



ZONING ORDINANCE

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722.01 Generally

- A. This article, including the Official Zoning Map, may be amended by the City Council on its own motion, or on recommendation of the Planning Commission, but no amendment shall become effective unless it shall have been proposed by or been submitted to the Planning Commission for review and recommendation; provided, however, that after any such amendment has been submitted to and reviewed by the Planning Commission and its recommendation made thereon, the City Council shall have the right to modify such amendment or place conditions thereon, and it shall not be necessary to resubmit such amendment, as modified or conditioned, to the Planning Commission. Before enacting an amendment to this article, the City Council shall give public notice and hold a public hearing thereon.
- B. Application to amend this article may be in the form of proposals to amend the text or Official Zoning Map. Unless initiated by the City Council or Planning Commission, all applications for map amendments must be submitted by the owner (as determined by controlling at least a 51% interest in the property) or the authorized agent of such property. An application for an amendment affecting the same property shall not be submitted more than once every 6 months; however, this provision shall not apply to those properties affected by an amendment filed by the City Council or Planning Commission. (Code 1996, Sec. 7-8-2-22-010)

722.02 Application for map amendments

- A. Each application to amend the Official Zoning Map shall be filed with the Department of Planning and Zoning at least 31 days (or less at staff discretion) prior to the Planning Commission hearing at which they may be heard. Each application shall include such information as the Planning and Zoning Director may require including, but not limited to:
 - 1. a legal description of the tract(s) proposed to be rezoned;
 - 2. a plat showing the dimensions, acreage and location of the tract(s) prepared by an architect, engineer, landscape architect or land surveyor whose state registration is current and valid (his seal shall be affixed to the plat);
 - 3. the present and proposed zoning classification for the tract(s);
 - 4. the name(s) and address(es) of the owners of the land and their agents, if any;
 - 5. a copy of the recorded warranty deed (or other instrument of title) which vested title to the property in the applicant,
 - 6. a copy of the paid in full tax bill or a letter from the City of Marietta Tax Department stating that all taxes have been paid, and
 - 7. a site plan showing any and all proposed improvements to be constructed if the application is approved.
- B. This application shall be accompanied by a fee to partially defray the public expense of processing the application. A fee shall not be charged if an official governmental agency files the application or if the rezoning is a result of O.C.G.A. § 36-66-1 et seq., which requires all annexed properties to have a zoning hearing, provided said hearing designates a zoning classification which is the most equivalent to the existing county zoning.
- C. No submitted application may be amended after public notice of the request has been given provided, however, the Planning Commission and City Council may allow such application to be amended during the public hearing.
- D. The applicant or agent shall be present at the hearings before the Planning Commission and City Council with regard to said application. In the event that an agent is present, rather than the applicant,

such agent must have full authority to act on behalf of the applicant with regard to all matters pertaining to said application.

- E. The applicant shall be allowed to submit renderings, site plans and other exhibits purporting to depict what is to be constructed should a map amendment be approved; however, the applicant may be required to develop according to such plans if approved by the City Council. Any deviation from such approved plans would require another rezoning application be filed. The City Council may also require or attach to any rezoning such conditions regarding the location, character and other features of the proposed building, structure or use as it may deem advisable so as to improve the quality of life through the protection against air, water and noise pollution and promotion of aesthetic considerations.
- F. An application may not be withdrawn by the applicant within 48 hours prior to a hearing on the matter, however, the City Council may, by a majority of the members present, allow an application to be withdrawn without prejudice with respect to the 6-month limitation, or allow an application to be amended. Failure of the applicant or their representative to appear at the scheduled hearing may result in automatic dismissal with prejudice, rejection of the application or continuance of the hearing at the sole discretion of the Planning Commission or City Council.

