

AN ORDINANCE

BY COUNCILMEMBERS ANDRE DICKENS, KWANZA HALL, AND CLETA WINSLOW

AN ORDINANCE TO AMEND THE 1982 ATLANTA ZONING ORDINANCE, AS AMENDED, CITY OF ATLANTA CODE OF ORDINANCES PART 16, SO AS TO ADD A NEW CHAPTER 36A ENTITLED “AFFORDABLE WORKFORCE HOUSING (BELTLINE OVERLAY DISTRICT)”; TO DEFINE CERTAIN TERMS; TO PROVIDE FOR RELATED REQUIREMENTS, PROCEDURES AND INCENTIVES; TO AMEND THE 1982 ATLANTA ZONING ORDINANCE, AS AMENDED, CITY OF ATLANTA CODE OF ORDINANCES PART 16, CHAPTER 28, SECTION 16-28.023, SO AS TO ALLOW TRANSFER OF DEVELOPMENT RIGHTS FOR UNUSED DENSITY BONUS; AND FOR OTHER PURPOSES.

WHEREAS, the City of Atlanta (the “City”) continually welcomes new persons to live and work in the City, and as a result the City’s Comprehensive Development Plan recognizes that many developed areas of the City, including the BeltLine Overlay District, are experiencing or are anticipated to experience residential development and redevelopment on scattered tracts of land; and

WHEREAS, the City’s Comprehensive Development Plan recognizes that a broad range of housing types and price levels can bring people of diverse ages, races, and incomes into daily interaction, strengthening the personal and civic bonds essential to an authentic community; therefore, it is in the best interest of the City that its workforce have as many tools at its disposal to be able to afford to live in the City and have a full range of housing options; and

WHEREAS, among the current policy goals expressed in the City’s Comprehensive Development Plan is the creation of an affordable and walkable city, to retain, grow and attract middle-income residents by promoting the development of middle-income housing within the context of mixed-income neighborhoods, promoting housing affordability in order to minimize the number of households that must pay more than thirty percent (30%) of their income in rent payments, and increasing the availability of affordable workforce housing; and

WHEREAS, the City’s Comprehensive Development Plan’s recommendations include providing development incentives to builders and developers in order to assist them in the construction of new, low and moderate-income housing; and

WHEREAS, affordable workforce housing benefits individuals and families (i.e. police, fire, teachers, EMTs, medical assistants, bank tellers, administrative assistants, retail workers, city and county employees, etc.); and

WHEREAS, the City Charter, at Section 1-102(b), provides that the City shall have all powers necessary and proper to promote the safety, health, peace, and general welfare of the City and its inhabitants; and

WHEREAS, the City Charter, at Section 1-102(c)(42), authorizes the City to regulate land use by the adoption of zoning ordinances, planning ordinances, and other regulatory ordinances; and

WHEREAS, increased development and the finite supply of developable land along the Atlanta BeltLine has caused concerns about affordability of housing for low and moderate-income citizens of the City, as chronicled in recent local news stories; and

WHEREAS, it is the expectation and goal of the City that at least 5,600 units of affordable workforce housing be created within the BeltLine TAD area (“BeltLine TAD”), as stated at the creation of the same; and

WHEREAS, the BeltLine Overlay District, which is broader than the BeltLine TAD, was similarly created with the expectation and goal of affordability in mind; and

WHEREAS, a zoning ordinance with incentives for providing affordable workforce housing will aid the City in its goal to maintain a diverse population for persons of various income levels and ensure the availability of affordable workforce housing for the City’s workforce to live within the City, and specifically, the BeltLine Overlay District; and

WHEREAS, one of these incentives is a city real property ad valorem tax credit available for development subject to the affordable workforce housing requirement set forth herein; and

WHEREAS, this ordinance is adopted pursuant to Georgia Constitution Article IX, Section II, Paragraph IV which empowers the governing authority of each county and of each municipality to adopt plans and exercise the power of zoning; and

WHEREAS, such zoning powers include, among other things, the power of local governments to provide within their respective territorial boundaries for the zoning or districting of property for various uses and the prohibition of other or different uses within such districts and for the regulation of development and the improvement of real estate within such districts in accordance with the uses of property for which such districts were established.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA, HEREBY ORDAINS AS FOLLOWS:

Section 1: The Atlanta Zoning Ordinance, City Code of Ordinances, Part 16 (Zoning), is hereby amended by adding a new Chapter 36A entitled “Affordable Workforce Housing (BeltLine Overlay District)”, which shall read as shown on **Exhibit “A”** attached hereto and incorporated herein by this reference.

Section 2: The City Code of Ordinances, Part 16, Chapter 28, Section 16-28.023(c), which sets forth eligible “sending areas” for transfer of development rights, is hereby amended by adding a new sub-paragraph 4 which shall read as follows:

- (4) One or more lots or parcels providing affordable workforce housing units in compliance with chapter 36A of this part.

