

O.C.G.A. § 36-66-1

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***** Current through the 2009 Regular Session *****

TITLE 36. LOCAL GOVERNMENT
PROVISIONS APPLICABLE TO COUNTIES AND MUNICIPAL CORPORATIONS
CHAPTER 66. ZONING PROCEDURES

O.C.G.A. § 36-66-1 (2009)

§ 36-66-1. Short title

This chapter shall be known and may be cited as "**The Zoning Procedures Law.**"

HISTORY: Code 1981, § 36-66-1, enacted by Ga. L. 1985, p. 1139, § 1.

§ 36-66-2. Legislative purpose; local government zoning powers

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

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

(1) Provide by ordinance or resolution for such administrative officers, bodies, or agencies as may be expedient for the efficient exercise of their zoning powers; and

(2) Provide by ordinance or resolution for procedures and requirements in addition to or supplemental to those required by this chapter.

HISTORY: Code 1981, § 36-66-2, enacted by Ga. L. 1985, p. 1139, § 1.

§ 36-66-3. Definitions

As used in this chapter, the term:

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

(2) "Territorial boundaries" means, in the case of counties, the unincorporated areas thereof and any area defined in paragraph (5.1) of Code Section 36-70-2, and, in the case of municipalities, the area lying

within the corporate limits thereof except any area defined in paragraph (5.1) of Code Section 36-70-2.

(3) "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.

(4) "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.

(5) "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.

HISTORY: Code 1981, § 36-66-3, enacted by Ga. L. 1985, p. 1139, § 1; Ga. L. 1993, p. 806, § 1; Ga. L. 1996, p. 1009, § 1; Ga. L. 1997, p. 1567, § 2; Ga. L. 1998, p. 1391, § 1.

§ 36-66-4. Hearings on proposed zoning decisions; notice of hearing; nongovernmental initiated actions; reconsideration of defeated actions; procedure on zoning for property annexed into municipality

(a) A local government taking action resulting in a zoning decision shall provide for a hearing on the proposed action. At least 15 but not more than 45 days prior to the date of the hearing, the local government shall cause to be published within a newspaper of general circulation within the territorial boundaries of the local government a notice of the hearing. The notice shall state the time, place, and purpose of the hearing.

(b) If a zoning decision of a local government is for the rezoning of property and the rezoning is initiated by a party other than the local government then:

(1) The notice, in addition to the requirements of subsection (a) of this Code section, shall include the location of the property, the present zoning classification of the property, and the proposed zoning classification of the property; and

(2) A sign containing information required by local ordinance or resolution shall be placed in a

conspicuous location on the property not less than 15 days prior to the date of the hearing.

(c) If the zoning decision of a local government is for the rezoning of property and the amendment to the zoning ordinance to accomplish the rezoning is defeated by the local government, then the same property may not again be considered for rezoning until the expiration of at least six months immediately following the defeat of the rezoning by the local government.

(d) If the zoning is for property to be annexed into a municipality, then:

(1) Such municipal local government shall complete the procedures required by this chapter for such zoning, except for the final vote of the municipal governing authority, prior to adoption of the annexation ordinance or resolution or the effective date of any local Act but no sooner than the date the notice of the proposed annexation is provided to the governing authority of the county as required under Code Section 36-36-6;

(2) The hearing required by subsection (a) of this Code section shall be conducted prior to the annexation of the subject property into the municipality;

(3) In addition to the other notice requirements of this Code section, the municipality shall cause to be published within a newspaper of general circulation within the territorial boundaries of the county wherein the property to be annexed is located a notice of the hearing as required under the provisions of subsection (a) or (b), as applicable, of this Code section and shall place a sign on the property when required by subsection (b) of this Code section; and

(4) The zoning classification approved by the municipality following the hearing required by this Code section shall become effective on the later of:

(A) The date the zoning is approved by the municipality;

(B) The date that the annexation becomes effective pursuant to Code Section 36-36-2; or

(C) Where a county has interposed an objection pursuant to Code Section 36-36-11, the date provided for in paragraph (8) of subsection (b) of said Code section.

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

(f) When a proposed zoning decision relates to or will allow the location or relocation of a halfway house,

drug rehabilitation center, or other facility for treatment of drug dependency, a public hearing shall be held on the proposed action. Such public hearing shall be held at least six months and not more than nine months prior to the date of final action on the zoning decision. The hearing required by this subsection shall be in addition to any hearing required under subsection (a) of this Code section. The local government shall give notice of such hearing by:

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

(2) Publishing in a newspaper of general circulation within the territorial boundaries of the local government a notice of the hearing at least 15 days and not more than 45 days prior to the date of the hearing. Both the posted notice and the published notice shall include a prominent statement that the proposed zoning decision relates to or will allow the location or relocation of a halfway house, drug rehabilitation center, or other facility for treatment of drug dependency. The published notice shall be at least six column inches in size and shall not be located in the classified advertising section of the newspaper.

