

PETITION TO AMEND THE FULTON COUNTY ZONING RESOLUTION

2005Z – 0103

COMMUNITY ZONING BOARD PUBLIC HEARINGS

October 18, 2005 (SOUTH) – DEFERRED FOR THIRTY (30) DAYS

November 15, 2005 (NORTH) - DENIAL

BOARD OF COMMISSIONERS PUBLIC HEARING

December 7, 2005 – DEFERRED UNTIL FEBRUARY 1, 2006

February 1, 2006 – DEFERRED UNTIL APRIL 5, 2006

This item was deferred without discussion at the February 1, 2006 Board of Commissioners meeting.

April 5, 2006 – APPROVED

The Board of Commissioners requested that staff report at the mid-month meeting on the resolution of the density issue.

***STAFF
RECOMMENDATION***

APPROVAL

PROPOSED AMENDMENT

To amend Article 4, Section 4.26 of the Zoning Resolution to add definitions and provisions for inclusionary zoning.

4.26. **INCLUSIONARY HOUSING ZONING.**

4.26.1. **PURPOSE AND INTENT.** This section of the Fulton County Zoning Ordinance is intended to provide that residential projects in Fulton County contain a defined percentage of housing affordable to very low, low, and moderate income households; to provide for a program of incentives and local public subsidy to assist in this effort; and to implement the mixed income and housing policies of the Housing and Implementation Elements of Fulton County's Comprehensive Plan. Participation in the Inclusionary Housing Zoning Program shall be voluntary for a twenty-four month period after which it will sunset until the Board of Commissioners can assess the effectiveness of the program and determine the conditions for its future implementation.

The Ordinance seeks to:

- (a) Provide for a full range of housing choices, conveniently located in a suitable living environment, for all incomes, ages and family sizes;
- (b) Provide housing to meet the existing and anticipated future needs of very low, low and moderate-income households;
- (c) Assure that affordable housing units are dispersed throughout the County by providing such units in all residential developments, except as otherwise may be provided for in this Article;
- (d) Encourage the construction of affordable housing by allowing increases in density to offset land and development costs;
- (e) Ensure that developers incur no loss or penalty and have reasonable prospects of realizing a profit on affordable housing units by virtue of the density bonus and other incentive provisions herein.

4.26.2. **DEFINITIONS.**

Affordable. Rented at an Affordable Rent or sold at an Affordable Housing Price.

Affordable Housing Price. A sales price, at which Low, Very Low, or Moderate Income Households, as provided in this Section, can qualify for the purchase of for-sale Inclusionary Units, based on designated income standards. For purposes of this calculation, housing expenses shall include mortgage principal and interest, taxes, insurance, and assessments.

Affordable Rent. (1) for a unit whose occupancy is restricted to a Low Income Household that the monthly rent consists of a maximum of one-twelfth of thirty percent (30%) of eighty percent (80%) of the median income applicable to Fulton County; and (2) for a unit whose occupancy is restricted to a Very Low Income Household that the monthly rent consists of a maximum of one-twelfth of thirty percent (30%) of fifty percent (50%) of the median income applicable to Fulton County. In each case, the median income applicable to Fulton County is as determined annually by the United States Department of Housing and Urban Development, adjusted for household

size, less a reasonable allowance for utilities and in compliance with the Low Income Housing Tax Credit Program administered by the Georgia Department of Community Affairs.

Affordable Rental Agreement. Legal restrictions by which the rents for rental Inclusionary Units will be controlled to ensure that rents remain Affordable for a period of thirty (30) years or longer.

Bond Financed Projects. Affordable housing developments financed with tax-exempt bonds and therefore eligible for 4% federal credits.

Density Bonus. A minimum density increase of at least twenty percent (20%) over the otherwise maximum residential density as permitted by the Fulton County Zoning Ordinance and the Comprehensive Land Use Plan at the time of application.

Developer. Any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities which seeks Fulton County's approvals for all or part of a Development Project. Developer includes Owner.

Development Agreement. An agreement entered into between Fulton County and a Developer.

Development Project. Any real-estate development project that includes Market Rate Units and is required to provide an Inclusionary Housing Component pursuant to the provisions of this Section. Projects at One Location undertaken in phases, stages or otherwise developed in distinct sections shall be considered a single Development Project for purposes of this Section.

Dwelling Unit. A residential unit within a Development Project.

External Subsidy. Any source of funds that is not Local Public Funding, including Federal or state grants, loans, bond funds, tax credits or other tax-based subsidy.

First-time Home buyer. An individual purchaser or spouse who has not owned a home during the past three years, or that the purchaser meets at least one of the following criteria:

- A. The purchaser is a displaced homemaker, defined as a person who has not worked full-time for a number of years, worked primarily without remuneration to care for the home and family, is unemployed or underemployed, is experiencing difficulty in obtaining or upgrading employment, and, while a homemaker, owned a home with a previous spouse;
- B. The purchaser is single (unmarried or legally separated), has one or more minor children of whom purchaser has custody, and, while previously married, owned a home with a previous spouse; or

- C. The purchaser owns or owned as a principal residence during the past three years, a dwelling unit which structure is not permanently affixed to a permanent foundation in accordance with the Fulton County's Zoning Ordinance, or is not and cannot be brought into compliance with Fulton County's Zoning Resolution for less than the cost of replacing the structure.

