

ARTICLE XXVIII
REZONING AND OTHER AMENDMENT PROCEDURES

- 28.1. **GENERAL AMENDMENTS.** Whenever the public necessity, convenience, general welfare or good zoning practice justify such action, and after consideration by the Planning Commission, the Mayor and City Council may, by resolution, change the regulations set forth in this Zoning Ordinance (text amendment) or amend the Zoning Maps.

In amending the Zoning Maps, the Mayor and City Council may approve a use permit and/or zoning district applied for by the applicant or a more restrictive zoning district based on the ranking of the City of Johns Creek zoning district intensities. The Mayor and City Council may consider a variance filed concurrently with a request for a rezoning and/or use permit.

In approving any zoning district change and/or use permit, the Mayor and City Council shall impose conditions of approval as deemed necessary and appropriate to mitigate potentially adverse influences or otherwise promote the public health, safety or general welfare.

Rezoning and/or use permit requests are referred to in this text as land use petitions. All land use petitions approved by the Mayor and City Council are subject to conditions approved by the Mayor and City Council.

- 28.2. **LAND USE PETITIONS.** Land use petitions may be initiated by the property owner or the Mayor and City Council on forms available from the Department.

No final action shall be taken on a land use petition affecting the same parcel more often than once every 12 months when the petition is initiated by the property owner.

At any time, the Mayor and City Council may initiate a land use petition on property which was previously rezoned. However, a six-month waiting period from the date of final Mayor and City Council action is required when a rezoning and/or use permit request was previously denied.

If a petition was previously denied, the owner must demonstrate that the proposed land use petition is significantly different from the previous denial to the satisfaction of the Mayor and City Council before it can be considered for a

reinitiation. A significant difference includes, but is not limited to a change in zoning district, use, density, height, buffers or other methods of screening, or other items which were discussed at a public hearing.

Appeals to Superior Court.

Any appeal of, or other legal challenge to, a Mayor and City Council’s final decision regarding a use permit petition shall be pursued by petition for writ of certiorari filed with the Superior Court of Fulton County within 30 days of the date of the Mayor and City Council’s decision. The applicant’s petition and all other initial filings with the Superior Court shall be served upon the named defendants/respondents in accordance with O.C.G.A. § 9-11-4.

Upon filing such appeal, the Clerk of Superior Court shall give immediate notice thereof to the Director, and within 30 days from the date of such notice, the Director shall cause to be filed with the Clerk of Superior Court a certified copy of the proceedings before the Mayor and City Council and the decision of the Mayor and City Council.

- 28.2.1. **FILING DEADLINES.** A complete land use petition shall be submitted in accordance with the advertised filing deadlines. The Director may extend the filing deadline by two days with a letter of explanation from the applicant justifying the delay of submittal. An incomplete petition will not be accepted.
- 28.2.2. **WITHDRAWAL PRIOR TO ADVERTISING.** If a land use petition has not been advertised for public hearing, a written request for withdrawal with the reason for the request shall be made to and accepted by the Director. No refunds of petition fees will be made.
- 28.2.3. **WITHDRAWAL AFTER ADVERTISING.** After a land use petition has been advertised it may not be withdrawn by the property owner or the applicant. All applications, having been advertised, shall be considered by the Mayor and City Council and shall receive final action.
- 28.2.4. **PETITION REQUIREMENTS.** All petitions shall include the following with the required number of copies of each as prescribed by the Director:
 - (1) Pre-application Review Form
 - (2) Signed and notarized petition with original signatures;
 - (3) Legal Description;
 - (4) Letter of Intent;
 - (5) Site plan which meets the requirements specified in Article 28.5.2;

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- (6) Site plan checklist which indicates compliance with site plan requirements specified in Article 28.5.2;
- (7) Environmental Site Analysis;
- (8) 8 ½” x 11” transparency of site plan;
- (9) Impact Analysis for rezoning petitions;
- (10) Disclosure Form;
- (11) Public Participation Plan;
- (12) Public Participation Report (due no later than 7 business days before the Mayor and City Council meeting)
- (13) Traffic Study, if applicable;
- (14) Metropolitan River Protection Act Pre-Review Letter, if applicable;
- (15) MARTA Corridor Plan Review Form, if applicable;
- (16) Development of Regional Impact Review Form, if applicable;
- (17) Environmental Impact Report, if applicable;
- (18) Noise Study Report, if applicable;
- (19) Other documents as identified in the pre-application review; and
- (20) Non-refundable filing fee
- (21) Copy of deed(s)

