

IN THE SUPERIOR COURT OF FRANKLIN COUNTY  
STATE OF GEORGIA

CALMAT CO

Plaintiff

v.

FRANKLIN COUNTY, GEORGIA;  
BOARD OF COMMISSIONERS OF  
FRANKLIN COUNTY, KYLE FOSTER,  
ROBERT L. FRANKLIN, AND EDDIE  
WESTER,

Defendants

CIVIL ACTION FILE NO.  
22-FV-0302P

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**MOTION TO DISMISS**

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COMES NOW Franklin County, Georgia, Kyle Foster, Robert L. Franklin, and Eddie Wester (collectively the “Defendants”)<sup>1</sup>, said individuals in their official capacities as members of the Board of Commissioners of Franklin County, by and through their undersigned counsel, and pursuant to O.C.G.A. § 9-11-12(b)(1) and § 9-11-12(b)(6) and Uniform Superior Court Rule 6.1, hereby file this Motion to Dismiss Plaintiff’s Complaint. In support of this Motion to Dismiss, Defendants rely upon the Brief in Support of Franklin County’s Motion to Dismiss

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<sup>1</sup> Defendants appear specially for the purpose of filing this Motion to Dismiss, and by doing so, expressly reserve and do not waive any defenses based on improper and/or lack of service of process. Service of this action has only been attempted on the individually named Defendants and not on Franklin County, Georgia or the Board of Commissioners of Franklin County.

being submitted contemporaneously herewith, and the pleadings on file with the Court, including any and all documents attached as exhibits and incorporated by reference in such pleadings.

WHEREFORE, Franklin County prays that this Court grant this Motion to Dismiss as to all claims contemplated in Plaintiff's Complaint, and for such other and further relief as the Court deems just and proper.

Respectfully submitted this 4<sup>th</sup> day of November, 2022.

**THE SAMUELS FIRM**

/S/

---

Dale R. "Bubba" Samuels  
Georgia Bar No. 141974

278 W. Main Street  
Buford, Georgia 30518  
(678) 482-0208 – telephone  
(678) 482-0209 – facsimile

Attorneys for Defendants

IN THE SUPERIOR COURT OF FRANKLIN COUNTY  
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Plaintiff

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Defendants

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**CERTIFICATE OF SERVICE**

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I hereby certify that I have this day served a true and correct copy of the within and foregoing **MOTION TO DISMISS** by placing a copy of same, postage prepaid, in the United States Mail to:

David Ellison  
Fortson, Bentley and Griffin, P.A.  
2500 Daniel's Bridge Road  
Building 200, Suite 3A  
Athens, Georgia 30606

This 4<sup>th</sup> day of November, 2022.

/S/  
Dale R. "Bubba" Samuels  
Georgia Bar No. 141974

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**BRIEF IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS**

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**INTRODUCTION**

Plaintiff's Complaint should be dismissed in its entirety. Because the Ordinance Plaintiff attempts to challenge was repealed by Franklin County, Plaintiff's claims are moot. Plaintiff's remaining associated claims are procedurally barred because Plaintiff failed to exhaust its adequate and available remedies prior to initiating this action by submitting any applications to Franklin County for consideration and approval of Plaintiff's proposed development of property. As such, the Court lacks subject matter jurisdiction and Plaintiff's Complaint fails to state a claim upon which relief may be granted. For all of these reasons, Plaintiff's Complaint should be dismissed with prejudice.

## I. STATEMENT OF FACTS

On August 1, 2022, the Franklin County Board of Commissioners (the “BOC”) adopted an Ordinance amending the text of its 2005 Zoning Regulations. See Exhibit A (the “Text Amendment”). The Text Amendment, among other things, added a new Section 2103 to the 2005 Zoning Regulations, adopting standards for the BOC’s consideration of “Mining, quarrying, and resource extraction” activities. At that same meeting on August 1, 2022, the BOC voted to adopt a new comprehensive Unified Development Code (the “UDC”) that would ultimately repeal and replace the 2005 Zoning Regulations, including the Text Amendment. Importantly, however, only Articles 12 and 13 of the UDC were effective immediately on August 1, 2022. The remaining provisions of the UDC, including the repealer provision contained in Section 1-403 of the UDC, were not effective until September 19, 2022, when the BOC adopted the Official Zoning Map of Franklin County. See Exhibit B.

