



## **CITY OF KIRKLAND**

**City Attorney's Office**

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### **MEMORANDUM**

**To:** David Ramsay, City Manager

**From:** Robin S. Jenkinson, City Attorney

**Date:** September 10, 2008

**Subject:** Moratorium Ordinance

### **RECOMMENDATION:**

Review proposed moratorium ordinances in light of Council Study Session materials and discussion about the Downtown Kirkland Design Review Process. As suggested in the Study Session materials, in deciding whether to impose a moratorium, the Council may want to consider the question in two parts: First, what is the problem? And secondly, if there is a problem, where is it? The moratorium ordinance can be tailored to respond to the answers to these questions.

### **BACKGROUND:**

At its September 2, 2008, meeting, the City Council requested staff to return with a Downtown moratorium ordinance. The attached moratorium ordinances offer two different approaches in response to the Council request. The first would prevent the City from accepting applications for development permits in excess of 500 square feet of gross floor area. This would allow the City to continue to accept any development permit applications for tenant improvements and residential remodels that do not increase the gross floor area by more than 500 square feet.

The second would prevent the City from accepting applications for development permits for buildings greater than two stories in height. As drafted, both moratorium ordinances would cover Central Business District (CBD) Zones 1, 2, 3, 4, 6, 7, and 8. The ordinances would not apply to CBD 5. This means neither ordinance would apply to ParkPlace. As the Council is aware, the ParkPlace private amendment request (PAR) for Comprehensive Plan and Zoning Code amendments is currently before the Planning Commission for review. Concurrent with the PAR, Touchstone, the owner of ParkPlace, has submitted an alternate development proposal for an office project under current CBD 5 zoning regulations. The City is currently processing Touchstone's application for design review as well as a short plat application in connection with the alternate development proposal.

As required by state law, the ordinances provide that a hearing on the moratorium will be held within 60 days, or by November 15, 2008, to determine if it should be continued. Following the public hearing, the Council must adopt findings of fact justifying the moratorium. Any moratorium adopted under RCW 35A.63.220 and RCW 36.70A.390 may be effective for up to six months, although it may be effective for up to one year if a work plan is developed for related studies providing for such a longer period. A moratorium may be renewed for one or more six month periods if a subsequent public hearing is held and findings of fact are made prior to each renewal.

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The attached ordinances contain five exemptions from the moratorium. First, the Kirkland Zoning Code provides that an applicant who submits a building permit application within 180 days of final Design Board Review approval is vested as of the date of the final Design Board Review decision. The ordinances acknowledge that the moratorium will not apply to these building permit applications. (Section 2.)

Second, under the state vesting law, an applicant has the right to have his or her development proposal considered under the Comprehensive Plan and Zoning Code regulations in effect at the time a complete application is submitted. Both ordinances exempt development permit applications that have been submitted and are vested. (Section 3.)

Third, in a 5-4 decision, the Washington Supreme Court in *Biggers v. Bainbridge Island*, 162 Wn.2d 683, 169 P.3d 14 (2007), cast doubt on whether local jurisdictions have the authority to impose moratoria on shoreline development. Shoreline permits have therefore been exempted from the proposed ordinances. (Section 4.)

Fourth, both moratorium ordinances clarify that the City will be allowed to continue to process development applications for the Transit Center which is located in the Park/Public Use (P) Zone and in the public right-of-way. (Section 5.)

Finally, the ordinances also exempt the Bank of America project. The applicant for the Bank of America project has submitted a complete building permit application for that project. Currently, the building permit process cannot move forward as a result of the Council's reversal of the Design Review Board's approval of the project. The exemption in the Ordinance could become applicable in the event of an adverse result for the City in the pending Land Use Petition Action filed in King County Superior Court. (Section 6.)

Please do not hesitate to contact me with any questions.

ORDINANCE 4139

AN ORDINANCE OF THE CITY OF KIRKLAND IMPOSING A MORATORIUM WITHIN CENTRAL BUSINESS DISTRICT (CBD) ZONES 1, 2, 3, 4, 6, 7, AND 8 ON THE ACCEPTANCE OF APPLICATIONS FOR REVIEW AND/OR ISSUANCE OF DEVELOPMENT PERMITS FOR ANY NEW DEVELOPMENT THAT WOULD ADD OR CREATE IN EXCESS OF 500 SQUARE FEET OF GROSS FLOOR AREA.

WHEREAS, the Kirkland City Council has previously identified a goal of maintaining the overall coherence of the Downtown's visual and historic character, which goal is articulated in the Downtown Plan, the Design Guidelines for Pedestrian Oriented Business Districts, the Design Review regulations, and in other policy/planning documents; and

WHEREAS, the applicable provisions of the Downtown Plan and the Zoning Code do not adequately ensure that Downtown development occurs in a manner that is predictable, effective, and consistent with this goal; and

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

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

WHEREAS, a moratorium on acceptance of applications for any new development that would add or create in excess of 500 square feet of gross floor area in CBD Zones 1, 2, 3, 4, 6, 7, and 8 is required in order to allow sufficient time to draft 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 Central Business District (CBD) Zones 1, 2, 3, 4, 6, 7, and 8 on the application for, intake of, review of, or issuance of any development permit which would add or create in excess of 500 square feet of gross floor area except as provided in Sections 2, 3, 4, 5, and 6.

Section 2. The moratorium established in Section 1 of this Ordinance shall not apply to any building permit application for a development which has been granted Design Board Review approval and would be considered vested,

on or before the effective date of this Ordinance, in the manner set forth in Kirkland Zoning Code Section 142.35(10).

