

**City of Chicago
Department of
Planning and Development**

2015 AFFORDABLE REQUIREMENTS ORDINANCE RULES & REGULATIONS

Updated 5.1.2017

**City of Chicago
Mayor Rahm Emanuel**

**Planning and Development
David L. Reifman, Commissioner**

**2015 AFFORDABLE REQUIREMENTS ORDINANCE (ARO) RULES & REGULATIONS
AUTHORITY AND USAGES**

BY AUTHORITY VESTED IN THE COMMISSIONER OF PLANNING AND DEVELOPMENT PURSUANT TO SECTION 2-45-115 OF THE MUNICIPAL CODE OF CHICAGO, THE FOLLOWING RULES AND REGULATIONS REGARDING THE 2015 AFFORDABLE REQUIREMENTS ORDINANCE ARE ADOPTED HEREIN.

Signed:  _____
David L. Reifman, Commissioner

Date: 2/15/2017
Date signed by Commissioner

Published date: February 2017

Replaces Rules published August 7, 2015

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Article 1: Applicability

The 2015 Ordinance (2-45-115 of the Municipal Code) sets out Applicability standards in Article C. The following Rules provide clarification, where needed:

1.1 Financial Assistance

Whenever the City provides financial assistance to any developer in connection with the development of a Residential Housing Project, 20% of the total units in a Residential Housing Project must be affordable.

If a project receives TIF assistance and the guidelines governing the TIF Redevelopment Project area in which the project is proposed do not state otherwise, for **rental** projects, half of the affordable units must be affordable to households earning 60% of AMI and half of the affordable units must be affordable to households earning 50% of AMI. For **for-sale** projects, half of the affordable units must be affordable to households earning 100% of AMI and half of the total units must be affordable to households earning 80% of AMI.

When TIF funds are used to fund the construction, renovation and rehabilitation of new housing units to be occupied by low-and very low-income households, the affordability guidelines set forth in the TIF Guidelines – not the ARO – will apply. Many of these projects also receive other forms of City financial assistance, such as Low Income Housing Tax Credits, which have more restrictive affordability requirements than the ARO, and, as such, will be monitored by DPD’s Developer Services Division and not under the ARO. However, projects receiving these other forms of financial assistance must include a Planned Development (PD) Statement provided by the City acknowledging the applicability of the ARO, should project details change, or the monitoring period required by the alternate sources expires prior to the 30-year term required by the ARO.

City land sales or permit fee waivers alone do not constitute financial assistance, even if the land sale represents below-market value.

1.2 Which Version of the ARO applies?

2007 ARO

Projects that have been submitted* to City Council prior to the 2015 ARO Effective date of October 13, 2015 AND have been approved by City Council prior to July 13, 2016 will be subject to the requirements of the 2007 ARO, as described in Section 2-45-110 of the Municipal Code. For these projects, the policies followed by the Department while implementing the 2007 ARO (including consistently rounding up for any fraction of a whole number) will govern. These projects have the option to pay the in-lieu fee of \$100,000 or provide affordable units on-site.

For Planned Developments (PDs) authorized before the 2015 ARO effective date (October 13, 2015), only the additional housing units or floor area allowed by the amendment will be subject to the 2015 ARO, provided the PD has not sunsetted. However, if the existing PD included an ARO obligation, that obligation would remain, even following an amendment to the PD – and the new units would additionally be subject to the 2015 ARO.

For PDs with multiple subareas, the ARO is only triggered if the overall floor area or unit count is increased.

2015 ARO

Projects that trigger the ARO and that are submitted* after the effective date of October 13, 2015 – and projects that were submitted before the effective date but did not receive City Council approval by July 13, 2016 – will be subject to the 2015 ARO, per Section 2-45-115 of the Municipal Code.

*Section 2-45-110 of the Municipal Code defines “submitted” as follows: With respect to an application for zoning approval or the sale of city land, an ordinance authorizing the rezoning or city land sale has been introduced to city council; with respect to financial assistance, a complete application has been received and accepted by DPD.

Article 2: Interaction with the Affordable Housing Zoning Bonus (density bonus) and the Neighborhoods Opportunity Fund Ordinance

Projects that were introduced to City Council prior to June 1 2016 may be eligible to take the **Affordable Housing Zoning Bonus** or “density bonus” described in the former Section 17-4 -1004 of the Municipal Code.

For projects eligible to take the density bonus AND subject to the 2015 ARO, the density bonus payment can be applied as a credit to the in-lieu fees owed under the ARO. In most cases, this means that the developer will pay the *higher of* the ARO or density bonus in-lieu fee.

On May 18, 2016, City Council approved the **Neighborhoods Opportunity Fund Ordinance** (17-4-1009B). This Ordinance replaces the Affordable Housing Zoning Bonus for all projects filed on or after June 1, 2016. Residential projects with ten or more units that elect to take the Neighborhood Opportunity Fund Bonus must do so as Planned Developments, so will be subject to the ARO. No payment credit will apply.

Article 3: ARO Zone Map

The 2015 ARO creates and defines three areas – or zones – in the city to reflect different housing markets and priorities: downtown; higher-income areas; and low-moderate income areas.

The ARO Zone Map uses household income and poverty to designate the low-moderate and higher income areas, or zones. To define the zones, a designation was first assigned to each census tract in the City, using the following criteria:

Higher Income Areas are census tracts that are:

- Higher Income: 50% of households or more earn more than 60% of the Chicago median income in two of the last three years for which data is available; AND
- Low Poverty: The poverty rate is less than or equal to 25% in two of the last three years for which data is available

Low-Moderate Income Areas are census tracts that are:

- Lower Income: More than 50% of households earn less than 60% of the Chicago median income in two of the last three years for which data is available; OR
- High Poverty: The poverty rate is greater than 25% in two of the last three years for which data is available

After mapping the census tracts as described above, community areas in which the majority of the area is represented by higher income census tracts are designated as Higher Income Community Areas. Community areas in which the majority of the area is represented by lower income census tracts are designated as Low-Moderate Income Community Areas. In both maps, the Downtown Zone is defined by the boundaries of the “D” zoning districts as now or hereafter designated in the Chicago Zoning Ordinance, Chapter 17-4 of the Municipal Code.

Downtown expansion

Properties in the Downtown Expansion Area defined in the Neighborhoods Opportunity Fund Ordinance (Section 17-1-1500 of the Municipal Code) that are rezoned to a “D” district will subsequently be considered to be part of the Downtown Zone for the purposes of the ARO.

Updates to the map

The map will be updated on January 1 of every fifth year, beginning on January 1, 2020. When the map is updated, the new map will be published on the ARO website by July 31 (or 45 days after data is available, whichever comes later) of the year preceding the new effective date. A project will be subject to the parameters of the map that is effective at the time a project is *submitted*, per the definition outlined in section 2-45-110 of the Municipal Code.

Article 4: Calculation of Required Units and/or Fees-in-Lieu

Projects that are subject to the ARO must provide 10% of the project’s total units as affordable (20% if the project receives financial assistance from the City).

With the exception of For Sale projects in the Downtown Zone that elect to pay the in-lieu premium, $\frac{1}{4}$ of the required 10% affordable units must be provided on-site (or off-site, as described in Article 6.2 of the Rules & Regulations).

4.1 Calculation of 10% Affordability Obligation

Calculation of the 10% affordability obligation is based on the total number of housing units in the residential housing project, including any units enabled by a downtown affordable housing zoning bonus (density bonus), Neighborhoods Opportunity Fund Bonus, or the ARO Transit Served Location (TSL) bonus.

4.2 Calculation of required on-site affordable units

For the purpose of calculating the number of required on-site (or off-site, if applicable) affordable units, DPD will multiply the total number of units in the project by 2.5%, as shown below.

On-site units* are 2.5% of total units			
total units in project	total affordable units required	on-site* affordable units required	on-site TSL units required
10-14	1	0	1
15-19	2	0	1
20-24	2	1	1
25-29	3	1	1
30-34	3	1	2
35-44	4	1	2
45-49	5	1	2
50-54	5	1	3
55-59	6	1	3
60-64	6	2	3
65-69	7	2	3
70-74	7	2	4
75-84	8	2	4
85-89	9	2	4
90-94	9	2	5
95-99	10	2	5
100-104	10	3	5
105-109	11	3	5

*With the exception of projects taking the TSL bonus and projects in low-moderate income areas, the on-site obligation **may** also be met through the provision of off-site units, or the sale or lease of units to the CHA or an Authorized Agency, following approval from DPD.

