

MORATORIA STATUTES

State law (e.g., RCW 35.63.200, 35A.63.220) authorizes local jurisdictions to impose moratoria, as interim zoning controls, when the local jurisdiction needs to take steps to maintain the status quo while considering impending zoning, land use or similar regulations. The moratorium or interim zoning controls may be adopted without holding a public hearing on the proposed moratorium or interim zoning control at the time of adoption. However, the local jurisdiction shall hold a public hearing on the adopted moratorium or interim zoning control within at least sixty days of its adoption, after which the council may maintain, modify or terminate the moratorium. Also, the public hearings for subsequent extensions could be set ahead of the extension as the moratorium would still be in effect during that time – still preserving the status quo.

The moratorium is typically only good for six months though it can be renewed (with six month extensions). However, an initial moratorium may be effective for one year if it includes a work-plan.

The lack of a requirement for a prior public hearing – or for that matter the lack of a requirement of advance notice before adoption (something about which people may question) is an off-set to Washington's vesting rules. The only way a local jurisdiction could effectively reach status quo (without opening the floodgates of vesting applications) is if it were afforded the opportunity to adopt a moratorium without prior notice and public hearing.

Caveat: Per RCW 35.99.050, cities and towns are precluded from placing or extending a moratorium on the acceptance and processing of applications, permitting, construction, maintenance, repair, replacement, extension, operation, or use of any facilities for personal wireless services, except as consistent with the guidelines for facilities siting implementation, as agreed to on August 5, 1998, by the federal communications commission's local and state government advisory committee, the cellular telecommunications industry association, the personal communications industry association, and the American mobile telecommunications association.

Another Caveat: The ability to extend moratoria, though not expressly limited by statute, does not last forever. However, for sake of comparison, Seattle extended its adult entertainment moratorium for seventeen years, but it was criticized for that length by the Federal District Court in *ASF, Inc v. City of Seattle*, U.S. District Court – Western District, Case No. C05-903JLR.

Note: In a case pending a decision by the Washington State Supreme Court, the Court is being asked the question of whether cities have a right to apply moratoria to shoreline regulations. *City of Bainbridge Island vs. Biggers*, Case No. 77150-2.

Also Note: The statutes do not dictate how moratoria shall be adopted - by ordinance or resolution. Insofar as resolutions may become effective immediately (without findings and procedures of “emergency” - to shorten the delay in an ordinance’s effective date), resolutions have an advantage.

As an aside, even though resolutions do not typically include “severability clauses,” they are included in the sample resolutions. After all, the moratoria may (often are) adopted by ordinance. And a severability clause doesn’t hurt, and could (perhaps) help if challenged.