

1 **STATE OF GEORGIA**  
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3 **CITY OF HAPEVILLE**  
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6 **ORDINANCE NO. 2016-07**  
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8 AN ORDINANCE BY THE MAYOR AND COUNCIL OF THE CITY OF  
9 HAPEVILLE, GEORGIA IMPOSING A MORATORIUM ON THE ACCEPTANCE OF  
10 APPLICATIONS FOR PERMITS, LICENSES OR INSPECTIONS RELATED TO THE  
11 DEVELOPMENT OF EXTENDED STAY HOTELS; TO REPEAL CONFLICTING  
12 ORDINANCES; TO PROVIDE FOR SEVERABILITY; TO PROVIDE FOR AN ADOPTION  
13 DATE AND EFFECTIVE DATE; TO PROVIDE A PENALTY; AND FOR OTHER  
14 PURPOSES.

15 **WHEREAS**, the City of Hapeville has been vested with substantial powers, rights and  
16 functions to generally regulate the practice, conduct or use of property for the purposes of  
17 maintaining health, morals, safety, security, peace, and the general welfare of the City of  
18 Hapeville; and

19 **WHEREAS**, Georgia law recognizes that local governments may impose moratoria on  
20 zoning decisions, building permits, and other development approvals where exigent  
21 circumstances warrant the same, pursuant to case law found at *City of Roswell et al v. Outdoor*  
22 *Systems, Inc.*, 274 Ga. 130, 549 S.E.2d 90 (2001); *Lawson v. Macon*, 214 Ga. 278, 104 S.E.2d  
23 425 (1958); *Taylor v. Shetzen*, 212 Ga. 101, 90 S.E.2d 572 (1955); and

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

26           **WHEREAS**, the Georgia Supreme Court, in the case of *DeKalb County v. Townsend*,  
27 243 Ga. 80 (1979), held that, "To justify a moratorium, it must appear first, that the interests of  
28 the public generally, as distinguished from those of a particular class, require such interference;  
29 and second, that the means are reasonably necessary for the accomplishment of the purpose, and  
30 not unduly oppressive upon individuals." The City of Hapeville has found that the interests of  
31 the public necessitate the enactment of a moratorium for health, safety, morals and general  
32 welfare purposes by means which are reasonable and not unduly oppressive; and

33           **WHEREAS**, the Mayor and Council of the City of Hapeville have, as a part of planning,  
34 zoning and growth management, been in review of the City's Zoning Ordinances and have been  
35 studying the City's best estimates and projections of the type of development which could be  
36 anticipated within the City of Hapeville; and

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

40           **WHEREAS**, the Mayor and Council therefore consider it paramount that land use  
41 regulation continue in the most orderly and predictable fashion with the least amount of  
42 disturbance to landowners and to the citizens of the City of Hapeville. The Mayor and Council  
43 have always had a strong interest in growth management so as to promote the traditional police  
44 power goals of health, safety, morals, aesthetics and the general welfare of the community; in  
45 particular, the lessening of congestion on City streets, security of the public from crime and other  
46 dangers, promotion of health and general welfare of its citizens, protection of the aesthetic

47 qualities of the City including access to air and light, and facilitation of the adequate provision of  
48 transportation and other public requirements; and

49         **WHEREAS**, it is the belief of the Mayor and Council of the City of Hapeville that the  
50 concept of "public welfare" is broad and inclusive; that the values it represents are spiritual as  
51 well as physical, aesthetic as well as monetary; and that it is within the power of the City "to  
52 determine that a community should be beautiful as well as healthy, spacious as well as clean,  
53 well balanced as well as carefully patrolled," *Berman v. Parker*, 348 U.S. 26, 75 S.Ct. 98 (1954);  
54 *Kelo v. City of New London*, 545 U.S. 469, 125 S. Ct. 2655, 162 L. Ed. 2d 439 (2005). It is also  
55 the opinion of the City that "general welfare" includes the valid public objectives of aesthetics,  
56 conservation of the value of existing lands and buildings within the City, making the most  
57 appropriate use of resources, preserving neighborhood characteristics, enhancing and protecting  
58 the economic well-being of the community, facilitating adequate provision of public services,  
59 and the preservation of the resources of the City; and

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

64         **BE IT AND IT IS HEREBY ORDAINED BY THE MAYOR AND COUNCIL OF**  
65 **THE CITY OF HAPEVILLE** and by the authority of the same:

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67 **SECTION I.**

68 **FINDINGS OF FACT**

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

71 (a) It appears that the City’s development ordinances, Zoning Ordinance and/or  
72 Comprehensive Land Use Plan require an additional review by the City of  
73 Hapeville as they relate to the development of extended stay hotels;

