

## Housing Initiative Clinic Briefs

### The City of Chicago's Affordable Requirements Ordinance

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This Housing Initiative Clinic Brief summarizes the Chicago Affordable Requirements Ordinance, including recently enacted amendments.

#### **Overview of the Affordable Requirements Ordinance**

The Affordable Requirements Ordinance (“ARO”) is a city ordinance that requires certain residential developments to provide a percentage of units at affordable prices. The ARO only applies to residential developments that have 10 or more units. If a residential development involves the rezoning of property or sale of City land to the developer, the developer must designate 10% of the units as “affordable” units<sup>1</sup>. For developments that receive financial assistance from the City, the affordability requirement is expanded to 20% of total units.

In 2014, Mayor Rahm Emanuel created an ARO Advisory Task Force charged with improving the ARO to increase development of affordable housing. The amendments were enacted by the City Council on March 18, 2015.

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<sup>1</sup> The ARO is triggered if the City of Chicago approves any of the following zoning changes and the development makes use of the change: (1) the rezoning of a lot to permit a higher floor area ratio than would otherwise be permitted in the base district; (2) the rezoning of a lot from a zoning district that does not allow household living uses to a zoning district that allows household living uses; or (3) the rezoning of a lot from a zoning district that does not allow household living uses on the ground floor of a building to a zoning district that permits household living uses on the ground floor. The ARO is also triggered if the City sells real property to any developer that subsequently uses it for a residential housing development. Chicago, Illinois, Municipal Code § 2-45-115(C)(1)

## **Defining Affordable**

“Affordable” means a sales price or rent that entails a monthly cost of not more than 30% of household income. For rental units, affordability is defined from the perspective of a household earning 60% of the Area Median Income (“AMI”). These units are required to remain affordable for 30 years. For sale units, affordability is defined from the perspective of a household earning up to 100% of AMI. In the case of for sale units, the restriction remains in effect for perpetuity. However, 30 years after the initial sale of the affordable unit, the owner may pay an amount equal to 50% of the difference between the unit’s market value and its affordable price, and the city would lift the affordable restriction. The owner can also sell the unit at an affordable price to a household earning up to 120% of AMI.

For developments that receive financial assistance from TIF Funds, “affordable” rental units have one-half of the units affordable to households earning up to 60% of AMI and one-half of the units affordable to households earning up to 50% of AMI. For sale housing, one-half must be affordable to households earning up to 100% of AMI and one-half must be affordable to households earning up to 80% of AMI.

## **Fee-in-lieu: A Primary Criticism of the Original ARO**

In its original version, the ARO provided developers an opportunity to avoid building affordable units by paying a fee-in-lieu amounting to \$100,000 per affordable unit not constructed. In high-income areas this was almost always the cheaper option, as the fee was offset by a higher return on investment in building more market rate units. The fee-in-lieu was contributed to the Affordable Housing Opportunity Fund, which was used by the City to fund new construction of

affordable housing and rental assistance; however, this fee-in-lieu financed housing was almost never built in areas comparable to the original development. One major concern, which is mitigated but not eliminated in the amended ARO, was that developers building in rapidly appreciating neighborhoods would pay the fee-in-lieu, and the affordable units would be built in poorer neighborhoods with fewer resources, thus increasing wealth disparities between neighborhoods in the city and shutting out low income people from opportunity areas.

### **Changes to Fee-in-lieu in the Amended ARO**

Several of the recent amendments to the ARO focus on increasing requirements for developers to build affordable housing. First, recognizing that the optimal solution will vary depending on geography, the amendments create three zones in the city: downtown, higher-income areas, and low-moderate income areas.

For low-moderate income areas, the developer must provide at least 25% of the required affordable units on-site. The developer may fulfill the rest of its affordable housing requirement by building additional on-site affordable units or paying a fee-in-lieu of \$50,000 per unit.

For higher-income areas, the developer must provide at least 25% of the required affordable units, but may do so on-site or off-site. Off-site affordable units must be located within a two-mile radius from the development and in either a higher-income area or a downtown district. The developer may fulfill the rest of its affordable housing requirement by a combination of additional affordable units and a fee-in-lieu of \$125,000 per unit.

