minimum requirements (e.g. conventional grocery stores and stores that accept WIC). The primary study question asked whether the Ordinance drove increased purchasing of staple foods. The research team collected baseline data as well as conducted annual assessments in 2015, 2016, and 2017—post implementation of the amended Staple Foods Ordinance—in both Minneapolis as well as St. Paul, Minnesota, the control city. The team presented their findings to the Minneapolis City Council on October 15, 2018.

These findings include:

- Healthy food availability has increased since implementation, with retailers in St. Paul

⁶⁸ Erin Golden, "Minneapolis healthy food rules prompt Dollar Tree to drop food stamp benefits," StarTribune, May 6, 2016, <http://www.startribune.com/minneapolis-healthy-food-rules-prompt-dollar-tree-to-drop-food-stamp-benefits/378445251/> (accessed October 11, 2018).

also getting healthier. No significant difference has been seen between Minneapolis and St. Paul.

- Healthy food purchases have not increased during the period of study, despite the fact that more healthy food is available.
- Full compliance with the policy in “high-risk stores” is low—at 10% in 2017.

The Minneapolis Health Department (MHD) also collected data over the period of time that the amended ordinance has been in effect to study overall compliance. Staff based its findings on compliance levels of eligible stores (242 stores are non-exempt licensed grocery stores) by checking for compliance in 91% of eligible stores. Their data indicate that overall compliance with the Staple Foods Ordinance decreased by 13% since its implementation. Despite this, their overall findings are positive: the number of stores meeting between six and nine requirements (out of ten) has increased by 22%. The number of stores that meet less than five (out of ten) requirements has decreased by 10%.

Their data collection also examines compliance by store type shedding light on which types of stores may have the most difficulty in meeting these requirements. Discount stores were among the lowest levels of full compliance.

Table 13: 2018 Compliance Rates by Store Type⁶⁹

CATEGORIES MET	SUPER- MARKET	CORNER STORE	DISCOUNT STORE	FOOD- GAS MART	PHARMACY	GENERA L RETAIL
10 of 10	97%	38%	11%	13%	0%	80%
6-9 of 10	3%	52%	89%	78%	100%	20%
0-5 of 10	0%	10%	0%	9%	0%	0%

The Minneapolis Health Department’s data also identifies compliance by staple food category. Across all ten categories, compliance was highest in the Meat, Poultry, Fish, and Vegetable Proteins category (97%). On the other hand, Fruit and Vegetables was second lowest (74%). Despite this statistic, compliance levels for Fruit and Vegetables have actually increased since 2015, from 68% to 74%. Two staple food categories experienced a decrease in compliance between 2015 and 2018: milk (91% to 84%) and eggs (80% to 66%).

Minneapolis Health Department staff identified reasons for lower than desired compliance rates:

- **Real/perceived consumer purchasing patterns**
Stores were reluctant to stock items they did not think customers would buy.
- **Dietary preferences**
Diets in certain populations might not align with the categories.
- **Inventory management**

⁶⁹ Data courtesy of Minneapolis Health Department

Perishable items are more difficult and more expensive to stock due to the need for expensive refrigeration equipment and the staff time required for regular inventory rotation/culling.

Some stores had difficulty stocking the correct sizes/quantities (e.g. the store may sell medium eggs instead of the required large eggs).

- **Supply chain issues**

Some stores, particularly small-scale retailers, experienced challenges procuring fresh produce.

In an effort to improve compliance moving forward, the Minneapolis Health Department identified five strategies:

- **Further monitoring and enforcement of non-compliant stores**

No citations or fines have been issued for these stores thus far, and staff plans to strengthen enforcement.

- **Technical assistance**

Staff will continue providing technical assistance in the form of inventory management, including helping stores identify culturally-appropriate foods that would satisfy requirements; financial support to install refrigeration equipment; assistance in applying for WIC or SNAP/EBT authorization; etc.

- **Education and training**

Minneapolis Health Department staff will identify new stores applying for grocery licenses or undergoing substantial renovations to help align the store environment and business practices with Staple Foods requirements;

- **Customers financial incentives**

These incentives, currently a pilot project, encourage low-income customers to purchase fruits and vegetables;

- **Text changes to ordinance language**

Possible changes will be based on findings from the STORE Study and citizen/store owner feedback.

Analysis

Minneapolis' Staple Foods Ordinance is a significant policy in terms of potential long-term impacts as well as resources the City has dedicated to its implementation. Staff spend significant time providing education and technical training to businesses to help them reach compliance. The issue of food access is real, particularly in low-income and minority communities. Due to that, the provision of healthy "staple" foods citywide can help improve access for people who may not have had it previously. However, there are likely still particular barriers in place preventing the purchase of this food, including education and awareness. Behavioral changes, such as a desired shift from purchasing healthy "staple" foods, in place of energy-dense foods that are high in fat and sugar, will likely take longer to occur than the three year study period. Based on that, the full impacts of the ordinance are yet to be seen.

Baltimore, Maryland

Like New Orleans, Baltimore has neighborhoods that face food insecurity and has high concentrations of neighborhoods which exist within food deserts and food swamps. Baltimore's Department of Planning has implemented several incentives to create better food access citywide.

Baltimore Food Policy Initiative

To address food insecurities in different communities, the planning department created the Baltimore Food Policy Initiative to work on solving some of the City's food issues through land use and zoning. An intergovernmental collaboration between the Department of Planning, Office of Sustainability, Baltimore City Health Department, the initiative works to tackle food insecurity through multiple strategies.

Land Use Measures

The planning department cites conveniences stores and retailers that sell food, but not on the same scale as a full supermarket, as part of the food insecurity issue. Decreasing restrictions on urban gardening has allowed community gardens to sell produce on site. In 2017, the City reduced zoning restrictions to allow these gardens to set up farm stands and sell produce. Hoop houses that function similar to greenhouses no longer have to go through the building permit process for new construction structures.

Personal Property Tax Credits

In addition to these zoning code changes, the City has created incentives for supermarkets to locate in food insecure neighborhoods. A bill which passed through the Maryland State Legislature in April 2015, SB 541 gives Baltimore City the authority to offer personal property tax abatements and incentives to encourage grocery stores to open in food insecure areas.⁷⁰ The measure allows for food deserts "to establish a tax credit against the personal property tax imposed on qualified supermarkets in food desert incentive areas."⁷¹

Local Policies

Several local policies, based on national models, are in place in an effort to increase access to healthy, nutritious food in food insecure areas.

Fresh Food Retailer Initiative

The City of New Orleans' Fresh Food Retailers Initiative (FFRI) program is an effort to increase access to fresh foods in traditionally underserved neighborhoods in the City in addition to

⁷⁰ <https://planning.baltimorecity.gov/baltimore-food-policy-initiative/food-policy>

⁷¹ <https://baltimore.legistar.com/LegislationDetail.aspx?ID=2467749&GUID=BB6C7558-1C21-410C-8FB8-C6994EAAFB3A&Options=&Search>

providing quality employment opportunities and serving as a catalyst for neighborhood revitalization. The program provides direct financial assistance to retail businesses by awarding forgivable and/or low-interest loans to supermarkets, grocery stores, and other fresh food retailers. Eligible activities include: pre-development, site assembly and improvement, construction and rehabilitation, equipment installation and updates, staff training, and start-up inventory and working capital. The total amount of Disaster Community Development Block Grant (D-CDBG) FFRI funding awarded, per store, may not exceed \$1,000,000, of which the total portion of forgivable loans may not exceed \$500,000. The City of New Orleans has provided \$7 million in D-CDBG) funds toward the program, which has been matched 1:1 by project partner Hope.

Forgivable and interest-bearing loans are available to supermarkets or other retail grocery outlets committed to expanding the healthy food offerings in low- or moderate-income, underserved neighborhoods. An underserved neighborhood is defined as an area of below average supermarket density or grocery sales. Applicants must plan to either: (1) open a self-service supermarket or other grocery retail outlet primarily selling fresh produce, seafood, meat, dairy, and other groceries; (2) renovate or substantially improve a store's ability to stock and sell a variety of fresh fruits and vegetables; or (3) develop a real estate project that will lease space to a grocery store tenant.

The City has partnered with HOPE and The Food Trust to implement the program. HOPE is dedicated to strengthening communities, building assets and improving lives in economically distressed areas of the Mid-South by providing access to high-quality financial products and related services. HOPE sponsors the Hope Credit Union, which is a low-income designated credit union that converts federally-insured deposits into financial services for low-wealth communities. Under the FFRI, Hope will provide a combination of forgivable and interest-bearing loans to FFRI participants.

The Food Trust works to ensure that every child and family has equal access to affordable and nutritious food. The Food Trust's goals are to increase the availability of fresh foods, develop a stable food supply in underserved communities, and improve the connection between urban and agricultural communities. Under FFRI, the Food Trust will evaluate applications to determine eligibility for the program. The FFRI has received 68 applications since the program's inception in 2011 and five grocery store projects have received funding support through the FFRI (see Figure 18). Of the six stores funded through the FFRI, five are currently operating and one (Da Fresh Market) closed due to poor sales and repaid the FFRI loan per program requirements.

Figure 18: FFRI Funding Recipients

RECIPIENT	YEAR	ADDRESS	FUNDS RECEIVED	PEOPLE SERVED
Da Fresh Market	2012	2139 Baronne Street	\$117,000	N/A
Broad ReFresh (Whole Foods)	2013	300 N. Broad Street	\$1,000,000	11,015
Circle Foods Store	2013	1522 St. Bernard Avenue	\$1,000,000	16,100
Dryades Public Market	2015	1307 Oretha Castle Haley Boulevard	\$1,000,000	10,300
Robert Fresh Market	2016	2222 St. Claude Avenue	\$1,000,000	20,862
			Total	58,277

The program has provided access to fresh foods for 58,277 New Orleanians who resided in previously underserved areas and currently has approximately \$300,000 remaining from its initial budget of \$7 million. It has yet to be determined if the program will be refunded under the new mayoral administration.

New Orleans Healthy Corner Store Collaborative

The New Orleans Healthy Corner Store Collaborative assists local corner store operators in increasing the amount of fresh, healthy food sold to consumers while also developing business sustainability tools. The Collaborative is a joint venture by Propeller, the City of New Orleans, Liberty's Kitchen, and Top Box Foods. The Mayor's Office of Community and Economic Development funds the program, contributing \$100,000 for year two of the program. Funding goes toward staff time, business consultant time, marketing materials, infrastructure updates such as coolers, and other fixtures.

The New Orleans Healthy Corner Store Collaborative is based on successful healthy corner store projects across the United States, including the Urban Food Project in Birmingham, Alabama, the Food Trust in Philadelphia, and DC Central Kitchen in Washington, DC.

