



# CITY OF DAHLONEGA

## City Council Public Hearing Agenda

May 15, 2023, 4:00 PM

Gary McCullough Chambers, Dahlonega City Hall

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In compliance with the Americans with Disabilities Act, those requiring accommodation for Council meetings should notify the City Clerk's Office at least 24 hours prior to the meeting at 706-864-6133.

Vision - To be an open, honest, and responsive city, balancing preservation, and growth, and delivering quality services fairly and equitably by being good stewards of Dahlonega's resources.

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### CALL TO ORDER

#### *Public Hearing:*

- [1.](#) Zoning Changes Pursuant to HB 1405  
Doug Parks, City Attorney

### ADJOURNMENT



# City Council Agenda Memo

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**DATE:** April 27, 2023  
**TITLE:** Zoning Changes Pursuant to HB 1405  
**PRESENTED BY:** Doug Parks, City Attorney

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## **AGENDA ITEM DESCRIPTION:**

The attached Ordinance for consideration is regarding the mandatory zoning changes outlined in HB 1405.

Specifically, the additions are outlined as follows: (1) Annexation procedures; (2) language to be included in a Public Hearing Notice; (3) appeal shall be brought within 30 days of the written decision of the appeal; and (4) designation of officer for perfection of service. Not required by HB 1405 but added is a requirement for a pre-application meeting prior to filing a request for a zoning decision.

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## **HISTORY/PAST ACTION:**

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## **FINANCIAL IMPACT:**

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## **RECOMMENDATION:**

Approval as these are mandatory changes.

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## **SUGGESTED MOTIONS:**

Motion to approve Ordinance 2023-05.

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**ATTACHMENTS:** Ordinance 2023-05: Regarding Zoning Changes Pursuant to HB 1405

**AN ORDINANCE TO AMEND ORDINANCE 91-9 WHICH APPEARS IN THE CODE OF THE CITY OF DAHLONEGA, GEORGIA, AND MORE PARTICULARLY APPEARS IN THE PUBLICATION OF THE CODE OF THE CITY OF DAHLONEGA, GEORGIA AT: SUBPART B: LAND USE AND LAND DEVELOPMENT; APPENDIX B: ZONING, ARTICLE XXVI: AMENDMENT, APPLICATION AND PROCEDURAL REQUIREMENTS; SECTIONS 2603: FREQUENCY OF APPLICATION, 2607: CRITERIA TO CONSIDER FOR MAP AMENDMENTS (REZONINGS), 2609: PUBLIC NOTICE AND PUBLIC HEARING REQUIRED, 2610: RECOMMENDATION BY ZONING ADMINISTRATIVE OFFICER, 2611: PLANNING COMMISSION RECOMMENDATION; AND TO ADD SECTIONS 2619: APPEALS, AND SECTION 2620: DESIGNATION OF OFFICER FOR PERFECTION OF SERVICE; STAY OF PROCEEDINGS.**

Short title: "An ordinance to amend the current zoning regulations to be consistent with House Bill 1405."

**WHEREAS**, the City of Dahlonega ("City") is a municipal corporation duly organized and existing under the laws of the State of Georgia; and

**WHEREAS**, the duly elected governing authority of the City is the Mayor and Council thereof ("City Council"); and

**WHEREAS**, the Georgia General Assembly passed Georgia Laws Act 881 (H.B. 1405) during the 2021-2022 Regular Session, and said Act was signed by the Governor on May 13, 2022, which instituted sweeping changes of the Georgia Zoning Procedures Law; and

**WHEREAS**, it is necessary to amend the City of Dahlonega Zoning Ordinance to conform to the changes in the Zoning Procedures Law; and

**WHEREAS**, municipalities are required to come into compliance with the amended procedures by July 1, 2023; and

**WHEREAS**, the Mayor and City Council of the City of Dahlonega find this text amendment to the City of Dahlonega Zoning Ordinance to be in the best interest of the public health, safety, and welfare.

**NOW, THEREFORE**, be it ordained, and it is so ordained by the authority of the City Council of Dahlonega, that the following Sections of Ordinance 91-9 as it appears as an appendix in the Code of the City of Dahlonega are hereby amended as noted and in two cases added in the following particulars:

**SECTION I:**

**BE IT ORDAINED** by the City Council of Dahlonega, and it is ordained by authority of the same, that Subpart B, Appendix B, Article XXVI, Section 2603, of the Code of the City of Dahlonega, Georgia, is hereby amended so that said Section now reads as follows in its entirety:

**Sec. 2603. Frequency of application; Pre application meeting.**

The Governing Body or the Planning Commission may at any time file, in its own name, an application for amendment to the text of the zoning regulations or the official zoning map.

