

AN ORDINANCE TO AMEND THE CODE OF ATHENS-CLARKE COUNTY, GEORGIA, WITH RESPECT TO **VOLUNTARY INCLUSIONARY ZONING**; AND FOR OTHER PURPOSES.

WHEREAS, the Unified Government of Athens-Clarke County, Georgia, is charged with providing for the general health, welfare, and safety of its residents; and

WHEREAS, the 2018 Athens-Clarke County Comprehensive Plan has a goal to increase the availability of well-designed, affordable, safe, and sanitary housing for all residents of Athens-Clarke County, Georgia, in order to meet the needs of the community, particularly as it relates to supporting families and a diverse workforce, with an emphasis on the implementation of inclusionary zoning techniques; and

WHEREAS, the February 2019 Proposal to Improve Housing Affordability in Athens, Georgia presented by the Georgia Initiative for Community Housing, Athens Team, and accepted by the Mayor and Commission of the Unified Government of Athens-Clarke County, Georgia, identified the need to incentivize inclusionary development as the second of five key strategies to address the affordable housing shortage in Athens-Clarke County; and

WHEREAS, based upon the review and consideration of reports and analyses of the housing supply in Athens-Clarke County, Georgia, the Mayor and Commission recognize that land is a finite resource to accommodate residential growth, that the diversity of its housing stock has declined for many reasons including increasing property values and construction costs, and that there has been a substantial decrease in affordable housing development within Athens-Clarke County; and

WHEREAS, the Mayor and Commission believe that housing is an essential human right and recognize that affordable housing benefits a diverse group of individuals, seniors, and families, who may be housing stressed and whose incomes do not allow them to easily find housing within our community and whose incomes are at or below 80% of Area Median Income (AMI); and

WHEREAS, the Mayor and Commission recognize that without intervention, the trend toward rising household costs will result in an increasingly inadequate supply of affordable housing for Athens-Clarke County residents and local employees, which will have a negative impact upon the ability of local employers to maintain an adequate local work force; and

WHEREAS, since the remaining land appropriate for new residential development within Athens-Clarke County is limited, it is essential that a reasonable proportion of such land use be development with dwelling units affordable to low- and moderate-income households; and

WHEREAS, the Mayor and Commission recognize that displacement or elimination of affordable housing within Athens-Clarke County would cause multiple harms to the community, including but not limited to, increases in travel time and distances for persons who provide services or are employed in Athens-Clarke County, but unable to afford housing here,

which in turn increases traffic congestion, reduces air and water quality, and has an adverse impact on public health; an imbalance in population diversity; and inconsistency with the vision for future development and the specific policies of the 2018 Athens-Clarke County Comprehensive Plan; and

WHEREAS, the Mayor and Commission wish to approve proposed amendments to Article II Title 9 of the Code of Ordinances of Athens-Clarke County in order to increase the stock of high-quality, affordable housing located in neighborhoods throughout Athens-Clarke County for households of a variety of income levels, ages and sizes in order to meet the Unified Government's goal of preserving and promoting a culturally and economically diverse population within Athens-Clarke County; and

WHEREAS, the proposed amendments will further the goals of the 2019 Proposal to Improve Housing Affordability in Athens, Georgia, and the 2018 Athens-Clarke County Comprehensive Plan to make Athens-Clarke County a more welcoming, diverse, and inclusive place to live; and

WHEREAS, said amendments will promote the health, sanitation, cleanliness, safety, morals, good order, security, prosperity and the general welfare of present and future inhabitants of Athens-Clarke County; and

WHEREAS, required public hearings were held by the Planning Commission of Athens-Clarke County and the Mayor and Commission for the proposed changes to the text of the Athens-Clarke County Zoning and Development Standards Ordinances, all in compliance with the Zoning Procedures Law as well as the applicable provisions of the Zoning and Development Standards Ordinances.

NOW, THEREFORE, The Commission of Athens-Clarke County, Georgia hereby ordains as follows:

SECTION 1. Chapter 9-27, previously marked "*Currently reserved*," of the Code of Athens-Clarke County, Georgia, is hereby deleted in its entirety with the following new chapter inserted in lieu thereof:

#### **"CHAPTER 9-27 INCLUSIONARY ZONING – RENTALS**

Sec. 9-27-1. – Purpose and Intent.

