

# MEMORANDUM

## *TOWN CLERK'S OFFICE*

TO: Mayor and Town Council  
Christopher J. Kovanos, MPA, Town Administrator

FROM: Barbara McDaniel, MMC, Assistant Town Clerk

THROUGH: Russell Muniz, CMC, Town Clerk

DATE: July 13, 2005

SUBJECT: Ordinance Declaring Moratorium

Due to an advertising error, staff is requesting that the ordinance declaring a moratorium be tabled to August 3, 2005.

# **TOWN OF DAVIE**

## **TOWN COUNCIL AGENDA REPORT**

**TO:** Mayor and Councilmembers

**FROM/PHONE:** Mark A. Kutney, AICP, Development Services Director  
(954) 797-1101

**PREPARED BY:** Mark A. Kutney, AICP, Development Services Director

**SUBJECT:** Ordinance

**AFFECTED DISTRICT:** Townwide

**TITLE OF AGENDA ITEM:** AN ORDINANCE OF THE TOWN OF DAVIE, FLORIDA, DECLARING A MORATORIUM FOR A PERIOD OF ONE HUNDRED AND EIGHTY (180) DAYS COMMENCING UPON THE ADOPTION OF THIS ORDINANCE; STATING THE FINDINGS AND REASONS FOR A MORATORIUM; PROHIBITING THE FILING OF ANY APPLICATION FOR ANY ADULT ENTERTAINMENT FACILITY OR ANY OTHER APPLICATIONS PERMITTED UNDER THE DAVIE CODE OF ORDINANCES RELATED TO THE USE OF ANY BUILDING FOR THE OPERATION OF AN ADULT ENTERTAINMENT FACILITY WITHIN THE TOWN OF DAVIE DURING THE MORATORIUM PERIOD; PROVIDING THE SCOPE OF THE MORATORIUM; PROVIDING FOR A DURATION; PROVIDING FOR SEVERABILITY, AND AN EFFECTIVE DATE.

**REPORT IN BRIEF:** Upon continued review of the Land Development Code and Chapter 13, Licenses and Business Regulations, Staff is concerned that the current state of these regulations contain defects which would impede the Town's ability to regulate Adult Entertainment Facilities through municipal police powers (zoning/land development code/occupational licensing regulations that protect the health, safety and welfare). Staff believes that the adoption of a moratorium is in order to protect the Town while new regulations are promulgated. The Town Staff and/or Consultants are in need of sufficient time to study, review, and make amendments to the Land Development Code based upon an analysis and evaluation of the impacts of Adult Entertainment Facilities and the identification of Community Standards for the Town.

**PREVIOUS ACTIONS:** None

**CONCURRENCES:** None

**FISCAL IMPACT:** Yes

Has request been budgeted? No

If yes, expected cost: Unknown, dependent upon if consultants or some  
Combination of consultants/staff is utilized.

**RECOMMENDATION(S):** Suitable for Town Council's review and deliberation

**Attachment(s):** Ordinance and Memorandum from Town Attorney's Office

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE TOWN OF DAVIE, FLORIDA, DECLARING A MORATORIUM FOR A PERIOD OF ONE HUNDRED AND EIGHTY (180) DAYS COMMENCING UPON THE ADOPTION OF THIS ORDINANCE; STATING THE FINDINGS AND REASONS FOR A MORATORIUM; PROHIBITING THE FILING OF ANY APPLICATION FOR ANY ADULT ENTERTAINMENT FACILITY OR ANY OTHER APPLICATIONS PERMITTED UNDER THE DAVIE CODE OF ORDINANCES RELATED TO THE USE OF ANY BUILDING FOR THE OPERATION OF AN ADULT ENTERTAINMENT FACILITY WITHIN THE TOWN OF DAVIE DURING THE MORATORIUM PERIOD; PROVIDING THE SCOPE OF THE MORATORIUM; PROVIDING FOR A DURATION; PROVIDING FOR SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the Development Services Department of the Town of Davie within its ongoing review of the Davie Town Code has identified specific defects within the Town's Land Development Code which have the effect of impeding the Town's ability to regulate Adult Entertainment Facilities through its inherent Zoning and Police Powers; and

