

AN ORDINANCE

AMENDING the Comprehensive Development Code of the City of Marietta.

NOW, THEREFORE BE IT HEREBY ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF MARIETTA, GEORGIA, THAT:

Section 1: Division 704.06 Special land use permit necessary, is renamed Special use exceptions and variances, and is amended as follows:

Any person requesting a special exception from those permitted uses listed under any zoning district must seek a special land use permit for those uses identified under Division 712.01 or, for all other use exceptions, must seek relief from the City Council by requesting an additional use under the regulations set forth in Division 722 (Amendments). Any person requesting relief from the other provisions of the zoning ordinance must seek a variance in compliance with those regulations set forth in Division 720 (Quasi-judicial Decisions and Board of Zoning Appeals). Variances considered in concurrence and in conjunction with the grant or denial of an amendment to a zoning ordinance to rezone property from one classification to another, any other business item, or the grant or denial of a permit relating to a special use of property by the City Council shall be deemed a zoning decision pursuant to the Georgia Zoning Procedures Act. Variance decisions by the Board of Zoning Appeals pursuant to Division 720 or variance(s) granted by the City Council, but not in connection with a zoning decision, are deemed to be quasi-judicial pursuant to the Georgia Zoning Procedures Act.

Section 2: Division 710.02 Temporary buildings, is hereby amended as follows:

710.02 Temporary buildings.

Temporary buildings and trailers shall not be allowed in any district except when utilized for construction site contracting work or for use pending completion of a permanent building being constructed at the same site. This exception for temporary buildings and trailers shall only apply during the period of an active construction permit, and all such temporary buildings and trailers must be removed upon expiration or termination of the permit. Utility hookups to temporary buildings must be screened from view through fencing or landscaping subject to approval by the Director of Development Services. Temporary structures associated with seasonal sales at an individual lot may be approved by the Director of Development Services once per calendar year for a period no longer than 45 consecutive days, subject to concurrence by the Fire Marshall and Public Works Director.

Section 3: Division 714.07, Compliance Requirements, is hereby amended as follows:

714.07 Compliance requirements.

- A. Sign Inspections. The Director of the Department of Development Services may require the building inspector or other City Code Enforcement Officials to perform field inspections to determine that the sign being erected, replaced, reconstructed, expanded, relocated, or used is being pursued in accordance with the Standard Building Code and all other applicable ordinances for which a sign permit has been issued.
- B. Notice of Violation. If any sign is erected or maintained in violation of any of the provisions of this division or other ordinances, the City shall have the power to give the owner thereof notice of such

violation by either certified written notice or hand delivery. Said notice shall include a brief statement of the particulars in which this division or other ordinances are violated and the manner in which such violation is to be remedied. If a sign has been registered with the City, notice to the registered owner or the person or firm receiving the permit shall be sufficient. If a sign has not been registered and the owner is not known, affixing of a copy of the notice to the sign, sign structure, or building for a period of 5 days shall be sufficient. If a sign owner cannot be found, the duty to perform corrections or removal of the sign will be upon the property owner on whose property the sign is attached. Permanent signs are allotted a period of 10 days for removal. Temporary and/or portable display signs have 5 days for removal. In addition, citations may be issued immediately to either the party benefiting or intending to benefit from the advertisement and/or their agent.

C. Unsafe and Unlawful Signs. If the City shall find that any sign is unsafe or insecure or has been constructed, erected or maintained in violation of the provisions of this division, it shall give written notice as provided above to the owner of record specifying the particular violations and demanding their remedy, and the City may proceed with action as provided by law. The City may cause any sign that is an immediate peril to persons, property, or public safety to be removed without notice. The cost of sign removal will be charged against the sign owner if known or against the property owner on which the sign is attached.

1. Any signs, fliers, bills, posters, or any other such object illegally placed upon or affixed to the public right-of-way or any publicly owned building or structure, whether located within or outside of the public right-of-way may be removed immediately without notice by the City. Any damage or defacement resulting from such prohibited placement shall immediately be repaired or otherwise corrected by the responsible party. For purposes of enforcement, the responsible party shall be deemed to be the party benefiting or intending to benefit from the advertisement, notice or message required to be removed.

D. Abandoned Signs. Signs that advertise a discontinued product, place, activity, person, institution, or business are considered abandoned signs. These signs shall be removed within 6 months from the date of discontinuance. If such signs are not removed or brought into compliance with the City of Marietta Sign Ordinance within this time period, the City shall take steps, following proper notice (as listed in Section 714.07 Subsections G. and H.), to have the signs removed. The Marietta Municipal Court may issue fines and/or orders in accordance with the penalties section of this division.