(Code 1996, Sec. 7-8-2-22-020)

722.03 Assistance by staff

The Planning and Zoning Director upon receiving an application for amendment to the Official Zoning Map shall prepare and transmit a report to the Planning Commission and City Council determining:

- Whether the zoning proposal will permit a use that is suitable in view of the use and development of adjacent and nearby property;
- Whether the zoning proposal will adversely affect the existing use or usability of adjacent or nearby property;
- Whether the property to be affected by the zoning proposal has a reasonable economic use as currently zoned;
- Whether the zoning proposal will result in a use that may cause an excessive or burdensome use of existing streets, transportation facilities, utilities, or schools;
- Whether the zoning proposal is in conformity with the policies and intent of the land use plan; and
- Whether there are other existing or changing conditions affecting the use and development of the property which give supporting grounds for either approved or disapproved zoning proposal.

(Code 1996, Sec. 7-8-2-22-030)

722.04 Planning Commission action

- A. The Planning Commission shall conduct a public hearing on each rezoning application in accordance with their adopted schedule and procedures. The staff report on each application shall be considered and testimony solicited from the applicant and those interested citizens. The Planning Commission shall review the following factors in making a determination on the application:
 - 1. Existing uses and zoning classifications of nearby property;
 - 2. The extent to which property values are diminished by the particular zoning restrictions;
 - 3. The extent to which the destruction of property values of the plaintiffs promotes the health, safety, morals or general welfare of the public;

4. The relative gain to the public, as compared to the hardship imposed upon the individual property owner;
 5. The suitability of the subject property for the zoned purposes;
 6. The length of time the property has been vacant as zoned, considered in the context of land development in the area in the vicinity of the property;
 7. Whether the subject property has a reasonable economic use as currently zoned;
 8. Whether the proposed zoning will adversely affect the existing use or usability of adjacent or nearby property;
 9. Whether the zoning proposal is in conformity with the policies and intent of the comprehensive land use plan;
 10. 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;
 11. 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.
- B. As to each application, the Planning Commission shall make a recommendation to:
1. Approve
 2. Approve with modifications
 3. Deny
 4. Approve another zoning district
 5. Table - the Planning Commission may only table a request upon consent of the applicant. If the applicant does not wish for the application to be tabled, the Planning Commission shall forward the request to City Council with or without a recommendation.
 6. No recommendation - only in the case of a tie vote, the Planning Commission may forward the request to City Council without a recommendation. A copy of the Planning Commission's recommendations shall be prepared and submitted to the City Council. (#20170801, 11/8/17)
- C. Planning Commission Meetings
1. Meetings of the Commission shall be held on the first Tuesday of each month at 6:00 p.m., or at such other times as set by the Commission or requested by City Council. The Secretary shall inform all members of the Commission at least 48 hours in advance of any meeting (excluding weekend days).
 2. A quorum shall consist of four members for the transaction of all business.
 3. Commission members are subject to the Code of Ethics as set forth in Chapter 14 of Article 1 of the City's Code of Ordinances, including the abuse of office and conflict of interest provisions set forth therein.
 4. All meetings shall comply with the Georgia Open Meetings Act. The order of business at meetings shall be at the discretion of the Chair.
 5. During a public hearing, both the applicant and those in opposition shall be allowed a total of 15 minutes to present their argument. The Chairman may request representatives of each side to speak for the entire group. If more than one person wishes to speak in favor of or against an application, the 15 minutes shall be divided among the various speakers. In no case, however, shall any group be allowed more than the allotted time, regardless of the number of speakers, unless extended by a vote of five members of the Commission. Written comments received before the meeting are encouraged.
 6. The applicant or agent shall be present at the hearings before the Planning Commission with regard to said application. In the event that an agent is present, rather than the applicant, such agent must have the full authority to act on behalf of the applicant with regard to all matters pertaining to said application.



