

# IF YOU CAN'T BUILD IT, THEY WON'T COME: CONDOMINIUM CONSTRUCTION MORATORIA AND GENTRIFICATION

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**Abstract:** The increasing presence of bright, new condominium development in America's cities is changing the composition and appearance of these urban landscapes. Long-time local residents in gentrifying areas are confronted daily with the impacts of development, and are searching for tools to preserve their communities and keep them affordable. One response has been proposed moratoria on condominium construction. This approach aims to stop the influx of more affluent individuals into urban neighborhoods by preventing the construction of higher-end condominiums. This Note examines the validity of such moratoria on condominium construction as an exercise of the police power. Through a comparison to rent control ordinances and condominium conversion moratoria, it argues that valid condominium construction moratoria can be implemented to address social and economic concerns. The Note concludes, however, that valid construction moratoria are not always the most appropriate or effective growth management tool to address a gentrifying community's needs.

## INTRODUCTION

America's cities and towns are constantly changing, complex environments.<sup>1</sup> Growth and development in urban areas are influenced by many different forces, such as economic trends, new immigrant populations, local residents, and local businesses.<sup>2</sup> Urban planners and state regulators strive to develop land use regulations that interact with outside development forces in a way that creates desirable and livable local communities.<sup>3</sup>

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<sup>1</sup> See Jane Jacobs, *Foreword* to CHESTER HARTMAN, *BETWEEN EMINENCE AND NOTORIETY: FOUR DECADES OF RADICAL URBAN PLANNING*, at xiii, xiv (2002); JANE JACOBS, *THE DEATH AND LIFE OF GREAT AMERICAN CITIES* 6 (Vintage Books 1992) (1961).

<sup>2</sup> See DAVID L. CALLIES ET AL., *CASES AND MATERIALS ON LAND USE* 1 (4th ed. 2004); HARTMAN, *supra* note 1, at 120.

<sup>3</sup> See CALLIES ET AL., *supra* note 2, at 13; JACOBS, *supra* note 1, at 8. Zoning is an important tool that regulators use to control the growth and development of a city. See DANIEL J. CURTIN, JR. & CECILY T. TALBERT, *CURTIN'S CALIFORNIA LAND USE AND PLANNING LAW* 43 (26th ed. 2006). Regulators enact zoning laws to prescribe the particular uses that are al-

Over the past two decades, a resurgence of economic activity in urban areas resulted in population growth in the country's cities.<sup>4</sup> One aspect of this growth, especially in the past ten years, has been a surge in the development of high-end condominiums in lower-income urban communities.<sup>5</sup> This development is changing the demographic compositions and economies in areas where new condominiums are prevalent.<sup>6</sup> As a result, local communities are concerned with the effects of this new growth and residents are looking for ways to address the increasing impacts on their neighborhoods.<sup>7</sup> One tool that is being explored to slow new condominium development and its effects is the imposition of moratoria on their construction.<sup>8</sup>

Planners routinely use moratoria as growth management devices.<sup>9</sup> Moratoria that specifically prohibit new condominium construction as a way to confront the social conditions of an area, however, are a recent development.<sup>10</sup> The condominium construction moratoria now being proposed have the broad goals of preserving the character and composition of local communities.<sup>11</sup> This Note analyzes the issue of whether cities can legally regulate growth and development based on social grounds, such as gentrification resulting from an overabundance of higher-end development. Specifically, it addresses this issue by examining the validity of potential moratoria on condominium construction as a mechanism for discouraging gentrification and stabilizing high volumes of condominium development plans.

Part I of this Note describes the extent of condominium development in American cities over the past decade and the gentrification process that frequently coincides with this new construction. This part also introduces the concept of condominium construction moratoria

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lowed within different city districts. *See id.* Exactions are another tool used to ensure that development forces have a positive impact on local communities. *See id.* at 325. With exactions, "The developer, in return for [development approval,] . . . agrees to donate to the city an amount of land or money needed to provide certain services and amenities necessitated by the anticipated influx of new residents . . . as a result of such development." *Id.*

<sup>4</sup> *See* Boston Redev. Auth., *New Century Begins with Building Boom: 90s End with Strong Development in Many Sectors*, 01-1 INSIGHT 1 (2001), available at <http://www.cityofboston.gov/bra/PDF/ResearchPublications/newcentury.pdf>.

<sup>5</sup> *See* Christine McConville, *Growing Pains in Southie: Building Boom Brings an Earful of Complaints About Noise*, BOSTON GLOBE, Oct. 9, 2006, at B1.

<sup>6</sup> *See* HARTMAN, *supra* note 1, at 120–21.

<sup>7</sup> McConville, *supra* note 5, at B1.

<sup>8</sup> *Id.*

<sup>9</sup> BRIAN W. BLAESSER & ALAN C. WEINSTEIN, *FEDERAL LAND USE LAW & LITIGATION* 128 (2006).

<sup>10</sup> *See id.*

<sup>11</sup> *See* McConville, *supra* note 5, at B1.

and examines community responses to these proposed regulations. Part II examines land use regulations, with a focus on moratoria, as a proper exercise of the police power. It reviews the history of land-use regulation and discusses the standards for evaluating the validity of a moratorium ordinance. Part III reviews the history of rent control ordinances and condominium conversion moratoria to develop a framework for assessing condominium construction moratoria. Part IV considers condominium construction moratoria in light of the framework established in Part III, and draws analogies to predict how a court would examine a challenged construction moratorium. Part IV also discusses the efficacy of condominium construction moratoria and suggests alternative growth management approaches to use when moratoria are not the most effective solution to a community's needs.

## I. RAPID REAL ESTATE GROWTH AND ITS EFFECTS: CONDOMINIUM CONSTRUCTION MORATORIA AS A RESPONSE

### A. *The Condominium Construction Boom*

Beginning in the early 2000s, many American cities experienced a boom of construction, including new condominium construction.<sup>12</sup> The impact of this rapid and large-scale growth is a major issue confronting cities and towns throughout the country.<sup>13</sup> While the real estate market slowed in some cities in mid-2006 and has continued to slow in 2007 and early 2008, as of the time of publication, there is still rapid condominium construction underway and planned for the future in many large urban areas.<sup>14</sup> In early 2006, Boston's planning agency projected that

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<sup>12</sup> See Tom Acitelli, *Mayor Trumpets Building Boom, But We're Still Bursting at the Seams*, N.Y. OBSERVER, Feb. 26, 2007, at 30, available at <http://www.observer.com/node/36793>; James R. Hagerty & Ruth Simon, *Housing Glut Gives Buyers Upper Hand: As Spring Home-Shopping Season Looms, Supply Mounts and Prices Fall in Some Areas; Builders See Slow Recovery*, WALL ST. J., Jan. 25, 2007, at D1; Robert Andrew Powell, *Amid the Shipyards and Lobster Traps, Condos*, N.Y. TIMES, Oct. 10, 2003, at F1; Boston Redev. Auth., *supra* note 4, at 1.

<sup>13</sup> See CURTIN & TALBERT, *supra* note 3, at 409.

<sup>14</sup> Kimberly Blanton, *Developers Throw in Extras to Seal Condo Deals*, BOSTON GLOBE, Feb. 22, 2006, at A1; Les Christie, *Shiller: Real Estate Is Risky Business: Economist Robert Shiller Points to Several Indicators That Suggest Prices Are Out of Whack*, CNNMONEY.COM, June 16, 2006, [http://money.cnn.com/2006/06/16/real\\_estate/buying\\_selling/Shiller\\_weighs\\_in\\_on\\_housing](http://money.cnn.com/2006/06/16/real_estate/buying_selling/Shiller_weighs_in_on_housing); Steve Kerch, *The Frenzy Fizzles: Condo Market Runs Aground for Investors, But Core Buyers Remain*, MARKETWATCH, Feb. 8, 2007, <http://www.marketwatch.com/news/story/condo-market-runs-aground-investors/story.aspx?guid=%7B9BDFBE64-9DF0-4FDA-B08E-FA9DCF9059A8%7D&dist>. The large number of condominiums on the market indicates slowing sales: the number of condominium listings have increased from January 2006 to January 2007 eighty-six percent in Las Vegas, forty-three percent in Washington, D.C., and twenty-one

14,000 condominium units were under construction or approved for construction and that approximately 1000 new condominium units would be placed on the Boston market annually for the following five years.<sup>15</sup> Cities and towns must now assess how to manage this growth.<sup>16</sup>

### B. Condominium Construction and Gentrification

New construction in urban areas often attracts an influx of new residents and can lead to gentrification.<sup>17</sup> Gentrification is the process by which relatively more affluent individuals move into lower-income areas.<sup>18</sup> An increase in wealthier residents often results in displacement of the area's existing residents due to rising housing costs.<sup>19</sup> The concept of gentrification emerged in the United States in the 1960s, when private-market investment in cities' downtown areas expanded urban economies.<sup>20</sup>

Gentrification studies show that a surge in a group of new residents impacts an area by replacing the existing population.<sup>21</sup> Local government officials and planners often view this process as a positive development "because of the perceived social and economic benefits that may accrue from [gentrification]."<sup>22</sup> As new residents with higher incomes enter a community, they introduce more capital and buying power into the local economy, which can bring new businesses and jobs to the area.<sup>23</sup> Higher-priced housing and residents with higher incomes

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percent in the Northern Virginia suburbs of Washington, D.C. Hagerty & Simon, *supra* note 12, at D1.

<sup>15</sup> Blanton, *supra* note 14, at A1.

<sup>16</sup> See CURTIN & TALBERT, *supra* note 3, at 409.

<sup>17</sup> See CALLIES ET AL., *supra* note 2, at 671.

<sup>18</sup> *Id.*; HARTMAN, *supra* note 1, at 109.

<sup>19</sup> Peter J. Macdonald, *Displacement in Gentrifying Neighborhoods: Regulating Condominium Conversion Through Municipal Land Use Controls*, 63 B.U. L. REV. 955, 955 & n.6 (1983).

