Chicago IL: *Affordable Requirements Ordinance*

INTRODUCTION

The City of Chicago passed its current mandatory inclusionary zoning program, the *Affordable Requirements Ordinance* (ARO), in May 2007. It replaced an initial but limited program adopted in 2003. In March 2015, the city approved regulatory changes to the ARO that came into effect in October 2015.

The passing of this ordinance can be attributed in large part to the multi-year efforts of a broad coalition of community organizations, including notably the Business and Professional People for the Public Interest (BPI). They first tried research and education; BPI particularly prepared a number of important and influential papers on inclusionary zoning. When this produced no change, the group turned to directly pressing councillors and supporting sympathetic candidates for council. The political action eventually proved to be decisive.

The powerful mayor of Chicago had resisted these efforts, particularly by raising fears that such a program would stifle development and harm the tax base. Nevertheless, this same mayor introduced and backed ARO as a compromise that would forestall the passage of more demanding measures.

The city's latest five-year housing plan adopted in February 2014 – called "Bouncing Back" – called for making better use of ARO to provide affordable housing. While this led to the regulatory improvements in 2105, the program still falls short of what the community coalition wanted in the first place.

The city since 2004 also has operated a voluntary inclusionary program – *Downtown Affordable Housing Density Bonus* – that uses density bonuses in the downtown area to provide for affordable housing (see Appendix).

PROVISIONS

Subject Developments

The inclusionary requirements apply to any residential development of 10 or more units that:

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

This considerably extended the original 2003 provisions, which had 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 a residential condominium.

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

The 2007 provisions were phased-in by exempting developments where:

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

Housing Obligation & Income Targets

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

Under the 2007 ARO, ownership housing had to be affordable to households earning at or below 100% of the area median income (AMI),and rental at or below 60% of AMI.

In 2015, the maximum permitted income for ownership was increased to 120% of AMI, but the price of the units continued to based on what would be affordable at 100% of AMI. This was done to create more latitude for the buyers potentially able to buying units.

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

Compliance Alternatives

Under the original 2007 provisions, the developers had the choice of including affordable housing in their developments or buying out the obligation by paying fees-in-lieu into the city’s Affordable Housing Opportunity Fund, which is used to support subsidized housing. The payments were based upon $100,000 for each affordable unit not produced.

The 2015 changes introduced different compliance alternatives according to three zones: 1) the downtown, 2) higher-income areas, and 3) low-moderate-income areas. This was done so that the regulations could be better tailored to the different housing markets and priorities.

Under the new rules, the developments in the higher-income and low-moderate-income areas must provide at least 25% of the affordable units on-site. For the remainder of the obligation, there are two choices:

- paying fees-in-lieu, or
- providing units off-site through construction, purchase or rehabilitation.

For buying-out the remaining 75% of their obligation, the fees-in-lieu are now $175,000/unit in the downtown, $125,000 in higher-income areas, and $50,000 in low-moderate-income areas. In the downtown area only, the entire obligation also can be bought out for $225,000/unit. The fees will be adjusted annually by CPI for inflation starting in beginning of 2018.

Out of these monies, 60% initially went to the construction or rehabilitation of affordable housing, and 40% for rental assistance administered by the fund. Now the fund will receive 50% of the fees-in-lieu.

There are locational constraints for the off-site units coming of the downtown and higher-income areas. These units must be provided within two miles of the subject development and within the same zoning district. There is a notable exception to this: no such constraints apply to off-site units generated by ownership developments in the downtown. The developments will be charged an administrative fee of $5,000/unit for using this option.

Cost Offsets

The program does not generally offer any explicit cost offsets. Specifically, it does not provide density increases or any other regulatory incentives in exchange for the affordable housing units, nor does it waive permit fees.

In this context, it must noted that the provisions in the main apply only to developments that have already benefitted from an up-zoning, or land and financial assistance provided by the city.

The affordable units are indirectly eligible for a property tax reduction because their assessment is based on the restricted sale price rather the market value.

Under the 2015 provisions, there now is a density bonus available for developments when ARO units are provided on-site in a “transit-served location”. Specifically, these developments are granted an 0.25 increase in the permitted FAR when 50% of the ARO units are provided on-site, and 0.5 when100% are provided on-site.

Affordability Controls

Under the initial 2003 provisions, both the rental and affordable units were required to remain affordable for 30 years. The city then relied mainly on secondary recapture mortgages to control the ownership units. Even when the value of the reduced price was recaptured, the city found that in an appreciating housing market the money recovered was insufficient to replacement housing at the same income level.

In 2006, the control of the affordable ownership units was turned over to the Chicago Community Land Trust. The Trust instituted controls based on a 99-year restrictive covenant recorded against the property title. The covenant is renewable whenever the unit is sold within that period. The units must be resold to the CCLT or to an income-qualified buyer.

The permitted increase in resale price is limited by two factors:

- a cap limiting the price to no more than what would be affordable to household earning 120% of AMI; and
- a percentage based upon the difference between the initial market value of the home and the affordable purchase price paid by the homeowner. More specifically, it is:
  - 25% if the difference is less than $50,000;
  - 20% if $50,000-$100,000;
  - 15% if $100,000-$150,000; and
  - 12% if over $150,000.

In 2015, the control period for the covenant was turned back to 30 years. There had been sales resistance from the potential buyers, and concern that the units would not be properly maintained over such a lengthy period, possibly leaving the CCLT with a hefty maintenance bill for which they had no money.

Under the 2015 provisions, Chicago Housing Authority and other city agencies have been for the first time authorized to purchase the on-site ARO units. To encourage the developers to participate, they are offered a $25,000/unit reduction in the fees-in-lieu for their remaining unit obligation.

