Case Studies in Inclusionary Housing

By Nicholas Brunick

The City of Chicago has long been known as “the city that works.”

Recent articles in The Economist and elsewhere have trumpeted Chicago’s relative social and fiscal health compared to other Rust Belt cities such as Detroit, Cleveland, and St. Louis. Even though vacant land and disinvestment remain huge challenges in many of Chicago’s neighborhoods, the city’s relative health is envied by other cities.

However, Chicago’s heralded “comeback” has given birth to a new and daunting challenge: a high-cost housing market that threatens to rob the city of working and middle-class families. Without them the city lacks the tax base, social capital, and workforce it needs to stay competitive and livable. To be viable and attractive for living, working, and playing, U.S. cities must find more ways to create and preserve affordable housing for every rung on the economic ladder. One way to do this is through inclusionary housing policies that zone for affordability, which is the focus of this issue of Zoning Practice.

Cities can use zoning codes and development approval processes to require, encourage, or negotiate a specified percentage of affordable units in certain types of developments. Often, a developer can pay money or donate land in lieu of including affordable housing in a development.

Unlike other large cities—notably San Diego, San Francisco, and Denver—Chicago has chosen not to pass a citywide inclusionary housing ordinance, but rather implement a package of inclusionary housing policies that use zoning authority selectively in different parts of the city. The city has a policy for developers who receive city assistance (the affordable requirements ordinance (ARO)); a policy for the neighborhoods (the CPAN program); and a policy for downtown development (the downtown density bonus program).

Do these policies represent a savvy approach by the city that recognizes the diversity of its neighborhoods and housing markets and the impossibility of crafting a one-size-fits-all approach, or do these policies create unpredictability and unfairness in the housing market and leave the city without the necessary policies and resources to adequately address its housing crisis? Is this good planning and smart politics or inadequate policy and cleverly disguised injustice? This article will attempt to answer these questions using national examples for comparison and featuring the lessons common to all communities struggling with the need for affordable housing.

During the last decade, many cities and local governments around the country saw unprecedented development activity with historic increases in housing and land prices. Consequently, the need for affordable housing has grown, impacting a broader and growing segment of the population: poor residents, working-class households, and even the middle class; employers who are unable to recruit employees nearby; everyday citizens choking on polluted air and stuck in traffic jams caused in part by workers traveling ever-longer distances for work; and, of course, elected officials who feel the heat from all of these constituencies and thus feel the need to respond.

Solutions to the crisis remain elusive when land and housing costs are so high, when federal funding for housing is at a 30-year low, when state funding for housing has failed to make up the difference, and when local funds are limited. In this environment, zoning for affordability quickly becomes a popular and immediate option. Local governments in California, Colorado, Florida, Illinois, Massachusetts, New Jersey, New Mexico, New York, North Carolina, Vermont, Wisconsin, and even Wyoming have employed inclusionary housing strategies. Many elected officials, like New York City Mayor Michael Bloomberg (a recent convert to inclusionary zoning), have become bullish on inclusionary zoning.

Chicago is no different. Due to a growing housing crisis and the organizing work of smart, sophisticated advocacy groups, Mayor Richard M. Daley and the city council have an inclusionary housing strategy. However, instead of passing an across-the-board policy (e.g., a 15 percent inclusionary housing requirement in all developments of 10 or more units), the city has chosen a three-pronged approach:

Prong #1: Quid Pro Quo—The Affordable Requirements Ordinance

In 2003, the Chicago city council passed the affordable housing requirements ordinance, which applies to developments of 10 or more units, and requires that: 1) If a development receives a write-down on city-owned land it must include 10 percent affordable housing and 2) If a development receives financial assistance from the city (which usually means tax increment financing (TIF) dollars) it must include 20 percent affordable housing.

