



LARGE SCALE RETAIL MORATORIUM PROPOSED CODE AMENDMENTS

FINDINGS AND RECOMMENDATIONS

TACOMA PLANNING COMMISSION

January 4, 2012

A. SUBJECT:

Amending the Land Use Regulatory Code to add a requirement that all large scale retail uses located within certain zoning districts that exceed specific size thresholds secure a Conditional Use Permit (CUP). Under this amendment, a Conditional Use Permit would be required for new or significantly modified retail businesses that exceed 45,000 square feet in size within the C-2, CCX, UCX, UCX-TD, and CIX Districts. Likewise, a CUP would be required for those retail businesses that exceed 65,000 square feet in size that are located within the M-1 and M-2 Districts and are located outside of the South Tacoma Manufacturing and Industrial Center (where large scale retail uses are already prohibited).

In addition, the draft code changes would:

- Create specific Conditional Use Permit decision criteria for large scale retail uses, with an enhanced focus on ensuring projects are designed to be compatible with the Comprehensive Plan policies for the area (particularly in Mixed-Use Centers), mitigate potential impacts to the surrounding area, and ensure the feasibility of future building reuse.
- Conditional Use Permits for large scale retail uses would require a pre-application community meeting, a public hearing, and be subject to approval by the Hearing Examiner.
- Revise the “RCX” Residential Commercial Mixed-Use District to limit large scale retail development to 30,000 square feet in size per business and 45,000 square feet in size for full service grocery stores (similar to the existing limitations in the NCX and C-1 Districts).

B. BACKGROUND:

This amendment is being proposed to better align Comprehensive Plan policy guidance with the Land Use Regulatory Code with respect to how the City regulates large scale retail businesses. This effort is the result of the Planning Commission and City Council’s review under a six-month city-wide moratorium on large scale retail businesses enacted on August 30, 2011 (Ordinance No. 28014).

The City Council’s direction through the moratorium process was to address the Comprehensive Plan policies and the concerns that were brought forward from the community during the first two months of the moratorium by identifying an appropriate regulatory path based on size limitations for retail uses. The City Council found that this narrow scope could be achieved by the moratorium expiration date of February 29, 2012.

C. FINDINGS OF FACT:

- 1) On August 30, 2011, the City Council adopted Ordinance No. 28014, enacting an emergency moratorium on all permitting for large scale retail uses (those with a floor area greater than 65,000 square feet) and referred the moratorium to the Planning Commission to hold a public hearing and develop findings of fact and a recommendation addressing, at a minimum, the need for and appropriate duration of the moratorium.
- 2) As noted in the moratorium ordinance, the purpose of the moratorium is to allow time for the Planning Commission and City Council to assess the impacts associated with large retail establishments, including economic, environmental, health, traffic and public safety, and to review and consider changes to the City's regulations and standards for these types of uses.
- 3) The moratorium applies City-wide and is in effect for six months (until February 29, 2012).
- 4) RCW 35A.63.220 and Tacoma Municipal Code (TMC) 13.02.055 permit the establishment of moratoria when it is found to be necessary as a protective measure to prevent vesting under current regulations or to maintain the status quo.
- 5) With regards to the duration of moratoria, the Code provides:

“Moratoria or interim zoning may be effective for a period of not longer than six months, but may be effective for up to one year if a work plan is developed for related studies requiring such longer period.” [Excerpt from TMC 13.02.055.D.]
- 6) With the adoption of Ordinance No. 28014, the City Council declared that an emergency existed and that immediate adoption of a moratorium was necessary to prevent the continued permitting of large scale retail establishments that might be inconsistent with the general public welfare and undermine the policies and intent of the Comprehensive Plan.
- 7) The emergency moratorium adopted by the City Council, which was the impetus for these proposed amendments, garnered substantial community interest and public input. The Planning Commission held a public hearing on the moratorium on October 5, 2011. Due to the substantial community interest in this issue, the two other moratoria in effect at the time, and numerous other work program items, the Commission recommended that the City Council extend the timeline associated with the emergency moratorium to August 30, 2012, a one-year period.
- 8) The City Council held a public hearing on October 25, 2011. Following the City Council's public hearing, they elected to retain the moratorium with its original 6-month timeline and citywide geographic scope, but modify its effect by clearly exempting reuse, minor alterations, minor additions, and boundary line adjustments (Substitute Ordinance No. 28027, adopted November 1, 2011). The Council also requested the Commission to focus its review during this limited timeframe on limiting the size of new retail businesses.
- 9) The Comprehensive Plan, adopted in 1993 by Ordinance No. 25360 and amended by ordinance once every year thereafter, is the City's comprehensive plan as required by the *State Growth Management Act (GMA)* and consists of several plan and program elements.
- 10) The GMA requires that any amendments to the Comprehensive Plan and/or development regulations conform to the requirements of the GMA.
- 11) The GMA allows counties and cities to amend their comprehensive land use plans and/or development regulations generally only once each year, except that amendments may be considered more frequently for a limited set of circumstances.

