

Zoning for dollars

How to approach the growth of small-box stores in your community

This past summer, a village council meeting in Empire—located in **Empire Township** (Leelanau Co.)—was packed with residents voicing their concern about a new business looking to open within their borders.

The community is home to the headquarters of Sleeping Bear Dunes National Park, which was named several years ago the most beautiful place in the country by “Good Morning, America.” It is a tourist destination—bringing visitors not just from around the state but from around the country to enjoy the picturesque scenery and shoreline, and rural charm of Northern Michigan.

Some residents fear that the new business looking to build on six acres near the village center would jeopardize small, locally owned businesses, destroying the characteristics that make small-town America special. Others welcome the access and convenience to affordable products, without having to drive long distances.

The experience in Empire is one happening throughout not only the state, but across the nation. A proliferation of “small box” stores—specifically dollar stores—are popping up in primarily rural areas. Much like the “big box” store issue with

which many communities are grappling, townships and other municipalities may now be facing “small box” store dilemmas.

*MTA asked attorney Mike Homier, who will be teaching on this topic at our Annual Educational Conference in April, to share some insights into the emerging issue—including efforts in other states, what Michigan township officials should know, and potential considerations if and when they are dealing with a “small box” issue in their own borders. **It is important to note, of course, that townships should work with their own legal counsel when considering any actions involving land use regulations.***



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In 2018, there were nearly 14,300 Starbucks¹ and 14,155 McDonald's² in the United States. Starbucks seems to be on every corner, and the golden arches are as ubiquitous as the blue sky—yet, combined, these American staples have nearly 2,000 fewer stores than Dollar General and Dollar Tree stores.³ Those brands make up just half of the dollar stores operating in the United States.

Michigan is home to more than 620 dollar stores alone.⁴ These “small-box stores” are proliferating in communities across the country, often opening multiple stores in low socio-economic and minority communities.⁵ Some local municipalities have begun to regulate, through zoning ordinances, the place of these businesses in their communities.

In recent weeks and months, the issue of dollar store saturation has gained national notoriety, with articles appearing in the *Washington Post*,⁶ *New York Times*⁷ and the *Detroit Free Press*.⁸ This was prompted by townships and cities, nationwide and here in Michigan, taking actions impacting dollar stores. However, before any township official proposes land use controls targeted at small-box stores, it is important to understand the issue and the range of zoning options, including the advantages and risks of each approach.

Issues impacting local communities

Dollar stores have faced increased backlash in recent years. Opponents say the chains undercut local grocers and drive out the competition. Proponents say they fill a need, especially in rural areas, by offering food and household staples at a low price and without requiring travelling to another municipality or neighborhood. The proliferation of the stores affects rural and urban townships differently, and each township must make an individual determination on if and how it chooses to regulate these stores—after careful consideration, and based on adopted policy and residents' wishes.

A dollar store in a rural community may be the only store within miles that provides residents with access to household essentials and basic food items.¹⁰ Often, there is no local grocery store competing with the dollar store, which provides food and other items at a convenient, nearby location. The convenience can be especially pronounced for those less mobile, such as the elderly, disabled and impoverished. In areas hit especially hard by the recession, which may still feel lingering effects on growth, a dollar store may be the first commercial investment in the community in years.¹¹ The new investment brings with it much needed new jobs. A single dollar store may provide a number of tangible benefits to a rural community.

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On the other hand, opponents note the lack of quality food products, especially the lack of fresh food, being offered by dollar stores. They note the impact fewer fresh food options have on both the quality and length of life.¹² A fear is that incoming dollar stores will drive out existing grocers and serve as a barrier to new grocers coming to town. As for jobs, the average dollar store employs just nine employees, all of which typically pay salaries below national averages and are often accompanied by unaffordable healthcare, if any at all.¹³ While dollar stores bring minimal jobs at minimum wage, the profits flow away from the community to a larger, national chain.

The impact of a dollar store opening can go beyond tangible effects. Residents of small town America may lament the community's loss of character, as mom-and-pop stores are replaced by corporate chains.¹⁴ The generic stores can erode the area's charm and may represent unwelcome change. There is no question that dollar stores disproportionately impact rural townships.