- a. This chapter of the Zoning and Development Standards Ordinance is intended to provide that multi-family residential projects in Athens-Clarke County are:
  1. Incentivized to contain a defined percentage of housing affordable to low-income and moderate-income households; and
  2. Encouraged to implement housing for residents of mixed income levels consistent with the goals of the 2018 Athens-Clarke County Comprehensive Plan and the 2019 Proposal to Improve Housing Affordability in Athens, Georgia presented by the Georgia Initiative for Community Housing, Athens Team.

b. This chapter seeks to:

1. Provide for a range of housing choices, conveniently located in a suitable living environment, for all incomes, ages and family sizes;
2. Provide housing to meet the existing and anticipated future needs of low to moderate income households;
3. Encourage the construction of affordable housing by allowing increases in density to offset land and development costs;
4. 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.

Sec. 9-27-2. – Definitions.

The following definitions shall apply in the interpretation and enforcement of this chapter:

*Affordable* means rented at an affordable rent or sold at an affordable housing price.

*Affordable housing price* means a sales price, at which low to moderate income households, as provided in this chapter, can qualify for the purchase of for-sale inclusionary units, based on designated income standards. For purposes of this calculation, housing expenses shall include:

1. Mortgage principal and interest;
2. Taxes;
3. Insurance; and
4. Assessments.

*Affordable rent* means:

1. For a unit whose occupancy is restricted to a low-income household, that the monthly rent does not exceed 1/12 of 30 percent of 80 percent of the area median income (AMI), adjusted for family size, as published and annually updated by the United States Department of Housing and Urban Development that is applicable to Athens-Clarke 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 1/12 of 30 percent of 60 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 that is applicable to Athens-Clarke County.
3. In each case, the area median income applicable to Athens-Clarke County shall be 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.

*Athens-Clarke County:* The Unified Government of Athens-Clarke County.

*Density bonus* means a density increase over the otherwise maximum residential density as permitted by the Athens-Clarke County zoning ordinance and the comprehensive land use plan at the time of application.

*Developer* means any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities that seeks Athens-Clarke County's approval for all or part of a development project. The term "developer" includes the term "owner."

*Development agreement* means an agreement entered into between Athens-Clarke County and a developer.

*Household income* means the combined adjusted gross income for all adult persons residing in a living unit.

*Household, low-income,* means a household whose annual income does not exceed 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,* means a household whose annual income does not exceed 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,* means a household whose income does not exceed 60 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 fund* means the fund created by Athens-Clarke County for the purposes of utilizing payments in lieu authorized by this chapter for the development of affordable housing within Athens-Clarke County.

*Inclusionary housing agreement* or *agreement* means the agreement between a developer and Athens-Clarke County setting forth the manner in which the inclusionary housing component will be met in the development project.

*Inclusionary housing component* means the provision of the inclusionary housing units in a development project.

*Inclusionary housing development* means a development in which the developer has voluntarily agreed to comply with the inclusionary zoning requirements of this chapter in exchange for certain inclusionary incentives.

*Inclusionary housing plan* means a plan required at the time of Plan Review for a land disturbance permit or building permit that provides the details of proposed inclusionary units.

*Inclusionary housing unit* or *inclusionary unit* means an ownership or rental dwelling unit developed as a part of the inclusionary housing component of a development project as provided in this chapter.

*Inclusionary incentives* means the planning and building standards waivers or reductions, and regulatory incentives or concessions provided by Athens-Clarke County to a development project to assist in the provision of the inclusionary housing component.

*Income, area median*, means 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.

*Land Use Restriction Agreement* means legal restrictions by which the rents for rental inclusionary units will be controlled to ensure that rents remain affordable for a period of twenty (20) years or longer if determined to be legally permissible.

*Market rate* means rates not restricted to an affordable housing price or affordable rent.

*Off-site unit* means an inclusionary unit that is built separately or at a different location than the main development.

*On-site unit* means an inclusionary unit that will be built as a part of the main development.

*Owner* includes the person, partnership, joint venture, association, corporation, or public or private entity having proprietary interest in real property to commence, maintain, and operate a development project.

*Residential project* means a residential development project eligible for the opportunity to provide an inclusionary housing component as specified in this chapter.

