



CITY OF KIRKLAND

City Attorney's Office

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MEMORANDUM

To: David Ramsay, City Manager

From: Robin S. Jenkinson, City Attorney

Date: October 10, 2008

Subject: CBD Interim Zoning Regulations

RECOMMENDATION:

After conducting the public hearing, the City Council determine whether to pass the attached ordinance which would, on an interim basis, eliminate potential "bonus" height for residential developments in Design Districts 1A and 1B as designated in the Moss Bay Neighborhood portion of the Comprehensive Plan. This means that in Design District 1A where the bonus story is a fourth story, no building higher than three stories would be allowed. In Design District 1B where the bonus story is a fifth story, no building higher than four stories would be allowed. (The Design Districts are shown on Attachment A to the ordinance.) In addition, in Central Business District Zone 1, the ordinance would restrict the height of new buildings, or portions of buildings, within 100 feet of Lake Street or Lake Street South to no more than two stories.

BACKGROUND:

On September 16, 2008, the City Council passed Ordinance 4139, imposing a moratorium on the acceptance of applications for development permits which would add or create in excess of 500 square feet of gross floor area. The moratorium applies to Central Business District (CBD) Zones 1, 2, 3, 4, 6, 7, and 8. The purpose of the moratorium was to provide the City Council time to consider whether Comprehensive Plan and/or Zoning Code amendments related to Downtown development should be adopted. The moratorium is currently effective until November 15, 2008.

On October 7, 2008, following a public hearing on the moratorium, the City Council discussed adopting interim zoning regulations while it considered potential amendments to the Comprehensive Plan and/or Zoning Code, instead of extending the moratorium. The proposed ordinance would adopt interim zoning regulations which would be in place for up to 180 days or until the City Council has an opportunity to clarify the standards for achieving additional height in Design Districts 1A and 1B and the standards for defining a two-story building along Lake Street. The City Council may want to make amendments to the attached ordinance based upon its discussion at its Study Session on October 16, 2008, and following the testimony at the public hearing.

Under RCW 35A.63.220 and RCW 36.70A.390, the City Council must adopt findings of fact justifying its action adopting the interim zoning regulations. Section 8 of the proposed ordinance includes findings of fact for the City Council's consideration. These were developed based upon City Council comments at the September 2, 16, and October 7, 2008, City Council meetings. The City Council may adopt, reject or supplement these findings or request that additional findings be prepared and returned at the Council's next regular meeting.

Please do not hesitate to contact me with any questions.

ORDINANCE NO. 4149

AN INTERIM ORDINANCE OF THE CITY OF KIRKLAND RELATING TO LAND USE AND ZONING WITHIN CENTRAL BUSINESS DISTRICT (CBD) ZONE 1, ADOPTING INTERIM ZONING REGULATIONS LIMITING THE HEIGHT OF BUILDINGS WITHIN DESIGN DISTRICTS 1A AND 1B AS DESIGNATED IN THE MOSS BAY NEIGHBORHOOD PORTION OF THE COMPREHENSIVE PLAN TO THREE AND FOUR STORIES, RESPECTIVELY; LIMITING THE HEIGHT OF BUILDINGS WITHIN 100 FEET OF LAKE STREET OR LAKE STREET SOUTH TO TWO STORIES; AND REPEALING ORDINANCE 4139.

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 Zoning Code and Design Review regulations, and in other policy/planning documents; and

WHEREAS, recent disputes concerning the application of provisions of the Downtown Plan, the Zoning Code, and Design Review regulations to specific Downtown development proposals indicate that members of the public and development community do not share a common understanding of the meaning of said provisions or the way in which they should be applied; and

WHEREAS, the lack of shared understanding and resulting disputes interfere with the predictability of Downtown development and achievement of the goal of maintaining the overall coherence of the Downtown's visual and historic character; 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, the clarification of applicable Plan, Zoning Code, and Design Review provisions may promote broader understanding and acceptance, reduce disputes, and help streamline the Downtown development approval process; and

WHEREAS, amendments to the Comprehensive Plan and/or Zoning Code may assist in providing clarification; and