Under this program affordable housing is defined for an ownership project as housing where a household earning 100 percent of the area median income (AMI) (adjusted for household size) will not have to spend more than 30 percent of its household income on a mortgage. In a rental project affordable housing is defined as an apartment where a household earning 60 percent of the AMI (adjusted for household size) will not have to spend more than 30 percent of its household income on rent. Under this program, a developer can satisfy the obligation to include affordable housing by paying $100,000...
per affordable unit (adjusted each year for inflation). The funds paid by the developer go to the city’s Affordable Housing Opportunities Fund. By ordinance, 60 percent of these funds must be used for the construction or rehabilitation of affordable housing. Forty percent of the funds go to the Chicago Low Income Housing Trust Fund (CLHITF), which primarily provides funding for a highly successful rental subsidy program that partners with landlords across the city.

Since 2003, the ARO, according to the city, has produced 763 affordable housing units—approximately 220 affordable housing units each year. Some of these 763 affordable housing units were created as part of the Chicago Housing Authority’s (CHA) Plan for Transformation developments, which are mixed-income developments containing roughly a third public housing, a third affordable housing, and a third market-rate housing as replacement housing for the demolished public housing high rises. Federal and state housing subsidies, including HOPE VI dollars and Low Income Housing Tax Credits, are already involved in these deals, which means the affordable units were guaranteed even without the city’s ARO ordinance. Nevertheless, TIF dollars are often used for residential developments in Chicago, and the ordinance ensures the promise of affordable housing when that happens. The principle behind the ARO is simple: If you want the city’s land or money you will do something for affordable housing.

Prong #2: Let the Neighborhoods Decide—The Chicago Partnerships for Affordable Neighborhoods Program (CPAN)

The city created the CPAN program to create affordable housing in private developments in city neighborhoods. Under this program, if an alderman—Chicago is governed by 50 locally elected aldermen who, as such, are the gatekeepers for local development—and a developer agree to include some affordable housing in an otherwise private development, the city will provide incentives such as fee waivers and marketing assistance to the developer. The success of the program is attributed to the city council’s nearly certain deference to the wishes of the alderman on local land-use matters. For example, a developer’s request for a zoning change needs the alderman’s support for city council approval. This Chicago tradition of “aldermanic prerogative” is as predictable and as accepted as a summertime refrain of “Wait ‘til next year!” from Cubs fans. According to the city, 16 of 50 aldermen have participated in the CPAN program, resulting in the creation of 461 affordable housing units since 2002.

The city advertises this program as purely voluntary. In practice, though, CPAN can also be mandatory or nonexistent, depending on the alderman. If an alderman is a strong affordable housing advocate, the CPAN program may, in effect, operate as a mandatory policy for that ward. If it used on a purely voluntary basis, CPAN might only be used when a developer needs a zoning change and is amenable to doing some affordable housing.

However, if an alderman does not support affordable housing, has a ward with little development, or simply lacks the energy or political will to negotiate tooth-and-nail with developers on specific developments, then it may not be used at all. The program requires development activity and a tremendous commitment of time, energy, and political will from aldermen and community groups. Indeed, each of the 451 affordable units produced by the program is the result of significant effort from both. Fortunately, only 16 aldermen have used the program.

Although the Chicago approach of project-specific land-use decisions has unique qualities, many cities and towns across the country can draw parallels with it. Local governments and special interest groups have long been known to use community input and opposition to stall, scale back, or prevent developments—especially those that include affordable housing. In the past three decades, community residents and elected officials in local governments from Massachusetts and New Jersey to California have reversed this historical trend by using the development approval process to secure affordable housing in market-rate developments, and the CPAN program is an example of just that.
Prong #3: Where Density is a Good Word—The Downtown Affordable Housing Zoning Bonus

A few years ago, the city underwent a rewrite of its antiquated zoning code. As part of the project, it instituted a number of density bonus provisions that apply to the downtown district, which, under the new code, is an expansive area that reaches beyond the city’s famed Loop district. Under these provisions developers can obtain additional density in return for providing community amenities. Under the downtown affordable housing zoning bonus, developers can obtain additional floor area ratio (FAR) if they include affordable housing in their development or if they pay a fee-in-lieu to the city’s Affordable Housing Opportunities Fund.

