

# Community Protection Policy Kit: Store Size Cap Ordinance

## Introduction

A size cap ordinance prohibits the construction of retail stores larger than a certain size. Dozens of cities and towns across the country have enacted these ordinances. The limits vary, but 50,000 square feet is about average.

Size caps help to sustain the vitality of small-scale, pedestrian-oriented business districts, which in turn nurture local business development. They also prevent the many negative impacts of big box development, such as increased traffic congestion and over-burdened public infrastructure, and they protect the character of the community by ensuring that new development is at a scale in keeping with the traditional built environment and surrounding landscape.

When faced with a store size cap ordinance, a retailer that typically builds larger stores will either opt not to build or will design a smaller store that fits within the cap.

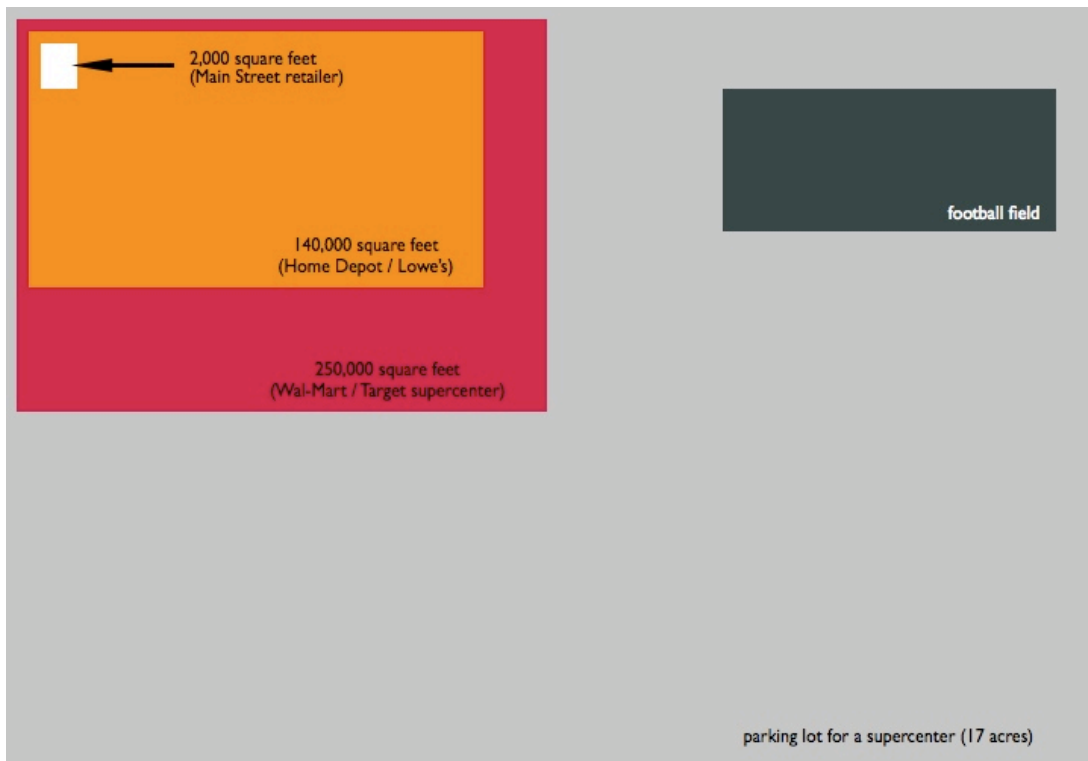
## What this kit contains:

1. "How Big is Too Big?" Flyer and Poster for Distribution
2. Common Questions: How to Answer the Opposition
3. Model Size Cap Ordinance
4. Key Decisions in Drafting a Size Cap Proposal
5. Tips for Building Support for a Store Size Cap
6. Examples of Communities that have Adopted Size Caps
7. Sample Materials from other Campaigns

# How Big is Too Big?



A typical Wal-Mart or Target supercenter, with its parking lot, occupies an area equal to more than a dozen football fields. Since 1990, retail development in the U.S. has consumed about 500,000 acres, or 780 square miles—more than half the size of Rhode Island.



