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MEMORANDUM

To: City of Moline Plan Commission
Chris Mathias, AICP, Interim Land Development Manager

CC: Jeffery Anderson, AICP, City Planner
Derke Price

From: David S. Silverman

Subject: Zoning Moratorium

Date: May 13, 2020

The City is considering placing a temporary zoning moratorium on personal storage uses, as defined and regulated under Sec. 35-3410(a) of the Zoning and Land Development Code, as amended, throughout the City while the City considers possible new regulations for these uses. This memorandum explains the legal basis for zoning moratoria and the practical affects it has on these land uses.

1. The Legal Basis for a Temporary Zoning Moratorium

Zoning moratoria are used to temporarily “freeze” activity regarding specific land uses while new plans, procedures, and regulations are created to address some identified need. The legality of development moratoria has been supported at both the state and federal levels, but there are requirements on their implementation and use in the zoning context. These requirements generally deal with the:

- purpose of a zoning moratorium,
- procedures used to approve a zoning moratorium, and
- what a City does during a zoning moratorium period.

A. Purpose of a Zoning Moratorium.

Before instituting a zoning moratorium, the City must identify some problem or be starting a planning process that will affect current and future land uses. The moratorium

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allows the City to make effective and efficient use of its time in formulating new regulations or preparing plans in an unchanging environment that would otherwise require it to be in a more responsive mode to changing conditions.

B. Procedures Used to Approve a Zoning Moratorium.

Illinois law equates a zoning moratorium with a zoning code text amendment, because it “suspends” the application of the zoning code to the uses subject to the moratorium. Therefore, everything the City does when it is considering either a map amendment (rezoning) or zoning code text amendment must also occur when it wants to set a zoning moratorium. This involves publishing a notice of and holding a public hearing on the zoning moratorium with the Planning Commission or Zoning Board of Appeals and, at some point after the close of the public hearing, passage of an ordinance by the City Council setting the zoning moratorium.

C. What a City Does During a Zoning Moratorium.

Once the moratorium is in place, the City must use its time to prepare new plans, procedures, and regulations concerning the affected uses. Failure to do so could result in affected property owners claiming that the moratorium deprived them of their rights to use their property under the frozen zoning regulations. The moratorium will enable the City to stay ahead of development and redevelopment activity and introduce new regulations to better regulate these uses. This process will counter any arguments that the City is unreasonably restricting property rights.

2. *The Impact of a Temporary Zoning Moratorium*

The City’s proposed zoning moratorium is focused on personal storage uses that need to be better regulated to facilitate the City’s broader land use goals and objectives. Once the moratorium is in place, it will operate as follows:

- It will not affect the rights of any zoning applicant whose application has been fully approved by the City, however they may become nonconforming uses;
- Any properly completed and filed application (i.e. inclusive of all required submittals and fees) that is affected by the temporary zoning moratorium may still be processed conditionally during the moratorium, but will not be finally approved until the expiration of the moratorium and unless the application complies with any new applicable regulations; and

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- A special "appeal" process will be provided to allow potentially aggrieved property owners an opportunity to obtain relief from the moratorium, (and to allow the City to assess whether that owner might otherwise have a valid claim for an impermissible restriction on property rights such as a "temporary taking").

We are available to discuss this memorandum at your request.

**CITY OF MOLINE
ROCK ISLAND COUNTY, ILLINOIS**

ORDINANCE NO. 20-_____

**AN ORDINANCE ESTABLISHING A TEMPORARY ZONING MORATORIUM FOR
PERSONAL STORAGE FACILITIES**

**ADOPTED BY THE
MAYOR AND CITY COUNCIL
OF THE
CITY OF MOLINE**

This ___ day of _____, 2020

Prepared by and Return to:
City of Moline
619 16th Street
Moline, Illinois 61265

Published in pamphlet form by authority of the Mayor and the City Council of the
City of Moline on _____, 2020.

ORDINANCE NO. 20 -

BE IT ORDAINED by the Mayor and City Council of the City of Moline, Rock Island County, Illinois, pursuant to its home rule powers, THAT:

AN ORDINANCE ESTABLISHING A TEMPORARY ZONING MORATORIUM FOR PERSONAL STORAGE FACILITIES

shall be and is hereby adopted as follows.

Section 1. BACKGROUND.

The City desires to protect the vitality and character of the business and residential uses in the City by taking measures that are proper and necessary to regulate such uses that may detract and deter from the City's development.

The City has determined that better zoning regulations need to be established for "personal storage" facilities, as defined in Section 35-3410(a) of the Zoning and Land Use Code, as amended, and wishes to establish a temporary zoning moratorium these uses to preserve the status quo while the City studies, analyzes, and possibly adopts new zoning and development regulations.

The Corporate Authorities have determined that it is necessary, and in the City's best interests to impose a temporary moratorium on the receipt of and processing of zoning applications for the approval of, and the issuance of any type of permit or approval for personal storage facilities.

