

1 **STATE OF GEORGIA**

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3 **CITY OF COLLEGE PARK**

4

ORDINANCE NO. 2017-13

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AN ORDINANCE BY THE MAYOR AND COUNCIL OF THE CITY OF COLLEGE
7 PARK, GEORGIA IMPOSING A ONE HUNDRED NINETY-SIX (196) DAY
8 MORATORIUM ON THE ACCEPTANCE OF APPLICATIONS FOR OCCUPATION TAX
9 CERTIFICATES, PERMITS, LICENSES OR INSPECTIONS RELATED TO THE
10 DEVELOPMENT OF HAIR CARE SERVICE-RELATED BUSINESSES WITHIN THE MAIN
11 STREET AND VIRGINIA AVENUE BUSINESS DISTRICT; 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.

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WHEREAS, the City of College Park, Georgia (the “City”) 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; and

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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

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

33 **WHEREAS**, the Mayor and Council of the City have, as a part of planning, zoning and
34 growth management, been in review of the City's Zoning Ordinances and have been studying the
35 City's best estimates and projections of the type of development which could be anticipated
36 within the City; 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. The Mayor and Council have always
43 had a strong interest in growth management so as to promote the traditional police power goals
44 of health, safety, morals, aesthetics and the general welfare of the community; in particular, the
45 lessening of congestion on City streets, security of the public from crime and other dangers,

68 The Mayor and Council of the City of College Park, Georgia (the “City”) hereby make
69 the following findings of fact:

70 (a) It appears that the City’s development ordinances, Zoning Ordinance and/or
71 Comprehensive Land Use Plan require an additional review by the City as they
72 relate to the development of hair care service-related businesses;

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

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

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

85 (e) That the Georgia Supreme Court has ruled that limited moratoria are reasonable
86 and do not constitute land use when such moratoria are applied throughout the
87 City under *City of Roswell et al v. Outdoor Systems Inc.*, 274 Ga. 130, 549 S.E.2d
88 90 (2001).

SECTION II.**IMPOSITION OF MORATORIUM**

(a) There is hereby imposed a moratorium of approximately one hundred ninety-six (196) days on the acceptance by the staff of the City of any application for occupation tax certificates, variances, permits or inspections for the development or establishment of the following businesses within the Main Street and Virginia Avenue Business District (as delineated on the map attached hereto and incorporated herein as Exhibit "A")¹ :

a. Beauty Shops,

b. Beauty Parlors,

c. Beauty Salons,

d. Barber Shops,

e. Braid Shops, and

f. All other hair care-related service businesses, (i) to the extent that the service providers come into contact with human hair in any capacity, or (ii) to the extent that the service providers engage in Barbering or the occupation of Cosmetology as defined in O.C.G.A. § 43-10-1. Such businesses include but are not limited to the following:

i. Nail salons,

ii. Spa establishments,

iii. Massage establishments,

¹ The "Main Street and Virginia Avenue Business District" encompasses portions of the following zoning districts: DB (Downtown Business District); C-1 (Community Business District); CI (Civic Institutional District); VNC (Virginia Avenue Neighborhood Commercial District); and R-4 (Single Family Dwelling District).

- 109 iv. Esthetician services,
110 v. Beauty supply stores, and
111 vi. Retail establishments in which human hair is sold.

112 (b) For the purposes of this ordinance, the terms “Barber Shop”, “Beauty Shop”, “Beauty
113 Salon” and “Beauty Parlor” mean any premises where one or more persons engage in
114 Barbering or in the occupation of a Cosmetologist, as defined below.

115 (c) For the purposes of this ordinance, the term “Barbering” means the occupation of shaving
116 or trimming the beard, cutting or dressing the hair, giving facial or scalp massages, giving
117 facial or scalp treatment with oils or cream or other preparations made for this purpose,
118 either by hand or by means of mechanical appliances, singeing and shampooing the hair,
119 coloring or dyeing the hair, or permanently waving or straightening the hair of an
120 individual for compensation. To the extent that the definition of this term is subsequently
121 revised during the term of this moratorium, the definition of “Barbering” in O.C.G.A. §
122 43-10-1 shall control.

123 (d) For the purposes of this ordinance, the term “Cosmetology”² means any individual who
124 performs any one or more of the following services for compensation:

- 125 a. Cuts or dresses the hair;
126 b. Gives facial or scalp massage or facial and scalp treatment with oils or creams and
127 other preparations made for this purpose, either by hand or mechanical appliance;

² To the extent that the definition of this term is subsequently revised during the term of this moratorium, the definition of “Cosmetologist” in O.C.G.A. § 43-10-1 shall control.