Section 3: This ordinance shall take effect sixty (60) days after adoption by the City Council and approval by the Mayor.

Section 4: All ordinances or parts of ordinances in conflict with this ordinance are repealed to the extent of any conflict.

Section 5: It is declared the intention of the City of Atlanta that the provisions of any part of this ordinance are severable. If any court of competent jurisdiction shall adjudge any provision of this ordinance to be invalid, such judgment shall not affect any other provision of this ordinance not specifically included in the judgment. If a court of competent jurisdiction shall adjudge invalid the application of any provision of this ordinance to a particular property, development, building or structure, such judgment shall not affect the application of said provision to any other property, development, building or structure not specifically included in said judgment.

Exhibit A

Chapter 36A. - AFFORDABLE WORKFORCE HOUSING (BELTLINE OVERLAY DISTRICT)

Sec. 16-36A.001. Scope of regulations.

The provisions of this chapter shall apply to all residential rental developments of five (5) or more dwelling units in the BeltLine Overlay District as defined by Section 16-36.001, et seq.

Sec. 16-36A.002. Findings and statement of intent.

Providing a range of affordable housing choices for working persons in the BeltLine Overlay District is a difficult but vital objective. Housing shortages for persons of various income levels are detrimental to the public health, safety and welfare, including detrimental transportation, environmental, business and social consequences. The purpose of this chapter is to further the availability of housing choices for individuals and families earning between sixty percent (60%) and eighty percent (80%) of the area median income (“AMI”) as calculated and published annually by the U.S. Department of Housing and Urban Development for the Atlanta – Sandy Springs – Marietta metropolitan area.

Therefore, policies to promote these objectives will serve to:

1. Implement the goals, policies, and objectives contained in the City’s Comprehensive Development Plan;
2. Ensure diverse housing options continue to be available for persons and/or households at or below AMI;
3. Maintain a balanced community by encouraging the finite supply of developable land to provide housing opportunities appropriate to meet various needs and income levels;
4. Ensure the availability of housing with better access to jobs in the city and thereby encouraging the use of MARTA and other public transit;
5. Improve the opportunity for working people to elevate their economic status;
6. Encourage the construction of affordable workforce housing by offering zoning incentives for the provision of affordable workforce housing as a portion of residential development to address both existing and anticipated future housing needs in the BeltLine Overlay District;
7. Afford developers of residential development the flexibility to meet the broad objectives of the city’s policies to assist in providing a percentage of affordable workforce housing units as a portion of development; and
8. Provide opportunities to have on-site, privately produced, owned and managed, long-term affordable units.

Sec. 16-36A.003. Definitions.

As used in this chapter, unless specifically stated otherwise, the following terms shall have the meanings set forth below:

1. *Affordable workforce housing unit(s)*: A residential rental unit in the BeltLine Overlay District that complies with the affordability requirement in section 16-36A.004.
2. *Applicant*: Any person, firm, partnership, association, joint venture, corporation, or any other entity or combination of entities or affiliated entities and any transferee of all or part of the real property at one location, which after this chapter takes effect develops a total of five (5) or more residential rental units at one location in the BeltLine Overlay District.
3. *At one location*: All real property of the Applicant in the BeltLine Overlay District if:
 - a. Such properties are contiguous at any point;
 - b. Such properties are separated only by a public or private right-of-way or utility corridor right-of-way, at any point; or
 - c. Such properties are separated only by other real property of the Applicant which is not subject to this chapter at the time of any building permit, site plan, and development or subdivision application by the Applicant.
4. *Market rate unit(s)*: A residential rental unit that is not an affordable workforce housing unit.
5. *LURA*: A Land Use Restrictive Agreement between the City and the Applicant that shall encumber property in a manner that will require the development and active marketing of a percentage of units as Affordable Workforce Housing.

Sec. 16-36A.004. Affordability requirement.

All improvement of real estate in the BeltLine Overlay District, regardless of the number of parcels, upon which five (5) or more residential rental units will be constructed at one location, shall comply with the applicable affordability requirement set forth below, for 30 years from actual occupancy of the affordable workforce housing unit. The affordable workforce housing units shall be similar in construction and appearance (e.g., square footage, type and brand of appliances, materials used for countertops, flooring, etc.) to the market rate units and shall not be in isolated areas in the development, but shall be interspersed among market rate units.