4.3 In-Lieu Fee Summary

ARO Zone	In-lieu Fee	Authorized Agency In-Lieu Fee	In-Lieu Premium
effective October 13, 2016*			
Low-Moderate Income	\$50,000	n/a	n/a
Higher Income	\$125,000	\$100,000	n/a
Downtown rental	\$175,000	\$150,000	n/a
Downtown for sale	\$175,000	\$150,000	\$225,000
*For downtown projects, the in-lieu fee was phased in. For downtown projects submitted before April 16, 2016, the in-lieu fee was \$140,000; the authorized agency fee was \$115,000; and the in-lieu premium fee was \$160,000.			

Projects with no on-site unit requirement (ie projects with fewer than 20 units) will not be required to pay the in-lieu premium.

4.4 Timing of the In-Lieu Fee Calculation

The in-lieu fee will be calculated at the time the Affordable Housing Profile is approved by the ARO Project Manager, using the fee that is effective at the time the project is submitted, as defined in Section 2-45-110 of the Municipal Code.

The fee, as calculated, will be valid for two years following the date the project is submitted, per the definition referenced above. If the fee has not been received by the department within the two years following submission, the in-lieu fee owed will be recalculated, reflecting the current fee, at the time that payment is made.

4.5 Annual Adjustments to the In-Lieu Fee, based on the Consumer Price Index (CPI)

Pursuant to the 2015 ARO Ordinance, the in-lieu fee will be adjusted annually, beginning on January 1, 2018, to reflect adjustments in the Consumer Price Index (CPI) for all Urban Consumers for the Chicago metropolitan area, based upon the data published by the United States Department of Labor, Bureau of Labor Statistics.

The adjustment will be based on the year-over-year CPI numbers for September of each year and will take effect on January 1 of the following year.

The updated fee-in-lieu will be published on DPD's website no later than 45 days before the new rates take effect on January 1 of each year.

Article 5: Administrative Procedures for ARO Projects

5.1 Administrative Procedures for Rezoning and Planned Developments (PDs)

Permit Hold: Following submission of the "Application for an Amendment to the Chicago Zoning Ordinance," the ARO PM places a hold in the Hansen permitting system on projects that are subject – or potentially subject – to the ARO. At the time the hold is placed, the ARO PM emails the developer and/or their attorney to outline the next steps required to meet the ARO.

Affordable Housing Profile + supporting documents: As soon as project details are finalized, the developer should submit the Affordable Housing Profile Form (AHP), and required supporting documentation to the ARO Project Manager (ARO PM).

The required supporting docs include:

- ARO Web Form
- If units are proposed:
 - Affordable Unit Details and Square Footage worksheet
 - Dimensioned Floor Plans with affordable units highlighted
 - If units are proposed off-site see the AHP for a list of required documents

- If units are proposed as CHA/Authorized Agency units, a signed acceptance letter must be attached

Once all required/requested documents have been received, the ARO PM will review the AHP and supporting documentation.

Planned Development (PD) Statements

PDs must include a PD statement, a template (as provided by the PD/ARO Staff). The PD statement will detail the project's ARO obligation. The Executed AHP is also included as an Exhibit to the PD, so project details – including the location of off-site units – must be finalized prior to Plan Commission.

Preparing and Recording the Affordable Housing Agreement and/or Payment of the In-Lieu Fee:

Before the first building permit, including the excavation or foundation permit, can be issued the applicant must pay the in-lieu fee and/or record the Affordable Housing Agreement.

Projects that are not required and do not elect to provide on-site units do not need to prepare or record the Affordable Housing Agreement.

The **Affordable Housing Agreement** outlines and commemorates the requirements and procedures that govern how the developer and subsequent owners or occupants of the unit and/or development will comply with the ARO, and is recorded against the property's PIN(s) prior to issuance of any building permits. The signed Affordable Housing Profile (AHP) and supporting documents form the basis for the Affordable Housing Agreement.

This Agreement – or Covenant – **can take up to 45 business days to prepare**, so developers and their attorneys are encouraged to begin compiling and submitting the required documents as soon as possible in order to avoid delays.

In order to prepare the Agreement, the ARO PM will require a copy of the following documents:

- An executed copy of the deed transferring title to the developer;
- A copy of the title policy showing the developer as the owner of the property and the named insured (except in the case of City land sales, when this information is not available);
- If there were any exceptions in the title policy such as building code violations, evidence that the property owner has cleared those exceptions;
- Articles of organization for the LLC, certified by the Illinois Secretary of State;
- Operating agreement of the LLC (if any), certified by the manager of the LLC;
- Certificate of Good Standing for the LLC, issued by the Illinois Secretary of State;
- Resolutions authorizing the LLC to enter into the Affordable Housing Covenant and Agreement;
- Resolutions authorizing the person identified in the signature block to sign the Affordable Housing Covenant and Agreement;
- Name of the managing member of the LLC (signatory for covenant);
- Copy of the ordinance approving the city land sale, financial assistance, or change in zoning.
- Copy of the Affordable Housing Profile, signed by the applicant and the ARO PM
- Floor Plans submitted for building permit, dated, with affordable units highlighted

- Copy of the Affordable Unit Details and Square Footage worksheet, with changes since the executed Affordable Housing Profile highlighted.

If the unit mix/sizes have changed since the Affordable Housing Profile was executed, the ARO PM will work with the developer to update the affordable unit mix.

After the ARO PM has a final draft of the Covenant, the developer and their attorney will have a chance to review it. Once agreement is reached on the final document, and the developer has received written permission [email is sufficient] from the ARO PM to record the Covenant, the developer is responsible for recording the signed Agreement with the Cook County Recorder of Deeds.

In addition to recording the Affordable Housing Agreement, the **in-lieu fee** and, if applicable, the off-site unit review fee, must be received by the ARO PM prior to the release of the first building permit. The process to make the in-lieu payment is detailed in Article 6.4 of the Rules.

Releasing the Building Permit Hold: After the ARO PM receives a copy of the **recorded** Affordable Housing Agreement and/or evidence that the payment-in-lieu has been made, the ARO PM will release the permit hold.

Part II Review for PDs Only: At the time of each Part II review for the Residential Project, the developer may update and resubmit the Affordable Housing Profile Form to the ARO PM for review and approval

5.2 Administrative Procedures for Projects Receiving or Purchasing City Land

5.2.1 Land grants or purchases through the City's Adjacent Neighbors Land Acquisition Program (ANLAP) or the Large Lots Program

ANLAP will typically not trigger the ARO, as the vacant lots sold through ANLAP are required to be purchased by owner-occupant neighbors, and to be used, for a minimum of ten years following the purchase, only for uses auxiliary to the existing residence, including open space, parking, or an addition to the existing home.

Because of these restrictions built into ANLAP, the deed of purchase for an ANLAP property does not typically trigger the ARO.

The Large Lot program allows property owners to purchase and maintain two city-owned lots per property owned on the same block in community areas identified through the Program. Although it is unlikely that these land sales would trigger the ARO, if the zoning enables the construction of ten or more units, the ARO may be triggered. For that reason, the Large Lots deed references the applicability of the ARO to projects with ten or more residential units. It is the responsibility of the Large Lots purchaser to reach out to DPD should the ARO be applicable.

5.2.2 Land purchases through the City's Sealed Bid process

Land purchases through the City's Sealed Bid process do not require that the owner disclose the intended use of the sale prior to purchase. However, the ARO's applicability to the site is advertised in the bid, and the deed of purchase requires compliance with the ARO if it is triggered by the construction of a residential housing project including ten or more units.

5.2.3 Land purchases through the Negotiated Sales program

A negotiated sale would require compliance with the ARO if a residential housing project (10+ residential units) would be constructed on the lot(s).

