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GAZA
Georgia Association of Zoning Administrators



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Important Note!

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Advanced Zoning Law
Zoning Moratoria

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What is a zoning moratorium?



Short answer:



It is a temporary measure, limited in scope, designed to maintain the status quo by prohibiting development.

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Why would a local government enact a zoning moratorium?



SHORT ANSWER:



IT WANTS TO TEMPORARILY "PAUSE" OR A "FREEZE" DEVELOPMENT TO ADDRESS AN ISSUE.

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Real life examples of zoning moratoria:

Athens-Clarke
County:
moratorium on
short-term rentals

City of Rome:
moratorium on gas
stations and
convenience stores

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Three Important Questions for Zoning Moratoria

Before a local government enacts a moratorium, it should be able to answer three key questions:

1. Why?

Why does a local government want to enact a moratorium?

2. What?

What is the goal that the local government want to accomplish?

3. How long?

How long does the moratorium need to be to reasonably address the goal?

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Why?

The government must have a public purpose for a moratorium.

• Examples:

- Over-concentration of a certain use in a community
- Lack of sewer capacity or other public services
- Pending revisions to the local planning and zoning code

However, be cautious!

- It must be "reasonably necessary" for the government to impose a moratorium. *DeKalb County v. Townsend Associates, Inc.*, 243 Ga. 80 (1979).
- According to at least one out-of-state case, a government should not impose a moratorium "solely as a pretext to assuage strident community opposition." *Belle Harbor Realty Corporation v. Kerr*, 323 N.E.2d 697 (N.Y. 1974).

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What?

What is the goal that the local government wants to accomplish?

- A government shouldn't impose a moratorium just to impose one. It should have a goal in mind.
- A common reason to impose a moratorium is to give a city or a county time to adopt new planning & zoning regulations for a certain situation or use.
- It is important to identify the goal(s) that a government wants to pursue and actually make progress towards the goal(s) during the moratorium period.

Pursue the goal!

An out-of-state case, *Deal Gardens, Inc. v. Board of Trustees of the Village of Loch Arbour*, 226 A.2d 607 (N.J. 1967) provides a good example.

- The Village of Loch Arbour, New Jersey, imposed a temporary zoning ordinance that essentially prohibited apartment buildings in its residential zone. The Village argued that it enacted this "stop gap" ordinance to allow time for the Village to enact new zoning regulations. A developer wishing to build a high-rise apartment challenged the ordinance.
- The Supreme Court of New Jersey found that sufficient time had passed for the Village to adopt new regulations; however, the Village failed to adopt new regulations during that time. It remanded the case for further findings on a different issue.
- **The Lesson:** Don't just talk about it! Pursue the goal and make progress!

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How long?

How long should a moratorium be?

- By definition, a moratorium is temporary.
- Generally, the moratorium shouldn't last longer than is reasonably necessary to pursue the goal that a local government has identified.
- As a best practice, the moratorium resolution or ordinance should explicitly state the duration of the moratorium!

Important cases.

- A local government does not have to comply with the Zoning Procedures Law, O.C.G.A. § 36-66-1, et seq., for a truly temporary moratorium because it is not a "final legislative action." *City of Roswell v. Outdoor Systems, Inc.*, 274 Ga. 13 (2001).
- Pertinently, a moratorium needs to be temporary! It cannot be indefinite. See, e.g., *Davidson Mineral Properties, Inc. v. Monroe County*, 257 Ga. 215 (1987).

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How long? (cont.)

Is there an outer limit?

- To our knowledge, there isn't yet a definite durational limit that applies in Georgia.
- A court will probably look at the individual circumstances to determine whether the length of a moratorium is appropriate.
- Courts will probably expect a local government to pursue its stated goal within a reasonable timeframe.

Cases to ponder.

- In one of the major cases involving a development moratorium, the U.S. Supreme Court stated, "It may be true that a moratorium lasting more than one year should be viewed with special skepticism[.]" *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 535 U.S. 302, 341 (2002). While this observation was dicta (i.e. non-binding), it is probably a good rule of thumb.
- "One of the more dangerous aspects of this type of legislation, arises from the damage which may result if there is no restriction of the period of time during which a restraint against some land use is permitted to continue. Plainly there must be some terminal point. It is impossible to establish an inflexible rule applicable to every case. Each situation must be assayed in its own particular factual setting to ascertain whether the elapsed time during which the ordinance has been in effect is reasonable." *Deal Gardens, Inc. v. Board of Trustees of the Village of Loch Arbour*, 226 A.2d 607, 611 (N.J. 1967).

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Athens Moratorium

Why?

The preamble of the Athens ordinance explains why the Mayor & Commission of Athens-Clarke County enacted the moratorium.

Language.