E. Maintenance and Appearance of Signs.

1. All signs shall be maintained in good condition, so as to present a neat and orderly appearance. Neglected or dilapidated signs shall be manifested by the following: rust or holes on or in the sign or sign structure, or broken, missing, loose or bent parts, faded or flaking paint, non-operative or partially non-operative illuminating or mechanical devices or missing letters in sign copy. Neglected and dilapidated signs are prohibited as listed in Section 714.06. The City may cause to be removed after due notice any sign which shows gross neglect or becomes dilapidated.
2. The City shall give the owner 10 days written notice to correct the deficiencies or to remove the sign or signs. If the owner refuses to correct the deficiencies or remove the sign, the City may take steps, following proper notice (as listed in Section 714.07C.) to have the sign removed at the expense of the owner. The Marietta Municipal Court may issue fines and/or orders in accordance with the penalties section of this ordinance.

F. Enforcement and Penalties.

1. Violation Deemed Public Nuisance. Any violation of this division is hereby declared to be a public nuisance. Improperly located signs or prohibited signs are hereby determined to pose an immediate safety threat and traffic hazard to members of the public traveling on City roadways.
2. Removal of Signs Without Notice. The enforcement personnel or any other agent of the City having jurisdiction under the circumstances may remove or direct the removal of any sign in violation of this division without giving notice to any party, if such sign:

- (i) Is upon the public right-of-way or upon other public property; or
- (ii) Poses an immediate threat to the life or health of any members of the public.

In the event that enforcement personnel remove or cause to be removed any sign under this section, criminal charges for such violation may be issued to anyone or combination thereof of the following:

- (i) To the owner of the sign;
 - (ii) To the erector of the sign;
 - (iii) To the property owner upon which such illegal sign is located; or
 - (iv) To the person or to the business entity who procured the erection of the sign.
3. Any sign that is removed and confiscated by the enforcement personnel shall constitute evidence in any subsequent prosecution regarding the illegal sign. Each sign that is caused to be removed shall constitute a separate violation of this division.
 4. Penalties. Violators are subject to penalties as identified in Section 714.07.I.
- G. Enforcement. Any violation of the provisions of this division which continues after proper notice by any person, agent, or tenant who has control over any sign located on property on which the sign is located is hereby deemed in violation of this division. The City Code Enforcement Officers, Director of the Department of Development Services or any law enforcement officer of the City is hereby authorized and directed, upon discovery of any violation of any provision of this division, to issue a citation for the violator or violators to appear before the appropriate court on a day and time certain to answer to the charges. Nothing herein contained shall prevent the City from taking such other lawful action as is necessary to prevent or remedy any violation.
- H. Penalties.
1. Any person who violates this division or fails to comply with this any of its requirements shall, upon conviction thereof, be fined up to \$1,000.00 for each violation and/or imprisoned for not more than 6 months, or both, and in addition shall pay all costs and expenses involved in each separate offense. The Marietta Municipal Court may issue an order requiring the removal of any sign in violation of this division. If business or property owner fails to comply with a removal order within 10 days of court hearing, City staff shall remove the illegal sign. The cost of sign removal will be charged against the sign owner or property owner if known or a lien shall be placed against the property on which the sign is attached. Except for a different violation, each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the City from taking such other lawful action as in necessary to prevent or remedy any violation, as mentioned in Section 718.08 of the Marietta Zoning Ordinance.
 2. Penalties for the first violation of this code section shall be a minimum fine of \$100.00. The penalty for second violations of the same provisions of this Code section by the same owner or tenant shall be a minimum fine of \$500.00. Third or repeat violations of the same provisions of this Code section by the same owner or tenant shall be punished by a minimum fine of \$1,000.00.

Section 4: Division 718.02, Administrative variances, is hereby deleted in its entirety.

Section 5: Division 720, Board of Zoning Appeals, is hereby renamed Quasi-Judicial Decisions and Board of Zoning Appeals.

Section 6: Division 720.01, Establishment and appointment, is hereby renamed, Exercise and delegation of quasi-judicial decision making authority, and amended as follows:

720.01 Exercise, delegation, and reservation of quasi-judicial decision-making authority

The City Council may exercise, or may delegate to the Board of Zoning Appeals or other boards so designated, quasi-judicial zoning powers, including the hearing appeals of administrative decisions by the

Director of Development Services, hearing and rendering decisions on applications for variances, special administrative permits, conditional use permits, or other similar permits, pursuant to standards for the exercise of such quasi-judicial authority adopted in this division. Where not specifically delegated to the Board of Zoning Appeals or other body, the powers of quasi-judicial decision making are reserved to the City Council and shall be exercised in accordance with the same standards set forth in Division 720.03 below. For variance requests before the City Council which are not being considered as part of a rezoning application, such quasi-judicial hearings shall be governed by the rules of procedure governing City Council hearings set forth in Division 722.05(E).