Fulton County Government. Fulton County, Georgia.

Household. One person living alone or two or more persons sharing residency whose income is considered for housing payments.

Household Income. The combined adjusted gross income for all adult persons residing in a living unit.

Household, Low Income. A household whose annual income does not exceed eighty (80) percent of the area median income, adjusted for family size as published and annually updated by the United States Department of Housing and Urban Development.

Household, Moderate Income. A household whose annual income does not exceed one hundred and twenty (120) percent of the area median income, adjusted for family size as published and annually updated by the United States Department of Housing and Urban Development.

Household, Very Low Income. A household whose income does not exceed fifty (50) percent of the area median income, adjusted for family size as published and annually updated by the United States Department of Housing and Urban Development.

Housing Trust Fund. The fund created by Fulton County and administered by the Fulton County Office of Housing (FCOH).

Inclusionary Housing Agreement or Agreement. The agreement between a Developer and the County setting forth the manner in which the Inclusionary Housing Component will be met in the Development Project.

Inclusionary Housing Plan. A plan required at the time of concept review for a land disturbance permit or building permit that provides the details of proposed inclusionary units.

Inclusionary Housing Component. The provision of the Inclusionary Housing Units in a Development Project.

Inclusionary Housing Unit or Inclusionary Unit. An ownership or rental dwelling unit developed as a part of the Inclusionary Housing Component of a Development Project as provided in this Section.

Inclusionary Housing Development. A development containing a building with more than eight (8) units for multi-family or for all residential developments of 20 units or more in which 10 percent of the total units must be inclusionary units restricted for occupancy by very low, low, or moderate income households except as otherwise provided for herein.

Inclusionary Incentives. The fee waivers or reductions, planning and building standards waivers or reductions, regulatory incentives or concessions, and Federal, State, and Local Public Funding provided by Fulton County to a Development Project to assist in the provision of the Inclusionary Housing Component.

Income, Area Median. The annual median family income of a geographic area of the state, as annually estimated by the United States Department of Housing and Urban Development pursuant to Section 8 of the Housing Act of 1937.

Initial Owner. The first person or persons to purchase a new for-sale Inclusionary Unit for his, her or their primary residence.

Legislative Entitlement. Means and includes general and community plan designations and redesignations, zonings and rezonings, and planned unit development site plans and revised site plans.

Local Public Funding. Loans and grants from the Housing Trust Fund, federal Home Investment Partnership Program ("HOME" funds), and redevelopment area tax increment housing set-aside funds, and other funds originating from or administered by Fulton County.

Low Income Housing Tax Credits. Federal and State financing in which federal housing tax credits are awarded to developers to raise capital for the development of affordable multi-family rental units.

Market Rate. Rates not restricted to an Affordable Housing Price or Affordable Rent.

Multi-family Residential. Residential units planned, approved, or built on land planned or zoned for other than Single Family Residential in which Housing Tax Credits have been awarded for the purpose of developing affordable multi-family rental units.

Off-Site Unit. An Inclusionary Unit that is built separately or at a different location than the main development.

On-Site Unit. An Inclusionary Unit that will be built as apart of the main development.

One Location. All adjacent land owned or controlled by the same Owner or a Related Owner, the property lines of which are contiguous at any point, or the property lines of which are separated only by a public or private street, road, or other public or private right of way.

Owner. Includes the person, persons, partnership, joint venture, association, corporation, or public or private entity having sufficient proprietary interest in real property to commence, maintain, and operate a Development Project.

Percent. A one hundredth part. In applying percentages referred to in this Section, any portion of a Percent less than one half (0.5%) shall be disregarded and any portion of a Percent one half (0.5%) or greater shall be rounded up to the next whole number.

Project, For Sale. A residential project, or portion thereof, which is intended to be sold to owner-occupants upon completion.

Project Level Approval. Includes a concept plan, a Special Permit, or other administrative or adjudicatory approval or determination in connection with a Development Project.

Related Owner. A person or entity, including but not limited to, partnerships, limited partnerships, and corporations, which has any of the following relationships with an Owner: (1) they share the majority of members of their governing boards; (2) they share two or more officers; (3) they are owned or controlled by the same majority shareholder(s) or general partner(s); (4) they are in a parent-subsidary relationship; or (5) the person is a sibling, offspring or parent of an individual Owner. For purposes of this subsection, a controlling interest means fifty percent (50%) or more of the voting power of a corporation, and a parent-subsidary relationship exists when one corporation owns, directly or indirectly, fifty percent (50%) or more of the voting power of another corporation. For purposes of this section, a person and any general partnership in which the person is a general partner, or a person and any corporation in which the person owns a controlling interest, shall be treated as one and the same.