The Collaborative trains participating stores in marketing techniques to increase produce sales, including running promotions, placing produce displays front and center, and arranging signage/displays using bright colors. In addition, all produce is priced to sell. While no stores participating in the Healthy Corner Store Program had to eliminate other types of inventory in order to sell fresh produce, some stores relocated soda and beer to the back of the store.

**Table 14: Healthy Corner Store Collaborative
Year-to-Date Sales Numbers for 2018⁷²**

Total Units of Produce Sold	57,775
Total Pounds of Produce Sold	22,015
Total Revenue Earned for Stores from Produce	\$43,096.30
Total Profit Earned for Stores from Produce	\$12,350.16

The New Orleans Healthy Corner Store Collaborative has assisted nine corner stores in providing fresh food for sale:

Year One Corner Stores:

- Danny Food Store
1150 Simon Bolivar
- Supermercado Las Acacias
4929 Freret Street
- Burnell's Lower 9th Ward Market
2036 Caffin Avenue
- R & B Grocery (formerly Community 6)
1921 Orleans Avenue

Year Two Corner Stores:

- Algiers Supermarket
3141 General Meyer Boulevard
- Franklin Discount
6100 Franklin Avenue
- Habibi Grocery
9530 Hayne Boulevard
- Key's Food Store
2600 Louisiana Avenue
- Overflow Market
432 N. Galvez Street

While the Healthy Corner Store Collaborative focuses on small neighborhood stores, representatives indicated a willingness to work with small box discount store retailers to get fresh

⁷² Provided by Top Box Foods. Current as of September 16, 2018.

food into neighborhoods without adequate access. When selecting stores to fund, the Collaborative takes into account many criteria, including the following:

- Is store located in a low income census tract?
- How far is the store from the nearest grocery store?
- Is the store near other businesses, schools, community centers, or public buildings?
- Is the store authorized to accept SNAP/WIC benefits?
- Store owner presence 50% of the time
- Capacity to accommodate additional inventory
- Willingness to change store layout prioritizing fresh produce
- Does the store have employees? Are the active and working or seem to be just handing out?
- Does the owner express an interest in providing healthier options for the community?

Best Practice Findings

- Land use regulations (e.g. zoning) to achieve improvements to public health have been implemented in many cities and held up by the courts.
- Kansas City, Kansas and Tulsa, Oklahoma have each adopted regulations designed to restrict the proliferation of small box discount stores. Both cities, Tulsa more so, have linked the provision of fresh food to their regulations. In Tulsa, for example, any store that provides at least 500 square feet of floor area to the sale of fresh meat, fruits, or vegetables is exempt from the one mile dispersal standard.
- Though the occupational licensing framework is substantially different in Minneapolis, Minnesota, the Staple Foods Ordinance applies to any store licensed as a grocery store—including small box discount stores—with a few exceptions in an effort to expand access to healthy, nutritious food.
- Financial incentives can assist in the entry of more food options, including healthy food options, in areas where grocery stores or food choice in general are not currently providing healthy foods.
- Loosening of zoning regulations, particularly pertaining to urban agriculture, may be able to assist in providing greater access to healthy foods in areas where food access is limited.

I. Small Box Discount Store Regulation Issues, Analysis, and Recommendations

In order to address the proliferation of small box discount stores, staff examines possible land use regulation tools to reduce the impacts of future stores, including new definitions, dispersal requirements, alcohol regulations, and use standards. In addition, staff considers other ways in which to provide access to healthier food in areas classified as food deserts by exploring possible incentives that may be attractive to grocery stores as well as a possible loosening of agriculture requirements.

Staff also examines challenges with the permitting and occupational license processes, and enforcement limitations.

Land Use Regulation Issues

Proposed Definitions

Small Box Variety Store

During the course of evaluating “small box discount stores,” staff determined that, while certain bad actors undoubtedly exist, as they can for any use, it is unnecessarily prejudicial to single out stores for stricter regulation because they sell discounted items. At their core, small box discount stores are retail stores that sell a variety of goods ranging from cleaning supplies, to birthday cards, personal grooming products, milk and soft drinks, cigarettes, and clothing. Due to negative consequences associated with the proliferation of these stores and to encourage the provision of more healthful fresh foods, the staff recommends a new definition and land use regulations, regardless of whether the stores are discount retailers.

In order to ensure that the small box variety store classification does not capture unintended retail uses that may fall within the 5,000 to 15,000 square feet range, staff has singled out a number of uses that should not be classified as small box retail. For example, the proposed definition does not encompass prescription pharmacies, such as Walgreens, CVS, or locally- or independently-owned pharmacies.

The staff proposes the following definition as part of its recommendation:

Small Box Variety Store: A retail store between 5,000 and 15,000 square feet that sells at retail an assortment of physical goods, products, or merchandise directly to the consumer, including food or beverages for off-premises consumption, household products, personal grooming and health products, and other consumer goods. Small box variety stores do not include small box stores that:

1. contain a prescription pharmacy;
2. sell gasoline or diesel fuel;
3. primarily sell specialty food items (e.g. meat, seafood, cheese, or oils and vinegars);

4. dedicate at least 15% of shelf space to fresh or fresh frozen foods; or
5. dedicate less than 5% of shelf space to food sales.

Fresh or Fresh Frozen Food

Small box variety stores that sell non-incidental food items (over 5% of floor area) may threaten existing full-line grocery stores and may prevent the entrance of new full-line grocery stores into the same market.⁷³ Because the proposed definition for small box variety store does not encompass small box stores that dedicate at least 15% of shelf space to fresh foods, it is necessary to define *fresh foods* to ensure that the Department of Safety & Permits is able to easily classify relevant new uses should the City ultimately codify any recommendations from this study.

In addition, due to the possible challenge of small stores to adequately manage fresh, non-frozen produce, staff recommends the inclusion of *fresh frozen food* in the definition.

Fresh or Fresh Frozen Food: Food for human consumption that is unprocessed, or otherwise in its raw state; food that was quickly frozen while still fresh.⁷⁴ This includes unprocessed meat and seafood.

Full-Line Grocery Stores

A staff recommendation to allow additional floor area for full-line grocery stores and permit by right requires the creation of a grocery store definition.

Grocery Store: A retail establishment primarily engaged in the sale of items in the following categories: a general line of groceries, packaged frozen food, dairy products, poultry and poultry products, confectioneries, fish and seafood, meats and meat products, fresh fruits and vegetables, and other grocery and related products where foods including fresh meat, poultry, seafood, and produce make up 25 percent or more of the shelf space and display area. A grocery store with at least 20,000 square feet in gross floor area may sell packaged alcoholic beverages.

High Concentration in Certain Neighborhoods/Capping Measures

In accounting for all existing small box discount retailers in the city, staff found that geographically, there is a higher concentration of these stores in areas of the city where the median household income is between \$12,000 and \$45,100. According to the Small Box Retail Stores and Median Household Income map shown below, staff can identify four areas in particular, where these stores are concentrated in census tracts where the median household income falls in that lower category:

⁷³ Impacts on full-service grocery stores is examined in detail previously in this report.

⁷⁴ The proposed definition for *fresh and fresh frozen food* is based on the U.S. Food and Drug Administration's *fresh, freshly frozen, fresh frozen*, and *frozen fresh* definitions as described in Sec. 101.95 "Fresh," "freshly frozen," "fresh frozen," "frozen fresh," Title 21, Volume 2 (Revised as of April 1, 2018), "Subchapter B: Food for Human Consumption."

- Gert Town/Tulane-Gravier/Central City, which counts six (6) stores, including three (3) on Carrollton Avenue, one (1) on North Broad Street, and two (2) on Washington Avenue. These stores are located approximately 0.5 to 1.5 miles from each other.
- Seventh Ward/St. Claude/Bywater/Lower Ninth Ward, which counts seven (7) stores, including four (4) on St. Claude Avenue, one (1) on North Claiborne Avenue, one (1) on St. Bernard Avenue, and one (1) on Almonaster Avenue. These stores are located approximately 0.5 to 1 mile from each other.
- New Orleans East/Gentilly, which counts fifteen (15) stores, including six (6) on Chef Menteur Highway, two (2) on Elysian Fields Avenue, two (2) on Downman Road, one (1) on Crowder Boulevard, three (3) on Morrison Road, and one (1) on the Interstate 10 Service Road. These stores are located approximately 0.25 to 2 miles from each other.
- Behrman/Tall Timbers-Brechtel, which counts four (4) stores, including three (3) stores on General de Gaulle Drive and one (1) on Behrman Place. These stores are located approximately 0.25 to 1 mile from each other.

Figure 19: Small Box Retail Stores & Median Household Income



In contrast, neighborhoods where the median household income is between \$45,100 and \$78,200 contain only three of these stores, and neighborhoods where the median household income is above \$78,200 contain only one (1). The three stores located within census tract characterized by a median household income between \$45,100 and \$78,200 dollars are located in the Filmore, Navarre, and old Aurora neighborhoods. The only store located in a census tract characterized with a median household income higher than \$78,200 dollars is on General de Gaulle Drive, at the edge of the Tall Timbers neighborhood, near the Intracoastal Waterway.

While concentration of small box discount does not only occur in New Orleans East, staff observed a lack of grocery stores in New Orleans East and the Lower Ninth Ward in comparison to the rest of the city. Grocery stores are shown in blue dots in Figure 19 above. Because New Orleans East residents do not benefit from a variety of food retail options, the concentration of small box retailers in this area is more problematic.

Recommendations

When high concentration of a certain use in a specific area is demonstrated to create negative impacts, staff has routinely recommended these uses be regulated in such a way to minimize impacts on neighborhoods. There are different land use mechanisms that can potentially minimize these negative impacts. They include dispersion measures, conditional use requirements, spacing requirements, limiting the total number of such uses, and use standards.

To prevent oversaturation in any particular area, spacing requirements could be put in place to limit the number of stores and their density. Limitations on concentration can typically be put in place by limiting the number of such uses per blockface and/or square, or per a certain distance measured in feet. This type of regulatory system could spread out small box variety stores and avoid overconcentration. In addition, because these stores can negatively impact full-service grocery stores, or otherwise deter them from locating nearby, a minimum spacing requirement can be applied from full-line grocery stores as well.