Lots sold for long-term open space or parking would not be subject to the ARO, unless the use was by or accessory to a project that would trigger the ARO;

5.3 Administrative Procedures for Projects Receiving Financial Assistance

Projects receiving financial assistance from the City for the construction of a Residential Housing Project are required to provide 20% of the units as affordable for thirty years.

If residential projects are receiving Low Income Housing Tax Credits, Donation Tax Credits, or other forms of financial assistance from the City, the long-term affordability of the required affordable units – as well as the income of the prospective tenants – will be tracked by the Department's Developer Services division.

Residential projects that are receiving TIF assistance – but no other form of City financial assistance that would impose stricter affordability requirements – must meet the requirements of the ARO.

Developers will be required to identify whether their project will likely be subject to the ARO on the TIF Application. The TIF PM will share the Affordable Housing Profile Form with the ARO PM.

Before the project can go to the Community Development Commission (CDC), the Affordable Housing Profile must be completed and signed by both the ARO PM and the developer/applicant. The Affordable Housing Profile includes details on the number and type of affordable units required, and/or the timing of the in-lieu payment.

Both the Affordable Housing Profile Form, signed by the ARO PM and the recorded Affordable Housing Agreement securing the number and type of affordable units, will be included as an exhibit to the TIF Redevelopment Agreement (RDA).

Planned Developments that receive City or other financial assistance to create long-term affordable units will be required to include a PD statement that references the alternate affordability requirements, but requires that the units remain affordable for at least 30 years, in the event that the alternate affordability requirements expire prior to the ARO obligation.

Article 6: Options to Meet the Ordinance

The 2015 Ordinance (2-45-115 of the Municipal Code) sets out the Methods of Compliance in Article F. Note that in all cases, DPD must meet the Standards for Affordable Units outlined in Section (U) of the Ordinance. The following Rules provide clarification, where needed:

6.1 Sign a long-term lease with or sell units to the Chicago Housing Authority (CHA) or another Authorized Agency

ARO-subject Rental projects Downtown or in Higher Income Zones may sell or lease their required affordable rental units to the CHA or another Authorized Agency.

If a developer sells or leases at least 2.5% of the total **on-site** units (1/4 of the required affordable units) through the processes outlined in this article to the CHA or another Authorized Agency, the remaining in-lieu fees will be reduced by \$25,000 per remaining required affordable unit .

CHA/Authorized Agency units must be located on-site in order to receive the in-lieu fee reduction for any outstanding ARO obligation.

ARO Projects must provide at least 8 affordable units to work with the CHA.

The CHA or Authorized Agency must meet the definition of “Authorized Agency” detailed in the Ordinance, to the satisfaction of the ARO Project Manager. The Developer must submit a letter from the Authorized Agency with their Affordable Housing Profile Form verifying that the CHA or other Authorized Agency will be purchasing or leasing the affordable units for the minimum 30-year term.

For Rental units sold to the CHA, the CHA would buy the units from the developer and then lease to tenants on the CHA’s list. Prior to purchasing and subsequently leasing the units, the CHA will need to secure HUD approval. Because CHA is not able to secure HUD approval until the units are complete, the City will require that the developer record the affordable covenant and pay the full in-lieu fee to the City. Once the units have been approved by HUD for purchase by the CHA, the City will authorize the refund of the Authorized Agency discounted funds to the developer.

If the units are not approved for purchase by the CHA, the developer will have an additional 90 days to identify an alternate Authorized Agency to purchase or lease the units, per the required terms.

If another alternate agency is not identified, the discounted funds will be retained by the City.

For Rental units leased to the CHA, in lieu of a 30-year lease signed with the Authorized Agency, prior to the issuance of any building permits for the project, the developer must sign a minimum-30-year Agreement to enter into a Housing Assistance Payments contract (AHAP) that will state the CHA’s intention to provide rental assistance for 30 years to low-income households upon completion of the project. The AHAP – and subsequent Housing Assistance Payments (HAP) agreement – would formalize the CHA’s agreement to provide rental assistance payments to the owner of the building, who will then house tenants from a list maintained by the CHA. The leases will be between the building owner and the tenant referred from the CHA’s list.

If a developer is working with an Authorized Agency other than the CHA, the ARO PM must ensure that the Authorized Agency meets the requirements outlined in the Ordinance.

Prior to the issuance of any building permits for the project, the developer must, at the City's direction, sign a minimum 30-year lease or record a 30-year deed restriction (the ARO Covenant, as provided by the City) against the property to ensure that the unit remains affordable to households at 60% of the Area Median Income (AMI). For a project receiving Section 8 Voucher Housing Assistance Payments, the Tenant Selection Plan should reference the ARO Covenant and the requirement that the ARO tenants meet the criteria outlined in the Covenant of an "Eligible Household".

All Authorized Agencies will be responsible for signing off on the Annual Owners Compliance (AOC) form that developers are required to submit on an annual report to DPD's Compliance Division by June 30 of each year. The report, provided in the format requested by DPD, will provide the following information and any additional information requested by the Commissioner:

- Number of ARO units currently in the authorized agency's inventory;
- Monthly Rental rate for each affordable unit;
- Information concerning each tenant household's composition and gross income;
- Affordable unit operating expenses and revenues received by each agency.

Prior to the initial leasing of the affordable units, DPD must verify that the prospective tenants are income qualified. The Authorized Agency, with the exception of the CHA, should not sign a lease with any tenant leasing an ARO unit unless the tenant's income has been approved by DPD. For a project receiving Section 8 Voucher Housing Assistance Payments, such verification may be a statement from the Authorized Agency to the Developer declaring that the Eligible Household's income does not exceed the applicable income limit under Section 42(g) of the Internal Revenue Code of 1986. The Developer and the Authorized Agency shall deliver to the Department any information required by the Department to confirm each tenant's income eligibility.

To exercise the Authorized Agency/CHA option for a For Sale project, ARO units must be sold to income-qualified households, not leased to the CHA or another Authorized Agency.

Note that, for projects that will be meeting the ARO through the CHA, CHA requirements dictate that, among other things, Davis Bacon wage rates are triggered on any new construction or rehab project that includes more than 9 units. Further, developers interested in working with the CHA should contact the CHA as soon as possible, as the AHAP must be in place prior to the start of any construction.

6.2 Build, Buy, or Rehab units off-site

City's goal for off-site units

Pursuant to the parameters set out in Article F, and the standards set out in Article V in Section 2-45-115 of the Municipal Code, developers in Higher Income Areas and Downtown may build, buy or rehab their required affordable units off-site.

By creating an off-site option, the Department is hoping to harness the expertise, experience, and ingenuity of the development community to create *more, larger, and potentially more-affordable* units off-site than would otherwise be created in the ARO-subject property.

Developers are encouraged to be creative in meeting their off-site obligation, but should do so in the spirit that the quality, location and sustainability of these units should be **comparable** to the market-rate units that triggered the requirement.

Meeting required with DPD Staff

As soon as off-site units are contemplated within a development – and at least several weeks prior to submitting their Affordable Housing Profile Form to the City and three months prior to the expected date of permit issuance (and three months prior to the anticipated Plan Commission date, if the project is a Planned Development)– any developer who is considering meeting their on-site ARO obligation by providing off-site units must schedule a meeting to review their proposal with the ARO PM.

At the meeting, the developer should be prepared to discuss their proposed budget; project location; project scope; and other topics that will help DPD determine whether the off-site units will be approved.

Standards for Off-Site Affordable Units

Cost to Construct

The cost to construct, acquire, or rehab the off-site units must meet **two criteria**:

- 1) it must completely cover the costs to construct, acquire, and/or rehab the required unit to the department’s specifications; and 2) it must equal or exceed the total amount of the equivalent in-lieu fees that would be required for the residential housing project.

These costs may **not** include marketing or management costs, broker fees or other soft costs, including closing costs.

For example, if a developer was building 100 rental units in the downtown zone, they would be required to build 10 affordable units, 3 of which would be required to be on-site. If they elected to construct these 3 units off-site, their off-site budget would be, at minimum, 3 x \$175,000, or \$525,000.

