CITY COUNCIL
ATLANTA, GEORGIA

01-O-0843

AN ORDINANCE
BY COUNCILMEMBERS MICHAEL J. BOND AND DERRICK BOAZMAN, CLETA WINSLOW, "ABLE" MABLE THOMAS, SHERRY DORSEY, C.T. MARTIN, VERN MCCARTY, JIM MADDOX AND JULIA EMMONS AS SUBSTITUTED BY FULL COUNCIL

AN ORDINANCE TO AMEND CHAPTER 58 OF THE CODE OF ORDINANCES OF THE CITY OF ATLANTA SO AS TO CREATE A NEW ARTICLE IV TO BE ENTITLED "PREDATORY LENDING PRACTICES;" TO AMEND CHAPTER 2, ARTICLE X, DIVISION 4 BY CREATING A NEW SECTION 2-1213 SO AS TO PROHIBIT PREDATORY LENDERS FROM CONTRACTING WITH THE CITY OF ATLANTA; TO AMEND CODE SECTION 2-1623 SO AS TO DEBAR PREDATORY LENDERS FROM DOING BUSINESS WITH THE CITY OF ATLANTA; TO AMEND SECTION 2-965 SO AS TO PROVIDE THAT THE CITY SHALL NOT KEEP ANY CITY FUNDS ON DEPOSIT WITH A PREDATORY LENDER OR AN AFFILIATE THEREOF; TO AMEND CHAPTER 2, ARTICLE VI SO AS TO CREATE A NEW SECTION 2-324 TO PREVENT INVESTMENT OF CITY FUNDS IN PREDATORY LENDERS OR THEIR AFFILIATES; TO REPEAL CONFLICTING ORDINANCES; AND FOR OTHER PURPOSES.

WHEREAS, the governing body of the City of Atlanta has received complaints that its elderly and fixed-income residents are losing their homes because the loan documents they signed contained unconscionable terms that they misunderstood or did not understand; and

WHEREAS, the Mayor and the governing body of the City of Atlanta seek to protect the health, safety and welfare of its citizens; and

WHEREAS, the Charter of the City of Atlanta empowers its governing authority to make, ordain, and establish such bylaws, ordinances, rules, and regulations as shall appear necessary for the security, welfare, convenience, and interest of the city and the inhabitants thereof and for preserving the health, peace, order, and good government of the city

WHEREAS, loan practices that take advantage of the most vulnerable of our citizens are contrary to the public interest and threaten the viability and stability of area neighborhoods and their citizens.

WHEREAS, the City will discourage the practice of predatory lending by enacting this ordinance restricting the City's business transactions to entities that are not engaged in predatory lending.

THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA HEREBY ORDAINS as follows:

Section One: **That Chapter 58 of the City of Atlanta Code of Ordinances be amended by creating a new Article IV entitled "Predatory Lending Practices", to read as follows:**

ARTICLE IV. PREDATORY LENDING PRACTICES.

Section 58-100 Legislative Findings.

The City Council of the City of Atlanta, Georgia finds:

(a) that citizens from many lower and moderate income neighborhoods in Georgia have been unable to access legitimate financing for home purchases and renovations, allowing predatory lenders to thrive; and

(b) that these predatory lenders are charging exorbitant fees and interest rates and are persuading citizens to incur mortgage debt in excess of their needs or ability to pay often through fraudulent means; and

(c) these predatory lending practices appear to be targeting elderly and vulnerable borrowers; and

(d) that to protect the citizens of Atlanta and its neighborhoods from lending practices which strip hard earned equity from city residents and contribute to the problem of vacant and abandoned houses by making loans that families cannot afford to repay.

Section 58-101. Intent and Purpose

It is the intent and purpose of this Chapter:

(a) to collect and make available to the public information necessary for city residents to protect themselves against predatory lending practices; and

(b) to prevent the lenders engaged in predatory lending and those persons providing referrals and services to those lenders from enjoying the privilege of doing business with our City.

