

All You Ever Wanted to Know About Zoning and Planning in Georgia

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2012 Community Planning Institute

- Zoning Procedures Act
- Using Zoning Standards
- Conflicts of Interest and Other Ethical Issues
- Open Meetings Act
- Constitutional Issues
- Legislative v. Administrative Decision

CONSTITUTIONAL AUTHORITY TO PLAN AND ZONE

The governing authority of each county and of each municipality may adopt plans and may exercise the power of zoning. This authorization shall not prohibit the General Assembly from enacting general laws establishing procedures for the exercise of such power.

Ga. Const. Art. 9, §2, Para. IV

Georgia Statutes that Specifically Govern Land Use Planning and Zoning

1. Zoning Procedures Law, § 36-66-1 et seq.
2. Transfer of Development Rights, § 36-66A-1 et seq.
3. Conflict of Interest in Zoning Act, § 36-67A-1 et seq.
4. Coordinated and Comprehensive Planning by Local Governments § 36-70-1 et seq. and §50-8-7.1-7.2

Georgia Statutes that Specifically Govern Land Use Planning and Zoning *(continued)*

5. Resolution of Land Use Classification Disputes,
§36-36-11
6. Limitation on Outdoor Advertising
§32-6-72
7. Limitation on Junkyards
§32-6-241
8. Procedures for Locating, Constructing and
Modifying Wireless Communication Facilities
§36-66B-4



ZONING PROCEDURES ACT

O.C.G.A. Chapter 36-66

ZONING means the power of local governments to provide within their respective territorial boundaries for the zoning or districting of property for various uses and the prohibition of other or different uses within such zones or districts and for the regulation of development and the improvement of real estate within such zones or districts in accordance with the uses of property for which such zones or districts were established.

O.C.G.A. § 36-66-3(3)

ZONING ORDINANCE means an ordinance or resolution of a local government establishing procedures and zones or districts within its respective territorial boundaries which regulate the uses and development standards of property within such zones or districts. The term also includes the zoning map adopted in conjunction with a zoning ordinance which shows the zones and districts and zoning classifications of property therein.

O.C.G.A. § 36-66-3(5)

ZONING DECISION means final legislative action by a local government which results in:

- (A) The adoption of a zoning ordinance;
- (B) The adoption of an amendment to a zoning ordinance which changes the text of the zoning ordinance;

- (C) The adoption of an amendment to a zoning ordinance which rezones property from one zoning classification to another;
- (D) The adoption of an amendment to a zoning ordinance by a municipal local government which zones property to be annexed into the municipality;
or
- (E) The grant of a permit relating to a special use of property.

O.C.G.A. § 36-66-3(4)

NOTICE OF PUBLIC HEARING

(Application for Rezoning by Property Owner)

- Notice published in a newspaper of general circulation within the territorial limits of the jurisdiction at least 15 days, but not more than 45 days prior to the hearings.
- The notice must state the time, place and purpose of the hearing.

NOTICE OF PUBLIC HEARING
(Application for Rezoning by Property Owner)
(continued)

- Notice shall include location of the property, the present zoning classification of the property, and the proposed zoning classification of the property.
- A sign placed in a conspicuous location on the property containing information required by the zoning ordinance not less than 15 days prior to the date of the hearing.

O.C.G.A. §36-66-4(b)

NOTICE OF ZONING HEARING

(Application by City Council or Board of Commissioners)

- Notice published in a newspaper of general circulation within the territorial limits of the jurisdiction at least 15 days, but not more than 45 days prior to the hearings.
- The notice must state the time, place and purpose of the hearing.

O.C.G.A. §36-66-4(a)

PUBLIC HEARING PROCEDURES

Local governments shall adopt policies and procedures which govern calling and conducting hearings required by Code Section 36-66-4, and printed copies of such policies and procedures shall be available for distribution to the general public.

PUBLIC HEARING PROCEDURES

A local government is required to give equal time to both proponents and opponents of the zoning application. In addition, the written procedures must state that each side shall have no less than 10 minutes.

O.C.G.A. §36-66-5(a)

PUBLIC HEARING ON PUBLIC HEARING PROCEDURES

The policies and procedures which govern calling and conducting a public hearing may be included in and adopted as part of the zoning ordinance. But prior to adoption of any zoning ordinance, a local government is required to conduct a public hearing on the policies and procedures for conducting public hearings.

