PLANNING, ZONING, AND LAND USE IN GEORGIA

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ACCG
Advancing Georgia's Counties.

INTRODUCTION

"If you don't know where you're going, you might not get there." - Yogi Berra[1]

In order to shape and manage future growth, economic development, and livability of their communities, county commissioners face some of their most important decisions, which focus on planning. County commissioners exercise planning responsibilities in unincorporated areas, while city governments are primarily responsible for planning within Georgia's municipalities. Some planning endeavors are shared by both cities and counties.

Planning enables a county to distinguish and define itself. It is proactive rather than reactive, setting a clear path for the future, while also allowing the county's vision to mature and change as time passes. Planning has significant benefits, including the following:

- Increasing public involvement in a community.
- Allowing for a better determination of county resource allocation.
- Facilitating economic development.
- Maintaining a county where folks want to live, work, play and learn.

The local government planning process involves county decisions based on following state planning requirements and adopting zoning and land use ordinances. Among major factors driving the planning process are:

- Decisions on where and when roads shall be built.
- Securing public property before growth makes it cost prohibitive.
- Future water and sewer needs.
- Other needed infrastructure improvements.
- Desirable land uses to shape a successful future.

Because there may be disagreement among certain groups, landowners, and developers, public involvement is key to a successful planning process. Citizen participation will help create public consensus, and stakeholders will see the county government as the community's key to achieving a livable community. Ultimately, the public – or a collection of individual interests – should shape the county's values, character, and goals through local planning.

Many counties find that, at some point, some citizens will demand planning through zoning and land use regulations and other citizens will oppose these government regulations. Often, the initial sentiment to adopt zoning regulations comes about when a controversial land use occurs within the community. Examples of land uses triggering consideration of zoning regulations are:

- Siting of landfills, salvage yards, large commercial operations near residential areas.
- Preservation of historic building or districts.
- Land-application systems for human or animal waste, incinerators.
- Cheap and non-durable housing, multi-family housing, and over-development or other non-compatible developments.

However, planning can be controversial and contentious, as county commissioners must find a balance between the public's desire to shape its community and maintaining the property rights of landowners, developers, and others who may have different plans for their property. Furthermore, zoning, land use, and planning decisions are often challenged in court by those who are unhappy with those decisions. Accordingly, certain rules, laws, and processes must be followed in order to have a county's zoning and land use decisions held up in court and accepted by the community.

In summary, effective planning will balance and help ensure the following:

- The community's quality of life is maintained and improved.
- Local tax dollars are spent wisely on public infrastructure.
- A vision – clearly stated and shared by all – describes the future of the community.
- Private property rights are protected.
- Environmental resources are protected.
- Economic development is encouraged and supported.
- More certainty about where development will occur, what it will be like, when it will happen, and how the public costs of development will be met.

Whether a county elects to adopt its own planning and land use ordinances or simply follows state planning requirements, several state laws and rules must be adhered to in the process. This chapter outlines state planning laws and requirements, local level zoning and land use, planning processes and public participation, available planning tools and assistance, and components involved in successful local planning and zoning initiatives.

STATE PLANNING REQUIREMENTS

The Georgia Planning Act

Regardless of their size or rate of development, all of Georgia's counties are required by state law to engage in some forms of planning. The Georgia Planning Act was adopted into law in 1989, requiring all cities and counties to complete a comprehensive plan in order to maintain a qualified local government (QLG) status.[2] Local governments must

be a QLG to be eligible to participate in certain state grant and other programs, , including:

- Community Development Block Grants (CDBG).
- Water and sewer loans from the Georgia Environmental Finance Authority (GEFA).
- Economic development funding from the OneGeorgia Authority.
- Environmental grants from the Environmental Protection Division of the Department of Natural Resources (DNR).
- A variety of other state programs.[3]

Furthermore, maintaining local government QLG status requires compliance with various other state mandates. A local government can check its QLG status here.

Role of Georgia's Regional Commissions

Georgia has a long history of regional planning efforts. In the 1960s, the state had area planning and development commissions (APDCs), whereby local governments could voluntarily join together, assess themselves local dues, and jointly hire professional planning and development staff for their mutual benefit. With passage of the Georgia Planning Act, these APDCs were constituted in state law as regional development centers (RDCs). These 16 RDCs were multi-county organizations, responsible for assisting Georgia's counties and cities with development and planning initiatives throughout the state, including development of local comprehensive plans.

In 2009, the Planning Act was revised to consolidate the 16 RDCs and their respective regions into 12 regional commissions (RCs), changing their organization structure and service areas.[4] These RCs currently assist Georgia's local governments with

- coordinated and comprehensive planning,
- land-use development,
- historic preservation,
- aging services,
- revolving loan funds,
- business retention,
- affordable housing,
- tourism,
- workforce development,
- coordinated transportation,
- geographic information systems, and
- disaster-mitigation planning, among other tasks.

Regional Commissions

State of Georgia

Each RC is governed by a regional council that is made up of the chief elected officer (or their appointee) of each county within the region, as well as one elected city official from each county. Additionally, each regional council must include three residents of the region appointed by the Governor, one nonpublic appointment by the Lieutenant Governor, and one nonpublic member appointed by the Speaker of the Georgia House of Representatives. The council may also include additional members as it deems necessary.[5] The council appoints the RC's executive director, establishes committees as it deems appropriate, adopts an annual work program and budget, and performs other duties as authorized in law.[6]

Georgia's RCs work closely in preparing, adopting, maintaining, and implementing regional plans. These plans set goals, needs, and opportunities for the respective region, and must be submitted to the state Department of Community Affairs (DCA) for review. Their purpose is to involve various segments of the region in developing the region's future and provide a guide to everyday decision-making for use by local government officials and other regional leaders.[7]

The Georgia Association of Regional Commissions

The Georgia Association of Regional Commissions (GARC) advances the efforts of the state's 12 RCs to serve counties and cities in planning, economic development, transportation, information technology, and human services. The GARC helps the RCs strengthen their capabilities, exchange information on regional planning, and foster the implementation of programs. The GARC represents RCs before the legislative and executive branches of the state and federal government.

Comprehensive Planning Process

All of Georgia's counties are required to engage in the state's comprehensive planning process. The Georgia Planning Act charges the DCA with establishing the minimum standards and procedures counties and cities must follow, including prescribing how local governments develop and implement their comprehensive plans.[8] The DCA's Minimum Standards and Procedures provides a framework for the development, management, and implementation of local comprehensive plans. These standards help each local government address its immediate needs and opportunities while moving toward realization of its long-term goals.[9]

Local comprehensive plans must include four core elements[10]:

1. Community goals (updated at local discretion).
2. Needs and opportunities (must be updated every five years).
3. Community work program (must be updated every five years).
4. Broadband (updated at local discretion).

