

October 10, 2015

Chicago apartment developers scurry to beat new affordable-housing law

By ALBY GALLUN | 



 SHARE

Appraisal Research Counselors

Chicago Rehab Network

DLA Piper LLP

Helmut Jahn

Rahm Emanuel

More +



Photo by Thinkstock

Eager to break ground on a 48-story apartment tower in the South Loop, Chicago developer John Murphy had a little extra incentive to file his plans with the city in September, not October.

Murphy rushed to City Hall to file a zoning-change request for the Michigan Avenue project before tougher affordable-housing regulations take effect this month. Aimed at creating more housing for lower-income residents, the changes make it more expensive to build apartments and condominiums in Chicago, which is why a herd of residential developers—or their zoning attorneys—scurried to file applications for new buildings in September. “It was a race to the deadline,” says Murphy, president of Murphy Asset Management.

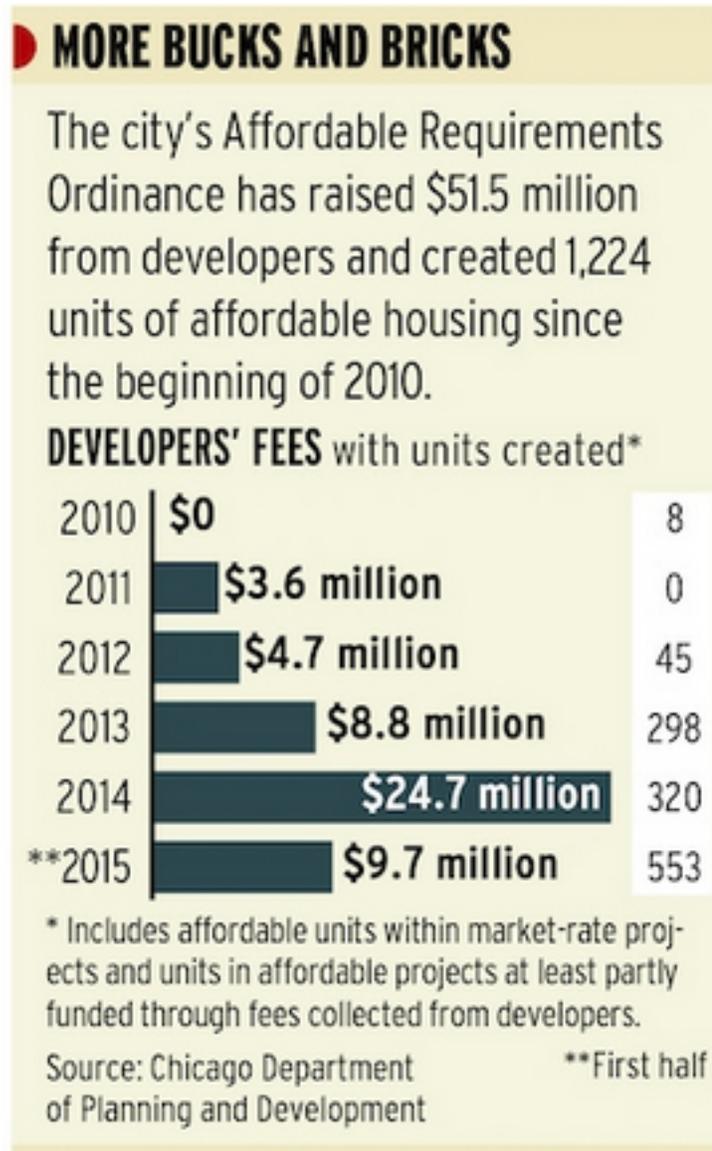
The sprint illustrates how much developers dislike the new regulations, which are already facing a court challenge from the Home Builders of Greater Chicago. Developers filed 69 zoning applications—mainly for permission to build bigger projects than allowed under current zoning law—for introduction at the City Council meeting on Sept. 24, almost three times the monthly average, according to the Department of Planning and Development. The filings included a 407-unit development near North and Clybourn avenues and a proposed 86-story residential high-rise designed by Helmut Jahn across from Grant Park.

Starting with plans introduced at the next City Council meeting, on Oct. 14, developers must comply with the city’s Affordable Requirements Ordinance. Mayor Rahm Emanuel predicts the new rules will create 1,200 affordable units and raise \$90 million for lower-income housing over the next five years, but developers say it will result in higher housing costs and less affordable housing.

Though most observers agree that the changes will depress the price of undeveloped land, they also could spur fruitful new partnerships and solutions. “Developers are many things, but above all they are creative,” says real estate lawyer Richard Klawiter, a partner at DLA Piper and chairman of its Chicago real estate practice. “They will figure out the most cost-effective way of implementing the ARO.”

The city created the ARO in 2003, but housing advocates long have argued it didn’t have enough teeth. Until the sweeping revision approved by the City Council in March, residential developers were required to set aside 10 percent of units in a project for below-market-rate housing or pay an “in-lieu” fee of \$100,000 per unit that would be deposited into a city fund to pay for affordable housing. The ordinance doesn’t apply to all residential projects, just to those with 10 or more units that need a zoning change or some other favor from the city.

Under the revised ordinance, the



fees for opting out vary by location, jumping to \$175,000 per unit for downtown projects. But developers no longer can buy their way out completely: Most must include at least a quarter of the required affordable units within their projects or build them at another location, usually within two miles.

So Murphy, who wants to construct a 500-unit tower at 1326 S. Michigan Ave., can fulfill his obligation to the city under the old ordinance by paying \$5 million to the city. Under the new rules, he would have had to pay the city \$6.6 million and include 13 affordable units in his building or in another project within two miles. "At some point, the additional cost has to go somewhere, and it's going to end up in the renter's expense," Murphy says.

Debates over the effectiveness of the Chicago ordinance and other forms of inclusionary zoning will rage on between developers and affordable-housing advocates. But the two sides generally agree on the primary goal: It's not just to build more affordable housing but to build it in thriving, stable neighborhoods with good schools, low crime and access to jobs.

The biggest losers could be investors that own buildable land. To compensate for the higher cost, developers are likely to offer a lower price for sites that need zoning changes. Appraiser Ron DeVries, a vice president at Chicago-based Appraisal Research Counselors, estimates that a site worth \$50,000 per unit under the old rules could be worth less than \$35,000 per unit under the new one. "All else being equal, somebody is going to pay less for land than they did before," he says.

The big unknown is how developers will fulfill their new obligation to set aside or build more units of affordable housing. DLA's Klawiter says some developers effectively could outsource the job, possibly by financing a certain number of units in a nonprofit developer's affordable project.

Kevin Jackson, executive director of the Chicago Rehab Network, an affordable-housing nonprofit, says he already has had discussions with for-profit developers interested in exploring ways to team up to comply with the tougher law. "They're just beginning," he says. "I think there's a really healthy chance that you're going to see stronger partnerships between the two communities."