Although Plaintiff timely filed the present action challenging the validity of the Text Amendment to the 2005 Zoning Regulations on August 26, 2022, and subsequently attempted service of its lawsuit on the Defendants on October 6, 2022<sup>1</sup>, the challenged Text Amendment was repealed on September 19, 2022.<sup>2</sup> Plaintiff has not challenged the applicable law governing their apparent plan for the subject property, the UDC, which was effective on and after September 19, 2022, and are procedurally barred from pursuing their claims.

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<sup>1</sup> Service was apparently only attempted by Plaintiff on the three individual Franklin County Commissioners named in the caption—Kyle Foster, Eddie Wester, and Robert L. Franklin. No service has been attempted or perfected on Defendants Franklin County, Georgia or the Board of Commissioners of Franklin County. Defendants appear specially for the purpose of filing this Motion to Dismiss and brief in support thereof, and by doing so, expressly reserve and do not waive any defenses based on improper and/or lack of service of process.

<sup>2</sup> Although Plaintiff’s “Appeal and Petition for Declaratory Judgment” seeks extraordinary relief, the Complaint is not verified positively by the petitioner or supported by other satisfactory proofs as required by O.C.G.A. § 9-10-110.

## II. ARGUMENT AND CITATION OF AUTHORITY

### A. Plaintiff's Challenge to the Text Amendment to the 2005 Zoning Regulations has been Rendered Moot by the Adoption of a New UDC and Map

A claim is moot when resolving it “would amount to the determination of an abstract question,” therefore giving the Plaintiff no relief. Shelley v. Town of Tyrone, 302 Ga. 297, 307 (2017). Dismissal of moot claims is mandatory because mootness “is an issue of jurisdiction and must be determined before a court addresses the merits of a claim.” Sweet City Landfill, LLC v. Elbert County, 818 S.E.2d 93, 98 (Ga. App. 2018).

Here, Plaintiff challenges the text amendment to the County’s 2005 Zoning Regulations (the “2005 Zoning Regulations”). However, Franklin County’s adoption of the new UDC, coupled with the September 19, 2022 adoption of the Official Zoning Map of Franklin County, repealed and replaced all prior zoning ordinances as they had been amended to that point. Thus, the 2005 Zoning Regulations, including the August 1, 2022 Text Amendment thereto, were repealed and no longer exist, having been replaced by the new UDC on September 19, 2022.

When an ordinance is repealed and replaced through the adoption of a new ordinance, claims regarding the prior ordinance are moot. See, e.g., Sweet City Landfill, 818 S.E.2d at 97 (holding the repeal and replacement of a solid waste ordinance rendered challenges to the ineffective ordinance moot); Shelley, 302 Ga. at 307 (holding facial challenges to a zoning ordinance were moot because the challenged zoning ordinance was repealed and replaced). Thus, this Court must dismiss the Plaintiff’s challenges to the Text Amendment because they are similarly moot.

Further, any claims Plaintiff now attempts to bring to challenge the new UDC are time barred. Challenges to zoning decisions as that term is defined in the Georgia Zoning Procedures

Law (the “ZPL”) are required to be brought within 30 days of the challenged action. O.C.G.A. § 36-66-5.1(b). See also, Village Centers, Inc. v. DeKalb County et al., 248 Ga. 177, 179 (1981). This 30-day time bar extends to instances where a party did not seek rezoning, but the party was covered by a comprehensive amendment to the zoning ordinance or a new zoning map. Wilson v. City of Snellville, 256 Ga. 734, 735 (1987). Here, if Plaintiff were to attempt to raise a new challenge to the applicable ordinance, the UDC, such challenge would be beyond the deadline for bringing a claim under the ZPL. Thus, Plaintiff’s challenge would fall squarely within Wilson’s authority. This 30-day requirement is jurisdictional in nature, so this Court would have no power to entertain any new claims challenging the UDC. Roswell v. Parker, 384 S.E.2d 396, 398 (Ga. App. 1989).

