

AN ORDINANCE OF THE CITY OF CHICAGO, ILLINOIS  
ESTABLISHING THE CHICAGO COMMUNITY LAND TRUST

WHEREAS, the City of Chicago (the “City”) is a home rule unit of government pursuant to Section 6(a), Article VII of the 1970 Constitution of the State of Illinois and may exercise any power related to its local government and affairs; and

WHEREAS, the City is committed to developing affordable housing and expanding opportunities for homeownership; and

WHEREAS, the City faces a number of housing challenges, including affordability for low- to moderate-income residents, a shortage of public resources for affordable housing, and maintaining long-term affordability; and

WHEREAS, since 1994, the Department of Housing (“DOH”) has operated under successive five-year plans, under which DOH allocates its resources and reports its activities to the City Council of the City (“City Council”) on a quarterly basis; and

WHEREAS, DOH’s current five-year plan for 2004 - 2008, *Build – Preserve – Lead: A Housing Agenda for Chicago’s Neighborhoods*, states that public funding for affordable housing is increasingly limited at all levels of government; and

WHEREAS, at the same time that public resources for affordable housing are shrinking, the gap between the amount of subsidy needed to make housing affordable and the amount of subsidy available continues to widen as housing costs increase; and

WHEREAS, DOH has created a number of innovative programs to develop new, for-sale affordable units; and

WHEREAS, DOH’s existing affordable homeownership programs provide a variety of subsidies to low- and moderate-income households to reduce the cost of buying homes; and

WHEREAS, the City annually contributes millions of dollars to construct or rehabilitate affordable single family homes through a combination of land write-downs, fee waivers, TIF assistance and development subsidies; and

WHEREAS, the City primarily relies on rights of reverter, deed restrictions and subsidy recapture provisions in second mortgages to secure the value of public subsidies invested in the development of affordable housing, and to preserve the affordability of such subsidized homes for future buyers; and

WHEREAS, the City's typical recapture mortgage treats the subsidy as a conditional loan, which requires the homeowner to repay a portion of the subsidy based on the length of time that the homeowner lives in the home and is forgiven over time; and

WHEREAS, in rapidly appreciating real estate markets, subsidy recapture provisions do not effectively discourage the quick resale of subsidized homes; and

WHEREAS, in an effort to preserve affordability, the City has begun to incorporate resale price restrictions and income-eligibility requirements into its second mortgages in the form of restrictive covenants; and

WHEREAS, the affordability controls in the City's second mortgages often give homeowners the option to either sell their property to an income-eligible household at an affordable price (in which case the new buyer assumes the mortgage), or sell their property for whatever price the market will bear (in which case the City is allowed to recapture the subsidy); and

WHEREAS, in rising markets, homebuyers often will not voluntarily choose to adhere to resale restrictions, especially when the repayment requirement is reduced over time, and, as a result, recapture mortgages do not always achieve the goals of preserving the value of subsidies and the affordability of subsidized housing for multiple, successive owners over time; and

WHEREAS, after the City's conditional loans are repaid or forgiven, the affordable unit is free to be sold at fair market value and the recaptured funds are unlikely to cover the cost of a new affordable unit due to appreciation and increasing development costs; and

WHEREAS, since 2001, DOH has been exploring the community land trust ("CLT") model of homeownership as a means of permanently restricting the resale price of subsidized homes and thus preventing the loss of such homes to the market; and

WHEREAS, a CLT is a nonprofit corporation that typically holds legal title to land in trust for the community for the chief purpose of creating permanent affordable homeownership opportunities for low- to moderate-income individuals and families who are kept out of the traditional homeownership market; and

WHEREAS, the CLT model of homeownership divides property ownership between individuals, who hold title to the home, and the CLT, which holds title to the underlying land; and

WHEREAS, the CLT enters into long-term (typically 99-year) renewable, assumable ground

leases with income-eligible homebuyers for the exclusive use of CLT land; and

WHEREAS, CLT ground leases place restrictions on the resale of subsidized homes to ensure that they will be sold to other limited income households at affordable prices as established by a resale formula; and

