

POST-DISASTER BUILDING MORATORIUM



HAZARDS ADDRESSED



HOW IT WORKS

A post-disaster moratorium on repairing or rebuilding structures temporarily restricts building activity following a major disaster. Communities have the authority to implement such restrictions post-event. The authorization to enact a moratorium can also be found within a comprehensive recovery ordinance that is adopted prior to a hazard event. Such ordinances typically establish the framework for a variety of post-disaster tasks, such as debris management, stabilization of damaged buildings, identification of other life/safety risks, repair of damaged infrastructure, and mitigation options and funding to rebuild to different standards or to potentially relocate certain uses (Boyd, Hokanson, Johnson, Schwab, & Topping, 2014). A sample model ordinance can be found on the APA website (see additional resources below).

The moratorium may include provisions to address critical issues regarding rebuilding that will be faced by communities in a post-disaster environment. Such provisions should:

- Establish restrictions for repairing and rebuilding structures that are based on damage thresholds.
- Distinguish between permits needed (and associated procedures) for rebuilding and repairing vs. permits for new development.
- Allow the community more time to assess conditions in more severely damaged areas.



Aftermath of 2013 flood in Jamestown, CO.

Source: Michael Rieger, FEMA

IMPLEMENTATION

Post-disaster moratoria on repairing or rebuilding structures are generally implemented through ordinances adopted by local governments. They can be adopted after a disaster; however, the best practice is to adopt before a disaster occurs and include triggers that will indicate when the procedures will need to go into place and how long the moratorium should last.

WHERE IT'S BEEN DONE

Following the 2013 floods, **Jamestown** implemented a moratorium on rebuilding and all new permits. The intent of this temporary moratorium was to allow the Town more time to evaluate the physical impacts the flood had on the Town, and to help inform where and under what conditions rebuilding could occur. This temporary suspension of permitting also allowed the Town Board more time to study and consider any necessary changes to the Town's construction and development policies. The moratorium was in place for four months from September 25, 2013, until January 21, 2014 (*Flood Recovery Information*, 2016).

The Town also created a *Rebuilding and Restoration Guide* (2014) that served as a valuable resource to its citizens following the disaster. The guide provided answers to citizens on all elements related to rebuilding.

Boulder County has integrated procedures for establishing a post-disaster rebuilding moratorium into its Land Use Code. The Code contains an entire section titled "Procedures Following Disasters."

Evans issued an emergency ordinance (Ord. 571-13) that imposed a building and development moratorium after the 2013 floods. The moratorium applied to the special flood hazard area and any additional areas flooded during the September floods, for a period of six months.

ADVANTAGES AND KEY TALKING POINTS

The benefits of enacting a post-disaster moratorium include:

- Allowing a community to pause or slow down the permitting and rebuilding process to help ensure appropriate post-disaster rebuilding (and determining what is appropriate ahead of any disaster event).
- Ensuring that community goals for recovery and redevelopment are being met.
- Allowing for necessary mitigation, code changes, and/or policy changes to be fully evaluated and/or implemented before rebuilding takes place.

CHALLENGES

Despite the many benefits, key challenges associated with implementing a post-disaster moratorium on rebuilding and redevelopment are negotiating the political, economic, and developmental pressures associated with such an ordinance.

There will be pressures to rebuild as quickly possible following a major disaster in order to allow citizens to return to the community and to reestablish the economic vitality of the community. Anything seen as an impediment to a quick recovery will likely not be looked upon favorably by

disaster victims and the community as a whole. It takes tremendous political will and clear messaging to community members to enact a post-disaster policy such as a moratorium on rebuilding.

MODEL CODE LANGUAGE AND COMMENTARY

While post-disaster moratoria should be tailored to the needs of the individual community, there are some basic components found in most ordinances, including:

- Purpose
- Duration
- Procedures and Permitting

The following sections describe each of the common elements in more detail and provide standard language that can be considered by Colorado local governments. Model language is in blue shading. Commentary is located in *italics* in the column at the right. The model language used in this document is based on several existing ordinances and programs from varying communities around the state and the nation, including municipalities and counties. The language is illustrative only; consult local counsel to tailor language for your jurisdiction.

Purpose

The purpose of this ordinance is to:

- A.** Authorize the implementation of a building moratorium when the following actions or findings occur:
- 1.** The [*municipality or county*] is declared a disaster area by the Governor of Colorado or the President of the United States;
 - 2.** The [*City Council, Board of County Commissioners, or equivalent*] declares a local state of emergency; or
 - 3.** The [*municipality or county*] is unable to maintain acceptable levels of service following an event as determined by the [*City Council, Board of County Commissioners, or equivalent*].

Commentary

Establishing a Framework:

Adopting moratoria on development activity can be controversial in the wake of a disaster. Community sentiment often leans toward a “return to normalcy,” which would include immediate rebuilding efforts. It is best to establish a clear framework for development permit activities before a disaster occurs to allow for thoughtful planning of hazard areas and to ensure that appropriate measures are taken to avoid repetitive losses.