Developers should utilize the following chart when calculating cost-per-unit:

Address of proposed off-site location: _____	Sample project
Purchase date: _____	
Purchase Price or, if property has been owned for more than one year, the Appraised Value*	\$670,000
Unit Updates	\$148,272
Total Costs	\$859,256

Number of Units	5
Cost Per Unit	\$171,905

Number of bedrooms in off-site units

At minimum, the off-site units must have the same number of bedrooms as those that would have been required, were those units to be constructed on-site. So, for example, if half of the units in the ARO-subject development are two-bedrooms and half are three-bedrooms, half of the off-site units would need to be two-bedrooms and half would need to be three-bedrooms.

For four-bedroom units, the developer has the option of meeting one four-unit obligation by providing one three-bedroom and one one-bedroom unit

Unless developers can demonstrate that comparable spaces are provided in the off-site affordable units, rooms identified as bonus, office, den, or similar spaces in the ARO-subject development will be considered bedrooms for the purpose of determining the number of required bedrooms.

Parking

Parking for off-site units should reflect both ARO triggering project offerings and the zoning requirements specific to the off-site location.

As with on-site units, if parking is included in the price of the market-rate development, it should be included in the price of the ARO off-site unit.

Design and Construction Standards

The Design and Construction Standards for ARO Off-Site units are [online here](#).

In addition, the following standards will also apply to all off-site units:

- Off-site units in Higher Income Areas or for Downtown Rental projects can be new construction or located in existing buildings that have been rehabbed with the past three years.
- Downtown For-Sale projects that are constructing their off-site units in Low-Moderate Income Areas must be new construction or located in existing buildings that have been rehabbed within the past year. Applicants will be required to submit a Certificate of Occupancy to demonstrate this.
- ARO off-site condominiums must be located in buildings with no fewer than ten units.
- Proposed off-site units must be vacant at the time the Affordable Housing Profile is submitted for consideration – ie – they must be vacant when they are submitted for initial DPD review. One exception is that if the existing tenants are income qualified

(as determined by DPD) at the time of application and would be interested in leasing the unit(s), the development may still qualify.

Legal Units with Building Permits and no violations

Off-site units must be legal units; and they must be constructed in compliance with all applicable provisions of the City's current Building Code.

It is DPD's expectation that the requisite building permits have been secured and approved for all work that has been undertaken within the building, even work that was done prior to acquisition, unless the developer intends to apply for additional permits to bring the building up to code.

The building proposed as an off-site unit should not have any outstanding building violations or complaints, including those listed on the City's website at <https://webapps1.cityofchicago.org/buildingviolations/violations/agreement.html>. If complaints exist, any plans submitted should be specific in addressing how the violations will be corrected.

Providing off-site units in an affordable development with City, State, or Federal financing

Developers may put their off-site units in State or City-funded affordable projects (that meet all the other ARO unit criteria, including those for off-site units), as long as the contribution equals or exceeds the cost to construct the unit, as determined by the project's per-unit total development cost. In other words, the required number of ARO units doesn't change, even if the per-unit development costs exceed the in-lieu fee amount.

For example, in a tax credit project with development costs of \$250,000/unit, a developer with a 100-unit ARO-triggering project could contribute 10 x \$250,000, or \$2.5 million, to the project to meet their full ARO obligation.

Affordable projects that receive the developer's off-site contribution and that are receiving City funds must demonstrate that the City contribution has been reduced by the amount received from the developer.

Developers may not place off-site units in projects that have already received City funding, unless the project has applied for additional funding from the City to extend the affordability period by at least 30 years or increase the number of affordable units within the project; or the project refunds the amounts received from the City.

Required Documents for Review of Off-Site Affordable Units

For projects intending to build, buy, or rehab off-site units to meet all or a portion of their ARO requirement, required documents are included on the reverse of the Affordable Housing Profile Form, online at www.cityofchicago.org/aro.

Documents required prior to issuance of the subject ARO project's building permit

- Evidence of site control for off-site project

- Administrative review fee (\$5,000) and in-lieu fee for units not being constructed
- Final signed/recorded Affordable Housing Agreement

Documents required prior to Leasing of Units

- Where applicable, Certificate of Occupancy for off-site ARO project
- Letter confirming that Compliance meeting was held
- For projects that do not require a Certificate of Occupancy, but for which additional work was required:
 - Copy of approved permits from Department of Buildings
 - Approval from DPD's Construction and Compliance division
- Marketing plan, as detailed in Article 9 (For Sale Units) or Article 10 (Rental Units) of the Rules & Regulations.

Inspections of off-site units

DPD Construction & Compliance Review Process/ Inspections

For existing buildings, DPD Construction & Compliance (CAC) Inspectors will do an initial site visit, following the submission of all required application materials but before signing off on the application, to ensure that the application accurately represents the development; and to ensure that the units are vacant.

If the off-site units are new construction or require rehab, DPD Staff will sign off on the Affordable Housing Profile after reviewing and approving the construction plans. **Developers should not submit for permit until the Affordable Housing Profile has been signed.**

Once the building permit has been issued, the developer should make an appointment with DPD CAC staff to review the approved building permits to confirm that all required changes have been incorporated into the approved plans. **Construction should not begin until DPD Staff have reviewed plans and/or issued a Construction Approval Letter.**

If additional improvements or repairs are warranted, DPD Inspectors will do follow-up inspections to ensure that agreed-upon work has been completed.

If the off-site units require a Certificate of Occupancy, DPD Staff would conduct a final inspection after the Cof O has been issued. Once the CofO was received and the ARO Inspection completed, the ARO Project Manager would authorize the issuance of the Certificate of Occupancy for the subject property.,

Department of Building Inspections

The developer is required to schedule and receive all applicable inspections with the Department of Buildings, and should save copies of all permit approvals and submit to DPD at the project's completion.

Filing of Affordable Housing Agreements/Covenants

For off-site ARO units, the Affordable Housing Agreement will initially be filed against both the ARO-subject project and the off-site property(or properties). The covenant against the ARO-subject property will be released when the following conditions have been met:

- The construction or rehabilitation, as applicable, of the Affordable Units and common areas and facilities in each ARO Building has been completed in accordance with the approved Plans and Specifications, and each Affordable Unit has received a Certificate of Occupancy (or, for renovations or alterations that do not require Certificates of Occupancy, a Certificate of Inspection and approval from the Department has inspected the Affordable Units and common areas and facilities and that determined that the Developer has completed such improvements in accordance with the terms of this Agreement).
- Each of the Affordable Units has been leased to an Eligible Household in accordance with the terms of the Agreement, and each lease is in full force and effect.
- There exists neither an Event of Default nor a condition or event which, with the giving of notice or passage of time or both, would constitute an Event of Default

Certificate of Occupancy for ARO-Subject Project

The Ordinance requires that the Certificate of Occupancy for the off-site units must be issued prior to the issuance of the Certificate of Occupancy for the ARO-subject project.

If the off-site units are being built in a development that requires a Certificate of Occupancy, the developer should deliver the CoFO to the ARO Project Manager, who will then schedule the final ARO off-site inspection. After completion of the inspection, the ARO Project Manager will authorize the Department of Buildings to issue the Certificate of Occupancy for the Subject Property.

6.3 Compliance through the ARO TSL (Transit Served Location) Bonus

For projects taking the ARO TSL bonus, verification from Zoning staff that the project is eligible for the ARO TSL Bonus will be required prior to the ARO PM's sign-off on the Affordable Housing Profile Form.

ARO units that enable additional floor area through the TSL must be located on-site.

6.4 Compliance through payment of the In-Lieu Fee

In-lieu fees must be received prior to the issuance of any building permit, including excavation or foundation permits. Payment is accepted in the form of a check made out to the City of Chicago. Wired Funds or credit card payments will not be accepted.

When the developer is ready to make the in-lieu payment (and at least 5 business days before they anticipate picking up their building permit), they should contact the ARO PM to finalize ARO paperwork and request the invoice – and confirm/provide the name and address of the ownership entity.

