07-O-0621

AN ORDINANCE

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**AN ORDINANCE TO AMEND THE CITY OF ATLANTA LAND DEVELOPMENT CODE; TO CREATE CODE SECTION 16-28.023(a) TITLED TRANSFER OF DEVELOPMENT RIGHTS IN THE BELTLINE PLANNING AREA; TO PROVIDE FOR DEFINITIONS; AND FOR OTHER PURPOSES.**

**WHEREAS,** the BeltLine is a transportation corridor that has the potential to transform the City of Atlanta and to attract and organize future growth in the region around parks, trails, transit and economic development located in the core of the City; and

**WHEREAS**, an optimal implementation of the BeltLine concept combines green space, trails, transit, and new development along 22 miles of historic rail segments that encircle the urban core; and

**WHEREAS**, the implementation of the BeltLine concept would revive certain areas of the City dominated by an industrial landscape and become a unique and innovative solution to the City's scattered pattern of growth by providing a connected network of parks, green spaces, trails and pedestrian-friendly streets to link existing neighborhoods previously severed by rail and industry, in addition to providing a 22-mile transit loop to reduce dependence on the automobile; and

**WHEREAS**, the enhancement of single-family neighborhoods, the preservation of cultural, historic and natural resources and the strengthening of the downtown urban core and the encouragement of pedestrian, bicycle and mass transit are among the current policy goals which are expressed in Urban Design Element of the CDP; and

**WHEREAS**, new residential and commercial development along the BeltLine should promote the transit accessibility, neighborhood and pedestrian connectivity: and

**WHEREAS**, the ability to transfer development rights from one parcel to another will increase the number of tools the City and its partners have in order to facilitate the goals and vision of the BeltLine Redevelopment uniformly throughout the entire 22 mile corridor.

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

That the Land Development Code Part 16 Chapter 28 be amended to create a new section as follows:

## Sec. 16-28.023A. Transfer of development rights in the BeltLine Planning Area

(1) *Intent.* The City of Atlanta finds that the purpose of attracting, managing and organizing future growth around parks, transit and trails located in the core of the City is a vital public policy that will substantially advance the public health, safety and general welfare as well as preserve and enhance existing natural, environmental, historical and cultural resources. In furtherance of this purpose as expressed in the BeltLine Redevelopment Plan and the overall planning goals of the City as expressed in the Comprehensive Development Plan as such documents exist now or as they may be amended, the city finds that a transportation corridor of sufficient size and scope within the BeltLine is essential and that increased density in the areas immediately adjacent to the transporation corridor is desirable. In order to accommodate the city's plans for the development of the transportation corridor and allow for increased density without rezoning, this code section is intended to allow and control the severance of development rights from a sending property and the transfer of development rights to a receiving property within the area of application as defined herein.

(2) *Area of application.* The terms of this section are intended to apply to an area defined on that map produced by the City of Atlanta Department of Planning and Community Development and attached to the ordinance which enacted this code section. Said area may hereinafter be referred to as the BeltLine Transferable Development Rights Planning Area ("BeltLine TDR Area and this term shall mean the area defined on said map (the "BeltLine TDR Map"). The inclusion of a property in the BeltLine TDR Map, including all future amendments, shall constitute a finding by the governing authority that the property so included meets all criteria set forth to satisfy the purpose and intent of this code section.

(3) *Amendments to the BeltLine TDR Map and its relationship to the Official Zoning Map.*

(i) The BeltLine TDR Map shall be an overlay of the Official Zoning Map for the purposes of the administration of this code section and those sections of the City Code applicable to the Official Zoning Map as set forth in Sec. 16-02.005 through Sec. 16-02.014 shall apply to the BeltLine TDR Map.

(ii) The Official Zoning Map shall determine the zoning of any property inside the BeltLine TDR Planning Area but a transfer of development rights to a property in the BeltLine TDR Area may increase the development factors currently allowed and available for a use permitted under the current zoning and Comprehensive Development Plan designation subject to this code section.

