

Moratoria On Residential Development Permits:

A Toolkit Report

February 2026

Submitted to:

**National Association of Home Builders
of the United States**

PREPARED BY:

Timothy S. Hollister
Andrea L. Gomes
Hinckley, Allen & Snyder LLP
20 Church Street, Floor 18
Hartford, Connecticut 06103
PHONE: (860) 725-6200
FAX: (860) 278-3802
<https://www.hinckleyallen.com>

TABLE OF CONTENTS

	Page
EXECUTIVE SUMMARY	1
SCOPE OF RESEARCH; DISCLAIMER.....	3
A NOTE ABOUT HOME RULE	3
I. INTRODUCTION TO RESIDENTIAL DEVELOPMENT MORATORIA	6
A. <u>Definitions and Scope of this Report</u>	8
B. <u>Types of Moratoria</u>	8
C. <u>Emerging Trend: Climate Moratoria</u>	10
D. <u>Why Governments Impose Moratoria</u>	13
E. <u>Impacts on Residential Development Moratoria on Owners, Developers, Builders, Contactors, and Others</u>	14
II. PERMISSIBLE AND IMPERMISSIBLE CHARACTERISTICS OF RESIDENTIAL DEVELOPMENT MORATORIA.....	15
A. <u>Purpose and Scope</u>	15
B. <u>Duration</u>	17
C. <u>State Statutes Governing Moratoria</u>	18
III. CHALLENGING A MORATORIUM	19
A. <u>Establishing Vested Rights</u>	19
B. <u>Preparation for a Challenge</u>	20
C. <u>Talking Points; Information Sources and Communication Channels; Alternatives</u>	21
IV. LEGAL BASES FOR CHALLENGES TO A PROPOSED OR ADOPTED MORATORIUM.....	24
A. <u>State and Federal Takings Claims</u>	24
B. <u>State Law Claims</u>	25
C. <u>Civil Rights and Damages Claims</u>	29
V. CONCLUSION.....	31
APPENDIX.....	A1

EXECUTIVE SUMMARY

In a game, when a team needs to regroup to consider its next play, the coach calls a timeout. When a child misbehaves and needs time to settle down before resuming, parents may impose a timeout. If a stock exchange encounters a steep drop in prices, its directors can suspend trading to stop the negative momentum. Timeouts are a fact of life.

This is no less true in land use planning, where moratoria—development timeouts to allow a government agency to review, draft, or revise regulations—have been around nearly as long as zoning itself. Nationwide, thousands of moratoria have been adopted, and hundreds of court decisions have assessed their legality, such that the rules about what is and is not permissible are reasonably well spelled out.

Yet, notwithstanding the many legal, planning, development, and financial issues that arise with moratoria, they continue to be a tool of land use planning that is readily proposed and sometimes adopted when municipal and county governments confront development or a trend that officials or their constituents don't like. Based on anecdotes shared among NAHB members and our own research, moratoria may be a rising trend, especially related to climate change and weather.

The problem is that local governments and their land use agencies sometimes impose moratoria for improper and illegal reasons. They suspend permitting because a group of citizens, perhaps fueled by misinformation on social media, dislikes the pace, type, density, height, traffic impact or other characteristics of recent, in-progress, or proposed development. Moratoria can result from a government recognizing errors in infrastructure planning or regulation. They can also be weaponized to undermine economic and financial expectations and contractual rights, and to discriminate on the basis of race, disability, income, and other improper criteria.

The point is that moratoria are a long-established tool of government land use regulation, but can be abused and misused. Many articles and portions of land use law treatises have been written about moratoria. *The main purpose of this Toolkit Report is to explain to NAHB members and their planning consultants and legal advisors how to recognize when a land use*

permitting moratorium may be invalid, and how to prevent its adoption or at least mitigate its impact.

This report is in four main sections. Part I explains what a moratorium is and is not; identifies types of moratoria; examines the emerging trend of “climate moratoria”; explains why governments impose moratoria; and lists the potential impacts of moratoria, that is, the direct and often overlooked indirect and adverse consequences that can result from a suspension of permitting. Climate moratoria are development pauses—and potential precursors to permanent regulation—based on floods, fires, wind, heat, drought, landslides, and other weather disasters; their theory is that development should be suspended until severe weather is better accounted for in development regulations, to avoid or mitigate damage to or destruction of homes and to enable resiliency and recovery.

Part II is a survey of the law focusing primarily on what courts have held are permissible and impermissible characteristics of moratoria. This section also reviews a sampling of state statutes that define what steps a local government must take and what justifications it must provide before pausing residential development.

What builders and developers can do to prevent, avoid, mitigate, or challenge a proposed or adopted moratorium is the subject of Part III. Topics include proving vested rights (a/k/a “grandfathering”) to be exempted from a moratorium; identifying when and how to challenge a moratorium proposal; public hearing talking points and data sources; and alternatives that can be proposed.

Part IV presents a list of legal challenges and claims that can be brought to try to invalidate a moratorium, and a checklist of questions that will help in determining the best strategic and legal courses of action. This section explains that the best tactics are to attack a moratorium’s purpose, scope, and direction; argue that the municipal government has no statutory authority to enact the proposed moratorium; identify procedural non-compliance; argue that the local government has not prepared, presented, or proved its asserted substantive

justifications; and in cases where the government is acting not just as a regulator but a property owner or market participant, point out that the moratorium is improper economic interference. Part IV also explains that takings claims under the Takings Clause of the federal Fifth Amendment or corresponding state constitutional law are difficult to win, but should be considered.

This Report is not a 50-state survey or compendium of statutes and cases. Particularly, court decisions cited are representative cases. *The primary focus of this Report is strategies for political situations, administrative agency hearings, and court proceedings in response to moratorium proposals.* This report does not address moratoria on residential evictions, which generated hundreds of court decisions during the pandemic of 2020-2024. As a result, we urge readers and recipients of this Report to be judicious in distributing or quoting from it in public proceedings.

SCOPE OF RESEARCH; DISCLAIMER

As required by our Code of Professional Responsibility, we reaffirm to NAHB and any member who may review this document that (1) the attorneys who have prepared this paper are admitted to the practice of law only in Connecticut, the federal Second Circuit, and the U.S. Supreme Court; (2) this Report provides a national overview of the law but it is not intended to provide legal advice with respect to the law of any particular state or jurisdiction, or to evaluate any particular proposed or enacted moratorium; and (3) with respect to any specific factual or legal situation regarding development moratoria in any particular state, the reader is advised to consult competent counsel in that state or jurisdiction.

A NOTE ABOUT HOME RULE

Relatively few states expressly authorize, prohibit, or specify criteria for moratoria in a state-level statute or regulations. A compilation of state laws governing moratoria is discussed in § II.C, with several statutes copied and highlighted in the Appendix to this Report. While statutes and regulations give definition to what is ostensibly required or prohibited with

moratoria, to evaluate the legality of a moratorium requires analysis and understanding of a state's home rule structure and the scope of municipal powers. This is best achieved by identifying the state's constitutional and statutory home rule provisions and characterizing the structure of the state's law.

The starting point is “Dillon's Rule,” a phrase from a written decision by Judge John F. Dillon of Iowa in 1868. It is a cornerstone of American municipal law. Dillon’s Rule maintains that the powers of a political subdivision of a state are limited to those expressly stated in state law or necessarily implied from that law. The first part of Dillon's Rule states that local governments have only three types of powers:

- those granted in express words;
- those necessarily or fairly implied in or incident to the powers expressly granted; and
- those essential to the declared purposes of local government that are indispensable to its obligations.

The second part states that if there is any reasonable doubt about whether a power has been conferred on a local government, then the power has *not* been conferred. This is the rule of strict construction of local government powers. See generally, C. Wirt, "Dillon's Rule," 24 *Virginia Town & City*, No. 8, at 12-15 (Aug. 1989).

Otherwise, home rule is a delegation of power from the state to its sub-units of government (counties, municipalities, towns, townships, boroughs, or villages). The power is limited to specific fields, and subject to judicial interpretation. Home rule creates local autonomy and to some degree limits state interference in “local” affairs. There are four primary areas in which home rule powers are exercised by local governments:

Structural – authority to choose the form of government, charter, and charter revisions;

Functional – authority to exercise powers of local self-government;

Fiscal – authority to determine revenue sources, set tax rates, borrow funds, and other related activities; and

Personnel – authority to set employment rules and conditions ranging from remuneration to collective bargaining.

See National League of Cities, *Home Rule*, recently updated in NLC’s “New Principles of Home Rule” available at [Home20Rule20Principles20ReportWEB-2-1.pdf \(nlc.org\)](https://www.nlc.org/sites/default/files/2020-01/Home20Rule20Principles20ReportWEB-2-1.pdf).

Thus, whether a proposed or adopted moratorium on residential development is legal depends in part on whether the state has adopted a statute allowing one; if so, compliance with the specified criteria; and whether governed by a state statute or regulation or not, how much authority the municipal government has been given under state law. Put another way (an issue discussed further in § IV below), moratoria should be evaluated based on whether the suspension is based on zoning and land use regulatory authority, general municipal powers, home rule authority, the state constitutional, or some combination, or some other basis, and whether these bases are construed strictly or broadly.¹ The reader should bear in mind that a moratorium that is permissible in one state may be impermissible in another.

Our research for this Report was undertaken between October 2025 and January 2026. Our cutoff date for statewide regulations, ordinances, and caselaw was January 30, 2026. Our work has consisted of three parts: (1) a review of secondary sources such as land use law treatises on the subject of moratoria; (2) a 50-state review looking for state statutes and significant caselaw, especially appellate cases and especially those decided since 2015 (that is, a ten-year look back); and (3) a review of 2024-2025 news articles to try to discern recent trends and states where moratoria appear to be a hot or emerging topic. We relied primarily on the Westlaw database for our research. Lastly, we conducted a search using a relatively new Artificial Intelligence platform called Harvey, which provided a checklist against which compared our own research. However, no part of this Report quotes from or relies on this AI tool.

¹ See, e.g., *Collura v. Town of Arlington*, 307 Mass. 881, 329 N.E.2d 733 (1975) (broad home rule authority validated moratorium)

To locate statutes authorizing moratoria in the Westlaw database, we conducted searches under the "general laws" database for each state and used a variety of search terms.²

We also entered search terms similar to footnote 1 into the Google search engine in an effort to capture news articles and recent updates that may not yet have made it to Westlaw, such as pending legislation, threatened litigation, and grassroots efforts to advocate for moratoria. We are confident that we have located statutes, regulations, and cases that illustrate all major policy considerations and legal issues.

I. INTRODUCTION TO RESIDENTIAL DEVELOPMENT MORATORIA.

First and foremost, a *moratorium is a suspension of property rights*. It is an action taken by a municipal commission that temporarily *overrides* state real property, land use, and residential development law. A moratorium, even one for six months for specific geographic area and imposed for a compelling purpose, is an extreme action that puts investment, development, and construction on hold and in limbo, and potentially at risk. As a result, courts and some state legislatures have allowed a moratorium only in compliance with strict, specific, and short-term requirements, and only when necessary to address a specific problem with existing regulations.

² (1) (*moratori! /s resident! /s devel!*) – this searched for any statutes where the term moratoria/moratorium appear in the same sentence as resident/residents/residential and develop/development/developing; (2) (*moratori! /25 resident! AND ("land use" OR zoning OR (planning /3 (commission OR board))) % evict! % "health care"*) – this searched for any statutes where the term moratoria/moratorium appear within 25 words of resident/residents/residential AND the terms "land use" or zoning or (planning within 3 of the words commission or board) appear, BUT it excludes any results containing the words evict/eviction or "health care"; and (3) *moratori! /s ("land use" OR zoning OR (planning /3 (commission OR board)))* – this searched for any statutes where the term moratoria/moratorium appear in the same sentence as the terms "land use" or zoning or (planning within 3 of the words commission or board).

State statutes, where they exist, generally contain demanding requirements for moratoria. They generally prohibit moratoria that pause a broad spectrum of development, or across a large geographic area. They allow moratoria to assist in the evaluation and revision or adoption of regulations when a specific, compelling issue arises, and then only for the time and extent necessary to fix the problem. Some of the stricter statutes and judicial discussions require for a valid moratorium: (1) a documented, substantial, existing condition that warrants the extreme remedy of suspension of permits; (2) a specific proposal by the government at the start of the moratorium as to what the eventual, post-moratorium solution will be, so the time period of permit suspension will promptly address the problem and result in revised regulations, while avoiding meandering deliberations, an impasse, or incomplete action; (3) the government's commitment to fund the eventual remedy when completed; and (4) some independent study or verification of the need and the efficacy of the proposed solution. A compendium of representative state statutes is in the Appendix to this Report.

A recent example of permissible moratoria, not in the residential context, is a suspension on permits for cannabis retail stores. When cannabis sales have been legalized by state law as a local land use, few if any municipalities have had regulations already in place to control the siting and operation of such stores. Short-term moratoria have been allowed to grant time for local governments to draft and adopt regulations where, for good reason, none existed, and to avoid the problem of unregulated stores. Another emerging example is moratoria on data centers, due to their outsized needs for acreage, power, and water.³

³ See “States Consider Pumping the Brakes on Data Centers,” Law 360 Real Estate Authority, Comm'l (Feb. 4, 2026), Appendix at A122.

A. Definitions and the Scope of this Report.

Specifically, this Report addresses (1) temporary (2) suspensions of (3) the acceptance, processing, and/or issuance of (4) specified types or classes of residential land use permits or approvals (5) for the purpose of addressing a substantial land use planning or regulatory issue or concern (6) through the consideration and adoption of new or revised regulations. The government actions, valid or invalid, discussed in this Report have all of these characteristics. As a result, this Report does not cover enactments that, expressly or functionally, are permanent; actions that do not suspend permitting criteria but directly, permanently amend them; those that do not affect land development permits *per se*; and actions that are not adopted to examine regulations but to address only related subjects such as the history, source, or current scope of the particular land use concern.

In light of these criteria, other than to distinguish them from moratoria, this Report does not address growth control ordinances or regulations, meaning permanent regulatory changes meant to slow or prohibit residential development through adoption of more difficult criteria or standards, such as increasing residential minimum lot size. Such changes are not moratoria.

B. Types of Moratoria.

Our review of cases and news articles reveals that moratoria that have suspended permits for a wide variety of purposes such as:

- rezonings;
- subdivisions;
- single-family development;
- townhome, duplex, triplex, and other forms of “middle housing development”;
- multi-family development;
- affordable housing;⁴

⁴ *Tocco v. New Jersey Council on Affordable Housing*, 242 N.J. Super. 218, 576 A.2d 328 (App. Div. 1990).

- septic system installations;
- sewer capacity allocations;
- water system creation and connections;
- variances;
- special permits and special exceptions;
- site plans;
- wetlands permits;
- building permits;
- solar panel installations; and
- annexation of additional land.⁵

Justifications for moratoria have included:

- inadequate sewage system;
- inadequate water;
- inadequate electricity;
- inadequate vehicle access, including emergency access;
- rapid and/or unexpected population growth;
- increasing traffic congestion;
- new or amended state or federal law or agency regulation that adds or changes local responsibilities for regulation;
- flooding;⁶
- wildfires;
- disaster recovery;
- lack of financing or tax revenue;
- facilitating acquisition of land for a public park;⁷

⁵ E.g. *Dahman v. City of Ballwin*, 483 S.W.2d 605 (Mo. Ct. App. 1972).

⁶ *Capture Realty Corp. v. Board of Adjustment*, 126 N.J. Super 200, 313 A.2d 629 (1973).

⁷ *Davis v. City of Bandon*, 105 Or. App. 425, 805 P.2d 709 (1991).

- fiscal conditions or crisis; and
- the need to study/evaluate the impacts of development on municipal services, including the public school system and emergency services.

C. Emerging Trend: Climate Moratoria.

A May 2024 article in the *Texas A & M Law Review*,⁸ published by the Dean and a professor at Albany (New York) Law School, summarizes the impacts of climate change on land use and development, and then explains the legal framework and potential justifications for a moratorium on development—not just residential, but on owners “continuing to build in vulnerable places.” We think this topic will be a significant part of the debate about moratoria for many years ahead, so we have summarized the article’s bases and observations.

The article begins with a compilation of recent (2023-2024) studies and articles about the most impactful weather events: floods, such as 100-year storms (a/k/a atmospheric rivers or storm surges) now occurring in some places on average at eight-year frequencies and overwhelming existing stormwater control systems including dams and levies; droughts that have upended land use planning assumptions about water for consumption, irrigation, and emergency response purposes; sea level rise that has made or could make coastal areas in accessible or uninhabitable; and wildfires that have destroyed residential areas and brought front-and-center the issue of whether rebuilding in compliance with previous/existing regulations should be permitted. *Id.* at 368. The authors proclaim that “[We] are stubbornly committing to engaging in emergency management to save lives in the near and distant future instead of anticipatory planning to avoid the worst climate impacts.” *Id.* “Anticipatory planning” is another phrase for moratoria.

Part I of the article summarizes the dimensions of “The Climate Emergency.” *Id.* at 369. The warning is stark:

⁸ 11 *Texas A & M L. Rev.* 365 (2024); copy attached at Appendix A6.

Climate change will wreak extensive damage on the U.S. economy...It will redefine...how we coexist with one another and our natural environments...How communities plan for climate change will profoundly impact the lives and well-being of their inhabitants.

When the authors speak of this type of planning, they are projecting far beyond tweaks to existing regulations.

To underscore the gravity of the issue, the authors then segue to the use of “local emergency declarations” as the basis for overhauling existing regulations. They note as justifications that climate impacts (such as ambient temperatures, sea level rises, and frequency of floods) are demonstrably getting worse year by year in particular locations; are generally irreversible; and therefore demand prompt attention. *Id.* at 375. However, the article notes that to date, emergency climate declarations “have focused more on creating a sense of urgency for action as opposed to dictating specific outcomes.” *Id.* at 379. *They advocate climate moratoria as one of the necessary, immediate outcomes.* In other words, the article proposes that climate change should be a current, real-time, inarguable public safety justification for imposing a moratorium.

Turning to possible specific aspects of a climate moratorium, the authors acknowledge that proposing or imposing a suspension of permits often causes “a race to secure permits and build before being prevented from doing so.” *Id.* at 384. They advert to the U.S. Supreme Court’s decision in *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 535 U.S. 302 (2002), which insulates moratoria from a claim of being a *per se* taking of land without just compensation, in violation of the federal Fifth Amendment.

The article (Part III.A) then reviews the procedural and substantive requirements of a valid moratorium—the same parameters as are explained in this Report, including purpose, scope, duration, statutory authority, and procedural compliance, which are either prescribed or proscribed by statute or measured against caselaw, precedent, and reasonableness. *Id.* at 385-88.

To further explain how to justify a climate moratorium, the authors then review sample cases involving sewer system deficiencies, flood control, and water supply. They spotlight an

effort in Petaluma, California in 2019 to impose a moratorium on all development in riparian areas, vernal pools, wetlands, and flood plains “pending adoption of a Climate Adaptation and Resilience Plan.” *Id.* at 394. The article recounts that the California Department of Housing then threatened enforcement action *against* Petaluma’s moratorium, citing the State’s Housing Crisis Act of 2019 as a conflicting and preemptive mandate. Petaluma then backed down and did not impose the moratorium, opting instead to adopt a “Climate Emergency Framework of 2021” that aimed to integrate climate change considerations into the City’s land use planning. *Id.* at 395.

In the article’s final section, the authors map out a three-stage process for adopting a defensible climate moratorium: (1) a vulnerability assessment; (2) an infrastructure inventory; and (3) climate “equity planning,” this third category referring in the climate change context to “environmental justice” and making sure that infrastructure improvement and resiliency planning are fair to underserved and vulnerable areas and populations. *Id.* at 400-401.

Giving credit where it is due, we think Professor Hirokawa and Law School Dean Carlarne have crystalized a discrete, emerging concept in land use planning and perhaps even coined a term we will hear for years to come, “climate moratorium.” Using the article as a touchstone for NAHB and its members, it seems to us that climate moratoria pose a unique and powerful threat to residential development because it will be relatively easy for local governments to justify them and courts to uphold them; as weather disasters recur, the public safety basis for moratoria—floods, fire, droughts, etc.—will be more and more difficult to refute. Asking for relatively long time—years—to assess the vulnerabilities and identify the infrastructure fixes may appear justified in light of the risk to human life, the public costs, and the urgency and irreversibility. Thus, the battlegrounds in challenging climate moratoria will be the scope of the geographic area where development is paused, the scope of activity that is targeted, and the articulation of what can or must be achieved with regulation before the moratorium is lifted.

Some climate moratoria will be based on claims that the suspension of permits is justified merely *by uncertainty about weather patterns* and should remain in place until climate change impacts are “better understood” and calculated. However, this justification appears to be speculation that should not be a basis for regulation, much less a suspension of permitting. Put another way, a moratorium that is not based on a recent, damaging weather event but anticipation of such should be contested. That is, beware emergency declarations.

D. Why Governments Impose Moratoria.

From our survey of cases and secondary sources, it appears that local governments most often impose residential development moratoria in four situations.

The first is where a new land use or residential development situation arises that requires revised or updated land use regulation, and government needs time to evaluate the regulatory need and draft and adopt new rules. A documented, substantial growth in population, a change in weather patterns, or infrastructure damage or destruction could fall into this category.

The second situation is where the government claims inadequate public infrastructure to serve residential development that current regulations allow. This is sometimes called the need for “adequate public facilities ordinance” or “APFO.” The ostensible concern is that residential development will require sewer, water, public road access, emergency access, or other essential public services not now available, such that a pause of development is needed until development and infrastructure are better aligned.

A third situation is where projected population growth will or may result in overcrowding that is not acceptable to existing residents. Stated concerns include traffic congestion, overcrowded schools, and overtaxed public recreation facilities.

The fourth situation is simple opposition to development in general or a proposed development in particular, where opponents propose a permitting suspension to give them time to organize political opposition and draft and propose revised regulations that limit or prohibit the development about which they are concerned.

E. Impacts on Residential Development Moratoria on Owners, Developers, Builders, Contactors, and Others.

Some of the actual and potential impacts and consequences of a moratorium on property owners and residential developers and builders are obvious, but some are not. A moratorium suspends applications for, processing of, and granting of permits for residential development, but also can have collateral effects. Property owners must:

- evaluate whether it is possible, prudent, or necessary to proceed with other related land use studies or permits (for example, a traffic study or certification);
- pay attention to upcoming deadlines that may be affected by suspension of permits, such as construction milestones, loan payments, and financing or refinancing requirements where the property for which permits have been suspended is collateral or security;
- consider whether a permit suspension will stop or suspend deadlines such as due diligence in a purchase and sale contract; foreclosure steps, if that is how property is being acquired; environmental remediation or cleanup actions; land records recording requirements; or the perfection of liens if contractors or subcontractors have performed or are performing work on the subject property;
- examine agreements with contractors, subcontractors, general contractors, brokers, suppliers, and lenders for “change of circumstance” provisions;
- review contractual provisions about delay, unforeseen obstacles, government interference, condemnation/eminent domain, and even *force majeure*;
- determine whether insurers and/or sureties must be notified, such as when construction-related policies already have been issued or a multi-phased project is underway but now cannot be completed due to a moratorium;
- if the property has a mortgage, determine whether the moratorium may impact the loan to value ratio, or require notice to the lender and other entities or individuals with subordinate or derivative interests in the property, which may necessitate posting additional security or trigger a loan event of default;
- evaluate budgeting concerns and make adjustments accordingly to account for increased costs associated with the delay in construction; and
- evaluate labor materials increases, interest rate increases, tariffs, insurance and insurability; and
- assess potential loss of contractors and subcontractors to construction not affected by the moratorium.

II. PERMISSIBLE AND IMPERMISSIBLE CHARACTERISTICS OF RESIDENTIAL DEVELOPMENT MORATORIA.

A. Purpose and Scope.

First and foremost, a residential development moratorium must address a specific defect in the existing zoning regulations that justifies a temporary suspension of the rights of property owners under state law. For example, a New Jersey court invalidated a moratorium that banned all new multifamily development because it violated state law requiring moratoria to “have a real, legitimate and substantial relationship to the objectives being sought and...must accomplish its goals with due consideration of all alternative methods and the rights of everyone to be affected by the ordinance.”⁹

Illegalities in the purpose of moratoria can include:

- No explanation of when or how the commission determined the need for the moratorium;
- No identification of any specific concern, problem, regulation defect, or recent problematic permit application that requires correction or revision;
- Wording that is broad (a/k/a, “using a bazooka when only a slingshot is needed”), vague, and undefined;
- Statements of purpose or scope that are open-ended, such as “including but not limited to”;
- A justification based on fiscal constraints rather than the regulatory drafting;
- Prohibitions on a broad category of applications such as zone changes, regulation amendments, or special permits regardless of the type of land use that is the claimed root of the problem;

⁹ See *New Jersey Shore Builders Ass'n v. Twp. Comm. of Dover Twp.*, 191 N.J. Super. 627, 631-633, 468 A.2d 742 (Law. Div. 1983) (“It is not enough to support a moratorium...to say that a problem exists and some residents are complaining. The situation must be exigent, the causes must be adequately explored and it must be demonstrated that other less extreme solutions have been investigated and found to be not feasible”).

- Inclusion of tasks, such as revision of the municipality’s plan of conservation and development (or other long-term planning document), that are under the control of a different agency or commission that may have a different or longer time frame for action than stated in the moratorium;
- Inexplicable and arbitrary exemptions such as “municipal or government uses” or other categories of use or owners, without defining what and who and explaining why they are exempted;
- Overly broad geographic coverage—sometimes invoked “to be fair to everyone”—such as “the entire town” or boundaries that do not align with what the regulations to be reviewed cover;
- Applying the suspension to small and minimal impact proposals when the justification for revising regulations is large, complex developments;
- Inclusion in the tasks to be accomplished during the moratorium of items such as “planning resources” and the “availability of reliable consultants” that are not matters involving the regulations *per se*, and are likely to require input and participation, if not also approval, from other town agencies that will not be bound by the purpose, goals, and timetable of the agency that imposes the moratorium.
- Targeting a specific development;¹⁰
- Restrictions that constitute spot zoning;¹¹ and
- Discrimination on a basis that is not a proper use of zoning authority.¹²

A significant limitation on moratoria is that agencies cannot enact suspensions that conflict with state statutes and mandates. Land use commissions generally do not have the authority to suspend state statutes. For example, state law may mandate a process to promote affordable or multi-family housing permitting. New Hampshire has adopted a state law effective July 2026 (H.B. 631) requiring all municipal zoning regulations to allow multi-family housing

¹⁰ *City of Crystal v. Fantasy House, Inc.*, 569 N.W.2d 225 (Minn. 1997).

¹¹ *Lake Illyria Corp. v. Town of Gardiner*, 352 N.Y.S.2d 54, 43 A.D.2d 386 (N.Y. 1974).

¹² *Ogo v. City of Torrance*, 37 Cal. App. 3d 830, 112 Cal. Rptr. 761 (2d Dist. 1974) (moratorium prevented low-income housing development).

“as-of-right”; such a state law command could be meaningless if it would be suspended by any municipality. Similarly, a Connecticut statute requires that zoning regulations:

- “[Must expressly] allow the development of housing which will meet the housing needs identified in the state’s consolidated plan for housing and community development pursuant to....” and
- “[May] not place a fixed numerical or percentage cap on the number of dwelling units that constitute multi-family housing over four units, middle housing or mixed-use development that may be permitted in the municipality.”

Most likely, courts in these jurisdictions would hold that a locally-adopted moratoria that suspends these mandates conflicts with state law and thus is preempted.

B. Duration.

After the purpose of a moratorium, the most scrutinized and litigated aspect of moratoria is their proposed duration.

Generically, the duration of a moratorium must be based on the land use planning problem to be solved *and the time that the regulatory/permitting agency reasonably needs to address it*. In other words, the validity of a proposed duration cannot be based on an argument that “most courts will validate a moratorium of six months to one year.” The justification depends on the problem to be solved. If a land use commission devises a good-faith plan to improve the mix of residential and non-residential uses in a discrete section of the town center; or wants to impose a six month moratorium on construction in the area so new construction does not undermine the long-term plan before it is adopted; and the agency legitimately needs time to go through the drafting, public notice, and public hearing procedures required for the new regulations; a six month time frame will usually be upheld as reasonable. If, on the other hand, the approach is to suspend construction for the purpose of evaluating *whether* a problem really exists, and no planning goal or time frame exists at the time the moratorium is proposed and

adopted, then a one year suspension would likely be invalidated for lack of a planning purpose and regulatory time frame.¹³

A moratorium's time limit may exceed the length of time that courts have sanctioned.¹⁴ A proposal may state that it will expire after one year but give the agency power to renew it "as necessary." With no clear metric from which progress can be measured (where, for example, the stated objective is simply to "review" and "consider" possible regulation revisions), an extension is virtually guaranteed. Courts have generally invalidated open-ended expirations.¹⁵

C. State Statute Governing Moratoria.

In the Appendix to this Report, we have included state statutes from Florida, New Jersey, Nevada, North Carolina, Oregon, Rhode Island, and Texas. In each statute except Texas, we have highlighted in yellow the particular sections that deal with moratoria. The entire Texas statute addresses moratoria, so highlighting has not been added. These are not the only states with legislation, but we have included those that best illustrate the issues discussed in this Report.

It is beyond the scope of this Report to review the details of each statute, but overall, these statutes reflect state legislatures establishing minimum requirements to ensure avoidance or mitigation of the concerns raised in this Report such as excessive scope and duration, justification, and well-defined regulatory objectives.

¹³ *Collura v. Town of Arlington*, 367 Mass. 881, 329 N.E.2d 733 (1975) (two years upheld); *Weare Land Use Ass'n v. Town of Weare*, 153 N.H. 510, 899 A.2d 255 (2006) (one year upheld).

¹⁴ *Bd. of Supervisors of Fairfax County v. Horne*, 216 Va. 113, 215 S.E.2d 453 (1975) (no statutory authority); *Lakeview Apts. of Hunns Lake, Inc. v. Town of Stanford*, 485 N.Y.S.2d 801, 108 A.D.2d 914 (2d Div. 1985); *Beck Devel. Co. v. Southern Pacific Transp. Co.*, 44 Cal. App. 4th 1160, 52 Cal. Rptr. 518 (3d Dist. 1996) (indefinite moratorium invalid); *Droste v. Board of County Commr's*, 159 P.3d 601 (Colo. 2007) (10 months acceptable); *Davidson Mineral Properties, Inc. v. Monroe County*, 257 Ga. 215, 357 S.E.2d 95 (1987) (invalid, no standards).

¹⁵ See *Lake Illyria Corp. v. Town of Gardiner*, 352 N.Y.S.2d 54, 43 A.D.2d 386 (1974) (four one-year moratorium extensions were unreasonable).

III. CHALLENGING A MORATORIUM.

A. Establishing Vested Rights.

If a moratorium is proposed that will disrupt a particular development plan, the owner's/ developer's first priority should be to evaluate vested rights under state law, meaning the right to be exempted or "grandfathered" from the suspension if adopted.

A thorough explanation of vested rights law is beyond the scope of this Report, but in general, in many states, the touchstone of a vested right is the issuance of a procedurally final and substantively valid development permit, *and* the permit holder's substantial and reasonable reliance (a/k/a "change of position") on that permit in the form of actual construction and a substantial financial investment. If these characteristics exist, then the permit holder should be able to make a case that it is exempt from any change of rules that post-dated the permit and construction. It should be noted that many states have vested rights statutes, but others define such protections only in caselaw.

It has long been recognized that a consequence of a proposed moratorium is a "race of diligence," meaning prompt action by property owners to secure permits and begin construction. Moreover, the general rule with regard to substantive regulation amendments—which a moratorium involves—is that such changes only operate prospectively, unless the agency specifically states a retroactive impact and provides a compelling reason for doing so.

The key points are that if a moratorium is proposed, developers should (1) promptly evaluate if they already have or can quickly establish a right to develop that will be recognized as vested and exempt from suspension; (2) pay attention to what the proposed moratorium says, if anything, about exemptions, vested rights, retroactivity, and an effective date of permit suspensions; and (3) determine whether a challenge is warranted or, at least, whether to become actively involved in the moratorium process, to provide meaningful comment and insight and try to shape the terms.

B. Preparation for a Challenge.

Here is a checklist of questions to ask when a moratorium on residential development permitting is proposed:

1. Is there a state statute that governs such moratoria, and if so, does the proposal comply?
2. If there is no statute, have the state courts established criteria or parameters, and if so, does the proposal comply?
3. Does the proposal allow development in progress to continue, i.e., does it recognize vested rights to continue? If not, is there a separate state law that does?
4. What is the stated purpose of the moratorium? Is it a response to an identified problem with existing regulations, or a problem with existing regulations that emerged during a recent application?
5. Does the proposal purport to identify all of the reasons for the moratorium and all of the tasks to be accomplished while permitting is suspended, or does the proposal contain open-ended or incomplete phrases such as “including but not limited to”?
6. Is the suspension of residential permitting a logical, reasonable, and proportional response to the regulatory problem that is the impetus for the proposal?
7. Has the claimed regulatory issue been documented by a study by a qualified expert or consultant?
8. Does the problem to be addressed by the moratorium exist now, or is it only anticipated?
9. Has the agency putting forth the proposal considered the economic impacts, both direct and indirect, of the moratorium?

10. Does the municipality proposing the moratorium intend to continue to collect taxes and fees on properties affected by the moratorium such as property taxes and impact fees?

11. What is the proposed geographic scope of the moratorium and does that scope align with the regulatory issue to be addressed?

12. For what types of land use does the moratorium suspend permitting, and is that list consistent with the regulatory problem?

13. If the moratorium is based on change in weather events and patterns, is it based on one event, or a series, and reliable data that predicts a future pattern as opposed to an isolated event?

14. What is the proposed duration of the moratorium, and is the time frame allowed by state law and based on completion of the specific regulatory task? Does the proposal allow for the moratorium to be extended? Does it state regulatory tasks that do not lend themselves to a reasonable estimate of how long the review of regulations is likely to take?

15. Has the agency proposing the moratorium carefully evaluated alternatives to the moratorium and ensuring that the actions is as narrowly and specifically drafted, to avoid permit suspensions that are unrelated to the regulatory issue?

16. What are the procedural requirements for enacting the moratorium and has the municipality or its agency followed those rules?

C. Talking Points; Information Sources and Communication Channels; Alternatives.

If a moratorium is proposed or adopted and a property owner developer decides to challenge it, here is a list of potential talking points.

1. A moratorium is a drastic action, a suspension of property rights.

2. By law, a moratorium must be a specific, narrowly tailored, short-term, and targeted response for a specific existing, and substantial concern with inadequacy of existing regulations.

3. Before adopting a moratorium on residential permitting, a government agency must consider and quantify economic impacts, direct and indirect, on the properties and developments where suspension is proposed, as compared to the economic benefits of the proposed regulatory outcome; and whether owners of suspended development must continue to pay property taxes. Will development fees be refunded or prorated?

4. Before adopting a moratorium, an agency must consider the potential for property owners and developers to initiate a race to secure permits, proceed with development, and rely on vested property rights and other exemptions.

5. Before adopting a moratorium, an agency must consider alternatives such as (a) foregoing a temporary suspension and moving ahead with a process of permanent regulation amendment; (b) limiting the geographic scope and other parameters of the moratorium to the minimum necessary to achieve the regulatory goal (e.g., a moratorium on residential developments of 10 units or more); (c) identifying the narrowest possible list of tasks to be accomplished while permitting is suspended; (d) adopting the shortest possible time frame for suspension; and (e) making sure that the tasks to be accomplished are legally within the authority of the agency, and the agency has the resources and expertise to complete its objectives.

6. Will the moratorium make existing properties non-conforming, or otherwise non-compliant with existing zoning?

7. Will the moratorium serve valid purposes of zoning such as the separation of incompatible uses, and prevention of overcrowding and congestion?

8. Has the agency proposing the moratorium considered the principle that land use regulation is in derogation of property rights and must be strictly construed against the government?

9. “Through zoning bylaws, a town may allow itself breathing room to plan for channeling of normal growth; it may not turn that breathing room into a choke hold against future growth...or allow one town to deflect growth onto its neighbors.”¹⁶

Collecting information and disseminating advocacy points against a moratorium can include the following:

1. Freedom of Information Act/public records request;
2. Discovery in anticipation of a lawsuit, such as taking the deposition of the municipality’s chief planning official, which can be aided by a subpoena;
3. Monitoring, or obtaining by subpoena: social media posts, text messages, and other electronic communications where public officials and proponents of a moratorium may be more candid with questions, lack of data, concerns about legality, alternatives, and speculation about outcomes than they may state in public meetings or drafts of moratorium proposals, on the incorrect assumption that such communications are not public information.
4. With caution, consider artificial intelligence platforms and their search capabilities, such as predicting economic impacts of a moratorium proposal. Obviously, any such search should be reviewed carefully for inaccuracies and superficial responses. However, in the authors’ recent experience we have seen that especially in the field of real estate, current AI tools provide an ever-improving and efficient mechanism for reviewing, assimilating, and summarizing large volumes of data. In addition, AI tools allow for “deep” research, meaning responses to highly specific inquiries and review of far-flung databases, such as “What will be

¹⁶ *Zuckerman v. Town of Hadley*, 442 Mass. 511, 813 N.E.2d 843 (2004).

the direct and indirect economic impacts of a one-year suspension of residential land use permitting in the greater [municipality] area of [state].”

IV. LEGAL BASES FOR CHALLENGES TO A PROPOSED OR ADOPTED MORATORIUM.

A. State and Federal Takings Claims.

A thorough explanation of how takings law may be used to challenge a moratorium will be less than useful for several reasons. First, a takings claim could only be brought after a moratorium has been adopted and in place for long enough to cause substantial financial harm. A taking generally does not occur just from the adoption of a moratorium. Second, by definition, moratoria are temporary or at least intended to be, and temporary taking claims, while theoretically possible, are more difficult to prove than claims based on a local government’s permanent appropriation of a property interest. A third reason is the principle that “mere planning,” meaning regulatory revisions that may have the *de facto* effect of depriving an owner of use of land, have been held to be necessary incidents of land use regulation, and simply not a taking.

All of the above is underscored by the U.S. Supreme Court’s decision in *Tahoe Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 535 U.S. 302 (2002), where the Court held that a temporary moratorium cannot be considered a partial or a “*per se*” or “categorical” taking; and a claim challenging a moratorium must be evaluated on its specific facts using the three-part “*ad hoc* factual inquiry” stated in *Penn Central Transp. Co. v. New York City*, 438 U.S. 104 (1978), focusing on the economic impact of the government’s action, interference with investment-backed expectations, and the “character” of the government action. In summary, while it is possible to conceive of a moratorium enacted with no rational basis, or adopted in bad faith causing a substantial financial impact for no valid planning reason, such a case will be rare and even then, difficult and expensive to prove.

A final observation about taking law as applied to moratoria is that when a federal Fifth Amendment taking claim may be out of reach, a claim based on the state constitution may be viable, because state constitutions may be more protective of property rights than federal Fifth Amendment cases.

B. State Law Claims.

Legal counsel representing a developer who needs to challenge a proposed or adopted moratorium should consider these potential legal grounds:

1. Is the proposal or enactment actually a moratorium? If so, it will contain all six elements listed in the definition on p. 7 above. Counsel should be careful to distinguish a moratorium from an adequate public facilities ordinance that does not suspend permitting but makes it conditional on completion, extension, or repair of infrastructure; and from conditional permit approvals that ostensibly allow a development to proceed but restrict when construction may start.¹⁷

2. Lack of authority to adopt a moratorium on residential development. Does a state statute prohibit a moratorium? Counsel should bear in mind that a prohibition may be express in state law or may arise under a preemption theory where state law does not prohibit a moratorium but imposes a mandatory obligation on a local governments, with which a suspension of permitting may not conflict. In addition, a state law governing moratoria may be stated in a stand-alone statute or embedded in a state's zoning enabling act.

3. Unreasonable, excessive, or unjustified purpose or scope. Where there is no express state law provision, a local government may violate state land use statutes by adopting a suspension that is not narrowly drafted to achieve a legitimate planning objective.

¹⁷ *Home Builders Ass's of Maine v. Town of Eliot*, 750 A.2d 966 (Me. 2000) (ordinance was permanent, not a moratorium).

4. Procedural non-compliance. State law governing procedural requirements for a moratorium may be stated in a statute specific to moratoria, or residential moratoria, or may be governed by the state zoning enabling act or locally adopted procedures. It is essential to review all three. In addition, counsel must consider the full range of potentially applicable procedures such as:

- application requirements;
- real party-in-interest disclosures;
- published (newspaper) notices;
- electronic (website) notices;
- individual notices such as certified mailed letters;
- other filing requirements, such as with the clerk of the municipality;
- notices to other potentially interested agencies such as abutting jurisdictions, regional planning entities, or utilities;
- referrals or notices to public officials such as a state-level planning agency;
- content of notices;
- dates and intervals of notices;
- agenda requirements;
- public hearing requirements such as in-person/remote/hybrid specifics;
- testimony time limits;
- First Amendment rights;
- forms and disclosure of reports and studies;
- automatic approvals based on agency inaction; and

- voting requirements such as quorum, simple majority, majority of all members, and super-majority rules;
- decision publication rules;
- reconsideration opportunities; and
- judicial appeal opportunities.

