

HOUSING (310 ILCS 67/)
Affordable Housing Planning and Appeal Act.

(310 ILCS 67/1)

Sec. 1. Short title. This Act may be cited as the Affordable Housing Planning and Appeal Act.

(Source: P.A. 93-595, eff. 1-1-04.)

(310 ILCS 67/5)

Sec. 5. Findings. The legislature finds and declares that:

- (1) there exists a shortage of affordable, accessible, safe, and sanitary housing in the State;
- (2) it is imperative that action be taken to assure the availability of workforce and retirement housing; and
- (3) local governments in the State that do not have sufficient affordable housing are encouraged to assist in providing affordable housing opportunities to assure the health, safety, and welfare of all citizens of the State.

(Source: P.A. 93-595, eff. 1-1-04.)

(310 ILCS 67/10)

Sec. 10. Purpose. The purpose of this Act is to encourage counties and municipalities to incorporate affordable housing within their housing stock sufficient to meet the needs of their county or community. Further, affordable housing developers who believe that they have been unfairly treated due to the fact that the development contains affordable housing may seek relief from local ordinances and regulations that may inhibit the construction of affordable housing needed to serve low-income and moderate-income households in this State.

(Source: P.A. 93-595, eff. 1-1-04.)

(310 ILCS 67/15)

Sec. 15. Definitions. As used in this Act:

"Affordable housing" means housing that has a sales price or rental amount that is within the means of a household that may occupy moderate-income or low-income housing. In the case of dwelling units for sale, housing that is affordable means housing in which mortgage, amortization, taxes, insurance, and condominium or association fees, if any, constitute no more than 30% of the gross annual household income for a household of the size that may occupy the unit. In the case of dwelling units for rent, housing that is affordable means housing for which the rent and utilities constitute no more than 30% of the gross annual household income for a household of the size that may occupy the unit.

"Affordable housing developer" means a nonprofit entity, limited equity cooperative or public agency, or private individual, firm, corporation, or other entity seeking to build an affordable housing development.

"Affordable housing development" means (i) any housing that is subsidized by the federal or State government or (ii) any housing in which at least 20% of the dwelling units are subject to covenants or restrictions that require that the dwelling units be sold or rented at prices that preserve them as affordable housing for a period of at least 15 years, in the case of for-sale housing, and at least 30 years, in the case of rental housing.

"Approving authority" means the governing body of the county or municipality.

"Area median household income" means the median household income adjusted for family size for applicable income limit areas as determined annually by the federal Department of Housing and Urban Development under Section 8 of the United States Housing Act of 1937.

"Development" means any building, construction, renovation, or excavation or any material change in the use or appearance of any structure or in the land itself; the division of land into parcels; or any change in the intensity or use of land, such as an increase in the number of dwelling units in a structure or a change to a commercial use.

"Exempt local government" means any local government in which at least 10% of its total year-round housing units are affordable, as determined by the Illinois Housing Development Authority pursuant to Section 20 of this Act; or any municipality under 1,000 population.

"Household" means the person or persons occupying a dwelling unit.

"Local government" means a county or municipality.

"Low-income housing" means housing that is affordable, according to the federal Department of Housing and Urban Development, for either home ownership or rental, and that is occupied, reserved, or marketed for occupancy by households with a gross household income that does not exceed 50% of the area median household income.

"Moderate-income housing" means housing that is affordable, according to the federal Department of Housing and Urban Development, for either home ownership or rental, and that is occupied, reserved, or marketed for occupancy by households with a gross household income that is greater than 50% but does not exceed 80% of the area median household income.

"Non-appealable local government requirements" means all essential requirements that protect the public health and safety, including any local building, electrical, fire, or plumbing code requirements or those requirements that are critical to the protection or preservation of the environment. (Source: P.A. 93-595, eff. 1-1-04; 93-678, eff. 6-28-04.)

(310 ILCS 67/20)

Sec. 20. Determination of exempt local governments.

