

**AN ORDINANCE OF THE CITY OF ALPHARETTA, GEORGIA TO  
AMEND THE UNIFIED DEVELOPMENT CODE OF THE CITY OF  
ALPHARETTA, GEORGIA TO AMEND PROCEDURES TO ENSURE  
CONSISTENCY WITH THE ZONING PROCEDURES LAW; TO  
REPEAL CONFLICTING ORDINANCES; TO PROVIDE AN  
EFFECTIVE DATE; AND FOR OTHER LAWFUL PURPOSES.**

**WHEREAS**, pursuant to its Charter and other laws of the State of Georgia, the City of Alpharetta, Georgia has the power to adopt clearly reasonable ordinances, resolutions and regulations for the protection and preservation of the public health, safety and welfare of its citizens; and

**WHEREAS**, the Unified Development Code of the City of Alpharetta regulates zoning within the City of Alpharetta, and

**WHEREAS**, the Georgia Legislature adopted revisions to the Georgia Zoning Procedures Law (O.C.G.A. § 36-66-1, et seq. "ZPL") establishing minimum procedures for the conduct and enforcement of zoning by local jurisdictions; and

**WHEREAS**, the revisions to the ZPL require local jurisdictions to meet certain minimum procedural requirements as part of their zoning ordinances; and

**WHEREAS**, the Mayor and Council have determined that it is in the best interest of the City's residents to amend the Zoning Ordinance to satisfy the minimum requirements set forth in the State ZPL;

**NOW THEREFORE, THE COUNCIL OF THE CITY OF ALPHARETTA  
HEREBY ORDAINS** as follows:

- Section 1.** The Unified Development Code of the City of Alpharetta, Georgia is hereby amended as provided in Exhibit A.
- Section 2.** That all Ordinances, parts of Ordinances, or regulations in conflict herewith are hereby repealed.
- Section 3.** That if any portion of this Ordinance or the application thereof shall be held invalid or unconstitutional, the other provisions of this Ordinance shall not be affected, and thus, the provisions of this Ordinance are declared severable.

**Section 4.** This Ordinance shall become effective upon adoption by the Mayor and City Council and the signature approval of the Mayor.

**SO ORDAINED** this the 26<sup>th</sup> day of June, 2023, the public's health, safety, and welfare demanding it.

**CITY OF ALPHARETTA, GEORGIA**

By: 

Jim Gilvin, Mayor

**COUNCIL MEMBERS**

**ABSENT**

Donald F. Mitchell

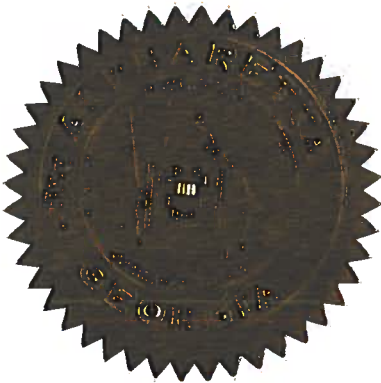
Brian Wil

Douglas J. Derito

John Hipes

Jason Binder


Dan Merkel



**ATTEST:**

  
Lauren Shapiro, City Clerk

**APPROVED AS TO FORM:**

  
Molly Esswein, City Attorney

## EXHIBIT A

Section 2.4.1(F)(1) is amended by replacing “4.5.4” with “4.5.5”

Section 2.7.4(D) is amended by deleting the subsection in its entirety and replacing it with the following:

1. Every applicant for a license shall make a written application to the City Clerk on forms prescribed by the City Clerk. All Applications shall be accompanied by a certified check for the full amount of the license fee, together with a separate check or cash in the amount of one hundred dollars (\$100.00) to defray investigative and administrative costs. If the application is denied, or if the applicant withdraws the application prior to its approval, the license fee (without interest) shall be refunded, but the one hundred dollar (\$100.00) investigative fee shall be retained.
2. Every application for a license shall be accompanied by one or more fully completed background questionnaires on forms prescribed by the City Clerk. The background questionnaire shall be completed by the owner and primary operator of the Range. If the owner is a corporation or partnership, each officer and director of the corporation and each general partner of the partnership shall provide a background questionnaire.
3. The City Clerk or her designee shall review the application and shall send a copy to all affected departments of city government to determine compliance with city regulations and laws, and to the police department to investigate the character and reputation of the applicant and other parties required to submit background questionnaires.
4. The City shall have ninety (90) days from receipt of a completed application for a license to make a decision in which to grant or deny a license. The council shall make a final decision regarding whether to grant or deny a license only after a public hearing. Notice of the hearing shall be published in a newspaper of general circulation within the City not less than thirty (30) and not more than forty-five (45) days prior to the date set for the public hearing. Additionally, notice of the public hearing shall be sent to the owner of the property that is the subject of the proposed action at least thirty (30) days prior to the hearing date by regular mail. The notice shall state the time, place and purpose of the hearing. The public hearing shall be conducted according to the procedures established in Section 4.2. In the event the city council has not granted or denied the application within ninety (90) days, the license shall automatically issue.