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

78 (c) The City's ongoing revision of its code, comprehensive plan and zoning  
79 ordinances requires that a limited cessation of development and building permits,  
80 occupation tax permits, and other licenses and permits, with respect to the above  
81 described use, be enacted;

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

86 (e) That the Georgia Supreme Court has ruled that limited moratoria are reasonable  
87 and do not constitute land use when such moratoria are applied throughout the

88 City under *City of Roswell et al v. Outdoor Systems Inc.*, 274 Ga. 130, 549 S.E.2d  
89 90 (2001).

90 **SECTION II.**

91 **IMPOSITION OF MORATORIUM**

92 (a) There is hereby imposed a moratorium on the acceptance by the staff of the City of  
93 Hapeville of rezoning or the acceptance of applications for variances, permits or  
94 inspections for the development of any “extended stay hotels,” or for any other license or  
95 permit, for the purpose of authorizing such or similar uses as described in the Zoning  
96 Ordinance of the City of Hapeville.

97 (b) “Extended stay hotel” shall include any building that otherwise meets the definition of  
98 hotel, but in which Cooking Facilities are included in more than twenty (20) percent of  
99 the total units. For the purposes of this Chapter, "Cooking Facilities" shall mean a stove  
100 top burner; a hotplate that does not serve as an integral part of an appliance designed  
101 solely to produce coffee; a conventional oven; a convection oven; a grill; a hibachi; or  
102 any oven producing heat using resistance heating elements or infrared heating sources.  
103 Microwaves and coffee makers shall not be considered Cooking Facilities.

104 (c) The duration of this moratorium shall be until the City adopts a revision to the City Code  
105 of the City of Hapeville related to the above referenced use, or until June 7, 2016,  
106 whichever first occurs.

107 (d) This moratorium shall be effective as of March 5, 2016.

108 (e) This moratorium shall have no effect upon approvals or permits previously issued or as to  
109 development plans previously approved by the City. The provisions of this Ordinance

110 shall not affect the issuance of permits or site plan reviews that have received preliminary  
111 or final approval by the City on or before the effective date of this Ordinance.

112 (f) As of the effective date of this Ordinance, no applications for rezoning, development,  
113 variances or permits for the above described use will be accepted by any agent, employee  
114 or officer of the City with respect to any property in the City of Hapeville, and any permit  
115 so accepted for filing will be deemed in error, null and void, and of no effect whatsoever  
116 and shall constitute no assurance whatsoever of any right to engage in any act, and any  
117 action in reliance on any such permit shall be unreasonable.

118 (g) The following procedures shall be put in place immediately. Under *Cannon v. Clayton*  
119 *County*, 255 Ga. 63, 335 S.E.2d 294 (1985); *Meeks v. City of Buford*, 275 Ga. 585, 571  
120 S.E.2d 369 (2002); *City of Duluth v. Riverbroke Props.*, 233 Ga. App. 46, 502 S.E.2d 806  
121 (1998), the Supreme Court stated, "Where a landowner makes a substantial change in  
122 position by expenditures and reliance on the probability of the issuance of a building  
123 permit, based upon an existing zoning ordinance and the assurances of zoning officials,  
124 he acquires vested rights and is entitled to have the permit issued despite a change in the  
125 zoning ordinance which would otherwise preclude the issuance of a permit." Pursuant to  
126 this case, the City of Hapeville recognizes that, unknown to the City, de facto vesting  
127 may have occurred. The following procedures are established to provide exemptions  
128 from the moratorium where vesting has occurred:

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

131 circumstances which the applicant feels substantiates a claim for vesting and the grant of an  
132 exemption.

133 **SECTION III.**

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

137 (b) It is hereby declared to be the intention of the Mayor and Council that, to the  
138 greatest extent allowed by law, each and every section, paragraph, sentence, clause or phrase of  
139 this Chapter is severable from every other section, paragraph, sentence, clause or phrase of this  
140 Ordinance. It is hereby further declared to be the intention of the Mayor and Council that, to the  
141 greatest extent allowed by law, no section, paragraph, sentence, clause or phrase of this  
142 Ordinance is mutually dependent upon any other section, paragraph, sentence, clause or phrase  
143 of this Ordinance.

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

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**SECTION IV.**

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

**SECTION V.**

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

**ORDAINED** this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**CITY OF HAPEVILLE, GEORGIA**

\_\_\_\_\_  
**Alan H. Hallman**, Mayor

**ATTEST:**

\_\_\_\_\_  
**Jennifer Elkins**, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**Steve Fincher**, City Attorney