Section 7: Division 720.02, Organization, is hereby renamed and **Board of Zoning Appeals; Establishment, appointment, and organization**, and amended as follows:

720.02 Board of Zoning Appeals; establishment, appointment, and organization.

- A. There is hereby established a Board of Zoning Appeals ("the Board"), which shall consist of 7 members, residents of the City of Marietta, living in separate wards, appointed by the City Council for terms of 3 years or thereafter until their successors are appointed. Members of the Board shall hold no other City office or position. Any vacancy in the membership of the Board shall be filled for the unexpired term in the same manner as the initial appointment.
- B. The Board of Zoning Appeals shall elect one of its members as chairman, who shall serve for one year or until he is re-elected or his successor is elected. Meetings of the Board shall be held on the last Monday of each month at 6:00 p.m., or as otherwise set by the call of the chairman, or at such times as the Board may decide. The Board shall keep minutes of its 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 its examinations and other official actions, all of which shall be maintained by the Department of Development Services and shall be a public record. The Board shall be authorized to adopt its own by-laws as described in Division 720.07.

Section 8: Division 720.03, Powers and duties, is hereby renamed **Board of Zoning Appeals; Powers and duties**, and amended as follows:

720.03 Board of Zoning Appeals; Powers and duties.

- A. The Board of Zoning Appeals shall have the powers to:
 1. Hear and decide appeals from the decision of the Director of Development Services where it is alleged there is error in any order, requirement, decision, or determination.
 2. Grant variances from zoning regulations of this article in cases where strict application of such regulations would result in unnecessary hardship; but only in harmony with the spirit and intent of these regulations and is the minimum necessary to grant relief without injury to the public interest. All such variances must be based upon the evidence submitted before the Board of Zoning Appeals and upon its findings, supported by the testimony or by documentary testimony that such variance shall be required by one of the following causes:
 - a) Because of the existence in good faith of a nonconforming structure or physical condition at a time prior to the adoption of the Zoning Ordinance of the City of Marietta, or amendments thereto, requires the continuance of such nonconforming structure or physical condition. Variances for nonconforming uses may not be considered or granted by the Board, and decisions on the continuation of nonconforming uses are specifically reserved to the City Council.
 - b) There are extraordinary and exceptional conditions creating a substantial hardship to the applicant which pertain to the particular piece of property or building in question because of its size, shape or topography.

- B. Every such judgment of the Board of Zoning Appeals granting a variance or appeal shall be accompanied by a finding of fact specifying the reasons therefor.
- C. In granting any variance under the provisions of this section, the Board of Zoning Appeals may designate such conditions in connection therewith as will, in its opinion, secure substantially the objectives of these regulations and may designate conditions to be performed or met by the user or property owner, out of regard for the public health, safety, comfort, convenience, and general welfare of the community, including safeguards for, with respect to light, air, areas of occupancy, density of population and conformity to any master or through traffic plan, the future development of the City.
- D. Variances approved by the Board must be implemented within a period of 12 months, meaning that a building permit must be obtained and the development and construction commenced within the 12-month time period. If the variance has not been implemented within 12 months, Board approval must be obtained again. This provision shall not apply to variances granted by the City Council in connection with zoning decisions.
- E. The Board may in conformity with this article reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and to that end shall have all the duty of the Director of Development Services to carry out the decisions of the Board.
- F. Variances may not be granted by the Board of Zoning Appeals conditioned upon the approval by City Council of an application to amend this article or to amend the Official Zoning Map.
- G. Variances granted by the Board of Zoning Appeals or City Council shall only remain in effect as long as the property to which it applies remains in the same zoning classification such property was in at the time the variance was granted.
- H. No variances may be granted by the Board of Zoning Appeals that would allow any part of a structure to be constructed over a sanitary sewer line, water line or stormwater line, or over any required easement for such lines.
- I. Failure of a Board Member to attend three regular meetings within a calendar year shall be reported to City Council as promptly as possible. City Council may accept the absences as resignation or allow the member to continue serving the term if just cause exists for the absences. Upon such resignation, resignation by other means, or other vacancies occurring in office, the Chairman shall inform the City Council as promptly as possible, so that the City Council may appoint a replacement to fill the unexpired term.

Section 9: Division 720.04, Procedures, is hereby amended as follows:

720.04 – Applications and notice.

