

COPY

IN THE CHANCERY COURT OF
DAVIDSON COUNTY, TENNESSEE
TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

HOME BUILDERS ASSOCIATION)
OF MIDDLE TENNESSEE,)
)
Plaintiff,)
)
v.)
)
THE METROPOLITAN)
GOVERNMENT OF NASHVILLE)
AND DAVIDSON COUNTY,)
)
Defendants.)

Case No. 17-386-TL

JURY DEMAND

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COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

I. INTRODUCTION

1. Plaintiff, Home Builders Association of Middle Tennessee ("HBAMT"), brings this civil rights lawsuit and seeks declaratory and injunctive relief to redress and prevent the deprivation of the constitutionally protected rights infringed upon by Defendant's, the Metropolitan Government of Nashville and Davidson County ("Metro's"), recent enactment of an unconstitutional and illegal ordinance, BL2016-133.

2. The Ordinance conditions the grant of development entitlements – such as amendments to the zoning map which Metro requires before private property owners can develop almost any piece of property – upon the transfer of well-recognized property rights.

3. More specifically, the Ordinance provides that as a condition to obtaining approval of development entitlements needed to build a development with more than five units, rental or for-sale, the private property owner seeking approval must agree to set aside a certain percentage of the units for rent or sale at a government-fixed, below-market price to qualified lower-income renters or purchasers, or, in the alternative, (1) build a government-determined number of units at a government-specified location to be rented or sold at a government-fixed, below market price to qualified lower-income renters or purchasers, or (2) pay an fee in lieu of the dedication.

4. Metro is using these forced set-asides to coerce private individuals and companies into bearing the burden of addressing a public concern: alleged rising housing costs. Ironically, Metro's coercive tactics impose the burden on the homebuilders – the very parties who increase the housing supply in Metro Nashville and most directly redress the alleged housing scarcity.

5. The Ordinance violates the Tennessee and United States Constitutions because it is an unconstitutional condition. Through the Ordinance, Metro conditions the approval of development entitlements needed to build developments over five units on a private property owner's surrender of its constitutional right to seek market rate value on their rental or for-sale properties. In doing so, Metro takes private property for a public purpose without providing just compensation.

6. The Ordinance violates state preemption law because it conditions the development of rental units on a property owner's allocation of a percentage of its development to affordable or workforce housing. The Ordinance furthermore exceeds the lawful boundaries of the authority granted to it to address affordable housing by the state government for both rental and for-sale units.

7. HBAMT seeks a declaration that the Ordinance imposes an unconstitutional condition, constituting a taking without just compensation within the meanings of the Tennessee and United States Constitutions, violates state preemption law, and exceeded Metro's delegated powers. It furthermore seeks a permanent injunction prohibiting the enforcement of the Ordinance.

II. Jurisdiction and Venue

8. This Court has jurisdiction over this action pursuant the Tennessee Declaratory Judgment Act, Tenn. Code Ann. § 29-14-102, and 42 U.S.C. § 1983.

9. As the county where the causes of action giving rise to the Complaint arose and where Defendant resides, venue is proper in this Court under Tenn. Code Ann. § 20-4-101(a).

10. This Court has authority to enter a declaratory judgment and to provide preliminary and permanent injunctive relief with the force and effect of a final decree pursuant to Tenn. Code Ann. §§ 29-1-101 *et. seq.*, 29-14-102,

29-14-103; 42 U.S.C. § 1983; and Tenn. R. Civ. P. 65 *et. seq.* (LexisNexis 2016).

11. Also, under Tenn. R. Civ. P. 65.04(7), this Court may consolidate an injunction hearing and advance it with a trial on the merits in order to promote a speedy and efficient resolution.

III. PARTIES

12. HBAMT is a non-profit trade group dedicated to the promotion and protection of the home building industry in the Middle Tennessee area, including Metro Nashville.