- 128 c. Singes and shampoos the hair, colors or dyes the hair, or does permanent waving
129 of the hair;
- 130 d. Performs nail care, pedicure, or manicuring services as defined in paragraph (9) of
131 this Code section; or
- 132 e. Performs the services of an esthetician as defined in paragraph (5) of this Code
133 section.
- 134 f. Such individual shall be considered as practicing the occupation of a
135 cosmetologist within the meaning of this ordinance; provided, however, that such
136 term shall not mean an individual who only braids the hair by hairweaving;
137 interlocking; twisting; plaiting; wrapping by hand, chemical, or mechanical
138 devices; or using any natural or synthetic fiber for extensions to the hair, and no
139 such individual shall be subject to the provisions of this chapter. Such term shall
140 not apply to an individual whose activities are limited to the application of
141 cosmetics which are marketed to individuals and are readily commercially
142 available to consumers.
- 143 (e) The duration of this moratorium shall be until the City adopts a revision to the City Code
144 related to the above referenced uses, or until March 5, 2018, whichever occurs first.
- 145 (f) This moratorium shall be effective as of August 21, 2017.
- 146 (g) This moratorium applies only to applicants seeking to locate within the Main Street and
147 Virginia Avenue Business District (as delineated on Exhibit "A"); however, this
148 moratorium shall *not apply*, subject to Section 1 of Article XVIII of the Zoning Code, to

149 applicants seeking to replace a business otherwise lawfully operating on the date of
150 adoption of this ordinance.

151 (h) This moratorium shall have no effect upon approvals or permits previously issued or as to
152 development plans previously approved by the City. The provisions of this Ordinance
153 shall not affect the issuance of permits or site plan reviews that have received preliminary
154 or final approval by the City on or before the effective date of this Ordinance.

155 (i) As of the effective date of this Ordinance, no applications for occupation tax certificates,
156 rezoning, development, variances or permits for the above described use will be accepted
157 by any agent, employee or officer of the City with respect to any property in the City, and
158 any permit so accepted for filing will be deemed in error, null and void, and of no effect
159 whatsoever, and shall constitute no assurance whatsoever of any right to engage in any
160 act, and any action in reliance on any such permit shall be unreasonable.

161 (j) The following procedures shall be put in place immediately. Under *Cannon v. Clayton*
162 *County*, 255 Ga. 63, 335 S.E.2d 294 (1985); *Meeks v. City of Buford*, 275 Ga. 585, 571
163 S.E.2d 369 (2002); *City of Duluth v. Riverbroke Props.*, 233 Ga. App. 46, 502 S.E.2d 806
164 (1998), the Supreme Court stated, "Where a landowner makes a substantial change in
165 position by expenditures and reliance on the probability of the issuance of a building
166 permit, based upon an existing zoning ordinance and the assurances of zoning officials,
167 he acquires vested rights and is entitled to have the permit issued despite a change in the
168 zoning ordinance which would otherwise preclude the issuance of a permit." Pursuant to
169 this case, the City recognizes that, unknown to the City, de facto vesting may have

170 occurred. The following procedures are established to provide exemptions from the
171 moratorium where vesting has occurred:

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

176 **SECTION III.**

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

180 (b) It is hereby declared to be the intention of the Mayor and Council that, to the
181 greatest extent allowed by law, each and every section, paragraph, sentence, clause or phrase of
182 this Chapter is severable from every other section, paragraph, sentence, clause or phrase of this
183 Ordinance. It is hereby further declared to be the intention of the Mayor and Council that, to the
184 greatest extent allowed by law, no section, paragraph, sentence, clause or phrase of this
185 Ordinance is mutually dependent upon any other section, paragraph, sentence, clause or phrase
186 of this Ordinance.

187 (c) In the event that any phrase, clause, sentence, paragraph or section of this
188 Ordinance shall, for any reason whatsoever, be declared invalid, unconstitutional or otherwise
189 unenforceable by the valid judgment or decree of any court of competent jurisdiction, it is the
190 express intent of the Mayor and Council that such invalidity, unconstitutionality or
191 unenforceability shall, to the greatest extent allowed by law, not render invalid, unconstitutional

192 or otherwise unenforceable any of the remaining phrases, clauses, sentences, paragraphs or
193 sections of the Ordinance and that, to the greatest extent allowed by law, all remaining phrases,
194 clauses, sentences, paragraphs and sections of the Ordinance shall remain valid, constitutional,
195 enforceable, and of full force and effect.

196 **SECTION IV.**

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

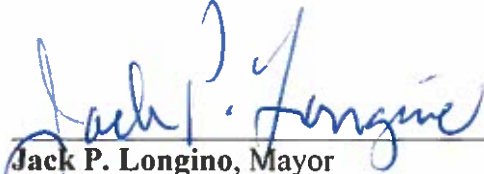
199 **SECTION V.**

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

202 [SIGNATURES CONTAINED ON THE FOLLOWING PAGE]

ORDAINED this 5 day of September, 2017.

CITY OF COLLEGE PARK, GEORGIA



Jack P. Longino, Mayor

ATTEST:



Melissa Brooks, City Clerk

APPROVED BY:



Steven M. Fincher, City Attorney

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EXHIBIT "A"

Main Street and Virginia Avenue Business District

