

ROSEVILLE
REQUEST FOR COUNCIL ACTION

Date: January 25, 2016
Item No.: 15.b

Department Approval



City Manager Approval



Item Description: HDR Interim Ordinance (Moratorium) Discussion

BACKGROUND

Council Member Willmus has requested that an item be placed on the agenda regarding enacting a high density residential moratorium.

State Statutes 462.355 (Attachment A) allow cities to enact moratoriums to provide additional time for the community to study relevant issues and/or enact relevant regulatory controls. The League of Minnesota Cities' discussion of Interim Ordinances is attached for guidance on the process (Attachment B).

The enactment of a moratorium is something that cities generally do not take lightly due to the potentially severe impact a moratorium may have on underlying property owners as well as the concerns that it may negatively impact the community's perception in the broader development community. For this reason, when a moratorium is established it is best to limit the moratorium to the minimum restriction necessary to accomplish the relevant studies or enactment of regulatory controls. It is also important that the City Council state clear justifications for the ordinance, since moratoriums are frequently challenged in court. Examples of ways to limit the scope of a moratorium could include actions such as:

- Limiting geographic area to the site(s) of concern rather than city-wide
- Limiting the time to less than is statutorily allowed if the full period is not necessary to complete the study or code changes
- Limiting the prohibited actions to only those that are the areas of concern. For instance, it is common that if building permits are restricted, cities will write the ordinance to still allow building permits to be issued that are just for the maintenance of existing buildings.

Currently, the City has several projects that could be impacted by a broad moratorium. These include the following:

- Cherrywood Pointe (Lexington)
- Applewood Pointe (Owasso School site)
- Dignicare Memory Care (197 CR B)
- Rezoning HDR property at Old Hwy 8 to MDR per Council direction
- Gracewood Assisted Living Comprehensive Plan/Rezoning Request (NE corner of CR B and Cleveland)
- Rezoning HDR property to CMU – 1 (Twin Lakes north of Terrace) which is on the agenda this evening as well

32 The Applewood and Cherrywood projects have an additional complexity because they are part
33 of a purchase agreement that the City has entered into related to the acquisition of the Owasso
34 ballfields. If the moratorium language is broad enough to include these sites, there could be
35 additional legal complications related to the purchase agreement.

36 **POLICY OBJECTIVE**

37 An interim ordinance (moratorium) is generally enacted when the City Council believes the
38 current situation could result in an outcome that is in opposition to City policies.

39 **BUDGET IMPLICATIONS**

40 A moratorium doesn't have significant budget implications on its own. Depending on the
41 outcome, some projects may not occur which could have a building permit fee and property tax
42 impact.

43 The primary budget impact concerns with a moratorium is usually if one or more of the impacted
44 property owners decides to pursue legal action, in which case the City would need to defend
45 itself and would be subject to any court decisions.

46 **STAFF RECOMMENDATION**

47 As this is a Council member initiated request and staff does not have the benefit of a full
48 understanding of the issue yet, there is no recommendation from staff at this time.

49 **REQUESTED COUNCIL ACTION**

50 Offer a motion to approve the attached ordinance (Attachment C) as amended.

51 *Please note, the draft ordinance will require amending to include the relevant facts of the case.*

Prepared by: Paul Bilotta, Community Development Director
Attachments: A: State Statutes 462.355
B: League of MN Cities summary on interim ordinances
C: Draft Interim Ordinance

462.355 ADOPT, AMEND COMPREHENSIVE PLAN; INTERIM ORDINANCE.

Subdivision 1. **Preparation and review.** The planning agency shall prepare the comprehensive municipal plan. In discharging this duty the planning agency shall consult with and coordinate the planning activities of other departments and agencies of the municipality to insure conformity with and to assist in the development of the comprehensive municipal plan. In its planning activities the planning agency shall take due cognizance of the planning activities of adjacent units of government and other affected public agencies. The planning agency shall periodically review the plan and recommend amendments whenever necessary. When preparing or recommending amendments to the comprehensive plan, the planning agency of a municipality located within a county that is not a greater than 80 percent area, as defined in section 103G.005, subdivision 10b, must consider adopting goals and objectives that will protect open space and the environment.