The program is slightly different for developers obtaining additional density within an existing zoning designation versus those seeking a zoning change to a different designation with a higher FAR density level. But, as a general rule, a developer that wishes to access additional FAR must dedicate 25 percent of the bonus floor area achieved through the affordable housing zoning bonus to affordable units. For example, the developer would receive four additional square feet for market-rate housing for every additional square foot dedicated to affordable housing. This provides a significant benefit to the developer.

If the developer chooses to pay a fee in lieu of affordable units, the fee is calculated on the basis of multiplying the additional FAR by the median price of land in the area of downtown with the development. The fee is calculated by multiplying 80 percent of the additional FAR achieved through the affordable housing zoning bonus by the median cost of land per buildable square foot for that section of downtown. The city publishes a schedule of land values for different parts of the downtown district.

The effort is a classic example of a voluntary inclusionary housing program. Developers can choose to build as of right under the baseline zoning requirements. However, if they want additional density (either through a rezoning or a bonus within the existing zoning) they must include affordable units in their project or pay for the additional density.

Applying for the density bonus requires the developer to sign an agreement with the city to produce the affordable units as part of the development or to pay the fee, and to provide the city with cash, a bond, or other security in the amount of the fees that would be paid in lieu of building the affordable units. The builder of the affordable units must also sign an affordable housing agreement with the Chicago Department of Housing and provide a detailed description of the project, including the affordable units. The affordable units must be ready for occupancy before or at the same time as market-rate units. The bond or cash is released after the building inspection and after confirmation by the zoning administrator of the construction of the affordable units. If the developer is paying the fee in lieu, the fees are collected when the city issues building permits for the development.

Chicago has received $24 million in “commitments” for the Affordable Housing Opportunities Fund to date, and 34 units are in the pipeline to be created as part of market-rate developments. In 2007, the city anticipates that it will collect $13 million of these commitments. Forty percent ($5.2 million) will go to the city’s Low Income Housing Trust Fund to expand the highly successful rental support program and to subsidize rental units for extremely low-income households and 60 percent ($7.8 million) will help to subsidize the rehabilitation or construction of affordable housing.

THE CHICAGO WAY

In the classic Chicago film, The Untouchables, about Eliot Ness and his efforts to bring down Al Capone, Jimmy Malone (played by Sean Connery) explains to Ness (played by Kevin Costner) that if he wants to “get Capone” he needs to do it “the Chicago way.” Untouchables fans will recall that the Chicago way accurately reflected the realities of life in the city at that time.

Though less sensational than a gangster classic, the three-pronged approach described in this article reflects the Chicago way. Indeed, when it comes to inclusionary housing, it reflects the goals and philosophies of the Daley administration. First, the administration believes in voluntary approaches using incentives—not mandates—to harness private-market activity and create affordable housing. The administration is careful to not stifle or chill development, which is why the three policies are voluntary. If you want city land at a discount, TIF funds, aldermanic assistance, or a density bonus, you must include affordable housing or pay a fee. Forgoing such benefits means you need not produce affordable housing.

Furthermore, the policies offer incentives to developers who agree to produce affordable housing. One could argue that under CPAN the program (in certain wards) is neither voluntary nor laden with strong incentives for the developers, and that it really depends on the alderman. However, developers must go through the aldermen whether the project is an affordable
house, a doghouse, outhouse, luxury house, or pancake house. CPAN will not change that.

Second, the Daley administration is resistant to a citywide inclusionary housing program, either because it believes that some neighborhoods need any kind of development right now or because aldermanic allies of the administration believe that affordable housing does not belong in their wards. Consequently, the density bonus program is currently limited to downtown. The ARO kicks in when city land is sold at a discount or involves city dollars (both of which are influenced by the local alderman), and CPAN lets the alderman and community groups determine whether affordable housing will be part of new developments in particular wards.

