

Chicago IL: *Affordable Requirements Ordinance*

Chicago, with its population of 2.8 million, is now the largest jurisdiction with an inclusionary zoning program. Recently adopted after resistance from a powerful mayor, this program represents a political compromise that falls short of what was sought by the proponents of the program.

INTRODUCTION

The City of Chicago passed the current version of its *Affordable Requirements Ordinance* (ARO) in May 2007. This version significantly expanded upon the initial version passed in 2003. The ordinance is found in Section 2-44-090 of its Municipal Code.

The city has a population of 2.8 mil. So, this particular inclusionary program is now the largest in the US in terms of community size.

This ordinance was the result of a multi-year effort by a broad coalition of community organizations, including Business and Professional People for the Public Interest (BPI). Since the early 2000s, this coalition has been pressing the city to pass an inclusionary zoning program. They were behind the limited initial 2003 ordinance, as well as the enhanced 2007 version. Because the more recent ordinance still fails to meet their objectives, the coalition continues to press for further improvements.

As part of these efforts, BPI researched programs elsewhere and prepared a number of important seminal papers on inclusionary zoning. When this research and rational persuasion had little impact, the group turned to political action by engaging and supporting candidates for city council that were in favour of inclusionary zoning. The steady and continuous pressure on local politicians, together with their improved understanding of the subject, proved to be decisive.

The mayor of Chicago over this time had resisted these efforts, raising concerns that such a program would stifle development and harm the tax base. Nevertheless, the mayor introduced the current version as a compromise in the dying days of one council, when it became apparent that the newly elected council would have passed much more demanding measures.

State law does not specifically refer to inclusionary zoning. Nevertheless, there is language in one key act that is seen as authorizing the use of mandatory inclusionary zoning. That language enables local government to use their zoning powers to require the creation and preservation of affordable housing.

In any case, the city of Chicago (along with many other municipalities in the state) has "home rule" status, which gives them very broad powers to legislate, including mandatory inclusionary zoning in the absence of explicit of state authority.

A number of other jurisdiction in the state now also use mandatory inclusionary requirements. The program in Chicago has not been challenged.

The city has had two other earlier programs that also use regulatory incentives to provide for affordable housing: *Community Partnership for Affordable Neighbourhoods* (CPAN) and *Downtown Affordable Housing Density Bonus*.

PROVISIONS

Subject Developments

Under the current ordinance, the developments subject to ARO include any residential developments of 10 or more units that:

- obtain city-owned land, with or without a price reduction;
- receive financial assistance from the city;
- receive a zoning change that
 - increases project density,
 - allows for change from a non-residential to residential use, or
 - permits residential floor space on the ground floor where not previously allowed; or
- is within a designated 'planned development' in a downtown zoning district.

This considerably extended the original 2003 ARO, which applied only to residential developments that received financial assistance or land at a reduced price from the city.

Under the ARO, development is defined to include new construction, substantial rehabilitation of existing units as well as conversion of any building to residential condominium.

The term 'planned development' is not defined, but is taken to mean any large or complex development that is subject to a special and comprehensive approval process.

The ordinance allowed for phasing in these provisions by exempting developments where:

- the land was purchased in the two years prior to the passage of the ordinance, or
- the zoning changes or planned developments were filed prior to the effective date of the ordinance (which was roughly three months after its passage).

Housing Obligation & Income Targets

The developments generally are required to set aside 10% of the total units as affordable housing. Whenever financial assistance from the city is involved, the obligation is increased to 20%.

Ownership housing must be affordable to households earning at or below 100% of the area median income, while rental must be at or below 60%.

The 10% set-aside requirement can be reduced when the ownership units are made available for incomes at or below 80%. In this case, the required number of units is left for determination, but in principle the fewer units must be “substantially equivalent” in value to the 10% obligation at 100% of area median income.

Compliance Alternatives

In lieu of providing affordable units, developers are permitted to make payments to the Affordable Housing Opportunity Fund. The payments are based upon \$100,000 for each affordable unit not produced, adjusted annually by the CPI. There has been no change to this rate so far.

Out of these monies, 60% goes to the construction or rehabilitation of affordable housing, and 40% for rental assistance administered by the city’s Housing Trust.

Cost Offsets

The ordinance does not explicitly offer any cost offsets, such as density increases or any other regulatory incentives.

The lack of explicit offsets has not been an issue because all of the subject developments already involve increased density, financial assistance or land. Furthermore, it is a well-established practice in the city that the developers are able to negotiate for increased density and other regulatory concessions as part of the development approval process for any substantial project.

The city does not grant waivers of permit fees or development charges under this program, but it does under other programs.

These units are eligible for property tax reduction based on the restricted sale price rather than market value.

Affordability Controls

Under the ARO regulations, the affordable units must be maintained as affordable for at least 30 years, but nearly all will be subject to control for 99 years.

The city for sometime has been using secondary recapture mortgages to control the affordability of affordable ownership units generated by various programs. At the time of purchase, the city records a 30-year lien for the difference between the unit’s market price and its affordable price. If the owner resells to an income-eligible buyer at an affordable price, this lien stays with the home. If the owner sells to a

non-income-eligible buyer or sells at a price above affordable level, the seller must repay the lien from the sale proceeds.

Recently, the city changed its policy and begun to impose 99-year agreements. To do so, it established in 2006 a new organization, Chicago Community Land Trust (CCLT) both to develop and then administer the necessary legal documents.

