01-O -1092

AN ORDINANCE
BY COUNCILMEMBER DERRICK BOAZMAN

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 "PROHIBITION AGAINST PREDATORY LENDING;" 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 THE CITY OF ATLANTA; 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 AUTHORIZE THE CHIEF FINANCIAL OFFICER TO WITHDRAW FUNDS FROM ANY DEPOSITORY THAT IS ITSELF OR IS AN AFFILIATE OF A PREDATORY LENDER; 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.

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 "Prohibition Against Predatory Lending", to read as follows:**

ARTICLE IV. PROHIBITION AGAINST 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; and

(c) to prevent predatory lenders and those persons providing referrals and services to those lenders from taking advantage of city programs designed to encourage home ownership and home repair.

Section 58-102. Definitions.

The following definitions shall apply throughout this Chapter:

(1)"Affiliate" means any entity that controls, is controlled by, or is under common control with, another entity, including any successors in interest or alter egos.

(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 or assisted others in so doing, 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 5% of the total annual number of loans which the business entity has assisted others in making, issuing or arranging; 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 Commissioner of the Department of Planning, Development and Neighborhood Conservation a plan to discontinue the practice of making high cost loans, if the plan ensures:

(c) the prompt disengagement from the practice of making, issuing, or arranging, or assisting others in so making, issuing, or arranging high cost loans by the business entity(s) and its affiliates; and
(d) the complete cessation of the making, issuing or arranging, or assisting others in 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 four 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 offers 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 annual percentage rate which varies in accordance with an index, the rate shall be the maximum rate permitted at any time by the loan documents; or

(b) The total points and fees exceed 3 percent of the total loan amount.

However, "high cost loan" shall not include a loan that is made primarily for a business purpose unrelated to the residential real property securing the loan, a loan with an annual percentage rate below that of a threshold loan at all times over the life of the loan, or any loan which exceeds $150,000.

(9) "Points and Fees" means:

(a) All items listed in 15 U.S.C. Section 1605(a)(1) through (4), except interest or the time-price differential;

(b) All charges listed in 15 U.S.C. Section 1605(e);

(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, or assisted others in so doing, within any 12 month period, predatory loans that comprise either:

(a) 5% of the total annual number of loans made, issued or arranged, or 5% of the total annual number of loans which the business entity has assisted others in so making, issuing or arranging; or

(b) 10 individual loans; whichever is less.

The term "predatory lender" shall not include a business entity, or its affiliates, that has submitted to the Commissioner of the Department of Planning, Development and Neighborhood Conservation, or any department so designated by the Mayor, a plan to discontinue the practice of making predatory loans, if the plan ensures:

(c) the prompt disengagement from the practice of making predatory loans by the financial institution and its affiliates, and
(d) 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" in violation of this Ordinance.

(m) "Lending Without Due Regard to Repayment" in violation of this Ordinance.

(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 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 three percentage points but less than four 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 offers 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 annual percentage rate which varies in accordance with an index, the rate shall be the maximum rate permitted at any time by the loan documents.

However, a "threshold loan " shall not include a loan that is made primarily for a business purpose unrelated to the residential real property securing the loan or a loan which exceeds $I00, 000.

Section 58-103. Predatory Lending Practices Prohibited.

(1) It shall be unlawful to engage in predatory lending practices, as set forth below:

(a) Issuing Predatory Loans

No person shall make, issue, or arrange a predatory loan, or assist others in doing so. A person who, when acting in good faith, fails to comply with this subsection will not be deemed to have violated this subsection if the person establishes that either:

(i) Within 30 days of the loan closing and prior to the institution of any action under this Article, the borrower is notified of the compliance failure, appropriate restitution is made, and whatever adjustments are necessary are made to the loan to either, at the choice of the borrower, (A) make the predatory loan satisfy the requirements of this Article or (B) change the terms of the loan in a

manner beneficial to the borrower so that the loan will no longer be considered a predatory loan subject to the provisions of this Chapter; or

