



REALTORS® Association of South Central Wisconsin, Inc.
South Central Wisconsin MLS Corporation

The Voice for Real Estate™ in South Central Wisconsin Since 1914

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MEMO:

To: Members of the Madison Common Council

Members of the Madison Plan Commission

From: Phil Salkin, Government Affairs Director

REALTORS® Association of South Central Wisconsin

Date: 7/10/06

Dear Alders:

In advance of the July 11th meeting on Inclusionary Zoning (IZ), we would like to provide our position on the issue. We have been offering comments and recommendations since the discussions began on IZ and funded a study by a respected U.W. professor that was shared with the City. We sincerely appreciate those alders who have listen to our concerns and spent so much time on IZ. We can only comment on the amendments provided thus far. We understand that the Plan Commission will not make its recommendations until the evening of Monday, July 10th. The RASCW believes the Council should repeal the existing IZ ordinance and focus on programs that will have a much better chance of providing affordable housing. If the Council believes that some form of IZ should be an integral part of an overall approach to housing, we recommend support for the proposed amended ordinance advanced by Alder Skidmore.

The record of the existing IZ program is clear and does not need to be repeated yet again. It is important to note that the best chance IZ had for success has gone by. The low interest rates we enjoyed in the past encouraged more people to get into the housing market. At the same time, it was thought that the higher prices caused by a sellers' market might encourage some people to consider IZ homes. It did not. Today, rising interest rates will take some people out of the market for IZ homes and the buyers' market will continue to offer everyone more choices at more reasonable prices. We have about 700 homes in Madison at or below \$185,000. If you consider the rest of Dane County (and people working in Madison obviously are considering the rest of Dane County), that number doubles.

IZ is also not just competing with the market. It is competing with the 100+ (according to WHEDA) first mortgage programs and dozens of downpayment assistance and rehab programs available. Few of these require equity sharing and some loans are forgivable.

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A few of our specific comments include:

- We understand that there will be a proposal to prevent units from leaving the IZ program for lack of sale. This will be a major disincentive for new housing in Madison. As it puts all of the risk of this program on the developer/builder, it will drive up the cost of the 85% of the market units. Please consider that there has never been a needs study for IZ or a marketing study of its acceptability to the buyer. All we have is its 29 month history of failure. Why is there an assumption that suddenly families will buy these units? If IZ is to continue, we recommend the marketing provisions of the Skidmore ordinance.
- The amended ordinance still requires IZ units for developments over 10 units in size and the allocation of 15% of the housing to the program. IZ has the greatest impact on small developers and builders who cannot reduce costs using the economies of scale available to larger businesses. Moving the base figure to 25 units for inclusion in the program will encourage smaller businesses to continue providing housing in Madison. Reducing the required IZ housing to 10% will make it easier to reduce the fiscal impact of the program. Both figures could be adjusted when and if there are enough IZ sales to suggest a direction.
- A key position for most of the housing and business associations is that IZ be revenue neutral. This is important in continuing to encourage housing construction in Madison and preventing cost-shifting. Despite numerous attempts, notably the effort by DMI, this is not included in the ordinance. Incentives are also not insured. Considering that the City has the ultimate control over projects by granting zoning, approval of development plans, issuance of building and occupancy permits, it should be willing to accept, at least for a while, the good faith efforts of developers and builders to provide good data on the fiscal impact of IZ and the value of offered incentives.
- The amended ordinance continues to provide the City with an option to buy for a 90 day period. This is a major disincentive for buyers. The amendments only leaven this by allowing the Department of Planning and Development to exercise its option in 30 days, if, the Common Council has budgeted funds to the Inclusionary Zoning Special Reserve Fund.
- The amended ordinance continues to apply to rental properties. We have been persuaded that IZ is not contributing to the health of the rental industry, important for lower income families. It is a concern that no new units have been built in almost 2.5 years under IZ.
- The amended ordinance continues allow the CDA to compete with families for the few IZ units that have or will be produced.

