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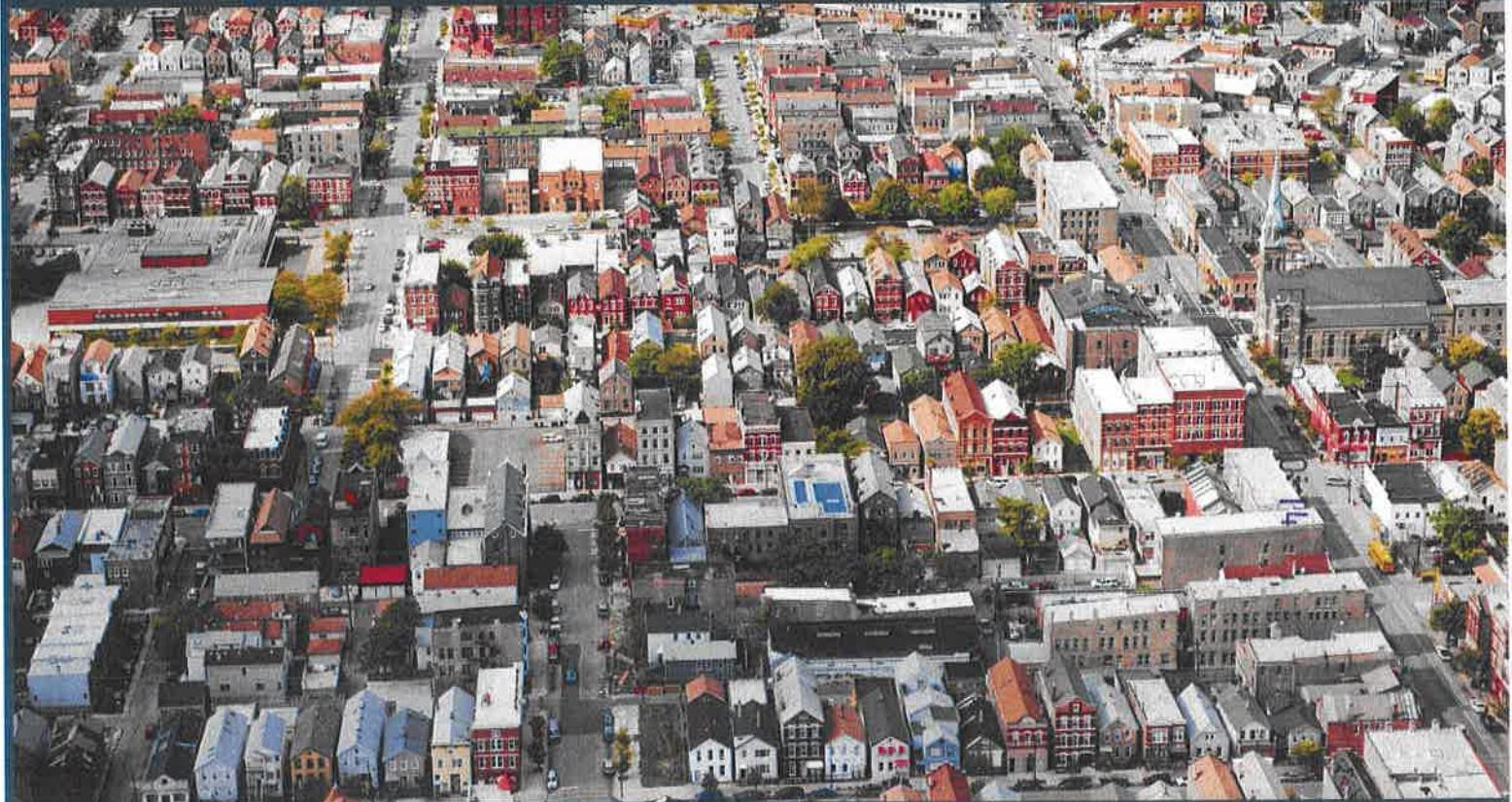
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FEBRUARY 2019

CITY OF CHICAGO OFFICE OF INSPECTOR GENERAL

DEPARTMENT OF PLANNING AND DEVELOPMENT
AFFORDABLE REQUIREMENTS ORDINANCE
ADMINISTRATION FOLLOW-UP INQUIRY



REPORT OF THE OFFICE OF INSPECTOR GENERAL



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FEBRUARY 19, 2019

TO THE MAYOR, MEMBERS OF THE CITY COUNCIL, CITY CLERK, CITY TREASURER, AND RESIDENTS OF THE CITY OF CHICAGO:

The City of Chicago Office of Inspector General (OIG) has completed a follow-up to its March 2017 audit of the Department of Planning and Development's (DPD) administration of the Affordable Requirements Ordinance (ARO). Based on the Department's responses, OIG concludes that DPD has implemented some corrective actions, while others are partially implemented or not implemented at all.