Wal-Mart, Target, Home Depot, Lowe's, and other retailers build stores that are several acres in size. Their parking lots are even larger, typically occupying a land area three times the size of the store itself.

And the big boxes keep getting bigger. Wal-Mart, for example, has been closing its superstores and building supercenters, which are about twice as large on average (100,000 vs. 200,000 square feet) and include a full supermarket.

## Bigger Stores, Bigger Impacts

Many of the negative impacts that big-box retailers have on communities and local economies are directly related to the size of their stores:

*Diminished competition*—The bigger the store, the bigger the bite it will take out of the local economy. Wal-Mart's U.S. stores, for example, annually average \$418 sales per square foot (Wal-Mart 2005 Annual

Report), meaning a 200,000-square-foot supercenter is designed to capture \$84 million each year. Most communities, even fast-growing areas, cannot absorb a store of that scale without severe revenue losses to existing businesses, including both locally owned stores and competing supermarkets and shopping centers.

As these businesses contract and close, residents are left with fewer choices and less competition. Some towns and neighborhoods now depend on a single big-box store for certain goods. Evidence suggests that these retailers may raise prices once they attain a dominant market position.

*Heavier Traffic*—The larger the store, the larger the geographic region from which it pulls customers and the higher the traffic counts. A 200,000-square-foot superstore typically generates more than 10,000 car trips on weekdays and more on Saturdays. (See our Impact of Big-Box Stores on Traffic fact sheet.)

## BIGBOXTOOLKIT

A project of the Institute for Local Self-Reliance

[www.bigboxtoolkit.com](http://www.bigboxtoolkit.com)



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*Excessive land consumption*—While neighborhood and downtown business districts, with their multi-story buildings and reduced need for parking, are relatively efficient users of land, big-box retailers are bulldozing vast tracks of field, forest, and farm land.

Retail chains have been consuming land at about ten times the rate of growth in consumer spending. Since 1990, some 500,000 acres—an area more than half the size of Rhode Island—has been developed for retail, mostly big-box stores.

*Spoiled local character*—Massive big-box stores surrounded by asphalt are out of proportion with the scale of traditional commercial districts and residential neighborhoods, fueling sprawl and undermining the character of our cities, towns, and rural areas.

### **Solution: Store Size Caps**

Dozens of cities and towns have enacted local zoning ordinances that prohibit stores over a certain size. Examples include:

- Ashland, Oregon—Limits retail stores to no more than 45,000 square feet.
- Ravalli County, Montana—Caps stores at 60,000 square feet.
- Madison, Wisconsin—Restricts retail buildings to a footprint of 100,000 square feet.
- Damariscotta, Maine—Bars stores over 35,000 square feet.

Store size caps prevent the many negative impacts of big-box development, such as increased traffic and over-burdened public infrastructure. They help to maintain the vitality of local business districts and protect the character of the community by ensuring that new development is at a scale in keeping with existing buildings.

Store size caps are not discriminatory. They do not ban retailers such as Home Depot and Target. Rather, they mandate that those companies build stores that are an appropriate size for the community.

Store size caps are legal. Through their land use zoning ordinances, cities have long had the power to control the scale of development by, for example, limiting building heights or setting minimum house lot sizes. Store size caps are a recent variation on these types of regulations and have been validated by the courts as a legitimate use of municipal authority.



*Store size cap ordinances foster small-scale, walkable business districts.*

Communities consider many factors in deciding what's an appropriate size limit for retail stores. Here are some useful reference points:

- Average Rite Aid: 13,000 sq. ft.
- Average Barnes & Noble: 25,000 sq. ft.
- Average Best Buy: 37,000 sq. ft.
- Supermarkets: range from 10,000 to 90,000 sq. ft. and average 44,000 sq. ft.
- Football field: 57,000 sq. ft.
- Average Home Depot (including garden area): 128,000 sq. ft.
- Wal-Mart supercenters: range from 99,000 to 250,000 sq. ft. and average 187,000 sq. ft.

