



Moratorium Workshop

November 7th, 2024

4:00 p.m.

Moratorium Guidance

Purpose

Define the problem?



Nexus

How does the moratorium relate to the problem?



Solutions

What will we accomplish during the moratorium and how does that relate to the problem?



Pertinent Laws and Judicial Decisions

Bert J Harris Act

The Legislature determines that there is an important state interest in protecting the interests of private property owners from such inordinate burdens. Therefore, it is the intent of the Legislature that, as a separate and distinct cause of action from the law of takings, the Legislature herein provides for relief, or payment of compensation, when a new law, rule, regulation, or ordinance of the state or a political entity in the state, as applied, unfairly affects real property.

When a specific action of a governmental entity has inordinately burdened an existing use of real property or a vested right to a specific use of real property, the property owner of that real property is entitled to relief, which may include compensation for the actual loss to the fair market value of the real property caused by the action of government, as provided in this section.

The terms “inordinate burden” and “inordinately burdened”:

1. Mean that an action of one or more governmental entities has directly restricted or limited the use of real property such that the property owner is permanently unable to attain the reasonable, investment-backed expectation for the existing use of the real property or a vested right to a specific use of the real property with respect to the real property as a whole, or that the property owner is left with existing or vested uses that are unreasonable such that the property owner bears permanently a disproportionate share of a burden imposed for the good of the public, which in fairness should be borne by the public at large.

The Bert J. Harris Act further provides that temporary impacts to real property in effect for one year or less do not constitute an “inordinate burden” to property. However, a temporary impact on development that is in effect for longer than one year may, depending on the circumstances, constitute an “inordinate burden”.

First English Evangelical Lutheran Church v Los Angeles County, 482 U.S. 304 (1987)

In 1957, a church purchased land on which it operated a campground and retreat for handicapped children called “Lutherglen.”⁶ The church’s land was located in a canyon along the banks of Mill Creek, which functioned as a natural drainage channel. In July 1977, a fire occurred that burned approximately 3,860 acres of the watershed area for Mill Creek.

In February 1978, a storm dropped a total of 11 inches of water in the watershed area, causing the usually dry creek to become a raging river and sweeping away buildings at Lutherglen and elsewhere in the canyon. No people were killed or injured at Lutherglen, but the storm drowned 10 persons outside of the facility and inflicted millions of dollars in losses in the community.

As a result of the flood, Los Angeles County adopted an interim ordinance prohibiting the construction of any building in interim flood protection areas, including the church’s property. The church immediately filed suit seeking damages.

In *First English*, the Court held that landowners were entitled to damages for temporary takings. The substantive holding of the Court was that when the government’s activities deprive a landowner of all use of property, no subsequent action can relieve it of the duty to provide compensation for the period of time during which the regulation was effective.

Assistant Attorney General, Joslyn Wilson opinion regarding Issuance of Permits while Moratorium under Consideration

In the instant inquiry, however, suspension of the issuance of all building permits is in the nature of a moratorium. While the city is in the process of adopting a moratorium ordinance, it has not yet done so. By permitting the suspension of building permits before the city has adopted the building moratorium ordinance, the city, in effect, would be imposing a building moratorium before it has complied with the requirements of section 166.041(3)(c), Florida Statutes. As indicated by the courts' decisions in *City of Sanibel v. Buntrock, supra*, and *City of Gainesville v. GNV Investments, Inc., supra*, a municipality may not impose a building moratorium until and unless the requirements of section 166.041(3)(c), Florida Statutes, have been met.[9]

Accordingly, it appears that the city may not suspend the issuance of residential building permits on a given street while it is actively undertaking the procedures required under section 166.041(3)(c), Florida Statutes, for the enactment of an ordinance providing for a moratorium on the issuance of said permits on that street.

