

CLAYTON COUNTY

STATE OF GEORGIA

RESOLUTION NO. 2021-39

A RESOLUTION ESTABLISHING A MORATORIUM ON THE ACCEPTANCE OF ANY APPLICATIONS RELATED TO THE DEVELOPMENT OF ANY NEW CONSTRUCTION SINGLE FAMILY RESIDENTIAL SUBDIVISIONS; TO REPEAL CONFLICTING RESOLUTIONS; TO PROVIDE FOR SEVERABILITY; TO PROVIDE FOR AN ADOPTION DATE AND EFFECTIVE DATE; TO PROVIDE A PENALTY; AND FOR OTHER PURPOSES.

**WHEREAS**, the Clayton County Board of Commissioners (“the Board”) has been vested with substantial powers, rights and functions to generally regulate the practice, conduct or use of property for the purposes of maintaining health, morals, safety, security, peace, and the general welfare of the County; and

**WHEREAS**, Georgia law recognizes that local governments may impose moratoria on zoning decisions, building permits, and other development approvals where exigent circumstances warrant the same, pursuant to case law found at *City of Roswell et al v. Outdoor Systems, Inc.*, 274 Ga. 130 (2001); *Lawson v. Macon*, 214 Ga. 278 (1958); *Taylor v. Shetzen*, 212 Ga. 101 (1955); and

**WHEREAS**, the Courts take judicial notice of a local government's inherent ability to impose moratoria on an emergency basis; and

**WHEREAS**, the Georgia Supreme Court, in the case of *DeKalb County v. Townsend*, 243 Ga. 80 (1979), held that, "To justify a moratorium, it must appear first, that the interests of the public generally, as distinguished from those of a particular class, require

such interference; and second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals." The Board has found that the interests of the public necessitate the enactment of a moratorium for health, safety, morals and general welfare purposes by means which are reasonable and not unduly oppressive; and

**WHEREAS**, the Board has, as a part of planning, zoning and growth management, been in review of the County's Zoning Ordinances and has been studying the County's best estimates and projections of the type of development which could be anticipated within Clayton County; and

**WHEREAS**, the Board deems it important to develop a comprehensive plan which integrates all of these concerns and therefore considers this moratorium a proper exercise of its police powers; and

**WHEREAS**, the Board therefore considers it paramount that land use regulation continues in the most orderly and predictable fashion with the least amount of disturbance to landowners and to the citizens of Clayton County. The Board has always had a strong interest in growth management so as to promote the traditional police power goals of health, safety, morals, aesthetics and the general welfare of the community; and in particular the lessening of congestion on County streets, security of the public from crime and other dangers, promotion of health and general welfare of its citizens, protection of the aesthetic qualities of the County including access to air and light, and facilitation of the adequate provision of transportation and other public requirements; and

**WHEREAS**, it is the belief of the Board that the concept of "public welfare" is broad and inclusive; that the values it represents are spiritual as well as physical, aesthetic as well

as monetary; and that it is within the power of the County "to determine that a community should be beautiful as well as healthy, spacious as well as clean, well balanced as well as carefully patrolled," *Berman v. Parker*, 348 U.S. 26, 75 S.Ct. 98 (1954); *Kelo v. City of New London*, 545 U.S. 469, 125 S. Ct. 2655, 162 L. Ed. 2d 439 (2005). It is also the opinion of the County that "general welfare" includes the valid public objectives of aesthetics, conservation of the value of existing lands and buildings within the County, making the most appropriate use of resources, preserving neighborhood characteristics, enhancing and protecting the economic well-being of the community, facilitating adequate provision of public services, and the preservation of the resources of the County; and

**WHEREAS**, the Board is, and has been interested in, developing a cohesive and coherent policy regarding certain uses in the County, and intends to promote community development through stability, predictability and balanced growth which will further the prosperity of the County as a whole.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF  
CLAYTON COUNTY, GEORGIA AND IT IS HEREBY RESOLVED

Section 1. - Findings of Fact. The Board of Commissioners of Clayton County hereby makes the following findings of fact:

(a) It appears that the County's development ordinances, Zoning Ordinance and/or Comprehensive Land Use Plan require an additional review by the County as these ordinances and policies relate to new construction single family residential subdivisions;

(b) Substantial disorder, detriment and irreparable harm would result to the citizens, businesses and Clayton County if the current land use regulation scheme in and for

the above described use in the County were to be utilized by property owners prior to a more thorough review;

(c) The County's ongoing revision of its code, comprehensive plan and zoning ordinances requires the enactment of a limited cessation of development and building permits, occupation tax permits, and other licenses, permits or variances, with respect to the use described in subsection (a) above;

(d) It is necessary and in the public interest to delay, for a reasonable period of time, the processing of any applications for such developments, to ensure that the design, development and location of the same are consistent with the long-term planning objectives of the County; and

(e) That the Georgia Supreme Court has ruled that limited moratoria are reasonable and do not constitute land use when such moratoria are applied throughout the County under *City of Roswell et al v. Outdoor Systems Inc.*, 274 Ga. 130 (2001).

Section 2. - Imposition of Moratorium.

(a) The Board hereby enacts a moratorium on the establishment of any additional new construction single family residential subdivisions and the acceptance by the staff of Clayton County of applications of any kind for or related to any new construction single family residential subdivisions.

