

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

RES2019-031

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6 **A RESOLUTION BY THE CITY OF SOUTH FULTON, GEORGIA, SETTING FORTH A**
7 **ZONING AND DEVELOPMENT MORATORIUM PERTAINING TO CITY DISTRICTS**
8 **THREE THROUGH FIVE AND FOR OTHER LAWFUL PURPOSES**
9

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

12
13 **WHEREAS**, the duly elected governing authority of the City, is the Mayor and
14 Council thereof ("City Council");

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

18
19 **WHEREAS**, Georgia cities are authorized to impose moratoria on zoning
20 decisions, permits and other development approvals. See *City of Roswell et al v.*
21 *Outdoor Systems, Inc.*, 274 Ga. 130 (2001); *Lawson v. Macon*, 214 Ga. 278 (1958);
22 *Taylor v. Shetzen*, 212 Ga. 101;

23
24 **WHEREAS**, the City has found that the interests of the public necessitate the
25 enactment of a moratorium for health, safety, morals and general welfare purposes by
26 means which are reasonable and not unduly oppressive;

27
28 **WHEREAS**, the City Council, as a part of planning, zoning and growth
29 management, is in process of assessing the City's comprehensive land use plan
30 ("Comprehensive Plan") and zoning regulations ("Zoning Code"), and studying the type
31 of development which could be anticipated within the City;

32
33 **WHEREAS**, the City Council deems it important to develop a Comprehensive
34 Plan and Zoning Code which enhances safe, healthy and positive development and
35 therefore consider this moratorium a proper exercise of its police powers;

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

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

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

50
51 **WHEREAS**, the City Council finds that "general welfare" includes the valid public
52 objectives of aesthetics, conservation of the value of existing lands and buildings within
53 the City, making the most appropriate use of resources, preserving neighborhood
54 characteristics, enhancing and protecting the economic well-being of the community,
55 facilitating adequate provision of public services, and the preservation of the resources
56 of the City;

57
58 **WHEREAS**, the City Council considers it paramount that land use regulations
59 continue in the most orderly and predictable fashion with the least amount of
60 disturbance to landowners and to the citizens of the City;

61
62 **WHEREAS**, this moratorium is enacted as a limited measure to preserve the
63 status quo pending the City's review of its Comprehensive Plan and Zoning Code;

64
65 **WHEREAS**, additionally the current Comprehensive Plan includes goals to
66 protect natural resources, and the agricultural and rural character of District Four,
67 however, the protection requires enhancement to the physical appearance and
68 development design controls while maintaining the agricultural area as agricultural only
69 and protecting environmentally sensitive lands;

70
71 **WHEREAS**, as such, District Four desires to review the Cedar Grove Agricultural
72 overlay to ensure that it is up to date given residential development within the past ten
73 years, changing residential demands and the infrastructure needs of the district. The
74 review will occur during the review of the zoning code and map;

75
76 **WHEREAS**, the City desires to impose a moratorium as set forth herein to allow
77 the City Council members, Planning Commission, City staff and an appointed citizen's
78 committee time to study these matters in conjunction with a consultant who will, finalize
79 their recommendations, and propose revisions to better achieve the goals of the City for
80 its own Comprehensive Plan designed by it before additional development occurs that
81 may be contrary to the goals in its zoning code, map and Comprehensive Plan;

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83 **WHEREAS**, the completion of this process is anticipated within coming months
84 to allow the recommendations to be considered by the City Council in connection with
85 enactment of legislation on the revised zoning code and map; and
86

87 **WHEREAS**, this moratorium is in the best interests of the health and general
88 welfare of the City, its residents and general public.
89

90 **THE COUNCIL OF THE CITY OF SOUTH FULTON, GEORGIA, HEREBY**
91 **RESOLVES** as follows:
92

93 **Section 1.**

94 **FINDINGS OF FACT**
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96 In addition to the findings in the above whereas clauses, the City Council hereby
97 makes the following findings of fact:
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- 99 (a) The City’s Zoning Code and/or Comprehensive Plan require an additional
100 review by the City as they relate to City Districts Three through Five;
101
102 (b) Substantial disorder, detriment and irreparable harm would result to the City
103 and its citizens if the current land use regulation scheme in and for the above
104 described use in the City were to be utilized by property owners for City
105 Districts Three through Five in a manner contrary to restrictions herein, prior to
106 a more thorough review;
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108 (c) The City’s ongoing revision of its Zoning Code and Comprehensive Plan
109 necessitate that this Resolution be enacted as set forth herein; and
110
111 (d) It is necessary and in the public interest to delay, for a reasonable period of
112 time, the processing of any applications as set forth below, to ensure that the
113 development of the same are consistent with the long-term planning objectives
114 of the City.
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116 **Section 2.**

