



CITY OF KIRKLAND
Planning and Community Development Department
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MEMORANDUM

To: Kurt Triplett, City Manager
From: Eric Shields, Planning Director
Date: November 30, 2011
Subject: Development Moratorium for BN zones

RECOMMENDATION

That the City Council provides direction on the following issues related to the recently adopted moratorium for BN zones.

BACKGROUND DISCUSSION

Effect of the Moratorium

On November 15, 2011, the City Council adopted Ordinance 4335A (attached) establishing a development moratorium in the Neighborhood Business zones of the City. The moratorium precludes the issuance of any development related permits or licenses except for vested permits and permits necessary to correct life/safety issues. The moratorium has a duration of 60 days during which time the City Council may, after holding a public hearing, extend the duration to six months. The recitals in the ordinance indicate that the intent of the moratorium is to ensure that the goals and policies in the Comprehensive Plan and other planning documents are fulfilled. The recitals also indicate that amendments to the Comprehensive Plan and/ or Zoning Code may be necessary and that a work program to study potential amendments will be prepared.

Council Direction - How to Proceed from Here

To help resolve the moratorium, Council direction on the following issues is sought:

1. **Extending the Moratorium.** Extension of the moratorium would allow time to review and revise applicable Comprehensive Plan and Zoning Code provisions. If the Council wishes to consider an extension of the moratorium beyond the existing 60 days, it must conduct a public hearing before January 14, 2012. The last regular meeting prior to January 14 is January 3, 2012.

Does the Council wish to consider extending the moratorium and have a hearing scheduled for January 3?

2. **Scope of the Moratorium.** As noted above, the moratorium restricts virtually all development activity within BN zones. Council may recall that there are only two BN zones

in the City, one on Lake St. S and another site at the NW corner of NE 70th St. and 132nd Ave. NE in the Bridle Trails area.

The Bridle Trails BN zone contains a relatively modern building containing several business spaces, some of which appear to be vacant. As the moratorium is now written, it would preclude tenant improvements for businesses wanting to remodel and occupy those spaces. Restricting such minor remodeling isn't necessary to achieve the goal of preventing development inconsistent with potential Comprehensive Plan and/or Zoning Code amendments. Consequently, if the moratorium is extended, staff recommends that the Council consider modifying it to allow improvements to existing buildings not involving building expansion.

Would the Council like the staff to prepare a modification to the moratorium allowing minor tenant improvements for consideration at the public hearing?

3. **Work Plan: Scope of Amendments** .The ordinance adopting the moratorium states an intention to review both the Comprehensive Plan and Zoning Code. The primary concern precipitating the moratorium is the perceived inadequacy of BN regulations to restrict the scale and density of development consistent with Comprehensive Plan policies for Residential Markets. This would suggest that the emphasis of the potential amendments would be on revisions to the BN zoning. However, there are two issues that complicate such an approach:
 - o First, the BN zoning applies to both the Lake St. S and Bridle Trails sites, but the Comprehensive Plan identifies only the Lake St. S site as a Residential Market. The Bridle Trails site is identified as part of a Neighborhood Center. The descriptions of these two types of commercial areas connote different scales of commercial use and site development. Furthermore, the Bridle Trails site is fully developed with a multi-tenant commercial building while the Lake St. S site is only partially developed with a small commercial building. Revisions to BN zoning regulations that address the different conditions of both sites may be difficult.
 - o Second, two aspects of the Comprehensive Plan pertaining to the Lake St. S site may be viewed as inconsistent with each other. The site is more than an acre in size and is designated on the land use map entirely for commercial use. At the same time, the identification of the site as a Residential Market suggests a smaller extent of commercial use. This calls into question whether the entire site should continue to be designated commercial and zoned BN or conversely whether the Residential Market identification is appropriate.

Consequently, a full resolution of this matter would best be served by first examining the relevant portions of the Comprehensive Plan for the Lake St. S site and determining whether the entire site is appropriate for commercial use. Appropriate revisions to the BN zoning regulations and/ or a rezoning of the Lake St. S site could then be considered to implement the revised Comprehensive Plan.

If Comprehensive Plan amendments are desired, we would need to resolve when they would be effective. The Growth Management Act requires that the Plan generally be amended no more often than once per year. The next annual plan amendment would be in December, 2012. Adopting amendments before December may not be a problem if code

amendments are consistent with the existing Plan and the new Plan provisions merely clarify and improve the consistency. Alternatively, a mid-year Plan amendment in response to an emergency moratorium may qualify as an allowable exception to the once per year rule. More research on this subject is needed.

Prior to reviewing BN zoning regulations, should the Comprehensive Plan be reviewed to clarify the appropriate land use policies for the Lake St. S site?

4. **Work Plan: Review Process.** Staff has identified the following three options for processing amendments to the BN zoning regulations. Staff recommends the first option:
 - o **Comprehensive Planning Commission Review** The normal process for considering Comprehensive Plan and Zoning Code amendments is for the Planning Commission to review issues and options in detail, conduct a public hearing and recommend amendments to the City Council. As the Council is aware, the Commission is now beginning the process of reviewing a variety of zoning regulations pertaining to commercial zones. Included in this review are the BN zones as well as similar BNA zones in the Finn Hill area and the MSC 2 zone on Market St. A review of the BN regulations in light of the moratorium could be added to the scope of that effort. This would have the advantage of allowing the Commission to review the BN zone regulations in conjunction with regulations for other commercial zones, including the similar BNA and MSC 2 zones.