(iii) No property receiving development rights may be developed in further variance from the zoning district regulations in order to accommodate the use of transferable development rights, unless such variance has been specifically granted and is shown on the site plan submitted with the special administrative permit application.

(iii) The adoption of the ordinance which codified this code section shall be considered the initial adoption of the BeltLine TDR Map as an overlay of the Official Zoning Map.

(iv) Amendments to the BeltLine TDR Map shall be accomplished by amending said map pursuant to that process followed for the amendment of the city's Official Zoning Map provided however that only the bureau of planning or the city council is authorized to introduce such amendments.

(v) In cases where the boundary lines of the BeltLine TDR Map bisect a parcel, the director of the bureau of planning is authorized to administratively adjust the boundary of the BeltLine TDR Map to include the remaining portion of a property outside of the currently designated BeltLine TDR Area provided howerever that the boundary may not be moved unless more than 50% of the square footage of the property is inside of the BeltLine TDR Area and that such line will be moved no more than 100 feet

(4) *Effect on transfer of development rights in other areas of the City.* This code section does not create a separate class of development rights. The process for the calculation, severance and use of development rights as expressed in this code section shall not prevent the use of development rights created hereinunder from being used in other areas of the City or the use of development rights in the area governed by this code section which are or have been created under Sec. 16-28.023.

(a) *Definitions and processes created for the BeltLineTDR Area are not interchangeable with other areas of the city.* Notwithstanding the fact that only one class of development rights exists, the definitions and processes made applicable under this code section for the transfer of development rights in the area defined to the BeltLine Area TDR Map are applicable only in the Beltline TDR Area.

(5) *Definitions.*

(a) *Commissioner:* means the Commissioner of the Department of Planning and Community Development or successor in any branch or department of the city to whom the present functions of said office are delegated in the future. The term "commissioner" includes those delegated by the commissioner to perform any duty or exercise any authority delegated to the commissioner provided however that such delegation shall be within those limits forth in the city code or other applicable law.

(b) *Director:* means the Director of the Bureau of Planning or successor in any branch or department of the city to whom the present functions of said office are delegated in the future. The term "director" includes those delegated by the director to perform any duty or exercise any authority delegated to the director

provided however such that delegation shall be within those limits forth in the city code or other applicable law.

(c) *Development rights:* Calculated square footage of development factors that would be allowed on the net lot area of a sending or receiving property under its present zoning category disregarding any variance or non-conformity that may presently allow a greater number of development units.

(i) Where the zoning of a sending property does not allow a use which would require calculation of development rights for residential uses, the development rights available for transfer shall be calculated as if the sending property were zoned to the MR-4 category.

(d) *Development factors:* shall have the same meaning as in Sec. 16-28.023(2)(b).

(e) *BeltLine sending area:* The area marked on the BeltLine TDR Map as property considered necessary or useful for the transportation corridor. This is land that is found by the governing body to have unique value that will be dedicated to transpartation use when the property is directly transferred to the City.

(f) *BeltLine sending property:*

(1) The term BeltLine sending property may be used to refer to one or more than one parcel or lot within the sending area marked on the BeltLine TDR Map that is part of a transaction transferring such property to the city. Multiple BeltLine sending properties may be made part of one transaction transferring ownership of the constituent parcels to the city and not have to consist of contiguous parcels. The City shall allocate development rights among the owners of the BeltLine sending properties in such transactions according to the instructions provided in the application filed with the city.

(2) A BeltLine sending property also refers to the boundaries of any property within the BeltLine TDR Planning area designated as a landmark building or site or historic building or site pursuant to the City of Atlanta Historic Preservation Ordinance. Such property may be but is not required to be located in the BeltLine sending area.

(3) A BeltLine sending property also refers to one or more lots or parcels that are suitable to be donated to and accepted by the city, and which will be dedicated for use as greenspace by an instrument to be recorded in the office of county clerk in which the property is located or property that will be purchased by the city for use as greenspace. Such property may be but is not required to be located in the BeltLine sending area.

