

Moratorium Emporium!

An in-depth discussion on the various tools we call moratoria.

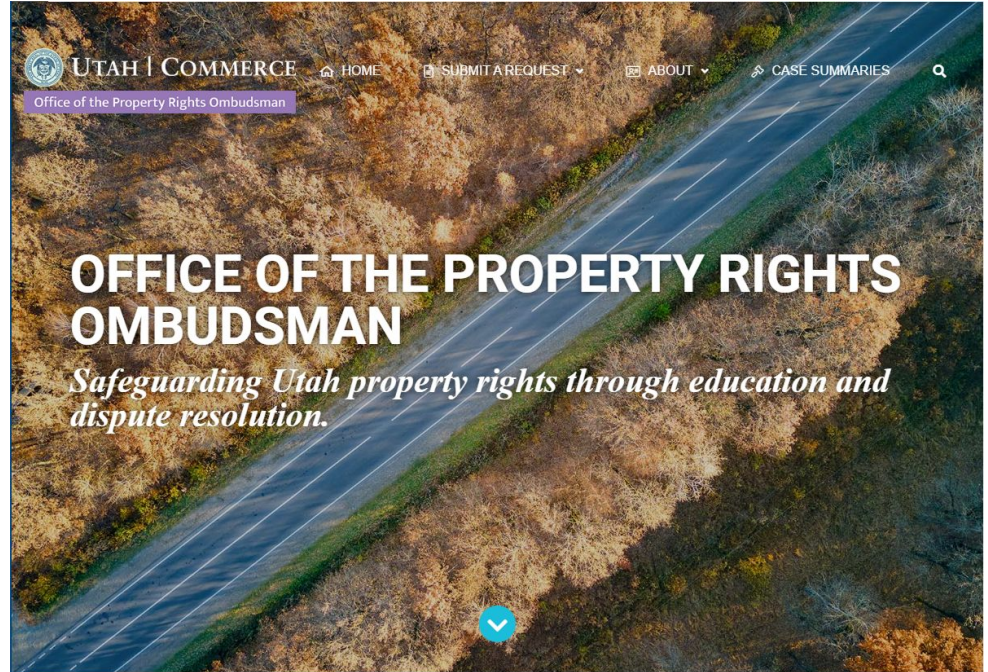
What are they? When and how do we use them?

Jordan Cullimore
Office of the Property Rights Ombudsman

The Ombudsman's Office: An Introduction

Website: propertyrights.utah.gov

- Discuss property rights questions
- Provide advisory opinions
- Mediate property rights disputes
- Provide training throughout the state



Three Different Tools Referred to as “Moratoria”

Discretionary Legislative Decision Making

1. The entity is presently not accepting or considering new zone change applications

Exceptions to the Vested Rights Rule

2. Temporary Land Use Regulation
3. Pending Ordinance



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Zone Change Applications

“I went into the city to submit an application for a zone change. They told me there is currently a moratorium on zone changes! Can they do that?”



Legislative vs Administrative Decision-making

Legislative decisions generally involve making laws of general applicability, and are based on the weighing of broad, competing policy considerations.

Typical Legislative Decisions

- Adoption & amendment of the general plan
- Enactment & amendment of land use ordinances and development standards
- Enactment of a zone map & approval of a zone change
- Annexation decisions
- *Maybe* development agreements

Legal Standard of Review

1. Decision must be consistent with applicable state and federal law (cannot be illegal)
2. It must be “reasonably debatable” that the decision could advance the general welfare or public interest

Administrative decisions generally involve applying existing codes to a particular development proposal, based on individual facts and circumstances.

Typical Administrative Decisions

- Subdivisions
- Conditional use permit
- Site plan
- Building Permit
- Variances
- *Maybe* development agreements

Legal Standard of Review

1. Decision must be consistent with relevant state and federal law, local ordinances, and any vested rights (cannot be illegal)
2. Regarding factual determinations, the decision must be supported with substantial evidence

Zone Change Applications

In zoning, as in any legislative action, the functioning authority has wide discretion. Its action is endowed with a presumption of validity; and it is the court's duty to resolve all doubts in favor thereof and not to interfere with the [entity's] action unless it clearly appears to be beyond its power; or is unconstitutional for some such reason as it deprives one of property without due process of law, or capriciously and arbitrarily infringes upon his rights therein, or is unjustly discriminatory.