Once the invoice has been received from the ARO PM (typically 1-2 days), the developer or their agent must make the payment directly to one of the City's Revenue Payment Centers, located here:

Department of Revenue Payment Sites				
City Hall	* 121 North LaSalle	Room 107	Monday - Friday	8:00 am - 5:00 pm
Revenue Payment Center (SW)	** 4770 S. Kedzie	Lobby	Monday - Friday	8:00 am - 6:30 pm
Revenue Payment Center (NW)	** 2550 W. Addison	Lobby	Monday - Friday	8:00 am - 6:30 pm
Revenue Payment Center (SE)	** 2006 E. 95th	Lobby	Monday - Friday	8:00 am - 6:30 pm
Revenue Payment Center (Central)	* 400 W. Superior	Lobby	Monday - Friday	8:00 am - 4:30 pm
			Saturday	8:00 am - 3:30 pm
	* Closed on City Holidays			

The check should not be deposited until the invoice is received. Failure to deposit the payment into the proper account will delay the release of the building permit.

Once the payment has been deposited, the developer should deliver or forward a copy of the receipt + a copy of the check (or check stub) to the ARO PM for the file. The ARO PM will issue a DPD receipt and, once the payment has been processed (typically the following business day), the ARO PM will release the building permit hold.

Note that projects with fewer than 20 units or downtown for-sale projects that elect to pay the in-lieu fee premium may meet their entire ARO obligation through payment of an in-lieu fee.

Article 7: Timing of the recording of the Affordable Housing Agreement and Payment of the In-Lieu Fee

For projects for which all units are permitted under a single building permit, the in-lieu fee and/or the recording of the affordable housing agreement are required prior to the issuance of the initial building permit (or, if applicable, the excavation or foundation permit).

For single family developments, multi-phased projects or others in which permits are issued on a unit-by-unit basis, the ARO obligation may be phased, as follows:

When the developer intends to construct affordable units, he/she must record the Affordable Housing Covenant against the project’s address range prior to the issuance of the tenth permit.

When the developer intends to make the in-lieu payment, the developer must make the payment whenever an additional in-lieu payment would be triggered. So, the first payment must be made before the permitting of the 10th unit; the 2nd payment before the permitting of the 15th unit; the 3rd payment before the permitting of the 25th unit, and so on.

Article 8: Design and Construction Standards for Affordable Units

Developers who provide affordable units must adhere to the Standards for Affordable Units outlined in Article U of 2-45-115 of the Municipal Code. Developers who are constructing off-site units must *also* adhere to Article V of 2-45-115 and Article 6.2 of the Rules and Regulations, and, in the event of a conflict, should follow the more restrictive requirement. The following rules and regulations provide clarification.

8.1 Unit Mix

The ARO PM's sign-off is required on the Affordable Unit Details and Square Footage worksheet as part of the Affordable Housing Profile Form submission to ensure the unit mix meets the Standards outlined in Article U of the Ordinance. This unit mix must be maintained for the 30-year affordability period.

The applicant will be required to resubmit the Unit Details worksheet prior to preparation of the covenant, so that any changes are reviewed and approved prior to permitting.

8.2 Square Footage

The square footage of affordable units should be generally consistent (typically within 15%) with the square footage of comparable (by number of bedrooms) market rate units in the project. Information on square footage is also captured in the required Affordable Unit Details and Square Footage excel worksheet.

8.3 Amenities and Finishes

While developers are encouraged to include the same amenities and finishes in affordable units as in market units, affordable units may have different in-unit amenities and finishes than market-rate units in the residential housing project, as long as:

- The basic components are the same; and
- The affordable amenities and finishes are durable, of good and new quality, and are consistent with then-current standards for new housing.

In-unit amenities include air conditioning and laundry facilities.

As part of the "Affordable Unit Details and Square Footage" worksheet required at the time the Affordable Housing Profile is submitted, the developer will be required to detail the amenities/finishes provided in both the ARO and market rate units.

8.4 Parking

Parking (in the same format as provided to market units) must be included in the sale price or rent of the unit, unless the developer can demonstrate to the satisfaction of the City that parking is not included in the purchase price/rent of the market-rate units.

8.5 Fees and Earnest Money

Affordable tenants or purchasers shall not be assessed any fees that are not assessed to market rate buyers.

Developers may accept earnest money from an affordable buyer, but that earnest money should be 100% reimbursable if the applicant does not meet DPD's affordability guidelines.

8.6 Income Limits

Income limits for the Chicago Primary Metropolitan Statistical Area (PMSA) are updated annually. They are typically released by HUD between December and April and are subsequently published on the Department’s website.

The income limits in place at the time of a tenants or homebuyer’s application will be utilized in determining their eligibility to lease or purchase the unit. If income limits for the following year are released prior to updated maximum rents – or vice versa – the most recent year for which both sets of data are available should be used to income qualify prospective tenants and set maximum rents.

The current income limits are available online at www.cityofchicago.org/ARO.

Article 9: For Sale Units

9.1 Pricing of For Sale Units

ARO For-Sale units must be priced to be affordable to households earning no more than 100% of the AMI (Note that the Ordinance allows households earning up to 120% of AMI to *purchase* the units). If TIF assistance is provided to the developer for the purposes of residential construction, 10% of the total units must be priced to be affordable to households at 100% of AMI and 10% of the total units must be priced to be affordable to households at 80% of AMI.

The City’s affordable formula takes into account a buyers’ total monthly housing costs, per the assumptions indicated below. The formula assumes that a buyer will finance 95% of the purchase price. Maximum sales prices assume 1.5 occupants per bedroom and 1 occupant for a unit with no bedrooms.

No price is valid unless the ARO PM has signed off on the AHP.

Total Monthly Housing Costs include the following:

Monthly Housing Costs		
Cost	Assumption	
property taxes	2% of the price and/or value	
condo assessment/home maintenance	Higher of the amount indicated by the developer/homeowner - or the average assessments, set by the City using MLS data for all annual sales, for units by number of bedrooms.	
	Those amounts are currently set at:	
	studio	\$300
	one-bedroom	\$325
	two-bedroom	\$350
	three-bedroom	\$375
four-bedroom	\$375	

	For single family homes that do not assess homeowners a monthly fee, this amount is reduced to \$150/month to encourage maintenance savings for single family homes.
CCLT covenant fee	tbd
Private Mortgage Insurance	PMI is estimated at 70 BPS, or 0.70% of the mortgage amount.
Property Insurance	0.25% of the market price for condominiums 0.75% of the market price for single family homes or townhomes (where buyers are paying for full homeowners rather than renters/contents insurance)
Interest Rate	The interest rate is the <i>higher</i> of the current interest rate, as published in the <i>Chicago Tribune</i> , and rounded up to the nearest quarter point - OR - the 10-year average of interest rates, as calculated by the City of Chicago, based on data provided annually by Freddie Mac as "Contract interest rates on commitments for fixed-rate first mortgages. Source: Primary Mortgage Market Survey® data provided by Freddie Mac."

Once the applicant and City have signed off on the Affordable Housing Profile (AHP), utilizing the AMI in place at the time of the sign-off of the AHP, the maximum affordable sales price is valid for a period of one year. If the Affordable Housing Agreement securing the units is not filed before the one-year period expires, the City will recalculate the maximum affordable sales price.

Once the Affordable Housing Agreement has been recorded, the maximum affordable sales price effective at the time the agreement is recorded will be valid for one year from the date of recording. If the unit(s) is/are not under contract within the year following the date of the Agreement, the Developer may notify the ARO PM and the ARO PM may recalculate the maximum affordable sales price (s) of the affordable units in accordance with the then-current formula.

9.2 Income Eligibility for For-Sale Units

For projects that are not receiving financial assistance, for-sale units may be purchased by households earning up to 120% AMI.

If TIF assistance is provided to the developer for the purposes of residential construction, buyers for 10% of the total units may earn no more than 80% of AMI and buyers for 10% of the total units may earn no more than 100% of AMI.

DPD follows HUD's HOME guidelines for calculating annual *gross* household income for first-time homebuyers. Home buyers who have owned property in the past will be considered for participation in the program if previously owned property is/was sold. Proceeds may be used for the downpayment, up to the required amount. Any balance of proceeds from the sale will be calculated at the rate of return for income purposes.