(1) At least fifteen percent (15%) of the total residential rental units shall be actively marketed for lease to households (excluding student households) having an income, as certified by the prospective tenant(s) at the time of execution of the applicable lease agreement, that does not exceed 80% of the area median income (“AMI”) for the family size having the same number of persons as the subject household for the Atlanta-Sandy Springs-Marietta, Georgia Department of Housing and Urban Development (“HUD”) Metro Fair Market Rent Area as published by HUD as of the date of the tenant’s application). The monthly rent amount, inclusive of all mandatory fees with the exception of tenant paid parking and tenant paid utilities (natural gas, electricity, water, sewer, and trash collection) for each affordable workforce housing unit shall be no more than thirty percent (30%) of the household’s monthly gross income as published periodically by HUD; or

(2) At least ten percent (10%) of the total residential rental units shall be actively marketed for lease to households (excluding student households) having an income, as certified by the prospective tenant(s) at the time of execution of the applicable lease agreement, that does not exceed sixty percent (60%) of the AMI for the family size having the same number of persons as the subject household for the Atlanta-Sandy Springs-Marietta, Georgia HUD Metro Fair Market Rent Area (as published by HUD as of the date of the tenant's application). The monthly rent amount, inclusive of all mandatory fees with the exception of tenant paid parking and tenant paid utilities (natural gas, electricity, water, sewer, and trash collection) for each affordable workforce housing unit shall be no more than thirty percent (30%) of the household's monthly gross income as published periodically by HUD.

Units actively marketed for lease in accordance with the terms of the LURA shall be considered to be in compliance with the requirements of this Chapter 36A.

Sec. 16-36A.005. Plans to conform.

Upon the face of the plans, and as a condition of, the approval of the earlier of a preliminary subdivision plat, special administrative permit, or building permit for improvement of real estate subject to the affordability requirement, the Applicant shall:

1. Identify which units on the plans will be initially designated as affordable in compliance with this chapter;
2. Acknowledge by signature, for itself its successors and assigns, that it will identify which units on the plans will be initially designated as affordable in compliance with this chapter, prior to issuance of the first certificate of occupancy; or
3. Acknowledge by signature, for itself its successors and assigns, that it will satisfy the requirements of 16-36A.007 below prior to issuance of the first certificate of occupancy.

Sec. 16-36A.006. Certificate of occupancy.

Unless Applicant satisfies the requirements of 16-36A.007:

1. *Concurrency.* Applicant shall use best efforts to develop affordable workforce housing unit(s) concurrently with market rate units. .
2. *LURA.* No certificate of occupancy shall issue until a Land Use Restrictive Agreement ("LURA") in the form provided by the city is recorded in the county real estate records where the property lies and a recorded copy is affixed to the application for certificate of occupancy.

Sec. 16-36A.007. In-lieu option.

In lieu of compliance with the on-site affordability requirement, the Applicant may elect to pay an in-lieu fee to the housing trust fund prior to issuance of the first certificate of occupancy in the amount of \$150,000 for each affordable workforce housing unit not built on-site, plus a 15% administrative cost, for a total of \$172,500 for each affordable workforce housing unit not built on-site. The in-lieu fee plus administrative cost is based on the

approximate cost for the City to cause affordable workforce housing units to be built from the housing trust fund.

Sec. 16-36A.008. Density incentive.

A development in compliance with the affordability requirement shall be entitled to a 15% floor-area ratio increase above the floor-area ratio set by the current zoning for the development. In the event the Applicant chooses not to use any or the entire density bonus, the Applicant may make application, pursuant to section 16-28.023, for severance of the unused density bonus in the form of development rights. In the event construction of all or a portion of the density bonus would exceed the maximum floor area ratio set forth in the comprehensive development plan, if any, Applicant shall only be entitled to apply for transfer of development rights for such excessive portion.

Evidence of a development exercising the right to increase the density onsite shall be entitled to the grant of a special exception by the BZA for an increase of the maximum parking requirements, if necessary, of 16-36.020(2) to assist with the additional units.

Sec. 16-36A.009. Tax Incentive.

A development in compliance with the affordability requirement shall be entitled to an annual city real property tax incentive as described in section 146-76 of the Atlanta Code of Ordinances.

Sec. 16-36A.010. Monitoring and Enforcement.

The office of buildings shall enforce the affordability requirement prior to issuance of the certificate of occupancy for the development. The office of housing shall enforce the affordability requirement after issuance of the certificate of occupancy for the development.

1. *Quarterly report.* Each development shall comply with quarterly or other reporting requirements set forth in the LURA, as described in section 16-36A.006.
2. *Non-compliance.* No development shall maintain its eligibility for tax incentives under this chapter unless a valid LURA remains in effect and unless the development continuously meets the affordability requirement during the entire period of the LURA. The City may take any other legal remedies allowed under the LURA including but not limited to seeking an injunction to prevent the leasing of units that would cause the project to exceed the number of Market Rate units to be leased under the LURA.

Sec. 16-36A.011. Severability.

It is declared the intention of the City of Atlanta that the provisions of any part of this chapter are severable. If any court of competent jurisdiction shall adjudge any provision of this chapter to be invalid, such judgment shall not affect any other provision of this chapter not specifically included in the judgment. If a court of competent jurisdiction shall adjudge invalid

the application of any provision of this chapter to a particular property, development, building or structure, such judgment shall not affect the application of said provision to any other property, development, building or structure not specifically included in said judgment.