Section 2.7.4(G) is amended by deleting the subsection in its entirety and replacing it with the following:

*G. Suspension or Revocation of License.* The City Clerk may suspend or revoke the license of any licensee found to have violated any provision of this Ordinance. However, no license shall be suspended or revoked without the opportunity for a hearing before the City Council. Any licensee desiring a hearing shall, within fifteen (15) days of being notified of an Ordinance violation, file a written petition for a hearing in the office of the City Clerk. A hearing shall be conducted by the City Council. Notice of the hearing shall be published in the newspaper utilized by Alpharetta as the legal organ not less than thirty (30) and not more than forty-five (45) days prior to the date set for the public hearing. The notice shall state the time, place and purpose of the hearing. Additionally, notice of the public hearing shall be sent to the owner of the property that is the subject of the proposed action at least thirty (30) days prior to the hearing date by regular mail. The public hearing shall be conducted according to the procedures established in Section 4.2. The licensee shall have the right to be represented by an attorney at the hearing at the expense of the licensee. The findings of the City Council shall be forwarded to the City Clerk after the conclusion of the hearing and it shall be the duty of the City Clerk to notify the licensee of the action of the City Council. The findings of the City Council shall be final.

Section 2.7.5(M)(2) is amended by deleting the subsection in its entirety and replacing it with the following:

2. The City Clerk shall prepare and cause to be published a notice of each pending application, which notice shall include the date the application will be considered by the Council, the location or street number of the premises where applicant proposes to conduct activities permitted by this Section and the name of each Owner and Operator. The applicant shall pay the publication costs. The notice shall be published in a newspaper of general circulation within the City not less than thirty (30) and not more than forty-five (45) days prior to the date set for the public hearing. Additionally, notice of the public hearing shall be sent to the owner of the property that is the subject of the proposed action at least thirty (30) days prior to the hearing date by regular mail. The public hearing shall be conducted according to the procedures established in Section 4.2. Each applicant for a license for an Adult Entertainment Establishment shall, at such applicant's expense, post on the premises where the activities permitted by such license are to be conducted, continuously for a period of not less than ten (10) days prior to the consideration of the application by the Council, a notice of the pending application, meeting the following minimum specifications: This notice shall be painted or printed in black letters three inches (3") or more in height, against a white background, on a wooden or metal sign and having a surface of not less than twelve square feet (12 sq. ft.), and shall be placed with the base of the sign not more than three feet (3') from the ground on the most conspicuous part of the premises, facing the most frequently traveled road, street or highway abutting same, and not more than ten feet (10')

therefrom. The sign shall state clearly the nature and purpose of the application, the date and hour and place of the Council hearing, and the name of each Owner and Operator making the application.

Section 2.7.5(Q)(5) is amended by deleting the subsection in its entirety and replacing it with the following:

5. When an appeal is placed on the Council agenda, the Council may take either of the following actions:

- (a) Set a hearing date before the City Council and instruct the City Clerk to give such notice of hearing as may be required by law; or
- (b) Appoint a hearing officer and fix the time and place for hearing. The hearing officer may or may not be a City employee, and may be appointed for an extended period of time. The Clerk shall assume responsibility for such publication of notice of the hearing as may be required by law. If a hearing officer is appointed, the hearing shall be conducted in accordance with the procedures set out in this Ordinance.

In either event, at least thirty (30) days but not more than forty-five (45) days prior to any hearing, notice shall be published in a newspaper of general circulation within the City. The notice shall state the time, place and purpose of the hearing. Additionally, notice of the public hearing shall be sent to the owner of the property that is the subject of the proposed action at least thirty (30) days prior to the hearing date by regular mail.

Section 2.7.5(Q)(6) is amended by deleting the subsection in its entirety and replacing it with the following:

6. At any hearing, the hearing officer or the City Council (if it elects not to appoint a hearing officer) shall receive oral and written testimony regarding the appeal. Hearings shall be conducted according to the procedures established in Section 4.2 and under any rules issued by the hearing officer or City Council, which shall be consistent with rules applied in administrative proceedings, and shall ensure that each party may present evidence, cross-examine witnesses and be represented by legal counsel.