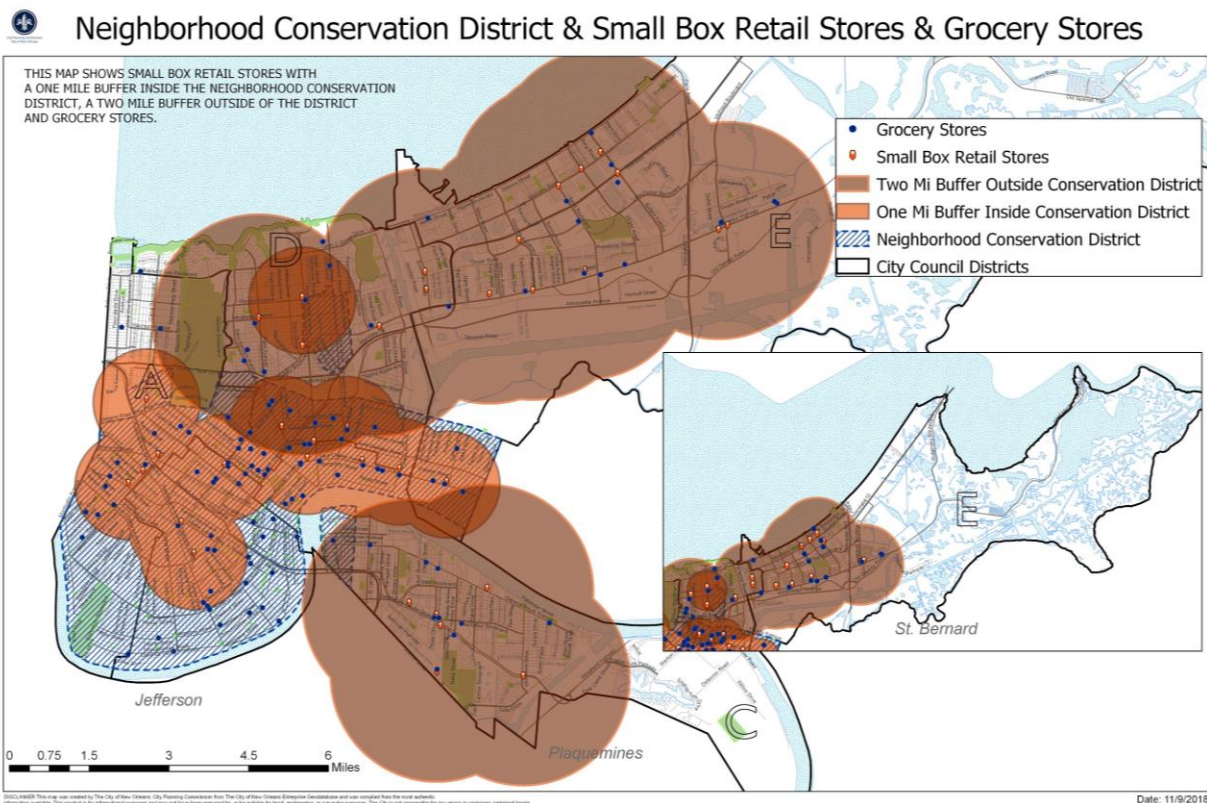
This distance requirement could apply to the entire city or to areas which are identified to have an unbalanced ratio of grocery stores and small box discount retailers to population. However, based on a review of Tulsa, Oklahoma's Healthy Neighborhoods Overlay, staff believes that a citywide regulation is preferable. Considering the difference in development pattern and density between the central areas of the city and the suburban areas of the city, staff believes that two different distance requirements would be appropriate. A one (1) mile distance requirement would be the most appropriate in historic areas of the city, which fall within the boundary of the Neighborhood Conservation District (NCD), shown in blue in the map below. The NCD generally includes the portion of the city located south of I-610, in historic core districts, historic urban districts, and central business districts.⁷⁵ While Gentilly Terrace neighborhood is located within the boundaries of the NCD, it is more suburban in development pattern and density. Therefore, staff believes that only the areas of the NCD south of I-610 should be subject to a one (1) mile distance requirement.

⁷⁵ More specifically, the NCD is established by ordinance as the area generally bounded, on the east bank of the Mississippi River, by the Orleans/Jefferson Parish line, Metairie Road, Interstate 10, Norfolk-Southern Railroad track, Orleans Avenue, City Park Avenue, Wisner Boulevard, Interstate 610, Florida Boulevard, the Orleans/St. Bernard Parish line, and the Mississippi River; on the west bank, the NCD encompasses the area generally bounded by Atlantic Boulevard, Bodenger Boulevard, the Orleans/Jefferson Parish line, and the Mississippi River, as well as all National Register Historic Districts that are on the National Register of Historic Places, pursuant to 16 U.S.C. 470 et seq., section 26-11, and other applicable laws. In addition to the Gentilly Terrace National Register District, the area bounded by the following streets, and those properties fronting on the bounding streets, shall be deemed to be part of the NCD: beginning at Elysian Fields Avenue at Gentilly Boulevard, north along Elysian Fields Avenue to Filmore Avenue, east along Filmore Avenue to Peoples Avenue, south along Peoples Avenue to Gentilly Boulevard, and along Gentilly Boulevard back to Elysian Fields.

In areas of the city characterized by a suburban type of development with lesser development density, staff believes that a two (2) mile distance requirement would be the most appropriate spacing requirement. In order to capture general commercial districts located within suburban areas, the area subject to the 2 mile distance requirement would not only include suburban zoning districts but all zoning districts located outside of the NCD boundaries. As seen on the map below, buffers of one (1) mile and two (2) miles from any existing small box variety stores would prevent the location of new dollar stores in all areas shown in orange and brown. New stores could still locate outside of the orange and brown areas as long as it also is located within a zoning district that allows such uses. These distance requirements would prevent further concentration in areas of the city that already have a number of this type of stores.

- Prohibit small box variety stores within less than one (1) mile, or 5,280 feet, of any existing small box variety store in areas of the city located within the boundaries of the NCD (except Gentilly Terrace).
- Prohibit small box variety stores within less than two (2) miles, or 10,560 feet, of any existing small box variety store in areas of the city located outside of the boundaries of the NCD (including Gentilly Terrace).

Figure 20: Small Box Discount Stores—1 Mile Buffer in Neighborhood Conservation Districts and 2 Mile Buffer in Non-Neighborhood Conservation Districts



Urban Agriculture

Due to the limited access that parts of the city have to fresh, healthy food, staff has examined methods to limit the barriers involved in selling fresh food at agriculture uses on residentially zoned lots. Agriculture without livestock is permitted by right in most zoning districts (including residential zoning districts), and agriculture with livestock is permitted by right in rural districts and allowed with a conditional use in some commercial and open space districts. The CZO states that while products may not be prepared, processed or packaged in a residential district, the canning of plants or plant products is permitted for any agricultural use even in residential districts. Further, retail sales for an agricultural use are permitted at farm stands only within Open Space Districts, Rural Development Districts, and non-residential districts. In these instances, retail sales are limited to crops grown and livestock raised on the farm where the farm stand is located and to unprocessed food products, or home processed food products such as jams, jellies, pickles, sauces, or baked goods created on the farm where the farm stand is located. While farm stands are not allowed in residential districts, farmers markets are allowed in any zoning districts at a maximum of one event per week. Finally, Article 21, Section 21.6.A.9 of the CZO states that “no detached accessory structure may be constructed prior to construction of the principal building to which it is accessory.”

Recommendations

If a shed or other similar type of structure associated with urban agriculture cannot be authorized on a lot that is entirely used for the growing of crops, the ability to store tools, store food, or can products on site is effectively limited. Based on this, staff recommends the following:

- Allow accessory structures without a principal structure on lots used for agriculture.

Additionally, the agriculture use standards states that farm stands, where food products created on the farm are sold, are only allowed in open space, rural development and non-residential districts. Farmers market are allowed in all zoning districts but require licensing by the City and the Department of Health and are limited to one event per week. To promote agriculture in areas of the city with limited access to grocery stores, staff recommends the following:

- Allow farm stand sales for community gardens and all agriculture uses in all residential zoning districts in which agriculture is a permitted use, or, where it is a conditional use, upon approval. Farm stand sales should be allowed seven days a week to sell produce exclusively grown on site.

Finally, while processed food is an industrial use that is not allowed in most districts where agriculture use is allowed, the agriculture use standards refer to “home processed food products” such as jams, pickles, sauces, or baked goods created on the farm as products that are allowed to be sold at farm stands. There is no distinction in the Comprehensive Zoning Ordinance between food processing and home processed food products. While allowing for canning of goods on residential lots, the CZO states that food may not be prepared, processed, or packaged in a residential district (except R-RE).

- Allow “home food processing” of agricultural products grown on site in any district where agriculture is a permitted use.

Full-Line Grocery Stores

A grocery store is a retail establishment that primarily sells food. Grocery stores generally offer a mix of perishable and non-perishable food items and may feature bakeries, butchers, and delicatessens, in addition to significant amounts of non-food products such as household items. Grocery stores generally range between 25,000 and 60,000 square feet in size, but can also be much smaller. Examples of grocery stores in the New Orleans area include large stores such as Rouses, Winn Dixie, Whole Foods Market, and Robert Fresh Market and smaller, more intimate operations such as Canseco’s and Zara’s.

Figure 21: Rouses (Baronne) and Canseco’s (Esplanade)



Post-Katrina, several new grocery stores have located in Orleans Parish, including the Whole Foods on Broad Street, the Rouses in the CBD, and the Winn Dixie on N. Carrollton Avenue in Mid City. Some of the new stores have been retrofits of existing structures (Whole Foods on Broad St. and Rouses in Warehouse District), while others have been new construction (Winn Dixie on Carrollton Ave.). At the same time other stores have closed post-Katrina and remain vacant to this day, which places a burden on local residents as access to fresh food options becomes more limited.

