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MEMORANDUM

TO: Brad Wilson; Midway City Council

FROM: Corbin Gordon

DATE: September 19, 2025

RE: Cemetery Moratorium Renewal

INTRODUCTION AND FACTUAL BACKGROUND

I have been asked by the Midway City Council to outline the legal options available to Midway City (the “City”) to potentially pass another Moratorium suspending the sale of cemetery plots in Midway Cemetery (the “Cemetery”).

The City Council enacted Resolution No. 2021-24 on July 20, 2021, adopting a temporary land use regulation (“Moratorium”) that suspended the sale of new cemetery plots in the Midway Cemetery for six months. By its terms, the Moratorium expired on January 20, 2022. Because additional time was needed to conclude the work undertaken regarding the cemetery, the City Council enacted Resolution 2022-04 on January 18, 2022 to extend the six-month moratorium for an additional three months, or until April 2022.

There are still substantial issues that need to be resolved regarding the operation of the cemetery. Because of this, I have been asked to see if it is possible for the City Council to issue another moratorium again temporarily suspending the sale of cemetery plots in order to give time to solve unresolved issues.

SUMMARY OF ANSWER

The City Council is the only body with authority to amend a temporary land use regulation and/or to enact a new one. The Utah legislature has passed Utah’s Municipal Land Use Development and Management Act, which is controlling over all municipal land use regulations. *See generally* Utah Code Ann. § 10-9a-501. The act does allow the City Council to pass

temporary land use regulations, but specifically limits the length of a moratorium to 6 months. The previous moratorium had already been in place for six months, and the code provides no authority to lengthen the time period. The City's decision to extend the moratorium for an additional three months was a risky one that could have invited legal challenge.

Utah law is unclear about whether a city that has already issued a moratorium concerning a certain subject can do so again. The applicable statute merely limits moratoria to a six-month period, with very few limited exceptions. Because of this, to issue another six-month moratorium could invite legal challenge. Should the City issue another moratorium, the law strictly limits the length to 180 days. It would be imprudent for the City to try to extend a moratorium again as it did in the past.

There is another, far easier way for the City to accomplish the same goal. Rather than use the powers granted from Utah's Municipal Land Use Development and Management Act, which limits moratoria to the strict 180 days, the City can instead use the powers given through Utah Code Ann. §10-8-62. There, the City has the broad authority to "survey, plat, map, fence, ornament, and otherwise ***improve, manage, and operate*** public burial and cemetery grounds." Utah Code Ann. § 10-8-62(3). The City can simply pause sales of new cemetery plots as an ***operational management decision***, so long as such a pause is not arbitrary or unreasonable, instead of as an official moratorium that is subject to the 180-day limitation and possible legal challenges.

LEGAL ANALYSIS

I. Does the Utah Code allow a moratorium for longer than six months?

Answer: No. Resolution 2022-04, enacted in January of 2022, which extended the previous six-month moratorium by three months, was most likely illegal.

Utah's Municipal Land Use Development and Management Act (MLUDMA) grants authority to enact land use regulations solely to the legislative body, which at the municipal level is the City Council. Utah Code §§ 10-9a-501, -503. Such regulations must be consistent with MLUDMA's purposes and normally require the full legislative process, including notice, hearings, and planning commission review. *Id.* § 10-9a-502.

The Moratorium was adopted by the City Council as a "temporary land use regulation" under Utah Code § 10-9a-504, which allows a council to bypass the usual process in limited circumstances. Temporary land use regulations are intended to preserve the status quo during unusual conditions while permanent policies are developed, and they may suspend or restrict development approvals.

State law imposes two conditions on such measures: the council must find a compelling, countervailing public interest, and the regulation must be temporary, with a term *not exceeding six months*. *Id.* § 10-9a-504(1)(a)(i), (2). The statute provides no authority for a moratorium longer than six months, and any extension beyond that limit would be subject to legal challenge.