<sup>20</sup> Sharon Zukin, *Gentrification: Culture and Capital in the Urban Core*, 13 ANN. REV. SOC. 129, 129 (1987). The displacement described by the term gentrification is currently understood as displacement due to private market forces. HARTMAN, *supra* note 1, at 120. This understanding "represents a shift from the 1950s and 1960s, when government programs, particularly urban renewal and construction of the interstate highway system, were the primary displacement forces." *Id.* at 120-21.

<sup>21</sup> Zukin, *supra* note 20, at 135.

<sup>22</sup> Henry W. McGee, Jr., *Afro-American Resistance to Gentrification and the Demise of Integrationist Ideology in the United States*, 23 URB. LAW. 25, 30 (1991) (quoting James H. Johnson, *Gentrification and Incumbent Upgrading: Benefits and Costs*, UCLA CENTER FOR AFRO-AM. STUD. NEWSL. (UCLA Ctr. for Afro-Am. Studies, L.A., Cal.), Nov. 1981, at 10).

<sup>23</sup> See *id.*

also increase the local tax base, infusing previously blighted areas with more capital for public services, facilities, and infrastructure.<sup>24</sup>

Conversely, opponents of gentrification assert that local, often minority, residents suffer detrimental social and economic consequences as a result of the influx of new development and new residents.<sup>25</sup> The increased density of rapid gentrification can add excessive stress to local infrastructure, such as sewers, streets, and sidewalks, and strain services such as fire and police coverage.<sup>26</sup> It can also drastically reduce affordable housing options in a neighborhood and increase residential property taxes.<sup>27</sup> Strong community populations that may have been living in an area for generations can be displaced as housing costs rise and long-time residents are forced to move in search of more affordable neighborhoods.<sup>28</sup>

### C. *Too Many Condominiums on the Market*

In mid-2006 the condominium markets in large cities—such as Washington, D.C., Las Vegas, Miami, and Boston—collapsed, resulting in an overabundance of new condominiums on the market.<sup>29</sup> In February 2006, there were 1369 condominiums for sale in downtown Boston, compared to only 880 in February 2005.<sup>30</sup> In the Washington, D.C. area there were 24,200 condominium units on the market at the end of 2006, compared to 13,000 at the beginning of 2005.<sup>31</sup> This increase in

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<sup>24</sup> See *id.*; Matt Viser, *Breaching Mass. Ave.; Gentrification that Touched the East Side of Boston's South End is Finally Expanding Across an Imaginary Dividing Line Towards a Once Neglected Neighborhood*, BOSTON GLOBE, Jan. 14, 2007, at H1 (commenting that new condominium development in a “gritty” neighborhood led to cleaner sidewalks, buildings painted in subtler colors, and a restaurant changing its name to sound more upscale).

<sup>25</sup> McGee, *supra* note 22, at 30.

<sup>26</sup> See Christina Pazzanese, *Not Open Studios, But Fort Point Draws Crowd*, BOSTON GLOBE, Apr. 1, 2007, at City Weekly 4.

<sup>27</sup> *Id.*

<sup>28</sup> HARTMAN, *supra* note 1, at 121; Shaila Dewan, *Gentrification Changing Face of New Atlanta: Historic Black Share of Population Declines*, N.Y. TIMES, Mar. 11, 2006, at A1 (“[A]lthough gentrification has expanded the city’s tax base and weeded out blight, it has had an unintended effect on Atlanta . . . . For the first time since the 1920s, the black share of the city’s population is declining and the white percentage is on the rise.”).

<sup>29</sup> Vikas Bajaj, *Buyers Scarce, Many Condos Are for Rent*, N.Y. TIMES, Jan. 16, 2007, at A1; Blanton, *supra* note 14, at A1. The National Association of Home Builders/Fannie Mae Multifamily Condo Market Index, which tracks builder confidence in the condominium housing market on a scale of zero to 100, fell to 19.7 in the third-quarter of 2006, compared to 47.1 in the third-quarter of 2005. *Builders Remain Worried About Condo Market Weakness*, MORTGAGE BANKING, Jan. 2007, at 131.

<sup>30</sup> Blanton, *supra* note 14, at A1.

<sup>31</sup> Bajaj, *supra* note 29, at A1.

D.C. condominiums corresponds to slowing sales, which dropped from 3520 in the first quarter of 2005 to 663 in the fourth quarter of 2006.<sup>32</sup>

As a result of the overabundance of condominiums on the market, some developers have decided to rent their units until the condominium surplus shrinks.<sup>33</sup> There is no national data source of new condominium sales; however, overall condominium sales fell 13.6% from November 2005 to November 2006.<sup>34</sup> If regulation is found to be an appropriate response to the impacts of the high volume of condominium construction, then imposing condominium construction moratoria is one regulatory approach that addresses this issue.<sup>35</sup>

#### D. Condominium Moratorium Regulations

A condominium construction moratorium prohibits the construction of new condominiums in a certain area for a specified period of time.<sup>36</sup> Local governments and residents in some urban communities support condominium construction moratoria as a means of addressing the social and economic impacts of new condominiums on local neighborhoods.<sup>37</sup> For example, in Austin, Texas, long-time residents of the city's east side asked the City Council in December 2006 to institute a moratorium on condominium construction.<sup>38</sup> The east side is home to a large portion of Austin's Latino community, and residents viewed the moratorium as a way to prevent population displacement.<sup>39</sup> One resident explained, "We're trying to preserve and maintain the charac-

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<sup>32</sup> *Id.*

<sup>33</sup> *Id.*; Kerch, *supra* note 14.

<sup>34</sup> Bajaj, *supra* note 29, at A1.

<sup>35</sup> See McConville, *supra* note 5, at B1; Leslie Coons, *East Austin Residents Seek 90-Day Condo Moratorium*, CBS 42 MORNING NEWS, Dec. 14, 2006, [http://www.keyetv.com/news/local/story.aspx?content\\_id=9192724A-7538-443A-97CE-BCC7386C5F23&gsa=true](http://www.keyetv.com/news/local/story.aspx?content_id=9192724A-7538-443A-97CE-BCC7386C5F23&gsa=true).

<sup>36</sup> See 10 PATRICK J. ROHAN, ZONING AND LAND USE CONTROLS § 53C.08[10] (Eric Damian Kelly ed., 2003). A condominium *construction* moratorium is different from a condominium *conversion* moratorium. See discussion *infra* Part III.B. The conversion moratoria do not address new construction of condominiums, but the conversion of existing rental apartment buildings into condominium buildings. See CALLIES ET AL., *supra* note 2, at 671.

<sup>37</sup> See McConville, *supra* note 5, at B1; Coons, *supra* note 35. While not the focus of this Note, condominium moratoria are also used as a growth management tool outside of urban areas. Denny Lee, *Time Catches Up with a Georgia Eden*, N.Y. TIMES, Aug. 20, 2004, at F1. In the Georgia beach community of Tybee Island, the City Council imposed a moratorium on condominium construction in 1999 to fight a building surge that was replacing wooden cottages with multi-story condominiums. *Id.*

<sup>38</sup> Coons, *supra* note 35.

<sup>39</sup> *Id.*

ter and culture of the neighborhoods.”<sup>40</sup> The situation in Austin exemplifies typical community reaction to the gentrification process.<sup>41</sup>

Similarly, in late 2006, residents in South Boston advocated for a moratorium on new development in response to the recent building boom of high-end condominiums.<sup>42</sup> A state representative, Brian P. Wallace, agreed to work with residents to address their concerns and consider the building moratorium.<sup>43</sup> The new construction in the area was attracting more affluent young adults, while displacing members of South Boston’s historically Irish Catholic working class community.<sup>44</sup> Residents viewed the moratorium as a way to preserve the character of the neighborhood and fight concerns of overdevelopment, increased congestion, and displacement of low-income and elderly residents.<sup>45</sup>

Critics of development moratoria assert that such moratoria can unintentionally result in increased development by motivating developers to fast-track otherwise dormant or slow-moving development plans.<sup>46</sup> Robert D. Yaro, president of the Regional Plan Association in Manhattan explained, “At the first mention of a moratorium . . . you shake out . . . development proposals that might not have been ready for years. And in many cases these end up getting far enough into the process that they are vested.”<sup>47</sup> If this result occurs, the moratorium adds to the problem that it was implemented to resolve.<sup>48</sup>

Condominium construction moratoria are also criticized by parties affected by the development freeze.<sup>49</sup> Prohibiting or limiting development can elicit strong negative responses from landowners, developers, and businesspeople, making moratoria politically charged topics.<sup>50</sup> For

<sup>40</sup> *Id.*

<sup>41</sup> See Macdonald, *supra* note 19, at 960; Coons, *supra* note 35.

<sup>42</sup> McConville, *supra* note 5, at B1.

<sup>43</sup> *Id.*

<sup>44</sup> See *id.*

<sup>45</sup> *Id.*

<sup>46</sup> John Rather, *Do Moratoriums Help or Hinder?*, N.Y. TIMES, July 28, 2002, at L11.

<sup>47</sup> *Id.* The courts have not directly addressed the validity of condominium construction moratoria.

<sup>48</sup> See *id.*

<sup>49</sup> See Ann E. Marimow, *Leaders Offer Alternative to Building Moratorium*, WASH. POST, Jan. 26, 2007, at B4 [hereinafter Marimow, *Moratorium Alternative*]; Miranda S. Spivack, *Rockville Weighs Moratorium on Construction: Council Debates a Less-Sweeping Plan to Stop Development While Zoning Rules Are Reviewed*, WASH POST, Nov. 9, 2006, at Montgomery Extra 1.

