



DeKalb County Department of Planning & Sustainability

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**Planning Commission Hearing Date: January 5, 2023
Board of Commissioners Hearing Date: January 26, 2023**

TEXT AMENDMENT ANALYSIS

AGENDA NO: 2022-2543 **ZONING CASE NO.:** TA-23-1246181 **COMMISSION DISTRICTS:** ALL

APPLICANT: Department of Planning & Sustainability

SECTIONS OF ZONING ORDINANCE AFFECTED BY AMENDMENTS: CHAPTER 27-ZONING ORDINANCE, INCLUDING BUT NOT LIMITED TO SECTION 9.1.3 (DEFINED TERMS), SECTION 7.1.2 (GOVERNING BODIES), SECTION 7.2.4 (PUBLIC HEARINGS), SECTION 4.1.3 (USE TABLE), AND SECTION 7.5.8 (APPEALS OF DECISIONS OF THE ZONING BOARD OF APPEALS).

REASON FOR REQUEST:

House Bill 1405, a revision to the O.C.G.A §36-66 *Zoning Procedures*, was approved by the Georgia Legislature in the Spring of 2022 and ratified by the Governor on May 13, 2022. This major revision to zoning procedures, which provide minimum statewide directives for many of the zoning related procedures that we administer, takes effect on July 1, 2023. The *Zoning Ordinance* must be updated to reflect these procedural changes by the effective date. The table below summarizes the major changes in state law and provide the corresponding sections of the *Zoning Ordinance* that will need to be revised.

Zoning Procedures Law – Updates to Zoning Ordinance by July 1, 2023

O.C.G.A Statute	Topic	Affected Zoning Ordinance Sec.
§36-66-1.1	Definition of “quasi-judicial”	Sec. 9.1.3. -add definition Sec. 7.1.2 – include reference or use to describe ZBA
§36-66-3	Definition of “zoning”	Sec. 9.1.3. -add definition
§36-66-4	Definition of “zoning decision”	Sec. 9.1.3. -update definition
§36-66-4a	Public hearing	Sec. 7.2.4. -public hearing procedures <i>*create a matrix</i>
§36-66-4f	Halfway houses, drug rehab ctrs, etc.	Sec. 4.1.3. – update Use Table to require SLUP for all zoning districts Sec. 4.2.48 – update for consistency with 6–9-month public hearing, notice, & advertising requirements
§36-66-4g	Quasi-judicial hearings/notices	Sec. 7.1.2 and/or 7.2.4 – update to include notice to owner of

		subject property & new minimum 30-day notice requirement instead of 15 days
§36-66-4h	Public hearing & notice procedures for multi-family uses in single-family zoning districts	Sec. 7.2.4. -public hearing procedures **major fiscal impact
§36-66-5.1	Appeal of Quasi-judicial decisions and designated staff for court filings	Sec. 7.5.8. – update to include designated staff person to receive court summonses

A more detailed and comprehensive packet of text amendment proposals related to this agenda item will be provided at the March 7, 2023 Planning Commission meeting. Staff recommends a full-cycle deferral.

STAFF RECOMMENDATION: Full-cycle Deferral

House Bill 1405 (AS PASSED HOUSE AND SENATE)

By: Representatives Roberts of the 52nd, Washburn of the 141st, Crowe of the 110th, Dreyer of the 59th, Paris of the 142nd, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 36 of the Official Code of Georgia Annotated, relating to local governments,
2 so as to revise "The Zoning Procedures Law"; to revise provisions related to judicial review
3 of zoning decisions; to revise definitions; to provide for requirements for zoning decisions
4 by boards or agencies using delegated powers; to provide additional notice and hearing
5 provisions for changes to zoning ordinances that revise single-family residential
6 classifications and definitions so as to authorize multifamily residential property uses; to
7 require review procedures for decisions made by boards or agencies using delegated powers;
8 to provide for judicial review of zoning decisions; to require certain designations relating to
9 appeals of quasi-judicial decisions; to provide for related matters; to provide for an effective
10 date and applicability; to repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 **SECTION 1.**

13 Title 36 of the Official Code of Georgia Annotated, relating to local governments, is
14 amended by revising Chapter 66, relating to zoning procedures, as follows:

15 "CHAPTER 66

H. B. 1405

16 36-66-1.