5. Unreasonable duration. As noted earlier, an invalid time frame can arise from a longer time frame being stated than the regulatory task is likely to or should require; open-ended renewal or extension provisions; inadequately described regulatory tasks; or objectives that rely on agencies or processes not in the control of the agency that proposes or imposes the moratorium.

6. Vested Rights. For establishing vested rights or exemption, counsel will need to determine if a state statute or applicable caselaw identify the requirements to establish an exemption. Additional considerations are whether the moratorium proposes exemptions, and whether what is proposed is prospective or retrospective. Vested rights may also be based on an estoppel or municipal estoppel theory, for which the general requirements are a final and validly issued land use permit, and the property owner/developer's good-faith reliance on that permit, manifested in a substantial "change of position," generally a substantial financial investment based on the permit; and commencement of construction.

7. Injunctions. If a property owner impacted by a moratorium determines to seek injunctive relief to invalidate the adoption and/or obtain an exemption from the suspension, an important concept to keep in mind is that in equity, real estate and development are usually considered a unique and irreplaceable asset, such that *a suspension of permitting, even temporarily, constitutes irreparable harm that cannot be remedied by money damages.*¹⁸ Otherwise, the usual criteria for a temporary injunction are the property owner's likelihood of

¹⁸ Interests in real estate are more appropriate for protection through equitable remedies than other interests. See, e.g. *Sisters of St. Joseph Corp. v. Atlas Sand & Gravel*, 120 Conn. 177, 180 A. 303 (1935).

winning or the merits of its claims; prejudice to the property owner if the injunction is not granted; prejudice to the government if the injunction is granted; and the public interest. Obviously to obtain an injunction against a moratorium, a developer's counsel will need to systematically undermine in the legality, reasonableness, feasibility, and asserted justifications of the moratorium.

When bringing an injunction action to challenge a temporary action, counsel must also consider how long the court system may take to render a decision. If a moratorium is adopted for less than one year, a temporary restraining order or privileged preliminary injunction motion may be necessary to avoid the claim being relegated to a civil docket and where it will not be decided until the moratorium is nearly expired. The municipal government may be tempted to delay in order to run out the clock. Yet another potential problem is that the purpose, scope, and duration of the moratorium may change while the agency debates and drafts, or a proposal for a six-month suspension may be extended in three or six month increments to avoid appearing to be a long-term action.

8. Mandamus. If a municipality fails to issue a permit that has been granted already, but now claims that the grant has been suspended by a moratorium, the way to test this is generally a writ of mandamus. The elements are (1) a clear non-discretionary legal right to issuance; and (2) no other alternative remedy. A similar procedure is a declaratory judgment action.

9. Economic waste. An often overlooked claim against government suspension of property rights is economic waste, which means preventing a productive, revenue-producing property from continuing to operate in a way that may cause a permanent loss of that productive capacity and value. This type of claim generally applies to in-progress construction, such as expansion or the next phase of a residential development that, if halted, could end up forfeiting

development potential. In general, one valid purpose of a court's use of its equitable powers is to prevent economic waste.

10. Bias or predetermination. In any land use matter, property owners and their counsel should be alert to possible bias, predetermination, or favoritism. Like any other agency action, enactment of a moratorium may be based on a pretext, meaning the publicly stated reason is not the actual reason, and the real reason is not legal.

If a municipal agency is composed of elected members, it may be useful to review their comparing materials and statements to see if they promised voters a moratorium.

11. Competitor-sponsored moratoria. Sometimes the force behind a moratorium is a competitor. In general, a moratorium that targets a particular development will be invalid for lack of a public purpose.

12. Variance? Can a property owner or developer obtain a variance from a moratorium? The answer is possibly, but how a variance applicant would explain hardship resulting from a temporary suspension and uncertain future regulation is problematic.

13. Spot zoning. A final consideration is spot zoning. A moratorium is a use of the zoning power, and if it targets a relatively small geographic area for no apparent planning or regulatory reason, the action might be vulnerable to a claim of spot zoning.

C. Civil Rights and Damages Claims.

While moratoria are potentially powerful land use tools, they cannot override civil rights laws such as the Americans with Disabilities Act ("ADA"), the federal Fair Housing Act ("FHA"), or their respective state counterparts. Title II of the ADA prohibits discrimination on the basis of disability by all state and local government entities, while the FHA prohibits discrimination in housing as a result of race, color, national origin, religion, sex (including gender identity and sexual orientation), familial status, and disability.

Both the ADA and the FHA require municipalities to reasonably accommodate those protected under its provisions, including by modifying their zoning policies, practices and procedures. The U.S. Department of Justice explained with respect to the ADA (emphasis added): “Reasonable modifications can include modifications to local laws, ordinances, and regulations that adversely impact people with disabilities. For example, it may be a reasonable modification to grant a variance for zoning requirements and setbacks. *In addition, city governments may consider granting exceptions to the enforcement of certain laws as a form of reasonable modification.*”¹⁹ Persons or entities not protected under the ADA or FHA may request a reasonable accommodation on behalf of others, such as its members, patients, or residents. Detailed proof as to the disability of each of its members is not required; collective proof of disability is sufficient. A reasonable accommodation may also incidentally benefit non-disabled persons so long as some of the people affected need the requested accommodation to accommodate a disability.

Thus, developers of housing that will assist one of the classes protected under the Acts, such as affordable housing, housing for the disabled, or otherwise, may want to consider seeking a reasonable accommodation to develop such housing even in the face of a moratorium. To request a reasonable accommodation, an applicant ordinarily uses the procedures established by the municipality, board or commission. What constitutes a reasonable accommodation is a fact-specific question, determined on a case-by-case basis. More specifically, the “reasonable accommodation test” requires that the requesting party prove that: (1) it is disabled within the meaning of the ADA; (2) it requested a reasonable accommodation; (3) the requested accommodation was reasonable; and (4) the requested accommodation is necessary. If a requesting party meets these elements, the only basis to deny the reasonable accommodation is if the municipality or other governmental entity shows that the accommodation will fundamentally

¹⁹ See “The ADA and City Governments: Common Problems, U.S. Department of Justice, Civil Rights Division, Disability Rights Section” at <https://www.ada.gov/resources/ada-city-governments/>.

alter the relevant zoning program, or constitutes an undue administrative or financial burden. If the public entity fails to accommodate when a reasonable accommodation is justified, it could be subject to financial penalties, including compensatory damages and attorney's fees and costs; injunctive relief; loss of federal or state funding; and reputational damage.

If it can be shown that a moratorium disproportionately targets housing for one of the protected classes, there may be a claim for discrimination in violation of the ADA and / or FHA. For example, if a moratorium is tailored to halt only affordable housing development, a claim for discrimination is a possibility. Like in the case of a failure to accommodate, penalties for discrimination under the ADA and FHA are significant, including the payment of significant civil penalties, damages to the victims, and attorney's fees and costs; injunctive relief; and reputational damage. Given the above, developers facing such a situation should consult local counsel to determine if there is a path forward to development with the ADA or FHA, notwithstanding a moratorium.

V. CONCLUSION.

In summary, residential permitting moratoria have been around for a long time and in the right circumstances may be valid. However, moratoria can be misused and abused. The purpose of this Report is to list strategies that residential builders and developers and their advisors should consider when challenging a proposed or adopted moratorium. We hope the list and observations presented will be useful to NAHB members and their mission of continuing to deliver quality homes to the American public.

APPENDIX

	Page
ARTICLES AND RESOURCES	
Author Biographies.....	A1
K.H. Hirokawa and C. Carlarne, <i>The Climate Moratorium</i> , 11 Tex. A&M L. Rev. 365 (2024).....	A6
<u>Representative State Statutes Governing Moratoria (with key provisions highlighted)</u>	
Florida, FL. ST § 125.01055.....	A45
• <i>Affordable housing statute requiring counties to authorize certain affordable housing developments in specific zones, with a prohibition on the enforcement of a building moratorium on such developments unless the county, by ordinance, enforces the moratorium for a limited time period, no more than 90 days in any three-year period. Statute specifically exempts moratoria meant to address stormwater, flood management, water supply, and sewer repairs from this general prohibition and time limit.</i>	
Florida, FL ST § 166.04151.....	A52
• <i>Same as above, § 125.01055, except as applied to municipalities.</i>	
New Jersey, NJ ST 40:55D-90.....	A59
• <i>Statute explicitly prohibiting moratoria except where a municipality provides the opinion of a “qualified health professional” that the public health is in imminent danger. If such a moratorium is imposed, it cannot exceed six months.</i>	
Nevada, NV ST 277.200.....	A60
• <i>Statute providing for the creation of a regional planning agency surrounding Lake Tahoe, including a moratorium on certain residential developments until the agency’s regional plan is amended, or May 1, 1983, whichever is earlier. This moratorium is apparently no longer in effect because of the limited timeframe in the statute, but is still part of the statute itself.</i>	
North Carolina, NC ST § 160D-107.....	A83
• <i>Moratorium statute generally authorizing temporary moratoria on developments, but prohibiting moratoria for the purpose of developing or adopting plans or regulations governing residential uses. Except where there is an “imminent and substantial threat to public health or safety,” this provision requires a legislative hearing for proposed moratoria of 60 days or less, but public hearings with notice for proposed moratoria of 61 days or longer. The statute also exempts from any such moratoria those developments that already have received certain</i>	

land use approvals.

Oregon, OR ST § 197.520	A85
• <i>Moratorium statute prohibiting moratoria unless the city, county, or district first provides written notice to the state Department of Land Conservation and Development, makes written findings justifying the need for the moratorium, and holds a public hearing. Statute also provides details on the appropriate justifications for a moratorium, depending on the type of land – e.g., urban vs. rural.</i>	
Rhode Island, RI ST § 45-22.2-13	A88
• <i>Statute providing municipalities with authority to: impose “reasonable limitations” on the number of building permits and land use approvals at any time, if the limit is consistent with the municipality’s comprehensive plan and if, for residential building permits, the limitation is “vital” to protecting public health and welfare; limit the number of building permits and land use approvals in the case of a “dire emergency;” and impose, by ordinance, a one-time moratorium in the 12 months prior to an anticipated change in a zoning map or regulation, with certain restrictions on geographic applicability and a requirement that notice be provided to affected property owners at least 14 days before the public hearing on the moratorium ordinance. All applications “substantially complete” at the time of the enactment of the moratorium are not subject to such moratoria.</i>	
Rhode Island, RI ST § 45-24-73	A91
• <i>Accessory Dwelling Unit (ADU) statute exempting ADUs from any moratoria or other limitation on residential units on residentially zoned land.</i>	
Rhode Island, RI ST § 45-53-4	A94
• <i>Statute exempting affordable housing permit applications from locally adopted limits or moratoria on the development of residential units.</i>	
Texas, TX Local Govt. § 212.131-139	A105
• <i>Moratoria-related statutes requiring notice and a public hearing before a moratorium may be imposed; requiring that a municipality justify the adoption of a moratorium by providing written findings that it is necessary to prevent a “shortage of essential public facilities” or a need for other public facilities, like police and fire; limiting moratoria to 90 days unless extended after additional public hearing and written justifications for the extension by the municipality, with a maximum term limit of 180 days; establishing a process for variances of any such moratorium; and confirming that any such moratorium does not apply to a zoning application filed before the effective date of the moratorium.</i>	
<u>Recent Article</u>	
“States Consider Pumping the Brakes on Data Center,” Law 360 Real Estate Authority Comm’l (Feb. 5, 2026).	A122

Articles about general moratorium law

Freilich, *Interim Development Controls: Essential Tools*, 49 J. Urb. Law 65 (1971)

J.A. Kushner, Subdivision Law and Growth Management, Moratoria, § 2.5 (Nov. 2025 Update)

P. Salkin, American Law of Zoning, § 34.3, Interim Controls, Moratoria (Nov. 2025 update)

Validity and effect of “interim” zoning ordinance, 30 A.L.R. 3d 1196 (1970) and 1990 Supp.



Timothy S. Hollister, Partner

860-331-2823 | thollister@hinckleyallen.com

EDUCATION

- Boston University School of Law, J.D., 1982
- Occidental College, M.A., 1980
- Wesleyan University, B.A., 1978, *cum laude*
- Coro Foundation Fellows Program in Public Affairs, St. Louis, 1978-1979

BAR MEMBERSHIPS

- Connecticut
- United States Court of Appeals for the First Circuit
- United States Court of Appeals for the Second Circuit
- United States District Court for the District of Connecticut
- United States Supreme Court

WORK EXPERIENCE

- Hinckley Allen
 - Partner (2021-Present)
- Shipman & Goodwin LLP
 - Partner (1992-2021)

Tim Hollister practices land use, environmental and municipal law, and handles a wide range of real estate and administrative law challenges that arise in the context of land use and environmental matters. He has represented developers, corporations, property owners, municipalities, boards of education, and neighborhood and environmental groups in administrative proceedings before local, state, regional and federal agencies and litigation in the state and federal trial courts. He has argued more than 50 cases in the state and federal appellate courts.

When representing applicants seeking land use and environmental permits, Tim's approach is to work closely with the team of experts and consultants to present the application in a professional, procedurally correct, substantively compliant, and cost-conscious manner, and to create an administrative record that will lead the agency to grant approval.

He is recognized both regionally and nationally for his work in workforce and affordable housing development, wetlands regulation, and eminent domain. Tim also has specific experience in inverse condemnation, unconstitutional takings, exactions and other civil rights violations, fair housing, drafting and enforcement of land use regulations, inclusionary zoning, flood plain management, mineral rights, riparian rights, specific performance, landlord and tenant, quiet title, title insurance, tax appeals, broker's commissions and foreclosures.

HONORS & AWARDS

- Best Lawyers in America® (2009-2026)
 - Lawyer of the Year (2011-2014, 2016-2018, 2020-2021, 2024, 2026)
 - Land Use and Zoning Law
 - Litigation – Land Use and Zoning
 - Real Estate Law
- Chambers and Partners, Chambers USA (2005-2025)
 - Band 1, Real Estate: Zoning/Land Use
- Super Lawyers, Connecticut (2006-2025)
 - Land Use/Zoning
 - Top 50 Lawyers in Connecticut (2012-2013, 2016)
- HOBI Award, Connecticut Home Builders Association (2019)
- Citizen of the Law Award, Connecticut Bar Association (2012)
- AV Preeminent® Rated, Martindale-Hubbell

A1

- Blue Ribbon Commission to Study Affordable Housing, State of Connecticut Office of the Governor (1999-2000)
- Distinguished Service Award, Connecticut Home Builders and Remodelers Association (2004 and 2007)
- Local Government Law Fellow, International Municipal Lawyers Association (2002-2007, 2012-2017, renewed in 2017, for 2017-2022)
- Marvin Glink Private Practice Local Government Attorney/National Public Service Award, International Municipal Lawyers Association (2008)
- Filed seven petitions or briefs in the United States Supreme Court

CHARITABLE & CIVIC INVOLVEMENT

- Commission on Connecticut's Development and Future
 - Attorney Appointed by Governor Ned Lamont (2021-2023)
 - Co-chair, Affordable Housing Plans Working Group
- Author, His Father Still: A Parenting Memoir, Oprah's Book Club Recommended Reading, July 2016
- 2015 Teen Driving Safety Leadership Award, National Safety Council
- Author, Not So Fast: Parenting Your Teen Through the Dangers of Driving, (Chicago Review Press, 2nd edition 2018), www.nsfteendriving.com; Author, "From Reid's Dad," a national blog for parents of teen drivers, www.fromreidsdad.org; National Highway Traffic Safety Administration (NHTSA) Public Service Award (2010); Public Service Award, Governor's Highway Safety Association, (2014); Teen Driver Safety Leadership Award, National Safety Council (2015)
- Governor's Teen Safe Driving Task Force: Member (2007-2008)
- Connecticut Coalition to End Homelessness: Counsel (1988-present)
- Asylum Hill Congregational Church: Task Force on Inclusiveness and Diversity, Co-Chair (2004-2006); Senior Minister Search Committee (2011)
- Coro Foundation, New York Center: Founding Member, Board of Directors (1980-86)

PROFESSIONAL AFFILIATIONS

- American Bar Association
- American Planning Association
- Connecticut Bar Association
 - Environmental Law Section, Executive Committee (1992-present)
 - Chair (1996-1997)
 - Member, Planning and Zoning Section (1992-present)
 - Chair, Affordable Housing and Homelessness Committee (2005-2008)

EXPERIENCE

- Author of a five-part series on legislative reforms to promote affordable housing in the 2025 state legislative session, published by the *Connecticut Mirror*, September 2024.
- Represented developers Wheelers Farm Partners LLC and Greenview Equities in the approval of a zoning regulation amendment, rezoning, and Preliminary Development Plan for the redevelopment of a 47 acre, five building, 460,000 sf, underperforming office park in Milford, CT.
- *Rainbow Housing Corp. v Town of Cromwell*: Successfully represented Rainbow Housing Corporation and its affiliate Gilead Community Services, subsidiaries of mental health services providers Connecticut Institute for the Blind and Oak Hill, in a tax exemption case in the Connecticut Superior Court, and then as co-counsel in the Supreme Court.
- Secured a victory for a neighborhood group of more than 500 residents of the area around Lime Rock Racetrack in Salisbury, Connecticut, a victory in the Connecticut Supreme Court in the case of Lime Rock Park vs Salisbury Planning and Zoning Commission et al.. At issue was the right of the Salisbury Planning and Zoning Commission to adopt revised zoning regulations to control the proposed expansion of the Race Track from a regional, auto-club-based operation into a NASCAR-type national facility capable of hosting multi-day races. Such expansion would require racing on Sundays, which has been banned at Lime Rock since the late 1950's by a court order in a noise nuisance case brought by neighbors of the Track. The trial court had ruled in 2018 that a state statute as amended in 1998 prohibited local zoning regulation from banning auto racing on Sundays. This ruling generated enormous pressure to prevail in this appeal, to protect the quality of life and property values of our hundreds of clients. The Supreme Court delivered a victory when it reversed the trial court, holding that the 1998 amendment to the state statute had rendered the law ambiguous as to Sunday racing, but the legislative history showed that the General Assembly could not have intended in 1998 to create a statewide right to conduct racing on Sundays, regardless of local regulations banning it.



Andrea L. Gomes, Partner

860-331-2603 | agomes@hinckleyallen.com

EDUCATION

- University of Connecticut School of Law, J.D., 2013
 - Executive Director, Connecticut Moot Court Board
- New York University, B.A., 2009, *cum laude*

BAR MEMBERSHIPS

- Connecticut
- United States District Court for the District of Connecticut

WORK EXPERIENCE

- Hinckley Allen
 - Partner (2024-Present)
 - Associate (2021-2023)
- Shipman & Goodwin LLP
 - Associate (2014-2021)
- Connecticut Appellate Court
 - Judicial Clerk (2013-2014)

Andrea Gomes is a partner in the firm's Real Estate Group, practicing in the areas of land use, environmental, and municipal law. Andrea regularly represents clients before local and state agencies and in state court. She has assisted with obtaining municipal approvals for clients, including site plan, special permit, variance, subdivision and wetlands approvals; in prosecuting or defending administrative appeals; and in litigating various matters, including affordable housing matters and property disputes such as quiet title actions, easement disputes, nuisance actions and actions for adverse possession. Additionally, she has counseled municipal agencies with various land use permitting and litigation matters, including public bidding disputes, eminent domain actions, and Freedom of Information Act issues.

Andrea's environmental work encompasses environmental clean-up and cost recovery actions and representation of large shipping companies and their insurers in marine casualty events, including oil spill response and natural resource damage assessments and restoration matters.

Andrea is also fluent in Portuguese.

HONORS & AWARDS

- Best Lawyers in America® (2026)
 - Land Use and Zoning Law
 - Real Estate Law
 - Ones to Watch® (2021-2025)
- Commercial Real Estate Women (CREW) Network, Impact Award for Economic and Community Improvement (2025)
- Hartford Business Journal
 - 40 Under Forty (2025)
 - Power 25 (2022)
- New England Real Estate Journal, Women in CRE Spotlight (2024)
- Super Lawyers, Connecticut
 - Rising Stars: Land Use/Zoning (2017-2023)
- American Law Institute Continuing Legal Education Scholarship and Leadership Award (2013)
- The David H. Neiditz Professional Writing Award (2013)
- CALI Excellence Awards in Business Organization (2012)

CERTIFICATIONS

- Certified Green Professional™ (CGP), National Association of Home Builders

CHARITABLE & CIVIC INVOLVEMENT

- West Hartford Town Plan & Zoning / Inland Wetlands and Watercourse Agency, Commissioner
- Connecticut Veterans Legal Center: Pro bono representation of veterans
- Lawyers for Children of America: Pro bono representation of children
- Statewide Legal Services of Connecticut: Pro bono representation, Divorce Clinic

PROFESSIONAL AFFILIATIONS

- Connecticut Bar Association, Planning and Zoning Section
- CREW CT — The Real Estate Exchange, President (2022), Immediate Past President (2023)
- Home Builders and Remodelers Association of Central Connecticut, Member
- National Association of Home Builders
 - Legal Action Committee, Member
 - Land Use Policy Subcommittee, Member

THE CLIMATE MORATORIUM

by: Keith H. Hirokawa & Cinnamon P. Carlarne*

ABSTRACT

Climate change is our new reality. The impacts of climatic changes, including massive forest fires, floods, drought, severe storms, saltwater intrusion, and the resulting migration of people displaced by such impacts, will continue to ravage communities across the nation into the foreseeable future. In the meantime, communities continue to expand and growth continues unabated in many of the most climate-impacted areas. Given that most communities are unprepared for the onslaught of climate disasters and many continue to increase existing community vulnerabilities through unsustainable growth and development practices, we need legal tools that will provide space to engage in effective adaptation planning. The climate moratorium is one such tool. Moratoria, which have been used to temporarily halt development and associated impacts to facilitate effective land-use planning, have long been used by communities to address community and infrastructure vulnerabilities. This Article proposes a climate moratorium.

TABLE OF CONTENTS

I. INTRODUCTION	365
II. THE CLIMATE EMERGENCY	369
A. <i>The New Normal: Climate Extremes</i>	369
B. <i>Climate Emergency: The New Planning Environment</i>	375
III. THE CLIMATE MORATORIUM	380
A. <i>The Mechanics of Moratoria</i>	386
B. <i>Use for Relevant Purposes: The Climate Emergency</i>	390
IV. ADAPTATION PLANNING DURING THE MORATORIUM	395
A. <i>Vulnerability Assessments</i>	397
B. <i>Infrastructure Inventories</i>	398
C. <i>Climate Equity Planning</i>	400
V. CONCLUSION	402

I. INTRODUCTION

Late in the evening of March 10, 2023, water began bubbling up in farmland in Monterey County, California. Thirty minutes later, a levee on the Pajaro River failed. The levee failure “triggered massive flooding

DOI: <https://doi.org/10.37419/LR.V11.I2.3>

* Keith H. Hirokawa is a Distinguished Professor of Law at Albany Law School; Cinnamon P. Carlarne is the President & Dean at Albany Law School.

and prompted hundreds of evacuations and dozens of water rescues.”¹ Among the more than 8,500 people in Monterey County under evacuation orders as a result of the failure and flooding were “roughly 1,700 residents – many of them Latino farmworkers – from the unincorporated community of Pajaro.”² As the rains continued to fall and another atmospheric river descended on California,³ Governor Newsom proclaimed a state of emergency in an additional 21 counties, bringing to 34 the number of counties in California declared under a state of emergency.⁴

The extreme California rains, coming in the wake of the worst megadrought in southwestern North America in at least 1,200 years,⁵ devastated entire communities, destroyed hundreds of thousands of acres of crops,⁶ and generally wreaked havoc across California for weeks on end.⁷ The images of Californian communities inundated by water

1. Susanne Rust et al., *Levee Breach in Monterey County Triggers Massive Flooding, Prompts Evacuations, Rescues*, L.A. TIMES, (Mar. 11, 2023, 7:41 PM), <https://www.latimes.com/california/story/2023-03-11/communities-along-central-coast-to-southern-sierra-hit-hardest-by-latest-storm> [<https://perma.cc/NTS3-TVP7>].

2. *Thousands Evacuated After California Levee Breached by Flooding*, CBS NEWS, (Mar. 12, 2023, 11:15 PM), <https://www.cbsnews.com/news/hundreds-evacuated-california-levee-breach-flooding-pajaro-river-monterey-county/> [<https://perma.cc/7S38-KUZB>].

3. Kaitlyn Radde, *A Waterlogged California Is Bracing for Yet Another Atmospheric River*, NPR NEWS (Mar. 13, 2023, 1:43 AM), <https://www.npr.org/2023/03/12/1162936998/a-waterlogged-california-is-bracing-for-yet-another-atmospheric-river> [<https://perma.cc/88QB-T4LU>].

4. Off. of Governor Gavin Newsom, *Governor Newsom Proclaims Storm State of Emergency Supporting 21 Additional Counties*, CA.GOV (Mar. 8, 2023), <https://www.gov.ca.gov/2023/03/08/governor-newsom-proclaims-storm-state-of-emergency-supporting-21-additional-counties/> [<https://perma.cc/GK7Z-CGTN>].

5. A. Park Williams et al., *Rapid Intensification of the Emerging Southwestern North American Megadrought in 2020–2021*, 12 NATURE CLIMATE CHANGE 232, 232 (2022), <https://doi.org/10.1038/s41558-022-01290-z>; see also Columbia Climate Sch., *Megadrought in Southwest Is Now the Worst in at Least 1,200 Years, Study Confirms*, STATE OF THE PLANET (Feb. 14, 2022), <https://news.climate.columbia.edu/2022/02/14/megadrought-in-southwest-is-now-the-worst-in-at-least-1200-years-study-confirms/> [<https://perma.cc/4FFW-CTUC>] (explaining that, by February 2022, “95 percent of the western United States was experiencing drought conditions. And in summer 2021, according to the U.S. Bureau of Reclamation, two of the largest reservoirs in North America—Lake Mead and Lake Powell, both on the Colorado River—reached their lowest recorded levels since tracking began”); Rachel Ramirez, *As California’s Big Cities Fail to Rein in Their Water Use, Rural Communities Are Already Tapped Out*, CNN (June 6, 2022, 11:26 AM), <https://www.cnn.com/2022/06/05/us/california-rural-groundwater-crisis-climate/index.html> [<https://perma.cc/9MRV-K9M2>].

6. See, e.g., Maricela De La Cruz, *Excessive Rainfall Hurts California Farmworkers’ Wallets as Crops Impacted*, KCRA (Mar. 22, 2023, 12:30 PM), <https://www.kcra.com/article/california-farmworkers-rain-storms-crops-impacted/43381233#> [<https://perma.cc/6ARR-GUU4>]; *California Family Farmer Emergency Fund: Support Family Farms in Crisis*, CMTY. ALL. FAM. FARMERS, <https://caff.org/emergencyfund/> [<https://perma.cc/NJ5C-N6YF>].

7. Nouran Salahieh et al., *Another Atmospheric River Will Thrash Storm-Ravaged California, Threatening More Flooding and Hurricane-Force Wind Gusts*, CNN

were catastrophic. But this was not an unanticipated set of events or an unavoidable series of catastrophes. Extreme precipitation was predicted.⁸ The resulting levee failure was anticipated.⁹ Scientists have been warning that “[a] large and growing body of evidence suggests that the frequency and intensity of precipitation extremes will increase in a warming climate”¹⁰ and that California “faces a broadly underappreciated risk of severe floods,” including the risk of a “megaflood.”¹¹ Moreover, in Pajaro County, “[o]fficials ha[d] known for decades that the Pajaro River levee . . . was vulnerable but never prioritized repairs in part because they believed it did not make financial sense to protect the low-income area.”¹²

Fires. Flooding. Drought. These disasters are the current reality in California. But not just in California and not just this year. Floods that previously occurred once in a hundred years are now regular occurrences nationwide,¹³ and tidal flooding is now a normal feature of East Coast city living.¹⁴ Massive forest fires across the Western United States,

(Mar. 20, 2023, 7:12 PM), <https://www.cnn.com/2023/03/20/weather/california-atmospheric-river-monday/index.html> [<https://perma.cc/F6NS-QAGB>].

8. Xingying Huang et al., *Future Warming and Intensification of Precipitation Extremes: A “Double Whammy” Leading to Increasing Flood Risk in California*, 47 GEOPHYSICAL RSCH. LETTERS, Aug. 28, 2020, at 1, 1, <https://doi.org/10.1029/2020GL088679> (noting that a “huge increase in runoff during the most extreme [atmospheric river] events could present major flood control challenges for the region”); UCLA Inst. of the Env’t & Sustainability, *The Future of Extreme Precipitation in California* (2020), <https://www.ioes.ucla.edu/project/future-extreme-precipitation-california/> (“California’s most extreme precipitation events will get more intense.”).

9. Susanne Rust, *Before Disastrous Flood, Officials Knew Pajaro River Levee Could Fail but Took No Action*, L.A. TIMES (Mar. 12, 2023), <https://www.latimes.com/california/story/2023-03-12/authorities-knew-the-levee-could-fail> [<https://perma.cc/K6BU-JCAL>].

10. Xingying Huang et al., *Future Precipitation Increase from Very High Resolution Ensemble Downscaling of Extreme Atmospheric River Storms in California*, 6 SCI. ADVANCES, July 17, 2020, at 1, 1, <https://doi.org/10.1126/sciadv.aba1323>.

11. Xingying Huang & Daniel L. Swain, *Climate Change Is Increasing the Risk of a California Megaflood*, 8 SCI. ADVANCES, Aug. 12, 2022, at 1, 1, <https://doi.org/10.1126/sciadv.abq0995> (defining “megaflood” as “extreme runoff and adverse hydrologic outcomes”).

12. Rust, *supra* note 9.

13. See Press Release, First St. Found., *NOAA’s 1-in-100 Year Flooding Can Now Be Expected Every 8 Years* (June 26, 2023), <https://firststreet.org/press/noaas-1-in-100-year-flooding-can-now-be-expected-every-8-years/> [<https://perma.cc/TT4R-7JX8>]; see also Ryan McNeill, *Rising Seas Seen Causing Routine Floods in U.S. Cities: Study*, REUTERS (Oct. 7, 2014, 11:05 PM), <https://www.reuters.com/article/us-sealevel-study/rising-seas-seen-causing-routine-floods-in-u-s-cities-study-idUSKCN0HX09I20141008> [<https://perma.cc/UL5H-XSA9>] (“[T]idal flooding along the U.S. coast is likely to become so common that parts of many communities, including the nation’s capital, could become unusable within three decades.”).

14. Jim Morrison, *Flooding Hot Spots: Why Seas Are Rising Faster on the U.S. East Coast*, YALE ENV’T 360 (Apr. 24, 2018), <https://e360.yale.edu/features/flooding-hot-spots-why-seas-are-rising-faster-on-the-u.s.-east-coast> [<https://perma.cc/S6P3-HGH2>]; Hadley Barndollar, *The East Coast Is Navigating a ‘Perilous Course’ Confronting Climate Change in Real Time*, PROVIDENCE J. (Feb. 5, 2023, 5:48 PM), <https://www.providencejournal.com/in-depth/news/2022/09/20/>

which once seemed epic, are now seasonal occurrences.¹⁵ Record-breaking droughts are now the background around which water, agriculture, and city planning in the Southwestern United States should take place.

In this context—one we might characterize as simultaneously seeking to prepare for overwhelming disasters *while* also envisioning a livable future—we are quite certain that we will fail on both counts without a significant degree of focused, place-based, and intensive adaptation planning. The problem addressed in this Article is that property owners continue to build in vulnerable places,¹⁶ sometimes in flood- or wild-fire-prone areas, sometimes without assurances of potable water, sewer service, transit or open space access, or access to protection from excessive heat, and so resiliency decreases, and vulnerabilities increase. As a result, we are stubbornly committing to engaging in emergency management to save lives in the near and distant future instead of anticipatory planning to avoid the worst climate impacts.

Local governments that find this circumstance unacceptable can choose to engage in adaptive regulatory measures. However, in the face of a changing regulatory arena, property owners often “race” the local government to secure the right to develop under old, outdated, and maladapted land use regulations.¹⁷ This Article argues that adoption of a moratorium can provide the stop-gap relief local governments need to address a community’s climate vulnerabilities. Moratoria have been used by local governments throughout the last century as tools to halt new development and provide some space and time to understand community needs, plan for future community well-being, and ensure the community is served by adequate infrastructure.¹⁸ We refer to this tool as the *climate moratorium*. Local governments can employ the climate moratorium, based on the need to address the climate emergency, to understand and assess their vulnerabilities; identify and finance needed infrastructure improvements; and address historic, systemic inequities that will be exacerbated due to climatic changes. In what follows, Part II first explains the emergency circumstances presented by climate change. Part III then introduces the climate moratorium and explains its application in the face of the emergency. Part IV then explores critical planning needs that the moratorium would facilitate. Finally, Part V concludes by emphasizing the urgency of embracing the climate moratorium.

east-coast-flooding-heat-severe-weather-climate-change/10308981002/ [https://perma.cc/B3VW-5299].

15. *Wildfire Climate Connection*, NAT’L OCEANIC & ATMOSPHERIC ADMIN. (July 24, 2023), <https://www.noaa.gov/noaa-wildfire/wildfire-climate-connection> [https://perma.cc/6VH6-QEDR].

16. After an announcement by the Mayor of Phoenix, Arizona, the State of Arizona adopted controls on growth in Phoenix due to groundwater concerns. Oliver Milman, *Arizona Limits Future Home-building in Phoenix Area Due to Lack of Groundwater*, GUARDIAN (June 2, 2023, 10:29 AM), <https://www.theguardian.com/us-news/2023/jun/02/phoenix-arizona-limits-future-home-building-drought> [https://perma.cc/6DC6-9UKK].

17. See *Downham v. City Council of Alexandria*, 58 F.2d 784, 788 (E.D. Va. 1932).

18. See *infra* notes 87–110 and accompanying text.

II. THE CLIMATE EMERGENCY

Climate emergencies can no longer be regarded as shocking or unexpected in either their slow-onset (e.g., drought) or sudden-onset (e.g., atmospheric river storms) forms. These disasters, which were once thought of as exceptional events, are now the backdrop for much of our shared lived experience. As the most recent report of the Intergovernmental Panel on Climate Change (“IPCC”) confirms:

Widespread and rapid changes in the atmosphere, ocean, cryosphere and biosphere have occurred. Human-caused climate change is already affecting many weather and climate extremes in every region across the globe. This has led to widespread adverse impacts and related losses and damages to nature and people

. . . .
 . . . Every increment of global warming will intensify multiple and concurrent hazards.¹⁹

Weather and climate extremes and resulting disasters are a reality of our contemporary, climate-changed world. We know to expect extreme events more frequently than in the past. As detailed in the *Fourth National Climate Assessment*:

Climate change is altering the characteristics of many extreme weather and climate-related events. Some extreme events have already become more frequent, intense, widespread, or of longer duration, and many are expected to continue to increase or worsen, presenting substantial challenges for built, agricultural, and natural systems. . . . Individual extreme weather and climate-related events—even those that have not been clearly attributed to climate change by scientific analyses—reveal risks to society and vulnerabilities that mirror those we expect in a warmer world. . . . The National Oceanic and Atmospheric Administration estimates that the United States has experienced 44 billion-dollar weather and climate disasters since 2015 (through April 6, 2018), incurring costs of nearly \$400 billion.²⁰

Extreme events are our new reality.

A. *The New Normal: Climate Extremes*

Sea level rise provides a simple but striking example. Globally, “the total urban population at risk from sea level rise, if emissions don’t go down, could number over 800 million people, living in 570 cities, by 2050,” and “the global economic costs to cities, from rising seas and inland

19. Intergovernmental Panel on Climate Change [IPCC], *Climate Change 2023: Synthesis Report, Summary for Policymakers*, at 5, 12 (2023).

20. U.S. GLOB. CHANGE RSCH. PROGRAM, *FOURTH NATIONAL CLIMATE ASSESSMENT: VOLUME II, IMPACTS, RISKS, AND ADAPTATION IN THE UNITED STATES, REPORT-IN-BRIEF 57* (2018), <https://doi.org/10.7930/NCA4.2018.RiB> [hereinafter *FOURTH NATIONAL CLIMATE ASSESSMENT*].

flooding, could amount to \$1 trillion by mid-century.”²¹ As a result of sea level rise and ongoing climatic changes, coastal communities across the world already face common challenges, including storm surge, land submergence, erosion, flooding, saltwater incursion, and climate gentrification.²² The global mean sea level has risen faster since 1900 than during any other century in at least 3,000 years.²³ Between 1901 and 2018, global mean sea level rose by .2 meters.²⁴ Moreover, sea levels will continue to rise over the 21st century, with estimates ranging from .15 to 2 meters.²⁵ In worst-case climate scenarios where warming increases to 4°C, coastal cities such as Mumbai, Shanghai, London, Venice, New York, and New Orleans will gradually become increasingly hostile places to live.²⁶

As an example of what this looks like close to home, the *U.S. Fourth National Climate Assessment* (“NCA”) warns that the increase in the frequency and extent of high tide flooding due to climate-driven sea level rise poses extensive threats to coastal communities, including coastal property and public infrastructure.²⁷ Specifically, the NCA suggests that “in the absence of significant global mitigation action and regional adaptation efforts, rising temperatures, sea level rise, and changes in extreme events are expected to increasingly disrupt and damage critical infrastructure and property, labor productivity, and the vitality of our communities.”²⁸ This includes up to \$1 trillion in coastal property threatened by sea level rise, higher storm surges, and high tide flooding.²⁹

The realities of sea level rise for cities along the East Coast of the United States are stark. As Justice Kagan suggests, absent dramatically scaled-up efforts to mitigate climate change and adapt to the anticipated effects of climate change, “children born this year could live to see parts of the Eastern seaboard swallowed by the ocean.”³⁰ For example, based on current emissions trajectories, NOAA “project[s] 10 to 14 inches

21. *Sea Level Rise and Coastal Flooding*, C40 CITIES (2018), <https://www.c40.org/what-we-do/scaling-up-climate-action/adaptation-water/the-future-we-dont-want/sea-level-rise/> [https://perma.cc/3FF8-PKS8].

22. Kara Consalo, *Vulnerable Populations: Climate Change and Extreme Weather Threats Facing Urban Communities*, 11 CHI-KENT J. ENV'T ENERGY L., Spring 2022, at 1, 4–5, 7–8, 22.

23. See, e.g., NASA Sea Level Change Team, *How Long Have Sea Levels Been Rising? How Does Recent Sea-level Rise Compare to that over the Previous Centuries?*, NASA <https://sealevel.nasa.gov/faq/13/how-long-have-sea-levels-been-rising-how-does-recent-sea-level-rise-compare-to-that-over-the-previous/> [https://perma.cc/MEU6-V79X].

24. Danial Khojasteh et al., *The Evolving Landscape of Sea-level Rise Science from 1990 to 2021*, 4 COMM'NS EARTH & ENV'T, July 14, 2023, at 1, 2, <https://doi.org/10.1038/s43247-023-00920-4>.

25. NASA Sea Level Change Team, *supra* note 23, at 20 tbl.2.3.

26. See J.B. Ruhl & Robin Kundis Craig, *4°C*, 106 MINN. L. REV. 191, 225 (2021).

27. FOURTH NATIONAL CLIMATE ASSESSMENT, *supra* note 20, at 17.

28. *Id.* at 12.

29. *Id.* at 38.

30. *West Virginia v. EPA*, 142 S.Ct. 2587, 2627 (2022) (Kagan, J., dissenting).

(25 to 35 centimeters) of rise on average for the East Coast”³¹ and warns that sea level rise “will create a profound shift in coastal flooding over the next 30 years by causing tide and storm surge heights to increase and reach further inland. By 2050, ‘moderate’ (typically damaging) flooding is expected to occur, on average, more than 10 times as often as it does today.”³² Already, “from 2011 to 2015, sea level[s] rose up to 5 inches—an inch per year—in some locales from North Carolina to Florida.”³³

Meanwhile, many cities along the southeastern Atlantic coast are already experiencing regular disruption from tidal flooding, sometimes referred to as “sunny day flooding” or “King Tide flooding.”³⁴ In Charleston, South Carolina, for example, “tidal flooding increased to 50 days in 2016, up from four days annually 50 years ago, causing millions of dollars in damage and disrupting travel to the city’s hospital district.”³⁵ Similarly, in Miami, Florida, one study found that since 2006, “rain-induced [flooding] events increased by 33% and tide-induced [flooding] events increased by more than 400%,”³⁶ while another study estimates that Miami-Dade County already faces more than \$3 billion in anticipated costs to protect the city from coastal flooding.³⁷

By now, the short- and long-term costs associated with sea level rise—including tidal flooding and storm-related events—are well understood. The scale and impact of these events will only increase over time. Yet we continue to build in, invest in, and shore up our most vulnerable coastal areas. That is, our coastal planning processes remain minimally responsive to inevitable climate impacts. But it is not just our coastal communities that are at risk and in need of realistic climate-responsive planning processes. Across the United States, increased incidence and intensity of fire, drought, excessive heat, and storm surges pose dire threats to humans and ecosystems and require a rethinking of development strategies and land management practices.³⁸ By mid-summer 2023,

31. Sally Younger, *NASA Study: Rising Sea Level Could Exceed Estimates for U.S. Coasts*, JET PROPULSION LAB’Y (Nov. 15, 2022), <https://www.jpl.nasa.gov/news/nasa-study-rising-sea-level-could-exceed-estimates-for-us-coasts> [<https://perma.cc/9XQM-MNF2>].