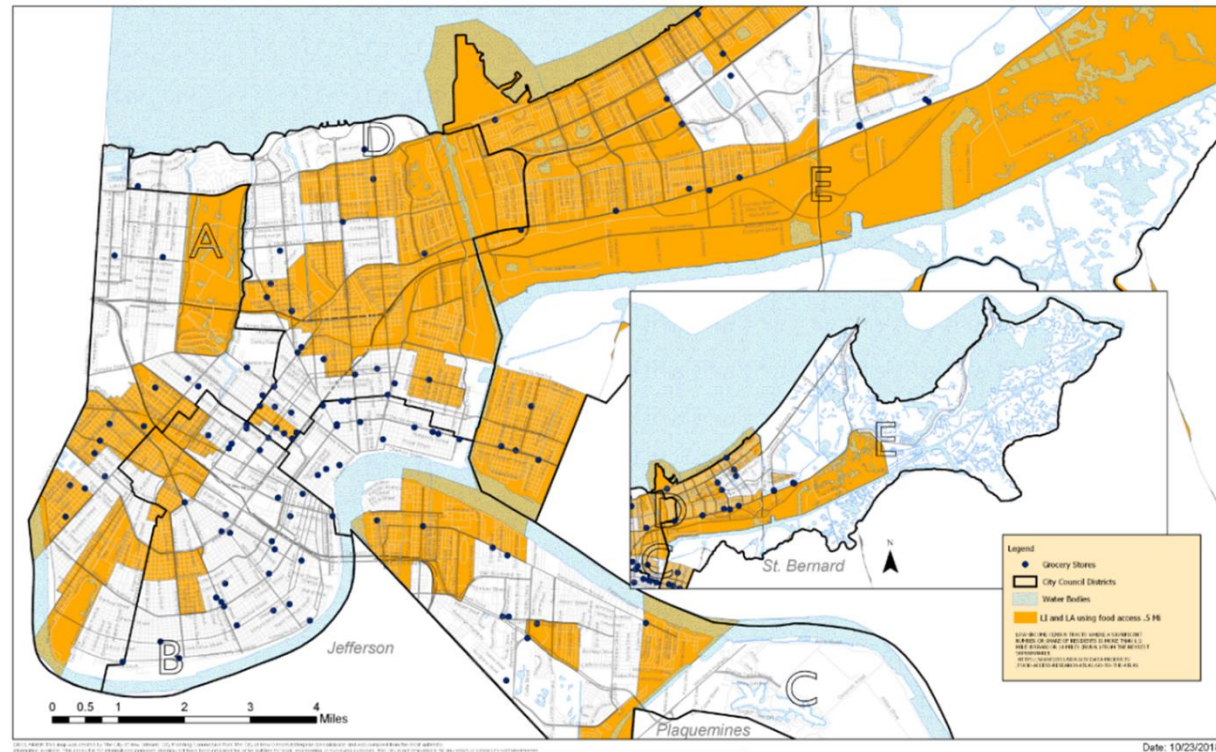
Figure 22: Vacant Grocery Stores



Figure 23 depicts low-income census tracts within Orleans Parish where a significant number of residents have limited access to full-line grocery stores providing fresh food options and existing

grocery stores. Areas such as New Orleans East, Hollygrove, and the Lower Ninth Ward stand out as having both limited access and few existing grocery stores. There are many factors that go into why a grocery store may locate or not locate in an existing location. This section discusses how these decisions are made and offers potential solutions for areas with limited access to grocery stores.

Figure 23: Low Income/Low Access ½ or 10 Mile, and Grocery Stores



Location Selection Criteria

Grocery retailers are formulaic when it comes to the location selection for a new store due to the fact that they operate on slim profit margins (under 2 percent net profit after taxes).⁷⁶ Operators need to be convinced that the area can support a store if one were to be opened. Potential grocers generally obtain a detailed data profile of an area and collect the following data before deciding where to locate a new store:

- Demographics
 - Population
 - Age
 - Race or Ethnicity
 - Educational attainment
 - Housing tenure (rental versus ownership)
- Real Estate Investment Activity
 - Existing residential and commercial development

⁷⁶ See Food Marketing Institute, Food retailing in the 21st Century: Riding a Consumer Revolution, retrieved from <http://www.fmi.org>.

- Planned residential and commercial development
 - Median home sales price, positive/negative change
- Income Profile
 - Median Income
 - Household net worth
 - Concentrated buying power
- Grocery Retail Demand
 - Estimated Expenditures
 - Leakage Dollars, by store type
 - Location and size of competitors
- Access Information
 - Major roads and traffic counts
 - Public transit service
 - Cars per household
- Crime
 - Violent crime
 - Property crime
 - Police presence

Potential grocers analyze the data gathered by professional surveyors and/or in-house analysts that attempt to predict whether a store will have a favorable probability of success. Since the cost of opening a new grocery store could potentially reach a price tag in the millions of dollars, a thorough analysis of the target area is critical.

The New Orleans area has experienced a rapid and significant increase of small box discount stores, mirroring national trends. According to research published by Forbes.com, from 2010 through 2015, the top four dollar store chains (Dollar General, Dollar Tree, Family Dollar, 99 Cents Only) grew their combined total annual sales from \$28 billion to an estimated \$42 billion, representing a compound annual growth rate (CAGR) of 8.5%. Within this same timeframe, the top four discount stores grew their combined annual sales in groceries, or “consumables” (typically defined as food, tobacco, health and beauty, and household cleaning products) by over \$10 billion, from \$18.3 billion to \$28.6 billion. Based on this research, the top four discount stores now represent 2.9% of the entire United States grocery market (approximately \$1 trillion), up from 2% in 2010.⁷⁷ Discount Stores are certainly increasing their market share of grocery sales and shopping dollars that may have potentially been spent at a traditional grocery stores are now being spent at dollar stores, a phenomenon that is certainly magnified in areas with a high concentration of discount stores.

In addition to hard data and market forces affecting a grocery operator’s decision to locate in a specific area, the perception and image of a location can have a significant impact on the evaluation of a potential store site. Negative perceptions of an area from issues such as crime (real or perceived) and aesthetic aspects including litter, lack of beautification, and vacant structures can have an impact on the decision to invest in a certain area. During the course of this

⁷⁷ Deborah Weinswig, “How the dollar store boom may shake up big grocers,” Forbes, May 2016, <https://www.forbes.com/sites/deborahweinswig/2016/05/09/how-the-dollar-store-boom-may-shake-up-big-grocers/#3f40539260db> (accessed October 18, 2018)

study, the City Planning Commission staff met with several local grocers who spoke to the fact that the issue of crime (real or perceived) had deterred efforts to locate in certain areas of New Orleans, such as New Orleans East.

Violent crime and property crime data retrieved by the staff from the New Orleans Police Department indicates that perceptions of crime in New Orleans East may be just that, a matter of perception and related to the image of this area of the city. The crime data reflects that the violent and property crime rates per 100,000 residents is actually lower in New Orleans East than in Orleans Parish as a whole.⁷⁸ These data implies that neighborhoods such as New Orleans East may have a problem related to perception. However, there are many actions that municipalities and communities can take to entice a store to locate in a certain area.

Possible Incentives

Developing grocery stores are often risky and costly endeavors. Offering incentives can be an effective tool for attracting a grocery store to an underserved area. Offering incentives can minimize risks of potential operators and projects can become more feasible.

Below are a number of possible incentives that could help attract grocery stores to an area:

- **Streamlined planning process** – Municipalities can offer help to get projects off of the ground and avoid stalling in the review and permitting phase. Some municipalities appoint a designated staff member to assist the applicant through the planning phase to avoid unforeseen hurdles from delaying progress.
- **Zoning considerations**
 - **Maximum Total Floor Area** – Commercial Use – Many zoning districts in Orleans Parish require conditional uses for commercial uses that exceed a certain threshold of gross floor area and outright prohibit others that exceed a certain gross floor area. For example, the HU-MU Historic Urban Mixed Use District (which includes the St. Claude Ave. portion of the Lower Ninth Ward) requires a conditional use for commercial uses over 5,000 square feet of gross floor area and prohibits those with over 10,000 square feet of gross floor area. The conditional use process requires an application to be heard and voted on by the City Planning Commission and the City Council, in a process that can range between four and six months. Eliminating the maximum total floor area requirements for potential grocers could be a valuable incentive that would save time and money. Additionally, increasing the allowed maximum total floor area allowed for grocery stores in some areas would allow a store to open and operate where they would otherwise be essentially prohibited.
 - **Parking Requirements** – The current off-street parking requirement for grocery stores (retail goods establishment) in Orleans Parish is one space per 500 square feet of gross floor area. Parking requirements have the potential to add significant cost to new developments and retrofits of existing structures. While some store operators may want as much parking as possible to accommodate potential customers, locations in more dense urban areas and where there is low car

⁷⁸ Statistics reported by the New Orleans Police Department, 2018.

ownership may not need as many spaces as is required by zoning. Allowing approved grocers to reduce parking provided on-site could be a valuable incentive to certain store operators.

- **Height restrictions** – Height restrictions in Orleans Parish vary by zoning district and have a wide range of allowances. Grocery store projects are often parts of mixed-use developments that can include housing, office, and commercial space. Mixed-use projects that include grocers in underserved areas could be allowed increased height in order to facilitate project plans.
- **Alcoholic beverage sales** – The retail sales of packaged alcoholic beverages is a conditional use in many districts that allow grocery stores. As previously mentioned, the conditional use process can last for several months and approval is not guaranteed. Removing the conditional use for the retail sale of alcoholic beverages within a grocery store could be a valuable incentive.
- **Tax Increment Finance Zone** – A tax increment finance zone (TIF) is a public financing method that is used as a subsidy for redevelopment, infrastructure, and other community-improvement projects. A TIF can be created for a potential grocery site and the surrounding area to ensure that sales tax revenue generated by the site will be invested on infrastructure improvements and amenities within the TIF boundaries for a certain time period. This financing method could incentivize a potential grocer to locate a store and guarantee future investment and improvements in the area.
- **Waiving fees** – Permitting fees for projects in Orleans Parish can be thousands of dollars⁷⁹ and the municipality could waive those fees for certain desirable developments, such as a grocery store in an underserved area.
- **Financing** – Local governments can compile and make available data, and offer technical guidance related to financing resources that support potential grocery store development. In addition, the municipality can fund programs to encourage small scale grocers (see Fresh Food Retailer Initiative section).
 - Community Development Block Grants (CDBG) – Federal program administered by Department of Housing and Urban Development (HUD) that provides funding to local agencies who then identify local priorities and allocate funds accordingly.
 - Section 108 Loan Guarantee Program - Section 108 offers state and local governments the ability to transform a small portion of their Community Development Block Grant (CDBG) funds into federally guaranteed loans large enough to pursue physical and economic revitalization projects capable of revitalizing entire neighborhoods.⁸⁰
- **Local/state tax credits**
 - Property tax abatement – The municipality has the ability to reduce or eliminate the amount of property tax owners pay on new construction, rehabilitation and/or major improvements.
 - The State of Louisiana provides a sales tax exemption for food sold for preparation and consumption in the home, including bakery products, fresh fruits

⁷⁹ See Fee Schedule in Appendix

⁸⁰ U.S. Department of Housing and Urban Development. Section 108 Loan Guarantee Program. Oct. 2018.
<https://www.hudexchange.info/programs/section-108/>

and vegetables, and packaged foods requiring further preparation by purchasers.⁸¹ This sort of tax exemption could be offered at the municipal level as well.

