

**COUNCIL OF THE DISTRICT OF COLUMBIA  
COMMITTEE OF THE WHOLE  
COMMITTEE REPORT**

1350 Pennsylvania Avenue, NW, Washington, DC 20004

**DRAFT**

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**TO:** All Councilmembers

**FROM:** Chairman Phil Mendelson  
Committee of the Whole

**DATE:** February 20, 2018

**SUBJECT:** Report on Bill 22-60, “Grocery Store Restrictive Covenant Prohibition Act of 2017”

The Committee of the Whole, to which Bill 22-60, the “Grocery Store Restrictive Covenant Prohibition Act of 2017” was referred, reports favorably thereon with amendments, and recommends approval by the Council.

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**I. BACKGROUND AND NEED**

On January 10, 2017, Bill 22-60, the “Grocery Store Restrictive Covenant Prohibition Act of 2017” was introduced by Councilmembers Mary Cheh and Bonds. Bill 22-60 prohibits restrictive land covenants or prohibitive contracts which prohibit the subsequent use of real property as a grocery store, on a site that is presently used as a grocery store. It provides an exception to an owner of a grocery store that relocates the grocery store within one-half mile of the previous site. For the exception to apply, relocation to the new site must occur within 2 years of the sale, transfer, or lease of the prior site and the restrictive covenant imposed on the prior site cannot exceed 3 years.

*Restrictive Covenants in the District*

In late 2014, it was reported that the Safeway at 4865 MacArthur Boulevard in Ward 3 was offered for sale. In previous store and property sales, Safeway required that a purchase of its property agree to a covenant prohibiting reuse of the property for a similar or analogous use; that is that the property may not be used a grocery store or retail food establishment of any kind. It was

determined that this type of restriction is harmful to residents. And, in the MacArthur Boulevard instance, it was viewed as harmful to the residents of the neighborhood as the next closest grocer is approximately 2.5 miles away. In response to the information obtained about the MacArthur Boulevard Safeway, on October 7, 2014, the first iteration of this bill was introduced on an emergency basis by Councilmembers David Catania and Mary Cheh and was unanimously approved by the Council.

In 2015, the District Government was made aware of a restrictive covenant on the Skyland Town Center site when attempting to close a development deal that would bring Walmart to Ward 7. It was discovered that the Skyland site located at 2385 Alabama Avenue Southeast had a restrictive covenant in place, which prohibited the land from being used to operate a grocery store. In 1998, a year after the opening of the Alabama Avenue Safeway, the District negotiated a covenant with Safeway to prevent an additional grocery store from operating at the Skyland site. It was not until 2016, that the District Government was able to negotiate the release of that covenant with Safeway to facilitate the development of the Skyland site, at the cost of \$900,000 annually over four years.

### *Impacts of Restrictive Covenants*

Restrictive covenants and other use restrictions policies related to grocery stores are harmful and limit a community's access to fresh food and pervert local land use plans. Maintaining a grocery store within an urban neighborhood is vital, particularly since many residents rely heavily on walking as a means of access to fresh food. A lack of stores offering health food options leads to unhealthy food choices and related health problems. These restrictive covenants are contrary to the standard of a free market and open competition. Restrictive covenants undermine food services competition and the advent of revitalized communities with large and small retailers, including drug stores, corner stores, and restaurants.

Restrictive covenants are a common practice in the grocery retail industry and are used by grocery operators as a way to protect profits and combat competition. However, for consumers these practices contribute to the creation of food deserts or at the very least fewer food options. As a response, local governments are using legislation to fight these anticompetition practices. Cities such as Chicago, Illinois<sup>1</sup> and Madison, Wisconsin have approved ordinances that ban this type of restrictive covenant, in addition to implementing other policies and initiatives to better control commercial land use and reduce food deserts.

The use of restrictive covenants by grocery retailers has shown to be an issue that negatively impacts the availability to fresh food across all eight wards of the District. By prohibiting the practice of including such clauses in property contracts, the District is allowing the market to better meet the demand for more healthy food options while also encouraging a more equitable local market.