Notices of a public hearing for adopting policies and procedures shall be the same as for adoption of a zoning ordinance.

ZONING STANDARDS

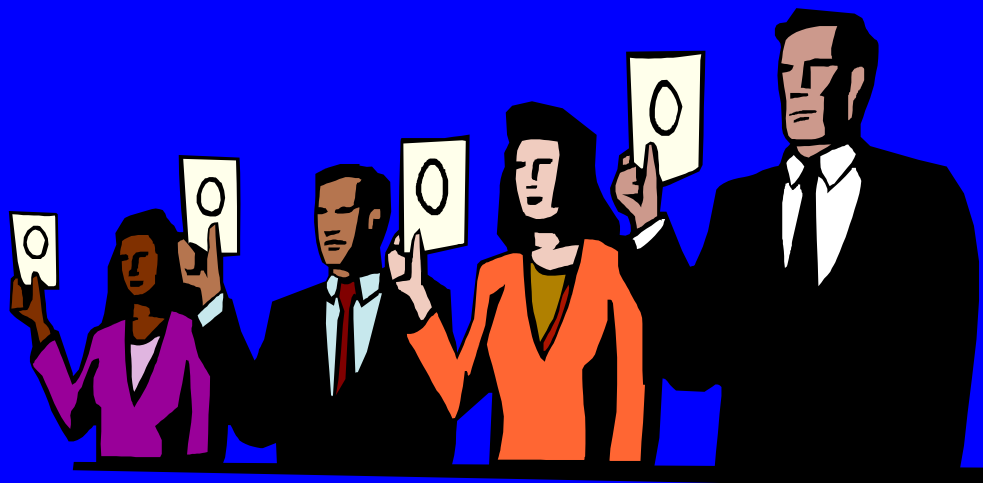
In addition to policies and procedures required by subsection (a) of this Code section, each local government shall adopt standards governing the exercise of the zoning power, and such standards may include any factors which the local government finds relevant in balancing the interest in promoting the public health, safety, morality, or general welfare against the right to the unrestricted use of property.

Such standards shall be printed and copies thereof shall be available for distribution to the general public.

O.C.G.A. §36-66-5(b)

PUBLIC HEARING FOR ADOPTION OF STANDARDS

Standards to be adopted by a local government may be included in and adopted as part of the zoning ordinance. But before its adoption, a local government is required to conduct a public hearing on the proposed standards. Notices relating to public hearings for adoption of zoning standards shall be advertised and conducted in the same manner as public hearings for adoption of a zoning ordinance.



USING STANDARDS

For Rezoning,
Special Uses
and Text Amendments

Rezoning Standards

- 1.** Whether the zoning proposal will permit a use that is suitable in view of the use and development of adjacent and nearby property;
- 2.** Whether the zoning proposal will adversely affect the existing use or usability of adjacent or nearby property;

Rezoning Standards

- 3.** Whether the property to be affected by the zoning proposal has a reasonable economic use as currently zoned;
- 4.** Whether the zoning proposal will result in a use which will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities, or schools;

Rezoning Standards

5. If the local government has an adopted land use plan, whether the zoning proposal is in conformity with the policy and intent of the land use plan; and
6. Whether there are other existing or changing conditions affecting the use and development of the property which give supporting grounds for either approval or disapproval of the zoning proposal.

O.C.G.A. 36-67-3(1-6) (repealed, 2012)

Special Use Standards

- Is the type of **street** providing access to the use adequate to serve the proposed special use?
- Is **access** into and out of the property adequate to provide for traffic and pedestrian safety, the anticipated volume of traffic flow, and access by emergency vehicles?
- Are **public facilities** such as schools, water or sewer utilities, and police or fire protection adequate to serve the special use?

Special Use Standards

- Are **refuse, service, parking and loading** areas on the property located or screened to protect other properties in the area from such adverse effects as noise, light, glare or odor?
- Will the **hours and manner of operation** of the special use have no adverse effects on other properties in the area?

Special Use Standards

- Will the height, size or location of the **buildings** or other structures on the property be compatible with the height, size or location of buildings or other structures on neighboring properties?
- Is the proposed use consistent with the purpose and intent of the **zoning district**?