Subd. 1a. **Update by metropolitan municipalities.** Each municipality in the metropolitan area, as defined in section 473.121, subdivision 2, shall review and update its comprehensive plan and fiscal devices and official controls as provided in section 473.864, subdivision 2.

Subd. 2. **Procedure to adopt, amend.** The planning agency may, unless otherwise provided by charter or ordinance consistent with the municipal charter, recommend to the governing body the adoption and amendment from time to time of a comprehensive municipal plan. The plan may be prepared and adopted in sections, each of which relates to a major subject of the plan or to a major geographical section of the municipality. The governing body may propose the comprehensive municipal plan and amendments to it by resolution submitted to the planning agency. Before adopting the comprehensive municipal plan or any section or amendment of the plan, the planning agency shall hold at least one public hearing thereon. A notice of the time, place and purpose of the hearing shall be published once in the official newspaper of the municipality at least ten days before the day of the hearing.

Subd. 3. **Adoption by governing body.** A proposed comprehensive plan or an amendment to it may not be acted upon by the governing body until it has received the recommendation of the planning agency or until 60 days have elapsed from the date an amendment proposed by the governing body has been submitted to the planning agency for its recommendation. Unless otherwise provided by charter, the governing body may by resolution adopt and amend the comprehensive plan or portion thereof as the official municipal plan upon such notice and hearing as may be prescribed by ordinance. Except for amendments to permit affordable housing development, a resolution to amend or adopt a comprehensive plan must be approved by a two-thirds vote of all of the members. Amendments to permit an affordable housing development are approved by a simple majority of all of the members. For purposes of this subdivision, "affordable housing development" means a development in which at least 20 percent of the residential units are restricted to occupancy for at least ten years by residents whose household income at the time of initial occupancy does not exceed 60 percent of area median income, adjusted for household size, as determined by the United States Department of Housing and Urban Development, and with respect to rental units, the rents for affordable units do not exceed 30 percent of 60 percent of area median income, adjusted for household size, as determined annually by the United States Department of Housing and Urban Development.

Subd. 4. **Interim ordinance.** (a) If a municipality is conducting studies or has authorized a study to be conducted or has held or has scheduled a hearing for the purpose of considering adoption or amendment of a comprehensive plan or official controls as defined in section 462.352, subdivision 15, or if new territory for which plans or controls have not been adopted is annexed to a municipality, the governing body of the municipality may adopt an interim ordinance applicable to all or part of its jurisdiction for the purpose of protecting the planning process and the health, safety and welfare of its citizens. The interim ordinance may

regulate, restrict, or prohibit any use, development, or subdivision within the jurisdiction or a portion thereof for a period not to exceed one year from the date it is effective.

(b) If a proposed interim ordinance purports to regulate, restrict, or prohibit activities relating to livestock production, a public hearing must be held following a ten-day notice given by publication in a newspaper of general circulation in the municipality before the interim ordinance takes effect.

(c) The period of an interim ordinance applicable to an area that is affected by a city's master plan for a municipal airport may be extended for such additional periods as the municipality may deem appropriate, not exceeding a total additional period of 18 months. In all other cases, no interim ordinance may halt, delay, or impede a subdivision that has been given preliminary approval, nor may any interim ordinance extend the time deadline for agency action set forth in section 15.99 with respect to any application filed prior to the effective date of the interim ordinance. The governing body of the municipality may extend the interim ordinance after a public hearing and written findings have been adopted based upon one or more of the conditions in clause (1), (2), or (3). The public hearing must be held at least 15 days but not more than 30 days before the expiration of the interim ordinance, and notice of the hearing must be published at least ten days before the hearing. The interim ordinance may be extended for the following conditions and durations, but, except as provided in clause (3), an interim ordinance may not be extended more than an additional 18 months:

(1) up to an additional 120 days following the receipt of the final approval or review by a federal, state, or metropolitan agency when the approval is required by law and the review or approval has not been completed and received by the municipality at least 30 days before the expiration of the interim ordinance;

(2) up to an additional 120 days following the completion of any other process required by a state statute, federal law, or court order, when the process is not completed at least 30 days before the expiration of the interim ordinance; or

(3) up to an additional one year if the municipality has not adopted a comprehensive plan under this section at the time the interim ordinance is enacted.

History: 1965 c 670 s 5; 1976 c 127 s 21; 1977 c 347 s 68; 1980 c 566 s 24; 1983 c 216 art 1 s 67; 1985 c 62 s 1,2; 1995 c 176 s 4; 2004 c 258 s 1; 2005 c 41 s 17; 1Sp2005 c 1 art 1 s 91; 2008 c 297 art 1 s 59; 2010 c 347 art 1 s 24

Minn. Stat. § 462.355, subd. 4.
Pawn America Minnesota, LLC v. City of St Louis Park, 787 N.W.2d 565 (Minn. 2010).

Minn. Stat. § 462.355, subd. 4(a).

Minn. Stat. § 462.355, subd. 4(b).
Duncanson v. Board of Supervisors of Danville Tp., 551 N.W.2d 248 (Minn. Ct. App. 1996).

Minn. Stat. § 462.355, subd. 4(c).

Minn. Stat. § 462.355, subd. 4(e)(3).

1. Interim Ordinances (Moratoria)

Adoption of an interim ordinance (more commonly known as a moratorium) may aid cities in the zoning ordinance amendment process, by allowing a city to study an issue without the pressure of time generated by pending applications. Cities may use a moratorium to protect the planning process, particularly when formal studies may be needed on a particular issue. Cities must follow the procedures established in state statute to initiate a moratorium.

a. Procedure for interim ordinance adoption

Cities must initiate a moratorium by adopting an ordinance (interim ordinance). The interim ordinance may regulate, restrict, or prohibit any use, development, or subdivision within the city or a portion of the city for a period not to exceed one year from the effective date of the ordinance. An interim ordinance may only be adopted where the city:

- Is conducting studies on the issue.
- Has authorized a study to be conducted.
- Has held or scheduled a hearing for the purpose of considering adoption or amendment of a comprehensive plan or other official controls, including the zoning code, subdivision controls, site plan regulations, sanitary codes, building codes and official maps.
- Has annexed new territory into the city for which plans or controls have not been adopted.

The legal justification for the interim ordinance should be stated in the findings of fact when the ordinance is adopted.

No notice or hearing is generally necessary before an interim ordinance is enacted. However, a public hearing must be held if the proposed interim ordinance regulates, restricts or prohibits livestock production (feedlots). In such case, the notice of the hearing must be published at least ten days prior to the hearing in a newspaper of general circulation in the city.

b. Procedure for interim ordinance extension

An interim ordinance may be extended only in limited circumstances if the procedures of state statute are followed. An interim ordinance may be extended if the city holds a public hearing and adopts findings of fact stating that additional time is needed to:

- Complete and adopt a comprehensive plan in cities that did not have comprehensive plan in place when the interim ordinance was adopted. This allows an extension for an additional year.

Minn. Stat. § 462.355, subd. 4(c) (1).

Minn. Stat. § 462.355, subd. 4(c) (2).

Minn. Stat. § 462.355, subd. 4(c).

Minn. Stat. § 462.355, subd. 4(c).

Semler Const., Inc. v. City of Hanover, 667 N.W.2d 457 (Minn. App. 2003).

