



Conflict of Interest in Zoning Actions

O.C.G.A. § 36-67A

and

**Policies And Procedures for Conducting Public Hearings
on Zoning Matters**

and

The Standards For Exercise Of Zoning Powers

State of Georgia
CONFLICT OF INTEREST IN ZONING ACTIONS
O.C.G.A. § 36-67A

OCGA § 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.

OCGA § 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.

OCGA § 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.

OCGA § 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.

OCGA § 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.

OCGA § 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.

CITY OF TIFTON
PART II - CODE OF ORDINANCES
APPENDIX A—LAND DEVELOPMENT CODE

CHAPTER 10. ADMINISTRATIVE PROVISIONS

10.00.08 Procedures for conducting public hearings.

The following rules of procedure shall govern public hearings pertaining to development subject to the provisions of this LDC:

- A. *Public hearing procedure.* All public hearings shall be placed on the appropriate body's agenda under a section entitled "Public Hearings". The Chair or Mayor or their designee shall officially declare the public hearing open and shall announce that the written public hearing procedures and a copy of Georgia's Conflict of Interest Law are available to the attending public as a handout or are posted for public review. The Manager shall be responsible for providing a copy of the public hearing procedures and a copy of Georgia's Conflict of Interest Law as handouts and/or postings.
- B. *Announcement of matter for consideration.*
 - 1. The Manager or his/her designee shall announce the matter for consideration.
 - 2. The Chair shall then call for acknowledgement of a potential conflict of interest by any members of the body.
- C. *Report of Manager.* The Manager or their designee will then report the Department of Community Development recommendation and, if applicable, the recommendation of the City of Tifton Planning and Zoning Commission.
- D. *Public hearings records standards.*
 - 1. The clerk shall mechanically record the proceedings of all public hearings.
 - 2. If requested by any party, verbatim transcripts of the public hearing can be prepared, but only if requested and purchased in advance by the requesting party, who must arrange at his expense for a certified court reporter to record and transcribe the hearing and furnish the original of the transcript to the appropriate body for its records.
 - 3. The record of the public hearing and all evidence (e.g., maps, drawings, traffic studies, etc.) submitted at the public hearing shall be noted as such and shall become a permanent part of the particular project file.
- E. *Public comments shall be heard in an orderly fashion.* Comments and testimony shall be provided in the following order:
 - 1. The applicant or applicant's agent;
 - 2. Citizens speaking in favor of the proposal or request;
 - 3. Citizens speaking in opposition to the proposal or request; and
 - 4. Rebuttal.
- F. Any party may appear at the public hearing in person or by agent or by attorney.

- G. Each person who appears shall identify himself by name and address; if the person is the applicant, he shall state whether he is the owner of the property or agent for owner.
- H. Each applicant or other interested party who submits documents at the hearing shall identify each document. Each document submitted shall be made a part of the official record of the hearing.
- I. *Time periods for testimony.* Where there are a large number of citizens wishing to testify at a given hearing, the Chair may invoke reasonable time limitations on both the proponents and opponents of a request. In such cases, these time limits shall apply to both sides of an issue equally, such minimum time period to be no less than ten (10) minutes per side. The Chair of the body hearing the request or proposal may otherwise limit discussion. The Chair of the body hearing the request or proposal may allow additional time in the Chair's discretion.
- J. Citizens shall address their comments to the body as a whole. Individual attacks or cross examination of members, City employees or other citizens will be ruled out of order.
- K. The body hearing the request or proposal retains the privilege to ask any questions of the Manager, other staff, or persons who have spoken on the matter.
- L. After all citizen comments have been received, all further discussion of the specific application is reserved for the body hearing the request or proposal. The Chair or his/her designee shall then declare the public hearing closed and no further public comment will be entertained.
- M. The body hearing the request or proposal may table the public hearing where additional information is necessary in order to render a decision. The continuation shall be to a specific time and date. Where an application is remanded to the Planning Commission for consideration of additional conditions, it shall be heard by the Planning Commission on their next available meeting date.
- N. In the case of tabling of a matter, no further public comments will be entertained upon further consideration of the matter.
- O. At the conclusion of the hearing by the body hearing the request or proposal, the Chair shall announce the decision. The Manager or his/her designee shall notify an applicant in writing of the decision. The written notification shall be made a part of the record.

(Ord. No. 2018-21 , (Exh. A), 10-15-2018)

10.04.04 Procedures for action by the City Council.

- A. *Generally.* Within the city limits of the City of Tifton, Georgia, the governing authority shall be the Mayor and City Council of the City of Tifton, Georgia.
- B. *Rezoning Procedures.*
 - 1. *General conditions.*
 - a. Zoning regulations, including the zoning map, may be amended by the governing authority on their own motion, on petition, or on recommendation of the Planning Commission, but no amendment shall become effective, unless it shall have been proposed by or shall first have been submitted to the Planning Commission for review and recommendation.
 - b. Before enacting an amendment to these regulations, the governing authority shall give public notice and hold a public hearing thereon as set forth in this LDC.