Sincerely,

Joslyn Wilson
Assistant Attorney General

New Smyrna Beach Moratorium

Ordinances in relation
to proposed City of
Edgewater
Moratoriums

NSB Ordinance No. 17-24

Area Specific Moratorium

49 ***NOW, THEREFORE, BE IT ENACTED BY THE CITY COMMISSION OF***
50 ***THE CITY OF NEW SMYRNA BEACH, FLORIDA:***

51
52 **SECTION 1: Recitals Adopted.** Each of the above stated recitals is hereby adopted and
53 confirmed as being true, and the same are hereby made a specific part of the Ordinance.
54

55 **SECTION 2: Moratorium Imposed.** A temporary moratorium, ending no later than June
56 25, 2024, unless automatically terminated or extended by a subsequent ordinance, is
57 hereby imposed on the issuance of any building permit in the geographical area identified
58 in Exhibit B, generally located in Venetian Bay, north of S.R. 44, east of Airport Road,
59 and south of Modena Way, excluding any single-family residential homes that have been
60 platted in an approved development phase. This temporary moratorium is in place to allow
61 time for all comments issued by St. Johns River Water Management District regarding the
62 malfunctioning stormwater system serving the above-referenced area, as set forth in
63 Exhibit A, to be addressed without further exacerbation of the system by substantial new
64 development. If all comments are addressed and the St. Johns River Water Management
65 District issues a notification of compliance prior to June 25, 2024, this moratorium shall
66 automatically terminate. In the event additional time is needed to address the comments, a
67 subsequent ordinance will be adopted extending the temporary moratorium. While the
68 temporary moratorium is in effect, the City shall not issue any new building permit that
69 affects the stormwater system in that particular geographic area, excluding single-family
70 residential homes that have been platted in an approved development phase. ✕
71

72 **SECTION 3: Determination of Vested Rights or Denial of All Economic Use.** ✕

73 (A) Nothing in this ordinance shall be construed or applied to abrogate the vested right of
74 a property owner to complete development of a parcel where the property owner can
75 demonstrate by substantial competent evidence each of the following:

Proposed Florida Shores Drainage Basin Moratorium

SECTION 2: Moratorium Imposed. A temporary moratorium, until no later than _____, 2025, is hereby imposed on the consideration of building permits that would increase impervious surface area such as, but not limited to, new single family homes, additions, detached garages, sheds, pools, driveways, patios on any parcel within the Florida Shores Drainage Basin described in Exhibit A to provide time for the City to review the impacts of Hurricane Ian and the storm event on September 14, 2024. During the temporary moratorium the City shall repair, maintain, and improve ditches, canals, and other stormwater systems while the City awaits the Jones Edmunds and Associates, Inc. master stormwater plan to make new improvements. While the temporary moratorium is in effect, the City shall not accept, process, or approve any building permit which would increase impervious surface except those that are related to Hurricane Milton damage or those that have already been submitted prior to the effective date of this Ordinance.

NSB Ordinance No. 74-22

City Wide Moratorium

SECTION 1: Recitals Adopted. Each of the above stated recitals is hereby adopted and confirmed as being true, and the same are hereby made a specific part of the Ordinance.

SECTION 2: Moratorium Imposed. A temporary moratorium, until no later than June 27, 2023, is hereby imposed on the consideration of any applications for rezonings, major amendments to a Master Development Agreement, site plan approvals, plat approvals, or variances for contiguous property 10 acres in size or larger proposed for residential development located in FEMA flood zones A or AE in the City of New Smyrna Beach to provide time for the City to review the impacts of Hurricane Ian and determine if updates to the City's stormwater management and drainage regulations are appropriate. While the temporary moratorium is in effect, the City shall not accept, process or approve any of the aforementioned applications except those that have already have been reviewed by the Planning and Zoning Board prior to the effective date of this ordinance.

SECTION 3: Determination of Vested Rights or Denial of All Economic Use.

(A) Nothing in this ordinance shall be construed or applied to abrogate the vested right of a property owner to complete development of a parcel where the property owner can demonstrate by substantial competent evidence each of the following:

1. A governmental act of development approval was obtained prior to the effective date of this ordinance; and
2. Upon which the property owner has detrimentally relied, in good faith, by making substantial expenditures; and

Proposed City Wide Moratorium

SECTION 2: Moratorium Imposed. A temporary moratorium, until no later than ____, 2025, is hereby imposed on the consideration of annexations, rezoning's, comprehensive plan amendments, site plans, preliminary plats, and final plats. Commercial and Industrial projects shall not be subject to the moratorium.