If the zoning decision of the Governing Body is for the rezoning of property and the amendment to the zoning ordinance to accomplish the rezoning is defeated by the Governing Body, then the same property may not again be considered for rezoning until the expiration of at least six months immediately following the defeat of the rezoning by the Governing Body.

A property owner or subsequent property owner shall not initiate action for a map amendment, conditional use permit, or variance affecting the same or any portion of property more often than once every six (6) months from the date of any previous decision rendered by the Governing Body defeating a request provided, however, that a property owner may petition for the alteration, modification or deletion of conditions of zoning in accordance with the provisions of this Article.

Prior to the filing of a rezoning or variance application, the owner or his/her representative is required to schedule a Pre-Application Conference with the Zoning Administrative Officer to review applicable regulations that apply to the proposal and to discuss potential issues. The date of the pre-application meeting shall be noted on the application for rezoning or special use.

**SECTION II:**

**BE IT ORDAINED** by the City Council of Dahlonega, and it is ordained by authority of the same, that Subpart B, Appendix B, Article XXVI, Section 2607, of the Code of the City of Dahlonega, Georgia, is hereby amended so that said Section now reads as follows in its entirety:

**Sec. 2607. Criteria to consider for map amendments (rezonings) and text amendments.  
Procedures must be complete when annexation and zoning are considered together.**

In exercising the zoning powers granted to the Mayor and City Council by State Law, the City Council shall apply the following standards in making zoning decisions, weighing each standard to the extent appropriate or relevant to each zoning decision:

- a) Standards for consideration of rezonings:
  - (1) Whether the zoning proposal will permit a use that is suitable in view of the use and development of adjacent and nearby property.
  - (2) Whether the zoning proposal will adversely affect the existing use or usability of adjacent or nearby property.
  - (3) Whether the zoning proposal will result in a use that will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities, or schools.
  - (4) Whether the zoning proposal is consistent with the Comprehensive Plan, transportation plans, or other plans adopted for guiding development within the City of Dahlonega.
  - (5) Whether there are other existing or changing conditions affecting the use and development of property that give supporting grounds for either approval or disapproval of the zoning or special use proposal.
- b) Standards for considering the adoption of a text amendment to Ordinance 91-9 Amended or other "zoning" ordinances:
  - (1) Is the proposal consistent with the purpose and intent of the ordinance or regulation under consideration?

- (2) Does the proposal further or is it compatible with the purpose and intent of the Comprehensive Plan?
  - (3) Is the proposal required to adequately address new or changing conditions or to properly implement the Comprehensive Plan?
  - (4) Does the proposal reasonably promote the public health, safety, morality or general welfare?
- c) Public notice and public hearing requirement procedures must be complete prior to annexation final vote.
- (1) The procedures required by these regulations for zoning must be complete except for the final vote of the municipal governing authority, prior to adoption of the annexation ordinance or resolution or the effective date of any local Act but no sooner than the date the notice of the proposed annexation is provided to the governing authority of the county as required under Code Section 36-36-6;
  - (2) The public hearing(s) required by these regulations shall be conducted prior to the annexation of the subject property into the municipality;
  - (3) In addition to the other notice requirements of these regulations, the municipality shall cause to be published within a newspaper of general circulation within the territorial boundaries of the county wherein the property to be annexed is located a notice of the hearing (and signage) as required under other provisions of these regulations.
  - (4) The zoning classification approved by the municipality following the hearing required by this Code section shall become effective on the later of:
    - (A) The date the zoning is approved by the municipality;
    - (B) The date that the annexation becomes effective pursuant to Code Section 36-36-2; or
    - (C) Where a county has interposed an objection pursuant to Code Section 36-33-11, the date provided for in paragraph (8) of subsection (c) of said Code section.

**SECTION III:**

**BE IT ORDAINED** by the City Council of Dahlonega, and it is ordained by authority of the same, that Subpart B, Appendix B, Article XXVI, Section 2609, of the Code of the City of Dahlonega, Georgia, is hereby amended so that said Section now reads as follows in its entirety:

**Sec. 2609. Public notice and public hearing required.**

This section shall apply to all applications for amendments to the text of the zoning regulations, amendments to the official zoning map, petitions for variances and appeals to the Board of Zoning Appeals, requests for conditional use approval, requests for alteration or extension of conditional zoning, applications for site plan approval in the MHP District, and petitions for development approval for property within the PUD, Planned Unit Development District, and applications for condominium site plan approval.