**B. Plaintiff’s Additional Claims Are Procedurally Barred**

Plaintiff has alleged additional claims, including an apparent claim for inverse condemnation, based on the “operational setback” provision of the Text Amendment as well. “As a general rule, before seeking judicial determination that a local regulation is unconstitutional as applied to its property, a party must first apply to local authorities for relief.” City of Suwanee v. Settles Bridge Farm, LLC 292 Ga. 434, 437 (2013). Plaintiff must exhaust these adequate and available administrative remedies before any as-applied challenge ripens for judicial review. Id. To exhaust its administrative remedies, Plaintiff must seek “permission from the local government through established channels” through variance or conditional use requests or rezoning petitions. See, e.g., Shelley, 302 Ga. at 304 (petitioner must make a variance or conditional use request or seek rezoning); Settles Bridge Farm, 292 Ga.at 438 (petitioner must apply for a special use permit); Mayor & Alderman of City of Savannah v. Savannah Cigarette & Amusement Servs., Inc., 262

Ga. 173, 174 (1996) (petitioner must seek rezoning). The purpose of these requirements is to prevent “judicial intervention” into local affairs and to promote judicial economy because “local authorities, unlike the court, have the power to grant the zoning relief sought.” Shelley, 302 Ga. at 304.

Plaintiff has failed to seek any administrative remedies from Franklin County. Plaintiff states in their petition they are “prepared” to file an application for rezoning and for a special use permit, but they have failed to seek either form of relief from the local authorities of the County. Plaintiff claims the Moratorium Barring the Acceptance for Conditional Use Permits for Heavy Industrial Uses (the “Moratorium”), prevented them from seeking these forms of relief. However, the Moratorium expired before Plaintiff filed their petition. See Exhibit C. Presently, and since before Plaintiff filed their petition, nothing has prevented Plaintiff from seeking permission from Franklin County, through rezoning and variance requests, to use their land for mining or quarrying activities. Because Plaintiff has failed to exhaust these adequate and available administrative remedies, Plaintiff’s as-applied claims are not yet ripe for judicial review, and must be dismissed on that basis as well.

### **III. CONCLUSION**

Plaintiff’s Complaint should be dismissed. Plaintiff’s attempt to challenge an ordinance that has since been repealed has rendered Plaintiff’s claims moot. Plaintiff failed to apply to Franklin County for their property to be properly zoned for their desired use prior to initiating this action, and in so doing, failed to exhaust its adequate and available remedies. All other claims and demands are without merit and there are no set of facts upon which this Court could fashion Plaintiff relief. The County’s motion should be granted, dismissing Plaintiff’s Complaint



with prejudice.

This 4<sup>th</sup> day of November, 2022.

**THE SAMUELS FIRM**

/s/

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Dale R. "Bubba" Samuels  
Georgia Bar No. 141974

278 W. Main Street  
Buford, Georgia 30518  
(678) 482-0208 – telephone  
(678) 482-0209 – facsimile

Attorneys for Defendants

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**CERTIFICATE OF SERVICE**

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I hereby certify that I have this day served a true and correct copy of the within and foregoing **BRIEF IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS** by placing a copy of same, postage prepaid, in the United States Mail to:

David Ellison  
Fortson, Bentley and Griffin, P.A.  
2500 Daniel's Bridge Road  
Building 200, Suite 3A  
Athens, Georgia 30606

This 4<sup>th</sup> day of November, 2022.

/S/  
Dale R. "Bubba" Samuels  
Georgia Bar No. 141974

## **EXHIBIT A**

IN THE SUPERIOR COURT OF FRANKLIN COUNTY  
STATE OF GEORGIA

CALMAT CO

Plaintiff

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Defendants

CIVIL ACTION FILE NO.  
22-FV-0302P

---

**CERTIFICATION**

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The undersigned Clerk of the Franklin County Board of Commissioners,  
HEREBY CERTIFIES that the following Ordinance adopted August 1, 2022 is a  
true and correct copy of the Ordinance that is part of the Official Records of  
Franklin County, Georgia.

WITNESS my signature and seal of Franklin County, Georgia.