(ii)The compliance failure was not intentional and resulted from a *bona fide* error notwithstanding the maintenance of procedures reasonably adapted to avoid such errors, and within 60 days after the discovery of the compliance failure and prior to the institution of any action under this Chapter or the receipt of written notice of compliance failure, the borrower is notified of the compliance failure, appropriate restitution is made, and whatever adjustments are necessary are made to the loan to either, at the choice of the borrower, (A) make the predatory loan satisfy the requirements of this Chapter, or (B) change the terms of the loan in a manner beneficial to the borrower so that the loan will no longer be considered a predatory loan subject to the provisions of this Chapter/Division. Examples of a *bona fide* error include clerical, calculation, computer malfunction and programming, and printing errors. An error of legal judgment with respect to a person's obligations under this Chapter is not a *bona fide* error.

(b)Lending Without Home Loan Counseling.

No person shall make, issue or arrange any threshold or high cost loan, or assist others in doing so, without first receiving notice from a counselor employed by a housing counseling agency approved by the Department of Planning, Development and Neighborhood Conservation, or any department so designated by the City, 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.

(c) Lending Without Due Regard to Repayment.

No lender shall make, issue or originate any threshold or high cost loan if 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 C.F.R. Section 36.4337(d), and follows the residual income guidelines established in 38 C.F.R. 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.

(d) Payments to Home Improvement Contractors.
A lender shall not pay proceeds of a threshold or high cost loan to any "home improvement contractor ", as that term is defined in the Home Improvement Finance Act, 73 P.S. §500-102(9), and a home improvement contractor may not receive the proceeds of a threshold or high cost loan, other than:

(i) by an instrument payable solely to the borrower(s); or

(ii) at the election of the borrower, through a third party escrow agent in accordance with terms established in a written agreement signed by the borrower and the home improvement contractor prior to the disbursement; provided however that in no instance shall more than 25% of the total proceeds of the threshold or high cost loan be disbursed at the time of closing.

(e) Incorporating Governmental Financial Assistance Funds.

(i) It shall be unlawful to promote, employ, package, promote, use, or in any other way incorporating funds from any of the programs administered by the City or a City Agency which are subject to regulation under this Article in combination with any high cost or predatory loan.

(ii) Any contract, lease, grant condition or other agreement entered into by the City with any City-related Agency shall contain a provision requiring that the City-related Agency, in the administration of governmental housing assistance funds abide by the provisions of this subsection as though its administration of such funds was directly subject to the provisions of this subsection.

(f) Provisions Not Applicable to Activities of Certain Financial Institutions.

(i) The prohibition against predatory lending practices made unlawful by sub-section (a) above shall not be applicable in the following circumstances:

(A) to a lender licensed under state or federal law, provided that such loan provisions are made in conformity with the requirements of federal law pursuant to the Alternative Mortgage Transaction Parity Act, 12 U. S. C. §3803, and provided that any such loan is not otherwise predatory as defined in this Article; or

(B) to a loan made in conformity with the laws of the State of Georgia solely because the loan contains any provision authorized by such act, provided that any such loan is not otherwise predatory as defined in this Article.

(ii) The prohibitions set forth in subsections (a) Issuing Predatory Loans; (b) Lending Without Home Loan Counseling; (c) Lending Without Due Regard to Repayment; and (d) Payments to Home Improvement Contractors are shall not be applicable to a State chartered bank, a bank and trust company, a savings bank, a private bank or a national bank, a State or federally chartered savings and loan association, a federally chartered savings bank or a State or federally chartered credit union. However, the provisions of subsections (a) Issuing Predatory Loans; (b) Lending Without Home Loan Counseling; (c) Lending Without Due Regard to Repayment; and (d) Payments to Home Improvement Contractors shall apply to the affiliates of such entities, except insofar as such affiliates are themselves one of the financial institutions enumerated above.

Section 58-104. Notice to Customers of Home Improvement Contractors; Recording of Certification of Compliance.