The purpose of the March 2017 audit was to determine the geographic outcomes of ARO-created and -financed affordable units, to assess the City's historical use of ARO in-lieu fees, and to evaluate the role of the Chicago Community Land Trust (CCLT) with respect to ARO-created, for-sale affordable units. Our audit found that, historically, the City neither appropriately accounted for all ARO and Density Bonus fees nor utilized best practices in the administration and investment of these fees. Additionally, OIG determined that CCLT has never been sufficiently funded to achieve its mission of acquiring land for the creation of affordable housing units. The scope of the audit included the 2003 and 2007 versions of the Ordinance, but it did not include the 2015 ARO amendments. Some of OIG's recommendations had already been addressed by the amended ARO.

Based on the results of the audit, OIG recommended that DPD develop defined goals relating to the geographic distribution of affordable housing, and that, as part of this work, the Department assess and formalize the city's high opportunity areas for affordable housing development. OIG recommended that DPD incentivize affordable housing development in these areas and monitor outcomes on an ongoing basis to ensure that it meets its geographic distribution goals. OIG also recommended that DPD ensure the restoration of \$4.5 million in ARO and Density Bonus fees to the Affordable Housing Opportunity Fund (AHOF) so that those monies could be used for the creation of affordable housing.

Regarding CCLT, OIG recommended that DPD and CCLT work with City Council and the Office of Budget and Management (OBM) to secure the financial resources necessary for CCLT to function as a community land trust. OIG also recommended

that, if CCLT continues to employ deed restrictions as an affordability mechanism, the City and City Council collaborate to revise the 2015 ARO to allow for the reintroduction of 99-year deed restrictions. Alternatively, OIG recommended that DPD and CCLT work with City Council to explore the possibility of sunsetting CCLT and integrating its existing functions into DPD's operations.

In its response to the audit, DPD described corrective actions it would take regarding some of the audit recommendations, while declining to commit to corrective action on others.

In November 2018, OIG inquired about corrective actions taken by DPD and CCLT in response to the audit.

Based on the Department's responses, OIG concludes that DPD has partially implemented corrective actions related to the audit findings. Specifically, DPD, working with the DePaul Institute for Housing Studies, used household income data from the U.S. Census Bureau to define three categories of housing zones—Higher Income, Low-Moderate Income, and Downtown—pursuant to the 2015 ARO. It also worked with OBM to create a dedicated fund to receive and spend ARO and Density Bonus monies, but declined to restore \$4.5 million previously diverted from affordable housing program use and disagreed that it had been diverted. DPD also reports that 363 ARO units will be developed in Higher Income and Downtown zones, although the units may not have been built yet. Additionally, the Chicago Low Income Housing Trust Fund (CLIHTF) has now designed a point system to prioritize its investments but has yet to put it to use because there is more funding available than projects.

The Chicago Community Land Trust has now hired an executive director, increased the number of units in its portfolio, and made efforts to fundraise externally. However, it has declined to undertake additional steps OIG recommended to better align its operations with its organizational name and mission. We again urge DPD to implement 99-year deed restrictions rather than 30-year deed restrictions and to take actions to change the name of the Chicago Community Land Trust to reflect its activities, or to alter its activities to include acquisition of land as a traditional land trust does.

Below, we summarize the three audit findings and recommendations, as well as the Department's response to our follow-up inquiry. We thank the staff and leadership of DPD for their cooperation during the audit and responsiveness to our follow-up inquiries.

Respectfully,



Joseph M. Ferguson
Inspector General
City of Chicago

FOLLOW-UP RESULTS

In November 2018, OIG followed up on its March 2017 Affordable Requirements Ordinance Administration Audit.¹ DPD responded by describing the corrective actions it has taken since receiving the audit and providing supporting documentation.

Below, we summarize OIG's three findings, the associated recommendations, and the status of DPD's corrective actions. Our follow-up inquiry did not observe or test implementation of the new procedures; thus, we make no determination as to their effectiveness, which would require a new audit with full testing.

OIG uses four categories to describe the Status of Corrective Action:

- **IMPLEMENTED** - The department has implemented actions that may reasonably be expected to resolve the core findings/concerns noted in the audit.
- **PARTIALLY IMPLEMENTED** - The department has implemented actions in response to the audit, but the actions do not fully address the findings/concerns raised in the audit.
- **PENDING IMPLEMENTATION** - The department has initiated action plans that, if fully implemented, may reasonably be expected to resolve the core findings of the audit. However, the department has not completed implementation.
- **NOT IMPLEMENTED** - The department has not initiated or implemented any actions responsive to OIG's findings.