13. Metro is a political subdivision of the State of Tennessee and public corporation, capable of suing and being sued. Metro. Charter § 1.01. Metro is a person within the meaning of 42 U.S.C. § 1983 and at all times relevant to this Complaint acted under color of law.

IV. STATEMENT OF FACTS

Metro's Inclusionary Zoning Ordinance

14. Metro's Council recently expressed concern that an alleged lack of affordable low- and moderate-income housing, also referred to as affordable and workforce housing, in Nashville poses a threat to the City and County's social and economic well-being.

15. Faced with an alleged shortage of affordable housing, Metro turned to so-called "inclusionary zoning."

16. Inclusionary zoning requires private property owners to dedicate a certain percentage of the new homes they build as low-income housing, either on or off site, or pay a fee in lieu of the dedication, before Metro will provide private property owners the amendments to the zoning map, variances, or other “development entitlements” they need to build in Nashville.

17. Since first proposed, Metro’s inclusionary zoning strategy has been highly controversial because it conditions the government’s issuance of development entitlements such as permits and amendments to the zoning map (often referred to as “upzoning”) on property set-asides and in-lieu fees. In doing so, Metro shifts a burden that ought to fall on the government to address an alleged pre-existing public problem onto individual private property owners.

18. Effective July 24, 2015, Metro amended the zoning title of its code (Title 17) to establish a requirement for affordable and workforce housing units, and to authorize the Planning Department to establish rules and regulations in accordance. *See Metro. Code § 17.10.010.*

19. Metro’s stated intent was to provide enabling legislation for the provision of low-income housing and its equitable distribution across all of Davidson County by “any means,” including minimum project sizes that would be “required” to provide affordable/workforce housing. *See Metro. Code § 17.10.010(B)(1).*

20. Metro's Planning Department was also directed to set a goal of "requiring at least fourteen percent" (14%) of the units in all residential development be reserved and used for affordable/workforce housing. *See* Metro. Code § 17.10.020(A).

21. Before enacting BL2016-133, Metro solicited input from a fifty (50) member "stakeholder group" made of public officials, local residential developers, housing advocates, and real estate and housing finance experts

22. On September 16, 2016, Metro enacted the Ordinance, BL2016-133. It is attached as an exhibit. *See* Tenn. R. Civ. P. 10.03 (2015).

23. The Ordinance requires private property owners seeking "development entitlements" above the current base zoning to build either a rental or for-sale development of five or more units to set aside a certain percentage of those units for rent or sale at a government-fixed, below-market price and to rent or sell those units to only those purchasers who qualify under Metro's income standards. *See* BL2016-133 §§ 1 and 4.

24. The Ordinance provides that in the alternative to setting aside homes in the development, private property owners may instead

(1) build units at a government-specified location to be rented or sold at government-fixed, below-market prices to those purchasers who qualify under the government's income standards, or

(2) pay an in-lieu fee. *See id.*

25. All units sold at the government-fixed, below market price are subject to long-term recorded encumbrances that ensure that the homes themselves remain part of Metro Nashville's stock of affordable housing. *See* BL2016-342.

26. The Ordinance applies in virtually any development of five (5) or more units, because a private property owner must seek additional development entitlements in virtually every instance. Aside from a sparse few remaining properties that are zoned R-15 or better and do not need to be rezoned to allow a density for a property that makes economic sense to develop, or where Metro has already approved a specific plan district ("SPs"), Metro's current zoning map contains no known properties that would allow for development of five (5) or more units without an amendment to the zoning map that would permit additional development entitlements.

27. As long as the Barnes Fund remains funded, the Ordinance applies whether or not the private property owner seeking to develop its property receives any financial incentive from Metro. *See* BL2016-133 § 1 (providing the conditions on development entitlements apply any time "adequate" financial incentives are available).

28. The Ordinance applies regardless of whether the private property owner seeking to develop its property intends on building units for rent or for-sale. Specifically, the Ordinance mandates that "all" residential developments seeking to increase development entitlements beyond that

permitted by current base zoning “shall” comply with Section 17.40.780 (Inclusionary Housing).” BL2016-133 § 4.

