

1 STATE OF GEORGIA

2

3 CITY OF COLLEGE PARK

4

5 ORDINANCE NO. 2015-14

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8 AN ORDINANCE TO APPROVE A MORATORIUM OF NINETY (90) DAYS FOR THE  
9 ACCEPTANCE OF ANY OCCUPATIONAL TAX CERTIFICATE APPLICATION,  
10 ZONING APPLICATION, APPLICATION FOR SIGN PERMITS, USE PERMITS OR  
11 OTHER APPLICATIONS INVOLVING OR ADDRESSING THE RETAIL SALE OF  
12 CONSUMER FIREWORKS WITHIN THE TERRITORIAL LIMITS OF THE CITY OF  
13 COLLEGE PARK, GEORGIA.

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15 WHEREAS, on May 5, 2015, the Governor of the State of Georgia signed into law,

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House Bill 110, which became effective on July 1, 2015, amending applicable Chapters of the

17

Georgia Code relating to the regulation of consumer fireworks and the role of local governments  
18 in regulating and prohibiting the sale and use of consumer fireworks; and

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WHEREAS, the Mayor and City Council for the City of College Park, Georgia (the  
20 “City”), the governing authority for the City, recognize that the retail sale of consumer fireworks,  
21 as defined and regulated by House Bill 110, is not currently listed as an approved type of  
22 business in the City’s Code of Ordinances; and

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WHEREAS, the Mayor and City Council find it necessary to enact a temporary  
24 moratorium to allow the City time to review and establish an appropriate zoning classification,  
25 use and location determination for the retail sale of consumer fireworks, as defined and regulated  
26 by House Bill 110;

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

30           **WHEREAS**, Georgia law recognizes that local governments may impose moratoria on  
31 zoning decisions, building permits, and other development approvals where exigent  
32 circumstances warrant the same, pursuant to case law found at *City of Roswell et al v. Outdoor*  
33 *Systems, Inc.*, 274 Ga. 130, 549 S.E.2d 90 (2001); *Lawson v. Macon*, 214 Ga. 278, 104 S.E.2d  
34 425 (1958); *Taylor v. Shetzen*, 212 Ga. 101, 90 S.E.2d 572 (1955); and  
35           **WHEREAS**, the Courts take judicial notice of a local government's inherent ability to  
36 impose moratoria on an emergency basis; and  
37           **WHEREAS**, the Georgia Supreme Court, in the case of *DeKalb County v. Townsend*,  
38 243 Ga. 80 (1979), held that, "To justify a moratorium, it must appear first, that the interests of  
39 the public generally, as distinguished from those of a particular class, require such interference;  
40 and second, that the means are reasonably necessary for the accomplishment of the purpose, and  
41 not unduly oppressive upon individuals." The City has found that the interests of the public  
42 necessitate the enactment of a moratorium for health, safety, morals and general welfare  
43 purposes by means which are reasonable and not unduly oppressive; and  
44           **WHEREAS**, the Mayor and City Council have, as a part of planning, zoning and growth  
45 management, been in review of the City's Zoning Ordinances and have been studying the City's  
46 best estimates and projections of the type of development which could be anticipated within the  
47 City; and  
48           **WHEREAS**, the Mayor and City Council deem it important to develop a comprehensive  
49 plan which integrates all of these concerns and therefore consider this moratorium a proper  
50 exercise of their police powers; and  
51           **WHEREAS**, the Mayor and City Council therefore consider it paramount that land use  
52 regulation continue in the most orderly and predictable fashion with the least amount of

53 disturbance to landowners and to the citizens of the City. The Mayor and City Council have  
54 always had a strong interest in growth management so as to promote the traditional police power  
55 goals of health, safety, morals, aesthetics and the general welfare of the community; in particular,  
56 the lessening of congestion on City streets, security of the public from crime and other dangers,  
57 promotion of health and general welfare of its citizens, protection of the aesthetic qualities of the  
58 City including access to air and light, and facilitation of the adequate provision of transportation  
59 and other public requirements; and

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

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

75 **BE IT AND IT IS HEREBY ORDAINED BY THE MAYOR AND COUNCIL OF**  
76 **THE CITY OF COLLEGE PARK, GEORGIA and by the authority thereof:**

77 The Mayor and City Council do hereby impose a moratorium of ninety (90) days for the  
78 acceptance of any occupational tax certificate application, zoning application, application for  
79 sign permits, use permits or other applications involving or addressing the retail sale of consumer  
80 fireworks within the territorial limits of the City of College Park, Georgia in order to allow for  
81 the consideration and adoption of appropriate zoning ordinances covering same, as defined and  
82 required by the Georgia Zoning Procedures Law.

83 **BE IT FURTHER ORDAINED**, said moratorium shall begin at 11:59 p.m. on  
84 September 8, 2015 and end at 11:59 p.m. on December 7, 2015.

85 **SECTION I.**  
86 **FINDINGS OF FACT**

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

- 89 (a) It appears that the City’s Zoning Ordinance requires an additional review by the  
90 City as it relates to zoning of locations in which consumer fireworks may be sold and/or  
91 manufactured;
- 92 (b) Substantial disorder, detriment and irreparable harm would result to the citizens,  
93 businesses and the City if the current land use regulation scheme, in and for the above described  
94 use in the City, were to be utilized by property owners prior to a more thorough review;
- 95 (c) The City’s ongoing revision of its code, comprehensive plan, and zoning  
96 ordinances requires that a limited cessation of development and building permits, occupation tax  
97 permits, and other licenses and permits, with respect to the above described use, be enacted;

98 (d) It is necessary and in the public interest to delay, for a reasonable period of time,  
99 the processing of any applications for such developments to ensure that the design, development  
100 and location of the same are consistent with the long-term planning objectives of the City; and  
101 (e) That the Georgia Supreme Court has ruled that limited moratoria are reasonable  
102 and do not constitute land use when such moratoria are applied throughout the City under *City of*  
103 *Roswell et al v. Outdoor Systems Inc.*, 274 Ga. 130, 549 S.E.2d 90 (2001).

