

SMART GROWTH MADISON

2810 Crossroads Drive • Suite 1900L • Madison, WI 53718
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UPDATED 2/7/2005

Sample calculations for IZ buyouts:

Owner occupied units - waiver fee is an amount equal to ten percent (10%) of the average sale price of the owner occupied units in the development for each owner-occupied inclusionary dwelling unit that will not be provided.

Scenario –

		buyout of all 8 IZ homes	buyout of 4 IZ homes
Price range of 53 single family homes	\$300,000 to \$550,000		
Average cost of all market rate homes	\$450,000		
10% of appraised value per unit	\$45,000		
Total buyout		\$360,000	\$180,000
buyout cost shifted to each market rate home		\$6,792	\$3,673

Rental units – waiver fee shall be twenty five percent (25%) of the cost to produce the unit.
 Note: The figures I used were calculated on costs to construct the entire building divided by the number of units in the building. The rent increases due to the buyout would be spread-out over a period of time between five and six years.

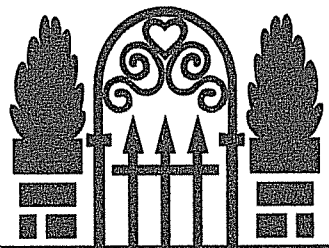
Scenario –

		buyout of all 12 IZ units	buyout of 6 IZ units
Cost to construct 80 unit apt building	\$6,348,000		
Appraised value per unit	\$79,350		
25% of cost per unit value	\$19,838		
Total buyout		\$238,050	\$119,025
buyout cost shifted to each market rate unit		\$2,976	\$1,608
monthly rent increase per market rate unit		\$40	\$25

Proposed rental waiver fee – ten percent (10%) of the appraised value of the average unit times the number of units waived. The rent increases due to the buyout would be spread-out over a period of time between five and six years.

Scenario –

		buyout of all 12 IZ units	buyout of 6 IZ units
Appraised Value of 80-unit apt building	\$6,900,000		
Appraised value per unit	\$86,250		
10% of appraised per unit value	\$8,625		
Total buyout		\$103,500	\$51,750
buyout cost shifted to each market rate unit		\$1,294	\$699
monthly rent increase per market rate unit		\$20	\$10



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February 7, 2005 UPDATE

TO: Members of the Plan Commission
FROM: Delora Newton, Executive Director
RE: Ordinance #36873 – proposed revisions to inclusionary zoning ordinance

In addition to the potential changes you discussed at your October 18 meeting, I am suggesting some additional changes, which appear below.

PAGE	SECTION	PROPOSED CHANGE	EXPLANATION
2	(25)(b) Inclusionary Dwelling Unit	The AMI for other residential occupancy in the last sentence should be changed to at or below 80% AMI instead of 60%	The category of 'other residential occupancy' was added mainly to address life-leases. Even though title to the unit is not transferred to the occupant, this type of housing is much closer to owner-occupied housing than rental housing. Owners receive back 90% of the purchase price from the life-lease provider at time of sale. The owner occupant pays a share of the building's PMS (payment in lieu of property taxes paid by a non-profit) and is assessed a monthly fee for trash pickup, maintenance, snow removal, etc. just like those living in condominiums. But the biggest factor in recommending 80% AMI is that the senior citizens who chose this type of facility have almost always sold a home prior to purchase of a life-lease.
2	(25)(c)1	Unstrike the phrases 'except development receiving' and add the phrase 'or qualified housing revenue bonds'	This section was never supposed to be removed. It is a drafting error made when clarifying the Section 42 exemption.
2	(25)(c)(4)	Strike the words 'or other residential occupancy dwelling units' from the last line on the page	See above explanation

PAGE	SECTION	PROPOSED CHANGE	EXPLANATION
4	(25)(c)8.h.	The waiver buyout for rental property should be changed from '25% of the cost to produce the unit' to '10% of the appraised value of the average unit times the number of units waived.'	This is a more realistic buyout provision and easier to calculate. The cost to produce the unit may not accurately reflect the true costs of providing affordable housing. Some costs such as parking, elevators, landscaping, common areas, fire alarm/fire suppression systems, etc. benefit the entire building, not just affordable units. In addition, the buyout fee cannot be excessive as there is no way for the builder to recoup this expense except to split it between all market rate units. This only serves to increase the cost of housing and may then price potential renters out of those units.
4	(25)(c)9.b.	At the end of this section add the following sentence for clarification purposes: "This provision includes other residential occupancy arrangements administered by a non-profit."	Life-leases provided by a non-profit should also be excluded from the City's exclusive right to purchase. Adding this language makes this point clear.
4	(25)(d)1.	The word 'shall' should be kept in the first sentence instead of the word 'may'	This is crucial to the workings of the ordinance. During the initial discussions on the ordinance, the Mayor's office stressed that the city intended to provide at least one incentive to every IZ development. Without at least one incentive, the City may subject itself to a lawsuit based on the City 'taking' away the ability of a developer to earn a profit on sale or rent of an IZ unit without providing anything of value in return to offset that loss.
6	(25)(d)4.f.	The correct dollar amount in this section should be \$5,000	See the attached incentives matrix which shows the agreement adopted in Feb. 2004. The matrix offers \$10,000 per unit up to a maximum of half the units. It is easier for everyone to understand if the figure is amended to \$5,000 per IZ unit.
6	(25)(d)4.g.	The correct dollar amount in this section should be \$2,500	See the attached incentives matrix which shows the agreement adopted in Feb. 2004. The matrix offers \$5,000 per unit up to a maximum of half the units. It is easier for everyone to understand if the figure is amended to \$2,500 per IZ unit.
9	(25)(g)	The phrase 'or qualified housing revenue bonds' should be added to the end of the second sentence.	The agreement reached with the Mayor to exempt Section 42 units from the IZ ordinance also included an exemption for affordable units funded with tax exempt bonds.

