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Frequently Asked Questions About Moratoriums

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Disclaimer

- This presentation, and the materials associated with it, are comprised of general information and not intended as legal advice related to a particular situation.
- Please contact an attorney if you need assistance related to a specific legal issue.





Presentation Goals

1. Know what a moratorium is
2. Learn how to enact a moratorium
3. Understand challenges to moratoriums
4. Discuss best practices and moratorium “pitfalls”



What are moratoriums?

- Stems from the Latin word *moratorius* that is defined as “tending to delay.”
- “[A] suspension of an activity.” *Merriam-Webster Dictionary*
- The plural of “moratorium” is either moratoriums or moratoria.
- In the township context, generally means the pause of considering and issuing some permit (e.g., zoning approvals) for a time period to study and potentially adopt new regulations for a particular topic.





What moratoriums are not!

- Bans
- Unlawful (if enacted properly)
- A “magic” solution to all of a township’s problems



What are moratoriums used for?

- Pausing consideration of a certain issue / approvals to allow a township to study the issue and to potentially adopt new or amended ordinances.

Examples

1. Pausing consideration of utility-scale renewable energy zoning applications to study existing wind and solar regulations.
2. Pausing consideration and issuance of marihuana licenses to study marihuana regulations.





How does a township enact a moratorium?

- It depends....
- Mixed case law
 - **By Resolution.** See *Metamora Twp v Am Aggregates of Michigan, Inc*, No. 349069, 2021 WL 1236108, p *15 (Mich Ct App, April 1, 2021).
 - **By Police Power Ordinance**
 - **By Zoning Ordinance Amendment?** *Tuscola Wind III, LLC v Ellington Twp*, No. 17-CV-11025, 2018 WL 1291161 (ED Mich, March 13, 2018)





How long can a moratorium last?

- "[A] moratorium lasting more than one year should be viewed with special skepticism." *Tahoe-Sierra Pres Council, Inc v Tahoe Regl Planning Agency*, 535 US 302, 304 (2002).
- **BUT** – Same case upheld a 32-month moratorium of development in the Lake Tahoe Basin during development of a land use plan for the area.