- A. An appeal to the Board of Zoning Appeals may be taken by any person, firm, or corporation aggrieved or by any governmental officer, department, board or agency affected by any decision of the Planning and Zoning Division with respect to this article. Such appeal shall be made within 10 days following notification of the decision appealed from, by filing with the Director of Development Services a notice of appeal and specifying the grounds thereof. The Director of Development Services or his designee shall forthwith transmit to the Board all the papers constituting the record upon which the action was taken.
- B. Applications for a hearing and decision on requests for variances and appeals shall be filed with the Director of Development Services, on forms he shall provide, at least 40 days prior to the meeting at which they may be heard. Each application shall contain such information as the Director of Development Services may require to enable the Board or City Council to make its decision including, but not limited to, a plat drawn to scale showing the following:
 - 1. All property lines, with dimensions on an appropriate scale to allow staff review;
 - 2. A legal description of the tract involved;
 - 3. Location of buildings and other structures, creeks, and easements referenced to the property;

4. North arrow, land district and land lot number; and
 5. Location of setback lines or other requirements from which the variance is sought.
- C. A copy of the paid in full tax bill or a letter from the City of Marietta Tax Department stating that all taxes have been paid must accompany the application for a variance before it will be processed.
 - D. At least 30 days prior to a quasi-judicial hearing before the Board or City Council for variances and appeals, the Department of Development Services shall notify by regular mail all property owners within 200 feet of the property being considered (excluding owners of common areas or common elements of a condominium development) as shown by the most recent City tax records at the addresses shown on said records. Such notification must include the proposed appeal(s) or variance(s) being considered and the date, time, and place of the scheduled quasi-judicial hearing.
 - E. Due notice of all quasi-judicial hearings on applications for variances and appeals shall be published at least 30 days (but no more than 45) days prior to the hearing in the newspaper denoted as the legal organ of the City and shall include the date, time, and place of said hearing.
 - F. In addition to the above notice requirements, at least 30 days prior to the quasi-judicial hearing the Department of Development Services shall post in a conspicuous place on the property a sign or signs which shall contain information as to the date, the time and purpose of the hearing.
 - G. No submitted variance application may be amended after public notice of the request has been given, provided, however, the Board may allow such application to be amended during the public hearing.
 - H. Notice of variance requests before the Board of Zoning Appeals shall be sent to all City Council Members by the Director of Development Services or his or her designee.
 - I. Any applicant to whom a variance or appeal is granted or denied shall be given written notice specifying any variances or appeals granted or denied within 10 days of the decision.
 - J. Time limit on resubmission. An application for a variance affecting the same property shall not be submitted more than once every 12 months; however, an applicant may petition the Board of Zoning Appeals or the City Council, as appropriate, to waive the 12-month waiting period by demonstrating that the situations or amount of variance requested which led to denial have materially changed or if the request is materially different.

Section 10: Division 720.05, Public hearings, is hereby amended as follows:

720.05 – Meetings and procedures for quasi-judicial hearings before the Board of Zoning Appeals

- A. The Board of Zoning Appeals shall hold a public hearing on all requests for variances and appeals on which it acts.
- B. Board of Zoning Appeals Meetings
 1. All members of the Board shall be notified of the meeting at least 48 hours in advance of any meeting (excluding weekend days).
 2. A quorum shall consist of four members for the transaction of all business.
 3. Board members are subject to the Code of Ethics as set forth in Chapter 14 of Article 1 of the City's Code of Ordinances, including the abuse of office and conflict of interest provisions set forth therein.
 4. All meetings shall comply with the requirements of the Georgia Open Meetings Act. The order of business at meetings shall be at the discretion of the Chairman.
 5. During a public hearing, the applicant and all those in opposition shall be allowed 20 minutes to present their argument(s). The applicant can reserve any portion of his remaining time for rebuttal. The Chairman may request representatives of the opposition to speak for the entire group. If more than one speaker represents a group, the 20 minutes shall be divided among the various speakers. In no case, however, shall any group be allowed more than the allotted time no matter how many speakers represent the group unless extended by a majority vote of the Board members present.