Section 2.9.4(C)(3) is amended by deleting the subsection in its entirety and replacing it with the following:

3. Public Hearings. The HPC and the City Council shall each hold a public hearing on any proposed ordinance for the designation of a historic property. Such public hearings may be held on the same date. The HPC shall make a recommendation to the City Council and the City Council will take final action. At least thirty (30) days but not

more than forty-five (45) days prior to each public hearing, notice shall be published in a newspaper of general circulation within the City. The notice shall state the time, place and purpose of the hearing. Written notice of the hearing shall be mailed not less than thirty (30) nor more than forty-five (45) days prior to the date set for the public hearing. A notice sent via the United States mail to the last known address of the property owner as such address appears in the City ad valorem tax records and a notice sent to the address of the property to the attention of the occupant shall constitute legal notification to the owner and occupant under this section. Such public hearings and the provisions of notice for same shall otherwise be performed in a manner consistent with the requirements of the Georgia Zoning Procedures Law (O.C.G.A. § 36-66-1, et seq.) and the City public hearing process for a proposed zoning change as provided in Section 4.2; provided, however, the HPC, not the Planning Commission, shall serve as the recommending body to the City Council in regard to such matters.

Section 2.9.7(E) is amended by deleting the subsection in its entirety and replacing it with the following:

E. Public Hearings, Notices, and Right to be Heard. The HPC shall hold a public hearing at which each proposed certificate of appropriateness is discussed. At least thirty (30) days but not more than forty-five (45) days prior to each public hearing, notice shall be published in a newspaper of general circulation within the City. The notice shall state the time, place and purpose of the hearing. Written notice of the hearing shall be mailed not less than thirty (30) nor more than forty-five (45) days prior to the date set for the public hearing to all owners and occupants of the subject property. The public hearing shall be conducted according to the procedures established in Section 4.2.

Section 2.9.7(J) is amended by deleting the subsection in its entirety and replacing it with the following:

J. Deadline for Approval or Rejection of Application for a Certificate of Appropriateness.

1. The HPC shall approve, reject or otherwise act on an application for a certificate of appropriateness within sixty (60) days after the filing thereof by the owner or occupant of a historic property, building, structure, object or historical site. Evidence of approval shall be by a certificate of appropriateness issued by the HPC. Notice of the issuance or denial of a certificate of appropriateness shall be sent by United States certified mail to the applicant and all other persons who have filed a written request for such notice with the HPC.
2. Should the HPC fail to approve or reject an application for a certificate of appropriateness within sixty (60) days the application shall be deemed automatically approved; provided, however, that such sixty (60) day period may be extended an additional thirty (30) days if consideration of an application for a certificate of appropriateness is tabled by the HPC.

Section 2.9.7 (O) is amended by deleting the subsection in its entirety and replacing it with the following:

O. Appeals. Any person adversely affected by any determination made by the HPC relative to the issuance or denial of an application for a certificate of appropriateness may appeal such determination to the City Council. Any such appeal must be filed with the City Council within thirty (30) days after the issuance of the determination pursuant to Subparagraph J.1. of this Subsection, or in the case of a failure of the HPC to act, within thirty (30) days of the expiration of the sixty (60) day period allowed for HPC action, as set forth in Subparagraph J.2. of this Subsection. The notice and procedures of any such appeal shall be conducted in accordance with the procedures established in Section 4.2. The City Council may approve, modify, or reject the determination made by the HPC if the governing body finds that the HPC abused its discretion in reaching its decision. Decisions of the City Council are final and may only be appealed by application for a writ of certiorari to the Superior Court of Fulton County, which must be filed within thirty (30) days of the date of the decision.

Section 2.9.10 is amended by deleting the subsection in its entirety and replacing it with the following:

To the extent not otherwise provided herein, any person adversely affected by a determination made by the HPC may appeal such determination to the City Council. Any such appeal must be filed within thirty (30) days of the date of the subject determination. The notice and procedures of any such appeal shall be conducted in accordance with the procedures established in Section 4.2. Decisions of the City Council are final and may only be appealed by application for a writ of certiorari to the Superior Court of Fulton County, which must be filed within thirty (30) days of the date of the decision.

