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Concerns Regarding *CAFHA, et al. v. City of Chicago*, Case No. 05-19-3886-6/9

Ms. Richardson-Lowry:

This letter summarizes the Department's concerns regarding the City of Chicago's civil rights compliance, as raised by our investigation into the above-referenced complaint. The Department seeks the City's engagement in discussions towards informal resolution before this investigation draws to a close, and this letter is intended to inform those discussions.

The Department initiated this investigation in 2019 under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d and its implementing regulations at 24 C.F.R. Part 1 ("Title VI") and Section 109 of the Housing and Community Development Act of 1974, 42 U.S.C. § 5309 and its implementing regulations at 24 C.F.R. Part 6 ("Section 109"), in response to a complaint alleging that the City's practice of delegating to each of its fifty aldermen "unfettered power" over the procedures that dictate whether income-restricted affordable rental housing ("affordable housing") is built in their ward discriminates on the basis of race and national origin.[1] The investigation to date has included reviews of City communications, administrative records, and data relating to the policies and practices that effect the siting of affordable housing; interviews with developers who have sought zoning and financing approval for affordable housing; and interviews with current and former aldermen.

The Department's investigation indicates that the City affords each of its fifty wards a local veto over proposals to build affordable housing, and that many majority-White wards use the local veto to block, deter, or downsize such proposals. As a result, new affordable housing is rarely, if ever, constructed in the majority-White wards that already have the least affordable housing. The City acknowledges this effect of the practice, its historical use for the purpose of creating and maintaining patterns of racial segregation, and its continued use as a tool that effectuates racially motivated opposition to affordable housing. The City's use of the local veto despite understanding its effects raises serious concerns about the City's compliance with Title VI and Section 109.

[1] The complaint was filed by the Chicago Area Fair Housing Alliance, Chicago Housing Initiative, Neighbors for Affordable Housing, The Jane Addams Senior Caucus, The Kenwood Oakland Community Organization, Lugenia Burns Hope Center, ONE Northside, People for Community Recovery, Pilsen Alliance, and Southside Together Organizing for Power.

The Department understands that the local veto over affordable housing proposals is not a law or formal policy, but a practice arising from (1) the requirement that City Council approve all such proposals,[2] and (2) the custom of only approving those proposals which have the affirmative support of the alderman for the ward in which the development is proposed.[3] This investigation identified three ways in which aldermen wield the local veto to block, deter, or downsize proposals to build affordable housing:

1. **The local veto allows aldermen to block or downsize affordable housing proposals in Council**. This investigation identified examples of aldermen blocking projects that would have created integrative affordable housing – even where such projects are otherwise consistent with citywide plans and policies – by explicitly voting down a proposal, or by withholding their affirmative support for land use or finance approvals, resulting in the expiration or withdrawal of the proposal.

2. **The local veto allows aldermen to deter or downsize affordable housing proposals before they are formally proposed to the City**. Interviews with developers of affordable housing revealed that the existence of the local veto deters them from proposing projects in predominantly white wards, and this investigation identified examples of developers significantly downsizing affordable housing proposals or shelving them altogether during informal, pre-application processes through which aldermen wield the threat of the local veto to influence development.

3. **Aldermen preemptively veto integrative affordable housing by downzoning**. This investigation identified examples of aldermen downzoning, or applying more restrictive zoning designations, in a manner that limits opportunities for the development of affordable housing and ensures that any such proposals would be subject to the processes that give rise to the local veto. Evidence suggests that the effect – and sometimes the purpose – of such downzoning is to make the development of integrative affordable housing more costly, time consuming, or otherwise less feasible.

Consistent with the City's own analysis of this practice,[4] the Department's investigation indicates that the local veto over affordable housing proposals has the following effects:

1. **By limiting the availability of affordable housing, the local veto disproportionately harms Black and Hispanic households**, who are far more likely than White households to need and qualify for affordable housing. These groups are already disproportionately impacted by the City's on-going affordable housing shortage, and the further loss of affordable rental units due to the local veto is three to four times more likely to affect Black households – and two times more likely to affect Hispanic households – than White households.[5]

2. **The local veto perpetuates segregation.** As noted in City planning documents, the local veto was instrumental in creating Chicago's patterns of segregation and is a significant reason for the

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[2] Council approval is required for the City's two main vehicles for the production of income-restricted affordable rental housing: the "Multi-Family Finance" program, through which the City allocates resources like low-income housing tax credits and HOME funds, and the "Affordable Requirements Ordinance," Chicago's inclusionary zoning program. *See* Chicago Dep't of Housing, 2022 Annual Report, https://www.chicago.gov/content/dam/city/depts/doh/plans/Annual%20Report%20Final%208.29.23.pdf.

