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City of Gainesville Policy Program Preliminary Research & Analysis

TOPIC: Development Moratorium Research

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REQUESTED BY: City Commission - Commissioner Johnson

OBJECTIVE

Explore ways to research and prevent displacement and gentrification in historically Black communities through a development moratorium.

EXECUTIVE SUMMARY

In Gainesville, several historically Black communities (including Porters, Spring Hill, Pleasant Street, and more) are at the risk of becoming displaced due to growing development. The City of Gainesville is in the process of creating a comprehensive plan with policy options to respond to and mitigate this gentrification, however this plan will not be completed for at least the next year. This report arises from concerns that by the time the comprehensive plan is completed, the historic communities will already be displaced.

One option to temporarily pause this development to study gentrification and enact policy solutions is a development moratorium. A development moratorium, or a temporary pause on development, would allow the City of Gainesville a short period, traditionally four months to a year, to better research and create solutions for this displacement without the concern that development will overtake these communities before solutions can be put in place. In order for a development moratorium to be legal and successful, it must be a short term pause in development concentrated in a specific area and on specific types of development. The moratorium also must address the specific threat to health, safety, or general welfare that the policy is geared towards. Finally, the most important element is that the city take the time given to them by the moratorium to actually create and put in place policy solutions to prevent displacement from occurring. Despite potential benefits, moratoria are often critiqued due to

their potential to increase rent and housing prices and are considered by critics to be a “band aid solution” to very long term and complex problems.

HISTORY/BACKGROUND INFORMATION

Development Moratoria

Moratoria in land use are temporary, legislatively-enacted periods during which a local government stops giving some type of permit. Moratoria allow local governments to ensure that a community’s problems are not compounded during the time the local government needs to formulate and implement a policy response to an issue. This policy option gives local governments more time to engage in planning and public participation in land use decisions, thus ensuring better input and dialogue with developers and landowners that may be affected by future policy change. For development moratoria, development is often paused on new construction such as multi-family housing complexes and building permits.

In order for moratoria to be successful, local governments must take the time given to them by the moratoria to truly research issues of gentrification and development, develop policy solutions to those issues, and then act on those issues once the moratoria are lifted. According to planning and land-use experts, moratoriums alone do little to stop development, and the effect of the policy instead depends on whether local officials use the time a moratorium gives them to enact (not simply discuss) changes in zoning and land-use regulations.¹ This lack of policy change stemming from moratoriums is one of the largest criticisms of the policy, as they can “create the appearance of doing something without the outcome.”

Moratoria additionally face significant criticisms from builders and property owners, who during the moratorium time period are not able to enjoy certain property rights that would otherwise be available. These individuals can put up significant fights against the policy, sometimes resulting in a lawsuit, which frequently prevent moratoria from ever coming to fruition. An additional concern surrounding moratoria is that loopholes written into ordinances can defeat the purpose of the policy. Specifically, when a moratorium is first brought up by local government, development proposals which may originally have not been ready for years begin the development process faster, and often end up getting far enough into the process that they are “exempted” from the moratorium.² This process has been substantiated by research, which indicates that in the immediate term after a development moratorium is announced/discussed, development is accelerated.³ However, this problem could be mitigated by a “zoning in progress” date, which would be the date that the City Commission officially directs the consideration or enactment of a moratorium, which could be significantly earlier than the date the ordinance is written.⁴

While there are many examples of legal development moratoria, courts have been less receptive to “rolling moratoriums”, or moratoria that are renewed and stretch over longer periods of time.⁵ Instead, to meet legal requirements moratoriums need to be interim measures, generally six months to a year in length, imposed for a clear purpose on specific areas. Most courts have agreed that moratoria are

¹ <https://www.nytimes.com/2002/07/28/nyregion/do-moratoriums-help-or-hinder.html>

² <https://www.nytimes.com/2002/07/28/nyregion/do-moratoriums-help-or-hinder.html>

³

https://www.researchgate.net/publication/225741543_How_Does_a_Development_Moratorium_Affect_Development_Timing_Choices_and_Land_Values/link/0c9605298423e54fb6000000/download

⁴ City of Gainesville Attorney’s Office

⁵ <https://www.nytimes.com/2002/07/28/nyregion/do-moratoriums-help-or-hinder.html>

supposed to be short, tied to a direct threat to the public health, safety and general welfare, given a specific start and end date, and then removed at the end of that date.⁶

The primary reason moratoria must be temporary is to avoid general takings liability, including inverse condemnation, meaning avoiding an impermissible or unreasonable deprivation of property rights. The State of Florida gives property owners extra statutory protections in the Bert Harris Act, which makes Florida governments liable for “inordinately burdening” property rights, and specifically states that although temporary impacts generally don’t qualify as an “inordinate burden”, they may qualify and be liable when such temporary impacts extend over a year in duration. Hence why most local governments in Florida try to keep moratoria no longer than one year.