(S E A L)

  
\_\_\_\_\_  
Jane Brown  
Franklin County, Georgia

**COUNTY OF FRANKLIN  
STATE OF GEORGIA**

**AN ORDINANCE  
BY THE BOARD OF COMMISSIONERS  
OF FRANKLIN COUNTY**

An Ordinance of Franklin County, Georgia Amending the Zoning Regulations Adopted April 4, 2005, as most recently amended July 12, 2021, to add a new Article XXI, "Specific Use Regulations," to repeal conflicting ordinances; to provide for severability; and to provide for an effective date.

**WHEREAS**, the Constitution of the State of Georgia, approved by the voters of the State in November of 1982, and effective July 1, 1983, provides in Article IX, Section II, Paragraph I thereof, that the governing authority of the county may adopt clearly reasonable ordinances, resolutions and regulations; and

**WHEREAS**, O.C.G.A. Section 36-1-20 authorizes counties to enact ordinances for protecting and preserving the public health, safety and welfare of the population of the unincorporated areas of the county; and

**WHEREAS**, in the interests of the health, safety, and general welfare of the citizens of Franklin County, Georgia, the Board of Commissioners of Franklin County desires to amend its zoning regulations; and

**WHEREAS**, appropriate notice and hearing on the amendments contained herein have been carried out according to general and local law.

**NOW THEREFORE**, be it ordained by the Board of Commissioners of Franklin County, Georgia, as follows:

**SECTION 1**

The zoning regulations of Franklin County are hereby amended to add a new Article XXI, "Specific Use Regulations," including a new Section 2101, "Landfill, other than sanitary," a new Section 2102, "Landfill, sanitary, and solid waste transfer facility," and a new Section 2103, "Mining, quarrying and resource extraction" to read as follows:

**ARTICLE XXI**  
**SPECIFIC USE REGULATIONS**

**Section 2101. Landfill, other than sanitary.**

- (a) Applicability. This section shall regulate landfills other than sanitary landfills, commonly referred to as “inert waste” and “construction and demolition” landfills. that accept waste materials that will not or are not likely to cause production of leachate of environmental concern and therefore have a low potential for groundwater contamination, including but not limited to earth and earth-like products, concrete, cured asphalt, rock, bricks, wood, metal, wall board, paper, cardboard, yard trimmings, stumps, limbs, and leaves, and specifically excluding industrial, hazardous, and municipal solid wastes.
- (b) Minimum site area. The minimum site area shall be one hundred (100) acres.
- (c) Buffer. A natural, undisturbed buffer meeting screening requirements of these zoning regulations and replanted where sparsely vegetated, shall be maintained for a minimum width of 200 feet along all side and rear property lines not abutting a state or federal highway.
- (d) Access. Access must be provided from a paved road or highway with a functional classification of minor arterial or higher as determined by the zoning administrator. Access shall not be allowed through any residential subdivision or residential development.
- (e) Traffic impact study. As a part of the special use application or if a special use is not required then prior to issuance of a development permit, a traffic study shall be submitted to the zoning administrator. The applicant shall address recommendations of the traffic study to mitigate traffic impacts of the proposed facility. Specifically, the study shall identify any state or county maintained road within or adjacent to the property, and shall state any repaving, alterations, turning lanes, signalization, or other road additions or improvements necessary to accommodate the potential increase of traffic volume or weight occasioned by the proposed operations.
- (f) Road surfacing and dust control. Permanent roads within the landfill site shall be surfaced with a dust-free material. Roads other than permanent roads shall be treated with dust inhibitors which will reduce the generation of dust from the road surfaces as a result of wind or vehicular action.
- (g) Lighting. As a part of the conditional use application, the applicant shall submit information regarding proposed night lighting, which may be limited by the Board of Commissioners via conditions of conditional use approval.