Residential Project. The entirety of Market Rate residential development in a Development Project subject to the requirement to provide an Inclusionary Housing Component as specified in this Section.

Single-family Residential. A development planned, approved, or built on land planned or zoned solely for a permitted residential density of one unit per parcel. Where such a planning or zoning single-family designation also allows as a conditional use duplexes or similar uses, the designation is nonetheless considered Single-family Residential for purposes of the Inclusionary Housing Component and the other provisions of this Section.

Fulton County Zoning Ordinance. The Fulton County Zoning Ordinance as it may be amended from time to time.

STANDARD INCLUSIONARY HOUSING COMPONENT.

- A. Number and Affordability of Inclusionary Units. For all residential developments of 20 units or more, the Inclusionary Housing Component shall consist of Inclusionary Units developed for, offered to, and leased or sold to Very Low, Low, and Moderate Income Households as follows: at least 5 percent of the units must be restricted to occupancy of moderate income households and 5 percent of the units must be restricted to occupancy of low and/or very low income households. For the purposes of calculating the number of inclusionary units, any decimal fraction of 0.5 or more shall be rounded up to the nearest whole number.
- B. Location of Inclusionary Units. Except as provided in this Section, Inclusionary Units shall be built on the site of the Development Project and must be dispersed throughout a Residential Development.
- C. Timing of Development. The Inclusionary Housing Plan and Inclusionary Housing Agreement shall include a phasing plan, which provides for the timely development of the Inclusionary Units as the Residential Project is built out. The phasing plan shall provide for development of the Inclusionary Units concurrently with the Market Rate Units; provided however, that the phasing plan will be adjusted by the Director of Environment & Community Development (E&CD) away from strict concurrency where necessary in order to account for the different financing and funding environments, economies of scale, and infrastructure needs applicable to development of the Market Rate and the Inclusionary Units. Multi-family development shall
- D. Design. Inclusionary units for single-family shall be comparable in infrastructure (including sewer, water and other utilities), construction quality, and exterior design to the market rate units. Inclusionary units may be smaller in aggregate size and have different interior finishes and features than market rate units so long as the interior features are durable, of good quality and consistent with contemporary standards for new housing. Inclusionary single-family units must be a minimum of 1,600 square feet for moderate-income households, 1,250 square feet for low-income households, and 1,000 square feet for very low-income households. The number of bedrooms in the inclusionary units should be comparable in number to those in the market rate units. The ratio of bathrooms per bedroom should be equal to the ratio of bathrooms per bedroom in market rate units. Multi-family design standards shall be consistent with the proposed development.

- E. Unit Size. The Inclusionary Housing Component shall accommodate diverse family sizes by including a mix of studio, one, two and three-bedroom units as determined by the Director of E&CD, upon recommendation by the Director of the Office of Housing.
- F. Exterior Appearance. Inclusionary Units shall be visually compatible with the Market Rate Units. External building materials and finishes shall be the same type and quality for Inclusionary Units as for Market Rate Units. Interior materials finishes may vary.
- G. Development Standards. Except as provided in the Inclusionary Housing Agreement pursuant to this Section, Inclusionary Units shall comply with all applicable Development Standards.

4.26.4. **INCENTIVES, ASSISTANCE AND SUBSIDIES.**

The Developer of a Development Project subject to the Inclusionary Housing provisions may request that Fulton County provide Inclusionary Incentives as set forth in this Section. The goal of these Inclusionary Incentives is to apply available incentives to qualifying projects in a manner that, to the extent feasible, offsets the cost of providing the Inclusionary Housing Component. The Director of E&CD shall respond to that request at the time and in the manner specified in this Section, and shall make a determination as to a package of Inclusionary Incentives for the Inclusionary Units as provided in this Section.

- A. Fee Waivers or Deferrals. Upon application, Fulton County shall make available to a Residential Project Developer a program of waiver, reduction or deferral of development fees, Impact Fee Waiver, administrative and financing fees for Inclusionary Units. Such a program may include application, on behalf of a Developer, to other government entities for fee waiver and deferral program for waiver and/or deferral of other impact or development fees.
- B. Modification of Development Standards. Upon application, Fulton County may modify for Inclusionary Units, to the extent feasible in light of the uses, design, and infrastructure needs of the Development Project, as determined by the Director of E&CD and the Office of Housing Director, development standards, including but not limited to, road widths, curb and gutter, parking, and housing types.
- C. Interior Finish Reductions. Upon application, Fulton County may, to the maximum extent appropriate in light of project design elements as determined by the Director of E&CD, allow builders to finish out the interior of Inclusionary Units with less expensive finishes and appliances.

- D. Streamlining and Priority Processing. The Director of E&CD shall expedite development Permits for Residential Projects that include an Inclusionary Housing Component. Fulton County shall develop further procedures for streamlining and priority processing which relieve Inclusionary Units of permit processing requirements to the maximum extent feasible consistent with the public health, safety and welfare.

- E. Density Bonus. Fulton County shall make available to the Residential Project a Density Bonus as provided in this Section. The number of units allowed may be increased by 20 percent provided, however, that the affordability requirements to qualify for a Density Bonus shall be those stated in this Section.