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<sup>1</sup> Chicago's Legislation to Limit Restrictive Land-Use Covenants;  
<https://www.preventioninstitute.org/location/chicago-s-legislation-to-limit-restrictive-land-use-covenants>

## II. LEGISLATIVE CHRONOLOGY

- January 10, 2017 Bill 22-60, “Grocery Store Restrictive Covenant Prohibition Act of 2017” is introduced by Chairman Mendelson, at the Request of the Mayor.
- January 24, 2017 Referred to the Committee of the Whole with comments from the Committee on Business and Economic Development.
- January 27, 2017 Notice of Intent to Act on Bill 22-60 is published in the *District of Columbia Register*.
- October 20, 2017 Notice of a Public Hearing on Bill 22-60 is published in the *District of Columbia Register*.
- November 28, 2017 The Committee of the Whole holds a public hearing on Bill 22-60.
- February 20, 2018 The Committee of the Whole marks-up Bill 22-60.

## III. POSITION OF THE EXECUTIVE

Andrew Trueblood, Chief of Staff for the Office of the Deputy Mayor for Planning and Economic Development testified on behalf of the Executive in support of Bill 22-60.

## IV. COMMENTS OF ADVISORY NEIGHBORHOOD COMMISSIONS

Andrew Trueblood, Chief of Staff for the Office of the Deputy Mayor for Planning and Economic Development (DMPED), testified on behalf of the Executive. Mr. Trueblood expressed his strong support for Bill 22-60.

## V. SUMMARY OF TESTIMONY

The Committee of the Whole held a public hearing on Bill 22-60, November 28, 2017, starting at 10:45 a.m. The testimony summarized below is from that hearing. The hearing was attend by Chairman Phil Mendelson. Copies of written testimony are attached to this report.

***Andrew Trueblood, Chief of Staff for the Office of the Deputy Mayor for Planning and Economic Development (DMPED)***, testified on behalf of the Executive. His testimony is summarized in more detail in Section III of this report.

The Committee received no testimony or comments in opposition to Bill 22-60.

## **VI. IMPACT OF LAW**

Bill 22-60 prohibits restrictive land covenants or prohibitive contracts which prohibit the subsequent use of real property as a grocery store, on a site that is presently used as a grocery store. It provides an exception to an owner of a grocery store that relocates the grocery store within one-half mile of the previous site. For the exception to apply, relocation to the new site must occur within 2 years of the sale, transfer, or lease of the prior site and the restrictive covenant imposed on the prior site cannot exceed 3 years.

## **VII. FISCAL IMPACT**

The attached February 15, 2017 fiscal impact statement from the District's Chief Financial Officer states that funds are sufficient in the FY 2018 through FY 2022 budget and financial plan to implement the bill.

## **VIII. SECTION-BY-SECTION ANALYSIS**

Section 1	Short Title.
Section 2	Establishes the prohibition of restrictive land covenants or other use restrictions in a contract for sale, lease, or other transfer of real property as grocery store or food retail store. Allows the use of restrictive covenants for owners or operators of grocery stores or food retail stores that terminate operations at a site to relocate to a comparable or larger site in the District within one-half mile of the previous site.
Section 3	Fiscal impact statement
Section 4	Applicability.
Section 5	Effective date.

## **IX. COMMITTEE ACTION**

## **X. ATTACHMENTS**

1. Bill 22-60 as introduced.
2. Written Testimony.
3. Status Report on
4. Fiscal Impact Statement for Bill 22-60.

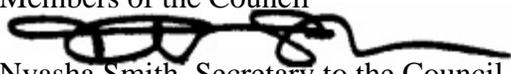
5. Legal Sufficiency Determination for Bill 22-60.
6. Committee Print for Bill 22-60.

**COUNCIL OF THE DISTRICT OF COLUMBIA**  
**1350 Pennsylvania Avenue, N.W.**  
**Washington D.C. 20004**

Memorandum

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To : Members of the Council

From :   
Nyasha Smith, Secretary to the Council

Date : January 23, 2017

Subject : Referral of Proposed Legislation

Notice is given that the attached proposed legislation was introduced in the Legislative Meeting on Tuesday, January 10, 2017. Copies are available in Room 10, the Legislative Services Division.