CHANGE NUMBER ONE

- (c) Provision of Inclusionary Dwelling Units.
1. Rental. All development as defined in Sec. 28.03(2), with ten (10) or more rental dwelling units on one or more contiguous parcels that requires a zoning map amendment, subdivision or land division, ~~except development receiving Section 42 low income housing tax credits or tax exempt bonds,~~ shall provide a number of inclusionary dwelling units equal to no less than fifteen percent (15%) of the total dwelling units in the development. Notwithstanding the above:
 - a. Development that contains only rental dwelling units receiving Section 42 low income housing tax credit shall not be subject to this ordinance.
 - b. Development with at least fifteen percent (15%) rental dwelling units receiving Section 42 low income housing tax credit or ~~qualified housing revenue bonds~~ and in which those dwelling units are dispersed throughout the development per Subdivision (g)6 of this ordinance, shall not be subject to this ordinance.
 2. c. Development that contains fewer than fifteen percent (15%) rental dwelling units receiving Section 42 low income housing tax credit or ~~qualified housing revenue bonds~~ are subject to this ordinance and the number of rental dwelling units receiving low income tax credits or ~~qualified housing revenue bonds~~ that count toward the total number of inclusionary dwelling units required shall depend on the dispersion of the inclusionary dwelling units in the development per Subdivision (g)6.

CHANGE NUMBER TWO

- (c)9. b. If the initial sale of an owner-occupied inclusionary dwelling unit is to the CDA or a non-profit entity that has a buy-back provision as part of its specific program operation, the unit shall not be subject to an exclusive option to purchase by the City until such time as the CDA or non-profit entity determines not to buy back the unit. At that time, the purchase price to exercise the option to purchase and the procedure for exercising or declining to exercise the option shall be as in a. above. This provision includes other residential occupancy arrangements administered by a non-profit.

CHANGE NUMBER THREE

- (d)4. Each of the incentives below has a value of 1 point. The applicant may shall select an incentive, or combination of incentives, according to the points received for the development and the guidelines in Subparagraphs a. through j.k. below.

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Change may back to shall and add the words "subject to availability" after the word "shall".

CHANGE NUMBER FOUR

- f. A cash subsidy from the Affordable Housing Trust Inclusionary Zoning Special Revenue Fund disbursed pursuant to Sec. 4.22, or another fund designated by the Common Council, disbursed pursuant to the rules of that fund of up to twenty-five hundred dollars (\$2,500) ~~ten thousand dollars (\$10,000)~~ per inclusionary dwelling unit for up to 50% of inclusionary dwelling units that are provided for families with an AMI denoted by an asterisk in 3. above or from Tax Incremental District funds, disbursed pursuant to adopted policies, for units provided to families with an AMI denoted by an asterisk in 3. above. No more than two (2) points may be used for a any cash subsidy. The subsidy shall be adjusted annually based on the Consumer Price Index and shall be subject to availability of monies in any of the above funds.

Change \$2500 to \$5000

CHANGE NUMBER FIVE

- g. A cash subsidy from the ~~Affordable Housing Trust~~ Inclusionary Zoning Special Revenue Fund, ~~disbursed pursuant to Sec. 4.22, or another fund designated by the Common Council, disbursed pursuant to the rules of that fund of five thousand dollars (\$5,000) per inclusionary dwelling unit or Tax Incremental District funds, disbursed pursuant to adopted policies, for up to fifty percent (50%) of~~ In either case, the subsidy shall be only for on-site inclusionary dwelling units for developments with forty-nine (49) or fewer detached dwelling units or developments with four (4) or more stories and at least seventy-five percent (75%) of parking is provided underground. No more than two (2) points may be used for a any cash subsidy. The subsidy shall be adjusted annually based to the Consumer Price Index and shall be subject to availability of monies in any of the above funds.