6. At the public hearing, the applicant or any other party may appear on his own behalf or be represented by agent or attorney. No case shall be considered for approval if the applicant or his agent does not appear. If the applicant or his agent does not appear, the Board may vote to deny the request or table the case to a future meeting. If the Board votes to table the request, the applicant shall bear the cost of any additional filing or advertising fees incurred, unless waived by majority vote of the Board.
 7. If the applicant elects to withdraw his application prior to the hearing at which the application is scheduled to be considered, a written request must be received in the office of the Director of Development Services not later than 48 hours before the scheduled hearing (excluding weekends). The Board may by majority vote allow an applicant to withdraw an application without prejudice at any time during consideration of the application.
 8. An applicant may request his application be tabled until the next scheduled meeting of the Board upon written request received in the office of the Director of Development Services no later than 48 hours prior to the scheduled hearing (excluding weekend days). Alternatively, a majority of the Board members present at the meeting may vote to table the application. If a motion to table is made at the request of an applicant, the applicant shall bear the cost of any additional filing or advertising fees incurred because of the request, unless waived by majority vote of the Board.
 9. No applause or disruptive behavior shall be allowed by individuals there to express support either for or against an issue before the Board of Zoning Appeals.
 10. The Board of Zoning Appeals shall not request a show of hands for or against an issue.
 11. All speakers shall be accorded due respect by other citizens in attendance at the meeting.
- C. Presentation of Evidence
1. Variance requests should be orally presented to the Board by the applicant or his representative, along with any documentation necessary to demonstrate his need for such variances.
 2. The Board is permitted to ask any pertinent questions of the applicant or his representative to aid in their understanding of the case.
 3. After such presentation by the applicant, the Chairman shall ask if there be anyone present who is in opposition to the granting of such variances.
 4. Those appearing in opposition should offer oral evidence and any documentation to show why granting the variance would create a specific hardship or hazard to their interests.
 5. The Board is permitted to ask any pertinent questions of the opposition to aid in their understanding of the case.
 6. All presentations and remarks by the applicant and opposition shall be directed to the Board.

Section 11: Division 720.06, Assistance by Staff, is hereby amended as follows:

720.06 - Assistance by staff for Board of Zoning Appeals.

The Director of the Department of Development Services or his or her designee shall provide such technical and clerical assistance as the Board may require and shall maintain permanent and complete records of the activities of the Board.

Section 12: Division 720.07, By-Laws, is hereby renamed **By-Laws for Board of Zoning Appeals** amended as follows:

720.07 – By-Laws for Board of Zoning Appeals

The Board shall adopt such rules for its own internal administration including, but not limited to, the election of the Chairman and Vice Chairman and the adoption of rules not in conflict with this division.

Section 13: Division 720.08, Appeals, is hereby amended as follows:

720.08 – Appeals of Quasi-Judicial Decisions

- A. Any person adversely affected by any quasi-judicial decision made by the Board of Zoning Appeals or City Council shall have 30 days from the date of the written decision to appeal such decision to the Superior Court of Cobb County by filing a petition for review as described in Chapter 3 of Title 5 of the Official Code of Georgia. Such appeals shall be reviewed on the record which shall be brought to the superior court as provided in Title 5.
- B. In connection with such an appeal from a quasi-judicial decision of the Board or City Council, the City Clerk shall have authority, without additional action by the Board, to approve or issue any form or certificate required by Chapter 3 of Title 5 of the Official Code of Georgia.
- C. In connection with such an appeal from a quasi-judicial decision of the Board or City Council, service of a petition for review pursuant to Chapter 3 of Title 5 of the Official Code of Georgia may be made upon the City Clerk during normal business hours at City Hall.
- D. An appeal to the Superior Court of Cobb County shall stay all legal proceedings in furtherance of the action appealed from, unless the Board of Zoning Appeals or City Council from which the appeal is taken certifies that, by reason of the facts stated in the certificate, a stay would cause imminent peril to life or property. In such actions, the applicant for the quasi-judicial decision shall be a necessary party and shall be named as a defendant in the action and served in accordance with the requirements of Chapter 3 of Title 5 or Chapter 11 of Title 9 of the Official Code of Georgia, as appropriate.

Section 14: Division 722.04, Planning Commission Action, is hereby amended as follows:

722.04 Planning Commission action.

- A. The Planning Commission shall conduct a public hearing on each rezoning application in accordance with the procedures set forth in this Division. The staff report on each application shall be considered and testimony solicited from the applicant and those interested citizens. The Planning Commission shall review the following factors in making a determination on the application:
 - 1. Existing uses and zoning classifications of nearby property;
 - 2. The extent to which property values are diminished by the particular zoning restrictions;
 - 3. The extent to which the destruction of property values of the plaintiffs promotes the health, safety, morals or general welfare of the public;
 - 4. The relative gain to the public, as compared to the hardship imposed upon the individual property owner;
 - 5. The suitability of the subject property for the zoned purposes;
 - 6. The length of time the property has been vacant as zoned, considered in the context of land development in the area in the vicinity of the property;
 - 7. Whether the subject property has a reasonable economic use as currently zoned;
 - 8. Whether the proposed zoning will adversely affect the existing use or usability of adjacent or nearby property;
 - 9. Whether the zoning proposal is in conformity with the policies and intent of the comprehensive land use plan;
 - 10. Whether the zoning proposal will result in a use which will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities, or schools;
 - 11. Whether there are other existing or changing conditions affecting the use and development of the property which give supporting grounds for either approval or disapproval of the zoning proposal.
- B. As to each application, the Planning Commission shall make a recommendation to:
 - 1. Approve.
 - 2. Approve with modifications.
 - 3. Deny.
 - 4. Approve another zoning district.