32. Nat’l Ocean Serv., *2022 Sea Level Rise Technical Report*, NAT’L OCEANIC ATMOSPHERIC ADMIN. <https://oceanservice.noaa.gov/hazards/sealevelrise/sealevel-rise-tech-report.html> [<https://perma.cc/U2PD-LK8R>].

33. Morrison, *supra* note 14.

34. *King Tides*, CITY OF MIA., <https://www.miamigov.com/My-Government/ClimateChange/King-Tides> [<https://perma.cc/UE76-KEBK>].

35. Morrison, *supra* note 14.

36. Shimon Wdowinski et al., *Increasing Flooding Hazard in Coastal Communities Due to Rising Sea Level: Case Study of Miami Beach, Florida*, 126 OCEAN & COASTAL MGMT., June 2016, at 1, 1, <https://doi.org/10.1016/j.ocecoaman.2016.03.002>.

37. SVERRE LEROY & RICHARD WILES, CTR. FOR CLIMATE INTEGRITY, *HIGH TIDE TAX: THE PRICE TO PROTECT COASTAL COMMUNITIES FROM RISING SEAS* 13 tbl.2 (2019).

38. See, e.g., German Lopez, *Compounding Disasters*, N.Y. TIMES (July 13, 2023), <https://www.nytimes.com/2023/07/13/briefing/extreme-weather.html> [<https://perma.cc/WKY4-QYUV>].

for example, NOAA estimated that 12 weather disasters had already caused over \$1 billion in damage.³⁹

Consider the increased incidence and impact of wildfires in the United States. Exacerbating wildfire conditions are driven by changing weather and development patterns, including “rising temperatures and changing precipitation patterns, pest populations, and land management practices.”⁴⁰ As detailed in the *Fourth National Climate Assessment*:

Between 1979 and 2013, the number of days with weather conditions conducive to fire has increased globally, including in the United States. At the same time, human activities have expanded into areas of uninhabited forests, shrublands, and grasslands, exposing these human activities to greater risk of property and life loss at this wildland–urban interface. Over the last two decades, the amount of forest area burned and the expansion of human activity into forests and other wildland areas have increased.⁴¹

The report further explained that “[a]s the climate warms, projected increases in wildfire frequency and area burned are expected to drive up costs associated with health effects, loss of homes and infrastructure, and fire suppression.”⁴² Increased incidences of wildfires pose dire threats to human health, critical infrastructure, and property. As just one example, in October 2017, California experienced the most destructive fire to date. The Tubbs Fire, which burned parts of Napa, Sonoma, and Lake counties, “caused an estimated \$1.2 billion in damages and destroyed over 5,000 structures, including 5% of the housing stock in the city of Santa Rosa.”⁴³ And that was just one of more than a dozen fires that burned through Northern California in October 2017.⁴⁴

As the climate continues to warm, “projected increases in wildfire frequency and area burned are expected to drive up costs associated with health effects, loss of homes and infrastructure, and fire suppression.”⁴⁵ Communities in wildfire-prone areas—which will include an increasingly vast swath of the United States—will experience profound

39. See Jonathan Erdman, *12 Billion-Dollar Weather Disasters Hit the US This Year, Second Fastest Pace on Record, NOAA Says*, WEATHER CHANNEL (July 13, 2023), <https://weather.com/news/news/2023-07-11-billion-dollar-disasters-january-june-2023-noaa> [<https://perma.cc/NGT8-5TV4>].

40. FOURTH NATIONAL CLIMATE ASSESSMENT, *supra* note 20, at 36.

41. Thomas Loveland et al., *Land Cover and Land-Use Change*, in 2 IMPACTS, RISKS, AND ADAPTATION IN THE UNITED STATES: FOURTH NATIONAL CLIMATE ASSESSMENT 202, 211 (David Reidmiller et al. eds., 2018), <https://doi.org/10.7930/NCA4.2018.CH5>.

42. *Id.* at 2.

43. FOURTH NATIONAL CLIMATE ASSESSMENT, *supra* note 20, at 37 fig.1.5 (“In October 2017, more than a dozen fires burned through northern California, killing dozens of people and leaving thousands more homeless. Communities distant from the fires were affected by poor air quality as smoke plumes darkened skies and caused the cancellation of school and other activities across the region.”).

44. *October 2017 Information*, CAL. GOVERNOR’S OFF. OF EMERGENCY SERVS., <https://wildfirerecovery.caloes.ca.gov/past-fires/october-2017-fires/oct-2017-info/> [<https://perma.cc/3WWK-E583>].

45. Thomas Loveland et al., *supra* note 41, at 2.

impacts on human health, economic activity, and social stability. Yet despite dramatic and increased incidences of devastating fires across the American West, we continue to allow development in fire-prone areas, and we continue to allow land-use management processes that increase the likelihood and severity of wildfire. The persistent “failure to anticipate [the] interconnected impacts” of climate change and land-use practices limits our ability to manage wildfire risks and increases the likelihood of future disasters—avoidable disasters.⁴⁶

That is, despite all we know about the extensive threats that sea level rise, changing precipitation patterns, and changing wildfire patterns pose to communities nationwide, we continue to build in and invest in flood- and fire-prone areas. And while sea-level rise, flooding, and wildfires pose some of the most visible and dramatic climate-related threats to communities across the United States, the range of threats climate change poses is vast and includes everything from heat morbidity⁴⁷ and respiratory illness associated with extreme heat and worsening air pollution,⁴⁸ to economic collapse of primary industry.⁴⁹ The *Fourth National Climate Assessment* sums up the extensive range of economic threats climate change poses to communities in the United States:

Without more significant global greenhouse gas mitigation and regional adaptation efforts, climate change is expected to cause substantial losses to infrastructure and property and impede the rate of economic growth over this century. Regional economies and industries that depend on natural resources and favorable climate

46. *Id.* at 13.

47. See, e.g., *KlimaSeniorinnen v. Switzerland*, App. No. 53600/20, ¶ 1 (Nov. 26, 2020), <https://hudoc.echr.coe.int/eng?i=002-13212> (explaining that an association of senior women sued the Swiss government in the European Court of Human Rights, alleging that their health was threatened by heat waves made worse by the climate crisis). For a description of the case, see Sabin Ctr. for Climate Change L., *KlimaSeniorinnen v. Switzerland (ECtHR)*, CLIMATE CHANGE LITIG. DATABASE, <http://climatecasechart.com/non-us-case/union-of-swiss-senior-women-for-climate-protection-v-swiss-federal-council-and-others/> [<https://perma.cc/TQ3U-WBQX>]; see also *FOURTH NATIONAL CLIMATE ASSESSMENT*, *supra* note 20, at 15 (“[H]eat-related deaths are projected to increase; in most regions, increases in heat-related deaths are expected to outpace reductions in cold-related deaths.”).

48. See *FOURTH NATIONAL CLIMATE ASSESSMENT*, *supra* note 20, at 98 (“More than 100 million people in the United States live in communities where air pollution exceeds health-based air quality standards. Unless counteracting efforts to improve air quality are implemented, climate change will worsen existing air pollution levels. This worsened air pollution would increase the incidence of adverse respiratory and cardiovascular health effects, including premature death. Increased air pollution would also have other environmental consequences, including reduced visibility and damage to agricultural crops and forests.”).

49. See, e.g., *id.* at 46 fig.1.15 (“The U.S. Caribbean Islands, Florida, Hawai’i, and the U.S.-Affiliated Pacific Islands face similar threats from coral bleaching and mortality due to warming ocean surface waters and ocean acidification. Degradation of coral reefs is expected to negatively affect fisheries and the economies that depend on them as habitat is lost in both regions.”); *id.* at 128 (“Studies show that major shifts in fisheries distribution and changes to the structure and composition of marine habitats adversely affect food security, shoreline protection, and economies throughout the Caribbean.”).

conditions, such as agriculture, tourism, and fisheries, are increasingly vulnerable to impacts driven by climate change. Reliable and affordable energy supplies, which underpin virtually every sector of the economy, are increasingly at risk from climate change and weather extremes The potential for losses in some sectors could reach hundreds of billions of dollars per year by the end of this century.⁵⁰

Climate change will wreak extensive damage on the U.S. economy. It will cost us hundreds of billions of dollars by the end of the century.⁵¹ It will have immeasurable impacts on human health and well-being. It will fundamentally alter ecosystems and ecosystem services. It will redefine who we are and how we coexist with one another and our natural environments. Yet we are not helpless. Climate impacts are inevitable, but our response to them is not. How communities plan for climate change will profoundly impact the lives and well-being of their inhabitants.

To be blunt, we are currently unprepared to thrive amidst the brutal, existential threats of climate change. This includes the threats to our coastal cities, which are vastly unprepared for the rising seas that lap at their edges. It includes the threats to our southwestern and western cities, which are unprepared for the inevitable fires, droughts, and floods they face. It includes threats to cities nationwide, which face flooding, fire, heat, air pollution, disease, and economic decline.⁵² We know with certainty that these threats exist. We also know with certainty that the impacts will become amplified over time. Yet we also know that very few localities are planning for the “anticipated scale of future change and emergent threats” that we now know to expect.⁵³ We are unprepared for the climate crisis.

Thus, we find ourselves at a critical juncture. Unless and until we confront climate change as the emergency that it is, we will continue to engage in planning processes that are, at best, performative acts of wishful thinking and, at worst, blatant acts of capitulation that knowingly sacrifice the futures of certain people and places for short-term gains.

Climate change is an emergency. As the UN has declared, “The science is clear. The world is in a state of climate emergency, and we need

50. *Id.* at 36–37 (citations omitted).

51. *Id.* at 168.

52. *See, e.g., id.* at 170.

53. *See, e.g., id.* at 62 (“[T]he scale and scope of adaptation implementation has increased, including by federal, state, tribal, and local agencies as well as business, academic, and nonprofit organizations. While the level of implementation is now higher, it is not yet common nor uniform across the United States, and the scale of implementation for some effects and locations is often considered inadequate to deal with the projected scale of climate change risks. Communities have generally focused on actions that address risks from current climate variability and recent extreme events, such as making buildings and other assets incrementally less sensitive to climate impacts. Fewer communities have focused on actions to address the anticipated scale of future change and emergent threats, such as reducing exposure by preventing building in high-risk locations or retreating from at-risk coastal areas.” (citation omitted)).

to shift into emergency gear.”⁵⁴ Responding to the climate emergency requires rethinking many facets about of how we govern, including our land-use and city-planning processes.

B. *Climate Emergency: The New Planning Environment*

There is a growing body of literature exploring the legal implications of defining climate change as a national emergency.⁵⁵ Much of this literature focuses on the scope of federal law and the repertoire of presidential powers potentially implicated by an emergency declaration. It explores how the President could draw on different emergency powers to fight climate change by taking actions ranging from suspending oil leases, to expanding electric vehicle production, to regulating fossil fuel companies.⁵⁶ Recognizing the importance of interrogating the complex implications of declaring climate change a national emergency, here we are focused on a different set of questions: Why are hundreds of local governments declaring climate emergencies? And how does defining climate change as an emergency at the local level advance efforts to better prepare for climate change?

The same factors that drive the conversation around declaring climate change a national emergency also underlie the urgency of treating climate change as a local emergency. Notably, as Nevitt, a professor at Emory University School of Law, highlights, “Climate change has three unique characteristics that penalize inaction and passivity: the rising severity of climate impacts, the irreversibility of climate impacts, and the urgency with which we must approach climate change to avert catastrophic harm.”⁵⁷

Recognizing the increasing urgency of the climate crisis, by mid-2023, more than 2,320 jurisdictions in 40 countries encompassing over 1 billion citizens had declared a climate emergency.⁵⁸ Those jurisdictions declaring a climate emergency include 18 national governments, the European Union, and a variety of sub-national jurisdictions.⁵⁹ This includes over 200 U.S. villages, towns, and cities.⁶⁰ Moreover, in 2021, in

54. *The Climate Emergency*, UN ENV'T PROGRAMME, <https://www.unep.org/climate-emergency> [https://perma.cc/R5GR-8UES].

55. See generally Mark P. Nevitt, *Is Climate Change a National Emergency?*, 55 U.C. DAVIS L. REV. 591, 599 (2021), <https://dx.doi.org/10.2139/ssrn.3803655> (noting that pinpointing the legal authorities authorized to address climate change is a novel contribution to the conversation).

56. Dan Farber, *Using Emergency Powers to Fight Climate Change*, LEGAL PLANET (Jan. 14, 2019), <https://legal-planet.org/2019/01/14/using-emergency-powers-to-fight-climate-change> [https://perma.cc/25B7-7D6X].

57. Nevitt, *supra* note 55, at 645.

58. *Climate Emergency Declarations in 2,346 Jurisdictions and Local Governments Cover 1 Billion Citizens*, CLIMATE EMERGENCY DECLARATION (Sept. 8, 2023), <https://climateemergencydeclaration.org/climate-emergency-declarations-cover-15-million-citizens/> [https://perma.cc/ZY9W-9CRA].

59. *Id.*

60. *Id.*

the largest-ever survey of climate opinion (*The People's Climate Vote*) of the 1.2 million respondents across 50 countries, 64% said that they believed that climate change was an emergency.⁶¹

While definitions of climate emergencies vary, in declaring “climate emergency” the word of the year in 2019, Oxford Languages defined it as “a situation in which urgent action is required to reduce or halt climate change and avoid potentially irreversible environmental damage resulting from it.”⁶² From a governance perspective, declaring a climate emergency “refers to the act of naming a state of emergency.”⁶³ It is the term that is used by governments at different levels when they want to emphasize the “catastrophic consequences of the changes in climate for humans,” and although “a climate emergency declaration per se doesn’t represent any formal or standard path to be followed, it admits the measures and actions taken so far to fight climate change haven’t been enough and represents a formal commitment to set priorities to mitigate climate change.”⁶⁴

The form and implications of climate emergency declarations vary from place to place in the United States, but commonalities include a desire to recognize widespread concern about the seriousness of the climate crisis, the urgency of responding to climate change, and the need to create immediate space and capacity to accelerate governance responses.⁶⁵ For example, in declaring a climate emergency, the City of Portland stated:

61. CASSIE FLYNN ET AL., PEOPLE’S CLIMATE VOTE: RESULTS 15 (2021), <https://www.undp.org/publications/peoples-climate-vote> [<https://perma.cc/XE48-KQVK>] (“The Peoples’ Climate Vote found that nearly two-thirds (64%) of people in 50 countries believe that climate change is a global emergency.”). Notably, 65% of U.S. respondents indicated that they believe climate change is an emergency. *Id.* at 16 fig.3.

62. Oxford University Press, *Word of the Year 2019*, OXFORD LANGUAGES, <https://languages.oup.com/word-of-the-year/2019/> [<https://perma.cc/SL5E-W54S>]. The Cambridge Dictionary defines “climate emergency” as “serious or urgent problems that are being caused or likely to be caused by changes in the world’s weather, in particular the world getting warmer as a result of human activity increasing the level of carbon dioxide in the atmosphere.” Cambridge Univ. Press & Assessment, *Climate Emergency*, CAMBRIDGE DICTIONARY, <https://dictionary.cambridge.org/dictionary/english/climate-emergency> [<https://perma.cc/5R2U-EDWQ>].

63. *Climate Emergency Declaration Definition*, YOUMATTER (Jan. 21, 2020), <https://youmatter.world/en/definition/definition-climate-emergency/> [<https://perma.cc/DU28-CT48>].

64. *Id.*

65. See, e.g., Charles R. Corbett, *The Climate Emergency and Solar Geoengineering*, 46 HARV. ENV’T. L. REV. 197, 204–06 (2022) (suggesting that “an emergency is a time-sensitive crisis in which the necessary response conflicts with ‘normalcy,’ a concept that includes established laws and social practices, constitutional norms, and so on”); J. Benton Heath, *The New National Security Challenge to the Economic Order*, 129 YALE L.J. 1020, 1037 (2020); Anne Barnard, *A ‘Climate Emergency’ Was Declared in New York City. Will That Change Anything?*, N.Y. TIMES (July 5, 2019), <https://www.nytimes.com/2019/07/05/nyregion/climate-emergency-nyc.html> [<https://perma.cc/J8TZ-PPJR>]; Mark Tutton, *UK Parliament Declares ‘Climate Emergency’*, CNN (May 1, 2019,

Whereas, the climate emergency is an existential threat to our community and economy, and combatting it will require government agencies, businesses, and residents to treat this as the crisis it is by taking bold steps to meet Portland's carbon reduction goals and building a healthy, resilient city in which everyone can thrive. Now, therefore, be it resolved, that the Portland City Council declares that a human-made climate emergency threatens our city, our region, our state, our nation, humanity, and the natural world, and that such an emergency calls for an immediate mobilization effort initiating greater action, resources, and collaboration that prioritizes frontline communities to restore a safe climate⁶⁶

Notably, other jurisdictions have framed the climate crisis more specifically as a public health emergency. The City of Boston, for example, adopted a resolution affirming that the climate crisis is a public health emergency based on the myriad health impacts climate change will have, including "increased exposure to extreme heat, reduced air quality, more frequent and intense natural hazards, increased exposure to infectious diseases and aeroallergens, effects on mental health, and increased risk of population displacement and conflict."⁶⁷ In issuing its climate emergency resolution, the City of Boston, in common with many other jurisdictions, emphasized the disparate impact of climate change on those who are already the most vulnerable in society, including "children and pregnant women, people with low income, the elderly, people with disabilities and chronic illnesses, and marginalized people of all races and ethnicities."⁶⁸

Other notable commonalities of local-level climate emergency declarations include an emphasis on achieving just transition with a particular focus on centering the economic needs and well-being of frontline communities, including workers and communities of color. Local emergency declarations also consistently focus on the importance of both mitigation and adaptation responses. For example, in its climate emergency resolution, the City of San Francisco emphasized that even as the city works on climate mitigation, it "shall continue to advance climate adaptation efforts to address unavoidable current and future climate change impacts."⁶⁹ The City of San Francisco also stressed that, in doing so, "labor unions and frontline environmental justice communities must be equitably and actively engaged in the City's transition to a fossil-fuel

5:46 PM), <https://www.cnn.com/2019/05/01/europe/uk-climate-emergency-scn-intl/index.html> [<https://perma.cc/UE7D-M79R>]; see also Clare Pledl, *Eco-Ableism in the Environmental Justice Movement*, 23 Vt. J. ENV'T. L. 1, 12 (2021) (calling for consideration of the particular threats climate change poses to people with disabilities).

66. Portland, Or., Ordinance 37494 (June 30, 2020).

67. Bos. City Council, *City Council Affirms Climate Crisis as a Public Health Emergency*, CITY OF BOS., (Jan. 17, 2020), <https://www.boston.gov/news/city-council-affirms-climate-crisis-public-health-emergency> [<https://perma.cc/UY7F-JUJW>].

68. *Id.*

69. S.F., Cal., Resolution 160-19 (Apr. 2, 2019).

free economy and prioritized through local climate mitigation and adaptation planning, policy, and program delivery, ensuring a just transition for all people”⁷⁰ Similarly, the City of Boulder climate emergency proclamation calls for an emphasis on the “Just Transition,” a “framework for a fair shift to an economy that is ecologically sustainable, equitable and just for all its members,” and calls for actions to reduce greenhouse gas emissions and “measures to protect all people and species” from the impacts of climate change.⁷¹

The severity of the crisis. The urgent need for equitable mitigation and adaptation actions. The inadequacy of existing governance structures. Calls for immediate action. These are the commonalities that cut across the hundreds of local-level climate emergency declarations. But what is the practical impact of declaring a climate emergency? What comes next after a community declares a climate emergency?

There is no set formula for the work that a climate emergency declaration does. Some cities lay out specific commitments or goals in their climate emergency declaration. As one example, in its climate emergency declaration, Portland laid out “many ideas, aspirations, directions, and goals,” including developing a new climate justice initiative, pursuing partnerships with youth-serving organizations, amending the City’s emission reduction target, adopting new policies to reduce carbon from buildings and the transport sector, and enhancing the tree canopy.⁷² These goals helped establish a roadmap for future actions. In contrast, other declarations are more aspirational and avoid laying out discrete goals or next steps. The City of Boulder’s climate emergency proclamation, for example, simply calls for action:

To support a countywide climate emergency mobilization and just transition effort to reverse global warming, including reducing countywide greenhouse gas emissions 45% below 2005 levels by 2030 and 90% below 2005 levels by 2050, and implementing adaptation and resilience strategies in preparation for intensifying climate

70. *Id.*

71. BD. OF BOULDER CNTY. COMM’RS, A PROCLAMATION ENDORSING THE DECLARATION OF A CLIMATE EMERGENCY (2019), <https://assets.bouldercounty.gov/wp-content/uploads/2019/07/climate-emergency-proclamation-july-2019.pdf> [<https://perma.cc/9UPL-4RYP>]. The resolution also details the particular challenges Boulder faces, noting:

[I]n Boulder County these [climate] impacts are already manifesting themselves in the form of wildfires burning twice as much acreage now as they did in 1980; more frequent and more severe flooding such as the devastating flood of 2013; and an increase in the number of summer days that will reach temperatures of over 95°F from an average of five between 1970-1999 to as many as 75 by the end of the 21st century WHEREAS, restoring a safe and stable climate requires mobilization to reduce greenhouse gas emissions across all sectors, and to implement measures to protect all people and species from the consequences of abrupt climate change

Id.

72. CITY OF PORTLAND BUREAU OF PLAN. & SUSTAINABILITY, CLIMATE EMERGENCY DECLARATION: ONE-YEAR PROGRESS REPORT (RESOLUTION No. 37494) 7-8 (2021).

impacts, the Board of Boulder County Commissioners hereby proclaim a climate emergency.⁷³

To date, climate emergency declarations have focused more on creating space and a sense of urgency for action as opposed to dictating specific outcomes.⁷⁴ Here, we argue for one specific action that should follow a climate emergency declaration—a climate moratorium. As will be discussed in greater detail in Section III, a climate moratorium is a natural response to a climate emergency. It is a legal tool that recognizes and responds to an emergency situation and creates the space for responsive governmental action before it is too late.

In the context of the climate crisis, the possibility of actions coming too late to avoid severe negative outcomes is very real. This is especially true in the context of local-level planning and development decisions that could either advance or undermine climate adaptation. In its most recent report, the IPCC accentuated the urgent nature of prioritizing adaptation planning, noting that:

Adaptation options that are feasible and effective today will become constrained and less effective with increasing global warming. With increasing global warming, losses and damages will increase and additional human and natural systems will reach adaptation limits. Maladaptation can be avoided by flexible, multi-sectoral, inclusive, long-term planning and implementation of adaptation actions . . .⁷⁵

More specifically, in the context of urban planning decisions, the report emphasized the urgency of creating inclusive planning processes that recognize and respond to the complex ways that climate change will impact existing infrastructure and governance systems.⁷⁶ Specifically, the report finds that:

Effective multilevel governance for mitigation, adaptation, risk management, and climate resilient development is enabled by inclusive decision processes that prioritise equity and justice in planning and implementation, allocation of appropriate resources, institutional review, and monitoring and evaluation. Vulnerabilities and climate risks are often reduced through carefully designed and implemented laws, policies, participatory processes, and interventions that address context specific inequities such as those based on gender, ethnicity, disability, age, location and income.⁷⁷

73. BD. OF BOULDER CNTY. COMM'RS, *supra* note 71.

74. *See, e.g., supra* notes 64–73 and accompanying text.

75. IPCC, *supra* note 19, at 20.

76. *See id.* at 28–32.

77. *Id.* at 34. With respect to urban planning, the report suggests:

Key adaptation and mitigation elements in cities include considering climate change impacts and risks (e.g. through climate services) in the design and planning of settlements and infrastructure; land use planning to achieve compact urban form, co-location of jobs and housing; supporting public transport and active mobility (e.g., walking and cycling); the efficient design, construction, retrofit, and use of buildings; reducing and changing energy and material consumption; sufficiency; material substitution; and electrification in combination

The inclusive, multilevel, equity-oriented governance processes the IPCC identifies as essential to advancing adaptation and avoiding maladaptation are possible, but they are not the norm. Local governments need to rethink their planning processes. They need tools to allow them to do so. The climate moratorium is one such tool. The climate moratorium responds to the emergency situations that the climate crisis creates. It pushes pause on development to allow local governments to engage in the type of planning processes the IPCC envisions.

In assessing progress towards achieving the goals set out in its climate emergency resolution, the City of Portland defined 2020–2021 as “[n]ot a normal year.”⁷⁸ While it may be true that 2020–2021 was an exceptionally abnormal year due to the global pandemic, the reality is that climate change is destabilizing our entire understanding of what a “normal year” is and what normal conditions are. It is urgent that we rethink our governance processes in response to our new normal. As we describe in the following section, the climate moratorium advances this work.

III. THE CLIMATE MORATORIUM

Ever since the Supreme Court approved of zoning in *Village of Euclid v. Ambler Realty Co.*,⁷⁹ courts have recognized that land use planning is a critical tool in controlling threats to the community.⁸⁰

with low emissions sources (*high confidence*). Urban transitions that offer benefits for mitigation, adaptation, human health and well-being, ecosystem services, and vulnerability reduction for low-income communities are fostered by inclusive long-term planning that takes an integrated approach to physical, natural and social infrastructure (*high confidence*). Green/natural and blue infrastructure supports carbon uptake and storage and either singly or when combined with grey infrastructure can reduce energy use and risk from extreme events such as heatwaves, flooding, heavy precipitation and droughts, while generating co-benefits for health, well-being and livelihoods (*medium confidence*).

Id. at 31 (citation omitted).

In terms of the effectiveness of specific adaptation responses, the report notes:

Policy mixes that include weather and health insurance, social protection and adaptive social safety nets, contingent finance and reserve funds, and universal access to early warning systems combined with effective contingency plans, can reduce vulnerability and exposure of human systems. Disaster risk management, early warning systems, climate services and risk spreading and sharing approaches have broad applicability across sectors. Increasing education including capacity building, climate literacy, and information provided through climate services and community approaches can facilitate heightened risk perception and accelerate behavioural changes and planning.

Id. at 32.

78. CITY OF PORTLAND BUREAU OF PLAN. & SUSTAINABILITY, *supra* note 72, at 10.

79. *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 395 (1926).

80. See generally John R. Nolon, *In Praise of Parochialism: The Advent of Local Environmental Law*, 26 HARV. ENV'T. L. REV. 365, 366 (2002) (“[E]xplain[ing] the role that local governments have assumed in protecting the environment . . . and discuss[ing] how this enhanced municipal role should influence environmental and land use policy”); see also Keith H. Hirokawa, *Sustaining Ecosystem Services*

Technological, cultural, social, and economic conditions *change*, and with it come new threats to public safety and welfare. In *Euclid*, the Court noted:

Until recent years, urban life was comparatively simple; but with the great increase and concentration of population, problems have developed, and constantly are developing, which require, and will continue to require, additional restrictions in respect of the use and occupation of private lands in urban communities. Regulations, the wisdom, necessity and validity of which, as applied to existing conditions, are so apparent that they are now uniformly sustained, a century ago, or even half a century ago, probably would have been rejected as arbitrary and oppressive. Such regulations are sustained, under the complex conditions of our day, for reasons analogous to those which justify traffic regulations, which, before the advent of automobiles and rapid transit street railways, would have been condemned as fatally arbitrary and unreasonable.⁸¹

Almost fifty years after the *Euclid* decision, state courts continue to discuss land use controls as essential and well-settled. In *Cappture Realty Corp. v. Board of Adjustment*, the New Jersey court stated:

The considerations which prompted legal recognition of comprehensive municipal planning of land uses are now history. The population explosion, industrial and commercial growth, the race for ratables, the constantly accelerating trend towards greater urbanization, and many other factors precipitated the utilization of zoning as a method of guarding against haphazard land usage detrimental to the public welfare.⁸²

Of course, we now know that the “advent of automobiles and rapid transit street railways,”⁸³ the constantly accelerating trend toward greater urbanization,⁸⁴ and the burning of fossil fuels that goes with them, were major causes of the climatic changes we now experience. And we know that climate change is one of those circumstances that requires a deep dive into the regulatory toolbox, repurposing of conventional regulatory tools, and even the creation of new ones.⁸⁵ We need to engage in this kind of thinking to save lives and maintain livable conditions in our communities.

So, what tools do we have at our disposal to engage in the kind of planning that is needed—planning that will save lives and enable

Through Local Environmental Law, 28 PACE ENV'T. L. REV. 760, 770 (2011), <https://doi.org/10.58948/0738-6206.1676> (exploring the ecosystem services perspective and its relevance to environmental regulation at the local government level).

81. *Euclid*, 272 U. S. at 386–87.

82. *Cappture Realty Corp. v. Bd. of Adjustment*, 313 A.2d 624, 630 (N.J. Super. Ct. Law Div. 1973).

83. *Euclid*, 272 U. S. at 387.

84. *See id.* at 392.

85. *See* Cinnamon P. Carlarne & Keith H. Hirokawa, *Climate Law Leaps*, 108 IOWA L. REV. ONLINE 102, 110–16 (2023).

community flourishing not just next year but into our inevitably climate-changed future? As explained in detail below, adaptation planning surely includes an identification of the most vulnerable in our communities to climatic changes and an inventory of infrastructure deficiencies that account for today's infrastructure needs, as well as those that will arise as climate conditions worsen. Adaption planning also requires forward-looking planning that focuses on the vulnerabilities that stretch across the socio-economic platform and exposes the demands of equity and fairness in planning resilient communities. The problem, in our view, is that the potential gains for adaptation planning come at a time when past planning and development interests continue to influence our adaptive capacity: we increase vulnerabilities by building in flood-prone and wildfire-prone areas, failing or refusing to build housing that protects residents from excessive heat, and increasing water demand in arid areas. In the meantime, many communities are already facing failing infrastructure, housing shortages, food deserts, and already stressed hydrological systems, not to mention poverty, racism, and a wide variety of bigotries. In other words, we are making it more difficult to survive climate change, day by day, and we were not prepared to begin with. The need for change may indeed have been yesterday, and the slow pace of change comes with the realization that adaptation planning appears as "locking the stable after the horse is stolen."⁸⁶

Enter the climate moratorium.⁸⁷

A land-use moratorium,⁸⁸ often referred to as an interim zoning ordinance,⁸⁹ is a temporary suspension on the issuance of building and other development permits.⁹⁰ The suspension—essentially making space to engage in land use and community planning—is designed to give local governments time to study and make considered decisions with respect to adopting or amending comprehensive land-use plans, zoning ordinances, or other land-use regulations.⁹¹ This tool is especially relevant in the climate change context, where local governments already lack the infrastructure or public facilities needed to serve both existing and new developments.⁹² In such cases, a moratorium allows a local government to engage in planning activities for the financing and construction of critical infrastructure,⁹³ including the protection of ecosystem services

86. *Downham v. City Council of Alexandria*, 58 F.2d 784, 788 (E.D. Va. 1932).

87. We introduced this idea in *Climate Law Leaps*, *supra* note 85, at 110–14.

88. See generally Robert H. Freilich, *Interim Development Controls: Essential Tools for Implementing Flexible Planning and Zoning*, 49 J. URB. L. 65, 65–67 (1971) (discussing the use of land-use controls to temporarily prevent land development).

89. See Matthew G. St. Amand & Dwight H. Merriam, *Defensible Moratoria: The Law Before and After the Tahoe-Sierra Decision*, 43 NAT. RES. J. 703, 709 (2003).

90. See, e.g., *Downham*, 58 F.2d at 788.

91. See *id.*; see also *Town of Mendon v. Ezzo*, 278 A.2d 726, 729 (Vt. 1971).

92. See *Belle Harbor Realty Corp. v. Kerr*, 323 N.E.2d 697, 699 (N.Y. 1974).

93. AM. PLAN. ASS'N, *GROWING SMART LEGIS. GUIDEBOOK* 179–80 (Stuart Meck ed., 2002); see also JAMES A. KUSHNER, *SUBDIVISION LAW AND GROWTH MANAGEMENT* § 2.4 (2d ed. 2022) (surveying state statutory authority and case law on moratoria authority).

that are provided by functioning ecosystems,⁹⁴ that will meet the resiliency needs of the affected community.⁹⁵

Through the climate moratorium, a local government can temporarily maintain the status quo to protect public safety and welfare against community threats. Moratoria have been used to engage in comprehensive land-use planning,⁹⁶ to address increasing congestion,⁹⁷ to preserve opportunities for affordable housing development,⁹⁸ to preserve opportunities for commercial development,⁹⁹ to address infrastructure inadequacies (particularly in the face of new development),¹⁰⁰ to understand and mitigate threats to water quality,¹⁰¹ to plan for energy facility development,¹⁰² to address erosion¹⁰³ and environmental concerns from forest practices,¹⁰⁴ to plan for historic property protection,¹⁰⁵ to consider land acquisition for park purposes,¹⁰⁶ and to address water scarcity.¹⁰⁷ Courts regularly (but not always) uphold moratoria that are limited to a reasonable period of time,¹⁰⁸ that are reasonably formulated to

94. For an explanation of the identification and use of ecosystem services to protect communities, especially in the context of climate change, see Keith H. Hirokawa et al., *Mapping Ecosystem Benefit Flows to Normalize Equity*, 54 ARIZ. ST. L.J. 819, 847–48 (2023).

95. Some state agencies are providing guidance to local governments on how to adopt effective moratoria to increase resilience. See, e.g., *Guidance for Local Governments*, N.Y. DEPT. OF STATE, <https://dos.ny.gov/guidance-local-governments> [<https://perma.cc/G773-GLUE>].

96. See, e.g., *Nolen v. Newtown Township*, 854 A.2d 705, 706–07 (Pa. Commw. Ct. 2004) (discussing a moratorium to create a comprehensive plan); *Droste v. Bd. of Cnty. Comm’rs*, 159 P.3d 601, 603 (Colo. 2007).

97. See *Associated Home Builders, Inc. v. City of Livermore*, 557 P.2d 473, 475 (Cal. 1976) (congestion in schools); *WCI Cmty., Inc. v. City of Coral Springs*, 885 So. 2d 912, 915 (Fla. Dist. Ct. App. 2004) (noting the purpose of the ordinance at hand was “[t]o enable the city to undertake a thorough analysis of the Comprehensive Plan and the residential development regulations for RC & RM zoning districts including, but not limited to the impact of said development on parks, recreation and open space, the availability of infrastructure and accessibility of emergency and public service vehicular traffic and public safety and public facilities”).

98. *Bellingham, Wash.*, Emergency Ordinance No. 2020-03-006 (2020) (enacting a moratorium on single-family detached dwellings to plan for greater housing diversity).

99. *Edgewood, Wash.*, Ordinance No. 19-0547 (2019) (enacting a moratorium on residential development to prevent loss of land left for commercial development).

100. *Belle Harbor Realty Corp. v. Kerr*, 323 N.E.2d 697, 698 (N.Y. 1974).

101. See, e.g., *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg’l Plan. Agency*, 535 U.S. 302, 306 (2002) (discussing pollution in Lake Tahoe).

102. See, e.g., *Ecogen, LLC v. Town of Italy*, 438 F. Supp. 2d 149, 152–53 (W.D.N.Y. 2006) (discussing a moratorium preventing wind energy development).

103. *Sun Ridge Dev., Inc. v. City of Cheyenne*, 787 P.2d 583, 584, 586–87 (Wyo. 1990).

104. CLARK COUNTY, WASH. CODE § 40.260.080(A)(1) (2023).

105. *City of Dallas v. Crownrich*, 506 S.W.2d 654, 655–56 (Tex. App. 1974).

106. *Santa Fe Vill. Venture v. City of Albuquerque*, 914 F. Supp. 478, 480 (D.N.M. 1995) (discussing a moratorium to allow Congress to consider creating the Petroglyph National Monument).

107. See, e.g., *Marin Mun. Water Dist. v. KG Land Cal. Corp.*, 235 Cal. App. 3d 1652, 1657 (1991) (discussing a moratorium issued in connection with a community water shortage).

108. See, e.g., *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg’l Plan. Agency*, 535 U.S.

advance the stated public interest,¹⁰⁹ and that result in actual planning or construction.¹¹⁰

In the context of climate change, the danger associated with planning activities that respond to new or pressing challenges is the “race of diligence,” the idea that upon notice of the pendency of new land use planning or proposal of a new development control ordinance, property owners will literally race to secure permits and build before being prevented from doing so. The idea of the race of diligence is attributed to the early Virginia case of *Downham v. City Council of Alexandria*, in which the court stated:

[I]t seems to the court that it would be a rather strict application of the law to hold that a city, pending the necessary preliminaries and hearings incident to proper decisions upon the adoption and the terms of a zoning ordinance, cannot, in the interim, take reasonable measures temporarily to protect the public interest and welfare until an ordinance is finally adopted. Otherwise, any movement by the governing body of a city to zone would, no doubt, frequently precipitate a race of diligence between property owners, and the adoption later of the zoning ordinance would in many instances be without effect to protect residential communities—*like locking the stable after the horse is stolen*.¹¹¹

Likewise, in *Tahoe-Sierra*, the Supreme Court recognized that, in the absence of temporary controls pending the outcome of an investigation of the public need for regulations, “landowners will have incentives to develop their property quickly before a comprehensive plan can be enacted, thereby fostering inefficient and ill-conceived growth.”¹¹² The fear is that landowners will rush to develop to beat the clock on new laws and, in the process, defeat the purposes of the new laws.¹¹³

In *Tahoe-Sierra*, the Court noted that Lake Tahoe was widely recognized as a treasure: “Lake Tahoe is ‘uniquely beautiful,’ that President

302, 341–42 (2002) (“[A]ny moratorium that lasts for more than one year should be viewed with special skepticism.”).

109. See, e.g., *Ecogen, LLC v. Town of Italy*, 438 F. Supp. 2d 149, 158 (W.D.N.Y. 2006) (refusing to enjoin a moratorium on wind energy development that was applied to substations, even though the substations had minimal impacts on the aesthetic purpose of the moratorium).

110. See, e.g., *Belle Harbor Realty Corp. v. Kerr*, 323 N.E.2d 697, 698 (N.Y. 1974).

111. *Downham v. City Council of Alexandria*, 58 F.2d 784, 788 (E.D. Va. 1932) (emphasis added).

112. *Tahoe-Sierra Pres. Council, Inc.*, 535 U.S. at 339.

113. As the Court noted, the Compact itself identified this challenge:

A finding in the 1980 Compact itself, which presumably was endorsed by all three legislative bodies that participated in its enactment, attests to the importance of that concern. (“The legislatures of the States of California and Nevada find that in order to make effective the regional plan as revised by the agency, it is necessary to halt temporarily works of development in the region which might otherwise absorb the entire capability of the region for further development or direct it out of harmony with the ultimate plan”).

Id. (quoting *Tahoe Reg'l Plan. Compact*, Pub. L. 96-551, 94 Stat. 3233, 3243 (1980)).

Clinton was right to call it a ‘national treasure that must be protected and preserved,’ and that Mark Twain aptly described the clarity of its waters as ‘not *merely* transparent, but dazzlingly, brilliantly so.’”¹¹⁴ Unfortunately, the beauty of the lake attracted many to the area, and development that accommodated the population influx increased the amount of impervious surfaces in the region, increasing unmitigated stormwater runoff into the lake and causing increased nutrient loading.¹¹⁵ The result was a threat to the characteristics of the lake that made it attractive. The Court noted:

Lake Tahoe’s exceptional clarity is attributed to the absence of algae that obscures the waters of most other lakes. Historically, the lack of nitrogen and phosphorous, which nourish the growth of algae, has ensured the transparency of its waters. Unfortunately, the lake’s pristine state has deteriorated rapidly over the past 40 years; increased land development in the Lake Tahoe Basin (Basin) has threatened the “noble sheet of blue water” beloved by Twain and countless others. As the District Court found, “[d]ramatic decreases in clarity first began to be noted in the late 1950’s/early 1960’s, shortly after development at the lake began in earnest.” The lake’s unsurpassed beauty, it seems, is the wellspring of its undoing.¹¹⁶

To control the impacts of development, participating state and regional governmental entities formed the Tahoe Regional Planning Agency (“TRPA”) (under the Tahoe Regional Planning Compact) and tasked it with “develop[ing] regional ‘environmental threshold carrying capacities’—a term that embraced ‘standards for air quality, water quality, soil conservation, vegetation preservation and noise’” within an identified timeframe.¹¹⁷ However, early into the planning process, the TRPA realized more time was needed to formulate an effective plan.¹¹⁸ In a series of acts that reflected the complexity of the planning goals, the TRPA adopted multiple moratoria on new development that would remain in effect until the plan was finalized—which amounted to a total of 32 months.¹¹⁹

While rejecting the notion that *any* temporary deprivation of use constitutes a regulatory taking,¹²⁰ the Court was reminded that “[a]s Justice Holmes warned in *Mahon*, ‘[g]overnment hardly could go on if to some extent values incident to property could not be diminished without paying for every such change in the general law.’”¹²¹ Indeed, the Court

114. *Id.* at 307 (quoting *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg’l Plan. Agency*, 34 F. Supp. 2d 1226, 1230 (Nev. 1999)).