Additional requirements include the following:

- Local governments having adopted impact fees must include a capital improvements element.
- Communities in the Georgia Job Tax Credit Tier 1[11] must include an economic development element; those having adopted zoning regulations must include a land use element.
- Local governments in Metropolitan Planning Organizations must include a transportation element (although it is recommended for all local governments).
- Entitlement communities under the federal Community Development Block Grant Program[12] must include a housing element.[13]

DCA maintains a list on its website of respective city and county comprehensive plan update schedules and deadlines, as well as specific plan elements that must be included in each update.

Public and Stakeholder Involvement

The adoption of the four core elements and additional requirements (when applicable) must enable public and stakeholder involvement and input though a hearing process at the local level. In developing a draft comprehensive plan, a county is required to hold a minimum of two public hearings prior to submitting the draft to its regional commission for review.[14] At least one public hearing must be held prior to the development of the plan to

- inform the public about the purpose of the plan;
- explain the process to be followed in its preparation; and
- to elicit community input on needs and goals.

Following these public hearings, the county must transmit its completed comprehensive plan to its RC for review, which then sends it to DCA. Both the RC and DCA will review the plan and make findings and recommendations, if necessary. Once the comprehensive plan is approved, the local government must inform the public that the plan is available for review and comment. The local government must adopt the plan within one year of DCA approval.[15] The DCA makes all approved county and city comprehensive plans available here. Local governments may update their plans as needed.

DCA Planning Support

In addition to assistance offered by RCs, DCA is also authorized to aid local governments with planning activities. This may include technical assistance on a variety of issues, including the following:

- Development and implementation of a local comprehensive plan.

- Aid with community and economic development, governmental administration, finance, and management.
- Downtown development and redevelopment.
- Housing and homelessness.

DCA assistance may include planning analysis, recommendations for policies or action, and related activities and services.[16]

Georgia's 12 RCs may, on behalf of a local government, petition DCA for alternative planning standards.[17] Furthermore, both DCA and RCs provide resources and support to local governments in preparation of their plans. RCs may take the lead in updating a plan's four core elements (community goals, needs and opportunities, community work program, broadband) or an alternative plan on behalf of a city or county at no additional cost to the community.

Developments of Regional Impact

Local governments are also subject to state planning requirements pertaining to developments of regional impact (DRI), with DCA determining what constitutes a DRI for each region of the state.[18] In short, large-scale developments that are likely to have regional effects beyond the jurisdiction of the county or city in which they are located are subject to DRI review to help ensure compatibility with the region's growth patterns and plans.

DCA makes a DRI determination after it receives any necessary information within the respective region from the RC, local governments, and other stakeholders. Such determinations must be made publicly available so that all local governments within a region will receive notice of the determinations. The department shall incorporate the minimum standards and procedures with respect to natural resources, the environment, and vital areas of the state.[19]

Importantly – in the event of a DRI for a development that requires a zoning change – the local government should wait for the DCA's completion of the DRI process and report before voting on the zoning change. Counties and cities cannot take final action approving a project until the DRI process is completed.[20] However, DCA's DRI determinations are only recommendations to the host local government. It is ultimately up to each county or city as to whether a proposed development is approved and moves forward.

Regionally Important Resources

The Georgia Planning Act also charges DCA with establishing procedures for identifying "Regionally Important Resources" (RIR) statewide.[21] RIRs include natural or historic resources that are of sufficient size or importance to merit special consideration by the

local governments having jurisdiction over them. DCA has established rules for RCs in preparing a regional resource plan that identifies the RIRs in each region and recommends best practices in managing these important resources.[22]

STATE ENVIRONMENTAL PLANNING REQUIREMENTS

Rules for Environmental Planning Criteria

The state has "an essential public interest in establishing minimum standards for land use in order to protect and preserve its natural resources, environment and vital areas."[23] Therefore, state law also requires certain local governments to develop plans to protect natural resources, the environment, and vital areas of the state.[24] Specifically, where and when these requirements are applicable, local governments must adopt ordinances to ensure the protection of

- mountains,
- river corridors,
- watersheds of streams and reservoirs which are to be used for public water supply,
- the purity of ground water, and
- wetlands.

As Part V of the Georgia Planning Act requires these protections, these measures are commonly referred to as Georgia's Part V planning criteria.

Following the law's passage, the DNR promulgated rules to enforce the environmental planning criteria. Local governments must first identify whether these protected areas fall within their jurisdiction, then follow DNR's rules through adoption and adherence in their local ordinances. Counties and cities must also incorporate these planning measures into their comprehensive plan.[25]

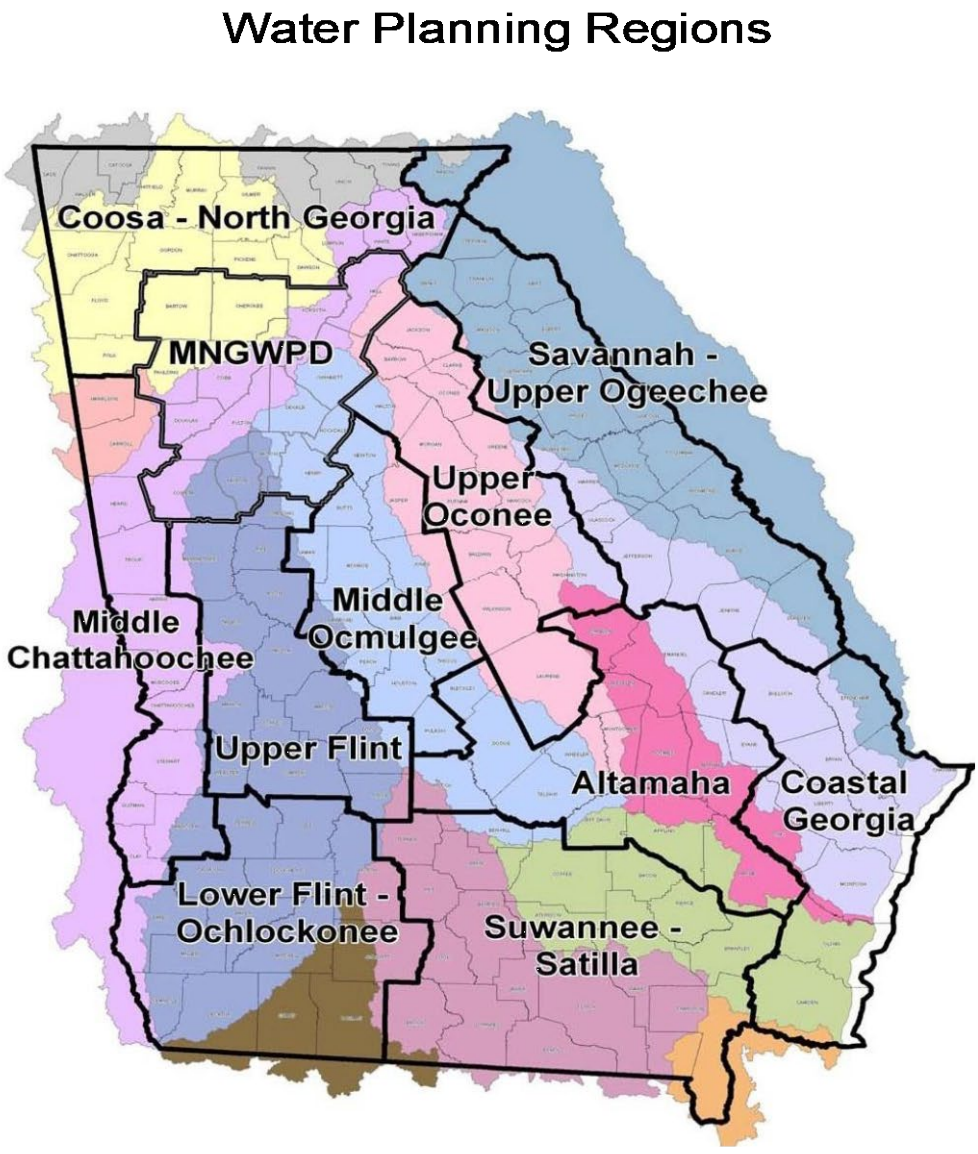
Local ordinances must either restrict or more tightly regulate land disturbance activities and construction within these designated areas to protect Georgia's natural resources. Local governments may adopt land use regulations stricter than these criteria; however, these ordinances cannot be less stringent. In any case, these criteria – particularly the mandatory enactment of larger stream buffers around the streams and rivers within water supply watersheds – have and will continue to be contentious with some property owners and policy makers due to diminishment of developable property and cost of compliance.