Section 4.1.2 is amended by deleting the subsection in its entirety and replacing it with the following:

**4.1.2 Public hearing process.**

Before taking final action on a proposed CLUP amendment, the Planning Commission and the City Council each shall hold a public hearing on the proposal. The Director shall publish the schedule of the public hearing dates on an annual basis, along with application filing deadlines.

A. *Public Notice.*

1. *Notification to the General Public.*

- a. At least fifteen (15) days but not more than forty-five (45) days prior to each public hearing, notice shall be published in a newspaper of general

circulation within the City. The Director shall prepare such notice, which shall state the time, place and purpose of the hearing.

- b. If a CLUP amendment is to be heard at the public hearing then:
  - (1) The notice in addition to the requirements above, shall include the location of the property, the present land use designation of the property and the proposed land use designation of the property; and
  - (2) The Director shall post, at least fifteen (15) days prior to the public hearing, on a conspicuous place on the property for which an application has been submitted, a sign or signs stating the date, time and place for the public hearing, and the public hearing case number.

2. *Notice to Surrounding Property Owners:* If the proposed CLUP amendment affects only one (1) property, notice shall also be given to the surrounding property owners as follows:

- a. At least ten (10) days prior to the first public hearing at which the amendment will be considered, the Director shall cause a notice to be mailed to the:
  - (1) All persons owning record title to the property located within 500 feet of the property that is the subject matter of amendment.
- b. The notice shall state the time, place and purpose of the hearings by the Planning Commission and the City Council. The written notice shall be mailed to the last known address of the property owners as such addresses appear on the Fulton County ad valorem tax records.

3. *Associated Applications for Zoning or Conditional Use.* If an application for a CLUP amendment is associated with a proposal to rezone property or to obtain approval of a conditional use, the public notice for the CLUP amendment and the zoning change and conditional use may be combined.

B. *Public Hearings.*

- 1. The following procedures shall govern public hearings for purposes of considering applications as specified in this Section.
  - a. Presiding officer. The public hearing shall be conducted by the presiding officer.
  - b. Requirements for speakers. Persons wishing to speak in support (including the applicants and designated representative) or opposition to any application shall provide their name and address on the specified form to City staff prior to speaking at the public hearing. In addition, each person shall be required to disclose any campaign contributions/gifts equal to or greater than \$100 given to any City elected official within two (2) years of the public hearing date.



- c. Time limits. Speakers at the public hearing shall be allowed not less than ten (10) minutes per side, provided, however, that the presiding officer may at his or her discretion elect to extend this time period equally to proponents and opponents.

C. Planning Commission.

1. The Director or his or her designee shall submit each proposed CLUP amendment to the Planning Commission, together with the staff recommendation.
2. The Planning Commission shall review and take action upon each CLUP amendment after holding a public hearing.
3. The Planning Commission by majority of those voting may recommend approval or denial, or make any other recommendation it deems appropriate.
4. The recommendation of the Planning Commission and that of the Director, together with the minutes of the Planning Commission hearing at which the CLUP amendment is reviewed, shall be submitted to the City Council. If the Planning Commission does not act upon the CLUP amendment at its public hearing, the amendment shall process forward to the City Council without a recommendation from the Planning Commission. No member of the Planning Commission shall rule on a matter in which he or she has a financial interest, directly or indirectly.

D. City Council.

1. The Director or his or her designee shall present each proposed CLUP amendment to the City Council, together with the staff recommendation. The Director or his or her designee shall also present the recommendation of the Planning Commission if it differs from the staff recommendation.
2. Following the public hearing, action may be taken by the City Council by majority of those voting approving or rejecting the proposal, or allowing withdrawal if so requested by the applicant (with or without prejudice), or the City Council may table the proposal for consideration at its next regular meeting, or the City Council may refer the matter back to the Planning Commission for further consideration.

E. *Referral to Planning Commission for Further Consideration.*

1. The Director shall conduct such further studies as appropriate and shall present any CLUP amendment to the Planning Commission that has been heard by the City Council and referred back to it for further consideration. Public notice of the Planning Commission and City Council's hearings shall be given in the same manner as prescribed herein, and the Planning Commission shall conduct its public hearing and take action as described above.
2. After the Planning Commission's rehearing and action on the referred application, the City Council shall hold a public hearing on the CLUP amendment, following the same procedures set forth for its hearings, above.

Section 4.2.2 is amended by deleting the subsection in its entirety and replacing it with the following:

**4.2.2 Public hearing process.**

Before taking final action on a proposed zoning change, the Planning Commission and the City Council each shall hold a public hearing on the proposal. The Director shall publish a schedule of the public hearing dates on an annual basis, along with the application filing deadlines.

