

VILLAGE OF WILMETTE, ILLINOIS

AFFORDABLE HOUSING PLAN

December 14, 2004

1.0 INTRODUCTION

1.1 Purpose and Scope

It is the longstanding policy of the Village of Wilmette (“Village”) to provide affordable housing options so persons with moderate incomes can enjoy the benefits of living in our community, and so our residents can enjoy the benefits of a community with economic diversity. This policy has been implemented, with active Village support or sponsorship, as opportunities have occurred over the past quarter century. It is currently set forth in Chapter Four of the 2000 Comprehensive Plan of the Village of Wilmette. The Village has been careful to balance the worthy objectives of this policy against other important policies, such as the policy favoring the maintenance of the Village’s single-family-home character, and the policy favoring land use re-development consistent with the capacity of infrastructure. *The crux of this Plan is the Village’s ongoing commitment to a proactive but reasoned approach to providing additional affordable housing.*

1.2 The Affordable Housing Planning and Appeals Act

In August 2003, the State of Illinois adopted Public Act 93-0595, the Affordable Housing Planning and Appeals Act of Illinois (“the Act”). A copy of the Act is attached as Exhibit 1. The Act is premised on a finding that there exists a shortage of affordable, accessible, safe and sanitary housing in the State. Its purpose is to “encourage” counties and municipalities to “incorporate affordable housing within their housing stock sufficient to meet the needs of their county or community.” It requires counties and municipalities with less than 10% affordable housing to adopt an Affordable Housing Plan (“Plan”) by April 1, 2005. It also contains an appeal procedure for aggrieved developers to seek relief from local decisions that inhibit the construction of affordable housing.

As set forth in the Act, the components of a Plan include a calculation of the total number of affordable housing units that are necessary to exempt the local government from the operation of the Act (*i.e.*, the number necessary to bring the percentage of affordable housing units to 10% of the total housing stock), an identification of opportunities for the development of affordable housing in the Village, a specification of incentives the Village will provide to encourage the creation of affordable housing, and a statement of a goal for increasing affordable housing units in the Village.

The Act identifies three alternative goals from which a municipality may select to achieve compliance. The first is to make 15% of all new residential construction or residential redevelopment within the Village affordable. The second is to increase the percentage of affordable housing within the Village from its current level to a level 3% higher. The third is to bring the percentage of affordable housing units in the Village to 10% of the total housing stock.

1.3 Home Rule

The Village is a “home rule” municipality, as provided in the Illinois Constitution. This means that unless the Illinois General Assembly has explicitly preempted the use of home rule authority on a given subject, the Village has the ability to adapt its local laws, ordinances and policies to the specific needs of Wilmette, even if those laws, ordinances and policies conflict with or take precedence over provisions of State law. In the case of the Act, the Illinois General Assembly did not explicitly preempt home rule authority, and a legal opinion provided to the Metropolitan Mayors Caucus (of which the Village is a member) by Holland & Knight LLP, attached as Exhibit 2, sets forth the legal analysis underlying the foregoing statement.

Given the Village’s longstanding policy of seeking to provide affordable housing options for persons with moderate incomes that also serve the unique needs of Wilmette, the Village has prepared this Plan in conformance with the provisions of the Act. However, the Village also recognizes that there is considerable uncertainty over provisions of the Act dealing with local land use decisions and possible loss of local control over those decisions. The Village intends to ensure that adoption of this Plan will be in Wilmette’s best interest and that all decisions about Wilmette’s housing needs and future development will continue to be made at the local level. Therefore, the Village intends the adoption of this Plan to be part of the total, comprehensive and exclusive regulation of this subject matter by the Village in the exercise of its home rule authority, notwithstanding any provision of the Act with which this Plan may differ.

The Village will submit this Plan to the State, not as a concession that it is required to comply with the Act, but in furtherance of its longstanding policy described in Paragraph 1.1 above. By adopting this Plan, the Village is exercising its home rule authority to completely regulate this subject and completely displace State law. The Village’s use of its home rule authority in this manner serves to both further its policy supporting affordable housing and guarantee to the community that local land use decisions are controlled at the local level and made with sensitivity to the character of the community.

1.4 Practical Limitations

If Wilmette were virgin land, with owners/developers anxiously awaiting the opportunity to build, the Village could easily implement a Plan that would achieve the 10% standard set forth in the Act. The Village could simply declare that at least 10% of the units must be affordable and implement this declaration by adopting land use regulations compelling this result. In the marketplace, these land use regulations would be a factor in the valuation of the land, and the cost of providing the affordable housing would be absorbed by land owners on a Village-wide basis.

But this is not the Wilmette of 2005. The Village is fully developed. By far the highest percentage of land area is zoned R and R1, consisting of single family detached homes that provide the essence of Wilmette’s character. Because of this character and other desirable features that have evolved over the 134 years of the Village’s history, real estate in Wilmette, when available, is very expensive. There are few, if any, single family detached homes in Wilmette that meet the Act’s definition of affordable housing.

According to the MAP Multiple Listing Service, the average sale price of a single family detached dwelling in Wilmette was \$710,326 in 2003, based on the sale of 349 properties ranging in price from \$276,000 to \$2,770,000. In 2004 through November 18, the average sale price of a detached dwelling was \$808,703, based on the sale of 308 properties ranging in price from \$265,000 to \$7,250,000. For attached dwellings, the average sale price in 2003 was \$385,101, based on the sale of 81 properties ranging in price from \$157,000 to \$875,000. In 2004 through November 18, the average sale price was \$370,375, based on the sale of 72 properties ranging in price from \$125,000 to \$805,000. This data indicate that most of the existing housing stock does not include affordable housing as defined by the Act.

The relatively high value of land in Wilmette makes it impractical to achieve the goal of this Plan by creating new affordable single family detached dwellings. Rather, the only conceivable way of achieving the Plan's goal is to create new affordable units in multi-family buildings. (In this Plan, the term "multi-family building" refers to a single building that includes a number of separate living quarters such as apartments or condominiums.) Moreover, even in such buildings, it may well be necessary to limit the number of affordable units to, for example, 15% to 20%, because experience elsewhere has shown that, aside from specialized housing for senior citizens and persons with disabilities, a larger percentage of affordable housing units might make the project unsound from both a financial and social perspective. And finally, appropriate sites in the Village for multi-family buildings, as established by the Village's Zoning Ordinance, are limited, and the pace of development of multi-family buildings, even in a receptive financial and regulatory environment, is slow.

This Plan takes these unique circumstances into account. It does not ignore economic realities. The goal of this Plan must be recognized as a goal to be pursued in good faith, not a quota to be achieved at all costs. Moreover, fairness requires that any economic burden of providing affordable housing should be shared broadly by all Village residents, not imposed narrowly on persons who happen to own property suitable for this use.

2.0 THE AFFORDABLE HOUSING NEED

2.1 The Current Housing Stock and the Act's 10% Standard

Based on the 2000 Census Summary File 3, the housing stock in the Village consisted of 10,332 units, 8,732 of which were owner-occupied, 1,311 of which were rental units, and 289 of which were vacant. Single family detached dwellings made up 8,017 units; 628 were in attached townhomes or accessory apartments; and 1,293 were in buildings with 20 or more units. The median housing value, as estimated by owners themselves in the 2000 census, was \$441,600.

The Act defines the need for affordable housing by establishing a standard that 10% of a municipality's total housing stock should be affordable. Municipalities that already meet this standard or achieve it after the effective date of the Act are "exempt" from the Act.

In addition, municipalities with populations under 1,000 (almost half of all Illinois municipalities) are exempt. Non-exempt municipalities must establish a goal to pursue the 10% standard. In Wilmette, the total number of affordable housing units required for exemption is 10% of the total housing stock, or **1,033 affordable units** (10% of 10,332).

It can be argued that 10% is an arbitrary standard, and the actual need for affordable housing is greater or lesser than 1,033 units. On one hand, the analysis of Perkins Eastman set forth below could support the argument that the actual need is 1,716 units, because that number of low to moderate income households currently reside in the Village. On the other hand, it could also be argued that the Act's methodology is faulty, because the 1,716 low to moderate income households that currently live in the Village appear to be able to "afford" housing that costs, in the majority of cases, more than 30% of their income. In any event, for purposes of this Plan, the Village accepts the Act's 10% standard.