(g) *BeltLine receiving area:* Any area on the BeltLine TDR Map marked as a receiving area provided however that such property must be zoned with a classification that allows multi-family residential uses or mixed use, provided that such mixed use has a residential component of at least 25 percent. Property which is zoned to the C-1 or C-2 zoning classification shall also be considered property included in the receiving area provided however that such property may not increase its commercial density but may increase its mix of residential uses up to the maximum overall density by the using transferable development rights to replace the commercial development rights.

(h) *BeltLine receiving property:* A specific parcel or lot or an aggregation of parcels or lots that are shown on the BeltLine Planning Area Map as being eligible for an increase in development rights or as otherwise made eligible as specified in this code section.

(i) *Transfer of development rights:* shall have the same meaning as in Sec. 16-28.023(2)(g).

(j) *BeltLine transfer application*: shall mean that application submitted to the commissioner for the transfer of development rights in the BeltLine Planning Area.

(k) *Code section:* shall mean this code section which is 16-28.023A.

(l) *Subsection:* shall mean a numbered subpart of code section 16-28.023A. Subsections need not be identified by number when the language is intended to refer to the subpart in which it is contained.

(m) *Chief procurement officer*: shall mean the principal real estate official of the city who is responsible for the acquisition, disposal, leasing and redevelopment of real property as may be necessary for the city, in accordance with the city code.

(n) *Density*: the amount of development allowed on a property based on calculations applied to the relationship of the area of a property sought to be developed to the floor area of the buildings, total open space, or usable open space.

(o) *Deed for transferable development rights*: shall mean a document which describes the amount of transferable development rights allowed to be severed from a sending property, transferred to third parties or to be used in connection with development on a receiving property pursuant to an application for special administrative permit. Such document may be registered as a distinct interest in real property with the appropriate tax assessor.

(p) *Zoning Ordinance*: shall mean the City of Atlanta Zoning Ordinance.

(6) *Process for the transfer of development rights in the BeltLine TDR Planning Area.*

(a) The severance of development rights from a BeltLine sending property or the increase in development rights assigned to a BeltLine receiving property in the BeltLine Planning Area shall be allowed through the issuance of a BeltLine transfer application which shall be a special administrative permit. The governing body has by the approval of the BeltLine TDR Map, determined that certain property is automatically qualified for the transfer of development rights, such that the director is required to make a separate finding only as to the following criteria

(i) whether the property is within the area set forth on the on BeltLine TDR Map that applies to a particular application;

(ii) whether the application is complete;

(iii) whether the applicant has correctly calculated the amount of transferable development rights associated with the application;

(iv) in the case of severance, whether the application contains proof of good and marketable title for the property to be transferred to the city (the city, may in its sole discretion, decided to reject an application based on an evaluation of the encumbrances and defects set forth in the title opinion or certificate included with the application);

(v) in the case of receipt, whether the application has included proof of ownership of a sufficient number of transferable development rights to support the increased density.

(b) The director shall have the authority to determine the appropriateness and suitability of allowing the severance of development rights from a BeltLine sending property or the increase in development rights assigned to a BeltLine receiving property based on the director's determination that the BeltLine transfer application meets the criteria set forth in this sub- section.

(c) The director shall be authorized to develop such documents and procedures relative to the issuance and recordation of the instruments necessary to sever development rights from the sending property and to affix development rights to the receiving property as are necessary to comply with applicable law.

(i) The director shall be authorized to transfer deeds or parts of deeds to a new owner in the records of the city on the application of the registered owner without processing a request to otherwise use the development rights contained therein.

(ii) The director shall only process applications for the receipt of development rights pursuant to deeds that have been issued by the city. Such deeds may be transferred to other owners as independent interests in

real estate by recording with the appropriate tax assessor in lieu of recording such changes with the city, provided however that where such person applying to use a deed is not the owner of record with the city, the director shall not be required to recognize such deed unless it shall be accompanied by a title opinion or certificate of title showing good and marketable title to such rights in accordance with Georgia Law as supplemented by Title Standards then in force

(d) The denial of a BeltLine transfer application or the withdrawal of such application prior to the closing of a transaction transferring property to the city shall not affect the rights of the applicant to develop and use the property in accord with its zoning with no change in the development factors.