17 This chapter shall be known and may be cited as ~~'The Zoning~~ 'Zoning Procedures Law.'

18 36-66-2.

19 (a) While recognizing and confirming the authority of local governments to exercise
20 zoning power within their respective territorial boundaries, it is the intention of this chapter
21 to establish as state policy minimum procedures governing the exercise and means of
22 judicial review of the exercise of that power. The purpose of these minimum procedures
23 is to assure that due process is afforded to the general public when local governments
24 regulate the uses of property through the exercise of the zoning power. Nothing in this
25 chapter shall be construed to invalidate any zoning decision made by a local government
26 prior to January 1, 1986 July 1, 2023, or to require a local government to exercise its
27 zoning power.

28 (b) Consistent with the minimum procedures required by this chapter, local governments
29 may:

30 (1) Provide by ordinance or resolution for such administrative officers, ~~bodies~~ boards,
31 or agencies as may be expedient for the efficient exercise of ~~their~~ delegated,
32 quasi-judicial zoning powers and to establish procedures and notice requirements for
33 hearings before such quasi-judicial officers, boards, or agencies that are consistent with
34 the minimum procedures provided for in this chapter to assure due process is afforded the
35 general public; and

36 (2) Provide by ordinance or resolution for procedures and requirements in addition to or
37 supplemental to those required by this chapter and, where so adopted, thereby establish
38 the minimum procedures for such local government's exercise of zoning powers.

39 36-66-3.

40 As used in this chapter, the term:

41 (1) 'Local government' means any county or municipality which exercises zoning power
42 within its territorial boundaries.

43 (1.1) 'Quasi-judicial officers, boards, or agencies' means an officer, board, or agency
44 appointed by a local government to exercise delegated, quasi-judicial zoning powers
45 including hearing appeals of administrative decisions by such officers, boards, or
46 agencies and hearing and rendering decisions on applications for variances, special
47 administrative permits, special exceptions, conditional use permits, or other similar
48 permits not enumerated herein as a zoning decision, pursuant to standards for the exercise
49 of such quasi-judicial authority adopted by a local government.

50 (2) 'Territorial boundaries' means, in the case of counties, the unincorporated areas
51 thereof and any area defined in paragraph (5.1) of Code Section 36-70-2, and, in the case
52 of municipalities, the area lying within the corporate limits thereof except any area
53 defined in paragraph (5.1) of Code Section 36-70-2.

54 (3) 'Zoning' means the power of local governments to provide within their respective
55 territorial boundaries for the zoning or districting of property for various uses and the
56 prohibition of other or different uses within such zones or districts and for the regulation
57 of development and the improvement of real estate within such zones or districts in
58 accordance with the uses of property for which such zones or districts were established.

59 (4) 'Zoning decision' means final legislative action by a local government which results
60 in:

61 (A) The adoption or repeal of a zoning ordinance;

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

64 (C) The adoption or denial of an amendment to a zoning ordinance ~~which rezones to~~
65 rezone property from one zoning classification to another;

66 (D) The adoption or denial of an amendment to a zoning ordinance by a municipal
67 local government ~~which zones to zone~~ zone property to be annexed into the municipality; ~~or~~

- 68 (E) The grant or denial of a permit relating to a special use of property;
- 69 (F) The grant or denial of a variance or conditions concurrent and in conjunction with
- 70 a decision pursuant to subparagraphs (C) or (E) of this paragraph.
- 71 (5) 'Zoning ordinance' means an ordinance or resolution of a local government
- 72 establishing procedures and zones or districts within its respective territorial boundaries
- 73 which regulate the uses and development standards of property within such zones or
- 74 districts. The term also includes the zoning map adopted in conjunction with a zoning
- 75 ordinance which shows the zones and districts and zoning classifications of property
- 76 therein.

77 36-66-4.