Section 58-102. Definitions.

The following definitions shall apply throughout this Chapter:

(1)"Affiliate" means any entity that controls, is controlled by, is under common control with, or makes loans to, including capital business loans, another entity, including any successors in interest or alter egos. For the purposes of this definition, "control" shall mean any entity that has control over another entity if:

(a) the entity directly or indirectly or acting through one or more other persons owns, controls, or has power to vote 25 per centum or more of any class of voting securities of another entity; or

(b) the entity controls in any manner the election of a majority of the directors or trustees of another entity.

(2) "Annual percentage rate". The annual percentage rate for the loan calculated according to the provisions of the federal Truth in Lending Act (15 U.S.C. §1601

et. seq.), and the regulations promulgated thereunder by the Federal Reserve Board (as said Act and regulations are amended from time to time).

(3) "Business Entity". Any individual, domestic corporation, foreign corporation, association, syndicate, joint stock company, partnership, joint venture, or unincorporated association, including any parent company, subsidiary, exclusive distributor or company affiliated therewith, engaged in a business or commercial enterprise.

(4) "City ". The City of Atlanta.

(5)"City Agency ". The City of Atlanta, its departments, boards and commissions;

(6)"City-related Agency". All authorities and quasi public corporations which either:

(a) receive appropriations from the City; or
(b) have entered into continuing contractual or cooperative relationships with the City; or
(c) operate under legal authority granted to them by City ordinance.

(7) "High Cost Lender". A business entity that, through itself and/or an affiliate has made, issued or arranged, within any 12 month period, high cost loans that comprise either:

(a) 5% of the total annual number of loans made, issued or arranged; or
(b) 10 individual loans; whichever is less

The term "high cost lender" shall not include a business entity, or its affiliates, that has submitted to the City a plan to discontinue the practice of making high cost loans, if the plan ensures:

(a) the prompt disengagement from the practice of making, issuing, or arranging high cost loans by the business entity(s) and its affiliates; and
(b) the complete cessation of the making, issuing or arranging of high cost loans by the business entity and its affiliates within 90 days after the plan is submitted; provided that no more than one plan may be submitted on behalf of any business entity.

(8) "High Cost Loan". A high cost loan is a loan that is secured by residential real property located within the City of Atlanta on which there is situated a dwelling for not more than four families or a condominium unit, or is secured by a cooperative unit within the City of Atlanta, if:

(a) The annual percentage rate of the loan equals or exceeds five (5) percentage points over the weekly average yield on United States Treasury securities with a comparable duration to the term of the loan, as of the week immediately preceding the week in which the interest rate for the loan is established, subject to the following conditions:

(i) If the terms of the loan offer any initial or introductory period, and the annual percentage rate is less than that which will apply after

the end of such initial or introductory period, then the annual percentage rate that shall be taken into account for purposes of this paragraph shall be the rate which applies after the initial or introductory period; and

(ii) In the case of an interest rate which varies in accordance with an index, the loan shall be deemed a high cost loan if:

A. potential or scheduled increases in the interest rate of the loan are not directly tied to future increases and decreases in a widely used federal or private market measurement that reflects the cost of borrowing money, such as the interest rate yield on United States Treasury securities, the federal funds rate, or the prime interest rate; or

B. the margin over such index at any point during the life of the loan exceeds five (5) percentage points.

(b) The total points and fees exceeds three percent (3%) of the total loan amount.