- **Federal tax credits**
 - New market tax credits – A federal tax benefit to investors who invest in ventures in qualified low-income areas.
 - Work opportunity tax credit – Federal tax credit available to employers who hire employees who were previously welfare recipients.
- **Reduced public utilities or service fees** – Providing discounted rates for energy, trash, recycling, and/or water/sewerage charges can serve as an added incentive for grocery operators.
- **Investment to improve public transit to store location** – In areas with low car ownership the local transit authority can provide increased transit service to a new grocery store location. This added service will benefit both the grocery operator and the community members that may have difficulty accessing fresh food due to mobility issues.
- **Public Safety** – The prevalence of crime or the perception of an area being dangerous can affect a potential grocer’s decision to enter a certain area and hiring private security can be a significant cost burden. In the New Orleans area, the hourly rate for an on-site security guard is approximately \$20 per hour. Grocers generally contract security guards for 14 hours per day, therefore, annual costs amount to around \$102,000 per year.⁸² The presence of a City police officer has the ability to deter crime and improve the perception of safety. Providing additional police presence at the site of a grocery store could be substantial incentive for potential grocers in an area where there are higher crime threats.
- **Public Image Campaign** – Certain neighborhoods suffer from a poor public image that may keep potential investors out. This image likely derives from a measure of reality but can also be a vestige of the past and of misconceptions and stereotypes. A public re-imaging and re-branding campaign can begin to chip away at negative perceptions. Such a campaign may involve the beautification of public spaces, infrastructure and amenity improvements, positive messaging, public gatherings, and improved transit to reduce sense of isolation.

Recommendations

Grocery Stores & Overlay Districts

Full-line grocery stores are a popular amenity that most every neighborhood wants close by. In food deserts, the overlap with residents who don’t have a vehicle makes fulfilling this need a public policy goal. A full-line grocery store needs adequate floor area for display, shelving, storage, and offices. With this use being so desirable and necessary for access to healthful foods, zoning regulations should make adequate provisions to encourage a large grocery store in commercial areas where it can still be compatible with nearby residential uses. In food desert areas, the CPC staff recommends allowing an additional 5,000 square feet of floor area by right in grocery stores on major streets, where the commercial zoning district may restrict it to 5,000, 10,000, or 25,000 square feet. This could be done generally through existing overlay districts,

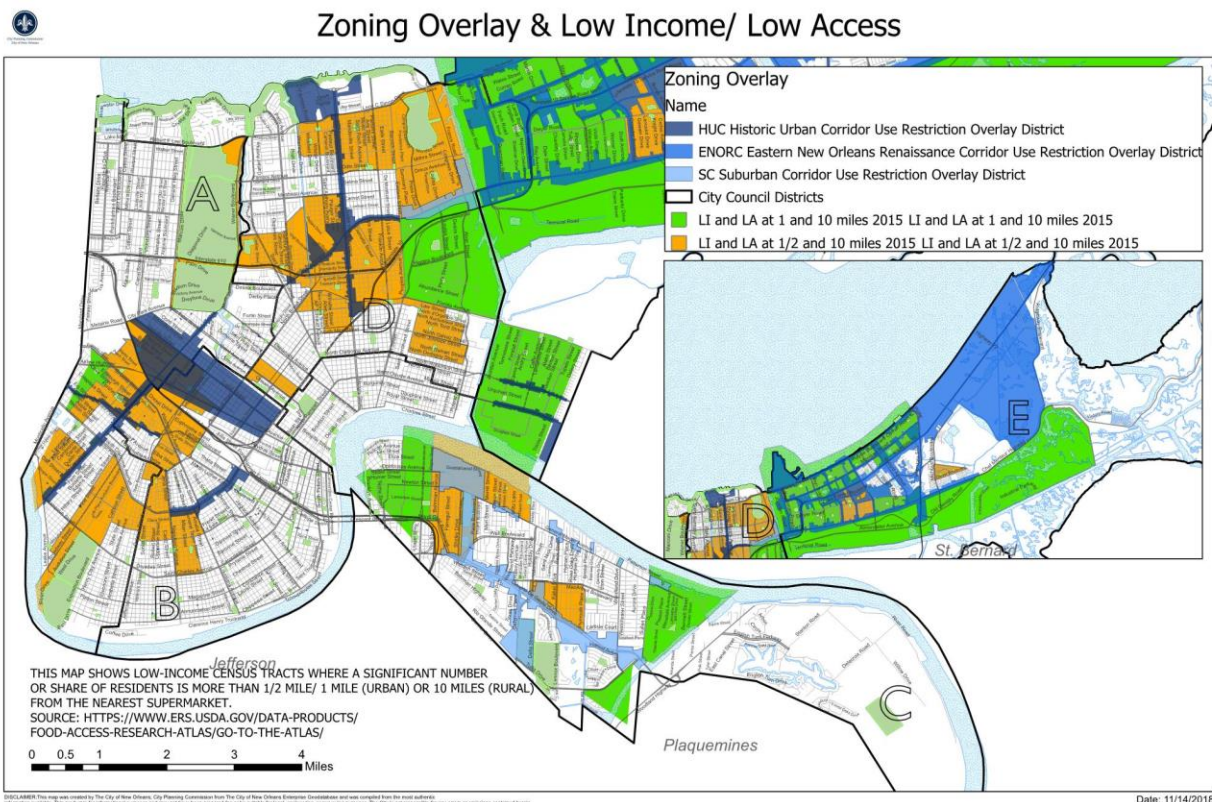
⁸¹ See Food Exemption Flyer in Appendix

⁸² Interview with owners/operators of Robert’s Fresh Market. 9/13/2018

such as the ENORC Eastern New Orleans Renaissance Corridor Use Restriction Overlay, SC Suburban Corridor Use Restriction Overlay, and Historic Urban Corridor Use Restriction Overlay. While these overlay districts were designed to restrict certain uses, they could also modify the base district regulations to be more permissive for grocery stores. The CPC staff recommends that a grocery store wishing to take advantage of this additional floor area allowance should also provide an additional 5% shelf space to fresh and freshly frozen foods beyond the grocery store definition. The corridors where this modification should apply include, but are not limited to the major streets below.

- New Orleans East
 - Hayne Boulevard
 - Downman Road
 - Morrison Road
- Algiers
 - Newton Street
 - General Meyer Avenue
- Lower Ninth Ward
 - N. Claiborne Avenue
 - St. Claude Avenue

Figure 24: Zoning Overlay & Low Income/Low Access



Alcoholic Beverage Sales

Per Article 26 of the Comprehensive Zoning Ordinance, “a retail goods establishment may not sell alcoholic beverages unless retail sales of packaged alcoholic beverages is allowed within the district and a separate approval is obtained for such use.” This means that if retail sales of packaged alcoholic beverages are permitted in the base zoning district, a small box discount store or grocery store may sell those items outright. If retail sales of packaged alcoholic beverages is conditional within the base zoning district, the use must receive approval from City Council in order to sell packaged alcoholic beverages.

In New Orleans, retail sales of alcoholic beverages in full-line grocery stores is common and expected. In order to alleviate some of the burden that a full-line grocery store may need to go through in order to operate, staff proposes that full-line grocery stores with at least 20,000 square feet be permitted by right to sell alcoholic beverages at retail. Larger grocery stores are better able to manage problems such as loitering and littering, which can accompany retail sales of alcoholic beverages, by providing security that small stores simply may be unable to afford.

In order to incentivize grocery stores to locate, staff proposes the following:

- Revise the grocery store definition to permit retail sales of packaged alcoholic beverages by right in full-line grocery stores with at least 20,000 square feet of gross floor area.

Fresh Food Retailer Initiative

Earlier in the report, staff overviewed the Fresh Food Retailer Initiative. As noted, it has yet to be determined whether the program will continue under the current administration. Staff believes that funds such as these can be instrumental in incentivizing the provision of groceries in communities that most need them. Following conversations with Hope Credit Union, several recommendations came to light specific to this program:

- **Have some structure of funds for technical assistance prior to and after the project.**
 - Hope Credit Union has found that this would have been valuable for the independent operators that operate one location. The current program has a technical assistance piece but it was limited.
- **Budget Fresh Food Retail Initiative (FFRI) from a general fund source.**
 - The Community Development Block Grant (CDBG) funds administrative process is cumbersome. If the City directly funded the program, project managers may have more time to work with applicants.
- **Extend length of Cooperative Endeavor Agreement beyond one year.**
 - Grocery retail projects can entail a lengthy process. Hope has been working with one developer and operator in the pipeline for 4 years and plans to close by the end of this year.
- **Study or evaluate the expansion of a healthy food program to other food system work (non-retail).**

Neighborhood Character & Quality of Life Issues

Small box discount store appearance is sometimes associated with degrading quality of the built environment and negative impacts on surrounding property values. They are typically located in metal buildings, as opposed to masonry buildings, and are subject to little investment in terms of exterior and interior design. Representatives of the Eastern New Orleans Advisory Commission (ENONAC) commented that the multitude of these stores “brand their community as a discount community.” Features such as signage, trees, landscaping, facade transparency, buried power lines, and other design elements of the urban environment can generally indicate locations of investment in cities. Likewise, the design elements that characterize small box discount stores contribute to the negative image some people associate with them.

ENONAC representatives specifically brought up litter, loitering, lack of landscaping, or non-maintained landscaping as issues that contribute to the negative branding of the communities in which these stores are located. Public comments heard during the City Planning Commission public meeting on September 11th, 2018 align with these concerns. Speakers commented that the prevalence of these discount stores does not favor attraction of other, higher-end types of businesses. According to ENONAC, the concentration of these stores makes it difficult to attract diversified retailers, and it hurts economic development in New Orleans East because other businesses do not want to associate their brands with discount stores.⁸³

In order to address the complaints about the appearance of these stores, the City could consider stronger design standards to apply to new commercial development either in zoning districts or certain design overlay districts. Existing design standards of the Comprehensive Zoning Ordinance already address these concerns. Base zoning districts include building design standards that apply to the Commercial Center Districts, Suburban Neighborhoods Non-Residential Districts or Historic Urban Neighborhoods Non-Residential Districts, in which most dollar stores are located throughout the City, including:

- Primary entrances oriented towards the street;
- Ground floor of newly constructed commercial buildings with at least 50% transparency and windows constructed of transparent glass; and
- EIFS, Stucco Board and Vinyl materials prohibited as predominant surface finish material on exterior walls visible from right-of-way.

Historic Core Neighborhoods Non-Residential Districts, which covers most properties along St. Claude Avenue west of the Industrial Canal, include even more stringent design regulations as these properties are also located within HDLC full jurisdiction local historic districts. HDLC design guidelines for new construction include:

- Preservation of the cohesive ambiance of historic resources with compatible, sympathetic construction;
- Compatible siting, proportion, scale, form, materials, fenestration, roof configuration, details and finishes.

⁸³ According to occupational license data, there are 13 stores in New Orleans East

The additional design regulations of the CT Corridor Transformation Design Overlay District generally apply to all properties along Chef Menteur Highway, Morrison Road, Crowder Boulevard, Downman Road, Bundy Road, Read Boulevard, and other commercial corridors in New Orleans East. They include:

- Pedestrian-friendly and bicycle-friendly environments;
- Parking located in rear of buildings so as to not be a dominant visual element of the site; and
- Neon signage prohibited.