In addition to this, the main bases upon which moratoriums are challenged are both procedural and substantive due process. While procedural due process can be easily established, substantive due process can be more difficult, and requires extreme thoroughness and thoughtfulness, mainly because any government action based on a constitutionally protected class (i.e. race) may have to meet very high burdens to prove constitutionality.⁷

These legal concerns indicate that city staff will need to narrowly define many elements of the moratorium and what it is set to achieve, including defining the areas of the city the policy will apply to, why the moratorium is being enacted and what problem it is attempting to help solve (ideally backed up by concrete data), and how the city is going to work to solve the problem during the moratorium period.

State of Florida

While some states have legal limitations on development moratoria, the State of Florida echoes Federal law in finding that moratoria constitute permissible growth management tools.⁸ While there is no statutory authority specifically addressing local governments’ use of moratoria, Florida case law has upheld Florida local governments’ use of moratoria as a permissible land use tool.⁹

Several communities in Florida have adopted development moratoria, notably including Palmetto Bay and Cutler Bay. Palmetto Bay first implemented a 4-month moratorium designed for the village to work on revising its rules to preserve neighborhoods.¹⁰ Palmetto Bay’s moratorium was established in July 2012, and specifically targeted development only in residential properties exceeding one acre, a moratorium which allowed for more development than originally proposed due to community pushback on the economic impact of halting all development.¹¹ During the four-month period, city staff worked on the revisions necessary to help protect these neighborhoods from development.

Cutler Bay’s moratorium lasted 6 months to study the impact of sea level rise.¹² This ordinance additionally allowed several exceptions from the moratorium, including any residential development which committed to obtaining a Leadership in Energy and Environmental Design (LEED) Certification, any development used for institutional uses that committed to obtaining a LEED certification, nonresidential or mixed use buildings consisting of 50,000 gross square feet or less that committed to obtaining an LEED Certification, the construction of a single family home, and any development that has received final site plan approval from the Town or County prior to the enactment of the ordinance.¹³

⁶ https://www.canr.msu.edu/news/zoning_moratoriums_should_only_be_done_with_caution

⁷ City of Gainesville Attorney’s Office

⁸ <https://www.law.ufl.edu/pdf/academics/centers-clinics/clinics/conservation/resources/moratoria.pdf>

⁹ <https://www.floridabar.org/the-florida-bar-journal/concurrency-and-moratoria/>

¹⁰ <https://www.miamiherald.com/news/local/community/article1941137.html>

¹¹ <https://eugeneflinn.blogspot.com/2012/05/update-on-zoning-in-progress-moratorium.html>

¹² <https://www.miamiherald.com/news/local/community/miami-dade/cutler-bay/article235891082.html>

¹³ <https://www.nrc.gov/docs/ML1021/ML102150583.pdf>

Palmetto Bay established an additional six-month moratorium in 2017, which specifically prohibited the approval of residential reserve units, transfer of development rights, and bonus floors under the Downtown Urban Village Zoning Code and within the DUV Zoning District for six months. This moratorium was put in place due to concern over the potential impact of developments in the region, specifically in relation to traffic congestion. During the moratorium period, a comprehensive traffic study was conducted to judge the impact of residential growth in the downtown area. Site plan applications which were filed in “substantially complete form” prior to April 4, 2017 were not adversely affected by the ordinance. This ordinance was passed on May 1, 2017.¹⁴ This second moratorium ordinance does indicate that the town had positive results from their original moratorium on development.

The existence of development moratoriums in Palmetto Bay and Cutler Bay reveal that development moratorium can be created in a legal manner in the State of Florida.

