

ORDINANCE #2023-6

AN ORDINANCE OF THE TOWN OF EATONVILLE, FLORIDA, ESTABLISHING A TEMPORARY MORATORIUM ON THE ISSUANCE OF NEW BUILDING PERMITS FOR NEW MULTI-FAMILY, MIXED USE, COMMERCIAL OR SINGLE FAMILY RESIDENTIAL FOR A MAXIMUM OF THREE HUNDRED SIXTY FIVE (365) DAYS OR 90 DAYS AFTER THE ADOPTION OF AN IMPACT FEE ORDINANCE, WHICH EVER IS EARLIER; PROVIDING LEGISLATIVE FINDINGS AND INTENT; PROVIDING FOR THE TERM OF MORATORIUM; PROVIDING EXEMPTIONS; PROVIDING FOR VESTED RIGHTS AND PROCEDURES; PROVIDING FOR SEVERABILITY; PROVIDING FOR NON-CODIFICATION; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

SECTION 1. Legislative Findings and Intent.

Following are the legislative findings and intent of the Town Council of the Town of Eatonville relative to this Moratorium Ordinance:

(a) The State of Florida, pursuant to the *Florida Impact Fee Act*, FLA. STAT. § 163.31801(1)-(2), has found “that impact fees are an important source of revenue for a local government to use in funding the infrastructure necessitated by new growth,” and “impact fees are an outgrowth of the home rule power of a local government to provide certain services within its jurisdiction.” *Id.*

(b) In accordance with Section 1.01 of the Town Charter, Article VIII of the Florida Constitution, and Chapters 163 and 166, Florida Statutes, as well as Section 163.31801, *Florida Statutes*, the Town Council has the authority to adopt an impact fee ordinance.

(c) Impact fees are charges assessed on new developments to help offset the costs and impacts on public infrastructure and facilities required to accommodate and maintain levels of service resulting from new developments.

(d) Impact fees are typically charged and collected in the final states of the development process, at the time a building permit is issued for new development.

(e) The Town of Eatonville expects substantial growth in new development and new development applications, particularly in multi-family, mixed use, commercial, and single family residential.

(f) Currently, the Town of Eatonville lacks an enforceable method under Section 163.31801, *Florida Statutes*, for assessing and collecting impact fees on new development.

(g) Impact fees must be proportional and reasonably connected to, or have a rational nexus with, the need for additional capital facilities and/or infrastructure and the increased impact

generated by the new development. Similarly, impact fees must be proportional and reasonably connected to, or have a rational nexus between the expenditures of the funds collected and the benefits accruing to the new development.

(h) All impact fees must be calculated based upon the most recent and localized data. Thus, before enacting any impact fee ordinance or resolution, the Town of Eatonville must first commission an impact fee feasibility study.

(i) On April 4, 2023, the Town Council approved the commission of an Impact Fee Feasibility Study, which is a prerequisite to adopting an impact fee ordinance.

(j) Once the study is completed, the ordinance adoption process will take at least an additional 90-days, and the Town of Eatonville must provide at least an additional 90-day period after adoption before the effective date of any new impact fee ordinance.

(k) The impacts of the substantial new development expected in the Town of Eatonville on public facilities and infrastructure needed to serve such new development and maintain levels of service without the ability to offset those costs or having new development share in same will negatively affect the public, health, safety, and welfare of the Town.

(l) In the period between now and when a new impact fee ordinance is effective, building permits issued for new multi-family, mixed use, commercial, and single family residential development will have a greater negative effect on public facilities and infrastructure than any other form of new development due to their size and strain on existing infrastructure and facilities.

(m) There is an urgent need for the Town Council to enact this temporary moratorium on the issuance of new building permits for new multi-family, mixed use, commercial, and single family residential development in order to temporarily preserve the status quo while the Town completes the Impact Fee Feasibility Study, adopts a new impact fee ordinance and schedule of fees by resolution, and receives input from the public, property owners, consultants and staff. Preserving the status quo will allow the Town to continue the application process for development, such as comprehensive plan and future land use map amendments, re-zoning applications, plats, variances, site plans, and special exceptions, while insuring that public infrastructure and facilities are not unduly burdened through the issuance of significant new building permits that will have an immediate and negative impact on said infrastructure and facilities without the assessment of properly adopted impact fees.