TITLE: "Grocery Store Restrictive Covenant Prohibition Act of 2017", B22-0060

INTRODUCED BY: Councilmembers Cheh and Bonds

CO-SPONSORED BY: Councilmembers Grosso, R. White, T. White, Silverman, Evans, Gray, and Chairman Mendelson

The Chairman is referring this legislation to the Committee of the Whole with comments from the Committee on Business and Economic Development.

Attachment

cc: General Counsel  
Budget Director  
Legislative Services

1   
2 Councilmember Anita Bonds

  
Councilmember Mary M. Cheh

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5  
6 A BILL  
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10 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA  
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15 To establish that it shall be unlawful for the owner or operator of a grocery store to impose a  
16 restrictive land covenant or use restriction on the sale, or other transfer, or lease of real  
17 property used as a grocery store that prohibits the subsequent use of the property as a  
18 grocery store.  
19

20 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA; That this  
21 act may be cited as the “Grocery Store Restrictive Covenant Prohibition Act of 2017”.

22 Sec. 2. (a) It shall be unlawful for the owner or operator of a grocery store to impose a  
23 restrictive land covenant or use restriction in a contract for the sale, or other transfer, or lease of  
24 real property being used as a grocery store that prohibits the subsequent use of the real property  
25 as a grocery store.

26 (b) Any contract, including a private agreement, that includes a restrictive land covenant  
27 or use restriction on real property as described in subsection (a) of this section shall be void and  
28 unenforceable.

29 (c) The prohibition imposed by this section shall not apply to an owner or operator of a  
30 grocery store or food retail store that terminates operations at a site for purposes of relocating the  
31 grocery or food retail store into a comparable or larger store located within the District of  
32 Columbia within one-half mile of the site where the prior operation was terminated; provided,  
33 that relocation and commencement of the operation of the new grocery store or food retail store

34 at the new site occurs within 2 years of the sale, transfer, or lease of the prior site, and the  
35 restrictive covenant imposed on the prior site does not have a term in excess of 3 years. If the  
36 new grocery store or food retail store is not relocated within the District within one-half mile of  
37 the prior site within 2 years, the restrictive land covenant or use restriction shall not be  
38 enforceable.

39 (d) For the purposes of this act, the term:

40 (1) "Grocery store" means a retail establishment with a primary business of  
41 selling grocery products and includes a selling area that is used for a general line of food and  
42 nonfood grocery products.

43 (2) "Private agreement" means a mutually agreed upon and entered into exchange  
44 of promises.

45 Sec. 3. Fiscal impact statement.

46 The Council adopts the fiscal impact statement in the committee report as the fiscal  
47 impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act,  
48 approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

49 Sec. 4. Effective date.

50 This act shall take effect following approval by the Mayor (or in the event of veto by the  
51 Mayor, action by the Council to override the veto), a 30-day period of congressional review as  
52 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December  
53 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of  
54 Columbia Register.

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**Government of the District of Columbia**



**Office of the Deputy Mayor for Planning and Economic Development**

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Committee on Finance & Revenue  
Public Hearing on  
**B22-060 the “Grocery Store Restrictive Covenant Prohibition Act of 2017”**

Testimony of  
Andrew Trueblood  
Chief of Staff  
Office of the Deputy Mayor for Planning and Economic Development

Before the  
Council of the District of Columbia  
Committee of the Whole,  
Chairman Phil Mendelson

Tuesday, November 28, 2017  
10:30 a.m.

John A. Wilson Building, Room 412  
1350 Pennsylvania Avenue, NW  
Washington, DC 20004

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Testimony of Andrew Trueblood, Chief of Staff  
Office of the Deputy Mayor for Planning and Economic Development  
on B22-0060 “Grocery Store Restrictive Covenant Prohibition Act of 2017”

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Good morning, Chairman Mendelson, members, and staff of the Committee of the Whole. I am Andrew Trueblood, Chief of Staff for the Office of the Deputy Mayor for Planning and Economic Development (“DMPED”). I am here to provide testimony with regards to B22-060, the “Grocery Store Restrictive Covenant Prohibition Act of 2017.”