- F. Local Public Funding. The Developer may apply to the Office of Housing for Local Public Funding to assist in the financing and development of the Inclusionary Housing Component. Local Public Funding may serve to facilitate state allocation of tax credits, mortgage revenue bond funds, or state or federal assistance to the Project ("External Subsidy"); provided that the provision of such Local Public Funding requires that Developer diligently pursue such External Subsidy and is not intended to substitute for such External Subsidy. A Developer seeking Local Public Funding shall apply to the Office of Housing Director for such funding pursuant to this Section. The Office of Housing Director shall submit the proposed Local Public Funding assistance package to the Director of E&CD for inclusion in the Fulton County's Inclusionary Incentives for the project.

The Office of Housing Director, as to the feasible elements of Local Public Funding and in making the determination as to inclusion of Local Public Funding in the Inclusionary Incentives, shall consider: (1) the number, percentage, and tenure of the Units for Very Low Income or Low Income Households in the Inclusionary Housing Component; (2) the financial structure and financing needs of the Inclusionary Housing Component; (3) the cost-efficiency of the solution to the Inclusionary Housing Component, (4) the Developer's initiatives in applying for grants and other funds external to Local Public Funding; (5) the availability of funds given the funding priorities of Office of Housing and other funding agencies at the time, and other development of housing for Very Low or Low Income Households under way, proposed or anticipated; and (6) other factors necessary to the evaluation. Office of Housing shall adopt and provide to Developers and other interested parties criteria for evaluation of applicants for Local Public Funding. These criteria may be contained in the Guidelines as outlined by the Office of Housing.

4.26.5.

CONSTRUCTION OF THE INCLUSIONARY HOUSING COMPONENT TO AVOID OVER CONCENTRATION.

The following principles shall apply to the development of the Inclusionary Housing Component:

- A. The Inclusionary Housing Plan shall provide for the dispersal of buildings containing Inclusionary Units to the maximum extent feasible taking into account the funding and financing environments applicable to Inclusionary housing development.
- B. Multi-family buildings may contain any proportion of inclusionary units, but no Inclusionary Housing Development may be located adjacent to another Inclusionary Housing Development. For purposes of this Section, Inclusionary Housing Development means a development containing a building with more than eight (8) units for multi-family or for all residential developments of 20 units or more, in which 10 percent of the total units must be inclusionary units restricted for occupancy by very low, low, or moderate income households except as otherwise provided for herein. The Director of E&CD may allow for variation from these principles, but only the extent necessary, if he or she determines that an alternative configuration of Inclusionary Units is required by funding or financing considerations associated with the development of the Inclusionary Units or by the applicable residential land use designations within and adjacent to the Residential Project.
- C. Proposed Inclusionary Single-family Housing Developments that are located within a census tract(s) in which 95% of the existing units are below 80% AMI, must submit a Housing Development Plan that includes the following mixed housing price points for sale:
 - i. 20% not to exceed \$150,000
 - ii. 60% between \$150,000 and \$216,000
 - iii. 20% Market

4.26.6.

ALTERNATIVES TO THE STANDARD INCLUSIONARY HOUSING COMPONENT.

Subject to the approval of the Board of Commissioners (BOC), in lieu of constructing affordable housing units on site, a developer may dedicate land or pay in-lieu housing fees. At the time of concept plan review, the developer shall be required to provide a report to the E&CD Director identifying the reasons the construction of the required number of affordable housing units within the development is not feasible. The report shall include sufficient independent data,

including appropriate financial information, which supports the developer's claim that it is not feasible to construct the required affordable units and a detailed analysis of why the density bonus cannot mitigate the conditions that prevent the developer from constructing the affordable units. The Director shall review all such requests and prepare a recommendation to the Board of Commissioners. Such requests shall be considered on a case-by-case basis by the BOC and may be approved at the BOC's sole discretion. The monetary value of an alternative equivalent must be equal to or exceed the cost to produce the required number of affordable housing units on site.

A. **Land Dedication and Off-Site Compliance Options.** Upon a determination by the Director of E&CD that the criteria outlined in number 4 below have been met, a Residential Project may provide all or part of its Inclusionary Housing Component by means of the following options:

- (1) Dedication of land to Fulton County at no cost. Under this option, a developer may donate to the County a site on which all or a portion of the mandated inclusionary units can be built. The dedicated site must be located in the same planning area (as defined by the Comprehensive Plan) in unincorporated Fulton County and must be physically suitable for development at the time of conveyance. It must be of sufficient size and properly zoned to accommodate the requisite number of units. It must already have access to water and sewer and public services (police, fire, etc.). The property should not have physical constraints that cause delay or increase construction costs (e.g., grading) or be unsuitable for residential development (e.g., contain toxins). The developer shall provide an appraisal of the land and its appraised value shall be confirmed by the County's Land Division of the General Services Department.
- (2) Development of Inclusionary Units Off-site. Inclusionary units may be constructed outside the Development Project within an Area ("Off-Site") for a Residential Project that is single-family or multi-family.
- (3) A combination of options (1) and (2).
- (4) Standard for Approval. The Director of E&CD may approve the proposal only if it provides a more cost-efficient solution to the Inclusionary Housing Component than the standard approach set forth in this Section, or if the location of Off-Site development would be superior to on-site development from the perspective of

access to transportation or other applicable residential planning policies in the Fulton County Comprehensive Plan.