¹ The 2017 DPD Affordable Requirements Ordinance Administration Audit report is available on the OIG website: <https://igchicago.org/2017/03/28/dpd-affordable-requirements-ordinance-administration-audit/>.

FINDING 1:**THE CITY LACKED AN EVIDENCE-BASED STRATEGY TO DEFINE HIGH AND LOW OPPORTUNITY AREAS AND ALLOCATE ARO FEES ACCORDINGLY****OIG RECOMMENDATION #1**

OIG recommended that DPD develop defined goals relating to the geographic distribution of affordable housing, and that, as part of this work, the Department assess and formalize the city's high opportunity areas for affordable housing development. The scope of the original audit was limited to ARO outcomes between January 1, 2003, and December 31, 2015, under the 2003 and 2007 versions of the Ordinance. OIG notes that the 2015 Ordinance created three zones: Higher Income, Low-Moderate Income, and Downtown.

STATUS OF CORRECTIVE ACTION: IMPLEMENTED

In response to the audit, DPD stated that "the 2015 ARO requires that, with very few exceptions, all ARO-triggered projects must create some affordable units rather than buy out of the obligation." Furthermore, DPD stated, "with the exception of Downtown For-Sale projects, which can put their required units anywhere in the City, projects built in the Downtown and Higher Income zones are required to put a percentage of their ARO units on-site or off-site within two miles of the triggering project and in a Downtown or Higher Income zone."

In response to OIG's follow-up inquiry, DPD stated that it had collaborated with the DePaul Institute for Housing Studies to define the zones as follows, using household income data from the U.S. Census Bureau:²

- Higher Income Areas contain a majority of census tracts wherein at least "50% of households earn more than 60% of

² The definitions below are provided in the City of Chicago, Department of Planning and Development, "2015 Affordable Requirements Ordinance Rules & Regulations," May 1, 2017, 6-7, accessed January 14, 2019, https://www.chicago.gov/content/dam/city/depts/dcd/general/housing/ARO_Rules_5-1-17.pdf. The 2015 ARO Zones Map is available at: https://www.chicago.gov/content/dam/city/depts/dcd/general/housing/2015_ARO_Zone_Map_JULY_28_2015.pdf, accessed January 14, 2019.

the Chicago median income in two of the last three years for which data is available" and "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 contain a majority of census tracts wherein "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 "the poverty rate is greater than 25% in two of the last three years for which data is available;" and
- the Downtown Zone uses the boundaries of the "D" zoning districts in the Chicago Zoning Ordinance.

According to its ARO rules, DPD will update the zones on January 1 of every fifth year, beginning on January 1, 2020, and publish the new map on the ARO website by July 31 of the year preceding the new effective date.

OIG RECOMMENDATION #2

OIG recommended that DPD incentivize affordable housing development in high opportunity areas. This may include amending the selection criteria in the Department's Multifamily Finance and Multi-Year Affordability through Upfront Investment (MAUI) applications to award points for high opportunity development.

STATUS OF CORRECTIVE ACTION: IMPLEMENTED

In response to the audit, DPD stated that the 2015 ARO "took significant steps to create more affordable units in high opportunity areas." DPD began tracking the number of units in the designated zones in September 2016, when the zones were first defined. In response to OIG's follow-up inquiry, DPD reported that 363 ARO units have been committed for construction in high opportunity areas (i.e., Higher Income Areas and Downtown zones) as of December 6, 2018, although the units may not have been built yet.

In response to the audit, DPD also stated that the Chicago Low-Income Housing Trust Fund (CLIHTF) Board would implement a point system to determine which projects to fund. In response to

OIG's follow-up inquiry, DPD provided evidence that a prioritization system had been created but noted that, thus far, CLIHTF has not used it because there is more funding available than projects. DPD explained that CLIHTF would only use the prioritization point system if it had more projects than funding.

OIG RECOMMENDATION #3

OIG recommended that DPD monitor Multifamily Finance and MAUI outcomes on an ongoing basis to ensure that the Department meets its geographic distribution goals.

STATUS OF CORRECTIVE ACTION: PARTIALLY IMPLEMENTED

In response to OIG's follow-up inquiry, DPD stated that for each project subject to the 2015 ARO, it identifies the ARO zone in its Quarterly Reports on the Five-Year Housing Plan. However, the Quarterly Reports include only projects where either in-lieu fees have been paid or there is a recorded covenant for affordable units, and neither DPD nor the newly re-established Department of Housing has set specific numerical geographic distribution goals related to Multifamily Finance or MAUI projects.

