

# TEMPORARY ZONING ORDINANCE

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LAND USE MORATORIA

# HISTORY

## ➤ **Moratoria as a Constitutional Taking**

*First English Evangelical Lutheran Church v. Los Angeles County*, 482 U.S. 304 (1987) (normal delays in decision making are not a “take”)

*Tahoe-Sierra Regional Perservation Council v. Tahoe Regional Planning Agency*, 535 U.S. 302 (2002) (32 month moratorium not a “take”)

*Dafau v. United States*, 22 Cl. Ct. 156 (Claims Court 1990) (delay must be “extraordinary”)

## ➤ **Utah’s Pending Ordinance Doctrine**

*Western Land Equities, Inc. v. City of Logan*, 617 P.2d 388 (Utah 1980)

## Utah Code §17-27a-504 (2005) **Temporary Land Use Regulations**

- These are the only types of moratoria that are now allowed in Utah.
- County Council may establish a *temporary land use regulation* that “prohibits or regulates the erection, construction, reconstruction, or alteration of any **building or structure** or any **subdivision approval**.” This statute is construed narrowly. Patterson v. Utah County Board of Adjustment, 893 P.2d 602 (Utah App. 1995). Consequently, there are limitations as to what can or cannot be subject to a moratorium. In general, moratoria may only be imposed for **administrative development permit applications**, not **legislative applications**.
  - Does not apply to rezones, MPD, variances, development agreements, and special exception applications
  - Does apply to subdivision plats, temporary use permits, low impact permits, conditional use permits, site plans and building permit applications
  - Does not apply to pending applications that have been deemed “complete” by the CDD

## Temporary Land Use Regulations - Continued

- County Council is not required to have a recommendation from the planning commission or to hold a public hearing.
- County Council must make a finding that there is a “**compelling, countervailing public interest**” for the moratorium. The Utah Supreme Court has indicated that a “compelling, countervailing public interest” is generally tied to the **health and safety** of residents. *Western Land Equities, Inc. v. City of Logan*, 617 P.2d 388 (Utah 1980).
- **The Council must be very specific as to what is being targeted for a moratorium, how it is tied to public health and safety, and why a moratorium is necessary and cannot be accomplished by something less restrictive.**
- *A temporary land use regulation* is only valid for **6 months**.

# EXAMPLES OF MORATORIA

What are some potential examples of acceptable areas (targets) for a moratorium on administrative development permits when there is a “compelling, countervailing public interest?”

- Moderate Income Housing Element to the General Plan (HB 462S3)
- Water Use and Preservation Element to the General Plan (SB 110SI)
- Modifying the transportation and road standards
- Modifying parking requirements in commercial or multifamily projects
- Modifying height, setback, lighting, landscaping, or architectural design standards