*A. Notification to the General Public.*

1. At least fifteen (15) days but not more than forty-five (45) days prior to each public hearing, notice shall be published in a newspaper of general circulation within the City. The Director shall prepare such notice, which shall state the time, place and purpose of the hearing.
2. A zoning change initiated by a party other than the City Council or the Planning Commission shall be heard at a public hearing only upon:
  - a. The notice, in addition to the requirements above, shall include the location of the property, the present zoning classification of the property, and the proposed zoning classification of the property or the conditional use requested; and
  - b. The Director shall post, at least fifteen (15) days prior to the public hearing, on a conspicuous place on the property for which an application has been submitted, a sign or signs stating the date, time and place for the public hearing, and the public hearing case number.
  - c. Notice to Surrounding Property Owners. If the proposed zoning change affects only one (1) property, notice shall also be given to surrounding property owners as follows:
3. At least ten (10) days prior to the first public hearing at which a zoning change will be considered, the Director shall cause a notice to be mailed to all persons owning record title to property located within 500 feet of the property that is the subject matter of the zoning change.
4. The notice shall state the time, place and purpose of the hearings by the Planning Commission and the City Council. The written notice shall be mailed to the last known address of the property owners as such addresses appear on the Fulton County ad valorem tax records.
5. Citizen Participation. The applicant shall be required to complete a Citizen's Participation Plan which includes notification to property owners.
  - a. Prior to the Public Hearing, the Applicant shall cause a notice to be mailed to:

- (1) All persons or property owner's associations owning record title to the property located within 500 feet of the property that is the subject matter of amendment.
- b. The notice shall state the time, place and purpose of the Public Hearing as well as a summary of applicant's request. The written notice shall be mailed to the last known address of the property owners as such addresses appear on the Fulton County ad valorem tax records.
- c. At the time of Public Hearing Application Submittal, the applicant shall provide the following information in the Citizen Participation Form — Part A:
  - (1) Method by which these individuals will be contacted.
  - (2) Method by which these individuals will have the opportunity to respond or contact the applicant with questions or concerns about the proposal.
- d. Prior to the scheduled Public Hearing The applicant shall provide to the Director in the Citizen Participation B Report:
  - (1) A Sample of any and all written communications used to provide notification. Failure to do so may result in cancellation of the scheduled hearing.
  - (2) A list of people who have been notified of this application and provided information describing the subject proposal. ALL adjoining property owners MUST be notified.

**B. *Public Hearings.***

1. The following procedures shall govern public hearings for purposes of considering applications as specified in this Section.
  - a. Presiding officer. The public hearing shall be conducted by the presiding officer.
  - b. Requirements for speakers. Persons wishing to speak in support (including the applicants and designated representative) or opposition to any application shall provide their name and address on the specified form to City staff prior to speaking at the public hearing. In addition, each person shall be required to disclose any campaign contributions/gifts equal to or greater than \$100 given to any City elected official within two (2) years of the public hearing date.
  - c. Time limits. Speakers at the public hearing shall be allowed not less than ten (10) minutes per side, provided, however, that the presiding officer may at his or her discretion elect to extend this time period equally to proponents and opponents.

**C. *Associated Applications for CLUP Amendments or Variances.*** If an application for a zoning change is associated with a proposed Comprehensive Land Use Plan amendment or exception variance, the public notice for the zoning change may be

combined with the public notice required for the associated applications. Any notice for an associated variance shall not be required to comply with the timing requirements set forth in Section 4.5.2, and shall instead be required to comply with the requirements of subsection (A) above.

1. The Director shall submit each application to the Planning Commission, together with a report of the Director's findings and a recommendation. The Planning Commission shall review and take action upon each application after holding a public hearing. In making a recommendation on each application, the Planning Commission shall follow the standards set forth under this Section. The recommendation of the Planning Commission and that of the Director, together with the minutes of the Planning Commission hearing at which the application is reviewed, shall be submitted to the City Council. If the Planning Commission does not act upon an application, the Director may take it to the City Council without a recommendation from the Planning Commission. No member of the Planning Commission shall rule on a matter in which he or she has a financial interest.