Per DPD Policy, eligible purchasers may not spend more than 38% of their household income on housing (note that the pricing formula assumes that buyers will spend no more than 33% of their income on housing).

9.3 Marketing For Sale Units

While DPD will typically list the affordable units on their website and share the information with any potential buyers who have indicated an interest in purchasing affordable units, **it is the responsibility of the developer to market and sell their ARO units.**

Developers shall use good faith and affirmative efforts to attract potential purchases or tenants from all minority communities and from households earning less than 120% (for-sale) of the AMI (or, if TIF assistance is received, marketed to households earning less than 100% and 80% of the AMI) through the marketing and advertising of the ARO units.

To ensure that units are marketed widely and sold in a timely manner, DPD has set the following parameters for marketing all ARO for-sale units.

Marketing Intake Meeting

Before marketing any unit for sale – and at least 90 days prior to the commencement of marketing for the units (all units, not just the affordable units) and 180 days prior to the anticipated closing for the affordable units – the developer must schedule a Marketing Intake Meeting with DPD Homeownership Center staff.

At the meeting, the Developer must submit their marketing plan. DPD staff will review the marketing and affordability requirements, and will review the process to approve and income-qualify eligible buyers/tenants with the applicant and marketing agents.

The meeting should be attended by the developer or his/her representative, and the marketing/sales agents that will be overseeing the process to sell the affordable units.

Marketing Plan

At the Marketing Intake meeting, the applicant must submit their completed marketing plan for the project, following the format of the Marketing Plan template provided at www.cityofchicago.org/ARO.

No marketing or advertising material related specifically to the affordable units should be distributed or published until DPD has signed off on the developer's Marketing Plan for the project.

If the Marketing Plan is not approved, DPD will provide recommendations to remedy any deficiencies.

DPD recommends – but does not require - that the applicant work with a marketing agent specializing in affordable units to ensure their affordable units are marketed effectively and sold quickly.

9.4 Homebuyer Requirements

Potential homebuyers must meet the following requirements:

Be Income Qualified

Per Article 8.7.1 of the Rules & Regulations.

Complete Homeownership Training

Potential homebuyers must receive certificates verifying that they have received the following pre-purchase education from a DPD-approved Delegate Housing Counseling Agency prior to submitting their application to purchase, unless otherwise indicated by DPD.

All certifications must be provided to DPD at least 10 days before closing.

Certifications are good for six months from date of issuance: : approval may extend to up to one year if the potential homebuyer's financial or household circumstances do not change substantially, at the Department's discretion.

1) General Pre-Purchase Training

- General Pre-Purchase Homebuyer certification requires 8 hours of training (including 6 hours of classroom training and 2 hours of one-on-one education)
- **on-line certification is *not* permitted**
- List of City-funded housing counseling agencies is online at http://www.cityofchicago.org/city/en/depts/dcd/supp_info/homeownership_housingcounselingcenters.html. Each Counseling agency maintains a calendar of scheduled classes on their websites.

2) Condo Training

Specific condo training is required **for purchasers of condominium units only** in order to ensure that buyers understand the particular restrictions and obligations inherent in the purchase of a condominium.

3) Chicago Community Land Trust Training

If the unit will be sold through the Chicago Community Land Trust (CCLT), CCLT-specific training is required, in order to ensure that buyers fully understand the ownership and resale restrictions and obligations inherent in purchasing a CCLT unit.

Mortgage Pre-approval

If a buyer is purchasing a CCLT unit, each potential purchaser must obtain a mortgage pre-approval letter from a lender approved by the CCLT. The list of approved lenders is available at www.cityofchicago.org/CCLT. The letter should indicate the type of loan product, maximum loan amount, interest rate and term (only 30 year fixed rate loans are allowed).

CCLT Staff will ensure that homebuyers will not be spending more than 38% of their income on housing, and will verify that the mortgage they are receiving is not a predatory loan.

Completed Application

The completed homebuyer application must be accompanied by the following documentation, and must be received at least ten days prior to signing a purchase contract:

- Homebuyer Counseling certificates (including Condo + CCLT Training, as applicable), as detailed above in Article 10.2 of the Rules & Regulations
- Mortgage pre-approval from a participating lender, as detailed above in Article 10.3 of the Rules & Regulations
- Copy of driver's license or State ID for each applicant over 18 years of age
- Tax returns (signed) and W-2s for the prior two years
- Paystubs from the prior three pay periods
- Child Support Affidavit
- Completed Verification of Employment, signed by HR department of employer
- Copy of Mortgage loan application
- Copy of divorce decree or legal judgment of separate maintenance (if applicable)
- Household Income affidavit
- 3 months of Checking and Savings statements
- 401K or Pension Funds

Additional documentation may be requested to verify income and eligibility.

Prior to Clear to Close/Scheduling a closing for "For Sale" ARO units, the following documentation must be received at least ten days prior to the scheduled closing in order to prepare the restrictive covenant:

- Signed Sales Contract/Purchase Agreement, with all upgrades and options listed
- Appraisal

9.5 Process to Sell ARO Units

Unless otherwise indicated by DPD, Applicants or their agents will be responsible for collecting completed homebuyer applications, per Article 10 of the Rules & Regulations.

Applicants will designate a date on their Marketing Plan (the date must be at least 30 days after which the units have been posted to the City's website and 30 days after the marketing activities approved in the Marketing Plan have been initiated) after which completed applications will be accepted. Applications should not be accepted unless they are complete, including all required documentation.

Unless otherwise determined by DPD Staff that a lottery or other application process is more appropriate, completed applications should be time and date-stamped, and submitted to DPD in the order of receipt.

DPD staff will review completed applications, and will give potential purchasers up to ten business days to comply with submittal requirements before moving to the next applicant.

Priority to select specific units will be based on order in which a completed application is submitted.

DPD Staff will send out Letters of Conditional approval will be sent out to all potential buyers who are determined to be income-qualified to purchase an affordable unit. Qualified buyers will then sign a contract to purchase a unit and complete the steps needed to get a final commitment from their lender.

When DPD financing is involved or the unit is being sold through the CCLT, the seller is responsible for sending a final request to close to DPD; DPD will issue a Clear to Close when the title commitment; final lender commitment letter; all required certifications; and a final appraisal are received by DPD.

Failure to record the 30-year resale restriction will deem the project non-compliant and will subject the developer to the Penalties for Non-Compliance detailed in Article 16 of the Rules & Regulations.

Lottery

If demand for a particular unit is expected to be high, DPD staff may recommend that the developer sell the unit via a lottery process, to ensure that opportunity to purchase the unit is made available to as many income-qualified homebuyers as possible.

9.6 Restrictions on For-Sale ARO Units

Resale or Transfer of ARO Units

The resale or transfer of any affordable housing unit shall be restricted as follows:

- During the thirty-year affordability period, owners of ARO units must sell their units at a price that renders the housing unit affordable, per the affordable housing agreement, to a household meeting the eligibility criteria as certified by DPD, or its agent.
- ARO Homeowners whose units are being sold through the CCLT are advised to contact DPD at least 6 months prior to the anticipated time of sale or whenever they decide to sell the unit, whichever comes sooner, in order to get direction from the CCLT on the process to price and sell the unit. While the resale process is often faster than 6 months, the process to set the resale price requires a current (no more than 6 months old) appraisal, which can take up to a month to order and receive. In addition, the CCLT has a 30-day Right of First Refusal period to purchase the unit, both of which mean that the process to sell an affordable unit will typically take longer than the process to sell a market-rate unit.

Once the appraisal is received, DPD will calculate the maximum resale price. The homeowner will be required to reimburse the CCLT for the price of an appraisal for the home, if a current (no more than 6 months old) appraisal is not available for the property.

- Existing homeowners will not be required to complete a Marketing Plan for their home, but they will be responsible to sell the home. While the payment of a real estate agent commission is not factored into the maximum resale price of a home, sellers are welcomed to work with a real estate agent to sell their home.
- Any listings for the unit should include the following language under the Remarks section: “This is an affordable unit created through the City of Chicago’s ARO program: income restrictions – as well as restrictions on the resale price – may apply. Owner occupants only, and homebuyer education classes required before purchasing. Contact [*insert contact*] for more information on affordability restrictions.”
- An interested buyer must submit a complete program application to DPD to determine eligibility, to the attention of:
Homeownership Center

City of Chicago, Department of Planning and Development
121 N LaSalle St – Room 1006
Chicago IL 60602

- A homebuyer approval letter will be issued within ten (10) business days from the receipt of a completed application from the interested buyer. An approval letter is required in order to purchase an affordable unit.