(n) The Town Council has the authority to adopt this Ordinance by virtue of the Town's home rule authority under Section 166.021(4), Florida Statutes, and its general police power; by virtue of Section 163.31801, Florida Statutes, which recognizes the critical importance of properly adopted impact fee ordinances to offset the impacts on public facilities and infrastructure from new development; and based on the inherent authority conferred by general law with respect to comprehensive planning.

SECTION 2. Temporary Moratorium.

(a) There is hereby imposed a temporary moratorium on the issuance of all new building permits for new development for multi-family, mixed use, commercial and single-family residential development in the Town of Eatonville.

(b) During the time this moratorium is in effect, no building permits for new development subject to the provisions of this Ordinance, as set forth in subsection (a), shall be issued or approved within the Town of Eatonville.

SECTION 3. Term of Moratorium.

(a) The provisions of this Ordinance shall terminate upon the **earliest** of two occurrences: (1) 90-days after the adoption of a new impact fee ordinance; or (2) one calendar year at 11:59 p.m. on the 365th day after the effective date of this Ordinance, as set forth in Section 9.

(b) The provisions of this Ordinance may be extended once by ordinance for a period of not more than six additional months (180) days, upon a finding by the Town Council following public comment that good cause or excusable neglect exists, the harm to the public infrastructure and facilities from the issuance of new building permits for new multi-family, mixed use, commercial and single family residential development continues to exist, and a new impact fee ordinance has not been enacted.

SECTION 4. Exemptions.

Exemptions from this Ordinance are as follows:

(a) Building permits for general maintenance, repairs, and/or health and safety improvements on lawfully existing structures or accessory structures, so long as any such altered structures shall remain within the footprint of the original structure. Maintenance, repairs, and improvements, all of which are proposed for health and safety purposes, shall be certified by a professional engineer registered in the State of Florida as repairs which are necessary to correct structural deficiencies which pose a health and safety hazard and shall be approved by the Town Building Official; and

(b) Building permits for interior remodeling and decorating of currently and lawfully existing structures or accessory structures; and

(c) Building permits for exterior repainting or reroofing of lawfully existing structures or accessory structures;

(d) Building permits for the replacement of lawfully existing structures which pose a life, health, and safety hazard, so long as the structure, once replaced, complies with all provisions of the Town's code and comprehensive plan. Building permits for replacement shall be approved, but must be certified by a professional engineer registered in the State of Florida as being necessary to correct structural deficiencies which pose a threat to the public life, health and safety and shall be approved by the Town Building Official; and

- (e) Building permits for landscaping and pavers; and
- (f) Any vested improvements as provided in this Ordinance; and
- (g) Any application for development or a development order that would not result in a building permit being issued; and
- (h) Building permits that are not for new multi-family, mixed use, commercial or single-family residential development.

SECTION 5. Vested Rights and Administrative/Quasi-Judicial Review Procedures.

(a) Owner(s) of real property within the Town or owner(s)' expressly authorized agent may request a determination of vested rights by paying an application fee, provided hereunder, and filing a technically complete application with the Town's Chief Administrative Officer or designee.

(b) The application form shall, at a minimum, contain the following information:

1. The name and address of the applicant(s), who must be the owner(s) of the subject parcel(s) or real property, or an agent expressly authorized to apply on behalf of the owner(s).
2. A legal description, current tax parcel identification number and survey or a sketch of the real property that is the subject of the application.
3. The name and address of each owner of the parcel(s) or real property.
4. Any approved site plan or development plans or plat that is applicable to the real property.
5. Identify with particularity with specific reference to any ordinance, resolution or other action of the Town of Eatonville or failure to act by the Town of Eatonville, any statute or other general law, upon which the applicant relied and which the applicant believes supports the applicant's position that a building permit should be issued during the moratorium.
6. A statement of fact that the applicant intends to prove or demonstrate, in support of the application that vested rights exist which warrant the issuance of a building permit during the moratorium.
7. The application shall fully articulate the legal basis for being issued a building permit notwithstanding the moratorium.