Finally, the administration is loathe to “force” density on city neighborhoods (although they have floated the idea of expanding the downtown density bonus program along certain transit lines and nodes). Thus, density is used as a generous bonus downtown (where it is more acceptable) and CPAN is used in the neighborhoods, typically without a density bonus. Such is the Chicago way. According to the city’s Department of Housing, the Chicago way has produced over 1,200 affordable homes and commitments for $34 million in-lieu payments between 2002 and 2006.

**COMPARISONS TO OTHER CITIES**

The Chicago way is unique, characterized by policies that are largely voluntary, incentive-based, and targeted for selective use in different parts of the city. Other large cities have: 1) mandatory, citywide approaches; 2) mandatory but targeted approaches; and 3) “voluntary,” targeted approaches.

**Citywide, Mandatory Inclusionary Housing Ordinances**

The Denver, San Diego, and San Francisco inclusionary housing programs require a 10 percent affordable housing component in any development with 10 or more units. Both San Francisco and San Diego adopted “limited” inclusionary housing policies in the early 1990s and went citywide in 2002 and 2003 respectively. The programs provide a clear, relatively predictable policy for the development community and a housing policy geared to harness and benefit from all developments of 10 or more units.

**Mandatory Ordinance with Specific Applications**

Boston has a mandatory inclusionary development policy that requires 15 percent affordable housing in any development of 10 or more units that 1) receives assistance from the Boston Redevelopment Authority; 2) uses city-owned land; or 3) receives a zoning change. Boston’s policy exists by way of an executive order issued by Mayor Thomas Menino in 2000. The policy originally required 10 percent affordable housing. Due to the success of the program, the city raised the affordable requirement to 15 percent.

**Targeted Inclusionary Zoning for Large Rezonings**

In the mid 1980s, New York City controlled over 10,000 city-owned vacant parcels or properties. Today, fewer than 800 vacant lots of properties remain and over 200,000 homes have been created—the overwhelming majority of them affordable. The city’s success at using city-owned property to rebuild neighborhoods, shore up its tax base, and create much-needed affordable housing has precipitated a need for viable new strategies for private land and in private developments. Inclusionary zoning is one housing tool, among many, now considered by the city.

New York’s inclusionary housing policy is determined by neither ordinance nor executive order, but rather the strategic employment of inclusionary housing policies on rezonings of specified sizes. For example, as the city rezones large parcels of industrial land to residential use at Hudson Yard (in Manhattan) and at Greenspoint–Williamsburg (in Brooklyn), developers are encouraged to include affordable housing. If they do, they receive a generous package of benefits: a 33 percent density bonus, a 20- to 25-year property tax exemption (previously available to market-rate developers but is now restricted to those who include affordable housing).

The Daley administration believes in voluntary approaches using incentives to harness private-market activity and create affordable housing.

Developers can pay a fee in lieu of including the affordable housing. The fee is paid to the Inclusionary Development Fund. The fee is $200,000 per affordable unit (up from $97,000 per unit) for rental developments. For ownership developments, the fee is $200,000 per affordable unit or one half of the difference between the average market-rate price in the development and the affordable price, whichever is greater. According to the Boston Municipal Research Bureau, the policy produced 715 units of affordable housing and millions of dollars in affordable housing funds as of May 2006. Although the city’s policy does not apply to all developments over a certain number of units (as in Denver, San Francisco, or San Diego), program administrators assert that a significant percentage of new development falls under the purview of the Boston program due to the city’s anti-quated zoning ordinance.

DOES “THE CHICAGO WAY” MEASURE UP?