29. Notably, the Ordinance also deletes the section of its zoning code that provided for density bonuses for any planned unit development (“PUD”) that allocated a portion of the units to affordable housing. See BL2016-122 § 1.

Tennessee’s Affordable Housing law

30. Under Tenn. Code Ann. § 66-35-102(b):

A local governmental unit shall not enact, maintain, or enforce any zoning regulation, requirement, or condition of development imposed by land use or zoning ordinances, resolutions, or regulations or pursuant to any special permit, special exception, or subdivision plan that requires the direct or indirect allocation of a percentage of existing or newly constructed private residential or commercial rental units for long-term retention as affordable or workforce housing.

31. This section does not affect the authority of a locality to implement an incentive-based program designed to increase the construction of affordable/workforce housing. Tenn. Code Ann. § 66-35-102(c).

Plaintiff HBAMT

32. HBAMT has over 600 members, more than half of who are actual builders of homes or apartments.

33. HBAMT’s members build of both rental and for-sale units in Metro Nashville.

34. HBMAT's members build projects of five (5) or more units in Metro.

35. HBMAT's members include those who are expected to comply with the Ordinance.

36. HBAMT actively followed Metro's legislative process as it crafted and passed the Ordinance, updating its members and discussing it in meetings.

37. The Executive Vice President for HBAMT, John Sheley, was a member of the Inclusionary Housing Stakeholders Group convened by Metro, and during the stakeholder meetings he expressed his disapproval of this approach.

38. HBAMT's members will request additional development entitlements from Metro through amendments to the zoning map for most, if not all, of their projects of five (5) or more units going forward.

39. HBAMT's members have asked for additional development entitlements from Metro through amendments to the zoning map in the past.

V. Claims

A. Count One - U.S. Const., amend. V & XIV, Tennessee Const., Article I, Section 21 (Unconstitutional Conditions).

40. HBAMT re-alleges the allegations in this Complaint as though set forth in this section.

41. The Takings Clause prohibits the government from taking property without just compensation. U.S. Const., amend. V.; Tenn. Const. art. I, § 21.

42. The doctrine of unconditional conditions prohibits the government from conditioning the provision of a discretionary benefit — such as the issuance of an additional development entitlement or amending the official zoning map — upon a requirement that the person waive or surrender a conditional right. *See Perry v. Sindermann*, 408 U.S. 593 (1972); *Koontz v. St. Johns River Water Mgmt. Dist.*, 133 S. Ct. 2586, 2603 (2013).

43. The Takings Clause not only prohibits physical takings, but also the misuse of governmental power over land-use regulations.

44. Further, governments may constitutionally exact money from property owners as a condition of the exercise of their property rights only if:

- a. The exaction directly mitigates a public impact arising from the property owners' exercise of their property rights; and

b. The exaction is roughly proportionate in both nature and extent to the public impact arising from the property owners' exercise of their property rights.

45. All three options provided for in the Ordinance result in the taking of property without just compensation and a destruction of property rights.

46. Metro's actions are an unconstitutional condition on obtaining additional residential development entitlements in violation of constitutional standards governing such exactions and as such, Metro effectuates a taking within the meaning of the State and Federal constitutions. *See Nollan v. California Coastal Comm'n*, 483 U.S. 825, 837 (1987); *Dolan v. City of Tigard*, 512 U.S. 374, 391 (1994); *Koontz*, 133 S. Ct. at 2603.

47. Here, Metro conditions the grant of development entitlements above base zoning on a private property owner's (e.g. the homebuilder) transfer of a well-recognized property right without just compensation.

48. Metro's zoning laws require such additional development entitlements before private property owners may develop five (5) or more units on any, or practically any, property.