117 **IMPOSITION OF MORATORIUM**
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- 119 (a) **Districts Three and Five.** There is hereby imposed a moratorium on the
120 acceptance by City staff, boards and commissions (“City staff”) of applications
121 and/or petitions for rezoning and variances with respect to property within City
122 Districts Three and Five for 60 days from the date of adoption of this
123 Resolution. In addition, there shall be a moratorium on the acceptance by City
124 staff, boards and commissions (“City staff”) of applications and/or petitions for

125 group homes within Districts Three, Four and Five for 60 days from the date of
126 adoption of this Resolution.

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128 (b) **District Four.** In addition, there is hereby imposed a moratorium on the
129 acceptance and/or processing by City staff of applications, petitions and/or
130 requests for approval and construction of development in CUP zoned land in
131 City District Four which is adjacent to land zoned as agricultural, from the date
132 of the adoption of this Resolution through September 30, 2019. This paragraph
133 does not apply to pending and/or approved building permit applications
134 accepted for review by the City prior to the effective date of this Resolution.

135
136 (c) This moratorium shall have no effect upon approvals or permits previously
137 issued or as to development plans previously approved by the City.

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139 (d) The provisions of this Resolution shall not affect the issuance of permits or site
140 plan reviews that have received preliminary or final approval by the City on or
141 before the effective date of this Resolution.

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143 (e) As of the effective date of this Resolution, any action taken by any City
144 employee, representative or agent which is contrary to this Resolution will be
145 deemed in error, null and void and of no effect whatsoever and shall constitute
146 no assurance whatsoever of any right to engage in any act, and any action in
147 reliance on any such action shall be unreasonable.

148 **Section 3.**

149 **VESTED RIGHTS**

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

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161 A written application, including verified supporting data, documents and facts,
162 may be made requesting a review by the Mayor and Council at a scheduled meeting of

163 any facts or circumstances which the applicant feels substantiates a claim for vesting
164 and the grant of an exemption.

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

171 (b) To the greatest extent allowed by law, each and every section, paragraph, sentence,
172 clause or phrase of this Resolution is severable from every other section, paragraph,
173 sentence, clause or phrase of this Resolution. No section, paragraph, sentence, clause
174 or phrase of this Resolution is mutually dependent upon any other section, paragraph,
175 sentence, clause or phrase of this Resolution.

176 (c) In the event that any phrase, clause, sentence, paragraph or section of this
177 Resolution shall, for any reason whatsoever, be declared invalid, unconstitutional or
178 otherwise unenforceable by the valid judgment or decree of any court of competent
179 jurisdiction, it is the express intent of the City Council that such invalidity,
180 unconstitutionality or unenforceability shall, to the greatest extent allowed by law, not
181 render invalid, unconstitutional or otherwise unenforceable any of the remaining
182 phrases, clauses, sentences, paragraphs or sections of the Resolution.

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

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

190 **Section 7.** The effective date of this Resolution shall be July 15, 2019, the date of
191 adoption, unless provided otherwise by the City Charter or state and/or federal law.

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

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197 THIS RESOLUTION adopted this 15th day of July 2019.

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CITY OF SOUTH FULTON, GEORGIA



WILLIAM "BILL" EDWARDS, MAYOR

ATTEST:



S. DIANE WHITE, CITY CLERK

APPROVED AS TO FORM:



EMILIA C. WALKER, CITY ATTORNEY



240 The foregoing RESOLUTION No. 2019-031, adopted on July 15, 2019 was offered
241 by Councilmember Rowell, who moved its approval. The motion was seconded by
242 Councilmember Jackson, and being put to a vote, the result was as follows:
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	AYE	NAY
William "Bill" Edwards, Mayor	_____	_____
Mark Baker, Mayor Pro Tem	X_____	_____
Catherine Foster Rowell	X_____	_____
Carmalitha Lizandra Gumbs	X_____	_____
Helen Zenobia Willis	X_____	_____
Gertrude Naeema Gilyard	X_____	_____
Rosie Jackson	X_____	_____
khalid kamau	X_____	_____