<sup>50</sup> See Editorial, *A Flexible Moratorium? Don't Let the Pendulum Swing Too Far Back*, WASH. POST, Jan. 16, 2007, at A18 (commenting on a proposed moratorium in Montgomery County that would freeze building permits in the county, criticizing moratorium generally as unappealing means of controlling growth, and stressing the importance of limiting the length of moratorium to a “brief” period of time); Ann E. Marimow, *Council Forgoes Morato-*

example, a proposed moratorium on new building projects in Montgomery County, Maryland received such strong opposition from developers and other community members that the County abandoned the moratorium ordinance.<sup>51</sup> As an alternative, the County stated that it hoped to achieve the goals of the moratorium through less drastic growth controls, such as impact fees and more stringent permit approval requirements.<sup>52</sup>

## II. LAND USE CONTROLS AS A PROPER EXERCISE OF THE POLICE POWER

### A. Growth Management Tools

Planners and regulators use growth management tools to steer urban growth.<sup>53</sup> Some of these regulations directly address infrastructure needs, while others tackle broader social aspects of growing municipalities.<sup>54</sup> The development moratorium is one way that regulators manage growth.<sup>55</sup> Moratoria are one of the “most drastic of all the growth management techniques” because they completely prohibit certain development, or limit development permit approval, for a certain period of time.<sup>56</sup>

### B. Moratorium Ordinances

A moratorium is “an authorized delay in the provision of government services or development approval.”<sup>57</sup> Municipalities adopt mora-

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*rium in Favor of Compromise*, WASH. POST, Jan. 31, 2007, at B7 [hereinafter Marimow, *Council Forgoes Moratorium*]; Marimow, *Moratorium Alternative*, *supra* note 49, at B4.

<sup>51</sup> Marimow, *Council Forgoes Moratorium*, *supra* note 50, at B7.

<sup>52</sup> Marimow, *Moratorium Alternative*, *supra* note 49, at B4.

<sup>53</sup> CURTIN & TALBERT, *supra* note 3, at 405 (explaining that growth management tools include, but are not limited to, a general plan, specific plans, zoning ordinances, and development moratoria).

<sup>54</sup> *Id.* at 404 (explaining that some growth management regulations address “limited sewer capacity, water shortages, revenue shortages, school overcrowding, and traffic congestion,” while others are used to maintain “the community’s unique character, the preservation of open space, lower densities, and preservation of scenic views”).

<sup>55</sup> *Id.* at 405.

<sup>56</sup> *Id.*

<sup>57</sup> ROHAN, *supra* note 36, § 53C.08[10] (quoting ROBERT MELTZ ET AL., *THE TAKINGS ISSUE: CONSTITUTIONAL LIMITS ON LAND USE CONTROL AND ENVIRONMENTAL REGULATION* 266 (1999)). A municipality adopting a moratorium must have the authority to do so. *Id.* § 22, at 22-1. In some states, local municipalities have express statutory authority to adopt such growth management regulations. *Id.* In other states, however, the authority is not as clear. *Id.* This Note does not examine the issue of authority for enactment; its examination of moratoria assumes that authority exists.

torium ordinances to address a number of different problems, such as strained infrastructure, sprawling growth, housing needs, diminishing open space, and detrimental environmental impacts.<sup>58</sup> Los Angeles, for example, implemented a moratorium to address an affordable housing issue.<sup>59</sup> In May 2006, the City Council banned the demolition of single-room occupancy dwellings in a fifty-square-block area of downtown, which housed close to 10,000 low-income residents, for a year while city officials determined how to preserve the availability of affordable housing in the rapidly gentrifying area.<sup>60</sup>

Development moratoria, which prohibit or limit development approval, are often used to allow municipalities time to review comprehensive land use plans, to develop and implement new zoning ordinances, or to increase needed public facilities.<sup>61</sup> Moratoria are designed to freeze development while the municipality determines appropriate ways to ensure that future growth positively, rather than negatively, impacts the area.<sup>62</sup>

It follows from the typical goals of development moratoria that valid regulations will have a definite time frame and will end once the purpose for the moratorium's enactment has been addressed.<sup>63</sup> The municipality implementing the moratorium must have an analytically supported plan of action and must make reasonable efforts to address the purpose during the course of the moratorium.<sup>64</sup> For example, a traditionally suburban area facing a spike in the construction of new homes could implement a moratorium on new housing development until the planning department completed a growth management plan that dictated where new construction could take place, in order to preserve open space in the community.<sup>65</sup> There is no standard outer limit on an acceptable time frame for a moratorium; the requirement is only

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<sup>58</sup> See BLAESSER & WEINSTEIN, *supra* note 9, at 128; ROHAN, *supra* note 36, § 22.01[1]; Spivack, *supra* note 49, at Montgomery Extra 1 (reporting that Rockville, Maryland Mayor Larry Giammo supported a proposed moratorium on new development while the city examined its zoning laws because he was "concerned about weaknesses in local zoning laws that . . . [did] not require enough open space, wide enough sidewalks or recessed upper floors of high rises to allow more light to filter to the street").

<sup>59</sup> Andrew Glazer, *Los Angeles Moratorium Puts Skid Row Gentrification on Hold: Affordable Housing for Thousands Endangered by Development*, WASH. POST, May 20, 2006, at F32.

<sup>60</sup> *Id.*

<sup>61</sup> BLAESSER & WEINSTEIN, *supra* note 9, at 128; ROHAN, *supra* note 36, § 22.01[1].

<sup>62</sup> BLAESSER & WEINSTEIN, *supra* note 9, at 129.

<sup>63</sup> ROHAN, *supra* note 36, § 53C.08[10].

<sup>64</sup> BLAESSER & WEINSTEIN, *supra* note 9, at 129.

<sup>65</sup> See *id.*

that the moratorium have a reasonable time limitation.<sup>66</sup> In many states, however, the legislation authorizing moratoria and other interim ordinances includes specific time limits for these growth management tools.<sup>67</sup>

A moratorium ordinance can be challenged as an invalid exercise of the police power.<sup>68</sup> Moratoria based on substantiated health, safety, or general welfare needs, however, are unlikely to be struck down by courts.<sup>69</sup> In addition, a moratorium with restrictions that taper off or terminate as certain goals or outcomes are attained has a strong chance of surviving legal attacks.<sup>70</sup> Moratoria are generally upheld as long as they address a valid purpose under the police power and have a temporary timeframe linked to the completion of certain needs or goals.<sup>71</sup>

### C. *The Police Power as the Basis for Land Use Ordinances*

States have the power to enact regulations as an exercise of their police power.<sup>72</sup> The concept of the police power is so broad and flexible that it is difficult to define.<sup>73</sup> U.S. Supreme Court Justice William Douglas commented that “[a]n attempt to define [the police power’s] reach or trace its outer limits is fruitless, for each case must turn on its own facts.”<sup>74</sup> Generally stated, the police power allows states to enact regulations that relate to the safety, health, or general welfare of the public.<sup>75</sup> Common regulations under the police power address issues such as “[p]ublic safety, public health, morality, peace and quiet, [and] law and order.”<sup>76</sup>

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<sup>66</sup> See *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency*, 535 U.S. 302, 353–54 (2002) (discussing different time-periods for moratoria and noting that various moratoria of 120 days, eighteen months, and two years were acceptable to the Court, but a moratorium “lasting nearly six years—bears no resemblance to the short-term nature of traditional moratoria”); CURTIN & TALBERT, *supra* note 3, at 297.

<sup>67</sup> CURTIN & TALBERT, *supra* note 3, at 297.

<sup>68</sup> See JOHN J. DELANEY ET AL., *HANDLING THE LAND USE CASE* § 28:5 (3d ed. 2007). Moratoria are also challenged on substantive due process and constitutional takings grounds, but these challenges will not be addressed in this Note. BLAESSER & WEINSTEIN, *supra* note 9, at 128.

<sup>69</sup> CURTIN & TALBERT, *supra* note 3, at 298.

<sup>70</sup> *Id.*

<sup>71</sup> DELANEY, *supra* note 68, § 28:5.

<sup>72</sup> STEVEN J. EAGLE, *REGULATORY TAKINGS* 223 (3d ed. 2005).

<sup>73</sup> MARKUS DIRK DUBBER, *THE POLICE POWER* 120 (2005); Donna Jalbert Patalano, Note, *Police Power and the Public Trust: Prescriptive Zoning Through the Conflation of Two Ancient Doctrines*, 28 B.C. ENVTL. AFF. L. REV. 683, 707 (2001).

<sup>74</sup> *Berman v. Parker*, 348 U.S. 26, 32 (1954).

<sup>75</sup> EAGLE, *supra* note 72, at 224 (quoting *Lochner v. New York*, 198 U.S. 45, 49 (1905)).

<sup>76</sup> *Berman*, 348 U.S. at 32.

A court will give great deference to the legislature when reviewing a regulation or ordinance that is challenged as an abuse of the police power.<sup>77</sup> Courts have noted that it is the role of the legislature to identify and address the public's needs, and thus, "The role of the judiciary in determining whether [the police power] is being exercised for a public purpose is an extremely narrow one."<sup>78</sup> Given the broad interpretation of the police power, there are a wide range of purposes served by valid land use regulations.<sup>79</sup>

In *Euclid v. Ambler Realty Co.*, the Supreme Court acknowledged that the growing size and impact of urban areas in the United States necessitated land use regulations as a new application of the police power.<sup>80</sup> *Euclid* established that zoning ordinances "must find their justification in some aspect of the police power, asserted for the public welfare."<sup>81</sup> Therefore, challenges to zoning ordinances require an examination of the particular police power underlying the ordinance's enactment.<sup>82</sup> The Court in *Euclid* stressed that the line between legitimate and illegitimate uses of the police power was not clearly delineated but, rather, must be based on a case-by-case assessment in light of the circumstances and conditions of the challenged zoning ordinance.<sup>83</sup> The Court stated:

[T]he question whether the power exists to forbid the erection of a building of a particular kind or for a particular use . . . is to be determined, not by an abstract consideration of the building or of the thing considered apart, but by considering it in connection with the circumstances and the locality.<sup>84</sup>

In *Berman v. Parker*, the Supreme Court examined the police power as the legal basis for land use regulations.<sup>85</sup> In *Berman*, the appellants, who owned land within a blighted area slated for redevelopment, brought an action to enjoin the condemnation of their property under the District of Columbia Redevelopment Act.<sup>86</sup> While the majority of the property within the area designated for redevelopment consisted of

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<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> See *John Donnelly & Sons, Inc. v. Outdoor Adver. Bd.*, 339 N.E.2d 709, 717 (Mass. 1975) ("[A]esthetics alone may justify the exercise of the police power.").