Chicago’s downtown density bonus program and the affordable requirements ordinance are clear and predictable programs that appear to work for the development community. The downtown density bonus represents an innova-
tive and highly successful effort by Chicago to navigate the difficult shoals of density, development, and affordable housing. Proponents of affordable housing should applaud the city for its efforts, which will likely be imitated by other cities. In fact, Seattle has followed Chicago’s lead with the adoption of its downtown density bonus program. Similar to New York City, Chicago employs voluntary, targeted approaches to secure the creation of affordable housing. CPAN produces units in a way that meets the variety of housing needs and political desires of the city’s diverse neighborhoods and wards.

However, Chicago’s programs suffer two major shortcomings. First, the voluntary nature of the programs can create unpredictability for developers and unfairness for neighborhoods and communities. This problem is most evident with CPAN—some neighborhoods participate while others abstain. Some developers have to participate; others do not. When purchasing land, developers may be unaware of whether compliance with CPAN will be required.

CPAN creates unpredictability in the development process, fails to establish a level playing field for developers and neighborhoods, and creates the potential for differential treatment for developers based on political clout. In San Diego, San Francisco, Denver, or even Boston, the inclusionary zoning requirement is clear, predictable, and applied across the board to all developments that meet broad criteria.

Second, the voluntary nature and limited coverage of CPAN, ARO, and the downtown bonus create “missed opportunities.” With an inclusive or mandatory program applying to a wider variety of developments, Chicago could generate many more affordable units and more money for successful programs like the city’s Low Income Housing Trust Fund.

If Chicago expanded its CPAN program and ARO ordinance to be more of a mandatory, across-the-board policy such as the programs in Denver, San Francisco, San Diego, and Boston (covering all zoning changes, etc.), the city would benefit from increased production and increased predictability in the development process. Under its current voluntary programs, Chicago must be savvy and generous with its incentives to secure participation by developers. And yet, despite being savvy, there are still large and overt missed opportunities. With a mandatory, citywide ordinance in place from 1998 to 2003, the city would have created over 7,000 affordable homes and apartments.

WHERE DOES CHICAGO GO FROM HERE?
Census figures reveal that from 2000 to 2005 the number of home owners in the City of Chicago paying more than 35 percent of their income for housing increased from about one in every five home owners to a whopping one in every three home owners and the percentage of renters paying more than 35 percent of their income on rent increased from 30 to 46 percent. The data also reveal that the city lost 71,000 rental units after enjoying a slight gain in population from 1990 to 2000. The city is once again losing population to the suburbs as 190,000 people left the city for other locales since 2000. And the out-migration is no doubt due at least in part to the affordable housing crunch. Chicago cannot continue a rebirth, nor cement its place as a world-class city in the global economy, until it deals sufficiently with the problem of providing enough affordable housing for middle- and working-class and poor households. So, what next?

MAYOR RICHARD M. DALEY’S PROPOSAL
In November 2006, Mayor Daley introduced an ordinance to expand the city’s affordable requirements ordinance to cover all zoning changes where the city grants an increase in residential density or allows a residential use not previously allowed, to cover all developments constructed on city land (not just developments that get a discount on the sale of city land), and to cover all developments that go through the planned unit development process (PUD). If passed, the new ordinance would require 10 percent affordable housing (at or below 60 percent of AMI for ownership units; at or below 100 percent of AMI for rental units) in developments of 10 or more units that fit the criteria listed above. This would be a significant expansion consistent with the current Chicago approach and one that city officials believe would create 1,000 affordable units each year. Passing the ordinance would make Chicago similar to Boston (which covers all developments that receive a zoning change).

THE ADVOCATES’ PROPOSAL
For the past five years, a coalition of community groups has worked to pass a citywide inclusionary housing ordinance in Chicago that would require 15 percent affordable housing in all new construction, substantial rehabs, and condo conversions of 10 or more units. Under the proposed ordinance, developers would receive cost offsets from a possible menu of benefits (including density bonuses, fee waivers, and reduced parking requirements).