State, Regional and Local Water Planning

Another state law – the 2004 Comprehensive State-wide Water Management Planning Act[26] – impacts and may dictate a county's planning and land use decisions. Under this Act, the DNR's Environmental Protection Division (EPD) is required to develop a state-

wide water plan that “manages water resources in a sustainable manner to support the state's economy, to protect public health and natural systems, and to enhance the quality of life for all citizens."[27] The State Water Plan, approved by the Georgia Water Council in 2008 and updated periodically, sets policies to guide river basin and aquifer management plans, regional water planning efforts, and local water plans.[28]

The plan established 11 water planning regions and respective regional water planning councils throughout the state, based on Georgia’s shared river basins.



These regional water planning councils are made up of representatives from counties and cities, industry, business, agriculture, academia, the development community, and other impacted stakeholders. Assisted by EPD, the first job of these councils was to assess and monitor existing water resources in their respective river basins. Regional councils, with state assistance, then forecasted future demands on these resources (human/population, industrial and agricultural needs, etc.) and the water resources' capacity to meet these expected demands. Next, the regional water councils identified water management practices to meet these future needs and protect these resources. In 2011, the regional councils recommended implementation and evaluation of these water management practices, which were included in their respective regional water development and conservation plans. These plans were updated in 2017 and must continue to be updated periodically.

Importantly – although these councils are made up various stakeholders – it is primarily the responsibility of the State of Georgia, its local governments, and local government authorities (particularly water and sewer authorities) to implement the plan management practices that are developed and ultimately approved by the EPD. Such practices may include water conservation measures, restrictions on outdoor water use, planning and constructing new water reservoirs, and the return of used water to its source, among others. These measures certainly require local planning, implementation, and enforcement; however, they do not necessarily entail a change in local land use or zoning practices.

Additionally, a regional water planning council may require water management practices that include the reduction of septic tank usage, water withdrawals, development, or land disturbance activities within certain environmentally sensitive areas. Many of these practices are aimed at reducing stormwater runoff or increasing groundwater recharge in order to preserve and protect a water source. This impacts a local government's land use practices, and development may have to be reduced or prohibited in certain areas to meet these requirements. If such actions are required of an area, the local government will have to adopt local ordinances and incorporate these measures into their local comprehensive plan with DCA.[29]

Metropolitan River Protection Act

Several Georgia counties are also subject to the Metropolitan River Protection Act. Enacted in 1973 and amended in 1998, this Act subjects certain local governments surrounding the Chattahoochee River in the metropolitan Atlanta region to land use restrictions. These restrictions are in place to deter over development near the river and its tributaries in order to prevent flooding and water pollution.[30] If these local governments fail to comply, the state has the authority to enforce the Act "if the public interest requires it."[31] Accordingly, applicable local governments must plan and base their local land use decisions on the Act's provisions. They must submit compliance

plans to the Atlanta Regional Commission, which has been charged with promulgating the rules and enforcing the Act.[32]

STATE ENVIRONMENTAL PROTECTION REQUIREMENTS

Erosion and Sediment Control

For the past several decades, Georgia has been one of the fastest growing states in the nation. Between 2000 and 2020, its population increased by 31 percent – from 8.2 million to 10.7 million. Along with population growth, particularly in the metropolitan regions, comes increased development of roads, homes, businesses, and other necessary infrastructure. Lands that were once forested or otherwise unoccupied are increasingly developed and covered with impervious surface, placing strains on maintaining the water quality of these areas.

An essential component of land use and development in Georgia is complying with state laws protecting the water quality of our streams and rivers from soil erosion and sedimentation. In regulating development, Georgia's local governments and other land use regulators must comply the state Erosion and Sedimentation (E&S) Act of 1975,[33] federal and state stormwater management requirements, and numerous other laws.

Soil erosion and sediment deposition into watersheds occur as a result of failure to apply proper control practices in land clearing, soil movement, and construction activities. The intent of the E&S Act is to strengthen and provide for establishment and implementation of a state-wide comprehensive soil erosion and sediment control program to conserve and protect the land, water, air, and other resources of Georgia.[34]

The E&S Act directly impacts Georgia's counties and cities, as many voluntarily become "local issuing authorities" (LIAs) and the ordinances they adopt must follow the Act. To become LIAs, local governments are required to adopt ordinances that prescribe the procedures for land disturbing activities within their jurisdictions. LIAs are authorized to permit and inspect land disturbing activities within their jurisdictions. Actions of LIAs are reviewed semi-annually by the State Soil and Water Conservation Commission or one of its districts.[35]

LIAs must adopt erosion and sedimentation protections at least as stringent as prescribed in the E&S Act, but may adopt ordinances with more stringent protections. If there is no LIA, the state assumes the role of regulating the land disturbing activities.[36]

All these protections, as well as best management practices, are contained in the *Manual for Erosion and Sediment Control in Georgia*, published by the State Soil and Water Conservation Commission and updated periodically. The publication covers a wide array of requirements and best management practices. Particularly important, it helps local governments to understand their responsibilities in complying with state and federal land disturbance, stream buffer, and stormwater management regulations.