- 12) One of these “limited set of circumstances” covers this proposed amendment, namely a change to the City’s Development Regulations that is designed to implement the Comprehensive Plan.
- 13) The GMA goes beyond this procedural “designed to implement” standard and imposes a substantive requirement that any such change to the Development Regulations shall be demonstrably consistent with and implement the Comprehensive Plan.
- 14) Development Regulations are defined to include, but are not limited to, zoning controls, critical area ordinances, shoreline master programs, official controls, planned unit development ordinances, subdivision ordinances, and binding site plan ordinances.
- 15) The proposed amendments to address large scale retail businesses fit within this definition of Development Regulations.
- 16) The procedures and criteria for amending Development Regulations are set forth in Chapter 13.02 of the *Tacoma Municipal Code*.
- 17) It is important to note that the moratorium ordinance and the community, particularly during the review of the moratorium, expressed concerns about large retail establishments that extend well beyond land use issues and the Planning Commission’s purview (e.g., living wages and employment conditions, unionized labor, crime, corporate conduct, international trade and labor practices, and other significant but very far-reaching socio-economic concerns associated with large retail establishments).
- 18) Based on staff research, the City receives requests for approximately one new large retail establishment or a significant remodel of an existing establishment each year. Just over the past few of months the City has received one building permit application for a new large retailer and an inquiry about construction of another one. Updating the City’s regulations for these types of projects is important to ensure that future projects are developed consistent with the City’s Comprehensive Plan.
- 19) Large retail uses are currently allowed in many areas of the city. The zoning districts that allow large retail uses include the C-2 General Community Commercial District, CCX Community Commercial Mixed-Use District, UCX Urban Center Mixed-Use District, UCX-TD Urban Center Mixed-Use Tacoma Dome District, CIX Commercial Industrial Mixed-Use District, RCX Residential Commercial Mixed-Use District, portions of the M-1 Light Industrial District, portions of the M-2 Heavy Industrial District, all of the Downtown zoning districts and some of the Shoreline zoning districts. It is worth noting that all of the existing large scale retail uses are located within the districts which allow such uses.
- 20) The intent statements for many of these districts recognize that they are areas appropriate for large scale uses that will attract people from throughout the city and beyond. However, many of these districts, particularly the Mixed-Use Center Districts, are also intended to incorporate a dense and compact mix of uses and a development pattern and form that encourages and supports pedestrian activity and multi-modal transportation choices.
- 21) The existing large retail establishments in the city generally represent significant portions of the districts in which they are located, often occupying large properties at major intersections or other key locations in the center of their districts. The manner in which these types of projects are developed has a substantial impact on whether these areas can and will meet the applicable Plan policies and goals and vision of the community.
- 22) The Mixed-Use Centers are a key part of the City’s growth strategy and how it intends to accommodate new population and employment growth as required by state law and regional and local growth management policies. The centers are supposed to incorporate a dense and varied mix of uses that provide opportunities to live, work, play, learn and recreate and are to be

designed to support pedestrian activity and multi-modal transportation options. The Plan specifically provides the following objectives for the centers (pages GD-9 – GD-10):

- Strengthen and direct growth with a concentrated mix of diverse uses (work, housing, and amenities) and development toward centers;
- Create a range of safe, convenient, and affordable housing opportunities and choices;
- Create walkable and transit-supportive neighborhoods;
- Build on and enhance existing assets and neighborhood character and identity;
- Foster efficient provision of services and utility;
- Reduce dependence on cars and enhance transportation connectivity;
- Support neighborhood business development; and
- Encourage sustainable development, including green building techniques, green/plant coverage, and low impact development.

