



## LARGE SCALE RETAIL EMERGENCY MORATORIUM REVIEW

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### FINDINGS AND RECOMMENDATIONS

TACOMA PLANNING COMMISSION  
October 19, 2011

**A. SUBJECT:**

Emergency moratorium on the permitting of large scale retail establishments within the City of Tacoma.

**B. BACKGROUND:**

On August 30, 2011, the City Council enacted an emergency moratorium on large scale retail establishments. The moratorium specifically prohibits the filing, acceptance and processing of applications for land use, building or other development permits associated with the establishment, location, or permitting of retail sales establishments with a floor area greater than 65,000 square feet in size. The moratorium applies Citywide and was enacted for a duration of six months (until February 28, 2012). As stated in the ordinance, the purpose of the moratorium is to allow the City time to evaluate the impacts of these kinds of uses and consider potential changes to its regulations and requirements.

**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, by October 19, 2011.
- 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 28, 2012).
- 4) RCW 35A.63.220 and Tacoma Municipal Code (TMC) 13.02.055 permit the establishment of moratoria when it 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) TMC Chapter 13.02 sets forth the procedures and criteria for amending the City's development regulations, including temporary moratoria.
- 8) TMC 13.02.055 provides that following adoption of an emergency moratorium, the Planning Commission is required to conduct a public hearing and provide findings and recommendations to the City Council before the Council, after further review, takes final action to retain, rescind or modify the emergency moratorium. The Commission's findings and recommendations are required to address, at a minimum, the need for and appropriate duration of the moratorium.
- 9) The emergency moratorium was presented to and discussed by the Planning Commission at its September 21, 2011 meeting and the Commission authorized the distribution of the moratorium ordinance for public review and set October 5, 2011 as the date for the Commission's public hearing on the matter.
- 10) Written and/or electronic notice of the Planning Commission's public hearing was provided to all recipients of the Planning Commission agenda, the Planning Commission's electronic mailing list, City Council members, Neighborhood Councils, business district associations, adjacent jurisdictions, state and other governmental agencies, the Puyallup Tribal Nation, City staff, City Commissions, environment, development, civic and social organizations, major institutions and employers, and other interested individuals and groups. In addition, notice was sent to community members who testified on the emergency moratorium to the City Council at its August 30, 2011 meeting, all known owners/operators of existing large retail establishments in the city, those who own property on which such large retail establishments are located, and taxpayers of record for all known properties with 400 feet of these properties. In total, the notice was sent out to over 3,000 addresses. Additionally, the public notice was posted on the bulletin boards on the first and second floors of the Tacoma Municipal Building, at all branches of the Tacoma Public Library, and on the City's internet website.
- 11) 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.
- 12) A copy of the moratorium ordinance was available for review at the offices of the Community and Economic Development Department and was also posted for public review on the City's website.
- 13) The Planning Commission held a public hearing on the moratorium on Wednesday, October 5, 2011. Thirty people provided testimony at the hearing and all were strongly in favor of the moratorium, with many requesting to extend the duration beyond 6-months and some requesting a permanent ban on large retail establishments within the City.
- 14) In addition to the oral testimony received at the October 5, 2011 public hearing, 15 written comments were submitted in response to the public notice prior to the October 7 comment deadline.
- 15) The Planning Commission reviewed all testimony offered at the October 5, 2011 public hearing and all written testimony submitted to the Commission prior to the comment deadline.
- 16) The testimony at the public hearing and the information contained in the public record indicate that the public overwhelmingly supports continuation of the moratorium to prevent the establishment of new large retail uses while the City reviews and considers revisions to the regulations for such establishments.

- 17) Public testimony in support of the moratorium raised a wide range of land use concerns about these types of uses, such as the appropriateness of current zoning, their consistency with the plan policies and vision for various areas of the city, the current permitting process for these types of uses, the inadequacy of the existing design and development standards, and environmental review processes and mitigation standards.
- 18) Four of the written comments received by the Commission opposed the continuation of the moratorium. The associated concerns included its potential impact on economic development and job recovery within the city and that the City already has regulatory tools in place to address potential design and environmental impacts that may be created by large retail establishments.
- 19) It is important to note that the moratorium ordinance and the community have 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).
- 20) The existing moratorium prevents the “filing, acceptance, and processing of applications for land use, building permits or other development permits associated with the establishment, location, or permitting” of large retail establishments. As drafted, this language is very broad and could be interpreted to encompass any and all permitting associated with large retail establishments, including minor remodels or additions to existing large retail establishments (possibly including necessary or needed maintenance and repair), or establishing a new large retail use within an existing, potentially vacant building. It is likely that even if the Commission and Council review and modify the design and development standards for large scale retail uses, many of these minor types of projects would not be affected by the revised regulations. Also, based on the input received by the Commission it would appear that the primary community concern is associated with the construction of new large retail uses and potentially substantial alterations or remodels.
- 21) As such, the Commission recommends that the moratorium be modified to apply only to substantial alterations of large scale retail establishments and to additions to such establishments if the addition exceeds 10% of the existing building’s size. The Commission recommends that the moratorium not affect minor alterations and tenant improvements for existing large scale retail buildings; nor should it apply to the re-use of an existing large scale retail building.
- 22) 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 couple of months the City has received one building permit application for a new large retailer and an inquiry about construction of another one. It is likely that if the moratorium is not retained one or more new or substantially altered large retailer will be permitted under the current regulations and before any amendments could be considered through the standard code update process.
- 23) Staff has also indicated that there are approximately 17 existing large scale retail uses (as defined by the moratorium ordinance) located within the City, as follows:

Location	Zoning	Approximate Size
Macy’s (Tacoma Mall)	UCX	255,000 sq. ft.
JC Penney’s (Tacoma Mall)	UCX	233,000 sq. ft.
Sears (Tacoma Mall)	UCX	180,000 sq. ft.
Costco (37 <sup>th</sup> & Steele)	UCX	152,000 sq. ft.

Location	Zoning	Approximate Size
Nordstrom (Tacoma Mall)	UCX	144,000 sq. ft.
Fred Meyer (19 <sup>th</sup> & Stevens)	C-2	143,000 sq. ft.
Fred Meyer (72 <sup>nd</sup> & Pacific)	CCX	142,000 sq. ft.
Lowe's (80 <sup>th</sup> & Hosmer)	C-2	138,000 sq. ft.
Lowe's (25 <sup>th</sup> & Orchard)	C-2	131,000 sq. ft.
Target (Allenmore)	CCX	124,000 sq. ft.
Home Depot (Center & Mullen)	C-2	117,000 sq. ft.
Home Depot (74 <sup>th</sup> & Sprague)	C-2	110,000 sq. ft.
Forever 21 (Tacoma Mall)	UCX	106,000 sq. ft.
K-Mart (72 <sup>nd</sup> & Portland)	CCX	106,000 sq. ft.
K-Mart (6 <sup>th</sup> & Orchard)	C-2	106,000 sq. ft.
Winco (72 <sup>nd</sup> & Hosmer)	C-2	103,000 sq. ft.
Fred Meyer (19 <sup>th</sup> & Mildred)	CCX	68,000 sq. ft.

- 24) 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, M-1 Light Industrial District, M-2 Heavy Industrial District, and all of the Downtown zoning districts. It is worth noting that all of the existing large scale retail uses are located within the districts which allow such uses.
- 25) The intent statements for most 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.
- 26) 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 of the community.
- 27) 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.

28) 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:

<b>MIXED-USE CENTER</b>	<b>CENTER TYPE</b>
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

29) 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.

30) Based on the Commission’s preliminary review of the Comprehensive Plan and development regulations, there are discrepancies between the current Plan policies relative to Community and Urban Mixed-Use Centers and the associated code requirements, particularly as they relate to large retail establishments. While the current regulations applicable to large retail developments in Community and Urban Mixed-Use Centers include provisions to promote plan goals they still allow for a largely 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.

31) Based on the moratorium ordinance adopted by the City Council, the public testimony provided, and a preliminary 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) Consider creation of a discretionary permit process for large developments 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 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.
- 32) Under the proposed 6-month moratorium staff would be required to provide draft code changes for Commission review by November 2 and the Commission would have to authorize a full proposal for public review by November 16. If the proposed changes only involved creating a permit review requirement for large projects in certain districts these deadlines could be met. However, based on the Council and community input, all of the identified issues cannot be sufficiently addressed through this one measure. A more detailed review and sophisticated regulatory response are needed and to accomplish this with appropriate community input and in coordination with the Council, this process will require additional time.
- 33) In order to properly address the identified land use issues and prepare code amendments that sufficiently balance the community's concerns, this evaluation should include a significant public outreach component. Collaboration with key stakeholders, such as the Neighborhood Councils, Business Districts, other commercial, real estate and business organizations, and the Public Works Department, will require more than the six months provided in the original moratorium ordinance.

#### **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 preliminary 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 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. It is also clear that, absent this moratorium, continued permitting of large scale retail establishments within these districts is likely and if allowed, that continued development under the current regulations will impact the community's ability to achieve the goals, policies and vision laid out in the Comprehensive Plan.

State law and City Code allow a moratorium to be in effect for up to one year if a work plan to address the permanent regulatory requirements is developed that requires a longer period. After a review of the findings in the moratorium and the extensive public comments provided at the Planning Commission public hearing, it is apparent to the Commission that the range of land use issues raised cannot be addressed with one simple regulatory change. If this project were focused only on creating a discretionary permit review process for large projects in these areas that could likely be accomplished in 6-months. However, considering the much wider scope outlined by the Council and the wide range of community concerns expressed during our public hearing it is apparent that this project involves multiple highly contentious and, in some cases very technical issues and will require significant research, study and public outreach than cannot be accomplished within the original 6-month timeline. The wide-range of issues raised deserve a thorough and considered review and will likely necessitate a comprehensive update to the regulations associated with these uses, potentially

including changes to permitting procedures, zoning, design and development standards and environmental review processes and standards. The new land use regulations could impact a wide range of residents and businesses in our community and, based on the substantial interest shown so far, should be developed in a manner that includes community and stakeholder input and close coordination between the City Council, the Commission and City staff.