(a) **Notice to Customers** Each home improvement contractor transacting business within the City of Atlanta must furnish the following notice, on a form provided by the Department of Planning, Development and Neighborhood Conservation, or any department so designated by the Mayor, along with each home improvement contract or bid for home improvement contract for any work to be performed on a residence located within the City of Atlanta, in substantially the same form as appears below

(b) **Certification of Compliance to be recorded**. At the time of recording a mortgage, the lender and if applicable the mortgage broker, must file a certification of compliance in the Superior Court of Fulton or DeKalb County, as applicable, for recording along with the mortgage instrument and deed. The Clerk of the Superior Court shall make the information contained in such certifications available to the public in the most usable form the Court practicably can provide. The certification of compliance shall be substantially in the following form and shall comply with any formatting requirements promulgated from time to time by the Department of Planning and Neighborhood Conservation or any department so designated by the Mayor.

IMPORTANT NOTICE TO CUSTOMERS OF HOME IMPROVEMENT CONTRACTORS

If you need a loan to pay for home improvements:

BE CAREFUL. A lender will probably want to take a mortgage on your house. You should not borrow more than you can afford or more than you need. The loan you are being offered may be a threshold or high cost loan. You may be eligible for a different loan that charges significantly lower interest or fees. Be very cautious about consolidating your debts with a home mortgage. Beware that if you default on this loan you could lose your house!

It is now the law in the City of Atlanta that before you sign any threshold or high cost home loan you must receive housing counseling assistance.

For the name, address and phone number of a housing counseling or legal services agency in your neighborhood turn this notice over to see the list of agencies printed on the reverse side.

I received this notice on this _____ day of _____, 2000_.

_____

Signature of home owner(s)

Address:_____

Required by the City of Atlanta, Code of Ordinances Section 58-104

Each home improvement contractor transacting business within the City of Atlanta must furnish the following notice, on a form provided by the City's Department of Planning, Development and Neighborhood Conservation, along with each home improvement contract or bid for a home improvement contract for any work to be performed on a residence located within the City of Atlanta

State of Georgia

County of _____

CERTIFICATION OF LENDER AND/OR MORTGAGE BROKER'S COMPLIANCE WITH CITY OF ATLANTA ORDINANCES PROHIBITING PREDATORY LENDING PRACTICES

NOTE: SECTION 58-104 OF THE CODE OF ORDINANCES OF THE CITY OF ATLANTA REQUIRES THAT AT THE TIME OF RECORDING A MORTGAGE, THE LENDER AND IF APPLICABLE THE MORTGAGE BROKER, MUST FILE A CERTIFICATION OF COMPLIANCE TO THE SUPERIOR COURT OF FULTON OR DEKALB COUNTY, AS APPLICABLE, FOR RECORDING ALONG WITH THE MORTGAGE INSTRUMENT AND DEED. THE CLERK OF THE SUPERIOR COURT SHALL MAKE THE INFORMATION CONTAINED IN SUCH CERTIFICATIONS AVAILABLE TO THE PUBLIC IN THE MOST USABLE FORM THE COURT PRACTICABLY CAN PROVIDE. THE CERTIFICATION OF COMPLIANCE SHALL BE SUBSTANTIALLY IN THE FOLLOWING FORM.

The undersigned lender and/or mortgage broker certify and affirm, under penalty of perjury, that to the best of my/our knowledge, information and belief, the attached mortgage, described below, entered into between *(name of lender)* and *(name of borrower)* on this _____ day of _____, 200__, for the property located at _____, Atlanta, Fulton/DeKalb County Georgia 303___, contains the following characteristics and terms:

WITH CITY OF ATLANTA ORDINANCES PROHIBITING PREDATORY LENDING PRACTICES
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CERTIFICATION OF LENDER AND/OR MORTGAGE BROKER'S COMPLIANCE

1. Type of mortgage: Purchase Money Non-purchase Money (circle one)
2. First Mortgage Junior Mortgage (circle one)
3. The annual percentage rate of the loan is: _____%
4. The applicable Treasury Rate is: _____% (The yield on Treasury securities having comparable periods of maturity to the loan maturity as of the fifteenth day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor.)
5. The total loan amount is: _____
6. The total amount of points and fees is: _____
7. The percentage of points and fees financed is: _____
8. The mortgage is or is not (circle one) a threshold or high cost loan.
9. The borrower has or has not (circle one) received housing counseling.
10. A certification of housing counseling is or is not (circle one) attached to this certification.
11. The mortgage does or does not (circle one) violate any of the provisions of Article 58 of the Code of Ordinances of the City of Atlanta

_____ Mortgage Lender
_____ Name and Title of Officer
_____ Address
_____ Telephone Number
_____ COA Business License. No.

