STATE OF GEORGIA

CITY OF DORAVILLE

ORDINANCE NO. 2009-__

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES, CITY OF DORAVILLE, GEORGIA TO AMEND SECTION 601 ACCESSORY USES OR STRUCTURES, ARTICLE VI GENERAL PROVISIONS, CHAPTER 23 ZONING; TO PROVIDE PENALTIES; TO PROVIDE FOR REPEAL OF CONFLICTING ORDINANCES; TO PROVIDE FOR AN ADOPTION AND EFFECTIVE DATE; TO PROVIDE FOR CODIFICATION; AND TO PROVIDE FOR OTHER LAWFUL PURPOSES.

WHEREAS, zoning is a matter within the purview of local governments pursuant to Article IX, Section II, Paragraph IV of the Constitution of the State of Georgia of 1983;

WHEREAS, these articles are adopted pursuant to authority granted to the City of Doraville, Georgia by Article IX, Section II, Paragraph III of the Constitution of the State of Georgia of 1983, and more specifically the plenary police powers delegated to the City by said section and by operation of law;

WHEREAS, the Official Code of Georgia Annotated § 36-66-1, et seq. provides procedures and regulations for the adoption of zoning ordinances;

WHEREAS, the duly elected governing authority of the City of Doraville, Georgia are the Mayor and Council thereof;

WHEREAS, evidence was presented to the Mayor and Council from the City Planner that the single family residential oriented provisions of the existing Zoning Ordinance require a

comprehensive update and revision including such items as regulation of accessory structures and street frontage requirements;

WHEREAS, the existing uses and zoning of nearby properties have been considered and it has been determined that the same present no negatives in the adoption of this Ordinance;

WHEREAS, to the extent there is destruction of property values on any property, the same promotes the health, safety, morals or general welfare of the public;

WHEREAS, the relative harm to the public as compared to the hardship imposed upon any individual property owners is de minimus;

WHEREAS, the suitability of a subject property for a zoning proposed has been considered and the zoning proposed has been deemed not directly applicable;

WHEREAS, the length of time a property has been vacant as zoned, considered in the context of land development of adjacent and nearby property is not applicable;

WHEREAS, whether the zoning proposal adversely affects the existing use or usability of adjacent or nearby property has been considered and it has been determined that no substantial adverse effects shall occur as a result of this Ordinance;

WHEREAS, property to be affected by the zoning proposal has a reasonable economic use as currently zoned;

WHEREAS, the zoning proposal will not result in a use which will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities or schools;

WHEREAS, the zoning proposal is in conformity with the policy and intent of the land use plan;

WHEREAS, there are other existing or changing conditions affecting the use and development of property which gives supporting grounds for approval of the zoning proposal;

WHEREAS, the possible effects of the change in the regulations or map on the character of a zoning district, a particular piece of property, neighborhood, a particular area, or the community have been considered and pose no negatives;

WHEREAS, the impact shall be limited as to adoption of the proposed zoning change upon pedestrian and vehicular circulation and traffic and thoroughfare capacities and capabilities; and

WHEREAS, the health, safety, welfare and aesthetics of the citizens of the City of Doraville shall be improved and protected by adoption and implementation of this Ordinance.

THE MAYOR AND COUNCIL OF THE CITY OF DORAVILLE, GEORGIA HEREBY ORDAIN:

Section 1

That Section 601, Article VI General Provisions, Chapter 23 Zoning of the Code of Ordinances, City of Doraville, Georgia is hereby amended to read as follows:

"Chapter 23. Zoning

. . .

Article VI. General Provisions.

Section 601. Accessory Uses or Structures.

Accessory uses, structures, or buildings (other than location exclusions defined herein) shall only be permitted in rear yards, and except as otherwise may be provided within the Zoning Ordinance. Accessory structures shall not be located on a street abutting side yard (which may also be referred to as a front yard and/or front yard building setback). On a street abutting side yard, the leading edge of the principal structure or the front building setback, whichever is

greater, shall be indicative of a prohibited location within a front yard. ***No attempt has been made to classify the total number of types of accessory structures unless as set forth herein.***

Fences are regulated as accessory structures by virtue of Section 703 ***and generally are permissible within front, side, and rear yards.***

Commercial, industrial, office and multiple family applications (three or more attached dwelling units) other than single-family detached residential and duplex (R-2) districts may have dumpster enclosures which meet City codes within rear and side yards although locations in rear yards are preferable. See also the City of Doraville Dumpster Ordinance for additional regulatory information.

No accessory building or structure shall be erected on a lot prior to the time of construction of the principal building to which it is subordinate but an accessory building or structure may be constructed at the same time as the principal structure. However, the accessory structure or building shall not receive a Certificate of Completion or Certificate of Occupancy ***(as applicable)*** *until such time as the principal structure has received its Certificate of Occupancy.*

Within a residential district (R-1 and R-2), no accessory building shall ever become the principal structure.