WHEREAS, based upon resident complaints, there is an increased degree of non-compliance activity related to STRs operating on parcels within the RS-40, RS-25, RS-15, RS-8, and RS-5 single-family residential zoning districts in Athens-Clarke County as evidenced by advertised properties that are operating without an occupancy tax certificate and in violation of local quality of life ordinances; and

WHEREAS, Unified Government staff have received an increased amount of nuisance complaints involving, among other issues, noise, over maximizing occupancy, traffic, and parking related to STRs in residential neighborhoods; and

WHEREAS, Athens-Clarke County is experiencing a housing crisis whereby local and essential workers are unable to find housing while concurrently the demand on local services and resources is increasing, creating housing insecurities and understaffed organizations and businesses; and

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Athens Moratorium

What?

The ordinance explains **what** goal the Unified Government of Athens-Clarke County hopes to accomplish.

Language.

Per Section 3 of both ordinances, "This temporary moratorium is necessary in order to maintain the status quo and allow the Planning Department of the Unified Government of Athens-Clarke County to consider the establishment of new or additional restrictions on the operation of STRs within the Code of Athens-Clarke County. The Manager (and appropriate staff as designated by the Manager) is hereby authorized to take necessary and appropriate actions, including posting any required notices under the Zoning Procedures Law, O.C.G.A. §§ 36-66-1, et seq., to study and propose further Ordinances and/or amendments to the Code of Athens-Clarke County, Georgia for adoption by the Commission of Athens-Clarke County to address the issues described in the preamble above."

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Athens Moratorium

How long?

The ordinance explains **how long** the moratorium will remain in effect.

Language.

Section 4 of the first ordinance states that the temporary moratorium "shall continue through and including Tuesday, November 7, 2023, at 11:59 post meridiem," absent some other event. Similarly, Section 4 of the second ordinance states that the temporary moratorium "shall remain in place through and including Tuesday, February 6, 2024, at 11:59 post meridiem," absent some other event.

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Advanced Zoning Law

Abandoned Cemeteries Act

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Why does this matter?

The General Assembly has declared that human remains and burial objects are not property to be owned by the person or entity which owns the land or water where the human remains and burial objects are interred or discovered, but human remains and burial objects are a part of the finite, irreplaceable, and nonrenewable cultural heritage of the people of Georgia which should be protected.

O.C.G.A. § 36-72-1(a)



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Why does this matter?

1

Cemeteries are cultural and historic resources

2

Neglect risks destruction of human remains

3

Law balances development, public safety, and respect for burial sites



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What is an “abandoned cemetery”?



An “abandoned cemetery” is one that shows neglect (unchecked vegetation, vandalism, disintegration of markers/boundaries) and for which no legally responsible, financially capable person can be found.

O.C.G.A. § 36-72-2.



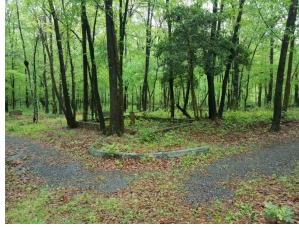
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What is a “burial ground”?

- A burial ground means “an area dedicated to and used for interment of human remains. The term shall include privately owned burial plots, individually and collectively, once human remains have been buried therein. The fact that the area was used for burial purposes shall be evidence that it was set aside for burial purposes.”

O.C.G.A. § 36-72-2



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What can local governments do?

Counties and cities are authorized to use public funds to preserve and protect any abandoned cemetery that the county or city determines is not being maintained by the person who is legally responsible for the care and maintenance, whether or not the person is financially capable of doing so.

Counties and cities may seek reimbursement of the public funds used for care and preservation of the cemetery by billing any legally responsible person or by levying upon any property as authorized by local ordinance, and to exercise the power of eminent domain to acquire any interest in land necessary for that purpose.

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Practical steps local governments can take



Assume care/maintenance (if appropriate)



Clear invasive vegetation, repair markers, install signage, & fencing



Work with historians, archaeologists, descendants, preservation groups



Use grants, volunteer programs, and non profit partners

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What can local governments do?



Require permits



Hold public hearing



Conduct inspections




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Permit Application Requirements

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graph LR
    A[Evidence of ownership of the land] --> B[Archeologist report]
    B --> C[Land survey]
    C --> D[Genealogist report]
    D --> E[Plan for mitigation and relocation of human remains]
    E --> F[Fee not to exceed $2,500.00]
    
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Violations

- Any person who knowingly fails to comply with the provisions of this chapter shall be guilty of a misdemeanor of a high and aggravated nature and, upon conviction, shall pay a fine of not more than \$5,000.00 for each grave site disturbed; provided, however, that any person who knowingly violates the provisions of O.C.G.A. § 36-72-4 shall be guilty of a misdemeanor of a high and aggravated nature and, upon conviction, shall be incarcerated for not more than six months and shall pay a fine not less than \$5,000.00 for each grave site disturbed.

