

1 STATE OF GEORGIA  
2 COUNTY OF FULTON  
3 CITY OF SOUTH FULTON

RES 2019-012

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5 A RESOLUTION BY THE CITY OF SOUTH FULTON, GEORGIA, SETTING FORTH A  
6 ZONING AND DEVELOPMENT MORATORIUM PERTAINING TO CITY DISTRICTS  
7 THREE THROUGH SIX AND FOR OTHER LAWFUL PURPOSES.  
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9 (Sponsored by Councilpersons Gilyard and Willis)

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11 WHEREAS, the City of South Fulton ("City") is a municipal corporation duly  
12 organized and existing under the laws of the State of Georgia;

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14 WHEREAS, the duly elected governing authority of the City, is the Mayor and  
15 Council thereof ("City Council");

16 WHEREAS, the City has been vested with the power and authority to regulate  
17 the practice, conduct or use of property for the purposes of maintaining health, morals,  
18 safety, security, peace and the general welfare of the City;

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20 WHEREAS, Georgia cities are authorized to impose moratoria on zoning  
21 decisions, permits and other development approvals. See *City of Roswell et al v.*  
22 *Outdoor Systems, Inc.*, 274 Ga. 130 (2001); *Lawson v. Macon*, 214 Ga. 278 (1958);  
23 *Taylor v. Shetzen*, 212 Ga. 101;

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25 WHEREAS, the City has found that the interests of the public necessitate the  
26 enactment of a moratorium for health, safety, morals and general welfare purposes by  
27 means which are reasonable and not unduly oppressive;

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29 WHEREAS, the City Council, as a part of planning, zoning and growth  
30 management, is in process of assessing the City's comprehensive land use plan  
31 ("Comprehensive Plan") and zoning regulations ("Zoning Code"), and studying the type  
32 of development which could be anticipated within the City;

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34 WHEREAS, the City Council deems it important to develop a Comprehensive  
35 Plan and Zoning Code which enhances safe, healthy and positive development and  
36 therefore consider this moratorium a proper exercise of its police powers;

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38 WHEREAS, the City Council has a strong interest in growth management so as  
39 to promote the traditional police power goals of health, safety, morals, aesthetics and  
40 the general welfare of the community; in particular, the lessening of congestion on City  
41 streets, security of the public from crime and other dangers, promotion of health and  
42 general welfare of its citizens, protection of the aesthetic qualities of the City including

43 access to air and light, and facilitation of the adequate provision of transportation and  
44 other public requirements;

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46 **WHEREAS**, the City Council finds that the concept of "public welfare" is broad  
47 and inclusive; that the values it represents are spiritual as well as physical, aesthetic as  
48 well as monetary; and that it is within the power of the City "to determine that a  
49 community should be beautiful as well as healthy, spacious as well as clean, well  
50 balanced as well as carefully patrolled," *Berman v. Parker*, 348 U.S. 26 (1954); *Kelo v.*  
51 *City of New London*, 545 U.S. 469 (2005);

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53 **WHEREAS**, the City Council finds that "general welfare" includes the valid public  
54 objectives of aesthetics, conservation of the value of existing lands and buildings within  
55 the City, making the most appropriate use of resources, preserving neighborhood  
56 characteristics, enhancing and protecting the economic well-being of the community,  
57 facilitating adequate provision of public services, and the preservation of the resources  
58 of the City;

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60 **WHEREAS**, the City Council considers it paramount that land use regulations  
61 continue in the most orderly and predictable fashion with the least amount of  
62 disturbance to landowners and to the citizens of the City;

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64 **WHEREAS**, this moratorium is enacted as a limited measure to preserve the  
65 status quo pending the City's review of its Comprehensive Plan and Zoning Code;

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67 **WHEREAS**, additionally the current Comprehensive Plan includes goals to  
68 protect natural resources, and the agricultural and rural character of District Four,  
69 however, the protection requires enhancement to the physical appearance and  
70 development design controls while maintaining the agricultural area as agricultural only  
71 and protecting environmentally sensitive lands;

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73 **WHEREAS**, as such, District Four desires to review the Cedar Grove Agricultural  
74 overlay to ensure that it is up to date given residential development within the past ten  
75 years, changing residential demands and the infrastructure needs of the district. The  
76 review will occur during the review of the zoning code and map;