49. The costs imposed by Metro bear neither an essential nexus nor rough proportionality to any alleged adverse impact that private property owners building rental or for-sale residential units supposedly have on affordable housing in the boundaries of Metro Nashville.

50. Metro's decision to condition the issuance of development entitlements on a private property owner's surrender of its right to seek market value on their units is unconstitutional on its face and as-applied and is void.

B. Count Two - Tenn. Code Ann. § 66-35-102(b) (State preemption).

51. HBAMT re-alleges the allegations in this Complaint as though set forth in this section.

52. Localities like Metro are political subdivisions of the State of Tennessee.

53. Localities like Metro have only the powers delegated to them by the State of Tennessee.

54. At all times herein mentioned and going forward, Metro had a mandatory and ministerial duty to conform their actions to the limits of its power as provided by the State of Tennessee.

55. For rental units, Tenn. Code Ann. § 66-35-102(b) prohibits Metro from conditioning development by ordinance or regulation on the allocation of any percentage of affordable/workforce housing.

56. For rental units, Tenn. Code Ann. § 66-35-102(c) permits Metro to use incentives to encourage the development of affordable/workforce housing.

57. Metro conditions its grant of development entitlements above the current base zoning on a private property owner's dedication of units as affordable housing, subject to the limited exceptions outlined above and adopted here by reference.

58. Metro has conditioned development by ordinance and regulation on the allocation of both rental and for-sale residential units to affordable/workforce housing, subject to the limited exceptions outlined above and adopted here by reference.

59. Homebuilders of rental residential units "shall" comply with Metro's demand to choose one of the options outlined above — build the housing on or off site, or pay a fee — so long as housing prices are at prices or rates that Metro deems unaffordable, and so long financial incentives exist that Metro deems "adequate. *See* BL2016-133 § 1.

60. Tennessee has both expressly and impliedly preempted localities by Tenn. Code Ann. § 66-35-102(b) from conditioning development imposed by land use or zoning ordinances, resolutions, or regulations or pursuant to any special permit, special exception, or subdivision plan that requires the direct or indirect allocation of a percentage of existing or newly constructed private residential or commercial rental units for long-term retention as affordable or workforce housing.

61. The Ordinance thus cannot apply to rental residential units.

C. Count Three – Metro has no authority delegated to it to enact the Ordinance (ultra vires).

62. HBAMT re-alleges the allegations in this Complaint as though set forth in this section.

63. Tennessee must expressly delegate powers to a locality.

64. The powers accorded to a locality are narrowly interpreted under the canon of statutory interpretation known as Dillon's Rule.

65. Tennessee has never delegated localities the power to address housing prices through an inclusionary zoning measure such as the one set forth in the Ordinance, although it has otherwise told cities how they may address affordable housing issue.

66. For instance, Tennessee permits counties with a metropolitan government to establish a housing trust fund. *See* Tenn. Code Ann. § 7-8-101.

67. For instance, Tennessee permits localities to appropriate funds for affordable or workforce housing. *See, e.g.,* Tenn. Code Ann. §§ 5-9-113, 13-23-501, *et. seq.*

68. Metro's definitions of "affordable housing" and "workforce housing" mirror Tenn. Code Ann. § 5-9-113.

69. For instance, Tennessee permits localities to create corporations to use real property for affordable housing. *See* Tenn. Code Ann. § 13-30-111(e)(1).

70. For instance, Tennessee permits metropolitan governments to convey real property it owns to a nonprofit organization for the purpose of constructing affordable or workforce housing. *See* Tenn. Code Ann. § 7-3-314.

71. For instance, Tennessee prohibits localities from conditioning development of rental residential units on the allocation of affordable or workforce housing. *See* Tenn. Code Ann. § 66-35-102(b).

72. For instance, Tennessee permits an incentive-based program designed to increase the construction of affordable or workforce housing, but only for rental units. *See* Tenn. Code Ann. § 66-35-102(c).

73. What Tennessee has never done is given localities the authority to condition approval of additional development entitlements through amendments to the zoning map.

