

ORDINANCE
24-008

AN ORDINANCE BY MAYOR AND COUNCIL OF THE CITY OF AUBURN, GEORGIA, ESTABLISHING A MORATORIUM ON REZONING, SPECIAL USE PERMIT AND VARIANCE APPLICATIONS, BUILDING PERMIT APPLICATIONS; SUBDIVISION CONCEPT PLAN SUBMITTALS; AND LAND DISTURBANCE PERMIT APPLICATIONS FOR PROPERTY WITHIN THE DOWNTOWN OVERLAY DISTRICT IDENTIFIED AND DESCRIBED IN THE CITY'S ZONING ORDINANCE; 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 governing authority of the City of Auburn, Georgia (hereinafter, the "City"), is the Mayor and City Council thereof;

WHEREAS, 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

WHEREAS, Georgia law recognizes that local governments may impose moratoria on zoning decisions, building permits, and other development approvals where circumstances warrant the same, *see, City of Roswell 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 a short term or emergency basis; and

WHEREAS, the Georgia Supreme Court, in *DeKalb County v. Townsend Associates*, 243 Ga. 80, 252 S.E.2d 498 (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 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, Gwinnett County recently announced the creation of a new employment center known as "Rowen" in unincorporated Gwinnett County adjacent to and near the City limits; and

WHEREAS, the Rowen project is expected to generate large scale infrastructure improvements in the areas near and inside the City; and

WHEREAS, the Mayor and Council have, as a part of planning, zoning and growth management, been in review of the City's Zoning Ordinances and Development Regulations, and have been studying the City's best estimates and projections of the types of development which could be anticipated within the City, especially the Downtown Overlay District; and

WHEREAS, the Mayor and Council have developed a comprehensive plan which integrates all of these concerns and therefore considers this moratorium a proper exercise of its police powers; and

WHEREAS, the City has drafted an Urban Redevelopment Plan in accordance with the provisions of Chapter 61 of Title 36 of the Official Code of Georgia Annotated, entitled the "Urban Redevelopment Law," as amended (the "Urban Redevelopment Law") and a Livable Centers Initiative (LCI) and identified the City's Downtown Area to enhance the livability, walkability, economic opportunity, sense of community, and overall vitality of the City's historic and future downtown core in response to the issues and circumstances described above;

WHEREAS, the Mayor and Council therefore consider it paramount that land use

regulation in the Downtown Overlay District continue in the most orderly and predictable fashion with the least amount of disturbance to landowners and to the citizens of the City in the core area. 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; and 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 that the concept of "public welfare" is broad and inclusive; that the values it represents are intangible 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." *Kelo v. City of New London*, 545 U.S. 469, 125 S. Ct. 2655 (2005); *Berman v. Parker*, 348 U.S. 26, 75 S. Ct. 98 (1954). 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, updating its ordinances, plans and policies regarding land uses within the boundaries of the Downtown Overlay District, and have intended to promote community development through stability, predictability and balanced growth which will further the prosperity of the City as a whole and coordinating that policy with neighboring jurisdictions.

NOW THEREFORE, THE COUNCIL OF THE CITY OF AUBURN HEREBY

ORDAINS as follows:

SECTION I.

FINDINGS OF FACT

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

(1) Recently, Gwinnett County has announced plans for a large planned growth development known as “Rowen” to serve as an employment center adjacent to the City. The Rowen project is expected to bring large scale infrastructure improvements including roads, water, sanitary sewer, and other utilities in and around the City.

(2) It appears that the City’s Code of Ordinances, Development Regulations, and Zoning Ordinances, particularly the Downtown Overlay District ordinance, warrant and require additional review by the City as they relate to uses within the Overlay District;

(3) Substantial disorder, detriment and irreparable harm would result to the citizens, the businesses and the City if the current land use regulation framework in and for the above described Downtown Overlay District were to be utilized by property owners prior to a more thorough review;

(4) The City's ongoing revision of its Code of Ordinances, Development Regulations, and Zoning Ordinances requires that a limited cessation of rezoning, special use permit and variance applications; subdivision concept plan submittals; building permit applications and land disturbance applications for properties within the Downtown Overlay District be enacted;

(5) It is necessary and in the public interest to delay, for a limited and reasonable period of time, the processing of any applications for such rezonings, special use permits, variances, building permit applications, concept plan submittals, land disturbance and developments within the Downtown Overlay District, to ensure that the design, development and location of the same are consistent with the long-term planning objectives of the City; and

(6) Limited moratoria are reasonable and do not constitute a burdensome regulation on

land use when such moratoria are applied throughout the City, *see City of Roswell v. Outdoor Systems Inc.*, 274 Ga. 130, 549 S.E.2d 90 (2001).