City of Gainesville

The City of Gainesville has adopted development moratoria in the past. In 2001, the city implemented a temporary moratorium on building permits, zoning permits, site plan approval and any other official action of the City of Gainesville which permitted industrial development or use on all real property located in whole or part within the “I-1: Limited industrial district” or the “I-2: General industrial district”. The moratorium period lasted from May 14, 2001 to December 17, 2001.¹⁵

The City of Gainesville additionally issued Ordinance 070026 in 2007, which issued a temporary moratorium on electronic and animated signs. The ordinance was adopted on June 11, 2007 and extended through April 14, 2008, during which period the city completed its review and adopted the necessary ordinances regulating this signage.¹⁶

The concern in Gainesville which has led to a push for a new development moratorium comes from increasing gentrification and displacement in historically black neighborhoods, such as the Porters, Spring Hill, and Pleasant Street communities. Gentrification is a form of neighborhood change that occurs when higher-income groups move into low-income areas, potentially altering the cultural and financial landscape of the original neighborhood.¹⁷ Proximity to the University of Florida coupled with significant public investment by the City to improve roads, sidewalks, lighting, and parks, in and near, historically black neighborhoods have increased private investment and development activity leading to increased gentrification pressure in these neighborhoods. Gentrification of these areas have prompted concerns that long-time residents of these neighborhoods may be pushed out of the area by rising rent costs as developers purchase land and property in the area to make high-end apartment complexes for University of Florida Students

If a development moratorium is put in place, the intention of the City of Gainesville is to complete the city’s comprehensive plan, which is scheduled to be completed in the next year, and better create policy solutions to address this gentrification and displacement. Without a development moratorium, there are concerns that during the time in which the comprehensive plan is being written, development

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https://library.municode.com/fl/palmetto_bay/codes/code_of_ordinances?nodeId=COOR_CH30ZO_ARTIIVIPABAFLANDEC_O_DIV30-50ZODI_S30-50.23.2REPL

¹⁵ <https://gainesville.legistar.com/LegislationDetail.aspx?ID=1205737&GUID=512DD3B1-12DB-4F99-9407-14CDFB18A05B&Options=&Search=>

¹⁶ <https://gainesville.legistar.com/LegislationDetail.aspx?ID=1209083&GUID=A4A4B62A-E0AB-4021-B9E5-287E60B2F701&Options=&Search=>

¹⁷ <https://www.huduser.gov/portal/sites/default/files/pdf/DisplacementReport.pdf>

overtake these neighborhoods and displacement will occur before policy solutions can be researched and implemented. However, there is a significant potential that the city's comprehensive plan will not be completed within the year period, and thus the moratorium period would need to be used to develop additional policy solutions.¹⁸ That said, the comprehensive plan forms the policy basis for changes to the City's land development regulations and code of ordinances which implement any new equitable development or anti-displacement policies adopted in the comprehensive plan. Absent these associated changes to the code to implement the plan, the policies will be less effective.

PRELIMINARY RESEARCH AND FINDINGS

Chapel Hill, North Carolina

In June 2011, the Chapel Hill Town Council passed an ordinance establishing a development moratorium on specific development applications for an area in and around the Northside and Pine Knolls neighborhood, in response to a petition from the Sustaining Ourselves Coalition. The moratorium was in effect until January 31, 2012. The moratorium was issued to develop methods for addressing incompatible development that was not consistent with the intent of the Neighborhood Conservation Districts. Specifically, the town was concerned about the conversion of single family homes into large rental properties targeted for student occupancy.¹⁹

The moratorium specifically applied to applications for building permits, applications for site plan approval, special use permits, zoning compliance permits, minor subdivisions and major subdivisions for residential development on residential zoned property submitted after May 23, 2011. Applications that were submitted prior to this date would be entirely unaffected by the moratorium, while applications submitted after were returned. The moratorium was enforced by Chapel Hill's Planning Department and Inspections Department.

There were several exemptions from the moratorium, including repairs required to fix damage due to catastrophic loss following storms, fires, or similar incidents; foundation repairs; repairs necessary to bring structures into compliance with standards set in the Building Code; renovations not involving expansion of the existing building footprint needed to provide accessibility for a current resident under ADA standards; and renovations for which building permits are issued based on estimated costs that do not cumulatively exceed \$10,000 and do not involve the addition of new bathrooms or the moving of loadbearing walls.²⁰

During the moratorium period, town staff participated with neighborhood stakeholders to develop a vision statement, identify key issues and develop strategies and a plan of action. The town also worked on implementing the new initiatives developed by the working group, and reviewing the current regulations of the Neighborhood Conservation Districts. A status report was made to the Town Council in September of 2011, and a strategy and action plan was recommended in November of 2011.²¹

Specifically, town staff created the Northside and Pine Knolls Community Plan that responded to the issues brought forward by the community during the moratorium discussions, which addressed community themes such as parking, enforcement, education, affordable housing, cultural and historic preservation, and zoning regulations. The town worked with the Marian Cheek Jackson Center, along