For rental units in downtown districts, the developer must provide at least 25% of the required affordable units, but may do so on-site or off-site. Off-site affordable units must be located within a two-mile radius from the development and in either a higher-income area or a downtown district. The developer may fulfill the rest of its affordable housing requirement by a combination of additional affordable units and fees-in-lieu. The fee-in-lieu is \$140,000 per unit until one year of publication date of the ordinance and will be \$175,000 per unit after that.

For sale units in downtown districts, the owner is not required to provide a certain percentage of affordable units on-site or off-site. The developer may fulfill its affordable housing requirement by a combination of providing affordable units on-site or off-site and fees-in-lieu. The off-site units may be built anywhere in the city, subject to city approval. The fee-in-lieu is \$140,000 per unit until one year of publication date of the ordinance and will be \$175,000 per unit after that. If the developer does not provide at least 25% of the required affordable units on-site or off-site, the fee-in-lieu increases to \$160,000 per unit until one year of publication date of the ordinance and then to \$225,000 per unit after that.

These amendments will result in more affordable units being provided in the developing areas of Chicago, providing residents with access to jobs and quality schools.

Although the fee-in-lieu provision remains a valid alternative to building the remaining 75% of the required affordable units, the amendments charge developers a figure that more closely corresponds to the location of the development. This provides developers greater incentive to build the affordable units rather than pay the fee to fulfill the requirement.

## **Ensuring Long-term Affordable Units in Opportunity Areas**

In addition to altering fee-in-lieu provisions to require more affordable units at or near the development site, the amendments make changes to off-site developments. The amendments require that off-site developments be of quality construction, that they be constructed concurrently with the main development, and that they be approved by the City's Department of Planning and Development. For every off-site development, the City will assess an additional \$5,000 administrative fee per off-site unit.

For developments being built in a "Transit Served Location," the City has an added interest in the developer including more affordable units. Generally, a Transit Served Location is defined as a development located within 600 feet of a CTA or Metra station. Affordable units built in such locations give residents access to greater mobility for work and school. Under the amendments, if developers of these prime developments provide at least 50% of the required affordable units on-site, they will be rewarded with a Floor Area Ratio bonus of .75 (allowing greater densities of units to be built), a 25% reduction in required off-street parking (thus lowering costs for the developer in building parking), and up to 10 feet in additional allowable building height.

In its original version, the ARO required that affordable units remain affordable for 30 years. The amendments leave this requirement in effect, but provide more flexibility by allowing developers to sell or lease affordable units to the Chicago Housing Authority or other "authorized agencies." If the developer does so for at least 25% of the required affordable units, the fee-in-lieu reduced by \$25,000 per unit. This change transfers management of affordable units to the agency that has that function as its core mission.

## **Recommendations**

The amendments to the ARO primarily affect developers of market rate housing, as it imposes new requirements to build affordable units. However, “authorized agencies” have an opportunity to purchase or lease these affordable units in exchange for lower fees-in-lieu for the remaining units. No guidelines on what constitutes an “authorized agency” have been announced, but the amendments indicate that qualified agencies include nonprofits administering subsidies under HUD’s McKinney-Vento homeless assistance grants program, Veterans Administration Supportive Housing programs, or other housing assistance programs approved by the City. Established nonprofits are likely to have access to these resources and should keep abreast of opportunities to make use of the new amendments.

There has not been an independent rigorous analysis done on the expected impact of the amendments to the Affordable Requirements Ordinance. Developers have claimed that the changes will hurt development and ultimately the construction of new affordable units, while affordable housing advocates have claimed that the amendments will not substantially hinder development. The Chicago Metropolitan Agency for Planning had released a report in 2008 on the potential impacts of inclusionary zoning policies like the ARO in northeastern Illinois<sup>2</sup>, but no similar analysis of potential impacts has been released more recently. The amendments appear to be a series of compromises that balance a drive to produce new affordable units against a concern about dragging down development. The amendments may be an improvement on the existing regime, but without substantial analysis, any such assessment can only be speculative.

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<sup>2</sup> <http://www.cmap.illinois.gov/about/2040/supporting-materials/process-archive/strategy-papers/inclusionary-zoning>