New development in these overlay districts would also be required to meet the landscaping, lighting, and refuse screening requirements of the Comprehensive Zoning Ordinance. These landscaping requirements include:

- Building foundation landscape for buildings that maintain a front or corner side yard of ten (10) or more and no parking is located within that front yard;
- Front landscape yard of 10 feet in width where a commercial use maintains parking in front of the principal building;
- Parking lot landscaping for parking lots of ten(10) or more spaces;
- Buffer yards of ten (10) feet when the parking lot of a non-residential use abuts a residential district; and
- Parkway trees within the public right-of-way in Commercial Center Districts and Central Business Districts.

Additionally, screening requirements mandate that all refuse and recycling containers be fully enclosed on three sides by a solid fence, masonry wall, or principal structure wall seven (7) feet in height and gated.

While existing commercial development may not always meet these design standards because the structures were built prior to the adoption of the current Comprehensive Zoning Ordinance, there are already appropriate regulations in place that would result in a higher quality of the built environment.

Possible Recommendations:

- New use standards specific to small box variety stores should be incorporated into Article 20 of the Comprehensive Zoning Ordinance. These should include the following requirements:
 - One trash can per thirty (30) feet of street frontage, placed at the most remote locations from one another;
 - All small box variety stores shall comply with the building design standards of the applicable zoning district.
 - Outside storage is prohibited with the exception of propane tanks. All other business, servicing, processing, and storage operations shall be located within the structure.

Permitting & Licensing Issues

Occupational Licenses

Based on discussions with the Department of Safety and Permits and the Bureau of Revenue, as well as occupational license research, City Planning Commission staff has identified a number of issues with the occupational license review process and issuance, as well as possible weaknesses should the City implement a policy similar to Minneapolis' Staple Foods Ordinance in which a particular occupational license category is linked to a staple foods requirement. The purpose of this section is to identify the issues and make recommendations to address those issues.

Inconsistency of Occupational License Types

During the course of the study, City Planning Commission staff reviewed occupational licenses for all licensed small box discount stores. Despite the consistency of operations and operators, these businesses are operating under four different license categories. Below are the North American Industry Classification System (NAICS) categories and definitions under which small box discount stores in Orleans Parish are currently classified:

- **General Merchandise Stores:** Industries in the General Merchandise Stores subsector retail new general merchandise from fixed point-of-sale locations. Establishments in this subsector are unique in that they have the equipment and staff capable of retailing a large variety of goods from a single location. This includes a variety of display equipment and staff trained to provide information on many lines of products.
- **Miscellaneous Store Retailers:** Industries in the Miscellaneous Store Retailers subsector retail merchandise from fixed point-of-sale locations (except new or used motor vehicles and parts; new furniture and home furnishings; new appliances and electronic products; new building materials and garden equipment and supplies; food and beverages; health and personal care goods; gasoline; new clothing and accessories; and new sporting goods, hobby goods, books, and music). Establishments in this subsector include stores with unique characteristics, such as florists, used merchandise stores, and pet and pet supply stores.
- **Department Stores:** This industry comprises establishments known as department stores that have separate departments for general lines of new merchandise, such as apparel, jewelry, home furnishings, and toys, with no one merchandise line predominating. Department stores may sell perishable groceries, such as fresh fruits, vegetables, and dairy products, but such sales are insignificant. Department stores may have separate customer checkout areas in each department, central customer checkout areas, or both.
- **Merchant Wholesalers, Durable Goods:** Industries in the Merchant Wholesalers, Durable Goods subsector sell capital or durable goods to other businesses. Merchant wholesalers generally take title to the goods that they sell; in other words, they buy and sell goods on their own account. Durable goods are new or used items generally with a normal life expectancy of three years or more. Durable goods merchant wholesale trade

establishments are engaged in wholesaling products, such as motor vehicles, furniture, construction materials, machinery and equipment (including household-type appliances), metals and minerals (except petroleum), sporting goods, toys and hobby goods, recyclable materials, and parts.

Of the thirty-four (34) currently licensed small box discount stores, twenty-nine (29) operate under the “All Other General Merchandise Stores” category. Three (3) operate under “Miscellaneous Store Retailers (Except Tobacco),” one (1) operates under the “Department Store” sub-type, and one (1) under “Durable Goods Wholesalers.” This indicates a discrepancy in how license categories are applied, which can result in inconsistent enforcement across the same types of uses.

As noted previously, the occupational license process initiates through the Department of Safety & Permits. This stems from the need for Safety & Permits’ Zoning Administration Division to evaluate the proposed use and ensure it is allowable under applicable zoning regulations. Following receipt of an occupational license application, the Department of Safety & Permits is tasked with selecting the appropriate occupational license code.⁸⁴ The Bureau of Revenue ultimately issues the occupational license following clearance from the Department of Safety & Permits.

Figure 25 (a & b): Screenshots from the occupational/general business license application requesting only basic information about the type of business

The screenshot shows the 'BUSINESS INFORMATION' section of a license application form. It includes radio buttons for 'For Profit' and 'Not for Profit'. Below these are text input fields for 'Trade Name' and 'Legal Name'. A bold instruction states: 'Please provide a detailed description of the proposed business and the type of sales, activities or services it performs in the box below.' This is followed by a large, empty rectangular box for the description.

In selecting the appropriate occupational license code, permit analysts choose from a list of 671 occupational codes, basing the selection on information from the occupational/general business license application form, their own experience with the license categories, and their best judgment. They do not refer to NAICS definitions to help narrow down or identify the selection. That said, many categories (e.g. baked goods stores, caterers, furniture stores, hardware stores, nail salons, and offices of optometrists) are easily discernible. However, some categories, such as miscellaneous store retailers, are not as clear-cut without looking up the NAICS definition. Due to this, small box variety stores may not all have consistent occupational license codes.

Lastly, according to a study in the Journal of Urban Health, “... NAICS codes are widely

⁸⁴ Per conversations with the Department of Safety & Permits, typically the applicant does not self-select the occupational license category unless done through the online application process.

available but do not differentiate between supermarkets, medium-sized food stores, and small food stores, which differ markedly in their mix of foods sold.”⁸⁵ Providing a definition that includes size may assist with more consistent classification.

Enforcement Powers

While the Bureau of Revenue is responsible for issuing warnings and penalties to expired occupational license holders, it depends upon the New Orleans Police Department for the issuance of citations and summonses to municipal court for cases of delinquency or other violations of occupational licenses.

Issues Related to Policy Changes

In talks with the Bureau of Revenue on how to regulate small box discount stores, Revenue staff suggested the possibility of a new license category for this use. Additionally, they noted that should the City wish to implement a policy, resources and/or structures must be in place to adequately inspect and ensure applicable businesses are compliant. In New Orleans’ occupational license system, not every store that sells food meant for home consumption is licensed as a grocery store. Businesses are licensed based on the majority of their business (e.g. if 51% of a store’s business/sales is food, the business would be licensed as a grocery store).⁸⁶ The Bureau of Revenue also assigns all businesses a commodity code, which attaches to the occupational license. In order to create a policy similar to Minneapolis’, the City would need to make modifications to the license categories, possibly adding a commodity code for all businesses that sell food meant for home consumption. Businesses typically have just one commodity code assigned. A grocery store such as Rouses may have “Grocery Store & Package Liquor” as its commodity code, attached to its occupational license (Supermarket & Other Grocery (except Convenience) Stores). A small box discount store such as Family Dollar may have “General Merchandise not Otherwise Indexed” as its commodity code.⁸⁷

The Bureau of Revenue manages commodity codes and may create new ones at its discretion. If the City desires a change in policy, creating a new commodity code may be an option. However, because multiple commodity codes exist for retail food sales meant for home consumption, the Bureau of Revenue would either need to use only one commodity code for a range of uses or use multiple codes with the awareness that certain commodity codes trigger the need for a staple foods requirement. This would also require reclassification for existing food retailers.

Per the CPC staff recommended definition for small box variety stores, specialty food stores (e.g. candy stores, cheese stores, or butchers) would not be classified as small box variety stores. In addition, uses that dedicate a certain percentage of shelf space to fresh or fresh frozen food are

⁸⁵ Thomas A. Farley, Janet Rice, J. Nicholas Bodor, Deborah A. Cohen, Ricky N. Blumenthal, and Donald Rose, “Measuring the Food Environment: Shelf Space of Fruits, Vegetables, and Snack Foods in Stores,” *Journal of Urban Health: Bulletin of the New York Academy of Medicine*, Vol. 86, No. 5 (2009): 672-682.

⁸⁶ There are three occupational license categories for grocery stores (Supermarket & Other Grocery (except Convenience) Stores, General Line Grocery Wholesalers, and Grocery & Related Products Wholesalers, Other). Traditional full-service grocery stores should be classified under Supermarket & Other Grocery (except Convenience) Stores, though discrepancies currently exist.

⁸⁷ This commodity code is assigned to retail business uses to which no other commodity code applies.

not included in the proposed definition. Due to this, staff has not included commodity codes related to these types of businesses in the below table, which shows the commodity codes for retail food for home consumption.⁸⁸

Table 15: Retail Food for Home Consumption Commodity Codes

Grocery stores
Grocery stores with package beer
Foods not otherwise indexed by name
Grocery stores & beer c.o.p.
Grocery store & package liquor
Grocery store & liquor c.o.p.

If the City proposes any fresh, fresh and fresh frozen, or staple foods regulations meant to apply to both existing and future stores, enforcement of these requirements would have an obvious linkage to the occupational license commodity codes. However, based on issues that Minneapolis has experienced with its Staple Foods Ordinance, the Bureau of Revenue would need to play a primary role in issuing licenses only to businesses when they meet the requirements of any new healthy food policy and withholding and issuing penalties to those that do not meet the requirements.

Recommendations

The Department of Safety & Permits assists the Bureau of Revenue in assigning consistent and accurate occupational license codes. If the City desires a change in policy, training should be provided in both agencies to ensure continuing consistency and business accountability. If additional time is required to determine or review the correct occupational license code, it is important that personnel in both the Department of Safety & Permits and the Bureau of Revenue are working together. If further training is necessary, both agencies should have access to these resources. Otherwise, license categories will remain inconsistent and have disparities in enforcement, and New Orleans will experience the same shortcomings that Minneapolis is facing. Therefore, CPC staff recommends the following related to the issuance of occupational licenses:

- The Department of Safety & Permits and the Bureau of Revenue shall standardize the small box variety store occupational license category to maintain consistency across all existing and future small box variety stores;
- The City Council shall budget adequate resources for personnel and training to the Department of Safety & Permits and the Bureau of Revenue for occupational license reviews and renewals; and
- Additionally, should the City implement any type of healthy foods policy:

⁸⁸ Commodity codes for specialty food sales include Meat & Seafood Markets, Candy & Nut Stores & Sweet Shops, and Fruit Stores & Vegetable Markets.