HISTORY: Code 1981, § 36-66-4, enacted by Ga. L. 1985, p. 1139, § 1; Ga. L. 1996, p. 1009, § 2; Ga. L. 1998, p. 856, § 3; Ga. L. 1998, p. 1392, § 1; Ga. L. 2004, p. 69, § 19.

§ 36-66-5. Adoption of hearing policies and procedures and standards for exercise of zoning power

(a) 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. Such policies and procedures shall specify a minimum time period at hearings on proposed zoning decisions for presentation of data, evidence, and opinion by proponents of each zoning decision and an equal minimum time period for presentation by opponents of each proposed zoning decision, such minimum time period to be no less than ten minutes per side.

(b) 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.

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

HISTORY: Code 1981, § 36-66-5, enacted by Ga. L. 1985, p. 1139, § 1; Ga. L. 1993, p. 806, § 2; Ga. L. 1996, p. 317, § 1.

§ 36-66-6. Investigations and recommendations of planning department regarding land near military installation

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

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

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

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

(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 a safety concern with respect to excessive or burdensome use of existing streets, transportation facilities, utilities, or schools due to the use of nearby property as a military base, military installation, or military airport;

(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 of the nearby property as a military base, military installation, or military airport which give supporting grounds for either approval or disapproval of the zoning proposal.

HISTORY: Code 1981, § 36-66-6, enacted by Ga. L. 2003, p. 581, § 1.

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TITLE 36. LOCAL GOVERNMENT

**PROVISIONS APPLICABLE TO COUNTIES AND MUNICIPAL CORPORATIONS
CHAPTER 67. ZONING PROPOSAL REVIEW PROCEDURES**

O.C.G.A. § 36-67-1 (2009)

§ 36-67-1. Applicability of article; "local government" and "governing authority" defined

This article shall apply only to those counties which have a population of 625,000 or more according to the United States decennial census of 2000 or any future such census and to those municipalities wholly or partially located within such counties which have a population of 100,000 or more according to the United States decennial census of 1980 or any future such census. As used in this article, the term "local government" means those counties and municipalities subject to this article; and the term "governing authority" means the governing authority of each such county and municipality.

HISTORY: Code 1981, § 36-67-1, enacted by Ga. L. 1985, p. 1178, § 1; Ga. L. 1992, p. 2202, § 1; Ga. L. 2002, p. 1473, § 1.

§ 36-67-2. Legislative findings

The General Assembly finds that the increasing urbanization of those local governments subject to this article requires that such local governments should use zoning procedures which may not be necessary in other less urbanized areas. The General Assembly finds that the procedures required by this article will help to ensure that governing authorities will make zoning decisions consistently and wisely and in keeping with the long-range requirements of the public health, safety, and welfare. The General Assembly further finds that the procedures required by this article will help to ensure that zoning decisions are made on the basis of a record which will contain matters necessary to the consistent and wise decision of zoning matters in highly urban areas. The General Assembly further finds that the procedures required by this article will help citizens of the affected local governments in presenting and articulating their viewpoints on zoning matters. The General Assembly further finds that the procedures required by this article will help to ensure that court decisions, when courts are required to intervene in zoning matters, will be made on the basis of a record which will contain matters necessary to the consistent and wise judicial decision of such zoning matters.

HISTORY: Code 1981, § 36-67-2, enacted by Ga. L. 1985, p. 1178, § 1.

§ 36-67-3. Zoning proposal review standards

In any local government which has established a planning department or other similar agency charged with the duty of reviewing zoning proposals, such planning department or other agency shall with respect to each zoning proposal investigate and make a recommendation with respect to each of the matters enumerated in this Code section, as well as carrying out any other duties with which the planning department or agency is charged by the local government. The planning department or other agency shall make a written record of its investigation and recommendations, and this record shall be a public record. The matters with which the planning department or agency shall be required to make such investigation and recommendation shall be:

(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;

(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;

(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.

HISTORY: Code 1981, § 36-67-3, enacted by Ga. L. 1985, p. 1178, § 1.

§ 36-67-4. Zoning proposal recommendation standards; multiple planning commissions

(a) In any local government which has established a planning commission or other similar body charged with the duty of making recommendations with respect to zoning proposals, such planning commission or other body shall with respect to each zoning proposal investigate and make a recommendation with respect to each of the matters enumerated in Code Section 36-67-3, as well as carrying out any other duties with which such planning commission or other body is charged by the local government. The planning commission or other body shall make a written record of its investigation and recommendations, and this record shall be a public record.