Passing the ordinance would make Chicago the largest city in the nation with a citywide, mandatory inclusionary housing policy (surpassing San Diego). The city has come a long way toward the advocates’ suggestion (by passing the three policies described in this article), but remains short of the advocates’ ideal. Similar to the Denver, San Diego, San Francisco, and Boston ordinances, a citywide approach would provide developers with greater predictability than they currently have under the CPAN program (where they are subject to the desires of the local aldermen and the community); it would establish a level playing field for all development; and it has tremendous production potential (as demonstrated earlier).

The Daley administration and the development community oppose such a measure. Thus, advocacy groups are calling for strengthening of the mayor’s ordinance by proposing three amendments: 1) Similar to Boston, increase the percentage from 10 to 15 percent on all city-owned parcels of land and all PUDs; 2) Similar to the city’s existing requirement for TIF funds, increase the per-
percentage from 10 to 20 percent on developments where a zoning change that increases residential density is granted; and 3) Diversify the income targeting to reach more working-class people in Chicago. Rather than targeting the affordable homes to households at or below 100 percent of AMI target a third of the homes to households at or below 100 percent of AMI, one-third to households at or below 80 percent of AMI, and one-third to households at or below 60 percent of AMI.

Boston recently began using city median income figures instead of the metro median income figures to accomplish the same objective of making the affordable units “more affordable.”

Whatever the outcome, it appears likely that Chicago’s inclusionary housing programs will expand to cover more development types. With the passage of the mayor’s ordinance as proposed, the Chicago way would now entail an expanded ARO (including city land, increased density, financial assistance, or access to the PUD process); a neighborhood-based program in CPAN; and a downtown density bonus program.

THE LESSONS
The Chicago way and the experience of other large cities provide key lessons about inclusionary housing programs.

No free lunch. With affordable housing, this is universally true—someone must foot the bill. In general, under traditional affordable housing programs or initiatives, it is the taxpayer. They provide the public financing or subsidy to make housing more affordable. Under an inclusionary housing program, the risk can be born fairly equally. Under a mandatory approach without generous or guaranteed cost offsets, it is the development community, the landowners, and the market-rate homebuyers who assume the risk of paying for the cost of the affordable units. Under a voluntary approach, it is the broader community that will most likely foot the bill (either through overly generous cost offsets or through missed opportunities that fail to produce much-needed affordable housing). In Chicago and New York City, the risk is assumed by the broader community; in Denver, San Diego, Boston, and San Francisco, it shades towards the development community.

Be creative. Chicago, New York, and Boston have not embraced a citywide, mandatory approach, but all use some form of inclusionary housing policy. Chicago’s downtown density bonus program is a creative response to the political and policy thicket of how to make inclusionary housing work in a diverse city with competing political forces. Chicago should be applauded for this innovation. Cities need to find all viable ways to harness the marketplace for affordable housing.

Be aggressive. Building booms are fleeting. Cities need to be nimble and ready to act fast with prudent policies that will allow them to reap the benefits of the next building boom. Chicago has missed many opportunities for creating and preserving affordable housing. Cities should not be afraid to employ mandatory approaches in a prudent manner to capture as much development as possible.

In determining who pays, the politics of development, density, and community control provide the final determination.

Memorize your policies. Negotiated and ad hoc policies will no doubt serve a positive role in many local governments. However, an ordinance, executive order, or even public regulations that provide a clear, predictable policy for the development community is essential. Without them, developers cannot appropriately price land or buildings and incorporate the cost of affordable housing into their pro formas. In addition, the application of one’s housing policy may become even more the result of political clout than is already the case in our complicated world. Establishing clear, public, and predictable programs is good government and good development policy.

Do more than zone for affordability. Inclusionary housing or zoning for affordability is not a panacea for the housing crisis or for community and economic development, but it is a very important tool. Cities must look to other tools: securing more federal, state, and city dollars for affordable housing and using city-owned vacant land for affordable housing. Zoning for affordability cannot solve the housing crisis alone, but it can play a very important role.
WHICH INCLUSIONARY HOUSING PROGRAMS ACTUALLY WORK?