2.2 Perkins Eastman's Analysis of the Shortfall under the Act

The Village retained the firm of Perkins Eastman to assist it in the development of this Plan. This section sets forth relevant portions (edited) of Perkins Eastman's analysis of the Village's shortfall, as judged by the 10% standard:

Key to the understanding of the requirements of the Act are the primary definitions on which all planning will be based. In the Act, the median income is defined as: "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." The only complication to this is that HUD, under Section 8, determines *family* income, not *household* income. Because HUD and its Section 8 income limits are the sources defined in the Act, HUD's Median Family Income (HAMFI) will be applied as if it were Median Household Income. [Footnote omitted.]

The number of "affordable dwelling units" that meet the Act's criteria will consist only of the rental unit inventory affordable to households at 60% of HAMFI and all for sale units affordable to households at 80% of HAMFI as of January 1, 2006, the date the exemption portion of the Act goes into effect.

Also under the Act, "for sale" properties have been defined as all owner-occupied housing and are *not* limited to only properties on the market as of January 1, 2006 as implied in the Act. Discussion with IHDA also determined that the decennial census, Illinois State Department of Finance Real Property records and housing insurance data are possible sources for identifying affordable units for exemption. This is the case simply because there is no existing up-to-date central data source of housing sales and rents.

Housing is considered “affordable” if 30 percent or less of an individual or household’s income goes to housing costs *and* the household income is 80% or less of the HAMFI for owner-occupied housing units and 60% or less of HAMFI for rental units. Generally, demand for affordable housing is established by the number of households spending more than 30 percent of their total income on housing costs by household size. However, as there is no central data source for this breakdown, the methodology used is based on median incomes only, disregarding size. It is understood that IHDA intends to do the same in its official assessment.

The newly clarified definition of “median household income” was confirmed through discussion with IHDA that the 2000 HAMFI is the basis for the count of affordable units. HAMFI is prepared at the county and/or PMSA geographic level. The Village falls under the HAMFI of Cook County and the Chicago PMSA. In 2000, the year of the decennial Census, the HAMFI for the PMSA was \$67,900 or slightly more than half of the Village’s median *family* income of \$122,515.

Thus, the cap for affordable owner-occupied housing is a household income of \$54,320 (80% of HAMFI). The income cap for affordable rental housing is \$40,740 (60% of HAMFI).

Following these guidelines as closely as possible, given the data provided by the decennial Census, 1,139 owner occupied households have an income of less than \$50,000 (80% of HAMFI), with 445 reporting that they spend less than 30% of their income on housing; while 576 renter occupied units have incomes of \$40,000 or less (60% of HAMFI), 111 of which report they are in affordable housing. Therefore, there were 1,716 low-moderate income households in Wilmette, with 556 in self-reported affordable housing units as defined by the Act and current assessment methodology.

The overall demand for affordable housing in the Village is thus 1,159 households. *According to the requirements of the Act, however, the legal shortfall is only 477 units* (the difference between 10% of the 2000 Census count of housing stock and the total number of low-moderate income households in affordable housing).

2.3 The Need Viewed Differently

While the Village accepts the Act’s 10% standard for purposes of this Plan, it also approaches the issue of affordable housing not in a mathematical manner, but based on its real life experience in addressing the need for affordable housing in the past and its knowledge of the residents and potential residents who give rise to this need. The population of the Village is aging, and some older residents with fixed or diminishing incomes may wish to continue living among their family and friends but in housing commensurate with their means. Non-resident parents of current residents may wish to

move to the Village to be close to their adult children during their golden years. Our community also includes persons with disabilities (some of whom are adult children of longtime Wilmette residents) whose incomes and resources limit their housing options. There are persons with low or moderate incomes who work in or for the Village and whose residency here would enhance the overall spirit of community. While the Village lacks the ability to accommodate all such residents and potential residents with affordable housing needs, it intends to continue to address these needs by increasing the number of affordable units, in the manner set forth in this Plan.

3.0 POTENTIAL LANDS AND BUILDINGS FOR AFFORDABLE HOUSING

3.1 General

The Village's experience is that opportunities to provide affordable housing sometimes arise without substantial notice, and the Village must be prepared to respond promptly lest an opportunity be lost. For example, it was not anticipated that Loyola University would close its Mallinckrodt campus, and the building would be suitable for conversion to residential use with affordable housing units included. While this Plan mentions some potential sites for affordable housing, it is necessary to be vigilant in seeking additional possibilities and to be ready to act when they arise. Indeed, there is little doubt that such vigilance will occur, because the Village has a Housing Commission and many residents who are strong advocates of affordable housing and who will not allow an opportunity for affordable housing to pass unnoticed.

3.2 Unsuitable Sites

As important as it is for this Plan to identify potential sites for affordable housing, it is equally important to identify sites that are not suitable. To be successful, this Plan needs broad community support, and unfounded concerns and fears about inappropriate development undermine this support.

Accordingly, this Plan rejects the idea of building affordable housing on any existing parkland. Open space for leisure and recreation is needed in a community, no less than affordable housing is needed. The diligent efforts of the Wilmette Park District to provide this benefit to Wilmette residents over the years should not be sacrificed to an important but not superior value.

Similarly, this Plan rejects the idea of providing affordable housing units by building multi-family buildings on land cleared for that purpose in the R or R1 zoning districts. Such development would injure the essential character of the Village. Indeed, the only potential R or R1 locations for multi-family buildings with affordable housing units are institutional buildings that cease to be used for their institutional purpose and that are suitable for adaptive reuse as senior housing (*e.g.*, Mallinckrodt and the Village Green Atrium), as already allowed by the Zoning Ordinance.

In sum, any affordable housing development that would adversely affect valued features of the Village is contrary to the intent of this Plan.

3.3 Suitable Sites

It is highly unlikely that any new, rehabbed or existing single family detached home in the R or R1 zoning districts or townhouse or duplex in the R2 zoning district would ever meet the definition of “affordable,” unless it were in some way subsidized by government or a not-for-profit entity. Even if there were several such subsidized units, this approach will not effectively address the need for additional affordable housing in the Village and is not the approach adopted by this Plan. Accordingly, this discussion is limited to types of housing that could reasonably include affordable living arrangements.

The Zoning Ordinance already allows various uses which could accommodate affordable living arrangements. (The zoning districts referred to below are explained on Exhibit 3, attached.) These uses are as follows:

1. Group homes for the elderly and for persons with disabilities in the R, R1, R2, and R3 zoning districts.
2. Adaptive reuse senior housing in the R, R1, R2, and R3 zoning districts.
3. Accessory living units in the R, R1, and R2 zoning districts.
4. Congregate housing facilities for the elderly in the R2, R3, NR, VC, and PCD2 zoning districts.
5. Congregate housing facilities for persons with disabilities in the R2 and R3 zoning districts.
6. Housing for the elderly in the R2, R3, R4, NR, VC, and PCD2 zoning districts.
7. Housing for persons with disabilities in the R2, R3, and R4 zoning districts.
8. Multi-family buildings in the R3, R4 and GC2 zoning districts.
9. Above-grade dwellings in the NR, VC, and PCD2 zoning districts.
10. Planned Use Developments in the NR, VC and GC1 zoning districts, which may contain multi-family dwellings at grade level in the NR and VC zoning districts (in addition to above grade dwelling units) and dwelling units above grade level in the GC1 zoning district.

The conclusion of this Plan is that the Zoning Ordinance, by allowing the foregoing uses as either permitted or special uses, requires no additional categories of uses to facilitate the creation of new affordable housing. The single exception is that the Zoning Ordinance does not currently deal with residential buildings in the GC2 zoning district in specific terms and does not allow the flexibility of Planned Use Developments in that district. These deficiencies are addressed in the draft ordinance attached as Exhibit 4.