¹⁸ City of Gainesville Attorney's Office

¹⁹ <https://indyweek.com/news/orange/moratorium-halts-development-chapel-hill-s-two-historically-affordable-african-american-neighborhoods/>

²⁰ http://chapelhill.granicus.com/MetaViewer.php?view_id=&clip_id=171&meta_id=15950

²¹ <http://www.townofchapelhill.org/home/showdocument?id=15015>

with the local communities, to implement this plan, and examples of the work include new parking regulations only allowing four cars on a lot, educating college students about living off campus and how to integrate college students into the community, and new zoning regulations to help protect historic areas.²²

The coordinated effort resulted in the first increase in African American home ownership and overall population across the two communities in 40 years.²³

San Francisco, California

San Francisco has attempted to place a moratorium on the development of market-rate housing multiple times, however such efforts have failed due to concerns that the policy would not meet the housing goals it seeks to attain.

In May 2015, the city of San Francisco attempted to enact a 45-day housing moratorium in an effort to preserve the Latino culture in the Mission that was threatened by displacement, rising rents, and evictions. The measure was meant to apply to a 1.5 square-mile area encompassing the Mission district. The proposal did not pass the Board of Supervisors, with members saying that the policy would create a larger housing shortage in the area, and that the policy could also negatively harm affordable housing without the money the city receives from the fees developers must pay to build housing at or above market rate.²⁴

After the measure failed the Board of Supervisors, activists collected signatures to put Proposition 1, an 18-month moratorium on the development of market-rate housing in the Mission, to appear on the November 2015 ballot. While the measure was put on the ballot, it did not receive the necessary public support to pass. Research requested by the Board of Supervisors examined how permanently halting market-rate development would upset the cost of living, eviction pressures, and funding for below market housing, and the study ultimately concluded that the moratorium would drive up housing costs citywide and would not prevent the displacement of current residents.²⁵ One of the primary reasons individuals support the moratorium was so that the city could purchase the few remaining land parcels to develop affordable housing, however the report, conducted by the San Francisco Office of Economic Analysis, similarly concluded that the moratorium was unlikely to induce a property owner to sell their land for affordable housing, and that housing prices were likely to continue to rise during the period, making market-rate development more profitable after the moratorium than it was before.²⁶

Specifically, critics found support that the temporary moratorium could make housing costs rise citywide by up to \$174 per household annually, while a permanent halt on market-rate homes could increase annual housing costs by \$1,800 per household. Finally, the report claimed that the temporary moratorium would have no effect on the reduction of displacement, make land more difficult to obtain for affordable housing, and would raise housing prices.²⁷

These concerns ultimately led San Francisco voters to reject the ballot measure.

Generally, unsuccessful development moratoria are unsuccessful at ever reaching fruition, due to similar criticisms as those seen in San Francisco.

²² <https://www.townofchapelhill.org/government/departments-services/housing-and-community/community-connections/neighborhoods/northside-neighborhood/northside-and-pine-knolls-community-plan>

²³ <https://www.newsobserver.com/opinion/article217884860.html>

²⁴ <https://www.planetizen.com/node/76609>

²⁵ <https://www.planetizen.com/node/76609>

²⁶ https://sfcontroller.org/sites/default/files/FileCenter/Documents/6742-mission_moratorium_final.pdf

²⁷ https://sfcontroller.org/sites/default/files/FileCenter/Documents/6742-mission_moratorium_final.pdf

Chicago, Illinois

The Chicago City Council created a moratorium to prevent property owners from obtaining demolition permits within an area near the 606 for six months, in an effort to halt the trend of developers purchasing existing affordable multi-family homes and replacing them with luxury housing, pushing out working class and middle class families.²⁸ Ordinance SO2019-9439, which passed in January 2020 and went into effect on February 1st, did provide exceptions for people seeking demolition permits to build affordable housing, or in emergency situations to address conditions that make a building dangerous to life, health or property. During the six months, the city is studying possible long-term solutions to gentrification in the area.²⁹

Originally, the ordinance called for a 14-month moratorium that would have also put a freeze on building permits and zoning changes in the proposed area, but after input from the entire City Council, the moratorium will last through August of 2020 and only freezes demolition permits.³⁰ This moratorium is still in place and thus results from the policy are yet to be seen.

The city attempted a similar measure in 2017 where they proposed imposing extra fees on developers who tear down affordable multi-family properties near the 606. However, this measure never passed City Council due to questions over its legality.