No accessory structure shall contain a dwelling unit, sleeping unit, living quarters or space for rent.

No accessory structure shall be used for agricultural purposes or the keeping of animals other than household pets (as shall be subject to limitations of Code). ***NOTE; however, that a greenhouse is a permitted accessory structure within a single-family residential detached***

dwelling district when living plant material (including the growing and maintenance of legal flora and edible crop material) is contained within.

Accessory uses or structure shall only be permitted if they meet the following:

1. *Unless as provided by Conditional Use or otherwise precluded by a zoning district, only ~~one (1)~~ three (3) accessory buildings or structures shall be permitted on a lot (except dumpster enclosures as detailed herein) and as shall be regulated by the zoning district's Dimensional Requirements. The following items are exempt from calculation as an accessory structure within a single-family detached* ***(R-1)*** *residential subdivision; however, their locations and distance requirements shall still be in accordance with the Zoning Code* ***unless as otherwise noted.***

NOTE: The annotation "front," "side," or "rear" means that not only shall this type of accessory structure fall within an exemption which shall not contribute to the total number of accessory structures allowed on a lot, but also these accessory items may be located within a "front yard," "side yard," or "rear yard" generally (subject to Dimensional Requirements of the zoned district and Section 601) when they are not an exemption to total number of accessory structures (e.g. when they are larger than the maximum dimensional size and area allowed).

Listed Exemptions:

- ***Flagpoles which are a maximum of fifteen (15) feet in vertical height when located within a single-family detached residential subdivision district (front, side, or rear);***
- *Fences installed in compliance with Section 703* ***(front, side, or rear);***
- ***Signs as regulated by the City sign code (front, side, or rear);***
- *Gazebos provided no larger than* ***16' x 16' or 256 square feet and maximum fifteen (15) feet in vertical height;***

- *Pergolas provided no larger than **16' x 16' or 256 square feet** **and maximum fifteen (15) feet in vertical height;***
- ***Arbor provided with living plant material, no size limit (front, side, or rear yard) and maximum fifteen (15) feet in height;***
- *Outdoor decorative statuary and/or fountain **(front, side, or rear yard) and maximum fifteen (15) feet in vertical height;***
- ***Masonry** barbecue and/or fire pits;*
- ***Masonry** outdoor fireplaces;*
- *Outdoor kitchens;*
- *Decorative windmills (other than wind turbines) **which are less than eight (8) feet in vertical height (front, side, or rear yard);***
- *Pole mounted birdhouses or other legal bird fowl **which are less than ten (10) feet in height (front, side or rear yard);**;*
- *Infant or children playground equipment **(side and rear) except where a rear yard grade exceeds a 2 to 1 slope ratio over the majority of the yard as determined by the Building Official then the property owner may apply for a variance to locate these items within a font yard;***
- *Trampolines;*
- *Infant or children playhouse provided no larger than **12' x 12' or 144 square feet** **and maximum fifteen (15) feet in vertical height;***
- *Ornamental aquatic pools for fish and/or live vegetation provided all Health Department and/or State Department of Agriculture requirements are complied with **(front, side, or rear yard);***
- *Doghouses, **provided no larger than 50 square feet and one (1) story (side or rear yard);***
- *Pool house with swimming pool (treated as one (1) accessory structure) **provided no taller than fifteen (15) feet in vertical height;***
- ***Freestanding wooden or composite decks less than two (2) feet in vertical height.***

- ***Swings located within living trees, other than tire swings, when located within a single-family residential detached dwelling district (front, side, rear);***

2. No accessory building or structure shall be located less than five (5) feet from any lot line provided, however, that no accessory structure shall occupy a transitional zoning buffer, a stream buffer, or a drainage easement. Generally speaking, the City reserves a ten (10) foot drainage easement, five (5) feet centered on each lot line along all side and rear property lines in residential districts containing single-family detached structures on fee simple lots. No administrative variance shall be permitted for accessory structure distance from a property line. In the case of free-standing fences, fence construction shall not impede the free flow of water within a drainage easement or constitute a sight distance problem at street intersections. Fences may be removed by the City or DeKalb County at any time without prior notification or compensation to the property owner when they are located within a public right-of-way or ~~legally~~ ***illegally*** *constructed within other prohibited areas as defined herein.*

3. Unless as provided for by Conditional Use specific to a zoning district, no accessory structure in a ***single-family detached*** *residential district shall exceed 800 square feet in gross floor area.* ***No dwelling unit within a single-family attached residential district (other than a duplex, R-2 district) shall be permitted to have it own accessory structure. Accessory structures within these districts containing three (3) or more attached dwelling units shall be collectively provided and constructed simultaneous, but not thereafter, to the dwelling construction based on a City approved master site plan.***

4. When an accessory use is attached to the principal structure by a breezeway, passage way or similar covered roofed means, it shall comply with the dimensional requirements of the principal structure to which it is accessory. ***A fence or wall shall not constitute***

attachment thereby eliminating the subordinate nature and distance requirements of the accessory structure.