WHEREAS, the proper and lawful regulation of Adult Entertainment Facilities is necessary to protect Davie's image as a suburban-rural community as well as protecting the traditional family friendly atmosphere presently enjoyed by residents of the Town; and

WHEREAS, the Davie Town Council recognizes the inherent dangers of allowing Adult Entertainment Facilities to operate within the Town without proper regulations in place and believes that addressing this situation immediately will protect the health and safety of Davie's residents; and

WHEREAS, the Davie Town Council has determined that a moratorium period will provide the Town with the time necessary to correct any defects within the Town Code relative to the Town's ability to regulate Adult Entertainment Facilities; and

WHEREAS, Article VIII, Section 2(b) of the Florida Constitution and §166.021, Florida Statutes grant the Town the authority to protect the health, safety and welfare of its residents;

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA:

SECTION 1: MORATORIUM

Pursuant to the Town of Davie's Police Powers granted within the Florida Constitution and the Florida Statutes, the Davie Town Council finds that there is an imminent peril to the public health, safety and welfare that requires a moratorium for a period of One Hundred and Eighty days (180) days from the adoption of this ordinance for all applications for Adult Entertainment Facilities or relating to the use of any building for the operation of an Adult Entertainment Facility.

SECTION 2. FINDINGS

1) The Town of Davie's Land Development Code presently regulates Adult Entertainment Facilities within Section 12-34 (A). This Section specifies that Adult Entertainment Facilities, where permitted and with a special permit, will be required to be the sole occupant of a freestanding building and not a part of a commercial building. This Section then mentions several

types of establishments which constitute Adult Facilities without specifically defining and categorizing the types of activities that would identify each establishment.

2) Other communities within the State of Florida have enacted more stringent regulations of Adult Entertainment Facilities by utilizing caselaw as well as their police powers that have allowed the local governments to protect the health and safety of their residents without infringing upon the 1<sup>st</sup> Amendment rights of Adult Entertainment Facility operators.

3) Allowing Adult Entertainment Facilities to enter the Town of Davie without proper regulations will detrimentally affect the ability of the Town to protect the health and safety of the residents of the Town of Davie. Most notably, the Town will be unable to protect Davie's image as a suburban-rural community and the family-friendly atmosphere enjoyed by the Town's residents.

4) In Addition to detrimentally affecting the Town's ability to regulate Adult Entertainment Facilities, allowing these types of facilities unregulated within the Town may lead to harmful secondary effects such as lewd public behavior and conduct that will detrimentally affect the health and safety of Davie's residents. Such conduct may include public nudity and prostitution.

5) The Town staff is in need of sufficient time to study, review, and make amendments to the Land Development Code that would evaluate and analyze the impacts of Adult Entertainment Facilities and also strengthen existing ordinances and create new regulations.

6) The Town is concerned that during the time required to conduct a comprehensive analysis of Adult Entertainment Facilities, the Town may receive an influx of applications from Applicants seeking to establish such facilities within the Town prior to the enactment of new regulations.

7) For the reasons stated herein, the Town Council of the Town of Davie finds that an imminent peril to public health, safety and welfare requires the adoption of a moratorium.

### SECTION 3. APPLICATIONS SUBJECT TO MORATORIUM

The moratorium declared herein applies to all applications for Adult Entertainment Facilities or relating to the use of any building for the operation of an Adult Entertainment Facility within the Town of Davie.

### SECTION 4. DECLARATION OF MORATORIUM

In order to preserve the status quo and allow the Town to review and revise the Land Development Code related to Adult Entertainment Facilities during this period of study, the Town Council hereby declares a moratorium for a period of up to One Hundred and Eighty days (180) days commencing upon the adoption of this ordinance.

### SECTION 5. SCOPE OF MORATORIUM

This moratorium shall apply to all applications for Adult Entertainment Facilities or relating to the use of any building for the operation of an Adult Entertainment Facility within the Town of Davie. This moratorium shall not include those applications which have been filed with the Town's Development Services Department and have been deemed completed by that department prior to the passage of this ordinance.

SECTION 6. DURATION

This moratorium declared herein shall exist for a period of One Hundred and Eighty days from the adoption of this ordinance and shall terminate on that date unless terminated sooner by the Davie Town Council.