104 **SECTION II.**

105 **IMPOSITION OF MORATORIUM**

106 (a) There is hereby imposed a moratorium on the acceptance by the staff of the City  
107 of occupational tax certificates, rezoning applications, applications for variances, permits or  
108 inspections for the development of any temporary or permanent locations for the sale and/or  
109 manufacture of consumer fireworks.

110 (b) “Consumer fireworks” shall mean “any small fireworks devices containing  
111 restricted amounts of pyrotechnic composition, designed primarily to produce visible or audible  
112 effects by combustion, that comply with the construction, chemical composition, and labeling  
113 regulations of the United States Consumer Product Safety Commission as provided for in Parts  
114 1500 and 1507 of Title 16 of the Code of Federal Regulations, the United States Department of  
115 Transportation as provided for in Part 172 of Title 49 of the Code of Federal Regulations, and the  
116 American Pyrotechnics Association as provided for in the 2001 American Pyrotechnics  
117 Association Standard 87-1, and additionally shall mean Roman candles.” See O.C.G.A. § 25-10-  
118 1(a)(1).

119 (c) This moratorium shall be effective as of the date of its adoption.

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

124 (e) As of the effective date of this Ordinance, no applications for rezoning,  
125 development, variances or permits for the above described use will be accepted by any agent,  
126 employee or officer of the City with respect to any property in the City, and any permit so  
127 accepted for filing will be deemed in error, null and void and of no effect whatsoever and shall  
128 constitute no assurance whatsoever of any right to engage in any act, and any action in reliance  
129 on any such permit shall be unreasonable.

130 (f) However, notwithstanding the foregoing, a written application, including verified  
131 supporting data, documents, and facts, may be made which specifically requests a review by the  
132 Mayor and Council at a scheduled meeting of any facts or circumstances which the applicant  
133 feels substantiates a claim for the grant of an exemption from this Moratorium either by virtue of  
134 an existing vested right to proceed under the existing laws and regulations, or by virtue of  
135 exigent or emergency circumstances.

136 (g) The following procedures shall be put in place immediately. Under *Cannon v.*  
137 *Clayton County*, 255 Ga. 63, 335 S.E.2d 294 (1985); *Meeks v. City of Buford*, 275 Ga. 585, 571  
138 S.E.2d 369 (2002); *City of Duluth v. Riverbroke Props.*, 233 Ga. App. 46, 502 S.E.2d 806  
139 (1998), the Supreme Court stated, “Where a landowner makes a substantial change in position by  
140 expenditures and reliance on the probability of the issuance of a building permit, based upon an  
141 existing zoning ordinance and the assurances of zoning officials, he acquires vested rights and is  
142 entitled to have the permit issued despite a change in the zoning ordinance which would

143 otherwise preclude the issuance of a permit.” Pursuant to this case, the City recognizes that,  
144 unknown to the City, de facto vesting may have occurred. The following procedures are  
145 established to provide exemptions from the moratorium where vesting has occurred:

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

150 **SECTION III.**

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

154 (b) It is hereby declared to be the intention of the Mayor and Council that, to the  
155 greatest extent allowed by law, each and every section, paragraph, sentence, clause or phrase of  
156 this Chapter is severable from every other section, paragraph, sentence, clause or phrase of this  
157 Ordinance. It is hereby further declared to be the intention of the Mayor and Council that, to the  
158 greatest extent allowed by law, no section, paragraph, sentence, clause or phrase of this  
159 Ordinance is mutually dependent upon any other section, paragraph, sentence, clause or phrase  
160 of this Ordinance.

161 **SECTION IV.**

162 (a) This Ordinance shall be codified in a manner consistent with the laws of the State  
163 of Georgia and the City.

164 (b) In the event that any phrase, clause, sentence, paragraph or section of this  
165 Ordinance shall, for any reason whatsoever, be declared invalid, unconstitutional or otherwise

166 unenforceable by the valid judgment or decree of any court of competent jurisdiction, it is the  
167 express intent of the Mayor and Council that such invalidity, unconstitutionality or  
168 unenforceability shall, to the greatest extent allowed by law, not render invalid, unconstitutional  
169 or otherwise unenforceable any of the remaining phrases, clauses, sentences, paragraphs or  
170 sections of the Ordinance and that, to the greatest extent allowed by law, all remaining phrases,  
171 clauses, sentences, paragraphs and sections of the Ordinance shall remain valid, constitutional,  
172 enforceable, and of full force and effect.

173 (c) The effective date of this Ordinance shall be the date of adoption unless otherwise  
174 stated herein.

175 (d) All Ordinances or parts of Ordinances in conflict with this Ordinance are, to the  
176 extent of such conflict, hereby repealed.

177 (e) The preamble of this Ordinance shall be considered to be and is hereby  
178 incorporated by reference as if fully set out herein.

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180 **SO ORDAINED** this the 8th day of September, 2015.  
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**CITY OF COLLEGE PARK, GEORGIA**

  
**JACK P. LONGINO, Mayor**

**Attest:**

  
**MELISSA BROOKS, City Clerk**  
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198 (Seal)



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**APPROVED AS TO FORM:**

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**STEVEN M. FINCHER, City Attorney**