No land-disturbing activities can be conducted in Georgia without the operating entity first obtaining a permit from an LIA.[37] If these activities occur in unincorporated areas, the county LIA issues and enforces the permit. City LIAs issue permits within incorporated areas. All LIAs are required to conduct inspections and enforce the permits that they issue. In areas where there is no qualified LIA, the state's general land disturbing permit applies and is enforced by the state Environmental Protection Division.[38]

Land Disturbance Activities

LIAs must ensure that best management practices are designed, installed, and maintained when issuing land-disturbing permits in order to control the discharge of stormwater.[39] In addition to requiring sound conservation and engineering practices, the state's minimum standards require numerous measures, including:

- Minimization of stripping of vegetation, cutting and filling operations, and duration of exposed erosive elements.
- Stabilization of disturbed soil as quickly as practical.
- Employment of temporary vegetation or mulching to protect critical areas.
- Use of silt fencing or similar measures to trap runoff.
- Protection of adjacent properties.[40]

There are limited exemptions to requirements for obtaining land disturbing permits.[41]

Stream and Marshland Buffers (for land development)

In addition to the above measures on land disturbance, LIAs must establish and protect stream buffers – also known as riparian buffers – under the E&S Act. A stream buffer is defined as the area of land immediately adjacent to the banks of state waters in its natural state of vegetation.[42] A buffer has restrictions or limits on development, particularly limiting impervious surfaces to protect streams and their water quality from pollution and other impacts of land disturbing activity (e.g., clearing, dredging, grading, excavating, transporting, filling of land).[43]

Georgia requires that stream buffers of at least 25 feet be maintained along the banks of all state waters.[44] Trout streams (also known as cold water streams) must maintain a buffer of at least 50 feet.[45] These distances are measured by where vegetation is wrested by normal stream flow. Coastal marshlands must also have an established buffer of 25 feet, as measured horizontally from the coast marshland-upland interface.[46] There are limited exceptions to these stream buffer requirements, including certain stream crossings of water and sewer lines, drainage structures, and the construction of public water system reservoirs.[47] LIAs have the authority to adopt regulations regarding stream and marshland buffers that exceed the state minimum requirements.[48]

Stormwater Management and Utility Fees

The above erosion and sedimentation management measures apply to construction activities in the state. Federal and state laws also require Georgia's cities and counties to manage post-construction stormwater runoff and its associated pollutants into the Waters of the United States.[49] Cities and counties that are considered part of an urbanized area (area population of at least 50,000) are also required by federal law to effectively manage post construction stormwater runoff.

The federal National Pollutant Discharge Elimination System (NPDES) permit program requires these local governments to obtain permits and implement significant measures to manage stormwater runoff and mitigate water pollution though a Municipal Separate Storm Sewer System (MS4).[50] This mandate is not funded by the federal or state governments; local governments may implement a stormwater utility program and charge stormwater utilities fees to recoup costs directly associated with compliance. To learn more about stormwater, the NPDES program, local requirements, stormwater utilities and these fees, please see the County Revenues Chapter.

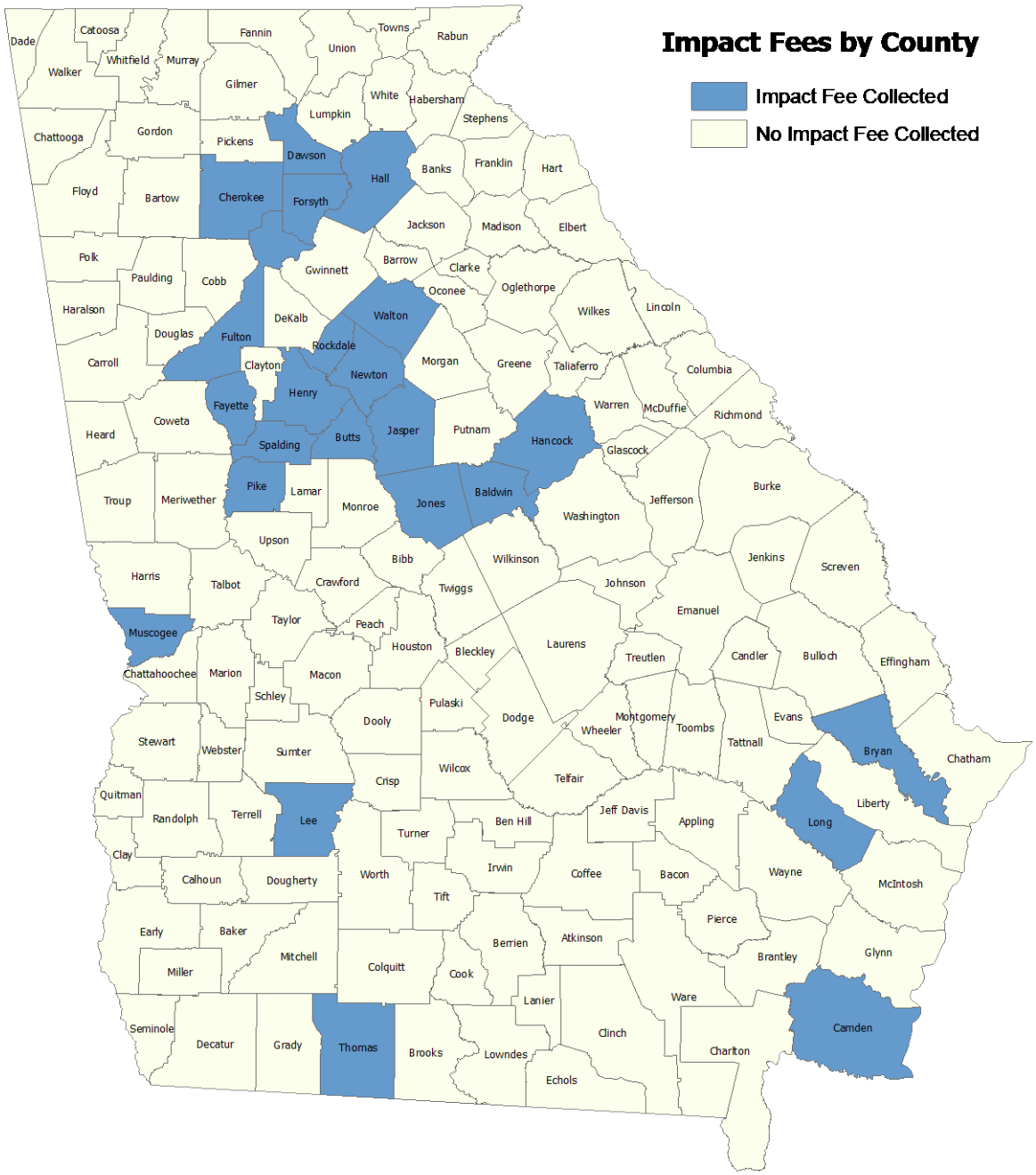
GEORGIA'S DEVELOPMENT IMPACT FEE LAW

An integral part of a county's planning process is to ensure that it can invest appropriately in the capital infrastructure needed to provide important government services to a growing community. To achieve this, counties are authorized to levy impact fees on developments. Under the premise that new developments pay for a portion of the facilities needed to serve them, the fees offset the financial impact on existing taxpayers. These one-time fees charged to developers can generate significant revenue in counties experiencing rapid development.