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7. An application may not be withdrawn by the applicant within 48 hours prior to a hearing on the matter (excluding weekend days), however, the Planning Commission may, by a majority of the members present, allow an application to be withdrawn without prejudice with respect to the 6-month limitation, or allow an application to be amended. Failure of the applicant or their representative to appear at the scheduled hearing may result in automatic dismissal with prejudice, rejection of the application or continuance of the hearing at the sole discretion of the Planning Commission.
- D. Planning Commission Vacancies.
- Failure of a Commission Member to attend three regular meetings within a calendar year shall be reported to City Council as promptly as possible. City Council may accept the absences as resignation or allow the member to continue serving the term if just cause exists for the absences. Upon such resignation, resignation by other means, or other vacancies occurring in office, the Chairman shall inform the City Council as promptly as possible, so that the City Council may appoint a replacement to fill the unexpired term.
- E. Presentation of Evidence to the Planning Commission
1. Requests should be orally presented to the Commission by Applicant, or his Representative, along with any documentation necessary.
 2. The Commission is permitted to ask any pertinent questions of the Applicant or his Representative to aid in their understanding of the case and such questions and responses shall not count towards the 15-minute time limit. Neither the public nor those speaking in opposition shall be permitted to ask questions of the Applicant or his Representative.
 3. After such presentation by the Applicant, the Chairman shall ask if there be anyone present who is in Opposition to the granting of such request.
 4. Those appearing in opposition should offer testimony and any documentation or other evidence demonstrating why granting the proposed request would create a specific hardship or why the proposed request would be detrimental or injurious to the general health, safety, and welfare of the area near the proposed rezoning.
 5. The Commission is permitted to ask any pertinent questions of the Opposition to aid in their understanding of the case and such questions and responses shall not count towards the 15-minute time limit. Neither the public nor the applicant shall be permitted to ask questions of the Opposition.
 6. All presentations, remarks and questions by the Applicant or Opposition shall be directed to the Commission.
- F. By-Laws of the Planning Commission
- The Commission shall adopt such rules for its own internal administration, including, but not limited to, the election of the Chairman and Vice Chairman and the adoption of rules not in conflict with this division.

722.05 City Council action

- A. The City Council shall hold a public hearing on all requests to amend this article and the Official Zoning Map contained therein. Prior to such hearing the City Council shall review the staff report and recommendation from the Planning Commission. At the public hearing the applicant shall present their request for a map amendment and any information they deem to support said request.
- B. So that the purpose of this article will be served and the health, public safety and general welfare secured, the City Council may approve, approve with stipulations (which may be site-specific), deny, reduce the land area for which the application is made, change the zoning classification requested, table



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until the next meeting or allow an application to be withdrawn (with or without prejudice at the discretion of the Council).

- C. The decision by City Council to approve in whole or part, reject, condition or delete an application for rezoning shall be based on, but not limited to, a consideration of the following:
1. Existing uses and zoning classifications of nearby property;
 2. The extent to which property values are diminished by the particular zoning restrictions;
 3. The extent to which the destruction of property values of the plaintiffs promotes the health, safety, morals or general welfare of the public;
 4. The relative gain to the public, as compared to the hardship imposed upon the individual property owner;
 5. The suitability of the subject property for the zoned purposes;
 6. The length of time the property has been vacant as zoned, considered in the context of land development in the area in the vicinity of the property;
 7. Whether the subject property has a reasonable economic use as currently zoned;
 8. Whether the proposed zoning will adversely affect the existing use or usability of adjacent or nearby property;
 9. Whether the zoning proposal is in conformity with the policies and intent of the comprehensive land use plan;
 10. 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;
 11. 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.
- D. In acting on such application, the City Council shall have the authority to grant the applicant variances from the regulations and provisions of this article in accordance with the standards set forth in Section 720.03 (A.3)
- E. City Council Zoning Hearing Procedures
- The following procedures shall apply to all hearings for zoning decision before the City Council:
1. Representatives/applicants, as a group, and representatives/opponents, as a group, shall be given a maximum of 15 minutes for each side to present its case, unless, by general consensus, more time is allotted by the City Council.
 2. Both the applicant and opposition shall have equal amounts of time, up to 15 minutes, to present their case and if time is extended for one side, time shall equally be extended for the other side.
 3. Those speaking in opposition, up to three people, shall have five minutes each not to exceed the total 15 minutes. If four or more people wish to speak in opposition to the request, the time limit of 15 minutes shall be equally divided. Council may extend the time.
 4. In order to accommodate all those that wish to speak, it is encouraged that groups which are present choose a spokesperson to present their views. In no case, however, shall any group be allowed more than the allotted time no matter how many speakers represent the group unless extended by a majority vote of the Council members present.
 5. The City Attorney shall be responsible for conducting a Public Hearing, keeping time and administering the oath to a speaker.
 6. The person addressing Council may be required to state the following information.
 - a. Whether the person speaks for themselves or another person;
 - b. Whether the person represents an organization or policy established by an organization or governing body;
 - c. Whether the person is being compensated by the person(s) for whom they are speak; and



