

**INCLUSIONARY ZONING PROGRAM POLICY: August 17, 2006 For-sale inclusionary units**

**DRAFT POLICIES BASED ON SOME ADOPTED CHANGES IN THE ORDINANCE, and the Court of Appeals August 2006 ruling regarding the rental portion of the ordinance**

**Note: This version divides the previous document into ‘Policies’ to be adopted by the Council, and ‘procedures’ to be followed by staff. We contemplate that staff will revise the ‘procedures’ from time to time based on experience, and Council or Plan Commission will make changes in the ordinance and in the ‘policies’.**

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## **A. Application and Contents of an Inclusionary Dwelling Unit Plan, including marketing of units, and procedures for amendments**

Concurrent with the submittal of any application required by the Inclusionary Zoning Ordinance (MGO 28.04) or any other City ordinance, the applicant for a development covered under MGO 28.04 shall submit to the City an Inclusionary Dwelling Unit Plan in a form acceptable to the Director of the Department of Planning and Development. City staff shall distribute the application to the neighborhood association registered with the City of Madison for the area in which the development is proposed (if any) and the alderperson for said area. Staff may reject an application based on incomplete information.

### **Inclusionary Dwelling Unit Plan**

As part of any application for the approval of an Inclusionary Dwelling Unit Plan, the developer will provide the information outlined in the Ordinance, in addition to any materials that would be submitted as part of the general land use application.

Depending on the type of development approval being requested, the level of detail for each of the items below might vary. For example, when the application submitted involves a preliminary plat and a zoning map amendment, the applicant will likely have insufficient information to fully comply with the submittal requirements related to 1 through 8. In these cases, the requirements of the ordinance will require compliance by recording deed restrictions against the individual lots created through the preliminary platting and final platting process. The deed restrictions shall require compliance with the inclusionary zoning ordinance prior to the issuance of other permits such as conditional use permits and building permits. It is anticipated that staff will recommend this procedure for multi-family lots created through the subdivision platting and zoning process for which detailed building and Inclusionary Dwelling Unit Plans are not yet available.

1. The total number of inclusionary and market-rate dwelling units that will be constructed; by tenure type, by unit size, by bedroom count, location and distribution of dwelling units, projected sales prices, arrangement of buildings and their architectural character, and a construction schedule. . \* (Note: the applicant/developer will need to indicate the target AMI level at the time of application in order to seek a range of appropriate incentives, but the specific sale prices won't be determined until the bedroom size is determined.

The construction schedule should indicate the approximate dates when construction of the project and each of its phases can be expected to begin and be completed, and within each phase the schedule for completion of the inclusionary dwelling units. The pace of the construction of the inclusionary units should be similar to the pace of construction of comparable market rate units by bedroom size.

2. The offset sought from the City for the provision of the inclusionary dwelling units.

3. The applicant/developer may submit a waiver request seeking a reduction in the proposed percentage of inclusionary dwelling units.

4. The marketing plan and steps to be taken by the developer to sell the inclusionary units.

\* Those items marked with an asterisk may not be completed in the early discussion stages of the General Development Plan or Inclusionary Dwelling Unit Plan, but would be completed as part of the Specific Implementation Plan or later phases of the development processes. The Inclusionary Dwelling Unit Plan shall designate the specific lots that are designated as the inclusionary dwelling unit lots. The developer may work with the Community Development Block Grant Office and Planning Unit to relocate the inclusionary zoning lots in subsequent phases. For multifamily lots the units will be determined in the Specific Implementation Plan. Details will be outlined in the subdivision improvement agreement.

### **Amendments to Previously Approved Developments**

If a applicant seeks an amendment to an approved Planned Unit Development General Development Plan at the time the Specific Implementation Plan is submitted, then the Specific Implementation Plan will be subject to the inclusionary zoning requirements, provided that there is an increase in the number of dwelling units proposed or other modifications deemed to be a major amendment by the Director of the Department of Planning and Development. Factors considered in determining if a change is a minor alteration or a major amendment include, an increase in the number of dwelling units, a change in the mix between owner and rental housing, major alterations to the street layout, the size and height of buildings, the size of lots and their location and the provision of public parklands and their locations. However, if these modifications are consistent with the goals of the General Development Plan they shall not be considered major amendment to the General Development Plan.