<sup>80</sup> *Euclid v. Ambler Realty Co.*, 272 U.S. 365, 386–87 (1926).

<sup>81</sup> *Id.* at 387.

<sup>82</sup> See *id.*

<sup>83</sup> *Id.* at 388.

<sup>84</sup> *Id.*

<sup>85</sup> *Berman v. Parker*, 348 U.S. 26, 32–33 (1954); CURTIN & TALBERT, *supra* note 3, at 1.

<sup>86</sup> 348 U.S. at 28.

rundown housing, a department store was located on the appellants' property.<sup>87</sup> The Act called for the elimination of substandard housing and blighted areas in D.C. to promote public welfare, and established that it was a public use to acquire and improve property within the "slums."<sup>88</sup> The appellants argued that the condemnation of their property pursuant to the Act was unconstitutional because their property was not being taken to rid the area of "slums," but "merely to develop a better balanced, more attractive community."<sup>89</sup>

The appellants in *Berman* challenged the application of the Act to their property as beyond the limits of the police power, arguing the Act did not promote public welfare.<sup>90</sup> The Supreme Court rejected this argument, concluding that "[t]he concept of the public welfare is broad and inclusive."<sup>91</sup> The Court reasoned that because of the broad scope of the police power, it was within the power of the legislature to determine that beautiful and well-balanced communities promote public welfare and, thus, to enact legislation based on this determination.<sup>92</sup>

It follows from *Berman* that growth management regulations such as moratoria can be a lawful exercise of the police power.<sup>93</sup> For a growth management regulation such as a moratorium to fall within the police power, however, it must reasonably relate to the public health, safety, or welfare of a municipality's residents.<sup>94</sup>

#### D. *Standards for Evaluating the Validity of Moratoria*

An analysis of a land use regulation must determine whether the regulation is appropriate under the police power.<sup>95</sup> This analysis should assess the purposes of the land use regulation based on judicial precedent.<sup>96</sup> The Supreme Court of California thoroughly discussed the evaluation of growth management ordinances in *Associated Home Builders, Inc. v. City of Livermore*.<sup>97</sup> There, the court assessed a challenge to a local zoning ordinance that prohibited the issuance of residential building permits until local education, sewage disposal, and water sup-

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<sup>87</sup> *Id.* at 30, 31.

<sup>88</sup> *See id.* at 29–30.

<sup>89</sup> *Id.* at 31.

<sup>90</sup> *Id.*

<sup>91</sup> *Id.* at 33.

<sup>92</sup> *Berman*, 348 U.S. at 33.

<sup>93</sup> *See id.*; CURTIN & TALBERT, *supra* note 3, at 409.

<sup>94</sup> CURTIN & TALBERT, *supra* note 3, at 409.

<sup>95</sup> *See id.*

<sup>96</sup> *See id.* at 410.

<sup>97</sup> *Associated Home Builders, Inc. v. City of Livermore*, 557 P.2d 473, 475 (Cal. 1976).

ply facilities complied with specified standards.<sup>98</sup> The plaintiffs argued that the moratorium on building permits exceeded the municipality's authority under the police power.<sup>99</sup>

The court reaffirmed the principle that land use ordinances that substantially limit immigration into a community are constitutional if they are "reasonably related to the welfare of the region affected by the ordinance."<sup>100</sup> In assessing whether the growth restriction related to the general welfare, the court adopted the U.S. Supreme Court's view in *Euclid*.<sup>101</sup> It explained that as long as it is fairly debatable that the ordinance has a reasonable relationship to general welfare, the ordinance will survive a constitutional attack.<sup>102</sup>

The court in *City of Livermore* also established that if the ordinance will affect regions beyond the enacting community, an evaluation of public welfare must include an evaluation of the impact on residents in surrounding areas.<sup>103</sup> Through this evaluation the court incorporated the Supreme Court's stance in *Euclid* that a police power determination requires the development to be considered "in connection with the circumstances and the locality."<sup>104</sup> The court articulated a three-step process for determining whether a growth management ordinance is a valid exercise of the police power.<sup>105</sup> The court explained:

The first step in [the] analysis is to forecast the probable effect and duration of the restriction. . .

The second step is to identify the competing interests affected by the restriction.

. . . [T]he final step is to determine whether the ordinance, in light of its probable impact, represents a reasonable accommodation of the competing interests.<sup>106</sup>

As long as the ordinance bears a relationship to health, safety, or welfare after consideration of the three-step process, then the ordinance is a valid exercise of the police power.<sup>107</sup>

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<sup>98</sup> *Id.*

<sup>99</sup> *Id.* at 483.

<sup>100</sup> *Id.* at 476.

<sup>101</sup> *Id.* at 483; see *Euclid v. Ambler Realty Co.*, 272 U.S. 365, 388 (1926).

<sup>102</sup> *City of Livermore*, 557 P.2d at 483.

<sup>103</sup> *Id.*

<sup>104</sup> See *Euclid*, 272 U.S. at 388.

<sup>105</sup> *City of Livermore*, 557 P.2d at 488; Robin S. Myren, *Growth Control as a Taking*, 25 URB. LAW. 385, 390-91 (1993).

<sup>106</sup> *City of Livermore*, 557 P.2d at 488.

<sup>107</sup> *Id.*

In summary, for a land use ordinance to be found unconstitutional, the regulation must be “arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare.”<sup>108</sup> The courts give great deference to the legislature in evaluating whether a moratorium is reasonably related to public welfare.<sup>109</sup> In *Euclid*, the Supreme Court suggested that it would serve the public welfare to enact zoning regulations that preserved the residential character of a neighborhood.<sup>110</sup> The Court reinforced its broad interpretation of the meaning of legitimate purposes under the police power in *Village of Belle Terre v. Boraas*.<sup>111</sup> There, the Court reasoned that “[t]he police power is not confined to elimination of filth, stench, and unhealthy places. It is ample to lay out zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people.”<sup>112</sup>

### III. LAND USE REGULATIONS ADDRESSING SOCIAL AND ECONOMIC CONCERNS

#### A. Rent Control Regulations

Rent control ordinances provide an illustrative example of economically motivated regulations that courts have held to be valid exercises of the police power.<sup>113</sup> These ordinances stabilize rental prices to protect tenants from rapid increases in prices and are popular in urban areas with large renter populations.<sup>114</sup> Rent control initially emerged as a wartime measure.<sup>115</sup> The earliest form of rent regulation in the United States arose during World War I with the passage of the Soldiers’ and Sailors’ Civil Relief Act of 1918, which, among other things, precluded

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<sup>108</sup> *Euclid*, 272 U.S. at 395. Although not the focus of this Note, it is important to acknowledge that because a moratorium is constitutionally valid does not guarantee that it will be an effective growth management tool. Myren, *supra* note 105, at 387.

<sup>109</sup> *Euclid*, 272 U.S. at 388.

<sup>110</sup> *Id.* at 394.

<sup>111</sup> *Village of Belle Terre v. Boraas*, 416 U.S. 1, 9 (1974).

<sup>112</sup> *Id.*

<sup>113</sup> CURTIN & TALBERT, *supra* note 3, at 3; Terence J. Centner, *Governments and Unconstitutional Takings: When Do Right-to-Farm Laws Go Too Far?*, 33 B.C. ENVTL. AFF. L. REV. 87, 133–34 (2006) (explaining how rent controls were enacted in “furtherance of public welfare”).

<sup>114</sup> 49 LAURA HUNTER DIETZ ET AL., AMERICAN JURISPRUDENCE § 906 (Joseph J. Basano et al. eds., 2d ed. 2006); JACK C. HARRIS, THE RENT CONTROL CONTROVERSY: BACKGROUND, DEBATE AND ALTERNATIVES 8 (1982).

<sup>115</sup> HARRIS, *supra* note 114, at 9.

eviction of military families from rental housing costing a certain, specified amount.<sup>116</sup>

In 1920, New York enacted the Emergency Housing Laws of the State of New York, which were an interrelated group of acts intended to address a shortage of housing toward the end of the War.<sup>117</sup> In *Levy Leasing Co. v. Siegel*, landlords challenged the constitutionality of these laws, specifically the rent control regulations.<sup>118</sup> The Supreme Court upheld the state court's finding that the laws were a valid exercise of the police power.<sup>119</sup> The Court stated:

The warrant for this legislative resort to the police power was the conviction on the part of the state legislators that there existed in the larger cities of the State a social emergency, caused by an insufficient supply of dwelling houses and apartments, so grave that it constituted a serious menace to the health, morality, comfort, and even to the peace of a large part of the people of the State. That . . . unless relieved, the public welfare would suffer in respects which constitute the primary and undisputed, as well as the most usual, basis and justification for exercise of [the police] power.<sup>120</sup>

Rent control significantly expanded during World War II, when economic stimulation created the potential for rapid increases in rental prices.<sup>121</sup> The rent controls enacted during the two world wars were justified by the economic wartime conditions.<sup>122</sup> Eventually, these federal controls were lifted in the years following World War II.<sup>123</sup>

In the 1970s, the Nixon administration instituted nationwide price regulations that included provisions for controlling rental prices in response to inflation concerns.<sup>124</sup> These rent controls became permanent when they were adopted by state and local governments.<sup>125</sup> While the wartime controls were a response to emergency wartime conditions,

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<sup>116</sup> Soldiers' & Sailors' Civil Relief Act of 1918, Pub. L. No. 65-103, § 300, 40 Stat. 440 (codified at 50 U.S.C. app. §§ 101-104); HARRIS, *supra* note 114, at 9.

<sup>117</sup> Emergency Housing Laws of the State of New York, 1920 N.Y. Laws 2477-90; *Levy Leasing Co. v. Siegel*, 258 U.S. 242, 243 (1922).