The best opportunities for creating additional affordable housing are on relatively large parcels where, consistent with existing zoning, multi-family buildings or mixed use commercial/residential buildings can be built. Four specific sites (the Farm Foundation property, the Baha'i Home, the Kohl Children's Museum, and the National Louis University Campus) are mentioned because they are examples of sites that may become available in the near future. This Plan recognizes there are other potential redevelopment sites, particularly in the NR, VC, GC1 and GC2 zoning districts, for multi-family buildings or mixed use commercial/residential buildings with affordable housing units. Each site that presents itself will require careful review through the planning and zoning processes designed to protect neighborhood and community interests.

In considering mixed use commercial/residential buildings in the GC1 zoning district, the Zoning Board of Appeals and the Village Board must be especially mindful of traffic and congestion issues involving Greenbay Road. It is expected that the departure of the Kohl Children's Museum, a significant traffic generator, will alleviate some of the current traffic and congestion problem, as will planned roadway improvements.

This Plan also requests the Building Code Board of Appeal to consider and make recommendations regarding the advisability of new regulations requiring a higher level of sound absorbency in building materials used in residential buildings located near Greenbay Road and other major streets. The purpose of this review is to assure that future multi-family buildings provide the same opportunity for peace and quiet as single family detached dwellings elsewhere in the Village.

The Farm Foundation is located at 201 Ridge at the southern edge of the Village in the R3 zoning district. It is currently vacant. The site to the south is also vacant. With potentially one-acre of property, about 40 residential units could be developed on this site, some in the "affordable" category.

The Baha'i Home, located on a 30,500 square foot parcel on the corner of Greenleaf Avenue and 4th Street, was built in 1958 as Wilmette's first senior housing facility. It accommodated 21 elderly residents and was a special use in the R2 zoning district. Although now vacant, it is still owned by the Baha'i Congregation. Should all units be made available to low and moderate income seniors, they would add 21 units to the Village's affordable housing stock.

The Kohl Children's Museum is located in the GC1 zoning district at the southern end of Greenbay Road (165-169 Greenbay Road). The 30,000 square foot property is located in close proximity to the non-conforming multi-family residential building in this zoning

district. Although the Children’s Museum is still in use, the owner is in the process of building a new venue in Glenview. When the museum relocates, the Greenbay Road property, which includes an adjacent parking lot, will become available for redevelopment, possibly with residential units, including affordable units, on one or two upper floors.

The Sheridan Road campus of National-Louis University consists of a 6.5-acre tract. The University recently decided to relocate the campus. Three-quarters of the property is located in the Village, making it the second largest potential redevelopment site in Wilmette. Several buildings, including Harrison Hall (a three story building), the Baker Demonstration School, and six houses are located on the site. The site is located in the R1 zoning district. However, a special use permit could allow the conversion of one or more of the large institutional buildings into senior housing, including some affordable senior housing units.

4.0 INCENTIVES

4.1 The Options

Because of the high value of land in Wilmette, it is likely that any new ownership or rental units, to be affordable, will be sold or rented at a below-market rate. When affordable housing is sold or rented at a below-market rate, someone must pay the differential. Stated differently, an owner or developer must have an offsetting financial incentive to sell or rent property at a below-market rate. Where will the value come from to compensate the owner or developer for the differential? Before identifying the incentives this Plan will offer, it is useful to examine the possible sources of this value:

Zoning mandates: The Village could adopt a zoning regulation that requires developers of multi-family buildings to set aside a certain percentage of the units for affordable housing. This would be an extreme form of “incentive.” The Village government would incur no cost in this approach. However, there would be a cost. It would be reflected immediately in a lower value for the land covered by the regulations since the development potential has been diminished. The land owner and/or developer would pay the cost.

Zoning bonuses: The Village could provide “zoning bonuses” for buildings incorporating a certain percentage of affordable units. These bonuses would be in the form of relaxations to height, setback, parking, and similar regulations. Again, the Village government would incur no cost in providing this type of incentive. However, the regulations being relaxed were presumably adopted for the protection of the community, especially the neighboring property owners. Allowing more intense development therefore may adversely affect the character of the neighborhood and diminish the value of the neighboring properties, and the neighboring property owners would bear the cost. However, it is possible that “bonuses” could be provided through the Planned Use Development Process of the Zoning Ordinance without adversely affecting neighboring properties.

Teardown tax and similar dedicated taxes and fees: It has been suggested that the Village could adopt a tax or a fee, the proceeds of which would be utilized to create financial incentives in the form of subsidies for the development of affordable housing. For example, a “teardown tax” could be levied on the act of demolishing an existing structure and failing to replace it with affordable housing. In Wilmette, such a tax would impact mainly older, functionally obsolescent single family detached houses, typically owned by longtime, older residents whose major assets are their homes. While excessively-large replacement houses present their own set of problems (with which the Village has attempted to cope), the teardown of obsolescent houses may be beneficial to the neighborhood and community. A teardown tax might somewhat deter such activity. Its cost would likely fall on residents selling houses destined for demolition, because builders (who may be the persons actually paying the tax) would factor the tax into the price they would be willing to pay for the property. Other ideas, like dedicated condominium conversion fees, new construction fees, and an increased real estate transfer tax, would have a similar narrow financial impact, focused on individual property owners involved in these activities.

Village subsidies: The Village could provide financial incentives for the development of affordable housing by direct subsidies. For example, the Village could participate in a project by acquiring property and reselling it to a private developer for multi-family housing that includes affordable housing units. Because the acquisition cost may be higher than the subsequent resale price (given the affordable housing requirements accompanying the resale), the cost in this case is borne by the taxpayers at large through whatever tax resources the Village utilizes. Techniques with a similar broad cost sharing impact are property tax abatements, financing assistance through municipal bonds or low-cost loans, reduced fees for permits and services (*e.g.*, zoning and building permits, or water/sewer fees), and outright grants.

Subsidies through a not-for-profit entity: The Village could sponsor or assist in the creation of a not-for-profit affordable housing entity that would seek funds from a variety of sources (*e.g.*, grants from private foundations, contributions from individuals and corporations, revolving loans from the Institute for Community Economics) and either engage in development activities itself or provide incentives for others. It is to be noted that a precedent exists for the Village’s limited involvement in such an entity, as the Village was closely involved in creating the not-for-profit corporation that owns and operates Shoreline Place.

4.2 The Preferred Incentives

This Plan adopts the policy of spreading the cost of affordable housing broadly, rather than placing the cost on targeted land owners. Accordingly, this Plan does not adopt ***zoning mandates*** or a ***dedicated taxes and fees*** as methods for creating incentives for affordable housing. Instead, this Plan adopts four methods of encouraging developers to include affordable housing units in new multi-family buildings, as follows:

First, developers coming to the Village with plans for multi-family buildings will be encouraged to seek zoning approval of their projects as Planned Use Developments and to include affordable housing units in their plans. The Planned Use Development process, already part of the Zoning Ordinance, provides the Village with a degree of flexibility regarding development standards that may be sufficient to make it attractive for developers to include affordable housing units without diminishing the value of neighboring properties.

Second, this Plan suggests the adoption of a new ordinance that would require an owner or developer, before applying for any special use permit, building permit, appearance review certificate, license or other Village authorization or approval involving a multi-family building in any zoning district or a commercial building in the VC, NR, GC1, or GC2 zoning districts, to meet with the Director of Community Development or his/her designee. At this meeting, the owner or developer would be given a copy of this Plan and, depending on the circumstances of the particular site, would be asked to consider the idea of including affordable housing units in the project. In addition, the Director of Community Development would explain the Planned Use Development process and other relevant provisions of Village ordinances. This meeting would be held no later than 60 days prior to the date when the developer files an application with the Village, provided that after the required meeting, the Village Board by resolution may waive any remaining portion of the 60-day waiting period in cases where it determines that requiring an exhaustion of the waiting period would not serve the purposes of this Plan. This meeting requirement would not apply to an owner or developer applying for approval of a multi-family building with 15% or more affordable housing units included in the project.

Aside from meeting with the Director of Community Development for the purpose stated and waiting 60 days to submit an application, the suggested ordinance would impose no other obligation on an applicant, and the Director of Community Development would have no authority to take or refuse to take any action based on the applicant's unwillingness to include affordable housing units. The draft ordinance, attached as Exhibit 4, provides for this 60-day waiting period.