The two other moratoria currently in effect, as well as the numerous other work program items, many of which are in response to City Council requests and/or grant funding, do not allow for the Commission or staff to dedicate all of their energy to this particular project. The Commission is also concerned about the potential for this new task to impact these and other important planning work currently underway or planned to occur this fall, such as the proposed amendments to downtown parking requirements and our regular work on the 2012 Annual Amendment. The Commission and staff's ability to manage existing responsibilities in addition to this new task will be severely constrained within a six-month schedule. In order to minimize such impacts and ensure that this project receives the level of review, outreach and coordination it deserves, a one-year timeline is needed.

**E. RECOMMENDATION:**

The Planning Commission finds that there is a need for an emergency moratorium to preserve the status quo and prevent vesting of development permits under the current regulations while the City reviews and considers development of improved regulations pertaining to large scale retail establishments.

However, the Planning Commission also recommends that the City Council reduce the geographic scope of the moratorium so that it applies only to Community and Urban Mixed-Use Centers. Further, the Planning Commission recommends that the moratorium should only apply to new large scale retail buildings, substantial alterations of an existing large scale retail building, and to additions to an existing large scale retail building that creates an increase of more than 10% in square footage. The moratorium should not apply to minor alterations and tenant improvements for existing large scale retail buildings; nor should it apply to the re-use of an existing large scale retail building.

Finally, the Commission recommends that the City Council extend the timeline associated with the emergency moratorium on large scale retail establishments to one year (until August 30, 2012) in order to allow the Commission, Council, staff and community sufficient time to develop a comprehensive and balanced regulatory approach that will address the myriad of land use issues that have been raised during this process, as outlined in the attached work plan.

**F. ATTACHMENTS:**

1. Proposed 12-Month Work Plan



## LARGE SCALE RETAIL MORATORIUM

### PROPOSED WORK PLAN *October 19, 2011*

Date	Event
<b>August 30, 2011</b>	<b>City Council adopts emergency moratorium; Ordinance No. 28014</b>
September 1, 2011	Effective date of emergency moratorium
September 21	Planning Commission discussion of Ordinance No. 28010, State law, Council direction and proposed code amendment schedule
September 23	Provide notice for Commission public hearing on emergency moratorium
<b>October 5</b>	<b>Planning Commission public hearing on emergency moratorium</b>
October 5	Commission review of preliminary draft code options
<b>October 19</b>	<b>Recommendation to City Council on emergency moratorium</b>
October 20	Provide notice of Commission's recommendation on moratorium in advance of Council public hearing
<b>October 25, 2011</b>	<b>City Council conducts public hearing on emergency moratorium</b>
<b>November 1, 2011</b>	<b>City Council clarifies and extends the moratorium to one-year</b>
November 2	Commission discussion of identified issues, timeline, public outreach, project scope, and benchmarking from other jurisdictions
December 5	Commission discussion of Community and Urban Centers policies, vision, geographies, existing circumstances
December	Community/stakeholder outreach
December	Council Committee discussion of identified issues, Mixed-Use Centers policies and vision, community and stakeholder input, and project scope
January 18	Commission discussion of large retail and shopping center design and development standards (parking, setbacks, landscaping, mass reduction, pedestrian-orientation, and other site and building design requirements)
January/February	Community/stakeholder outreach
February 15	Commission discussion of environmental review processes and mitigation standards
February/March	Council Committee discussion of design and development standards and environmental review processes and mitigation standards
March 21	Commission authorizes draft amendments for public review and sets the public hearing date
March 28	Distribution of public notice for Planning Commission public hearing

Date	Event
April 11, 2012	Public informational meeting on draft amendments
<b>April 18, 2012</b>	<b>Planning Commission public hearing on draft amendments</b>
April 27	Last day to submit written comments on draft amendments
May	Council Committee discussion of public review draft and public comments received
May 16	Planning Commission discussion of hearing testimony
May 30, 2012	<b>Planning Commission makes recommendation to City Council</b>
June 5	City Council sets hearing date
June 8	City Clerk distributes public notice for City Council public hearing
June 19	City Council study session on proposed amendments, as recommended by the Planning Commission
<b>June 26, 2012</b>	<b>City Council conducts public hearing on proposed amendments</b>
July	Council Committee discussion of hearing testimony and potential changes to the draft ordinance
July 31	City Council – first reading of ordinance(s) to adopt amendments
August 7	City Council – second reading and adoption of amendments
August 17	Submit final amendments to State
August 19	Effective date of amendments
August 30, 2012	Moratorium expires