(e) The chief procurement officer is authorized to accept the deeds transferring to the city, any property within the BeltLine sending area as it now exists or as the BeltLine Area Planning Map may be amended to include any property in the BeltLine sending area.

(7) *Severance of development rights from a BeltLine sending property.*

(a) An applicant may submit an application at any time and such application may be given number for tracking purposes so that documents in support may be received by the bureau of planning. An application is deemed to be filed with the director only when all documents required for a complete application in accordance with the criteria set forth in this subsection have been received.

(b) *Form of the application:* Each application to transfer development rights from a BeltLine sending property shall be in a form approved by the director but such form shall be required to contain the following:

(i) A map and a legal description of each property from which the transfer is proposed.

(ii) As to each property contained in the application, a title opinion or certificate of title showing good and marketable title in accordance with Georgia Law as supplemented by Title Standards then in force and the existence of encumbrances and defects, and the effects given to any then found to exist as determined in accordance with such Standards.

(iii) An original notarized statement by the current property owner of each property as shown by the title opinion or certificate and any person with an interest in the property, including, without limitation, any lienholders, consenting to the transfer of the property to city in fee simple in exchange for the transfer of the development rights to the person named in the application as the recipient of the development rights.

(iv) A calculation of the amount of quantified development factors that are proposed to be severed or transferred from each property in the application.

(v) The form of a deed of transferable development rights which shall be recorded with the City after approval of the transfer by the director and the recording with the appropriate tax assessor of the deed transferring the sending property to the city in fee simple.

(c) *Actions of the director*:

(i) The director is authorized but not required to hold conferences with applicants prior to the submission of the application.

(ii) The director shall determine whether the entire property in the applicaiton is within the BeltLine sending area.

(iii) The director is authorized to confer with other city bureaus, departments or agencies to determine if the application contains documents which meet the criteria set forth herein.

(iv) The director is authorized to allow amendments to an application and may hold an application pending amendment of the BeltLine Area Planning Map. as that area marked on the BeltLine TDR Map that the property which is the subject of an application is considered necessary or useful for the implementation of transportation projects, greenspace or trails and as such has been found by the governing body to have unique value that will be dedicated to transportation, greenspace or trail use when the property is directly transferred to the City or that is deserving of protection from future development because of its aesthetic or historic value.

(v) An application shall be denied on the director's determination that the application does not apply to property which is contained on BeltLine sending area as that area marked on the BeltLine Area Planning Map and that the property does not warrant amendment of the BeltLine Area Planning Map. Denial of an application for this reason may be issued by the director before all documents for a complete application have been received so long as such denial is based on the review of the map and a legal description of each property from which the transfer is proposed.

(vi) Other than as provided in this subsection, the director shall render a decision to allow severance of the development rights only after receipt of all documents necessary to constitute a complete application.

(vii) Once the director determines that the application is complete, the director shall notify the councilmember of the district containing the

property and the president of any neighborhood planning unit in which the property is located that such application is pending. Thirty (30) days after the date of the notification to the councilmember of the district containing the property and the president of the neighborhood planning unit(s) the director may approve the application upon a finding that it meets the criteria set forth in this code section. The director shall notify the councilmember of the district containing the property and the president of any neighborhood planning unit in which the property is located that such application has been approved.

(viii) The director's decisions as to an application as described in this code section shall be set forth in a letter to the applicant and a copy provided by regular mail to the councilmember of the district containing the property, the president of any neighborhood planning unit in which the property is located.

(d) *Actions after the director's approval of the BeltLine severance application*

(i) The director shall request that a closing on the transfer of the property to the city be held by the chief procurement officer pursuant to Sec. 2-1544 of the city code regarding gratuitous transfers. At the closing the property shall be acquired by the city and the development rights transferred to the applicant.

