

AG Ferguson: Albertsons lifts illegal restrictions that created food desert in Bellingham neighborhood

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Land use restrictions unlawfully barred competitors from occupying its former location since 2018

BELLINGHAM — Attorney General Bob Ferguson announced today that, as a result of his investigation, Albertsons has removed illegal land use restrictions that created a food desert by barring a grocery store from going into its former location in Bellingham’s Birchwood neighborhood since 2018.

As a result of Albertson’s conduct in the largely low-income Bellingham neighborhood, the City of Bellingham later banned these types of property restrictions related to grocery stores, but could not apply its new ordinance retroactively. The property has been sold twice since Albertsons closed its store, but the restrictions imposed by Albertsons still barred a grocery store from moving into the development through 2038, leaving thousands of residents without a full-service supermarket within reasonable walking distance.

By creating these illegal restrictions, Albertsons ensured that a competitor could not open a grocery store in this neighborhood. Shoppers had no choice but to travel to other stores farther away, including a Haggen the company owned a few miles away.

This effectively created a food desert in the neighborhood, defined as an area with limited access to affordable and nutritious food.

Ferguson opened an investigation after learning of the property restrictions to probe whether they violate Washington’s antitrust laws.

As a result of Ferguson’s investigation, Albertsons removed the restrictions, once again allowing a grocery store to open in the location. It must also pay \$25,000 to defray the costs of the Attorney General’s investigation.

“Access to fresh groceries is essential for every neighborhood,” Ferguson said. “In a neighborhood like Birchwood, many residents may have less access to transportation, or may be elderly or disabled. Albertsons forced the residents of Birchwood to walk farther for groceries so it could reduce competition for its own grocery store nearby. My legal team will continue to stand up to antitrust violations that create food deserts that harm Washington families.”

The Birchwood Albertsons was located in a development in which all the owners agreed — back in 1982 — that only Albertsons’ parcel could sell groceries. For years, Albertsons’ presence benefited the entire development by bringing in regular customers. But Albertsons closed the Birchwood store in 2016, after it acquired a nearby Haggen store.

Albertsons sold the Birchwood store in 2018, but included as part of the sale a restriction limiting the amount of food that could be sold in its old store. In doing so, Albertsons prevented a grocery store from moving into the entire development. Albertsons also entered into a separate agreement with the buyer, which prevented the buyer from agreeing to amend the 1982 agreement to allow a grocery store to operate in any other parcel in the development. The former Albertsons store was sold again in 2021, but the land-use restrictions remained.

As a result of Ferguson’s investigation, which began before Kroger and Albertsons announced their proposed merger, Albertsons has relinquished its land use restrictions on the properties. A supermarket is no longer barred from opening in Albertsons’ old location and the current owner is free to agree to amend the 1982 restrictions, leaving open the possibility that a supermarket may open in the neighborhood in the future.

Assistant Attorneys General Travis Kennedy, Valerie Balch and Paula Pera, Paralegal Kimberly Hitchcock, and Legal Assistants Grace Monastrial, Keriann Snider and Debbie Chase handled the case for Washington.

Albertsons-Kroger merger

In January of 2024, Ferguson filed a lawsuit to block a proposed merger between Albertsons and Kroger (<https://www.atg.wa.gov/news/news-releases/ag-ferguson-files-lawsuit-block-kroger-albertsons-merger>). Ferguson asserts the proposed merger will severely limit shopping options for consumers and eliminate vital competition that keeps grocery prices low.

Kroger and Albertsons are the two largest supermarket chains in Washington and the second and fourth largest supermarket operators in the country. They currently have more than 700,000 employees in nearly 5,000 stores across 49 states. They have combined annual revenue in excess of \$200 billion.

The two grocery giants own other companies with stores in Washington. Albertsons owns Safeway and Haggen, while Kroger owns QFC and Fred Meyer. Albertsons and Kroger account for the vast majority of grocery stores in Washington, with 216 Safeway and Albertsons stores in the state and 114 Kroger-owned Fred Meyer and QFC stores.

Ferguson also asserts that a proposal by Kroger and Albertsons to mitigate the impacts of their merger, which includes selling off more than 100 stores in Washington, does not change the fact that Kroger would still enjoy a near-monopoly in many markets in the state. In addition, the plan to sell the stores to a company that is primarily a wholesale supplier could set up many of the divested supermarkets to fail, endangering Washington jobs and further diminishing choices for Washington shoppers.

After the merger announcement, *The Seattle Times*, citing numbers from Nielsen, reported that more than half of households in the Seattle metro area alone most frequently shop at a store owned by one of the companies (<https://www.seattletimes.com/seattle-news/data/grocery-chain-merger-would-affect-majority-of-seattle-area-households/>).

In April, Ferguson defeated the supermarket giants’ attempt to dismiss his lawsuit (<https://www.atg.wa.gov/news/news-releases/judge-rules-ag-ferguson-challenge-kroger-albertsons-merger-will-continue>). The trial is scheduled for Sept. 16 in King County Superior Court.

The Office of the Attorney General’s Antitrust Division is responsible for enforcing the antitrust provisions of Washington’s Unfair Business Practices-Consumer Protection Act. The division investigates and litigates complaints of anticompetitive conduct and reviews potentially anticompetitive mergers. The division also brings actions in federal court under federal antitrust laws. It receives no general fund support, funding its own actions through recoveries made in other cases.

The Antitrust Division investigates complaints about potential anti-competitive activity. For information about filing a complaint, visit <https://fortress.wa.gov/atg/formhandler/ago/AntitrustComplaint.aspx> (<https://fortress.wa.gov/atg/formhandler/ago/AntitrustComplaint.aspx>).

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