Text Amendment Standards

- Is the proposed text amendment compatible with the purpose and intent of the **Comprehensive Plan**?
- Is the proposed text amendment consistent with the purpose and intent of the **Zoning Ordinance**?
- Will adoption of the amendment further the protection of the **public health, safety or general welfare**?

CONFLICT OF INTEREST IN ZONING ACT

O.C.G.A. Chapter 36-67(A)

WHEN?

- ONLY REZONING

DISCLOSE/DISQUALIFY

- PUBLIC OFFICIALS
- APPLICANTS/ ATTORNEYS
- OPPOSITION/ ATTORNEYS

WHICH PUBLIC OFFICIALS?

- PLANNING COMMISSION
- GOVERNING AUTHORITY
 - MAYOR
 - COUNCIL
 - COUNTY COMMISSION

PUBLIC OFFICIALS' FINANCIAL OR FAMILIAL INTEREST

- Any ownership interest
 - Disclose and disqualify
- Financial Interest in entity w/ any ownership
 - Financial interest = 10%
 - Disclose and disqualify

PUBLIC OFFICIALS (continued)

- Family members with ownership or financial interest
 - Family= sp, m, f, s, b, s, d
 - Disclose
- Campaign contributions
 - None

DISQUALIFIED PUBLIC
OFFICIALS SHALL NOT
TAKE ACTION TO
INFLUENCE AN
APPLICATION FOR
REZONING

APPLICANT

- Applicant or attorney.
- Campaign gifts or contributions totaling \$250.
- 2 yrs. preceding the zoning application.
- File within 10 days of application.

OPPOSITION

- Opposition/attorney
- \$250
- File 5 days prior to the hearing
- 2 years preceding application

**ADDITIONAL ETHICAL
CONSIDERATIONS
CONCERNING VOTING**

Ethical Issues

- Little v. City of Lawrenceville et al., 272 Ga. 340, 528 S.E.2d 515 (2000)
- Dunaway v. City of Marietta, 251 Ga. 727, 308 S.E.2d 823 (1983)
- Crozer et al. v. Reichert et al., 275 Ga. 118, 561 S.E.2d 120 (2002)
- Vickers v. Coffee County, 255 Ga. 659, 340 S.E.2d 585 (1986)



OPEN AND PUBLIC MEETINGS ACT

O.C.G.A. Chapter 50-14

Who is subject to the act?

Every county, municipality, commission, agency, board, department or authority of each county or municipality.

What meetings are required to be opened?

A gathering of a quorum of the members of the governing body or any committee at which official business, policy, or public matter of the governing body or agency is formulated, presented, discussed, or voted upon.

Meeting shall not include:

1. The gathering of a quorum of the members of a governing body or committee for the purpose of making inspections of physical facilities or property under the jurisdiction of such agency at which no other official business of the agency is to be discussed or official action is to be taken;

2. The gathering of a quorum of the members of a governing body or committee for the purpose of attending state-wide, multijurisdictional, or regional meetings to participate in seminars or courses of training on matters related to the purpose of the agency or to receive or discuss information on matters related for the purpose of the agency at which no official action is to be taken by the members;

3. The gathering of quorum of the members of a governing body or committee for the purpose of meeting with officials of the legislative or executive branches of the state or federal offices and at which no official action is to be taken by the members;

4. The gathering of a quorum of the members of a governing body of an agency for the purpose of traveling to a meeting or gathering as otherwise authorized by this subsection so long as no official business, policy, or public matter is formulated, presented, discussed, or voted upon by the quorum;

5. The gathering of a quorum of the members of a governing body of an agency at social, ceremonial, civic, or religious events so long as no official business, policy, or public matter is formulated, presented, discussed, or voted upon by the quorum; or

6. This subparagraph's exclusions from the definition of the term meeting shall not apply if it is shown that the primary purpose of the gathering or gatherings is to evade or avoid the requirements for conducting a meeting while discussing or conducting official business.

Open meetings shall be:

- Open to the public (visual and sound recording shall be permitted)
- Set for a time, place, and date of the regular meeting of the agency pursuant to notice posted at least one week in advance and maintained in a conspicuous place available to the public at the regular meeting place of the agency, as well as the agency's website, if any.