For examples of size cap ordinances, see: <http://www.newrules.org/retail/size.html>

# Common Questions: How to Answer the Opposition

## **Are store size caps legal?**

Yes. Cities and towns have long had the authority—through the zoning powers granted to them by state law—to control the scale of development. Most municipal zoning codes are filled with provisions that regulate scale by, for example, restricting the height of buildings or setting a minimum acreage for house lots.

Store size caps are merely a variation on this long-standing use of zoning to ensure that new development is of a scale appropriate to the community. As such, they are perfectly legal. Indeed, scores of cities and towns have restricted the size of stores and their laws have not been challenged by big-box retailers.

## **Didn't Wal-Mart sue a city in California that adopted a law banning superstores?**

Wal-Mart did seek to overturn an ordinance adopted by Turlock, California, on the grounds that it was discriminatory and illegally interfered with competition.

The ordinance at issue was not a straight size cap on all stores. Instead, the law only bans stores over 100,000 square feet that devote more than 5 percent of their floor area to groceries. While supercenters are affected, other kinds of big-box stores that do not carry food are not.

Even so, Wal-Mart lost in both state and federal court. Courts in both jurisdictions upheld Turlock's ordinance, ruling that the restrictions are constitutional, do not unduly harm competition, and are a valid use of municipal zoning authority.

## **Doesn't it go against the free market to ban certain types of businesses and prevent them from competing?**

Size caps do not single out particular companies and prevent them from doing business. Instead they require all retailers to build stores that are appropriately sized for the community. Wal-Mart, Home Depot, and other chains are free to open stores so long as those outlets do not exceed the size limit—a limit that local businesses are also subject to.

Size caps are not only fair, but they foster greater competition and more consumer choice by not allowing a single giant supercenter to become the only place where residents can buy certain kinds of goods. Size caps instead facilitate a market composed of a diversity of small and mid-sized stores.

## **If 50,000 square feet is okay, why not 51,000 square feet? Aren't size caps rather arbitrary?**

The size limit being proposed was not chosen at random. It is the result of much research into what other cities and towns have done and what size limit makes the most sense for this community.

The research overwhelmingly indicates that the cost to communities of large-scale retail development far outweighs the benefits. Deciding exactly where to draw the line is not always easy—there's always someone who will argue that a particular number is arbitrary—but we have to draw it somewhere.

## **Didn't Wal-Mart get around a size cap in a Maryland community by building two smaller stores side-by-side?**

This particular size cap ordinance, in Calvert County, was poorly worded. Most size cap ordinances, including the one proposed here, define two or more adjacent buildings operated by one company as a single retail store for the purposes of the size cap (meaning the total square footage of all the buildings cannot exceed the cap).

Although Wal-Mart did propose two side-by-side stores in Calvert County, public outcry over the plan ultimately led the company to drop its proposal.

## **Won't a size cap hurt economic development? What has been the experience of cities and towns that have size caps?**

Communities commonly report that, while store size cap ordinances stop some development, they actually foster other kinds of economic development. The caps have blocked massive retail projects, but ushered in downtown investment and encouraged small-scale, mixed use and pedestrian-oriented development.

After the passage of 65,000-square-foot cap in Rockville, Maryland, a site slated for a big-box store was instead developed as a multi-story residential building with retail stores and restaurants on the first floor. In Arcata, California, a prohibition on big-box development has had the effect of steering new investment into the downtown instead. The downtown has virtually no retail vacancy and a new multi-story building was recently erected on a long-standing vacant lot.

None of the size cap ordinances that we are aware of—some are more than a decade old—have been repealed.

# Model Ordinance

This is a very basic size cap ordinance that can serve as a starting point for crafting your proposal.

## LARGE-SCALE RETAIL ORDINANCE

**WHEREAS** the city finds that large-scale retail development can result in substantial impacts to the community, including noise, traffic, and loss of local character;

**WHEREAS** the city finds that large-scale retail development imposes additional costs on public facilities and services;

**WHEREAS** the city finds that large-scale retail development is inconsistent with the goals contained in the comprehensive plan;

**WHEREAS** the city finds that limiting the size of retail stores is necessary to foster a competitive and diverse mix of retail establishments;

**WHEREAS** the city finds that limiting the size of retail stores will promote a more efficient use of land;

**WHEREAS** the city finds that limiting the size of retail stores is necessary to facilitate a safe and comfortable pedestrian scale environment;

**NOW, THEREFORE, BE IT ORDAINED** by the city:

That in all zoning districts, no single retail establishment, whether located in a single building or combination of buildings, shall exceed 50,000 (fifty thousand) square feet of gross floor area in the aggregate.