115. *Id.* at 308.

116. *Id.* at 307 (alteration in original) (citation omitted).

117. *Id.* at 310 (quoting *Tahoe Reg’l Plan. Compact*, Pub. L. 96-551, 94 Stat. 3235, 3239 (1980)).

118. *Id.* at 311.

119. *Id.* at 311–12.

120. *Id.* at 337.

121. *Id.* at 335 (quoting *Pa. Coal Co. v. Mahon*, 260 U.S. 393, 413 (1922)).

noted, "[a] rule that required compensation for every delay in the use of property would render routine government processes prohibitively expensive or encourage hasty decisionmaking."¹²²

The Court observed that there was no evidence the TRPA was acting in bad faith or otherwise trying to avoid engaging in considerate planning.¹²³ Rather, the Court noted that there is an "interest in facilitating informed decisionmaking by regulatory agencies . . ."¹²⁴ The moratorium was a tool designed and used for that very purpose. As the Court stated:

Unlike the "extraordinary circumstance" in which the government deprives a property owner of all economic use, moratoria . . . are used widely among land-use planners to preserve the status quo while formulating a more permanent development strategy. In fact, the consensus in the planning community appears to be that moratoria, or "interim development controls" as they are often called, are an essential tool of successful development.¹²⁵

Given the context in which local governments have relied on moratoria, including the purposes for which moratoria are effective, and the need to engage in land-use planning and infrastructure repair, the climate moratorium will be an effective tool in the adaptation toolbox.

A. *The Mechanics of Moratoria*

A preliminary judicial inquiry involves whether the local government has the authority to adopt a moratorium. In some states, moratorium authority is often premised on home rule charters;¹²⁶ specific enabling legislation that either includes the power to adopt interim measures¹²⁷ or specific limitations on the use of moratoria.¹²⁸ However, where local governments act in the absence of specific statutory authority (or beyond express authority), courts have often found that a statutory scheme may imply the authority to adopt a moratorium under either planning and zoning enabling authority¹²⁹ or pursuant to the more extensive powers

122. *Id.*

123. *Id.* at 334.

124. *Id.* at 339.

125. *Id.* at 337-38 (citations omitted) (quoting *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1017 (1992)).

126. *See, e.g., Fletcher v. Porter*, 21 Cal. Rptr. 452, 454 (Dist. Ct. App. 1962).

127. *See, e.g., WASH. REV. CODE* § 36.70.790 (1963).

128. *See* N.J. STAT. § 40:55D-90 (1975); OR. REV. STAT. § 197.520(1) (1980).

129. *See, e.g., Brazos Land, Inc. v. Bd. of Cnty. Comm'rs*, 848 P.2d 1095, 1101 (N.M. Ct. App. 1993); *Almquist v. Town of Marshan*, 245 N.W.2d 819, 825 (Minn. 1976); *Schoeller v. Bd. of Cnty. Comm'rs*, 568 P.2d 869, 878 (Wyo. 1977). Although many moratoria cases involve delays in land use development to facilitate efforts to engage in local land use planning, there seems to be no basis for distinguishing between emergency planning needs and stop-gap needs for consideration of floodplain development regulations, economic development, or historic structures. *See, e.g., Woodbury Place Partners v. City of Woodbury*, 492 N.W.2d 258, 262 (Minn. Ct. App. 1992).

authorized under the general police power.¹³⁰ Although most moratoria are prompted by the consideration of jurisdiction-wide planning needs, some moratoria are upheld even where they are in response to a specific development proposal.¹³¹ Hence, in some cases, courts have even been willing to uphold the denial of a single building permit where the approval would be contrary to a pending new zoning ordinance, despite the proposed use being in compliance with the existing ordinance.¹³²

Where the court does find authority to adopt a moratorium, local governments may be subject to procedural requirements that can slow down the regulatory process.¹³³ Most land use control ordinances are subject to public notice and hearing requirements, and given the crises that often surround the use of moratoria, local governments often move quickly to adopt them.¹³⁴ In some cases, particularly where local government is unable to demonstrate exigency, courts have invalidated hastily-approved moratoria.¹³⁵ However, as further discussed below, many courts are willing to uphold an interim measure adopted without notice or a public hearing,¹³⁶ particularly where the moratorium responded to an emergency circumstance.¹³⁷

130. See, e.g., *Collura v. Town of Arlington*, 329 N.E.2d 733, 736–37 (Mass. 1975) (finding implied authority to adopt moratoria in the broad delegation of police power to local governments and in-home rule provisions of the state constitution); *Almquist*, 245 N.W.2d at 825 (finding that Municipal Planning Act provided implied authority to adopt temporary measures); *Rubin v. McAlevey*, 282 N.Y.S.2d 564, 568 (Sup. Ct. 1967), *aff'd*, 288 N.Y.S.2d 519 (App. Div. 1968) (upholding under enabling act interim ordinances that controlled growth from overtaking infrastructure). In contrast, some state courts have invalidated moratoria in the absence of express statutory authority. See, e.g., *Naylor v. Township of Hellam*, 773 A.2d 770, 777 (Pa. 2001); *Schrader v. Guilford Plan. & Zoning Comm'n*, 418 A.2d 93, 94 (Conn. Super. Ct. 1980); *Bd. of Supervisors v. Horne*, 215 S.E.2d 453, 459 (Va. 1975).

131. See *Almquist*, 245 N.W.2d at 825–26 (upholding interim control even when done in response to a specific development proposal, where a planning process would be the most effective response).

132. *A.J. Aberman, Inc. v. City of New Kensington*, 105 A.2d 586, 589–90 (Pa. 1954); *Hunter v. Adams*, 4 Cal. Rptr. 776, 784 (Ct. App. 1960); *Russian Hill Improvement Ass'n v. Bd. of Permit Appeals*, 423 P.2d 824, 832–33 (Cal. 1967).

133. See, e.g., *City of Sanibel v. Buntrock*, 409 So. 2d 1073, 1075 (Fla. Dist. Ct. App. 1981) (finding that notice and hearing requirements in state zoning enabling laws applied to adoption of moratoria in the absence of an emergency); *Matson v. Clark Cnty. Bd. of Comm'rs*, 904 P.2d 317, 320 (Wash. Ct. App. 1995) (noting that to make sure interim zoning efforts are effective, they “must not be subject to time-consuming notice and hearing requirements applicable to ordinary zoning”).

134. See *Buntrock*, 409 So. 2d at 1074–75.

135. See e.g., *Montana v. Miller*, 545 P.2d 660, 662 (Mont. 1976) (stating that an interim ordinance was null and void for failure to comply with notice and hearing requirements).

136. See, e.g., *Duncanson v. Bd. of Supervisors*, 551 N.W.2d 248, 250 (Minn. Ct. App. 1996) (“[N]o notice is required when an interim ordinance is enacted.”).

137. See *Metro Realty v. Cnty. of El Dorado*, 222 Cal. App. 2d 508, 517–19 (Dist. Ct. App. 1963) (stating that no notice was required before adopting an emergency measure for the purpose of developing a water development and conservation plan); *Jablinske v. Snohomish Cnty.*, 626 P.2d 543, 545–46 (Wash. Ct. App. 1981) (finding that emergency measures intended to preserve the status quo during comprehensive plan process were not subject to notice and hearing requirements).

A third requirement, which often consumes judicial review of moratoria, focuses on the duration of the development delay. Where the length of a moratorium is not statutorily limited, courts will typically uphold moratoria that are limited to a "reasonable" delay.¹³⁸ As the court noted in *Deal Gardens, Inc. v. Board of Trustees*:

Although the municipality may adopt a "stop gap" zoning ordinance, which if not temporary might be considered unconstitutional, such power is strictly limited and must be exercised with great caution. One of the more dangerous aspects of this type of legislation, arises from the damage which may result if there is no restriction of the period of time during which a restraint against some land use is permitted to continue. Plainly there must be some terminal point. It is impossible to establish an inflexible rule applicable to every case. Each situation must be assayed in its own particular factual setting to ascertain whether the elapsed time during which the ordinance has been in effect is reasonable.¹³⁹

There are a variety of factors that are relevant to reasonableness, including the complexity of the public welfare threat to be studied, whether the local government is pursuing a solution in good faith, and the burden borne by the property owners.¹⁴⁰ Courts have upheld delays that could have extended an entire generation (18 years) when designed as an effective growth-control approach.¹⁴¹ In many of these cases, courts are willing to display extraordinary deference to local legislatures that are, in good faith, responding to a threat to human health and safety.¹⁴²

138. *Valley View Indus. Park v. City of Redmond*, 733 P.2d 182, 195-96 (Wash. 1987) (stating that time was a relevant factor justifying a delay in processing building permit applications, and here the delay did not exceed a reasonable period for issuance of a permit); *Gisler v. Deschutes Cnty.*, 945 P.2d 1051, 1055 (Or. Ct. App. 1997) (stating a delay of over a year was not excessive); *Guinnane v. City of S.F.*, 241 Cal. Rptr. 787, 791-92 (Ct. App. 1987), *cert. denied*, 488 U.S. 823 (1988) (stating that the delay was not excessive); see also Robert H. Freilich, *Time, Space, and Value in Inverse Condemnation: A Unified Theory for Partial Takings Analysis*, 24 U. Haw. L. Rev. 589, 592-94, 600-10 (2002) (reviewing cases involving the reasonableness of the duration of moratoria); Dwight H. Merriam & Gurdon H. Buck, *Smart Growth, Dumb Takings*, 29 Env't. L. Rep. 10746, 10751-53 (1999) (reviewing cases involving the reasonableness of the duration of moratoria).

139. *Deal Gardens, Inc. v. Bd. of Trustees*, 226 A.2d 607, 611 (N.J. 1967).

140. *Peacock v. Cnty. of Sacramento*, 77 Cal. Rptr. 391, 398 (Ct. App. 1969) (finding that a moratorium effectively lasting three years was reasonable time to study land use problems, but beyond that time would be considered a taking). In *Westwood Forest Estates, Inc. v. Village of South Nyack*, the court stated that a reasonable duration of a moratorium will be: (1) temporary, (2) limited to necessary improvements, and (3) not designed so that individual property owners shoulder the burdens instead of the community. 244 N.E.2d 700, 703 (N.Y. 1969). In *Westwood Forest*, the court invalidated the moratorium where the village did not suffer inadequate sewer capacity but instead had failed to provide adequate treatment of sewage effluent over a long period of time. *Id.* at 701-03. The court did not dispute the need to repair the problem but found that the village's refusal to allow one property owner to develop unfairly burdened the individual. *Id.* at 702.

141. *Golden v. Plan. Bd.*, 285 N.E.2d 291, 304-05 (N.Y. 1972).

142. As the court noted in *Capture Realty*, "[a]lthough this case now involves a moratorium for flood alleviation construction, there is no rational basis for holding that

Hence, on remand in *First English Evangelical Lutheran Church v. County of Los Angeles*, for instance, the California court found that “[t]he study was completed and a report containing recommended restrictions submitted in less than two years. County decision-makers took another six months to hold hearings, ponder and pass the somewhat less restrictive permanent ordinance.”¹⁴³ Under such circumstances, the County did not “owe any of these landowners a duty to cut any corners in the study or take any risks that anything might be overlooked which could produce a permanent ordinance less restrictive than public safety concerns demanded.”¹⁴⁴

An additional requirement considered by courts is whether the local government is actually making use of the development delay to accomplish the purposes of the moratorium.¹⁴⁵ In *Wincamp Partnership, OTC v. Anne Arundel County*, the court was faced with an overtaxed sewage system and difficult choices about where, when, and how to update and expand the system.¹⁴⁶ Plaintiffs were owners (and financiers) of approximately 580 acres of undeveloped property in Anne Arundel County, Maryland.¹⁴⁷ Those properties were served by the county-operated Patuxent Wastewater Treatment Plant, which was engaged in a lengthy process of expansion to accommodate capacity needs that pre-existed the plaintiffs’ development proposals.¹⁴⁸ Then-recent amendments to the state’s subdivision laws prohibited approval of subdivisions that were not served by adequate sewer facilities.¹⁴⁹ After the plaintiffs were informed that the County would not approve their subdivision

a municipality may not provide sufficient breathing space in order to complete construction of such flood control projects where the health, safety and welfare (as well as property values) of the people in the municipality are involved.” *Cappture Realty Corp. v. Bd. of Adjustment*, 313 A.2d 624, 631 (N.J. Super. Ct. Law Div. 1973).

143. *First Eng. Evangelical Lutheran Church v. Cnty. of L.A.*, 258 Cal. Rptr. 893, 906 (1989) (considering a “temporary measure—in effect a total moratorium on any construction on First English’s property—while the County conducted a study to determine what uses and what structures, if any, could be permitted on this property consistent with considerations of safety”).

144. *Id.*

145. In general, municipalities or counties enacting moratoria must act on a rational basis and proceed in good faith. Hence, in *Wincamp Partnership, OTC v. Anne Arundel County*, state and local laws prohibited the issuance of building permits where the applicant could not show adequate sewer capacity. 458 F. Supp. 1009, 1012 (D. Md. 1978). The court deferred to the decision of the county, which had decided against immediately financing sewer improvements that would have allowed the development of plaintiff’s land, where the county illustrated good faith efforts to repair the deficiencies and acted rationally in adopting priorities for service to new users. *Id.* at 1029–30. In contrast, in *Charles v. Diamond*, the court remanded the case for consideration of whether the town’s ten-year delay in permitting to make improvements was unreasonable. 360 N.E.2d 1295, 1302 (N.Y. 1977).

146. *Wincamp P’ship, OTC*, 458 F. Supp. at 1012–16.

147. *Id.* at 1011.

148. *Id.*

149. *Id.* at 1012.

proposals until sewage capacity was secured, the plaintiffs sued, alleging a taking for failure to maintain adequate sewage capacity.¹⁵⁰

Against the challenges, the court found that the County's actions were "reasonably related to the public welfare in terms of geographical extent, duration and purpose."¹⁵¹ The court's reasonableness determination was based on findings that the County "is about to appropriate funds" for the sewer expansion, "has developed a plan . . . for attacking the water and sewerage problems occasioned by its rapid growth," and "[t]here is no evidence in the record that the County has been overly lax in implementing that plan though it would hardly seem to have acted as speedily as it might have."¹⁵² The court's conclusion illustrates the municipality's dire need to be able to adopt stop-gap and interim measures to protect the public welfare:

Municipalities must retain the authority to modify their policies with respect to community development, without having the burden of demonstrating that the consequences of change fall evenly upon interested parties. A contrary rule would prevent local government from reacting to changed conditions or from implementing alterations in municipal priorities.¹⁵³

Although moratorium requirements are construed in a wide variety of ways across jurisdictions, many courts recognize that moratoria can be an effective way to meet challenges before they grow into community problems. In the next section, we offer examples of successful moratoria that illustrate the tool's potential in addressing much-needed climate adaptation planning.

B. Use for Relevant Purposes: The Climate Emergency

As noted above, courts often defer to local governments when moratoria are adopted in response to an emergency. Notably, several states have adopted specific legislation that authorizes interim zoning ordinances but limits the exercise of that power to the diligent pursuit of solutions to identified emergencies. For instance, New Jersey authorizes moratoria "where the municipality demonstrates on the basis of a written opinion by a qualified health professional that a clear imminent danger to the health of the inhabitants of the municipality exists . . ."¹⁵⁴ Likewise, Minnesota law provides:

If a county is conducting or in good faith intends to conduct studies within a reasonable time, or has held or is holding a hearing for the purpose of considering a comprehensive plan or official controls

150. *Id.* at 1012, 1015.

151. *Id.* at 1029.

152. *Id.*

153. *Id.* at 1030 (quoting *City of Highland Park v. Train*, 374 F. Supp. 758, 773 (N.D. Ill. 1974), *aff'd*, 519 F.2d 681 (7th Cir. 1975)).

154. N.J. STAT. § 40:55D-90(b) (1975).

or an amendment, extension, or addition to either, or in the event new territory for which no zoning may have been adopted, may be annexed to a municipality, the board in order to protect the public health, safety, and general welfare may adopt as an emergency measure a temporary interim zoning map or temporary interim zoning ordinance, the purpose of which shall be to classify and regulate uses and related matters as constitutes the emergency. Such interim resolution shall be limited to one year from the date it becomes effective and to one year to renewal thereafter.¹⁵⁵

In some ways, requiring local governments to demonstrate an actual emergency has slowed the use of moratoria.¹⁵⁶ In the context of climate change, the question of whether an actual emergency exists is likely a moot point. Nonetheless, in addition to the water quality challenges discussed above in *Tahoe-Sierra*, it is worthwhile to consider a few examples of the types of emergencies that have justified moratoria in the past. These are exactly the challenges local governments will face in the coming decades.

First, moratoria have been used to facilitate sewer improvements intended to correct a deficiency.¹⁵⁷ In *Belle Harbor Realty Corp. v. Kerr*, the municipality was faced with an “already overloaded, overflowing, backing-up, antiquated sewer system.”¹⁵⁸ Under such circumstances, the court was less concerned with development delays than the good faith pursuit of repairs for the problem:

Consequently a municipality may not invoke its police powers solely as a pretext to assuage strident community opposition. To justify interference with the beneficial enjoyment of property the municipality must establish that it has acted in response to a dire necessity, that its action is reasonably calculated to alleviate or prevent the crisis condition, and that it is presently taking steps to rectify the problem. When the general police power is invoked under such circumstances it must be considered an emergency measure and is circumscribed by the exigencies of that emergency.¹⁵⁹

In *Belle Harbor*, the court upheld the revocation of a permit for construction of a nursing home where the sewer system was inadequate for

155. MINN. STAT. § 394.34 (1959); accord COLO. REV. STAT. § 30-28-121 (1963); ME. REV. STAT. tit. 30-A, § 4356 (1989).

156. See *N.J. Shore Builders Ass’n v. Mayor of Middletown*, 561 A.2d 319, 324 (N.J. Super. Ct. Law Div. 1989) (invalidating a six-month subdivision moratorium based on finding that the testimony about water availability did not meet the “clear imminent danger” standard).

157. See, e.g., *Est. of Scott v. Victoria Cnty.*, 778 S.W.2d 585, 591 (Tex. App. 1989) (“[T]he evidence in the instant case established that there was a crisis situation at the Aloe sewer plant. . . . The evidence conclusively established that the moratorium was necessary to prevent a further hazard to the health and safety of the public.”).

158. 323 N.E.2d 697, 699 (N.Y. 1974).

159. *Id.*

current use.¹⁶⁰ The court ordered a new proceeding to determine if the revocation was necessary to prevent health risk.

Likewise, moratoria have been employed to address flooding risks. In *Cappture Realty Corp. v. Board of Adjustment*, the court reviewed challenges to a moratorium that allowed a community time to consider flood control needs.¹⁶¹ The original ordinance stated:

WHEREAS, it is of immediate and vital importance that all construction in the flood prone and flood plain areas be prohibited for a reasonable time to enable the Borough of East Paterson to study and put into operation flood control plans and to study and adopt necessary amendments to its Zoning Ordinances and Building Code to prevent and alleviate flood conditions in such areas . . .¹⁶²

The moratorium was expressly limited to one year but then was extended for two additional years by successive ordinances.¹⁶³ Prior to the original moratorium ordinance, the County had retained an engineering firm to study the flood dangers from the relevant waterbody, Fleischer Brook.¹⁶⁴ In April or May 1972, the engineering report entitled "Flood Control Study, Fleischer Brook" was circulated to the affected municipalities.¹⁶⁵ Notably, because there were few undeveloped properties within the affected flood-prone area, the report recommended construction and engineering solutions rather than additional land use regulations to minimize flood risks.¹⁶⁶

In response to the argument that moratoria only provide time and space for local governments to make planning and zoning adjustments, rather than infrastructure improvements, the court found "no rational basis for holding that a municipality may not provide sufficient breathing space in order to complete construction of such flood control projects where the health, safety and welfare (as well as property values) of the people in the municipality are involved."¹⁶⁷ The court also reasoned that development without a reasonable, planned basis for floodplain development could raise liability concerns for a developer who, through construction, increases the amount of flood waters reaching other properties, and in any event, courts had increasingly recognized the propriety of moratoria to address "lack of adequate sewage treatment facilities or other health reasons."¹⁶⁸

160. *Id.* at 698-99.

161. *Cappture Realty Corp. v. Bd. of Adjustment*, 313 A.2d 624, 626 (N.J. Super. Ct. Law Div. 1973).

162. *Id.*

163. *Id.*

164. *Id.*

165. *Id.*

166. *Id.* at 627.

167. *Id.* at 631.

168. *Id.* at 631-32.

Third, moratoria have provided opportunities to find water to serve the community.¹⁶⁹ In *Metro Realty v. County of El Dorado*, El Dorado County was actively engaged in “studying a comprehensive county-wide water development and conservation plan to meet the needs of its growing population.”¹⁷⁰ The County adopted a moratorium to immediately prevent development in areas being considered for development as a reservoir.¹⁷¹ In upholding the moratorium, the court was “impressed” by the idea that the temporary development restrictions were “necessitated” by the need to address water scarcity in a county-wide water plan, “the execution of which would certainly be seriously impeded and might be completely blocked should subdivision developments be permitted to proceed willy-nilly during the plan’s formulation stages.”¹⁷²

As a final and more recent example, consider the state intervention in Petaluma, California, where the community was deeply engaged in climate emergency planning. Petaluma declared a climate emergency in 2019¹⁷³ and adopted a temporary ban on new gas station construction, followed by the creation of a Climate Action Commission¹⁷⁴ on the grounds that “restoring a safe and stable climate requires mobilization of all levels of government and society on a scale, scope, and speed not seen since World War Two.”¹⁷⁵ In preparation for a City Council meeting, the Climate Action Commission prepared the Recommended Actions for City Council and Staff.¹⁷⁶ Among other things, the Commission identified transportation as a problematic source of emissions and the dangers of sea level rise and storm surges as “unaccounted for” in their past planning efforts.¹⁷⁷ Included in the Recommended Actions was a pitch to coordinate planning with California Native peoples, adopt a Climate Emergency Framework, assess climate impacts by neighborhood and demographic groups, and establish and implement climate-action equity principles.¹⁷⁸ In addition, the Commission recommended: 1) a

169. See e.g., *Swanson v. Marin Mun. Water Dist.*, 128 Cal. Rptr. 485, 492–93 (Ct. App. 1976) (upholding a moratorium on new water service as reasonable, given a threatened water shortage, but recognizing a continuing obligation on the part of the district to “exert every reasonable effort to augment its available water supply in order to meet increasing demands”).

170. *Metro Realty v. Cnty. of El Dorado*, 35 Cal. Rptr. 480, 509 (Dist. Ct. App. 1963).

171. *Id.* at 512.

172. *Id.* at 515.

173. Petaluma City Council, Resol. No. 2019-055 (Cal. 2019).

174. Petaluma, Cal., Ordinance No. 2689 N.C.S. (2019).

175. Climate Action Commission, *Climate Action Commission Recommended Actions for City Council and Staff 12/10/20*, <https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fstorage.googleapis.com%2Fproudcity%2Fpetalumaca%2Fuploads%2F2021%2F01%2F20210111B-Climate-Action-Commission-Recommended-Actions-for-City-Council.docx&wdOrigin=BROWSELINK> [https://perma.cc/8FW2-Q387].

176. *Id.*

177. *Id.*

178. *Id.*

moratorium on City acquisition of fossil-fuel powered vehicles, 2) making permanent the moratorium on gas stations, and 3) a “temporary emergency moratorium on all riparian, vernal pool/wet meadow, wetland and floodplain development” pending environmental review and adoption of a Climate Adaptation and Resilience Plan.¹⁷⁹

With little fanfare, Petaluma reportedly became the first American city to impose a moratorium on the construction of new gasoline stations,¹⁸⁰ and perhaps the first city to impose a climate moratorium. However, the crux of this story lies in the Commission’s recommendations on halting development in wetlands and floodplains. In response to the Recommended Actions, California’s Department of Housing and Community Development (“HCD”) sent a comment to the City that strongly suggested that the HCD opposed the floodplain moratorium.¹⁸¹ HCD pointed out that the Emergency Framework “is largely void of consideration for increasing housing supply, choices and affordability or specific targets for lower-income households, special-needs populations or frontline and underserved communities.”¹⁸² HCD recommended that the City “harmonize[]” the recommended moratorium with the adopted housing goals unless the moratorium was intended to “protect against an imminent threat to the health and safety of persons.”¹⁸³ HCD further argued that California law did not permit the city to restrict housing development “until the City has submitted the ordinance and received approval from HCD.”¹⁸⁴ Finally, HCD threatened enforcement action.¹⁸⁵

Notably, the HCD letter recognizes that the agency’s leverage is found in the Housing Crisis Act of 2019,¹⁸⁶ which prohibits local governments from adopting development policies that limit housing development or limit population.¹⁸⁷ The HCD letter points out that the relevant provision limits the City’s authority to adopt or enforce moratoria “other than to specifically protect against an imminent threat to the health and safety of persons.”¹⁸⁸ The problem, in the context of climate change and its imminent and exacerbated impacts on vulnerable populations, is that where affordable housing is relegated to floodplains, a temporary loss of development opportunities in those areas should not qualify as a loss

179. *Id.*

180. Josh Marcus, *Inside the First Town in America to Ban Gas Stations*, INDEPENDENT (Jan. 18, 2022, 6:57 PM), <https://www.independent.co.uk/climate-change/news/petaluma-ban-gas-stations-california-b1995730.html> [https://perma.cc/6XPR-72N7].

181. Letter from Shannon West, Land Use & Plan. Unit Chief, Cal. Dep’t of Hous. and Cmty. Dev., to Peggy Flynn, Petaluma City Manager (Mar. 11, 2021) (hereinafter HCD Letter).

182. *Id.*

183. *Id.* (emphasis omitted) (quoting CAL. GOV’T CODE § 66300(b)(1)(B)(i)).

184. *Id.* (citing Gov’t § 66300(b)(1)(B)(ii)).

185. *Id.*

186. *Id.*

187. *Id.* (citing Gov’t § 66300(b)(1)(A)).

188. *Id.* (emphasis omitted) (quoting Gov’t § 66300(b)(1)(B)(i)).

of affordable housing opportunities; at best, preventing new affordable housing in the floodplain prevents the perpetuation of racial capitalism in the housing market.¹⁸⁹ Nobody, especially populations shouldering exacerbated vulnerabilities, should be forced to decide between living in flood-prone areas or living in unaffordable housing.

The Petaluma City Council ultimately adopted the Climate Emergency Framework in 2021¹⁹⁰ and ordered the integration of climate goals into its existing land use planning policies with the goal of achieving carbon neutrality by 2030.¹⁹¹ The City did not deliberate on or adopt the recommended floodplain development moratorium. This was a missed opportunity.

To be clear, moratoria are not (in their currently used iteration) novel legal tools. Rather, the moratorium is a tried-and-true legal tool that assists governments who find their communities unprepared for complex challenges and who seek time to think through how to adequately address these challenges as they make planning decisions. Yet, the outer edges of the use of moratoria have yet to be discovered. Until now. Now, we argue that we need to add the moratorium to our adaptation toolbox; we need the climate moratorium. The climate moratorium provides an opportunity for climate preparedness that is at once timely and effective and facilitates something more than incremental planning and progress.

IV. ADAPTATION PLANNING DURING THE MORATORIUM

Given the foregoing, the climate moratorium provides a novel and potentially powerful tool for stimulating new and more effective systems of climate change governance, especially climate adaptation planning. By now, climate adaptation is a topic familiar to most communities, even as climate adaptation planning remains fragmented and inchoate nationwide. As defined by the IPCC, adaptation includes “adjustment[s] in natural or human systems in response to actual or expected climatic stimuli or their effects, which moderates harm or exploits beneficial opportunities.”¹⁹² Simply put, “[a]daptation is used broadly to refer to all the varied efforts undertaken at multiple levels of governance to prepare for climate change, whether the intent is to maximize opportunities or minimize risks associated with climate change.”¹⁹³ Adapting to

189. See generally Carmen G. Gonzalez & Athena D. Mutua, *Mapping Racial Capitalism: Implications for Law*, 2 J.L. & POL. ECON. 127 (2022), <https://doi.org/10.5070/LP62258224> (defining and explaining the concept of racial capitalism).

190. CITY OF PETALUMA, CAL., CLIMATE EMERGENCY FRAMEWORK 16 (2021).

191. *Id.* at 11.

192. Intergovernmental Panel on Climate Change [IPCC], *Climate Change 2007: Adaptation and Vulnerability*, at 6 (2007).

193. See DANIEL A. FARBER & CINNAMON P. CARLARNE, CLIMATE CHANGE LAW 224 (2022).

climate change is a particularly challenging planning process because of all the different physical, social, political, and economic dimensions it requires us to consider. As Neil Adger suggests, adaptation planning “involves cascading decisions across a landscape made up of agents from individuals, firms and civil society, to public bodies and governments at local, regional and national scales, and international agencies.”¹⁹⁴ Simply put, adaption planning is a complex planning process.

As explored in depth in the expansive climate adaptation legal literature,¹⁹⁵ three basic strategies have come to dominate adaptation policy planning. According to J.B. Ruhl, these include strategies to resist climate impacts—e.g., through construction of a sea wall to protect the existing built environment; strategies to increase resilience to climate impacts such as changing the form and function of the built environment along the coast to absorb and recover from flooding impacts; and strategies to retreat from the impacts by moving away, such as by shifting the built environment away from the coast.¹⁹⁶ We have seen instances of all these strategies employed in communities nationwide. But, to date, adaptation planning remains not only uneven across communities but also often ill-informed because good, equitable, and effective climate adaptation planning requires careful and engaged efforts that consider, for example, risks and vulnerabilities, ecosystem services mapping, and much more.¹⁹⁷ Again, one of the main impediments to good adaptation planning is time. Hence the need for a climate moratorium.

As a framing example, we return to coastal communities. In coastal communities, the climate moratorium can be used to advance climate adaptation planning that could slow down maladapted development proposals (such as coastal development that fails to consider sea level rise, zoning that allows building in high-risk fire zones, or development patterns that lead to climate gentrification). It can also be used to facilitate community risk and vulnerability assessments, undertake natural resource inventories, and engage in climate equity assessments—all of which are essential to comprehensive climate adaptation planning. Here, we briefly discuss how a climate moratorium creates space for better planning in each of these contexts with the goal of beginning the

194. W. Neil Adger et al., *Successful Adaptation to Climate Change Across Scales*, 15 GLOB. ENV'T. CHANGE 77, 79 (2005), <https://doi.org/10.1016/j.gloenvcha.2004.12.005>.

195. See, e.g., MICHAEL B. GERRARD & KATRINA FISCHER KUH, *THE LAW OF ADAPTATION TO CLIMATE CHANGE: U.S. AND INTERNATIONAL ASPECTS* 3 (Michael B. Gerrard & Katrina Fischer Kuh eds., 2012); J.B. Ruhl, *Climate Adaptation Law*, in GLOBAL CLIMATE CHANGE AND U.S. LAW 611–12 (Michael B. Gerrard et al., eds., 3d ed. 2023); Robert L. Glicksman, *Climate Change Adaptation: A Collective Action Perspective on Federalism Considerations*, 40 ENV'T L. 1159, 1159 (2010).

196. Ruhl & Craig, *supra* note 26, at 231–46.

197. For a discussion of the slow pace and challenges associated with adaptation planning in the United States, see Keith H. Hirokawa & Cinnamon P. Carlarne, Comment, *Disputing Dominance*, 35 GEO. ENV'T L. REV. (forthcoming 2023), <http://dx.doi.org/10.2139/ssrn.4249025>.

process of mapping out the multitude of opportunities and benefits the climate moratorium creates.

A. *Vulnerability Assessments*

Risk assessments evaluate a community's vulnerability, exposure, sensitivity, and adaptive capacity to climate change. Of particular relevance here are vulnerability assessments. Vulnerability is the propensity or predisposition of a community to be adversely impacted.¹⁹⁸ A community's vulnerability to climate change can be determined by weighing its exposure and sensitivity to the hazards of climate change against its ability to cope, adapt, or recover from climate impacts (that is, its adaptive capacity).¹⁹⁹ Higher exposure and sensitivity result in greater vulnerability, while higher adaptive capacity corresponds with lower vulnerability.²⁰⁰

Understanding a community's vulnerability to climate change is essential to climate adaptation planning—both in the short- and long-term. This is particularly important because past practice suggests that planning decisions often focus on protecting physical assets and infrastructure at risk, especially high-value properties (and wealthier communities), as opposed to risks posted to particular communities—especially historically excluded communities. This all too often leads to planning decisions that not only disregard but also often exacerbate the already inequitable distribution of climate risks that vulnerable communities experience.²⁰¹

As just one example, an assessment of sea level rise along the Atlantic and Gulf coasts found that 22% of the most socially vulnerable

198. W. Neil Adger, *Vulnerability*, 16 GLOB. ENV'T CHANGE 268, 269 (2006), <https://doi.org/10.1016/j.gloenvcha.2006.02.006>. For examples of different tools for mapping and assessing vulnerability, see UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE, ASSESSING CLIMATE CHANGE IMPACTS AND VULNERABILITY: MAKING INFORMED ADAPTATION DECISIONS (2011); JONATHAN COOK ET AL., U.S. AGENCY INT'L DEV., CLIMATE VULNERABILITY ASSESSMENT: AN ANNEX TO THE USAID CLIMATE-RESILIENT DEVELOPMENT FRAMEWORK 2-4 (2016); JACOB ASSA & RIAD MEDDEB, UNITED NATIONS DEV. PROGRAMME, TOWARDS A MULTIDIMENSIONAL VULNERABILITY INDEX 2, 14 (2021); KATHARINE VINCENT, UNITED NATIONS DEV. PROGRAMME, MAPPING CLIMATE CHANGE VULNERABILITY AND IMPACT SCENARIOS 3-5 (2010); UNITED NATIONS HIGH COMM'R FOR REFUGEES & INT'L DET. COAL., VULNERABILITY SCREENING TOOL: IDENTIFYING AND ADDRESSING VULNERABILITY: A TOOL FOR ASYLUM AND MIGRATION SYSTEMS 1-6 (2016).

199. Adaptive capacity is the ability or potential of a system to respond successfully to climate variability and change, and includes adjustments in both behavior and in resources and technologies. The presence of adaptive capacity has been shown to be a necessary condition for the design and implementation of effective adaptation strategies to reduce the likelihood and the magnitude of harmful outcomes resulting from climate change. Adaptive capacity also enables sectors and institutions to take advantage of opportunities or benefits from climate change, such as a longer growing season or increased potential for tourism. IPCC, *supra* note 192, at 21, 28, 335-36, 344.

200. For an excellent discussion of adaptation law in the context of efforts to increase the resilience and adaptive capacity of socio-ecological systems, see Robin Kundis Craig, "Stationarity Is Dead"—Long Live Transformation: Five Principles for Climate Change Adaptation Law, 34 HARV. ENV'T L. REV. 9, 10-18 (2010).

201. See Hirokawa & Carlarne, *supra* note 197, at 21-23.

populations were at risk of having their property inundated.²⁰² The study also found that those areas with high levels of social vulnerability are more likely to be abandoned than areas with low social vulnerability scores.²⁰³

In coastal communities, vulnerability assessments provide critical tools for determining the neighborhoods or segments of the population that will be most affected by climate change, as well as understanding why those vulnerabilities exist. Used properly, vulnerability assessments provide information that can be used to understand and respond to short-term risks, as well as to encourage long-term adaptation planning that is more informed, inclusive, and equitable.

But vulnerability assessments take time—something that local governments often lack—and require system-wide thinking—something local governments rarely have time to do. A climate moratorium creates space for communities to undertake vulnerability assessments. Very simply, the climate moratorium creates planning space to complete the vulnerability assessments that are essential to facilitating climate planning and minimizing the climate emergency.

B. Infrastructure Inventories

Second, a climate moratorium would allow communities to undertake inventory assessments—including, for example, natural resource inventories and inventories of relevant grey and green infrastructure. Grey infrastructure—including water and sewer infrastructure, transportation systems, and other critical built facilities—is notoriously outdated and often inadequate to serve even current needs, much less climate-exacerbated needs.²⁰⁴ Here, we focus on one particularly

202. Jeremy Martinich et al., *Risks of Sea Level Rise to Disadvantaged Communities in the United States*, 18 MITIGATION & ADAPTATION STRATEGIES FOR GLOB. CHANGE 169, 175 tbl.1, 177 (2012), <https://doi.org/10.1007/s11027-011-9356-0>.

203. *Id.* at 178.

204. Recognizing that “investment in infrastructure underpins modern economic growth,” the Global Commission on the Economy and Climate reports that the carbon-intensive economy results in significant infrastructure needs: “The infrastructure requirements for a high-carbon economy, across transport, energy, water systems and cities, are estimated at around US\$90 trillion, or an average of US\$6 trillion per year over the next 15 years.” GLOB. COMM’N ON ECON. AND CLIMATE, BETTER GROWTH, BETTER CLIMATE: THE NEW CLIMATE ECONOMY REPORT 7 (2014). Likewise, in the 2021 Infrastructure Report Card, ASCE reports that our infrastructure is in dire circumstances for transportation (“Unfortunately, the growing wear and tear to our nation’s roads has left 43% of our public roadways in poor or mediocre condition, a number that has remained stagnant over the past several years.” AM. SOC’Y OF CIV. ENG’RS, 2021 REPORT CARD FOR AMERICA’S INFRASTRUCTURE 107 (2021)), wastewater (“The majority of the nation’s [wastewater treatment plants] are designed with an average lifespan of 40 to 50 years, so the systems that were constructed in the 1970s, around the passing of the Clean Water Act in 1972, are reaching the end of their service lives.” *Id.* at 152), and water provision (“In 2019, the total capital spending on water infrastructure at all levels was approximately \$48 billion, while capital investment needs were \$129 billion, creating an \$81 billion gap.” *Id.* at 156). Moreover, much of the existing infrastructure

helpful type of inventory that a climate moratorium would enable—an ecosystem services inventory.

Ecosystem services embody the idea that functioning ecosystems are critical to both human resiliency and economic wealth. Ecosystem services research explores how ecosystems provide “basic life support for human and animal populations and are the source of spiritual, aesthetic, and other human experiences that are valued in many ways by many people,”²⁰⁵ as well as how those services have substantial economic worth.²⁰⁶ Research on ecosystem services has produced a substantial body of literature on ways to understand the value provided by these services in economic terms, the policies that might be used to guide ecosystem services’ legal tools, and even regulatory mechanisms that might effectively capture the value of ecosystems as we continue to build on the land. In short, ecosystem service research attempts to make the value of ecosystems visible, in part by translating that value into monetary terms.

Ecosystem services research has been put to many good uses. It has been used as a communication tool and as a tool for creating markets for the benefits ecosystems provide.²⁰⁷ However, the research has been underutilized to identify the social dimensions of ecosystem services.²⁰⁸ This gap impedes efforts to understand and address the distribution of power and resources in an ecosystem services context.²⁰⁹ Moreover, in common with many other environmental challenges, ecosystem services research is often difficult to understand by all stakeholders: those who control the flow of ecosystem services, those who need to receive ecosystem benefits, and those who govern.²¹⁰ One response to these challenges is to inventory ecosystem services and map the flows of these services—see where the services exist, who controls the availability of

lies in flood-prone areas and hence is susceptible to climate change impacts. *Id.* at 59, 157.

205. SCIENCE ADVISORY BOARD, EPA, VALUING THE PROTECTION OF ECOLOGICAL SYSTEMS AND SERVICES 8 (2009).

206. See, e.g., David C. Holzman, *Accounting for Nature’s Benefits: The Dollar Value of Ecosystem Services*, 120 ENV’T HEALTH PERSPECTIVES A153 (2012), <https://doi.org/10.1289/ehp.120-a152>.

207. See S.A. Bekessy et al., *Ask Not What Nature Can Do for You: A Critique of Ecosystem Services as a Communication Strategy*, 224 BIOLOGICAL CONSERVATION 71, 71 (2018), <https://doi.org/10.1016/j.biocon.2018.05.017>; Sarah Schomers & Bettina Matzdorf, *Payments for Ecosystem Services: A Review and Comparison of Developing and Industrialized Countries*, 6 ECOSYSTEM SERVS. 16, 16 (2013), <https://dx.doi.org/10.1016/j.ecoser.2013.01.002>.

208. See Brendan Fisher et al., *Defining and Classifying Ecosystem Services for Decision Making*, 68 ECOLOGICAL ECON. 643, 645 (2009) (“[T]he social value of the benefits that ecosystems provide could potentially be enumerated so that society can make more informed policy and management decisions.”).