The Commission is scheduled to discuss the commercial regulations in a study meeting on December 8, 2011, at which time staff will provide a briefing on the moratorium and potential scope of review of BN regulations. It's too soon to know how long the Commission will take to complete its work on the commercial regulations, but we hope to be able to forward recommendations to the Council by the end of April 2012. If the moratorium is extended to six months, it would be effective until May 15, 2012 (which coincidentally is a Council meeting date).

If the Council desires a more expeditious review of the BN regulations and related Comprehensive Plan policies, two other options may be considered:

- o **Expedited Planning Commission Review.** This would involve the Planning Commission initially focusing exclusively on the BN zones, while putting issues relating to other commercial zones on hold for a few months. A date certain for Commission completion could be established. The end of February would be ambitious but doable. This option would have the disadvantage of not allowing the Commission to review the BN regulations in the context of similar issues in other commercial zones. It would also push back the completion date of another related project which involves amendments to Totem Lake Business District regulations.
- o **City Council Review.** This option would have the Comprehensive Plan and Zoning Code amendment process for the areas zoned BN handled entirely by the City Council. The Council would be able to more directly deal with concerns leading to the moratorium; but this option would have the disadvantages noted above for the expedited Planning Commission review and would also deny the Council the advice of the Planning Commission. From a staffing point of view, this option is also somewhat less efficient, as staff would be allocating time between the work of the Council and Planning Commission on similar subjects.

What process would the Council like to use to review the BN zoning regulations and associated Comprehensive policies?

With direction from the City Council on the above issues, staff will process Zoning Code and Comprehensive Plan amendments with the goal of completing work before the termination date of the moratorium.

cc: Kirkland Planning Commission

ORDINANCE 4335A

AN ORDINANCE OF THE CITY OF KIRKLAND IMPOSING A MORATORIUM WITHIN NEIGHBORHOOD BUSINESS (BN) ZONES ON THE ACCEPTANCE OF APPLICATIONS FOR THE REVIEW AND/OR ISSUANCE OF DEVELOPMENT PERMITS FOR ANY NEW DEVELOPMENT, ADDITION OR ALTERATION AS SUCH TERMS AS ARE DEFINED IN THIS ORDINANCE; AND ESTABLISHING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the Neighborhood Business (BN) Zone in the Kirkland Zoning Code currently contains no residential density limit whatsoever; and

WHEREAS, the City has a compelling interest in ensuring that the goals and policies contained in the Comprehensive Plan and other policy/planning documents are fulfilled; and

WHEREAS, amendments to the Comprehensive Plan and/or Zoning Code may be necessary; and

WHEREAS, a moratorium on acceptance of development permit applications for any new development, additions or alterations to existing developments in the BN Zones is required in order to allow sufficient time to consider Comprehensive Plan and/or Zoning Code amendments; and

WHEREAS, the City will establish a work plan to study and develop Comprehensive Plan and/or Zoning Code amendments that address the concerns identified above; and

WHEREAS, the City is authorized pursuant to RCW 35A.63.220 and RCW 36.70A.390 to adopt a moratorium for the purpose of preserving the status quo while Comprehensive Plan and/or Zoning Code amendments are considered, prepared and enacted;

NOW, THEREFORE, the City Council of the City of Kirkland do ordain as follows:

Section 1. Imposition of Moratorium. A moratorium is hereby imposed in the Neighborhood Business (BN) Zones on the application for, intake of, review of, or issuance of any subdivision, short subdivision, land use approval, land use permit, building permit, variance, license, and/or other approval for any new use, change in use, new development, or additions or alterations to existing development (collectively such approvals and permits are referred to herein as "Development Permits", except as provided in Section 2.

Section 2. Scope of Moratorium. The moratorium established in Section 1 of this Ordinance shall not apply to:

- A. Development permits that became vested on or before the effective date of this Ordinance in accordance with RCW 19.27.095 and RCW 58.17.033 or any other applicable law.
- B. Those Development Permits necessary to correct existing life/safety issues that would otherwise pose a threat to property or residents or occupants of an existing structure.

Section 3. Duration of Moratorium. The moratorium imposed by this Ordinance shall continue in effect for a period an initial period of sixty (60) days, unless repealed, extended, or modified by the City after public hearing and the entry of findings of fact pursuant to RCW 35A.63.220 and RCW 36.70A.390.

Section 4. Public Hearing. Pursuant to RCW 35A.63.220, the City Council shall hold a public hearing on this moratorium within sixty (60) days of its adoption, or no later than January 14, 2012, to hear and consider public comment. Following such hearing, the City Council may adopt findings of fact and may extend the interim hearing ordinance for a period of up to six (6) months. If a period of more than six months is required to complete consideration of any changes to the Comprehensive Plan and/or Zoning Code, the Council may extend this Ordinance after any required public hearing, pursuant to RCW 35A.63.220 and RCW 36.70A.390.

Section 5. Definition. As used in this Ordinance "Development Permit" shall have the meaning set forth in Kirkland Zoning Code 5.10.215.

Section 6. Severability. Should any provision of this Ordinance or its application to any person or circumstance be held invalid, the remainder of the ordinance, or the application of the provision to any other persons or circumstances shall not be affected.

Section 7. Public Emergency. The City council hereby finds and declares that a public emergency exists, and that this ordinance is necessary for the protection of the public health and safety and the preservation of the character of surrounding neighborhoods, and should, therefore, take effect upon adoption.

Section 8. Effective Date. In accordance with RCW 35A.13.190, this Ordinance, as a public emergency ordinance, shall take effect and be in force immediately upon adoption.

Passed by majority vote of the Kirkland City Council in open meeting this 15th day of November, 2011.

Signed in authentication thereof this 15th day of
November, 2011.


MAYOR

Attest:


City Clerk

Approved as to Form:


City Attorney