5. Table - the Planning Commission may only table a request upon consent of the applicant. If the applicant does not wish for the application to be tabled, the Planning Commission shall forward the request to City Council with or without a recommendation.
6. No recommendation - only in the case of a tie vote, the Planning Commission may forward the request to City Council without a recommendation. A copy of the Planning Commission's recommendations shall be prepared and submitted to the City Council.

C. Planning Commission Meetings

1. Meetings of the Commission shall be held on the first Tuesday of each month at 6:00 p.m., or at such other times as set by the Commission or requested by City Council. The Secretary shall inform all members of the Commission at least 48 hours in advance of any meeting (excluding weekend days).
2. A quorum shall consist of four members for the transaction of all business.
3. Commission members are subject to the Code of Ethics as set forth in Chapter 14 of Article 1 of the City's Code of Ordinances, including the abuse of office and conflict of interest provisions set forth therein.
4. All meetings shall comply with the Georgia Open Meetings Act. The order of business at meetings shall be at the discretion of the Chair.
5. During a public hearing, both the applicant and those in opposition shall be allowed a total of 15 minutes to present their argument. The Chairman may request representatives of each side to speak for the entire group. If more than one person wishes to speak in favor of or against an application, the 15 minutes shall be divided among the various speakers. In no case, however, shall any group be allowed more than the allotted time, regardless of the number of speakers, unless extended by a vote of five members of the Commission. Written comments received before the meeting are encouraged.
6. The applicant or agent shall be present at the hearings before the Planning Commission with regard to said application. In the event that an agent is present, rather than the applicant, such agent must have the full authority to act on behalf of the applicant with regard to all matters pertaining to said application.
7. An application may not be withdrawn by the applicant within 48 hours prior to a hearing on the matter (excluding weekend days), however, the Planning Commission may, by a majority of the members present, allow an application to be withdrawn without prejudice with respect to the 6-month limitation, or allow an application to be amended. Failure of the applicant or their representative to appear at the scheduled hearing may result in automatic dismissal with prejudice, rejection of the application or continuance of the hearing at the sole discretion of the Planning Commission.

D. Planning Commission Vacancies.

Failure of a Commission Member to attend three regular meetings within a calendar year shall be considered for resignation from the Commission. Such resignation shall be forwarded to the City Council who may accept the resignation or may decline to accept it if it finds just cause exists for the absences. Upon such resignation, resignation by other means, or other vacancies occurring in office, the Chairman shall inform the City Council as promptly as possible, so that the City Council may appoint a replacement to fill the unexpired term.

E. Presentation of Evidence to the Planning Commission

1. Requests should be orally presented to the Commission by Applicant, or his Representative, along with any documentation necessary.
2. The Commission is permitted to ask any pertinent questions of the Applicant or his Representative to aid in their understanding of the case and such questions and responses shall not count towards the 15-minute time limit. Neither the public nor those speaking in opposition shall be permitted to ask questions of the Applicant or his Representative.
3. After such presentation by the Applicant, the Chairman shall ask if there be anyone present who is in Opposition to the granting of such request.

4. Those appearing in opposition should offer testimony and any documentation or other evidence demonstrating why granting the proposed request would create a specific hardship or why the proposed request would be detrimental or injurious to the general health, safety, and welfare of the area near the proposed rezoning.
 5. The Commission is permitted to ask any pertinent questions of the Opposition to aid in their understanding of the case and such questions and responses shall not count towards the 15-minute time limit. Neither the public nor the applicant shall be permitted to ask questions of the Opposition.
 6. All presentations, remarks and questions by the Applicant or Opposition shall be directed to the Commission.
- F. By-Laws of the Planning Commission
- The Commission shall adopt such rules for its own internal administration, including, but not limited to, the election of the Chairman and Vice Chairman and the adoption of rules not in conflict with this division.

