

April 21, 2025

**VIA EMAIL**

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City Council  
City of Atlanta  
55 Trinity Ave. SW  
Atlanta, GA 30303

Re: Constitutional Notice Regarding Adoption of 24-0-1691, Ordinance to Amend Atlanta City Code to Adopt a New Tree Protection Ordinance for the City of Atlanta.

Dear City Council:

This firm represents Brock Built Homes, Empire Communities, and The Greater Atlanta Homebuilders Association. Each of these entities have significant concerns about new legislation pending before the City Council: Proposed Ordinance 24-0-1691, entitled, "An Ordinance by Councilmember Michael Julian Bond as Substituted by Community Development/Human Services Committee to Amend the Atlanta City Code, Part II (General Ordinances), Chapter 158 (Vegetation), Article II (Tree Protection), to Adopt a New Tree Protection Ordinance for the City of Atlanta; and for Other Purposes"

(the “Proposed Ordinance”). This Proposed Ordinance is currently before the City Council for consideration.

Any enactment of the Proposed Ordinance will drastically undermine the affordable housing supply, discourage residential development in the City, and violate its citizens’ constitutional rights, as explained in greater detail below. This letter constitutes constitutional notice regarding the violations that will result from the Proposed Ordinance.

**I. The Issues Posed by the Proposed Ordinance**

The Proposed Ordinance considered by the City of Atlanta differs significantly from the current Tree Protection Ordinance, with many aspects of the Proposed Ordinance imposing unfair burdens upon property owners, developers, and citizens of Atlanta.

Notable changes contained within the Proposed Ordinance include:

- Tree recompense fees are set to increase by 500-800% in instances where maximum recompense remains intact;
- Maximum recompense is proposed to be removed from the Tree Protection Ordinance, resulting in projects relying upon maximum recompense to experience tree recompense fee increases of over 1000%;
- Expanded definitions of “priority” and “non-priority” trees will drastically reduce the number and quality of buildable lots, crushing the supply of buildable lots;
- Projects that include affordable housing product do not receive nearly enough recompense discounts to make any difference in their development cost structure; and
- Any greenfield sites five acres or larger will be required to preserve 30% of the site area from any land disturbance, which decreases the value of a third or more of a site for preservation, regardless of whether any trees of significance exist on the property.

The result of the Proposed Ordinance will be that builders, developers, and stakeholders will be driven to other municipalities to build houses. Builders and developers in Atlanta already need more flexibility on the spacing of tree planting set forth in the current ordinance. The new ordinance takes a bad situation and makes it worse.

Further, the development of additional affordable housing, a vital City priority, will suffer the brunt of these new regulations. The increased costs imposed by the Proposed Ordinance hit an affordable housing project much harder than a market project. The margins and cost structures for affordable developments are razor thin, and blowing up a cost line item like this renders those affordable projects upside down before the first shovel hits the ground. If the costs cannot be absorbed, the affordable projects will never be started, OR, the resulting home price in such a project will no longer be “affordable.”

If the Proposed Ordinance were to go into effect, within a period of 12 to 18 months, building permits issued within the City will significantly decline. This decline will cripple new housing stock at all price points within the City.

The Proposed Ordinance does not simply hurt developers and builders. In addition, the Proposed Ordinance will have a devastating effect upon property owners. Parcels of all sizes will lose tens of millions of dollars in value due to things like recompense fees increasing exponentially and buildable envelopes shrinking.

The City will lose development opportunities and revenue as a result of this shift. The City will also be subject to innumerable appeals, petitions, and lawsuits, as the Proposed Ordinance completely trounces the vested rights and constitutional rights of property owners and developers within the City. Moreover, the adoption of the Proposed Ordinance will lead to a long, difficult, legislative bog, as future Mayors and Council have to undo the hole the Proposed Ordinance creates in the housing stock.

## **II. Recommendations**

In light of the issues addressed above, our clients ask that you consider a phased approach to a new Tree Protection Ordinance, rather than the Proposed Ordinance. The City Council could avoid the many pitfalls of the Proposed Ordinance by instead:

- Retain maximum recompense for R-4, R-4A, R-4B, R-5, and SPI districts which limit development to one and two-family dwellings;
- Create and administer a registration process for tree professionals; and
- Adopt a 100% waiver of recompense fees for all affordable housing.

Further, additional Tree Protection Ordinance legislation should await determination that: (1) the tree canopy loss is not significantly increasing, and (2) that additional burdens are not arising for affordable housing or market rate housing due to the changes made to the Tree Protection Ordinance.

While the City's goal of achieving and maintaining a 50% tree canopy within the City is admirable, additional conversations are needed to determine how the existing funds and proposed increased funds will serve to reach that goal. Approaching this solution with care and consideration, through the implementation of these recommendations, can help to facilitate those conversations in the most productive way.

### **III. Constitutional Notice**

Adopting the Proposed Ordinance will unreasonably impair and destroy our clients' property rights, and the rights of property owners, builders, and developers, without first paying fair, adequate and just compensation for such rights, in violation of Article I, Section I, Paragraph I of the Constitution of the State of Georgia, Article I, Section III, Paragraph I of the Constitution of the State of Georgia, and the Just Compensation Clause of the Fifth Amendment to the Constitution of the United States.

Adopting the Proposed Ordinance would be unconstitutional, illegal, null and void, constituting a taking of our clients' and other owners' property in violation of the Just Compensation Clause of the Fifth Amendment to the Constitution of the United States, Article I, Section I, Paragraph I, and Article I, Section III, Paragraph I of the Constitution of the State of Georgia.

Adopting the Proposed Ordinance will unconstitutionally discriminate, in an arbitrary, capricious, and unreasonable manner, between our clients and other similarly situated entities and property owners in violation of Article I, Section I, Paragraph II of the Constitution of the State of Georgia and the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.


Adopting the Proposed Ordinance will constitute an unreasonable and extreme hardship upon our clients and other property owners, builders, and developers, without remotely advancing the public health, safety and welfare and would constitute an arbitrary and capricious act without any rational basis therefore, constituting an abuse of discretion in violation of Article I, Section I, Paragraph I of the Constitution of the State of Georgia, Article I, Section III, Paragraph I of the Constitution of the State of Georgia, and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

Adopting the Proposed Ordinance will violate Article I, Section I, Paragraph X of the Constitution of the State of Georgia.

*[Signature to appear on the following page]*

Sincerely,

BLOOM PARHAM, LLP

 (with permission  
By ATP)

Simon H. Bloom

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