In 1990, the Georgia Development Impact Fee Act (DIFA) was enacted into law. Its purpose is to provide an equitable program for planning and financing public facilities needed to serve new growth and development.[51] While this law can significantly affect the way Georgia's local governments pay for public services, it requires adherence to many stringent guidelines and procedures.

Relatively few counties have enacted development impact fees – as of 2022, only 23 of Georgia's counties have done so (see map on next page).

County Use of Development Impact Fees



State law requires local governments to adopt a capital improvements element (CIA) in their comprehensive plan prior to adopting an impact fee ordinance.[52] DCA has developed *How to Address Georgia's Impact Fee Requirements*, a guidebook to assist local governments in complying with state impact fee law and planning requirements.

Impact fees may only be used to fund the following:

- Water and wastewater treatment.
- Roads.
- Stormwater management systems.
- Park and recreation facilities.
- Public safety.
- Libraries.[53]

The law establishes specific rules by which impact fees must be calculated, collected, expended, accounted for, and administered.[54] For more information, see the County Revenues Chapter.

In recent years, several legislative attempts have been made to expand impact fees for school systems to fund construction needed to accommodate rapid school enrollment growth. However, none have been successful to date.[55]

ZONING AND LAND USE AT THE LOCAL LEVEL

The Georgia Constitution

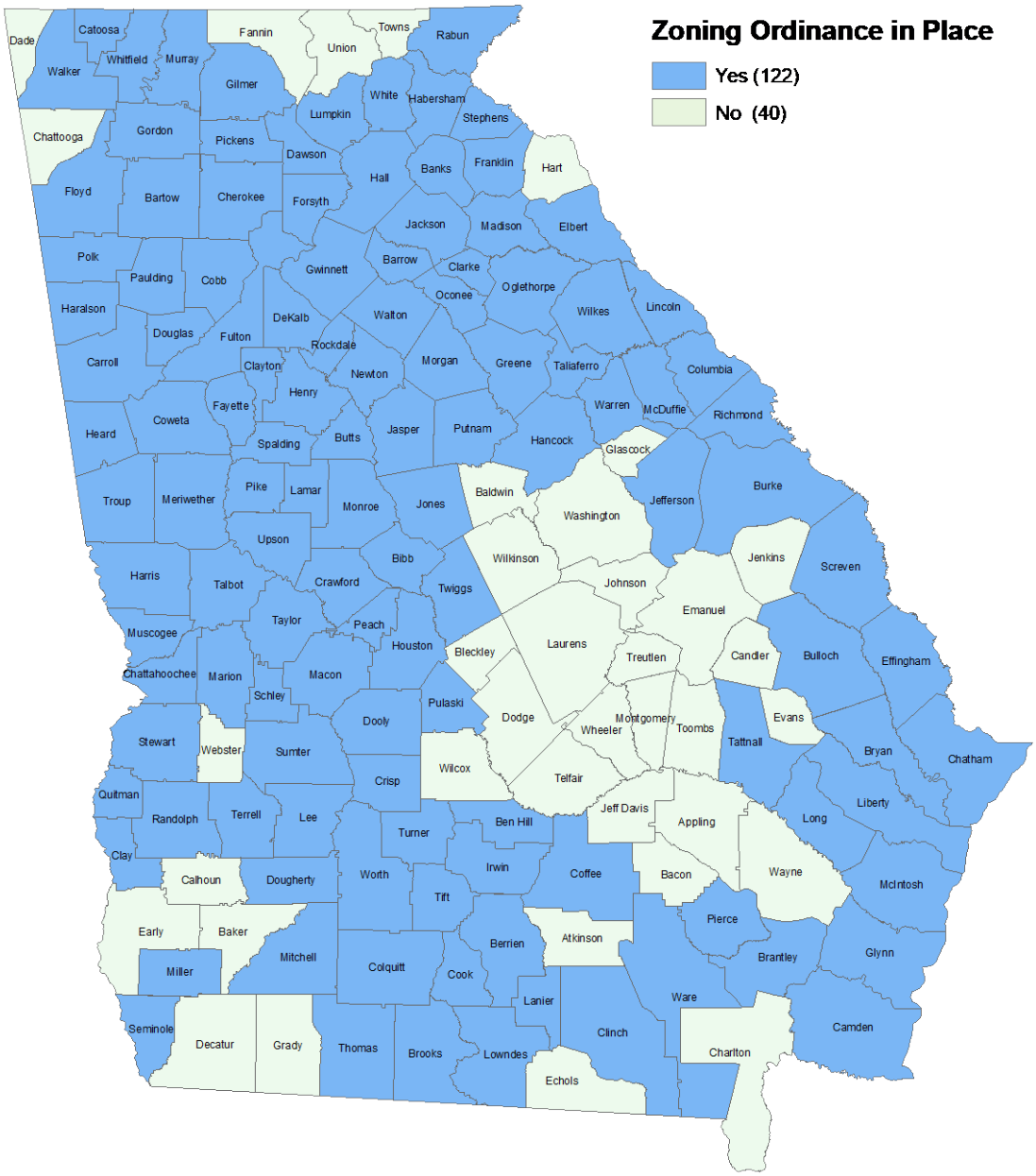
The Georgia Constitution (Constitution), under its home rule provision, reserves to cities and counties the substantive power to zone and plan for land within their respective jurisdictions.[56] Cities have zoning jurisdiction over properties within their city limits; counties have zoning jurisdiction over the unincorporated areas. The provision grants the Georgia General Assembly power to adopt procedural rules governing local government use of this authority. Under the exercise of this power, counties and cities receive many types of land development applications, collectively referred to as "zoning" matters. In addition to the Constitution, there are various provisions in state law requiring or addressing local government zoning and setting out requirements, rules, and parameters, as described below.