The purposes of the suggested 60day waiting period are twofold. First, it would assure that an owner or developer must at least consider the idea of including affordable housing units in a potential multi-family project. Second, it would give the Village at least 60 days notice of contemplated projects, during which time it could take actions, including direct involvement described in the next paragraph, in furtherance of this Plan.

Third, this Plan recommends that the Village consider direct involvement, on an ad hoc basis, when a desirable site for affordable housing becomes available, community support is found to exist, and Village involvement is the only practical way to accomplish the project (like Mallinckrodt). It must be recognized that the Village has very limited financial resources for direct involvement. Significantly, the Illinois Legislature, in adopting the Act, did not appropriate any funds to assist local governments like the Village to pursue its affordable housing goal, at a time when the Village is struggling to maintain basic municipal services in the face of revenue stagnation and increasing costs,

some of which are the result of other unfunded State mandates. In view of the foregoing, direct involvement and financial participation by the Village will be the rare exception rather than the general rule.

Fourth, this Plan requests the Housing Commission to consider and make recommendations regarding the creation of a not-for-profit entity to obtain funding from non-Village sources and take actions to provide incentives or otherwise promote the development of affordable housing, consistent with this Plan. Highland Park provides an example of such an entity, but the Housing Commission is encouraged to consider a broad scope of such possibilities.

5.0 THE GOAL

5.1 The Goal of this Plan

This Plan adopts the goal of making 15% of all new residential development or redevelopment consist of affordable housing units. This goal will be pursued by concentrating attention on multi-family buildings, as defined in Paragraph 1.4, and asking developers of such buildings to consider including at least 15% affordable housing units, in the manner described above. While this plan focuses on multi-family buildings, other affordable living arrangements, as described in Paragraph 3.3, will undoubtedly continue to be added to the Village's housing stock as the number of group homes and accessory living units increase in the ordinary course to meet a growing need. Overall, it is believed that concentrating on new multi-family buildings, in a manner consistent with the Zoning Ordinance, is a reasonable approach for pursuing the 15% goal.

5.2 The Alternative Goals Allowed by the Act

This Plan does not adopt the Act's alternative goal of increasing the affordable housing stock in the Village by 3.0%, for the following reason. This goal would require the Village to increase the affordable housing stock from its current 5.38% to 8.38%, or from 556 units to 866 units, or by a total of 310 units. The Village can conceive no reasonable way in which this number of new affordable housing units could be provided in the foreseeable future. For example, to increase the number of affordable housing units by 310 in multi-family buildings consisting of 15% affordable units, it would take a total of 2,067 units in new multi-family buildings to achieve this goal. This number of new units would increase the Village's total housing stock by 20%.

The other alternative goal in the Act, making 10% of the Village's total housing stock housing affordable, is rejected for the same reason. It would require an increase in the percentage of affordable housing units from 5.38% to 10%, or from 556 units to 1,033 units, or by a total of 477 units. If an increase of 310 affordable units is unrealistic, an increase of 477 affordable units is more so.

6.0 ASSIGNMENT OF RESPONSIBILITIES

6.1 The Housing Commission

The Housing Commission will have responsibility for monitoring this Plan, measuring the Village's progress in pursuing the established goal, and making recommendations to the Village Board for actions in furtherance of this Plan and for future changes to this Plan. The Commission should develop a methodology appropriate to the Village by which this progress may be measured, and in doing so may take into account recommendations made by State agencies, as well as other sources. The Commission will also have responsibility for considering and making recommendations regarding the creation of a not-for-profit entity, as described above.

6.2 The Building Code Board of Appeal

The Building Code Board of Appeal will have responsibility for considering and making recommendations regarding the advisability of new regulations requiring a higher level of sound absorbency in building materials used in residential buildings located near Greenbay Road and other major streets. The Building Code Board of Appeal is also requested to consider whether the Building Code adequately protects public health and safety in the context of affordable housing.

6.3 Zoning Board of Appeals

The Zoning Board of Appeals will have responsibility for applying the provisions of the Zoning Ordinance, as they may be amended from time to time, to applications involving multi-family buildings containing affordable housing units in light of the Village policies set forth in this Plan, as well as other applicable Village policies. Just as multi-family buildings with affordable housing units are not subject to a higher level of scrutiny under the variation and special use standards than buildings without such units, neither are they entitled to greater leniency under the standards.

6.4 Director of Community Development

The Director of Community Development will have responsibility for meeting with owners or developers contemplating requesting the Village to authorize or approve certain types of projects, as explained above; giving them a copy of this Plan; asking them to consider the idea of including affordable housing units in the project; and explaining the Planned Use Development process and other relevant provisions of Village ordinances. The Director of Community Development will also have responsibility for implementing the Housing Commission's methodology for measuring progress under this Plan and providing the Housing Commission with the data collected as a result.

Exhibit 1



Illinois General Assembly

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Bills & Resolutions

Compiled Statutes

Public Acts

Legislative Reports

IL Constitution

Legislative Guide

Legislative Glossary

Public Act 093-0595

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Public Act 93-0595

HB0625 Enrolled

LRB093 05848 DRJ 05941 b

AN ACT in relation to housing.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

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

Section 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.

Section 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.

Section 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

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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.

"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 median gross household income for households of the same size within the county in which the housing is located.

"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 median gross household income for households of the same size within the county in which the housing is located.

"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.

Section 20. Determination of exempt local governments.

(a) Beginning January 1, 2006, 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 January 1, 2006, 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.

(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.

Section 25. Affordable housing plan.

(a) Prior to July 1, 2004, 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 defined in Section 20 of this Act; or a minimum of a total of 10% of affordable housing within its jurisdiction.

(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.

Section 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.

Section 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.

Section 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.

Effective Date: 01/01/04

Floor Actions

Date	Action
8/26/2003	Public Act093-0595

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Public Act 093-0678

SB2724 Enrolled

LRB093 19551 AMC 45291 b

AN ACT concerning housing.

Be it enacted by the People of the State of Illinois,
represented in the General Assembly:

Section 5. The Affordable Housing Planning and Appeal Act
is amended by changing Sections 15, 20, and 25 as follows:

(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 gross household income for households of the same size within the county in which the housing is located.

"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 gross household income for households of the same size within the county in which the housing is located.

"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.)

(310 ILCS 67/20)

Sec. 20. Determination of exempt local governments.

(a) Beginning October 1, 2004 ~~January 1, 2006~~, 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 ~~January 1, 2006~~, 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.)

(310 ILCS 67/25)

Sec. 25. Affordable housing plan.

(a) Prior to April 1, 2005 ~~July 1, 2004~~, 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 defined in Section 20 of this Act; or a minimum of a total of 10% ~~of~~ 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.)

Section 99. Effective date. This Act takes effect upon becoming law.

Effective Date: 6/28/2004

Floor Actions

Date	Action
6/28/2004	Public Act 093-0678

Law Offices

HOLLAND & KNIGHT LLP

131 South Dearborn Street
30th Floor
Chicago, Illinois 60603

312-263-3600 Phone
312-578-6666 Fax
<http://www.hklaw.com>

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MEMORANDUM

Peter M. Friedman
312-578-6566

Internet Address:
peter.friedman@hklaw.com

April 8, 2004

TO: Metropolitan Mayors Caucus

FROM: Peter M. Friedman
Holland & Knight LLP

RE: Affordable Housing Planning and Appeal Act
Home Rule Application

We serve on the Caucus' Ad-hoc Model Affordable Housing Plan Committee. We have been asked by the Housing Director and the Caucus to give our opinion on whether Public Act 93-5095, the Affordable Housing Planning and Appeal Act, 310 ILCS 67/1 et seq. ("**Affordable Housing Act**"), applies to Illinois home rule units of local government.

Based on the recognized methods of preemption authorized under the Illinois Constitution and Illinois Supreme Court cases, it is our opinion that the Affordable Housing Act does not preempt home rule authority and thus does not apply to home rule units of local government. We note, however, that the Illinois Housing Development Authority ("**IHDA**") has indicated its belief that the Affordable Housing Act does preempt home rule and apply to home rule governments. Thus, notwithstanding our view and the analysis below, we caution home rule municipalities that choose not to comply with the Affordable Housing Act that IHDA may challenge that position in the future.