23) The Planning Commission and City Council recently conducted a substantial update to the Comprehensive Plan policies, zoning and development regulations for the Mixed-Use Centers. That effort resulted in expanded policy guidance and the creation of three new centers in 2007 and the adoption of revised zoning and design and development regulations in 2009. However, while that project resulted in significant improvements, it was largely focused on the Neighborhood Mixed-Use Centers and the Urban and Community Centers did not receive sufficient attention. The eight Community and Urban Centers are:

MIXED-USE CENTER	CENTER TYPE
Tacoma Mall Area	Urban
East 72nd and Portland Avenue	Community
James Center/TCC	Community
Lower Portland Avenue	Community
South 34th and Pacific Avenue	Community
South 72nd and Pacific Avenue	Community
Tacoma Central Plaza/Allenmore	Community
Westgate	Community

24) Of particular note, the Comprehensive Plan policies adopted in 2007 specifically call for the creation of a special permit process for large developments within the Community and Urban Mixed-Use Centers. Implementing regulations for these policies have not yet been developed.

25) Based on the Commission’s review of the Comprehensive Plan and development regulations, there are discrepancies between the current Plan policies and the associated code requirements, particularly as they relate to large retail establishments. While the current regulations applicable to large retail developments in many areas of the city include provisions to promote plan goals they still allow for a basically suburban-style of development with large single-use buildings, surrounded by expansive parking. That style of development could thwart the ability for the community to achieve its long-range vision for these areas as described in the Comprehensive Plan goals and policies, particularly within the Community and Urban Mixed-Use Centers.

26) Based on the moratorium ordinance adopted by the City Council, the public testimony provided, and a review of the associated Comprehensive Plan policies and associated development regulations, the Commission has identified the following items that are in need of review:

- a) Creation of a discretionary permit process for large developments, particularly within Community and Urban Mixed-Use Centers, that would allow for community input as well as a more comprehensive review of large projects to ensure they are consistent with the intent and goals of the Comprehensive Plan and development regulations.
 - b) Modify the design and development standards applicable to large scale retail uses, particularly within Community and Urban Mixed-Use Centers. This could include exploration of new or modified standards addressing business size limitations, building mass and design details, maximum setbacks and site layout, required mix of uses, parking requirements, and pedestrian orientation and amenities.
 - c) Review and assess the existing environmental review processes and standards to ensure that they provide the appropriate guidance and authority to address environmental impacts associated with large scale retail uses, with a particular focus on traffic impacts.
- 27) In response to the moratorium ordinance and the City Council's direction, the Planning Commission, along with staff from the Community and Economic Development Department, reviewed the existing Comprehensive Plan policies, existing Land Use Regulatory Code provisions, and recent development trends and assembled draft code amendments to address the community and Council concerns. These issues were presented to and discussed by the Planning Commission at their meetings on September 21, October 5, October 19, November 2, November 16, December 7, and December 21, 2011, as well as on January 4, 2012, all of which were open to the public.
- 28) The proposed code amendments regarding large scale retail businesses were prepared under the auspices of the Planning Commission with public participation consistent with GMA requirements and the procedures of Chapter 13.02 of the *Tacoma Municipal Code*.
- 29) The Planning Commission held a public hearing on Wednesday, December 7, 2011 at 5:00 pm, to receive written comments and oral testimony on the proposed code amendments for large scale retail businesses.
- 30) Notice of the public hearing and public comment period was distributed to approximately 6,500 stakeholders including taxpayers, as listed in the records of the Pierce County Assessor-Treasurer, located within and within 100 feet of the areas affected by the proposed changes, Neighborhood Council board members, other neighborhood groups, business district associations, civic organizations, environmental groups, development interests, adjacent jurisdictions, the Puyallup Tribal Nation, major employers and institutions, City and State departments, Joint Base Lewis-McChord, individuals who testified during the moratorium process, and other known interested individuals or groups. The notice included general information regarding the time and place of the public hearing, a description of the purpose of the public hearing, where additional information could be obtained and how to submit public comment.
- 31) The notice was also posted on the Planning Division's website (www.cityoftacoma.org/planning), at all branches of the Tacoma Library, at the office of the Community and Economic Development Department, and on the public information bulletin boards on the first and second floors of the Tacoma Municipal Building.
- 32) Advertisement of the public hearing was published in *The News Tribune* on November 30, 2011.
- 33) Pursuant to WAC 197-11 and Tacoma's SEPA procedures, a Preliminary Determination of Environmental Non-Significance was issued on November 17, 2011. This preliminary determination (SEPA File Number: SEP2011-40000172738) was made based upon a review of a completed environmental checklist. No comments were received and the preliminary determination became final on December 12, 2011.