Zoning Ordinances at the Local Level

Zoning is an important tool that counties and cities use to define and regulate land uses such as residential, agricultural, conservation, commercial, or industrial, as well as the size of buildings and how they relate to their surroundings. Zoning is also used to separate different or conflicting land uses from one another to prevent impactful uses from having negative impacts on sensitive uses and property values are maintained.

Zoning allows counties and cities to better guide and plan for the future development, economic growth, attractiveness, and viability of their community. Ultimately, zoning standards adopted by a county may include any factors that it finds relevant in balancing public health, safety, morality, or general welfare with the right to unrestricted use of property. At the time of this publication, 122 of Georgia's 159 counties have adopted some form of local zoning ordinance.

County Zoning Enforcement



Zoning is done by adoption of an ordinance that divides the county into various districts based on land uses (e.g., residential, commercial, agricultural) and stipulates how land must be developed and used within each respective zoning district. Each district usually allows a range of permissible uses without the need of any zoning change. A rezoning usually involves a particular parcel of land and situations in which the underlying zoning district is changed to allow a new range of uses on the property in question.

Zoning ordinances can also go beyond specifying land uses and regulate such areas as:

- Minimum parking requirements.
- Height and setbacks of structures from neighboring property lines.
- Open space requirements.
- Allowable lot sizes in residential areas.
- Building and landscaping design standards.
- Other related considerations.

Zoning is not a comprehensive land use plan as described earlier in this chapter. However, the comprehensive plan should be used to guide a county's zoning and other regulations affecting how land is used.

Georgia Zoning Procedures Law

As noted, the Constitution allows the state to legislate on matters of procedure in the zoning and planning process. Using this power, the General Assembly has enacted the Zoning Procedures Law (ZPL), which sets out certain procedural requirements for counties and cities to follow if they elect to enact zoning regulations.[57] The ZPL's stated purpose is to provide the minimum procedures required to assure "that due process is afforded to the general public when local governments regulate the uses of property."[58] The zoning decisions to which these procedures apply are local legislative actions resulting in the

- adoption of a zoning ordinance,
- adoption of an amendment to text of a zoning ordinance,
- rezoning of property,
- a city's adoption of a zoning ordinance amendment which zones property that is being annexed into the city, and
- special use permits.[59]

Furthermore, the ZPL outlines specific minimum procedures that must be followed during the above zoning actions.[60] Counties and cities must provide for a hearing on the proposed zoning decision, with prior advertisement in the newspaper that serves as the county legal organ. The advertisement must be published between 15 and 45 days prior

to the public hearing and must disclose the time, place, and purpose for the hearing. For rezonings, a sign advertising the public hearing must be posted in a conspicuous place on the subject property at least 15 days prior to the public hearing. Local ordinances may have additional requirements.

Local governments are also required to adopt procedural rules for public hearings on the above categories of zoning decisions, including equal hearing time for proponents and opponents of not less than 10 minutes each.[61] If a rezoning application is ultimately denied, the ZPL provides that no new rezoning of that property may be considered by the local government for at least six months.[62] In respect to common-law property rights, failure to strictly follow the ZPL's procedural requirements may, if challenged, invalidate the local government's zoning action(s).[63]

Nonconforming Uses

Most zoning ordinances will grandfather in existing property owners within a district, allowing continuance of their then-current land uses which are not compatible with the new zoning regulations. Referred to as a "noncompatible use" or "legal nonconforming use," the property owner's existing land use is legal but no longer permitted under the ordinance going forward. Oftentimes, this allowance is limited, applying only to the specific use in effect at the time the ordinance was adopted. Sometimes, a county ordinance will limit the amount of time permitted for noncompatible use before it must come into compliance with the adopted zoning ordinance.

Variances

There will be times when a landowner wishes to use his or her property in a manner that is not consistent with the zoning regulations governing their district. That individual may ask the county/zoning board to grant a variance – permission to create or continue a use not otherwise allowed under the applicable zoning regulation. Examples include a reduction of property setbacks, increases in allowable building height, or other development standards that are set out in the local government's zoning ordinance. In most counties, an administrative board – such as a Board of Zoning Appeals or a Board of Zoning Adjustment – has authority over variance decisions and should follow objective criteria set out in the county's zoning ordinance. Rather than being able to grant variances at whim, counties should apply (and the courts will insist upon) objective factors supported by factual evidence in determining whether to grant the variance.

Conditional Zoning

In some cases, counties and cities will attach conditions to a rezoning approval, which is referred to as "conditional zoning." To be a valid exercise of a local government's authority, the zoning conditions – which are not applicable to other land which is similarly zoned – must be designed to mitigate impacts of the development or land use

seeking rezoning. In order to be upheld by the courts, these conditions should be imposed for the protection or benefit of neighbors to ameliorate the effects of the zoning change.[64] Lastly, zoning conditions should be as easily understood and enforceable as possible.

Conflicts of Interest

State law sets out certain provisions prohibiting conflicts of interest in rezoning decisions. Members of the county governing authority or planning commission must disclose if they or an immediate family member has an ownership interest in a property that is subject to a rezoning.[65]

Additionally, a rezoning applicant must file a disclosure report with the county if he or she has – within two years immediately preceding the application – made campaign contributions of $250 or more to any member of the governing authority or planning commission who will consider the application.[66] The report must be submitted within 10 days of the application first being submitted.[67]

Likewise, opponents of a rezoning action must disclose if they have made – within two years preceding the filling of the action being opposed – campaign contributions aggregating $250 or more to a member of the county governing authority considering the rezoning. This disclosure must be filed at least five days prior to the first zoning hearing by the county (or any of its agencies) on the rezoning application.[68]

Legal Guidelines and Implications

If a county or city denies a rezoning application, the dissatisfied applicant may file a lawsuit within 30 days of the date that the local government's final decision is reduced to writing (such as a notification letter to the applicant of the final decision).[69] The question before a county board of commissioners at its hearing is whether the proposed zoning is appropriate. However, the issue before the court is the constitutionality of the existing zoning and whether that classification is depriving the landowner of property without due process of law.[70]

While there is a wealth of court precedent influencing and governing local zoning decisions, perhaps none have had greater influence than the 1976 Supreme Court of Georgia ruling in *Guhl v. Holcomb Bridge Road Corporation*.[71] In this case, the county refused to rezone many acres of undeveloped land from residential to office-institutional use. In holding the residential zoning to be unconstitutional, the court identified six factors that are relevant to determining the constitutionality of a local zoning ordinance:

1. Existing uses and the zoning of nearby property.
2. Extent to which property values are diminished by the zoning restrictions.
3. Extent to which the destruction of property values of the plaintiffs promotes the health, safety, morals, or general welfare of the public.