The term "gross floor area" shall include indoor and outdoor space utilized for retail display and sale of goods. The gross floor area of adjacent stores shall be aggregated in cases where the stores (1) are engaged in the selling of similar or related goods, wares or merchandise and operate under common ownership or management; (2) share checkstands, a warehouse, or a distribution facility; or (3) otherwise operate as associated, integrated or co-operative business enterprises.

# Key Decisions in Drafting a Size Cap Proposal

## What will be the geographic extent of the cap?

Most store size cap ordinances apply to the entire city or town. In some larger cities, size caps are implemented on a neighborhood by neighborhood basis, allowing for variation in the size limit depending on the needs and circumstances of each neighborhood.

A number of counties have also adopted store size caps. Usually county zoning rules affect only the unincorporated land that lies outside of the jurisdiction of cities and towns within the county. In some cases, however, county laws supersede municipal laws and apply to land both beyond and within town boundaries.

## Should the cap apply to the building footprint or to the "gross leasable area"?

A few communities cap only the footprint of the building. This approach allows for larger stores provided they are multi-story. A footprint cap of 50,000 square feet, for example, would accommodate a 200,000-square-foot store spread over four floors.

The vast majority of communities with store size cap laws apply the limit to the gross leasable area, or the GLA, of the store. GLA refers to the total floor space that the store occupies. A 50,000-square-foot cap on GLA would not allow for a store larger than that, whether on one or more stories.

Because many of the economic, community, and traffic impacts of big-box retailers are tied to the size of the stores, not the footprint of the buildings, we strongly recommend that size cap laws specify GLA.

Encouraging or mandating that retailers build multi-story buildings that accommodate other uses, such as residential or offices on upper floors, is also an excellent idea. Doing so will not only produce a more efficient and pedestrian-friendly land use pattern, but it will create a better environment for nurturing new locally owned businesses. Fostering multi-story buildings, however, is best achieved through design standards, rather than through a footprint ordinance.

## What should be the size limit?

This depends on the circumstances and the long-term goals of the community. Every community is different and must make its own determination about what makes sense.

Here are some factors worth considering:

- *Where other communities have drawn the line*—Most cities and towns that have size caps in place set the limit somewhere between 25,000 and 75,000 square feet (see the examples included in this kit). A cap of 50,000 square feet—which is somewhat larger than the average supermarket (44,000 square feet) and smaller than a football field (57,000 square feet)—is close to average.
- *Population and shopping choices*—Communities have enough spending power to support only so much retail. A town of 10,000 might only be able to sustain a total of 400,000 square feet of retail, so a cap of 20,000 square feet makes sense to ensure a good mix of different businesses. Although it might seem like a very different environment, the same dynamic is at work in many big cities, where a neighborhood business district serves a similarly small population within a short radius. A number of urban neighborhoods have capped retailers at 10,000 square feet or less to foster a mix of many different stores.
- *The size of existing retail stores*—Some communities adopt a cap that is the size of the largest store in town. However, it is also entirely legitimate to set a limit that is *smaller* than existing stores. Indeed, it's often only after experiencing the negative effects of one or more big-box stores that many communities decide they cannot accommodate additional large-scale development. While size caps apply to all future construction and do not force changes on existing oversized stores, they do prevent those stores from expanding further.
- *Your transportation goals*—A smaller cap encourages more stores within closer proximity to more homes, and thus less driving. Consider—and this is a very rough-sketch example—that a market with 40,000 people generates enough spending on hardware and building supplies (according to national averages) to support either a single 140,000-square-foot big-box or seven to eight 20,000-square-foot stores scattered across the city and providing hardware and related goods within a short distance of many residents.

