TO: Planning Commission
FROM: Donna Stenger, Manager, Long-Range Planning Division
SUBJECT: Large Scale Retail Moratorium – Public Hearing
DATE: September 28, 2011

At your next meeting on October 5, 2011, the Planning Commission will hold a public hearing regarding the emergency moratorium on large scale retail establishments that was adopted by the City Council on August 30, 2011. The specific purpose of this hearing is to solicit community input to help the Commission make its recommendation to the City Council regarding the need for and appropriate duration of the moratorium.

Attached is the Public Hearing Report that summarizes the moratorium, the process for consideration of moratoria, and the public notice process. Following the close of the comment period (5:00 p.m. on October 7) staff will be compiling and providing all of the public testimony for the Commission’s consideration. The Commission is currently scheduled to review the testimony and make your recommendation regarding the moratorium at the meeting on October 19.

If you have any questions or requests, you may contact Brian Boudet at (253) 573-2389 or by e-mail at bboudet@cityoftacoma.org.

Attachment

c: Peter Huffman, Assistant Director
A. **SUBJECT:**
Emergency moratorium on the permitting of large scale retail establishments.

B. **BACKGROUND:**
On August 30, 2011, the City Council enacted an emergency moratorium on large scale retail establishments (Ordinance No. 28014, a copy of which is included as Attachment 1). 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. **LAND USE REGULATORY CODE – PROCESS FOR MORATORIA:**
In accordance with Tacoma Municipal Code Section 13.02.055, the process for moratoria is as follows:

1. **Declaring a Moratorium**
   a. A moratorium and/or interim zoning controls may be considered either as a result of an emergency situation or as a temporary protective measure to prevent vesting of rights under existing zoning and development regulations.
   b. Moratoria or interim zoning may be initiated by either the Planning Commission or the City Council by means of determination at a public meeting that such action may be warranted.
   c. Where an emergency exists, prior public notice may be limited to the information contained in the public meeting agenda. City Council-initiated moratoria or interim zoning shall be referred to the Planning Commission for findings of fact and a recommendation prior to action; provided, that where an emergency is found to exist by the City Council, it may act immediately and prior to the formulation of Planning Commission findings of fact and recommendation.
   d. At its next available meeting immediately following the City Council’s referral or action, the Planning Commission shall consider the measure and shall respond with its findings of fact and recommendation to the Council within 30 days. If it finds evidence that an emergency exists necessitating the immediate imposition of a moratorium or interim zoning, or that temporary measures are needed to protect the status quo, it shall recommend adoption to the City Council.
   e. In emergency situations where the City Council has first enacted a moratorium or interim zoning, but where the Planning Commission’s findings of fact and recommendation do not support the action, the City Council shall reconsider, but shall not be bound to reversing, its action.
2. **Public Hearing and Action**
   a. The Planning Commission will hold at least one public hearing prior to formulating its recommendation to the City Council.
   b. In the case of moratoria or interim zoning, the City Council shall hold a public hearing within at least 60 days of adopting any moratoria or interim zoning, as provided by RCW 36.70A.390.
   c. The City Council shall adopt findings of fact justifying the adoption of moratoria before, or immediately after, it holds a public hearing.

3. **Duration of Moratorium**
   a. As part of its findings of fact and recommendation, the Planning Commission shall recommend to the City Council a duration for the moratorium and note if a study, either underway or proposed, is expected to develop a permanent solution and the time period by which that study would be concluded.
   b. 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.
   c. Moratoria or interim zoning may be renewed for an unlimited number of six-month intervals following their imposition; provided, that prior to each renewal, a public hearing is held by the City Council and findings of fact are made which support the renewal.

D. **GENERAL INFORMATION:**

1. **Environmental Evaluation**
   Procedural actions such as the adoption of legislation, rules, regulation, resolutions or ordinances, or of any plan or program relating solely to governmental procedures, and containing no substantive standards respecting use or modification of the environment is exempt from SEPA environmental evaluation under WAC 197-11-800(19).