(a) Beginning October 1, 2004, the Illinois Housing Development Authority shall determine which local governments are exempt and not exempt from the operation of this Act based on an identification of the total number of year-round housing units in the most recent decennial census for each local government within the State and by an inventory of for-sale and rental affordable housing units, as defined in this Act, for each local government from the decennial census and other relevant sources.

(b) The Illinois Housing Development Authority shall make this determination by:

(i) totaling the number of for-sale housing units in each local government that are affordable to households with a gross household income that is less than 80% of the median household income within the county or primary

metropolitan statistical area;

(ii) totaling the number of rental units in each local government that are affordable to households with a gross household income that is less than 60% of the median household income within the county or primary metropolitan statistical area;

(iii) adding the number of for-sale and rental units for each local government from items (i) and (ii); and

(iv) dividing the sum of (iii) above by the total number of year-round housing units in the local government as contained in the latest decennial census and multiplying the result by 100 to determine the percentage of affordable housing units within the jurisdiction of the local government.

(c) Beginning October 1, 2004, the Illinois Housing Development Authority shall publish on an annual basis a list of exempt and non-exempt local governments and the data that it used to calculate its determination. The data shall be shown for each local government in the State and for the State as a whole. Upon publishing a list of exempt and non-exempt local governments, the Illinois Housing Development Authority shall notify a local government that it is not exempt from the operation of this Act and provide to it the data used to calculate its determination.

(d) A local government or developer of affordable housing may appeal the determination of the Illinois Housing Development Authority as to whether the local government is exempt or non-exempt under this Act in connection with an appeal under Section 30 of this Act.

(Source: P.A. 93-595, eff. 1-1-04; 93-678, eff. 6-28-04.)

(310 ILCS 67/25)

Sec. 25. Affordable housing plan.

(a) Prior to April 1, 2005, all non-exempt local governments must approve an affordable housing plan.

(b) For the purposes of this Act, the affordable housing plan shall consist of at least the following:

(i) a statement of the total number of affordable housing units that are necessary to exempt the local government from the operation of this Act as defined in Section 15 and Section 20;

(ii) an identification of lands within the jurisdiction that are most appropriate for the construction of affordable housing and of existing structures most appropriate for conversion to, or rehabilitation for, affordable housing, including a consideration of lands and structures of developers who have expressed a commitment to provide affordable housing and lands and structures that are publicly or semi-publicly owned;

(iii) incentives that local governments may provide for the purpose of attracting affordable housing to their jurisdiction; and

(iv) a goal of a minimum of 15% of all new development or redevelopment within the local government that would be defined as affordable housing in this Act; or a minimum of a 3 percentage point increase in the overall percentage of affordable housing within its

jurisdiction, as described in subsection (b) of Section 20 of this Act; or a minimum of a total of 10% affordable housing within its jurisdiction as described in subsection (b) of Section 20 of this Act.

(c) Within 60 days after the adoption of an affordable housing plan or revisions to its affordable housing plan, the local government must submit a copy of that plan to the Illinois Housing Development Authority.

(Source: P.A. 93-595, eff. 1-1-04; 93-678, eff. 6-28-04.)

(310 ILCS 67/30)

Sec. 30. Appeal to State Housing Appeals Board.

(a) Beginning January 1, 2006, an affordable housing developer whose application is either denied or approved with conditions that in his or her judgment render the provision of affordable housing infeasible may, within 45 days after the decision, submit to the State Housing Appeals Board information regarding why the developer believes he or she was unfairly denied or conditions were placed upon the tentative approval of the development unless the local government that rendered the decision is exempt under Section 15 or Section 20 of this Act. The Board shall maintain all information forwarded to them by developers and shall compile and make available an annual report summarizing the information thus received.

(b) Beginning January 1, 2009, an affordable housing developer whose application is either denied or approved with conditions that in his or her judgment render the provision of affordable housing infeasible may, within 45 days after the decision, appeal to the State Housing Appeals Board challenging that decision unless the municipality or county that rendered the decision is exempt under Section 15 of this Act. The developer must submit information regarding why the developer believes he or she was unfairly denied or unreasonable conditions were placed upon the tentative approval of the development.