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78 **WHEREAS**, the City desires to impose a six (6) month moratorium as set forth  
79 herein to allow the Planning Commission, City staff and an appointed citizen's  
80 committee time to study these matters in conjunction with a consultant who will, finalize  
81 their recommendations, and propose revisions to better achieve the goals of the City for  
82 its own Comprehensive Plan designed by it before additional development occurs that  
83 may be contrary to the goals in its zoning code, map and Comprehensive Plan;



124 Resolution. In addition, there shall be a moratorium on the acceptance by City  
125 staff, boards and commissions ("City staff") of applications and/or petitions for  
126 group homes within Districts Three, Four, Five and Six for 45 days from the  
127 date of adoption of this Resolution.  
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129 (b) **District Four.** In addition, there is hereby imposed a moratorium on the  
130 acceptance and/or processing by City staff of applications, petitions and/or  
131 requests for approval and construction of development in CUP zoned land in  
132 City District Four which is adjacent to land zoned as agricultural, from the date  
133 of the adoption of this Resolution through September 30, 2019. This paragraph  
134 does not apply to pending and/or approved building permit applications  
135 accepted for review by the City prior to the effective date of this Resolution.  
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137 (c) This moratorium shall have no effect upon approvals or permits previously  
138 issued or as to development plans previously approved by the City.  
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140 (d) The provisions of this Resolution shall not affect the issuance of permits or site  
141 plan reviews that have received preliminary or final approval by the City on or  
142 before the effective date of this Resolution.  
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144 (e) As of the effective date of this Resolution, any action taken by any City  
145 employee, representative or agent which is contrary to this Resolution will be  
146 deemed in error, null and void and of no effect whatsoever and shall constitute  
147 no assurance whatsoever of any right to engage in any act, and any action in  
148 reliance on any such action shall be unreasonable.

149 **Section 3.**

150 **VESTED RIGHTS**

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

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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.

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**Section 4.** It is hereby declared to be the intention of the Mayor and Council that: (a) All sections, paragraphs, sentences, clauses and phrases of this Resolution are or were, upon their enactment, believed by the City Council to be fully valid, enforceable and constitutional.

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(b) To the greatest extent allowed by law, each and every section, paragraph, sentence, clause or phrase of this Resolution is severable from every other section, paragraph, sentence, clause or phrase of this Resolution. 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.

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(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 City 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 Resolution.

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**Section 5.** All prior City zoning moratoriums are hereby concluded and replaced by this moratorium. In addition, all Resolutions and parts of Resolutions in conflict herewith are hereby expressly repealed.

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**Section 6.** The city attorney and city clerk are authorized to make non-substantive editing and renumbering revisions to this Resolution for proofing, codification, and supplementation purposes. The final version of all ordinances shall be filed with the city clerk.

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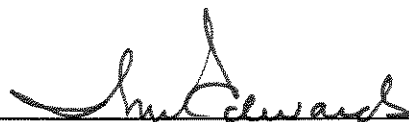
**Section 7.** The effective date of this Resolution shall be March 19, 2019, the date of adoption, unless provided otherwise by the City Charter or state and/or federal law.

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**Section 8. Instruction to City Clerk:** The City Clerk is hereby directed to circulate a copy of this Resolution to the Director of the City Department of Community and Regulatory Affairs and contracted Zoning Consultants promptly following its adoption.

199 THIS RESOLUTION adopted this 26th day of March 2019. CITY OF SOUTH  
200 FULTON, GEORGIA

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205 WILLIAM "BILL" EDWARDS, MAYOR

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208 ATTEST:

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212 S. DIANE WHITE, CITY CLERK

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214 APPROVED AS TO FORM:

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218 EMILIA C. WALKER, CITY ATTORNEY

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220 The foregoing RESOLUTION No. 2019-012, adopted on March 26, 2019 was  
221 offered by Councilmember Willis, who moved its approval. The motion was  
222 seconded by Councilmember Gilyard, and being put to a vote, the result was as  
223 follows:

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	AYE	NAY
William "Bill" Edwards, Mayor	<u>          </u>	<u>          </u>
Mark Baker, Mayor Pro Tem	<u>      X      </u>	<u>          </u>
Catherine Foster Rowell	<u>      X      </u>	<u>          </u>
Carmalitha Lizandra Gumbs	<u>      X      </u>	<u>          </u>
Helen Zenobia Willis	<u>      X      </u>	<u>          </u>
Gertrude Naeema Gilyard	<u>      X      </u>	<u>          </u>
Rosie Jackson	<u>      X      </u>	<u>          </u>
khalid kamau	<u>      X      </u>	<u>          </u>