209. See Hirokawa et al., *supra* note 94, at 821.

210. *Id.*

those services, and who benefits from those services.²¹¹ This is known as ecosystem benefit flows mapping.

Mapping the flows of ecosystem benefits between and among geographically distinct communities allows us to identify and integrate social dimensions into ecosystem services mapping while also creating a more inclusive and accessible tool for communities to use in planning processes.²¹² Mapping ecosystem benefit flows changes how we think about the distribution of ecosystem services, the control of ecosystem services, and the power structures that shape past and future ecosystem services use.²¹³ Benefit flows mapping thus not only makes the technical languages of ecology and economics more visually accessible, but also contextualizes ecosystem services within the power structures that shape who controls and benefits from these services.²¹⁴ It changes how we see and think about ecosystem services and, inevitably, how we think about planning decisions.

In the climate change context, this process—mapping ecosystem benefit flows—is essential to understanding risks and opportunities and the distribution of those risks and opportunities in climate-affected communities. However, to engage in benefit flows mapping, a community needs the time to assess ecosystem services supply and to undertake a socio-economic assessment of these services. This takes time. Time that generally seems impossible to capture, but which a climate moratorium would offer.

C. Climate Equity Planning

Ultimately, good adaptation planning mandates our third category of planning, climate equity planning. As noted in Petaluma's Climate Action Framework, "Climate change is expected to create a series of shocks and burdens that Petaluma's underserved communities will experience more negatively due to their limited options and resources for avoiding, recovering from, or adapting to the damage caused by climate change."²¹⁵ Petaluma's vision mandates policies centered on inclusion: "Everyone in Petaluma deserves the right to experience a healthy, sustainable future."²¹⁶

211. See Karrigan Börk et al., *Adapting to a 4°C World*, 52 ENV'T L. REP. 10211, 10227 (2022).

212. See Jennifer Hauck et al., "Maps Have an Air of Authority": Potential Benefits and Challenges of Ecosystem Service Maps at Different Levels of Decision Making, 4 ECOSYSTEM SERVS. 25, 27 (2013), <https://doi.org/10.1016/j.ecoser.2012.11.003>.

213. See *id.* at 29–31.

214. See *id.* at 27–28.

215. City of Petaluma, *supra* note 190, at 13. The Climate Action Framework defines "frontline and underserved communities" to include "low-income residents, residents with disabilities, and seniors, indigenous peoples, communities of color, immigrants, as well as residents experiencing food insecurity and lack of shelter." *Id.*

216. *Id.*

Petaluma's underserved communities are indeed vulnerable to climate change, but their vulnerabilities are illustrative of a greater problem. Indeed, the scale and breadth of climate change impacts in communities across the United States are profound. But, the impacts of climatic changes will neither be uniform nor constant.²¹⁷ Rather, massive variability in topography, population, culture, political stability, and socio-economic systems will render these seemingly shared challenges highly disparate across different coastal communities and for the individuals living within these communities.²¹⁸ The risks will be unevenly distributed, and the effects of those risks will be differently experienced even among members of the same communities. That is, although climate impacts will be ubiquitous, there will be no common experience of climate change. Individuals and communities will face different risks at different times and in different ways. And those communities that are already vulnerable will be hardest hit unless existing forms of power and vulnerability are exposed and disrupted. Many of those people who are most vulnerable to the risks of climate change include Indigenous people, low-income communities, communities of color, as well as the elderly.²¹⁹ Right now, the voices and needs of these people are underrepresented in climate adaptation planning, and existing power structures will keep it that way absent intentional efforts to disrupt those structures. Climate equity planning is one tool to begin to erode climate dominance and advance more inclusive and, ultimately, effective climate planning.

In this context, the climate moratorium creates room for equity planning and could enable planning along the lines of what we are starting to see in certain forward-looking communities. As just one example, in Providence, Rhode Island, the City Council in coordination with local planners, residents, interest groups, and consultants, have engaged in some of the most progressive and accountable climate equity planning nationwide.²²⁰ This planning includes creating a *Climate Justice Plan* that develops an inclusive, collaborative framework for adaptation planning that advances an initiative to “[p]artner with the [Racial and Environmental Justice Committee] and other frontline communities to ensure those most impacted by the impacts of climate change are centered in the process of designing and implementing a plan to prepare the city for the impacts of climate change.”²²¹ In the *Climate Justice Plan*, Providence identifies and seeks to respond to the same types of climate impacts that threaten many other U.S. coastal communities: excessive heat, flooding, coastal storms, sea-level rise and other related

217. See, e.g., FOURTH NATIONAL CLIMATE ASSESSMENT, *supra* note 20, at 14–18.

218. See Hirokawa & Carlarne, *supra* note 197, at 1.

219. *Id.* at 2.

220. For a full discussion of the equity-oriented planning efforts in Providence, see Hirokawa & Carlarne, *supra* note 197.

221. CITY OF PROVIDENCE, CLIMATE JUSTICE PLAN 35 (2019) (emphasis omitted).

climate change impacts. In contrast to most other coastal communities, however, Providence centers its planning process on “those who are most impacted by the climate crisis,”²²² not as mere stakeholders, but as *owners* of a process that will result in equitable city policies.²²³ That is, Providence is engaged in a form of climate equity planning, not merely climate adaptation planning. The equity-centered approach is unique and is reflected in the insistence that Providence planning be collaborative,²²⁴ participatory, and inclusive, with the purpose of transforming decision-making from “community engagement to ownership.”²²⁵ This type of inclusive, community centered planning takes time.

A growing number of cities are engaging in climate equity planning, but these efforts remain few and far between. A climate moratorium could create room for communities to engage in planning that is more uniquely adapted to their particular region and their particular local history. Whatever the climate equity planning looks like, it is essential, and the climate moratorium is a tool that can facilitate such planning.

These brief snapshots into climate adaptation planning illustrate the urgency of finding new and better planning tools to address the climate emergency. They demonstrate how uniquely suited the climate moratorium is as a tool for facilitating more effective climate adaptation planning.

V. CONCLUSION

Upon the release of the most recent IPCC report, UN Secretary General António Guterres declared, “I’ve seen many reports, but nothing like the new [IPCC] climate report, an atlas of human suffering [and] damning indictment of failed climate leadership.”²²⁶ This report warns us, yet again, that “[i]t is unequivocal that human influence has warmed the atmosphere, ocean and land,” and that human-induced climate change is “affecting many weather and climate extremes in every region across the globe,” bringing about “changes in extremes such as heatwaves, heavy precipitation, droughts, and tropical cyclones . . .”²²⁷ We are living in a world defined by climate change. Climate change pervades every aspect of contemporary life and should underpin every

222. *Id.* at 3.

223. *Id.* at 30.

224. *Id.* at 31.

225. *Id.* at 30 (cleaned up).

226. António Guterres (@antonioguterres), TWITTER (Feb. 28, 2022, 5:18 AM), <https://twitter.com/antonioguterres/status/1498256378506448899?s=10> [<https://perma.cc/S9SN-N9WB>].

227. Intergovernmental Panel on Climate Change [IPCC], *Climate Change 2022: The Physical Science Basis, Headline Statements from the Summary for Policymakers* (2022), https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_Hheadline_Statements.pdf [<https://perma.cc/K7QB-JSPA>].

planning decision. The climate emergency is upon us, and it demands innovative legal thinking.

We need to engage in faster and better planning, and we need a regulatory toolbox that allows us to more directly confront climatic changes — this toolbox may include the incremental tools we traditionally rely on in environmental law (e.g., air, water, and land pollution prevention) or land use law (e.g., zoning and land use planning), but it also needs to include more innovative, ambitious, and even transformative tools. As J.B. Ruhl and Robin Craig have suggested, historically, “[t]he emphasis in the United States (and elsewhere) has been on using incremental adaptation to keep human communities mostly intact, in situ, and close to normal, with place-based security for people and property the overarching goal.”²²⁸ However, incremental adaptation, while pivotal to our early responses to climate change, is simply not enough. We are dramatically unprepared for the challenges we face, and we need to act on the basis that resiliency requires us to do much more.

Climate change is an emergency. Preparing for climate change means (urgently) rethinking how we plan for change in the short- and long-term. The climate moratorium is an indispensable tool in these planning efforts. Now is the time for the climate moratorium.

228. Ruhl & Craig, *supra* note 26, at 239.

[West's Florida Statutes Annotated](#)[Title XI. County Organization and Intergovernmental Relations \(Chapters 124-164\) \(Refs & Annos\)](#)[Chapter 125. County Government \(Refs & Annos\)](#)[Part I. County Commissioners: Powers and Duties \(Refs & Annos\)](#)

West's F.S.A. § 125.01055

125.01055. Affordable housing

Effective: July 1, 2025

[Currentness](#)

- (1) Notwithstanding any other provision of law, a county may adopt and maintain in effect any law, ordinance, rule, or other measure that is adopted for the purpose of increasing the supply of affordable housing using land use mechanisms such as inclusionary housing or linkage fee ordinances.
- (2) An inclusionary housing ordinance may require a developer to provide a specified number or percentage of affordable housing units to be included in a development or allow a developer to contribute to a housing fund or other alternatives in lieu of building the affordable housing units.
- (3) An affordable housing linkage fee ordinance may require the payment of a flat or percentage-based fee, whether calculated on the basis of the number of approved dwelling units, the amount of approved square footage, or otherwise.
- (4) In exchange for a developer fulfilling the requirements of subsection (2) or, for residential or mixed-use residential development, the requirements of subsection (3), a county must provide incentives to fully offset all costs to the developer of its affordable housing contribution or linkage fee. Such incentives may include, but are not limited to:
- (a) Allowing the developer density or intensity bonus incentives or more floor space than allowed under the current or proposed future land use designation or zoning;
 - (b) Reducing or waiving fees, such as impact fees or water and sewer charges; or
 - (c) Granting other incentives.
- (5) Subsection (4) does not apply in an area of critical state concern, as designated in [s. 380.0552](#).
- (6) Notwithstanding any other law or local ordinance or regulation to the contrary, the board of county commissioners may approve the development of housing that is affordable, as defined in [s. 420.0004](#), including, but not limited to, a mixed-use

residential development, on any parcel zoned for commercial or industrial use, or on any parcel, including any contiguous parcel connected thereto, which is owned by a religious institution as defined in s. 170.201(2) which contains a house of public worship, regardless of underlying zoning, so long as at least 10 percent of the units included in the project are for housing that is affordable. The provisions of this subsection are self-executing and do not require the board of county commissioners to adopt an ordinance or a regulation before using the approval process in this subsection.

<Subsection (7) is repealed by its own terms on October 1, 2033, unless reviewed and saved from repeal by the Legislature.>

(7)(a) A county must authorize multifamily and mixed-use residential as allowable uses in any area zoned for commercial, industrial, or mixed use, and in portions of any flexibly zoned area such as a planned unit development permitted for commercial, industrial, or mixed use, if at least 40 percent of the residential units in a proposed multifamily development are rental units that, for a period of at least 30 years, are affordable as defined in s. 420.0004. Notwithstanding any other law, local ordinance, or regulation to the contrary, a county may not require a proposed multifamily development to obtain a zoning or land use change, special exception, conditional use approval, variance, transfer of density or development units, amendment to a development of regional impact, or comprehensive plan amendment for the building height, zoning, and densities authorized under this subsection. For mixed-use residential projects, at least 65 percent of the total square footage must be used for residential purposes. The county may not require that more than 10 percent of the total square footage of such mixed-use residential projects be used for nonresidential purposes.

(b) A county may not restrict the density of a proposed development authorized under this subsection below the highest currently allowed, or allowed on July 1, 2023, density on any unincorporated land in the county where residential development is allowed under the county's land development regulations. For purposes of this paragraph, the term “highest currently allowed density” does not include the density of any building that met the requirements of this subsection or the density of any building that has received any bonus, variance, or other special exception for density provided in the county's land development regulations as an incentive for development. For purposes of this paragraph, “highest currently allowed, or allowed on July 1, 2023,” means whichever is least restrictive at the time of development.

(c) A county may not restrict the floor area ratio of a proposed development authorized under this subsection below 150 percent of the highest currently allowed, or allowed on July 1, 2023, floor area ratio on any unincorporated land in the county where development is allowed under the county's land development regulations. For purposes of this paragraph, the term “highest currently allowed floor area ratio” does not include the floor area ratio of any building that met the requirements of this subsection or the floor area ratio of any building that has received any bonus, variance, or other special exception for floor area ratio provided in the county's land development regulations as an incentive for development. For purposes of this subsection, the term “floor area ratio” includes floor lot ratio and lot coverage.

(d) 1. A county may not restrict the height of a proposed development authorized under this subsection below the highest currently allowed, or allowed on July 1, 2023, height for a commercial or residential building located in its jurisdiction within 1 mile of the proposed development or three stories, whichever is higher. For purposes of this paragraph, the term “highest currently allowed height” does not include the height of any building that met the requirements of this subsection or the height of any building that has received any bonus, variance, or other special exception for height provided in the county's land development regulations as an incentive for development.

2. If the proposed development is adjacent to, on two or more sides, a parcel zoned for single-family residential use which is within a single-family residential development with at least 25 contiguous single-family homes, the county may restrict the height of the proposed development to 150 percent of the tallest building on any property adjacent to the proposed development, the highest currently allowed, or allowed on July 1, 2023, height for the property provided in the county's land development

regulations, or three stories, whichever is higher, not to exceed 10 stories. For the purposes of this paragraph, the term “adjacent to” means those properties sharing more than one point of a property line, but does not include properties separated by a public road.

3. If the proposed development is on a parcel with a contributing structure or building within a historic district which was listed in the National Register of Historic Places before January 1, 2000, or is on a parcel with a structure or building individually listed in the National Register of Historic Places, the county may restrict the height of the proposed development to the highest currently allowed, or allowed on July 1, 2023, height for a commercial or residential building located in its jurisdiction within three-fourths of a mile of the proposed development or three stories, whichever is higher. The term “highest currently allowed” in this paragraph includes the maximum height allowed for any building in a zoning district irrespective of any conditions.

(e) 1. A proposed development authorized under this subsection must be administratively approved without further action by the board of county commissioners or any quasi-judicial or administrative board or reviewing body if the development satisfies the county's land development regulations for multifamily developments in areas zoned for such use and is otherwise consistent with the comprehensive plan, with the exception of provisions establishing allowable densities, floor area ratios, height, and land use. Such land development regulations include, but are not limited to, regulations relating to setbacks and parking requirements. A proposed development located within one-quarter mile of a military installation identified in s. 163.3175(2) may not be administratively approved. Each county shall maintain on its website a policy containing procedures and expectations for administrative approval pursuant to this subsection. For purposes of this subparagraph, the term “allowable density” means the density prescribed for the property in accordance with this subsection without additional requirements to procure and transfer density units or development units from other properties.

2. The county must administratively approve the demolition of an existing structure associated with a proposed development under this subsection, without further action by the board of county commissioners or any quasi-judicial or administrative board or reviewing body, if the proposed demolition otherwise complies with all state and local regulations.

3. If the proposed development is on a parcel with a contributing structure or building within a historic district which was listed in the National Register of Historic Places before January 1, 2000, or is on a parcel with a structure or building individually listed in the National Register of Historic Places, the county may administratively require the proposed development to comply with local regulations relating to architectural design, such as facade replication, provided it does not affect height, floor area ratio, or ¹ density of the proposed development.

(f) 1. A county must, upon request of an applicant, reduce parking requirements by 15 percent for a proposed development authorized under this subsection if the development:

a. Is located within one-quarter mile of a transit stop, as defined in the county's land development code, and the transit stop is accessible from the development;

b. Is located within one-half mile of a major transportation hub that is accessible from the proposed development by safe, pedestrian-friendly means, such as sidewalks, crosswalks, elevated pedestrian or bike paths, or other multimodal design features;
or

c. Has available parking within 600 feet of the proposed development which may consist of options such as on-street parking, parking lots, or parking garages available for use by residents of the proposed development. However, a county may not require that the available parking compensate for the reduction in parking requirements.

2. A county must eliminate parking requirements for a proposed mixed-use residential development authorized under this subsection within an area recognized by the county as a transit-oriented development or area, as provided in paragraph (h).

3. For purposes of this paragraph, the term “major transportation hub” means any transit station, whether bus, train, or light rail, which is served by public transit with a mix of other transportation options.

(g) For proposed multifamily developments in an unincorporated area zoned for commercial or industrial use which is within the boundaries of a multicounty independent special district that was created to provide municipal services and is not authorized to levy ad valorem taxes, and less than 20 percent of the land area within such district is designated for commercial or industrial use, a county must authorize, as provided in this subsection, such development only if the development is mixed-use residential.

(h) A proposed development authorized under this subsection which is located within a transit-oriented development or area, as recognized by the county, must be mixed-use residential and otherwise comply with requirements of the county's regulations applicable to the transit-oriented development or area except for use, height, density, floor area ratio, and parking as provided in this subsection or as otherwise agreed to by the county and the applicant for the development.

(i) Except as otherwise provided in this subsection, a development authorized under this subsection must comply with all applicable state and local laws and regulations.

(j) 1. Nothing in this subsection precludes a county from granting a bonus, variance, conditional use, or other special exception for height, density, or floor area ratio in addition to the height, density, and floor area ratio requirements in this subsection.

2. Nothing in this subsection precludes a proposed development authorized under this subsection from receiving a bonus for density, height, or floor area ratio pursuant to an ordinance or regulation of the jurisdiction where the proposed development is located if the proposed development satisfies the conditions to receive the bonus except for any condition which conflicts with this subsection. If a proposed development qualifies for such bonus, the bonus must be administratively approved by the county and no further action by the board of county commissioners is required.

(k) Notwithstanding any other law or local ordinance or regulation to the contrary, a county may allow an adjacent parcel of land to be included within a proposed multifamily development authorized under this subsection.

(l) The court shall give any civil action filed against a county for a violation of this subsection priority over other pending cases and render a preliminary or final decision as expeditiously as possible.

(m) If a civil action is filed against a county for a violation of this subsection, the court must assess and award reasonable attorney fees and costs to the prevailing party. An award of reasonable attorney fees or costs pursuant to this subsection may not

exceed \$250,000. In addition, a prevailing party may not recover any attorney fees or costs directly incurred by or associated with litigation to determine an award of reasonable attorney fees or costs.

(n) As used in this subsection, the term:

1. “Commercial use” means activities associated with the sale, rental, or distribution of products or the performance of services related thereto. The term includes, but is not limited to, such uses or activities as retail sales; wholesale sales; rentals of equipment, goods, or products; offices; restaurants; public lodging establishments as described in [s. 509.242\(1\)\(a\)](#); food service vendors; sports arenas; theaters; tourist attractions; and other for-profit business activities. A parcel zoned to permit such uses by right without the requirement to obtain a variance or waiver is considered commercial use for the purposes of this section, irrespective of the local land development regulation's listed category or title. The term does not include home-based businesses or cottage food operations undertaken on residential property, public lodging establishments as described in [s. 509.242\(1\)\(c\)](#), or uses that are accessory, ancillary, incidental to the allowable uses, or allowed only on a temporary basis. Recreational uses, such as golf courses, tennis courts, swimming pools, and clubhouses, within an area designated for residential use are not commercial use, irrespective of how they are operated.

2. “Industrial use” means activities associated with the manufacture, assembly, processing, or storage of products or the performance of services related thereto. The term includes, but is not limited to, such uses or activities as automobile manufacturing or repair, boat manufacturing or repair, junk yards, meat packing facilities, citrus processing and packing facilities, produce processing and packing facilities, electrical generating plants, water treatment plants, sewage treatment plants, and solid waste disposal sites. A parcel zoned to permit such uses by right without the requirement to obtain a variance or waiver is considered industrial use for the purposes of this section, irrespective of the local land development regulation's listed category or title. The term does not include uses that are accessory, ancillary, incidental to the allowable uses, or allowed only on a temporary basis. Recreational uses, such as golf courses, tennis courts, swimming pools, and clubhouses, within an area designated for residential use are not industrial use, irrespective of how they are operated.

3. “Mixed use” means any use that combines multiple types of approved land uses from at least two of the residential use, commercial use, and industrial use categories. The term does not include uses that are accessory, ancillary, incidental to the allowable uses, or allowed only on a temporary basis. Recreational uses, such as golf courses, tennis courts, swimming pools, and clubhouses, within an area designated for residential use are not mixed use, irrespective of how they are operated.

4. “Planned unit development” has the same meaning as provided in [s. 163.3202\(5\)\(b\)](#).

(o) This subsection does not apply to:

1. Airport-impacted areas as provided in [s. 333.03](#).

2. Property defined as recreational and commercial working waterfront in [s. 342.201\(2\)\(b\)](#) in any area zoned as industrial.

3. The Wekiva Study Area, as described in [s. 369.316](#).

4. The Everglades Protection Area, as defined in [s. 373.4592\(2\)](#).

(p) This subsection expires October 1, 2033.

(8) Any development authorized under paragraph (7)(a) must be treated as a conforming use even after the expiration of subsection (7) and the development's affordability period as provided in paragraph (7)(a), notwithstanding the county's comprehensive plan, future land use designation, or zoning. If at any point during the development's affordability period the development violates the affordability period requirement provided in paragraph (7)(a), the development must be allowed a reasonable time to cure such violation. If the violation is not cured within a reasonable time, the development must be treated as a nonconforming use.

(9)(a) Except as provided in paragraphs (b) and (d), a county may not enforce a building moratorium that has the effect of delaying the permitting or construction of a multifamily residential or mixed-use residential development authorized under subsection (7).

(b) A county may, by ordinance, impose or enforce such a building moratorium for no more than 90 days in any 3-year period. Before adoption of such a building moratorium, the county shall prepare or cause to be prepared an assessment of the county's need for affordable housing at the extremely-low-income, very-low-income, low-income, or moderate-income limits specified in s. 420.0004, including projections of such need for the next 5 years. This assessment must be posted on the county's website by the date the notice of proposed enactment is published, and presented at the same public meeting at which the proposed ordinance imposing the building moratorium is adopted by the board of county commissioners. This assessment must be included in the business impact estimate for the ordinance imposing such a moratorium required by s. 125.66(3).

(c) If a civil action is filed against a county for a violation of this subsection, the court must assess and award reasonable attorney fees and costs to the prevailing party. An award of reasonable attorney fees or costs pursuant to this subsection may not exceed \$250,000. In addition, a prevailing party may not recover any attorney fees or costs directly incurred by or associated with litigation to determine an award of reasonable attorney fees or costs.

(d) This subsection does not apply to moratoria imposed or enforced to address stormwater or flood water management, to address the supply of potable water, or due to the necessary repair of sanitary sewer systems, if such moratoria apply equally to all types of multifamily or mixed-use residential development.

(10)(a) Beginning November 1, 2026, each county must provide an annual report to the state land planning agency which includes:

1. A summary of litigation relating to subsection (7) that was initiated, remains pending, or was resolved during the previous fiscal year.
2. A list of all projects proposed or approved under subsection (7) during the previous fiscal year. For each project, the report must include, at a minimum, the project's size, density, and intensity and the total number of units proposed, including the number of affordable units and associated targeted household incomes.

(b) The state land planning agency shall compile the information received under this subsection and submit the information to the Governor, the President of the Senate, and the Speaker of the House of Representatives annually by February 1.

Credits

Added by [Laws 2001, c. 2001-252, § 16, eff. June 15, 2001](#). Amended by [Laws 2019, c. 2019-165, § 1, eff. June 28, 2019](#); [Laws 2020, c. 2020-27, § 1, eff. July 1, 2020](#); [Laws 2022, c. 2022-176, § 1, eff. June 8, 2022](#); [Laws 2023, c. 2023-17, § 3, eff. July 1, 2023](#); [Laws 2024, c. 2024-188, § 1, eff. May 16, 2024](#); [Laws 2025, c. 2025-172, § 1, eff. July 1, 2025](#).

Footnotes

¹ The word “or” was substituted for the word “of” by the Division of Law Revision to conform to context.

West's F. S. A. § 125.01055, FL ST § 125.01055

Current with laws, joint and concurrent resolutions and memorials in effect from the 2025 Special Session C and through July 1, 2025, of the 2025 first regular session.

End of Document

© 2026 Thomson Reuters. No claim to original U.S. Government Works.

 KeyCite Yellow Flag
Proposed Legislation

West's Florida Statutes Annotated
Title XII. Municipalities (Chapters 165-185)
Chapter 166. Municipalities (Refs & Annos)
Part I. General Provisions

West's F.S.A. § 166.04151

166.04151. Affordable housing

Effective: July 1, 2025

[Currentness](#)

(1) Notwithstanding any other provision of law, a municipality may adopt and maintain in effect any law, ordinance, rule, or other measure that is adopted for the purpose of increasing the supply of affordable housing using land use mechanisms such as inclusionary housing or linkage fee ordinances.

(2) An inclusionary housing ordinance may require a developer to provide a specified number or percentage of affordable housing units to be included in a development or allow a developer to contribute to a housing fund or other alternatives in lieu of building the affordable housing units.

(3) An affordable housing linkage fee ordinance may require the payment of a flat or percentage-based fee, whether calculated on the basis of the number of approved dwelling units, the amount of approved square footage, or otherwise.

(4) In exchange for a developer fulfilling the requirements of subsection (2) or, for residential or mixed-use residential development, the requirements of subsection (3), a municipality must provide incentives to fully offset all costs to the developer of its affordable housing contribution or linkage fee. Such incentives may include, but are not limited to:

(a) Allowing the developer density or intensity bonus incentives or more floor space than allowed under the current or proposed future land use designation or zoning;

(b) Reducing or waiving fees, such as impact fees or water and sewer charges; or

(c) Granting other incentives.

(5) Subsection (4) does not apply in an area of critical state concern, as designated by [s. 380.0552](#) or chapter 28-36, Florida Administrative Code.

(6) Notwithstanding any other law or local ordinance or regulation to the contrary, the governing body of a municipality may approve the development of housing that is affordable, as defined in s. 420.0004, including, but not limited to, a mixed-use residential development, on any parcel zoned for commercial or industrial use, or on any parcel, including any contiguous parcel connected thereto, which is owned by a religious institution as defined in s. 170.201(2) which contains a house of public worship, regardless of underlying zoning, so long as at least 10 percent of the units included in the project are for housing that is affordable. The provisions of this subsection are self-executing and do not require the governing body to adopt an ordinance or a regulation before using the approval process in this subsection.

<Subsection (7) is repealed by its own terms on October 1, 2033, unless reviewed and saved from repeal by the Legislature.>

(7)(a) A municipality must authorize multifamily and mixed-use residential as allowable uses in any area zoned for commercial, industrial, or mixed use, and in portions of any flexibly zoned area such as a planned unit development permitted for commercial, industrial, or mixed use, if at least 40 percent of the residential units in a proposed multifamily development are rental units that, for a period of at least 30 years, are affordable as defined in s. 420.0004. Notwithstanding any other law, local ordinance, or regulation to the contrary, a municipality may not require a proposed multifamily development to obtain a zoning or land use change, special exception, conditional use approval, variance, transfer of density or development units, amendment to a development of regional impact, amendment to a municipal charter, or comprehensive plan amendment for the building height, zoning, and densities authorized under this subsection. For mixed-use residential projects, at least 65 percent of the total square footage must be used for residential purposes. The municipality may not require that more than 10 percent of the total square footage of such mixed-use residential projects be used for nonresidential purposes.

(b) A municipality may not restrict the density of a proposed development authorized under this subsection below the highest currently allowed, or allowed on July 1, 2023, density on any land in the municipality where residential development is allowed under the municipality's land development regulations. For purposes of this paragraph, the term "highest currently allowed density" does not include the density of any building that met the requirements of this subsection or the density of any building that has received any bonus, variance, or other special exception for density provided in the municipality's land development regulations as an incentive for development. For purposes of this paragraph, "highest currently allowed, or allowed on July 1, 2023," means whichever is least restrictive at the time of development.

(c) A municipality may not restrict the floor area ratio of a proposed development authorized under this subsection below 150 percent of the highest currently allowed, or allowed on July 1, 2023, floor area ratio on any land in the municipality where development is allowed under the municipality's land development regulations. For purposes of this paragraph, the term "highest currently allowed floor area ratio" does not include the floor area ratio of any building that met the requirements of this subsection or the floor area ratio of any building that has received any bonus, variance, or other special exception for floor area ratio provided in the municipality's land development regulations as an incentive for development. For purposes of this subsection, the term "floor area ratio" includes floor lot ratio and lot coverage.

(d) 1. A municipality may not restrict the height of a proposed development authorized under this subsection below the highest currently allowed, or allowed on July 1, 2023, height for a commercial or residential building located in its jurisdiction within 1 mile of the proposed development or three stories, whichever is higher. For purposes of this paragraph, the term "highest currently allowed height" does not include the height of any building that met the requirements of this subsection or the height of any building that has received any bonus, variance, or other special exception for height provided in the municipality's land development regulations as an incentive for development.

2. If the proposed development is adjacent to, on two or more sides, a parcel zoned for single-family residential use that is within a single-family residential development with at least 25 contiguous single-family homes, the municipality may restrict the height of the proposed development to 150 percent of the tallest building on any property adjacent to the proposed development, the highest currently allowed, or allowed on July 1, 2023, height for the property provided in the municipality's land development regulations, or three stories, whichever is higher, not to exceed 10 stories. For the purposes of this paragraph, the term "adjacent to" means those properties sharing more than one point of a property line, but does not include properties separated by a public road or body of water, including manmade lakes or ponds. For a proposed development located within a municipality within an area of critical state concern as designated by [s. 380.0552](#) or chapter 28-36, Florida Administrative Code, the term "story" includes only the habitable space above the base flood elevation as designated by the Federal Emergency Management Agency in the most current Flood Insurance Rate Map. A story may not exceed 10 feet in height measured from finished floor to finished floor, including space for mechanical equipment. The highest story may not exceed 10 feet from finished floor to the top plate.

3. If the proposed development is on a parcel with a contributing structure or building within a historic district which was listed in the National Register of Historic Places before January 1, 2000, or is on a parcel with a structure or building individually listed in the National Register of Historic Places, the municipality may restrict the height of the proposed development to the highest currently allowed, or allowed on July 1, 2023, height for a commercial or residential building located in its jurisdiction within three-fourths of a mile of the proposed development or three stories, whichever is higher. The term "highest currently allowed" in this paragraph includes the maximum height allowed for any building in a zoning district irrespective of any conditions.

(e) 1. A proposed development authorized under this subsection must be administratively approved without further action by the governing body of the municipality or any quasi-judicial or administrative board or reviewing body if the development satisfies the municipality's land development regulations for multifamily developments in areas zoned for such use and is otherwise consistent with the comprehensive plan, with the exception of provisions establishing allowable densities, floor area ratios, height, and land use. Such land development regulations include, but are not limited to, regulations relating to setbacks and parking requirements. A proposed development located within one-quarter mile of a military installation identified in [s. 163.3175\(2\)](#) may not be administratively approved. Each municipality shall maintain on its website a policy containing procedures and expectations for administrative approval pursuant to this subsection. For purposes of this paragraph, the term "allowable density" means the density prescribed for the property in accordance with this subsection without additional requirements to procure and transfer density units or development units from other properties.

2. The municipality must administratively approve the demolition of an existing structure associated with a proposed development under this subsection, without further action by the governing body of the municipality or any quasi-judicial or administrative board or reviewing body, if the proposed demolition otherwise complies with all state and local regulations.

3. If the proposed development is on a parcel with a contributing structure or building within a historic district which was listed in the National Register of Historic Places before January 1, 2000, or is on a parcel with a structure or building individually listed in the National Register of Historic Places, the municipality may administratively require the proposed development to comply with local regulations relating to architectural design, such as facade replication, provided it does not affect height, floor area ratio, or ¹ density of the proposed development.

(f) 1. A municipality must, upon request of an applicant, reduce parking requirements for a proposed development authorized under this subsection by 15 percent if the development:

a. Is located within one-quarter mile of a transit stop, as defined in the municipality's land development code, and the transit stop is accessible from the development;

b. Is located within one-half mile of a major transportation hub that is accessible from the proposed development by safe, pedestrian-friendly means, such as sidewalks, crosswalks, elevated pedestrian or bike paths, or other multimodal design features; or

c. Has available parking within 600 feet of the proposed development which may consist of options such as on-street parking, parking lots, or parking garages available for use by residents of the proposed development. However, a municipality may not require that the available parking compensate for the reduction in parking requirements.

2. A municipality must eliminate parking requirements for a proposed mixed-use residential development authorized under this subsection within an area recognized by the municipality as a transit-oriented development or area, as provided in paragraph (h).

3. For purposes of this paragraph, the term “major transportation hub” means any transit station, whether bus, train, or light rail, which is served by public transit with a mix of other transportation options.

(g) A municipality that designates less than 20 percent of the land area within its jurisdiction for commercial or industrial use must authorize a proposed multifamily development as provided in this subsection in areas zoned for commercial or industrial use only if the proposed multifamily development is mixed-use residential.

(h) A proposed development authorized under this subsection which is located within a transit-oriented development or area, as recognized by the municipality, must be mixed-use residential and otherwise comply with requirements of the municipality's regulations applicable to the transit-oriented development or area except for use, height, density, floor area ratio, and parking as provided in this subsection or as otherwise agreed to by the municipality and the applicant for the development.

(i) Except as otherwise provided in this subsection, a development authorized under this subsection must comply with all applicable state and local laws and regulations.

(j) 1. Nothing in this subsection precludes a municipality from granting a bonus, variance, conditional use, or other special exception to height, density, or floor area ratio in addition to the height, density, and floor area ratio requirements in this subsection.

2. Nothing in this subsection precludes a proposed development authorized under this subsection from receiving a bonus for density, height, or floor area ratio pursuant to an ordinance or regulation of the jurisdiction where the proposed development is located if the proposed development satisfies the conditions to receive the bonus except for any condition which conflicts with this subsection. If a proposed development qualifies for such bonus, the bonus must be administratively approved by the municipality and no further action by the governing body of the municipality is required.

(k) Notwithstanding any other law or local ordinance or regulation to the contrary, a municipality may allow an adjacent parcel of land to be included within a proposed multifamily development authorized under this subsection.

(l) The court shall give any civil action filed against a municipality for a violation of this subsection priority over other pending cases and render a preliminary or final decision as expeditiously as possible.

(m) If a civil action is filed against a municipality for a violation of this subsection, the court must assess and award reasonable attorney fees and costs to the prevailing party. An award of reasonable attorney fees or costs pursuant to this subsection may not exceed \$250,000. In addition, a prevailing party may not recover any attorney fees or costs directly incurred by or associated with litigation to determine an award of reasonable attorney fees or costs.

(n) As used in this subsection, the term:

1. “Commercial use” means activities associated with the sale, rental, or distribution of products or the performance of services related thereto. The term includes, but is not limited to, such uses or activities as retail sales; wholesale sales; rentals of equipment, goods, or products; offices; restaurants; public lodging establishments as described in [s. 509.242\(1\)\(a\)](#); food service vendors; sports arenas; theaters; tourist attractions; and other for-profit business activities. A parcel zoned to permit such uses by right without the requirement to obtain a variance or waiver is considered commercial use for the purposes of this section, irrespective of the local land development regulation's listed category or title. The term does not include home-based businesses or cottage food operations undertaken on residential property, public lodging establishments as described in [s. 509.242\(1\)\(c\)](#), or uses that are accessory, ancillary, incidental to the allowable uses, or allowed only on a temporary basis. Recreational uses, such as golf courses, tennis courts, swimming pools, and clubhouses, within an area designated for residential use are not commercial use, irrespective of how they are operated.

2. “Industrial use” means activities associated with the manufacture, assembly, processing, or storage of products or the performance of services related thereto. The term includes, but is not limited to, such uses or activities as automobile manufacturing or repair, boat manufacturing or repair, junk yards, meat packing facilities, citrus processing and packing facilities, produce processing and packing facilities, electrical generating plants, water treatment plants, sewage treatment plants, and solid waste disposal sites. A parcel zoned to permit such uses by right without the requirement to obtain a variance or waiver is considered industrial use for the purposes of this section, irrespective of the local land development regulation's listed category or title. The term does not include uses that are accessory, ancillary, incidental to the allowable uses, or allowed only on a temporary basis. Recreational uses, such as golf courses, tennis courts, swimming pools, and clubhouses, within an area designated for residential use are not industrial use, irrespective of how they are operated.

3. “Mixed use” means any use that combines multiple types of approved land uses from at least two of the residential use, commercial use, and industrial use categories. The term does not include uses that are accessory, ancillary, incidental to the allowable uses, or allowed only on a temporary basis. Recreational uses, such as golf courses, tennis courts, swimming pools, and clubhouses, within an area designated for residential use are not mixed use, irrespective of how they are operated.

4. “Planned unit development” has the same meaning as provided in [s. 163.3202\(5\)\(b\)](#).

(o) This subsection does not apply to:

1. Airport-impacted areas as provided in [s. 333.03](#).

2. Property defined as recreational and commercial working waterfront in [s. 342.201\(2\)\(b\)](#) in any area zoned as industrial.

3. The Wekiva Study Area, as described in [s. 369.316](#).

4. The Everglades Protection Area, as defined in [s. 373.4592\(2\)](#).

(p) This subsection expires October 1, 2033.

(8) Any development authorized under paragraph (7)(a) must be treated as a conforming use even after the expiration of subsection (7) and the development's affordability period as provided in paragraph (7)(a), notwithstanding the municipality's comprehensive plan, future land use designation, or zoning. If at any point during the development's affordability period the development violates the affordability period requirement provided in paragraph (7)(a), the development must be allowed a reasonable time to cure such violation. If the violation is not cured within a reasonable time, the development must be treated as a nonconforming use.

(9)(a) Except as provided in paragraphs (b) and (d), a municipality may not enforce a building moratorium that has the effect of delaying the permitting or construction of a multifamily residential or mixed-use residential development authorized under subsection (7).

(b) A municipality may, by ordinance, impose or enforce such a building moratorium for no more than 90 days in any 3-year period. Before adoption of such a building moratorium, the municipality shall prepare or cause to be prepared an assessment of the municipality's need for affordable housing at the extremely-low-income, very-low-income, low-income, or moderate-income limits specified in [s. 420.0004](#), including projections of such need for the next 5 years. This assessment must be posted on the municipality's website by the date the notice of proposed enactment is published and must be presented at the same public meeting at which the proposed ordinance imposing the building moratorium is adopted by the governing body of the municipality. This assessment must be included in the business impact estimate for the ordinance imposing such a moratorium required by [s. 166.041\(4\)](#).

(c) If a civil action is filed against a municipality for a violation of this subsection, the court must assess and award reasonable attorney fees and costs to the prevailing party. An award of reasonable attorney fees or costs pursuant to this subsection may not exceed \$250,000. In addition, a prevailing party may not recover any attorney fees or costs directly incurred by or associated with litigation to determine an award of reasonable attorney fees or costs.

(d) This subsection does not apply to moratoria imposed or enforced to address stormwater or flood water management, to address the supply of potable water, or due to the necessary repair of sanitary sewer systems, if such moratoria apply equally to all types of multifamily or mixed-use residential development.

(10)(a) Beginning November 1, 2026, each municipality must provide an annual report to the state land planning agency which includes:

1. A summary of litigation relating to subsection (7) that was initiated, remains pending, or was resolved during the previous fiscal year.

2. A list of all projects proposed or approved under subsection (7) during the previous fiscal year. For each project, the report must include, at a minimum, the project's size, density, and intensity and the total number of units proposed, including the number of affordable units and associated targeted household incomes.

(b) The state land planning agency shall compile the information received under this subsection and submit the information to the Governor, the President of the Senate, and the Speaker of the House of Representatives annually by February 1.

Credits

Added by [Laws 2001, c. 2001-252, § 15, eff. June 15, 2001](#). Amended by [Laws 2019, c. 2019-165, § 9, eff. June 28, 2019](#); [Laws 2020, c. 2020-27, § 6, eff. July 1, 2020](#); [Laws 2022, c. 2022-176, § 2, eff. June 8, 2022](#); [Laws 2023, c. 2023-17, § 5, eff. July 1, 2023](#); [Laws 2024, c. 2024-188, § 2, eff. May 16, 2024](#); [Laws 2025, c. 2025-172, § 2, eff. July 1, 2025](#).

Footnotes

¹ The word “or” was substituted for the word “of” by the Division of Law Revision to conform to context.

West's F. S. A. § 166.04151, FL ST § 166.04151

Current with laws, joint and concurrent resolutions and memorials in effect from the 2025 Special Session C and through July 1, 2025, of the 2025 first regular session.

End of Document

© 2026 Thomson Reuters. No claim to original U.S. Government Works.

New Jersey Statutes Annotated

Title 40. Municipalities and Counties

Subtitle 3. Municipalities Generally (Refs & Annos)

Chapter 55D. Planning, Zoning, Etc.

Municipal Land Use Law (Refs & Annos)

Article 11. Periodic Reexamination of Municipal Plans and Regulations

N.J.S.A. 40:55D-90

40:55D-90. Moratoriums; interim zoning

[Currentness](#)

- a. The prohibition of development in order to prepare a master plan and development regulations is prohibited.
- b. No moratoria on applications for development or interim zoning ordinances shall be permitted except in cases where the municipality demonstrates on the basis of a written opinion by a qualified health professional that a clear imminent danger to the health of the inhabitants of the municipality exists, and in no case shall the moratorium or interim ordinance exceed a six-month term.