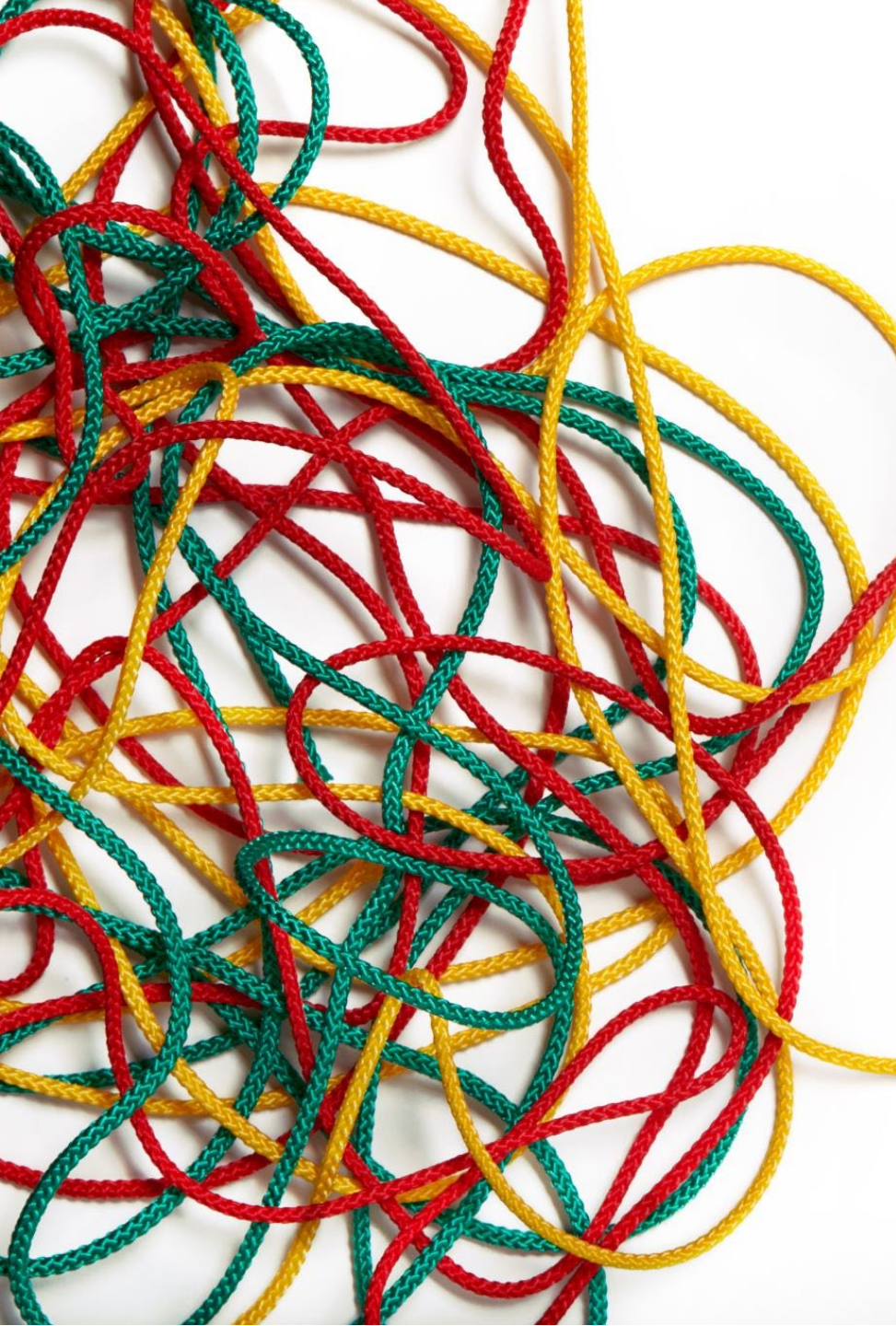
Common Challenges #1 - Formation

- Especially for moratoriums related to zoning regulations and approvals, developers may challenge a moratorium based on how it was adopted.
- Similar challenges for moratoriums adopted by resolution.

Solutions

1. Adopt by police power ordinance.
2. Adopt corresponding zoning ordinance amendment (after police power ordinance) for moratoriums related to land-use issues.
3. Ensure that your township's zoning ordinance does not require action on applications within a set period of time.





Zoning Moratorium Safeguard?

- Given the *Tuscola Wind* case, a township may want to insert a provision in its Zoning Ordinance allowing adoption of moratoriums similar to fee schedules.
- This (although not fully tested) may allow a township to avoid the long adoption times associated with Zoning Ordinance amendments.





Common Challenges #2 - Takings

- Regulatory Takings
- “[N]or shall private property be taken for public use, without just compensation[.]” US Const, Amend V.

Solutions

1. Make moratorium temporary
2. The moratorium should treat people equally
3. If possible, allow other uses of land
4. Allow limited waiver mechanism



Common Challenges #3 – Other Constitutional Claims

- **Substantive due process** - Government actions must have a rational basis and not deprive citizens of life, liberty, or property. US Const, Amend XIV.
- **Procedural due process** - Adequate procedures were followed related to a constitutionally protected interest. US Const, Amend XIV.
 - Open Meetings Act Obligations!
- **Equal Protection** – Government must avoid disparate treatment of similarly situated persons. US Const, Amend XIV.
- **Tips**
 - ✓ Prepare findings outlining “why” your township is enacting a moratorium
 - ✓ Follow ordinance adoption processes in state law
 - ✓ Follow Open Meetings Act
 - ✓ Do not treat similar entities or individuals differently



Common Challenges #4 – Preempting Statutes

- *Amber Reineck House v City of Howell, Michigan*, No. 20-CV-10203, 2022 WL 17650471 (ED Mich, December 13, 2022).
- Moratorium in case above enacted on land uses that encompassed substance abuse disorder transitional housing.
- Court did not dismiss case and found appropriate to determine if moratorium violated Fair Housing Act, Americans with Disabilities Act, and similar state statutes.
- **Tip:** Proceed with caution if a moratorium may impact those in protected classes!





Common Moratorium Pitfalls

- Townships should avoid the following pitfalls if enacting a moratorium:
 1. Enacting a moratorium with no plan to study or revise ordinance regulations.
 2. Thinking the moratorium will cause the controversial issue to “go away.”
 3. Allowing a moratorium to expire before new regulations are adopted.
 4. Adopting a moratorium by motion.
 5. Not articulating “findings” for enacting a moratorium.



Best Moratorium Practices

1. Ensure your township adopts the moratorium correctly.
2. Develop a plan of action to enact/study new regulations.
3. Do not impose a moratorium for longer than a year unless special circumstances.
4. Avoid enacting moratoriums that will restrict all purposes for a parcel unless the moratorium has a waiver provision.
5. **Be transparent** – A moratorium may make some upset but encourage their participation when studying new regulations.
6. Don't target (even unintentionally) protected classes with a moratorium.
7. Outline reasons for enacting a moratorium.



Questions

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