4. Relative gain to the public, as compared to the hardship imposed upon the individual property owner.
5. Suitability of the subject property for the zoned purposes.
6. Length of time the property has been vacant as zoned, considered in the contact of land development in the area within the vicinity of the property.[72]

Other types of zoning actions (e.g., use permits and variances) are subject to different standards in court proceedings. County officials should consult with their county attorney for further guidance on this topic.

Zoning Hearings, Planning Commissions, and Zoning Boards of Appeal

As outlined above, the ZPL requires counties and cities to provide for a hearing on proposed zoning actions. The local government must post notice of the hearing that states the time, place, and purpose of the hearing – published within a newspaper of general circulation in the jurisdiction – at least 15 days, but no more than 45 days, prior to the hearing's date.[73]

Local governments must specify a minimum time period at these hearings for presentation of data, evidence, and opinion by proponents of each zoning decision and an equal minimum time period for presentation by opponents. Each side must be provided at least 10 minutes to speak.[74]

While not required by law, many local governments have elected to create a planning commission to make recommendations on zoning applications and, in some cases, to conduct the required public hearings. Planning commissions may also preside over other planning, subdivision, building design, and permitting matters. These commissions are advisory boards appointed by the county governing authority, although some counties have joint city-county commissions whereby the county and city share the appointment responsibilities. Ideally, these commissions should

- look out for the community's future and long-term interests;
- apply the standards and policies contained in the relevant zoning regulations in an objective and even-handed manner;
- focus beyond short-term gain as well as political and special interests;
- be able to work or consult with professional and technical experts; and
- have no conflicts of interest on zoning matters before them.

Planning commissions then make recommendations to the county or city governing authority, which holds the authority to take final action on zoning matters. Counties and cities delegating this authority should closely review their procedures for clearly conveying those hearing proceedings to the governing authority prior to the governing authority's final zoning decision.

Many of Georgia's counties also have established and appointed a zoning board of appeals. These boards most often consider zoning variances and appeals of zoning decisions made by the county's zoning administrator. In many cases, a local zoning board of appeals has decision making authority; however, its decisions may be appealed to the county governing authority or to Superior Court.

PREEMPTING LOCAL ZONING IN GEORGIA

As mentioned throughout, the Constitution and ZPL authorize and regulate zoning authority at the local government level. While the Constitution protects this local authority, the state is authorized to adopt laws governing procedures which must be adhered to, statewide, in the zoning process. However, state law cannot limit local governments' substantive zoning powers.

Nonetheless, legislation to preempt the zoning authority of Georgia's counties and cities is introduced during most sessions of the Georgia General Assembly. ACCG does not have a position on whether counties should adopt any of the above zoning measures. However, it strongly believes that such decisions are best left for local governments to decide and has opposed these statewide preemptions. Counties and cities are the proper level of government to determine if these and other zoning regulations are needed, and to what extent. One size certainly does not fit all of Georgia's 159 counties. Accordingly, a single statewide preemption is rarely appropriate.

PLANNING AND ZONING STAFF ASSOCIATIONS

In addition to the assistance offered by DCA and RCs, local government planning and zoning officials have statewide associations which promote training, education, and professionalism in the planning and zoning professions. ACCG partners with these groups on many fronts, particularly to receive their members' expert feedback on pending legislation being considered by the Georgia General Assembly and in providing legislative updates at their respective meetings.

Georgia Association of Zoning Administrators

County and city professional staff handling zoning issues may join the Georgia Association of Zoning Administrators (GAZA), which is committed to improving the professionalism of zoning administrators. GAZA conducts two-day conferences twice per year around the state to discuss timely zoning topics in Georgia and provide training/education promoting high standards of efficiency in the administration of zoning, code enforcement, and planning ordinances. The association also provides networking opportunities, posts zoning-related job openings, and updates its members on pending and final zoning law changes.

Georgia Planning Association

The Georgia Planning Association (GPA) is the state's official chapter of the American Planning Association. It currently has over 1,100 members in Georgia, consisting of professional planners and planning officials from both state and local governments, as well as stakeholders from academia, the private sector, and non-profit associations. Established in 1968, the GPA merged with the Georgia Chapter of the American Planning Association – the nation's largest planning organization – in 1982. The GPA provides a forum where planners can share their expertise and ideas with policymakers and the public for the benefit of successful planning in Georgia. The association holds several meetings throughout the year, provides continuing education for certified planners, produces publications and other resources, and provides news and events to promote professional planning and create communities that thrive and prosper.

Georgia Association of Code Enforcement

Closely related to planning and zoning is code enforcement, which many counties and cities use to enforce various aspects of local planning and zoning ordinances. Established in 1998, the Georgia Association of Code Enforcement (GACE) advocates for responsible code enforcement and promotes professionalism, fellowship, and communication among its local government members in the state. GACE, in partnership with the University of Georgia's Carl Vinson Institute of Government, offers education, training programs and a Code Enforcement Officer Certificate Program to officials charged with the enforcement of county, city, and state codes in Georgia.

CONCLUSION

The State of Georgia and its local governments have a long history of being proactive on planning. Since the early 1960s, the state's area planning and development commissions (APDCs) offered counties and cities the opportunity to join together, assess dues, and jointly hire professional planning staff to work toward the betterment of their communities. These groups were constituted in state law in 1989 as regional development centers, then revised to regional councils in 2009, serving all the state's local governments with planning assistance.

The Georgia Planning Act of 1989 requires counties and cities to engage in comprehensive planning at the local and regional levels, offering guidance and assistance through RCs and DCA. Furthermore, the Act sought to protect and preserve Georgia's vital natural resources through establishing environmental planning criteria, which applicable regions and local governments must follow to ensure continued enjoyment of these resources.

In 2004 – amidst deepening water quality and quantity challenges and litigation filed by neighboring states – Georgia pioneered a national water planning model with the passage of the Comprehensive State-wide Water Management Planning Act. However,

the state has not stopped there. Georgia, a strong home rule state, has a Constitution that authorizes counties and cities to go substantially beyond minimum planning requirements by adopting additional planning and zoning measures within their respective jurisdictions. While the General Assembly has procedural rules governing use of this authority, it cannot take this power away from counties and cities. Only the citizens of Georgia may alter this authority through the passage of a constitutional amendment.

As of the date of this publication, 119 of Georgia's 159 counties have adopted zoning and are enforcing zoning ordinances. On behalf of their citizens, these counties have chosen to regulate land uses within their jurisdiction in combination with other state and local planning measures. Planning and zoning are important for many counties in order to

- stimulate or slow down development in specific areas,
- protect the quality of residential areas,
- prevent incompatible land uses from adjoining one another,
- ensure predictability among landowners and protect property values,
- foster economic development, and
- preserve the character of their community.

Planning and zoning also help local governments set the overall path for their communities, enabling them to make the highest, best use of limited taxpayer resources in providing public infrastructure such as for roads, parks, water, sewer, libraries, and an array of other resources.