- (5) Number of Inclusionary Units Credited to the Dedication or Off-Site Location. The number of Inclusionary Units credited to the dedication or Off-Site location will consist of the number of Inclusionary Units which can with reasonable degree of certainty be developed on the land, given (a) the mix of Inclusionary Unit sizes and type of structure in the Inclusionary Housing Plan; (b) densities permitted by applicable planning and zoning designations; and (c) site, infrastructure, environmental and other physical and planning constraints.
- (6) Site Suitability. The land proposed for dedication or for Off-Site location must be suitable from the perspective of size, configuration, physical characteristics, physical and environmental constraints, access, location, adjacent use, and other relevant planning criteria. The site must allow development of Inclusionary Units in a manner that complies with this Section including the over-concentration provisions set forth in Section 4.26.4.
- (7) Site Identification and Regulatory Status. The Developer must identify the proposed dedicated site or Off-Site location and the number of proposed Units to be credited thereby as part of the Inclusionary Housing Plan required in this Section. At the same time or before the Development Project receives its Inclusionary Incentives, the dedicated or Off-Site land shall have received all the Inclusionary Incentives necessary for development of the Inclusionary Units on such land. Unless the phasing plan requires otherwise, at the same time or before a Residential Project receives its first Project specific Entitlements, the dedicated or Off-Site land shall have received all the necessary Project-Level Approvals necessary for development of the Inclusionary Units on such land, and prior to the issuance of any Certificate of Occupancy for a Residential Project, the dedicated land or Off-Site land shall be fully served with the infrastructure necessary for residential development.
- (8) Director of E&CD Action. The Director of E&CD may recommend conditional approval or denial of the proposed land dedication or Off-Site development proposal. In reviewing the proposal, the Director of E&CD will consult with the Director of the Office of Housing. If the land dedication or the Off-Site proposal is accepted or accepted as modified, the relevant elements

of the Inclusionary Housing Plan shall be included in the applicable Legislative Approvals for both the Residential Development generating the requirement for the Inclusionary Housing Component and, if applicable, the dedicated site or Off-Site Development Project where all or part of that requirement is proposed to be met. If the dedication or Off-Site proposal is rejected, the Inclusionary Housing Component shall be provided as set forth in this Section within the Development Project.

- (9) **Implementation.** As early as possible in the regulatory process, and in no case later than the negotiation of the Inclusionary Housing Agreement as provided in this Section, the Owner of the Residential Project must: (1) in the case of land dedication, provide an irrevocable offer of dedication for the dedicated site at no cost to Fulton County; and (2) in the case of Off-Site land, demonstrate to the Director of E&CD and the Office of Housing Director that the Off-Site location is and will remain committed to the timely development of the Inclusionary Units as provided in the Inclusionary Housing Plan. This commitment may be demonstrated through ownership of the Off-site location, or through adequate control of the use of the Off-site location through joint ownership, joint venture or other contractual means. If necessary to ensure that Inclusionary Housing Units are developed contemporaneously with the Market Rate Units, the Director of E&CD may require the offer of dedication or evidence of Off-Site control as early as the first Legislative Entitlement. With respect to an Off-site location, the Director of E&CD may also condition development or occupancy of the Residential Project on development or occupancy of the Off-Site Inclusionary Units, and the Inclusionary Housing Agreement must apply to and be recorded against both the Residential Project and the Off-Site land. With respect to dedicated land, Fulton County, upon acceptance of the offer of dedication, shall publish a request for proposal for development of the site(s), which will result in the production of the number of Inclusionary Units credited to the site(s).

B. In-Lieu Housing Fees. For Residential Developments of 20 or more units, including Inclusionary Units, the requirements of this Section may be satisfied by paying an in-lieu fee to the Affordable Housing Trust Fund.

- (1) Under this option, the developer may pay an amount equivalent to the cost of constructing the mandated units at the required affordability levels. Fees shall be calculated for the construction of affordable housing units for moderate and low and very low

income households and shall be adjusted annually based upon the estimated average construction cost per square foot of floor area for single-family (not including the value of the improved lot) as estimated for the region (south) by the National Association of Home Builders or the American Apartment Association for multi-family development.