Credits

L.1975, c. 291, § 77, eff. Aug. 1, 1976. Amended by L.1979, c. 7, § 1, eff. Jan. 30, 1979; L.1985, c. 516, § 20, eff. March 22, 1985.

[Notes of Decisions \(14\)](#)

N. J. S. A. 40:55D-90, NJ ST 40:55D-90

Current with laws through L.2025, c. 176 and J.R. No. 12.

End of Document

© 2026 Thomson Reuters. No claim to original U.S. Government Works.



KeyCite Yellow Flag

Proposed Legislation

West's Nevada Revised Statutes Annotated**Title 22. Cooperative Agreements by Public Agencies; Regional Transportation Commissions; Planning and Zoning; Development and Redevelopment (Chapters 271-280)****Chapter 277. Cooperative Agreements: State, Counties, Cities, Districts and Other Public Agencies (Refs & Annos)****Tahoe Regional Planning Compact (Refs & Annos)**

N.R.S. 277.200

277.200. Text of Compact

Effective: October 1, 2017

[Currentness](#)

<Section repealed on the date the Governor of Nevada either proclaims the withdrawal of the State of California from the Compact or finds that the Tahoe Regional Planning Agency has become unable to perform its duties or exercise its powers. See notes for changes to this section effective under certain conditions.>

The Tahoe Regional Planning Compact is as follows:

Tahoe Regional Planning Compact**ARTICLE I. Findings and Declarations of Policy**

(a) It is found and declared that:

- (1) The waters of Lake Tahoe and other resources of the region are threatened with deterioration or degeneration, which endangers the natural beauty and economic productivity of the region.
- (2) The public and private interests and investments in the region are substantial.
- (3) The region exhibits unique environmental and ecological values which are irreplaceable.
- (4) By virtue of the special conditions and circumstances of the region's natural ecology, developmental pattern, population distribution and human needs, the region is experiencing problems of resource use and deficiencies of environmental control.
- (5) Increasing urbanization is threatening the ecological values of the region and threatening the public opportunities for use of the public lands.

- (6) Maintenance of the social and economic health of the region depends on maintaining the significant scenic, recreational, educational, scientific, natural and public health values provided by the Lake Tahoe Basin.
- (7) There is a public interest in protecting, preserving and enhancing these values for the residents of the region and for visitors to the region.
- (8) Responsibilities for providing recreational and scientific opportunities, preserving scenic and natural areas, and safeguarding the public who live, work and play in or visit the region are divided among local governments, regional agencies, the states of California and Nevada, and the Federal Government.
- (9) In recognition of the public investment and multistate and national significance of the recreational values, the Federal Government has an interest in the acquisition of recreational property and the management of resources in the region to preserve environmental and recreational values, and the Federal Government should assist the states in fulfilling their responsibilities.
- (10) In order to preserve the scenic beauty and outdoor recreational opportunities of the region, there is a need to insure an equilibrium between the region's natural endowment and its man-made environment.
- (b) In order to enhance the efficiency and governmental effectiveness of the region, it is imperative that there be established a Tahoe Regional Planning Agency with the powers conferred by this compact including the power to establish environmental threshold carrying capacities and to adopt and enforce a regional plan and implementing ordinances which will achieve and maintain such capacities while providing opportunities for orderly growth and development consistent with such capacities.
- (c) The Tahoe Regional Planning Agency shall interpret and administer its plans, ordinances, rules and regulations in accordance with the provisions of this compact.

ARTICLE II. Definitions

As used in this compact:

- (a) "Region," includes Lake Tahoe, the adjacent parts of Douglas and Washoe counties and Carson City, which for the purposes of this compact shall be deemed a county, lying within the Tahoe Basin in the State of Nevada, and the adjacent parts of the Counties of Placer and El Dorado lying within the Tahoe Basin in the State of California, and that additional and adjacent part of the County of Placer outside of the Tahoe Basin in the State of California which lies southward and eastward of a line starting at the intersection of the basin crestline and the north boundary of Section 1, thence west to the northwest corner of Section 3, thence south to the intersection of the basin crestline and the west boundary of Section 10; all sections referring to Township 15 North, Range 16 East, M.D.B. & M. The region defined and described herein shall be as precisely delineated on official maps of the agency.
- (b) "Agency" means the Tahoe Regional Planning Agency.

- (c) “Governing body” means the governing board of the Tahoe Regional Planning Agency.
- (d) “Regional plan” means the long-term general plan for the development of the region.
- (e) “Planning commission” means the advisory planning commission appointed pursuant to subdivision (h) of Article III.
- (f) “Gaming” means to deal, operate, carry on, conduct, maintain or expose for play any banking or percentage game played with cards, dice or any mechanical device or machine for money, property, checks, credit or any representative of value, including, without limiting the generality of the foregoing, faro, monte, roulette, keno, bingo, fantan, twenty-one, blackjack, seven-and-a-half, big injun, klondike, craps, stud poker, draw poker or slot machine, but does not include social games played solely for drinks, or cigars or cigarettes served individually, games played in private homes or residences for prizes or games operated by charitable or educational organizations, to the extent excluded by applicable state law.
- (g) “Restricted gaming license” means a license to operate not more than 15 slot machines on which a quarterly fee is charged pursuant to [NRS 463.373](#) and no other games.
- (h) “Project” means an activity undertaken by any person, including any public agency, if the activity may substantially affect the land, water, air, space or any other natural resources of the region.
- (i) “Environmental threshold carrying capacity” means an environmental standard necessary to maintain a significant scenic, recreational, educational, scientific or natural value of the region or to maintain public health and safety within the region. Such standards shall include but not be limited to standards for air quality, water quality, soil conservation, vegetation preservation and noise.
- (j) “Feasible” means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social and technological factors.
- (k) “Areas open to public use” means all of the areas within a structure housing gaming under a nonrestricted license except areas devoted to the private use of guests.
- (l) “Areas devoted to private use of guests” means hotel rooms and hallways to serve hotel room areas, and any parking areas. A hallway serves hotel room areas if more than 50 percent of the areas on each side of the hallway are hotel rooms.
- (m) “Nonrestricted license” means a gaming license which is not a restricted gaming license.

ARTICLE III. Organization

- (a) There is created the Tahoe Regional Planning Agency as a separate legal entity.

The governing body of the agency shall be constituted as follows:

(1) California delegation:

(A) One member appointed by each of the County Boards of Supervisors of the Counties of El Dorado and Placer and one member appointed by the City Council of the City of South Lake Tahoe. Any such member may be a member of the county board of supervisors or city council, respectively, and shall reside in the territorial jurisdiction of the governmental body making the appointment.

(B) Two members appointed by the Governor of California, one member appointed by the Speaker of the Assembly of California and one member appointed by the Senate Rules Committee of the State of California. The members appointed pursuant to this subparagraph shall not be residents of the region and shall represent the public at large within the State of California.

(2) Nevada delegation:

(A) One member appointed by each of the boards of county commissioners of Douglas and Washoe counties and one member appointed by the board of supervisors of Carson City. Any such member may be a member of the board of county commissioners or board of supervisors, respectively, and shall reside in the territorial jurisdiction of the governmental body making the appointment.

(B) One member appointed by the governor of Nevada, the secretary of state of Nevada or his designee, and the director of the state department of conservation and natural resources of Nevada or his designee. Except for the secretary of state and the director of the state department of conservation and natural resources, the members or designees appointed pursuant to this subparagraph shall not be residents of the region. All members appointed pursuant to this subparagraph shall represent the public at large within the State of Nevada.

(C) One member appointed for a 1-year term by the six other members of the Nevada delegation. If at least four members of the Nevada delegation are unable to agree upon the selection of a seventh member within 60 days after the effective date of the amendments to this compact or the occurrence of a vacancy on the governing body for that state the governor of the State of Nevada shall make such an appointment. The member appointed pursuant to this subparagraph may, but is not required to, be a resident of the region within the State of Nevada.

(3) If any appointing authority under paragraph (1)(A), (1)(B), (2)(A) or (2)(B) fails to make such an appointment within 60 days after the effective date of the amendments to this compact or the occurrence of a vacancy on the governing body, the governor of the state in which the appointing authority is located shall make the appointment. The term of any member so appointed shall be 1 year.

(4) The position of any member of the governing body shall be deemed vacant if such a member is absent from three consecutive meetings of the governing body in any calendar year.

(5) Each member and employee of the agency shall disclose his economic interests in the region within 10 days after taking his seat on the governing board or being employed by the agency and shall thereafter disclose any further economic interest which he acquires, as soon as feasible after he acquires it. As used in this paragraph, “economic interests” means:

(A) Any business entity operating in the region in which the member or employee has a direct or indirect investment worth more than \$1,000;

(B) Any real property located in the region in which the member or employee has a direct or indirect interest worth more than \$1,000;

(C) Any source of income attributable to activities in the region, other than loans by or deposits with a commercial lending institution in the regular course of business, aggregating \$250 or more in value received by or promised to the member within the preceding 12 months; or

(D) Any business entity operating in the region in which the member or employee is a director, officer, partner, trustee, employee or holds any position of management.

No member or employee of the agency shall make, or attempt to influence, an agency decision in which he knows or has reason to know he has an economic interest. Members and employees of the agency must disqualify themselves from making or participating in the making of any decision of the agency when it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the economic interests of the member or employee.

(b) The members of the agency shall serve without compensation, but the expenses of each member shall be met by the body which he represents in accordance with the law of that body. All other expenses incurred by the governing body in the course of exercising the powers conferred upon it by this compact unless met in some other manner specifically provided, shall be paid by the agency out of its own funds.

(c) Except for the secretary of state and director of the state department of conservation and natural resources of Nevada and the member appointed pursuant to subdivision (a)(2)(C), the members of the governing body serve at the pleasure of the appointing authority in each case, but each appointment shall be reviewed no less often than every 4 years. Members may be reappointed.

(d) The governing body of the agency shall meet at least monthly. All meetings shall be open to the public to the extent required by the law of the State of California or the State of Nevada, whichever imposes the greater requirement, applicable to local governments at the time such meeting is held. The governing body shall fix a date for its regular monthly meeting in such terms as “the first Monday of each month,” and shall not change such date more often than once in any calendar year. Notice of the date so fixed shall be given by publication at least once in a newspaper or combination of newspapers whose circulation is general throughout the region and in each county a portion of whose territory lies within the region. Notice of any special meeting, except an emergency meeting, shall be given by so publishing the date and place and posting an agenda at least 5 days prior to the meeting.

(e) The position of a member of the governing body shall be considered vacated upon his loss of any of the qualifications required for his appointment and in such event the appointing authority shall appoint a successor.

(f) The governing body shall elect from its own members a chairman and vice chairman, whose terms of office shall be 2 years, and who may be reelected. If a vacancy occurs in either office, the governing body may fill such vacancy for the unexpired term.

(g) Four of the members of the governing body from each state constitute a quorum for the transaction of the business of the agency. The voting procedures shall be as follows:

(1) For adopting, amending or repealing environmental threshold carrying capacities, the regional plan, and ordinances, rules and regulations, and for granting variances from the ordinances, rules and regulations, the vote of at least four of the members of each state agreeing with the vote of at least four members of the other state shall be required to take action. If there is no vote of at least four of the members from one state agreeing with the vote of at least four of the members of the other state on the actions specified in this paragraph, an action of rejection shall be deemed to have been taken.

(2) For approving a project, the affirmative vote of at least five members from the state in which the project is located and the affirmative vote of at least nine members of the governing body are required. If at least five members of the governing body from the state in which the project is located and at least nine members of the entire governing body do not vote in favor of the project, upon a motion for approval, an action of rejection shall be deemed to have been taken. A decision by the agency to approve a project shall be supported by a statement of findings, adopted by the agency, which indicates that the project complies with the regional plan and with applicable ordinances, rules and regulations of the agency.

(3) For routine business and for directing the agency's staff on litigation and enforcement actions, at least eight members of the governing body must agree to take action. If at least eight votes in favor of such action are not cast, an action of rejection shall be deemed to have been taken.

Whenever under the provisions of this compact or any ordinance, rule, regulation or policy adopted pursuant thereto, the agency is required to review or approve any project, public or private, the agency shall take final action by vote, whether to approve, to require modification or to reject such project, within 180 days after the application for such project is accepted as complete by the agency in compliance with the agency's rules and regulations governing such delivery unless the applicant has agreed to an extension of this time limit. If a final action by vote does not take place within 180 days, the applicant may bring an action in a court of competent jurisdiction to compel a vote unless he has agreed to an extension. This provision does not limit the right of any person to obtain judicial review of agency action under subdivision (h) of Article VI. The vote of each member of the governing body shall be individually recorded. The governing body shall adopt its own rules, regulations and procedures.

(h) An advisory planning commission shall be appointed by the agency. The commission shall include: the chief planning officers of Placer County, El Dorado County, and the City of South Lake Tahoe in California and of Douglas County, Washoe County and Carson City in Nevada, the executive officer of the Lahontan Regional Water Quality Control Board of the State of California, the executive officer of the Air Resources Board of the State of California, the director of the state department of conservation and natural resources of the State of Nevada, the administrator of the division of environmental protection in the state department of conservation and natural resources of the State of Nevada, the administrator of the Lake Tahoe Management Unit of the United States Forest Service, and at least four lay members with an equal number from each state, at least half of whom shall be residents of the region. Any official member may designate an alternate.

The term of office of each lay member of the advisory planning commission shall be 2 years. Members may be reappointed.

The position of each member of the advisory planning commission shall be considered vacated upon loss of any of the qualifications required for appointment, and in such an event the appointing authority shall appoint a successor.

The advisory planning commission shall elect from its own members a chairman and a vice chairman, whose terms of office shall be 2 years and who may be reelected. If a vacancy occurs in either office, the advisory planning commission shall fill such vacancy for the unexpired term.

A majority of the members of the advisory planning commission constitutes a quorum for the transaction of the business of the commission. A majority vote of the quorum present shall be required to take action with respect to any matter.

(i) The agency shall establish and maintain an office within the region, and for this purpose the agency may rent or own property and equipment. Every plan, ordinance and other record of the agency which is of such nature as to constitute a public record under the law of either the State of California or the State of Nevada shall be open to inspection and copying during regular office hours.

(j) Each authority charged under this compact or by the law of either state with the duty of appointing a member of the governing body of the agency shall by certified copy of its resolution or other action notify the Secretary of State of its own state of the action taken.

ARTICLE IV. Personnel

(a) The governing body shall determine the qualification of, and it shall appoint and fix the salary of, the executive officer of the agency, and shall employ such other staff and legal counsel as may be necessary to execute the powers and functions provided for under this compact or in accordance with any intergovernmental contracts or agreements the agency may be responsible for administering.

(b) Agency personnel standards and regulations shall conform insofar as possible to the regulations and procedures of the civil service of the State of California or the State of Nevada, as may be determined by the governing body of the agency; and shall be regional and bistrate in application and effect; provided that the governing body may, for administrative convenience and at its discretion, assign the administration of designated personnel arrangements to an agency of either state, and provided that administratively convenient adjustments be made in the standards and regulations governing personnel assigned under intergovernmental agreements.

(c) The agency may establish and maintain or participate in such additional programs of employee benefits as may be appropriate to afford employees of the agency terms and conditions of employment similar to those enjoyed by employees of California and Nevada generally.

ARTICLE V. Planning

(a) In preparing each of the plans required by this article and each amendment thereto, if any, subsequent to its adoption, the planning commission after due notice shall hold at least one public hearing which may be continued from time to time, and shall review the testimony and any written recommendations presented at such hearing before recommending the plan or amendment. The notice required by this subdivision shall be given at least 20 days prior to the public hearing by publication at least once in a newspaper or combination of newspapers whose circulation is general throughout the region and in each county a portion of whose territory lies within the region.

The planning commission shall then recommend such plan or amendment to the governing body for adoption by ordinance. The governing body may adopt, modify or reject the proposed plan or amendment, or may initiate and adopt a plan or amendment without referring it to the planning commission. If the governing body initiates or substantially modifies a plan or amendment, it shall hold at least one public hearing thereon after due notice as required in this subdivision.

If a request is made for the amendment of the regional plan by:

- (1) A political subdivision a part of whose territory would be affected by such amendment; or
- (2) The owner or lessee of real property which would be affected by such amendment,

the governing body shall complete its action on such amendment within 180 days after such request is accepted as complete according to standards which must be prescribed by ordinance of the agency.

(b) The agency shall develop, in cooperation with the states of California and Nevada, environmental threshold carrying capacities for the region. The agency should request the President's Council on Environmental Quality, the United States Forest Service and other appropriate agencies to assist in developing such environmental threshold carrying capacities. Within 18 months after the effective date of the amendments to this compact, the agency shall adopt environmental threshold carrying capacities for the region.

(c) Within 1 year after the adoption of the environmental threshold carrying capacities for the region, the agency shall amend the regional plan so that, at a minimum, the plan and all of its elements, as implemented through agency ordinances, rules and regulations, achieves and maintains the adopted environmental threshold carrying capacities. Each element of the plan shall contain implementation provisions and time schedules for such implementation by ordinance. The planning commission and governing body shall continuously review and maintain the regional plan and, in so doing, shall ensure that the regional plan reflects changing economic conditions and the economic effect of regulation on commerce. The regional plan shall consist of a diagram, or diagrams, and text, or texts setting forth the projects and proposals for implementation of the regional plan, a description of the needs and goals of the region and a statement of the policies, standards and elements of the regional plan.

The regional plan shall be a single enforceable plan and includes all of the following correlated elements:

- (1) A land-use plan for the integrated arrangement and general location and extent of, and the criteria and standards for, the uses of land, water, air, space and other natural resources within the region, including but not limited to an indication or allocation of maximum population densities and permitted uses.
- (2) A transportation plan for the integrated development of a regional system of transportation, including but not limited to parkways, highways, transportation facilities, transit routes, waterways, navigation facilities, public transportation facilities, bicycle facilities, and appurtenant terminals and facilities for the movement of people and goods within the region. The goal of transportation planning shall be:
 - (A) To reduce dependency on the automobile by making more effective use of existing transportation modes and of public transit to move people and goods within the region; and

(B) To reduce to the extent feasible air pollution which is caused by motor vehicles.

Where increases in capacity are required, the agency shall give preference to providing such capacity through public transportation and public programs and projects related to transportation. The agency shall review and consider all existing transportation plans in preparing its regional transportation plan pursuant to this paragraph.

The plan shall provide for an appropriate transit system for the region.

The plan shall give consideration to:

(A) Completion of the Loop Road in the states of Nevada and California;

(B) Utilization of a light rail mass transit system in the South Shore area; and

(C) Utilization of a transit terminal in the Kingsbury Grade area.

Until the regional plan is revised, or a new transportation plan is adopted in accordance with this paragraph, the agency has no effective transportation plan.

(3) A conservation plan for the preservation, development, utilization, and management of the scenic and other natural resources within the basin, including but not limited to, soils, shoreline and submerged lands, scenic corridors along transportation routes, open spaces, recreational and historical facilities.

(4) A recreation plan for the development, utilization, and management of the recreational resources of the region, including but not limited to, wilderness and forested lands, parks and parkways, riding and hiking trails, beaches and playgrounds, marinas, areas for skiing and other recreational facilities.

(5) A public services and facilities plan for the general location, scale and provision of public services and facilities, which, by the nature of their function, size, extent and other characteristics are necessary or appropriate for inclusion in the regional plan.

In formulating and maintaining the regional plan, the planning commission and governing body shall take account of and shall seek to harmonize the needs of the region as a whole, the plans of the counties and cities within the region, the plans and planning activities of the state, federal and other public agencies and nongovernmental agencies and organizations which affect or are concerned with planning and development within the region.

(d) The regional plan shall provide for attaining and maintaining federal, state, or local air and water quality standards, whichever are strictest, in the respective portions of the region for which the standards are applicable.

The agency may, however, adopt air or water quality standards or control measures more stringent than the applicable state implementation plan or the applicable federal, state, or local standards for the region, if it finds that such additional standards or control measures are necessary to achieve the purposes of this compact. Each element of the regional plan, where applicable, shall, by ordinance, identify the means and time schedule by which air and water quality standards will be attained.

(e) Except for the Regional Transportation Plan of the California Tahoe Regional Planning Agency, the regional plan, ordinances, rules and regulations adopted by the California Tahoe Regional Planning Agency in effect on July 1, 1980, shall be the regional plan, ordinances, rules and regulations of the Tahoe Regional Planning Agency for that portion of the Tahoe region located in the State of California. Such plan, ordinance, rule or regulation may be amended or repealed by the governing body of the agency. The plans, ordinances, rules and regulations of the Tahoe Regional Planning Agency that do not conflict with, or are not addressed by, the California Tahoe Regional Planning Agency's plans, ordinances, rules and regulations referred to in this subdivision shall continue to be applicable unless amended or repealed by the governing body of the agency. No provision of the regional plan, ordinances, rules and regulations of the California Tahoe Regional Planning Agency referred to in this subdivision shall apply to that portion of the region within the State of Nevada, unless such provision is adopted for the Nevada portion of the region by the governing body of the agency.

(f) The regional plan, ordinances, rules and regulations of the Tahoe Regional Planning Agency apply to that portion of the region within the State of Nevada.

(g) The agency shall adopt ordinances prescribing specific written findings that the agency must make prior to approving any project in the region. These findings shall relate to environmental protection and shall insure that the project under review will not adversely affect implementation of the regional plan and will not cause the adopted environmental threshold carrying capacities of the region to be exceeded.

(h) The agency shall maintain the data, maps and other information developed in the course of formulating and administering the regional plan, in a form suitable to assure a consistent view of developmental trends and other relevant information for the availability of and use by other agencies of government and by private organizations and individuals concerned.

(i) Where necessary for the realization of the regional plan, the agency may engage in collaborative planning with local governmental jurisdictions located outside the region, but contiguous to its boundaries. In formulating and implementing the regional plan, the agency shall seek the cooperation and consider the recommendations of counties and cities and other agencies of local government, of state and federal agencies, of educational institutions and research organizations, whether public or private, and of civic groups and private persons.

ARTICLE VI. Agency's Powers

(a) The governing body shall adopt all necessary ordinances, rules, and regulations to effectuate the adopted regional plan. Except as otherwise provided in this compact, every such ordinance, rule or regulation shall establish a minimum standard applicable throughout the region. Any political subdivision or public agency may adopt and enforce an equal or higher requirement applicable to the same subject of regulation in its territory. The regulations of the agency shall contain standards including but not limited to the following: water purity and clarity; subdivision; zoning; tree removal; solid waste disposal; sewage disposal; land fills, excavations, cuts and grading; piers, harbors, breakwaters or channels and other shoreline developments; waste disposal in shoreline areas; waste disposal from boats; mobile-home parks; house relocation; outdoor advertising; floodplain protection; soil and sedimentation control; air pollution; and watershed protection. Whenever possible without diminishing the effectiveness of the regional plan, the ordinances, rules, regulations and policies shall be confined to matters which are general and regional in application, leaving to the jurisdiction of the respective states, counties and cities the enactment of specific and local ordinances, rules, regulations and policies which conform to the regional plan.

The agency shall prescribe by ordinance those activities which it has determined will not have substantial effect on the land, water, air, space or any other natural resources in the region and therefore will be exempt from its review and approval.

Every ordinance adopted by the agency shall be published at least once by title in a newspaper or combination of newspapers whose circulation is general throughout the region. Except an ordinance adopting or amending the regional plan, no ordinance shall become effective until 60 days after its adoption. Immediately after its adoption, a copy of each ordinance shall be transmitted to the governing body of each political subdivision having territory within the region.

(b) No project other than those to be reviewed and approved under the special provisions of subdivisions (d), (e), (f) and (g) may be developed in the region without obtaining the review and approval of the agency and no project may be approved unless it is found to comply with the regional plan and with the ordinances, rules and regulations enacted pursuant to subdivision (a) to effectuate that plan.

The agency may approve a project in the region only after making the written findings required by this subdivision or subdivision (g) of Article V. Such findings shall be based on substantial evidence in the record.

Before adoption by the agency of the ordinances required in subdivision (g) of Article V, the agency may approve a project in the region only after making written findings on the basis of substantial evidence in the record that the project is consistent with the regional plan then in effect and with applicable plans, ordinances, regulations, and standards of federal and state agencies relating to the protection, maintenance and enhancement of environmental quality in the region.

(c) The legislatures of the states of California and Nevada find that in order to make effective the regional plan as revised by the agency, it is necessary to halt temporarily works of development in the region which might otherwise absorb the entire capability of the region for further development or direct it out of harmony with the ultimate plan. Subject to the limitation provided in this subdivision, from the effective date of the amendments to this compact until the regional plan is amended pursuant to subdivision (c) of Article V, or until May 1, 1983, whichever is earlier:

(1) Except as otherwise provided in this paragraph, no new subdivision, planned unit development, or condominium project may be approved unless a complete tentative map or plan has been approved before the effective date of the amendments to this compact by all agencies having jurisdiction. The subdivision of land owned by a general improvement district, which existed and owned the land before the effective date of the amendments to this compact, may be approved if subdivision of the land is necessary to avoid insolvency of the district.

(2) Except as provided in paragraph (3), no apartment building may be erected unless the required permits for such building have been secured from all agencies having jurisdiction, prior to the effective date of the amendments to this compact.

(3) During each of the calendar years 1980, 1981 and 1982, no city or county may issue building permits which authorize the construction of a greater number of new residential units within the region than were authorized within the region by building permits issued by that city or county during the calendar year 1978. For the period of January through April, 1983, building permits authorizing the construction of no more than one-third of that number may be issued by each such city or county. For purposes of this paragraph a "residential unit" means either a single family residence or an individual residential unit within a larger building, such as an apartment building, a duplex or a condominium.

The legislatures find the respective numbers of residential units authorized within the region during the calendar year 1978 to be as follows:

1. City of South Lake Tahoe and El Dorado County (combined).....	252
2. Placer County.....	278
3. Carson City.....	-0-
4. Douglas County.....	339
5. Washoe County.....	739

(4) During each of the calendar years 1980, 1981 and 1982, no city or county may issue building permits which authorize construction of a greater square footage of new commercial buildings within the region than were authorized within the region by building permits for commercial purposes issued by that city or county during the calendar year 1978. For the period of January through April, 1983, building permits authorizing the construction of no more than one-third the amount of that square footage may be issued by each such city or county.

The legislatures find the respective square footages of commercial buildings authorized within the region during calendar year 1978 to be as follows:

1. City of South Lake Tahoe and El Dorado County (combined).....	64,324
2. Placer County.....	23,000
3. Carson City.....	-0-
4. Douglas County.....	57,354
5. Washoe County.....	50,600

(5) No structure may be erected to house gaming under a nonrestricted license.

(6) No facility for the treatment of sewage may be constructed or enlarged except:

(A) To comply, as ordered by the appropriate state agency for the control of water pollution, with existing limitations of effluent under the Clean Water Act, [33 U.S.C. §§ 1251 et seq.](#), and the applicable state law for control of water pollution;

(B) To accommodate development which is not prohibited or limited by this subdivision; or

(C) In the case of Douglas County Lake Tahoe Sewer Authority, to modify or otherwise alter sewage treatment facilities existing on the effective date of the amendments to this compact so that such facilities will be able to treat the total volume of effluent for which they were originally designed, which is 3.0 million gallons per day. Such modification or alteration is not a “project”; is not subject to the requirements of Article VII; and does not require a permit from the agency. Before commencing such modification or alteration, however, the Authority shall submit to the agency its report identifying any significant soil erosion problems which may be caused by such modifications or alterations and the measures which the Authority proposes to take to mitigate or avoid such problems.

The moratorium imposed by this subdivision does not apply to work done pursuant to a right vested before the effective date of the amendments to this compact. Notwithstanding the expiration date of the moratorium imposed by this subdivision, no new highway may be built or existing highway widened to accommodate additional continuous lanes for automobiles until the regional transportation plan is revised and adopted.

The moratorium imposed by this subdivision does not apply to the construction of any parking garage which has been approved by the agency prior to May 4, 1979, whether that approval was affirmative or by default. The provisions of this paragraph are not an expression of legislative intent that any such parking garage, the approval of which is the subject of litigation which was pending on the effective date of the amendments to this compact, should or should not be constructed. The provisions of this paragraph are intended solely to permit construction of such a parking garage if a judgment sustaining the agency's approval to construct that parking garage has become final and no appeal is pending or may lawfully be taken to a higher court.

(d) Subject to the final order of any court of competent jurisdiction entered in litigation contesting the validity of an approval by the Tahoe Regional Planning Agency, whether that approval was affirmative or by default, if that litigation was pending on May 4, 1979, the agency and the states of California and Nevada shall recognize as a permitted and conforming use:

(1) Every structure housing gaming under a nonrestricted license which existed as a licensed gaming establishment on May 4, 1979, or whose construction was approved by the Tahoe Regional Planning Agency affirmatively or deemed approved before that date. The construction or use of any structure to house gaming under a nonrestricted license not so existing or approved, or the enlargement in cubic volume of any such existing or approved structure is prohibited.

(2) Every other nonrestricted gaming establishment whose use was seasonal and whose license was issued before May 4, 1979, for the same season and for the number and type of games and slot machines on which taxes or fees were paid in the calendar year 1978.

(3) Gaming conducted pursuant to a restricted gaming license issued before May 4, 1979, to the extent permitted by that license on that date.

The area within any structure housing gaming under a nonrestricted license which may be open to public use (as distinct from that devoted to the private use of guests and exclusive of any parking area) is limited to the area existing or approved for public use on May 4, 1979. Within these limits, any external modification of the structure which requires a permit from a local government also requires approval from the agency. The agency shall not permit restaurants, convention facilities, showrooms or other public areas to be constructed elsewhere in the region outside the structure in order to replace areas existing or approved for public use on May 4, 1979.

(e) Any structure housing licensed gaming may be rebuilt or replaced to a size not to exceed the cubic volume, height and land coverage existing or approved on May 4, 1979, without the review or approval of the agency or any planning or regulatory authority of the State of Nevada whose review or approval would be required for a new structure.

(f) The following provisions apply to any internal or external modification, remodeling, change in use, or repair of a structure housing gaming under a nonrestricted license which is not prohibited by Article VI (d):

(1) The agency's review of an external modification of the structure which requires a permit from a local government is limited to determining whether the external modification will do any of the following:

- (A) Enlarge the cubic volume of the structure;
- (B) Increase the total square footage of area open to or approved for public use on May 4, 1979;
- (C) Convert an area devoted to the private use of guests to an area open to public use;
- (D) Increase the public area open to public use which is used for gaming beyond the limits contained in paragraph (3); and
- (E) Conflict with or be subject to the provisions of any of the agency's ordinances that are generally applicable throughout the region.

The agency shall make this determination within 60 days after the proposal is delivered to the agency in compliance with the agency's rules or regulations governing such delivery unless the applicant has agreed to an extension of this time limit. If an external modification is determined to have any of the effects enumerated in subparagraphs (A) through (C), it is prohibited. If an external modification is determined to have any of the effects enumerated in subparagraph (D) or (E), it is subject to the applicable provisions of this compact. If an external modification is determined to have no such effect, it is not subject to the provisions of this compact.

(2) Except as provided in paragraph (3), internal modification, remodeling, change in use or repair of a structure housing gaming under a nonrestricted license is not a project and does not require the review or approval of the agency.

(3) Internal modification, remodeling, change in use or repair of areas open to public use within a structure housing gaming under a nonrestricted license which alone or in combination with any other such modification, remodeling, change in use or repair will increase the total portion of those areas which is actually used for gaming by more than the product of the total base area, as defined below, in square feet existing on or approved before August 4, 1980, multiplied by 15 percent constitutes a project and is subject to all of the provisions of this compact relating to projects. For purposes of this paragraph and the determination required by Article VI (g), base area means all of the area within a structure housing gaming under a nonrestricted license which may be open to public use, whether or not gaming is actually conducted or carried on in that area, except retail stores, convention centers and meeting rooms, administrative offices, kitchens, maintenance and storage areas, rest rooms, engineering and mechanical rooms, accounting rooms and counting rooms.

(g) In order to administer and enforce the provisions of paragraphs (d), (e) and (f) the State of Nevada, through its appropriate planning or regulatory agency, shall require the owner or licensee of a structure housing gaming under a nonrestricted license to provide:

(1) Documents containing sufficient information for the Nevada agency to establish the following relative to the structure:

- (A) The location of its external walls;

(B) Its total cubic volume;

(C) Within its external walls, the area in square feet open or approved for public use and the area in square feet devoted to or approved for the private use of guests on May 4, 1979;

(D) The amount of surface area of land under the structure; and

(E) The base area as defined in paragraph (f)(3) in square feet existing on or approved before August 4, 1980.

(2) An informational report whenever any internal modification, remodeling, change in use, or repair will increase the total portion of the areas open to public use which is used for gaming.

The Nevada agency shall transmit this information to the Tahoe Regional Planning Agency.

(h) Gaming conducted pursuant to a restricted gaming license is exempt from review by the agency if it is incidental to the primary use of the premises.

(i) The provisions of subdivisions (d) and (e) are intended only to limit gaming and related activities as conducted within a gaming establishment, or construction designed to permit the enlargement of such activities, and not to limit any other use of property zoned for commercial use or the accommodation of tourists, as approved by the agency.

(j) Legal actions arising out of or alleging a violation of the provisions of this compact, of the regional plan or of an ordinance or regulation of the agency or of a permit or a condition of a permit issued by the agency are governed by the following provisions:

(1) This subdivision applies to:

(A) Actions arising out of activities directly undertaken by the agency.

(B) Actions arising out of the issuance to a person of a lease, permit, license or other entitlement for use by the agency.

(C) Actions arising out of any other act or failure to act by any person or public agency.

Such legal actions may be filed and the provisions of this subdivision apply equally in the appropriate courts of California and Nevada and of the United States.

(2) Venue lies:

(A) If a civil or criminal action challenges an activity by the agency or any person which is undertaken or to be undertaken upon a parcel of real property, in the state or federal judicial district where the real property is situated.

(B) If an action challenges an activity which does not involve a specific parcel of land (such as an action challenging an ordinance of the agency), in any state or federal court having jurisdiction within the region.

(3) Any aggrieved person may file an action in an appropriate court of the State of California or Nevada or of the United States alleging noncompliance with the provisions of this compact or with an ordinance or regulation of the agency. In the case of governmental agencies, "aggrieved person" means the Tahoe Regional Planning Agency or any state, federal or local agency. In the case of any person other than a governmental agency who challenges an action of the Tahoe Regional Planning Agency, "aggrieved person" means any person who has appeared, either in person, through an authorized representative, or in writing, before the agency at an appropriate administrative hearing to register objection to the action which is being challenged, or who had good cause for not making such an appearance.

(4) A legal action arising out of the adoption or amendment of the regional plan or of any ordinance or regulation of the agency, or out of the granting or denial of any permit, shall be commenced within 60 days after final action by the agency. All other legal actions shall be commenced within 65 days after discovery of the cause of action.

(5) In any legal action filed pursuant to this subdivision which challenges an adjudicatory act or decision of the agency to approve or disapprove a project, the scope of judicial inquiry shall extend only to whether there was prejudicial abuse of discretion. Prejudicial abuse of discretion is established if the agency has not proceeded in a manner required by law or if the act or decision of the agency was not supported by substantial evidence in light of the whole record. In making such a determination the court shall not exercise its independent judgment on evidence but shall only determine whether the act or decision was supported by substantial evidence in light of the whole record. In any legal action filed pursuant to this subdivision which challenges a legislative act or decision of the agency (such as the adoption of the regional plan and the enactment of implementing ordinances), the scope of the judicial inquiry shall extend only to the questions of whether the act or decision has been arbitrary, capricious or lacking substantial evidentiary support or whether the agency has failed to proceed in a manner required by law.

(6) In addition to the provisions of paragraph (5) relating to judicial inquiry:

(A) When adopting or amending a regional plan, the agency shall act in accordance with the requirements of the compact and the implementing ordinances, rules and regulations, and a party challenging the regional plan has the burden of showing that the regional plan is not in conformance with those requirements.

(B) When taking an action or making a decision, the agency shall act in accordance with the requirements of the compact and the regional plan, including the implementing ordinances, rules and regulations, and a party challenging the action or decision has the burden of showing that the act or decision is not in conformance with those requirements.

(7) The provisions of this subdivision do not apply to any legal proceeding pending on the date when this subdivision becomes effective. Any such legal proceeding shall be conducted and concluded under the provisions of law which were applicable prior to the effective date of this subdivision.

- (8) The security required for the issuance of a temporary restraining order or preliminary injunction based upon an alleged violation of this compact or any ordinance, plan, rule or regulation adopted pursuant thereto is governed by the rule or statute applicable to the court in which the action is brought, unless the action is brought by a public agency or political subdivision to enforce its own rules, regulations and ordinances in which case no security shall be required.
- (k) The agency shall monitor activities in the region and may bring enforcement actions in the region to ensure compliance with the regional plan and adopted ordinances, rules, regulations and policies. If it is found that the regional plan, or ordinances, rules, regulations and policies are not being enforced by a local jurisdiction, the agency may bring action in a court of competent jurisdiction to ensure compliance.
- (l) Any person who violates any provision of this compact or of any ordinance or regulation of the agency or of any condition of approval imposed by the agency is subject to a civil penalty not to exceed \$5,000. Any such person is subject to an additional civil penalty not to exceed \$5,000 per day, for each day on which such a violation persists. In imposing the penalties authorized by this subdivision, the court shall consider the nature of the violation and shall impose a greater penalty if it was willful or resulted from gross negligence than if it resulted from inadvertence or simple negligence.
- (m) The agency is hereby empowered to initiate, negotiate and participate in contracts and agreements among the local governmental authorities of the region, or any other intergovernmental contracts or agreements authorized by state or federal law.
- (n) Each intergovernmental contract or agreement shall provide for its own funding and staffing, but this shall not preclude financial contributions from the local authorities concerned or from supplementary sources.
- (o) Every record of the agency, whether public or not, shall be open for examination to the Legislature and Controller of the State of California and the legislative auditor of the State of Nevada.
- (p) Approval by the agency of any project expires 3 years after the date of final action by the agency or the effective date of the amendments to this compact, whichever is later, unless construction is begun within that time and diligently pursued thereafter, or the use or activity has commenced. In computing the 3-year period any period of time during which the project is the subject of a legal action which delays or renders impossible the diligent pursuit of that project shall not be counted. Any license, permit or certificate issued by the agency which has an expiration date shall be extended by that period of time during which the project is the subject of such legal action as provided in this subdivision.
- (q) The governing body shall maintain a current list of real property known to be available for exchange with the United States or with other owners of real property in order to facilitate exchanges of real property by owners of real property in the region.

ARTICLE VII. Environmental Impact Statements

- (a) The Tahoe Regional Planning Agency when acting upon matters that have a significant effect on the environment shall:
- (1) Utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision making which may have an impact on man's environment;

(2) Prepare and consider a detailed environmental impact statement before deciding to approve or carry out any project. The detailed environmental impact statement shall include the following:

(A) The significant environmental impacts of the proposed project;

(B) Any significant adverse environmental effects which cannot be avoided should the project be implemented;

(C) Alternatives to the proposed project;

(D) Mitigation measures which must be implemented to assure meeting standards of the region;

(E) The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity;

(F) Any significant irreversible and irretrievable commitments of resources which would be involved in the proposed project should it be implemented; and

(G) The growth-inducing impact of the proposed project;

(3) Study, develop and describe appropriate alternatives to recommended courses of action for any project which involves unresolved conflicts concerning alternative uses of available resources;

(4) Make available to states, counties, municipalities, institutions and individuals, advice and information useful in restoring, maintaining and enhancing the quality of the region's environment; and

(5) Initiate and utilize ecological information in the planning and development of resource-oriented projects.

(b) Prior to completing an environmental impact statement, the agency shall consult with and obtain the comments of any federal, state or local agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate federal, state and local agencies which are authorized to develop and enforce environmental standards shall be made available to the public and shall accompany the project through the review processes. The public shall be consulted during the environmental impact statement process and views shall be solicited during a public comment period not to be less than 60 days.

(c) Any environmental impact statement required pursuant to this article need not repeat in its entirety any information or data which is relevant to such a statement and is a matter of public record or is generally available to the public, such as information contained in an environmental impact report prepared pursuant to the California Environmental Quality Act or a federal environmental impact statement prepared pursuant to the National Environmental Policy Act of 1969. However, such

information or data shall be briefly described in the environmental impact statement and its relationship to the environmental impact statement shall be indicated.

In addition, any person may submit information relative to a proposed project which may be included, in whole or in part, in any environmental impact statement required by this article.

(d) In addition to the written findings specified by agency ordinance to implement the regional plan, the agency shall make either of the following written findings before approving a project for which an environmental impact statement was prepared:

(1) Changes or alterations have been required in or incorporated into such project which avoid or reduce the significant adverse environmental effects to a less than significant level; or

(2) Specific considerations, such as economic, social or technical, make infeasible the mitigation measures or project alternatives discussed in the environmental impact statement on the project.

