

1 CITY OF COLLEGE PARK

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3 STATE OF GEORGIA

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6 ORDINANCE NO. 2015-23

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8 AN ORDINANCE BY THE MAYOR AND COUNCIL OF THE CITY OF
9 COLLEGE PARK, GEORGIA EXTENDING FOR A SECOND TIME A MORATORIUM
10 ON THE ACCEPTANCE OF APPLICATIONS FOR PERMITS, LICENSES OR
11 INSPECTIONS RELATED TO THE DEVELOPMENT OF EXTENDED STAY HOTELS
12 AND MOTELS; TO REPEAL CONFLICTING ORDINANCES; TO PROVIDE FOR
13 SEVERABILITY; TO PROVIDE FOR AN ADOPTION DATE AND EFFECTIVE DATE;
14 TO PROVIDE A PENALTY; AND FOR OTHER PURPOSES.

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

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21 WHEREAS, Georgia law recognizes that local governments may impose moratoria on
22 zoning decisions, building permits, and other development approvals where exigent
23 circumstances warrant the same, pursuant to case law found at *City of Roswell et al v. Outdoor*
24 *Systems, Inc.*, 274 Ga. 130, 549 S.E.2d 90 (2001); *Lawson v. Macon*, 214 Ga. 278, 104 S.E.2d
25 425 (1958); *Taylor v. Shetzen*, 212 Ga. 101, 90 S.E.2d 572 (1955); and

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

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

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

49 **WHEREAS**, it is the belief of the Mayor and Council of the City of College Park 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 **NOW THEREFORE BE IT ORDAINED** by the Mayor and Council of the City of
65 College Park and by the authority of the same:

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SECTION I.

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FINDINGS OF FACT

69 The Mayor and Council of the City of College Park hereby make the following findings

70 of 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 College Park 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 College Park if the current land use regulation scheme in
76 and 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 **EXTENSION OF MORATORIUM**

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

97 (b) “Extended stay hotel” shall include any building containing six or more guest rooms
98 rented or leased for sleeping purposes in excess of one week, and that contain Cooking
99 Facilities or Cooking Devices for food preparation. As used herein, “Cooking Facilities”
100 and “Cooking Devices” shall mean a stove top burner, a hotplate that does not serve as an
101 integral part of an appliance designed solely to produce coffee; a conventional oven; a
102 convection oven; a grill; a hibachi; or any oven producing heat using resistance heating
103 elements or infrared heating sources.

104 (c) This is the second moratorium extension. The duration of the original moratorium was
105 from March 24, 2015 until September 20, 2015. The duration of the first extension of the
106 moratorium is from September 21, 2015 until December 20, 2015.

107 (d) The duration of this extended moratorium shall be until the City adopts a revision of the
108 City Code of the City of College Park related to the above referenced use or until March
109 20, 2016, whichever first occurs.

110 (e) This moratorium shall be effective as of December 21, 2015.

111 (f) This moratorium shall have no effect upon approvals or permits previously issued or as to

112 development plans previously approved by the City. The provisions of this Ordinance

113 shall not affect the issuance of permits or site plan reviews that have received preliminary

114 or final approval by the City on or before the effective date of this Ordinance.

115 (g) As of the effective date of this Ordinance, no applications for rezoning, development,

116 variances or permits for the above described use will be accepted by any agent, employee

117 or officer of the City with respect to any property in the City of College Park, and any

118 permit so accepted for filing will be deemed in error, null and void and of no effect

119 whatsoever and shall constitute no assurance whatsoever of any right to engage in any

120 act, and any action in reliance on any such permit shall be unreasonable.

121 (h) The following procedures shall be put in place immediately. Under *Cannon v. Clayton*

122 *County*, 255 Ga. 63, 335 S.E.2d 294 (1985); *Meeks v. City of Buford*, 275 Ga. 585, 571

123 S.E.2d 369 (2002); *City of Duluth v. Riverbroke Props.*, 233 Ga. App. 46, 502 S.E.2d 806

124 (1998), the Supreme Court stated, "Where a landowner makes a substantial change in

125 position by expenditures and reliance on the probability of the issuance of a building

126 permit, based upon an existing zoning ordinance and the assurances of zoning officials,

127 he acquires vested rights and is entitled to have the permit issued despite a change in the

128 zoning ordinance which would otherwise preclude the issuance of a permit." Pursuant to

129 this case, the City of College Park recognizes that, unknown to the City, de facto vesting

130 may have occurred. The following procedures are established to provide exemptions

131 from the moratorium where vesting has occurred:

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

136 **SECTION III.**

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

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

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

154 clauses, sentences, paragraphs and sections of the Ordinance shall remain valid, constitutional,
155 enforceable, and of full force and effect.

156 **SECTION IV.**

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

159 **SECTION V.**

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

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164 [SIGNATURES CONTAINED ON FOLLOWING PAGE]

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169 ORDAINED this 7th day of December 2015.

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CITY OF COLLEGE PARK, GEORGIA



Jack P. Longino, Mayor

ATTEST:



Melissa Brooks, City Clerk

APPROVED AS TO FORM:



Steve Fincher, City Attorney