2. *Application for amendment.*
 - a. Applications for amendment of these regulations may be in the form of proposals for amendment of the text of these regulations or proposals for amendment of the zoning maps.
 - b. Applications shall be in the form specified in Section 10.02.00.
 - c. No application for a zoning change affecting the same parcel of property or part thereof shall be accepted by the Manager or his/her designee until the expiration of at least six (6) months immediately following the defeat of the rezoning request by the governing authority.
3. *Referral to Planning Commission.*
 - a. After the routine monthly application acceptance deadline, the Manager or his/her designee shall transmit a copy of the completed application to the Planning Commission, and applicable staff members, for review and recommendation.
 - b. The Planning Commission shall review each application for consistency with the adopted Comprehensive Plan, and the adopted standards for exercise of the zoning powers.
 - c. The Planning Commission shall have thirty (30) days within which to submit a report to the governing authority.
 - d. The staff report and Planning Commission recommendations shall then be transmitted to the governing authority.
4. **Standards for exercise of zoning powers.** In order to promote the public health, safety, and general welfare of the City of Tifton and the residents thereof against the unrestricted use of property, the following standards, and any other factors relevant to balancing the above-stated public interest, shall be considered by the governing authority in making any zoning decision:
 - a. The existing land use pattern;
 - b. The possible creation of an isolated district unrelated to adjacent and near districts;
 - c. The existing population density pattern and the possible increase or overtaxing of the load on public facilities;
 - d. Whether changed or changing conditions make the passage of the proposed amendment reasonable;
 - e. Whether the proposed change will adversely influence existing conditions in the neighborhood or the community at large;
 - f. Potential impact on the environment, including, but not limited to, drainage, soil erosion, and sedimentation, flooding, air quality, and water quality and quantity;
 - g. The reasonableness of the costs required of the public in providing, improving, increasing or maintaining public utilities, schools, streets and public safety necessities when considering the proposed change;
 - h. Whether the proposed change will be detrimental to the value, improvement, or development of adjacent or nearby property in accordance with existing regulations;
 - i. Whether the proposed change is out of scale with the needs of the neighborhood, area, or City of Tifton;

- j. Whether the proposed change will constitute a grant of special privilege to the individual owner as contrasted with the adjacent or nearby neighborhood or with the general public; and
 - k. The extent to which the zoning decision is consistent with the Comprehensive Plan, as duly amended.
 - i. The Comprehensive Plan is established as official policy of the City of Tifton.
 - ii. As such, the goals and policies of the Plan, and the resultant Future Land Use Plan, shall serve as the guide under which areas are divided into zoning districts.
5. *Additional Restrictions and Standards may be required.*
- a. Provided, that the governing authority may impose or require such additional restrictions and standards as may be necessary to protect the health and safety of workers and residents in the community, and to protect the value and use of property in the general neighborhood; and
 - b. Provided that wherever the governing authority shall find in the case of any permit granted pursuant to the provisions of these regulations that any term, condition or restrictions upon which such permit was granted are not being complied with, said governing authority shall rescind and revoke such permit after giving due notice to all parties concerned and granting full opportunity for a public hearing.
- C. *Removal of Recorded Subdivision.*
- 1. After a subdivision has been recorded, the property owner or his agent may petition the governing authority for permission to remove the subdivision plat from the land records of Tift County.
 - 2. The governing authority may permit such removal providing that no lot in the subdivision has been sold.
 - 3. Upon giving its permission for such removal, the governing authority shall release bonds or cash posted by the property owner pursuant to the provisions of Section 10.02.09.
- D. *Amendments to LDC text.* Action by the governing authority regarding proposed amendments to the LDC text shall be taken at an advertised public hearing, and shall be based on the following information:
- 1. The staff compliance report and recommendation;
 - 2. The recommendation of the Planning Commission;
 - 3. The application and supporting documentation; and
 - 4. Testimony during the public hearing.

Sec. 10.05.00 Appeals.

10.05.01 Applicability.

- A. The ZBA shall hear and decide upon appeals where it is alleged there is error in any order, requirement, decision, or determination made by the Manager or his/her designee in the enforcement of this LDC.
- B. Appeals to the ZBA may be taken by any person aggrieved or by any officer, department, board, or bureau of the governing authority affected by any decision of the Manager or his/her designee. Such

appeals shall be filed no later than thirty (30) days after the date of notification of the decision appealed from by filing with the Manager, and with the ZBA, a notice of appeal specifying the grounds thereof. The Manager or his/her designee shall forthwith transmit to the ZBA all the papers constituting the record upon which the action appealed from was taken.

- C. The suspension, revocation, modification or grant with condition of a permit by the governing authority upon finding that the holder is not in compliance with this LDC; or that the holder is in violation of permit conditions; or that the holder is in violation of any ordinance; shall entitle the person submitting the plan or holding the permit to a hearing before the ZBA.