

# Land Use Bulletin

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June 2007

*Whether you are a developer of residential housing or your exit strategy involves the sale of your property to a residential housing developer, the City of Chicago's newly amended affordable housing regulations may significantly impact your plans.*

## INTRODUCTION

On May 23, 2007, the City of Chicago adopted significant amendments to its affordable housing regulations ("Amendment"). The Amendment materially alters the affordable housing requirements affecting property owners and developers in Chicago. If you think that your project or your property is not affected, think again.

The Amendment expands the scope of coverage of the City's affordable housing regulations to require that in connection with certain rezoning and planned development approvals, as well as purchases of City-owned land, a developer is now required to either: (1) develop ten to twenty percent of residential units as affordable housing; or (2) make a cash payment of at least \$100,000 for each unit not developed as affordable housing.

However, if timely steps are taken, it may be possible to remove certain developments from compliance with the newly enacted Amendment and continue to be governed by the pre-Amendment ordinance. The Amendment specifically provides that it does not take effect until ninety (90) days after passage and publication of the Amendment, *i.e.*, on or about August 21, 2007. Further, the Amendment states that it shall not apply to: (1) any residential housing development of land acquired by the developer within two years prior to the passage of the Amendment; or (2) any application for zoning change or a planned development that was filed with the Zoning Administrator prior to

the effective date of the Amendment, *i.e.*, on or about August 21, 2007.

## *Pre-Amendment Affordable Housing Regulations*

Under the pre-Amendment regulations, compliance with the affordable housing ordinance was limited to developments of ten or more housing units in which: (1) the developer purchased land from the City at a sale price that was less than fair market value of the property; or (2) financial assistance was provided by the City to the developer. In these instances, the developer was required to designate 10 to 20 percent of the units as affordable housing. Prior to the Amendment, "Affordable Housing" was defined as: (1) *for owners*, housing that is affordable to households earning up to one hundred percent of the Chicago Primary Metropolitan Statistical Area median income; and (2) *for renters*, housing that is affordable to households earning up to sixty percent of the Chicago Primary Metropolitan Statistical Area median income. A developer who acquired City property for less than fair market value or who received financial assistance could establish compliance with affordable housing requirements by: (1) building affordable housing units as part of the project; (2) paying \$100,000 to the "Affordable Housing Opportunity Fund" for each unit not developed as part of the project; or (3) some combination of the above. The affordable housing units developed under the pre-Amendment regulations were

required to remain as affordable housing for 30 years unless the property was foreclosed or condemned or the developer/owner sold the unit to a household that was not eligible for affordable housing assistance and the developer paid certain recapture fees.

In addition to the above requirements of the Municipal Code, the Chicago Zoning Ordinance also provided that property that was rezoned to certain “*downtown*” zoning districts that allowed for higher base floor area ratio and that was subsequently developed with additional residential dwelling units, was required to comply with the Chicago Zoning Ordinance’s affordable housing requirements.

### *The 2007 Amendment*

The Amendment to the affordable housing ordinance expands the coverage and applicability of the ordinance. Under the new ordinance, if a developer contemplates the development of a residential housing project, the ordinance applies to: (1) any sale of City property; (2) additional rezoning requests; and (3) certain planned developments.

In general, if a residential housing project is commenced under the Amendment, the developer is required to establish 10 percent of the housing units as affordable housing, or the equivalent thereof. However, a developer that receives financial assistance from the City is required to establish 20 percent of the housing units as affordable housing, or the equivalent thereof.

A “residential housing project” is defined as “one or more buildings that collectively contain ten or more housing units on one or more tax parcels or lots marketed as a single or unified project or sharing common elements or comprising a part of a planned development or the addition of ten or more housing units to an existing building.”

### **REZONING REQUESTS AND SALE OF CITY PROPERTY**

With respect to rezoning requests, the Amendment expands the reach of the affordable housing laws to zoning approvals of a lot: (1) to permit a higher floor area ratio than would

otherwise be permitted in the base district, where the lot is subsequently developed with a residential housing project; (2) from a zoning district that does not allow household living uses to a zoning district that allows household living uses, where the lot is subsequently developed with a residential housing project; and (3) 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, where the ground floor is subsequently developed with a residential housing project.

Regarding the acquisition of property owned by the City of Chicago, the Amendment applies to *any* sale of City property to a developer on which a residential housing project is subsequently developed.

However, the provisions above do *not* apply to a residential housing project: (1) located on property that was rezoned and thereby converted to a nonconforming use, if the zoning change was approved solely to restore the residential housing project to a conforming use; or (2) located on a lot that has been rezoned for which a building permit is applied for three years or more after the zoning change was approved.