We also note that legislation has been introduced in the General Assembly (SB 2724) to make several changes to the Affordable Housing Act. In considering SB 2724, the legislature might be urged to consider taking the steps

(and securing the requisite votes) to confirm or otherwise clarify whether the statute was intended to preempt home rule authority.

I. The Affordable Housing Act.

A. Determination of "Exempt" and "Non-Exempt" Local Governments

Under the Affordable Housing Act, beginning January 1, 2006, IHDA is required to identify "exempt" and "non-exempt" local governments. IHDA is required to publish the list of exempt and non-exempt local governments on an annual basis thereafter.

A local government will be "non-exempt" if less than 10 percent of its total year-round housing units are "affordable." Local governments that exceed the 10 percent minimum will be "exempt" and will not be required to comply with the specific affordable housing planning requirements of the Act. Under Sections 30(a) and 30(b) of the Act, an "exempt" local government also will not be subject to appeals to the newly created State Housing Appeals Board.

As used in the Act, the terms "exempt" and "non-exempt" do not relate to whether the Act applies to home rule governments. In light of our opinion that the Act does not apply to home rule governments, IDHA's "exempt" and "non-exempt" determinations should only be made from the pool of non home rule Illinois local governments. Home rule units are not subject to being identified by IDHA as "non-exempt" under the Act.

B. Affordable Housing Plans.

Notwithstanding IHDA's January 1, 2006 start date for reporting, the Act requires all applicable (i.e., non home rule) local governments that do not meet the exempt requirements to approve an affordable housing plan prior to July 1, 2004.¹ The affordable housing plan must provide the following information: (1) the total number of affordable housing units required for the local government to reach exempt status under the Act; (2) identification of lands that are appropriate for affordable housing; (3) incentives that the local government may provide to affordable housing developers; and (4) a stated goal that 15 percent of all new development will provide affordable housing, or that the current affordable housing stock in the local government will increase 3 percent, or that the local government will achieve the overall 10 percent affordable housing threshold.

¹ This discrepancy is one of the changes to the Affordable Housing Act being consider as part of SB 2724.

C. Appeals.

The Act provides an appeal procedure for aggrieved developers of affordable housing. Beginning January 1, 2009, developers of affordable housing that have an application denied, or that have an application approved with conditions that the developer feels will render the provision of affordable housing infeasible, may appeal the decision to a new State Housing Appeals Board created under the Act. Prior to January 1, 2009, the Board will act solely as an information repository. However, after January 1, 2009, the Board will have the authority to overturn local government actions regarding the challenged decisions. The Board is prohibited, however, from interfering with a decision based on local requirements that protect the public health and safety, including building, electrical, fire, and plumbing code requirements. Decisions of the Board may only be appealed directly to the Illinois Appellate Court.

As previously noted, a non home rule government that IDHA determines is "exempt" – that is, a government that meets the 10 percent affordable housing minimum requirement -- is not subject to the appeal process of the new Housing Appeals Board.

II. Home Rule Preemption

You asked us specifically whether the Affordable Housing Act applies to home rule local governments. We understand that IDHA, which is the agency charged with overseeing compliance with the Act, has at least informally asserted that affordable housing is a matter of exclusive statewide concern, as opposed to local concern, and that the Act therefore impliedly preempts home rule. We do not agree that the Affordable Housing Act preempts home rule.

The Illinois Constitution sets forth three specific methods for the State to preempt home rule powers.

First, the General Assembly may expressly pre-empt home rule authority by a three-fifths vote (Ill. Const., Art. VII, Sec. 6(g)). The Illinois Supreme Court has held that the mere fact that the General Assembly passes a law relating to the powers of municipalities generally does not mean that the law restricts home rule power -- instead, the General Assembly must include an explicit statement that it intends to restrict the powers of home rule municipalities. See *Scadron v. City of Des Plaines*, 153 Ill. 2d 164, 187 (1992) (quoting *Rozner v. Korshak*, 55 Ill. 2d 430, 435 (1973)). The Affordable Housing Act does not contain any explicit home rule preemption.

Second, the General Assembly may specifically provide for the State to exercise a power exclusively (Ill. Const., Art. VII, Sec. 6(h)). Under this Section, the General Assembly must make an express statement that the subject is one of

purely statewide interest. See *Schillerstrom Homes, Inc. v. City of Naperville*, 198 Ill. 2d 281, 291 (2001). The Affordable Housing Act does not contain any express statement that affordable housing is purely a statewide interest. Moreover, the State has not exercised authority exclusively over affordable housing under the Affordable Housing Act. Rather, the Act requires each non-exempt local government to establish its own plans and policies for achieving levels of affordable housing that will vary among communities based on decisions that communities will make locally. Such a legislative structure is not consistent with the type of exclusivity that courts have recognized as triggering a home rule preemption.

Third, Article VII, Sec. 6(i) of the Illinois Constitution provides that home rule units may exercise powers and perform functions concurrently with the state, "to the extent that the General Assembly by law does not specifically limit the concurrent exercise or specifically declare the State's exercise to be exclusive." The Affordable Housing Act does not specifically limit local governments' concurrent exercise or specifically declare the State's exercise to be exclusive. To the contrary, as noted above, the Affordable Housing Act calls for local exercise of authority and discretion in establishing plans and implementing regulations relating to affordable housing.

The Affordable Housing Act does not preempt home rule powers under any of these three Constitutional methods.

The only other way that the Affordable Housing Act could be deemed to apply to home rule governments, is to argue that the subject of the Act – the provision of affordable housing – does not fall within the general home rule powers of home rule governments (i.e., the provision of affordable housing does not pertain specifically to the "government and affairs" of home rule units and is not a matter of purely local concern) (Ill. Const., Art. VII, Sec. 6(a)).

In this regard, the following should be noted:

- While the State may have adopted affordable housing policies, including the Governor's Executive Order No. 2003-18, establishing a comprehensive housing initiative, the mere existence of even a comprehensive statutory scheme like the Affordable Housing Act does not produce an inadvertent preemption or the conclusion that a specific matter is beyond home rule authority. *Chicago Park District v. City of Chicago*, 111 Ill. 2d 7 (1986).
- "Whether a particular problem is of statewide rather than local dimension must be decided not on the basis of a specific formula or listing set forth in the Constitution but with regard for the nature and extent of the problem, the units of government which have the

most vital interest in its solution, and the role traditionally played by local and statewide authorities in dealing with it." *Schillerstrom Homes*, 198 Ill. 2d at 290 (quoting *Kalodimos v. Village of Morton Grove*, 103 Ill. 2d 483, 501 (1984)).

- In connection with the Affordable Housing Act, it does not expressly pre-empt home rule authority. Additionally, because the Act itself calls upon each affected municipality to develop its own affordable housing plan, it cannot be claimed that the State has decided to exercise exclusively authority relating to affordable housing. Moreover, the purpose of the Act (Section 10) makes plain that, while affordable housing may be a concern of the State, the Act is intended to have "counties and municipalities ... meet the [affordable housing] needs of their county or community."
- While the floor debate and legislative history of the Affordable Housing Act is neither binding nor crystal clear, there are numerous statements and representations by House members that the Act was not intended to apply to home rule. There is also an indication that the House Parliamentarian opined that the Act did not preempt home rule.

In light of all of this, we believe that the Act does not apply to home rule local governments. The bases for pre-empting home rule powers do not appear obvious or sufficient in the Act. Needless to say, no court has yet ruled on this issue. The ultimate determination regarding the applicability of the Act to home rule units may have to await clarification from the General Assembly (see below) or the courts.

III. Pending Legislation.

On February 4, 2004, Senator Jeff Schoenberg introduced SB 2724 to make various changes to the Affordable Housing Act. The changes proposed in SB 2724, and in subsequent amendments filed regarding this legislation, relate to various deadlines and timing provisions of the Act, as well as to the definition of low and moderate-income housing.