<sup>118</sup> *Levy Leasing Co.*, 258 U.S. at 243.

<sup>119</sup> *Id.* at 244, 250.

<sup>120</sup> *Id.* at 245.

<sup>121</sup> HARRIS, *supra* note 114, at 9.

<sup>122</sup> DIETZ ET AL., *supra* note 114, § 906.

<sup>123</sup> HARRIS, *supra* note 114, at 10.

<sup>124</sup> *Id.* at 11.

<sup>125</sup> *Id.*

these new rent controls were based on a legal exercise of the police power to address more permanent public welfare issues.<sup>126</sup> Municipalities enacted rent control ordinances for a variety of reasons, including “protect[ing] tenants from landlord abuses[,] . . . reinforc[ing] housing code compliance[,] . . . [and] limiting the rate at which rents are allowed to rise.”<sup>127</sup>

Under the police power, rent control ordinances must have a substantial relationship to the public health, safety, or welfare of the residents of a state or municipality.<sup>128</sup> A California rent control measure, the Cotati Rent Stabilization Ordinance, was upheld by the California Court of Appeal as reasonably related to a legitimate governmental purpose.<sup>129</sup> Here, as with other rent control ordinances, the purpose was to “prevent exploitation of housing shortages by the imposition of excessive rent charges.”<sup>130</sup> The court determined that for ordinances advancing a purely economic interest—as with rent control ordinances—local governments may impose a distinction in treatment based on economic measures as long as the distinction has a “rational relationship” to a “legitimate public purpose.”<sup>131</sup> The court noted that it was “at least debatable” that the challenged rent control ordinance’s economics-based standard had a rational relationship to a legitimate public purpose.<sup>132</sup>

An examination of whether a rent control ordinance relates to public health, safety, or welfare requires a “reasonable factual basis to support the legislative determination” for the regulation.<sup>133</sup> The Supreme Court examined a rent control ordinance in *Pennell v. City of San Jose*.<sup>134</sup> There, a landlord association brought suit alleging, *inter alia*,

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<sup>126</sup> DIETZ ET AL., *supra* note 114, § 906.

<sup>127</sup> HARRIS, *supra* note 114, at 12.

<sup>128</sup> DIETZ ET AL., *supra* note 114, § 907.

<sup>129</sup> Cotati Alliance for Better Hous. v. City of Cotati, 195 Cal. Rptr. 825, 827 (Cal. Ct. App. 1983).

<sup>130</sup> *Id.* at 833.

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> See Gross v. Superior Court, 217 Cal. Rptr. 284 (Cal. Ct. App. 1985); DIETZ ET AL., *supra* note 114, § 907.

<sup>134</sup> *Pennell v. City of San Jose*, 485 U.S. 1, 4 (1988). This case included an examination of the constitutionality of the ordinance. *Id.* The majority of courts have upheld rent control ordinances against constitutional Due Process Clause and Takings Clause challenges. See Note, *The Constitutionality of Rent Control Restrictions on Property Owners' Dominion Interests*, 100 HARV. L. REV. 1067, 1067–69 (1987). Courts have held that rent control restrictions do not violate the Due Process Clause because the regulations are reasonably related to a legitimate goal—preventing extreme rent escalation—under the police power. *Id.* at 1071.

that the ordinance was not a legitimate exercise of the police power.<sup>135</sup> The ordinance's stated purpose was:

[A]lleviat[ing] some of the more immediate needs created by San Jose's housing situation. These needs include but are not limited to the prevention of excessive and unreasonable rent increases, the alleviation of undue hardships upon individual tenants, and the assurance to landlords of a fair and reasonable return on the value of their property.<sup>136</sup>

The Court evaluated this purpose to determine whether it was "arbitrary, discriminatory, or demonstrably irrelevant to the policy the legislature is free to adopt;"<sup>137</sup> the Court found that it was not, and that the ordinance was a legitimate exercise of the police power.<sup>138</sup> One aspect of the Court's holding was the recognition of the validity of governmental intervention to regulate artificially inflated rates or prices.<sup>139</sup> The Court reiterated that price regulation, such as rent control, has the legitimate and rational goal of protecting consumer welfare.<sup>140</sup>

There are instances where courts found rent control ordinances to be invalid, despite the broad reach of the police power and the high level of deference given to the legislature.<sup>141</sup> In *Birkenfeld v. Berkeley*, the Supreme Court of California determined that a city rent control ordinance was not constitutional.<sup>142</sup> The assessment of the *Birkenfeld* ordinance, based on the relationship between the purpose of the control and the valid goals of the police power, took a similar approach as the ordinances discussed above.<sup>143</sup> The court did not question the ordinance's objective of alleviating the "ill effects of the exploitation of a housing shortage."<sup>144</sup> Nevertheless, the court affirmed the lower court's declaration that the regulation was unconstitutional and void because it did not bear a reasonable relationship to the regulation's purpose.<sup>145</sup> Specifically, the court concluded that provisions in the ordinance that

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<sup>135</sup> *Pennell*, 485 U.S. at 12.

<sup>136</sup> *Id.* at 4–5 (quoting SAN JOSE, CAL., CODE OF ORDINANCES § 5701.2 (1979) (recodified at ch. 17.23)).

<sup>137</sup> *Id.* at 11 (quoting Permian Basin Area Rate Cases, 390 U.S. 747, 769–770 (1968)).

<sup>138</sup> *Id.* at 13.

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

<sup>141</sup> *Birkenfeld v. City of Berkeley*, 550 P.2d 1001, 1006 (Cal. 1976).

<sup>142</sup> *Id.*

<sup>143</sup> *See id.* at 1023.

<sup>144</sup> *Id.*

<sup>145</sup> *Id.* at 1029–30.

imposed unreasonably low rent ceilings with an indefinite duration and required an unnecessarily time-intensive procedure for rent adjustments were problematic.<sup>146</sup> Since these provisions were not reasonably related to the proper objectives of the regulation—addressing the exploitation of a housing shortage—the court held that the rent control ordinance was unconstitutional.<sup>147</sup>

## B. *The Validity of Condominium Conversion Moratorium Regulations*

### 1. Condominium Conversion Moratoria

Condominium conversion regulations are another area where courts have held that regulations affecting economic interests in property are a valid exercise of the police power.<sup>148</sup> There are two types of condominium conversion laws: those that impose disclosure requirements on the conversion process, and those that impose outright moratoria on the conversions.<sup>149</sup> This discussion addresses the validity of conversions generally, but focuses primarily on conversion moratoria.

Condominium conversion is most common in low-income urban areas with proximity to desirable urban amenities.<sup>150</sup> Opponents of condominium conversion argue that such conversions create a shortage of affordable housing and displace tenants from their homes and neighborhoods.<sup>151</sup> Condominium conversion regulations first appeared in the 1970s, in response to a condominium building boom.<sup>152</sup> In Chicago, for instance, the city council passed a moratorium on conversions in 1979 after approximately 70,000 apartments were converted to condominiums during the decade, the largest number of any metropolitan area in the United States.<sup>153</sup>

Condominium conversion regulations and moratoria on conversion remain a relevant issue today.<sup>154</sup> These conversions still occur

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<sup>146</sup> *Id.* at 1030.

<sup>147</sup> *Birkenfeld*, 550 P.2d at 1030.

<sup>148</sup> CURTIN & TALBERT, *supra* note 3, at 3.

<sup>149</sup> Note, *The Validity of Ordinances Limiting Condominium Conversion*, 78 MICH. L. REV. 124, 125 (1979).

<sup>150</sup> CALLIES ET AL., *supra* note 2, at 672.

<sup>151</sup> Note, *supra* note 149, at 124.

<sup>152</sup> See Alby Gallun, *Daley Seeks to Slow Condo Conversions*, CHICAGO BUSINESS, Oct. 23, 2006, [http://chicagobusiness.com/cgi-bin/article.pl?article\\_id=26696](http://chicagobusiness.com/cgi-bin/article.pl?article_id=26696).

<sup>153</sup> *Id.*

<sup>154</sup> See Press Release, Bill Rosendahl, City Councilman, Rosendahl Combats Loss of Rental Housing (Aug. 8, 2006), [http://www.lacity.org/council/cd11/press/cd11press12839722\\_08082006.pdf](http://www.lacity.org/council/cd11/press/cd11press12839722_08082006.pdf).

throughout the country and can result in increased rental prices by taking rental buildings off the market.<sup>155</sup> In Los Angeles, City Council member Bill Rosendahl called for a moratorium on condominium conversions in August 2006.<sup>156</sup> Rosendahl introduced the moratorium as a way to confront the loss of rental and affordable housing in parts of Los Angeles.<sup>157</sup> He explained that “[w]e are at the point of crisis. Longtime residents are being forced from their homes in epidemic numbers. They can no longer continue to live in their neighborhoods. Our communities are being ripped apart.”<sup>158</sup> Chicago is once again addressing the issue of condominium conversion.<sup>159</sup> In the fall of 2006, Mayor Richard M. Daley assembled a task force to examine ways to preserve affordable housing in the face of wide-spread condominium conversions.<sup>160</sup>

## 2. Validity of Condominium Conversion Moratoria

Enabling statutes or provisions are required in order to enact condominium conversion restrictions.<sup>161</sup> Valid restrictions on condominium conversion must be rationally related to a legitimate public purpose.<sup>162</sup> In most instances, the public purpose validating a condominium conversion ordinance is the protection of prospective purchasers or existing tenants.<sup>163</sup>

A common argument against condominium conversion moratoria is that land use regulations should not be based on the form of ownership.<sup>164</sup> In *Maplewood Village Tenants Ass’n v. Maplewood Village*, the Superior Court of New Jersey held that land use controls “cannot be employed by a municipality to exclude condominiums or discriminate against the condominium form of ownership, for it is the use rather

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<sup>155</sup> David Leonhardt, *Rents Head Up as Home Prices Put Off Buyers: Ebb Seen in Housing Boom*, N.Y. TIMES, Aug. 25, 2005, at A1.

