



Policy Paper and Position on Pending Ordinance Doctrine

The “pending ordinance doctrine” is recognized in South Carolina case law, but the court referenced state law in Pennsylvania. It gives local governments the authority to enforce an ordinance or refuse to issue a permit under an existing ordinance, after the public hearing for the ordinance has been properly advertised and read once by the local government even though it has not been fully approved by the governing body. The doctrine’s rationale is to prohibit a person from gaining approval for an activity that is inconsistent with an ordinance that is actively under consideration for adoption.

The pending ordinance doctrine is in effect a moratorium, but it is far more limited in its timeframe than moratoriums that are often enacted by local governments and last many months. In addition, a pending ordinance means that local government has already arrived at a governmental policy and is not inhibiting a person’s rights under the law while it debates and drafts an ordinance.

According to the South Carolina Association of Counties, an ordinance is legally pending “when the governing body has resolved to consider a scheme of rezoning and has advertised to the public its intention to hold public hearings on the rezoning.”

A related legal concept is the “moratorium.” The Western Upstate Association of REALTORS® Board of Directors considers a moratorium a denial of due process right and should only be used for a genuine emergency (see the Western Upstate Association of REALTORS® Policy Statement on Moratoriums).

The Western Upstate Association of REALTORS® is generally supportive of the pending ordinance doctrine because it assumes work is already done to prepare the ordinance and interested parties, like the REALTORS® Association, have had the opportunity to be heard.

These conditions must exist for the Western Upstate Association of REALTORS® to support the invocation of the pending ordinance doctrine:

1. The ordinance is legitimately developed with public input.
2. The ordinance is properly advertised for consideration by the governing body.
3. The ordinance is read once by the governing board, thereby giving notice that an ordinance is pending. However, the association does not consider an ordinance “in title only” to be legitimately before the body because the content of the ordinance is not made available to the public for its review. In addition, an ordinance in title only is not one that is truly “pending.”
4. Consideration of the ordinance by the governing body is not subjected to arbitrary or unnecessary delay that slows the adoption or rejection of the draft ordinance.

We do oppose, however, the use of the Pending Ordinance Doctrine in a Moratorium ordinance. The Pending Ordinance Doctrine is a tool to limit the use of a moratorium and therefore should

not be used to enforce a moratorium before it has been properly and fully approved by the governmental body.

As is always the case, the Western Piedmont Association of REALTORS® stands ready to work with our government partners to develop public policy that meets the interests and needs of the community and our industry.

Adopted: Board of Directors, March 15, 2023