(b) A county government which is subject to the provisions of this article may create a separate planning commission for each of the major identifiable areas or communities which lie within the territory over which the county government exercises the planning and zoning power. Each such planning commission so created shall have the duties and responsibilities provided for in subsection (a) of this Code section.

HISTORY: Code 1981, § 36-67-4, enacted by Ga. L. 1985, p. 1178, § 1; Ga. L. 1992, p. 3017, § 1.

§ 36-67-5. Proposed zoning impact analysis by nongovernmental initiating party

If a zoning proposal is initiated by a party other than the local government, the initiating party shall be required to file a written, documented analysis of the impact of the proposed zoning with respect to each of the matters enumerated in Code Section 36-67-3, as well as any other supporting materials required by the local governing authority. The time at which such analysis is required to be filed shall be specified by each local governing authority, but the required time for filing shall not be less than seven days before any hearing or meeting of the governing authority at which the zoning proposal will be under consideration by the governing authority. Such a zoning proposal and analysis shall be a public record.

HISTORY: Code 1981, § 36-67-5, enacted by Ga. L. 1985, p. 1178, § 1.

§ 36-67-6. Zoning proposal record and analysis review at hearing or meeting

At any hearing or meeting at which a governing authority has under consideration a zoning proposal, the analysis submitted by the initiating party, if any, shall be reviewed. At any hearing or meeting at which a governing authority has under consideration a zoning proposal, the record prepared by the planning department or other agency, if any, shall be reviewed. At any hearing or meeting at which a governing authority has under consideration a zoning proposal, the record prepared by the planning commission or other group, if any, shall be reviewed. The review of such analysis and records at such hearing or meeting shall consist, as a minimum, of an oral statement of the findings with respect to each matter enumerated in Code Section 36-67-3 or the written presentation of such findings to the members of the governing authority together with a limited supply of copies of such findings to be available at the hearing or meeting and available on request to interested members of the public.

HISTORY: Code 1981, § 36-67-6, enacted by Ga. L. 1985, p. 1178, § 1.

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TITLE 36. LOCAL GOVERNMENT
PROVISIONS APPLICABLE TO COUNTIES AND MUNICIPAL CORPORATIONS
CHAPTER 67A. CONFLICT OF INTEREST IN ZONING ACTIONS

O.C.G.A. § 36-67A-1 (2009)

§ 36-67A-1. Definitions

As used in this chapter, the term:

(1) "Applicant" means any person who applies for a rezoning action and any attorney or other person representing or acting on behalf of a person who applies for a rezoning action.

(2) "Business entity" means any corporation, partnership, limited partnership, firm, enterprise, franchise, association, or trust.

(2.1) "Campaign contribution" means a "contribution" as defined in paragraph (7) of Code Section 21-5-3.

(3) "Financial interest" means all direct ownership interests of the total assets or capital stock of a business entity where such ownership interest is 10 percent or more.

(4) "Local government" means any county or municipality of this state.

(5) "Local government official" means any member of the governing authority of a local government or any member of a planning or zoning commission.

(6) "Member of the family" means the spouse, mother, father, brother, sister, son, or daughter of a local government official.

(6.1) "Opponent" means any person who opposes a rezoning action or any attorney or other person representing or acting on behalf of a person who opposes a rezoning action.

(6.2) "Oppose" means to appear before, discuss with, or contact, either orally or in writing, any local government or local government official and argue against a rezoning action.

(6.3) "Person" means an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons.

(7) "Property interest" means the direct ownership of real property and includes any percentage of ownership less than total ownership.

(8) "Real property" means any tract or parcel of land and, if developed, any buildings or structures located on the land.

(9) "Rezoning action" means action by local government adopting an amendment to a zoning ordinance which has the effect of rezoning real property from one zoning classification to another.

HISTORY: Code 1981, § 36-67A-1, enacted by Ga. L. 1986, p. 1269, § 1; Ga. L. 1991, p. 1365, § 1; Ga. L. 2005, p. 859, § 24/HB 48.

§ 36-67A-2. Disclosure of financial interests

A local government official who knew or reasonably should have known he or she:

(1) Has a property interest in any real property affected by a rezoning action which that official's local government will have the duty to consider;

(2) Has a financial interest in any business entity which has a property interest in any real property affected by a rezoning action which that official's local government will have the duty to consider; or

(3) Has a member of the family having any interest described in paragraph (1) or (2) of this Code section shall immediately disclose the nature and extent of such interest, in writing, to the governing authority of the local government in which the local government official is a member. The local government official who has an interest as defined in paragraph (1) or (2) of this Code section shall disqualify himself from voting on the rezoning action. The disqualified local government official shall not take any other action on behalf of himself or any other person to influence action on the application for rezoning. The disclosures provided for in this Code section shall be a public record and available for public inspection at any time during normal working hours.