2. **Public Review Process**
   The Large Scale Retail Moratorium was first reviewed by the Planning Commission at its September 21, 2011 meeting. The Planning Commission was provided a copy of the emergency moratorium, Ordinance No. 28014, and a preliminary schedule for both review of the moratorium and consideration of potential code changes within the 6-month timeframe provided by the Council. The Planning Commission discussed its responsibilities under the moratorium, one of which is to conduct a public hearing on the moratorium. The Planning Commission authorized the distribution of the moratorium for public comment and set October 5, 2011 as the date for a public hearing regarding the moratorium.

3. **Notification**
   Written and/or electronic notice of the Planning Commission’s public hearing was sent to community members who testified on the emergency moratorium to the City Council at its August 30, 2011 meeting and at the Environment & Public Works Committee meeting on August 24, 2011, and all known owners and operators of existing large scale retail establishments in the City. The notice also 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 taxpayers of record for all known properties currently containing a large scale retail establishment and to taxpayers of record for all properties within 400 feet of these properties. In total, the notice was sent to more than 3,000 addresses. Additionally, the public notice was posted on the bulletin boards on the first and second floors of the Tacoma Municipal Building and on the City’s internet website.

The notice could also be viewed and downloaded at the Planning Division’s website (www.cityoftacoma.org/planning). The notice was also posted on the public information bulletin boards on the first and second floors of the Tacoma Municipal Building.

The notice stated the time and place of the hearing, the purpose of the public hearing, where and how additional information could be obtained and how to provide comments. Advertisement of the public hearing was published in The News Tribune on September 29, 2011.

E. **COMMUNITY AND ECONOMIC DEVELOPMENT DEPARTMENT RECOMMENDATION:**

Staff recommends that the Planning Commission accept and evaluate all oral and written testimony submitted at the public hearing and prior to the comment deadline of October 7 before to making a recommendation to the City Council.

F. **ATTACHMENTS:**

1. Public Hearing Notice
2. Ordinance No. 28014 – Large Scale Retail Moratorium
On August 30, 2011 the City Council adopted Ordinance No. 28014, placing a six-month moratorium on the permitting of large scale retail establishments (those with a floor area greater than 65,000 square feet). 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.

**Planning Commission Public Hearing**

Wednesday, October 5, 2011  5:00 pm  City Council Chambers
Tacoma Municipal Building, 747 Market Street, 1st Floor

**What is the purpose of the public hearing?**

The City Council referred the moratorium to the Planning Commission to develop findings and recommendations regarding the moratorium. The Planning Commission is seeking public comment addressing, at a minimum:

- Is the emergency moratorium needed?
- If so, what is the appropriate duration of the moratorium?

*Please Note: This public hearing is on the need for and duration of the moratorium and not to discuss or review any particular changes to the City’s regulations or requirements relative to large retail uses.*
WHERE CAN I GET ADDITIONAL INFORMATION?
Additional information, including the complete text of the moratorium (Ordinance No. 28014) adopted by the City Council, is available from the Community and Economic Development Department at the address to the right, and on the Planning Division website:

www.cityoftacoma.org/planning
(click on “Large Scale Retail Moratorium”)

HOW DO I PROVIDE COMMENTS TO THE COMMISSION?
You can testify at the hearing or provide written comments no later than 5:00 p.m. on Friday, October 7, 2011 using the return address on this card or by facsimile at (253) 591-2002 or via e-mail at planning@cityoftacoma.org.

If you have additional questions please feel free to contact Brian Boudet at:

(253) 573-2389

The City of Tacoma does not discriminate on the basis of disability in any of its programs, activities, or services. To request this information in an alternative format or a reasonable accommodation, please contact the City Clerk’s Office at 591-5505. TTY or speech-to-speech users please dial 711 to connect to Washington Relay Services.
ORDINANCE NO. 28014

BY REQUEST OF DEPUTY MAYOR WALKER AND COUNCIL MEMBERS MELLO, FEY AND CAMPBELL

AN ORDINANCE adopting an immediate six-month moratorium relating to land use and zoning, establishing a moratorium on the acceptance of applications for new building or other development permits associated with the establishment, location, or permitting of retail establishments that exceed 65,000 square feet in the aggregate, and establishing a plan and dates for review and development of regulations relating to these types of large retail establishments; referring the moratorium to the Planning Commission to hold a public hearing to develop findings of fact and recommendations by October 19, 2011, including the need for and the duration of the moratorium; setting October 25, 2011 as the date for a public hearing on the moratorium; declaring an emergency in the passage of this ordinance providing that the moratorium will take effect immediately upon adoption and publication and, unless extended, will sunset within six (6) months of the date of adoption; and providing for severability.