_____ Mortgage Broker
_____ Name and Title of Officer
_____ Address
_____ Telephone Number
_____ COA Business License No.

Sworn to and Subscribed before me
This _____ day of _____ 200___.

_____
*Notary Public My Commission Expires:*_____

Section 58-105. Penalties.

(1) Fines.

(a) Each calendar day on which a borrower is assessed with interest on the principal amount of a predatory, threshold, or high cost loan made unlawful by Section 58-103 shall constitute a separate violation of this Article.

(b) Any person or entity that is convicted of a violation of this section shall be punished by a fine of not less than $100 and not more than $300 per day of violation.

(2) Loss of City Contracts.

(a) No person or business entity shall be awarded a contract with the City or a City Agency if the person or business entity or any of its affiliates has been shown by credible evidence to be a high cost lender or a predatory lender, as defined by Code Sections 58-102 and 58-103. Conviction under Section 58-105 shall be conclusive evidence for all purposes that an individual or business entity is a high cost or a predatory lender.

(b) Every contract with the City shall contain a provision requiring that the person or business entity with which the City is contracting certify 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 2-1213.

(c) 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. Any other contract awarded in violation of this Section shall be voidable at the option of the City.

(d) Any contract, lease, grant condition or other agreement entered into by the City with any City-related Agency shall contain a provision requiring that the City-related Agency, in the procurement of goods and services purchased pursuant to agreement between the City and the City-related Agency, abide by the provisions of Section 2-1213 as though such procurement was directly subject to such provision. The City-related Agency shall require City approval for any waivers.

(e) The Office of Contract Compliance in conjunction with the Department of Planning, Development and Neighborhood Conservation may end the debarment of a person or business entity pursuant to Code Section 2-1623(b)(10) in order to allow execution of a contract with the person or entity upon written application by the head of the City agency or City-related Agency affected by the proposed contract, setting forth facts sufficient in the judgment of the purchasing agent to establish:

i) that the public health, safety or welfare of the City requires the goods or services of the person or business entity; and

ii) that the City is unable to acquire the goods or services at comparable price and quality, and in sufficient quantity from other sources.

(3) Forfeiture of Government – Funded Housing Assistance.
Any person or business entity which receives any grant funds from the City or a City Agency, which is subject to regulation under this Article, and that assists a borrower in securing a high cost or predatory loan in the City of Atlanta, shall forfeit all such funds to the City, provided that nothing herein shall restrict the ability of any agency receiving grant funds from the City from providing counseling services to borrowers of threshold and high cost loans. Any contract, lease, grant condition or other agreement entered into by the City with any City-related Agency shall contain a provision requiring that the City-related Agency shall abide by the provisions of this subsection in the administration of governmental housing assistance funds, as though its administration of such funds was directly subject to the provisions of this subsection.

Section 58-106. Enforcement.
(a) The Commissioner of the Department of Planning and Neighborhood Conservation or any department so designated by the mayor is hereby charged with the enforcement of this Chapter, with the exception of the imposition of the criminal penalties provided for in Section 58-105(1). The Director shall promulgate such rules, regulations and procedures, as he or she may deem necessary to aid in the administration and enforcement of the provisions of Chapter 58. Such rules and regulations shall include the standards, guidelines and procedures for the approval of plans as described in this Chapter.

(b) For the purpose of enforcement of the provisions of this ordinance, the Commissioner shall maintain a listing of those business entities that have been determined by credible evidence to meet the definitions of high cost lender and predatory lender under this Chapter and shall regularly distribute this listing to all City Agencies and City-Related Agencies. This listing shall also be made available to the public free of charge by request made to the Commissioner of Department of Planning and Neighborhood Conservation.

(c) The Commissioner may make findings with respect to predatory loans and predatory lenders based on recommendations made by a Predatory Lending Review Commission to be constituted by the Atlanta City Council.