HISTORY: Code 1981, § 36-67A-2, enacted by Ga. L. 1986, p. 1269, § 1; Ga. L. 1991, p. 1365, § 1.

§ 36-67A-3. Disclosure of campaign contributions

(a) When any applicant for rezoning action has made, within two years immediately preceding the filing of that applicant's application for the rezoning action, campaign contributions aggregating \$250.00 or more to a local government official who will consider the application, it shall be the duty of the applicant to file a disclosure report with the governing authority of the respective local government showing:

(1) The name and official position of the local government official to whom the campaign contribution was made; and

(2) The dollar amount and description of each campaign contribution made by the applicant to the local government official during the two years immediately preceding the filing of the application for the rezoning action and the date of each such contribution.

(b) The disclosures required by subsection (a) of this Code section shall be filed within ten days after the application for the rezoning action is first filed.

(c) When any opponent of a rezoning action has made, within two years immediately preceding the filing of the rezoning action being opposed, campaign contributions aggregating \$250.00 or more to a local government official of the local government which will consider the application, it shall be the duty of the opponent to file a disclosure with the governing authority of the respective local government showing:

(1) The name and official position of the local government official to whom the campaign contribution was made; and

(2) The dollar amount and description of each campaign contribution made by the opponent to the local government official during the two years immediately preceding the filing of the application for the rezoning action and the date of each such contribution.

(d) The disclosure required by subsection (c) of this Code section shall be filed at least five calendar days prior to the first hearing by the local government or any of its agencies on the rezoning application.

HISTORY: Code 1981, § 36-67A-3, enacted by Ga. L. 1986, p. 1269, § 1; Ga. L. 1991, p. 1365, § 1; Ga. L. 1993, p. 91, § 36.

§ 36-67A-4. Penalties

Any person knowingly failing to comply with the requirements of this chapter or violating the provisions of this chapter shall be guilty of a misdemeanor.

HISTORY: Code 1981, § 36-67A-4, enacted by Ga. L. 1986, p. 1269, § 1; Ga. L. 1987, p. 3, § 36; Ga. L. 1991, p. 1365, § 1.

§ 36-67A-5. Appointment of disinterested special master if governing authority unable to attain a quorum

(a) Where one or more disqualifications required by this chapter result in the inability of the governing authority of the county or municipality to attain a quorum for the purpose of making a final decision when considering a rezoning action, the governing authority immediately shall petition the superior court wherein the property which is the subject of the rezoning is located for appointment of a disinterested special master for the purpose of hearing evidence regarding the proposed rezoning action and making a recommendation to the petitioning governing authority. The court, in its order appointing the special master, shall give such directions for notice and the service thereof as well as for the time in which a hearing must be held and recommendations issued as are just and appropriate under the circumstances and as are consistent with this chapter.

(b) The disinterested special master provided for in this Code section shall be appointed by the judge or judges of the superior courts of each judicial circuit and shall discharge the duties provided for in this Code section. The special master so appointed must be a competent attorney at law, be of good standing in his profession, and have at least three years' experience in the practice of law. He shall hold office at the pleasure of the judge and shall be removable at any time with or without cause. The court, in its order appointing the special master, shall designate the person or entity responsible for compensating the special master at a rate not less than \$50.00 per day nor more than \$250.00 per day for the time actually devoted to the hearing and consideration of the matter.

(c) The special master shall consider any factors relevant in balancing the interest in promoting the public health, safety, morality, or general welfare against the right to the unrestricted use of property.

(d) The hearing provided for in this Code section and all records pertinent thereto shall be open and available to the public.

(e) Nothing contained in this Code section shall be construed as a delegation of the final decision-making powers of the governing authority to the special master and the recommendation of the special master is not a final decision as to the rezoning action. Where a special master has been appointed and has made a recommendation, the disqualification requirement of Code Section 36-67A-2 shall be waived.

HISTORY: Code 1981, § 36-67A-5, enacted by Ga. L. 1991, p. 1365, § 1.

§ 36-67A-6. Voting on zoning decision if ordinance being adopted for first time or ordinance being revised pursuant to comprehensive plan

Nothing in this chapter shall be construed to prohibit a local government official from voting on a zoning decision when the local government is adopting a zoning ordinance for the first time or when a local government is voting upon a revision of the zoning ordinance initiated by the local government pursuant to a comprehensive plan as defined in Chapter 70 of this title.

HISTORY: Code 1981, § 36-67A-6, enacted by Ga. L. 1991, p. 1365, § 1.