

REQUEST FOR COUNCIL ACTION

Date: February 8, 2016
Item No.: 10.c

Department Approval



City Manager Approval



Item Description: High Density Residential Interim Ordinance (Moratorium)

BACKGROUND

At the January 25, 2016 meeting, the City Council asked for a moratorium ordinance to be brought forward in order to prevent the additional rezoning or guiding of land for high density residential development for 90 days. During this time, the City Council will be studying the current available supply of high density residential property as well as studying potential new regulatory tools, including Planned Unit Development (PUD).

This ordinance will only affect the rezoning/guiding of new property for high density residential. It will not affect any rezoning applications that have been received prior to the effective date of the ordinance and it will not affect any building permit or other applications within existing high density residential zoned areas. Any high density residential projects in other districts, such as Community Mixed Use (CMU) or Community Business (CB) would also not be affected by this interim ordinance.

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).

POLICY OBJECTIVE

An interim ordinance (moratorium) is generally enacted when the City Council believes the current regulatory and development situation could result in an outcome that is in opposition to City policies. The City Council has expressed a desire to study the supply of high density residential property and this short moratorium period should give the City Council enough time to complete that task.

BUDGET IMPLICATIONS

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

STAFF RECOMMENDATION

Staff recommends the approval of the attached interim ordinance which will establish a 90 day moratorium on new rezoning or comprehensive plan amendments for high density residential zoning and guiding.

31 **REQUESTED COUNCIL ACTION**

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

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(c)(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 REZONING OF PROPERTY FOR
HDR-1 AND HDR-2 IN THE CITY OF ROSEVILLE**

THE CITY OF ROSEVILLE ORDAINS:

SECTION 1: Purpose and Intent

The City of Roseville (“City”) recognizes significant public interest and concern over ensuring the City has the appropriate amount of available land zoned and guided for high density housing to satisfy the needs of the community.

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 City recognizes it may not currently have the appropriate regulatory tools such as Planned Unit Developments to effectively regulate high density housing.

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 analyzing the supply and demand for high density housing in the community, review of high density housing zoning regulations, and creation of a Planned Unit Development and/or site plan approval process.

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 the rezoning of property to zoning classification HDR-1: High Density Residential-1 and HDR-2: High Density Residential-2 across the entire City. During the effective period of this interim ordinance, the City will not accept any application for rezoning of property to HDR-1 or HDR-2 nor any applications for comprehensive plan amendments to the High Density Residential classification.

All rezoning and comprehensive plan amendment applications received prior to the effective date of this ordinance will remain valid and continue forward in the review and approval process normally. This interim ordinance does not impact building permits or other land use applications besides rezoning and comprehensive plan amendments.

If any potential applicant has already scheduled or held a developer open house meeting in accordance with Section 1009.07 of the City Code but has not yet applied for a rezoning or comprehensive plan amendment, the timing requirement in this section is suspended during the period this interim ordinance is in effect.

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 for 90 days, 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