<sup>156</sup> Rosendahl, *supra* note 154, at 1.

<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

<sup>159</sup> Gallun, *supra* note 152.

<sup>160</sup> *Id.*

<sup>161</sup> Edward H. Ziegler, Jr. et al., *Regulation of Occupancy, Ownership, Rental Housing, and Conversions*, RATNKOPF’S THE LAW OF ZONING AND PLANNING, 2006, at 1, available at 5 RLZPN § 81:15. This Note does not examine issues involving authority for enactment of these regulations.

<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

<sup>164</sup> See *Maplewood Vill. Tenants Ass’n v. Maplewood Vill.*, 282 A.2d 428, 431 (N.J. Super. Ct. Ch. Div. 1971).

than form of ownership that is the proper concern and focus of zoning and planning regulation.”<sup>165</sup>

In *Griffin Development Co. v. City of Oxnard*, the Supreme Court of California considered whether a city could regulate the conversion of apartments into condominiums.<sup>166</sup> The court looked to past cases to establish the standard of judicial review for condominium conversion ordinances as economic regulations.<sup>167</sup> The standard employed was that “legislation regulating prices or otherwise restricting contractual or property rights [was] within the police power if its operative provisions [we]re reasonably related to the accomplishment of a legitimate governmental purpose.”<sup>168</sup>

Accordingly, the court conducted a thorough inquiry into the specific provisions of the ordinance to determine whether it was reasonably related to a legitimate governmental purpose.<sup>169</sup> The court found substantial rationale for the provisions.<sup>170</sup> For instance, the parking space requirement reflected statistics on the quantity of cars owned by homeowners and the required number of bedrooms was based on family size of likely occupants.<sup>171</sup> From this examination, and through reiteration of the elasticity of the police power, the court found that the regulations were plainly related to a legitimate governmental interest.<sup>172</sup> The court concluded that “the [condominium conversion] regulations—reasonably related to the legitimate governmental purpose—[we]re a valid exercise of the city’s police power.”<sup>173</sup>

The California Court of Appeal evaluated a challenge to a San Francisco condominium conversion moratorium in *Leavenworth Properties v. City of San Francisco*, a case raising both equal protection and police power issues.<sup>174</sup> The plaintiff, an apartment building owner hoping to convert his property into condominiums, argued that the city’s ordinance was arbitrary and denied him the equal protection of the law.<sup>175</sup> The challenged ordinance imposed a three-year moratorium on con-

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<sup>165</sup> *Id.*

<sup>166</sup> *Griffin Dev. Co. v. City of Oxnard*, 703 P.2d 339, 339 (Cal. 1985).

<sup>167</sup> *Id.* at 342.

<sup>168</sup> *Id.* (quoting *Birkenfeld v. Berkeley*, 550 P.2d 1001, 1022 (1976)).

<sup>169</sup> *Id.* at 344.

<sup>170</sup> *Id.*

<sup>171</sup> *Id.* at 343.

<sup>172</sup> *Griffin Dev. Co.*, 703 P.2d at 344.

<sup>173</sup> *Id.*

<sup>174</sup> *Leavenworth Props. v. City of San Francisco*, 234 Cal. Rptr. 598, 600 (Cal. Ct. App. 1987).

<sup>175</sup> *Leavenworth Props.*, 234 Cal. Rptr. at 599–600.

dominium conversion.<sup>176</sup> While the plaintiff's challenge was not based on an abuse of the police power, the court still emphasized that, in California, condominium regulation is consistently treated as a lawful exercise of the police power.<sup>177</sup> The court then examined the equal protection claim based on the rational basis test.<sup>178</sup> The rational basis standard was used, rather than the strict scrutiny standard asserted by the plaintiff, because the ordinance was economic legislation.<sup>179</sup>

The court in *Leavenworth Properties* determined that the goal of the ordinance was to maintain available rental housing.<sup>180</sup> The ordinance itself stated that part of its purpose was "[t]o preserve a reasonable balance of ownership and rental housing within the City and County of San Francisco."<sup>181</sup> The court held that this purpose was rationally related to a legitimate state interest and, thus, upheld the constitutionality of the ordinance.<sup>182</sup>

#### IV. THE BEST TOOL FOR THE JOB: CAN CONDOMINIUM CONSTRUCTION MORATORIA VALIDLY AND EFFECTIVELY CONFRONT GENTRIFICATION AND THE CONDO BOOM?

This Note examines whether an ordinance that imposes a moratorium on new condominium construction is an appropriate use of the police power.<sup>183</sup> The analysis addresses condominium construction moratoria generally and considers how different purposes for the moratoria could lead to different outcomes in an assessment of their validity.<sup>184</sup> Before determining the appropriateness of the purposes of these ordinances, however, authority must exist to enact the regulations.<sup>185</sup> Once municipal authority to enact a development moratorium is established, the next step is to determine whether the purpose, or purposes, of a moratorium sufficiently relate to the public's health, safety, or welfare.<sup>186</sup> Since the courts have not directly addressed the validity of condominium construction moratoria, this Note looks to ap-

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<sup>176</sup> *Id.* at 599.

<sup>177</sup> *Id.*

<sup>178</sup> *Id.* at 600.

<sup>179</sup> *See id.*

<sup>180</sup> *Id.* at 600-01.

<sup>181</sup> *Leavenworth Props.*, 234 Cal. Rptr. at 600 (quoting S.F., CAL., MUN. CODE art. 1, § 1302(c)(1) (1979)).

<sup>182</sup> *Id.* at 600, 603.

<sup>183</sup> *See* CURTIN & TALBERT, *supra* note 3, at 1; EAGLE, *supra* note 72, at 223.

<sup>184</sup> *See* ROHAN, *supra* note 36, § 53C.08[10].

<sup>185</sup> *Id.* § 22, at 22-1.

<sup>186</sup> *See* Berman v. Parker, 348 U.S. 26, 32 (1954).

plicable court decisions in related matters to predict how a court might address a challenge to a condominium construction moratorium.<sup>187</sup> Analogies to rent control and condominium conversion ordinances, thus, provide a helpful framework for assessing the validity of condominium construction moratoria.<sup>188</sup>

#### A. Municipalities May Enact Land Use Moratoria

A municipality must have the authority to enact a land use regulation, including a condominium moratorium; without authority, the regulation is invalid.<sup>189</sup> Authority to enact land use regulations comes from the police power and, thus, requires that the regulations relate to the general health, safety, or welfare of the public.<sup>190</sup> The Supreme Court established that use-focused ordinances addressed health, safety, and welfare concerns and were proper applications of the police power in *Euclid v. Ambler Realty Co.*, when it upheld challenged zoning regulations.<sup>191</sup> The Court expanded the *Euclid* holding beyond zoning ordinances in *Berman v. Parker*, when it determined that an ordinance regarding the redevelopment of a deteriorating area was constitutionally sound.<sup>192</sup> *Euclid*, *Berman*, and many other cases since, have established that the police power may be used to enact land use regulations.<sup>193</sup>

As a result, it is now an accepted principle that municipalities have the authority, through the police power, to enact ordinances and regulations affecting the use of land.<sup>194</sup> This principle provides the first step in establishing condominium construction moratoria as valid regulations.<sup>195</sup> Still, the Court in *Euclid* emphasized that evaluations of zoning ordinances must be considered on a case-by-case basis because of the difficulty in precisely defining the police power and the lack of a clear

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<sup>187</sup> See generally *Levy Leasing Co. v. Siegel*, 258 U.S. 242 (1922) (upholding constitutionality of wartime rent control laws); *Griffin Dev. Co. v. City of Oxnard*, 703 P.2d 339 (Cal. 1985) (holding that regulating condominium conversion accomplishes a legitimate government purpose); *Cotati Alliance for Better Hous. v. City of Cotati*, 195 Cal. Rptr. 825 (Cal. Ct. App. 1983) (upholding a rent control ordinance with a purely economic interest as rationally related to a legitimate public purpose).

<sup>188</sup> See *Levy Leasing Co.*, 258 U.S. at 243; *Griffin Dev. Co.*, 703 P.2d at 339; *Cotati Alliance for Better Hous.*, 195 Cal. Rptr. at 827.

<sup>189</sup> See ROHAN, *supra* note 36, § 22, at 22-1.

<sup>190</sup> See DIETZ ET AL., *supra* note 114, § 907.

<sup>191</sup> See *Euclid v. Ambler Realty Co.*, 272 U.S. 365, 386-87 (1926).

<sup>192</sup> See, e.g., *Berman v. Parker*, 348 U.S. 26, 33 (1954); *Euclid*, 272 U.S. at 387.

<sup>193</sup> See *Berman*, 348 U.S. at 32-33; *Euclid*, 272 U.S. at 387.

<sup>194</sup> See *Berman*, 348 U.S. at 32-33.

<sup>195</sup> See *id.*

delineation between uses that are acceptable and unacceptable.<sup>196</sup> While zoning and other land use regulations are valid applications of the police power, this validity does not provide a blanket approval for all such regulations.<sup>197</sup> Thus, the inquiry into the validity of condominium construction moratoria must go further to determine whether such ordinances sufficiently relate to the health, safety, or welfare of a municipality's residents.<sup>198</sup>

*B. Examination of Land Use Moratoria as a Valid Exercise of the Police Power*

A municipality's authority to enact moratoria and other land use regulations does not guarantee that all such regulations will be valid—the particular purpose of a regulation must be a valid exercise of the police power.<sup>199</sup> Because the municipal authority to regulate land use stems from the police power, the purpose of any particular land use moratorium must relate to the health, safety, or welfare of the public.<sup>200</sup> Land use regulations, however, are enacted to achieve many different goals, and can have a broad range of purposes.<sup>201</sup> It is the role of state legislatures to develop and adopt these regulations in response to the needs of their communities.<sup>202</sup> Since land use regulations are enacted through the legislative process—and not enacted by the courts—judicial review gives great deference to the legislature's determination of needed regulations and their purposes.<sup>203</sup>

Accordingly, the courts view themselves as having a very narrow, limited role in determining whether the police power is being exercised for a proper public purpose.<sup>204</sup> The Supreme Court exemplified this view in *Euclid*, when it explained that finding an ordinance unconstitutional under the police power requires that the regulation be

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<sup>196</sup> 272 U.S. at 388; DUBBER, *supra* note 73, at 120.