For urban areas, including larger townships, another concern is the creation of "food deserts." Food deserts are residential areas "with limited access to affordable and nutritious food such as fruits, vegetables and whole grains."¹⁵ Redlining by grocers and lack of access to capital for minority, especially African American, business owners contribute to food deserts.¹⁶ Residents in a food desert typically are more than half a mile away from any full-line

grocery store or supermarket. This makes it especially difficult for residents who do not own a car to get to a grocery store on a regular basis.

Opponents of dollar stores say such stores exacerbate the issue by undercutting the few local grocers accessible by residents in impoverished neighborhoods. Perhaps more harmful than food deserts, the dollar stores may create "food swamps." Food swamps are areas where less healthy food is in abundance, with no similar access to healthy foods.¹⁷ The unhealthy food sold by dollar stores is more readily accessible, cheaper, and contributes to obesity and other health problems. Proponents argue food deserts, by nature, already lack food options and dollar stores merely fill the void. They see dollar stores as a symptom of larger problems, not the root cause of them.

The expansion of dollar stores, along with all of their benefits and drawbacks, has greatly impacted a number of communities across the United States. As a result, some communities are drafting new zoning restrictions to counter what they see is a net negative.

Defining the small-box store

The first step to regulating dollar stores is to define them. A dollar store is a small-box store that operates out of smaller retail spaces, such as strip malls, and sells a wide variety of relatively small and inexpensive items.¹⁸ Municipalities around the country have defined the stores in different ways and can serve as examples for townships that may wish to adopt their own definitions in an ordinance. For instance, Tulsa, Oklahoma, has defined dollar stores as retail stores with a "floor area of 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."¹⁹ Kansas City, Kansas, more broadly defines dollar stores as a store with "15,000 square feet or less which sells at retail an assortment of physical goods, products, or merchandise directly to the consumer."²⁰

Generally, dollar store definitions have three parts:

- 1) an upper limit on the square footage a store occupies,
 - 2) a description of items sold, and
 - 3) excluded types of stores.
- Townships looking to define dollar stores by size should consider the limit on square footage to be at least 10,000 square feet or more. Dollar Tree, for example, looks for stores to be in the 8,000 to 10,500 square feet range.²¹ Kansas City chose a cutoff nearly 5,000 square feet more than that range, whereas Tulsa exceeded it by just 2,000 square feet. Even at 15,000 square feet, there is little concern of incidentally including bigger grocers in the definition of dollar store. For instance, Meijer stores average nearly 200,000 square feet,²² and D&W Fresh Markets are often in excess of 50,000 square feet.²³



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The greater concern is including mom-and-pop stores. Ordinances can be crafted to avoid including such stores by, first, reviewing the square footage of stores in the municipality to determine where to draw the line, and second, by describing the items sold.

Definitions of small-box stores frequently include descriptors like “variety” or “assortment” and are aimed at the cost of the goods being sold. The descriptors seek to exclude specialty stores and references to price frequently included in such ordinances take aim at the discount nature of small box stores. While Kansas City opted to leave price unaddressed, Tulsa specified an exact price: the majority of items being sold cost less than \$10. A middle ground between unaddressed price and an actual dollar number is the phrase, “relatively inexpensive.” While a vaguer and more malleable standard, it allows municipal officials to address the dollar store phenomenon while providing some flexibility.

Finally, dollar stores can also be defined by what they are not. Some municipalities exclude certain types of businesses from the definition of small-box or dollar store. Drugstores and convenience stores attached to gas stations are frequently excluded. Other stores are excluded by how much and what kind of food is sold. Stores that have a large percentage of their shelving units stocked with fresh or fresh frozen food, such as small or specialty grocers, are often exempt. Alternatively, stores that have a minimal amount of shelf space (such as a clothing store with candy bars in the checkout lanes) dedicated to food are also exempt.

What is and what is not a small-box store? Any proposed ordinance should define the stores by their size and by the types of items being sold, and be tailored to the individual community. But, township officials must also avoid inadvertent inclusion and inadvertent exclusion.