- (h) Fencing. Landfills shall be enclosed by a six (6) foot high fence along the entire perimeter boundary, for screening and security purposes, as approved during the conditional use application process or as approved by the zoning administrator if not subject to the conditional use application process. Gates must be provided at all points of vehicular ingress and egress and shall be closed and locked when not in regular use. Along such perimeter fence, notice signs shall be posed at regular intervals which shall warn against trespassing.
- (i) Operational setback. Landfilling activities shall not occur within 2000 feet of any perimeter property line.
- (j) On-site operator. All landfills regulated by this section shall have an operator in attendance at all times when the landfill is in use.
- (k) Covered loads. Vehicles shall be allowed into a landfill site only if waste is covered, to prevent blowing of material from the vehicle.
- (l) Hours of operation. Unless otherwise approved by the Board of Commissioners via conditions of conditional use approval, the landfill operations (excluding routine maintenance of equipment) shall be limited to the following: No operation shall be allowed between the hours of 7:00 p.m. and 7:00 a.m. during the months of November, December, January, February, and March. No operation shall be allowed between the hours of 9:00 p.m. and 6:30 a.m. during the months of April, May, June, July, August, September and October. No operation shall be permitted on Sundays, New Years, Independence Day, Thanksgiving or Christmas Day.
- (m) State permit. The owner shall provide the Public Development Department with a current copy of a Georgia solid waste handling permit, or pending application thereof, prior to applying for a development permit.

**Section 2102. Landfill, sanitary, and solid waste transfer facility.**

- (a) General siting restriction. No sanitary landfill shall be sited in a manner inconsistent with the location provisions of the local or regional Comprehensive Solid Waste Management Plan adopted by the Franklin County Board of Commissioners.
- (b) Minimum site area. The minimum site area shall be one-hundred (100) acres.
- (c) Access. Access must be provided from a paved road or highway with a functional classification of minor arterial or higher as determined by the zoning administrator. Access shall not be allowed through any residential subdivision or residential development.
- (d) Traffic impact study. As a part of the special use application, a traffic study shall be submitted to the zoning administrator. The applicant shall address recommendations of the traffic study to mitigate traffic impacts of the proposed facility. Specifically, the study

shall identify any state or county maintained road within or adjacent to the property, and shall state any repaving, alterations, turning lanes, signalization, or other road additions or improvements necessary to accommodate the potential increase of traffic volume or weight occasioned by the proposed operations.

- (e) Road surfacing and dust control. Permanent roads within the site shall be surfaced with a dust-free material. Roads other than permanent roads shall be treated with dust inhibitors which will reduce the generation of dust from the road surfaces as a result of wind or vehicular action.
- (f) Well impact study. An analysis of existing wells within one (1) mile of the proposed operations and the potential impacts of sanitary landfilling on said wells, along with recommendation to mitigate impacts on said wells shall be submitted with the application. No sanitary landfilling shall be allowed to adversely affect any wells within one (1) mile of the proposed operations.
- (g) Fencing. Facilities shall be enclosed by a six (6) foot high fence along the entire perimeter boundary, for screening and security purposes, as approved during the special use application process. Gates must be provided at all points of vehicular ingress and egress and shall be closed and locked when not in regular use. Along such perimeter fence, notice signs shall be posed at regular intervals which shall warn against trespassing.
- (h) Lighting. As a part of the conditional use application, the applicant shall submit information regarding proposed night lighting, which may be limited by the Board of Commissioners via conditions of conditional use approval.
- (i) Operational setback. Sanitary landfilling activities shall not occur within 2,000 feet from any perimeter property line.
- (j) On-site operator. All facilities shall have an operator in attendance at all times when the landfill is in use.
- (k) Covered loads. Vehicles shall be allowed into a facility site only if waste is covered, to prevent blowing of material from the vehicle.
- (l) Hours of operation. Hours of operation may be limited by the Board of Commissioners via conditions of special use approval. Unless otherwise approved, facilities operations (excluding routine maintenance of equipment) shall be limited to the following: No operation shall be allowed between the hours of 7:00 p.m. and 7:00 a.m. during the months of November, December, January, February, and March. No operation shall be allowed between the hours of 9:00 p.m. and 6:30 a.m. during the months of April, May, June, July, August, September and October. No operation shall be permitted on Sundays, New Years, Independence Day, Thanksgiving or Christmas Day.



- (m) State permit. The owner shall provide the Public Development Department with a current copy of a Georgia solid waste handling permit, or pending application thereof, prior to applying for a development permit.