ADMINISTRATION

The program is principally administered by two organizations:

- The Department of Planning and Development is responsible for ensuring that the affordable housing obligations of the ordinance are met. In this capacity, it is principally engaged in reviewing and approving the development agreements reached with the developers of the subject developments.
  It also income-qualifies the purchasers and renters, and controls the affordable rental units generated by this and other city programs

- The Chicago Community Land Trust is responsible for maintaining the permanent affordability of the affordable ownership units generated by ARO and other city programs.

  The Trust is a quasi-independent non-profit organization created by the city in 2006 with the express purpose of maintaining the permanent affordability of these units. Establishing this organization was seen as a way of providing uniform legal documents and consistent resale controls for the various programs, ensuring fairness and consistency in the sale of the units, and providing better monitoring and more efficient administration.

  The organization has engaged in the following:
  - developing the deed restrictions;
  - helping the developers to market the units;
  - operating a waiting list of eligible buyers;
  - pre-purchase education courses;
  - providing post-purchase homeowner support;
  - securing service providers (lenders, attorneys and others) for the buyers;
  - overseeing the closing of the sales;
  - monitoring the properties to ensure compliance with the regulations; and
  - providing outreach and education for developers, politicians, community organizations and other interested parties.

PRODUCTION

To the end of 2015, the ARO program has produced 240 affordable units, and generated $44.1 million in fees representing another 440 units.

In 2005 alone, ARO was applied to 33 developments providing a total of 2,233 units. 77 affordable units – or 3½% of the total – were produced by 7 of these developments. The remaining developments generated $15.7 million in fees. Only 7% to the total units and 1% of the affordable units were ownership.

Assuming “positive market conditions”, the revised program is expected to create 1,200 new affordable units and generate $90 million in fees over 5 years. This would represent about 5% of the optimistic citywide projection for new housing over the same period.

OBSERVATIONS

The ARO program is applied principally to developments receiving some economic benefit from the city – namely an up-zoning, or land and financial assistance. This makes it different than vast majority of inclusionary programs, which are typically applied to all developments, including those building under as-of-right provisions. (On the other hand, it must be noted that this makes it consistent with the practices used in the dozen or so other big-city programs.)

Whether or not this approach substantially reduces the amount of affordable produced remains unclear. Considering that some sort of re-zoning probably is needed for every major development in these cities, this approach is likely to capture most – but not necessarily all – of the potential output.

This program is also different in that it is hardly "inclusionary". Unlike nearly every other inclusionary program, it seems to have been designed primarily to get fees-in-lieu rather than affordable units, and particularly on-site units in mixed-income developments. There was no obligation at all to build on-site housing in the 2007 provisions, and only a very modest obligation of 2½% in the 2015. Under these circumstances, it should be no surprise that most of the developers have chosen to pay the fees because this is generally the easiest way to meet the obligation.

The fees have been generated almost entirely by upscale market developments in the well-off and high-growth areas of the downtown and North Side, and used predominantly to provide subsidized low-income rental housing in the poor neighbourhoods of the South and West Sides.

This approach is defended on two grounds. It has harnessed the strong development in high-growth areas to benefit of low-growth and under-served areas elsewhere. It also has provided a way for the city to replace the ever-shrinking federal funding for affordable housing and urban renewal.

But there has been a downside. The approach has also served to re-enforce the pervasive racial and economic segregation that has plagued the city for a very long time. It has done this by continuing to consign low-income housing to where it can be most readily built, and not necessarily where it is most needed.

The 2015 revisions are intended to address these issues, particularly by using the program to produce a larger number of affordable units, and also to provide them more widely across the city. Nevertheless, the strong bias towards fees remains as shown by the higher fees and the only modest on-site requirements.

The current ordinance still falls short of what was originally sought by the community coalition that had pushed for these measures. More specifically, it had lobbied for these more demanding provisions:

1) extending the requirements to new as-of-right residential developments;
2) lowering the income threshold for ownership to 80% of AMI; and
3) raising the required affordable housing set-aside to at least 15%.

The recent changes did address another of their concerns: setting local fees-in-lieu that better reflected the public cost of providing affordable housing in various places across the city.

APPENDIX: *Downtown Density Bonus*

The *Affordable Housing Zoning Bonus* – also commonly called the *Downtown Density Bonus* – was created in 2004 to enable housing developments in downtown zoning districts to build additional density in exchange for providing on-site affordable housing or contributing to the city's Affordable Housing Opportunity Fund.

The maximum allowed bonus in the different effected downtown districts ranges from 20% to 30% on top of the permitted base FAR. At least 20% of the bonused space must go to affordable housing.

The units must be affordable for households earning up to 60% of AMI for rental, and 100% for ownership.

The financial contribution is determined by multiplying the bonused floor area by 80% of the median value of the land in each specific district. In 2015, the contribution amounted to \$18-34/ft^2 of bonused space.

Downtown developments are also subject to the ARO program. Under the new 2015 regulations, in order to buy-out their housing obligation, developers must now pay the higher of the density bonus fee or the ARO fees-in-lieu.

The long-term affordability of units is controlled by CCLT.

From its start to the end of 2015, the program has resulted in the construction of 30 on-site units and the payment of \$88.3 million in fees from 58 developments.

In proposals before city council in April 2016, this bonus scheme will be become part of a more comprehensive system – called the *Neighborhood Opportunity Bonus* – that covers commercial as well as residential developments across the entire downtown. It will allow for exchanging a density bonus for the provision of about 20 features including affordable housing, or payment of fees according to the above formula. It is intended to leverage strong downtown growth to provide funds for much-needed improvements in poor and under-served neighbourhoods.

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