(9) "Points and Fees" means:

(a) All items required to be disclosed under Sections 226.4(a) and 226.4(b) of Title 12 of the Code of Federal Regulations, as amended from time to time, except the interest rate or time-price differential;

(b) All charges for items listed under Section 226.4(c)(7) of Title 12 of the Code of Federal Regulations, as amended from time to time, but only if the charges are not bona fide and reasonable in amount or the lender receives direct or indirect compensation in connection with the charge or the charge is paid to an affiliate of the lender;

(c) All compensation paid directly or indirectly (including but not limited to yield spread premiums) to a mortgage broker, including a broker that originates a loan in its own name in a table funded transaction, not otherwise included in subparagraph (a) or (b) of this paragraph;

(d) All premiums or other charges financed, directly or indirectly, in the loan for any credit life, credit disability, credit unemployment, accident, health, or loss-of-income insurance or any other line or subline of insurance which may become accepted as credit insurance by the insurance and lending industries or for any debt cancellation or suspension agreements or contracts (whether or not the debt cancellation or suspension agreement coverage is insurance under applicable law), or similar products; and

(e) The maximum prepayment fees or penalties that may be charged under the terms of the loan.

(10) "Predatory lender" means a business entity that, through itself and or an affiliate has made, issued or arranged, within any 12 month period, predatory loans that comprise either:

(a) Five percent (5%) of the total annual number of loans made, issued or arranged; or

(b) Ten (10) individual loans; whichever is less.

The term "predatory lender" shall not include a business entity, or its affiliates, that has submitted to the City a plan to discontinue the practice of making predatory loans, if the plan ensures:

(a) the prompt disengagement from the practice of making predatory loans by the financial institution and its affiliates, and
(b) the complete cessation of the making of predatory loans by the financial institution and its affiliates within 90 days after the plan is submitted; provided that no more than one plan may be submitted on behalf of any financial institution.

(11)"Predatory loan" means a threshold or high cost loan that was made under circumstances that involve any of the following acts or practices or that contain any of the following loan terms:

(a) Fraudulent or deceptive acts or practices, including fraudulent or deceptive marketing and sales efforts to sell high cost loans;
(b) "Loan Flipping". "Flipping" a loan means the making of a threshold or high cost loan to a borrower that refinances an existing loan secured by residential property in the city of Atlanta when the new loan does not have a reasonable, tangible net benefit to the borrower considering all of the circumstances, including the terms of both the new and refinanced loans, the cost of the new loan, and the borrower's circumstances. Reduction of monthly payments alone shall not be considered a tangible net benefit to the borrower.
(c) "Balloon Payments". A loan that contains a scheduled payment that is more than twice as large as the average of earlier scheduled payments or which contains a provision that gives the lender, in its sole discretion, the right to accelerate the indebtedness in the absence of the default of the borrower.
(d) "Negative Amortization". A loan that contains a payment schedule with regular periodic payments that causes the principal balance to increase.
(e) "Points and Fees." The direct or indirect financing of the following: (1) any prepayment fees or penalties payable by the borrower in a refinancing transaction if the lender or an affiliate of the lender is the noteholder of the note being refinanced; (2) any points and fees; or (3) any other charges payable to third parties.
(f) "Increased Interest Rate". A loan that contains a provision that increases the interest rate after the occurrence of a default. Interest rate increases do not constitute a predatory loan practice in a variable rate loan where the increase is otherwise consistent with the provisions of the loan documents, provided that the event of default or the acceleration of the indebtedness does not trigger the change in the interest rate.
(g) "Advance Payments". A loan which includes terms under which more than two periodic payments required under the loan are consolidated and paid in advance from the loan proceeds provided to the borrower other

than a loan issued by or guaranteed by city agencies, city-related agencies, or another state or federal government agency.

(h) "Modification or Deferral Fees ". A loan which includes terms under which the lender may charge a borrower any fees or other charges to modify, renew, extend, or amend a loan product or to defer any payment due under the terms of a loan product.

(i) "Mandatory Arbitration ". A loan that contains a mandatory arbitration clause that limits in any way the right of the borrower to seek relief through a court of law or equity.

(j)"Prepayment Penalties". The lender has charged or contracted to charge any prepayment fee or penalty for the voluntary or involuntary prepayment of the home loan, or the lender has charged or contracted to charge any fee for informing any person of the balance due to pay off the home loan.