**“Contiguous” Parcel (Section (25)(c) 1. and 2.)**

The city will use a definition to include common ownership or substantial ownership participation by the same person or entity, of adjacent parcels or parcels even if separated by an alley, easement or street. “Ownership” includes land contract interests as well as fee simple ownership.

**Definition of ‘Unit’ characteristics with regard to the term, ‘similar’ in appearance**

In the Inclusionary Zoning Ordinance, the word “similar” is used to compare the market rate and inclusionary dwelling units in terms of the appearance of inclusionary dwelling units, the proportion of attached and detached units to be provided, the mix of units based on number of bedrooms, the proportion of rental and owner-occupied units, and the dispersion of units throughout the development. The ordinance requires the inclusionary dwelling units to be similar to the market-rate units in this case. For the purpose of this ordinance, the term similar shall mean that the inclusionary dwelling units must be comparable to the market-rate units in all respects under each of these sections of the ordinance. The Inclusionary Dwelling Unit Plan must document how the proposed development will comply with each of these sections of the ordinance.

The interpretation of the term “similar” in reference to “exterior appearance” as required in the physical standards for an inclusionary dwelling unit shall be reviewed with reference to such physical features as exterior materials, roof overhangs, front porches, columns, window and door trim, and lighting features.

The appearance of inclusionary dwelling units shall be similar to the market-rate units. Staff will use the type of building materials provided on the market-rate units and the inclusionary dwelling units to determine whether this requirement has been met. All architectural details will be included in this review, including entrance doors, lighting, window trim, siding, roof materials, fascia and soffits.

**Staff Review and Recommendations to the Plan Commission**

Following the submittal of a complete and formal application under this ordinance, the Planning Unit will circulate the application to various City reviewing agencies. These City agencies will provide a recommendation to the City’s Plan Commission and the Common Council on the application, the requested offsets, and compliance with the requirements of the ordinance.

If City agencies recommend against the approval of any offsets sought by the developer under the ordinance, the agency shall provide, in writing, the reason for their recommendation. The applicant will have a one-week notice prior to the Plan Commission meeting where their application will be considered if the staff will not support the request for an offset. The Applicant may then submit a request for waiver or reduction of the 15% target inclusionary dwelling units based upon staff recommendation for a denial of particular proposed offsets. The final decision on the granting of any offset rests with the City’s Plan Commission, or the appropriate policy body that oversees that particular offset (such as the Parks Commission) and the Common Council. If staff recommends an incentive but the Plan Commission or Common Council denies the incentive, the Plan Commission or Common Council shall consider a

reduction in the number of required inclusionary dwelling units proportional to the value of the denied incentive.

## **B. Calculation of Price Levels**

### **OWNER UNITS: Initial Sales Price**

The City will calculate the maximum household share of the initial sales price of the inclusionary dwelling unit based upon the average family's ability to pay 30% of their family income for principal, interest, taxes, insurance, and if applicable, homeowner or condo fees. The City will base this calculation on the following sources:

- a) Applicable family income by family size: HUD area median income figures
- b) Principal and interest: average 30-year mortgage low rate published by Freddie Mac or around March 1, June 1, September 1 or December 1 or soon thereafter; (suggestion: eliminate two of these change periods.)
- c) Calculation of taxes based upon the average comparable sales, as determined by the City assessor using the mill rate set annually as of January 1 of each calendar year;
- d) Calculation of insurance for a similar sized property, as determined by the City risk manager x/\$1000.
- e) 0% down payment and the correlating private mortgage insurance

For the purposes of the determining the initial qualifying sales price of a home, the definition of dwelling unit in Chapter 28 includes a full kitchen facility, however, the cost of the unit shall include a refrigerator and stove, but need not include the cost of a parking stall if the price of other units in the project do not include the cost of a parking stall. Nonetheless, an eligible household may purchase an inclusionary dwelling unit at the qualifying price, and also include in the mortgage financing any additional amenities beyond the level of kitchen furnishings indicated in this first sentence, such as a parking stall, dishwasher, or higher grade of interior finish. These additional amenities should be provided at the buyer's choice, and not required as part of the purchase of an inclusionary dwelling unit.

