

**A RESOLUTION ENACTING A MORATORIUM FOR 90 DAYS
ON THE ACCEPTANCE OF APPLICATIONS AND THE ISSUANCE
OF LAND DISTURBANCE AND OTHER PERMITS FOR
DEVELOPMENT OF ANY SINGLE-FAMILY RESIDENTIAL RENTAL
SUBDIVISIONS, ALSO KNOWN AS HORIZONTAL APARTMENTS; TO
REPEAL CONFLICTING RESOLUTIONS; TO PROVIDE FOR
SEVERABILITY; TO PROVIDE FOR AN ADOPTION DATE AND
EFFECTIVE DATE; TO PROVIDE A PENALTY;
AND FOR OTHER PURPOSES**

WHEREAS, the Carroll County Board of Commissioners (the "Board") is charged with the responsibility of protecting the health, safety and welfare of the residents of Carroll County;

WHEREAS, Carroll County is further charged with the responsibility of approving permitted uses, activities require a conditional use permit within the County's existing zoning categories, and the issuance of permits for land uses including land disturbance permits for activities associated with single-family residential rental subdivisions, also known as horizontal apartments;

WHEREAS, the Board 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 County;

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 (2001); *Lawson v. Macon*, 214 Ga. 278 (1958); *Taylor v. Shetzen*, 212 Ga. 101 (1955);

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

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 Board 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;

WHEREAS, the Board has, as a part of planning, zoning and growth management, been in review of the County's Zoning Ordinances and has been studying the County's best estimates and projections of the type of development which could be anticipated within Clayton County;

WHEREAS, the Board deems it important to develop a comprehensive plan which integrates all of these concerns and therefore considers this moratorium a proper exercise of its police powers;

WHEREAS, the Board therefore considers it paramount that land use regulation continues in the most orderly and predictable fashion with the least amount of disturbance to landowners and to the citizens of Clayton County. The Board has 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; and in particular the lessening of congestion on County 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 County including access to air and light, and facilitation of the adequate provision of transportation and other public requirements;

WHEREAS, it is the belief of the Board 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 County "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); *Kela 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 County that "general welfare" includes the valid public objectives of aesthetics, conservation of the value of existing lands and buildings within the County, 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 County;

WHEREAS, the Board is, and has been interested in, developing a cohesive and coherent policy regarding certain uses in the County, and intends to promote community development through stability, predictability and balanced growth which will further the prosperity of the County as a whole;

WHEREAS, the County's Zoning Ordinance previously included a Higher Density Detached Residential ("HDDR") zoning district that was deleted and removed by the Board on August 11, 2020, which permitted dwellings and/or spaces within a lot or parcel that are for rent or lease as dwellings;

WHEREAS, the staff of the Carroll County is in the process of a review and revision of the Carroll County Zoning Ordinance;

WHEREAS, the staff of the Carroll County requires further time to complete revisions

and to research and consider changes to the ordinances prior to advertising and submitting revised proposed ordinances related to the Carroll County Zoning Ordinance including the permitted uses, conditional use permit requirements and related development regulations to the Board for consideration;

WHEREAS, out of an abundance of caution, the Board wishes to limit applications and land disturbance permits issued in agricultural districts for uses activities associated with mining sites for the removal of minerals and natural materials for a ninety (90) day period during such time the Carroll County staff will draft revisions to and complete required advertising for the Carroll County Zoning Ordinance and Development Regulations for approval, consideration and implementation.

NOW THEREFORE BE IT RESOLVED, by the Carroll County Board of Commissioners as follows:

Section 1. Findings of Fact. The Board hereby makes the following findings of fact:

- (a) It appears that the County's development ordinances, Zoning Ordinance and/or Comprehensive Land Use Plan require an additional review by the County as these ordinances and policies relate to new construction single-family residential rental subdivisions, also known as horizontal apartments.
- (b) Substantial disorder, detriment and irreparable harm would result to the citizens, businesses and Carroll County if the current land use regulation scheme in and for the above-described use in the County were to be utilized by property owners prior to a more thorough review.
- (c) The County's ongoing revision of its code, comprehensive plan and zoning ordinances requires the enactment of a limited cessation of development and building permits, occupation tax permits, and other licenses, permits or variances, with respect to the use described in subsection (a) above.
- (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 County.
- (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 County under *City of Roswell et al v. Outdoor Systems Inc.*, 274 Ga. 130 (2001).