28.3. PUBLIC HEARING AND NOTICE REQUIREMENTS.

Before adopting any change to the Zoning Maps or text of the Zoning Ordinance, the Mayor and City Council shall hold a public hearing following the public hearing by the Planning Commission where a recommendation was made on the petition.

Notice of the Planning Commission and Mayor and City Council hearings shall be given simultaneously at least 15 days but not more than 45 days prior to the date of the Mayor and City Council’s public hearing and shall be published in a newspaper of general circulation. Renotification is not required when a petition is deferred by the Mayor and City Council.

The applicant or agent shall post a sign as issued by the Community Development Department in a conspicuous location on each public street frontage of the subject property not later than 8:30 a.m. on the 20th day prior to the Planning Commission Hearing.

The sign shall be mounted and posted as specified by the Community Development Department. Property that is not posted on the 20th day before the scheduled first hearing date will be administratively removed from the agenda.

When the Planning Commission or the Mayor and City Council defers a petition, the applicant is required to post an updated sign with new hearing dates 20 days prior to the next scheduled hearing date. When a petition is deferred by the Mayor and City Council for less than 20 days, posting an updated sign is not required.

The Applicant shall give notice by regular mail to all property owners within 300 feet of the boundaries of the subject property who appear on the tax records of the City of Johns Creek as retrieved by the City's Geographic Information System. The notices shall be mailed a minimum of 15 days prior to the hearing date. A parcel list and certificate of mailing verifying said requirement has been satisfied shall be provided to the Community Development Department. Renotification by mail is not required when a petition is deferred by the Mayor and City Council.

The published and mailed notices shall contain the time, place, and purpose of the hearing, the location of the property, and the present and proposed zoning classifications and/or requested use permit. The posted sign shall include all of the items required in the published notice except the location of the property. Notice shall not be considered inadequate if the mail is not delivered.

28.3.1. **SECRETARY.** The Director or his/her appointee shall serve as Secretary to the Planning Commission. The Secretary shall keep minutes of proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact; and shall keep records of evidence, examinations and official actions, all of which shall be filed and shall be a public record.

28.4. **TECHNICAL EVALUATIONS AND REPORTS.** Proposed land use petitions shall be considered by the Mayor and City Council only after the evaluations and reports required below have been completed and the Planning Commission has made a recommendation. Such reports shall be public record.

28.4.1. **ZONING IMPACT ANALYSIS BY THE PLANNING COMMISSION AND THE DEPARTMENT.** For each rezoning petition, the Planning Commission and the Department shall investigate and make a recommendation with respect to the factors listed below. The Department shall make a written record of its investigation and recommendation on each rezoning petition, as well as any other factors it may find relevant, and carry out any other duties with which it is charged by the Mayor and City Council.

The Planning Commission shall make a recommendation which the Department shall transmit in writing to the Mayor and City Council.

The zoning impact analysis factors are as follows:

- A. Whether the zoning proposal will permit a use that is suitable in view of the 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;

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- C. Whether the property to be affected by the zoning proposal has a reasonable economic use as currently zoned;
- D. Whether the zoning proposal will result in a use which will or could cause an excessive burdensome use of existing streets, transportation facilities, utilities, or schools;
- E. Whether the zoning proposal is in conformity with the policies and intent of the land use plan;
- F. 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; and
- G. Whether the zoning proposal will permit a use which can be considered environmentally adverse to the natural resources, environment and citizens of the City of Johns Creek.

28.4.2. **ZONING IMPACT ANALYSIS BY APPLICANT.** If a rezoning is initiated by the property owner, a written documented analysis of the impact of the proposed zoning with respect to each of the matters enumerated in 28.4.1 is required at the time of filing the land use petition.