**Section 2103. Mining, quarrying or resource extraction.**

- (a) Minimum site area. The minimum site area shall be one hundred (100) acres.
- (b) Buffer. A natural, undisturbed buffer meeting screening requirements of these zoning regulations and replanted where sparsely vegetated, shall be maintained for a minimum width of 200 feet along all side and rear property lines not abutting a state or federal highway.
- (c) Fencing. Such facilities shall be enclosed by a six (6) foot high fence along the entire perimeter boundary, for screening and security purposes, as approved during the conditional use application process. Gates must be provided at all points of vehicular ingress and egress and shall be closed and locked when not in regular use. Along such perimeter fence, notice signs shall be posed at regular intervals which shall warn against trespassing and shall contain a statement pertaining to the use of explosives, if applicable.
- (d) Buffer. A natural, undisturbed buffer meeting screening requirements of these zoning regulations and replanted where sparsely vegetated, shall be maintained for a minimum width of 200 feet along all side and rear property lines not abutting a state or federal highway.
- (e) Operational setbacks. Mining, quarrying and excavation operations shall not take place any closer than 2,000 feet to any perimeter property line.
- (f) Operations plan. An operation plan containing the following information shall be submitted as part of the application for special use approval:
  - 1. Date of commencement of the operation and its expected duration.
  - 2. Proposed hours and days of operation, which shall not be inconsistent with this Section unless approved otherwise by the Franklin County Board of Commissioners as a part of conditional use application approval.
  - 3. A description of the method of operation, including the disposition of topsoil, overburden and by-products
  - 4. A description of the equipment to be used in the extraction process.
  - 5. A statement regarding the intended use of explosives, if any, or other hazardous materials, if any, and the methods and procedures proposed for handling, use, storage and disposal of the materials.

6. A plan for reclamation of the land upon completion of mining, quarrying, or other excavation.
- (g) Traffic impact study. As a part of the special use application, a traffic study shall be submitted to the zoning administrator. The applicant shall address recommendations of the traffic study to mitigate traffic impacts of the proposed facility. Specifically, the study shall identify any state or county maintained road within or adjacent to the property, and shall state any repaving, alterations, turning lanes, signalization, or other road additions or improvements necessary to accommodate the potential increase of traffic volume or weight occasioned by the proposed operations.
- (h) Air quality study. As a part of the special use application, an air quality study shall be submitted to the zoning administrator. The applicant shall address recommendations of the air quality study to mitigate fugitive dust and any other air quality impacts of the proposed facility.
- (i) Noise study. As a part of the conditional use application, a noise impact study shall be submitted to the zoning administrator. The applicant shall address recommendations of the noise study to mitigate noise and lighting impacts of the proposed facility.
- (j) Lighting. As a part of the conditional use application, the applicant shall submit information regarding proposed night lighting, which may be limited by the Board of Commissioners via conditions of conditional use approval.
- (k) Blasting and vibrations. Blasting operations if permitted are subject to the requirements of this UDC. Vibration levels at the boundaries of the extraction site shall not exceed a minimum peak velocity of 1.0 inches per second, steady state and 2.0 inches per second impact state.
- (l) Well impact study. An analysis shall be required of existing wells within one (1) mile of the proposed operations and the potential impacts of such mining, quarrying, or excavation on said wells, along with recommendation to mitigate impacts on said wells.
- (m) Reference to state rules and regulations. A state surface mining permit, and all plans and specifications submitted for such state permit, as required by state law and administrative rules, shall be submitted to the zoning administrator prior to commencement of operations.
- (n) Days and hours of operation. Hours of operation may be limited by the Board of Commissioners via conditions of special use approval. Unless otherwise approved, the mining and quarrying operations (excluding routine maintenance of equipment) shall be limited to the following: No operation shall be allowed between the hours of 7:00 p.m. and 7:00 a.m. during the months of November, December, January, February, and March. No operation shall be allowed between the hours of 9:00 p.m. and 6:30 a.m. during the months of April, May, June, July, August, September and October. No operation shall be permitted on Sundays, New Years, Independence Day, Thanksgiving or Christmas Day.

**SECTION 2**

All ordinances and parts of ordinances in conflict with this ordinance are hereby repealed.

**SECTION 3**

Should a court of competent jurisdiction find any provision of this development code to be invalid or unenforceable, such invalid or unenforceable provision shall be severed from this development code and shall not affect the validity or enforceability of the remainder of this development code, which shall remain in full force and effect.

