

Unified Government of Athens-Clarke County, Georgia
Mayor and Commission
Tuesday, March 21, 2023
6:05 p.m.
City Hall

The Unified Government of Athens-Clarke County, Georgia met this date in special called session. Roll call was conducted. Present: Mayor Girtz; Commissioners Davenport, Taylor, Wright, Fisher, Houle, Culpepper, Myers, Thornton, and Hamby. No commissioners were absent.

A motion was made by Commissioner Houle, seconded by Commissioner Thornton, to amend the agenda to remove consideration of the emergency culvert replacement (84 inch) on Olympic Drive. The motion passed by unanimous vote.

A motion was made by Commissioner Myers, seconded by Commissioner Fisher, to suspend Rules of Commission. The motion passed by unanimous vote.

Public input

- None received.

New business - Discussion

A motion was made by Commissioner Wright, seconded by Commissioner Hamby, to adopt the following ordinance, presented by title only, to approve the temporary moratorium on the downtown parklet program. The motion passed by unanimous vote.

AN ORDINANCE OF THE COMMISSION OF ATHENS-CLARKE COUNTY, GEORGIA, TO ESTABLISH A MORATORIUM ON THE ACCEPTANCE AND PROCESSING OF APPLICATIONS FOR PARKLETS; AND TO PROVIDE FOR OTHER LAWFUL PURPOSES.

WHEREAS, the Unified Government of Athens-Clarke County, Georgia (the "Unified Government") has been vested with substantial powers, rights, and functions to regulate the practice, conduct, or use of Unified Government property for the purposes of maintaining health, morals, safety, security, peace, and the general welfare of Athens-Clarke County; and

WHEREAS, pursuant to Sec. 6-22-1 through Sec. 6-22-16 of The Code of Ordinances of Athens-Clarke County, Georgia, the Mayor and Commission of the Unified Government established the Parklet Program for the purpose of regulating the establishment, operation, and maintenance of Parklets within areas of public parking owned by the Unified Government; and

WHEREAS, the Mayor and Commission of the Unified Government have, as a part of a comprehensive scheme for the regulation of Parklets established in the Parklet Program, sought to promote the safe use of Parklets and to promote the general economic development of downtown Athens-Clarke County for the benefit of residents, visitors, and businesses located there, while specifically providing under Sec. 6-22-1 that "no vested property right of individuals or businesses is created under the Parklet Program;" and

WHEREAS, the Mayor and Commission are, and have been interested in, developing a cohesive and coherent policy regarding the Parklet Program, and have intended to promote community development through stability, predictability and balanced growth that will further the prosperity of Athens-Clarke County as a whole; and

WHEREAS, initial implementation of the Parklet Program has demonstrated that although the existing design scheme for Parklets established in Sec. 6-22-8 of The Code of Ordinances of Athens-Clarke County, Georgia, was intended to be comprehensive, it inadvertently failed to provide sufficiently clear and definitive regulations related to the construction and design of the Parklets, particularly as it relates to barriers, access pursuant to the American with Disabilities Act, and the construction of platforms within the Parklet itself; and

WHEREAS, the Mayor and Commission find that this lack of clearly defined regulations is a potential threat to the public safety, health, and welfare of the residents and visitors of Athens-Clarke County that requires more thorough study and review; and

WHEREAS, Georgia law recognizes that local government may impose moratoria on zoning decisions, building permits, privilege licenses, and other development approvals, pursuant to case law found at *City of Roswell v. Outdoor System, Inc.*, 274 Ga. 130, 549 S.E.2d 90 (2001); *Lawson v. Macon*, 214 Ga. 278, 104 S.E.2d 425 (1958); and *Taylor v. Shetzen*, 111 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, 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;" and

WHEREAS, the Mayor and Commission has found that the interests of the public necessitate the enactment of a moratorium on the acceptance and processing of Parklet Program applications for health, safety, and general welfare purposes by means that are reasonable and not unduly oppressive; and

WHEREAS, the Mayor and Commission deem it important to review and revise the existing comprehensive scheme for the regulation of Parklets, which integrates all of these concerns, and therefore considers this moratorium a proper exercise of its police powers; and