For purposes of defining the number of bedrooms in a home, the inclusionary zoning plan shall use the definition used by the Building Inspection Unit. The Building Unit defines a 'bedroom' by minimum room standards as required by the State of Wisconsin Building Code whereby a 'den' without windows shall not be considered a 'bedroom'. The developer should use the gross square footage of the inclusionary units (minus the garage, attic, and unfinished basement areas) to calculate the minimum dwelling unit size for compliance with the ordinance.\*

### **Condo and Homeowner Association Fees**

Condo fees will only count for the portion of the condo fees that are for housing costs as defined in the ordinance, and exclude such items as maintenance fees or utilities or supportive services for the resident. Homeowner association fees for detached housing will be counted as housing costs

The following section will need to be reviewed by the City Attorney's Office:

### **ACQUISITION PRICE, OPERATING COSTS, AND RELATED PROCEDURES FOR INCLUSIONARY UNITS IN 'OTHER RESIDENTIAL OCCUPANCY' PROJECTS**

'Other Residential Occupancy' are those residential arrangements other than rental or owner-occupied, including but not limited to, continuing care contracts, agreements known as 'life leases', 'continuum of

care agreements', or any other agreement whereby the resident of a dwelling unit makes some payment other than or in addition to a periodic occupancy payment, but does not obtain fee title to a residential unit.

The price of another residential occupancy inclusionary dwelling unit shall not exceed thirty (30%) of the monthly income for the applicable Area Median Income (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 for an owner-occupied inclusionary dwelling unit.

### **C. Waiver Criteria and Request for Waiver**

A developer will be expected to provide 15% of the dwelling units as onsite inclusionary dwelling units (or off-site inclusionary units or payments in lieu) for all developments where the offsets offered by the City and chosen by the developer would cover at least 95% of the estimated revenue gap for the project.

A developer may request a reduction in the number of on-site units through the formal waiver process outlined in the ordinance, and outlined in this section. The City may approve the reduction of the 15% requirement where providing the inclusionary dwelling units would render providing the inclusionary dwelling units financially infeasible.

As part of the general land use application process and the filing of the IDUP, a developer may request a waiver to the expected 15% goal.

If the developer requests a waiver, the developer should provide evidence regarding why this request should be granted. This evidence will be presented to Planning Unit staff for inclusion in the Plan Commission Packets and will be part of the Inclusionary Dwelling Unit Plan. The City shall restrict or deny access to any record, as that term is defined under sec. 19.32(2) of the Wis. Stats., or portion of a record submitted to the City under MGO 28.04 if the applicant identifies the information as being confidential, and

- (a) The record contains information that is competitively sensitive to the person submitting the record requested and
- (b) The City determines that restricting or denying access to the record or portion of a record outweighs the public interest in full access to the record or portion of the record involved.

Staff will review the evidence provided and make a recommendation to the Plan Commission regarding the granting of the waiver. Staff will select the incentive that the developer will use to base the claim of financial infeasibility and staff will select which one of the four waiver options (off-site, assignment to third party, cash in lieu, or combination) the developer will seek. If staff chooses the combination option, then staff will establish the target percentage of each option that the developer will use in proving financial infeasibility.

The Plan Commission may determine that all or part of the inclusionary dwelling unit component of the project is infeasible on-site and that a project qualifies for the waiver of the on-site requirements if:

- a) The projected resident condo fee on the inclusionary dwelling unit, in addition to the regular payments for mortgage, taxes, and insurance would substantially exceed the inclusionary dwelling unit affordability standards of 30% of income due to high condominium fees; or,
- b) The developer can demonstrate that the site development costs of the project (excluding land acquisition costs) involve extraordinary site development costs such as contaminated soil or water drainage issues; or,
- c) The estimated cost of an on-site inclusionary dwelling unit exceeds the value of the incentives and offsets provided by the City, including such items as added density, cash subsidy, park fee and park development credit or,

- d) The developer can demonstrate that the acquisition and site development costs associated with sites available on the market or available to the developer cost more than the on-site project and exceed the value of the offsets offered by the City: or,
- e)

The Plan Commission will make one determination of waiver eligibility based on the developer evidence, staff recommendations and public testimony taken at the Plan Commission meeting. Based upon clear and convincing evidence concerning “financial feasibility”, the Plan Commission may reduce the number of inclusionary dwelling units required for the development after the developer proves they cannot provide the required number of inclusionary dwelling units off-site, by assignment of the obligation, by payment of cash in lieu of providing the units or some combination thereof. The Plan Commission may reduce the number of inclusionary dwelling units that must be provided to the point where the project becomes financially feasible.