28.4.3. **ENVIRONMENTAL REPORTS.** If a rezoning and/or use permit is initiated by the property owner, an Environmental Site Analysis and/or an Environmental Impact Report shall be filed with the land use petition per the following:

28.4.3.1. **ENVIRONMENTAL SITE ANALYSIS (ESA).** All rezoning and/or use permit petitions shall include an Environmental Site Analysis to identify environmental conditions on the site to determine if the proposed use may be considered environmentally adverse.

The Environmental Site Analysis shall detail the following:

- 1 How the project conforms to the Comprehensive Land Use Plan;
- 2 The presence or absence of the following and does the project encroach or adversely affect any of the following:
 - a Wetlands;
 - b. Floodplains;
 - c. Streams/stream buffers;

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- d. Slopes exceeding 25 percent over a 10 ft. rise in elevation;
 - e. Vegetation (including endangered species; areas of confirmed Georgia Department of Natural Resources listed endangered species shall comply with the Federal Endangered Species Act);
 - f. Wildlife species (including fish and endangered species; areas of confirmed Georgia Department of Natural Resources listed endangered species shall comply with the Federal Endangered Species Act);
 - g. Archeological/historical sites;
3. How the project implements the following:
- a. Protection of environmentally sensitive areas (floodplains, slopes exceeding 25 percent, river corridors);
 - b. Protection of water quality;
 - c. Minimization of negative impacts on existing infrastructure;
 - d. Minimization of negative impacts on archeological/historically significant areas;
 - e. Minimization of negative impacts on environmentally stressed communities;
 - f. Creation and preservation of green space and open space;
 - g. Protection of citizens from the negative impacts of noise and lighting;
 - h. Protection of parks and recreational green space;
 - i. Minimization of impacts to wildlife habitats;

28.4.3.2. **ENVIRONMENTAL IMPACT REPORT (EIR)**. Any petition for an industrial rezoning and/or use permit shall include an Environmental Impact Report to determine if the proposed use is environmentally adverse.

The Environmental Impact Report shall detail the following:

- 1 Conformance to the Comprehensive Plan including each of the policies regarding environmental justice;
- 2 Impacts on noise levels of the surrounding area;

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- 3 Impacts on air quality of the surrounding area;
- 4 Impacts on water quality/resources including surface water, ground water, flood plains, and wetlands;
- 5 Impacts on vegetation, fish, and wildlife species and habitats;
- 6 Impacts of thermal and explosive hazards on the surrounding area;
- 7 Impacts of hazardous wastes on the surrounding area; The report shall cite all uses and quantities of any agents listed on the Federal Environmental Protection Agency Lists of Hazardous Wastes.

The Environmental Impact Report shall detail strategies to mitigate or avoid impacts listed above as applicable.

28.4.3.3. **REVIEW CRITERIA FOR ESA AND/OR EIR.** Environmental Site Analysis and/or Environmental Impact Reports shall be reviewed based upon the following:

- 1 Whether the petition is consistent with the policies of the Comprehensive Land Use Plan;
- 2 The detail provided for ESAs and EIRs as outlined in Sections 28.4.3.1. and 28.4.3.2. above.

The Department shall review the ESAs and EIRs submitted with petitions for rezoning and/or use permits and make recommendations to the Mayor and City Council with respect to the proposed use. The anticipated impact of the proposed use on an environmentally stressed community will be included in the Department's recommendation.

As determined by the Director or his/her designee, Environmental Impact Reports may also be required with applications for land disturbance permits, building permits, temporary or permanent certificates of occupancy, or any other permits issued by the Department Community Development.

28.4.4. **TRAFFIC IMPACT STUDY.** A Traffic Impact Study is required when a land use petition equals or exceeds the thresholds indicated in the Department's Rezoning, Use Permit & Concurrent Variance Application Package. The study shall be prepared by a certified traffic engineer or transportation planner in accordance with professional practices and must be submitted at the time of the filing of the land use petition.

