

**A RESOLUTION ESTABLISHING
FOR THE VILLAGE OF BARRINGTON HILLS ITS EXEMPTION
FROM THE AFFORDABLE HOUSING, PLANNING, AND APPEALS ACT
PURSUANT TO ITS HOME RULE AUTHORITY AS PROVIDED
IN THE CONSTITUTION OF THE STATE OF ILLINOIS**

WHEREAS, the Village President and Board of Trustees of the Village of Barrington Hills, Illinois (the "Village"), find that 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 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, would be subject to the requirements of the Act, including possible appeals 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 the Village, as a Home Rule municipality, has the authority to adopt ordinances and to promulgate ordinances, rules and regulations that pertain to its government and affairs. Article 7, Section 6(a) of the Illinois Constitution provides that "[. . .] Except as limited by this Section, a home rule unit may

exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare". The Act does not preempt Home Rule authority, based on the following:

- A. In Article 7, Section 6(m), the Illinois Constitution specifically provides that "powers and functions of home rule units shall be construed liberally".
- B. The general powers granted in Section 6(a) continue in force even if the General Assembly adopts less stringent or conflicting statutes, so long as the General Assembly does not preempt the use of home rule powers.
- C. The General Assembly has not preempted the power of the Village to exempt itself from the coverage of the Act. The Act does not contain home rule preemption, and the General Assembly failed to approve the Act by the three-fifths majority constitutionally required to preempt the powers of a home rule unit.
- D. The Act does not supersede the powers of home rule units of local government.
- E. In Kalodimos v. Village of Morton Grove, 103 Ill.2d 483, 502, 470 N.E.2d 266 (1984), the Illinois Supreme Court found that "Home rule is predicated on the assumption that problems in which local governments have a legitimate and substantial interest should be open to local solution and reasonable experimentation to meet local needs, free from veto by voters and elected representatives of other parts of the State who might disagree with the particular approach advanced by the representatives of the locality involved or fail to appreciate the local perception of the problem".
- F. The Act does not contain any express statement that affordable housing is purely a matter of statewide interest or give the State exclusive authority over affordable housing. On the contrary, the Act provides that each non-exempt unit of local government establish its own plans and policies for achieving levels of affordable housing.
- G. The Act's requirement of local based planning is inconsistent with the type of exclusive State control required for home rule preemption. This inconsistency is apparent not only in the language of the Act but also in the application of the Act. IHDA was charged with the responsibility of determining which communities fell within the scope of the Act. Out of the 1,298 municipalities in the State, IHDA determined that the Act applied only to 49 municipalities, or municipalities constituting approximately 4.7% of the State's population based on the 2000 Census. All of the non-exempt communities identified by IHDA are in Cook, Lake, DuPage, Will, McHenry or Kane counties. IHDA's determination further validates that affordable housing is not purely a matter of statewide interest or concern.

- H. The Act does not specifically limit local governments' concurrent exercise of municipal planning, development and zoning power or specifically declare the State's exercise of those powers under the Act to be exclusive. Rather, the opposite is true. The Act requires the local exercise of authority and discretion in establishing plans and implementing regulations relating to affordable housing.
- I. There is no indication in the Act that the provision of affordable housing and the Act's attendant derogation of local land use planning and zoning regulations are not a subject within a home rule unit's government and affairs.
- J. The House floor debate on the Act contains numerous statements and representations by the Act's sponsor, Representative Sloane, that the Act was not intended to apply to home rule units of local government;

and

WHEREAS, the Village President and Board of Trustees further find that the Village of Barrington Hills comprehensively regulates planning, zoning and development within its boundaries; and

WHEREAS, the Village President and Board of Trustees further find that compliance by the Village of Barrington Hills with the Act is not feasible and is not in the best interests of the Village; and

WHEREAS, the Village President and Board of Trustees further find that, based on all the foregoing, the Village intends this Resolution to constitute the total, comprehensive and exclusive regulation of the subject matter of affordable housing within the Village of Barrington Hills generally, by the Village in the exercise of the Village's Home Rule authority, and that notwithstanding any provision of the Act, this Resolution shall totally displace and preempt the Act and all its provisions as permitted under the Village's constitutional Home Rule authority; and

WHEREAS, the Village President and Board of Trustees further find that the Village also intends that by adoption of this Resolution, all decisions about Barrington Hill's housing needs and future development will continue to be made at the local level and not be subject to appeal to a State board or commission:

NOW THEREFORE, BE IT RESOLVED by the President and Board of Trustees of the Village of Barrington Hills, Cook, Kane, Lake and McHenry Counties, Illinois, in exercise of the authority of this Village as a Home Rule unit, as follows:

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.

SECTION 2: The Affordable Housing Planning and Appeal Act, 310 ILCS 67/1, *et seq.*, is hereby declared not to apply within the Village of Barrington Hills and shall be superseded within the Village by the Zoning Ordinance.

SECTION 3: This Resolution and each of its terms shall be the effective legislative act of a Home Rule municipality without regard to whether such resolution should: (a) contain terms contrary to the provisions of current or subsequent non-preemptive state law, or (b) legislate in a manner or regarding a matter not delegated to municipalities by state law. It is the intent of the corporate authorities of the Village of Barrington Hills that to the extent that the terms of this resolution should be inconsistent with any non-preemptive state law, that this resolution shall supersede state law in that regard within its jurisdiction.

SECTION 4: If any part or provision of this resolution shall be held or deemed to be invalid, such invalidity shall not have the affect of rendering another part or provision of this resolution invalid.

SECTION 5: This resolution shall be in full force and effect from and after its passage and approval and publication in pamphlet form, as required by law.

APPROVED THIS: 27th day of June, 2005.

AYES: 7; NAYES: 0; ABSENT: 0.

ATTEST:

Joanne Wytmar
Village Clerk

[Signature]
Village President