(k) "Financing of Credit Insurance". The lender has financed, directly or indirectly, premiums or other charges for any credit life, credit disability, credit unemployment insurance, accident, health, or loss-of-income insurance or any other line or sub-line of insurance which may become accepted as a credit insurance by the insurance and lending industries or for any debt cancellation or suspension agreements or contracts (whether or not the debt cancellation or suspension agreement coverage is insurance under applicable law), or similar products. Insurance premiums calculated and paid on a monthly basis shall not be considered financed by the lender; provided, however, that in no event shall the amount of coverage for any home loan exceed the amount necessary to satisfy the borrower's obligation on any given date during the life of such home loan.

(l)"Lending Without Home Loan Counseling" means making, issuing, or arranging a threshold or high-cost loan without first receiving notice from a counselor approved by the United States Department of Housing and Urban Development that the borrower has received counseling on the advisability of the loan transaction and the appropriateness of the loan for the borrower based upon the information provided by borrower and lender to the counselor at the time counseling is provided to the borrower.

(m) "Lending Without Due Regard to Repayment" means that the lender does not reasonably believe at the time the loan is consummated that the borrower or borrowers who reside in the home (when considered individually or collectively) will be able to make the scheduled payments to repay the obligation based upon consideration of their current and expected income, current obligations, employment status, and other financial resources *(other than the borrower's equity in the dwelling which secures repayment of the loan)*. A lender who follows the debt-to-income ratio listed in 38 C.F.R. Section 36.4337(c)(1) and as defined in 38 C.F.R. Section 36.4337(d), and follows the residual income guidelines established in 38 C.F.R. Section 36.4337(e) and VA-Form 26-6393 shall

benefit from a rebuttable presumption that the lender made the loan with due regard to repayment ability.

(n) "Encouraging Default." The lender recommends or encourages default on an existing loan or other debt prior to and in connection with the closing or planned closing of a loan that refinances all or any portion of such existing loan or debt.

(o) "Late fees." The lender charges late fees for the late payment of an installment due on a home loan, unless:

(1) The fee does not exceed 5 percent of the past due installment;

(2) The fee is not charged more than once as a result of a single late payment; and

(3) The borrower has agreed to the imposition of the late fees in the home loan contract.

(p) Charging of points, fees or other charges in connection with a high-cost home loan if the proceeds of the high cost home loan are used to refinance an existing high-cost home loan held by the same lender or an affiliate of the lender.

(q) Refinancing of a special mortgage originated, subsidized or guaranteed by or through a state, tribal or local government, or nonprofit organization, which bears either a below-market interest rate, or has nonstandard payment terms beneficial to the borrower, such as payments that vary with income, are limited to a percentage of income, or where no payments are required under specified conditions, and where, as a result of the refinancing, the borrower will lose one or more of the benefits of the special mortgage.

(12) "Threshold loan". A loan that is secured by residential real property located within the City of Atlanta on which there is situated a dwelling for not more than four (4) families or a condominium unit, or is secured by a cooperative unit within the City of Atlanta, if the annual percentage rate of the loan equals or exceeds by at least four (4) percentage points but less than five (5) percentage points the weekly average yield on United States Treasury securities with a comparable duration to the term of the loan, as of the week immediately preceding the week in which the interest rate for the loan is established, subject to the following conditions:

(a) If the terms of the loan offer any initial or introductory period, and the annual percentage rate is less than that which will apply after the end of such initial or introductory period, then the annual percentage rate that shall be taken into account for purposes of this paragraph shall be the rate which applies after the initial or introductory period; and

(b) In the case of an interest rate which varies in accordance with an index, a loan shall be deemed a threshold loan if:

1. potential or scheduled increases in the interest rate of the loan are not directly tied to future increases and

decreases in a widely used federal or private market measurement that reflects the cost of borrowing money, such as the interest rate yield on United States Treasury securities, the federal funds rate, or the prime interest rate; or

2. the margin over such index at any point during the life of the loan exceeds five (5) percentage points.