28.4.5. **DEVELOPMENT OF REGIONAL IMPACT STUDY (DRI).** A Development of Regional Impact Study is required when a land use petition meets or exceeds the thresholds indicated in the Department's Rezoning, Use Permit & Concurrent Variance Application Package. Form 1: Initial DRI Information must be submitted at the time of the filing of the land use petition.

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28.4.6. **NOISE STUDY REPORT.**

A noise study shall be performed, by a state registered professional engineer or noise professional, if a proposed site is located within 1,000 feet of an expressway or within 3,000 feet of an active rail line. An expressway is defined as a highway facility usually having two or more lanes for the exclusive use of traffic in each direction and partial control of access (i.e. I-85, I-285 and GA-400).

- 1 The noise study shall include an analysis of the proposed use with respect to existing ambient noise, that is, business and industry noise, aircraft noise, roadway noise, and construction noise.
- 2 If the noise study results in a day-night average sound level greater than 65 dBA, the applicant shall provide a sound attenuation plan specifying the type of noise buffering measures/materials to be employed during construction that will reduce the interior residential noise levels to 50 dBA or less.
- 3 The sound level readings shall be measured at a distance from the site to the noise source. The measurement should be from the source to the nearest points on the site where structures having noise sensitive uses are located. These points shall be labeled as the NAL (noise assessment locations). The measurement location for structures is a point 6.5 feet from the facade. In the event that the location of the structures has not yet been specified at the time of the noise study, then the distance used in the noise study should be measured as 6.5 feet less than the distance from the structure setback line to the major source(s) of noise. (Reference: Title 24, Housing & Urban Development, Part 51 – Environmental Criteria and Standards, Subpart B – Noise Abatement and Control, Section 51.103) Criteria and Standards (c) Exterior standards.

28.4.7. **PUBLIC PARTICIPATION PLAN AND REPORT.**

The Public Participation Plan is to ensure that applicants pursue early and effective public participation in conjunction with their petitions, ensure that the citizens of the City of Johns Creek have an adequate opportunity to learn about petitions that may affect them, and to ensure ongoing communication between applicants, adjoining property owners, environmentally stressed communities, community associations and other organizations, elected officials and City staff. A target area for public participation should be determined by the applicant and current planner at the time of the pre-application review. Applicants are required to

submit a Public Participation Plan for meeting with interested citizens to advise of pending rezoning/use permit applications and to allow citizens the opportunity to discuss concerns and provide input about project design or development. An applicant's responsibilities are to inform the public, solicit input, and provide a summary of these activities in the form of a written report (Public Participation Report).

The requirement for a Public Participation Plan does not give communities decision making powers or force a consensus on issues. Applicants are not obligated to make any concessions or changes based upon input from citizens. A refusal by the community to meet with applicants does not mean that the applicants fail to meet the requirements of the Public Participation Plan.

Dialogue should occur between applicants and communities before the Planning Commission hearing, the first public hearing. Public Participation Plans are required with all rezoning and/or use permit applications and must be filed simultaneously with the application. Participation Plan Reports are required to be submitted no less than If the report is not submitted as required, the Mayor and City Council may defer an application.

The minimum requirements for Public Participation Plans and Public Participation Reports are as follows:

- A. Public Participation Plan. Every application for a rezoning or use permit which requires a public hearing shall include a Public Participation Plan which must be implemented prior to the first public hearing.

Minimum Standards:

- 1 Identification of all property owners within a quarter mile of the site and area homeowners' associations, environmentally stressed communities, political jurisdictions, and any other public agencies or organizations which may be affected by an application as determined by the applicant and the current planner at the time of the pre-application review.
- 2 Explanation of how interested parties will be informed of rezoning/use permit applications.

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- 3 Methods for providing opportunities for discussion with interested parties before public hearings are held. Applicants are required to schedule at least one meeting at a convenient location and time and notify all interested parties, as identified in 1. above, of the purpose, place and time of the meeting.
- 4 Applicant's schedule for completion of the Public Participation Plan.

B. Public Participation Report. Every rezoning and use permit applicant is required to provide a Public Participation Report on the Department's form no later than 15 calendar days prior to the Planning Commission hearing. This report shall be made a part of the official file and a summary will be provided to the Planning Commission and the Mayor and City Council.