A proactive ordinance anticipates the steps that should be taken following any major disaster event within the community and can be incorporated directly into a community’s land use and development code. A reactive ordinance is adopted immediately following a disaster event and can be more specific to a specific event and a defined hazard area where such event occurred.

Purpose: *Additional information can be included in the purpose and intent statement, such as a description of specific vulnerabilities to natural and/or human-caused hazards. Communities may also consider authorizing a task force or advisory committee that oversees recovery and rebuilding operations. If such entity is established, that should be included in the purpose statement.*

- B.** Foster appropriate response during and after a disaster, which often require extraordinary actions.
- C.** Modify development approval procedures to allow property owners to build, repair, or rebuild in a timely, safe, and responsible manner.

Duration

Any moratorium imposed shall be subject to review by the [City Council, Board of County Commissioners, or equivalent] at the earliest possible time, but no later than [90 days] after it begins. At that time, the [City Council, Board of County Commissioners, or equivalent] shall extend, terminate, or modify the moratorium.

Procedures and Permitting

This section describes the procedures for development permits following a major hazard event.

A. Public Notice

Notice of any moratorium shall be posted in the defined location for all other public notices and shall identify the geographic area for which the moratorium is in effect and the review and permitting procedures impacted by such moratorium.

B. Suspension of Development Activity

- 1.** The [City Council, Board of County Commissioners, or equivalent] shall have the authority to temporarily suspend the issuance of land use and development permits they administer under the land use code, building code, and any other ordinance where suspension of such permit is deemed necessary and reasonable to protect the public health, safety, and welfare of the community.
- 2.** The suspension of permits may also include applications currently under review. If an application under review is suspended, the applicable review timeframes shall also be suspended until the development activity suspension has been terminated.

C. Deconstruction or Demolition of Damaged Structures

Any deconstruction or structure demolition requires the appropriate permit from the [building official, planning director, city/county engineer, city/county manager, or equivalent]. The [building official, planning director, city/county engineer, city/county manager, or equivalent] may waive any or

Duration: *The moratorium duration may vary depending on the scale of the disaster. Communities typically do not exceed six months for a moratorium. Local governments should aim to keep the duration as short as possible and consult with their attorneys whether an extended moratorium would be potential grounds for a takings claim.*

Procedures and Permitting: *Communities may also consider adopting regulations for debris removal and hazard abatement through a separate ordinance. Following a major hazard event, debris removal by the local government can be slowed by property owners taking the position that such debris has value. It is important for communities to act decisively to remove debris and mitigate any conditions in the public right-of-way that could be a safety concern.*

Public Notice: *It is important to define a geographic area, zone, or other boundary for which the imposing moratorium applies. For example, a special flood hazard area, a designated burn area, or a larger area if warranted based on the extent of a disaster.*

Suspension of Development Activity: *Some communities may elect to adopt a tiered approach to development activities restricted under a moratorium. For example, the Hillsborough County, Florida ordinance establishes different timelines following a disaster for destroyed structures, major damaged structures, minor damaged structures, new development, previously issued building permits, development orders, and site plan reviews.*

all permitting requirements depending on the type of work and the extent of the disaster.

D. Emergency Repairs

Emergency repairs necessary to prevent imminent danger to life or property is exempt from this section except that the property owner shall notify the [building official, planning director, city/county engineer, city/county manager, or equivalent] within [72 hours/one week/10 days/other timeframe] of the work conducted and shall apply for any required permit as deemed necessary by the [building official, planning director, city/county engineer, city/county manager, or equivalent].

KEY FACTS

Administrative capacity	Adoption of the ordinance does not require significant administrative capacity but implementation of the ordinance does, including coordination with the Building Official and Attorney
Mapping	Mapping may potentially be needed to help determine areas where the moratorium should be implemented for a given disaster event
Regulatory requirements	Local ordinance
Maintenance	Not typically required, unless moratorium is continued for an additional and specific period of time
Adoption required	Yes
Statutory reference	In 2007, the Colorado Supreme Court upheld the authority for local governments to adopt emergency ordinances to temporary zoning control under the Land Use Control Enabling Act, citing Droste v. Pitkin County Commissioners (Colo. 2007)
Associated costs	None directly tied to local government other than staff time required for implementation

EXAMPLES

Boulder County Land Use Code	bouldercounty.org/property/build/pages/lucode.aspx Article 19
City of Evans Moratorium Following 2013 Floods	cml.org/Issues/Public-Safety/Emergency-Management/Emergency-Ordinance-Imposing-Moratorium-on-Building/Development,-Flood-(City-of-Evans)/

Town of Jamestown bouldercounty.org/doc/landuse/jamestown2013ordinance2.pdf See
Temporary Moratorium for also the Rebuilding and Restoration Guide:
Building Permits and jamestownco.org/files/2013/12/Rebuilding-and-Restoration-Guide-3.01.pdf
Floodplain Permits
Following 2013 Floods

Hillsborough County, FL hillsboroughcounty.org/DocumentCenter/Home/View/1051
Ordinance to Guide
Redevelopment and
Mitigation Following a
Disaster or Storm Event

FOR MORE INFORMATION

American Planning Association: Planning for Post-Disaster Recovery: Next Generation
planning.org/research/postdisaster