Prior to making any zoning decision, the City Council shall conduct a Public hearing. The public hearing shall be called and a public notice provided in accordance with the provisions of Ordinance 91-9 as amended and in accordance with the provisions of O.C.G.A. § 36-66-4. Public Hearing Notice, as follows:

- a) A notice of time and place of the hearing shall be published at least 30 Days, but not more than 45 days, prior to said Public hearing in the official legal organ of the City of Dahlonega or another newspaper of general circulation within the territorial boundaries of the city. The notice shall state the time, place and purpose of the hearing in accordance with O.C.G.A. § 36-66-4. If the proposed amendment is a rezoning of property, variance, conditional or special use initiated by a party other than the City Council, then:
  - 1) The published notice, in addition to the foregoing, shall include the name of the applicant, the address and location of the property, the present zoning classification of the property, and the proposed zoning classification of the property or proposed variance sought; and
  - 2) A sign or signs containing that same information shall be placed on the property by the City not less than 15 days, prior to the date of the hearing. The sign or signs shall be placed in a conspicuous location on the property frontage in such manner as to be legible from the public road. On lots with more than one road frontage, a sign will be placed facing each Public road. If the property has no road frontage, a sign shall be placed at a location on each road where access will be gained to the property.

All required public hearings shall be held by the Governing Body, and no action shall be taken on said applications until a public hearing has been held by the Governing Body.

Public hearings regarding variances and appeals shall be held by the Board of Zoning Appeals, and no action shall be taken on said applications until a public hearing has been held by the Board of Zoning Appeals. The public hearing shall be called, and a public notice provided in accordance with the provisions of O.C.G.A. § 36-66-4(g). Public Hearing Notice, as follows: Notice of such hearing shall be provided at least 30 days nor more than 45 days prior to the quasi-judicial hearing, with such notice being made as provided for in these regulations and with additional notice being mailed at least thirty days prior to the hearing to the owner of the property that is the subject of the proposed action.

Public hearings may be delayed, rescheduled or continued to another time and date, provided announcement is given at the time and place of the initially scheduled and advertised public hearing, and provided such date, time and location of the public hearing to be delayed, rescheduled or continued is given. If the applicant of a petition before the Planning Commission or Governing Body fails to attend the public hearing, then the Planning commission or Governing Body may require re-advertisement of the subject petition at the expense of the applicant. If there is no quorum of the Planning Commission or Governing Body at the scheduled public hearing, then the public hearing(s) shall be rescheduled and re-advertised at the City of Dahlonega's expense.

Where the proposed action includes any combination of zoning decisions under these regulations for the same property, only one hearing shall be required under this Code Section. At least 30 days nor more than 45 days prior to the date of the hearing, the local government shall cause to be published within a newspaper of general circulation within the territorial boundaries of the local government a notice of the hearing. The notice shall state the time, place, and purpose of the hearing.

#### **SECTION IV:**

**BE IT ORDAINED** by the City Council of Dahlonega, and it is ordained by authority of the same, that Subpart B, Appendix B, Article XXVI, Section 2610, of the Code of the City of Dahlonega, Georgia, is hereby amended so that said Section now reads as follows in its entirety:

**Sec. 2610. Recommendation by zoning administrative officer; additional duties.**

The Zoning Administrative Officer will, as appropriate, customarily submit to the recommending and/or decision making body, prior to a scheduled public hearing, copies of the site plan and letter of intent along with a written recommendation for approval, disapproval, deferral, withdrawal or other recommendation. Said recommendation shall include reasons for said recommendations, considered within the context of the appropriate criteria as specified by these regulations. The recommendations of the Zoning Administrative Officer shall have an advisory effect only and shall not be binding on the Governing Body. Copies of the Zoning Administrative Officer's recommendations shall be made available to the applicant and other interested parties upon completion and distribution to the appropriate bodies and at the public hearing. Following the Planning Commission's public hearing, as Secretary to the Planning Commission, the Zoning Administrative Officer shall prepare and submit the Planning Commission's recommendations to the City Council prior to the City Council's public hearing.

**SECTION V:**

**BE IT ORDAINED** by the City Council of Dahlonega, and it is ordained by authority of the same, that Subpart B, Appendix B, Article XXVI, Section 2611, of the Code of the City of Dahlonega, Georgia, is hereby amended so that said Section now reads as follows in its entirety:

**Sec. 2611. Planning commission recommendation.**

Prior to the hearing held by the Governing Body, the Planning Commission shall hold a public hearing on all applications for amendment to the text of the zoning regulations, amendments to the official zoning map, conditional use permit applications, petitions for alteration or extension of conditional zoning, requests for development plan approval within the PUD, Planned Unit Development District, request for site plan approval in the MHP, Mobile Home Park District, requests for condominium site plan approval and variances for properties located in all zoning districts.