Minimum Standards:

- 1 Provide a list of all parties that were contacted, the methods of notification that were used, and copies of all notification letters.
- 2 Provide dates and locations of all community and/or other meetings that were attended by the applicant to discuss an application. (attach meeting notices, letters, etc.)
- 3 Provide the number of people who participated in meetings held to discuss an application. (attach sign-in sheets)
- 4 A summary of concerns and issues expressed by interested parties.
- 5 A summary of the applicant's response to concerns and issues.

28.5. **CONDITIONAL DEVELOPMENT.**

28.5.1. **DESIGNATION.** Each zoning district shall have a designation thereunder to be known as Conditional for that district.

28.5.2. **PLANS.** Site plans for rezonings and use permits must be folded, drawn to scale, no larger than 30" x 42", and shall, at a minimum, include the following information:

- (1) Key and/or legend and site location map with North arrow;
- (2) Boundary survey of subject property which includes dimensions along property lines that match the metes and bounds of the property's written

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- legal description and clearly indicates the point of beginning;
- (3) Acreage of subject property;
- (4) Location of land lot lines and identification of land lots;
- (5) Existing, proposed new dedicated and future reserved rights-of-way of all streets, roads, and railroads adjacent to and on the subject property;
- (6) Proposed streets on the subject site;
- (7) Posted speed limits on all adjoining roads;
- (8) Current zoning of the subject site and adjoining properties;
- (9) Existing buildings with square footages and heights (stories), wells, driveways, fences, cell towers, and any other structures or improvements on the subject property;
- (10) Existing buildings with square footages and heights (stories), wells, driveways, fences, cell towers, and any other structures or improvements on adjacent properties within 400 feet of the subject site based on the City's aerial photography or an acceptable substitute as approved by the Director;
- (11) Location of proposed buildings (except single family residential lots) with total square footage;
- (12) Layout and minimum lot size of proposed single family residential lots;
- (13) Topography (surveyed or City) on subject site and adjacent property within 200 feet as required to assess runoff effects;
- (14) Location of overhead and underground electrical and pipeline transmission/conveyance lines;
- (15) Required and/or proposed setbacks;
- (16) 100 year flood plain horizontal limits and flood zone designations as shown on survey or FEMA FIRM maps;
- (17) Required landscape strips, undisturbed buffers, and any other natural areas as required or proposed;

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- (18) Required and proposed parking spaces; Loading and unloading facilities;
- (19) Lakes, streams, and waters on the state and associated buffers;
- (20) Proposed stormwater management facilities;
- (21) Community wastewater facilities including preliminary areas reserved for septic drain fields and points of access;
- (22) Availability of water system and sanitary sewer system;
- (23) Tree lines, woodlands and open fields on subject site;
- (24) Entrance site distance profile assuming the driver's eye at a height of 3.5 feet (See The City of Johns Creek Subdivision Regulations);
- (25) Wetlands shown on the City's GIS maps or survey; and
- (26) Airport noise contours on those properties within the FAR Part 150 Airport Noise Contour Map.

A request for relief from any of the above site plan requirements may be submitted in writing to the Director for approval prior to the filing deadline. The request should clearly state the reasons for the request. Projects subject to Development of Regional Impact reviews and other large projects that will be phased shall be required to revise the site plan for each phase of the development to comply with the above standards through a Zoning Modification.

- 28.6. **ZONING MAPS.** The official Zoning Map will be amended to reflect the land use petition approvals.
- 28.7. **APPLICABLE REGULATIONS.** Zoning regulations that applied at the time of acceptance of an application for a Land Disturbance Permit shall prevail.
- 28.8. **PETITION FEES.** Prior to accepting a petition for rezoning, use permit, concurrent variance, or extension of zoning and/or use permit, the Director shall collect nonrefundable fees as established by the Mayor and City Council.
- 28.9. **PROCEDURES FOR MODIFICATION OF ZONING CONDITIONS.** Modification of conditions of rezoning require rezoning pursuant to this Article.

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