The first is the error of including in the definition stores that are not intended to be included. For instance, it is arguable the Kansas City definition could include a small, 12,000-square-foot independent hardware store that has too many aisles of prepackaged food. It is unlikely such store is the target of the ordinance and the city probably does not want them to be restricted the same as dollar stores.

The second type of error is excluding from the definition true dollar stores, the type of store officials seek to regulate. A dollar store in a Tulsa strip mall, at 10,500 square feet, could avoid restrictions simply by renting 1,501 square feet of the adjacent store front. An unintended consequence of defining “dollar store” as such might simply lead to larger dollar stores. Line drawing is not an easy task and there is no one-size-fits-all definition. Township and other local officials should be careful to avoid both kinds of errors when defining small-box stores.

Zoning options

Township and municipal officials have a number of options to address the emerging issue of small-box store expansion.



A single dollar store may provide a number of tangible benefits to a rural community. Some residents of small town America, however, may lament the community’s loss of character as the generic stores can erode the area’s charm and may represent unwelcome change.

Approaches include placing a moratorium on the opening of new stores, restricting or dispersing where dollar stores may open, making permits conditional, or requiring healthy food overlays.²⁴ Each option may be taken alone or in conjunction with another option.

Small-box moratorium

Municipalities, including Empire and Oklahoma City, have sought moratoriums on the opening of new dollar stores. The moratoriums, which are generally temporary and last between six months and one year, allow municipal officials to debate how to best handle the changing landscape of land uses. Moratoriums are typically the first step and are not designed to solve the issue. Rather, they preserve the status quo while allowing officials to hear constituent concerns and seek expert advice before making a decision or deciding that further regulation is not necessary.

Restriction and dispersal policies

Using Kansas City as an example once more, its ordinance prevents two dollar stores from being within 10,000 feet (nearly two miles) of an existing store or within 200 feet of a residentially zoned property.²⁵ The goal of such policy is to prevent the clustering of dollar stores, which increases competition for grocery stores and could even drive them out of business.

Another approach that New Orleans, Louisiana, explored but ultimately did not adopt, is restricting the opening of new dollar stores within one mile of an existing grocery store.²⁶

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Instead, the city prevents dollar stores from opening within two miles of an existing store in less developed areas, and within one mile of existing stores in more developed areas.²⁷ The goal is to prevent food deserts and swamps in the less developed areas of the city. Residents in the more developed part have more options to begin with and are less likely to be left with dollar stores as their only options.

This type of zoning restriction likely works best in larger townships or municipalities where consumers may have more options. It is effective against the threat of dollar stores becoming clustered in certain areas and driving out competition. It would be less effective in rural areas, such as Empire, where even one dollar store could upset the local ecosystem.

Conditional permits

Conditional or special use permits often accompany zoning restrictions and require the small-box store to meet some requirement before being granted a permit. Oftentimes, the small-box store is required to provide some amount of square footage—500 in the case of Kansas City—dedicated to fresh or fresh frozen food before a permit will be granted. Other localities require a percent of the floor area be reserved for fresh produce, meat and dairy. This helps prevent those types of foods from disappearing from the area if a local grocer leaves, and makes more accessible healthier options.

Conditional permitting may also be effective at increasing the amount of fresh food that is available; however, it may be best put to use in rural areas that seek the convenience that dollar stores provide. It provides opportunities for less mobile populations—persons who may be disabled or lack adequate means of transportation—to purchase fresh, healthier foods in their location rather than having to travel some distance.

Healthy food overlay district

Food overlay districts are perhaps the most comprehensive approach to addressing any issues caused by the expansion



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of dollar stores. The approach generally combines restrictive policies and conditional permitting with a larger plan to combat food insecurity in certain areas. Oftentimes, this means loosening of restrictions for existing sellers and incentives to attract new grocers.

Birmingham, Alabama,²⁸ for example, established a healthy food overlay district in 2019.²⁸ The idea was to make healthy food options more readily available by tightening restrictions on dollar stores and loosening restrictions on traditional grocers. Small-box stores are prevented from opening within one mile of an existing store. Parking and size restrictions were loosened for traditional grocers, and farmers' markets saw an increase in the number of days they can operate each year. Mobile grocers can now operate in residential neighborhoods, provided they are not within 1,000 feet of a grocery store and do not remain there for three consecutive days. Such policies seek to provide convenient, healthy options while restricting the growth of dollar stores.