A separate written finding shall be made for each significant effect identified in the environmental impact statement on the project. All written findings must be supported by substantial evidence in the record.

(e) The agency may charge and collect a reasonable fee from any person proposing a project subject to the provisions of this compact in order to recover the estimated costs incurred by the agency in preparing an environmental impact statement under this article.

(f) The agency shall adopt by ordinance a list of classes of projects which the agency has determined will not have a significant effect on the environment and therefore will be exempt from the requirement for the preparation of an environmental impact statement under this article. Prior to adopting the list, the agency shall make a written finding supported by substantial evidence in the record that each class of projects will not have a significant effect on the environment.

ARTICLE VIII. Finances

(a) On or before September 30 of each calendar year the agency shall establish the amount of money necessary to support its activities for the next succeeding fiscal year commencing July 1 of the following year. The agency shall apportion \$75,000 of this amount among the counties within the region on the same ratio to the total sum required as the full cash valuation of taxable property within the region in each county bears to the total full cash valuation of taxable property within the region. In addition, each county within the region in California shall pay \$18,750 to the agency and each county within the region in Nevada, including Carson City, shall pay \$12,500 to the agency, from any funds available therefor. The State of California and the State of Nevada may pay to the agency by July 1 of each year any additional sums necessary to support the operations of the agency pursuant to this compact. If additional funds are required, the agency shall make a request for the funds to the states of California and Nevada. Requests for state funds must be apportioned two-thirds from California and one-third from Nevada. Money appropriated shall be paid within 30 days.

(b) The agency may fix and collect reasonable fees for any services rendered by it.

(c) The agency shall submit an itemized budget to the states for review with any request for state funds, shall be strictly accountable to any county in the region and the states for all funds paid by them to the agency and shall be strictly accountable to all participating bodies for all receipts and disbursement.

(d) The agency is authorized to receive gifts, donations, subventions, grants, and other financial aids and funds; but the agency may not own land except as provided in subdivision (i) of Article III.

(e) The agency shall not obligate itself beyond the moneys due under this article for its support from the several counties and the states for the current fiscal year, plus any moneys on hand or irrevocably pledged to its support from other sources. No obligation contracted by the agency shall bind either of the party states or any political subdivision thereof.

ARTICLE IX. Transportation District

(a) The Tahoe transportation district is hereby established as a special purpose district. The boundaries of the district are coterminous with those of the region.

(b) The business of the district shall be managed by a board of directors consisting of:

(1) One member of the county board of supervisors of each of the counties of El Dorado and Placer who must be appointed by his respective board of supervisors;

(2) One member of the city council of the City of South Lake Tahoe who must be appointed by the city council;

(3) One member each of the board of county commissioners of Douglas County and of Washoe County who must be appointed by his respective board of county commissioners;

(4) One member of the board of supervisors of Carson City who must be appointed by the board of supervisors;

(5) One member of the South Shore Transportation Management Association or its successor organization who must be appointed by the association or its successor organization;

(6) One member of the North Shore Transportation Management Association or its successor organization who must be appointed by the association or its successor organization;

(7) One member of each local transportation district in the region that is authorized by the State of Nevada or the State of California who must be appointed by his respective transportation district;

(8) One member appointed by a majority of the other voting directors who represents a public or private transportation system operating in the region;

(9) The director of the California Department of Transportation; and

(10) The director of the department of transportation of the State of Nevada.

Any entity that appoints a member to the board of directors, the director of the California Department of Transportation or the director of the department of transportation of the State of Nevada may designate an alternate.

(c) Before a local transportation district appoints a member to the board of directors pursuant to paragraph (7) of subdivision (b), the local transportation district must enter into a written agreement with the Tahoe transportation district that sets forth the responsibilities of the districts for the establishment of policies and the management of financial matters, including, but not limited to, the distribution of revenue among the districts.

(d) The directors of the California Department of Transportation and the department of transportation of the State of Nevada, or their designated alternates, serve as nonvoting directors, but shall provide technical and professional advice to the district as necessary and appropriate.

(e) The vote of a majority of the directors must agree to take action. If a majority of votes in favor of an action are not cast, an action of rejection shall be deemed to have been taken.

(f) The Tahoe transportation district may by resolution establish procedures for the adoption of its budgets, the appropriation of its money and the carrying on of its other financial activities. These procedures must conform insofar as is practicable to the procedures for financial administration of the State of California or the State of Nevada or one or more of the local governments in the region.

(g) The Tahoe transportation district may in accordance with the adopted transportation plan:

(1) Own and operate a public transportation system to the exclusion of all other publicly owned transportation systems in the region.

(2) Own and operate support facilities for public and private systems of transportation, including, but not limited to, parking lots, terminals, facilities for maintenance, devices for the collection of revenue and other related equipment.

(3) Acquire or agree to operate upon mutually agreeable terms any publicly or privately owned transportation system or facility within the region.

(4) Hire the employees of existing public transportation systems that are acquired by the district without loss of benefits to the employees, bargain collectively with employee organizations, and extend pension and other collateral benefits to employees.

(5) Contract with private companies to provide supplementary transportation or provide any of the services needed in operating a system of transportation for the region.

- (6) Contract with local governments in the region to operate transportation facilities or provide any of the services necessary to operate a system of transportation for the region.
- (7) Fix the rates and charges for transportation services provided pursuant to this subdivision.
- (8) Issue revenue bonds and other evidence of indebtedness and make other financial arrangements appropriate for developing and operating a public transportation system.
- (9) By resolution, determine and propose for adoption a tax for the purpose of obtaining services of the district. The tax proposed must be general and of uniform operation throughout the region, and may not be graduated in any way, except for a sales and use tax. If a sales and use tax is approved by the voters as provided in this paragraph, it may be administered by the states of California and Nevada respectively in accordance with the laws that apply within their respective jurisdictions and must not exceed a rate of 1 percent of the gross receipts from the sale of tangible personal property sold in the district. The district is prohibited from imposing any other tax measured by gross or net receipts on business, an ad valorem tax, a tax or charge that is assessed against people or vehicles as they enter or leave the region, and any tax, direct or indirect, on gaming tables and devices. Any such proposition must be submitted to the voters of the district and shall become effective upon approval of the voters voting on the proposition who reside in the State of California in accordance with the laws that apply within that state and approval of the voters voting on the proposition who reside in the State of Nevada in accordance with the laws that apply within that state. The revenues from any such tax must be used for the service for which it was imposed, and for no other purpose.
- (10) Provide service from inside the region to convenient airport, railroad and interstate bus terminals without regard to the boundaries of the region.
- (h) The legislatures of the states of California and Nevada may, by substantively identical enactments, amend this article.

ARTICLE X. Miscellaneous

- (a) It is intended that the provisions of this compact shall be reasonably and liberally construed to effectuate the purposes thereof. Except as provided in subdivision (c), the provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining state and in full force and effect as to the state affected as to all severable matters.
- (b) The agency shall have such additional powers and duties as may hereafter be delegated or imposed upon it from time to time by the action of the Legislature of either state concurred in by the Legislature of the other.
- (c) A state party to this compact may withdraw therefrom by enacting a statute repealing the compact. Notice of withdrawal shall be communicated officially and in writing to the Governor of the other state and to the agency administrators. This provision

is not severable, and if it is held to be unconstitutional or invalid, no other provision of this compact shall be binding upon the State of Nevada or the State of California.

(d) No provision of this compact shall have any effect upon the allocation, distribution or storage of interstate waters or upon any appropriative water right.

Credits

Added by Laws 1968, p. 4. Repealed by Laws 1979, c. 574, § 20. Amended by Laws 1979, p. 1135; Laws 1980 (14th ss), p. 1; [Laws 1997, c. 311, § 1](#); [Laws 2013, c. 424, § 1](#); [Laws 2017, c. 335, § 6](#), eff. Oct. 1. 2017.

Editors' Notes

CONDITIONAL PROVISIONS

<Upon proclamation by the governor that certain conditions have been met, amendments to NRS 277.200 enacted by Laws 2011, c. 530, and Laws 2019, c. 207, will become effective as detailed in the Historical and Statutory Notes which follow.>

[Notes of Decisions \(113\)](#)

N. R. S. 277.200, NV ST 277.200

Current through legislation of the 83rd Regular Session (2025) End and through Chapter 13 (End) of the 36th Special Session (2025). Text subject to revision and classification by the Legislative Counsel Bureau.



KeyCite Yellow Flag

Proposed Legislation

West's North Carolina General Statutes Annotated
Chapter 160D. Local Planning and Development Regulation
Article 1. General Provisions

N.C.G.S.A. § 160D-107

§ 160D-107. Moratoria

Effective: June 19, 2020

[Currentness](#)

(a) Authority.--As provided in this section, local governments may adopt temporary moratoria on any development approval required by law, except for the purpose of developing and adopting new or amended plans or development regulations governing residential uses. The duration of any moratorium shall be reasonable in light of the specific conditions that warrant imposition of the moratorium and may not exceed the period of time necessary to correct, modify, or resolve such conditions.

(b) Hearing Required.--Except in cases of imminent and substantial threat to public health or safety, before adopting a development regulation imposing a development moratorium with a duration of 60 days or any shorter period, the governing board shall hold a legislative hearing and shall publish a notice of the hearing in a newspaper having general circulation in the area not less than seven days before the date set for the hearing. A development moratorium with a duration of 61 days or longer, and any extension of a moratorium so that the total duration is 61 days or longer, is subject to the notice and hearing requirements of [G.S. 160D-601](#).

(c) Exempt Projects.--Absent an imminent threat to public health or safety, a development moratorium adopted pursuant to this section does not apply to any project for which a valid building permit issued pursuant to [G.S. 160D-1108](#) is outstanding, to any project for which a special use permit application has been accepted as complete, to development set forth in a site-specific vesting plan approved pursuant to [G.S. 160D-108.1](#), to development for which substantial expenditures have already been made in good-faith reliance on a prior valid development approval, or to preliminary or final subdivision plats that have been accepted for review by the local government prior to the call for a hearing to adopt the moratorium. Any preliminary subdivision plat accepted for review by the local government prior to the call for a hearing, if subsequently approved, shall be allowed to proceed to final plat approval without being subject to the moratorium. Notwithstanding the foregoing, if a complete application for a development approval has been submitted prior to the effective date of a moratorium, [G.S. 160D-108\(b\)](#) applies when permit processing resumes.

(d) Required Statements.--Any development regulation establishing a development moratorium must include, at the time of adoption, each of the following:

- (1) A statement of the problems or conditions necessitating the moratorium and what courses of action, alternative to a moratorium, were considered by the local government and why those alternative courses of action were not deemed adequate.

(2) A statement of the development approvals subject to the moratorium and how a moratorium on those approvals will address the problems or conditions leading to imposition of the moratorium.

(3) A date for termination of the moratorium and a statement setting forth why that duration is reasonably necessary to address the problems or conditions leading to imposition of the moratorium.

(4) A statement of the actions, and the schedule for those actions, proposed to be taken by the local government during the duration of the moratorium to address the problems or conditions leading to imposition of the moratorium.

(e) Limit on Renewal or Extension.--No moratorium may be subsequently renewed or extended for any additional period unless the local government has taken all reasonable and feasible steps proposed to be taken in its ordinance establishing the moratorium to address the problems or conditions leading to imposition of the moratorium and unless new facts and conditions warrant an extension. Any ordinance renewing or extending a development moratorium must include, at the time of adoption, the findings set forth in subdivisions (1) through (4) of subsection (d) of this section, including what new facts or conditions warrant the extension.

(f) Expedited Judicial Review.--Any person aggrieved by the imposition of a moratorium on development approvals required by law may apply to the General Court of Justice for an order enjoining the enforcement of the moratorium. Actions brought pursuant to this section shall be scheduled for expedited hearing, and subsequent proceedings in those actions shall be accorded priority by the trial and appellate courts. In such actions, the local government has the burden of showing compliance with the procedural requirements of this subsection.

Credits

Added by [S.L. 2019-111, § 2.4](#)(§ 160D-1-7), eff. June 19, 2020. Amended by [S.L. 2020-25, § 4](#), eff. June 19, 2020.

[Notes of Decisions \(3\)](#)

N.C.G.S.A. § 160D-107, NC ST § 160D-107

The statutes and Constitution are current through S.L. 2025-97 of the 2025 Regular Session of the General Assembly, subject to changes made pursuant to direction of the Revisor of Statutes.

West's Oregon Revised Statutes Annotated

Title 19. Miscellaneous Matters Related to Government and Public Affairs

Chapter 197. Comprehensive Land Use Planning I (Refs & Annos)

Moratorium on Construction or Land Development (Refs & Annos)

O.R.S. § 197.520

197.520. Moratorium declarations

Currentness

(1) No city, county or special district may adopt a moratorium on construction or land development unless it first:

- (a) Provides written notice to the Department of Land Conservation and Development at least 45 days prior to the final public hearing to be held to consider the adoption of the moratorium;
- (b) Makes written findings justifying the need for the moratorium in the manner provided for in this section; and
- (c) Holds a public hearing on the adoption of the moratorium and the findings which support the moratorium.

(2) For urban or urbanizable land, a moratorium may be justified by demonstration of a need to prevent a shortage of public facilities which would otherwise occur during the effective period of the moratorium. Such a demonstration shall be based upon reasonably available information, and shall include, but need not be limited to, findings:

- (a) Showing the extent of need beyond the estimated capacity of existing public facilities expected to result from new land development, including identification of any public facilities currently operating beyond capacity, and the portion of such capacity already committed to development;
- (b) That the moratorium is reasonably limited to those areas of the city, county or special district where a shortage of key public facilities would otherwise occur; and
- (c) That the housing and economic development needs of the area affected have been accommodated as much as possible in any program for allocating any remaining public facility capacity.

(3) A moratorium not based on a shortage of public facilities under subsection (2) of this section may be justified only by a demonstration of compelling need. Such a demonstration shall be based upon reasonably available information and shall include, but need not be limited to, findings:

- (a) For urban or urbanizable land:

(A) That application of existing development ordinances or regulations and other applicable law is inadequate to prevent irrevocable public harm from development in affected geographical areas;

(B) That the moratorium is sufficiently limited to ensure that a needed supply of affected housing types and the supply of commercial and industrial facilities within or in proximity to the city, county or special district are not unreasonably restricted by the adoption of the moratorium;

(C) Stating the reasons alternative methods of achieving the objectives of the moratorium are unsatisfactory;

(D) That the city, county or special district has determined that the public harm which would be caused by failure to impose a moratorium outweighs the adverse effects on other affected local governments, including shifts in demand for housing or economic development, public facilities and services and buildable lands, and the overall impact of the moratorium on population distribution; and

(E) That the city, county or special district proposing the moratorium has determined that sufficient resources are available to complete the development of needed interim or permanent changes in plans, regulations or procedures within the period of effectiveness of the moratorium.

(b) For rural land:

(A) That application of existing development ordinances or regulations and other applicable law is inadequate to prevent irrevocable public harm from development in affected geographical areas;

(B) Stating the reasons alternative methods of achieving the objectives of the moratorium are unsatisfactory;

(C) That the moratorium is sufficiently limited to ensure that lots or parcels outside the affected geographical areas are not unreasonably restricted by the adoption of the moratorium; and

(D) That the city, county or special district proposing the moratorium has developed a work plan and time schedule for achieving the objectives of the moratorium.

(4) No moratorium adopted under subsection (3)(a) of this section shall be effective for a period longer than 120 days, but such a moratorium may be extended provided the city, county or special district adopting the moratorium holds a public hearing on the proposed extension and adopts written findings that:

(a) Verify the problem giving rise to the need for a moratorium still exists;

(b) Demonstrate that reasonable progress is being made to alleviate the problem giving rise to the moratorium; and

(c) Set a specific duration for the renewal of the moratorium. No extension may be for a period longer than six months.

(5) Any city, county or special district considering an extension of a moratorium shall give the department at least 14 days' notice of the time and date of the public hearing on the extension.

Credits

Laws 1980, c. 2, § 3; [Laws 1991, c. 839, § 3](#); [Laws 1995, c. 463, § 3](#).

[Notes of Decisions \(6\)](#)

O. R. S. § 197.520, OR ST § 197.520

Current through laws of the 2025 Regular Session of the 83rd Legislative Assembly, which convened January 21, 2025, and adjourned sine die June 27, 2025 and the 2025 Special Session of the 83rd Legislative Assembly, which convened August 29, 2025, and adjourned sine die October 1, 2025, pending classification of undesignated material and text revision by the Oregon Reviser. See ORS 173.160. Some statute sections may be more current, see credits for details.

End of Document

© 2026 Thomson Reuters. No claim to original U.S. Government Works.

West's General Laws of Rhode Island Annotated

Title 45. Towns and Cities

Chapter 22.2. Rhode Island Comprehensive Planning and Land Use Act

Gen.Laws 1956, § 45-22.2-13

§ 45-22.2-13. Compliance and implementation

Effective: June 25, 2024

[Currentness](#)

- (a) The municipality is responsible for the administration and enforcement of the plan.
- (b) All municipal land use decisions shall be in conformance with the locally adopted municipal comprehensive plan subject to [§ 45-22.2-12\(b\)](#).
- (c) Each municipality shall amend its zoning ordinance and map to conform to the comprehensive plan in accordance with the implementation program as required by [§ 45-22.2-6\(b\)\(11\)](#) and [§ 45-22.2-6\(b\)\(12\)\(iv\)](#). The zoning ordinance and map in effect at the time of plan adoption shall remain in force until amended. Except with respect to comprehensive plans that have failed to be updated within twelve (12) years, as set forth in [§ 45-22.2-6\(b\)\(11\)](#), in instances where the zoning ordinance is in conflict with an adopted comprehensive plan, the zoning ordinance in effect at the time of the comprehensive plan adoption shall direct municipal land use decisions until such time as the zoning ordinance is amended to achieve consistency with the comprehensive plan and its implementation schedule. In instances of uncertainty in the internal construction or application of any section of the zoning ordinance or map, the ordinance or map shall be construed in a manner that will further the implementation of, and not be contrary to, the goals and policies and applicable content of the adopted comprehensive plan.
- (d) Limitations on land use applications, review, and approvals may be imposed according to only the following provisions:
- (1) Nothing in the chapter shall be deemed to preclude municipalities from imposing reasonable limitations on the number of building permits or other land use approvals to be issued at any time, provided such limitations are consistent with the municipality's comprehensive plan in accordance with this chapter and are based on a reasonable, rational assessment of the municipality's sustainable capacity for growth. If such limitation is applied to residential building permits, the limitation must be vital to protecting public health and welfare and it must be demonstrated that there is no other means available to protect public health and welfare given the need for additional housing units in the community. No such limitation shall be applicable to applications submitted as part of a comprehensive permit project under [§ 45-53-4](#) or units to be developed under inclusionary zoning.
- (2) In the event of a dire emergency not reasonably foreseeable as part of the comprehensive planning process, a municipality may impose a limitation on the number of building permits or other land use approvals to be issued at any time, provided that such limitation is reasonably necessary to alleviate the emergency and is limited to the time reasonably necessary to alleviate the emergency, but in no event shall such limitation be in place longer than one hundred twenty (120) days.

(e) A one-time moratorium, for the purpose of providing interim protection for a planned future land use or uses, may be imposed during the twelve (12) months subsequent to the adoption of the local comprehensive plan provided that a change to the zoning ordinance and map has been identified and scheduled for implementation within twelve (12) months of plan adoption. The moratorium shall be enacted as an ordinance and may regulate, restrict, or prohibit any use, development, or subdivisions under the following provisions:

(1) The moratorium is restricted to those areas identified on the map or maps as required by § 45-22.2-6(b)(2)(iii).

(2) A notice of the moratorium must be provided by first class mail to property owners affected by said moratorium at least fourteen (14) days in advance of the public hearing.

(3) The ordinance shall specify:

(i) The purpose of the moratorium;

(ii) The date it shall take effect and the date it shall end;

(iii) The area covered by the moratorium; and

(iv) The regulations, restrictions, or prohibitions established by the moratorium.

(4) The moratorium may be extended up to an additional ninety (90) days if necessary to complete a zoning ordinance and map change provided that: (i) The public hearing as required by § 45-24-53 has commenced; and (ii) The chief approves the extension based on a demonstration of good cause. Said extension shall not be deemed as non-conformance to the implementation schedule.

(f) A moratorium enacted under the provisions of subsection (e) of this section shall not apply to state agencies until such time that the municipal comprehensive plan receives approval from the chief or superior court.

(g) For a moratorium enacted under the provisions of subsection (e) of this section, in the event a municipality fails to amend its zoning ordinance and map to conform to the comprehensive plan within the implementation schedule, or by the expiration of the moratorium period, a municipality must amend either their implementation schedule or, if the future land use is no longer desirable or feasible, amend the future land use map.

(1) Failure to comply with this provision within one hundred twenty (120) days of the date of the implementation schedule or the expiration of the moratorium period shall result in the denial or rescission, in whole or in part, of state approval of the comprehensive plan and of all benefits and incentives conditioned on state approval.

(2) An implementation schedule amended under this provision shall not be eligible for an additional moratorium as provided for in subsection (e) of this section.

(h) For any moratorium related to the submission, review, or approval of any land use application for residential housing development, other than that covered by subsection (e) of this section, such moratorium must be vital to protecting public health and welfare and it must be demonstrated that there is no other means available to protect public health and welfare given the need for additional housing units in the community. No such limitation shall be applicable to applications submitted as part of a comprehensive permit project under § 45-53-4, or units to be developed under inclusionary zoning. The proposal for such moratorium shall be advertised in a newspaper of local circulation at least fourteen (14) days in advance of the hearing and shall be posted on the municipal website for the fourteen (14) days in advance of the hearing on the same. A moratorium under this provision shall not last for longer than one hundred twenty (120) days. A moratorium under this provision must include a vesting provision that vests all applications that are substantially complete at the time of the enactment of the moratorium.

Credits

P.L. 1988, ch. 601, § 1; P.L. 1995, ch. 247, § 1; P.L. 2001, ch. 179, § 1; P.L. 2011, ch. 215, § 1, eff. July 1, 2011; P.L. 2011, ch. 313, § 1, eff. July 12, 2011; P.L. 2023, ch. 314, § 1, eff. March 1, 2024; P.L. 2023, ch. 315, § 1, eff. March 1, 2024; P.L. 2024, ch. 300, § 1, eff. June 25, 2024; P.L. 2024, ch. 301, § 1, eff. June 25, 2024.

Notes of Decisions (2)

Gen. Laws, 1956, § 45-22.2-13, RI ST § 45-22.2-13

Current with effective legislation through Chapter 473 of the 2025 Regular Session of the Rhode Island Legislature.



KeyCite Yellow Flag
Proposed Legislation

West's General Laws of Rhode Island Annotated
Title 45. Towns and Cities
Chapter 24. Zoning Ordinances (Refs & Annos)

Gen.Laws 1956, § 45-24-73

§ 45-24-73. Design standards required for accessory dwelling units --
Consistent statewide treatment of accessory dwelling units required.

Effective: June 25, 2024

[Currentness](#)

(a) Pursuant to [§ 45-24-37](#), one accessory dwelling unit (ADU) per lot shall be allowed by right under the following circumstances:

- (1) On an owner-occupied property as a reasonable accommodation for family members with disabilities; or
- (2) On a lot with a total lot area of twenty thousand square feet (20,000 sq. ft.) or more for which the primary use is residential;
or
- (3) Where the proposed ADU is located within the existing footprint of the primary structure or existing accessory attached or detached structure and does not expand the footprint of the structure.

(b) Uniform standards.

(1) A municipality may establish a maximum unit size for an ADU but such limitation must allow, subject to applicable dimensional requirements:

- (i) A studio or one bedroom ADU of at least nine hundred square feet (900 sq. ft), or sixty percent (60%) of the floor area of the principal dwelling, whichever is less; and
- (ii) A two-bedroom (2) ADU of at least twelve hundred square feet (1,200 sq. ft.), or sixty percent (60%) of the floor area of the principal dwelling, whichever is less.

(2) For all ADU applications, a municipality shall not:

- (i) Restrict tenants based on familial relationships or age unless such restriction is necessary to comply with the terms of the federal subsidy related to affordability;

- (ii) Charge application or permitting fees for the creation of an ADU that exceed those that would be charged for a new single-family dwelling;
 - (iii) Require infrastructure improvements in connection with the ADU, including, but not limited to, separate water or sewer service lines or expanded septic system capacity unless such improvements and/or modifications are required by an applicable state agency for compliance under state law or regulation, or to comply with building code requirements, or to address capacity or upgrades necessary to accommodate the ADU;
 - (iv) Discriminate against populations protected under state and federal fair housing laws;
 - (v) Impose dimensional requirements or other development standards on ADUs that in any instance exceed the requirements for an accessory structure in the same zoning district;
 - (vi) Require additional lot area, lot frontage, or lot width for conforming lots or legal nonconforming lots of record solely to accommodate an ADU;
 - (vii) Require zoning relief for ADU applications proposed within an existing footprint of the primary or accessory structure which is a legal nonconforming structure in order to address the existing dimensional nonconformity;
 - (viii) Require more than one off-street parking space per bedroom of the ADU;
 - (ix) Limit ADUs to lots with preexisting dwellings, or otherwise prohibit ADUs as part of applications for new primary dwelling units or subdivisions;
 - (x) Prohibit an ADU that otherwise complies with this chapter and applicable dimensional regulations from having up to two (2) bedrooms;
 - (xi) Require an ADU to be exclusively occupied by a household that is low- or moderate-income or less as defined by § 42-128-8.1, unless such ADU is part of an inclusionary zoning or comprehensive permit application; or
 - (xii) Revoke the permitted status or otherwise require the disassembly of a legally established ADU upon transfer of title or occupancy.
- (3) An application for an ADU that is not allowed by right under this section, shall not, by itself, be reviewed as a minor land development or major land development project.
- (4) A municipality shall allow ADUs as part of applications for new primary dwelling units or subdivisions. For proposed ADUs that are part of a larger development proposal, a municipality shall not count such ADUs toward density of the proposal for purposes of limiting the number of dwelling units allowed in such development proposal.

(i) Municipalities may utilize a unified development review process for any application that includes ADUs, regardless of whether a city or town has opted into the current unified development review statute.

(5) As part of the approval process, municipalities may exempt ADUs from all or part of utility assessment and/or tie in fees.

(6) Private restrictions on ADUs imposed by condominium associations, homeowner associations, or similar residential property governing bodies, which conflict with the provisions of this section or the definition of an ADU as set forth in § 45-24-31, shall be void as against public policy. Provided, however, if ADUs are allowed by condominium association covenants, homeowner association covenants, or similar residential property governing bodies, they shall be deemed in compliance with this subsection.

(7) The development of ADUs shall not be restricted by any locally adopted ordinance or policy that places a limit or moratorium on the development of residential units in land zoned for residential use.

(8) ADUs shall not be offered or rented for tourist or transient use or through a hosting platform, as such terms are defined in § 42-63.1-2.

Credits

P.L. 2022, ch. 437, § 2, eff. June 30, 2022; P.L. 2022, ch. 440, § 2, eff. June 30, 2022; P.L. 2024, ch. 284, § 1, eff. June 25, 2024; P.L. 2024, ch. 285, § 1, eff. June 25, 2024.

Gen. Laws, 1956, § 45-24-73, RI ST § 45-24-73

Current with effective legislation through Chapter 473 of the 2025 Regular Session of the Rhode Island Legislature.

End of Document

© 2026 Thomson Reuters. No claim to original U.S. Government Works.

 KeyCite Yellow Flag
Proposed Legislation

West's General Laws of Rhode Island Annotated
Title 45. Towns and Cities
Chapter 53. Low- and Moderate-Income Housing

Gen.Laws 1956, § 45-53-4

§ 45-53-4. Procedure for approval of construction of low- or moderate-income housing

Effective: January 1, 2026
[Currentness](#)



(a) Any applicant proposing to build low- or moderate-income housing may submit to the local review board a single application for a comprehensive permit to build that housing in lieu of separate applications to the applicable local boards. This procedure is only available for proposals in which at least twenty-five percent (25%) of the housing is low- or moderate-income housing. This procedure is not available in cities and towns that have low- or moderate-income housing in excess of ten percent (10%) of its year-round housing units which also have an inclusionary zoning ordinance which complies with [§ 45-24-46.1](#).

(b) Cities and towns that have low- or moderate-income housing in excess of ten percent (10%) of its year-round housing units:

(1) May provide an applicant with more dwelling units than allowed by right under its zoning ordinance in the form of a density bonus to allow an increase in the allowed dwelling units per acre (DU/A), as well as other incentives and municipal government subsidies as defined in [§ 45-53-3](#);

(2) May, by council action, limit the annual total number of dwelling units in comprehensive permit applications from for-profit developers to an aggregate of one percent (1%) of the total number of year-round housing units in the town, and notwithstanding the timetables set forth elsewhere in this section, the local review board shall have the authority to consider comprehensive permit applications from for-profit developers, which are made pursuant to this subsection, sequentially in the order in which they are submitted.

(c) Cities and towns that do not have low- or moderate-income housing in excess of ten percent (10%) of its year-round housing units:

(1) Shall make available to applications under this chapter municipal government subsidies, including adjustments and zoning incentives, to offset the differential costs of the low- or moderate-income housing units. At a minimum, the following zoning incentives shall be allowed for in these cities or towns for projects submitted under this chapter:

(A) **Density bonuses.** These cities and towns shall provide an applicant with more dwelling units than allowed by right under its zoning ordinances in the form of a density bonus to allow an increase in the allowed dwelling units per acre (DU/A). At a minimum, the following density bonuses for projects submitted under this chapter, provided that the total land utilized in the density calculation shall exclude wetlands; area devoted to roadway infrastructure necessary for development; and easements or rights of way of record:

(i) For properties connected to public sewer and water, or eligible to be connected to public sewer and water based on written confirmation from each respective service provider, the density bonus for a project that provides at least twenty-five percent (25%) low- and moderate-income housing shall be at least five (5) units per acre;

(ii) For properties connected to public sewer and water, or eligible to be connected to public sewer and water based on written confirmation from each respective service provider, the density bonus for a project that provides at least fifty percent (50%) low- and moderate-income housing shall be at least nine (9) units per acre;

(iii) For properties connected to public sewer and water, or eligible to be connected to public sewer and water based on written confirmation from each respective service provider, the density bonus for a project that provides one hundred percent (100%) low- and moderate-income housing shall be at least twelve (12) units per acre;

(iv) For properties not connected to either public water or sewer or both, but which provide competent evidence as to the availability of water to service the development and/or a permit for on-site wastewater treatment facilities to service the dwelling units from the applicable state agency, the density bonus for a project that provides at least twenty-five percent (25%) low- and moderate-income housing shall be at least three (3) units per acre;

(v) For properties not connected to either public water or sewer or both, but which provide competent evidence as to the availability of water to service the development and/or a permit for on-site wastewater treatment facilities to service the dwelling units from the applicable state agency, the density bonus for a project that provides at least fifty percent (50%) low- and moderate-income housing shall be at least five (5) units per acre;

(vi) For properties not connected to either public water or sewer or both, but which provide competent evidence as to the availability of water to service the development and/or a permit for on-site wastewater treatment facilities to service the dwelling units from the applicable state agency, the density bonus for a project that provides one hundred percent (100%) low- and moderate-income housing shall be at least eight (8) units per acre;

(B) **Parking.** A municipality shall not require more than one off-street parking space per dwelling unit for units up to and including two (2) bedrooms in applications submitted under this chapter;

(C) **Bedrooms.** A municipality shall not limit the number of bedrooms for applications submitted under this chapter to anything less than three (3) bedrooms per dwelling unit for single-family dwelling units;

(D) **Floor area.** A municipality shall not utilize floor area requirements to limit any application, except as provided by § 45-24.3-11.

(d) A municipality shall not restrict comprehensive permit applications and permits by any locally adopted ordinance or policy that places a limit or moratorium on the development of residential units.

(e) The application and review process for a comprehensive permit shall be as follows:

(1) **Pre-application conference.** A municipality may require an applicant proposing a project under this chapter to complete, or the applicant proposing a project under this chapter, who is not electing to have master plan review, may request a pre-application conference with the local review board, the technical review committee established pursuant to § 45-23-56, or with the administrative officer for the local review board as appropriate. In advance of a pre-application conference, the applicant shall be required to submit only a short description of the project in writing including the number of units, type of housing, density analysis, preliminary list of adjustments needed, as well as a location map, and conceptual site plan. The purpose of the pre-application conference shall be to review a concept plan of the proposed development and to elicit feedback from the reviewing person or board. Upon receipt of a request by an applicant for a pre-application conference, the municipality shall have thirty (30) days to schedule and hold the pre-application conference, unless a different timeframe is agreed to by the applicant in writing. If thirty (30) days has elapsed from the filing of the pre-application submission and no pre-application conference has taken place, nothing shall be deemed to preclude an applicant from thereafter filing and proceeding with an application for preliminary plan review for a comprehensive permit.

(2) **Optional master plan.** An applicant may elect to apply for and be heard on master plan review prior to preliminary plan submission. If a master plan review is elected by the applicant the following shall apply:

(i) **Submission requirements.** Submission requirements for master plan review shall be limited to the following:

(A) An application form and fee;

(B) A short description of the project in writing including the number of units, type of housing, density analysis, list of adjustments needed, as well as a location map, and preliminary determinations as to site constraints;

(C) Conceptual site plans showing infrastructure locations for roadways, preliminary locations and design of conceptual stormwater facilities, location of sewer and water lines and/or wells and on-site wastewater treatment systems, locations of housing units, estimated locations of site constraints, and wetlands;

(D) A preliminary traffic opinion for projects of over thirty (30) dwelling units;

(E) A letter of eligibility issued by the Rhode Island housing and mortgage finance corporation, or in the case of projects primarily funded by the U.S. Department of Housing and Urban Development or other state or federal agencies, an award letter indicating the subsidy, or application in such form as may be prescribed for a municipal government subsidy;

(F) If the applicant submits any requests for adjustments at master plan, a public hearing shall be held in the same manner as during preliminary plan review as set forth in this section and the applicant shall be responsible for providing the list of abutters and all advertising costs.

(ii) **Certification of completeness.** The master plan application must be certified complete or incomplete by the administrative officer according to the provisions of § 45-23-36; provided, however, that the certificate shall be granted within twenty-five (25) days of submission of the application. The running of the time period set forth herein will be deemed stopped upon the issuance of a written certificate of incompleteness of the application by the administrative officer and will recommence upon the resubmission of a corrected application by the applicant. However, in no event will the administrative officer be required to certify a corrected submission as complete or incomplete less than ten (10) days after its resubmission. If the administrative officer certifies the application as incomplete, the officer shall set forth in writing with specificity the missing or incomplete items.

(iii) **Review of applications.** A master plan application filed in accordance with this chapter shall be reviewed in accordance with the following provisions:

(A) **Timeframe for review.** The local review board shall render a decision on the master plan application within sixty (60) days of the date the application is certified complete, or within a further amount of time that may be consented to by the applicant through the submission of a written consent.

(B) **Failure to act.** Failure of the local review board to act within the prescribed period constitutes approval of the master plan, and a certificate of the administrative officer as to the failure of the local review board to act within the required time and the resulting approval shall be issued on request of the applicant.

(C) **Required findings.** In voting on an application, the local review board shall make findings, supported by legally competent evidence on the record that discloses the nature and character of the observations upon which the fact finders acted, on the standards required for preliminary plan review in this section, to the extent applicable at the master plan. The failure to provide information which is required later at preliminary plan review shall not form a basis for denial. If the board votes to defer a finding to preliminary plan it shall do so on the record during the proceedings and in the written decision and specify what items are necessary for review at the preliminary plan stage in order to address that finding.

(iv) **Vesting.** The approved master plan is vested for a period of two (2) years with the right to extend for two (2), one-year extensions upon written request by the applicant, who must appear before the planning board for each annual review. Thereafter, vesting may be extended for a longer period, for good cause shown, if requested, in writing by the applicant, and approved by the local review board. The vesting for the master plan approval includes all ordinance provisions and regulations at the time of the approval, general and specific conditions shown on the approved master plan drawings and supporting material.

(3) Preliminary plan review.

(i) **Submission requirements.** Applications for preliminary plan review under this chapter shall include:

(A) Unless already submitted at a master plan stage, a letter of eligibility issued by the Rhode Island housing and mortgage finance corporation, or in the case of projects primarily funded by the U.S. Department of Housing and Urban Development or other state or federal agencies, an award letter indicating the subsidy, or application in such form as may be prescribed for a municipal government subsidy; and

(B) A letter signed by the authorized representative of the applicant, setting forth the specific sections and provisions of applicable local ordinances and regulations from which the applicant is seeking adjustments; and

(C) A proposed timetable for the commencement of construction and completion of the project; and

(D) Those items required by local regulations promulgated pursuant to applicable state law, with the exception of evidence of state or federal permits; and for comprehensive permit applications included in the checklist for the preliminary plan review in the local regulations promulgated pursuant to chapter 23 of this title; and

(E) Notwithstanding the submission requirements set forth above, the local review board may request additional, reasonable documentation throughout the public hearing, including, but not limited to, opinions of experts, credible evidence of application for necessary federal and/or state permits, statements and advice from other local boards and officials.

(ii) **Certification of completeness.** The preliminary plan application must be certified complete or incomplete by the administrative officer according to the provisions of § 45-23-36; provided, however, that the certificate shall be granted within twenty-five (25) days of submission of the application. The running of the time period set forth herein will be deemed stopped upon the issuance of a written certificate of incompleteness of the application by the administrative officer and will recommence upon the resubmission of a corrected application by the applicant. However, in no event will the administrative officer be required to certify a corrected submission as complete or incomplete less than ten (10) days after its resubmission. If the administrative officer certifies the application as incomplete, the officer shall set forth in writing with specificity the missing or incomplete items.

(iii) **Review of applications.** An application filed in accordance with this chapter shall be reviewed in accordance with the following provisions:

(A) **Public hearing.** A public hearing shall be noticed and held as soon as practicable after the issuance of a certificate of completeness.

(B) **Notice.** Public notice for the public hearing will be the same notice required under local regulations for a public hearing for a preliminary plan promulgated in accordance with § 45-23-42. The cost of notice shall be paid by the applicant.

(C) **Timeframe for review.** The local review board shall render a decision on the preliminary plan application within ninety (90) days of the date the application is certified complete, or within a further amount of time that may be consented to by the applicant through the submission of a written consent.

(D) **Failure to act.** Failure of the local review board to act within the prescribed period constitutes approval of the preliminary plan, and a certificate of the administrative officer as to the failure of the local review board to act within the required time and the resulting approval shall be issued on request of the applicant. Further, if the public hearing is

not convened or a decision is not rendered within the time allowed in subsections (d)(2)(iii)(A) and (d)(2)(iii)(C) of this section, the application is deemed to have been allowed and the preliminary plan approval shall be issued immediately.

(E) **Required findings.** In voting on an application, the local review board shall make findings, supported by legally competent evidence on the record that discloses the nature and character of the observations upon which the fact finders acted, on each of the following standards, where applicable:

(I) Whether the proposed development is consistent with local needs as identified in the community's affordable housing plan and/or has satisfactorily addressed the issues where there may be inconsistencies. If the local board finds that the proposed development is inconsistent with the community's affordable housing plan, it must also find that the municipality has made significant progress in implementing its housing plan.

(II) Whether the proposed development is in compliance with the standards and provisions of the municipality's zoning ordinance and subdivision regulations, and/or where adjustments are requested by the applicant, whether local concerns that have been affected by the relief granted do not outweigh the state and local need for low- and moderate-income housing. For cities and towns that have low- or moderate-income housing in excess of ten percent (10%) of its year-round housing units, where adjustments are requested, in addition to the above-showing, the proposed development must show it has mitigated any impact of the proposed development on the general character of the surrounding area.

(III) Whether the low- and moderate-income housing units proposed are integrated throughout the development; are compatible in scale, meaning that: (1) The size of the low- and moderate-income units shall not be less than seventy-five percent (75%) of the size of the market rate units, unless otherwise allowed by the local board; (2) The affordable units are of similar architectural style to the market rate units within the project so that the exterior of the units look like an integrated neighborhood with similar rooflines, window patterns, materials and colors; and (3) The affordable units will be built and occupied in a proportional manner with the construction and occupancy of the market rate units. Except that for housing units that are intended to be occupied by persons fifty-five (55) years of age or older, or sixty-two (62) years of age or older, as permitted by the federal Fair Housing Act pursuant to [42 U.S.C. § 3607\(b\)](#) and [24 CFR §§ 100.300-308](#) and the Rhode Island fair housing practices act pursuant to [§ 34-37-4.1](#), such units need not be integrated in any building or phase within the development that contains housing units that are not age-restricted, and neither age-restricted housing units nor any building or phase containing age-restricted housing units must be compatible in scale and architectural style to other housing unit types to the extent the age-restricted housing units are designed to meet the physical or social needs of older persons or necessary to provide housing opportunities for older persons.

(IV) Whether there will be significant negative impacts on the health and safety of current or future residents of the community, in areas including, but not limited to, safe circulation of pedestrian and vehicular traffic, provision of emergency services, sewerage disposal, availability of potable water, adequate surface water run-off, and the preservation of natural, historical, or cultural features.