II. What are the possible legal consequences of extending an existing moratorium beyond six months?

Answer: Likely litigation that claims a violation of Utah Code and its six-month time limit on moratoriums, and possibly a claim that extending the moratorium constitutes an unconstitutional taking, which would require the City to pay compensation.

The question is whether the Moratorium may be extended beyond 180 days. The language of Utah Code makes clear that it cannot, and any attempt to do so risks being treated as a taking requiring compensation. Federal law provides no bright-line rule for when a temporary regulation becomes a compensable taking, but Utah courts have held that the Utah Constitution offers broader protections than the U.S. Constitution. See *Bagford v. Ephraim City*, 904 P.2d 1095, 1097 (Utah 1995). Both the Fifth Amendment and Article I, section 22 of the Utah Constitution prohibit takings without just compensation, including “regulatory takings” where regulation deprives an owner of economic use of property. *Penn Central Trans. Co. v. City of New York*, 438 U.S. 104, 124 (1978). Utah decisions are consistent, holding that a significant restriction on property use may require compensation. See *View Condo. Owners Ass’n v. MSICO L.L.C.*, 2005 UT 91, ¶ 31; *Arnell v. Salt Lake County Bd. of Adjustment*, 2005 UT App 165, ¶ 17; *Colman v. Utah State Land Bd.*, 795 P.2d 622, 626 (Utah 1990); *Bingham v. Roosevelt City Corp.*, 2010 UT 37, ¶ 15.

The U.S. Supreme Court has held that a temporary moratorium is not a per se taking because of its limited duration. *Tahoe-Sierra Pres. Council v. TRPA*, 535 U.S. 302, 331–32 (2002). Yet because Utah applies stricter standards, it is uncertain how its courts would treat a moratorium extended beyond the six-month statutory limit. Federal law applies a case-by-case inquiry into the regulation’s economic impact, interference with investment-backed expectations, and the nature of government action. *Palazzolo v. Rhode Island*, 533 U.S. 606, 617 (2001). Utah courts could interpret the legislature’s six-month cap in § 10-9a-504(2) as a firm boundary, making any longer moratorium a per se violation.

The Utah Supreme Court has not ruled on this precise issue, but the risk is significant: if an extension beyond six months were held unlawful, the City could be exposed to takings liability. Given the statute’s express limitation, extending the Moratorium would likely be found illegal. See Utah Code § 10-9a-801(3)(d); *Baker v. Park City Mun. Corp.*, 2017 UT App 190. While municipal land use decisions are generally given deference, *Springville Citizens for a Better Community v. City of Springville*, 1999 UT 25, ¶ 23, any extension would almost certainly violate MLUDMA and invite litigation.

III. Is there another way for the City to still temporarily suspend the sale of Cemetery plots?

Answer: Yes. Rather than use the restricted moratorium available in MLUDMA, the City can instead use its broad management powers over city cemeteries available in § 10-8-62 to pause sales of new cemetery plots as an ***operational management decision***.

The six-month limit in Utah's Land Use Development and Management Act applies only to land-use moratoria. It does not restrict the City's operation of its municipal cemetery. Instead, the City has broad statutory authority to manage and regulate cemeteries under Utah Code §§ 10-8-62, 10-8-63, and Title 8. These provisions allow the City to temporarily suspend sales of interment rights as part of its responsibility to manage the cemetery. Title 8 further clarifies that purchasers receive only a right of interment, not fee ownership, and provides procedures for addressing abandoned or unused lots. Because a pause on sales is an operational measure, it is not bound by § 10-9a-504's six-month limitation.

However, the City's authority is not unlimited. In *Crawford v. Manti*, 18 Utah 2d 79, 415 P.2d 665 (1966), the Utah Supreme Court upheld a municipality's broad discretion to regulate cemeteries but emphasized that such powers cannot be exercised in an unreasonable, arbitrary, or capricious manner. Any suspension of sales must therefore be supported by clear and legitimate findings tied to the public interest, for example, correcting mapping and deed errors, ensuring fairness in allocation, protecting perpetual-care obligations, or maintaining adequate capacity. Arbitrary restrictions unrelated to those goals could expose the City to legal challenge.