- The City shall assign an appropriate agency to conduct inspections to ensure compliance; and
- The Bureau of Revenue shall work with inspectors training in the specific requirements of the ordinance when issuing occupational licenses, ensuring that only compliant businesses are issued licenses.

Use Determinations

Based on discussions with the Department of Safety and Permits, City Planning Commission staff has identified a number of issues with singling out and regulating “discount” stores as well as possible challenges for proposed regulations of small box variety stores. The purpose of this section is to identify the issues and make recommendations to address those issues.

Small Box Discount Store

The Department of Safety & Permits is tasked with determining the zoning classification of all proposed uses. Typically this will occur during the occupational license application process.⁸⁹ In cases specific to proposed retail, they do not request further information from the on the products sold because the Comprehensive Zoning Ordinance makes no distinction between different retail uses. As noted, retail uses such as small box discount stores are permitted anywhere that retail in general is permitted, as long as they meet related regulations such as maximum floor area and parking.

The Department of Safety & Permits could experience challenges in determining whether a proposed small box store is discount in nature. Further, requesting prices and price comparisons from potential small box discount stores is outside the scope of the Department’s review process. Overall, they are concerned with whether a particular use is permitted and whether the building is up to code. Singling out stores that are discount in nature could result in unfair treatment of chain small box discount stores such as Family Dollar, Dollar General, and Dollar Tree, or other stores whose names indicate discounted merchandise. Other stores may be able to receive approval to operate before the discount nature of their business becomes apparent. In conversations with the Department of Safety & Permits, staff described the difficulty with enforcement once a use has already been permitted.

Small Box Variety Store

CPC staff proposes a new retail use category, *small box variety store* rather than the *small box discount store* definition provided in the motion. In conversations with the Department of Safety & Permits, CPC staff has tailored this definition to include food retailers that do not provide a significant amount fresh food. In order to classify this use, the Department of Safety & Permits would need a description of the retail use, floor plans with the proposed layout and total square footage, and shelf space calculations for fresh or fresh frozen foods. They would not request any

⁸⁹ Typically, building plans for new construction or renovation often do not explicitly state the specific use. An architect may label floor plans as “white box,” “or commercial,” and if that is generally permitted, the Department of Safety & Permits may issue a building permit. It normally is not until the occupational license process that the Department will do a full zoning review.

information about item prices. This may require minor alterations to existing application forms such as the occupational/general business license application in order to capture floor plan and fresh food shelf and display area square footage.

Recommendations

In order to ensure a change in policy is correctly implemented, the Department of Safety & Permits must receive adequate resources in the form of training to properly identify small box variety stores. In addition, new definitions must be clear and structures must be in place to ensure proper enforcement. Therefore, CPC staff recommends the following changes to the occupational license process:

- The One Stop Shop shall modify the occupational/general business license application to include requests for floor area, percentage of shelf space dedicated to fresh or fresh frozen foods, and whether the store will offer gasoline or diesel fuel or contain a prescription pharmacy;
- Department of Safety & Permits staff tasked with assigning occupational licenses shall receive additional training.

Enforcement Limitations

Inspections

Currently, Safety and Permits perform sweeps of properties for code violations. Inspections are also carried out by the department based on complaints. During the sweeps, inspectors generally perform inspections on the outside of a property and do not enter businesses. If the City were to enforce stricter measures for discount retailers, such as a percentage of shelf space dedicated to fresh foods, the City would likely need to perform such inspections separately from sweeps. Inspectors performing sweeps and responding to complaints on properties also do not go through entire plans approved during the permitting process and lack the resources to enforce plan compliance after permitting inspection periods have passed. Landscaping plans and site plans are not reviewed in the field after initial inspections.

Meetings with the Department of Sanitation, Department of Code Enforcement, and the Department of Safety and Permits all brought up limitations and possible issues with enforcing regulations within the City Code. New regulations for discount retailers could be properly enforced with a strict adjudication process and high fines. The City has started performing more sweeps of businesses and the creation of the CleanUpNOLA initiative has given departments more personnel to inspect and enforce violations. The initiative will aid the City in enforcing zoning, sanitation, and quality of life laws and citing violations.

Fines and Adjudication

The Department of Safety and Permits can impose fines on property owners in violation of the City Code. These fines can only be imposed on property owners after an adjudication hearing and when no measures have been taken to remedy the violation. Fines can result in \$500 per

violation. In order for Safety and Permits to impose more fines, a new adjudication process would be followed for each additional fine. The adjudication process can be lengthy and each new violation would have to go through the process.

Code Enforcement and the Department of Sanitation can also only enforce the City Code on property owners and cannot write violations to the tenants of a property. The New Orleans Police Department can issue fines and a citation that would eventually be heard in municipal court. These NOPD citations could only be enforced on a particular person. For a violation to be heard in criminal court, it would need to be for an individual in violation of a quality of life law. The NOPD cannot bring a business or vendor into municipal court for violations. Even if NOPD had the ability to take businesses to municipal court, it would still be up to the judge to prosecute and eventually fine the individual or business. Quality of life issues brought to municipal court are often not taken as a serious offense by judges. Violations on the property are heard in Civil District Court.

Fines imposed by all departments after adjudication hearings can eventually result in a lien on a property. If the property owner fails to pay a fine, and does not remedy a violation, a lien can be placed on the property which is added to a property's tax bill. Based on talks with Safety and Permits, property owners and their tenants will take liens on a property seriously. Large corporate tenants such as Family Dollar and Dollar General usually do not want to operate with a building owner with multiple violations and liens.

Changes to the State Legislation for Enforcement Agencies

Currently, the Department of Sanitation, the Department of Public Works, and other enforcement agencies lack the authority to issue citations to property owners; only the New Orleans Police Department has the authority to issue citations. Sanitation rangers, and other City agencies, only have the ability to issue verbal and written warnings to the property owners. They cannot write warnings for tenants. This is an issue, specifically as it relates to small box discount stores, because small box discount stores are typically not the property owners of the buildings where they operate in New Orleans.

New state legislation proposed for the 2019 spring legislation session could give these departments more enforcement power when property owners fail to abate vegetation, litter, and other debris in the public right-of-way adjacent to a property, etc.

Recommendations

- Provide staffing resources to the Department of Safety and Permits for inspectors to inspect and enforce floor plans, site plans to ensure “small box variety stores” are in compliance with submitted plans.
- Allow the Department of Safety and Permits and the Department of Code Enforcement the ability to fine multiple times for multiple violations. A \$500 fine for each violation should be heard at the same adjudication hearing.

- Define clear roles for the Department of Sanitation and the Department of Code Enforcement to ensure proper minimum property maintenance upkeep for property owners.
- Promote the passage of the state law pertaining to right-of-way maintenance in order to grant the Department of Sanitation, the Department of Public Works, and other enforcement agencies the authority to issue citations for violations such as littering or driving in a bicycle lane.

J. Summary of Recommendations & Text Changes

Proposed Comprehensive Zoning Ordinance Text

Definitions (Article 26)

Small Box Variety Store: A retail store between 5,000 and 15,000 square feet that sells at retail an assortment of physical goods, products, or merchandise directly to the consumer, including food or beverages for off-premises consumption, household products, personal grooming and health products, and other consumer goods. Small box variety stores do not include small box stores that:

1. contain a prescription pharmacy;
2. sell gasoline or diesel fuel;
3. primarily sell specialty food items (e.g. meat, seafood, cheese, or oils and vinegars);
4. dedicate at least 15% of shelf space to fresh or fresh frozen foods; or
5. dedicate less than 5% of shelf space to food sales.

Other Definitions

Fresh or Fresh Frozen Food: Food for human consumption that is unprocessed, or otherwise in its raw state; food that was quickly frozen while still fresh.⁹⁰ This includes unprocessed meat and seafood.

Grocery Store: A retail establishment primarily engaged in the sale of items in multiple of the following categories: a general line of groceries, packaged frozen food, dairy products, poultry and poultry products, confectioneries, fish and seafood, meats and meat products, fresh fruits and vegetables, and other grocery and related products where fresh or fresh foods including fresh meat, poultry, seafood, and produce make up 25 percent or more of the shelf space and display area. A grocery store with at least 20,000 square feet of gross floor area may sell packaged alcoholic beverages.

⁹⁰ The proposed definition for *fresh and fresh frozen food* is based on the U.S. Food and Drug Administration's *fresh, freshly frozen, fresh frozen*, and *frozen fresh* definitions as described in Sec. 101.95 "Fresh," "freshly frozen," "fresh frozen," "frozen fresh," Title 21, Volume 2 (Revised as of April 1, 2018), "Subchapter B: Food for Human Consumption."

Home Processed Food Products: “Low-risk foods” in accordance with LA Rev Stat § 40:4.9. Home processed food products do not include animal products.

Agriculture. Land on which crops are grown and/or livestock are raised for sale, commercial use, personal food production, donation, or educational purposes. **Retail sales and home food processing are permitted for all agriculture uses, subject to Section 20.3.C.**⁹¹

Use Standards (Article 20)

Article 20.3.MMM – Small Box Variety Store

5. In the Neighborhood Conservation District, a small box variety store is prohibited within one (1) mile, or 5,280 feet, of any other small box variety store. Outside of the Neighborhood Conservation District, a small box variety store is prohibited within two (2) miles or 10,560 feet, of any other small box variety store. The required separation distance must be measured in a straight line from the nearest point on the lot line of the other property occupied by a small box variety store.
6. One litter can shall be placed for every thirty (30) linear feet of street frontage. The litter can shall be placed directly outside the primary entrance. Where more than one (1) litter can is required, the operator may place additional cans according to their discretion.
7. The operator of the small box variety store shall provide daily litter clean-up of the site and along the public rights-of-way abutting the property.
8. Outside storage is prohibited except for propane tanks. All business, servicing, processing, and storage operations shall be located within the structure.

Article 20.3.C – Agriculture

[...]

20.3.C.1 – Additional Bulk & Yard Regulations

All structures and other improvements are subject to the bulk and yard regulations of the district, except as provided below:

- d. There are no yard requirements for the planting of crops.
- e. All structures used for the keeping of livestock shall be located a minimum of twenty-five (25) feet from any lot line. This does not apply to apiaries, chicken coops, pigeon coops, and aquaponic structures, which shall meet the accessory structure requirements of Section 21.6.
- f. **Accessory structures associated with agricultural uses are permitted on lots without a principal structure.**

[...]

⁹¹ Proposed text to the Comprehensive Zoning ordinance is noted in **bold, underlined font**. Proposed deletions from existing language of the Ordinance is noted with a ~~strike through~~.

