



Memorandum

TO: RULES AND OPEN GOVERNMENT
COMMITTEE

FROM: Councilmember Nora Campos
Councilmember Forrest Williams
Councilmember Kansen Chu

SUBJECT: SEE BELOW

DATE: August 14, 2008

Approved

Nora Campos *Forrest Williams* Date 8/14/08
Kansen Chu

**SUBJECT: DEVELOPMENT OF CONDITIONAL ZONING PROHIBITING THE
ESTABLISHMENT OF NEW FAST-FOOD RESTAURANTS IN CLOSE PROXIMITY
TO SCHOOLS**

RECOMMENDATION

1. Direct staff to draft an ordinance placing a one-year citywide moratorium on the establishment of new fast food restaurants and to return to Council within 90 days for approval. Within this year, staff is directed to study trends in the locations of new fast-food restaurants citywide, including proposed establishments that have not yet opened and present the findings to the Community and Economic Development Committee for review.
2. Direct staff to draft a zoning ordinance that creates a "school zone" of a 1,000-foot radius around each school in the City of San José, within which new fast-food restaurants may not locate;
 - a. Direct staff to coordinate and conduct a stakeholder outreach process to solicit input from restaurant industry representatives and residents on the proposed ordinance;
 - b. Direct staff to seek recommendations from the Youth Commission and the Planning Commission on the proposed ordinance before consideration by the City Council;
 - c. Amend the Community and Economic Development Committee workplan to include a review of the draft ordinance within 180 days;
3. Direct the City Attorney to generate a legal definition of a "fast-food restaurant" and provide examples of restaurants that fit this definition and restaurants that do not, explaining why such restaurants are exceptions.

BACKGROUND

Obesity rates in the United States are rapidly increasing, a trend which is showing no signs of slowing. According to a 2007 report by the Trust for America's Health, from 2006 to 2007 adult obesity rose in 31 states, while no states decreased. Recent statistics have shown that a shocking two-thirds of U.S. adults are obese or overweight. The increase in obesity has led to an increase

in chronic conditions such as diabetes, stroke, heart disease, high blood pressure and certain cancers.

The ongoing increase in obesity rates has placed a great strain on health care expenditures, costing between \$98 billion and \$129 billion each year on a national level. According to the childhood obesity report produced by Kaiser Permanente, in 2003 California spent \$7.7 billion on obesity-related health care alone. According to the Centers for Disease Control and Prevention report about preventing obesity and chronic diseases through good nutrition and physical activity, a sustained 10% weight loss will reduce an overweight person's lifetime medical costs by \$2,200 to \$5,300 as costs for diseases associated with being overweight are lowered.

Studies have also proven that obesity rates are disproportionately higher in African-American and Latino communities. According to the California Behavioral Risk Factor Surveillance Survey conducted in 2007, 73.7% of African-Americans and 60.4% of Latinos were at risk for being overweight, while 55.6% of Caucasians were at risk. Likewise, rates of diabetes are higher for Latinos and African-Americans than for Caucasians. This worrying trend highlights the need to provide racially-diverse and low-income communities with healthier eating options and to take steps to curtail the increase in high-fat, low-nutrition options like fast food.

The obesity epidemic is especially worrying when examining the health and well-being of our youth population. According to the California Department of Public Health, Cancer Prevention and Nutrition Services, children are among those most affected by obesity, with approximately one in three children and one in four teens at risk or already overweight. In 2002, a study led by the California Center for Public Health Advocacy revealed that 26.5% of the State's students were overweight and 39.6% were considered unfit. A year later, the California Department of Education performed a fitness test on a combined 1.3 million students in grade levels 5, 7 and 9 and revealed that only 23% in grade 5, 27.1% in grade 7 and 24.1% in grade 9 met minimum fitness standards.

The increased prevalence of fast food outlets has had devastating effects on children's health in our communities. Recent studies by the University of Alberta and the University of California considered the relationship between obesity and fast-food restaurants and revealed a positive correlation between the two. This is especially important considering that the number of fast food restaurants in the United States has increased dramatically from 72,850 in 1972 to over 280,000 in recent years. According to a special report on childhood obesity produced by Kaiser Permanente in partnership with UCLA and UCSF, in 2006, children ate five times as much fast food as children did in 1970. The report also states that a child who eats fast food consumes 187 more calories a day than a child who does not eat fast food, leading to a potential gain of six pounds each year.

If steps are not taken to address the obesity epidemic, the overall health and fitness of our residents and, most importantly, our youth will continue to decline, while healthcare costs and obesity-related diseases will boom.

ANALYSIS

By adopting a zoning ordinance that prohibits the establishment of new fast food restaurants within a certain distance from school sites, the City of San José will make a clear declaration

about the importance of combating the childhood obesity epidemic. In addition, the City will also be helping to protect lower-income communities, who have disproportionately borne the brunt of the expansion of the fast food industry.

By examining data gathered by the U.S. Census Bureau, it is clear that fast food restaurants are disproportionately concentrated around schools in lower-income communities in the City of San Jose. In zip codes exhibiting lower average household income and higher poverty rate than average for the City of San Jose, more schools are located in close proximity to fast food restaurants than in zip codes with a higher average household income and lower poverty rates. In the 95122 and 95116 zip codes each have six schools can be found with fast-food restaurants within 1,000 feet. The same number The 95126 zip code has three schools within 1,000 feet of a fast food restaurant. These trends are vastly different for zip codes with higher than average household income and lower than average poverty rates.

In order to combat the concentration of fast food restaurants, especially in lower-income communities, the City ought to limit the proximity of fast-food restaurants and school sites while encouraging the establishment of grocery stores, non-fast-food restaurants and farmer's markets in school zones, especially those in lower-income communities. According to the Trust for America's Health, access to nutritious, affordable foods in low-income areas is limited and "low-income zip codes tend to have fewer and smaller grocery stores." However, increased efforts to improve nutrition in schools could be for naught if students are continually bombarded with the temptation of fast food once they leave campus.

The City of San Jose has already made it clear that our children's health is important by allocating \$3 million for the Children's Health Initiative, aimed at providing health insurance to about 71,000 uninsured children in Santa Clara County. Many of the children who are eligible for health care through the Children's Health Initiative live in and attend schools in zip codes with a greater number of fast food restaurants within 1,000 feet of school sites. The City cannot afford to ignore the connection between poverty and poor health if it hopes for the long-term success of the Children's Health Initiative.

Conditional zoning has been challenged on its legality; however, California State law (California Constitution, Article XI, section 7) asserts that any ordinance is lawful as long as it is not in conflict with any general laws. Court cases have ruled that conditional zoning ordinances are legal if they are created in the public interest.

Other municipalities have ordinances in place that seek to accomplish similar goals. The City of Detroit has prohibited the establishment of fast-food restaurants within 500 feet of a school sites for decades. The City of Los Angeles recently passed a one-year ordinance prohibiting the establishment of new fast food restaurants within the City while planners develop ways to attract a wider variety of food providers.

Not only is limiting the proximity of fast food restaurants to schools important for the well-being of our youth and for reinforcing nutrition lessons taught in class, this ordinance could effectively lower health care costs for our city in the long-run. We must take the next step in ensuring the health and safety of the youth in San Jose by encouraging healthy choices and working to proactively address the obesity epidemic.