Monitoring and Reporting Requirements

Purchasers of ARO units are required to submit annual affidavits verifying:

- that they maintain homeowner's insurance on the property;
- that they continue to reside in the property as their primary residence; and
- providing current contact information
- current income/occupation and other demographic information, as requested

Refinances

Post-purchase education may be required prior to Refinancing of an affordable unit.

Homeowners are required to contact DPD once a refinancing lender has been identified to initiate the subordination process and request a Subordination Agreement.

DPD Policy does not allow cash-out in Subordination transactions. The maximum new mortgage loan amount will be the amount of the pay-off letter(s) plus the closing costs shown on a signed GFE. The amount of the new mortgage loan must be consistent on the following documents.

The following documents should be submitted to DPD by the lender to initiate processing of the Subordination Request:

- A copy of the recorded City of Chicago junior mortgage related to your request.
- A signed Subordination Request letter from the new lender, with all transaction details, and the rationale for the refinance.
- A copy of the signed Homeowner's authorization to release information.
- A copy of the signed Good Faith Estimate for the new mortgage.
- A copy of the signed copy of the properly completed 1003.
- A copy of the signed Truth-In-Lending Disclosure for the new mortgage.
- A pay-off letter for a date at least fifteen (15) business days from the date documents are delivered to DPD
- A copy of the signed Mortgage Approval/Commitment Letter with term, P&I and details for the new mortgage.
- Copy of new Title Commitment for the amount of new mortgage (may not be required for land sales).
- Copy of the Appraisal or other Market Value Analysis used to process the new mortgage
- Documents to show original loan amount, P&I, and loan type.

Upon receipt of all of these documents from the lender the DPD staff can initiate processing the Subordination Request. This can take 15 business days, or longer. If approved, the Subordination is mailed

USPS, unless a prepaid overnight carrier envelope is provided. The lender should ensure that the amount of the new mortgage loan is consistent, even on the Title Commitment, and the rate is consistent on all documents.

CCLT Homeowners may be required to refinance with a participating lender – and receive permission from the CCLT prior to refinancing.

Article 10: Rental Units

10.1 Pricing of Rental Units

ARO Rental units must be priced to be affordable to households earning no more than 60% of the Area Median Income. If TIF assistance is provided to the developer for the purposes of residential construction, 10% of the total units must be priced to be affordable to households at 50% of AMI and 10% of the total units must be priced to be affordable to households at 60% of AMI.

Affordable rents are updated annually by the department, based on income limits as published by HUD and utility allowances published by the Chicago Housing Authority.

DPD publishes the affordable rents at www.cityofchicago.org/ARO as soon as they become available, typically between February and June of each year.

Maximum rents assume 1.5 occupants per bedroom and 1 occupant for an apartment with no bedrooms.

10.2 Income requirements for ARO Tenants

For projects that are not receiving financial assistance, rental units may be leased by households earning up to 60% of area median income (AMI).

If TIF assistance is provided to the developer for the purposes of residential construction, tenants for 10% of the total units may earn no more than 50% of AMI and tenants for 10% of the total units may earn no more than 60% of AMI.

Tenants are income qualified at the time of initial rental, or if a tenant is added or removed from the lease.

While developers are required to submit annual reports indicating that the affordable units are leased at an affordable price per the current Maximum Rent Limits, the tenants already residing in the units do not need to be income qualified annually, unless there are any changes to the individuals listed on the lease.

Prior to the initial leasing of the affordable units, DPD must verify that the prospective tenants are income qualified. The developer or management company should not sign a lease with any tenant leasing an ARO unit unless the tenant's income has been approved by DPD. The DPD approval letter certifying income eligibility for Rental units is valid for one year.

DPD follows the Department of Housing & Urban Development (HUD)'s guidelines for calculating annual *gross* household income, as published in Chapter 5, titled "Chapter 5: Determining Income & Calculating Rent" of

the HUD Handbook and published at
http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_35649.pdf.

10.3 Marketing ARO Rental Units

It is the responsibility of the developer to market and lease their required affordable units.

Applicants shall use good faith and affirmative efforts to attract potential tenants from all minority communities and from households earning less than 60% of the Area Median Income (or, if TIF assistance is received, marketed to households earning less than 60% and 50% of the AMI) through the marketing and advertising of the ARO units. To that end, DPD has set the following requirements and parameters for marketing all affordable rental units.

Marketing Intake Meeting

Before marketing any unit for rent – and at least 30 days prior to the commencement of marketing for the units (all units, not just affordable units) – the applicant must meet with DPD Compliance Staff for a marketing intake meeting to review the process to market and lease the unit to an income qualified tenant, as well as the process to income qualify tenants AND submit annual compliance documentation. At this meeting, Developers are required to submit the ARO Rental Unit Marketing Form to the DPD Project Manager.

The meeting should be attended by the applicant(s), and should include those responsible for leasing the units and income-qualifying tenants AND for submitting annual compliance documentation.

The meeting will cover the following:

- Number and type of units which must remain affordable
- Period of affordability
- Unit requirements
 - Finishes
 - Square footage
 - Fees
 - “floating” units
- How to calculate tenant income
 - Tenant Information Certification (TIC) form and how to fill it out
 - What information are you required to collect and review?
 - What constitutes a “household member”
- Maximum Affordable Rents
- Initial Lease-Up Requirements
- Annual Reporting Requirements

The Compliance Division will send a letter to all participants following the meeting confirming participation.

Marketing Plan

Developers must complete and submit the ARO Rental Unit Marketing Form to the DPD Project Manager at the Marketing Intake Meeting, and before marketing their affordable units. The City will

use the information provided on this form to list the units on the City's Affordable Housing Resource List.

Developers are responsible for providing current contact information to the City for the term of their affordability period.

Developers are encouraged to reach out to their local housing counseling agencies to identify interested and income-qualified tenants.

Marketing and Leasing of the affordable units must follow all provisions of the City's Residential Landlord and Tenant's Ordinance as well as all applicable sections of the Fair Housing Ordinance.

10.4 Process to Income Qualify an ARO Tenant

- Management company takes a rental application from the tenant
- Management company requests required income documentation for household income
- Management company performs initial income verification for an ARO unit
- Management company provides tenant income information to ARO Program staff
- ARO staff reviews tenant income information and issue emailed response to the management company. If tenant is qualified, ARO staff issues tenant approval letter.
- Once Tenant Approval Letter is signed, the management company may sign lease with approved tenant.

The management company must furnish a signed copy of the lease to the City.

The Department must verify in writing that each tenant meets the income eligibility requirements of an Eligible Household. The Developer shall deliver to the Department any information required by the Department to confirm each tenant's income eligibility.

The Department shall have ten (10) business days from the date of receipt of a "complete information package" to qualify purchasers. A "complete information package" shall include, by means of illustration and not limitation, the W 2 forms from each purchaser's employers, U.S. 1040 income tax returns for each purchaser from the previous two (2) years, an affidavit or verification from each purchaser with regard to Household size, and the employer verification form utilized by Fannie Mae. Tenant income information must be dated within six months prior to the anticipated leasing date: any income information that is dated prior to 6 months before the anticipated leasing date will not be accepted.

General Guidelines

- Tenants applying to rent affordable units should not be charged any fees for applying for an affordable unit that are not evenly applied to all applicants.
- Project owners may evaluate prospective tenants based on the criteria they typically use to do so, and may not evaluate prospective tenants on any criteria they would not apply to all tenants.
- Affordable rental units should be rented to qualified tenants on a first-come; first-served basis.