WHEREAS, the Mayor and Commission therefore consider it paramount that business, privilege, and Parklet permitting and regulation continue in the most orderly and predictable fashion with the least amount of disturbance to landowners and to the residents of the Unified Government. The Mayor and Commission have always had a strong interest in growth and infrastructure management so as to promote the traditional police powers goals of health, safety, morals, aesthetics and the general welfare of the community; and in particular the lessening of congestion on the Unified Government streets, security of the public from dangers, promotion of health and general welfare of its citizens, protection of the aesthetic qualities of the Unified Government 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 Commission 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 Unified Government "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. 3d 439 (2005); and

WHEREAS, it is also the opinion of the Mayor and Commission that "general welfare" includes the valid public objectives of public safety, aesthetics, conservation of the value of existing lands and buildings within the Unified Government, making the most appropriate use of resources, preserving downtown 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 Unified Government; and

NOW, THEREFORE, the Mayor and Commission of Athens-Clarke County, Georgia, hereby ordain as follows:

SECTION I. FINDINGS OF FACT

The Mayor and Commission of the Unified Government hereby make the following findings of fact:

(a) It appears that the Unified Government's regulatory scheme and permitting requirements for the Parklet Program require an additional review by the Unified Government as they do not provide clearly defined regulations related to the construction and design of Parklets;

(b) This lack of clearly defined regulations is a potential threat to the public, safety, health, and welfare of the residents and visitors of Athens-Clarke County that requires more thorough study and review;

(c) Substantial disorder and irreparable harm could result to the residents, visitors, and businesses of Athens-Clarke County as well as the Unified Government itself if the current Parklet Program were to continue to be utilized prior to a more thorough review due to the lack of clearly defined regulations related to the construction and design of Parklets;

(d) The Unified Government's ongoing revision of its code provisions regarding the comprehensive regulation of Parklets requires the temporary cessation of the acceptance by the staff of the Unified Government of applications for permits for Parklets;

(e) It is necessary and in the public interest to delay, for a reasonable period of time, the processing of any applications for such permits that have already been submitted prior to the effective date of this Ordinance, to ensure that the construction and design of the same are consistent with the long-term regulatory objectives of the Unified Government.

SECTION II. IMPOSITION OF MORATORIUM

(1) There is hereby imposed a moratorium on the acceptance by the staff of the Unified

Government of applications for permits for Parklets;

(2) There is hereby imposed a moratorium on the processing by the staff of the Unified Government of applications for such permits that have already been submitted prior to the effective date of this Ordinance;

(3) The duration of this moratorium shall be until the Unified Government adopts a revision of the The Code of Ordinances of Athens-Clarke County, Georgia, related to the Parklet Program or until Tuesday, September 19, 2023, whichever occurs first;

(4) This moratorium shall have no effect upon permits for Parklets previously issued and fully approved by the Unified Government on or before the effective date of this Ordinance; and

(5) As of the effective date of this Ordinance, no applications for permits to operate a Parklet will be accepted and/or processed by any agent, employee, or officer of the Unified Government with respect to any property in the Unified Government, and any permit so accepted and/or processed 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 III.

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

SECTION IV.

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

(b) It is hereby declared to be the intention of the Mayor and Commission 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.

(c) It is hereby further declared to be the intention of the Mayor and Commission 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.

(d) 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 Commission 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.

To the extent necessary, penalties in effect for violations of Chapter 1 of The Code of Ordinances of Athens-Clarke County, Georgia, at the time of the effective date of this Ordinance shall be and are hereby made applicable to this Ordinance and shall remain in full force and effect.

SECTION VI.

All Ordinances or parts of Ordinances in conflict with this Ordinance are, to the extent of such conflict, hereby repealed or set aside during the period in which the moratorium set forth herein is in effect.

SECTION VII.

This Ordinance shall become effective immediately upon its approval by the Mayor or its adoption into law without such approval.

Mayor Girtz noted that the review of the parklet program will go back to the Government Operations Committee for some amendments to make sure the Parklet Program aligns with our special events needs.

A motion was made by Commissioner Thornton, seconded by Commissioner Davenport, to adjourn from Special Called Session. The motion passed by unanimous vote.

The Special Called Session adjourned at 6:17 p.m.

Acting Clerk of Commission