- (2) The County Manager shall establish an affordable Housing Trust Fund for the receipt and management of in-lieu housing fees. Monies received into the fund shall be utilized solely for the construction or purchase and maintenance of affordable housing and for the costs of administering programs consistent with the purposes of the section. In all cases, the required number of housing units at the required levels of affordability shall be provided for by this fund.
- (3) Fees must be paid within ten calendar days of issuance of a building permit for the Development or the permit will be null and void. For phased Developments, payments may be made for each portion of the Development within ten calendar days of the issuance of a Building Permit for that phase. When payment is delayed, in the event of default, or for any other reason, the amount of the in-lieu fee payable under this Section will be based upon the fee schedule in effect at the time the fee is paid.
- (4) No final inspection for occupancy will be completed for any corresponding Market-rate Unit in a Residential Development unless fees required under this Section have been paid in full to the Department of E&CD.

C. **Combined Dedication of Land and In-Lieu Housing Fees.** Under this option, the developer may dedicate land and pay in-lieu housing fees equivalent to the cost of producing the mandated units at the required affordability levels. The developer shall provide an appraisal of the land and its appraised value shall be confirmed by the County's Land Division of the General Services Department.

4.26.7. **EXCLUSIONS.**

The requirements of this Article do not apply to:

- (a) Housing developments of fewer than 20 lots;
- (b) Structures that have been destroyed by fire, flood, earthquake or other act of nature provided that the reconstructed site does not increase the number

- of residential units;
- (c) Developments that already have more units that qualify as affordable to moderate, low and very low income households than this Article requires;
- (d) Housing constructed by other government agencies.

4.26.8. **DURATION OF AFFORDABILITY.**

- A. **Rental Inclusionary Units.** Units shall remain Affordable for a period of no less than thirty (30) years from the recordation of the Affordable Rental Agreement.
- B. **For Sale Single Family Unit.** Units shall remain Affordable for a period of no less than fifteen (15) years from the recordation of the Affordable Housing Agreement;

4.26.9. **AFFORDABILITY AND RESALE OF FOR-SALE UNITS (SUSTAINABILITY POLICY).**

Each affordable unit created in accordance with this Section shall have limitations governing its resale. The purpose of these limitations is to preserve the long-term affordability of the unit and to ensure its continued availability for affordable income households. The resale controls shall be established through a restriction on the property and shall be in force for a period of fifteen (15) years concurrent with an equity-sharing program between the County and the homeowner.

- A. **Initial Sale.** To ensure that only eligible households purchase affordable housing units, the purchaser of an affordable unit shall be required to submit copies of the last three years' federal and state income tax returns and certify, in writing and prior to the transfer of title, to the developer of the housing units or his/her agent, and within thirty (30) days following transfer of title, to the local housing trust, community development corporation, housing authority or other agency as established by the County, that household's annual income level does not exceed the maximum level as established by the Office of Housing, and as may be revised from time to time.
- B. **Maximum Cost.** The maximum housing cost for affordable units created under this bylaw is as established by the Office of Housing and the Local Initiative Program or as revised by the County.
- C. **Resale to an Income Eligible Person Exception.** The Owner of a Residential project shall sell Inclusionary Housing Units to an income-eligible Initial Owner at an Affordable Price. Thereafter for a period of

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fifteen (15) years from the recordation of the note or other document as provided below, the Initial Owner and any subsequent owner shall notify the Office of Housing in writing of their intent to sell the Inclusionary Unit. The Homeowner or its assignee shall have ninety (90) days from receipt of the notification to (1) identify, qualify, and refer to the seller an income-eligible purchaser or request an extension. The Initial Owner and any subsequent owner shall sell the unit to the referred purchaser at the resale price established by the Office of Housing as provided in this section. In the event that the Homeowner or its assignee does not complete the purchase of the unit within the time frames specified above, an extension for the sale of the Inclusionary Unit must be obtained from the Office of Housing.

- D. Recordation of Note - Agreement or Covenant and Recapture Upon Sale. At the time of the initial sale and any subsequent sale to an income-eligible purchaser, the Office of Housing shall record an interest-bearing note, secured by a deed of trust, and/or regulatory agreement or covenant to recapture the difference between the Inclusionary Unit's market value, as determined by an appraiser approved by Office of Housing, and its Affordable Housing Price at the time of sale or resale. The Office of Housing shall also record a deed of trust encumbering any other monetary Inclusionary Incentives. The deed of trust, regulatory agreement, or covenant shall require that for a period of no less than 15 years, the unit may be resold to an income eligible purchaser. The full principal amount and interest will be due on sale to any non income eligible purchaser; due on change of use from an owner-occupied residential unit to any other use or if the Inclusionary Unit is rented; and due on any refinance of the Inclusionary Unit without the Office of Housing approval. The Office of Housing shall apply all recaptured funds to subsidize other for sale Inclusionary Housing Units.
- E. Resale Price. Sales beyond the initial sale to a qualified affordable income purchaser shall include the initial discount rate between the sale price and the unit's appraised value at the time of resale. This percentage shall be recorded as part of the restriction on the property noted in this Section. For example, if a unit appraised for \$100,000 is sold for \$75,000 as a result of this bylaw, it has sold for 75 percent of its appraised value. If, several years later, the appraised value of the unit at the time of proposed resale is \$150,000, the unit may be sold for no more than \$112,500--75 percent of the appraised value of \$150,000.

