**Overlay District**

**What is it?**

An overlay district is used to establish alternative land development requirements within a specific area of your community that requires special attention, such as an environmentally sensitive area or rapidly developing strip corridor. For some examples of overlay districts, refer to the Other resources section of GQGP quality growth tool: Overlay District. The overlay is usually superimposed over conventional zoning districts. It consists of a physical area with mapped boundaries and written text spelling out requirements that are either added to, or in place of, those of the underlying regulations. But don't assume that you must already have zoning or other development regulations in your community to use overlay districts. Overlays are frequently used as stand-alone regulations to manage development in particular areas of a community.

**How to do it**

1. **Assemble stakeholders.** Get input from neighborhood groups, developers and interest groups whose constituencies might be affected by the overlay district. Involve the public at the outset with full discussion of the problems or goals that the overlay addresses.
   - possible stakeholder groups may include:
     - local government representatives
     - neighborhood organizations
     - property owners
     - realtors
     - home builders
     - bankers

2. **Identify areas of the community where an overlay district may be appropriate.** Begin by identifying areas of the community where special development problems or needs exist. Are there areas of the community where your conventional land use regulations don't seem to be working (e.g., polluted streams, inappropriate development on hillsides, unattractive commercial corridors, etc.)? Have concerns been expressed by residents, visitors or merchants from a particular part of your community? Investigate these areas in detail to determine the exact nature and causes of the problems they are facing.

3. **Determine whether an overlay district is the right solution.** There are many situations for which you might consider using overlay districts. For some Examples of Overlay Districts, refer to the Other resources section of GQGP quality growth tool: Overlay District. Explore alternative approaches openly and take time to consider the best alternatives for solving the problem. For some Alternatives to Overlay Districts, refer to the Other resources section of GQGP quality growth tool: Overlay District.
4. **Decide specific overlay boundaries and requirements.** Involve stakeholders in setting the overlay boundaries and requirements. A design charrette (refer to GQGP quality growth tool: Design Charrette) is an excellent tool for involving stakeholders in this process. Begin by identifying the public purposes and desired outcomes from establishing the overlay district. Boundaries for the overlay district should be drawn based on reliable scientific factors or other logical rationale for including properties within the district, so that the resulting boundaries will be legally defensible. Overlay requirements may be established by beginning with a menu of all possible development standards, then narrowing the list to those likely to be most effective at achieving desired outcomes. It may be useful to trial run the proposed overlay requirements by applying the criteria to many different situations to determine if they are likely to have the desired effect.

5. **Adopt the ordinance and revise the comprehensive plan.** For a model overlay district ordinance refer to the Model ordinances and other implementation instruments section of GQGP quality growth tool: Overlay Districts. A good overlay district ordinance should provide all of the following components:
   a. **Purpose Statement** - Tie the overlay to the goals and objectives of the Comprehensive Plan, cite the public necessity behind the intent, and make a direct connection to protecting the public health, safety, morals, general welfare and aesthetics.
   b. **Spatial Definition** - The boundary or rule for spatial definition should be as simple and understandable as possible. Provide the information in a way the public can understand.
   c. **Procedures for Application** - Additional information will be needed in the application to demonstrate compliance with the factors addressed in the overlay regulations.
   d. **Special Definitions** - Specialized standards will likely require specialized terminology that must be defined.
   e. **Standards for Review and Approval** - The reviewing body needs guidance concerning how to determine compliance. If there are no standards for review and approval, an ordinance may be struck down for vagueness, or decisions overturned as being arbitrary and capricious.
   f. **Review Board** - A Review Board can provide more opportunity for public input, more political "cover" and a broader perspective than reviews by staff. However, if the substance of the overlay is overly technical or specialized, it will be necessary to require technical expertise and training for board members.
   g. **Appeals Process** - The term "hardship" needs to be carefully prescribed to address unique situations and to avoid variances based on convenience rather than peculiar damages. The standing to appeal needs to be limited to "aggrieved parties" having direct and substantive claims in order to avoid groundless appeals.
   h. **Resolution of conflicting provisions** - If the overlay intends to add new provisions above those existing in the underlying zoning districts, then it will be necessary to prescribe which set of standards takes precedence in case of a conflict.
In adopting the overlay ordinance, make sure you meet all legal requirements for open meetings, public notice, etc. Also be sure to revise your comprehensive plan to reflect the new overlay requirements. Your Comprehensive Plan is the best place to prepare your case for using overlay districts. It should provide the goals, objectives, and policies that substantiate the need and public purpose of overlay districts. This will provide stronger legal foundation for your overlay district, should it ever be challenged in court.