WHEREAS, the adoption of interim zoning regulations will provide the City Council time to consider whether permanent Comprehensive Plan and/or Zoning Code amendments should be adopted; and

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

WHEREAS, the City Council has determined that the moratorium established on September 16, 2008, with the passage of Ordinance 4139 will no longer be necessary when the interim zoning regulations adopted by this Ordinance are effective; and

WHEREAS, the City Council held a public hearing on October 21, 2008;

WHEREAS, the City has the authority to adopt an interim zoning ordinance pursuant to RCW 35A.63.220 and RCW 36.70A.390;

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

Section 1. Ordinance 4139, passed September 16, 2008, is hereby repealed.

Section 2. As an interim zoning regulation, within Central Business District Zone 1, no building within the Design District 1A as designated in the Moss Bay Neighborhood portion of the Comprehensive Plan as shown on Attachment A shall be higher than three stories and no building in Design District 1B as designated in the Moss Bay Neighborhood portion of the Comprehensive Plan as shown on Attachment A shall be higher than four stories.

Section 3. As an interim zoning regulation, no portion of a structure within one hundred (100) feet of Lake Street or Lake Street South shall be higher than two stories.

Section 4. The interim regulations adopted in Sections 2 and 3 of this Ordinance shall not apply to development permits that became vested prior to September 27, 2008, in accordance with RCW 19.27.095 and RCW 58.17.033.

Section 5. The interim regulations adopted in Sections 2 and 3 of this Ordinance shall not apply to publicly owned property and/or facilities or public right-of-way.

Section 6. The interim regulations adopted in Sections 2 and 3 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. The interim regulations adopted by this Ordinance shall continue in effect for a period of up to one hundred eighty (180) days from the effective date of this Ordinance, unless repealed, extended, or modified by the City Council.

Section 8. Findings of Fact.

A. The recitals set forth on pages 1-2 above are hereby adopted as findings of fact.

- B. Although decisions of the City Council on appeals of Design Review approvals for Downtown development reflect the meaning of Comprehensive Plan, Zoning Code, and Design Review provisions as adopted by the City Council, property developers and City residents desire greater certainty concerning the meaning and application of the Comprehensive Plan, Zoning Code, and/or Design Review provisions governing Downtown development.
- C. It is necessary for the City Council to consider whether changes to the Downtown Plan, Zoning Code, and/or Design Review provisions can provide more certainty and predictability, thereby facilitating achievement of Downtown Plan and other goals.
- D. To avoid the potential for submission and vesting of applications for development that may be inconsistent with final Plan and/or Code clarifications to be considered by the City Council, the interim zoning regulations set forth in Sections 2 and 3 are necessary.
- E. To facilitate greater predictability and certainty in the Downtown development approval process, Downtown Plan and/or Zoning Code provisions could also be clarified to provide additional, more specific guidance to Design Review Board in the exercise of its discretion.
- F. The City Council also needs to consider whether the tasks and level of discretion currently delegated to the Design Review Board strike the appropriate balance or whether changes in the Design Review approval process could provide greater predictability and certainty.
- G. A planning process including significant opportunities for participation by property owners, residents and other stake-holders will be undertaken.

Section 9. If a period of more than one hundred eighty (180) days is required to completed consideration of any changes to the Comprehensive Plan and/or Zoning Code, the Council may adopt extensions of this Ordinance after any required public hearing pursuant to RCW 35A.63.220 and RCW 36.70A.390.

Section 10. 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. Ordinance 4139, which is repealed by this Ordinance, shall remain in force and effect until the effective date of this Ordinance.

Section 12. 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.