#### **Off-site Provision of Inclusionary Dwelling Units**

If the obligation to provide inclusionary dwelling units are off-site, the units shall be provided within one year of the date one which they would have otherwise been provided in accordance with the Inclusionary Dwelling Unit Plan and consistent with approved phasing. The schedule for providing inclusionary dwelling units under this section shall be defined in the Inclusionary Dwelling Unit Plan. Developers providing units under this section shall be given one year to build the units from the date of the issuance of the first occupancy permit for market-rate units within the relevant phase of the development.

An off-site inclusionary unit may include comparable units to those on-site, including the provision of new or renovated units if the units meet the appropriate City building code and energy star standards at the time the developer places them on the market.

If the Plan Commission or Common Council denies a request for an offset as part of the Inclusionary Dwelling Unit Plan, for which the developer is eligible under City ordinances and for which the City staff has recommended adoption, the Plan Commission or Common Council shall automatically grant a reduction in the number of the inclusionary dwelling units to a point that makes the provision of inclusionary dwelling units feasible.

The developer may appeal the Plan Commission’s determination to the Council. The Common Council will consider the evidence that was put before the Plan Commission and decide whether to confirm the Plan Commission determination or not. If the Common Council does not confirm the Plan Commission determination the Council can make their own determination or refer the decision back to the Plan Commission for reconsideration.

### **D. Calculation of income to determine “Eligible Families”, Definition of Income and Student Status**

Each year around April 1, the Department of Planning and Development will issue the area median income figures to be used in the calculation of sales price levels for the inclusionary dwelling units. These guidelines will set forth the income levels by family size, the comparable dwelling unit size to be associated with each family size used to determine the sales price as defined in MGO 28.04(25)(e)2., and the method for calculation and documentation of income.

#### **Area Median Income**

The City will continue to use Housing and Urban Development (HUD)-provided Area Median Incomes (AMI) that serve as the figures for the standard metropolitan area until such time that the City may obtain reliable data for income levels for Dane County or the City of Madison. .

The method for calculation of income eligibility will involve the use of gross income from the previous tax year or the projected income for the current tax year based upon current earnings. Documentation shall be collected that includes a copy of the filed income tax forms from the previous year, or three current wage receipts.

The City will include the household income of the parents, guardian or trust for purposes of determining income eligibility of any person who is dependent for more than half of their income on their parents, guardian or trust.

The City will not include an asset test in the calculation of eligibility of a family to purchase an inclusionary dwelling unit.

### **E. Non-profit Agency ‘Designation’ Criteria as an Eligible Family**

The City will recognize a non-profit agency as an ‘income eligible family’ upon official review of the non-profit agency’s application to the CDBG Office for ‘designation’, and the determination that it meets the following conditions:

- a) Registered with the State of Wisconsin as a not-for-profit organization with affordable housing as a stated objective;
- b) Applied for, and received Federal tax-exempt status;
- c) Demonstrates two years of continuous operation in housing development, property management or housing counseling;
- d) Commits to providing a full accounting of their finances either through an annual audit or a public financial statement;
- e) Demonstrates willingness to enter into a long-term agreement with the City to provide affordable housing under the terms of the ordinance; and.
- f) States its intention to either rent or purchase an inclusionary dwelling unit for the purpose of renting or selling the unit itself to an income-eligible family.

## **Section F City Policies Regarding Option to Purchase for-sale Inclusionary Dwelling Units**

### **City Purchase of Inclusionary Dwelling Units**

The City intends to purchase some inclusionary dwelling unit lots or units in order to facilitate transfer to an income eligible family. The City may purchase these select units during the initial development phase, or after the initial sale when the inclusionary dwelling unit owner offers the unit for sale to the City. The City does not intend to itself own and operate the Inclusionary dwelling units on a long-term basis.

The City, working with the City of Madison Community Development Authority, will produce a plan that establishes a goal for the number, type and tenure of inclusionary units targeted to be purchased by the City of Madison Community Development Authority and other non-profit agencies. can purchase in a year. The plan shall include the criteria for determining where the units will be purchased, and including how these would contribute to the goals of the City of Madison Fair Share and Diversity Plan.