Units under the control of CCLT will be subject to a 99-year restrictive covenant with a maximum resale price. The maximum resale price will be the original purchase price plus a percentage of the market appreciation, and in most cases will be a below-market price. Homes must be resold to the CCLT or to an income-qualified buyer.

The city's intent is to place all of the ARO affordable ownership units under the control of CCLT, but there might be exceptions. CCLT has established a policy that they will accept only affordable units selling at price at least \$25,000 lower than its market price. (Their concern is that an affordable unit with a smaller price deferential would not be marketable due to the legal encumbrances.) It is also possible that local aldermen in some cases could intervene to negotiate the lesser 30-year period.

ADMINISTRATION

The program is administered by two organizations:

- The Development Services Division of the Department of Community Development (DCD) is responsible for ensuring that the developers meet the affordable housing obligations of the ordinance.

In this capacity, it is principally engaged in reviewing and approving the development agreements reached with the developers of the subject developments.

- The Chicago Community Land Trust is responsible for maintaining the permanent affordability of the affordable ownership units. (Another division of DCD holds the corresponding role for the affordable rental units generated by this and other city programs.)

At the present time, the Development Services Division has a staff of only one engaged roughly 30% in the program. Separately, a staff member in another division is engaged roughly 60% to assessing income qualification for all of the city's affordable ownership programs. Two city lawyers are also engaged part-time in reviewing the sales documents.

PRODUCTION

The impact of this new program has not been felt, due to the economic downturn as well as the time lag between the adoption of new regulations and construction. So far the program has generated only 4 units.

The initial ARO generated 857 affordable units through May 2007, or roughly 200 units per year.

Based upon past development activity, the new program is expected to produce roughly 1000 units per year (or their equivalent in fees-in-lieu).

COMMENTS

This program imposes the affordable housing requirements principally on developments receiving regulatory benefits through the re-zoning process. This approach is consistent with the practices used in nearly every other “big-city” program, but not with the more common greenfield programs where the requirements are imposed on as-of-right developments. This approach is justified by city staff because it should cover nearly all large developments.

The use of a separate organization like the Chicago Community Land Trust to administer the on-going affordability requirements is relatively unique. Most programs are administered entirely in-house. Establishing this new organization was seen as a way of consolidating the administration of affordable ownership units coming out of a number of programs, and also a way of introducing stricter “permanent affordability” measures. In time, this organization is expected to be entirely self-sufficient.

The introduction of “permanent affordability” is a reflection of trend seen across the US. In this case, restrictive covenants that lock in the affordability for 99 years are being to replace 30-year secondary recapture mortgages, which are widely used in Ontario and elsewhere in this country.

The current ordinance still falls short of what was sought by BPI and the community coalition that been leading the push for these measures. For that reason, they continue to lobby for following more demanding provisions:

- 1) extending the affordable housing requirements to new residential developments built within the ‘as-of-right’ zoning provisions;
- 2) setting the income threshold for ownership at 80% of area median income;
- 3) using the median income specific to the city’s municipal area rather than the metropolitan area;
- 4) setting the affordable housing requirement at 15%; and
- 5) applying localized fees-in-lieu that reflect the public cost of providing affordable housing in various places across the city.

The municipal median income is seen as preferable to the metropolitan median income because the latter is inflated by the higher incomes of the surrounding

affluent suburbs outside of the city. So, in turn, this sets a higher and less affordable income threshold for the units.

The fees-in-lieu provisions, it is recognized by city staff, need further work. One rate is difficult to set for an entire city with the size of Chicago. The current rate of \$100,000 is probably too low for downtown and too high for the outer areas. (Nevertheless, this is consistent with the city's planning policies, which is to encourage affordable housing outside the downtown and not inside.) The rate also is not adjusted by unit size. One alternative that has been considered is to use a rate based on a fixed percentage of sale price.

RELATED PROGRAMS

Downtown Density Bonus

This program, started in 2002, allows increased density in downtown residential buildings in return for contributing to the Affordable Housing Opportunity Fund. The additional housing built by the developers need not be affordable housing as in the case of inclusionary housing programs. The fees represent the affordable housing benefit as they are used through the fund to support housing for low-income and working families. The fees are set in fixed and non-negotiable rates, set in \$/ft² that vary for four different downtown areas.

From 2001 to mid-2007, the downtown density bonus generated \$24 million.

Chicago Partnerships for Affordable Neighborhoods (CPAN)

This program, started in 2001, supports the provision of affordable condominiums and single family homes in market-rate developments, particularly in appreciating neighborhoods. The developments must provide a percentage of the units at a purchase affordable to households earning below 100% of area median income.

Developers receive these fixed and non-negotiable incentives:

- a permit fee waiver of \$10,000 for every affordable unit provided;
- site improvements for projects generally developing 10 or more units; and
- a partial reimbursement of \$3,000 in review process charges.

Homebuyers are also eligible for purchase price assistance in the form of \$10,000 interest-free loan repayable upon sale.

These incentives generally are not sufficient to provide the write-downs meeting the income targets. Nevertheless, some local aldermen have been able to pressure the developers to meet the targets in the absence of additional incentives.

Developments subject to the ARO are not eligible for this program unless they provide another 10% of units as affordable.

From 2002 to mid-2007, CPAN produced 492 units.

RD/14Oct09