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- d. Whether the person or any member of their immediate family have a personal interest in the pending matter.
7. As each case is called, all witnesses for the applicant and opponents shall first be sworn in prior to making their presentations.
8. No further public input will be allowed except responses to questions asked by the Council members.
9. The Applicant shall go first and may reserve any remaining time to conclude after the opposition has had their turn. The time for rebuttal by the applicant shall be included in the 15 minutes time limit.
10. Questions and answers to those questions from Council members shall not count against the time of the side that is asked questions.
11. At the public hearing, the applicant or any other party may appear on his own behalf or be represented by agent or attorney.
12. No applause shall be allowed either for or against an issue.
13. No request for a show of hands for or against an issue shall be allowed.
14. All speakers shall be accorded due respect by other citizens in attendance at the meeting.
15. In all hearings and/or appearances before the Marietta City Council, same shall be conducted in an orderly manner; and there shall be no applause during such appearance/hearing; and no comment or participation while another person is addressing the Marietta City Council; and there shall be no show of hands or other public participation during such hearing/appearance.

722.06

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(Code 1996, Sec. 7-8-2-22-06; #20150959, Ord #7859, 12/9/15)

722.07 Public notification

- A. Due notice of all public hearings on an application for text or map amendment shall be published at least 15 (but no more than 45) days prior to the public hearing in the newspaper denoted as the legal organ of the City and shall include the date, time and place of said public hearings.
- B. At least 15 days prior to the Planning Commission public hearing, the Department of Planning and Zoning shall post on a conspicuous place on the property for which an application has been submitted, a sign or signs containing information as to the application and date, time and place of public hearings.
- C. For amendments not initiated by the City, the Department of Planning and Zoning shall notify by regular mail all property owners within 200 feet of the property being considered (excluding owners of common areas or common elements of a condominium development) as shown by the most recent City tax records at the addresses shown on said records. Such notification shall be mailed at least 15 days prior to the City Council hearing and must include the proposed zoning change, as well as the date, time and place of the scheduled public hearings.
- D. If an application for map amendment is postponed at the request of the applicant, due notice of the new public hearings on the application must be republished and reposted as per the requirements of Sections



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7-8-2-24-070 (A) and (B) above. The costs of said advertisements shall be the responsibility of the applicant. (Code 1996, Sec. 7-8-2-22-07)

722.08 Home rule annexation

- A. The Department of Planning and Zoning, upon receiving a request for annexation, shall determine whether such application complies with legal and procedural requirements. If it does not comply with requirements, the City shall notify in writing the persons presenting the application, stating wherein the application is deficient. If it is determined that the application does comply with this article, the City shall proceed to act on the application in accordance with O.C.G.A. § 36-36-36.
- B. Within seven days of accepting an application for annexation, the Department of Planning and Zoning shall give written notice to Cobb County (by certified mail- return receipt requested) and include a map or other description of the site proposed to be annexed sufficient to identify the area.
- C. The City of Marietta shall make plans for the extension of services to the area proposed to be annexed and shall prepare a report to be made available to the public at least 14 days prior to the public hearing.
- D. The Planning Commission shall review each application after a public hearing is held. The Planning Commission will determine whether the annexation would have adverse affects upon public facilities and services, and may recommend a Future Land Use designation and zoning category. A report of the Planning Commission's recommendation shall be submitted to the City Council.
- E. The City shall hold separate public hearings on the proposed annexation and zoning of the property, not less than 15 days nor more than 45 days from the time a determination is made that the petition is valid. Notice of the time and place of the hearing shall be given in writing to the persons presenting the application and shall be advertised in the local newspaper once a week for two consecutive weeks immediately preceding the hearing. If, after the public hearing, the governing body determines that the annexation would be in the best interests of the area's residents and property owners and of the citizens of the City, an annexing ordinance shall be adopted within 60 days following validation of the signature of the applicants.
- F. All annexation proposals must be accompanied by a rezoning application submitted to the Department of Planning and Zoning even if the applicant desires the City zoning district most similar to that previous designated by Cobb County. (Code 1996, Sec. 7-8-2-22-080)