Change \$5000 to \$2500

CHANGE NUMBER SIX

(e)

2. Owner-Occupied Inclusionary Dwelling Units. The initial sale price of an owner-occupied inclusionary dwelling unit ~~or a lot that is designated for an owner-occupied inclusionary dwelling unit~~ shall be calculated based on a monthly payment that includes property taxes, homeowner's insurance, private mortgage insurance, homeowner's or condominium association fees (if applicable), monthly ground rent, and the principal payment and interest on a mortgage based on the available fixed-rate thirty (30) year mortgage. The monthly payment that is used to calculate the initial sale price shall be no more than thirty percent (30%) of the monthly income for the applicable AMI. The applicable interest rate for establishing a sale price shall be the rate, as determined quarterly by the

CHANGE NUMBER SEVEN

5.6.Failure to Rent or Sell During Marketing Period. If an inclusionary dwelling unit is not rented after having been marketed for ninety (90) days, or if there is no accepted offer to purchase after having been marketed for one hundred twenty (120) days, it may be marketed to a family with an AMI that is at or below the next greater ten percent (10%) increment of AMI than that specified in the restriction on the unit. For each additional consecutive ninety (90) or one hundred twenty (120) day period without a rental or sale, the inclusionary dwelling unit may be offered to a family with an AMI that is at or below an additional ten percent (10%) increment of AMI. ~~The owner or lessor shall provide the City with verification of the date on which marketing of a unit commences within ten (10) days of the beginning of the marketing period.~~ Marketing begins on the date the Director of the Department of Planning and Development receives notice that marketing of a unit has begun. The owner or lessor also shall provide the sale or rental price of the inclusionary dwelling unit and shall notify the City when the inclusionary dwelling unit is sold or rented. If the owner or lessor has provided notice of marketing as required in (e)6. and ~~has extended the marketing period two (2) times, has marketed a rental inclusionary dwelling unit at least 240 days,~~ the owner or lessor may rent or sell the inclusionary dwelling unit at market rate. After a one year period, When a new family occupies the rental inclusionary dwelling unit, it shall be marketed to a family with an AMI at the level required for that unit. For purposes of this paragraph, other residential occupancy inclusionary dwelling units shall be treated in the same manner as rental inclusionary dwelling units.

CHANGE NUMBER EIGHT

(g) Standards for Inclusionary Dwelling Units. The following standards shall apply to all inclusionary dwelling units except that par. 7 shall not apply to those units receiving Section 42 low income housing tax credit or qualified housing revenue bonds.

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DISAGREEMENTS REMAIN FOR THE FOLLOWING:

(c)8.

i. Payment to the Inclusionary Zoning Special Revenue Fund for a waiver of other residential occupancy dwelling units shall be an amount equal to ten percent (10%) of the appraised value of the average rental unit multiplied by the number of required, but not provided, inclusionary dwelling units.

AND

(e)3.

Other Residential Occupancy Inclusionary Dwelling Units. The price of another residential occupancy residency inclusionary dwelling unit shall not exceed thirty percent (30%) of the monthly income for the applicable AMI and shall include all occupancy fees, utility costs and, if applicable, any monthly payment for the financing of the cost to enter into an agreement for such unit. The monthly payment shall be calculated in the same manner as a monthly payment under (e)2. above.

WE ARE WORKING ON LANGUAGE FOR THE FOLLOWING TWO ISSUES

add to 25 c 9 b:

If the initial sale of an owner-occupied inclusionary unit is encumbered by a recorded instrument (such as a deed restriction or long-term ground lease) with income eligibility provisions that limit resale to a family at or below 80% of AMI, and with a resale price cap formula wherein the resale price cannot exceed the initial sale price plus 50% of the increase in appraised value of the unit, that unit shall not be subject to the resale provisions of this ordinance, so long as the encumbrance remains in effect.

Add new sentence in 25 H 8:

The provisions in 1 through 7 above shall not apply if the initial sale of an owner-occupied inclusionary dwelling unit is encumbered by a recorded instrument (such as a deed restriction or long-term ground lease) with income eligibility provisions that limit resale to a family at or below 80% of AMI, and with a resale price cap formula wherein the resale price cannot exceed the initial sale price plus 50% of the increase in appraised value of the unit, that unit shall not be subject to the resale provisions of this ordinance, so long as the encumbrance remains in effect.

AND

SUBORDINATION. The provisions of this Ordinance (Subsection (25) of Section 28.04) are subordinate to any deed of trust or mortgage which is granted by the owner and is

secured by the Inclusionary Dwelling Unit in a first priority position (referred to herein as a "First Mortgage"). Any party, and its successors and assigns, receiving title to the Inclusionary Dwelling Unit through a trustee's sale, judicial foreclosure sale, or deed in lieu of foreclosure with respect to such First Mortgage shall receive title free and clear of the provisions of this Ordinance. The notice provisions contained in this Ordinance shall not apply to any holder of the First Mortgage on the Inclusionary Dwelling Unit. Nothing contained herein shall in any way be construed as requiring the delay of any trustee's sale, judicial foreclosure or deed in lieu of foreclosure with respect to the First Mortgage. At no time may the City exercise an option to buy the Inclusionary Dwelling Unit from the holder of the First Mortgage for less than such holder's debt on the Inclusionary Dwelling Unit.

Plus adding the right of first refusal for the City at the foreclosure sale.

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