- 78 (a) A local government taking action resulting in a zoning decision shall provide for a
- 79 hearing on the proposed action. Where the proposed action includes any combination of
- 80 zoning decisions under subparagraphs (C), (E), or (F) of paragraph (4) of Code Section
- 81 36-66-3 for the same property, only one hearing shall be required under this Code Section.
- 82 At least 15 but not more than 45 days prior to the date of the hearing, the local government
- 83 shall cause to be published within a newspaper of general circulation within the territorial
- 84 boundaries of the local government a notice of the hearing. The notice shall state the time,
- 85 place, and purpose of the hearing.
- 86 (b) If a zoning decision of a local government is for the rezoning of property and the
- 87 rezoning is initiated by a party other than the local government, then:
- 88 (1) The notice, in addition to the requirements of subsection (a) of this Code section,
- 89 shall include the location of the property, the present zoning classification of the property,
- 90 and the proposed zoning classification of the property; and
- 91 (2) A sign containing information required by local ordinance or resolution shall be
- 92 placed in a conspicuous location on the property not less than 15 days prior to the date
- 93 of the hearing.

- 94 (c) If the zoning decision of a local government is for the rezoning of property and the
95 amendment to the zoning ordinance to accomplish the rezoning is defeated by the local
96 government, then the same property may not again be considered for rezoning until the
97 expiration of at least six months immediately following the defeat of the rezoning by the
98 local government.
- 99 (d) If the zoning is for property to be annexed into a municipality, then:
- 100 (1) Such municipal local government shall complete the procedures required by this
101 chapter for such zoning, except for the final vote of the municipal governing authority,
102 prior to adoption of the annexation ordinance or resolution or the effective date of any
103 local Act but no sooner than the date the notice of the proposed annexation is provided
104 to the governing authority of the county as required under Code Section 36-36-6;
- 105 (2) The hearing required by subsection (a) of this Code section shall be conducted prior
106 to the annexation of the subject property into the municipality;
- 107 (3) In addition to the other notice requirements of this Code section, the municipality
108 shall cause to be published within a newspaper of general circulation within the territorial
109 boundaries of the county wherein the property to be annexed is located a notice of the
110 hearing as required under the provisions of subsection (a) or (b), as applicable, of this
111 Code section and shall place a sign on the property when required by subsection (b) of
112 this Code section; and
- 113 (4) The zoning classification approved by the municipality following the hearing
114 required by this Code section shall become effective on the later of:
- 115 (A) The date the zoning is approved by the municipality;
- 116 (B) The date that the annexation becomes effective pursuant to Code Section 36-36-2;
- 117 or
- 118 (C) Where a county has interposed an objection pursuant to Code Section 36-36-11,
119 the date provided for in paragraph (8) of subsection (c) of said Code section.

120 (e) A qualified municipality into which property has been annexed may provide, by the
121 adoption of a zoning ordinance, that all annexed property shall be zoned by the
122 municipality, without further action, for the same use for which that property was zoned
123 immediately prior to such annexation. A qualified county which includes property which
124 has been deannexed by a municipality may provide, by the adoption of a zoning ordinance,
125 that all deannexed property shall be zoned by the county, without further action, for the
126 same use for which that property was zoned immediately prior to such deannexation. A
127 municipality shall be a qualified municipality only if the municipality and the county in
128 which is located the property annexed into such municipality have a common zoning
129 ordinance with respect to zoning classifications. A county shall be a qualified county only
130 if that county and the municipality in which was located the property deannexed have a
131 common zoning ordinance with respect to zoning classifications. A zoning ordinance
132 authorized by this subsection shall be adopted in compliance with the other provisions of
133 this chapter. The operation of such ordinance to zone property which is annexed or
134 deannexed shall not require any further action by the adopting municipality, adopting
135 county, or owner of the property annexed or deannexed. Property which is zoned pursuant
136 to this subsection may have such zoning classification changed upon compliance with the
137 other provisions of this chapter.