WHEREAS, the resale formula in a CLT ground lease determines the homeowner's profit on resale, balancing the competing goals of providing a fair return on the homeowner's housing investment and preserving long-term affordability; and

WHEREAS, the CLT approach to homeownership helps low- to moderate-income individuals and families build wealth through the creation of equity, while at the same time maximizing the benefits from housing assistance dollars and protecting the affordability of subsidized housing for future residents; and

WHEREAS, although the CLT model of homeownership places limits on the ability of a homeowner to capture the appreciated value of a home, it provides many other benefits not available to renters, including mortgage interest deductions, real property tax deductions, stable housing costs, security of ownership, a long-term stake in the surrounding neighborhood, full return of equity acquired through the pay-down of purchase money mortgage debt, and an equitable return on the homeowner's investment; and

WHEREAS, in addition to the foregoing benefits of CLT homeownership, permanent resale restrictions allow taxing authorities to reduce the assessed value of CLT housing, and thus reduce property taxes; and

WHEREAS, the collection of modest monthly ground lease fees and one-time marketing and resale fees payable by homeowners allow CLTs to become financially and organizationally self-sufficient, with the capacity to monitor and enforce ground lease restrictions, conduct public education and outreach, market affordable units within its portfolio, provide back-up services for first-time homebuyers, and manage the resale of limited-equity homes without using limited public resources; and

WHEREAS, because the CLT retains a continuing ownership and lessor's interest in the property, permanent resale restrictions in CLT ground leases do not violate common law rules against perpetuities and restraints on alienation; and

WHEREAS, in 2001, the City commissioned a study, entitled *Options & Issues in Creating a Community Land Trust*, with a \$15,000 grant from the John D. and Catherine T. MacArthur

Foundation to determine the questions that a start-up CLT must face and the kinds of decisions that a start-up CLT must make; and

WHEREAS, in 2004, DOH secured technical assistance through a HUD-funded program to help the City determine how it could or should support CLT activity in order to achieve the goal of long-term affordability; and

WHEREAS, after weighing several options, DOH determined that creating a citywide CLT, as opposed to separate CLTs for different neighborhoods, would most effectively achieve the goal of long-term affordability by: (a) promoting a common understanding of what is meant by CLT housing among prospective homebuyers, community-based organizations, developers, lenders, appraisers, realtors, attorneys and land use planners; (b) standardizing the ways in which CLT housing will be assessed, subsidized, mortgaged, marketed, enforced and managed throughout the City; (c) increasing the likelihood that CLT housing will be developed on a larger scale and faster pace by an expert staff; and (d) eliminating the duplication of efforts and the added operational and administrative costs of supporting dozens of CLTs scattered over dozens of neighborhoods; and

WHEREAS, in 2005, DOH established an Advisory Group of community, religious, business and organizational leaders to provide guidance in shaping a new citywide CLT, which met monthly from June through November of 2005; and

WHEREAS, on September 22, 2005, the John D. and Catherine T. MacArthur Foundation awarded DOH a grant of \$396,000 to cover the operating costs of a citywide CLT for three years (the "CLT Grant"); and

WHEREAS, pursuant to an ordinance adopted by the City Council on September 14, 2005, and published at pages 55212 through 55220 in the Journal of the Proceedings of the City Council of such date, the City approved the acceptance of the CLT Grant; and

WHEREAS, it is in the best interests of the City to provide for the establishment of a citywide community land trust ("Chicago CLT") as an Illinois not-for-profit corporation having as its primary mission preserving the long-term affordability of housing units created through public subsidies; and

WHEREAS, it is also in the best interests of the City to establish a board of directors that will maintain accountability to low- and moderate-income occupants of CLT homes, as well as representatives of the community at large; and

WHEREAS, DOH anticipates that the Chicago CLT's initial holdings will consist primarily of affordable units that are produced through the City's existing affordable homeownership programs, and that, in most cases, the Chicago CLT will not act as a developer itself, but instead will work with other nonprofit and for-profit developers of affordable housing to create CLT units; and