722.09 Legislative annexation

Annexation into the corporate limits of the City by action of the Georgia State Legislature will conform to the requirements of section 722.08 above, except that the City Council will not pass the ordinance zoning the annexed tract until after action by the legislature.(Code 1996, Sec. 7-8-2-22-090)

722.10 Zoning Decisions Relating to Authorize Multifamily Uses in Single-Family Classifications

- A. In compliance with O.C.G.A. § 36-66-4(h) the following supplementary procedures shall apply:
 - 1. Notwithstanding any other provisions of this chapter to the contrary, when a proposed zoning decision relates to an amendment of the zoning ordinance to revise one or more zoning classifications or definitions relating to single-family residential uses of property so as to authorize multifamily uses of property pursuant to such classification or definitions, or to grant blanket permission, under certain or all circumstances, for property owners to deviate from the existing zoning requirements of a single-family residential zoning, such zoning decision shall be adopted in the following manner:

- a. The zoning decision shall be adopted at two regular meetings of the City Council making the zoning decision, during a period of not less than 21 days apart; and
- b. Prior to the first meeting provided for in subparagraph (A) of this paragraph, at least two public hearings shall be held on the proposed action. Such public hearings shall be held at least three months and not more than nine months prior to the date of final action on the zoning decision. Furthermore, at least one of the public hearings shall be held between the hours of 5:00 P.M. and 8:00 P.M. The hearings required by this paragraph shall be in addition to any hearing required under the normal zoning decision process.
- c. The City Council shall give notice of such hearing by:
 - i. Posting notice on each affected premises in the manner prescribed by subsection (b) of this Code section; provided, however, that when more than 500 parcels are affected, in which case posting notice is required every 500 feet in the affected area; and
 - ii. Publishing in a newspaper of general circulation within the territorial boundaries of the local government a notice of each 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 authorize multifamily uses or give blanket permission to the property owner to deviate from the zoning requirements of a single-family residential zoning of property in classification previously relating to single-family residential uses. The published notice shall be at least nine column inches in size and shall not be located in the classified advertising section of the newspaper. The notice shall state that a copy of the proposed amendment is on file in the office of the clerk or the recording officer of the local government and in the office of the clerk of the superior court of the county of the legal situs of the City Council for the purpose of examination and inspection by the public. The City Council shall furnish anyone, upon written request, a copy of the proposed amendment, at no cost.

2. The provisions of paragraph (1) of this subsection shall also apply to any zoning decisions that provide for the abolition of all single-family residential zoning classifications within the territorial boundaries of a local government or zoning decisions that result in the rezoning of all property zoned for single-family residential uses within the territorial boundaries of a local government to multifamily residential uses of property.
3. This subsection shall not apply to zoning decisions for the rezoning of property from a single-family residential use of property to a multifamily residential use of property when the rezoning is initiated by the owner or authorized agent of the owner of such property.

722.11 Challenge of Zoning Decision

- A. Any person adversely affected by any zoning decision made by the City Council shall have 30 days from the date of the written decision to challenge such determination to the Superior Court of Cobb County pursuant to the standards set forth in Chapter 66 of Title 36 and under the procedures contained in Chapter 4 of Title 9 of the Official Code of Georgia.
- B. In connection with such an appeal from a zoning decision of the City Council, the City Clerk shall have authority, without additional action by the Board, to transmit the record of the zoning decision to the Clerk of Superior Court.
- C. An appeal to the Superior Court of Cobb County shall stay all legal proceedings in furtherance of the action appealed from, unless the City Council from which the appeal is taken certifies that, by reason of the facts stated in the certificate, a stay would cause imminent peril to life or property. In such actions, the applicant for the zoning decision shall be a necessary party and shall be named as a defendant in



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the action and served in accordance with the requirements of Title 5 or Title 9 of the Official Code of Georgia, as appropriate.