74. Tennessee has never authorized even incentives to for-sale units.

75. Metro thus did not have the authority to enact the Ordinance, and it is thus void and *ultra vires*.

V. Request for Relief

76. HBAMT requests of this Court the following relief:

A. The entry of a declaratory judgment declaring BL2016-133 unconstitutional, a taking, and an unconstitutional condition under the Fifth and Fourteenth Amendment to the U.S. Constitution and Article I, Section 21 of the Tennessee Constitution;

B. The entry of a declaratory judgment that Tenn. Code Ann. § 66-35-102(b) preempts the application of BL2016-13 to rental units;

C. The entry of a declaratory judgment declaring that Metro exceeded its lawfully delegated authority when passed BL216-133;

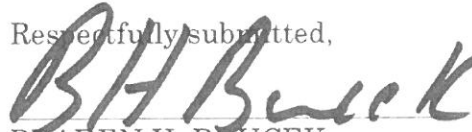
D. An order permanently enjoining Metro, its agents, and its employees from enforcing BL2016-133;

E. Award attorneys' fees and costs in this action pursuant to 42 U.S.C. § 1988, and;

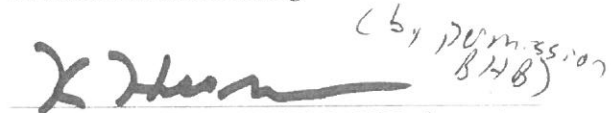
F. Such other relief as the Court deems just, equitable, necessary and proper.

Dated: April 24, 2017.

Respectfully submitted,



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(by permission BHB)

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EXHIBIT

BL2016-133

SECOND SUBSTITUTE ORDINANCE NO. BL2016-133

An ordinance to amend various sections of Title 17 of the Metropolitan Zoning Code to incentivize Inclusionary Housing with any residential development that seeks additional development entitlements beyond that permitted by the current base zoning district. (Proposal No. 2016Z-001TX-001)

WHEREAS, the Metropolitan Government of Nashville and Davidson County has undertaken a Inclusionary Housing Feasibility and Market Study (the Study); and

WHEREAS, the Study found that there has been cost appreciation and housing turnover in central areas of the city; and

WHEREAS, the Study found that 24% of homeowners in the city are cost-burdened and 46% of renters in the city are cost-burdened; and

WHEREAS, cost appreciation and housing turnover in central areas can lead to the displacement of cost-burdened households and gentrification; and

WHEREAS, 29% of all 2015 home sales in Nashville and Davidson County were affordable to a buyer earning 80% AMI for a 2.5 person household; and

WHEREAS, much of the housing affordable to 80% AMI is outside of the central areas, with poor access to jobs, transit and services; and

WHEREAS, affordable and workforce housing is a primary concern of the citizens of Nashville and Davidson County, as it continues to be a major barrier to economic progress for many in Nashville; and

WHEREAS, increasing the supply of affordable and workforce housing supports economic growth and is an important tool in reducing poverty in Davidson County.

NOW, THEREFORE, BE IT ENACTED BY THE COUNTY OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1. That Chapter 17.40 (Administration and Procedures) of the Metropolitan Code is hereby amended by inserting the following Article XVII (Inclusionary Housing):

17.40.780 Purpose and Applicability of Inclusionary Housing Provisions

A. Purpose. The purposes of this Section are to promote the public health, safety and welfare by increasing the production of Inclusionary Housing units to meet existing and anticipated housing and employment needs; mitigating the impacts of increasing housing cost and provide housing affordable to low and moderate income households; providing for a range of housing choices throughout the city to avoid the concentration of poverty;

and to provide a mechanism by which residential development can contribute in a direct way to increasing the supply of affordable and workforce housing in exchange for additional development entitlements other than those otherwise permitted as a matter of right.