### **REDEVELOPMENT OF EXISTING BUILDINGS**

The Amendment also applies to existing buildings. With respect to existing buildings, compliance is required as follows: (1) if the building already contains housing units at the time the zoning change is approved, only the additional floor space area that is built within the residential housing project is subject to the affordable housing laws; (2) if the building contains a mixed use occupancy, with one use being residential, only the additional floor space area provided for residential use that is built within the residential housing project is subject to the affordable housing laws; and (3) if the developer has received financial assistance or purchased land for the construction of a residential housing project, the entire building is subject to the affordable housing laws.

## PLANNED DEVELOPMENTS

Title 2-44-090(b)(4) governs planned developments and states that for every planned development in which a residential housing project is developed:

- 1) that is *not eligible* for a floor area bonus, and for which the City approves the rezoning or sale as described in section 2-44-090(b)(1), the developer is required to establish 10 percent of the housing units as affordable housing or the equivalent thereof;
- 2) that is *eligible* for a floor area bonus and for which the city approves the rezoning or sale as described in section 2-44-090(b)(1), the developer is required to establish 10 percent of the housing units as affordable housing or the equivalent thereof, provided that if the planned development is also rezoned to allow for a higher base floor area ratio, the developer may elect to meet his affordable housing requirements according to section 17-4-1004.
- 3) that is *eligible* for a floor area bonus, but does *not* involve any rezoning of the lot or sale of any property, the developer shall be required to establish 10 percent of the housing units as affordable housing or the equivalent thereof, unless the developer participates in the affordable housing floor area density program by purchasing additional floor area pursuant to section 17-4-1004.
- 4) for which the developer receives *financial assistance*, the developer is required to establish 20 percent of the housing units as affordable housing.

The provisions of subsection (b)(4) do not apply to: (1) any planned development or other agreement that is specifically authorized by the City Council prior to the

effective date of the Amendment; or (2) an amendment to a planned development that is specifically authorized by the City Council after the effective date of the Amendment; provided, however, that if such amendment authorizes the addition of floor area for the development of ten or more housing units, the development of the additional housing is subject to subsection (b)(4).

## COMPLIANCE WITH THE AFFORDABLE HOUSING REQUIREMENTS

As with the pre-Amendment version of the law, a developer may comply with the percentage requirements detailed above by: (1) building affordable housing units as part of the residential housing project; (2) paying \$100,000 to the “Affordable Housing Opportunity Fund” for each unit not developed as part of the residential housing project; or (3) any combination thereof. The Amendment adds a provision by which the current \$100,000 fee for each unit not built as affordable housing is adjusted annually according to the U.S. Department of Labor Consumer Price Index for all Urban Consumers for the Chicago Metropolitan Area.

## CONCLUSION

The post-Amendment regulations will materially alter the affordable housing requirements affecting a property owner and/or developer in Chicago and may have a significant financial impact on the sale and/or development of property in Chicago.

However, the Amendment specifically provides that it does not take effect until ninety (90) days after passage and publication of the Amendment, *i.e.*, on or about August 21, 2007. Further, the Amendment states that it shall not apply to: (1) any residential housing development of land acquired by the developer within two years prior to the passage of the Amendment; or (2) any application for zoning change or a planned development that was filed with the Zoning Administrator prior to the effective date of the Amendment.

Please contact us so that we may assist you with your development strategy.

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**The Vedder Price Land Use Practice Group**

The Vedder Price Land Use Practice Group assists clients with land use and development entitlements and governmental financial assistance, regarding all land use approvals including:

- rezoning, planned unit development, special use, variation, exception;
- annexation, subdivision, street/alley vacation, stormwater management issues, impact fees and other exactions; and
- governmental financial incentives for expansion, relocation and redevelopment of properties.

Additional services include:

- governmental relations;
- structuring innovative master plans, ordinances and agreements for clients' long-term needs;
- handling land use and zoning due diligence in refinancings or purchases to more accurately assess value and risk; and
- community relations and outreach.

Areas of Concentration:

- **Hospitals/Senior Housing:** Hospital expansions, outpatient facilities, professional office buildings, assisted and independent living, nursing facilities, CCRCs.
- **Retail:** Development of grocery stores, fast-food drive-through facilities, drive-through banks, various approvals at regional shopping centers.
- **Industrial/Transportation:** Industrial expansions, relocations, freight movement, governmental assistance.
- **Technology/Telecommunications:** Redevelopments involving high-tech infrastructure (including all land use approvals, conduit use agreements, and governmental assistance), siting of wireless facilities.
- **Sports Facilities:** Arenas, sports academies.

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