Section 3. The moratorium established in Section 1 of this Ordinance shall not apply to 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.

Section 4. The moratorium established in Section 1 of this Ordinance shall not apply to applications for substantial development permits, conditional use permits, or variances under the Shoreline Management Act, Chapter 90.58 RCW, and Kirkland Municipal Code Chapter 24.06.

Section 5. The moratorium established in Section 1 of this Ordinance shall not apply to the Park/Public Use (P) Zone, publicly owned property, or public right-of-way.

Section 6. The moratorium established in Section 1 of this Ordinance shall not apply to the Bank of America/Merrill Gardens Mixed Use Project at 101 Kirkland Avenue, File No. DRC07-00006, Case No. APL08-00001 ("Bank of America Project"). Design Review for the Bank of America Project was approved by the City Design Review Board (DRB) on January 16, 2008, but the City Council reversed the DRB decision on August 5, 2008. The applicant for the Bank of America Project appealed the City Council decision to King County Superior Court, and that appeal is currently pending. (Case No. 08-2-29048-4SEA).

Section 7. Duration and Scope of Moratorium. The moratorium imposed by this Ordinance shall continue in effect for 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 8. Public Hearing. Pursuant to RCW 35A.63.220 and RCW 36.70A.390, the City Council shall hold a public hearing on this moratorium within sixty (60) days of its adoption, or no later than November 15, 2008, to hear and consider public comment and testimony regarding this moratorium. Following such hearing, the City Council may adopt findings of fact, and may extend the moratorium for a period 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 hearing, pursuant to RCW 35A.63.220 and RCW 36.70A.390.

Section 9. 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 10. Effective Date. This Ordinance shall be in force and effect five days from and after its passage by the Kirkland City Council and publication, as required by law.

Passed by majority vote of the Kirkland City Council in open meeting  
this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

Signed in authentication thereof this \_\_\_\_\_ day of  
\_\_\_\_\_, 2008.

\_\_\_\_\_  
MAYOR

Attest:

\_\_\_\_\_  
City Clerk

Approved as to Form:

\_\_\_\_\_  
City Attorney

ORDINANCE 4139\*

AN ORDINANCE OF THE CITY OF KIRKLAND IMPOSING A MORATORIUM WITHIN CENTRAL BUSINESS DISTRICT (CBD) ZONES 1, 2, 3, 4, 6, 7, AND 8 ON THE ACCEPTANCE OF APPLICATIONS FOR REVIEW AND/OR ISSUANCE OF DEVELOPMENT PERMITS FOR ANY NEW DEVELOPMENT THAT WOULD EXCEED TWO STORIES IN HEIGHT.

WHEREAS, the Kirkland City Council has previously identified a goal of maintaining the overall coherence of the Downtown's visual and historic character, which goal is articulated in the Downtown Plan, the Design Guidelines for Pedestrian Oriented Business Districts, the Design Review regulations, and in other policy/planning documents; and

WHEREAS, the applicable provisions of the Downtown Plan and Zoning Code do not adequately ensure that Downtown development occurs in a manner that is predictable, effective and consistent with this goal; and

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

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

WHEREAS, a moratorium on acceptance of applications for any new development that would exceed two stories in height in CBD Zones 1, 2, 3, 4, 6, 7, and 8 is required in order to allow sufficient time to draft 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 Central Business District (CBD) Zones 1, 2, 3, 4, 6, 7, and 8 on the application for, intake of, review of, or issuance of any development permit for buildings that would exceed two stories in height above the abutting right-of-way as measured at the midpoint of the frontage of the subject property. If the subject property abuts more than one right-of-way, the two stories in height will be measured at the midpoint of the frontage on the lower right-of-way.

Section 2. The moratorium established in Section 1 of this Ordinance shall not apply to any building permit application for a development which has been granted Design Review approval and would be considered vested, on or before the effective date of this Ordinance, in the manner set forth in Kirkland Zoning Code Section 142.35(10).

Section 3. The moratorium established in Section 1 of this Ordinance shall not apply to 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.

Section 4. The moratorium established in Section 1 of this Ordinance shall not apply to applications for substantial development permits, conditional use permits, or variances under the Shoreline Management Act, Chapter 90.58 RCW, and Kirkland Municipal Code 24.06.

Section 5. The moratorium established in Section 1 of this Ordinance shall not apply to the Park/Public Use (P) Zone, publicly owned property, or public right-of-way.

Section 6. The moratorium established in Section 1 of this Ordinance shall not apply to the Bank of America/Merrill Gardens Mixed Use Project at 101 Kirkland Avenue, File No. DRC07-00006, Case No. APL08-00001 ("Bank of America Project"). Design Review for the Bank of America Project was approved by the City Design Review Board (DRB) on January 16, 2008, but the City Council reversed the DRB decision on August 5, 2008. The applicant for the Bank of America Project appealed the City Council decision to King County Superior Court, and that appeal is currently pending. (Case No. 08-2-29048-4SEA).

Section 7. Duration and Scope 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 8. 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 November 15, 2008, to hear and consider public comment. Following such hearing, the City Council may adopt findings of fact and may extend the interim zoning 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 9. Definitions.

- a. As used in this Ordinance "story" shall have the meaning set forth in Kirkland Zoning Code 5.10.890.

Section 10. 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 11. Effective Date. This Ordinance shall be in force and effect five days after its passage by the Kirkland City Council and publication, as required by law.

Passed by majority vote of the Kirkland City Council in open meeting this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

Signed in authentication thereof this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

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MAYOR

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