Right of first refusal to purchase: The purchaser of an affordable housing unit developed as a result of this Resolution shall agree to execute a deed rider prepared by their attorney, consistent with model riders prepared by

the Office of Housing, granting, among other things, the County's right of first refusal to purchase the property in the event that a subsequent qualified purchaser cannot be located.

The Office of Housing shall require, as a condition for permitting under this Section, that the applicant comply with the mandatory set-asides and accompanying restrictions on affordability, including the execution of the deed rider noted in this Section. E&CD shall not issue an occupancy permit for any affordable unit until the deed restriction is recorded.

- F. Equity Sharing Program. A homeowner is entitled to a share of the equity for each year of ownership pursuant to policies established by the Office of Housing. After the expiration of the 15 year affordability period, the homeowner must pay one half of the excess of the total resale price over the sum of: prior maximum sales price; a percentage of the affordable unit's prior purchase price with the cost of living increase since last sold; the fair market value documented capital improvements; and a reasonable sales and commission. If the amount remaining is less than \$20,000, the amount due to the special revenue fund will be adjusted so the seller receives \$10,000. If the amount is less than \$10,000, the seller will receive the entire amount.

- G. The Office of Housing Guidelines. The County Manager's Office of Housing shall adopt guidelines for the administration of this program. The guidelines may provide for a graduated increase in the rate of increase of market value over the time of ownership of a for-sale Inclusionary Unit by one Owner or for forgiveness of all or a portion of the note(s) when (1) the resale value of the Inclusionary Unit falls below the market value of the unit at its last sale; or (2) the income-eligible owner occupies the unit for a substantial period of time.

4.26.10. **OCCUPANCY REQUIREMENT.**

- A. Rental Units. Any person who occupies a rental Inclusionary Unit shall occupy that Unit as his or her principal residence.

- B. For-Sale Units. An Individual who purchases a for-sale Inclusionary Unit shall occupy that unit as his or her principal residence, and shall certify to the Developer of the Unit or the Office of Housing that he or she is income eligible.

ADMINISTRATION OF THE INCLUSIONARY HOUSING COMPONENT.

The Inclusionary Housing Program shall be administered by two County agencies: E&CD and the County Manager's Office of Housing. Environment and Community Development shall oversee the zoning and permitting process. The Director of the Office of Housing shall be responsible for determining targeted rental and ownership affordability, resident qualifications, and monitoring the program. The Office of Housing shall conduct a study within eighteen (18) months of the 24-month voluntary period, to determine the success of the Resolution to determine whether the Program should remain voluntary or mandatory.

- A. Proposed Inclusionary Housing Plan. At the time of and as part of the application for the Inclusionary Zoning, the Developer of a Development Project shall present to E&CD and the Office of Housing a draft Inclusionary Housing Plan, which shall contain, at a level of detail appropriate to the request, the number, unit mix, location, structure type, affordability, and phasing of Inclusionary Units. If land dedication or an Off-Site location is proposed, the draft Plan shall include information necessary to establish site location, suitability, development constraints, and the number of Inclusionary Units assigned.
- B. Action on Inclusionary Housing Plan. E&CD and the Office of Housing shall review the proposed Inclusionary Housing. No Zoning designation shall be granted without an adequate Inclusionary Housing Plan. The elements of the Inclusionary Housing Plan shall be incorporated into the terms and conditions of the applicable Project-specific Approvals.
- C. Inclusionary Housing Agreement.
1. Requirement. No Development Agreement or Project-specific Approval may be issued by Fulton County without an executed Inclusionary Housing Agreement executed by the Owner, the Developer (if not Owner), and the Director of the Office of Housing acting with the advice of the E&CD Director. Recordation of the Agreement shall be a condition of approval of any Development Agreement, Disposition and Development Agreement or Project-level Approval.
 2. Timing. The Inclusionary Housing Agreement shall be negotiated concurrently with the processing of an application for the earlier of a Development Agreement or the first Project-specific Approval. At the request of the Developer, and if Developer makes the

project development and financing details set forth below in subparagraphs 3 and 4 available, the Inclusionary Housing Agreement may be negotiated earlier in connection with the issuance of a Legislative Entitlement.

3. Contents. The Agreement shall be consistent with the Inclusionary Housing Plan, and shall indicate: ownership or rental project, the number and size of Moderate, Very Low and Low income Units, the developer of the Inclusionary Units, the phasing and construction scheduling of the Units, commitments for Inclusionary Incentives, including Office of Housing commitments for Local Public Subsidy, and any other information required by the Office of Housing relative to the Inclusionary Housing Component. In the case of land dedication or Off-Site Inclusionary Housing, the Agreement shall also contain the information required in this Section.
4. Information Required from Developer. The Developer of the Development Project shall present to E&CD and the Office of Housing: (1) plans, schematics, and details of phasing of the Residential Project as a whole including the Inclusionary Housing Component; (2) financial pro-forma for the Inclusionary Housing Component with sufficient economic information to allow for evaluation of feasibility, financing and equity sources and requirements, and rates of return; (3) the name and address of the entity which will develop the Inclusionary Housing Component if not Developer; (4) in the case of land dedication, an executed irrevocable offer of dedication at no cost; (5) in the case of Off-Site location, the evidence of site control required in this Section, and (6) any other information reasonably required by the Office of Housing in connection with the Agreement.
5. Local Public Subsidy. The Developer of the Development Project may apply to the Office of Housing for Local Public Subsidy. Such an application shall contain the planning and financial information necessary to evaluate the eligibility and suitability of the project for Local Public Funding and shall include timetables or copies of proposals for External Subsidy. The application will be considered pursuant to the Office of Housing Multi Family Lending Guidelines, Office of Housing Single Family Ownership Housing Financing Guidelines, and any Guidelines developed pursuant to this Section. The Office of Housing shall determine the Inclusionary Incentives it will make available in connection with the Residential Project as provided in this Section. The