**Things to consider before using this tool**

- Overlay districts are more appropriate for communities that employ professional planning staff. If you don't already have staff in place, you can get technical assistance from your Regional Development Center or, in some cases, small local governments can agree to pool their resources with adjacent jurisdictions to share more technically prepared staff.
- The overlay district is a tool that is widely used and accepted in Georgia and in other states. No additional statutory authority is required. There has been little case law on using overlays. Legal issues are related to 14th amendment clauses on due process and equal protection in the U.S. Constitution. The primary legal consideration concerns imposing higher standards on certain property. These are more extreme forms of the same legal issues that pertain to the use of zoning in general. If in some cases the strict enforcement of the district requirements might come close to invoking a "takings" claim, your overlay district should provide for hardship variances or face possible court tests.
- Public concerns vary with the nature of the regulations being imposed by the overlay district. The greatest concerns are often related to the documentation of public necessity, impacts on property values, and fairness of application to only a portion of the community. Property owners and the real estate developers often allege that the overlay deprives them of property value because it constrains the full use and enjoyment of their property.
- If there is likely to be public opposition to the overlay district, interim development controls may be instituted for the overlay area to allow time for more deliberation.
- It is possible to impose multiple overlapping overlay districts on the same parcel. The resulting complexity could make such a scheme difficult to administer. It's possible that one overlay may work at cross-purposes to another.
- Costs of implementing overlay districts include both the initial ordinance development costs and long-term administrative costs of enforcement after the ordinance is in place.
  - The initial costs vary with the nature of the district. Architectural design standards, relatively straight-forward landscape, signs, bulk and density controls can often be prepared without consultant assistance. Highly technical issues such as noise regulation or water quality protection are the most expensive because they can require in-depth consultant studies. The costs of these studies might be partially reimbursed through state or...
federal grants. You might be able to share costs with other jurisdictions seeking to enact similar regulations.

- The level of administrative costs depends on the:
  1) number of applications
  2) complexity of each case
  3) number of reviews and public hearings that are required.
Most overlay districts require staff to review and process site plan applications. Administrative reviews are faster than full public hearings that require posting signs and preparing newspaper ads and letters. The full cost of the public hearing process includes both the cost of staff to attend public hearings and staff time to review the outcome and process the approvals, denials, and appeals. If a review board reviews each application and holds public meetings, two or more public hearings may be required per application. Multiple reviews and re-applications add still more staff time and effort.

- Your staff may need special training to interpret and apply the requirements of an overlay district that has technical aspects requiring scientific analysis, historic preservation, architectural standards, or economic analysis.

- Be sure that your overlay district has well-defined boundaries. It is essential to know and make clear which properties are affected by mapping the overlay on parcel maps. Overlay districts that are not parcel-specific should be displayed on a parcel-by-parcel basis with more detailed maps or by rule in order to be efficiently and fairly administered and enforced.
Additional Information regarding Overlay Districts

Background
An overlay district is used to establish special development requirements within a particular area of your community. The overlay is a mapped area that is usually superimposed over conventional zoning districts found in most communities' zoning ordinances and maps. But don't assume that you have to have zoning in your community to create overlay districts. Overlay districts are used to establish special regulations that can be either a higher level of restrictions or may actually permit exceptions or less restrictive standards than required in the underlying regulations. Many types of overlay districts can be used to implement Quality Growth approaches such as design regulations, Traditional Neighborhood Development (TND), and watershed protection, just to name a few.

An overlay district, like a conventional zoning district, consists of a physical area with mapped boundaries and written text spelling out requirements that are either added to, or in place of, those of the underlying regulations. The mapped boundaries of the overlay district do not necessarily coincide with other zoning district boundaries, and may not follow parcel boundaries. Often natural features define the boundaries of an overlay district.

A simple example of an overlay district might establish a different standard for routine matters such as front yard setbacks. For example, where an underlying district may require a minimum front yard set back of 40 feet from the right-of-way, a Traditional Neighborhood District Overlay may provide that all commercially zoned property will be developed with a uniform setback of 15 feet from the curb line.

Overlay districts are becoming common where local officials realize the need to set higher standards in some geographically specific areas. These overlays are intended to protect and enhance distinct community resources that conventional zoning districts may not properly address. Also, overlay districts recognize that certain standards may not be necessary or appropriate to apply throughout the community.