Section 4.2.3 is amended by deleting the subsection in its entirety and replacing it with the following:

**4.2.3 Standards for zoning changes.**

***A. Zoning Map Amendments (Rezoning).***

1. In order to be approved, a rezoning must be in conformity with the designation for the property on the Future Land Use Map contained in the Comprehensive Plan, as most recently amended.
2. The Planning Commission and the City Council shall consider the following standards in considering a rezoning application, giving due weight or priority to those factors particularly appropriate to the circumstances of each application:
  - a. Whether the zoning proposal will permit a use that is suitable in view of the zoning, use and development of adjacent and nearby property.
  - b. Whether the zoning proposal will adversely affect the existing use or usability of adjacent or nearby property.
  - c. Whether the zoning proposal will adversely affect the natural environment.
  - d. Whether there are substantial reasons why the property cannot or should not be used as currently zoned.
  - e. Whether the zoning proposal will result in a use that will or could cause an excessive or burdensome use of public facilities or services, including but not limited to existing streets and transportation facilities, schools, water or sewer utilities, and police or fire protection.
  - f. Whether the zoning proposal is supported by new or changing conditions not anticipated or reflected in the existing zoning on the property.

- g. Whether the zoning proposal reflects a reasonable balance between the promotion of the public health, safety, morality or general welfare against the right to unrestricted use of property.
- h. Whether there are substantial reasons why the property cannot be used in accordance with existing zoning.
- i. The extent to which the zoning proposal is consistent with the Comprehensive Plan.

B. *Conditional Use Standards.* A conditional use otherwise permitted within a zoning district shall be considered to be compatible with other uses permitted in the district, provided that due consideration is given to the following objective criteria at a public hearing and satisfactory provisions or arrangements are made for:

- 1. Access into and out of the property with regard to traffic and pedestrian safety, volume of traffic flow, and emergency vehicles, as well as the type of street providing access;
- 2. The extent to which refuse areas, loading and service areas, off street parking, and buffers and screening are provided on the property;
- 3. Ensuring that the conditional use will not be injurious to the use and enjoyment of the environment or of other property in the immediate vicinity or diminish and impair property values within the surrounding neighborhood;
- 4. Ensuring that the conditional use will not increase local or state expenditures in relation to the cost of servicing or maintaining neighboring properties;
- 5. Ensuring that the conditional use will not impede the normal and orderly development of surrounding property for uses predominant in the area; and
- 6. Ensuring that the location and character of the conditional use is considered to be consistent with a desirable pattern of development for the city, in general.
- 7. Ensuring that the conditional use is appropriately separated from similar uses and conflicting uses, such as residences, government buildings, parks, churches or schools.

C. *Planning Commission Recommendation.*

- 1. The Director or his or her designee shall submit each application to the Planning Commission, together with the staff recommendation.
- 2. The Planning Commission shall review and take action on each application after holding a public hearing.
- 3. The Planning Commission by majority of those voting may recommend approval, approval with conditions, or denial, or may request that the City Council refer the application back to the Planning Commission for further study or make any other recommendation it deems appropriate.
- 4. The recommendation of the Planning Commission and that of the staff, together with the minutes of the Planning Commission public hearing at which the

application is reviewed, shall be submitted to the City Council. If the Planning Commission does not act upon the application at its public hearing, the amendment shall process forward to the City Council without a recommendation from the Planning Commission.

D. *City Council.*

1. The Director or his or her designee shall present each application to the City Council, together with the staff recommendation. The Director or his or her designee shall also present the recommendation of the Planning Commission if it differs from the staff recommendation.
2. Following the public hearing, action may be taken by the City Council by majority of those voting approving, approving with conditions, or rejecting the proposal, or allowing withdrawal if so requested by the applicant (with or without prejudice), or the City Council may table the proposal for consideration at its next regular meeting, or the City Council may refer the matter back to the Planning Commission for further consideration.
3. If the application for a zoning change is associated with a proposed amendment to the Comprehensive Land Use Plan or an application for an exception variance, the City Council shall first take action on the CLUP amendment.
  - a. If the CLUP amendment is denied, the zoning change may not be approved unless conformity to the purpose and intent of the CLUP and the land use designation of the Future Land Use Plan Map is achieved.
  - b. If the CLUP amendment is approved, action may then be considered on the proposed zoning change.
  - c. If the zoning change is denied, the exception/variance may not be approved.
  - d. If the zoning change is approved, with or without conditions, action may then be considered on the proposed exception/variance.

E. *Referral to Planning Commission for Further Consideration.*

1. The Director shall conduct such further studies as appropriate and shall present any application to the Planning Commission that has been heard by the City Council and referred back to it for further consideration. Public notice of the Planning Commission and City Council's hearing and take action as described above.
2. After the Planning Commission's rehearing and action on the referred application, the City Council shall hold a public hearing on the application, following the same procedures set forth for its hearings, above.