O.C.G.A. § 36-72-16




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**Athens Case Study:
Gospel Pilgrim Cemetery**

Founded in 1882

Approximately 3,000 graves

8.25 acres



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**Gospel Pilgrim
Cemetery
(Athens, GA)**



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Advanced Zoning Law
FAIR HOUSING ACT

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What is the Fair Housing Act?

Reference to the "Fair Housing Act" can really mean two things. First, it can mean the *federal* Fair Housing Act, 42 U.S.C. §§ 3601, et seq. Second, it can mean the *state* Fair Housing Law, O.C.G.A. §§ 8-3-200, et seq.

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Policy behind both laws

"It is the policy of the State of Georgia to provide, within constitutional limitations, for fair housing throughout this state."

O.C.G.A. § 8-3-200(a).

"It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States."

42 U.S.C. § 3601.

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Housing for Older Persons

While both the state and federal law are very complex, we will focus on one very narrow aspect for this presentation: housing for older persons.

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Banned discrimination

Georgia

Georgia law bans various types of housing discrimination because of a person's race, color, religion, sex, disability, familial status, or national origin.

See, e.g., O.C.G.A. §§ 8-202(a), 8-203, 8-204(b).

Federal

Similarly, federal law bans discrimination because of a person's race, color, religion, sex, familial status, national origin, or handicap.

See, e.g., 42 U.S.C. §§ 3604, 3605(a), 3606.

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What does "familial status" mean?

Georgia

(A) That the person is a parent of or has legal custody of one or more individuals who have not attained the age of 18 years and such individuals are being domiciled with such parent or legal custodian;

(B) That the person is the designee of a parent or other person having legal custody, with the written permission of the parent or other person, and that one or more individuals who have not attained the age of 18 years are being domiciled with such person; or

(C) That the person is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

O.C.G.A. § 8-3-201(10)

Federal

(x) "Familial status" means one or more individuals (who have not attained the age of 18 years) being domiciled with—

(1) a parent or another person having legal custody of such individual or individuals; or

(2) the designee of such parent or other person having such custody, with the written permission of such parent or other person.

The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

42 U.S.C. § 3602(k)

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Age Discrimination

No direct ban on age discrimination.

There is no direct ban on age discrimination under either the state or federal law.

However, as a practical matter, age discrimination can occur where a person is discriminated against because of familial status or because of a disability or handicap.

But...

Both the state and the federal law include provisions exempting "housing for older persons" from familial status discrimination.

42 U.S.C. § 3607(b)(1); O.C.G.A. § 8-3-205(b)(2).

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Practical Effect

The practical effect of the housing for older persons exception in federal and state law is that housing designed for and intended for older persons does not constitute familial status discrimination.

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When does housing meeting the exception?

Georgia law specifically provides for three circumstances that satisfy the housing for older persons exception:

- O.C.G.A. § 8-3-205(b)(1)(A) – “Provided under any state or federal program that the secretary of housing and urban development determines is specifically designed and operated to assist elderly persons as defined in the state or federal program”
- O.C.G.A. § 8-3-205(b)(1)(B) – “Intended for, and solely occupied by, persons 62 years of age or older”

-Or-

- O.C.G.A. § 8-3-205(b)(1)(C) – “Intended and operated for occupancy by at least one person 55 years of age or older per unit,” provided that the housing meets certain factors provided in the state statute and a regulation of the Georgia Commission on Equal Opportunity, Ga. Comp. R. & Regs. r. 186-2-.02(5)(e). Importantly, both the state statute and the regulation require that at least 80% of the housing be occupied by at least one person who is 55 or older.

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When does housing meeting the exception, cont.?

The Georgia statute mimics the same exemptions in federal law:

- 42 U.S.C. § 3607(b)(2)(A) – “[P]rovided under any State or Federal program that the Secretary determines is specifically designed and operated to assist elderly persons (as defined in the State or Federal program)”
- 42 U.S.C. § 3607(b)(2)– “[I]ntended for, and solely occupied by, persons 62 years of age or older.”

-Or-

- 42 U.S.C. § 3607(b)(2)(C) – “[I]ntended and operated for occupancy by persons 55 years of age or older,” provided that the housing meets certain factors.
- The Code of Federal Regulations, 24 C.F.R. §§ 100.300, et seq., also has detailed regulations concerning housing for older persons.

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Why does this matter?

If an applicant or developer presents a proposed development with housing for older persons, planning staff are sometimes asked whether this is improper age discrimination.

- As the previous slides demonstrate, this is a complicated question.
- However, it is helpful to know that federal and state fair housing laws do contemplate housing for older persons under certain circumstances.



Both the state and federal regulations can be complicated. If any specific legal questions arise, it is best to consult with your city or county attorney.

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