FINDING 2:

DPD DID NOT APPROPRIATELY ACCOUNT FOR \$4.5 MILLION IN ARO AND DENSITY BONUS FEES

OIG RECOMMENDATION #4

OIG recommended that DPD ensure the restoration of \$4,005,400 in ARO and Density Bonus fees to the AHOF so that those monies can be used for the creation of affordable housing. In addition, OIG recommended that DPD secure the transfer of the \$541,252 in appropriation-authorized but unused ARO and Density Bonus fees from the Corporate Fund to the AHOF.

STATUS OF CORRECTIVE ACTION: PARTIALLY IMPLEMENTED

DPD and OBM did not restore the \$4.5 million in funds to the AHOF, but placed existing and forward-going ARO and Density Bonus fees in a dedicated fund beginning in 2016. DPD stated that this separate fund allows the City to ensure that future fees are tracked accurately and dedicated to affordable housing.

OIG and DPD disagreed about the underlying cause of the discrepancy in ARO and Density Bonus fees, but agree that the risk has been mitigated going forward.

FINDING 3:**THE CHICAGO COMMUNITY LAND TRUST DID NOT FULLY EMBODY ITS ROLE AS DEFINED IN ITS ESTABLISHING ORDINANCE****OIG RECOMMENDATION #5**

OIG recommended that DPD and CCLT work with City Council and OBM to secure the financial resources necessary for CCLT to function as a community land trust. Alternatively, OIG recommended that DPD and CCLT work with City Council to explore the possibility of sunsetting CCLT and integrating its existing functions into DPD's operations.

OIG also recommended that, if CCLT continued to employ deed restrictions to preserve long-term affordability, the City and City Council should reintroduce 99-year deed restrictions, which were reduced to 30 years by the 2015 ARO.

Additionally, in the audit, OIG found that CCLT had never acquired land and, as such, had never utilized long-term ground leases to preserve affordable housing, as is the practice of most community land trusts across the country. DPD stated that the CCLT board was aware of the confusion about whether it meets the conventional definition of a land trust because it has never owned land. To that end, DPD stated that the board would change its name to better reflect its efforts to advance affordable housing through deed restrictions and other tools.

STATUS OF CORRECTIVE ACTION: PARTIALLY IMPLEMENTED

In response to the audit, DPD declined to consider sunsetting CCLT, but stated that it was in the process of hiring an executive director who would aid CCLT by increasing its membership, fundraising externally, and expanding its stewardship activities to additional affordable units created by the City. DPD further stated that the CCLT board was aware of the confusion about whether it meets the conventional definition of a land trust because it has

never owned land. To that end, DPD stated that the board would change its name to better reflect its efforts to advance affordable housing through deed restrictions and other tools.

In response to OIG's follow-up inquiry, DPD stated that CCLT has added 14 new units to its portfolio since March 2017, bringing the total to 99 units out of its goal of 200 units. DPD further stated that CCLT has expanded its electronic media outreach to owners of affordable units to keep them informed about CCLT resources. DPD stated that the executive director secured a \$10,000 operating grant and CCLT will attempt to obtain other funding from philanthropic sources. DPD also stated that CCLT has reduced the deed restriction to 30 years for all new units, and converted all existing deed restrictions to 30 years, as well. Finally, DPD stated that CCLT has elected not to change its name at this time because its board was unable to find a name that correctly and adequately described CCLT activities and was sufficiently different from similar organizations in Chicago. The CCLT board decided to spend its energy on other pursuits, such as acquiring vacant land in neighborhoods at risk of gentrification and preserving it for future affordable housing development.

MISSION

The City of Chicago Office of Inspector General (OIG) is an independent, nonpartisan oversight agency whose mission is to promote economy, efficiency, effectiveness, and integrity in the administration of programs and operations of City government. OIG achieves this mission through,

- administrative and criminal investigations by its Investigations Section;
- performance audits of City programs and operations by its Audit and Program Review Section;
- inspections, evaluations and reviews of City police and police accountability programs, operations, and policies by its Public Safety Section; and
- compliance audit and monitoring of City hiring and employment activities by its Hiring Oversight Unit.

From these activities, OIG issues reports of findings and disciplinary and other recommendations,

- to assure that City officials, employees, and vendors are held accountable for violations of laws and policies;
- to improve the efficiency and cost-effectiveness of government operations; and
- to prevent, detect, identify, expose, and eliminate waste, inefficiency, misconduct, fraud, corruption, and abuse of public authority and resources.

AUTHORITY

OIG's authority to produce reports of its findings and recommendations is established in the City of Chicago Municipal Code §§ 2-56-030(d), -035(c), -110, -230, and 240.

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