

## Moratoria

### Packet Synopsis

In the land use sense, the use of a **moratorium ordinance** is the legislative tool to buy time to consider and adopt a legislative control, an ordinance, for a situation or land use not currently addressed in the Local Unit of Government's (LGU) present land use plan and/or ordinances. The granting of **moratoria** authority by state legislatures to their LGUs recognizes the reality that LGUs do not always foresee how property owners might wish to use their properties nor where and how community values may change or its circumstances. Therefore, the authority to adopt a **moratorium ordinance** enables the state's LGUs to address the unforeseen.

In Minnesota, **moratoria** is called **interim zoning** in MS § 394.34 which authorizes counties to use this tool and **interim ordinance** in Subd. 4 of MS § 462.355, the authorization for cities. MS § 394.34 for counties authorizes an initial one year of enforcement plus a one year extension and Subd. 4 of MS § 462.355 for municipalities authorize an initial term of one year of enforcement. A municipality may conditionally extend an **interim ordinance** for up to 18 months. It is important to consult section 4 of MS § 462.355 for municipalities concerning the conditions that may be governing. Copies of both current Minnesota Statutes are enclosed in this packet.

There are a number of issues that can arise when using this tool of land use management, the significant ones being the constitutional ones of free speech and expression (1<sup>st</sup> Amendment issues) and takings (5<sup>th</sup> Amendment issues). So care must be taken in the crafting of a **moratorium**. The enclosed packet materials have been selected because it is believed they best illustrate the topic, **moratoria**.

“Moratoria on Development Not Per Se Taking”, *Legal Note*, League of Wisconsin Municipalities, June 2002 – This paper covers moratoria on development and not per se taking. It analyzes the judicial reasoning of the Supreme Court determining that a properly written and applied moratorium is not a 5<sup>th</sup> Amendment “taking”. In essence, moratoria are constitutional.

“Moratoria (Interim Development Regulations)”, *Creating the Community You Want: Municipal Options for Land Use Control*, New York State, Department of State, June 1998 – This is not only a brief and very good definition of moratoria, but it also concisely and clearly presents what it should include.

**Moratoria** can be established for a variety of reasons. The following examples illustrate how they have been used to address challenges and concerns in other communities, and help you construct your ordinance.

“An Ordinance Establishing a Moratorium on Large Residential Structures”, Town of Duck, NC, Adopted May 15, 2002 – Enacted to address public safety, land use and environment issues.

“Public Hearing Regarding the Sewerage Moratorium Ordinance”, Southport, NY, Adopted July 25, 2000 – Enacted to preclude any subdivision developments of 30 units or larger or 15 acres or larger while the city’s sewer system rehabilitation is evaluated to see if the system can support further development.

“First Reading, Moratorium Ordinance, Wireless Telecom Facilities”, *City Council Meeting Minutes*, Hopkins, MN, January 7, 2003 – Enacted to address the issue of telecom towers in residentially zoned district. There was also another moratorium ordinance being considered for currency exchange businesses.

“Ordinance No. 12-4, Ordinance Establishing temporary Moratorium on the Siting and Construction of Telecommunications Facilities”, Town of Dunn, Dane County, WI, November 21, 2000 – An example of a “towers” moratorium for a rural environment. It might be appropriate to address all types of towers at the same time (telecommunication, wind energy, etc) in the “tower” moratorium as well as the final ordinance.

“Ordinance Number 54, Town of Solway Moratorium Relating to Selected Land Uses”, St. Louis County, MN and the Town of Solway, MN, February 15, 2000 – Enacted to allow the Town of Solway and St. Louis County to revise Solway’s land use plan.

“An Interim Ordinance Placing a Time-limited Moratorium on the Siting or Expansion of Adult Establishments Within Any Zoning District of the County of Winona, and Directing a Study Be Conducted”, Winona County, MN – A very carefully drafted interim ordinance on a 1<sup>st</sup> Amendment sensitive land use issue. Note how carefully it uses empirical data to validate its purpose and Minnesota courts do accept non-local source empirical data.

“Town of Easton, “Big Box” Moratorium Info, The Moratorium Ordinance”, Easton, MN, September 30, 1999 – Enacted to allow the city to review and revise its comprehensive plan to incorporate Planned Unit Developments that are based upon “big box retail” so as to mitigate such possible adversities as traffic congestion, impact on current city commercial core and its unique small town character. This ordinance is considered a model for its purpose.

## **INTERLIBRARY LOAN MATERIALS**

The following are available through MnLINK

**Title:** *The takings issue: constitutional limits on land use control and environmental regulation* / Robert Meltz, Dwight H. Merriam, Richard M. Frank. **Library:** University of Minnesota, Twin Cities **Authors:** Meltz, Robert. **Published:** Washington, D.C. Island Press, c1999 **Notes:** Includes bibliographical references and index. **Contents:** A Note to the Nonlawyer: How to Read Legal Footnotes -- Introduction. The Path to the Present. Property Protection in Federal and State Constitutions. Property and Takings Law -- Getting to the Takings Issue. Jurisdiction. Ripeness. Other Hurdles. Section 1983

Claims. Right to Jury Trial -- Is It or Isn't It a Taking? Overview. Facial Versus As-Applied Challenges. Physical Takings. Regulatory Takings. Date of the Taking. Exceptions to Takings -- Land-Use Programs Raising Takings Issues. Planning, Zoning, and Subdivision. Physical Improvements and Exactions. Growth Management and Moratoria. Future Condemnation. Landlords and Tenants. Historic Preservation. Airplanes and Airports. Contracts and Development Agreements -- Environmental Programs Raising Takings Issues. Wetlands. Wildlife. Mining. Billboard Controls. Rails to Trails. Hazardous Wastes and Contaminated Site Cleanup. Water Rights -- Remedies. Invalidation and Other Equitable Relief. Money Damages, Interest, and Fees -- Lessening the Public/Private Conflict. Voluntary Initiatives, Incentives, and Direct Acquisition. Alternative Dispute Resolution. Property Rights Legislation. Key Supreme Court Takings Decisions Involving Land Use: The Short Course -- How a Court Might Analyze a Land-Use-Related Taking Claim. **ISBN 1559633808 Summary Library:** University of Minnesota, Twin Cities

**Location:** TC Law Library

**Call No:** KF5698 .M45 1999

**Title:** *Zoning and land use in Minnesota* / prepared by Scott T. Anderson...[et al.].

**Library:** MnPALS **Published:** Eau Claire, WI: Lorman Education Services, c2003.

**Subjects:** Zoning law -- Minnesota. Land use -- law and legislation -- Minnesota.

**Contributors:** Anderson, Scott T. Kolb, John C. Myers, David J. Tiede, Peter B.

Lorman Education Services. **Notes:** "St. Cloud, MN, January 31, 2003." **Contents:** Zoning and land use -- Guide to the basics of land use law in Minnesota -- Moratoria - protecting the planning process -- Zoning and land use in Minnesota. **Holdings Library:** MnPALS

**Location:** Ramsey County Law Library

**Shelving Location:** Main Collection

**Call No:** KF5698.Z99MN Z66 2003

**Copy Number:** 1.0

**Item Status:**

**Circulation Policy:** Ask Librarian

## LEGAL NOTES

See the enclosed copies of the applicable Minnesota Statutes.