(V) Whether the proposed land developments or subdivisions lots will have adequate and permanent physical access to a public street in accordance with the requirements of [§ 45-23-60\(a\)\(5\)](#), or the local review board has approved other access, such as a private road.

(VI) Whether the proposed development will result in the creation of individual lots with any physical constraints to development that building on those lots according to pertinent regulations and building standards would be impracticable, unless created only as permanent open space or permanently reserved for a public purpose on the approved, recorded plans.

(iv) **Vesting.** The approved preliminary plan is vested for a period of two (2) years with the right to extend for two (2), one-year extensions upon written request by the applicant, who must appear before the planning board for each annual review and provide proof of valid state or federal permits as applicable. Thereafter, vesting may be extended for a longer period, for good cause shown, if requested, in writing by the applicant, and approved by the local review board. The vesting for the preliminary plan approval includes all ordinance provisions and regulations at the time of the approval, general and specific conditions shown on the approved preliminary plan drawings and supporting material.

(4) **Final plan review.** The second and final stage of review for the comprehensive permit project shall be done administratively, unless an applicant has requested and been granted any waivers from the submission of checklist items for preliminary plan review, and then, at the local review board's discretion, it may vote to require the applicant to return for final plan review and approval.

(i) **Submission requirements.** Applications for final plan review under this chapter shall include:

(A) All required state and federal permits must be obtained prior to the final plan approval or the issuance of a building permit; and

(B) A draft monitoring agreement which identifies an approved entity that will monitor the long-term affordability of the low- and moderate-income units pursuant to § 45-53-3.2; and

(C) A sample land lease or deed restriction with affordability liens that will restrict use as low- and moderate-income housing in conformance with the guidelines of the agency providing the subsidy for the low- and moderate-income housing, but for a period of not less than thirty (30) years; and

(D) Those items required by local regulations promulgated pursuant to applicable state law included in the checklist for final plan review in the local regulations promulgated pursuant to chapter 23 of this title, including, but not limited to:

(I) Arrangements for completion of the required public improvements, including construction schedule and/or financial guarantees; and

(II) Certification by the tax collector that all property taxes are current; and

(III) For phased projects, the final plan for phases following the first phase, shall be accompanied by copies of as-built drawings not previously submitted of all existing public improvements for prior phases.

(ii) **Certification of completeness.** The final plan application must be certified complete or incomplete by the administrative officer according to the provisions of § 45-23-36; provided however, that the certificate shall be granted within twenty-five (25) days of submission of the application. The running of the time period set forth herein will be deemed stopped upon the issuance of a written certificate of incompleteness of the application by the administrative officer and will recommence upon the resubmission of a corrected application by the applicant. However, in no event will the administrative officer be required to certify a corrected submission as complete or incomplete less than ten (10) days after its resubmission. If the administrative officer certifies the application as incomplete, the officer shall set forth in writing with specificity the missing or incomplete items.

(iii) **Review of applications.**

(A) **Timeframe for review.** The reviewing authority shall render a decision on the final plan application within forty-five (45) days of the date the application is certified complete.

(B) **Modifications and changes to plans:**

(I) Minor changes, as defined in the local regulations, to the approved plans approved¹ may be approved administratively, by the administrative officer. The changes may be authorized without additional public hearings, at the discretion of the administrative officer. All changes shall be made part of the permanent record of the project application. This provision does not prohibit the administrative officer from requesting a recommendation from either the technical review committee or the local review board. Denial of the proposed change(s) shall be referred to the local review board for review as a major change.

(II) Major changes, as defined in the local regulations, to the plans may be approved only by the local review board and must follow the same review and public hearing process required for approval of preliminary plans as described in subsection (d)(2)(iii) of this section.

(III) The administrative officer shall notify the applicant in writing within fourteen (14) days of submission of the final plan application if the administrative officer is referring the application to the local review board under this subsection.

(C) **Decision on final plan.** An application filed in accordance with this chapter shall be approved by the administrative officer unless such application does not satisfy conditions set forth in the preliminary plan approval decision or such application does not have the requisite state and/or federal approvals or other required submissions, does not post the required improvement bonds, or such application is a major modification of the plans approved at preliminary plan.

(D) **Failure to act.** Failure of the reviewing authority to act within the prescribed period constitutes approval of the final plan, and a certificate of the administrative officer as to the failure to act within the required time and the resulting approval shall be issued on request of the applicant.

(iv) **Vesting.** The approved final plan decision is vested for a period of two (2) years with the right to extend for one one-year extension upon written request by the applicant, who must appear before the planning board for the extension request, unless, within that period, the plat or plan has been submitted for signature and recording as specified in § 45-23-64.

Thereafter, vesting may be extended for a longer period, for good cause shown, if requested, in writing by the applicant, and approved by the local review board.

(5) **Infeasibility of conditions of approval.** The burden is on the applicant to show, by competent evidence before the local review board, that proposed conditions of approval are infeasible, as defined in § 45-53-3. Upon request, the applicant shall be provided a reasonable opportunity to respond to such proposed conditions prior to a final vote on the application.

(6) **Fees.** Municipalities may impose fees on comprehensive permit applications that are consistent with but do not exceed fees that would otherwise be assessed for a project of the same scope and type, but not proceeding under this chapter; provided, however, the imposition of such fees shall not preclude a showing by an applicant that the fees make the project financially infeasible.

(7) **Recording of written decisions.** All written decisions on applications under this chapter shall be recorded in the land evidence records within twenty (20) days after the local review board's vote or the administrative officer's decision, as applicable. A copy of the recorded decision shall be mailed within one business day of recording, by any method that provides confirmation of receipt, to the applicant and to any objector who has filed a written request for notice with the administrative officer.

(8) **Local review board powers.** The local review board has the same power to issue permits or approvals that any local board or official who would otherwise act with respect to the application, including, but not limited to, the power to attach to the permit or approval, conditions, and requirements with respect to height, site plan, size or shape, or building materials, as are consistent with the terms of this section.

(9) **Majority vote required.** All local review board decisions on comprehensive permits shall be by majority vote of the members present at the proceeding.

(10) **Construction timetable.** A comprehensive permit shall expire unless construction is started within twelve (12) months and completed within sixty (60) months of the recording of the final plan unless a longer and/or phased period for development is agreed to by the local review board and the applicant. Low- and moderate-income housing units shall be built and occupied prior to, or simultaneous with the construction and occupancy of market rate units.

(11) **Report.** The local review board of a town with an approved affordable housing plan shall report the status of implementation to the housing resources commission, including the disposition of any applications made under the plan, as of June 30, 2006, by September 1, 2006, and for each June 30 thereafter by September 1 through 2010. The housing resources commission shall prepare by October 15 and adopt by December 31, a report on the status of implementation, which shall be submitted to the governor, the speaker and the president of the senate, and shall find which towns are not in compliance with implementation requirements.

(12) **Remanded applications.** Notwithstanding the provisions of § 45-53-4 in effect on February 13, 2004, a local review board shall commence hearings within thirty (30) days of receiving an application remanded pursuant to § 45-53-5 or, effective January 1, 2024, § 45-53-5.1. In any town with more than one remanded application, applications may be scheduled for hearing in the order in which they were received, and may be taken up sequentially, with the thirty-day (30) requirement for the initiation of hearings, commencing upon the decision of the earlier filed application.

(f)(1) The general assembly finds and declares that in January 2004 towns throughout Rhode Island have been confronted by an unprecedented volume and complexity of development applications as a result of private for-profit developers using the provisions of this chapter and that in order to protect the public health and welfare in communities and to provide sufficient time to establish a reasonable and orderly process for the consideration of applications made under the provisions of this chapter, and to have communities prepare plans to meet low- and moderate-income housing goals, that it is necessary to impose a moratorium on the use of comprehensive permit applications as herein provided by private for-profit developers; a moratorium is hereby imposed on the use of the provisions of this chapter by private for-profit developers, which moratorium shall be effective on passage and shall expire on January 31, 2005, and may be revisited prior to expiration and extended to such other date as may be established by law. Notwithstanding the provisions of subsection (a) of this section, private for-profit developers may not utilize the procedure of this chapter until the expiration of the moratorium.

(2) No for-profit developer shall submit a new application for comprehensive permits until July 1, 2005, except by mutual agreement with the local review board.

(3) Notwithstanding the provisions of subsection (e)(2) of this section, a local review board in a town which has submitted a plan in accordance with subsection (f) of this section, shall not be required to accept an application for a new comprehensive permit from a for-profit developer until October 1, 2005.

(g) Towns and cities that are not in conformity with the provisions of § 45-53-3(5)(i) shall prepare by December 31, 2004, a comprehensive plan housing element for low- and moderate-income housing as specified by § 45-53-3(5)(ii), consistent with applicable law and regulation. That the secretary of the planning board or commission of each city or town subject to the requirements of this paragraph shall report in writing the status of the preparation of the housing element for low- and moderate-income housing on or before June 30, 2004, and on or before December 31, 2004, to the secretary of the state planning council, to the chair of the house committee on corporations and to the chair of the senate committee on commerce, housing and municipal government.

(h) If any provision of this section or the application thereof shall for any reason be judged invalid, the judgment shall not affect, impair, or invalidate the remainder of this section or of any other provision of this chapter, but shall be confined in its effect to the provision or application directly involved in the controversy giving rise to the judgment, and a moratorium on the applications of for-profit developers pursuant to this chapter shall remain and continue to be in effect for the period commencing on the day this section becomes law [February 13, 2004] and continue until it shall expire on January 31, 2005, or until amended further.

(h)² In planning for, awarding, and otherwise administering programs and funds for housing and for community development, state departments, agencies, boards and commissions, and public corporations, as defined in chapter 18 of title 35, shall among the towns subject to the provision of § 45-53-3(5)(ii), give priority to the maximum extent allowable by law to towns with an approved affordable housing plan. The director of administration shall adopt not later than January 31, 2005, regulations to implement the provisions of this section.

(i) Multi-family rental units built under a comprehensive permit may be calculated towards meeting the requirements of a municipality's low- or moderate-income housing inventory, as long as the units meet and are in compliance with the provisions of § 45-53-3.1.

Credits

P.L. 1991, ch. 154, § 1; P.L. 1998, ch. 58, § 1; P.L. 2002, ch. 416, § 1; P.L. 2004, ch. 3, § 1; P.L. 2004, ch. 4, § 1; P.L. 2004, ch. 286, § 11; P.L. 2004, ch. 324, § 11; P.L. 2005, ch. 139, § 3; P.L. 2005, ch. 297, § 3; P.L. 2006, ch. 371, § 1, eff. July 7, 2006; P.L. 2006, ch. 511, § 1, eff. July 7, 2006; P.L. 2022, ch. 386, § 1, eff. June 30, 2022; P.L. 2022, ch. 387, § 1, eff. June 30, 2022; P.L. 2022, ch. 411, § 1, eff. June 30, 2022; P.L. 2022, ch. 412, § 1, eff. June 30, 2022; P.L. 2022, ch. 413, § 1, eff. June 30, 2022; P.L. 2022, ch. 414, § 1, eff. June 30, 2022; P.L. 2023, ch. 310, § 1, eff. Jan. 1, 2024; P.L. 2023, ch. 311, § 1, eff. Jan. 1, 2024; P.L. 2023, ch. 312, § 1, eff. June 24, 2023; P.L. 2023, ch. 313, § 1, eff. June 24, 2023; P.L. 2025, ch. 363, § 1, eff. July 1, 2025; P.L. 2025, ch. 364, § 1, eff. July 1, 2025; P.L. 2025, ch. 363, § 2, eff. Jan. 1, 2026; P.L. 2025, ch. 364, § 2, eff. Jan. 1, 2026.

Notes of Decisions (23)

Footnotes

1 So in original.

2 Subsection lettering in original.

Gen. Laws, 1956, § 45-53-4, RI ST § 45-53-4

Current with effective legislation through Chapter 473 of the 2025 Regular Session of the Rhode Island Legislature.

End of Document

© 2026 Thomson Reuters. No claim to original U.S. Government Works.

Vernon's Texas Statutes and Codes Annotated
Local Government Code (Refs & Annos)
Title 7. Regulation of Land Use, Structures, Businesses, and Related Activities
Subtitle A. Municipal Regulatory Authority
Chapter 212. Municipal Regulation of Subdivisions and Property Development (Refs & Annos)
Subchapter E. Moratorium on Property Development in Certain Circumstances (Refs & Annos)

V.T.C.A., Local Government Code § 212.131

§ 212.131. Definitions

Effective: September 1, 2005

[Currentness](#)

In this subchapter:

- (1) “Essential public facilities” means water, sewer, or storm drainage facilities or street improvements provided by a municipality or private utility.
- (2) “Residential property” means property zoned for or otherwise authorized for single-family or multi-family use.
- (3) “Property development” means the construction, reconstruction, or other alteration or improvement of residential or commercial buildings or the subdivision or replatting of a subdivision of residential or commercial property.
- (4) “Commercial property” means property zoned for or otherwise authorized for use other than single-family use, multifamily use, heavy industrial use, or use as a quarry.

Credits

Added by [Acts 2001, 77th Leg., ch. 441, § 1, eff. Sept. 1, 2001](#). Amended by [Acts 2005, 79th Leg., ch. 1321, § 1, eff. Sept. 1, 2005](#).

[Notes of Decisions \(1\)](#)

V. T. C. A., Local Government Code § 212.131, TX LOCAL GOVT § 212.131

Current through the end of the 2025 Regular and Second Called Sessions of the 89th Legislature.

End of Document

© 2026 Thomson Reuters. No claim to original U.S. Government Works.

Vernon's Texas Statutes and Codes Annotated
Local Government Code (Refs & Annos)
Title 7. Regulation of Land Use, Structures, Businesses, and Related Activities
Subtitle A. Municipal Regulatory Authority
Chapter 212. Municipal Regulation of Subdivisions and Property Development (Refs & Annos)
Subchapter E. Moratorium on Property Development in Certain Circumstances (Refs & Annos)

V.T.C.A., Local Government Code § 212.132

§ 212.132. Applicability

Effective: September 1, 2005

[Currentness](#)

This subchapter applies only to a moratorium imposed on property development affecting only residential property, commercial property, or both residential and commercial property.

Credits

Added by [Acts 2001, 77th Leg., ch. 441, § 1, eff. Sept. 1, 2001](#). Amended by [Acts 2005, 79th Leg., ch. 1321, § 2, eff. Sept. 1, 2005](#).

V. T. C. A., Local Government Code § 212.132, TX LOCAL GOVT § 212.132

Current through the end of the 2025 Regular and Second Called Sessions of the 89th Legislature.

End of Document

© 2026 Thomson Reuters. No claim to original U.S. Government Works.

Vernon's Texas Statutes and Codes Annotated
Local Government Code (Refs & Annos)
Title 7. Regulation of Land Use, Structures, Businesses, and Related Activities
Subtitle A. Municipal Regulatory Authority
Chapter 212. Municipal Regulation of Subdivisions and Property Development (Refs & Annos)
Subchapter E. Moratorium on Property Development in Certain Circumstances (Refs & Annos)

V.T.C.A., Local Government Code § 212.133

§ 212.133. Procedure for Adopting Moratorium

Effective: September 1, 2005

[Currentness](#)

A municipality may not adopt a moratorium on property development unless the municipality:

- (1) complies with the notice and hearing procedures prescribed by [Section 212.134](#); and
- (2) makes written findings as provided by [Section 212.135](#), [212.1351](#), or [212.1352](#), as applicable.

Credits

Added by [Acts 2001, 77th Leg., ch. 441, § 1, eff. Sept. 1, 2001](#). Amended by [Acts 2005, 79th Leg., ch. 1321, § 2, eff. Sept. 1, 2005](#).

V. T. C. A., Local Government Code § 212.133, TX LOCAL GOVT § 212.133

Current through the end of the 2025 Regular and Second Called Sessions of the 89th Legislature.

End of Document

© 2026 Thomson Reuters. No claim to original U.S. Government Works.

Vernon's Texas Statutes and Codes Annotated

Local Government Code (Refs & Annos)

Title 7. Regulation of Land Use, Structures, Businesses, and Related Activities

Subtitle A. Municipal Regulatory Authority

Chapter 212. Municipal Regulation of Subdivisions and Property Development (Refs & Annos)

Subchapter E. Moratorium on Property Development in Certain Circumstances (Refs & Annos)

V.T.C.A., Local Government Code § 212.1335

§ 212.1335. Redesignated as V.T.C.A., Local Government Code §
212.1535 by Acts 2007, 80th Leg., ch. 921, § 17.001(53), eff. Sept. 1, 2007

Effective: September 1, 2007

[Currentness](#)

V. T. C. A., Local Government Code § 212.1335, TX LOCAL GOVT § 212.1335

Current through the end of the 2025 Regular and Second Called Sessions of the 89th Legislature.

End of Document

© 2026 Thomson Reuters. No claim to original U.S. Government Works.

Vernon's Texas Statutes and Codes Annotated

Local Government Code (Refs & Annos)

Title 7. Regulation of Land Use, Structures, Businesses, and Related Activities

Subtitle A. Municipal Regulatory Authority

Chapter 212. Municipal Regulation of Subdivisions and Property Development (Refs & Annos)

Subchapter E. Moratorium on Property Development in Certain Circumstances (Refs & Annos)

V.T.C.A., Local Government Code § 212.134

§ 212.134. Notice and Public Hearing Requirements

Effective: September 1, 2025

[Currentness](#)

(a) Before a moratorium on property development may be imposed, a municipality must conduct public hearings as provided by this section.

(b) A public hearing must provide municipal residents and affected parties an opportunity to be heard. The municipality shall, not later than the 30th day before the date of a hearing:

(1) publish notice of the time and place of the hearing in a newspaper of general circulation in the municipality; and

(2) send notice of the hearing by certified mail to any person who has given written notice by certified or registered mail to the municipal secretary requesting notice of the hearing within two years preceding the date of adoption of the ordinance or resolution setting the public hearing .

(c) The governing body of a municipality shall hold two public hearings on a moratorium on property development proposed to be adopted under this subchapter. The governing body may not hold the second public hearing before the 30th day after the date of the first public hearing .

(d) Repealed by [Acts 2025, 89th Leg., ch. 414 \(H.B. 2559\), § 3\(1\), eff. Sept. 1, 2025](#).

(e) Repealed by [Acts 2025, 89th Leg., ch. 414 \(H.B. 2559\), § 3\(1\), eff. Sept 1, 2025](#).

(f) Not later than the 12th day after the date of the second public hearing, the governing body of the municipality shall begin a final determination on the imposition of a moratorium by giving the ordinance imposing the moratorium at least two readings that are not less than 28 days apart. The ordinance must receive the affirmative vote of at least three-fourths of all members of the governing body on final reading in order to take effect. If the governing body fails to adopt an ordinance imposing a moratorium within the period prescribed by this subsection, the municipality may not adopt the ordinance .

Credits

Added by Acts 2001, 77th Leg., ch. 441, § 1, eff. Sept. 1, 2001. Amended by Acts 2025, 89th Leg., ch. 414 (H.B. 2559), §§ 1, 3(1), eff. Sept. 1, 2025.

V. T. C. A., Local Government Code § 212.134, TX LOCAL GOVT § 212.134

Current through the end of the 2025 Regular and Second Called Sessions of the 89th Legislature.

End of Document

© 2026 Thomson Reuters. No claim to original U.S. Government Works.

Vernon's Texas Statutes and Codes Annotated
Local Government Code (Refs & Annos)
Title 7. Regulation of Land Use, Structures, Businesses, and Related Activities
Subtitle A. Municipal Regulatory Authority
Chapter 212. Municipal Regulation of Subdivisions and Property Development (Refs & Annos)
Subchapter E. Moratorium on Property Development in Certain Circumstances (Refs & Annos)

V.T.C.A., Local Government Code § 212.135

§ 212.135. Justification for Moratorium: Shortage of Essential Public Facilities; Written Findings Required

Effective: September 1, 2005

[Currentness](#)

(a) If a municipality adopts a moratorium on property development, the moratorium is justified by demonstrating a need to prevent a shortage of essential public facilities. The municipality must issue written findings based on reasonably available information.

(b) The written findings must include a summary of:

(1) evidence demonstrating the extent of need beyond the estimated capacity of existing essential public facilities that is expected to result from new property development, including identifying:

(A) any essential public facilities currently operating near, at, or beyond capacity;

(B) the portion of that capacity committed to the development subject to the moratorium; and

(C) the impact fee revenue allocated to address the facility need; and

(2) evidence demonstrating that the moratorium is reasonably limited to:

(A) areas of the municipality where a shortage of essential public facilities would otherwise occur; and

(B) property that has not been approved for development because of the insufficiency of existing essential public facilities.

Credits

Added by [Acts 2001, 77th Leg., ch. 441, § 1, eff. Sept. 1, 2001](#). Amended by [Acts 2005, 79th Leg., ch. 1321, § 2, eff. Sept. 1, 2005](#).

[Notes of Decisions \(7\)](#)

V. T. C. A., Local Government Code § 212.135, TX LOCAL GOVT § 212.135

Current through the end of the 2025 Regular and Second Called Sessions of the 89th Legislature.

End of Document

© 2026 Thomson Reuters. No claim to original U.S. Government Works.

Vernon's Texas Statutes and Codes Annotated

Local Government Code (Refs & Annos)

Title 7. Regulation of Land Use, Structures, Businesses, and Related Activities

Subtitle A. Municipal Regulatory Authority

Chapter 212. Municipal Regulation of Subdivisions and Property Development (Refs & Annos)

Subchapter E. Moratorium on Property Development in Certain Circumstances (Refs & Annos)

V.T.C.A., Local Government Code § 212.1351

§ 212.1351. Justification for Moratorium: Significant Need for Public Facilities; Written Findings Required

Effective: September 1, 2005

[Currentness](#)

(a) Except as provided by [Section 212.1352](#), a moratorium that is not based on a shortage of essential public facilities is justified only by demonstrating a significant need for other public facilities, including police and fire facilities. For purposes of this subsection, a significant need for public facilities is established if the failure to provide those public facilities would result in an overcapacity of public facilities or would be detrimental to the health, safety, and welfare of the residents of the municipality. The municipality must issue written findings based on reasonably available information.

(b) The written findings must include a summary of:

(1) evidence demonstrating that applying existing development ordinances or regulations and other applicable laws is inadequate to prevent the new development from causing the overcapacity of municipal infrastructure or being detrimental to the public health, safety, and welfare in an affected geographical area;

(2) evidence demonstrating that alternative methods of achieving the objectives of the moratorium are unsatisfactory; and

(3) evidence demonstrating that the municipality has approved a working plan and time schedule for achieving the objectives of the moratorium.

Credits

Added by [Acts 2001, 77th Leg., ch. 441, § 1, eff. Sept. 1, 2001](#). Redesignated from [V.T.C.A., Local Government Code § 212.135\(b\)](#) and amended by [Acts 2005, 79th Leg., ch. 1321, § 2, eff. Sept. 1, 2005](#).

V. T. C. A., Local Government Code § 212.1351, TX LOCAL GOVT § 212.1351

Current through the end of the 2025 Regular and Second Called Sessions of the 89th Legislature.

Vernon's Texas Statutes and Codes Annotated

Local Government Code (Refs & Annos)

Title 7. Regulation of Land Use, Structures, Businesses, and Related Activities

Subtitle A. Municipal Regulatory Authority

Chapter 212. Municipal Regulation of Subdivisions and Property Development (Refs & Annos)

Subchapter E. Moratorium on Property Development in Certain Circumstances (Refs & Annos)

V.T.C.A., Local Government Code § 212.1352

§ 212.1352. Justification for Commercial Moratorium in Certain Circumstances; Written Findings Required

Effective: September 1, 2005

[Currentness](#)

(a) If a municipality adopts a moratorium on commercial property development that is not based on a demonstrated shortage of essential public facilities, the municipality must issue written findings based on reasonably available information that the moratorium is justified by demonstrating that applying existing commercial development ordinances or regulations and other applicable laws is inadequate to prevent the new development from being detrimental to the public health, safety, or welfare of the residents of the municipality.

(b) The written findings must include a summary of:

(1) evidence demonstrating the need to adopt new ordinances or regulations or to amend existing ordinances, including identification of the harm to the public health, safety, or welfare that will occur if a moratorium is not adopted;

(2) the geographical boundaries in which the moratorium will apply;

(3) the specific types of commercial property to which the moratorium will apply; and

(4) the objectives or goals to be achieved by adopting new ordinances or regulations or amending existing ordinances or regulations during the period the moratorium is in effect.

Credits

Added by [Acts 2005, 79th Leg., ch. 1321, § 2, eff. Sept. 1, 2005](#).

V. T. C. A., Local Government Code § 212.1352, TX LOCAL GOVT § 212.1352

Current through the end of the 2025 Regular and Second Called Sessions of the 89th Legislature.



KeyCite Red Flag

KeyCite Red Flag Negative Treatment § 212.136. Repealed by Acts 2025, 89th Leg., ch. 414 (H.B. 2559), § 3(2), eff. Sept. 1, 2025

Vernon's Texas Statutes and Codes Annotated

Local Government Code (Refs & Annos)

Title 7. Regulation of Land Use, Structures, Businesses, and Related Activities

Subtitle A. Municipal Regulatory Authority

Chapter 212. Municipal Regulation of Subdivisions and Property Development (Refs & Annos)

Subchapter E. Moratorium on Property Development in Certain Circumstances (Refs & Annos)

V.T.C.A., Local Government Code § 212.136

§ 212.136. Repealed by Acts 2025, 89th Leg., ch. 414 (H.B. 2559), § 3(2), eff. Sept. 1, 2025

Effective: September 1, 2025

[Currentness](#)

Credits

Repealed section, titled “Expiration of Moratorium; Extension” had the following history: Added by [Acts 2001, 77th Leg., ch. 441, § 1, eff. Sept. 1, 2001](#). Amended by [Acts 2005, 79th Leg., ch. 1321, § 2, eff. Sept. 1, 2005](#). Repealed by [Acts 2025, 89th Leg., ch. 414 \(H.B. 2559\), § 3\(2\), eff. Sept. 1, 2025](#).

Another Subchapter E, Enforcement of Land Use Restrictions Contained in Plats and Other Instruments, consisting of §§ 212.131 to 212.137, was relettered as Subchapter F, [V.T.C.A., Local Government Code §§ 212.151 to 212.157](#) by [Acts 2003, 78th Leg., ch. 1275, § 2\(107\), eff. Sept. 1, 2003](#).

V. T. C. A., Local Government Code § 212.136, TX LOCAL GOVT § 212.136

Current through the end of the 2025 Regular and Second Called Sessions of the 89th Legislature.

End of Document

© 2026 Thomson Reuters. No claim to original U.S. Government Works.

Vernon's Texas Statutes and Codes Annotated
Local Government Code (Refs & Annos)
Title 7. Regulation of Land Use, Structures, Businesses, and Related Activities
Subtitle A. Municipal Regulatory Authority
Chapter 212. Municipal Regulation of Subdivisions and Property Development (Refs & Annos)
Subchapter E. Moratorium on Property Development in Certain Circumstances (Refs & Annos)

V.T.C.A., Local Government Code § 212.1361

§ 212.1361. Notice for Extension Required

Effective: September 1, 2005

[Currentness](#)

A municipality proposing an extension of a moratorium under this subchapter must publish notice in a newspaper of general circulation in the municipality not later than the 15th day before the date of the hearing required by this subchapter.

Credits

Added by [Acts 2001, 77th Leg., ch. 441, § 1, eff. Sept. 1, 2001](#). Redesignated from [V.T.C.A., Local Government Code § 212.136\(b\)](#) and amended by [Acts 2005, 79th Leg., ch. 1321, § 2, eff. Sept. 1, 2005](#).

V. T. C. A., Local Government Code § 212.1361, TX LOCAL GOVT § 212.1361

Current through the end of the 2025 Regular and Second Called Sessions of the 89th Legislature.

End of Document

© 2026 Thomson Reuters. No claim to original U.S. Government Works.

Vernon's Texas Statutes and Codes Annotated

Local Government Code (Refs & Annos)

Title 7. Regulation of Land Use, Structures, Businesses, and Related Activities

Subtitle A. Municipal Regulatory Authority

Chapter 212. Municipal Regulation of Subdivisions and Property Development (Refs & Annos)

Subchapter E. Moratorium on Property Development in Certain Circumstances (Refs & Annos)

V.T.C.A., Local Government Code § 212.1362

§ 212.1362. Expiration of Moratorium ; Extension

Effective: September 1, 2025

[Currentness](#)

(a) A moratorium adopted under this subchapter expires on the 90th day after the date the moratorium is adopted unless the governing body of the municipality extends the moratorium by:

(1) holding a public hearing on the proposed extension of the moratorium; and

(2) adopting written findings that:

(A) identify the problem requiring the need for extending the moratorium;

(B) describe the reasonable progress made to alleviate the problem;

(C) specify a definite duration for the renewal period of the moratorium; and

(D) include a summary of evidence demonstrating that the problem will be resolved within the extended duration of the moratorium.

(b) A municipality may not adopt a moratorium under this subchapter:

(1) that exceeds an aggregate of 180 days; or

(2) before the second anniversary of the expiration date of a previous moratorium if the subsequent moratorium addresses the same harm, affects the same type of property, or affects the same geographical area identified by the previous moratorium.

Credits

Added by [Acts 2005, 79th Leg., ch. 1321, § 2, eff. Sept. 1, 2005](#). Amended by [Acts 2025, 89th Leg., ch. 414 \(H.B. 2559\), § 2, eff. Sept. 1, 2025](#).

V. T. C. A., Local Government Code § 212.1362, TX LOCAL GOVT § 212.1362

Current through the end of the 2025 Regular and Second Called Sessions of the 89th Legislature.

End of Document

© 2026 Thomson Reuters. No claim to original U.S. Government Works.

Vernon's Texas Statutes and Codes Annotated
Local Government Code (Refs & Annos)
Title 7. Regulation of Land Use, Structures, Businesses, and Related Activities
Subtitle A. Municipal Regulatory Authority
Chapter 212. Municipal Regulation of Subdivisions and Property Development (Refs & Annos)
Subchapter E. Moratorium on Property Development in Certain Circumstances (Refs & Annos)

V.T.C.A., Local Government Code § 212.137

§ 212.137. Waiver Procedures Required

Effective: September 1, 2005

[Currentness](#)

(a) A moratorium adopted under this subchapter must allow a permit applicant to apply for a waiver from the moratorium relating to the property subject to the permit by:

(1) claiming a right obtained under a development agreement; or

(2) providing the public facilities that are the subject of the moratorium at the landowner's cost.

(b) The permit applicant must submit the reasons for the request to the governing body of the municipality in writing. The governing body of the municipality must vote on whether to grant the waiver request within 10 days after the date of receiving the written request.

Credits

Added by [Acts 2001, 77th Leg., ch. 441, § 1, eff. Sept. 1, 2001](#). Amended by [Acts 2005, 79th Leg., ch. 1321, § 2, eff. Sept. 1, 2005](#).

V. T. C. A., Local Government Code § 212.137, TX LOCAL GOVT § 212.137

Current through the end of the 2025 Regular and Second Called Sessions of the 89th Legislature.

End of Document

© 2026 Thomson Reuters. No claim to original U.S. Government Works.

Vernon's Texas Statutes and Codes Annotated

Local Government Code (Refs & Annos)

Title 7. Regulation of Land Use, Structures, Businesses, and Related Activities

Subtitle A. Municipal Regulatory Authority

Chapter 212. Municipal Regulation of Subdivisions and Property Development (Refs & Annos)

Subchapter E. Moratorium on Property Development in Certain Circumstances (Refs & Annos)

V.T.C.A., Local Government Code § 212.138

§ 212.138. Effect on Other Law

Effective: September 1, 2001

[Currentness](#)

A moratorium adopted under this subchapter does not affect the rights acquired under Chapter 245 or common law.

Credits

Added by [Acts 2001, 77th Leg., ch. 441, § 1, eff. Sept. 1, 2001](#).

V. T. C. A., Local Government Code § 212.138, TX LOCAL GOVT § 212.138

Current through the end of the 2025 Regular and Second Called Sessions of the 89th Legislature.

End of Document

© 2026 Thomson Reuters. No claim to original U.S. Government Works.

Vernon's Texas Statutes and Codes Annotated
Local Government Code (Refs & Annos)
Title 7. Regulation of Land Use, Structures, Businesses, and Related Activities
Subtitle A. Municipal Regulatory Authority
Chapter 212. Municipal Regulation of Subdivisions and Property Development (Refs & Annos)
Subchapter E. Moratorium on Property Development in Certain Circumstances (Refs & Annos)

V.T.C.A., Local Government Code § 212.139

§ 212.139. Limitation on Moratorium

Effective: September 1, 2005

[Currentness](#)

- (a) A moratorium adopted under this subchapter does not affect an application for a project in progress under Chapter 245.
- (b) A municipality may not adopt a moratorium under this subchapter that:
- (1) prohibits a person from filing or processing an application for a project in progress under Chapter 245; or
 - (2) prohibits or delays the processing of an application for zoning filed before the effective date of the moratorium.

Credits

Added by [Acts 2005, 79th Leg., ch. 1321, § 2, eff. Sept. 1, 2005](#).

V. T. C. A., Local Government Code § 212.139, TX LOCAL GOVT § 212.139

Current through the end of the 2025 Regular and Second Called Sessions of the 89th Legislature.

End of Document

© 2026 Thomson Reuters. No claim to original U.S. Government Works.

States Consider Pumping The Brakes On Data Centers

By Charlie Innis

Law360 (February 4, 2026, 7:07 PM EST) -- At least six states, including Virginia, could prohibit new data center construction under proposed moratoriums this year, measures some attorneys say would be unprecedented for addressing concerns over resource usage and could invite constitutional questions.



The proposed moratoriums are part of a larger trend of state policymakers trying to wrap their arms around the rapidly growing data center industry and its extensive power needs. (Alexis Jumeau/Abaca/Sipa USA via AP Images)

Lawmakers in Virginia — home of the world's largest data center market — Georgia, Maryland, Oklahoma, New Hampshire and Vermont have introduced bills in legislative sessions this year to temporarily pause new construction of data centers within their states.

The proposals come as many states and the data center industry grapple with towering data center demand, tight energy supply and lengthy queue times for power connections **amid rising public opposition** over the facilities' power and water usage that has derailed some projects.

The proposed moratoriums are part of a larger trend of state policymakers trying to wrap their arms around the rapidly growing data center industry and its extensive power needs, said Tory

Lauterbach, a partner in Gibson Dunn & Crutcher LLP's energy practice who regularly advises data center development.

"While I'm not one of the legislators who's proposed these pieces of legislation, I read them not as attempts to prevent data centers from being built, but as controlling mechanisms to sort through the timing for the building of data centers, such that there is time for those regions to properly build out their infrastructure," Lauterbach said.

While moratoriums are among the more "stark" proposals legislators are looking at, the bills nonetheless present opportunities for stakeholders to develop policy ideas, she said.

"Whether a bill passes or not, certainly they're going to be a topic of discussion," she added.

Proposed Moratoriums

Current versions of the proposed moratoriums in Virginia, Georgia, Maryland, Oklahoma, New Hampshire and Vermont vary in scope and length.

Virginia's bill, H.B. 1515, prohibits localities from granting final approval of a rezoning application, development plan or other permitting to new data centers until either all pending interconnection requests with electric utility companies are fulfilled, or until July 1, 2028, whichever comes first.

The proposed moratorium in Georgia, H.B. 1059, prohibits counties, local authorities, municipal corporations and political subdivisions of the state from issuing permits or licenses to allow data center construction until March 1, 2027. The bill notes that although the facilities are a "valuable economic resource," the state must pause their development until it can fully understand the centers' impact on natural resources.

Oklahoma's bill, S.B. 1488, also includes an end date: It proposes a moratorium until Nov. 1, 2029, and asks the state's public utilities commission to study data centers' impacts on water resources, utility rates and property values before that date.

The text of the introduced bill for Maryland's proposed moratorium, H.B. 120, doesn't appear to include a specific end date. It says "a person may not construct a data center in the state" and "a unit of state or local government may not approve a proposal for the construction of a data center in the state."

Maryland's bill includes a provision stating the moratorium doesn't apply to data center construction that has received all federal, state and local permits before its effective date. Additionally, it has a contingency provision stating the moratorium will automatically be repealed if the state later passes legislation requiring all new centers to be built alongside new or existing energy facilities, and the co-located facilities must provide power generation capacity "that meets or exceeds the data center's power needs."

New Hampshire's proposed moratorium, H.B. 1265, extends through one year following its effective date. The bill prohibits people, businesses and entities from beginning construction of new data centers and establishes a committee to study the facilities' environmental impacts.

In Vermont, a group of state senators filed S.B. 205 on Wednesday, proposing that "no person shall be permitted to operate an artificial intelligence (AI) data center or to in any way begin site preparation for or commence construction of an AI data center in [Vermont] prior to July 1, 2030."

Constitutionality Questions

If enacted, a moratorium on data centers could face legal scrutiny, including over its federal and state constitutionality, though the strength of a court challenge would depend on how the legislation is written, according to attorneys.

States generally have leeway under federal law to pass economic regulations through legislation, whether it be a state bill or a zoning enactment on data center development, noted David

Casazza, a partner in Gibson Dunn's appellate and constitutional law practice.

Federal courts usually give a rational basis review to legal challenges to state regulation on economic activity, and states "overwhelmingly" tend to win under that basis, he said.

"It is so much so that the cases that come out the other way are very notable and a very small handful, and they tend to be very context-specific challenges," Casazza said.

One way a data center moratorium could be fought in the federal courts is through a challenge under the U.S. Constitution's dormant commerce clause, an implied restriction on states' ability to discriminate against out-of-state businesses.

"Can you make a case that this is discrimination that's between in-state and out-of-state businesses? Is it a state legislature that's trying to regulate conduct that's happening out of state?" Casazza said. "That's going to be a harder sell when it's about a physical real estate development that's within the state's boundaries, but that's typically a first stop."

The equal protection and taking clauses are other potential homes for a data center moratorium legal challenge, he said.

In the takings context, the analysis would likely be a comparison of the property value with the moratorium regulation in place and what the value was before the moratorium was adopted, he noted.

"Data centers could be an unusual situation where there's an extremely high-value use of the land as a data center development, and even if you're permitted to use the land for something else, if that something else is a small fraction of its economic value as a data center, you'd have a stronger takings claim than in the general zoning context," Casazza said.

Additional context that would matter in any federal court challenge are the length and severity of the prohibitions, and whether the state's rationale behind the regulation fits the method it's using to accomplish its goal.

"If the reason that the state is putting forward seems entirely unrelated to the method it's trying to do to accomplish that, or if the reason seems to be entirely pretextual, that's going to be a much stronger constitutional challenge than a situation where there's a relatively close fit," Casazza said.

The adoption of a moratorium on data centers would be unprecedented in Virginia, said Brian Winterhalter, a land use and zoning partner with DLA Piper based in northern Virginia, where he regularly works on digital infrastructure projects.

Virginia lawmakers have **debated regulations for the data center industry** in recent legislative cycles, with most proposals dying on the vine. Some counties in the state have meanwhile tightened their own zoning rules for new data center projects.

State law in Virginia doesn't provide space for counties to pass their own moratoriums on data centers, unless the state has granted them that authority, Winterhalter said.

"I think it is an open question, and perhaps one of first impression, if it were ever to be put to the test of whether [a state moratorium] is permissible under the Virginia Constitution," Winterhalter said.

Power Issues

Regardless of whether a temporary moratorium is established somewhere, utility companies in growing data center markets need to find a way to get through their queues for power connections without over-burdening electrical grids, attorneys said.

"In many states, there is a significant number of projects that would like to interconnect and take

service off the grid. That issue is going to have to be solved, and parties are trying to solve it now, whether legislatively or not," Gibson Dunn's Lauterbach said.

State legislators, regulators and utility companies are currently deploying policy tools other than moratoriums to address the lengthy backlog of power requests, the need for more energy infrastructure and potential costs of infrastructure improvements on residential and other commercial customers, she said.

For example, data center developers are **being asked in some markets** to commit to funding energy infrastructure upgrades and to signing multiyear power contracts to assure utility companies and regulators that they will be consistent users, Lauterbach added.

Winterhalter said he doesn't think a statewide moratorium is the right solution for Virginia's power supply issues.

While pushback against data centers has been strong in some northern Virginia counties, other communities in the state are still embracing new projects, and utility companies are already managing their lengthy queue times and don't need a moratorium, he noted.

"I think it is a very blunt tool to solve a challenging problem that would require a more nuanced approach that would be more effective," Winterhalter said.

Laura Morton, an energy infrastructure partner with Perkins Coie LLP, attributed the public opposition to data centers and concerns over their use of resources to the speed at which they're being developed.

"Fast development without clear answers breeds resistance," Morton said.

Lauterbach noted that an important aspect of the moratorium bills is that they are time-limited proposals to provide for orderly development of data centers.

"It's not that states don't want data centers," Lauterbach said. "States want data centers, and they want them on terms that are good for consumers."

--Editing by Haylee Pearl and Lakshna Mehta.