10.5 Monitoring and Reporting Requirements for ARO Rental Units

Owners or Authorized Agencies of rental properties must submit the Annual Owner Certification (AOC) documentation to the Department of Planning and Development's Compliance Division by June 30 of each year, including:

- The rent roll (which includes tenants name, current lease period and household composition data)
- Annual Owner's Certification (Compliance Certificate filed as Exhibit in Affordable Housing Agreement – including information on number of bedrooms and square footage of each affordable unit)
- Completed Tenant Income Certification (TIC) form with required documentation for every ARO unit (do not need to have new forms unless there is a new tenant, or someone has been added to the lease of the current tenant)
- Copy of lease agreement for every ARO unit
- Contact information for the management company
- Copy of the original signed Affordable Housing Profile

It is the responsibility of the Management Company to submit completed and notarized AOC documentation to the Compliance Division of the Department of Planning and Development by June 30 of each year (or as otherwise indicated by the Compliance Division) until the expiration of the Affordable Housing Agreement term.

10.5.1 Affordability Term

For ARO projects with rental units, the 30-year affordability term and begins on the date on which the **last** affordable unit in an ARO project is first leased to an Eligible Household (the Final Lease Commencement Date) and expires on the thirtieth (30th) anniversary of the Final Lease Commencement Date.

For For-sale units, the 30-year affordability term begins on the date the unit is first purchased by an income-qualified buyer.

10.5.2 Affordable Unit Leases

All leases for the Affordable Units shall be written, shall be in conformity with all applicable laws, including without limitation, the City of Chicago Residential Landlord and Tenant Ordinance, and shall contain clauses, inter alia, wherein each individual lessee: (i) certifies the accuracy of the statements made in the Tenant Income Certification, and (ii) agrees that the Household income and other eligibility requirements shall be deemed substantial and material obligations of his/her tenancy, that he/she will comply with all requests for information with respect thereto from the Developer or the City, and that the failure to provide accurate information in the Tenant Income Certification or refusal to comply with a request for information with respect thereto shall be deemed a substantial violation of an obligation of his/her tenancy.

All leases for the Affordable Units shall be for a period of not less than one year, unless by mutual agreement of the tenant and the Developer. Notwithstanding the foregoing, rents will not be set more than one year in advance. Leases for Affordable Units shall not contain any of the following provisions:

- Agreement by the tenant to be sued, to admit guilt or to a judgment in favor of the Developer in a lawsuit brought in connection with the lease;

- Agreement by the tenant that the Developer may take, hold or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties; provided, however, this prohibition does not apply to an agreement by the tenant concerning disposition of personal property remaining in the Affordable Unit after the tenant has moved out of the unit, in which case the Developer may dispose of this personal property in accordance with applicable local and state law;
- Agreement by the tenant not to hold the Developer or the Developer's agents legally responsible for any action or failure to act, whether intentional or negligent;
- Agreement by the tenant that the Developer may institute a lawsuit without notice to the tenant;
- Agreement by the tenant that the Developer may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense or before a court decision on the rights of the parties;
- Agreement by the tenant to waive any right to a trial by jury;
- Agreement by the tenant to waive the tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease; or
- Agreement by the tenant to pay attorney's fees or other legal costs even if the tenant wins in a court proceeding by the Developer against the tenant; provided, however, that the tenant may be obligated to pay costs if the tenant loses.

The Developer shall not terminate the tenancy or refuse to renew the lease of a tenant of an Affordable Unit except for serious or repeated violation of the terms and conditions of the lease; for violation of applicable federal, state or local law; or for other good cause. To terminate or refuse to renew tenancy, the Developer must serve written notice upon the tenant specifying the grounds for the action at least 30 days prior to the termination of tenancy. The Developer shall also comply with all local, county or state law regarding tenant protections.

The Developer agrees that it shall not impose any fees for construction management or for inspections for compliance with property standards. Nothing in this Section shall prohibit the Developer from charging prospective tenants reasonable application fees (as determined by the City in its sole discretion).

All tenant lists, applications and waiting lists relating to each ARO Building shall at all times be kept separate and identifiable from any other business of the Developer which is unrelated to the ARO Building, shall be maintained, as required by the City, in a reasonable condition for proper audit and shall be subject to examination during business hours by representatives of the City. If the Developer employs a management agent for the ARO Building, the Developer shall require such agent to comply with the requirements of this Agreement and shall include such requirements in any and all management agreements or contracts entered into with respect to the ARO Building.

Article 11: Penalties for Non-Compliance

Penalties for developers who fail to meet their ARO obligation or lease or sell required affordable units per the terms of the Ordinance are subject to the Enforcement provisions outlined in Article N of the Section 2-45-115

of the Municipal Code. Note that developers that submit piecemeal applications to avoid meeting the ARO – and that are later determined by the City to be subject to the ARO – will be subject to these penalties.

Article 12: Changes to the Rules & Regulations

The Rules and Regulations may be updated at any time at the discretion of the Commissioner. The current version of the Rules will be dated and published on the DPD website at www.cityofchicago.org/ARO.

Article 13: Changes to the Project

Project does not move forward

If the project receives a zoning change and does not move forward, the hold will remain on the address range. If a different project submits a permit to construct a residential housing project on the site (ie a project with 10+ residential units), that project will be subject to the ARO, regardless of the ownership of the lots or development.

Changes to the project

Any change to the project following approval by Plan Commission, City Council, or DPD that increases allowable FAR or number of residential units would require a recalculation of the affordable housing requirement.

Changes to the overall unit mix in the project may result in changes to the affordable unit mix – but would require the ARO PM's signature prior to the issuance of the building permit. Approval would be based on the criteria outlined in Article 8 of the Rules & Regulations.

Sale of the Property

If the project or land is sold or transferred, the affordability obligation remains with the property.

Project converts from Rental to For-Sale

Projects that convert from rental to for-sale prior to the expiration of the 30-year affordability term will be required to sell the affordable rental units to income-qualified for-sale buyers, under the terms of the ARO. The 30-year affordability term will restart on the date of the initial sale of the condominium unit.

No changes permitted after the building permit has been issued

The Ordinance requires that, prior to the issuance of a building permit, all ARO-subject projects must pay an amount equal to the required fee in lieu or file the affordable housing agreement securing the construction of the affordable units.

If the developer fails to comply, the penalties described in Article 16 of the Rules & Regulations become effective.

Developer elects to provide on-site affordable units after they've paid the in-lieu fee

If the developer elects to provide additional affordable units after DPD has already received their in-lieu fee, the ARO PM may work with the developer to seek a refund in exchange for the filing of the affordable covenant securing construction of the units.

Article 14: Affordable Housing Opportunity Fund

The in-lieu fees and other fees collected through the ARO and Density Bonus shall be deposited into the Affordable Housing Opportunity Fund, unless required to be deposited into another fund pursuant to federal or state law.

The Department of Planning and Development is responsible for administration of the Affordable Housing Opportunity Fund, as set forth in Chapter 2-45-115 of the Municipal Code of Chicago. DPD reports quarterly on the collection and expenditure of funds collected under the ARO.

Article 15: Hardship Waivers

Because of their widely varying land use and operational characteristics, hardship waiver requests require case-by-case review. Hardship requests should be made to the ARO Project Manager, who will forward the request for consideration to the Commissioner.

At minimum, in order to be considered for a hardship waiver under the terms outlined in Article P of the Ordinance, the applicant would need to provide a written description of evidence that the particular hardship exists, specifically that the ARO creates a hardship for which:

- the practical difficulties or particular hardships are due to unique circumstances and are not generally applicable to other similarly situated property;
- the purpose of the *hardship* is not based exclusively upon a desire to make more money out of the property; and
- the waiver, if granted, will not set a precedent that reduces the impact or is counter to the intent of the ordinance.

Article 16: Program Contacts

Questions about the Affordable Requirements Ordinance can be directed to the following individuals.

Department of Planning and Development (Bureau of Housing)

ARO Project Manager

121 N LaSalle

Chicago, IL 60602

Phone: 312-744-6746

Department of Planning and Development (Bureau of Zoning)

Assistant Commissioner

121 N. LaSalle, Room 905

Chicago, IL 60602

Phone:

Department of Planning and Development (Compliance & Monitoring Division)

Program Auditor III for NSP/ARO/TIF

Phone: 312.742.0345