WHEREAS, DOH recognizes that it is not possible for the Chicago CLT to own the land underlying certain types of DOH-subsidized housing units, such as affordable units created in multi-family market rate developments under the City's affordable housing ordinance (e.g., one affordable unit located in a six-flat condominium project where the other five units are sold as market rate units); and

WHEREAS, DOH wishes to pursue the goal of permanent affordability in multi-family market rate developments and, therefore, where the Chicago CLT cannot retain ownership of the underlying land, DOH may require developers to impose deed restrictions on subsidized condominium units similar to the restrictions in CLT ground leases, which the CLT will then monitor and enforce; and

WHEREAS, as it grows in size and capacity, the Chicago CLT may make its land available for rental housing, as well as commercial and social service uses that benefit the community; and

WHEREAS, DOH anticipates that, over time, the Chicago CLT will generate a stream of revenue adequate to support its operations without additional public funding; *now, therefore,*

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

**SECTION 1.** The foregoing recitals are hereby adopted as the findings of the City Council.

**SECTION 2.** DOH is authorized and directed to take such steps as may be necessary to enable the Chicago CLT to become duly organized and qualified as an Illinois not-for-profit organization.

**SECTION 3.** The Chicago CLT's Board of Directors shall be composed of not more than eighteen (18) directors and no fewer than fifteen (15) directors appointed by the Mayor of the City with the advice and consent of the City Council.

**SECTION 4.** The City Council hereby approves the filing of the Articles of Incorporation of the Chicago CLT in substantially the form of Exhibit "A" to this ordinance. Amendments to the Articles of Incorporation shall be approved by the Mayor with the advice and consent of the City

Council, provided that, without such approval, advice and consent, the Chicago CLT is authorized to adopt (a) administrative amendments consistent with the purposes of this ordinance and the CLT's goals and objectives, as determined by the Commissioner of DOH and the Corporation Counsel, and (b) such amendments as it determines to be appropriate to enable it to qualify as an exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1986 (the "Code") and Section 501(a) of the Code.

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**SECTION 5.** The City Council hereby approves the By-Laws of the Chicago CLT in substantially the form of Exhibit "B" to this ordinance. Amendments to the By-Laws shall be approved by the Mayor with the advice and consent of the City Council, provided that, without such approval, advice and consent, the Chicago CLT is authorized to adopt (a) administrative amendments consistent with the purposes of this ordinance and the CLT's goals and objectives, as determined by the Commissioner of DOH and the Corporation Counsel, and (b) such amendments as it determines to be appropriate to enable it to qualify as an exempt organization under Section 501(c)(3) of the Code and Section 501(a) of the Code.

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**SECTION 6.** DOH is authorized to provide such internal staff support to the Chicago CLT as may be required to accomplish its purposes and mission. DOH is authorized to negotiate and execute agreements with the Chicago CLT that set forth the terms and conditions pursuant to which such staff support would be provided to the Chicago CLT.

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**SECTION 7.** The Chicago CLT shall prepare annual reports for public review detailing its activities and accomplishments. A copy of each annual report shall be presented to the Mayor, the Chairman of the Housing and Real Estate Committee, and the City Council.

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**SECTION 8.** If any provision of this ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such provision shall not affect any of the other provisions of this ordinance

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**SECTION 9.** To the extent that any ordinance, resolution, motion or order, or any provision of the Articles of Incorporation or By-Laws of the Chicago CLT, or any resolution adopted by the Chicago CLT, is in conflict with the provisions of this ordinance, the provisions of this ordinance shall be controlling.

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**SECTION 10.** This ordinance shall take effect immediately upon its passage and approval.

Attachments: Exhibit A – Articles of Incorporation  
Exhibit B – By-Laws

***Exhibit “A”***

***Articles of Incorporation***

***for***

***Chicago Community Land Trust***

***Exhibit “B”***

***By-Laws***

***for***

***Chicago Community Land Trust***