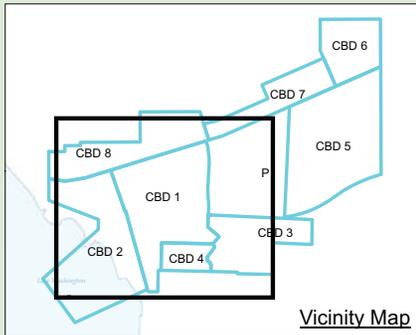
MAYOR

Attest:

City Clerk

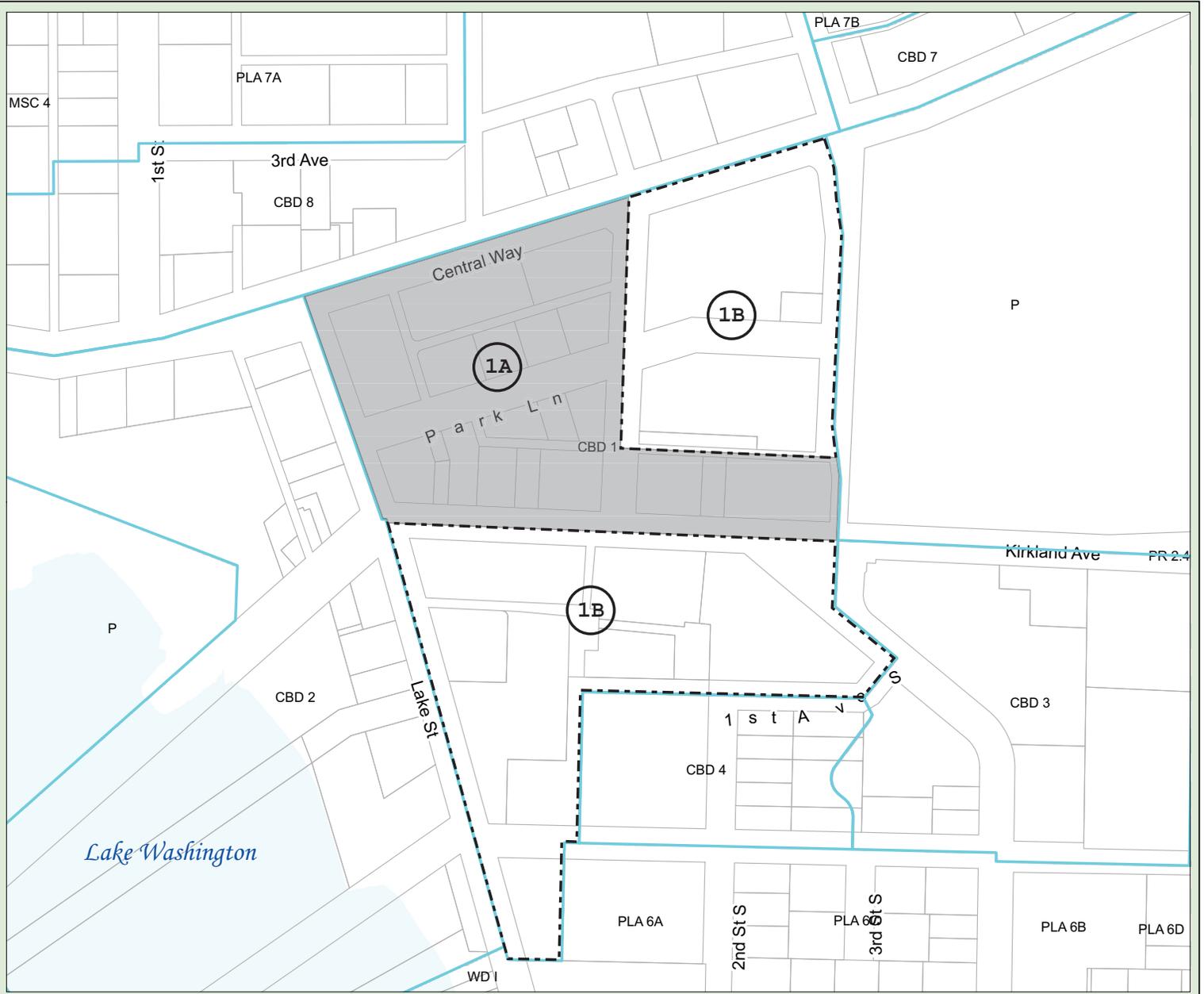
Approved as to Form:

City Attorney



**CBD 1
Design Districts 1A & 1B**

- Design District 1A
- Design District 1B



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