The pending legislation does not, however, contain any provisions regarding home rule. In light of the uncertainty held by local and state government officials and attorneys as to whether the Act was intended to preempt home rule, the Caucus should urge the General Assembly to clarify and confirm this issue in conjunction with other changes to the Act. This clarification should be made now, during the 93rd General Assembly, so that home rule governments can determine whether they have requirements and obligations under the Act.

EXHIBIT 3

THE ZONING DISTRICTS MENTIONED IN THE PLAN

The R district is the Village's least dense residential zoning district and consists of large lots with abundant open space. R district properties are located along the lakefront and along the Village's northern boundary.

The R1 district is the Village's largest zoning district, comprising approximately 85% of the Village's 5.3 square miles. The R1 district consists of relatively low density development and is where most of the Village's institutional structures are located. The R1 district is spread throughout the Village.

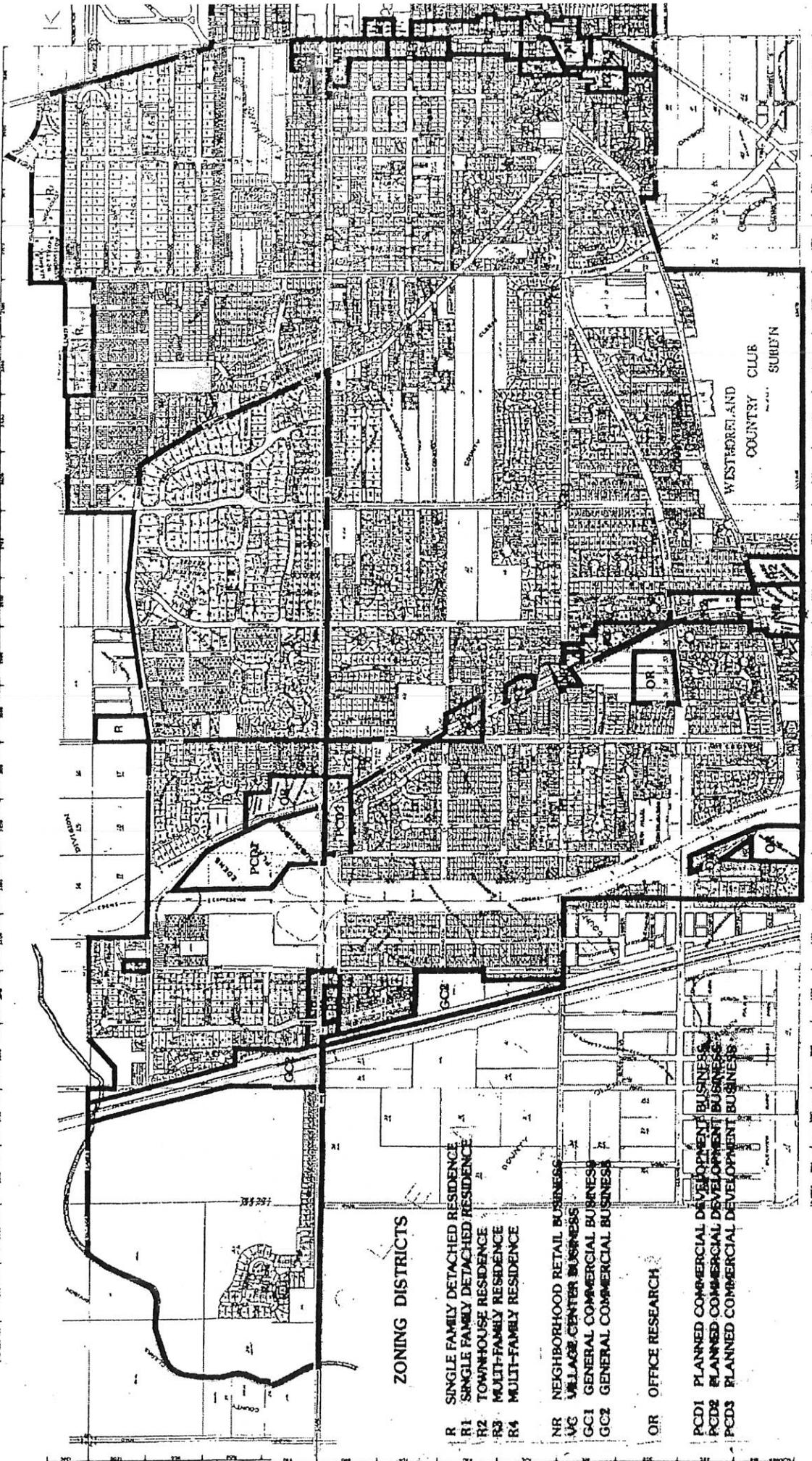
The R2 district contains more townhouses than any other district and acts as a transition zone between areas of commercial or multi-family uses and areas of predominantly single-family detached dwellings. R2 district properties are located adjacent to NR, VC, GC1 and PCD2 districts and are spread throughout the Village. Two of the Village's R2 districts are located within walking distance of transit facilities. The R2 district is where three of the Village's affordable senior housing developments are located.

The R3 district consists primarily of low-rise multi-family residential buildings. The R3 district properties are located adjacent to the NR district in the Fourth and Linden area, along the Ridge Road corridor and on west Lake Avenue. One of the Village's R3 districts is located within walking distance of transit facilities.

The NR district is the Village's convenience shopping district intended to provide service to residents of the surrounding neighborhoods. The NR district is also designed to accommodate limited multi-family housing and congregate care opportunities in a small-scale, mixed-use neighborhood environment. The NR districts are spread throughout the Village. Two of the Village's NR districts are located within walking distance of transit facilities.

The VC district is a centrally located, compactly developed commercial area that is centered at the intersection of Wilmette and Central Avenue. The VC district contains more mixed-use buildings than any other district and is within walking distance to a Metra railroad station. The VC district maintains a mix of commercial and institutional uses which provide goods and services for the Village as a whole as well as for the convenience of residents of the surrounding neighborhood.

The GC-1 district is for general commercial activities and currently includes retail establishments and automobile sales and service establishments. It consists of the properties fronting the west side of Green Bay Road from the east-west alley just north of Lake Avenue to Central Avenue and from just south of Wilmette Avenue to the Village border with Evanston. The GC1 district is located within walking distance to transit facilities.



ZONING DISTRICTS

- R SINGLE FAMILY DETACHED RESIDENCE
- R1 SINGLE FAMILY DETACHED RESIDENCE
- R2 TOWNHOUSE RESIDENCE
- R3 MULTI-FAMILY RESIDENCE
- R4 MULTI-FAMILY RESIDENCE

- NR NEIGHBORHOOD RETAIL BUSINESS
- UG VILLAGE CENTER BUSINESS
- GC1 GENERAL COMMERCIAL BUSINESS
- GC2 GENERAL COMMERCIAL BUSINESS

OR OFFICE RESEARCH

- PCO1 PLANNED COMMERCIAL DEVELOPMENT BUSINESS
- PCO2 PLANNED COMMERCIAL DEVELOPMENT BUSINESS
- PCO3 PLANNED COMMERCIAL DEVELOPMENT BUSINESS

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SUBDIV

ORDINANCE NO. ____-0-__

AN ORDINANCE AMENDING THE WILMETTE VILLAGE CODE, 1993, AS AMENDED, AMENDING PORTIONS OF CHAPTER 9, "HOUSING AND BUILDING REGULATIONS," SECTION 9-1, "HOUSING CODES," AND AMENDING CHAPTER 20, "ZONING ORDINANCE," IN ORDER TO IMPLEMENT PORTIONS OF THE VILLAGE OF WILMETTE AFFORDABLE HOUSING PLAN

WHEREAS, the Village President and Board of Trustees of the Village of Wilmette, Cook County, Illinois, find that the Village of Wilmette, Cook County, Illinois (the "Village") is a home rule municipal corporation as provided in Article VII, Section 6 of the 1970 Constitution of the State of Illinois and, pursuant to said constitutional authority, may exercise any power and perform any function pertaining to its government and affairs for the protection of the public health, safety, morals and welfare; and,

