

SUBSTITUTE
ORDINANCE

WHEREAS, The City of Chicago allocates Low Income Housing Tax Credits (LIHTC) and other funds to advance the construction, preservation, and rehabilitation of affordable housing in the City; and

WHEREAS, The City has an interest in producing high quality, long-lasting affordable housing and maximizing value of limited resources; and

WHEREAS, The City has an interest in ensuring that our developer partners—the recipients of tax credits and other funds—effectively steward taxpayer resources while also providing flexibility and setting those partners up for success; and

WHEREAS, The City values promoting transparency and data sharing; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:

SECTION 1. Section 2-44-050 of the Municipal Code of Chicago is hereby amended by deleting the language struck through, and by adding the language underscored, as follows:

2-44-050 Commissioner of Housing – Powers and duties.

(a) The Commissioner is authorized to:

(Omitted text is unaffected by this ordinance)

(7) ~~Either~~ Subject to and in accordance with Section 2-44-055, either personally or through a designee, administer ~~and/or~~ allocate low-income housing tax credits pursuant to Section 42 of the Internal Revenue Code of 1986 (for purposes of this section, "Section 42") in connection with qualified low-income housing projects.

(8) ~~Enter~~ Subject to and in accordance with Section 2-44-055, enter into, negotiate, and execute such agreements or documents and to promulgate and amend such rules as are necessary to: (A) maximize the use of low-income housing tax credits administered and/or allocated by the City; and (B) expend funds appropriated to the Department in connection with qualified low-income housing projects for expanding affordable housing within the City, all consistent with the requirements of Section 42 and any regulations promulgated thereunder.

(Omitted text is unaffected by this ordinance)

SECTION 2. Chapter 2-44 of the Municipal Code of Chicago is hereby amended by inserting a new Section 2-44-055, as follows:

2-44-055 Credit Allocations and Affordable Housing Developments.

(a) *Definitions.* Whenever used in this section, the following words and phrases shall have the following meanings:

“Affordable housing development” means the construction, addition, or rehabilitation of rental housing, or the conversion of any building or buildings into rental housing, that is or will be under common ownership, management, and financing and is or will be assisted with City financial assistance as a single undertaking, in which, at the conclusion of the construction, rehabilitation, or conversion: (A) at least some portion of the dwelling units are affordable to eligible households, as those terms are defined by Section 2-44-085(B); (B) the rental housing consists of ten or more dwelling units; and (C) the rental housing has received City financial assistance.

“Change order” means any written modification to the approved plans, specifications, scope of work, construction contract, project budget, schedule, materials, or method of construction for an affordable housing development, including any change that increases or decreases development costs, reallocates budgeted amounts, alters the approved scope, or affects the timing, quality, design, or completion of work related to the affordable housing development.

“City financial assistance” means any financial assistance provided by the Department through grants, direct or indirect loans, or allocation of tax credits for the development of residential housing units.

“Contingency reserve” means the construction contingency reserve account included in an affordable housing development’s project budget for the purpose of addressing reasonably necessary changes in construction cost or scope.

“Draw package” means any request, requisition, application, or package submitted by or on behalf of any sponsor, owner, developer, or general contractor, or their respective agents, for the disbursement or release of City financial assistance administered by the Department in connection with costs incurred or to be incurred for an affordable housing development.

“Related change orders” means change orders which arise from the same or substantially similar underlying facts, circumstances, causes, field conditions, design issues, scope modifications, trade work, corrective measures, or another common factual basis, regardless of whether they are submitted together or separately.

“Sponsor” means the person or entity that: (A) applies for City financial assistance for an affordable housing development, and (B) directly or indirectly controls the owner of that affordable housing development.

“Unit mix” means the number and distribution of dwelling units by bedroom count in an affordable housing development.

(b) The Department’s policies related to construction contingency, cost savings, change orders, and construction close-out applying to affordable housing developments selected, funded, or governed by any Qualified Allocation Plan published by the Department on or after January 1, 2027, shall conform with the following:

(1) All affordable housing developments shall be underwritten by the Department with a project-specific contingency reserve, which shall be determined according to a defined and transparent policy and is subject to reasonable modifications on a project-specific basis at the sole discretion of the Commissioner. The general policy for establishing contingency reserve amounts shall be to apply a percentage to the combined sum of trade payments, site

work, general contractor general conditions, general contractor overhead, and general contractor profit items, as reflected in the budget for the applicable affordable housing development.

(2) Such contingency reserve is generally to be held by the sponsor, to the extent allowable by law and funding requirements, and within reasonable limits established by the Commissioner to protect the interest of the Department, ensure the timely delivery of the affordable housing development as approved by the Department, and steward taxpayer resources.