(c) Beginning January 1, 2009, the Board shall render a decision on the appeal within 120 days after the appeal is filed. In its determination of an appeal, the Board shall conduct a de novo review of the matter. In rendering its decision, the Board shall consider the facts and whether the developer was treated in a manner that places an undue burden on the development due to the fact that the development contains affordable housing as defined in this Act. The Board shall further consider any action taken by the unit of local government in regards to granting waivers or variances that would have the effect of creating or prohibiting the economic viability of the development. In any proceeding before the Board, the developer bears the burden of demonstrating that he or she has been unfairly denied or unreasonable conditions have been placed upon the tentative approval for the application for an affordable housing development.

(d) The Board shall dismiss any appeal if:

(i) the local government has adopted an affordable housing plan as defined in Section 25 of this Act and submitted that plan to the Illinois Housing Development Authority within the time frame required by this Act; and

(ii) the local government has implemented its

affordable housing plan and has met its goal as established in its affordable housing plan as defined in Section 25 of this Act.

(e) The Board shall dismiss any appeal if the reason for denying the application or placing conditions upon the approval is a non-appealable local government requirement under Section 15 of this Act.

(f) The Board may affirm, reverse, or modify the conditions of, or add conditions to, a decision made by the approving authority. The decision of the Board constitutes an order directed to the approving authority and is binding on the local government.

(g) The appellate court has the exclusive jurisdiction to review decisions of the Board.

(Source: P.A. 93-595, eff. 1-1-04.)

(310 ILCS 67/40)

Sec. 40. Nonresidential development as part of an affordable housing development.

(a) An affordable housing developer who applies to develop property that contains nonresidential uses in a nonresidential zoning district must designate either at least 50% of the area or at least 50% of the square footage of the development for residential use. Unless adjacent to a residential development, the nonresidential zoning district shall not include property zoned industrial. The applicant bears the burden of proof of demonstrating that the purposes of a nonresidential zoning district will not be impaired by the construction of housing in the zoning district and that the public health and safety of the residents of the affordable housing will not be adversely affected by nonresidential uses either in existence or permitted in that zoning district. The development should be completed simultaneously to the extent possible and shall be unified in design.

(b) For purposes of subsection (a), the square footage of the residential portion of the development shall be measured by the interior floor area of dwelling units, excluding that portion that is unheated. Square footage of the nonresidential portion shall be calculated according to the gross leasable area.

(Source: P.A. 93-595, eff. 1-1-04.)

(310 ILCS 67/50)

Sec. 50. Housing Appeals Board.

(a) Prior to July 1, 2006, a Housing Appeals Board shall be created consisting of 7 members appointed by the Governor as follows:

- (1) a retired circuit judge or retired appellate judge, who shall act as chairperson;
- (2) a zoning board of appeals member;
- (3) a planning board member;
- (4) a mayor or municipal council or board member;
- (5) a county board member;
- (6) an affordable housing developer; and
- (7) an affordable housing advocate.

In addition, the Chairman of the Illinois Housing Development Authority, ex officio, shall serve as a non-voting member. No more than 4 of the appointed members may be from the same political party. Appointments under items (2), (3),

and (4) shall be from local governments that are not exempt under this Act.

(b) Initial terms of 4 members designated by the Governor shall be for 2 years. Initial terms of 3 members designated by the Governor shall be for one year. Thereafter, members shall be appointed for terms of 2 years. A member shall receive no compensation for his or her services, but shall be reimbursed by the State for all reasonable expenses actually and necessarily incurred in the performance of his or her official duties. The board shall hear all petitions for review filed under this Act and shall conduct all hearings in accordance with the rules and regulations established by the chairperson. The Illinois Housing Development Authority shall provide space and clerical and other assistance that the Board may require.

(c) The Illinois Housing Development Authority may adopt such other rules and regulations as it deems necessary and appropriate to carry out the Board's responsibilities under this Act and to provide direction to local governments and affordable housing developers.

(Source: P.A. 93-595, eff. 1-1-04.)