WHEREAS, the Village President and Board of Trustees further find that the availability of affordable housing in the Village is a matter pertaining to the public health, safety and welfare and, therefore, the adoption of plans, ordinances, regulations and other legislative and administrative actions to provide for the development of affordable housing are matters pertaining to the government and affairs of the Village and, consequently, are within the constitutional grant of home rule authority to the Village; and,

WHEREAS, the Village President and Board of Trustees further find that it is the longstanding policy of the Village to provide affordable housing options so persons with moderate incomes can enjoy the benefits of living in the Village and so Village residents can enjoy the benefits of a community with economic diversity, and that this policy has been implemented, with active Village support or sponsorship, as opportunities have occurred over the

past quarter century, with the Village being careful to balance the worthy objectives of this policy against other important policies, such as the Village's policies favoring the maintenance of the Village's single-family home character and land use re-development consistent with the capacity of infrastructure, all of the foregoing demonstrating the Village's ongoing commitment to a proactive but reasoned approach to providing additional affordable housing; and,

WHEREAS, the Village President and Board of Trustees further find that, given the Village's longstanding policy of seeking to provide affordable housing options for persons with moderate incomes that also serve the unique needs of Wilmette, the Village independently authorized its Housing Commission to undertake an affordable housing analysis for the Village, and make findings and recommendations to the Village Board concerning the need for and availability of affordable housing in the Village and such steps as may appropriate for the Village to take to increase the availability of affordable housing in Wilmette, and the Village will continue to support the work of its Housing Commission in this area; and,

WHEREAS, the Village President and Board of Trustees further find that the State of Illinois has enacted the Affordable Housing, Planning and Appeal Act, Public Act 93-595, effective January 1, 2004, as amended by Public Act 93-678, and as now or hereafter amended (collectively, the "Act"), which provides for the designation of particular municipalities in the State as either "exempt" or "non-exempt," based on the amount of housing in those municipalities determined under the Act to be "affordable," requires non-exempt municipalities to develop and submit to the State on or before April 1, 2005 an "affordable housing plan," and provides that, beginning January 1, 2009, developers who have been denied land use approvals by a "non-exempt" municipality may appeal such a decision to a "State Housing Appeals Board," in order to seek relief from the decision; and,

WHEREAS, the Village President and Board of Trustees further find that the Village has been identified by the Illinois Housing Development Authority as a municipality that will be “non-exempt” under the Act and, therefore, will be subject to the requirements of the Act aforesaid, including possible appeal of local land use decisions to the State Housing Appeals Board; and,

WHEREAS, the Village President and Board of Trustees further find that the Act does not preempt home rule authority and that there is considerable uncertainty over provisions of the Act governing local land use decisions and possible loss of local control over those decisions, and that the public interest would be best served by the Village not ceding its final authority over local land use decisions to a State board or commission; and,

WHEREAS, the Village President and Board of Trustees further find that, in furtherance of the Village’s long-standing policy supporting the development of affordable housing aforesaid, the Village has developed its Village of Wilmette Affordable Housing Plan (the “Plan”), a copy of which is attached hereto as Exhibit A and is incorporated by reference as if set forth verbatim herein, which the Village finds addresses the subject of affordable housing in a manner most beneficial to the Village, any further or different requirements of the Act notwithstanding; and,

WHEREAS, the Village President and Board of Trustees further find that the provisions of the Plan were officially adopted by the Village by Ordinance No. 2004-O-____, passed on or about _____, 2004, and enacted pursuant to the Village’s home rule authority aforesaid; and,

WHEREAS, the Village President and Board of Trustees further find that the provisions of the Plan call for the adoption of an ordinance requiring a 60-day consultation period prior to applying for any building permit, zoning approval, appearance review approval, or other land use

approval or permit required under the Village's building codes and its Zoning Ordinance, so as to provide adequate opportunity to work on a cooperative basis with developers to facilitate the development of affordable housing in Wilmette as more fully discussed in the Plan; and,

WHEREAS, the Village President and Board of Trustees further find that the provisions of the Plan call for the adoption of amendments to the Zoning Ordinance concerning zoning districts in which a Planned Unit Development is a special use, and concerning development standards and potential residential special uses in the GC-2 Zoning District, so as to facilitate the development of affordable housing in Wilmette as more fully discussed in the Plan;

NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES of the Village of Wilmette, Cook County, Illinois:

SECTION 1: The foregoing findings and recitals, and each of them, are hereby made a part of Section 1 of this Ordinance and are incorporated by reference as if set forth verbatim herein, and further, that this Ordinance is enacted pursuant to the Village of Wilmette's home rule authority.

SECTION 2: The Wilmette Village Code, 1993, as amended, is further amended in Chapter 9, Housing and Building Regulations, Section 9-1, "Housing Code," by adding thereto a new Subsection 9-1.12, "Affordable Housing Consultation Period," with further subsections thereof, in the manner and form shown below, so that said new Subsection 9-1.12 shall hereafter read as follows:

9-1.12 AFFORDABLE HOUSING CONSULTATION PROCEDURE. [NEW]

9-1.12.1 APPLICABILITY.

The provisions of this Section 9-1.12 and its subsections shall be applicable to the following types of construction projects that are required to obtain any permit under the provisions of this Chapter:

- (a) Multifamily dwellings, either newly constructed or as part of the rehabilitation or remodeling of an existing structure where the valuation for building permit fee

purposes under Section 9-3.3 of this Chapter exceeds 50% of the building's value prior to said remodeling or rehabilitation.

(b) Commercial buildings that are:

- (1) Newly constructed or as part of the rehabilitation or remodeling of an existing structure where the valuation for building permit fee purposes under Section 9-3.3 of this Chapter exceeds 50% of the building's value prior to said remodeling or rehabilitation; and,
- (2) Located in the following zoning districts, as they are defined in the Village of Wilmette Zoning Ordinance, Chapter 20, Wilmette Village Code as amended: Village Center (VC), Neighborhood Retail (NR), General Commercial 1 (GC-1), or General Commercial 2 (GC-2).

(c) The provisions of this Section 9-1.12 shall not apply to a construction project with 15% or more affordable housing units included in the project, as proposed.

9-1.12.2 PRIOR CONSULTATION CONCERNING AFFORDABLE HOUSING REQUIRED.

(a) Notwithstanding any other provision of this Chapter or of the model codes adopted by reference in Section 9-3 of this Chapter, prior to submitting to the Department of Community Development any application for any permit required by this Chapter for a construction project identified in Subsection 9-1.12.1, the applicant shall meet with the Director of Community Development or the Director's designee. At such meeting, the Director of Community Development shall provide the prospective permit applicant with a copy of the Village of Wilmette Affordable Housing Plan and will discuss with the prospective applicant whether there are reasonable options for including affordable housing units in the project. Additionally, at such meeting the Director of Community Development shall provide the prospective applicant a copy of the Planned Use Development provisions of the Village of Wilmette Zoning Ordinance and related provisions of the Wilmette Village Code.

(b) The meeting required in paragraph (a) of this Subsection shall be held at least 60 calendar days prior to the date when an applicant for a construction project covered by Section 9-1.12.1 files an application with the Village, provided that after the required meeting, the Village Board by resolution may waive any remaining portion of the 60-day waiting period in cases where it determines that requiring an exhaustion of the waiting period would not serve the purposes of the Plan.

SECTION 3: The Wilmette Village Code, 1993, as amended, is further amended in Chapter 20, Zoning Ordinance, Article 1, "Development Standards of General Applicability," Part 1,

“Required Permits, Certificates and Approvals,” by adding thereto a new Section 20-4.1.10, “Affordable Housing Consultation Procedure,” with further subsections thereof, in the manner and form shown below, so that said new Subsection 20-4.1.10 shall hereafter read as follows:

20-4.1.10 AFFORDABLE HOUSING CONSULTATION PROCEDURE.
[NEW]

20-4.1.10.1 APPLICABILITY.