SECTION II.

IMPOSITION OF MORATORIUM

(1) There is hereby imposed a moratorium on the acceptance by the staff of the City of Auburn of rezoning applications; special use permit applications; variance applications; building permit applications; subdivision concept plan submittals; land disturbance permit applications; and development permit applications for properties within the Downtown Overlay District shown in Exhibit "A" attached hereto and incorporated herein by reference;

(2) The duration of this moratorium shall be until the City of Auburn adopts a revision of the City's Zoning Ordinance, Development Regulations and other ordinances related to uses within the Downtown Overlay District or until the expiration of one- hundred eighty (180) days from enactment, whichever first occurs;

(3) This moratorium shall be effective as of the date of adoption of this Ordinance;

(4) 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 Ordinance shall not affect the issuance of permits or site plan reviews that have been submitted to City staff or have received preliminary or final approval by the City on or before the effective date of this Ordinance. The provisions of this Ordinance shall not apply to permit applications for repairs or remodeling of the interior of existing structures which do not change the existing land use or to permits for fences, decks or accessory structures.

(5) As of the effective date of this Ordinance, no applications for development or permits for the above described use may be accepted by any agent, employee or officer of the City with respect to any property in the Downtown Overlay District of the City of Auburn, 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;

(6) In *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); *City of Duluth v. Riverbrooke Props.*, 233 Ga. App. 46, 502 S.E.2d 806 (1998), the Supreme Court held: "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 these judicial decisions, the City of Auburn recognizes that, unknown to the City, de facto vesting may have occurred. The following procedures are established to provide exemptions from the moratorium where such 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.

EXEMPTION

(1) During the term of this moratorium, any person may file an application for exemption from this moratorium with the Mayor and Council related to pre-existing residential uses occupied and in place as of the date of this Ordinance. The Mayor and Council may grant such exemption where the pre-existing use is deemed to be in conformity with the proposed amended Development Regulations, proposed amended Zoning Ordinance and/or the Comprehensive Plan that are to be considered during the term of this moratorium. The Mayor and Council shall consider the general terms of the proposed development, the proposed use, the proposed development plans, the benefits of the proposed development to the City, and the Comprehensive Plan for the City in deciding upon a requested exemption.

(2) Should the Mayor and Council grant such exemption, the staff of the City of Auburn may accept site plans, development plans, rezoning requests, and applications for building permits subject to any conditions or limitations adopted by the Mayor and Council. 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.

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

SECTION IV.

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

(2) 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 Ordinance is severable from every other section, paragraph, sentence, clause or phrase of this Ordinance. 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 Ordinance is mutually dependent upon any other section, paragraph, sentence, clause or phrase of this Ordinance.

(3) In the event that any phrase, clause, sentence, paragraph or section of this Ordinance 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 Ordinance and that, to the greatest extent allowed by law, all remaining phrases, clauses, sentences, paragraphs and sections of the Ordinance shall remain valid, constitutional, enforceable, and of full force and effect.

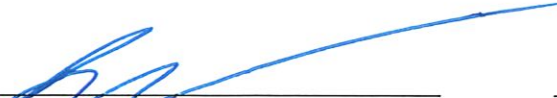
SECTION V.

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

SECTION VI.

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

SO ORDAINED this 13th day of June, 2024.