- 34) The environmental checklist and Preliminary Determination of Non-Significance were provided to the Planning Commission, Department of Ecology, Tacoma's Neighborhood Councils, City departments, adjacent jurisdictions, State and federal agencies, the Puyallup Tribe, and other appropriate entities.
- 35) Pursuant to RCW 36.70A.370 and following the guidelines prepared by the Washington State Attorney General pursuant to RCW 36.70A.370, the draft large scale retail amendment was reviewed by the City Attorney to assure that adoption of the changes will not result in an unconstitutional taking of property.
- 36) In accordance with RCW 36.70A.106, the Community and Economic Development Department, on November 17, 2011, notified the State Department of Commerce and other required State agencies of its intent to adopt amendments to its development regulations with respect to large scale retail businesses. The notice included transmittal of the proposed amendment language. On November 21, 2011 the state confirmed that the City had met the requirement of RCW 36.70A.106 as to notice to State agencies. No comments from state agencies have been received to date.
- 37) The Planning Commission reviewed all testimony offered at the December 7, 2011 public hearing and all written testimony submitted to the Commission prior to the comment deadline on Friday, December 9, 2011.
- 38) One person provided oral testimony at the public hearing and also submitted a letter. This gentleman's oral testimony and letter requested the proposed amendments exempt from the CUP requirement those sites that wish to consolidate tenant spaces within an existing building footprint, where the consolidation would create a tenant space that exceeds the proposed square-footage for a CUP requirement.
- 39) Three additional written comments were received by the close of comment period. Two of the written comments were in favor of the draft regulations for large scale retail businesses. One anonymous person provided a general comment displaying his/her extreme disappointment with development within the City.
- 40) On December 21, 2011 a copy of all comment letters and e-mails were provided to the Planning Commission for their consideration, together with a summary of the oral testimony.
- 41) In response to the public comments received and based on subsequent discussions, the Planning Commission revised the draft code amendments as follows:
 - a) Included a 1,000-foot public notice radius for large scale retail CUPs, and that this radius be required for the notice of the pre-application community meeting and for the public hearing;
 - b) That public information signs advising the pre-application community meeting be posted at the site prior to the pre-application community meeting;
 - c) Revised the CUP criteria to further encourage limiting the amount of parking provided and low-impact development techniques; and
 - d) Clarified that the CUP requirement would not apply to the expansion of large scale retail uses that don't involve building expansions (expanding into another part of an existing building) unless the expansion is substantial.
- 42) A staff report and analysis of the proposed Code amendment was prepared by the Long Range Planning Division of the Community and Economic Development Department. The report provided a general description of the proposed changes and discussed applicable provisions of the State Growth Management Act, the City Comprehensive Plan, and the City's Land Use Regulatory Code. The proposed amendment was analyzed using the ten criteria found in Chapter

13.02 of the Tacoma Municipal Code pertaining to proposed amendments to the Comprehensive Plan or Development Regulations.