<sup>197</sup> See *Berman*, 348 U.S. at 32–33; *Euclid*, 272 U.S. at 388.

<sup>198</sup> See *Euclid*, 272 U.S. at 387; CURTIN & TALBERT, *supra* note 3, at 409. The need for a case-by-case assessment of the validity of land use ordinances requires that each condominium construction moratorium be individually assessed and considered in terms of “the circumstances and the locality.” See *Euclid*, 272 U.S. at 388. This Note, however, looks more broadly at condominium construction moratoria and elements that could contribute the validity or invalidity of an ordinance of this kind.

<sup>199</sup> See *Euclid*, 272 U.S. at 388.

<sup>200</sup> See EAGLE, *supra* note 72, at 224.

<sup>201</sup> See CURTIN & TALBERT, *supra* note 3, at 3. Land use regulations can address such issues as housing density, street width, community aesthetics, and economic interest in real property, among other things. *Id.*

<sup>202</sup> See *Berman*, 348 U.S. at 32.

<sup>203</sup> *Id.*

<sup>204</sup> *Id.*

“arbitrary and unreasonable” with “no substantial relation to public health, safety, morals, or general welfare.”<sup>205</sup> An analysis of the various purposes for condominium construction moratoria must consider the great deference that a court would give the legislature in reviewing a challenge to a moratorium regulation.<sup>206</sup>

### 1. Rent Control: Regulations with an Economically Driven Purpose

Like moratoria, municipalities enact rent control regulations as an exercise of the police power.<sup>207</sup> Therefore, these regulations are only upheld if they have a substantial relationship to the public health, safety, or welfare: the same standard that applies to condominium moratoria.<sup>208</sup> Rent control ordinances provide a useful reference point for evaluating condominium construction moratoria because rent control ordinances have economically oriented purposes, such as stabilizing rental prices.<sup>209</sup>

Rent control and condominium construction regulations have illustrative similarities in their purposes and goals.<sup>210</sup> While dealing with the issues in different ways, rent control and condominium construction regulations address impacts on housing in specific neighborhoods or areas.<sup>211</sup> These two types of regulations share the goal of preventing housing shortages for lower-income residents.<sup>212</sup> Additionally, both types of regulations can serve as a response to an influx of more affluent individuals into a traditionally lower-income area.<sup>213</sup> Finally, each demonstrates instances where regulation is used to counteract the effect of market forces on the land use and housing availability in an area.<sup>214</sup>

The Supreme Court’s decision in *Levy Leasing Co. v. Siegel* links insufficient housing with public welfare.<sup>215</sup> The rent control ordinance challenged in this case was enacted in response to the housing shortage

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<sup>205</sup> *Euclid v. Ambler Realty Co.*, 272 U.S. 365, 395 (1926).

<sup>206</sup> *See Berman*, 348 U.S. at 32.

<sup>207</sup> *DIETZ ET AL.*, *supra* note 114, § 907.

<sup>208</sup> *See id.*

<sup>209</sup> *See CURTIN & TALBERT*, *supra* note 3, at 3; *DIETZ ET AL.*, *supra* note 114, § 906.

<sup>210</sup> *See Cotati Alliance for Better Hous. v. City of Cotati*, 195 Cal. Rptr. 825, 827 (Cal. Ct. App. 1983); *McConville*, *supra* note 5, at B1; *Coons*, *supra* note 35.

<sup>211</sup> *See Cotati Alliance for Better Hous.*, 195 Cal. Rptr. at 833; *McConville*, *supra* note 5, at B1.

<sup>212</sup> *See Cotati Alliance for Better Hous.*, 195 Cal. Rptr. at 833.

<sup>213</sup> *See McConville*, *supra* note 5, at B1; *Coons*, *supra* note 35.

<sup>214</sup> *See Cotati Alliance for Better Hous.*, 195 Cal. Rptr. at 833; *McConville*, *supra* note 5, at B1; *Coons*, *supra* note 35.

<sup>215</sup> *Levy Leasing Co. v. Siegel*, 258 U.S. 242, 245 (1922).

following World War I.<sup>216</sup> The Court explained that the legislature resorted to the police power in this instance based on its strong belief that there was a “social emergency[] caused by an insufficient supply of dwelling houses and apartments.”<sup>217</sup> The Court went on to discuss the rent control ordinance’s purpose of relieving the serious housing problem and, thus, preventing harm to the public welfare.<sup>218</sup> Once the Court linked relieving a housing shortage to the public welfare, it stated strongly that the ordinance addressed aspects of the public welfare, “[W]hich constitute the primary and undisputed . . . basis and justification for exercise of [the police] power.”<sup>219</sup>

While examination of rent control ordinances does provide insight into evaluating condominium construction moratoria, drawing analogies between the two kinds of regulations must be done cautiously.<sup>220</sup> Both kinds of regulations share a common goal of addressing housing needs in an area with changing populations or market pressures.<sup>221</sup> While these long-term and broad goals may be the same, the immediate purposes and effects are different.<sup>222</sup> The differences between rent control ordinances and condominium construction moratoria prevent the direct application of cases analyzing the former to the latter.<sup>223</sup>

Rent control ordinances directly regulate the amount of lower-priced housing by requiring the stabilization of rental prices.<sup>224</sup> The connection to more affordably priced housing is not as direct in the case of condominium construction moratoria.<sup>225</sup> The moratoria effectively prevent the development of higher-priced housing, but this restriction does not necessarily correlate to an increased amount of lower-priced housing.<sup>226</sup> For example, if the moratoria were enacted in neighborhoods where new condominiums were being built on vacant lots or open land, a construction moratorium would not result in more

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<sup>216</sup> *Id.* at 243–44; see HARRIS, *supra* note 114, at 9.

<sup>217</sup> *Levy Leasing Co.*, 258 U.S. at 245.

<sup>218</sup> *Id.*

<sup>219</sup> *Id.*

<sup>220</sup> See DIETZ ET AL., *supra* note 114, § 906; McConville, *supra* note 5, at B1; Coons, *supra* note 35.

<sup>221</sup> See DIETZ ET AL., *supra* note 114, § 906; McConville, *supra* note 5, at B1; Coons, *supra* note 35.

<sup>222</sup> See DIETZ ET AL., *supra* note 114, § 906; McConville, *supra* note 5, at B1; Coons, *supra* note 35.

<sup>223</sup> See DIETZ ET AL., *supra* note 114, § 906; McConville, *supra* note 5, at B1; Coons, *supra* note 35.

<sup>224</sup> DIETZ ET AL., *supra* note 114, § 906.

<sup>225</sup> See Coons, *supra* note 35.

<sup>226</sup> See *id.*

lower-priced housing unless an aspect of the moratorium was to develop a plan for creating affordable housing during the construction freeze.<sup>227</sup> Thus, an analysis of condominium construction moratoria, based on an analogy to rent control ordinances, must carefully assess the similarities and differences between the purposes and effects of these respective regulations and draw comparisons accordingly.<sup>228</sup>

## 2. Condominium Conversion Moratoria

In addition to rent control ordinances, condominium conversion moratoria also provide a helpful analytical framework for assessing the validity of the purposes of condominium construction moratoria.<sup>229</sup> Like construction moratoria, condominium conversion moratoria involve the issue of economic interests in property.<sup>230</sup> Both types of moratoria originated in response to large influxes in condominium building booms, one to new construction and the other to conversion of apartment buildings into condominiums.<sup>231</sup>

Many of the arguments currently made by communities in support of proposed condominium construction moratoria have been made in relation to conversion ordinances.<sup>232</sup> For instance, the local discussion surrounding both types of regulations focuses on displacement of current residents, a shortage of affordable housing, and changing neighborhood character as reasons to enact these land use controls.<sup>233</sup>

While the courts have not ruled on condominium construction moratoria, they have examined condominium conversion moratoria.<sup>234</sup> In *Griffin Development Co. v. City of Oxnard*, the Supreme Court of California determined that a city could regulate the conversion of apartments into condominiums.<sup>235</sup> In its analysis, the court stressed that the legislature could restrict economic or property interests as long as the "operative provisions [of the regulation] [we]re reasonably related to the accomplishment of a legitimate governmental purpose."<sup>236</sup> It does

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<sup>227</sup> See McConville, *supra* note 5, at B1.

<sup>228</sup> See DIETZ ET AL., *supra* note 114, § 906; McConville, *supra* note 5, at B1; Coons, *supra* note 35.

<sup>229</sup> See CURTIN & TALBERT, *supra* note 3, at 3.

<sup>230</sup> See *id.*

<sup>231</sup> See McConville, *supra* note 5, at B1; Coons, *supra* note 35; Gallun, *supra* note 152.

<sup>232</sup> See Note, *supra* note 149, at 124; McConville, *supra* note 5, at B1; Coons, *supra* note 35.

<sup>233</sup> See Note, *supra* note 149, at 124; McConville, *supra* note 5, at B1; Rosendahl, *supra* note 154, at 1; Coons, *supra* note 35.

<sup>234</sup> See *Griffin Dev. Co. v. City of Oxnard*, 703 P.2d 339, 339 (Cal. 1985).

<sup>235</sup> *Id.* at 339-40.