Each local government is different in its planning and zoning needs. Georgia law recognizes that one size does not fit all – counties and cities are empowered to select the measures that best accommodate their community's needs and desires. Furthermore, the state, regional commissions, and professional planning and zoning associations stand ready to assist Georgia's counties and cities in meeting planning and zoning visions. Your county has the tools available to shape its own future. This is home rule, and home rule works.

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[1] Yogi Berra and Dave Kaplan, *When You Come to a Fork in the Road, Take It!:Inspiration and Wisdom from One of Baseball's Greatest Heroes* (2001).
[2] O.C.G.A. § 50-8-1 et seq. See also O.C.G.A. §§ 45-12-200 et seq., 36-70-1 to 5, and 12-2-8.
[3] Department of Community Affairs' Fact Sheet "Programs Linked to Qualified Local Government (QLG) Status," dca.ga.gov/sites/default/files/factsheet_programs_linked_to_qlg_status.pdf.
[4] Burke Walker, Northeast Georgia Regional Commission "Regional Commissions of Georgia, "New Georgia Encyclopedia September 5, 2014. https://www.georgiaencyclopedia.org/articles/government-politics/regional-commissions-of-georgia/.
[5] O.C.G.A. § 50-8-34(b).
[6] O.C.G.A. § 50-8-34(f).
[7] Ga. Comp. R. & Regs r. 110-12-6-.02.

[8] O.C.G.A. § 50-8-7.1(b).
[9] Official Compilation Rules and Regulations of the State of Georgia, GA. Comp. R. & Regs. r. 110-12-1.01 to .05.
[10] Ga. Comp. R. & Regs r. 110-12-1-.03(2) to (3).
[11] The Georgia Job Tax Credit Program falls under O.C.G.A. §§ 48-7-40 and 48-7-40.1. The Department of Community Affairs annually designates tiers based on location and economic-related conditions.
[12] Title 1 of the Housing and Community Development Act of 1974, Pub. L. No. 93-383, as amended; 42 U.S.C. 5301 et seq.
[13] Ga. Comp. R. & Regs r. 110-12-1-.02(1).
[14] Ga. Comp. R. & Regs r. 110-3-2-.06(4).
[15] Ga. Comp. R. & Regs r. 110-12-1-.04(j) and (m).
[16] O.C.G.A. § 50-8-7(a)(1) to (5).
[17] Ga. Comp. R. & Regs r. 110-12-1-.04(3).
[18] O.C.G.A. § 50-8-7.1(b)(3).
[19] O.C.G.A. § 50-8-7.1(b)(2) to (4).
[20] Ga. Comp. R. & Regs r. 110-12-3-.02(2).
[21] O.C.G.A. § 50-8-7.1(b)(3).
[22] Ga. Comp. R. & Regs r. 110-12-4 et seq.
[23] O.C.G.A. § 12-2-8(a).
[24] Id.
[25] Ga. Comp. R. & Regs r. 391-3-16 et seq.
[26] O.C.G.A. § 12-5-520 et seq.
[27] O.C.G.A. § 12-5-522(a).
[28] "Georgia Statewide Comprehensive State-wide Water Management Plan," Georgia Water Council, January 2008. https://waterplanning.georgia.gov/state-water-plan.
[29] Ga. Comp. R. & Regs r. 110-12-1-.02(3).
[30] O.C.G.A. § 12-5-442(a).
[31] O.C.G.A. § 12-5-442(d).
[32] The Atlanta Regional Commission (ARC) was required to develop the rules to carry out and enforce this Act. The ARC did so through the development and adoption of the Chattahoochee Corridor Plan, which can be found at: https://atlantaregional.org/wp-content/uploads/ep-corridor-plan.pdf. To see the ARC's Metropolitan River Protection Act Rules and Regulations, please visit: https://atlantaregional.org/wp-content/uploads/2017/03/ep-chat-rulz.pdf.
[33] O.C.G.A. § 12-7-1, et seq.
[34] O.C.G.A. § 12-7-2.
[35] O.C.G.A. § 12-7-8(b).
[36] O.C.G.A. § 12-7-5.
[37] O.C.G.A. § 12-7-7(a).
[38] O.C.G.A. § 12-7-7(c).
[39] O.C.G.A. § 12-7-6(a)(1).
[40] O.C.G.A. § 12-7-6(b)(1-14).
[41] O.C.G.A. § 12-7-17(1-11).
[42] O.C.G.A. § 12-7-3(2).
[43] O.C.G.A. § 12-7-3(9).
[44] O.C.G.A. § 12-7-6(b)(15)(A).
[45] O.C.G.A. § 12-7-6(b)(16).
[46] O.C.G.A. § 12-7-6(b)(17).
[47] Ga. Comp R. & Regs ch. 391-3-7-.05.
[48] O.C.G.A. § 12-7-6(c).
[49] Clean Water Act. 33 U.S.C §§ 1251, et seq.
[50] 2017 General NPDES Stormwater Permit No. GAG610000 for Phase II Storm Water Discharges from Municipal Separate Storm Sewer Systems (MS4).
[51] O.C.G.A. § 36-71-1.

[52] O.C.G.A. § 36-71-3(a).
[53] O.C.G.A. § 36-71-2(17).
[54] O.C.G.A. §§ 36-71-3 through 36-71-10.
[55] S.B. 404, 155th Gen. Assemb., Reg. Sess. (Ga. 2020).
[56] Ga. Const. art. IX, § II, para. IV.
[57] O.C.G.A. § 36-66-1 et seq.
[58] O.C.G.A. § 36-66-2(a).
[59] O.C.G.A. § 36-66-3(4).
[60] O.C.G.A. § 36-66-4.
[61] O.C.G.A. § 36-66-5(a).
[62] O.C.G.A § 36-66-4(c).
[63] *C & H Development, LLC v. Franklin County*, 294 Ga. App. 792 (2008).
[64] See, e.g., *Cross v. Hall County*, 238 Ga. 709, 713 (1977); *Heavy Machines Co. v. City of Roswell*, 257 Ga. 745, 746 (1988).
[65] O.C.G.A. § 36-67A-1 et seq.
[66] O.C.G.A. § 36-67A-3(a).
[67] O.C.G.A. § 36-67A-3(b).
[68] O.C.G.A. § 36-67A-3(c).
[69] *Taco Mac v. Atlanta Board of Zoning Adjustment*, 255 Ga. 538, 538-39 (1986).
[70] See, e.g., *DeKalb County v. Chamblee Dunwoody Hotel,* 248 Ga. 186, 189-90 (1981).
[71] 238 Ga. 322 (1977).
[72] Id. at 323-324.
[73] O.C.G.A. § 36-66-4(a).
[74] O.C.G.A. § 36-66-5(a).