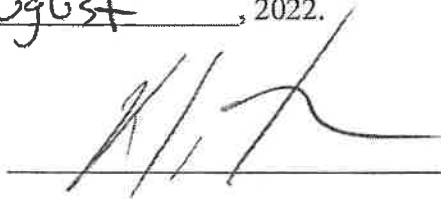
**SECTION 4**

This ordinance shall be effective upon its adoption.

So ORDAINED, This the 1<sup>st</sup> Day of August, 2022.

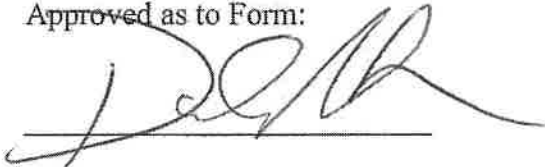


Attest: County Clerk



Chairman, Board of Commissioners

Approved as to Form:



County Attorney

## **EXHIBIT B**

IN THE SUPERIOR COURT OF FRANKLIN COUNTY  
STATE OF GEORGIA

CALMAT CO

Plaintiff

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BOARD OF COMMISSIONERS OF  
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ROBERT L. FRANKLIN, AND EDDIE  
WESTER,

Defendants

CIVIL ACTION FILE NO.  
22-FV-0302P

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**CERTIFICATION**

---

The undersigned Clerk of the Franklin County Board of Commissioners, **HEREBY CERTIFIES** that the following portion of the Franklin County Unified Development Code adopted August 1, 2022 is a true and correct copy of Page 19 of the Ordinance, containing § 1-403 Repeal of previous ordinances, and § 1-404 Effective date, all of which are part of the Official Records of Franklin County, Georgia.

WITNESS my signature and seal of Franklin County, Georgia.

(S E A L)

  
\_\_\_\_\_  
Jane Brown  
Franklin County, Georgia

**Sec. 1-403. Repeal of previous ordinances.**

All ordinances or parts thereof having the same purpose or subject matter are hereby repealed to the extent of their conflict. Without limiting the generality of the foregoing, the following ordinances existing on the effective date of this ordinance adoption are specifically repealed:

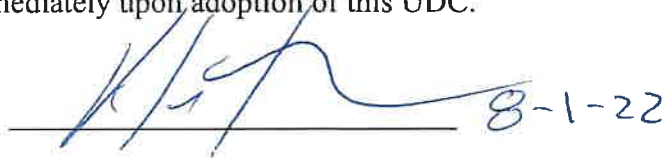
Zoning regulations of Franklin County, Georgia, adopted April 4, 2005, as amended.

**Sec. 1-404. Effective date.**

This UDC shall take effect and be in force from and after adoption of the official zoning map by the Board of Commissioners, the public health, safety, and welfare demanding it; provided, however, that Articles 12, "Zoning Amendments and Procedures," and 13, "Variances and Appeals" of this UDC shall be effective immediately upon adoption of this UDC.

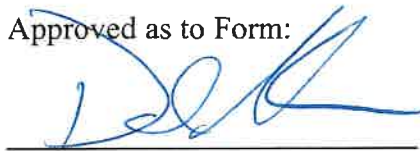


Attest: County Clerk

 8-1-22

Chairman, Board of Commissioners

Approved as to Form:



County Attorney

## **EXHIBIT C**

IN THE SUPERIOR COURT OF FRANKLIN COUNTY  
STATE OF GEORGIA

CALMAT CO

Plaintiff

v.

FRANKLIN COUNTY, GEORGIA;  
BOARD OF COMMISSIONERS OF  
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ROBERT L. FRANKLIN, AND EDDIE  
WESTER,

Defendants

CIVIL ACTION FILE NO.  
22-FV-0302P

---


**CERTIFICATION**

---

The undersigned Clerk of the Franklin County Board of Commissioners, **HEREBY CERTIFIES** that the following Resolution adopted May 26, 2022 is a true and correct copy of Resolution for a Moratorium that expired on August 24, 2022, and which Resolution is included in the Official Records of Franklin County, Georgia.

WITNESS my signature and seal of Franklin County, Georgia.