Section Two: **The City of Atlanta Code of Ordinances, Chapter 2, Article IX, Section 2-965, be amended by designating the existing language as subparagraph (a) and by creating a new subparagraph (b) to read as follows:**

(b) City Depositories.

(1) Each City depository shall:

(A) provide the City with an affidavit certifying that neither it, nor any of its affiliates is, and none will become a high cost lender or a predatory lender as defined by Code Section 58-102. The affidavit shall be in a form prescribed by the City and shall be sworn by one or more of the officers duly authorized by the depository;

(B) permit the City to inspect all documents and other records required to verify that the affidavit is true and correct.

(2) The City shall not keep any City funds on deposit in any bank or other financial institution that is a predatory or a high cost lender, or an affiliate thereof, as defined in Section 58-102 of the Code of Ordinances.

Section Three. **That Chapter 2, Article VI, of the City of Atlanta Code of Ordinances is hereby amended so as to create a new Section 2-324 to read as follows:**

Section 2-324. Investments in Predatory Lenders and Affiliates.

(a) No monies or funds held under any provision of any pension or retirement provisions shall hereinafter be invested in the stocks, securities, or other obligations of any business entity that is a high cost lender or a predatory lender or that is an affiliate of any business entity that is a high cost lender or a predatory lender as defined by Section 58-102 of the City of Atlanta Code of Ordinances.

(b) No monies or funds held under any provision of any pension or retirement provisions shall hereinafter be invested in the securities collateralized by any interest in loans originating or purchased by any business entity that is a high cost lender or a predatory lender or that is an

affiliate of any business entity that is a high cost lender or a predatory lender as defined in Section 58-102 of the City of Atlanta Code of Ordinances.

Section Four: **That Chapter Two, Article X, Division 16, *Suspension, Disqualification and Debarment,* Section 2-1623 be amended by adding a new sub-paragraph (b)(10) to read as follows:**

(b)(10) Having been shown to be a high cost lender or a predatory lender, or an affiliate thereof, as defined by City of Atlanta Code Section 58-102.

Section Five: **That Chapter Two, Article X, Division 4 be amended by adding a new Section 2-1213 to read as follows:**

Section 2-1213 Prohibition against contracting with predatory or high cost lenders.

(a) The City and those authorized to act on its behalf shall not enter into any contract with any person or business entity that is a predatory or a high cost lender, or an affiliate thereof, as defined in Code Section 58-102.

(b) Every City contract, purchase order, change order, or contract modification shall contain a provision requiring that the person or business entity with which the City is contracting certify, under penalty of perjury, that neither the person, or business entity, nor any of its affiliates is a high cost lender or a predatory lender, as provided by Code Section 58-102. All contractors shall identify a person having authority to sign for the contractor who shall certify, in writing, as follows:

> *I certify, under penalty of perjury, that this bid or offer is made by a person or business entity that is neither a high cost lender nor a predatory lender, nor is the contractor an affiliate of a high cost lender or a predatory lender, as defined by City of Atlanta Code Section 58-102. I further certify that I am an agent duly authorized to sign this certification on behalf of the contracting party.*

(c) Any person or business entity that provides a false affidavit shall be subject to any or all of the following penalties:

(1) Withholding of ten percent (10%) of all future payments under the involved contract until it is determined that the person or business entity is in compliance with this section.

(2) Withholding of all future payments under the involved contract until it is determined that the

person or business entity is in compliance with this section.

(3) Cancellation of the involved contract.

(d) Nothing in this section shall affect the validity of any contract entered into in connection with any debt obligations issued by or on behalf of the City, regardless of whether the contract was awarded in compliance with this section.

Section Six: Severability.

If any clause, sentence, paragraph, or part of this ordinance, or the application thereof to any person or circumstance, shall for any reason be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this ordinance nor the application of such clause, sentence, paragraph or part to other persons or circumstances, but shall be confined in its operation to the clause, sentence, paragraph or part thereof and to the persons or circumstances directly involved in the controversy in which such judgment shall have been rendered.