The provisions of this Section 20-4.1.10 and its subsections shall be applicable to the following types of construction projects that are required to obtain any variation, special use permit, appearance review certificate or other authorization provided for under the provisions of this Chapter 20:

- (a) Multifamily dwellings, either newly constructed or as part of the rehabilitation or remodeling of an existing structure where the valuation for building permit fee purposes under Section 9-3.3 of this Chapter exceeds 50% of the building’s value prior to said remodeling or rehabilitation.
- (b) Commercial buildings that are:
 - (1) Newly constructed or as part of the rehabilitation or remodeling of an existing structure where the valuation for building permit fee purposes under Section 9-3.3 of Chapter 9 of the Wilmette Village Code exceeds 50% of the building’s value prior to said remodeling or rehabilitation; and,
 - (2) Located in the following zoning districts, as they are defined in this Chapter 20, as amended: Village Center (VC), Neighborhood Retail (NR), General Commercial 1 (GC-1), or General Commercial 2 (GC-2).
- (c) The provisions of this Section 20-4.1.10 shall not apply to a construction project with 15% or more affordable housing units included in the project, as proposed.

20-4.1.10.2 PRIOR CONSULTATION CONCERNING AFFORDABLE HOUSING REQUIRED.

(a) Notwithstanding any other provision of this Chapter, prior to submitting to the Department of Community Development any application for any variation, special use permit, appearance review certificate, or other land development authorization required by this Chapter for a construction project identified in Subsection 20-4.1.10.1, the applicant shall meet with the Director of Community Development or the Director’s designee. At such meeting, the Director of Community Development shall provide the prospective permit applicant with a copy of the Village of Wilmette Affordable Housing Plan and will discuss with the prospective applicant reasonable options for including affordable housing units in the project. Additionally, at such meeting the Director of

Community Development shall provide the prospective applicant a copy of the Planned Use Development provisions of the Village of Wilmette Zoning Ordinance and related provisions of the Wilmette Village Code.

(b) The meeting required in paragraph (a) of this Subsection shall be held at least 60 calendar days prior to the date when an applicant for a construction project covered by Section 20-4.1.10.1 files an application with the Village, provided that after the required meeting, the Village Board by resolution may waive any remaining portion of the 60-day waiting period in cases where it determines that requiring an exhaustion of the waiting period would not serve the purposes of the Plan.

SECTION 4: The Wilmette Village Code, 1993, as amended, is further amended in Chapter 20, Zoning Ordinance, Article 5, "Zoning Districts," Part 10, "'GC-2' General Commercial District," Section 20-5.10.3, "Special Uses," by deleting the text of said Section 20-5.10.3 in the manner and form shown in strikethrough type below and inserting therein and therefor such new text as shown in underlined bold type below, so that said Section 20-5.10.3 shall hereafter read as follows:

Section 20-5.10.3. Special uses.

The following uses may be established as special uses in the GC-2 District, in accordance with Article 4, Part 3 of this Chapter:

- (a) Health clubs.
- (b) Heavy equipment and supplies establishments.
- (c) Manufacturing establishments.
- (d) Parks and playgrounds, less than four acres in area, provided that:
 - (1) No more than one building is located on the lot; and
 - (2) The building has a height no greater than 15 feet; and
 - (3) The building has a floor area no greater than 500 square feet.
- (e) Public utility service uses.
- (f) Recreation centers.

- (g) Storage and distribution establishments.
- (h) Taxicab fleet yards.
- (i) Vehicle sales, rental, and servicing.

(j) Residential uses, when part of the development of a parcel of at least 5 acres in area, or a group of parcels that collectively is at least 5 acres in area.

(~~j~~ **k**) Any other use which the applicant can demonstrate (1) will have less of an impact than the above-listed uses on the surrounding area and the Village as a whole in terms of traffic generation, environmental quality, public service demand, and other factors, and (2) will be more compatible with adjacent single-family residential districts than the above-listed uses in terms of the design and configuration of buildings and other structures. However, this shall in no event include commercial retail establishments, shopping centers, automobile service stations, convenience food marts, restaurants, or fast-food restaurants.

(~~k~~ **l**) The following accessory uses:

- (1) Outdoor storage of construction materials, in accordance with Section 6.4.10(b); and
- (2) Any other accessory uses or structures designated as special uses in Article 6, Part 4 of this Chapter.

SECTION 5: The Wilmette Village Code, 1993, as amended, is further amended in Chapter 20, Zoning Ordinance, Article 5, "Zoning Districts," Part 15, "Planned Unit Developments," Section 20-5.15.2, "Location," by deleting the text of said Section 20-5.15.2 in the manner and form shown in strikethrough type below and inserting therein and therefor such new text as shown in underlined bold type below, so that said Section 20-5.15.2 shall hereafter read as follows:

Section 20-5.15.2 Location.

A Planned Unit Development may be located, as a special use, in the Neighborhood Retail (NR), Village Center (VC), General Commercial 1 (GC1), **General Commercial 2 (GC2)**, and Office Research (OR) Zoning Districts. No portion of the Planned Unit Development may be located in more than one zoning district.

SECTION 6: The Wilmette Village Code, 1993, as amended, is further amended in Chapter 20, Zoning Ordinance, Article 5, "Zoning Districts," Part 15, "Planned Unit Developments," Section 20-5.15.4, "Uses Allowed," by deleting the text of said Section 20-5.15.4 in the manner and form shown in strikethrough type below and inserting therein and therefor such new text as shown in underlined bold type below, so that said Section 20-5.15.4 shall hereafter read as follows:

Section 20-5.15.4 Uses allowed.

The uses which may be permitted under a Planned Unit Development shall be those listed as permitted, accessory or special uses in the zoning district in which the Planned Unit Development is located. Additionally, street level residential uses in the NR, **GC2** and VC Zoning Districts and above street level residential uses in the GC1 **and GC2** Zoning Districts may be permitted under a Planned Unit Development, where found to be appropriate by the Village Board under the standards of review set forth in this Part 15.

SECTION 7: The Wilmette Village Code, 1993, as amended, is further amended in Chapter 20, Zoning Ordinance, Article 5, "Zoning Districts," Part 15, "Planned Unit Developments," Section 20-5.15.5, "Modifications Allowed Under a Planned Unit Development," by deleting the text of said Section 20-5.15.5 in the manner and form shown in strikethrough type below and inserting therein and therefor such new text as shown in underlined bold type below, so that said Section 20-5.15.5 shall hereafter read as follows:

Section 20-5.15.5 Modifications allowed under a planned unit development

Except as noted herein, development standards may be modified under a Planned Unit Development. The maximum height requirement in the NR, GC1, VC and OR Zoning District may be modified to match the height, in stories, of the tallest building in the individual commercial district. If the number of stories is a whole number, an additional .5 story is permitted. **The maximum height requirement in the GC2 Zoning District may be modified to three stories or 40 feet.** Requirements set forth in the Zoning Ordinance concerning the number of principal structures permitted on a single lot may be modified under a Planned Unit Development. Requirements set forth in the Zoning Ordinance for fences may be modified under a Planned Unit Development, but such

modifications shall be consistent with the requirements of Chapter 16 of the Village Code concerning prohibited view obstructions.

The following limitations shall apply to any modification or variation from the requirements of the Zoning Ordinance permitted under a Planned Unit Development:

(a) No modification of the requirements set forth in Chapter 15 (Planning and Platting), Section 15-2.4, of the Village Code concerning the minimum design, quality and construction standards for public improvements and infrastructure, shall be permitted.

(b) No modification of the Environmental Performance Standards set forth in Article 6, Part 3 of the Zoning Ordinance shall be permitted.

(c) No modification of the code requirements set forth in the building, electrical, plumbing, fire prevention, or any other code or requirement provided for in Chapter 9 of the Village Code, shall be permitted.

SECTION 8: This Ordinance shall be in full force and effect from and after its passage, approval and publication as required by law.

PASSED by the President and Board of Trustees of the Village of Wilmette, Illinois, on the ____ day of _____, 200_.

AYE: _____

NAY: _____

Clerk of the Village of Wilmette, IL

APPROVED by the President of the Village of Wilmette, Illinois, this ____ day of _____, 200_.

President of the Village of Wilmette, IL

ATTEST:

Clerk of the Village of Wilmette, IL