Inclusionary Housing Agreement shall specify the nature and amount of Local Public Funding. If Fulton County fails to make available the Inclusionary Incentives set forth in an executed and recorded Inclusionary Housing Agreement, the Residential Project shall be relieved of the portion of the Inclusionary Obligation that represents the percentage of local public funding committed in the Agreement but not provided. At Fulton County's option, the Agreement may provide that if the Local Public Funding component of the Inclusionary Incentives is delayed beyond the time provided for in the Agreement, the construction of Inclusionary Units may be deferred until funding availability, or that during the period of delay, the Owner may offer the Inclusionary Units as rental units at Market Rate until such time as the Local Public Funding indicated in the Agreement becomes available, at which time such rental units, upon being voluntarily vacated by existing market rate tenants, would be offered as Inclusionary Units.

6. Incorporation into Project-level Approvals and Recordation. The Developer's obligations and the Inclusionary Incentives in the Agreement shall be incorporated into the Project-specific Approvals. The executed Agreement shall be recorded as a covenant running with the land against the real property of the Residential Project and, in the case of Off-Site Inclusionary Units, against the real property on which such Units are to be located.

D. Administration of Affordability for Rental Inclusionary Housing. The Owner of rental Inclusionary Units shall be responsible for certifying the income of tenant to the Office of Housing at the time of initial rental and annually thereafter. The Owner of rental Inclusionary Units shall apply the same rental terms and conditions (except rent levels, deposits and income requirements) to tenants of Inclusionary Units as are applied to all other tenants, except as otherwise required to comply with government subsidy programs. Discrimination based on subsidies received by the prospective tenant is prohibited. The Fulton County Office of Housing shall keep confidential the personal identifying information of the household members occupying an Inclusionary Unit.

E. Guidelines. The Office of Housing Multi-family Development Financing Guidelines and the Office of Housing Single Family Ownership Housing Financing Guidelines shall apply to Inclusionary Housing developed under this Section. The Director of E&CD and Office of Housing Director may jointly develop, and either of them may adopt, additional guidelines as

necessary for the implementation of this Section consistent with the terms contained herein.

4.26.12. **ADMINISTRATIVE FEES.**

The Fulton County Board of Commissioners may by resolution establish reasonable fees and deposits for the administration of this Section.

4.26.13. **PARTICIPATION.**

Participation in the Inclusionary Housing Zoning Program shall be voluntary for a twenty-four month period after which it will sunset until the Board of Commissioners determines the effectiveness of the program and the conditions for its future implementation.

4.26.14. **ENFORCEMENT AND PENALTIES.**

- A. No Inclusionary Incentives shall be issued or valid without an Inclusionary Housing Plan as required by this Section.
- B. No Project-specific Approval nor Development Agreement shall be issued for any Development Project unless an Inclusionary Housing Agreement has been approved and executed, and no building permit or certificate of occupancy shall issue until the Inclusionary Housing Agreement has been recorded as required by this Section.
- C. If the developer violates this ordinance in any way, including not constructing the required affordable units, the County may deny, suspend, or revoke any and all building or occupancy permits. The County can also withhold any additional building permits until the affordable units are built.
- D. If the ordinance is violated by the sale of an affordable unit, the County can enjoin or void any transfer of the affordable unit and require the owner to sell the unit to an eligible income individual.
- E. Fulton County may bring such civil and criminal enforcement actions as are provided for in the Fulton County Code.

4.26.15. **SEVERABILITY.**

The Fulton County Board of Commissioners hereby declares that every section, paragraph, clause and phrase of this Ordinance is severable. If, for any reason, any provision of the ordinance is held to be invalid, such invalidity shall not affect the validity of the remaining provisions.

4.26.16. **APPEALS.**

Any persons aggrieved by a final decision of the Department of Environment and Community Development relating to this article may appeal such final decision to the Board of Zoning Appeals by filing in writing setting forth plainly, fully and distinctly why the final decision is contrary to law per the Fulton County Zoning Resolution. Such appeal shall be filed within 30 days after the final decision of the department is rendered.

4.26.17. **EFFECTIVE DATE.**

The effective date of this Zoning Amendment shall be January 1, 2007.