Section 2. Imposition of Moratorium.

- (a) Effective immediately upon the approval of this Resolution, the Board

hereby issues a moratorium on accepting applications and issuing land disturbance and other permits for activities associated with any single-family residential rental subdivisions, also known as horizontal apartments, for all properties located within the unincorporated area of Carroll County.

(b) The Board hereby enacts a moratorium on the establishment of any additional new construction single-family residential rental subdivisions, also known as horizontal apartments, and the acceptance by the staff of Carroll County of applications of any kind for or related to any new construction single-family residential rental subdivision, also known as horizontal apartments.

(c) This moratorium will be for an initial period of time of ninety (90) days from the date of the adoption of this Resolution.

(d) As a result of this Resolution, the Community Development Department, Planning and Zoning Division, its Director, agents and employees, are directed not to accept applications or issue any new land disturbance permits issued for activities associated with any single-family residential rental subdivision, also known as horizontal apartments, located within the unincorporated area of Carroll County.

(e) The Carroll County staff, including the members of the Community Development Departments including its Planning and Zoning Division, along with the assistance of the County Attorney, are directed to continue their efforts to review and provide suggestions for revisions to the Board of Commissioners of the Carroll County Zoning Ordinance and Development Regulations for activities associated with any single-family residential rental subdivision, also known as horizontal apartments.

(f) The duration of this moratorium shall be until the County adopts a revision of the Code of Carroll County related to the above referenced uses or until ninety (90) days has elapsed, whichever first occurs.

(g) This moratorium shall be effective as of the date of adoption of this Resolution.

(h) This moratorium shall have no effect upon approvals or permits previously issued or as to development plans previously approved by the County that expressly allow single-family residential rental subdivisions, also known as horizontal apartments. 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 County on or before the effective date of this Resolution.

(i) As of the effective date of this Resolution, no applications for

development or permits or for any other purposes related to the use described in subsection (a) above shall be accepted by any agent, employee or officer of the County with respect to any property in Carroll County, 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.

Section 3. Exemption.

(a) The following procedures shall be put in place immediately.

(b) During the term of this moratorium, any person may file an application for exemption from this moratorium with the Community Development Department. The written application for exemption from this moratorium shall include all supporting data, documents and facts, and must be verified by the applicant. The Director of the Community Development Department will review all such verified facts and circumstances which the applicant feels substantiates a claim for vested rights under the County's Zoning Ordinance and/or the grant of an exemption to this moratorium. The County Planner shall schedule a public hearing before the Board of Community Appeals in accordance with the County Zoning Ordinance Sec. 102-13. The Board of Community Appeals shall hear and decide appeals from the decision made by the Director of Community Development in accordance with the County's Zoning Ordinance Sec. 102-13. The Board may consider the general terms of the proposed development, the proposed use, the proposed development plans, the benefits of the proposed development to the County, and the comprehensive land use plan for the County in deciding upon a requested exemption.

(c) Should the Board grant such exemption, the staff of the County may accept and process an application for the proposed use. However, the grant of an exemption from this moratorium in no way confers any rights upon the applicant or the exempted plans, applications or requests.

(d) Any exemption granted by the Board shall not constitute final approval of such plans or requests by the County. Any granted exemption shall merely grant the County staff the ability to accept and process the subject application in accordance with all County laws.

Section 4. Intent.

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

(b) It is hereby declared to be the intention of the Board 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 Board 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 Resolution.

(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 Board 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 5. All Resolutions or parts of Resolutions in conflict with this Resolution are, to the extent of such conflict, hereby repealed.

Section 6. The preamble of this Resolution shall be and is hereby incorporated by reference as if fully set out herein.

Section 7. This Resolution shall be effective on the date of its approval by the Board of Commissioners.

SO RESOLVED this ____ day of _____, 2021.

CARROLL COUNTY BOARD OF COMMISSIONERS

By: _____
Michelle Morgan, Chairman

Attest:

Donna Lackey, Clerk