138 (f) When a proposed zoning decision relates to or will allow the location or relocation of
139 a halfway house, drug rehabilitation center, or other facility for treatment of drug
140 dependency, a public hearing shall be held on the proposed action. Such public hearing
141 shall be held at least six months and not more than nine months prior to the date of final
142 action on the zoning decision. The hearing required by this subsection shall be in addition
143 to any hearing required under subsection (a) of this Code section. The local government
144 shall give notice of such hearing by:

145 (1) Posting notice on the affected premises in the manner prescribed by subsection (b)
146 of this Code section; and

147 (2) Publishing in a newspaper of general circulation within the territorial boundaries of
148 the local government a notice of the hearing at least 15 days and not more than 45 days
149 prior to the date of the hearing.

150 Both the posted notice and the published notice shall include a prominent statement that
151 the proposed zoning decision relates to or will allow the location or relocation of a halfway
152 house, drug rehabilitation center, or other facility for treatment of drug dependency. The
153 published notice shall be at least six column inches in size and shall not be located in the
154 classified advertising section of the newspaper.

155 (g) A local government delegating decision-making power to a quasi-judicial officer,
156 board, or agency shall provide for a hearing on each proposed action described in
157 paragraph (1.1) of Code Section 36-66-3. Notice of such hearing shall be provided at
158 least 30 days prior to the quasi-judicial hearing, with such notice being made as provided
159 for in subsection (a) of this Code section and with additional notice being mailed to the
160 owner of the property that is the subject of the proposed action.

161 (h)(1) Notwithstanding any other provisions of this chapter to the contrary, when a
162 proposed zoning decision relates to an amendment of the zoning ordinance to revise one
163 or more zoning classifications or definitions relating to single-family residential uses of
164 property so as to authorize multifamily uses of property pursuant to such classification
165 or definitions, or to grant blanket permission, under certain or all circumstances, for
166 property owners to deviate from the existing zoning requirements of a single-family
167 residential zoning, such zoning decision must be adopted in the following manner:

168 (A) The zoning decision shall be adopted at two regular meetings of the local
169 government making the zoning decision, during a period of not less than 21 days apart;
170 and

171 (B) Prior to the first meeting provided for in subparagraph (A) of this paragraph, at
172 least two public hearings shall be held on the proposed action. Such public hearings
173 shall be held at least three months and not more than nine months prior to the date of

174 final action on the zoning decision. Furthermore, at least one of the public hearings
175 must be held between the hours of 5:00 P.M. and 8:00 P.M. The hearings required by
176 this paragraph shall be in addition to any hearing required under subsection (a) of this
177 Code section. The local government shall give notice of such hearing by:

178 (i) Posting notice on each affected premises in the manner prescribed by
179 subsection (b) of this Code section; provided, however, that when more than 500
180 parcels are affected, in which case posting notice is required every 500 feet in the
181 affected area; and

182 (ii) Publishing in a newspaper of general circulation within the territorial boundaries
183 of the local government a notice of each hearing at least 15 days and not more than 45
184 days prior to the date of the hearing.

185 Both the posted notice and the published notice shall include a prominent statement that
186 the proposed zoning decision relates to or will authorize multifamily uses or give blanket
187 permission to the property owner to deviate from the zoning requirements of a
188 single-family residential zoning of property in classification previously relating to
189 single-family residential uses. The published notice shall be at least nine column inches
190 in size and shall not be located in the classified advertising section of the newspaper. The
191 notice shall state that a copy of the proposed amendment is on file in the office of the
192 clerk or the recording officer of the local government and in the office of the clerk of the
193 superior court of the county of the legal situs of the local government for the purpose of
194 examination and inspection by the public. The local government shall furnish anyone,
195 upon written request, a copy of the proposed amendment, at no cost.

196 (2) The provisions of paragraph (1) of this subsection shall also apply to any zoning
197 decisions that provide for the abolition of all single-family residential zoning
198 classifications within the territorial boundaries of a local government or zoning decisions
199 that result in the rezoning of all property zoned for single-family residential uses within

200 the territorial boundaries of a local government to multifamily residential uses of
201 property.

202 (3) This subsection shall not apply to zoning decisions for the rezoning of property from
203 a single-family residential use of property to a multifamily residential use of property
204 when the rezoning is initiated by the owner or authorized agent of the owner of such
205 property.