Article 20.3.C.3 – Food Preparation, Processing, and Packaging

- d. ~~No food or other products of any plants or livestock may be prepared, processed, or packaged in any residential district, except in the R-RE District. However, the canning of plants or plant products~~ **Home food processing** is permitted as part of any agricultural use.
- e. Food may be prepared, processed, or packaged at an agricultural use located in any ~~non-residential~~ **zoning** district in which food processing is a permitted use, **or in any zoning district where food processing is a conditional use, upon approval.**
- f. In any zoning district in which food processing is classified as a conditional use, a property owner may apply for a conditional use to permit the preparation, processing, or packaging of food or other products of any plants or livestock raised on the agricultural use.

[...]

Article 20.3.C.6 – Retail Sales

Retail sales for an agricultural use are permitted at farm stands ~~within the Open Space Districts, Rural Development Districts, and any non-residential district,~~ **in all zoning districts in which agriculture is a permitted use, or, where it is a conditional use, upon approval,** subject to the following standards:

- c. Farm stands shall conform to the provisions of Section 21.6.
- d. Retail sales are limited to the following:
 - i. Crops grown and/or livestock raised on the farm where the farm stand is located.
 - ii. Other unprocessed food products, or home processed food products such as jams, jellies, pickles, sauces, or baked goods created on the farm where the farm stand is located.

Permitted & Conditional Uses (Articles 7 to 17)

Small Box Variety Stores and Grocery Stores

Below are the use tables that show the zoning districts where the small box variety store and grocery store uses are proposed as permitted (“P”), conditional (“C”), and prohibited uses (blank space). The table also lists the retail goods establishment use. The retail goods establishment use

is not currently permitted in Open Space Districts (Article 7), Rural Development Districts (Article 8), Historic Core Neighborhoods Residential Districts (Article 9), Historic Urban Neighborhoods Residential Districts (Article 11), and Suburban Neighborhoods Residential Districts (Article 13), and thus the use tables for these districts are not shown below.

In addition, the below use tables show the zoning districts where agricultural uses (with and without livestock) are proposed as permitted (“P”), conditional (“C”), and prohibited uses (blank space).

Table 16: Permitted & Conditional Uses – Small Box Variety Stores, Grocery Stores, and Retail Goods Establishments District Permissions

Use Table: Historic Core Neighborhoods Non-Residential Districts (Article 10)											
Uses	District										Use Standards
	VCC-1	VCC-2	VC E	VC E-1	VCS	VCS -1	VC P	HMC -1	HM C-2	HM - MU	
[...]											
Retail Goods Establishment	P	P	P	P	P	P		P	P	P	
Grocery Store	P	P	P	P	P	P		P	P	P	
Small Box Variety Store	P	P	P	P	P	P		P	P	P	Section 20.3.M MM
[...]											

Use Table: Historic Urban Neighborhoods Non-Residential Districts (Article 12)				
Uses	District			Use Standards
	HU-B1A	HU-B1	HU-MU	
[...]				
Retail Goods Establishment	P	P	P	
Grocery Store	P	P	P	
Small Box Variety Store	P	P	P	Section 20.3.MMM
[...]				

Use Table: Suburban Neighborhoods Non-Residential Districts (Article 14)									
Uses	District								Use Standards
	S-B1	S-B2	S-LB1	S-LB2	S-LC	S-LP	S-LM	S-MU	

[...]									
Retail Goods Establishment	P	P	P	P	P			P	
Grocery Store	P	P	P	P	P			P	
Small Box Variety Store	P	P	P	P	P			P	Section 20.3.M MM
[...]									
Use Table: Commercial Center & Institutional Campus Districts (Article 15)									
Uses	District								
	C-1	C-2	C-3	MU-1	MU-2	EC	MC	MS	LS
[...]									
Retail Goods Establishment	P	P	P	P	P	P	P	P	P
Grocery Store	P	P	P	P	P	P	P	P	P
Small Box Variety Store	P	P	P	P	P	P	P	P	P
[...]									
									Section 20.3.MM M

Use Table: Centers for Industry (Article 16)					
Uses	District				Use Standards
	LI	HI	MI	BIP	
[...]					
Retail Goods Establishment	P	P	P	P	
Grocery Store	P	P	P	P	
Small Box Variety Store	P	P	P	P	Section 20.3.MM M
[...]					

Use Table: Central Business Districts (Article 17)								
Uses	District							Use Standards
	CBD-1	CBD-2	CBD-3	CBD-4	CBD-5	CBD-6	CBD-7	
[...]								
Retail Goods Establishment	P	P	P	P	P	P	P	
Grocery Store	P	P	P	P	P	P	P	
Small Box Variety Store	P	P	P	P	P	P	P	Section 20.3.MM

								M
[...]								

Maximum Total Floor Area for Commercial Uses

- In food desert areas, the CPC staff recommends allowing an additional 5,000 square feet of floor area by right in grocery stores on major streets, where the commercial zoning district may restrict it to 5,000, 10,000, or 25,000 square feet. The CPC staff recommends that a grocery store wishing to take advantage of this additional floor area allowance should also provide an additional 5% shelf space to fresh and freshly frozen foods beyond the grocery store definition.

Permitting & Licensing

Occupational Licenses

- The Department of Safety & Permits and the Bureau of Revenue shall standardize the small box variety store occupational license category to maintain consistency across all existing and future small box variety stores including converting all renewals to the appropriate new code.
- The City Council shall budget adequate resources for personnel and training to the Department of Safety & Permits and the Bureau of Revenue for occupational license reviews and renewals.
- The One Stop Shop shall modify the occupational/general business license application to include requests for floor area, percentage of shelf space dedicated to fresh or frozen foods, and whether the store will offer gasoline or diesel fuel or contain a prescription pharmacy.
- The Department of Safety & Permits staff tasked with determining occupational licenses categories prior to issuance of the licenses by the Department of Revenue shall receive additional training about small box variety stores.

Enforcement

- Provide more staffing power to the Department of Safety and Permits to hire and train inspectors to enforce floor plans and site plans to ensure “small box discount stores” are in compliance with submitted plans.
- Allow the Department of Safety and Permits and the Department of Code Enforcement the ability to enact multiple fines for multiple violations. A \$500 fine for each violation should be heard at the same adjudication hearing.
- Define clear roles for the Department of Sanitation and the Department of Code Enforcement to ensure proper minimum property maintenance upkeep for property owners.
- Promote the passage of the state law pertaining to right-of-way maintenance in order to grant the Department of Sanitation, the Department of Public Works, and other

enforcement agencies the authority to issue citations for violations such as littering or driving in the bike lane.

Other Recommendations

Fresh Food Retailer Initiative

In order to encourage grocery stores, and healthy food in general, to locate in the communities that most need them, the staff recommends:

- Continue the Fresh Food Retailer Initiative and examine the possibility of providing additional incentives to areas with low food access, such as New Orleans East and the Lower Ninth Ward.

Healthy Corner Store Program

In order to encourage sales of fresh produce within communities, the staff recommends:

- Continue to fund the Healthy Corner Store Program, contributing \$100,000 for years three through five of the program, with the possibility of extension beyond five years.

Plastic Bags Ordinance

Litter is a major problem in New Orleans and around retail locations. Plastic bags are often seen clogging gutters and trapped in tree branches, though this is certainly not the only type of litter. To combat litter and for environmental benefits, many cities and some states have enacted ordinances prohibiting the use of disposable plastic bags. Members of a previous City Council including the current Mayor considered sponsoring a motion that would require retailers to charge customers for both plastic and paper bags, thereby encouraging shoppers to bring their own reusable bags. If such a law were enacted, it would best be implemented on a state level to ensure a level playing field; however, a citywide ordinance may still be effective. If a new ordinance is adopted, continued allowance of paper bags should be strongly considered as these bags break down more easily. Reusable bag give-away promotions should be part of any rollout.

Further Study

There are other ways to increase healthful food access, in addition to promoting the sale of healthful foods in underserved areas. Mobile vending, food delivery, and increasing people's mobility are three such ways that can be especially helpful to people with limited mobility. Even a grocery store in close proximity does not guarantee food access, as some people have no vehicle, limited income, and/or physical impairments.

Mobile Vending

Mobile vending is a moving vehicle that can come to certain locations and neighborhoods to sell food such as fruits and vegetables. An example is Mr. and Ms. Okra, who have been well known mobile vendors in New Orleans. Such businesses may not be able to offer the most affordable prices and may have difficulty making a sufficient profit. However, this concept may warrant further study of whether a program could be established to support mobile vending in food deserts.

Food Delivery

Food delivery is a service that delivers selected food items to your home. Some grocery stores offer this service. Prices may be different than those offered in the store and may require a service fee. The service may also require internet access to place the order. Added expenses for food delivery may make the service out of reach for those with limited incomes. However, if it could be made to be of comparable expense to shopping in-store, this could be of great assistance to those with limited mobility.

Increasing Mobility

Groceries can be difficult to transport without a vehicle. Many items are heavy and some people are not physically able to carry them, which requires frequent trips to break up the purchasing into manageable amounts. Many people without vehicles depend upon relatives, friends, and volunteers to help them. Providing or strengthening systems to provide rides to the grocery can be of great help even for those who are not particularly far from a grocery store.

Shelf Space Percentages

In light of a pending Memorandum of Understanding between the City and Tulane University for their shelf space data research, staff recommends further study to determine appropriate and feasible shelf space percentages dedicated to fresh or fresh frozen foods in both small box variety stores and grocery stores.

Staple Foods Ordinance

Should the City desire a policy similar to Minneapolis' Staple Foods Ordinance, staff recommends further study by the Department of Health or other appropriate agency to determine appropriate staple foods.

Next Steps

The Small Box Retail Diversity Study, directed by City Council Motion (As Corrected) M-18-256, will be presented to the City Planning Commission on December 11, 2018. Before it considers the Study, the CPC must first hold a public hearing. Taking public input into mind, the CPC can choose to forward the Study to the City Council with or without changes to the staff recommendations. If the CPC chooses to modify the recommendations, the staff will incorporate

those recommendations and forward the revised Study to the City Council by the deadline of January 14, 2019. The City Council may choose to hold its own public hearing on the Study, though it is not required. The City Council may then direct the City Planning Commission to consider all or part of the recommendations as text changes to the Comprehensive Zoning Ordinance. If that is done, CPC staff will docket the request and write a staff report with recommendations for specific zoning text changes. The zoning docket would require an additional public hearing before the City Planning Commission. The Commission may choose to recommend text changes to the City Council with or without modification of the staff recommendations, or they could recommend denial of the proposal. The City Council must hold a public hearing before considering adoption of zoning text changes. Finally, the Council may adopt, adopt with modifications, or deny the City Planning Commission's recommendations.

The Small Box Retail Diversity Study also makes recommendations for changes to the permitting, licensing, and enforcement process, regulations for which are contained in the City Code, as well as State-level law changes. The City Planning Commission would not be formally involved in implementation of those changes.