Applications submitted prior to the effective date of this Ordinance shall be allowed to complete the development process as follows:

- If an applicant has received approval for an annexation, rezoning, and / or comprehensive plan amendment within the last six months prior to the effective date of this Ordinance, said applicant shall have the right to submit a site plan and / or a preliminary plat and subsequently a final plat.
- If an applicant has submitted for a preliminary plat prior to the effective date of this Ordinance, said applicant shall be allowed during the moratorium to submit for final plat.

While the temporary moratorium is in effect, the City shall not accept, process, or approve any new applications beyond the exceptions denoted above for annexations, rezoning's, comprehensive plan amendments, site plans, preliminary plats, or final plats. The following are examples that would not be accepted, processed, or approved during the moratorium:

An applicant who received entitlements more than six months prior to the effective date of the moratorium who does not have an application submitted for a site plan, preliminary plat, and / or final plat prior to the effective date of the Moratorium shall not be allowed to submit for site plan, preliminary plat, and / or final plat and complete the process as described above during the term during the temporary moratorium.



Potential Economic Impacts

American Community Survey (ACS) 2023 Employment Data

Label	Edgewater city, Florida
	Estimate
▼ Total:	9,353
Agriculture, forestry, fishing and hunting, and mining	0
Construction	752
Manufacturing	1,030
Wholesale trade	54
Retail trade	1,139
Transportation and warehousing, and utilities	1,065
Information	115
Finance and insurance, and real estate and rental and leasing	901
Professional, scientific, and management, and administrative and waste management services	951
Educational services, and health care and social assistance	2,135
Arts, entertainment, and recreation, and accommodation and food services	926
Other services, except public administration	231
Public administration	54



Potential Tasks to Accomplish during Moratorium

Timelines of Potential Tasks to be Accomplished during a Moratorium

Task	Estimated Time to Completion	What this task entails	Development Services Suggestions
Entire Land Development Code Update	12 months	Public Education Seminars (Min 4), Public Workshops (Min. 10) -Start Broad and progressively narrow scope over repeated public meetings with staff analysis and summarization of public input, drafting document, requesting approval from Economic Development Board and Planning and Zoning Board	•Tailored Zoning for Area Specific Plans •Tree preservation update •Permitted Use Table •Parking Table •Enhanced Design Standards
Entire Comprehensive Plan Update	12 months	Public Education Seminars (Min 4), Public Workshops (Min. 10) -Start Broad and progressively narrow scope over repeated public meetings with staff analysis and summarization of public input, drafting document, requesting approval from Economic Development Board and Planning and Zoning Board	•Density Review •ISBA County Property FLU Assignment •Area Specific Planning (Districts, Corridors, Neighborhoods, Villages, Hamlets, ect.)
Stormwater Code Update	4 to 5 months	Development Services working with Environmental Services to Update Article IV and Article V	•100 year/ 24 hour (13.1 inches) closed basin design prior to discharge to public conveyance even if in open basin •1 cup to 1.5 cups for compensating storage •Limiting the mitigation of wetlands to isolated ones that are less than 1/2 acre.
Stormwater Maintenance	Ongoing	Continue to implement and monitor scheduled cleaning of swales and culverts. Identify problem areas in existing system, create a project list to prioritize fixes, act to fix said problems.	•Continue to use Track EZ for reports of problems to identify non functioning areas and fix.
Jones Edmunds Stormwater Master Plan	12 months	Mapping of City drainage system, identification of flooding prone areas, Capital Improvement Projects List based on cost/benefit analysis.	•Hold off on large capital projects until report is finalized •Raise stormwater fee in anticipation of Capital Improvement Project to get a running start on implementation of project list.
Stormwater Impact Fee and Affordable Housing Impact Fee	12 months	Go out to bid, hire consultant, draft report, present and adopt before City Council.	•Over 11,000 units are entitled and yet to be built. City has opportunity capture 11,000 units worth of impact fees to help expand stormwater capacity and establish a war chest for public/private affordable housing partnerships.