Section 2. PUBLIC HEARING.

A public hearing on the proposed personal storage facility public hearing was advertised on May 8th and May 12th 2020, in the *Quad City Times*, and convened by the Plan Commission on May 27th, 2020, on which date the Plan Commission recommended approval of and made findings of fact for a temporary moratorium for personal storage facilities, which findings of fact are attached in **Exhibit A** attached to and, by this reference, made a part of this Ordinance.

Section 3. TEMPORARY MORATORIUM ESTABLISHED.

A. A temporary moratorium ("**Temporary Moratorium**") is established on the receipt of applications for the processing and approval of, and the issuance of any type of permit for the Use of Personal Storage Facilities ("Moratorium Use"), as defined by Section 35-3410(a) in the City's Code.

B. The Temporary Moratorium established in Section 3(A) of this Ordinance will be, and is hereby, established for a period of ___ months from this Ordinance's effective date, and the Temporary Moratorium will expire at 12:01 a.m. on _____, _____, unless prior to that time, the City's Council, in its sole and absolute discretion, extends this Temporary Moratorium by ordinance duly adopted.

Section 4. EXISTING APPROVED PERMITS.

Nothing in this Ordinance will affect the rights of any person or entity whose application for a permit for a personal storage facility that has been fully approved by the City.

Section 5. CONDITIONAL PROCESSING OF NEW APPLICATIONS.

Any proposal to operate a personal storage facility may still be presented to the City for consideration, and such applications will be processed conditionally during the term of the Temporary Moratorium, but no such application will be finally approved until (a) the expiration or termination of the Temporary Moratorium and (b) the City confirming that the application complies with the applicable regulations in effect following the expiration or termination of the Temporary Moratorium. Persons or entities filing an application pursuant to this Section 5 do so at their own risk.

Section 6. HARDSHIP APPEALS PROCESS.

An applicant seeking to establish a Moratorium Use may seek an exception from the Temporary Moratorium as follows:

- A. File a written request for relief with the City Planner on forms provided by the City.
- B. A request for relief will be considered at a public hearing, properly noticed in accordance with the Zoning and Land Development Code, as amended, by the Plan Commission.
- C. Based on the evidence presented at such hearing and the factors set forth in Section 6.E of this Ordinance, the Plan Commission will make a recommendation to the City Council.
- D. Following receipt of the Plan Commission's recommendation, the City Council may, at a regularly scheduled meeting and by ordinance duly adopted, grant the applicant an exception to the provisions of the Temporary Moratorium.
- E. In order to obtain an exception to the provisions of the Temporary Moratorium, an applicant must demonstrate by clear evidence and the City must determine that:
 - (1) the effect of the Temporary Moratorium has caused or will cause an economic hardship on the applicant;
 - (2) the applicant has no other reasonable use of the property in question other than as the proposed personal storage facility use;
 - (3) the applicant has made substantial investment in the development of the personal storage facility that is affected by the Temporary Moratorium, which investment was made in reasonable reliance on the regulations in effect prior to the Temporary Moratorium and without knowledge of pending changes in such regulations

(including this Temporary Moratorium), and based on a reasonable probability of zoning approval by the City; and

- (4) the personal storage facility as proposed complies with all applicable City ordinances, regulations, and rules.

Section 6. SAVINGS CLAUSE.

This Ordinance and each section and provision of said ordinance hereunder, are hereby declared to be independent divisions and subdivisions and, notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provisions of said Ordinance, or the application thereof to any person or circumstance is held to be invalid, the remaining sections or provisions and the application of such sections and provisions to any person or circumstances other than those to which it is held invalid, shall not be affected thereby, and it is hereby declared that such sections and provisions would have been passed independently of such section or provision so known to be invalid. Should any procedural aspect of this Ordinance be invalidated, such invalidation shall not affect the enforceability of the substantive aspects of this Ordinance.

Section 7. SUPERSEDER.

In the event a conflict exists between the terms of this Ordinance and any other ordinance or resolution of the City, the terms of this Ordinance shall govern.

Section 8. EFFECTIVE DATE.

This Ordinance shall be in full force and effect from and after its passage and publication in pamphlet form, in accordance with the requirements law.

ADOPTED this _____ day of _____, 2020, pursuant to a roll call vote as follows:

Aldermen	Aye	Nay	Abstain	Absent
Scott Williams First Ward				
David Parker, Jr. Second Ward				
Mike Wendt Third Ward				
Dick Potter Fourth Ward				
Sam Moyer Fifth Ward				
Kevin Schoonmaker Sixth Ward				
Michael Waldron Seventh Ward				
Sonia Berg Alderman at Large				

APPROVED by me, Stephanie Acri, as Mayor of the City of Moline, Rock Island County, Illinois
this ___ day of _____ 2020.

STEPHANIE ACRI, MAYOR

JANINE HOLLEMLBAEK PARR, CITY CLERK

EXHIBIT A
Plan Commission Findings of Fact