F. *Change in Conditions of Approval.* Any application that proposes a change in the conditions of approval previously established by the City Council through action on a zoning change shall be reviewed in light of the standards set forth in this section for a map amendment or conditional use, as appropriate.

Section 4.5 is amended by deleting the subsection in its entirety and replacing it with the following:

## **SECTION 4.5 APPEALS**

### **4.5.1 Initiation.**

- A. All requests for relief from the imposition of the regulations and requirements of this Ordinance on a property or development activity, or from an interpretation of the meaning of words or the boundaries of zoning districts, or from an administrative decision of the Director, shall be taken as an appeal to the Board of Appeals, except as otherwise provided in this Section.
- B. Appeals to the Board of Appeals may be initiated by any person aggrieved or by an officer, department, board or bureau of the City. Such appeal shall be initiated within 15 days of the action or decision appealed from by filing with the Director notice of said appeal specifying the grounds thereof. The Director shall transmit to the Board of Appeals any papers constituting the record of the action or decision from which the appeal was taken.
- C. An appeal stays all legal proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is made certifies to the Board of Appeals, after the notice of appeal shall have been filed with them, that by reason of facts stated in the certificate a stay would, in the Director's opinion, cause imminent peril to life and property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by a court of competent jurisdiction.

### **4.5.2 Public hearing process.**

#### **A . Public Notice**

##### ***1. Notification to the General Public.***

- a. At least thirty (30) days but not more than forty-five (45) days prior to each public hearing, notice shall be published in a newspaper of general circulation within the City. The Director shall prepare such notice, which shall state the time, place and purpose of the hearing. Additionally, notice of the public hearing shall be sent to the owner of the property that is the subject of the proposed action at least thirty (30) days prior to the hearing date by regular mail.
- b. If a request for a variance is to be heard at the hearing, then the notice shall, in addition to the above requirements, include the proposed code provisions requested to be modified. Each section of this code requested to be varied shall be separately identified in all required notices.
- c. If an appeal of an administrative decision is to be heard at the hearing, then the notice shall, in addition to the above requirements, include a summary of the purpose of the appeal.

#### **4.5.3 Public hearing.**

- A. The Director shall submit the appeal to the Board of Appeals, together with any Staff Report. The Board of Appeals shall review and take action upon each appeal after holding a public hearing. In making a decision on the appeal, the Board of Appeals shall follow the standards set forth under this Section. No member of the Board of Appeals shall rule on a matter in which he or she has a financial interest, directly or indirectly.
- B. In taking on an appeal, the Board of Appeals by majority of those voting may approve, approve with conditions, or deny the appeal, or the Board of Appeals may table the matter for consideration at its next regular meeting.
- C. The following procedures shall govern public hearings for purposes of considering applications as specified in this Section.
  - 1. Presiding officer. The public hearing shall be conducted by the presiding officer.
  - 2. Requirements for speakers. Persons wishing to speak in support (including the applicants and designated representative) or opposition to any application shall provide their name and address on the specified form to City staff prior to speaking at the public hearing. In addition, each person shall be required to disclose any campaign contributions/gifts equal to or greater than \$100 given to any City elected official within two (2) years of the public hearing date.
  - 3. Time limits. Speakers at the public hearing shall be allowed not less than ten (10) minutes per side, provided, however, that the presiding officer may at his or her discretion elect to extend this time period equally to proponents and opponents.

#### **4.5.4. Hardship variances.**

- A. *General.*
  - 1. Relief from the application of the provisions of this Ordinance may be granted by the board of Appeals upon a finding that compliance with such provision will result in a hardship to the property or owner that is substantially unwarranted by the protection of the public health, safety or general welfare and the need for consistency among all properties similarly zoned.
  - 2. Such relief may be granted only to the extent necessary to alleviate such unnecessary hardship and not as a convenience to the applicant nor to gain any advantage or interest over similarly zoned properties.
- B. *Standards for Approval.* A hardship variance may be granted in whole or in part, or with conditions, in such individual case of unnecessary hardship upon a finding by the Board of Appeals that:
  - 1. There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography; or



2. The application of the Ordinance to this particular piece of property would create an unnecessary hardship; or
  3. There are conditions that are peculiar to the property which adversely affect its reasonable use or usability as currently zoned.
- C. *Limitation.* In no case shall a hardship variance be granted from the conditions of approval imposed on a property through a zoning change granted by the City Council, nor may any use of land or buildings or structures be granted that is not permitted by the zoning district that is applicable to the property.

