

STATE OF GEORGIA
COUNTY OF DEKALB
CITY OF BROOKHAVEN

ORD 2018-06-06

AN ORDINANCE TO PLACE A MORATORIUM ON ALL LAND USE PETITIONS AND LAND DEVELOPMENT PERMITS RELATED TO LAND WITHIN THE BUFORD HIGHWAY IMPROVEMENT PLAN AREA OF THE CITY OF BROOKHAVEN DURING THE REVIEW AND ADOPTION OF THE CITY OF BROOKHAVEN ZONING ORDINANCE REWRITE

WHEREAS, the City of Brookhaven is 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 City of Brookhaven pursuant to Charter Section 1.03(b)(25) and the general laws of the State of Georgia; 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, 549 S.E.2d 90 (2001); Lawson v. Macon, 214 Ga. 278, 104 S.E.2d 425 (1958); Taylor v. Shetzen, 212 Ga. 101, 90 S.E.2d 572 (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 City of Brookhaven finds 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 Mayor and Council of the City of Brookhaven have, as a part of planning, zoning and growth management, reviewed the City's Zoning Ordinances and have been studying the City's best estimates and projections of the type of development which could be anticipated within the City of Brookhaven; and

WHEREAS, the Mayor and Council deem it important to develop a comprehensive plan and zoning ordinance which integrates all of these concerns and therefore consider this moratorium a proper exercise of its police powers; and

WHEREAS, the Mayor and Council therefore consider it paramount that land use regulation continue in the most orderly and predictable fashion with the least amount of disturbance to landowners and to the citizens of the City of Brookhaven. The Mayor and Council have always had a strong interest in growth management to promote the traditional police power goals of health, safety, morals, aesthetics and the general welfare of the community; in particular, the lessening of congestion on City 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 City 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 Mayor and Council of the City of Brookhaven 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 City "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 City that "general welfare" includes the valid public objectives of aesthetics, conservation of the value of existing lands and buildings within the City, 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 City; and

WHEREAS, the Mayor and Council are, and have been interested in, developing a cohesive and coherent policy regarding redevelopment in the City, and have intended to promote community development through stability, predictability and balanced growth which will further the prosperity of the City as a whole.

NOW THEREFORE BE IT RESOLVED by the Mayor and Council of the City of Brookhaven and by the authority of the same:

SECTION I. FINDINGS OF FACT

The Mayor and Council of the City of Brookhaven make the following findings of fact:

- (a) It appears that the City's development ordinances, Zoning Ordinance and/or Comprehensive Land Use Plan require an additional review by the City of Brookhaven as they relate to development within the City;
- (b) Substantial disorder, detriment and irreparable harm would result to the citizens, businesses and City of Brookhaven if the current land use regulation scheme in and for the above described use in the City were to be utilized by property owners prior to a more thorough review;
- (c) The City's ongoing revision of its code, comprehensive plan, and zoning ordinances requires that a limited cessation of land use petitions and land development permits, with respect to the above described use, be enacted;
- (d) It is necessary and in the public interest to delay, for a reasonable period of time, the processing of any such petitions and applications, to ensure that the design, development and location of the same are consistent with the long-term planning objectives of the City; 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 generally under *City of Roswell et al v. Outdoor Systems Inc.*, 274 Ga. 130, 549 S.E.2d 90 (2001).

SECTION II. IMPOSITION OF MORATORIUM

- (a) There is hereby imposed a moratorium on the acceptance by the staff of the City of Brookhaven of any and all land use petitions and land development permits as described in the Code of the City of Brookhaven, within the area described and delineated in Exhibit A, which map and description is adopted and incorporated herein by reference.

- (b) The duration of this moratorium shall be until December 31, 2018.
- (c) The City Council may, prior to the expiration of this moratorium, and after appropriate notice and public comment, extend its term as the Council may elect to approve.
- (d) This moratorium shall be effective as of the date of its adoption.
- (e) This moratorium shall have no effect upon land use petitions and land development permits applied for prior to the effective date of this ordinance.
- (f) The provisions of this Ordinance shall not affect the issuance of permits or site plan reviews that have received final approval by the City on or before the effective date of this Ordinance.
- (g) As of the effective date of this Ordinance, no applications for land use petitions and land development permits as described use be accepted by any agent, employee or officer of the City with respect to any property identified in Exhibit A attached hereto, and any application 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.
- (h) The following procedures shall be put in place immediately. Under *Cannon v. Clayton County*, 255 Ga. 63, 335 S.E.2d 294 (1985); *Meeks v. City of Buford*, 275 Ga. 585, 571 S.E.2d 369 (2002); *City of Duluth v. Riverbroke Props.*, 233 Ga. App. 46, 502 S.E.2d 806 (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 this case, the City of Brookhaven recognizes that, unknown to the City, de facto vesting may have occurred. The following procedures are established to provide exemptions from the moratorium where vesting has occurred:

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

SECTION III.

- (a) It is hereby declared to be the intention of the Mayor and Council that all sections, paragraphs, sentences, clauses and phrases of this Ordinance are and were, upon their enactment, believed by the Mayor and Council to be fully valid, enforceable and constitutional.
- (b) It is hereby declared to be the intention of the Mayor and Council 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 Ordinance. It is hereby further declared to be the intention of the Mayor and Council that, to the greatest extent allowed by law, no section, paragraph, sentence, clause or phrase of this Ordinance is mutually dependent upon any other section, paragraph, sentence, clause or phrase of this Ordinance.
- (c) In the event that any phrase, clause, sentence, paragraph or section of this Ordinance 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 Mayor and Council 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 Ordinance and

that, to the greatest extent allowed by law, all remaining phrases, clauses, sentences, paragraphs and sections of the Ordinance shall remain valid, constitutional, enforceable, and of full force and effect.

SECTION IV.

All Ordinances or parts of Ordinances in conflict with this Ordinance are, to the extent of such conflict, hereby repealed. This section shall not operate to repeal Chapters 7, 14 or 27 of the City of Brookhaven Code of Ordinances in their entirety.

SECTION V.

The preamble of this Ordinance shall be considered to be, and is hereby incorporated by reference as if, fully set out herein.

SO RESOLVED AND ORDAINED, the health, safety and welfare of the public demanding it, this 12th day of June 2018.

Approved by:

Approved as to Form:

John Arthur Ernst Jr., Mayor

Christopher D. Balch, City Attorney

Attest:

Susan Hiott, City Clerk

SEAL