Open meetings at a time or place other than that prescribed for regular meetings:

- Pursuant to written notice at least 24 hours at the place of regular meetings and notice at least 24 hours to the legal newspaper if the meeting is not held at a time or place for regular meetings of the agency.

Published agenda of open meetings:

- An agenda of all matters expected to be considered at an open meeting shall be available upon request and posted at the meeting site in advance as reasonably possible but not more than 2 weeks prior to the meeting. (other agenda items may be considered and acted upon at the meeting)

Summary of subjects acted on:

- Within 2 business days of the adjournment of an open meeting, a summary of the subjects acted on and members present at the meeting is required to be available for public inspection.

Minutes of an open meeting:

- Minutes shall be promptly recorded not later than immediately following the next regular meeting of the agency.
- Minutes shall include names of the members present, a description of each motion or proposal, identity of the person making and seconding the motion or other proposal, and a record of all votes.

Direct Constitutional Authority to Counties and Cities to Plan and Zone Trumps All Statutes and Ordinances

Constitutional Restrictions on the Exercise of Zoning Power

1. Taking without just compensation
2. Due process
3. Equal Protection
4. Vested rights

LEGISLATIVE v. ADMINISTRATIVE DECISION-MAKING

LEGISLATIVE HEARINGS

1. Set up procedures for calling and conducting of the hearing as required by O.C.G.A. §36-66-5(a).
2. Give the required notice under the Zoning Procedures Act, O.C.G.A. §36-66-4.

LEGISLATIVE HEARINGS

3. Copy the entire zoning file for each application to be considered at the public hearing and distribute one copy to each planning commission member or elected official at least seventy-two hours before the hearing.
4. Record the public hearing, either by a tape recorder or a court reporter. If the case is appealed, prepare a transcript.

LEGISLATIVE HEARINGS

5. Prepare an agenda before the meeting listing all the applications with a description of each and provide the order in which they will be considered by the hearing board. A copy should be available for all attendees.
6. Prepare a copy of the procedures for distribution to the attendees as required by O.C.G.A. §36-66-5(a).

LEGISLATIVE HEARINGS

7. Have the official zoning map and the future land use plan present during the public hearing.
8. Have a professional staff member give a report and make a recommendation to the hearing board.

LEGISLATIVE HEARINGS

9. A motion respecting the decision of the hearing board should be stated clearly. Especially, this is true in the case of conditions which apply to a rezoning.
10. The Planning Commission is not required to make findings, but it may do so in accordance with the standards previously adopted by the local governing authority.

ADMINISTRATIVE HEARINGS

1. Provide the required notice of the hearing as set forth in the local ordinance.
2. Establish written procedures for conduct of the hearing and provide a copy to all attendees.

ADMINISTRATIVE HEARINGS

The recommended procedures are as follows:

- a. Allow the applicant to make the first presentation.
- b. Provide for witness testimony.

ADMINISTRATIVE HEARINGS

- c. Allow for cross-examination by interested parties (require interested parties to be represented by someone).
- d. Allow interested parties to introduce evidence.
- e. Allow cross-examination of the interested parties by applicant.

ADMINISTRATIVE HEARINGS

- f. Require that all documents be marked as exhibits.
- g. Upon conclusion of the hearing for each application, make a decision.
- h. Reduce all decisions to writing or have a verbatim transcript of the motion and vote on each decision.

ADMINISTRATIVE HEARINGS

3. Prepare a record or file for each application which should include the application and any documents introduced or provided as exhibits and the transcript of the hearing. It is especially important that this be prepared in the event of an appeal.

ADMINISTRATIVE HEARINGS

4. Have a professional staff member explain the case to the Board. Allow him or her to be examined as appropriate by the applicant or interested parties. The professional staff may make a recommendation of a desired result, but it is not required.

ADMINISTRATIVE HEARINGS

5. Provide the same file to the applicant as is provided to each board member. Make sure each board member has a copy of the file prior to the hearing. Make the file available to the parties interested upon request.

ADMINISTRATIVE HEARINGS

6. Have the official zoning map and future land use plan present at the hearing for use by anyone at the hearing.
7. Record the public hearing, either by a tape recorder or a court reporter. If the case is appealed, prepare a transcript.

QUESTIONS AND ANSWERS

FIRE AWAY ...