Moratorium Basics

Moratoria are often used to preserve the status quo in an area while developing a long-term plan for development. A moratorium implies a temporary action while a permanent solution is developed. A moratorium can be adopted to restrict land uses, or under the jurisdiction□s police power, an ordinance can be adopted to restrict other activities that don□t involve application of the jurisdiction□s zoning ordinance.

A. Land Use Moratorium

Under California Government Code section 65858, a city or a county may adopt an interim ordinance to temporarily prohibit certain land uses in the community that may be in conflict with the General Plan or zoning ordinances being studied for revision.

- The entity must make a finding that approval of a land-use entitlement would result in a current and immediate threat to the public health, safety or welfare.

- The entity may not prohibit the formal processing of development applications. (*Building Industry Legal Defense Foundation v. Superior Court* (1999) 72 Cal.App.4th 1410, 1420.)

A moratorium ordinance requires 4/5 vote of the governing body.

The urgency ordinance may remain in effect for only 45-days, unless extended by 4/5 vote:

- Can extend for a total of 2-years, either :
  (a) once for 10-months, 15 days, and again for 1-year; or
  (b) once for 22-months, 15 days.

Key Points:

< Restricts land uses, not process only; i.e., cannot adopt moratorium that only restricts the application and processing of well construction permits because well construction is not a land use.

< Contemplates future change in a general plan or zoning ordinance to address the issue or problem that results in an threat to public health, safety or welfare.

Example:

To address declining groundwater levels in a groundwater basin, the County of San Luis Obispo adopted a moratorium that prohibits within that basin (1) new or expanded irrigated crop production, (2) conversion of dry farm or grazing land to new irrigated crop production, and (3) new development dependent upon groundwater. Additionally, the moratorium prohibited approval of applications to construct, repair or modify a water system that serves any of the prohibited land uses. The moratorium provided for exception and exemptions to the ordinance, such as existing and approved land uses, multi-family residential projects, projects with offset clearance demonstrating no net change in water use.

B. Police Power Regulation

A county or city may adopt an ordinance to protect the public health, safety or welfare. For example, Stanislaus County has adopted a variety of ordinances, including regulation of collection and disposal of refuse, agricultural pest inspections, smoking in public places and work places, and regulation of well construction to protect water quality.

Process:

The normal process for adopting an ordinance is to first introduce the proposed ordinance at one meeting, and second to consider adoption of the ordinance at a second meeting. The ordinance becomes effective 30-days after it is adopted at the second meeting.

The normal process can vary depending on circumstances. For example, if it is a long ordinance and the jurisdiction wants to publish only a summary of it, an additional week is required between the two meetings to allow for publication of the summary. Also, if the governing body finds that there is an immediate need to protect the health, safety or welfare of the community, it can adopt an urgency ordinance at the first meeting and it becomes effective immediately.

Term of Police Power Regulation

Unlike a land use moratorium, which is limited to an initial 45-day period and a total of 2-years, an ordinance or regulation adopted under the police power is unlimited, or more precisely remains effective until it is either repealed or modified. It is possible to include a sunset provision in the ordinance that terminates the new ordinance on a date certain.