For a list of average store sizes for different retail chains, see the "How Big is Too Big?" flyer included in this kit.

### **Should you allow for some flexibility for stores in a certain size range?**

Some communities have taken a tiered approach. They have adopted an absolute cap of, say, 60,000 square feet, while requiring proposals for stores in a smaller size range—say, 20,000 to 60,000 square feet—to pass a community impact review and obtain a special use permit to build. This approach recognizes that stores in a certain size range may or may not have adverse impacts, depending on the particular store and location, and therefore should be considered on a case-by-case basis. For more on community impact review ordinances, see ILSR's New Rules web site at <http://www.newrules.org/retail/impact.html>.



# Tips for Building Support for a Store Size Cap

## **Form a broad coalition.**

Your message will be especially powerful if decision-makers hear it from a broad range of people. Reach out to business owners, labor unions, religious leaders, environmentalists, community and neighborhood groups, and, of course, your friends and neighbors.

## **Develop a campaign plan to educate your neighbors and elected officials.**

You will find many tools and resources on the Big Box Tool Kit web site at <http://www.bigboxtoolkit.com> to help you make the case about the impact of big-box stores and the need for a size cap. See especially the campaign guidance under Section 1 ("Where to Start: How to Stop a Big Box") and the educational materials in Section 3 ("Educate Your Neighbors: Facts on Big-Box Impacts") and Section 4 ("Find Answers: Studies, Experts & Advice")

## **Use visuals.**

This is crucial. Most people have no idea how big 50,000 or 100,000 square feet is, and opponents will take advantage of this by trying to portray your proposal as unreasonable. Distribute the "How Big is Too Big?" flyer included in this kit or blow it up as a poster for public meetings. Or develop your own graphic to illustrate stores sizes, perhaps in relation to a local landmark. Citizens in one community, for example, started with an aerial photo of their downtown and overlaid the outline of 200,000-square-foot supercenter and its parking lot. You should also think about ways that you can convey size in talking about the cap. For example, if you are proposing a size cap of 50,000 square feet, you might tell people you want to bar stores larger than a football field.

## **Quote from your community's comprehensive plan.**

Read your community's comprehensive plan and find statements within the plan that support limiting retail sprawl and strengthening downtown and neighborhood businesses. Then quote from the plan as you make the case for the cap, particularly when talking to city officials. (If you need a basic overview of local land use policy and comprehensive plans, please see Section 1 ("Where to Start: How to Stop a Big Box") of the Big Box Tool Kit web site at <http://www.bigboxtoolkit.com>).

# Examples of Communities with Size Caps

Here are some examples of the dozens of communities that have enacted store size cap ordinances. Additional details and the full text of all of these ordinances can be found on ILSR's New Rules web site at [www.newrules.org/retail/size.html](http://www.newrules.org/retail/size.html)

## Cities and Towns

Andover, MA—65,00 square feet (2007)

Agoura Hills, CA—60,000 square feet (2002)

Ashland, OR—45,000 square feet (1995)

Belfast, ME—75,000 square feet (2001)

Bellingham, WA—90,000 square feet (2007)

Boxborough, MA—25,000 square feet (2000)

Bozeman, MT—75,000 square feet (2003)

Charlevoix, MI—45,000 square feet (2005)

Cottage Grove, WI—60,000 square feet (2006)

Easton, MD—65,000 square feet (2000)

Hailey, ID—36,000 square feet (1995)

Homer, AK—45,000 square feet (2004)

Madison, Wisconsin—100,000 square feet (building footprint) (2005)

Mt. Shasta, California—50,000 square feet (2005)

Neptune Beach, FL—60,000 square feet (2006)

North Elba, NY—40,000 square feet (1998)

Northampton, MA—90,000 square feet (2002)

Rockville, MD—65,000 square feet (2000)

Santa Fe, NM—150,000 square feet (2001)

Skaneateles, NY—45,000 square feet

Taos, NM—80,000 square feet (1999)

Walpole, NH—40,000 square feet (2000)

Warwick, NY—60,000 square feet (2002)

Westford, MA—60,000 square feet (1995)