206 36-66-5.

207 (a) Local governments shall adopt policies and procedures which govern calling and
208 conducting hearings required by Code Section 36-66-4, and printed copies of such policies
209 and procedures shall be available for distribution to the general public. Such policies and
210 procedures shall specify a minimum time period at hearings on proposed zoning decisions
211 or quasi-judicial decisions for presentation of data, evidence, and opinion by proponents
212 of each zoning decision and an equal minimum time period for presentation by opponents
213 of each proposed zoning decision, such minimum time period to be no less than ten
214 minutes per side.

215 (b) In addition to policies and procedures required by subsection (a) of this Code section,
216 each local government rendering a zoning decision shall adopt standards governing the
217 exercise of the zoning power, and such standards may include any factors which the local
218 government finds relevant in balancing the interest in promoting the public health, safety,
219 morality, or general welfare against the right to the unrestricted use of property. Such
220 standards shall be printed and copies thereof shall be available for distribution to the
221 general public.

222 (b.1) In addition to policies and procedures required by subsection (a) of this Code section,
223 each local government providing for a quasi-judicial officer's, board's, or agency's grant,
224 denial, or review of a quasi-judicial matter may adopt specific standards and criteria
225 governing the exercise of such quasi-judicial decision-making authority, and such standards

226 shall include the factors by which the local government directs the evaluation of a
227 quasi-judicial matter. Such standards shall be printed and copies thereof made available
228 for distribution to the general public.

229 (c) The policies and procedures required by subsection (a) of this Code section and the
230 adoption of standards required by subsection (b) and permitted by subsection (b.1) of this
231 Code section may shall be included in and adopted as part of the zoning ordinance. Prior
232 to the adoption of any zoning ordinance enacted on or after ~~January 1, 1986~~ July 1, 2022,
233 a local government shall conduct a public hearing on a proposed action which may be
234 advertised and held concurrent with the hearing required by subsection (a) of Code Section
235 36-66-4 for the adoption of a zoning ordinance. The provisions of subsection (a) of Code
236 Section 36-66-4 relating to notices of public hearings for the purposes of that subsection
237 shall also apply to public hearings required by this subsection.

238 36-66-5.1.

239 (a) To ensure that the general public is afforded due process in an orderly way to petition
240 the courts for review of a local government's exercise of zoning, administrative, or
241 quasi-judicial powers as guaranteed by Article I, Section I, Paragraphs IX and XII of the
242 Constitution, the General Assembly, pursuant to its authority under Article VI, Section IV,
243 Paragraph I of the Constitution, provides the following mechanism by which each of the
244 powers described in this chapter may be reviewed by the superior court of the county
245 wherein such property is located:

246 (1) Zoning decisions as described in this chapter, being legislative in nature, shall be
247 subject to direct constitutional challenge regarding the validity of maintaining the existing
248 zoning on the subject property or the validity of conditions or an interim zoning category
249 other than what was requested in the superior court pursuant to its original jurisdiction
250 over declaratory judgments pursuant to Chapter 4 of Title 9 and equity jurisdiction under
251 Title 23. Such challenges shall be by way of a de novo review by the superior court

252 wherein such review brings up the whole record from the local government and all
253 competent evidence shall be admissible in the trial thereof, whether adduced in a local
254 government process or not and employing the presumption that a governmental zoning
255 decision is valid and can be overcome substantively by a petitioner showing by clear and
256 convincing evidence that the zoning classification is a significant detriment to the
257 petitioner and is insubstantially related to the public health, safety, morality, or general
258 welfare; or

259 (2) Quasi-judicial decisions as described in this chapter and zoning decisions under
260 subparagraph (E) of paragraph (4) of Code Section 36-66-3 shall be subject to appellate
261 review by the superior court pursuant to its appellate jurisdiction from a lower judicatory
262 body and shall be brought by way of a petition for such review as provided for in Title 5.
263 Such matters shall be reviewed on the record which shall be brought to the superior court
264 as provided in Title 5.

265 (b) All such challenges or appeals shall be brought within 30 days of the written decision
266 of the challenged or appealed action.