5. Accessory buildings or ~~structure~~ ***structures*** *located on non-residential zoned lots shall not be generally restricted as to overall square footage size provided the same are in compliance with the other requirements contained herein and the relevant zoning district's Dimensional Requirements.* ***As defined herein these non-residential districts shall be C-1, C-2, O-I, O-W, M-1, M-2, R-3, R-4, and R-SFA districts.*** *Dumpster enclosures within non-residential districts which meet Code shall not be regulated to the overall number allowed when shown on a City of Doraville approved site plan and having received a building permit from the City of Doraville.*

6. Except as otherwise provided, no accessory building or structure shall be located closer than twenty (20) feet to any principal or other structure ***(excluding fences).*** *In non-residential districts* ***(C-1, C-2, O-I, O-W, M-1, M-2, R-3, R-4, and RSFA),*** *the building codes shall prevail which may mandate a larger distance requirement. No administrative variance shall be permitted for distance from other structure(s).*

7. The height of any accessory structure shall not exceed the zoning district Dimensional Requirements; however, any accessory structure in a residential district which exceeds one (1) story shall be required to obtain a Conditional Use Permit when its height is taller than the principal structure to which it is subordinate. No administrative variance shall be permitted for accessory structure height. ***<u>See also Section 701, Height Exemptions, General Rule, for other exceptions and regulated accessory items.</u>***

8. Accessory buildings or structures shall not be used for any type of commercial operation whether permanent, temporary or as part of a home occupation ***in the R-1, R-2, R-3, R-4, RCH, and R-SFA districts.***

9. Portable, demountable, mobile, modular, manufactured or temporary accessory structures shall be prohibited in all zoning districts. ***See also Section 606 regarding buildings on approved construction sites.*** *No tractor trailer or other commercial vehicle shall be considered to be an accessory structure. No recreational vehicle shall be considered to be an accessory structure.* ***No marine storage or shipping container shall be considered to be an accessory structure. No billboard sign shall ~~not~~ be considered to be an accessory structure; but, its height shall be further regulated by the City sign code.***

10. Accessory structures must be anchored to permanent foundations which are either concrete slab on grade or a continuous footing or any combination thereof deemed acceptable by the City Building Official or his designee. Accessory structures may not, regardless of size, sit on the ground on runners, sit on blocks, or sit on piers. Any wood framing material less than eighteen (18) inches from grade shall be of decay resistant material or pressure treated wood.

11. Except as otherwise provided for by Code, accessory structures shall be designed to be architecturally compatible with the principal structure to which they are accessory by the use of one (1) or more of the façade elevation materials found on the principal structure or determined to be complimentary thereto. Said design must be approved by the City Planner or his designee. ***Garages and carports have specific criteria which are further described in Section 402, Definitions. The establishment of a City architectural control ordinance and/or board shall preempt the City Planner's review capacity; however, the City does not enforce protective covenants which are the responsibility of property owners.***

12. Accessory structures are not exempt from the City's floodplain and stream buffer ordinances ***unless as detailed therein."***

Section 2

a. 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 or were, upon their enactment, believed by the Mayor and Council to be fully valid, enforceable and constitutional.

b. 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 or 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.

c. 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 3

Penalties provided for violations of this Ordinance are set out in Section 1-12, as amended hereby, of the Code of Ordinances, City of Doraville, Georgia and are herby incorporated as if set out fully.

Section 4

All ordinances or parts of ordinances in conflict herewith are hereby expressly repealed.

Section 5

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

Section 6

The Ordinance shall be codified in a manner consistent with the laws of the State of Georgia and the City of Doraville.

Section 7

It is the intention of the governing body, and it is hereby ordained that the provisions of this Ordinance shall become and be made part of the Code Ordinances, City of Doraville, Georgia and the sections of this Ordinance may be renumbered to accomplish such intention.

Section 8

This Ordinance shall become effective upon its adoption by the Mayor and Council.

SO ORDAINED, this ___ day of _____, 2009.

CITY OF DORAVILLE, GEORGIA

_____
Ray Jenkins, Mayor

_____
First Reading

_____
Second Reading

ATTEST:

_____(SEAL)
Rhonda Blackmon, City Clerk

APPROVED AS TO FORM:

_____
Murray J. Weed, City Attorney

	Yea	Nay
Maria Alexander	☐	☐
Brian Bates	☐	☐
Pam Fleming	☐	☐
Donna Pittman	☐	☐
Bob Roche	☐	☐
Bob Spangler	☐	☐