B. Applicability.

1. When additional residential development entitlements are gained through an amendment to the official zoning map or when public resources or property is provided for a residential development, the rental residential units shall be subject to the provisions of this Section as long as adequate financial incentives from the Metropolitan Government of Nashville and Davidson County are available. On projects where a funding cap limits the financial incentives available to less than the value calculated based on the difference between the market rate rent and the selected workforce rent, the set aside may be adjusted annually to align the needed incentive with the funding available. A property owner or developer with for-sale residential units may participate in the incentives of this Section.
2. For residential uses, developments fewer than five units are exempt. For the purposes of this subsection, "development" shall include any residential or mixed use development at one or more adjoining sites with common ownership or under common control, within a period of five years from the first date of the issuance of a building permit for construction.
3. Inclusionary Housing shall not be provided and no financial incentives shall be granted if the average unit sale price or rental rate is less than, or within 5% above 100% Median Household Income (MHI) market prices or rental rates for Nashville and Davidson County and the Inclusionary Housing Plan demonstrates that the census tract average market rate prices or average rental rates for comparable units are affordable to a household at 100% MHI.

17.40.790 Requirements for Inclusionary Housing

A. Construction. The set aside for affordable or workforce housing shall be:

	Rental at 60% MHI or less	Rental at Greater than 60% MHI to 80% MHI	Rental at Greater than 80% MHI to 100% MHI (available in the UZO only)	For-sale at Greater than 60% MHI to 80% MHI	For-sale at Greater than 80% MHI to 100% MHI (available in the UZO only)
Single-family and Two- family uses	12.5% of total residential units	15% of total residential units	17.5% of total residential units	10% of total residential units	15% of total residential units

Multi-family uses less than 3 stories	12.5% of total residential floor area	15% of total residential floor area	17.5% of total residential floor area	10% of total residential floor area	15% of total residential floor area
Multifamily uses (3 to 6 stories)	10% of total residential floor area	12.5% of total residential floor area	15% of total residential floor area	n/a	n/a
Multifamily uses (≥ 7 stories)	7.5% of total residential floor area	10% of total residential floor area	12.5% of total residential floor area	n/a	n/a
<p>The Office of Economic Opportunity and Empowerment with assistance from the Finance Department may approve a mixture of MHI levels, provided the mixture is equivalent to the set asides above. The equivalency of the mixture of MHI levels and the approval shall be documented in the Inclusionary Housing Plan.</p> <p>For the purposes of this Article, the residential floor area shall be the net leasable residential floor area.</p>					

B. In lieu Construction.

1. In lieu of meeting the Inclusionary Housing incentives on site, construction at the same rates included in subsection A of this section may be provided within the following distances from the development that is providing Inclusionary Housing:
 - i. One (1) mile along the corridor, if the development that is providing Inclusionary Housing is on a Multimodal Corridor designated in the Major and Collector Street Plan, excluding Expressways, Freeways and Ramps.
 - ii. A half mile ($\frac{1}{2}$) mile, if the development that is providing Inclusionary Housing is not on a Multimodal Corridor designated in the Major and Collector Street Plan, excluding Expressways, Freeways and Ramps.
 - iii. In lieu construction shall not be permitted at an alternate location if the Inclusionary Housing Plan demonstrates that the alternate location's census tract market rate prices or rental rates for comparable units are affordable to a household at 100%MHI.
2. Use & Occupancy permits for the affordable and/or workforce units shall be issued prior to the issuance of any Use & Occupancy permit for principal project.