SECTION 7: All ordinances or parts of Ordinances in conflict herewith are to the extent of such conflict hereby repealed.

SECTION 8: This Ordinance shall take effect immediately upon its passage.

PASSED ON FIRST READING THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2005

PASSED ON SECOND READING THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2005

\_\_\_\_\_  
MAYOR/COUNCILMEMBER

ATTEST:

\_\_\_\_\_  
TOWN CLERK

APPROVED THIS \_\_ DAY OF \_\_\_\_\_, 2005.

RCUD MAY 24'05

MONROE D. KIAR  
TOWN ATTORNEY  
TOWN OF DAVIE  
6191 SW 45<sup>th</sup> Street, Suite 6151A  
Davie, Florida 33314  
(954) 584-9770

SCANNED

MAY 24 2005

MEMORANDUM

INITIALS: \_\_\_\_\_

DATE: May 23, 2005  
TO: Chris Kovanes, Town Administrator  
CC: Mayor and Councilmembers  
Mark Kutney, Development Services Director  
FROM: Monroe D. Kiar, Town Attorney   
RE: Adult Entertainment Ordinance  
Control Number: 050503

You requested this office to issue a legal analysis related to the proposed imposition of a moratorium on the issuance of development permits to adult entertainment facilities within the Town of Davie. As you know, this office previously issued a legal opinion related to zonings in progress in which the legal implications of utilizing that zoning technique were specifically analyzed. Like zonings in progress, moratoriums are utilized by local governments in order to temporarily preserve the levels of development within a specified area until permanent development ordinances can be implemented. However, the proposed moratorium will slightly differ from zonings in progress analyzed in the previous memorandum because the moratorium will prevent all applications related to adult entertainment facilities from being accepted and processed during the proposed moratorium period. As the legal challenges to moratoriums have been addressed within the previous memorandum, this memorandum will focus on identifying the necessary components of the moratorium ordinance.

Both moratorium and zoning in progress ordinances may be described as interim development controls and must contain certain components. They must first specify the duration of the planning process. As in the case of zonings in progress, the court will make a determination as to whether the length of a moratorium unreasonably interferes with the rights of potential applicants. In my previous memorandum, this office cited the case of *Tahoe-Sierra Preservation Council Inc. v. Tahoe Regional Planning Agency*, 535 U.S. 302, (2002) as the controlling case in determining whether the length of a moratorium was unreasonable. In that case, the United States Supreme Court upheld two moratoria as valid that culminated in a thirty-two month development restriction. In my office's conversations with the Town's Development Services Director, Mark Kutney, Mr. Kutney anticipates that the process would last for a considerably shorter period than

the thirty-two month period upheld by the Supreme Court. It is also necessary to restate the 11<sup>th</sup> Circuit's holding in *Corn v. City of Lauderdale Lakes*, 95 F.3d 1066, (11<sup>th</sup> Cir. 1996). The 11<sup>th</sup> Circuit in that case upheld a moratorium on the basis that the moratorium set a specific date for its expiration. Accordingly, it is clear that any proposed moratorium issued by the Town must be of a reasonable duration and must state the time of its expiration upon the face of the ordinance.

In addition to indicating the date of the moratorium's expiration, it is evident that the moratorium ordinance must indicate the date that the moratorium will commence. Furthermore, the ordinance must specify the area and scope of the proposed moratorium. As indicated within the previous memorandum written by this office, the ordinance must specify the types of development applications that will be subject to the moratorium and must state a reasonable justification for the enactment of the ordinance. With respect to the justifications required for the moratorium, the courts have consistently upheld those interim development controls which were established in order to protect the health and safety of the municipality's residents. Additionally, the scope of the interim development controls must be reasonably related to the justification for the enactment of the interim development controls. Finally, as is the case in all ordinances, the moratorium ordinance must provide residents with adequate notice of the planned amendments to the Town Code and the moratorium restrictions.

Attached, please find a draft of the proposed moratorium ordinance prepared by this office for your review. If you have any questions regarding the ordinance or any questions relating to this memorandum, please contact my office.

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