For both legal defensibility and public transparency, it may be wise to adopt the suspension with a sunset provision, such as six months, coupled with a requirement that staff report back with progress and recommendations. A proposed Resolution accompanies this memo. At the end of the period, the Council may renew the suspension if the issues remain unresolved but doing so after a reasonable review process helps demonstrate that the City is acting reasonably and not simply imposing an indefinite ban. This approach balances the City's management needs with the rights and expectations of residents and aligns with the principle in *Crawford* that municipal cemetery powers must be exercised fairly.

CONCLUSION

In conclusion, it is legally risky for the City to try to enact another moratorium regarding the Cemetery, and even if it did, it cannot lawfully extend a moratorium under § 10-9a-504 beyond six months. Instead, the City likely may suspend new cemetery plot sales under its general management powers in Title 10 and Title 8. By grounding its action in those statutes, articulating clear findings, and avoiding arbitrary measures, the City will likely place itself on sound legal footing while it resolves the cemetery's administrative issues.



RESOLUTION

20~~21~~-24

A RESOLUTION AUTHORIZING A AN OPERATIONALSUSPENSION ~~MORATORIUM~~ ON THE SALE OF CEMETERY PLOTS WITH SPECIFIC EXCEPTIONS, AND RELATED MATTERS

WHEREAS, Midway City owns and operates the Midway City Cemetery; and

WHEREAS, historically there have been issues regarding the tracking of ownership of certain cemetery plots that have been sold, but the City may not have the correct name or contact information of the current claimants to those plots; and

WHEREAS, there are also cases where the ownership of one or more cemetery plots is the subject of a dispute between surviving heirs of the original purchaser; and

WHEREAS, it is in the best interest of the City and its residents to update the policies and procedures of the cemetery, specifically with respect to the sale and tracking of ownership of cemetery plots; and

WHEREAS, the Midway City Council and Midway City staff have determined that records regarding previous sales of cemetery plots need to be updated and corrected before new lots are sold in order to avoid confusion or error; and

WHEREAS, Utah Code Ann. § 10-8-62 grants Midway City the broad authority to “improve, manage, and operate public burial and cemetery grounds”; and

WHEREAS, the City Council finds that there is good cause for imposing a six (6) month ~~moratorium~~ operational suspension on the sale of new cemetery plots, with certain exceptions, in order to allow City Staff to update policies and ownership records.

NOW, THEREFORE, be it hereby Resolved by the City Council of Midway City, Utah, as follows:

1. No cemetery plots in the Midway Cemetery will be sold for six (6) months following the adoption of this Resolution.

~~4.2.~~ This operational suspension shall remain in effect for a period of six (6) months from the date of enactment, unless earlier appealed or extended by subsequent Resolution of the Midway City Council.

~~2.3.~~ The ~~moratorium~~ operational suspension shall not apply to the sale of cemetery plots that meet the following conditions:

- a. The plot is purchased for the purpose of the imminent interment of a recently deceased person.
- b. The plot is in an area of the cemetery where there are no ownership issues that have been discovered by Midway City staff.
- c. An individual purchasing a plot for the imminent interment of a recently deceased person may also purchase a second plot immediately next to the plot purchased for the recently deceased person.

~~3.4.~~ Interment in the Midway City Cemetery shall continue to be allowed as normal in any plot where the ownership can be conclusively proved to the Midway City Staff.

~~4.5.~~ The Midway City Attorney, along with Midway City Staff, is directed to prepare updated policies and procedures regarding the operation of the Midway Cemetery and the sale and tracking of plots, and to present those new policies and procedures to the City Council for their approval and adoption prior to the expiration of the ~~moratorium~~ suspension period.

This Resolution shall take effect immediately upon publication as required by law.

PASSED AND ADOPTED by the Midway City Council on the 20th day of ~~July 2021~~.

MIDWAY CITY

Celeste Johnson, Mayor

ATTEST:

Brad Wilson, Recorder

(SEAL)