## Counties

Coconino County, Arizona (Flagstaff)—70,000 square feet (2001)

Kauai, Hawaii—75,000 square feet (2007)

Talbot County, MD—65,000 square feet (2003)

Tuolumne County, CA—60,000 square feet (2004)

## Neighborhoods

Brookside in Kansas City, MO—10,000 square feet (or 25,000 square feet for grocery stores) (2000)

Coconut Grove in Miami, FL—70,000 square feet (2005)

San Francisco, CA—Several San Francisco neighborhood cap stores at 4,000-6,000 square feet

Front and back of a flyer developed by Our Town Damariscotta in their successful campaign for a 35,000-square-foot size cap in Damariscotta, Newcastle, and several other towns in Maine.

**35,000 sq. ft.**  
Size Cap

**57,000 sq. ft.**  
Football Field

**2,500 sq. ft.**  
Waltz

**16,000 sq. ft.**  
Damariscotta Hardware

**10,000 sq. ft.**  
Yellowfront

**186,000 sq. ft.**  
Wal-Mart Supercenter

## How big is too big?

The proposed Wal-Mart site including parking is 25 acres, bigger than Damariscotta's entire downtown district.

# BIG★BOX

## Will Raise Your Taxes

Communities Across the Nation  
Have Learned the Hard Way:  
**Big Box Stores Cost Taxpayers Money.**

**Here are 6 reasons why:**

1. Police, Fire, and Road Maintenance costs increase due to Big Box development - more than any other kind of retail. – *who pays?*
2. Police costs skyrocket by as much as 30% when Big Boxes stores are in small towns. – *who pays?*
3. Big Box retail will reduce the values of neighboring residential properties thereby creating tax increases on your property. – Again, *who pays?*
4. Local businesses are forced to close or scale back, which decreases their assessed value and their tax contribution. – *who pays?*
5. Towns around the country report a NET LOSS in revenue when Big Boxes come to town.– *who pays?*
6. Big Box retail pays less in taxes per square foot than smaller retailers. – *who pays?*

**Not them --YOU do!**

Based on independent research studies available at [www.newrules.org](http://www.newrules.org).  
Paid for by the local people who support Our Town.  
[www.ourtowndamariscotta.com](http://www.ourtowndamariscotta.com)

**Vote YES on the Size Cap**  
**March 21 -- Damariscotta**  
**March 27 -- Newcastle**



Front and back of a flyer developed by Our Town Damariscotta in their successful campaign for a 35,000-square-foot size cap in Damariscotta, Newcastle, and several other towns in Maine.

## **BIG BOX IMPACTS**

**ECONOMIC:** *Big Box stores undermine vibrant local economies.*

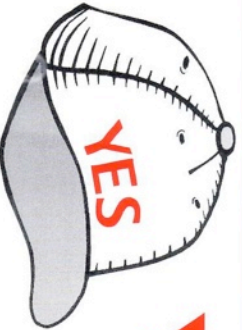
- ◆ Superstores drain revenue from locally-owned businesses
- ◆ Big Box monopoly undercuts independence
- ◆ Tourism suffers if region loses its character
- ◆ Higher demands on town services can raise taxes

**VALUES:** *Our quality of life is threatened by...*

- ◆ Loss of downtown as community center
- ◆ Sprawl: one Big Box attracts others
- ◆ Suburbanization: Damariscotta becomes an Everyplace
- ◆ Loss of pedestrian-friendly stores to car-dependent retail

**ENVIRONMENT:** *Big Box construction hurts natural resources.*

- ◆ Sprawl consumes open space and wildlife habitat
- ◆ Paved areas increase storm water runoff
- ◆ Superstores bring 24 hour light and noise pollution
- ◆ Traffic and truck deliveries increase emissions



# **YES! On the Cap For Our Future**

**Vote March 21 ◆ Damariscotta**

### **Why a Size Cap?**

- ◆ To prevent Big Box Development in Damariscotta
- ◆ To encourage economic growth that fits the town
- ◆ To protect local control now and in the future

*Size Caps have been successfully implemented in towns around the country and in Maine to limit the scale of retail development.*