<sup>236</sup> *Id.* at 342 (quoting *Birkenfeld v. City of Berkeley*, 550 P.2d 1001, 1022 (1976)).

not directly follow from this ruling that limiting the construction of condominiums could be a legitimate governmental purpose as well, but it does suggest that this kind of regulation could also be valid as an exercise of the police power.<sup>237</sup>

In addition to economic interests, condominium conversion regulations touch on the issue of maintaining the character or composition of a community.<sup>238</sup> In *Leavenworth Properties v. City of San Francisco*, the California Court of Appeal examined a conversion moratorium with the purpose of “preserv[ing] a reasonable balance of ownership and rental housing within the City.”<sup>239</sup> The court held that this justification was a legitimate state interest relating to public welfare and, thus, upheld the constitutionality of the ordinance.<sup>240</sup> This holding suggests that condominium construction moratoria with a similar purpose would also be found to promote a legitimate state interest and fall within the police power.<sup>241</sup> A condominium construction moratorium based on this premise would have the goal of preserving a social balance in the area by limiting the number of newcomers moving into the community as homebuyers of new condominiums.<sup>242</sup>

### 3. The *Associated Home Builders v. City of Livermore* Analysis

Rent control and condominium conversion ordinances supply useful analogies for examining condominium construction moratoria. Examining past court evaluations of growth management ordinances also provide examples of useful processes to assess the validity of such ordinances.<sup>243</sup> One way to evaluate the validity of condominium construction moratoria is to analyze them under the three-step process articulated in *Associated Home Builders v. City of Livermore*.<sup>244</sup>

First, this analysis predicts the likely effects of prohibiting condominium construction in the designated area, taking into account the probable time frame for the moratorium.<sup>245</sup> The analysis then identifies

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<sup>237</sup> See *id.* at 344.

<sup>238</sup> See *Leavenworth Props. v. City of San Francisco*, 234 Cal. Rptr. 598, 600–01 (Cal. Ct. App. 1987); CALLIES ET AL., *supra* note 2, at 672; Note, *supra* note 149, at 124.

<sup>239</sup> *Leavenworth*, 234 Cal. Rptr. at 600 (quoting S.F., CAL., MUN. CODE art. 1, § 1302(c) (1) (1979)).

<sup>240</sup> *Id.*

<sup>241</sup> See *id.*

<sup>242</sup> See *id.*

<sup>243</sup> See *Associated Home Builders v. City of Livermore*, 557 P.2d 473, 488 (Cal. 1976).

<sup>244</sup> *Id.*

<sup>245</sup> See *id.*

the competing interests that are affected by the moratorium.<sup>246</sup> Finally, based on the prior two determinations, the analysis requires evaluating whether the moratorium reasonably accommodates the competing interests.<sup>247</sup>

The need for a case-by-case evaluation of land use regulations precludes a general application of the *City of Livermore* analysis to condominium construction moratoria.<sup>248</sup> Still, the analysis is helpful in predicting how various common factors of the construction moratoria would be considered by a court.<sup>249</sup> For instance, as part of the *City of Livermore* analysis, potential impact on both the area directly regulated by the moratorium and the areas surrounding the moratorium boundary must be considered.<sup>250</sup> This aspect of the *City of Livermore* analysis broadens the *public* that must be considered in assessing a moratorium's relationship to public health, safety, and welfare.<sup>251</sup> Thus, a condominium moratorium with the goal of slowing or eliminating the gentrification process in the regulated community might also have the unintended effect of shifting the flood of construction and individuals to a surrounding area.<sup>252</sup> Depending on the interests of the surrounding area, this shift could have either a negative or positive effect.<sup>253</sup> Alternatively, a condominium construction moratorium that reduces the rate and scale of economic development in the regulated area could similarly impact the local economy in surrounding areas.<sup>254</sup> These examples are just a few instances where a *City of Livermore* analysis would require weighing of the differing effects on the health, safety, and welfare of individuals in the area regulated by a moratorium ordinance and those in surrounding areas.<sup>255</sup>

#### 4. Moratoria Timeframes: What Happens During the Freeze?

Crucial aspects of any condominium construction moratorium are its duration and what occurs while construction is put on hold.<sup>256</sup> There is no definitively established outer time limit for moratoria beyond

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<sup>246</sup> See *id.*

<sup>247</sup> See *id.*

<sup>248</sup> See *Euclid v. Ambler Realty Co.*, 272 U.S. 365, 388 (1926).

<sup>249</sup> See *City of Livermore*, 557 P.2d at 488.

<sup>250</sup> See *id.*

<sup>251</sup> See *id.*

<sup>252</sup> See *CALLIES ET AL.*, *supra* note 2, at 671.

<sup>253</sup> *McGee*, *supra* note 22, at 30.

<sup>254</sup> See *id.*

<sup>255</sup> See *City of Livermore*, 557 P.2d at 488.

<sup>256</sup> See *ROHAN*, *supra* note 36, § 53.C08[10].

which the regulations will be invalid.<sup>257</sup> An evaluation of the duration of a moratorium would examine whether there is a reasonable relationship between the purpose of the moratorium and the steps to be taken during the moratorium, as well as the length of the hold on construction.<sup>258</sup>

Comparing these moratoria to rent control and condominium conversion regulations suggests that a court would find that the purposes behind the moratoria—preserving neighborhood character and addressing the effects of gentrification—could have a rational relationship to public welfare.<sup>259</sup> But the evaluation of the moratoria does not stop there. Even if the goal of the moratorium is valid, the regulation itself will not survive scrutiny unless it includes provisions establishing the steps that will be taken during the moratorium to address the problems targeted by the regulation.<sup>260</sup> A court's evaluation of moratorium provisions would likely be similar to the California Supreme Court's examination of a condominium conversion ordinance in *Griffin Development Co.*<sup>261</sup> There, the regulation was valid because it served a legitimate governmental interest, and the operative provisions had a reasonable relationship to the accomplishment of that interest.<sup>262</sup>

Thus, a moratorium cannot put a hold on condominium construction solely to prevent changes to neighborhood character.<sup>263</sup> The purpose for freezing construction must be to allow the municipality time to take steps that address the adverse impacts of the construction.<sup>264</sup> For example, if rapid condominium construction was displacing lower-income residents in a neighborhood, it could be appropriate for the city to institute a moratorium while it developed a plan to provide more affordable housing in the area.<sup>265</sup> It could also be appropriate to have a moratorium on condominium construction—where a building boom was stressing a neighborhood's infrastructure or encroaching on open space—while the city assessed implementing new land use controls or

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<sup>257</sup> See *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency*, 535 U.S. 302, 353–54 (2002).

<sup>258</sup> See *id.*

<sup>259</sup> See *Griffin Dev. Co. v. City of Oxnard*, 703 P.2d 339, 342 (Cal. 1985); *Cotati Alliance for Better Hous. v. City of Cotati*, 195 Cal. Rptr. 825, 827 (Cal. Ct. App. 1983).

<sup>260</sup> See *Griffin Dev. Co.*, 703 P.2d at 342 (examining provisions of condominium conversion moratorium for their relationship to a legitimate governmental purpose).

<sup>261</sup> See *id.*

<sup>262</sup> *Id.* at 344.

<sup>263</sup> See *id.*

<sup>264</sup> See ROHAN, *supra* note 36, § 53C.08[10].

<sup>265</sup> See *id.*

developed an overall land use plan to guide future construction.<sup>266</sup> A proper moratorium will end once the indicated steps are taken, at which point development may resume, but with new controls in place to manage the impacts of the new development.<sup>267</sup>

#### 5. Effectiveness of Valid Condominium Construction Moratoria

The effectiveness of a condominium construction moratorium is another important consideration for cities exploring the use of this land use tool.<sup>268</sup> Establishing the validity of a moratorium targeted at gentrification under the police power does not guarantee that the regulation will effectively and efficiently address the needs of the community.<sup>269</sup> Moratoria are temporary in nature and are limited in the role they can play in slowing and controlling condominium development in an area.<sup>270</sup> Moratoria cannot permanently limit growth in an area; zoning or other long-term growth management controls must be put in place during the moratoria for them to achieve long-lasting effects.<sup>271</sup> Proposed moratoria should be carefully considered to determine whether freezing development is necessary, or whether other long-term controls can be implemented without moratoria.<sup>272</sup>

#### CONCLUSION

Condominium construction moratoria provide a potential way for municipalities to confront the impact of rapid condominium development. By limiting the number of condominiums built in a certain area, these moratoria may prevent the displacement of local residents due to rising property costs and may preserve local community character. In order for legislatures to enact these regulations—through the exercise of the police power—the regulations' purposes must have a sufficient relationship to public health, safety, or welfare.

Each condominium construction moratorium must be evaluated individually to determine its validity. An assessment of the purposes and impacts of a moratorium must consider the effects to both the area tar-

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<sup>266</sup> *See id.*

<sup>267</sup> *See id.*

<sup>268</sup> *See Myren, supra* note 105, at 387.

<sup>269</sup> *See Berman v. Parker*, 348 U.S. 26, 32–33 (1954); *Euclid v. Ambler Realty Co.*, 272 U.S. 365, 387 (1926).

<sup>270</sup> *See ROHAN, supra* note 36, § 53C.08[10].

<sup>271</sup> *See id.*

<sup>272</sup> *See id.*

geted by the regulation and the surrounding areas likely to be indirectly impacted. Based on determinations of the validity of rent control ordinances and condominium conversion moratoria, a construction moratorium with the purpose of preserving the economic and social composition of a community would most likely be valid under the police power as long as its operative provisions were related to its proper purpose.

Despite the strong likelihood of validity of condominium construction moratoria, planners and regulators should only resort to this drastic land use control when the circumstances in a local community cannot be addressed through other growth management measures. Moratoria are politically charged tools that elicit strong responses from community members. Because of their volatile nature, they should only be used when a community must quickly freeze development to address pressing needs, such as insufficient infrastructure or the availability of affordable housing. A moratorium's effectiveness turns on what is accomplished during the development freeze, rather than the halt in construction itself.

Thus, while community members may view a moratorium as a perfect solution to stopping rapid construction and social change in the neighborhood, a moratorium is not a permanent solution. A moratorium cannot last indefinitely, and once it is lifted the economic and social forces will continue to impact the community. A valid and effective moratorium will use the time during the building freeze to develop growth management controls that will steer these forces and new growth in a positive direction.