



# WESTERN UPSTATE ASSOCIATION OF REALTORS®

## **Policy Paper and Position on Moratorium**

A moratorium, in the context of land use, is an action taken by government to deny the right of due process, or entitlement to a permit, to a property owner. Local governments in the Upstate have used moratoriums in the past and have occasionally found themselves in court because they have enacted a moratorium improperly, denying property owners their right to due process.

### **Legal Background in the Upstate**

In *Scott vs. Greenville County*, in 1979, the County Council's Planning and Development Committee ordered the county's Zoning Administrator not to issue a building permit for a multi-family development project while County Council considered a proposed rezoning of the development site. Scott sued and the South Carolina Supreme Court ultimately ruled that Scott was entitled to the permit. The court ruled that "Scott enjoyed an entitlement to the issuance of a permit upon presentation of an application and plans showing a use expressly permitted under the then-current zoning ordinance." A judge in the Court of Common Pleas for Greenville County wrote there was "no legal basis for the intrusion of County Council into the zoning certificate and building permit process."

In *Simpkins vs. City of Gaffney*, in 1993, City Council issued a moratorium on the issuance of building permits for the construction of duplexes and multi-family housing units. The South Carolina Court of Appeals ruled that City Council did not possess the power to suspend an ordinance temporarily, and that council must either repeal or replace an ordinance with another ordinance.

Moratoriums have been adopted, and considered, at other times as well. The City of Greenville once considered a moratorium on demolition of existing buildings and construction of new buildings in areas zoned for single-family residential on properties fronting on roads deemed "Vulnerable Thoroughfare Locations." In total a dozen streets were listed.

In 2017 the City of Mauldin adopted a moratorium on construction and development activities in and around its proposed town square area while it considered a plan for the area. That area still has not been redeveloped. And moratoriums have been adopted throughout the Upstate since 2020 including in Clemson, Pendleton, and in Anderson and Greenville counties, and the City of Greenville, where they were proposed and successfully opposed by REALTORS®. In 2022, Laurens County Council approved and extended a moratorium simply on a motion from a councilmember. No ordinance was drafted nor a public hearing held.

### **A failure to plan**

A moratorium is evidence of a failure to plan. It is also evidence that regulators have failed to gain a basic understanding of the marketplace, or by prior action, has pushed market forces to an

unexpected location. Much like squeezing a balloon forces air to an unsqueezed portion of the balloon, regulation can push the marketplace into an “unsqueezed” portion of a community.

### **Our position**

A moratorium must never be used to deny a person a permit or certificate of occupancy which they are entitled to receive. Investment in real estate is in reliance upon the rules and conditions that exist at the time the investment is made. Of course, conditions may change, like absorption of available capacity in utilities, that could impact future use. But absent such a condition, a property owner has a right to the use of their property within the limits of ordinance and public policy in effect at that time. If an ordinance or public policy is to be considered that will change the use of the property, the property owner, in fact all property owners, have a right to notification and the opportunity to have input on any change.

A moratorium also must not be considered even when a new ordinance or plan is being considered. South Carolina law provides for the opportunity for a governing body to impose the terms of a new ordinance even before it is adopted. The pending-ordinance doctrine should be sufficient to allow a governing body to apply a planned ordinance after one reading and notice of a public hearing without imposing a moratorium.

The Western Upstate Association of REALTORS® opposes the imposition of a moratorium to affect a pause in development to change or adopt new rules. A moratorium is only justified when utility or capital infrastructure capacity is at issue and should include a plan for relieving the capacity shortfall in an expedited manner.

Adopted:

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