(3) After completion of an affordable housing development, cost savings and unspent contingency reserve may be retained by the sponsor, to the extent allowable under any applicable law and funding requirements. The specific use of available funds upon project completion shall be among the permissible uses established by rules promulgated by the Commissioner and shall be agreed upon prior to financial closing.

(4) Except for change orders subject to subsection (b)(4)(A), the Department may not require prior approval of any change order if such sponsor certifies to the Department that the change order complies with applicable law and funding requirements. Such notice shall include documentation and certifications as may be reasonably necessary to support such change order.

(A) The Department may establish administrative procedures for the review and approval of change orders listed in subsection (b)(4)(A)(1) and (2); provided, however, such procedures shall be designed to prioritize timely progression of construction and avoid unnecessary administrative delays, and may not impose any requirements which conflict with those set forth in this subsection (b)(4)(A). Change orders may be subject to prior approval under this section if:

(1) The change order (i) modifies the approved unit count, unit mix, or affordability restrictions; (ii) materially affects any legally or contractually required accessibility features or any element necessary to comply with any applicable accessibility laws or regulations; (iii) materially alters approved amenities, community spaces, or other significant project features represented in the Department-approved plans and specifications; or (iv) results in expenditures that are not allowable under any applicable law or funding requirements; or

(2) The change order, the sum of related change orders, or the sum of all change orders associated with any one draw package, would consume the greater of twenty thousand dollars (\$20,000) or twenty percent (20%) of the remaining contingency reserve balance.

(B) Notwithstanding anything herein to the contrary: (1) change orders may not be divided, sequenced, or separately submitted for the purpose of avoiding prior approval under this section; and (2) draw packages submitted to the Department shall include complete, accurate, and properly assembled documentation as required by the Department for evaluation and processing of any request for the disbursement or release of City financial assistance.

(C) Nothing in this section shall be construed to limit the rights or remedies available to the City at law or equity, or to waive or impair any rights or remedies available to the City under any agreement providing City financial assistance, including, but not limited to, any provision granting the City the right to examine books and records, require corrective action or other mitigation, or exercise available remedies following an event of default.

(5) The Department shall authorize occupancy of an affordable housing development when the Department has determined that all of the following conditions have been satisfied: (i) the Department of Buildings has issued a final certificate of occupancy pursuant to Sections 14-A-7-702.1 and 14A-7-702.2 of this Code; (ii) the Department has received a valid certificate of insurance for the affordable housing development; (iii) the Department has received a certificate of substantial completion from the architect of record; (iv) the architect of record has submitted a punch list for the affordable housing development; and (v) the Mayor's Office for People with Disabilities has submitted confirmation of its accessibility inspection and verified compliance.

(c) The Department shall issue, no less than annually, a public report on the status of all affordable housing developments that have been preliminarily accepted by the Department for financing, are under construction, or have completed construction since the last report. Each report shall include, subject to the reasonable discretion of the Department, the following information for each development:

- (1) The common address(es) and City ward(s);
- (2) Date of conditional commitment of City financial assistance;
- (3) For affordable housing developments underway pursuant to a financial closing that enables the affordable housing project to commence, the date of financial closing;
- (4) Number of affordable and total units;
- (5) Total development cost; and
- (6) For affordable housing developments recently completed, the date of completion.

(d) The Department shall make available, no less than quarterly, a public dataset or report summarizing the Department's metrics for:

- (1) The average processing time for waiver requests related to architectural or technical standards applicable to affordable housing developments, measured from the date that the Department receives a complete waiver request to the date the Department issues its final disposition of said waiver request in writing;
- (2) The average processing time for charge order requests, measured from the date the Department receives a complete change order package to the date the Department issues its final disposition of said change order request in writing;
- (3) The average processing time for draw package reviews measured from the date a complete draw package is received by the Department to the date of the Department's final disposition or approval of disbursement in connection with said draw package;
- (4) The average number of days between the date of financial closing that enables the affordable housing development to commence construction and the Department's issuance of notice to proceed for the affordable housing development; and

(5) The average number of days between the Department of Buildings' issuance of a final certificate of occupancy for any affordable housing development pursuant to Sections 14A-7-702.1 and 14A-7-702.2 of the Code and the Department's issuance of permission to occupy the affordable housing development.

(e) The Commissioner is authorized to promulgate rules necessary to implement, administer, and enforce this section, including, but not limited to, rules preventing evasion or circumvention of this section and rules requiring retention of supporting documentation and certifications for change orders.

(f) The obligations of the Department in subsections (c) and (d) shall begin no later than June 30, 2027, and expire on June 30, 2032.

(g) In the event of any conflict between the provisions of this Section 2-44-055 and Section 42 of the Internal Revenue Code of 1986 ("Section 42") and the applicable Treasury regulations under Section 42 (the "Tax Credit Regulations"), Section 42 and the Tax Credit Regulations shall control.

SECTION 3. This ordinance takes effect upon passage and publication.