

CITY OF MADISON, WISCONSIN

REPORT OF: City Attorney
TITLE:
AUTHOR:
DATED: January 10, 2008

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TO THE MAYOR AND COMMON COUNCIL:

RE: Legistar File Number 07614
Amending Section 16.23(2), creating new Section 16.24, and renumbering current Sections 16.24 and 16.25, respectively, of the Madison General Ordinances to create review of condominium instruments.

I have been asked about the applicability of Sec. 28.04(26), Inclusionary Housing to property that is converted to condominium ownership, as well as whether the proposed ordinance, for City review of condominium instruments, is an appropriate vehicle for potential application of Sec 28.04(26).

It is not possible to state that Sec. 28.04(26) will or will not apply without information on a particular project. Sec. 28.04(26)(c) states that the inclusionary housing requirements apply to certain types of "development". The relevant definition of "development" is in Sec. 28.03(2), which reads,

"Development means any man-made change to improved or unimproved real estate, including, but not limited to, the construction of buildings, structures or accessory structures; the construction of additions or substantial alterations to buildings, structures or accessory structures; the placement of buildings or structures; ditching, lagooning, dredging, filling, grading, paving, excavation or drilling operations; and the deposition or extraction of earthen materials."

In cases where a conversion involves only a change from non-condominium to condominium ownership, Sec. 28.04(26) likely would not apply. In other cases, if there are changes that are considered to be "development", the inclusionary housing requirements may apply. The specific characteristics of each conversion should be examined to determine whether inclusionary dwelling units will be required.

The proposed ordinance can serve as a way for the City to know when conversions occur. Routing the submitted condominium instruments to zoning, planning, and CDBG staff will provide the opportunity to examine the characteristics of the conversion and determine the applicability of Sec. 28.04(26).

In addition, the application that will be used to implement the proposed ordinance can note that the submission may be subject to Sec. 28.04(26).

The condominium review process itself cannot be used to require materials relevant to the applicability of Sec. 28.04(26) because the statute providing authority for the review limits the bases for review to a small number of factors. Nonetheless, the review of condominium instruments can be used as a way to learn of

condominium conversions and initiate a discussion with the applicant so the impact of Sec. 28.04(26) can be determined.



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