The approval of this Act would prohibit restrictive land covenants or prohibitive contracts that exclude subsequent use of real property as a grocery store, on a site that is presently used as a grocery store. Responding to specific cases where restrictive covenants have delayed or prevented the development of certain properties, the Council has for the past two years approved emergency and temporary versions of this legislation.

The Administration is always supportive of initiatives that promote access to grocery stores and fresh food across the District. In this case, eliminating restrictive land covenants may be beneficial to the District, by ensuring (with a minor exception) that eligible parcels of land are not precluded from hosting a grocery store merely because they were previously owned by a grocery store.

We would note that, in places where these restrictive covenants already exist, this legislation on its own may not allay concerns of an affected retailer about potential litigation risk. We have seen that large format retailers and grocers, who sign long-term leases and invest significant capital into their stores, have been unwilling to sign a lease when there is even a remote possibility of having to close a store due to an adverse court decision. Additionally, retailers who regularly use these covenants as part of their regular practice may be dissuaded from choosing to locate in the District.

Ultimately, we believe that this legislation is an important step for ensuring food access across the District and would be beneficial for District residents. Thank you for your time and I am happy to answer any questions you may have.

1 **COMMITTEE PRINT**  
2 **Committee of the Whole**  
3 **February 20, 2018**

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7 **A BILL**

8  
9 **Bill 22-60**

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12 **IN THE COUNCIL OF THE DISTRICT OF COLUMBIA**  
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17 To establish that it shall be unlawful for the owner or operator of a grocery store to agree to the  
18 inclusion of a restrictive land covenant or use restriction on the sale, or other transfer, or  
19 lease of real property used as a grocery store that prohibits the subsequent use of the  
20 property as a grocery store, unless the owner or operator relocates proximate to the  
21 former location, commences operation within 2 years, and limits the restrictive covenant  
22 to not exceed 3 years.

23  
24 **BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this**  
25 **act may be cited as the “Grocery Store Restrictive Covenant Prohibition Act of 2017”.**

26 **Sec. 2. (a) It shall be unlawful for the owner or operator of a grocery store to agree to the**  
27 **inclusion of a restrictive land covenant or other use restriction in a contract for the sale, lease, or**  
28 **other transfer of real property that prohibits the use of the real property as a grocery store, food**  
29 **retail store or the use of any property within 1 mile as a grocery store or food retail store.**

30 **(b) The restrictive land covenant or other use restriction on real property of the type**  
31 **described in subsection (a) of this section shall be void and unenforceable.**

32 **(c) The prohibition imposed by this section shall not apply to an owner or operator of a**  
33 **grocery store or food retail store that terminates operations at a site for purposes of relocating the**  
34 **grocery or food retail store to a comparable or larger site located in the District of Columbia**  
35 **within one-half mile of the site where the prior operations were terminated; provided, that**

36 relocation and commencement of the operation of the new grocery store or food retail store at the  
37 new site occurs within 2 years of the sale, transfer, or lease of the prior site, and that the  
38 restrictive covenant or other use restriction agreed upon with respect to the prior site does not  
39 have a term in excess of 3 years.

40 (d) For the purposes of this act, the term:

41 (1) "Grocery store" means a retail establishment with a primary business of  
42 selling grocery products and includes a selling area that is used for a general line of food,  
43 nonfood grocery products, or prescription pharmacy merchandise.

44 (2) "Food Retail Store" means a retail establishment with a primary business of selling food for  
45 consumption on-premise or off-premise. Sec. 3. Fiscal impact statement.

46 The Council adopts the fiscal impact statement in the committee report as the fiscal  
47 impact statement required by section 4a of the General Legislative Procedures Act of 1975,  
48 approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

49 Sec. 4. Effective date.

50 This act shall take effect following approval by the Mayor (or in the event of veto by the  
51 Mayor, action by the Council to override the veto), a 30-day period of congressional review as  
52 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December  
53 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of  
54 Columbia Register.