- 43) The Planning Commission finds that the Comprehensive Plan policies recognizes that large scale retail developments can be an important and positive part of our community as long as they are well done and appropriately located.
- 44) The Planning Commission acknowledges that the City Council, through the moratoria process, directed the Planning Commission to limit its review of large scale retail businesses to using size limitations to identify appropriate zoning district locations for such developments.
- 45) The Planning Commission supports a more refined approach that is based on amending the Land Use Regulatory Code to align with existing Comprehensive Plan policies that support a discretionary land use permit for large scale retail development.
- 46) While the Comprehensive Plan policies specifically address large scale retail developments in the Community and Urban Mixed-Use Centers, the Planning Commission found that the potential impacts of such developments should be addressed in additional zoning districts where there are often adjacent residential neighborhoods and/or lower intensity commercial development patterns. Such zoning districts include the C-2, CCX, UCX, UCX-TD, RCX, CIX, M-1, and M-2 Districts.
- 47) Large scale retail development should be subject to the approval of a Conditional Use Permit in most of these districts. "Large scale" should be defined as 45,000 square feet in the C-2, CCX, UCX, UCX-TD, and CIX Districts, and 65,000 square feet in the M-1 and M-2 Districts. These thresholds are based on the moratorium ordinance adopted by the City Council, the existing Comprehensive Plan policies, and staff research regarding the common size of retail establishments.
- 48) Large scale retail development (in a suburban manner) is less likely within the Downtown Tacoma and Shoreline Districts. As such, the proposed amendment does not add similar square-footage thresholds and permit requirements to these areas.
- 49) The smaller scale neighborhood commercial uses and development pattern within the NCX and C-1 Districts is similar to that of the RCX District. As such, large scale retail development should be limited in the same manner within the RCX District.
- 50) The Conditional Use Permit is a discretionary land use permit that can be appropriately applied to large scale retail development to recognize that such businesses may be appropriately located in selected zoning districts while providing a process to allow the City and neighbors to review the potential impacts of such developments to the surrounding neighborhood and if such impacts can be reasonably mitigated, condition the use to address those impacts.
- 51) The potential land use impacts of a large scale retail business are typically a combination of building design, site circulation, pedestrian and bicycle conflicts, traffic congestion, and off-street parking layout, location and quantities. The existing design and development regulations do not, in many cases, sufficiently address these types of large scale development. As such, it is appropriate to establish an enhanced CUP process for large scale retail development.
- 52) Considering the size and scale of such projects, they can both significantly impact an area and dramatically affect the ability for the community and the particular neighborhood to achieve its long-term vision and goals. Recognizing this and the community's concern about the potential for such large projects to be permitted without any significant public input, the Commission also finds that the CUP process should be enhanced for these types of projects. These enhancements should include a pre-application community meeting, and increased public notice range from 400 feet to 1,000 feet, and a requirement for a public hearing before the Hearing Examiner makes a

decision on the proposal. These enhancements will make the CUP requirement a more effective and responsive tool to allow for neighborhood participation and discretionary City review of new and substantially altered large scale retail businesses.

D. CONCLUSIONS:

On August 30, 2011, the City Council declared an emergency and adopted an immediate, six-month, city-wide moratorium on the acceptance or processing of development permit applications for large scale retail establishments.

Based on a review of the Comprehensive Plan and development regulations, the Commission concludes that there are areas where the current land use regulations do not sufficiently implement the Comprehensive Plan policies and goals, particularly as they relate to Community and Urban Mixed-Use Centers, and the potential development of large retail establishments in these important districts.

After a review of the findings in the moratorium, a review of the extensive public comments provided at the Planning Commission public hearings, and recognizing direction from the City Council to limit the Commission's scope of work to that which could be achieved within the 6-month moratorium, the Commission presents proposed Land Use Regulatory Code amendments which seek to substantially improve the City's ability to address the potential impacts of large scale retail businesses on their surrounding residential and commercial neighborhoods.

The Commission understands that there needs to be a balance of economic growth and protection of existing neighborhoods from the potential impacts of new and altered large scale retail businesses. Discretionary permit review, such as the enhanced Conditional Use Permit proposed, will provide an invaluable land use tool to help strike this balance.

E. RECOMMENDATION:

The Planning Commission recommends that the City Council adopt the amended large scale retail regulations set forth in Exhibit A to these "Findings and Recommendations."

F. EXHIBITS:

- A. Proposed Land Use Regulatory Code Amendments
- B. Map of the areas affected by the proposed changes (the three different colors reflect the areas affected by the two different proposed thresholds and the proposed size limitation)