Harmon City, Inc. v. Draper City, 2000 UT App 31



Zone Change Applications

A Few Considerations

If you are going to put a categorical pause on zone change requests, have a good reason why

Avoid using it as a broad and sweeping tool

Municipalities, specifically, should avoid using it as a long-term solution

- Municipalities exist to provide municipal services and facilitate the orderly growth and use of land



Red Flag - No Economically Beneficial Use

- The property owner states, or it is apparent to the local government officials, that the owner “cannot do anything with his land.”
- “We think, in short, that there are good reasons for our frequently expressed belief that when the owner of real property has been called upon to sacrifice all economically beneficial uses in the name of the common good, that is, to leave his property economically idle, he has suffered a taking.” *Lucas v. S.C. Coastal Council*, 505 U.S. 1003 (1992)
- More often an “as applied” concern, as opposed to a “facial” one



Red Flag - Unjustly Discriminatory

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The general rule: [I]f an ordinance "could promote the general welfare; or even if it is reasonably debatable that it is in the interest of the general welfare" [a court] will uphold it. *Smith Inv. Co. v. Sandy City*, 958 P.2d 245 (UT App 1998)

LUDMA § 10-9a-801

A court shall:

- (i) presume that a land use regulation properly enacted under the authority of this chapter is valid; and
- (ii) determine only whether:
 - (A) the land use regulation is expressly preempted by, or was enacted contrary to, state or federal law; and
 - (B) *it is reasonably debatable that the land use regulation is consistent with this chapter*

The guiding principle: Treat similarly situated individuals similarly. Don't exclude.



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Vested Rights

“A property owner should be able to plan for developing his property in a manner permitted by existing zoning regulations with some degree of assurance that the basic ground rules will not be changed in midstream.”

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



The Vested Rights Rule

Utah Code 10-9a-509(1)(a)

(i) An applicant who has submitted a complete land use application...including the payment of all application fees, is **entitled to substantive review** of the application under the land use regulations:

(A) in effect on the date that the application is complete; and

(B) applicable to the application or to the information shown on the application.

(ii) An applicant is **entitled to approval** of a land use application if the application conforms to the requirements of the applicable land use regulations, land use decisions, and development standards in effect when the applicant submits a complete application and pays application fees...



There are always exceptions...

. . . [A] rule which vests a right unconditionally at the time application for a permit is made affords no protection for important public interests that may legitimately require interference with planned private development. If a proposal met zoning requirements at the time of application but seriously threatens public health, safety, or welfare, the interests of the public should not be thwarted.

Western Land Equities, Inc. v. City of Logan, 617 P.2d 388, 395-396 (Utah 1980).



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Temporary Land Use Regulation

When? (Or under what circumstances?)

Utah Code 10-9(a)-504(1)

(a) Except as provided in Subsection (2)(b), a municipal legislative body may, *without prior consideration of or recommendation from the planning commission*, enact an ordinance establishing a temporary land use regulation for any part or all of the area within the municipality if:

- (i) *the legislative body **makes a finding of compelling, countervailing public interest***; or
- (ii) the area is unregulated.



Temporary Land Use Regulation

What?

Utah Code 10-9(a)-504(1)

(b) A temporary land use regulation...***may prohibit or regulate the erection, construction, reconstruction, or alteration of any building or structure or any subdivision approval.***

(c) A temporary land use regulation...may not impose an impact fee or other financial requirement on building or development.



Temporary Land Use Regulation

How long?

Utah Code 10-9(a)-504(2)

(a) The municipal legislative body shall establish a period of limited effect for the ordinance ***not to exceed 180 days***.

(b) A municipal legislative body may not apply the provisions of a temporary land use regulation to the review of a specific land use application if the land use application is impaired or prohibited by proceedings initiated under [a pending ordinance].



The Compelling, Countervailing Public Interest

What is NOT a compelling, countervailing public interest?

In *Western Land Equities*, the developer sought to construct residences (allowed by special permit) in an M1 Zone.

Concerns raised:

- Inappropriate site for residential
- Inadequate sidewalks
- Surrounded by railroads on three sides
- Access and fire protection concerns

“It is incumbent upon a city...to act in good faith and not to reject an application because the application itself triggers zoning reconsiderations that result in a substitution of the judgment of current city officials for that of their predecessors.”

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

The court did not find that simply because the concerns were raised, a compelling, countervailing, public interest had been established.

A compelling, countervailing public interest is not:

- Mere speculation or conjecture
- A “zoning reconsideration” that results in a “substitution of the judgment of current city officials for that of their predecessors.”



The Compelling, Countervailing Public Interest

What may be considered a compelling, countervailing public interest?

"[A] compelling public interests may, when appropriate, be given priority over individual economic interests. A city should not be unduly restricted in effectuating legitimate policy changes when they are grounded in recognized legislative police powers. There may be instances when an application would for the first time draw attention to a serious problem that calls for an immediate amendment to a zoning ordinance, and such an amendment would be entitled to valid retroactive effect."