Section 15: Division 722.05, City Council Action, is hereby amended as follows:

722.05 City Council action.

- A. The City Council shall hold a public hearing on all requests to amend this article and the Official Zoning Map contained therein. Prior to such hearing the City Council shall review the staff report and recommendation from the Planning Commission. At the public hearing the applicant shall present their request for a map amendment and any information they deem to support said request.
- B. So that the purpose of this article will be served and the health, public safety and general welfare secured, the City Council may approve, approve with stipulations (which may be site-specific), deny, reduce the land area for which the application is made, change the zoning classification requested, table until the next meeting or allow an application to be withdrawn (with or without prejudice at the discretion of the Council).
- C. The decision by City Council to approve in whole or part, reject, condition or delete an application for rezoning shall be based on, but not limited to, a consideration of the following:
 1. Existing uses and zoning classifications of nearby property;
 2. The extent to which property values are diminished by the particular zoning restrictions;
 3. The extent to which the destruction of property values of the plaintiffs promotes the health, safety, morals or general welfare of the public;
 4. The relative gain to the public, as compared to the hardship imposed upon the individual property owner;
 5. The suitability of the subject property for the zoned purposes;
 6. The length of time the property has been vacant as zoned, considered in the context of land development in the area in the vicinity of the property;
 7. Whether the subject property has a reasonable economic use as currently zoned;
 8. Whether the proposed zoning will adversely affect the existing use or usability of adjacent or nearby property;
 9. Whether the zoning proposal is in conformity with the policies and intent of the comprehensive land use plan;
 10. Whether the zoning proposal will result in a use which will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities, or schools;
 11. Whether there are other existing or changing conditions affecting the use and development of the property which give supporting grounds for either approval or disapproval of the zoning proposal.
- D. In acting on such application, the City Council shall have the authority to grant the applicant variances from the regulations and provisions of this article in accordance with the standards set forth in Section 720.03.

E. City Council Zoning Hearing Procedures

The following procedures shall apply to all hearings for zoning decision before the City Council:

1. Representatives/applicants, as a group, and representatives/opponents, as a group, shall be given a maximum of 15 minutes for each side to present its case, unless, by general consensus, more time is allotted by the City Council.
2. Both the applicant and opposition shall have equal amounts of time, up to 15 minutes, to present their case and if time is extended for one side, time shall equally be extended for the other side.
3. Those speaking in opposition, up to three people, shall have five minutes each not to exceed the total 15 minutes. If four or more people wish to speak in opposition to the request, the time limit of 15 minutes shall be equally divided. Council may extend the time.
4. In order to accommodate all those that wish to speak, it is encouraged that groups which are present choose a spokesperson to present their views. In no case, however, shall any group be allowed more than the allotted time no matter how many speakers represent the group unless extended by a majority vote of the Council members present.
5. The City Attorney shall be responsible for conducting a Public Hearing, keeping time and administering the oath to a speaker.
6. The person addressing Council may be required to state the following information.
 - a. Whether the person speaks for themselves or another person;
 - b. Whether the person represents an organization or policy established by an organization or governing body;
 - c. Whether the person is being compensated by the person(s) for whom they are speak; and
 - d. Whether the person or any member of their immediate family have a personal interest in the pending matter.
7. As each case is called, all witnesses for the applicant and opponents shall first be sworn in prior to making their presentations.
8. No further public input will be allowed except responses to questions asked by the Council members.
9. The Applicant shall go first and may reserve any remaining time to conclude after the opposition has had their turn. The time for rebuttal by the applicant shall be included in the 15 minutes time limit.
10. Questions and answers to those questions from Council members shall not count against the time of the side that is asked questions.
11. At the public hearing, the applicant or any other party may appear on his own behalf or be represented by agent or attorney.
12. No applause shall be allowed either for or against an issue.
13. No request for a show of hands for or against an issue shall be allowed.
14. All speakers shall be accorded due respect by other citizens in attendance at the meeting.
15. In all hearings and/or appearances before the Marietta City Council, same shall be conducted in an orderly manner; and there shall be no applause during such appearance/hearing; and no comment or participation while another person is addressing the Marietta City Council; and there shall be no show of hands or other public participation during such hearing/appearance.

Section 16: Division 722.10, Zoning Decisions Relating to Authorize Multifamily Uses in Single-Family Classifications, is hereby adopted as follows:

- A. In compliance with O.C.G.A. § 36-66-4(h) the following supplementary procedures shall apply:
 1. Notwithstanding any other provisions of this chapter to the contrary, when a proposed zoning decision relates to an amendment of the zoning ordinance to revise one or more zoning classifications or definitions relating to single-family residential uses of property so as to authorize multifamily uses of property pursuant to such classification or definitions, or to grant

blanket permission, under certain or all circumstances, for property owners to deviate from the existing zoning requirements of a single-family residential zoning, such zoning decision shall be adopted in the following manner:

- a. The zoning decision shall be adopted at two regular meetings of the City Council making the zoning decision, during a period of not less than 21 days apart; and
- b. Prior to the first meeting provided for in subparagraph (A) of this paragraph, at least two public hearings shall be held on the proposed action. Such public hearings shall be held at least three months and not more than nine months prior to the date of final action on the zoning decision. Furthermore, at least one of the public hearings shall be held between the hours of 5:00 P.M. and 8:00 P.M. The hearings required by this paragraph shall be in addition to any hearing required under the normal zoning decision process.
- c. The City Council shall give notice of such hearing by:
 - i. Posting notice on each affected premises in the manner prescribed by subsection (b) of this Code section; provided, however, that when more than 500 parcels are affected, in which case posting notice is required every 500 feet in the affected area; and
 - ii. Publishing in a newspaper of general circulation within the territorial boundaries of the local government a notice of each hearing at least 15 days and not more than 45 days prior to the date of the hearing.

Both the posted notice and the published notice shall include a prominent statement that the proposed zoning decision relates to or will authorize multifamily uses or give blanket permission to the property owner to deviate from the zoning requirements of a single-family residential zoning of property in classification previously relating to single-family residential uses. The published notice shall be at least nine column inches in size and shall not be located in the classified advertising section of the newspaper. The notice shall state that a copy of the proposed amendment is on file in the office of the clerk or the recording officer of the local government and in the office of the clerk of the superior court of the county of the legal situs of the City Council for the purpose of examination and inspection by the public. The City Council shall furnish anyone, upon written request, a copy of the proposed amendment, at no cost.

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

Section 17: Division 722.11, Challenge of Zoning Decisions, is hereby adopted as follows:

722.11 – Challenge of Zoning Decisions

- A. Any person adversely affected by any zoning decision made by the City Council shall have 30 days from the date of the written decision to challenge such determination to the Superior Court of Cobb County pursuant to the standards set forth in Chapter 66 of Title 36 and under the procedures contained in Chapter 4 of Title 9 of the Official Code of Georgia.
- B. In connection with such an appeal from a zoning decision of the City Council, the City Clerk shall have authority, without additional action by the Board, to transmit the record of the zoning decision to the Clerk of Superior Court.

- C. An appeal to the Superior Court of Cobb County shall stay all legal proceedings in furtherance of the action appealed from, unless the City Council from which the appeal is taken certifies that, by reason of the facts stated in the certificate, a stay would cause imminent peril to life or property. In such actions, the applicant for the zoning decision shall be a necessary party and shall be named as a defendant in the action and served in accordance with the requirements of Title 5 or Title 9 of the Official Code of Georgia, as appropriate.

Section 18: Division 724.02, Definition of terms, is hereby amended to include the following definitions:

Quasi-judicial decision: decisions on applications for variances, appeals of decisions of the Director of Development Services, special land use permits, or other similar permits not enumerated as a zoning decision, pursuant to standards for the exercise of such quasi-judicial authority adopted by the City Council.

Zoning decision: final legislative action by the City Council which results in:

- (A) The adoption or repeal of a zoning ordinance;
- (B) The adoption of an amendment to a zoning ordinance which changes the text of the zoning ordinance;
- (C) The adoption or denial of an amendment to a zoning ordinance to rezone property from one zoning classification to another;
- (D) The adoption or denial of an amendment to a zoning ordinance by a municipal local government to zone property to be annexed into the municipality;
- (E) The grant or denial of a permit relating to a special use of property; or
- (F) The grant or denial of a variance or conditions concurrent and in conjunction with a decision pursuant to subparagraph (C) or (E) of this paragraph.

Section 19: It is hereby declared to be the intention of this Ordinance that its sections, paragraphs, sentences, clauses, and phrases are severable and if any section, paragraph, sentence, clause, or phrase of this Ordinance is declared to be unconstitutional or invalid, it shall not affect any of the remaining sections, paragraphs, sentences, clauses, or phrases of this Ordinance.

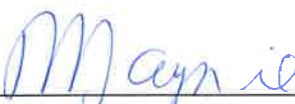
Section 20: All Ordinances and parts of Ordinances in conflict with this Ordinance are hereby repealed.

Section 21: This Ordinance shall be effective upon signature or without the signature of the Mayor, subject to Georgia laws 1983, page 4119.

Final Ordinance submitted by:


Rusty Roth, Director of Development Services

Approved as to Form:


Douglas R. Haynie, City Attorney

Approved by City Council:

APPROVED:

DATE: March 12, 2025

R. Steve Tumlin, Jr.
R. Steve Tumlin, Jr., Mayor

ATTEST:
Stephanie Guy
Stephanie Guy, City Clerk