Woodbury Place Partners v. Woodbury, 492 N.W.2d 258 (Minn. Ct. App. 1993).
Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency, 535 U.S. 302, 122 S. Ct. 1465 (2002).

A.G. Op. 477b-34 (July 29, 1991).

- Obtain final approval or review by a federal, state, or metropolitan agency of the proposed amendment to the city's official controls, when such approval is required by law and the review or approval has not been completed and received by the municipality at least 30 days before the expiration of the interim ordinance. This allows an extension for an additional 120 days.
- Complete "any other process" required by a state statute, federal law, or court order and when the process has not been completed at least 30 days before the expiration of the interim ordinance. This allows an extension for an additional 120 days.
- Review an area that is affected by a city's master plan for a municipal airport. This allows for an additional period of 18 months.

The required public hearing must be held at least 15 days but not more than 30 days before the expiration of the interim ordinance, and notice of the hearing must be published at least ten days before the hearing.

c. Applicability

An interim ordinance or moratorium may not delay or prohibit a subdivision that has been given preliminary approval, nor extend the time for action under the 60-day rule with respect to any application filed prior to the effective date of the interim ordinance.

According to the Minnesota Court of Appeals, the use of an interim ordinance prohibiting or limiting use of land is generally not compensable if there is a valid purpose for the interim regulation. In evaluating whether an interim ordinance is a temporary taking in the nature of a regulatory taking, courts will look to the parcel as whole. There is no bright-line rule for regulatory takings; rather, they must be evaluated on a case-by-case basis.

VI. Zoning ordinance enforcement

The Municipal Planning Act authorizes cities to enforce their zoning ordinance through criminal penalties. In addition, civil remedies, such as an injunction, are available to cities to cure on-going violations. The Minnesota Attorney General has ruled that it is a general duty of a city to enforce its zoning ordinance and that a city cannot refuse to enforce zoning requirements by ignoring illegal land uses. In enforcing city ordinances, however, a city must be aware that certain landowners may have specific rights as existing non-conformities; if their non-conforming use pre-dated the city's zoning regulation.

**City of Roseville
ORDINANCE NO.**

**AN INTERIM ORDINANCE ESTABLISHING A MORATORIUM
TEMPORARILY PROHIBITING _____**

THE CITY OF ROSEVILLE ORDAINS:

SECTION 1: Purpose and Intent

The City of Roseville (“City”) recognizes significant public interest and concern over _____.

The City desires to regulate the use of property in a manner that is consistent with the purpose and intent of the Comprehensive Plan and Zoning Ordinance.

The use of property for High Density Residential purposes _____.

Minnesota Statutes Section 462.355 allows the City to adopt a temporary interim ordinance for a period of up to twelve (12) months from the date it is effective, to allow for such study and adoption of comprehensive plan, zoning and/or other official land use controls in order to protect the public health, safety and general welfare. The same statute allows for the limited extension of the period under particular circumstances.

The City has concluded that additional study is required related to _____.

There is a need for an interim ordinance to be adopted for the purpose of protecting the planning process and the health, safety, and welfare of the citizens of the City until such a study has been completed.

SECTION 2: Prohibition

Pursuant to State Statutes 462.355, the City hereby adopts and approves this interim ordinance temporarily prohibiting _____ at _____. During the effective period of this interim ordinance, the City will not accept any application or issue any permit for _____.

SECTION 3: Effective Date and Duration

This ordinance shall take effect and be in full force from and after its passage and publication. It shall remain in effect until the adoption of official controls contemplated herein or one year, whichever occurs first, after which occurrence this ordinance shall lapse, unless properly extended pursuant to state law.

Passed by the City Council of the City of Roseville this ____ day of _____ 2016.

AN INTERIM ORDINANCE ESTABLISHING A MORATORIUM TEMPORARILY PROHIBITING _____

(SEAL)

CITY OF ROSEVILLE

BY: _____
Daniel J. Roe, Mayor

ATTEST:

Patrick Trudgeon, City Manager