WHEREAS large retail sales establishments of various formats may have unintended and often unconsidered economic, environmental and social impacts which outweigh or diminish the benefits of such establishments, and

WHEREAS such impacts may include the increased costs of public infrastructure, such as roads, sewers, storm and water lines, increased costs for public services, such as law enforcement, fire, and other emergency services, and increased tolls on the environment, and such costs may diminish or exceed the public revenue generated from such establishments, and

WHEREAS the City requires time to conduct appropriate research and analysis of these types of uses and the impacts of this kind of development, and to ensure that such uses are developed in a manner that is consistent with the policies and intent of the Comprehensive Plan and in a manner that minimizes or mitigates any community impacts, and
WHEREAS the citizens of Tacoma are concerned about potential negative economic and environmental impacts of larger retail sales establishments on the community and existing businesses, particularly smaller local businesses, both in the retail sphere and in supporting areas, and

WHEREAS the City Council supports environmental responsibility and a sustainable, local economy, and

WHEREAS the City Council believes in promoting competition to protect and benefit the public interest, and such large retail sales establishments may limit competition by causing the loss of existing, smaller businesses, and

WHEREAS a moratorium on the issuance of permits for large retail sales establishments is necessary to enable the City Council to consider whether to amend the City’s development regulations to formulate criteria which will address economic, environmental and other impacts, and to hold a public hearing on the moratorium within 60 days of the commencement of the moratorium, and

WHEREAS, the potential adverse impacts on the economy, the environment, public health, public safety, public property and public peace justify the passage of an emergency ordinance, and

WHEREAS, pursuant to RCW 35.63.200 and RCW 36.70A.390, the City may adopt an immediate moratorium for a period of up to six months, provided that the City holds a public hearing on and adopts findings of fact related to the proposed moratorium within 60 days after its adoption; Now, Therefore

BE IT ORDAINED BY THE CITY OF TACOMA:
Section 1. That pursuant to the provisions of RCW 36.70A.390, a
moratorium is hereby imposed on the filing, acceptance, and processing of
applications for land use, building permits 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, unless complete applications
were filed with the City prior to the effective date of this ordinance.

Section 2. That this moratorium shall be in effect for six (6) months
following the effective date of this ordinance, and may be renewed as provided by
law.

Section 3. That, pursuant to Section 13.02.055 of the Tacoma Municipal
Code, the City Council hereby refers the moratorium to the Planning Commission
for its review at its next available meeting on September 21, 2011, and to hold a
public hearing and develop findings of fact and recommendations, including the
need for and duration of the moratorium, by October 19, 2011.

Section 4. That as required by RCW 36.70A.390, within sixty (60) days of
passage of this ordinance the City Council will hold a public hearing on this
moratorium and will adopt the necessary findings required by law.

Section 5. That during the moratorium, the City Manager is authorized to
direct City staff to study and report both to the Planning Commission and to the
City Council at appropriate times and places as to whether the City code should be
amended to address the impacts, particularly economic, environmental and social,
and/or to provide mitigation requirements for large retail sales establishments.
Section 6. That this Ordinance shall be transmitted to Washington State Department of Commerce, pursuant to RCW 36.70A.106.

Section 7. That for the reasons set forth above, and to promote the objectives stated above, the City Council finds that a public emergency exists, necessitating that this ordinance take effect immediately upon its passage and publication unless repealed, extended, or modified by the Tacoma City Council after subsequent public hearings and entry of appropriate findings of fact pursuant to RCW 35.63.200.

Section 8. That if any section, subsection, paragraph, sentence, clause, or phrase of this ordinance, or its application to any person or situation, should be held to be invalid or unconstitutional for any reason by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this ordinance or its application to any other person or situation.

Passed AUG 3 0 2011

Mayor

Attest:

City Clerk

Approved as to Form:

City Attorney