

STATE OF GEORGIA

CITY OF MORROW

RESOLUTION NO. 2019-09

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF MORROW, GEORGIA IMPOSING A ONE HUNDRED AND TWENTY (120) DAY MORATORIUM ON THE ACCEPTANCE OF APPLICATIONS FOR PERMITS, LICENSES OR INSPECTIONS RELATED TO THE DEVELOPMENT OF PERSONAL SERVICE ESTABLISHMENTS, URGENT MEDICAL CARE FACILITIES, CONVENIENCE STORES, BEAUTY SUPPLY STORES, EVENT CENTERS, TIRE STORES, DISCOUNT VARIETY STORES, RESALE SHOPS, NAIL SUPPLY STORES, TAX PREPARATION BUSINESSES; TO REPEAL CONFLICTING ORDINANCES; TO PROVIDE FOR SEVERABILITY; TO PROVIDE FOR AN ADOPTION DATE AND EFFECTIVE DATE; TO PROVIDE A PENALTY; AND FOR OTHER PURPOSES.

WHEREAS, the City of Morrow 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 Morrow; 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 not unduly oppressive upon individuals." The City of Morrow 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 of the City of Morrow have, as a part of planning, zoning and growth management, been in review of the City's Zoning Ordinances and have been studying the City's best estimates and projections of the type of development which could be anticipated within the City of Morrow; and

WHEREAS, the Mayor and Council deem it important to direct development in a manner that is consistent with the current Comprehensive Plan which integrates all of these concerns and therefore consider this moratorium a proper exercise of its police powers; and

WHEREAS, the Mayor and Council therefore consider it paramount that land use regulation continue in the most orderly and predictable fashion with the least amount of disturbance to landowners and to the citizens of the City of Morrow. The Mayor and Council have always had a strong interest in growth management so as to promote the traditional police power goals of health, safety, morals, aesthetics and the general welfare of the community; 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 Morrow 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 that is in adherence to the City's Comprehensive Plan which will further the prosperity of the City as a whole.

THEREFORE, IT IS HEREBY RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF MORROW and by the authority of the same:

SECTION I.

FINDINGS OF FACT

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

- (a) It appears that the City's development ordinances, Zoning Ordinance and/or Comprehensive Land Use Plan require an additional review by the City of Morrow as they relate to the development of Personal Service Establishments, Urgent Medical Care Facilities, Convenience Stores, Beauty Supply Stores, Event Centers, Tire Stores, Discount Variety Stores, Resale Shops, Nail Supply Stores, and Tax Preparation Businesses;
- (b) Substantial disorder, detriment and irreparable harm would result to the citizens, businesses and City of Morrow if the current land use regulation scheme in and for the above described use in the City were to be utilized by property owners prior to a more thorough review;
- (c) The City's ongoing revision of its code, comprehensive plan and zoning ordinances requires that a limited cessation of development and building permits, occupation tax permits, and other licenses and permits, with respect to the above described use, be enacted;
- (d) It is necessary and in the public interest to delay, for a reasonable period of time, the processing of any applications for such developments, to ensure that the design, development and location of the same are consistent with the long-term planning objectives of the City; 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 of approximately ONE HUNDRED AND TWENTY (120) DAYs on the acceptance by the staff of the City of Morrow of any application for variances, permits or inspections, occupation tax certificates or other applicable licenses for the development or establishment of any Personal Service Establishments, Urgent Medical Care Facilities, Convenience Stores, Beauty Supply Stores, Event Centers, Tire Stores, Discount Variety Stores, Resale Shops, Nail Supply Stores, and Tax Preparation Businesses, for the purpose of authorizing such or similar uses as described in the Zoning Ordinance of the City of Morrow on any property upon which a Personal Service Establishment, Urgent Medical Care Facility, Convenience Store, Beauty Supply Store, Event Center, Tire Store, Discount Variety Store, Resale Shop, Nail Supply Store, or Tax Preparation Business has not operated pursuant to a valid occupation tax certificate at any time during the six (6) month period preceding the effective date of this Resolution.
- (b) For the purposes of this Resolution, the term "Personal Service Establishment" includes but is not limited to businesses commonly referred to as Hair Salons, Barber Shops, Weave Shops, Nail Salons, Waxing Salons, Day Spas, Daycares, and Massage Parlors.

- (c) For the purposes of this Resolution, the term "Urgent Care Facility" is defined as a walk-in clinic focused on the delivery of ambulatory care in a dedicated medical facility outside of a traditional emergency department.
- (d) For the purposes of this Resolution, the term "Convenience Store" means a store with extended opening hours and in a convenient location, stocking a limited range of household goods and groceries.
- (e) For the purposes of this Resolution, the term "Beauty Supply Store" means any commercial establishment primarily engaged in the retail sale of personal hair grooming products, including, but not limited to, shampoo, combs, brushes, hair dyes, hair extensions or weaves. The term shall not include any commercial establishment where the retail sale of personal hair grooming products is ancillary to the primary purpose of such establishment.
- (f) For the purposes of this Resolution, the term "Event Center" means a privately operated venue used for receptions or parties, or similar activities.
- (g) For the purposes of this Resolution, the term "Tire Store" means a retail business dealing primarily in the sale of new and used tires.
- (h) For the purposes of this Resolution, the term "Discount Variety Store" means a retail *shop* which sells a variety of products at prices that are lower than the typical market price.
- (i) For the purposes of this Resolution, the term "Resale Shop" means a retail store that sells gently used or refurbished products to customers at less-than-new prices.

- (j) For the purposes of this Resolution, the term "Nail Supply Store" means any commercial establishment primarily engaged in the retail sale of personal grooming products designed for use on hands or feet, with such products including, but not limited to, clippers, buffers, files/emery boards, nail polishes/polish removers, and artificial nails. The term shall not include any commercial establishment where the retail sale of personal grooming products designed for use on hands or feet is ancillary to the primary purpose of such establishment.
- (k) For the purposes of this Resolution, the term "Tax Preparation Business" means a business performing the process of preparing tax returns, often income tax returns, for a person other than the taxpayer in exchange for compensation.
- (l) The duration of this moratorium shall be until the City adopts a revision to the City Code of the City of Morrow related to the above referenced use, or until February 4, 2020, whichever occurs first.
- (m) This moratorium shall be effective as of October 8, 2019.
- (n) 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.
- (o) As of the effective date of this Resolution, no applications for rezoning, development, variances, licenses, occupation tax certificates or permits for the above described use will be accepted by any agent, employee or officer of the City with respect to any property in the City of Morrow, and any permit so accepted for filing will be deemed in error, null

and void, and of no effect whatsoever, and shall constitute no assurance whatsoever of any right to engage in any act, and any action in reliance on any such permit shall be unreasonable.

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

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

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 Chapter 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 Ordinance.

(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 the 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 Resolution or parts of Resolution 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.

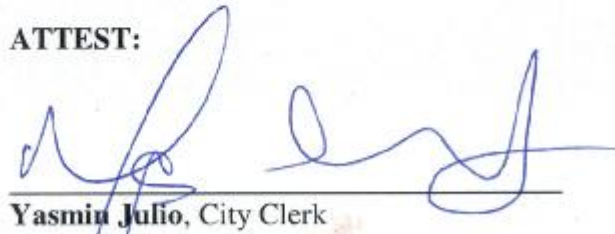
SO RESOLVED AND EFFECTIVE this 24th day of September, 2019.

CITY OF MORROW, GEORGIA



Jeffrey A. DeTar, Mayor

ATTEST:



Yasmin Julio, City Clerk

APPROVED BY:



City Attorney