After completing its studies of the particular petition, the Planning Commission shall submit a recommended action in writing to the Governing Body. The Planning Commission may submit any additional report it deems appropriate. The recommendations of the Planning Commission shall have an advisory effect only and shall not be binding on the Governing Body. Copies of the Planning Commission's recommendations and reports shall be made available to the applicant and other interested parties upon completion and distribution to the Governing Body and at the public hearing before the Governing Body.

The Planning Commission shall have thirty days within which to submit its recommendations. The Governing Body shall not take action on any of said applications, until it has received the recommendation of the Planning Commission within the specified time period. If the Planning Commission fails to submit a recommendation with the thirty (30) day period, it shall be deemed to have approved the proposed application.

The requirements set forth elsewhere herein for public notice and hearing before the Governing Body shall be required for the public hearing required before the Planning Commission.

## SECTION VI:

**BE IT ORDAINED** by the City Council of Dahlonega, and it is ordained by authority of the same, that Subpart B, Appendix B, Article XXVI, of the Code of the City of Dahlonega, Georgia, is hereby amended to add a Section 2619 to read as follows:

### **Sec. 2619. Appeals.**

‘Zoning Decisions’ means final legislative action by a local government 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 (including a conditional use);
- (F) The grant or denial of a variance or conditions concurrent and in conjunction with a decision pursuant to subparagraphs (C) or (E) of this paragraph.

All such challenges or appeals as to decisions of the City Council shall be brought within 30 days of the written decision of the challenged or appealed action. Specifically as to decisions of the Board of Zoning Appeals or other quasi-judicial decisions, the decision is a final decision and any appeal of such a decision shall be pursued by petition for review filed with the Lumpkin County Superior Court within 30 days of the date of the decision. The City Clerk shall serve as the officer to receive the petition or service of appeal on behalf of the Governing Body or Board of Zoning Appeals, in accordance with O.C.G.A. § 36-66-5.1.

## SECTION VII:

**BE IT ORDAINED** by the City Council of Dahlonega, and it is ordained by authority of the same, that Subpart B, Appendix B, Article XXVI, of the Code of the City of Dahlonega, Georgia, is hereby amended to add a Section 2620 to read as follows:

### **Sec. 2620. Designation of Officer for perfection of service; stay of proceedings.**

The city officer who shall have the authority, without additional board or agency action, to approve or issue any form or certificate necessary to perfect the petition described in Title 5, O.C.G.A., for review of lower judicatory bodies or agencies referenced in these regulations and upon whom



service of such petition may be effected or accepted on behalf of lower judicatory boards during normal business hours, at the regular offices of the City of Dahlonega shall be the City Clerk, and shall also serve as the official who shall have authority to accept service and upon whom service of an appeal of a quasi-judicial decision may be effected or accepted on behalf of the local governing authority, during normal business hours, at the regular offices of the local government.

An appeal or challenge by an opponent filed pursuant to these regulations shall stay all legal proceedings in furtherance of the action appealed from or challenged, unless the local government, officer, board, or agency from which or from whom the appeal or challenge 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 or 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 O.C.G.A. Title 5 or Title 9, as appropriate.

Except as modified herein, The Code of the City of Dahlonega, Georgia, is hereby reaffirmed and restated. The codifier is hereby granted editorial license to include this amendment in future supplements of said Code by appropriate section, division, article or chapter. The City Attorney is directed and authorized to direct the codifier to make necessary minor, non-substantive corrections to the provisions of this Code, including but not limited to, the misspelling of words, typographical errors, duplicate pages, incorrect references to state or federal laws, statutes, this Code, or other codes or similar legal or technical sources, and other similar amendments, without necessity of passage of a corrective ordinance or other action of the Mayor and Council. The City Clerk shall, upon the written advice or recommendation of the city attorney and without the necessity of further council action, alter, amend or supplement any non-codified ordinance, resolution or other record filed in his or her office as necessary to effect similar non-substantive changes or revisions and ensure that such public records are correct, complete and accurate.

Adopted and Ordained this \_\_\_ day of \_\_\_\_\_, 2023.

By: \_\_\_\_\_  
JoAnne Taylor, Mayor

Attest: \_\_\_\_\_  
Mary Csukas, City Clerk