(S E A L)

  
\_\_\_\_\_  
Jane Brown  
Franklin County, Georgia



**A RESOLUTION BY THE FRANKLIN COUNTY BOARD OF COMMISSIONERS FOR A  
MORATORIUM BARRING THE ACCEPTANCE OF APPLICATIONS FOR CONDITIONAL  
USE PERMITS FOR HEAVY INDUSTRIAL USES PURSUANT TO THE ZONING  
REGULATIONS OF FRANKLIN COUNTY, GEORGIA**

**WHEREAS**, the Zoning Regulations of Franklin County, Georgia (the “Ordinance”) was adopted on or about April 4, 2005; and

**WHEREAS**, the Franklin County Board of Commissioners desires to take steps to ensure the uniformity and enforceability of the Ordinance, and all regulations and guidelines governing the issuance of Conditional Use Permits for heavy industrial uses proposed in Franklin County; and

**WHEREAS**, proposed revisions to the Zoning Regulations of Franklin County, Georgia to be included in the County’s new Unified Development Code are currently being drafted and considered by the Franklin County Planning Commission for recommendation of consideration and adoption by the Board of Commissioners, which consideration shall include at least one Public Hearing; and

**WHEREAS**, such proposed revisions are necessary to harmonize the rights of private property use with the desired character of Franklin County and the health, safety, and welfare of its citizens; and

**WHEREAS**, such proposed revisions are necessary to regulate the location and operation of heavy industrial uses within the jurisdiction of Franklin County; and

**WHEREAS**, such revisions are necessary to restrict the location, relocation and erection of heavy industrial uses to certain specified areas and under certain conditions and applying certain standards as allowed by law; and

**WHEREAS**, a moratorium on the acceptance of applications and the issuance of Conditional Use Permits for heavy industrial uses proposed in Agriculture, Industrial, and/or Commercial zoning districts is reasonably calculated to allow certain revised provisions of the Zoning Regulations of Franklin County, Georgia to be created, implemented, and adopted; and

**WHEREAS**, a moratorium on the acceptance of applications and the issuance of Conditional Use Permits for the location, relocation, and erection of heavy industrial uses proposed in Agriculture,

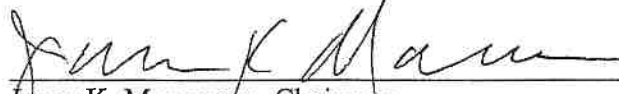
Industrial, and/or Commercial zoning districts is within the limits of necessity and is the least restrictive means available in the exercise of Franklin County's police power for the legitimate public purpose of addressing the regulations and restrictions governing heavy industrial uses in Franklin County, as well as for the legitimate public purpose of maintaining the status quo pending approval and adoption of a revised Ordinance by the Franklin County Board of Commissioners.

**NOW THEREFORE, BE IT RESOLVED BY THE FRANKLIN COUNTY BOARD OF COMMISSIONERS** that a moratorium is imposed for a period of ninety (90) days, through and including August 24, 2022, or until the proposed revisions to the Zoning Regulations of Franklin County, Georgia to be included in the County's new Unified Development Code are duly considered and acted upon by the Franklin County Board of Commissioners. Said moratorium shall be effective immediately, such that no applications for Conditional Use Permits for the location, relocation, or erection of heavy industrial uses proposed in Agriculture, Industrial, and/or Commercial zoning districts shall be accepted, and no such permits shall otherwise be granted during the term of this moratorium, the health, safety, and welfare of the citizens of Franklin County demanding it.

**BE IT FURTHER RESOLVED** that it is the express intent of the Franklin County Board of Commissioners that this Resolution be consistent with both federal and State law. If any provision of this Resolution or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions or applications of the Resolution which shall be given effect without the invalid provision or application, and to this end the invalid provisions of this Resolution are declared, and shall be and remain, severable.

SO RESOLVED AND ADOPTED, this 26<sup>th</sup> day of May, 2022.

**FRANKLIN COUNTY BOARD OF  
COMMISSIONERS**

  
\_\_\_\_\_  
Jason K. Macomson, Chairman

Attest:

  
\_\_\_\_\_  
Kayla Finger, County Clerk

[SEAL]