Atlanta, Georgia

Atlanta, Georgia created a similar development moratorium in March of 2020, which paused the development on new building permits for all projects neighboring the Westside Park at Bellwood Quarry community. This park is slated to become Atlanta's largest public green space, but its development has created concerns of displacement. The Atlanta Mayor called for a moratorium on new rezoning and building permit applications for six months in response, citing a need to "address rapid gentrification occurring in the area". The move is designed to give city officials time to assess how Westside development trends are affecting adjacent neighborhoods and to help stem the displacement of longtime residents, and the city has stated that the mayor's office will engage in robust community planning during the six month pause.³¹ The move began as an executive order in February which directed the Office of Buildings and the Office of Zoning and Development to "refuse to accept new applications for rezonings, building permits for new construction, land disturbance permits, special use permits, special administrative permits, subdivisions, replottings, and lot consolidations for non-public projects"; however, the City Council passed similar legislation in March, codifying the policy.³² This moratorium is still in place and thus results remain to be seen.

The Atlanta City Council has been considering a development moratorium since 2017 in the West Midtown area, where development has outpaced the upkeep of local roads and transportation infrastructure.

Dunwoody, Georgia

²⁸ <https://chicago.cbslocal.com/2020/01/14/aldermen-606-development-moratorium-demolition-permits-housing-committee-city-council/>

²⁹ <https://chicago.legistar.com/LegislationDetail.aspx?ID=4284829&GUID=95854C6C-F672-40F2-8476-6DB8AD009FE5&Options=Advanced&Search=>

³⁰ <https://news.wttw.com/2020/01/13/development-freeze-aims-slow-displacement-near-606-trail>

³¹

http://atlantacityga.igam2.com/Citizens/Detail_LegiFile.aspx?MeetingID=2041&MediaPosition=&ID=13362&CssClass=&Print=Yes

³² <https://atlantaintownpaper.com/2020/03/atlanta-city-council-approves-building-moratorium-near-westside-park/>

The move in Atlanta mirrored a moratorium on all multifamily development in the City of Dunwoody in an attempt to better understand the city's fire-safety codes and ordinances.³³ While the policy was controversial, subsequent reports since the moratorium was lifted have indicated that development was not hindered in the long run.³⁴ In January of 2020, the city placed an additional moratorium on Dunwoody Village development for six months, which stopped any new land disturbance permits, special use applications, or design review for the temporary period. This moratorium was implemented in an effort to give the city time to complete revisions to the Dunwoody Overlay Master Plan before considering any new development.

The moratorium passed with a 6-1 vote, with critics arguing that the moratorium would hurt business and slow progress.³⁵ In late January, the moratorium was amended to allow the development of restaurants, bars, health clubs, and medical office projects. For all other businesses, the moratorium would remain the same through June of 2020. The city has since admitted that the original moratorium was overly prohibitive and that the goals of effective development can be accomplished while being more permissive for certain businesses.³⁶

PRELIMINARY COST/BENEFIT ANALYSIS

Costs

- A moratorium would halt development in the designated regions, which could cause economic decline.
- Property owners, developers and business owners would likely be opposed to the policy, which could come at a large political cost.
- The discussion of a moratorium could “reveal” and speed up future development projects in the region, resulting in more gentrification and displacement. However, this problem could be mitigated by a “zoning in progress” date.
- Development moratoria have been subject to lawsuits, and thus the moratorium would need to be carefully crafted to ensure legality.

Benefits

- A moratorium would allow for time to properly research and understand displacement and gentrification in historic communities in order to create policy to protect those communities.
- A moratorium could help to align the goals of the comprehensive plan, community goals, and city policy.
- The moratorium could help lead to development which creates a more cohesive and united community, helping to unite long-term neighbors and new students at UF.

PRELIMINARY AND ILLUSTRATIVE LIST OF POTENTIAL STAKEHOLDERS

- Planning Department
- City Attorney's Office
- Landowners
- Developers
- Porters Community
- Spring Hill Community
- Pleasant Hill Community
- Seminary Lane

³³ <https://atlanta.curbed.com/2018/11/26/18112347/dunwoody-apartment-condo-development-moratorium>

³⁴ <https://atlanta.curbed.com/2020/3/2/21161054/atlanta-city-council-moratorium-building-rezoning>

³⁵ http://www.thecrier.net/news/article_9bb216cc-2d92-11ea-8b93-a79ea3d2e628.html

³⁶ http://www.thecrier.net/news/article_d94fec54-3bd2-11ea-a657-07273cbf9558.html

- University of Florida

ADDITIONAL RESOURCES

- Example lawsuit: <https://sammamish.news/2020/04/23/gerend-lawsuit-both-sides-claim-victory-development-moratorium-enacted/>