(ii) At the closing, an original and fully executed deed transferring the property to the city in fee simple shall be delivered to city's closing agent and a deed of transferable development rights shall be delivered to the applicant's agent. Any other documents necessary to complete the transfer of title to the city shall also be executed. All costs of closing are to be paid by the applicant.

(iii) The development rights shall be deemed severed from the BeltLine sending property as of the date of closing and the deed of transferable development rights may be transferred as a distinct interest in real property until its use at a BeltLine receiving property or at a receiving property located elsewhere in the city.

(iv) The director shall cause the amount of development rights associated with the transaction to be recorded in accord with this code section.

(8) *Receipt of development rights in the BeltLine Planning Area:*

(a) *Increased density allowed:* An applicant may apply to increase the density of development on a BeltLine receiving property under the process set forth in this code section where such additional density is expressed as a proposed increase in additional floor area, open space, and usable open space above that resulting

from the calculations applied to the property sought to be developed under its present zoning.

(b) *Overall limitation on amount of transferable development rights in an application*: The director shall not allow the utilization of development rights on a BeltLine receiving property in an amount greater than the maximum shown on the BeltLine TDR Map.

(c) *Receiving Properties to conform to Zoning Ordinance* Except for the increased density, no receiving property may be developed in variance from other applicable zoning district regulations in order to accommodate the use of transferable development rights.

(d) *Form of the application:* Each application to transfer development rights to a BeltLine receiving property shall be in a form approved by the director but such form shall be required to contain the following

(i) An affidavit from the property owner and any lienholder consenting to the use of the transferred development rights on the property.

(ii) An affidavit from the applicant stating that all development rights sought to be utilized pursuant to the application are fully and unconditionally owned by the property owner or applicant. The affidavit shall also identify the source of all transferable development rights to be used by the receiving property by reference to the original transaction(s) that created such development rights as issued by the city. Such affidavit shall also acknowledge that the use of the transferable development rights necessary to complete the project shall, upon final approval of the application, remain with the property for the life of the development and cannot be severed from the property or otherwise transferred without the property being declared a sending property in a subsequent application.

(iii) A map and a legal description of the property to receive the transferred development rights.

(e) *Actions of the director*:

(i) The director is authorized but not required to hold conferences with applicants prior to the submission of the application.

(ii) The director shall determine whether the entire property in the application is within the BeltLine receiving area.

(iii) An application shall be denied on the director's determination that the application does not apply to property which is contained on BeltLine receiving area and that the property does not warrant amendment of the BeltLine TDR Map. Denial of an application for this reason may be issued

by the director before all documents for a complete application have been received so long as such denial is based on the review of the map and a legal description of each property from which the transfer is proposed.

(iv) Other than as provided in this subsection, the director shall render a decision to allow receipt of the development rights only after receipt of all documents necessary to constitute a complete application.

(v) Once the director determines that the application is complete, the director shall notify the councilmember of the district containing the property and the president of any neighborhood planning unit in which the property is located that such application is pending. Thirty (30) days after the date of the notification to the councilmember of the district containing the property and the president of the neighborhood planning unit(s) the director may preliminarly approve the application upon a finding that it meets the criteria set forth in this code section.

(vi) After an application has been preliminarily approved, the applicant shall present original deeds for transferable development rights or title opinions or certificates of title which are equal to the amount of rights were represented in the affidavit submitted with the application. Failure to produce the deeds or or title opinions or certificates of title represented in the affidavit submitted with the application submitted shall be sufficient cause to deny the application.

(vii) The director's decisions as to an application as described in this code section shall be set forth in a letter to the applicant and a copy provided by regular mail to the councilmember of the district containing the property, the president of any neighborhood planning unit in which the property is located.

(vii) The director shall cause the rights associated with the sending and receiving properties to be recorded in the manner appropriate to the transaction.