#### Sec. 9-27-3. – Penalty.

- a. No inclusionary incentives shall be issued without an approved development agreement clearly identifying the voluntary affordable housing to be provided as authorized by this chapter.
- b. If the developer violates this chapter or an executed inclusionary housing agreement in any way, including not constructing the required affordable units, Athens-Clarke County may deny, suspend, or revoke any and all building or occupancy permits. Athens-Clarke County can also withhold any additional building permits until the affordable units are built.
- c. Athens-Clarke County or its designee may bring such civil and criminal enforcement actions as are provided for in the Code of Athens-Clarke County.

#### Sec. 9-27-4. – Standards.

- a. *Minimum eligibility requirements.* Any development involving the construction, renovation, reconstruction, or change in use of multiple-family dwellings shall be eligible to apply to be considered as an inclusionary housing development, provided that one of the following minimum project sizes are applicable:
  1. Any new development that creates at least five (5) multiple-family dwelling units;
  2. Any renovation or reconstruction of existing multiple-family dwelling units that increases the number of dwelling units by at least five (5) dwelling units; or

3. Any change in use of all or part of an existing development of one or more buildings from a nonresidential use to a residential use that has at least five (5) dwelling units.
- b. *Number of inclusionary units.* To calculate the number of inclusionary dwelling units or lots, the total number of proposed units shall be multiplied by the associated percentage identified in Section 9-27-5. If the product contains a fraction, it shall be rounded up to the next higher integer or the applicable percentage may be made as a payment in lieu for the fractional percentage of a unit.
  1. *Location of inclusionary units.* The inclusionary units shall be located within the inclusionary housing development, except in accordance with the payment in lieu option as defined below in Section 9-27-7.
- c. *Leased or rented inclusionary units.* Inclusionary dwelling units that will be leased or rented shall be:
  1. Restricted to households having an income that does not exceed the designated percentage of the area median income for the family size having the same number of persons as the subject household for the Athens-Clarke County, Georgia, Metropolitan Statistical Area, as published by the U.S. Department of Housing and Urban Development as of the date of the household's application, and whose housing and utility costs do not exceed thirty percent (30%) of the household's annual gross income; and
  2. Maintained as inclusionary dwelling units through a land use restriction agreement with Athens-Clarke County and/or its authorized designee for a period of 20 years or the longest period which is permissible under Georgia state law.
- d. *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 may be adjusted by the director of the Planning Department 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.
- e. *Design, appearance, and size.* Inclusionary units shall be:
  1. Indistinguishable from the market rate units in infrastructure (including sewer, water and other utilities); construction quality; interior and exterior design; and all aspects of construction, design, and materials;
  2. Designed to have a number of bedrooms and bathrooms with the intent of accommodating diverse family sizes by including a mix of studio, one, two, and three-bedroom units, all in substantially the same proportion as the market rate dwelling units, as applicable;

3. Interspersed among the market rate dwelling units within the development with access to the same communal areas, shared spaces, entrances, exits, elevators, and amenities, as well as the same share of parking spaces, as those that are enjoyed by and are accessible to the market rate dwelling units. Developments not meeting this criterion must be approved by the Athens Clarke County Planning Commission as a Type III action as defined in Section 9-4 of the Zoning Ordinance;
4. Designed to be indistinguishable in square footage, style, and quality with the market rate dwelling units in the development;

Sec. 9-27-5. – Inclusionary incentives.

- a. *Purpose.* 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.
- b. *Density Bonus.*
  1. Athens-Clarke County shall make available to the residential project the following applicable density bonus and incentives:

Zoning District	Allowable Density Bonus	% Affordable Units Required	
		OPTION A	OPTION B
<b>RM-1</b>	50%	15%*	10%**
<b>RM-2</b>	50%	15%*	10%**
<b>RM-3</b>	50%	15%*	10%**
<b>C-O</b>	50%	15%*	10%**
<b>CN</b>	50%	15%*	10%**
<b>CG</b>	100%	20%*	15%**
<b>CD</b>	25%	10%*	5%**

\*Under Option A, affordable units must be rented to qualifying low-income residents at or below 80% AMI.

\*\*Under Option B, affordable units must be rented to qualifying very-low income residents at or below 60% AMI. .

2. To calculate the density bonus for multi-family developments, the maximum number of dwelling units allowed in the applicable zoning district shall be multiplied by the applicable percentage in the chart above. If the product contains a fraction, a fraction of 0.5 or more shall be rounded up to the next higher integer, and fraction of less than 0.5 shall be rounded down to the next lower integer.