[3] This is one manifestation of "aldermanic prerogative," Council's practice of rubber-stamping aldermen's decisions on permits in their wards. While not codified, the practice is "so permanent and well-settled [that it] constitute[s] a custom or usage with the force of law." 520 S. Michigan Ave. Assoc. v. Fioretti, et al., 07 C 4245 (N.D. Ill. 2009), *citing* St. Louis v. Praprotnik, 485 U.S. 112 (1988).

[4] *See, e.g.,* Blueprint for Fair Housing (2022), https://www.chicago.gov/content/city/en/sites/blueprint-for-fair-housing/home.html; Racial Equity Impact Assessment: Qualified Allocation Plan (2021), https://www.chicago.gov/city/en/depts/doh/supp_info/2023-qualified-allocation-plan.html; Analysis of Impediments for Fair Housing Choice (2016), https://www.chicago.gov/city/en/depts/cchr/provdrs/discrim/alerts/2016/february/analysis-of-impediments-to-fair-housing.html.

[5] Comprehensive Housing Affordability Strategy data, based on 2018 ACS https://www.huduser.gov/portal/datasets/cp.html. White and Black refer to non-Hispanic people only, and Hispanic refers to people of Hispanic origin of all racial backgrounds.

perpetuation of those patterns. This investigation indicates the continued use of the local veto to block affordable housing units in White areas is a key driver of segregation. For example, this investigation's non-exhaustive review of Council decisions between 2019 and 2022 identified several hundred affordable housing units approved by the Department of Housing for construction in majority-White areas that were blocked at the request of the local alderman.

3. **The local veto effectuates opposition to affordable housing based on racial animus.** The continued existence of racially motivated opposition to affordable housing in majority-White areas is widely acknowledged in Chicago, yet aldermen interviewed during this investigation reported deferring to local opinion with no consideration of whether racial animus played a role. Indeed, this investigation identified several instances of opposition replete with coded racial animus informing aldermen's decisions to veto affordable housing proposals.

The City's prior administrations did not proffer a justification for the continued existence of this practice. Aldermen interviewed during this investigation asserted that the practice is necessary to ensure that local concerns are considered in development decisions. This investigation indicates, however, that Council routinely shows unquestioning deference to local aldermen even in the absence of any articulated local concern, and even where concerns are clearly invoked as pretext to block integrative affordable housing. In other cases, legitimate but minor local concerns were invoked to block or significantly delay integrative affordable housing proposals, even where those concerns contradicted fact-based analyses and well-considered City plans on the same topics. The practice appears to be a blunt tool that blocks and deters integrative affordable housing while going well beyond what is necessary to provide a forum for local concerns – in other words, precisely the sort of "artificial, arbitrary, and unnecessary barrier" discussed by the Supreme Court under the Fair Housing Act in *Inclusive Communities*.[6]

Several legislative proposals over the past five years would have limited the effect of the local veto or replaced it with processes that preserve local voice without allowing aldermen to unilaterally block integrative affordable housing. In some cases, these proposals were supported by the majority of aldermen but were never brought to a vote, in part because they were not supported by the Mayor and their selected committee chairpersons at the time.[7] Other proposals passed, but only after the removal of provisions that would have limited opportunities to exercise the local veto and encouraged the development of affordable housing in more affluent, disproportionately White areas.[8]

The Department has outlined the above to offer the City an opportunity to resume discussions towards informal resolution, which can be arranged by contacting me. We look forward to the City's response.

Sincerely,

[redacted]

Lon D. Meltesen, Region V Director
Office of Fair Housing and Equal Opportunity

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[6] Tex. Dep't of Hous. & Cmty. Affairs v. Inclusive Cmtys. Project, Inc., 135 S. Ct. 2507, 2522 (2015).

[7] *E.g.,* O2018-6119 ("Affordable Housing Equity Ordinance") and O2019-5797 ("Homes For All Ordinance") would have limited Council's ability to block developments with affordable units in wards with relatively little affordable housing.

[8] *E.g.,* O2019-285, O2020-2850 ("Additional Dwelling Units Ordinance"), and O2022-2000 ("Connected Communities Ordinance").