#### **4.5.5 Exceptions.**

A. *General.*

1. An exception requested as part of a rezoning or conditional use application shall be heard by the Planning Commission and decided by the City Council as part of the public hearing process related to the rezoning or conditional use application. All other exceptions (which do not exceed 50% of the stipulated requirement) shall be heard and acted upon by the Board of Appeals, unless approved administratively by the Director as provided herein.
2. Exceptions shall be limited to relief from the following requirements of this Ordinance:
  - a. Minimum building setbacks;
  - b. Maximum building height;
  - c. Buffers and screening;
  - d. Signage in accordance with a coordinated signage plan;
  - e. Minimum street frontage;
  - f. Parking and loading requirements;
  - g. Tree preservation;
  - h. Signage height and copy area; and
  - i. Minimum street frontage;
  - j. Minimum building size;
  - k. Maximum impervious area

B. *Standards for Approval.*

1. An exception may be granted upon a finding that:
  - a. There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of size, shape or topography; or
  - b. The application of the Ordinance to this particular piece of property would create an unnecessary hardship; or

- c. There are conditions that are peculiar to the property which adversely affect its reasonable use or usability as currently zoned; or
  - d. Relief, if granted, would not cause substantial detriment to the public good or impair the purpose and intent of the Ordinance.
- 2. An exception may be granted from the requirements of this Ordinance regarding tree preservation. The factors to be taken into consideration include the following:
  - a. The ease with which the applicant can alter or revise the proposed development or improvement to accommodate existing trees.
  - b. The economic hardship that would be imposed upon the applicant were the exception denied.
  - c. The heightened desirability of preserving tree cover in densely developed or densely populated areas.
  - d. The need for visual screening in transitional zones or relief from glare, blight, commercial or industrial ugliness or any other visual affront.
  - e. Whether the continued presence of the tree or trees is likely to cause danger to a person or property.
  - f. Whether the topography of the area in which the tree is located is such a nature to be damaging or injurious to trees.
  - g. Whether the removal of trees is for the purpose of thinning a heavily wooded area where some trees will remain.
  - h. Whether tree removal would have an adverse impact upon existing biological and ecological systems.
  - i. Whether tree removal would affect noise pollution by increasing source noise levels to such a degree that a public nuisance may be anticipated or a violation of the noise control ordinance will occur.
- C. *Limitations.* In no case shall an exception be granted from the conditions of approval imposed on a property through a zoning change granted by the City Council, nor may a minimum lot size required by a zoning district be reduced, nor may any use of land or buildings or structures be granted that will result in an increase in housing units or nonresidential building density or is not permitted by the zoning district that is applicable to the property.

#### **4.5.6 Interpretations.**

- A. The Board of Appeals, upon appeal of an aggrieved party or at the request of the Director, shall interpret the use of words or phrases within the context of the intent of this Ordinance, the boundaries of the various zoning districts where uncertainty exists, and such other provisions of this Ordinance as may require clarification or extension. The Board of Appeals shall also hear and decide appeals from any order, determination, decision or other action by the Director where a misinterpretation of the requirements or other provisions of this Ordinance is alleged, except for appeals

of administrative decisions denying design approval of signs reviewed by the Director for compliance with the design standards set forth in the Design Review Board Ordinance.

- B. An interpretation by the Board of Appeals shall be final, unless an appeal of their action is taken to Superior Court within 30 days of the Board's action.

#### **4.5.7 Appeals of Administrative Variance Decisions.**

Any administrative variance decision or administrative exception decision made pursuant to Section 5.1 may be appealed in accord with the procedures set forth in Sections 4.5.2 and 4.5.3.

Add a new Section 5.10 – Designated Officials for Appeal Proceedings to read:

- (a) In order to comply with O.C.G.A. § 36-66-5.1(c), the Mayor, the Chairman of the Planning Commission, the Chairman of the Board of Zoning Appeals, the Chairman of the Historic Preservation Commission, and/or the Chairman of the Design Review Board, as appropriate, is authorized to issue appeal bonds and certificates of costs upon confirmation with City staff that such approvals are appropriate.
- (b) For purposes of appeals pursuant to Chapter 4, of Title 5 of the Official Code of Georgia Annotated, the Mayor, the Chairman of the Planning Commission, the Chairman of the Board of Zoning Appeals, the Chairman of the Historic Preservation Commission, and/or the Chairman of the Design Review Board, as appropriate, is authorized to accept service on behalf of the Respondent. The Mayor is authorized to accept service of process on behalf of the City as the defendant/opposite party.