

CITY OF HAPEVILLE

STATE OF GEORGIA

RESOLUTION NO. 2016-06

A RESOLUTION BY THE MAYOR AND COUNCIL OF THE CITY OF HAPEVILLE, GEORGIA ESTABLISHING A MORATORIUM ON THE ENFORCEMENT OF THE CODE OF ORDINANCES REGULATING THE USE OF IMPERVIOUS AND PERVIOUS MATERIALS IN THE SURFACE AREAS OF PARKING LOTS; TO REPEAL CONFLICTING RESOLUTIONS; TO PROVIDE FOR SEVERABILITY; TO PROVIDE FOR AN ADOPTION DATE AND EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, the City of Hapeville 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 City of Hapeville; 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 are not unduly oppressive upon individuals." The City of Hapeville 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 Mayor and Council have always had a strong interest in the promotion of 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 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 Hapeville 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 certain uses 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; and

NOW THEREFORE be it resolved by the Mayor and Council of the City of Hapeville and by the authority of the same:

SECTION I.

FINDINGS OF FACT

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

(a) It appears that certain provisions of the Code of Ordinances of the City of Hapeville (the “Code”), including but not limited to Section 93-23-5, require additional review as those provisions relate to the use of impervious and pervious materials in the surface areas of parking lots;

(b) Substantial disorder, detriment and irreparable harm would result to the citizens, businesses and City of Hapeville if the current set of ordinances for the above described use in the City were to be utilized by property owners prior to a more thorough review;

(c) The City imposed a moratorium on the enforcement of the Code provisions concerning the use of impervious and pervious materials in the surface areas of parking lots on March 26, 2015; extended that moratorium on September 15, 2015; and did not revise the provisions during the period covered by that moratorium;

(d) The City's ongoing revision of its code and zoning ordinances requires that a limited cessation of the enforcement of the provisions of the Code as they relate to the use of impervious and pervious materials in the surface areas of parking lots; 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 City 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 enforcement of the provisions of the Code of Ordinances of the City of Hapeville, including but not limited to Section 93-23-5, to the extent those provisions regulate the use of impervious and pervious materials in the surface areas of parking lots. The duration of this moratorium shall be until the City adopts a revision of the City Code of the City of Hapeville related to the above referenced use or until September 21, 2016, whichever first occurs. This moratorium shall be effective as of the date of the adoption of this Resolution;

(b) This moratorium shall have no effect upon approvals or permits previously issued or as to development plans previously approved by the City. 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 City on or before the effective date of this Resolution;

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 Resolution 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 Resolution 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 Mayor and Council 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 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 this 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 IV.

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

SECTION V.

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

SO RESOLVED this _____ day of May, 2016.

CITY OF HAPEVILLE, GEORGIA

ALAN HALLMAN, Mayor

ATTEST:

Jennifer Elkins, City Clerk

APPROVED AS TO FORM:

Steven M. Fincher, City Attorney