- c. *Parking Reduction.* All qualifying projects shall be allowed up to a twenty percent (20%) parking reduction if within one thousand five hundred (1,500) feet of an Athens-Clarke County Transit stop.
- d. *Ground Floor Commercial Development Reduction.* Qualifying projects within the CD zone shall be allowed up to a fifty percent (50%) reduction in required percentage of ground floor commercial development as defined in Section 9-10-2 (L1).
- e. All qualifying inclusionary housing developments must meet all other underlying development standards associated with the zoning district.

Sec. 9-27-6. Reserved—

Sec. 9-27-7. – Payment in Lieu Alternative.

- a. Under this option, qualifying projects in the CD (Commercial Downtown) zoning district may choose to make a payment in lieu of providing affordable units on-site. The payment in lieu amount shall be the product of: the number of affordable units required under option A above, multiplied by a per-unit figure, which shall be determined from time to time by the Mayor and Commission, based on the estimated cost of constructing the mandated units. In other zoning districts, payments in lieu are available only in lieu of any required fractional percentage of a required affordable unit, in place of rounding up to the next whole number. The per-unit payment amount set by the Mayor and Commission shall be located in its Schedule of Fees and Charges pursuant to Sec. 2-6-2. The county manager shall establish a housing 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 this section.
- b. Payment in lieu fees must be paid prior to the issuance of a building permit for the development. For phased developments, payments may be made for each portion of the development prior to 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, or at the time the payment was due, whichever is greater.

Sec. 9-27-8. – Occupancy requirement.

Any person who occupies a rental inclusionary unit shall occupy that unit as his or her principal residence.

Sec. 9-27-9. – Administration of the inclusionary housing program.



- a. *Entities.* The inclusionary housing program shall be administered by the Unified Government of Athens-Clarke County's Planning Department in conjunction with the Housing and Community Development Department. Additionally, the Unified Government may contract with an outside party at the discretion of the Mayor and Commission to provide further administration and monitoring services.
- b. *Duties.* The Planning Department shall oversee the zoning and permitting process. The director of the Housing and Community Development Department shall be responsible for determining targeted rental and ownership affordability, resident qualifications, and monitoring the program.
- c. *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 the Planning Department 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.
- d. *Action on inclusionary housing plan.* The Housing and Community Development Department shall review the proposed inclusionary housing plan. The elements of the inclusionary housing plan shall be incorporated into the terms and conditions of the applicable project-specific approvals.
- e. *Inclusionary housing agreement.*
  - 1. *Requirement.* No development agreement or project-specific approval may be issued without an executed inclusionary housing agreement executed by the owner, the developer (if not owner), and the director of the Housing and Community Development Department acting with the advice of the Planning 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.
  - 3. *Contents.* The agreement shall be consistent with the inclusionary housing plan, and shall indicate: the number of 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 commitments for local public subsidy, and any other information required by the Housing and Community Development Department 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 subsection.
  - 4. *Information required from developer.* The developer of the development project shall provide
    - a. Plans, schematics, and details of phasing of the residential project as a whole including the inclusionary housing component;

- b. The name and address of the entity which will develop the inclusionary housing component, if not the developer;
  - c. Any other information reasonably required by the Housing and Community Development Department in connection with the agreement.
- 5. *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.
- b. *Administration of affordability for rental inclusionary housing.* The owner of rental inclusionary units shall be responsible for certifying the income of tenants to the Housing and Community Development Department 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 Housing and Community Development Department shall keep confidential the personal identifying information of the household members occupying an inclusionary unit.
- c. *Guidelines.* The director of the Housing and Community Development Department and the director of the Planning Department may jointly develop, and either of them may adopt, additional guidelines as necessary for the implementation of this chapter consistent with the terms contained herein.

Sec. 9-27-10. – Administrative fees.

The Mayor and Commission may by resolution establish reasonable fees and deposits for the administration of this chapter, which shall be set forth in the annual Schedule of Fees and Charges pursuant to Sec. 2-6-2.

Sec. 9-27-11. – Participation.

Participation in the inclusionary housing zoning program shall be entirely voluntary.

Sec. 9-27-12. – Severability.

The Mayor and Commission hereby declare that every section, paragraph, clause, and phrase of this chapter is severable. If, for any reason, any provision of this chapter is held to be invalid, such invalidity shall not affect the validity of the remaining provisions.

SECTION 2. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