The healthy food overlay is an attractive option for townships near larger municipalities that can offer a variety of grocer choices. Rural townships may benefit less, especially townships that already have fairly loose regulations or if those regulations are not barrier to grocers entering the market.



Decide what's best for your township

There is no one-size-fits-all approach to dealing with dollar stores. Some communities may welcome them with open arms. Others may find reasonable restrictions that avoid clustering of stores prevent many of the downsides while providing some of the benefits that these small-box stores offer. Others may use the issue as a prompt for a broader focus on food insecurity and lack of access to healthy, nutritional food for large segments of the population.

Township officials should be cognizant of the issue and be prepared to take the steps toward enacting a policy that best fits their community.

Hear more about this topic from Attorney Mike Homier at his educational session, "Small Box Discount Retailers and Big Dollar Zoning Issues," held from 10:15 to 11:30 a.m. on Tuesday, April 28 at MTA's Annual Educational Conference & Expo at the Grand Traverse Resort in Acme

Township (Grand Traverse Co.). Learn more about the Conference at www.michigantownships.org.



End notes

¹ <https://www.wsj.com/articles/too-much-coffee-starbucks-shops-outnumber-mcdonalds-1528372800>

² *Number of Stores of the Leading 20 American Retailers in the United States in 2018*, Statista (Jul. 2, 2019)

³ *Id.*

⁴ <https://ilsr.org/rule/dollar-store-dispersal-restrictions/dollar-store-restriction-tulsa-okla/>

⁵ Marie Donahue, *Dollar Store Restriction – Tulsa Oklahoma*, Institute of Local Self-reliance (2018)

⁶ See, e.g., Rachel Siegel, *As Dollar Stores Move into Cities, Residents See a Steep Downside*, Washington Post (Feb. 15, 2019)

⁷ See, e.g., Victor Luckerson, *How a City Fought Runaway Capitalism and Won*, The New York Times (Nov. 15, 2019)

⁸ See, e.g., John Carlisle, *Dollar Store Wants to Infiltrate Popular Up North Vacation Spot – and Town Fights Back*, Detroit Free Press (Dec. 2, 2019)

⁹ Carlisle, *supra* note 8.

¹⁰ New Orleans Study

¹¹ *Id.* at page 19.

¹² See Siegel, *supra* note 6

¹³ *Dollar Store Impacts*, Institute of Local Self-reliance

¹⁴ See generally, Carlisle, *supra* note 6.

¹⁵ New Orleans Study. <https://www.nola.gov/getattachment/City-Planning/Major-Studies-and-Projects/Small-Box-Retail-Diversity-Study/Small-Box-Retail-Diversity-Final-Report.pdf/>

¹⁶ See Marie Donahue and Stacy Mitchell, *Dollar Stores are Targeting Struggling Urban Neighborhoods and Small Towns. One Community is Showing How to Fight Back*, Institute of Local Self-reliance (Dec. 6, 2018)

¹⁷ New Orleans Study. Page 53.

¹⁸ See Michael Davidson and Fay Dolnick, *A Planners Dictionary*, page 441

¹⁹ Tulsa, Oklahoma, Municipal Code § 42.35.050-L.4

²⁰ Donahue, *supra* note 5.

²¹ See Real Estate Partners, *Dollar Tree*, <https://www.dollartreeinfo.com/real-estate>.

²² See Meijer Frequently Asked Questions, <http://newsroom.meijer.com/faqs>

²³ See Pete Daly, *Grocers' Corner*, Grand Rapids Business Journal (Jun. 24, 2011)

²⁴ See generally Marie Donahue, *Dollar Store Restrictions*, Institute of Local Self-reliance (2018)

²⁵ Donahue, *supra* note 5.

²⁶ New Orleans Study

²⁷ *Id.* at page 95.

²⁸ See Sam Prickett, *Birmingham City Council Approves Healthy Food Overlay District*, WBHM (Jul. 11, 2019)

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