C. In lieu Contribution. There is hereby established a Housing Incentives Fund to be maintained as an administrative account by the Finance Department for the purpose of funding the incentives grant program. In lieu of meeting the Inclusionary Housing

incentives for rental units on site, prior to the issuance of building permits, an in lieu contribution may be provided to the Housing Incentives Fund as follows:

Within the UZO	Outside of the UZO
Per square foot equivalent of 50% of the affordable sales price at 100% MHI for Davidson County 12.5% of the total residential floor area in a rental project.	Per square foot equivalent of 50% of the affordable sales price at 80% MHI for Davidson County 10% of the total residential floor area in a rental project.
<p>The affordable sales price shall be determined by the Office of Economic Opportunity and Empowerment with assistance from the Finance Department annually based on:</p> <ol style="list-style-type: none"> A maximum down payment of 5.0%, Current Year MHI thresholds adjusted for household size published by HUD, Prior six-month average rate of interest based on the Fannie Mae Yield on 30-year mortgage commitments (price at par) plus one-half point (0.5%) spread, 30-year mortgage term, Any homeowner fees, taxes and insurance, and Typical unit size. 	

17.40.800 Standards for Construction and Occupancy of Affordable and/or Workforce Housing.

- With the building permit application, the Owner/Developer shall submit an Inclusionary Housing Plan, which documents the following:
 - Number of total residential units provided under the site plan.
 - Whether the development uses public resources or public property.
 - Number of affordable or workforce housing units provided.
 - Income levels of targeted families for affordable or workforce housing units.
 - The proposed rents or sales prices and guarantee of limits on future rent increases or sales prices.
 - Location of affordable or workforce housing units.
 - Sizes of affordable or workforce housing units.
 - Bedroom counts of affordable or workforce housing units.
 - Market rate pricing or rental rates for comparable units within the census tract for the project site and, if applicable, the in lieu site.
 - The party responsible for compliance reports, with approval from the Office of Economic Opportunity and Empowerment with assistance from the Finance Department.
- To ensure livability, Inclusionary Housing units shall be at least 80% of the average size of market rate units and the breakdown of bedroom counts of Inclusionary Housing units shall be similar to the breakdown of bedroom counts for the market rate units in the project. After the Inclusionary Housing square footage is allocated

according to the distribution of market rate units, any remaining square footage too small for construction of a unit shall utilize the in lieu contribution option.

- C. Exteriors of Inclusionary Housing units shall closely resemble the exteriors of other units in a project.
- D. The owner shall ensure to the satisfaction of the Metropolitan Government that the Inclusionary Housing units will:
 - 1. be occupied by eligible households.
 - 2. be maintained as rental Inclusionary Housing units for a minimum of 15 years from the date of initial occupancy and/or be maintained as for-sale Inclusionary Housing unit for 30 years from the date of initial occupancy.

17.40.810 Enforcement.

- A. Prior to the issuance of the first building permit, all Standards for Construction and Occupancy shall be documented on the building permit plans.
- B. Prior to the issuance of the Use & Occupancy permit, all Standards for Construction and Occupancy shall be satisfied and documentation provided to the Codes Department.
- C. During the applicable period, the owner, developer or designee shall provide a compliance report to the Office of Economic Opportunity and Empowerment in the form and manner determined by the Office of Economic Opportunity and Empowerment with assistance from the Finance Department. The party responsible for compliance reports shall be approved by the Office of Economic Opportunity and Empowerment and noted Inclusionary Housing Plan. For for-sale developments, individual owners are not permitted to be the party responsible for compliance reports.

17.40.820 Sunset provisions.

- A. The provisions of Article XVII (Inclusionary Housing) shall expire and be null and void as of December 31, 2019. This provision, commonly known as a "sunset provision," is included to ensure that the effectiveness and necessity of this section is reviewed by the metropolitan council after its adoption.
- B. Two (2) years after its passage, the Planning Department shall conduct a study of the impact of Article XVII (Inclusionary Housing) and related incentives. This study shall include an assessment of the economic impact, impact on affordable housing and whether the incentives should be recalibrated. The study shall be delivered to the Metropolitan Council no later than six (6) months before the sunset date.

Section 2. That Section 17.36.090 (Development bonuses.) of the Metropolitan Code is hereby amended by deleting the subsection B.

Section 3. That Chapter 17.37 (Downtown Code (DTC) of the Metropolitan Code is hereby amended by deleting pages 93, 96 and 99 and replacing with pages 93, 96 and 99 in the attached Exhibit A.