<u>Section Two</u>: **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 or subsidiaries, is, and none will become a high cost lender or a predatory lender as defined by Sections 58-102 and 58-103, Prohibition Against Predatory

Lending Practices. The affidavit shall be in a form prescribed by the Chief Financial Officer and shall be sworn by one or more of the officers duly authorized by the depository;

(B) provide the City with predatory lending information, which shall include, but is not limited to the market share ratio of the depository's refinance loans in minority census tracts in Atlanta to non-minority census tracts in Atlanta, and the market share ratio of the depository's refinance loans in low and moderate income census tracts in Atlanta to middle and upper income census tracts as all terms describing census tracts are defined in 12 C.F.R. Pt. 9.55, App. A (as amended); and considering each affiliate separately in calculations.

(2) The Chief Financial Officer shall not keep any City funds on deposit in any bank or other financial institution which provides, either directly or indirectly through such entities such as its parent corporation, affiliate, subsidiary or agent, engages in lending practices as a high cost lender or a predatory lender as defined in Chapter 58 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 remain invested or hereinafter be invested in the stocks, securities, or other obligations of any business entity which is a high cost lender or a predatory lender or which is an affiliate of any business entity which is a high cost lender or a predatory lender pursuant to as defined by Chapter 58 of the City of Atlanta Code of Ordinances.

(b) No monies or funds held under any provision of any pension or retirement provisions shall remain invested or hereinafter be invested in the securities collateralized by any interest in loans originating or purchased by any business entity which is a high cost lender or a predatory lender or which is an affiliate of any business entity which is a high cost lender or a predatory lender as defined in Chapter 58 of the City of Atlanta Code of Ordinances.

(c) The divestiture required by this subsection shall be completed within six (6) months of receipt by all pension boards of the City of Atlanta of notice from the Director of the Office of Contract Compliance that a business entity is a high cost lender or a predatory lender or an affiliate of a high cost lender or a predatory lender. During the six (6) month period,

all pension boards of the City of Atlanta shall make regular reports to the City Council concerning the progress of divestiture. If, prior to expiration of the six (6) month time limit, for divestiture, any pension board determines that completion of divestiture within the six (6) month time limit will necessitate substantial financial losses, then the pension board shall request from City Council an extension of time within which to complete divestiture.

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 by credible evidence to be a high cost lender or a predatory lender, as defined by City of Atlanta Code Sections 58-102 and 58-103. Conviction under Code Section 58-105 shall be conclusive evidence that an individual or business entity is a high cost or a predatory lender.

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) In accordance with Code Section 58-105, 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 Sections 58-102 and 58-103. 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 Sections 58-102 and 58-103. I further certify that I am an agent duly authorized to sign this certification on behalf of the contracting party.*

(b) 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. Any other contract awarded in violation of this Section shall be voidable at the option of the City.

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 Eight : **That all ordinances or parts of ordinances in conflict herewith are hereby repealed.**

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01-O-1092

(Do Not Write Above This Line)

AN ORDINANCE

BY COUNCILMEMBER DERRICK BOAZMAN

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 "PROHIBITION AGAINST PREDATORY LENDING;" 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 THE CITY OF ATLANTA; 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 AUTHORIZE THE CHIEF FINANCIAL OFFICER TO WITHDRAW FUNDS FROM ANY DEPOSITORY THAT IS ITSELF OR IS AN AFFILIATE OF A PREDATORY LENDER; 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.

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

Date Referred 07/02/01

Referred To: Finance/Executive

Date Referred

Referred To:

Date Referred

Referred To:

First Reading

Committee

Date

Chair

Referred to

Committee	Committee
Date	Date
Chair	Chair
Action: Fav, Adv, Hold (see rev. side) Other:	Action: Fav, Adv, Hold (see rev. side) Other:
Members	Members
Refer To	Refer To

Committee	Committee
Date	Date
Chair	Chair
Action: Fav, Adv, Hold (see rev. side) Other:	Action: Fav, Adv, Hold (see rev. side) Other:
Members	Members
Refer To	Refer To

FINAL COUNCIL ACTION

☐2nd ☐1st & 2nd Readings ☐3rd

☐Consent ☐V Vote ☐RC Vote

CERTIFIED

MAYOR'S ACTION