Mayor Richard E. Roquemore




Robert L. Vogel, III Council Member



Taylor J. Sisk, Council Member



Jamie L. Bradley, Council Member



Joshua Rowan, Council Member

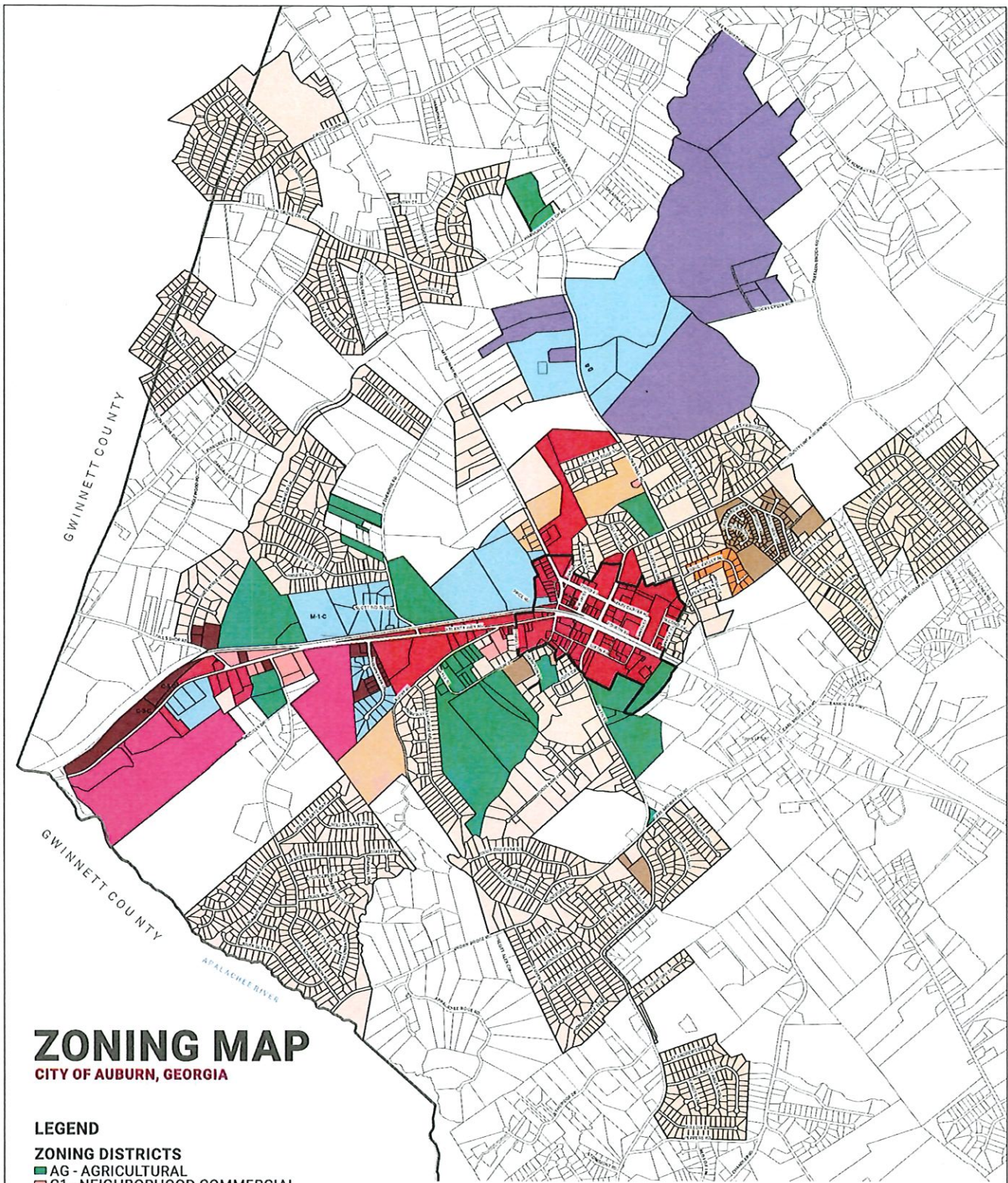
ATTEST:

By: 

Michael Parks, Acting City Clerk

Exhibit "A"

Downtown Overlay District Map



ZONING MAP

CITY OF AUBURN, GEORGIA

LEGEND

ZONING DISTRICTS

- AG - AGRICULTURAL
- C1 - NEIGHBORHOOD COMMERCIAL
- C2 - GENERAL COMMERCIAL
- C3 - CENTRAL BUSINESS & HIGHWAY COMMERCIAL
- M1 - LIGHT MANUFACTURING
- M2 - HEAVY MANUFACTURING
- OI - OFFICE / INSTITUTIONAL
- PSV - PLANNED SUBURBAN VILLAGE
- R100 - SINGLE FAMILY RESIDENTIAL
- RM8 - RESIDENTIAL MULTI-FAMILY APARTMENT
- RMD - RESIDENTIAL MULTI-FAMILY DUPLEX
- MH - MOBILE HOME
- DOWNTOWN OVERLAY DISTRICT

Prepared by:
Community Development Department
City of Auburn, Georgia
April 9, 2019

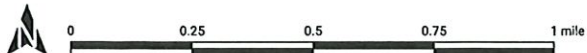
The City assumes no responsibility for the legal accuracy of the information contained herein. All data is for informational purposes only.



CERTIFIED AS THE OFFICIAL ZONING MAP FOR THE CITY OF AUBURN, GEORGIA.

THIS _____ DAY OF _____, 2019

LINDA BLECHINGER, MAYOR



DOWNTOWN OVERLAY DISTRICT