Section 4. That Chapter 17.40 of the Metropolitan Code is hereby amended by inserting the following Section 17.40.055 (Inclusionary Housing Incentive):

As an incentive to encourage developers and property owners to meet the affordable and workforce housing goals set forth in this Title, all proposed residential development that seeks to increase development entitlements beyond that permitted by the current base zoning district shall comply with Section 17.40.780 (Inclusionary Housing).

Section 5. That Section 17.40.105 (Specific plan—Purpose and intent.) of the Metropolitan Code is hereby amended by deleting the last sentence and inserting the following as the last sentence:

The specific plan cannot vary Section 17.40.055 (Inclusionary Housing Incentive) and must comply with the building, fire and life safety codes adopted by the metropolitan government.

Section 6. That Chapter 17.10 of the Metropolitan Code is hereby deleted.

Section 7. That any appropriately filed application that complies with all existing filing requirements and that is filed prior to the effective date of this ordinance shall not be subject to the provisions of this ordinance, however a developer and/or property owner may participate in the incentives of this Section.

Section 8. Be it further enacted that following passage, this ordinance shall take on October 1, 2016 and such change be published in a newspaper of general circulation, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

INTRODUCED BY:


Member of Council



ORIGINAL

METROPOLITAN COUNTY COUNCIL

SECOND
SUBSTITUTE

Bill No. BL 2016-133

An ordinance to amend various sections of Title 17 of the Metropolitan Zoning Code to incentivize Inclusionary Housing with any residential development that seeks additional development entitlements beyond that permitted by the current base zoning district. (Proposal No. 2016Z-001TX-001)

Introduced _____

Passed First Reading _____

Amended _____

Passed Second Reading _____

SECOND SUB.
FILED & AMENDED

Passed Third Reading SEP - 6 2016

Approved SEP - 7 2016

By  _____
Metropolitan Mayor

Advertised SEP 16 2016

Effective Date SEP 16 2016

AMENDMENT NO. 1

TO

ORDINANCE NO. BL2016-133

Mr. President –

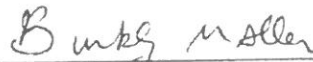
I move to amend Ordinance No. BL2016-133 as follows:

I. By amending Section 1 by deleting proposed sub-section 17.40.820.A and substituting therefore the following:

17.40.820 Sunset provisions.

- A. The provisions of Article XVII (Inclusionary Housing) shall expire and be null and void as of December 31, 2019 unless extended by resolution of the metropolitan council. This provision, commonly known as a "sunset provision," is included to ensure that the effectiveness and necessity of this section is reviewed by the metropolitan council after its adoption.

INTRODUCED BY:



Burkley Allen
Member of Council



ADOPTED: September 6, 2016

AMENDMENT NO. 2

TO

SUBSTITUTE ORDINANCE NO. BL2016-133

Mr. President –

I move to amend Substitute Ordinance No. BL2016-133 as follows:

I. By amending Section 7 by deleting it in its entirety and substituting therefore the following:

Section 7. Be it further enacted that this ordinance take effect nine (9) months from and after its passage and such change be published in a newspaper of general circulation, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

INTRODUCED BY:


Member of Council

ADOPTED: September 6, 2016

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing was served upon the following, by the following means:

Counsel	Counsel for	Via
Jon Cooper Director of Law Metro Courthouse Ste. 108 P.O. Box 196300 Nashville, TN 37219-6300 615/862.6341 jon.cooper@nashville.gov	Metro Nashville	<input type="checkbox"/> United States mail, postage prepaid <input checked="" type="checkbox"/> Hand delivery <input type="checkbox"/> Fax <input type="checkbox"/> Email <input type="checkbox"/> Fed Ex <input type="checkbox"/> CM/ECF

Dated: April 24, 2017.

Respectfully submitted,



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