The CDA will abide by the covenant and restrictions of that associated neighborhood. A rent-to-own program shall be considered homeownership, not rental for purposes of meeting owner-occupied restrictions in the covenants and restrictions. For City of Madison Community Development Authority owned properties the Community Development Authority shall pay a payment in lieu of taxes (PILOT) to the City of Madison. . .

**Purchase during the review of the Inclusionary Dwelling Unit Plan**

The City may arrange with the developer, as part of the Inclusionary Dwelling Unit Plan review, to purchase a set number of units or parcels for residential use, which will be stipulated in the approved Inclusionary Dwelling Unit Plan. Lots would be purchased for transfer to the CDA or non-profit agencies. The City will exercise its initial option to purchase lots or newly built inclusionary dwelling units during the development phase.

**Purchase from inclusionary dwelling unit owner after initial sale of inclusionary unit, under the City option to purchase**

The City shall exercise its option to purchase an inclusionary dwelling unit offered for resale unless one of the following occurs:

- a) The value of the city's share of equity in the inclusionary dwelling unit is less than 95% of the funds needed to keep the unit affordable to the subsequent buyer at the same AMI% as the current owner.
- b) The value of the City's share of equity in the inclusionary dwelling unit is at least 95% of the funds needed to keep the unit affordable to the subsequent buyer at the same AMI% as the current owner, but existing funding sources are insufficient to cover the shortfall amount needed.
- c) The home is nearing the end of its useful life or the physical condition of the unit makes more sense to capture the City's equity share before the value of the home stagnates, keeping the home affordable through market forces
- d) The value of the property has increased disproportionately to the value of the surrounding properties and the value of the equity share could be better used to create additional housing units.

The Council will authorize City staff to exercise the option to purchase through the City of Madison Community Development Authority or a qualifying non-profit agency. If staff determine that the City (or its assignees) should not purchase the property offered by sale, then Department of Planning and Development will report their determination to the Common Council.

**Sales Price for Resales of Owner-occupied or other residential occupancy Inclusionary Dwelling Units under City Option to Buy**

For purchase of owner-occupied or other residential occupancy inclusionary dwelling units the City will use a current appraised value of the property as determined by a professional qualified appraiser hired by the City as the basis for the City purchase price of the owner unit.

Subsequent sales prices where the City (or its assignees) exercises the City's option to purchase the dwelling unit(s) will be based upon a current appraised value

The seller of an inclusionary dwelling unit, where the City (and its assignees) has refused to exercise its option to purchase, must sell the unit/property at no less than the assessed value to a bona fide disinterested party, unless the seller receives a written determination from the Director of the Department of Planning and Development that the inclusionary dwelling unit could be sold at less than current City assessed value. These circumstances will be narrowly confined to cases of hardship for the seller, such as short-notice job transfers outside of Dane County, a sudden drop in value not recognized in the official Assessor's figures, or unanticipated events outside of the control of the seller (such as rising medical bills).



**Section G: City Administration of the Inclusionary Dwelling Program****Monitoring**

The City will review 5% of the rental inclusionary dwelling units on an annual basis. Checking the units will include review of property management's procedure to document verification of family incomes and conformance with the Inclusionary Dwelling Unit Plan. Acceptable documentation by the property manager will be documentation that is similar to information required under the HOME program. The City will provide checklists and best practices to property managers to assist in complying with this program.

For owner-occupied units, the City will audit 5% of the owner inclusionary dwelling units on an annual basis for determination that the household qualifying at the time of the last sale is indeed the occupant of the premises. Additionally, when monitoring the sales price of the homes, the base price of the home must meet the targeted sales price as determined by the appropriate AMI and the costs of appliances, landscaping and optional upgrades that increase the mortgage amount shall not be considered.

**Annual Report**

The Department of Planning and Development will prepare an annual report six months after the end of the calendar year for review by the Common Council and related city policy bodies, such as the Board of Estimates, the Plan Commission, the Housing Committee, the CDBG Commission, the Parks Commission, and the Community Development Authority. The report will include a comprehensive evaluation of all aspects for the Inclusionary Zoning ordinance and process.