Section Seven: That all ordinances or parts of ordinances in conflict herewith are hereby repealed.

A true copy,
Rhonda Daughtin Johnson
Municipal Clerk, CMC

ADOPTED by the Council SEP 17, 2001
APPROVED by the Mayor SEP 25, 2001

RCS# 3105
9/17/01
5:29 PM

Atlanta City Council

Regular Session

01-O-0843

New Code Section Entitled "Prohibition Against Predatory Lending"
ADOPT ON SUB

YEAS:	14
NAYS:	1
ABSTENTIONS:	0
NOT VOTING:	1
EXCUSED:	0
ABSENT	0

Y McCarty	Y Dorsey	Y Moore	Y Thomas
Y Starnes	Y Woolard	Y Martin	Y Emmons
Y Bond	N Morris	Y Maddox	Y Alexander
Y Winslow	Y Muller	Y Boazman	NV Pitts

CORRECTED COPY

(9)

01-O -0843

(Do Not Write Above This Line)

AN ORDINANCE BY COUNCILMEMBER MICHAEL BOND

AN ORDINANCE TO ENACT A NEW DIVISION /CHAPTER OF THE CITY OF ATLANTA CODE OF ORDINANCES ENTITLED "PROHIBITION AGAINST PREDATORY LENDING," AND AMENDING SECTIONS OF THE CITY OF ATLANTA CODE OF ORDINANCES GOVERNING LICENSING, INVESTMENTS AND DEPOSITS OF CITY FUNDS ETC. SO AS TO PROHIBIT ALL BUSINESS ENTITIES AND THEIR AFFILIATES FROM MAKING, ISSUING OR ARRANGING ANY SUBPRIME OR HIGH-COST LOAN, OR ASSISTING OTHERS IN DOING SO, IN ANY MANNER WHICH HAS BEEN DETERMINED TO BE ABUSIVE, UNSCRUPULOUS AND MISLEADING, PROVIDING PENALTIES FOR NON-COMPLIANCE; PROVIDING REMEDIES TO AGGRIEVED PARTIES; TO REPEAL CONFLICTING ORDINANCES; AND FOR OTHER PURPOSES (Substitute)

4/7/01 Substitute
Brought Forward Without Objection

- ☐ CONSENT REFER
- ☐ REGULAR REPORT REFER
- ☐ ADVERTISE & REFER
- ☐ 1st ADOPT 2nd READ & REFER
- ☑ PERSONAL PAPER REFER

ADOPTED BY
SEP 17 2001
COUNCIL

Date Referred 5/21/01

Referred To: Finance/Executive

Date Referred

Referred To:

Date Referred

Referred To:

First Reading

Committee
Date
Chair
Referred to

Committee	Committee
Fin/Exec	Fin/Exec
Date 5-30-01	Date 8-15-01
Chair	Chair
Action: Fav, Adv, Hold (see rev. side) Other:	Action: Fav, Adv, Hold (see rev. side) Other: as Substituted
Members	Members
Refer To	Refer To

Committee	Committee
Fin/Exec	Fin/Exec
Date 6/27/01	Date 9-13-01
Chair admend	Chair
Action: Fav, Adv, Hold (see rev. side) Other:	Action: Fav, Adv, Hold (see rev. side) Other: Forward No Rec
Members	Members
Refer To	Refer To

FINAL COUNCIL ACTION

☐2nd ☐1st & 2nd ☐3rd Readings

☐Consent ☐V Vote ☒RC Vote

CERTIFIED

CERTIFIED
SEP 17 2001
ATLANTA CITY COUNCIL PRESIDENT

CERTIFIED
SEP 17 2001
Rhonda Dauphin Johnson
MUNICIPAL CLERK

MAYOR'S ACTION

APPROVED
SEP 25 2001
MAYOR