(b) The duration of this moratorium shall be until the County adopts a revision of the Code of Clayton County related to the above referenced uses or until 180 days has elapsed, whichever first occurs;

(c) This moratorium shall be effective as of the date of adoption of this Resolution;

(d) This moratorium shall have no effect upon approvals or permits previously issued or as to development plans previously approved by the County. The provisions of this Resolution shall not affect the issuance of permits or site plan reviews that have received preliminary or final approval by the County or for which consultations have been had with the County staff on or before the effective date of this Resolution;

(e) As of the effective date of this Resolution, no applications for development or permits or for any other purposes related to the use described in subsection (a) above shall be accepted by any agent, employee or officer of the County with respect to any property in Clayton County, and any permit so accepted for filing will be deemed in error, null and void and of no effect whatsoever and shall constitute no assurance whatsoever of any right to engage in any act, and any action in reliance on any such permit shall be unreasonable.

Section 3. – Exemption.

(a) The following procedures shall be put in place immediately. Under *Cannon v. Clayton County*, 255 Ga. 63 (1985); *Meeks v. City of Buford*, 275 Ga. 585 (2002); *City of Duluth v. Riverbroke Props.*, 233 Ga. App. 46 (1998), the Supreme Court stated, "Where a landowner makes a substantial change in position by expenditures and reliance on the probability of the issuance of a building permit, based upon an existing zoning ordinance and the assurances of zoning officials, he acquires vested rights and is entitled to have the permit issued despite a change in the zoning ordinance which would otherwise preclude the issuance of a permit." Pursuant to these cases, Clayton County recognizes that, unknown to the County, de facto vesting may have occurred and the following procedures are established to provide exemptions from the moratorium where vesting has occurred:

(b) A written request, including verified supporting data, documents and facts, may be made requesting a review by the Zoning Administrator at a scheduled meeting of any facts or circumstances which the applicant feels substantiates a claim for vesting and the grant of an exemption.

(c) During the term of this moratorium, any person may file an application for exemption from this moratorium with the Department of Community Development. The Zoning Administrator shall schedule a public hearing before the Board of Commissioners within thirty (30) days of receipt of the application. The Board of Commissioners may grant such exemption where the proposed establishment(s) is/are deemed to be in conformity with the proposed development ordinances, proposed Zoning Ordinance and/or the proposed Comprehensive Land Use Plan that are to be considered during the term of this moratorium. The Board shall consider the general terms of the proposed development, the proposed use, the proposed development plans, the benefits of the proposed development to the County, and the comprehensive land use plan for the County in deciding upon a requested exemption.

(d) Should the Board grant such exemption, the staff of Clayton County may accept and process an application for the proposed use. However, the grant of an exemption from this moratorium in no way confers any rights upon the applicant or the exempted plans, applications or requests.

(e) Any exemption granted by the Board of Commissioners shall not constitute final approval of such plans or requests by the County. Any granted exemption shall merely grant the County staff the ability to accept and process the subject application in accordance with all County laws.

Section 4. – Intent.

(a) It is hereby declared to be the intention of the Board of Commissioners that all sections, paragraphs, sentences, clauses and phrases of this Ordinance are and were, upon their enactment, believed by the Board of Commissioners to be fully valid, enforceable and constitutional.

(b) It is hereby declared to be the intention of the Board of Commissioners that, to the greatest extent allowed by law, each and every section, paragraph, sentence, clause or phrase of this Chapter is severable from every other section, paragraph, sentence, clause or phrase of this Resolution. It is hereby further declared to be the intention of the Board of Commissioners that, to the greatest extent allowed by law, no section, paragraph, sentence, clause or phrase of this Resolution is mutually dependent upon any other section, paragraph, sentence, clause or phrase of this Resolution.

(c) In the event that any phrase, clause, sentence, paragraph or section of this Resolution shall, for any reason whatsoever, be declared invalid, unconstitutional or otherwise unenforceable by the valid judgment or decree of any court of competent jurisdiction, it is the express intent of the Board of Commissioners that such invalidity, unconstitutionality or unenforceability shall, to the greatest extent allowed by law, not render invalid, unconstitutional or otherwise unenforceable any of the remaining phrases, clauses, sentences, paragraphs or sections of the Resolution and that, to the greatest extent allowed by law, all remaining phrases, clauses, sentences, paragraphs and sections of the Resolution shall remain valid, constitutional, enforceable, and of full force and effect.

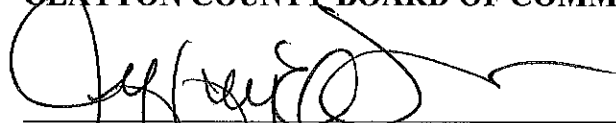
Section 5. All Resolutions or parts of Resolutions in conflict with this Resolution are, to the extent of such conflict, hereby repealed.

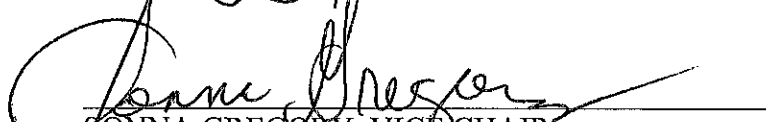
Section 6. The preamble of this Resolution shall be and is hereby incorporated by reference as if fully set out herein.

Section 7. This Resolution shall be effective on the date of its approval by the Board of Commissioners.

SO RESOLVED, this the 16 day of February, 2021.

**CLAYTON COUNTY BOARD OF COMMISSIONERS**

  
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JEFFREY E. TURNER, CHAIRMAN


  
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SONNA GREGORY, VICE CHAIR

  
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GAIL HAMBRICK, COMMISSIONER

  
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FELICIA FRANKLIN, COMMISSIONER

  
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DEMONT DAVIS, COMMISSIONER

ATTEST:

  
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BRENDA B. JAMES, CLERK