8. Any other relevant, non-duplicative information that the applicant desires the Town Council to consider.
 9. Such other relevant information that the Town's Chief Administrative Officer or designee may request so long as it does not impose an undue burden on the applicant.
- (c) The applicant shall provide a sworn statement, executed by all owners of the real property at issue or an authorized agent averring that all factual information set forth in the application is true and accurate.
 - (d) The Town's Chief Administrative Officer or designee shall screen each application to determine whether the application is technically complete, as set forth herein. No screening shall take place until an applicant has paid an application processing fee of \$200.00. This sufficiency determination shall be made within fourteen (14) calendar days after receipt of the application. If not technically complete, the application shall be returned to the applicant with written notification identifying the deficiencies in the application and the applicant shall be granted fourteen (14) additional calendar days to complete a technically sufficient application. If a response is not submitted to the Town's Chief Administrative Officer or designee within the time specified in this subsection, the application shall be deemed abandoned.
 - (e) Upon the Town's Chief Administrative Officer or designee's acceptance of a technically complete application, for which the application fee has been submitted, the Town Council shall review the application, hold a public hearing, and make a final determination within forty-five (45) calendar days as to whether or not it has been clearly and convincingly demonstrated that the real property at issue has vested status and should be issued a building permit for new development notwithstanding this moratorium.
 - (f) Within seven (7) calendar days after making a final determination of vested rights status, the Town Council shall provide the applicant with a written order, notifying the applicant of the determination vested rights status. Notwithstanding the moratorium, if the Town Council determines that vested rights exist, and all other applicable provisions of the Town's code and comprehensive plan have been met, then a building permit for the new development shall issue and the applicant shall have the right to rely upon such written notification that the real property is vested. The Town Council's written notification shall be final and not subject to further appeal to the Town, revocation, or modification.
 - (g) The public hearing on the application for vested rights shall be a quasi-judicial hearing before the Town Council. The applicant shall present all the applicant's evidence in support of the application. The technical Florida Rules of Evidence shall not apply to the hearing, but basic notions of due process will be observed, and all testimony of witnesses shall be given under oath.

- (h) The Town Council's decision to grant vested rights status shall be based on common law criteria for vested rights determinations. The Town Council's decision shall be final.
- (i) Any property expressly exempt from this moratorium, as set forth in Section 4 is presumptively vested for purposes of this Ordinance and shall not be required to file an application under this Section.

SECTION 6. Severability.

If any section, subpart, or part of a section, paragraph, sentence, clause, phrase or word of this Ordinance is for any reason, held or declared to be unconstitutional, inoperative, preempted or void, such provisions may be severed and such holding shall not affect the remaining portions of this Ordinance and shall be construed to have been the legislative intent to pass this Ordinance without such parts therein; and the remainder of this Ordinance, after the exclusion of such part or parts, shall be deemed to be valid as if this Ordinance had been adopted without such unconstitutional, invalid or inoperative part therein. If this Ordinance or any provision or part thereof shall be held unconstitutional, invalid, or inoperative as applied to any person, group, real property, kind of or classification of property, and/or circumstances, such holding shall not affect the application of the Ordinance to any other person, group, real property, kind of or classification of property or circumstances.

SECTION 7. Conflicts.

Any ordinances or resolutions in conflict herewith are hereby repealed to the extent of such conflict for the effective term of this Ordinance.

SECTION 8. Non-Codification.

The provisions of this Ordinance shall NOT be included and incorporated within the Code of Ordinances of the Town of Eatonville.

SECTION 9. Effective Date; Repeal or Expiration.

This Ordinance shall become effective immediately upon approval by the Town Council and shall stand repealed as set forth in Section 3 above. The Town Council may also repeal this Ordinance at any time and may extend it as set forth in Section 3 above.

Upon motion duly made and carried, the foregoing Ordinance was approved and passed and transmitted upon the first reading on the **18** day of **April**, 2023.

Upon motion duly made and carried, the foregoing Ordinance was approved and passed upon the second reading on the ____ day of _____, 2023.

Attest:

TOWN OF EATONVILLE

Veronica King,
Town Clerk

Angie Gardner, Mayor

Approved as to Form:

Clifford B. Shepard, Town Attorney