267 (c) To ensure that the citizens of this state are not unnecessarily burdened by the review
268 process as a mechanism of appeal, local governments shall designate by ordinance or
269 resolution:

270 (1) The officer of the quasi-judicial board or agency who shall have authority, without
271 additional board or agency action, to approve or issue any form or certificate necessary
272 to perfect the petition described in Title 5 for review of lower judicatory bodies and upon
273 whom service of such petition may be effected or accepted on behalf of the lower
274 judicatory board or agency, during normal business hours, at the regular offices of the
275 local government; and

276 (2) The elected official or his or designee who shall have authority to accept service and
277 upon whom service of an appeal of a quasi-judicial decision may be effected or accepted

278 on behalf of the local governing authority, during normal business hours, at the regular
279 offices of the local government.

280 (d) An appeal or challenge by an opponent filed pursuant to this chapter shall stay all legal
281 proceedings in furtherance of the action appealed from or challenged, unless the local
282 government, officer, board, or agency from which or from whom the appeal or challenge
283 is taken certifies that, by reason of the facts stated in the certificate, a stay would cause
284 imminent peril to life or property. In such actions, the applicant for the zoning decision or
285 the quasi-judicial decision shall be a necessary party and shall be named as a defendant in
286 the action and served in accordance with the requirements of Title 5 or Title 9, as
287 appropriate.

288 36-66-6.

289 (a) In any local government which has established a planning department or other similar
290 agency charged with the duty of reviewing zoning proposals, such planning department or
291 other agency shall, with respect to each proposed zoning decision involving land that is
292 adjacent to or within 3,000 feet of any military base or military installation or within
293 the 3,000 foot Clear Zone and Accident Prevention Zones Numbers I and II as prescribed
294 in the definition of an Air Installation Compatible Use Zone of a military airport,
295 investigate and make a recommendation with respect to each of the matters enumerated in
296 subsection (b) of this Code section, in addition to any other duties with which the planning
297 department or agency is charged by the local government. The planning department or
298 other agency shall request from the commander of such military base, military installation,
299 or military airport a written recommendation and supporting facts relating to the use of the
300 land being considered in the proposed zoning decision at least 30 days prior to the hearing
301 required by subsection (a) of Code Section 36-66-4. If the base commander does not
302 submit a response to such request by the date of the public hearing, there shall be a
303 presumption that the proposed zoning decision will not have any adverse effect relative to

304 the matters specified in subsection (b) of this Code section. Any such information provided
305 shall become a part of the public record.

306 (b) The matters with which the planning department or agency shall be required to make
307 such investigation and recommendation shall be:

308 (1) Whether the zoning proposal will permit a use that is suitable in view of the use of
309 adjacent or nearby property within 3,000 feet of a military base, military installation, or
310 military airport;

311 (2) Whether the zoning proposal will adversely affect the existing use or usability of
312 nearby property within 3,000 feet of a military base, military installation, or military
313 airport;

314 (3) Whether the property to be affected by the zoning proposal has a reasonable
315 economic use as currently zoned;

316 (4) Whether the zoning proposal will result in a use which will or could cause a safety
317 concern with respect to excessive or burdensome use of existing streets, transportation
318 facilities, utilities, or schools due to the use of nearby property as a military base, military
319 installation, or military airport;

320 (5) If the local government has an adopted land use plan, whether the zoning proposal
321 is in conformity with the policy and intent of the land use plan; and

322 (6) Whether there are other existing or changing conditions affecting the use of the
323 nearby property as a military base, military installation, or military airport which give
324 supporting grounds for either approval or disapproval of the zoning proposal."

325

SECTION 2.

326 This Act shall become effective on July 1, 2022, and shall apply to all zoning and
327 quasi-judicial decisions occurring on and after that date; however, no zoning or quasi-judicial
328 decision prior to July 1, 2023, shall be rendered invalid or void because of a local
329 government's failure to implement language in their ordinances accomplishing the provisions
330 of Code Section 36-66-5.1.

331

SECTION 3.

332 All laws and parts of laws in conflict with this Act are repealed.