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

A compelling, countervailing public interest is:

- A "legitimate public concern"
- A "serious problem" that calls for "immediate amendment to a zoning ordinance"

Oakley City halts all new developments due to water shortage

Oct 6, 2022, 5:00 PM



(Shafkat Anowar/Deseret News)

BY HEATHER KELLY

KSLNewsRadio

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OAKLEY, Utah — Oakley, a small city east of Park City, has stopped all new development projects due to a lack of water.

Oakley Mayor Zane Woolstenhulme, told KSL NewsRadio's [Dave and Dujanovic](#) that the city was using 9 million gallons of water more each month than they were receiving.

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Vested Rights Rule

Utah Code 10-9a-509

(1)(a)(i) An applicant who has submitted a complete land use application...including the payment of all application fees, is ***entitled to substantive review*** of the application under the land use regulations:

(A) in effect on the date that the application is complete; and

(B) applicable to the application or to the information shown on the application.



Pending Ordinance

Utah Code 10-9a-509(1)(a)(ii)

An applicant is ***entitled to approval*** of a land use application if the application conforms to the requirements of the applicable land use regulations, land use decisions, and development standards in effect when the applicant submits a complete application and pays application fees, **unless**:

(A) the land use authority, on the record, formally finds that a compelling, countervailing public interest would be jeopardized by approving the application and specifies the compelling, countervailing public interest in writing; or

(B) ***in the manner provided by local ordinance and before the applicant submits the application, the municipality formally initiates proceedings to amend the municipality's land use regulations in a manner that would prohibit approval of the application as submitted.***

PENDING

Pending Ordinance

Of limited duration

Utah Code 10-9a-509(1)(b)

The municipality shall process an application without regard to proceedings the municipality initiated to amend the municipality's ordinances...if:

- (i) **180 days** have passed since the municipality initiated the proceedings; and
- (ii)(A) the proceedings have not resulted in an enactment that prohibits approval of the application as submitted; or
- (B) during the 12 months prior to the municipality processing the application, or multiple applications of the same type, are impaired or prohibited under the terms of a temporary land use regulation adopted under Section 10-9a-504.



Pending Ordinance

Must be Some Detail to the Pending Ordinance

Utah Code 10-9a-509(1)(a)(ii)(B) provides that a pending ordinance may be applied to an land use application if the pending ordinance would “amend the municipality's land use regulations in a manner that would prohibit approval of the application as submitted.”

Clearly this requires more than a concept or a topic for review. The pending ordinance under formal consideration should include enough detail in the form of the proposed ordinance that a person could determine that the ordinance, if approved, would indeed prohibit “approval of the application as submitted.”



Example of a Pending Ordinance Provision

LCC 17.04.090(2). Lindon City formally initiates proceedings to amend this division when it gives notice, according to Lindon City Code Section 17.14.040, of the first public hearing in which the proposed amendment will be considered.

LCC 17.04.090(8). Notification of Pending Land Use Ordinances

- a. When the City Council determines the need to adopt, amend, revise, or change any land-use, the City Council shall pass a resolution notifying the public that the City is considering the adoption, amendment, revision, or change of the current land use ordinances pursuant to Section 17.04.090, and shall identify the specific ordinance(s) and/or zone(s) to be affected.
- b. Applications for building or use permits filed after the passage of a Resolution pursuant to this section will be subject to any conditions or requirements established or amended as adopted in the pending ordinance.
- c. Upon receipt of an application for any building or use permit in an area or zone subject to a pending ordinance, the building official receiving the application shall notify the applicant of the pending ordinance(s).



In Summary: When to Use Each Tool?

Pause on Zone Change Requests

- The entity is putting together a thoughtful zoning scheme for the first time, or for the first time in a long while, and would like to get it in place before considering new zone change requests
- Recent studies indicate existing and planned capital facilities and services will be inadequate for even existing zoning, or for any increase in intensity
- This should be a very temporary solution! Work fast to get in place plans and ordinances that will reasonably and thoughtfully guide future growth
- Done as a matter of policy within legislative discretion; no formal resolution or ordinance needed

Temporary Land Use Regulation

- Urgent, unforeseen emergencies supported by facts and data (as opposed to mere speculation or conjecture)
- Temporary by definition (180 days)

Pending Ordinance

- The entity identifies an area of the code in need of improvement or modification
- Ordinary course of the public process
- Temporarily holds new applications to allow time for pending ordinance change to be enacted (for 180 days)

Questions?

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