START\_STATUTE9-463.06.  Standards for enactment of moratorium; land development; limitations; definitions

A.  A city or town shall not adopt a moratorium on construction or land development unless it first:

1.  Provides notice to the public published once in a newspaper of general circulation in the community at least thirty days before a final public hearing to be held to consider the adoption of the moratorium.

2.  Makes written findings justifying the need for the moratorium in the manner provided for in this section.

3.  Holds a public hearing on the adoption of the moratorium and the findings that support the moratorium.

B.  For urban or urbanizable land, a moratorium may be justified by demonstration of a need to prevent a shortage of essential public facilities that would otherwise occur during the effective period of the moratorium.  This demonstration shall be based on reasonably available information and shall include at least the following findings:

1.  A showing of the extent of need beyond the estimated capacity of existing essential public facilities expected to result from new land development, including identification of any essential public facilities currently operating beyond capacity and the portion of this capacity already committed to development, or in the case of water resources, a showing that, in an active management area, an assured water supply cannot be provided or, outside an active management area, a sufficient water supply cannot be provided, to the new land development, including identification of current water resources and the portion already committed to development.

2.  That the moratorium is reasonably limited to those areas of the city or town where a shortage of essential public facilities would otherwise occur and on property that has not received development approvals based upon the sufficiency of existing essential public facilities.

3.  That the housing and economic development needs of the area affected have been accommodated as much as possible in any program for allocating any remaining essential public facility capacity.

C.  A moratorium not based on a shortage of essential public facilities under subsection B of this section may be justified only by a demonstration of compelling need for other public facilities, including police and fire facilities.  This demonstration shall be based on reasonably available information and shall include at least the following findings:

1.  For urban or urbanizable land:

(a)  That application of existing development ordinances or regulations and other applicable law is inadequate to prevent irrevocable public harm from development in affected geographical areas.

(b)  That the moratorium is sufficiently limited to ensure that a needed supply of affected housing types and the supply of commercial and  industrial facilities within or in proximity to the city or town are not unreasonably restricted by the adoption of the moratorium.

(c)  Stating the reasons that alternative methods of achieving the objectives of the moratorium are unsatisfactory.

(d)  That the city or town has determined that the public harm that would be caused by failure to impose a moratorium outweighs the adverse effects on other affected local governments, including shifts in demand for housing or economic development, public facilities and services and buildable lands and the overall impact of the moratorium on population distribution.

(e)  That the city or town proposing the moratorium has developed a work plan and time schedule for achieving the objectives of the moratorium.

2.  For rural land:

(a)  That application of existing development ordinances or regulations and other applicable law is inadequate to prevent irrevocable public harm from development in affected geographical areas.

(b)  Stating the reasons that alternative methods of achieving the objectives of the moratorium are unsatisfactory.

(c)  That the moratorium is sufficiently limited to ensure that lots or parcels outside the affected geographical areas are not unreasonably restricted by the adoption of the moratorium.

(d)  That the city or town proposing the moratorium has developed a work plan and time schedule for achieving the objectives of the moratorium.

D.  Any moratorium adopted pursuant to this section does not affect any express provision in a development agreement entered into pursuant to section 9‑500.05 or as defined in section 11‑1101 governing the rate, timing and sequencing of development, nor does it affect rights acquired pursuant to a protected development right granted according to chapter 11 of this title or title 11, chapter 9.  Any moratorium adopted pursuant to this section shall provide a procedure pursuant to which an individual landowner may apply for a waiver of the moratorium's applicability to its property by claiming rights obtained pursuant to a development agreement, a protected development right or any vested right or by providing the public facilities that are the subject of the moratorium at the landowner's cost.

E.  A moratorium adopted under subsection C, paragraph 1 of this section shall not remain in effect for more than one hundred twenty days, but such a moratorium may be extended for additional periods of time of up to one hundred twenty days if the city or town adopting the moratorium holds a public hearing on the proposed extension and adopts written findings that:

1.  Verify the problem requiring the need for the moratorium to be extended.

2.  Demonstrate that reasonable progress is being made to alleviate the problem resulting in the moratorium.

3.  Set a specific duration for the renewal of the moratorium.

F.  A city or town considering an extension of a moratorium shall provide notice to the general public published once in a newspaper of general circulation in the community at least thirty days before a final hearing is held to consider an extension of a moratorium.

G.  Nothing in this section shall prevent a city or town from complying with any state or federal law, regulation or order issued in writing by a legally authorized governmental entity.

H.  A landowner aggrieved by a municipality's adoption of a moratorium pursuant to this section may file, at any time within thirty days after the moratorium has been adopted, a complaint for a trial de novo in the superior court on the facts and the law regarding the moratorium.  All matters presented to the superior court pursuant to this section have preference on the court calendar on the same basis as condemnation matters and the court shall further have the authority to award reasonable attorney fees incurred in the appeal and trial pursuant to this section to the prevailing party.

I.  In this section:

1.  "Compelling need" means a clear and imminent danger to the health and safety of the public.

2.  "Essential public facilities" means water, sewer and street improvements to the extent that these improvements and water resources are provided by the city, town or private utility.

3.  "Moratorium on construction or land development" means engaging in a pattern or practice of delaying or stopping issuance of permits, authorizations or approvals necessary for the subdivision and partitioning of, or construction on, any land.  It does not include denial or delay of permits or authorizations because they are inconsistent with applicable statutes, rules, zoning or other ordinances.

4.  "Rural land" means all property in the unincorporated area of a county or in the incorporated area of the city or town with a population of two thousand nine hundred or less persons according to the most recent United States decennial census.

5.  "Urban or urbanizable land" means all property in the incorporated area of a city or town with a population of more than two thousand nine hundred persons according to the most recent United States decennial census.

6.  "Vested right" means a right to develop property established by the expenditure of substantial sums of money pursuant to a permit or approval granted by the city, town or county. END\_STATUTE