MADISON COMMON COUNCIL
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We would like to acknowledge that the hard work of alders, the housing associations and individuals in the field have produced several important improvements. These include an improvement to the equity plan developed by Alder Sanborn. It still calls for the City to receive a portion of the increase in equity from the buyer for doing little more than requiring developers to provide the units through its control of zoning. In the event that the City should adopt an IZ ordinance that is revenue-neutral, the equity recapture would appear to be more justified. We also acknowledge the attempts to lessen the impact on housing costs by allowing some IZ units to be accommodated in multi-family buildings and units in condos to be “stacked.”

On balance the few improvements to the ordinance do not appear sufficient to allow IZ to worked as hoped and promised. We encourage alders to repeal this ordinance and replace it with meaningful programs that have worked in many other communities. As noted, if alders believe that some form of IZ has a place in Madison, we strongly recommend the version advanced by Alder Skidmore. As government affairs director for the REALTORS®, I receive a great deal of information on housing programs in other communities. There are many success stories of mayors, alders, REALTORS®, developers and others working together for a common goal. There is no reason that this should not be the case in Madison.

Please do not hesitate to inquire for additional information. Thank you.

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received at PC mtg
7/10/06 Add to
legistar
AGENDA # _____

CITY OF MADISON, WISCONSIN

AN ORDINANCE _____

Creating Section _____ of the Madison General Ordinances relating to the creation of a Comprehensive Affordable Housing Initiative

Drafted by: Ald.

Date: July __, 2006

Fiscal Note: Appropriate general obligation borrowing.

SPONSORS:

PRESENTED _____

REFERRED _____

REREFERRED _____

REPORTED BACK _____

ADOPTED _____ POF _____

RULES SUSPENDED _____

PUBLIC HEARING _____

APPROVAL OF FISCAL NOTE IS NEEDED BY THE COMPTROLLER'S OFFICE

Approved By

Comptroller's Office

RESOLUTION NUMBER _____

ID NUMBER _____

The Common Council of the City of Madison do hereby ordain as follows:

- 1. Section _____ of the Madison General Ordinances hereby created to read as follows:

1.1.1 **PURPOSE AND INTENT**

This section of the Madison Ordinance is intended to provide that Residential Projects in Madison contain a defined percentage of housing affordable to low and moderate income households and to provide for a program of incentives and subsidies to assist this effort.

1.1.2. **Definitions**

Affordable Unit. A unit sold at an Affordable Housing Price

Affordable Housing Price. A sales price at which Low or Moderate Income Households can qualify for the purchase of units, based on designated income standards.

Density Bonus. An increase over density as determined by the Director of the Department.

Department. The City of Madison Department of Planning and Development.

Developer. Any person, firm, partnership, association, joint venture, corporation or any other entity or combination of entities that seeks approval for all or part of a Development Project in which zoning changes are required.

Development Agreement. An agreement entered into between the City of Madison and a Developer.

Development Project. Any real estate development project that includes Market Rate units and is required to provide units pursuant to the provisions of this section. Projects at one location undertaken in phases, stages or otherwise developed in distinct sections shall be considered as a single Development Project for purposes of this section.

Dwelling Unit. A residential unit within a Development Project.

Household, Low Income. A household whose annual income does not exceed 60% of the area medium income, adjusted for family size as published and annually updated by HUD.

Household, Moderate Income. A household whose annual income does not exceed 80% of the area medium income, adjusted for family size as published and annually updated by HUD.

Housing Expenses. Mortgage, principal, interest, taxes and insurance.

Inclusionary Housing Agreement. The agreement between a Developer and the City setting forth the manner in which the Inclusionary Housing Component will be met in the Development Project.

Inclusionary Housing Plan. A plan required at the time of concept review for a land disturbance permit or building permit that provides the details of proposed Inclusionary units.

Inclusionary Housing Component. The provision of the Inclusionary Units in a Development Project.

Inclusionary Unit. Dwelling Unit that is sold at an Affordable Housing Price and is subject to the provisions of this Ordinance.

Inclusionary Housing Development. A Residential Development with 25 units or more in which 10% of the total units must be Inclusionary units.

Inclusionary Incentives. The fee waivers or reductions, planning and building standards waivers or reductions, regulatory incentives or concessions and non-local funding provided by City, County, State and Federal sources to a Development Project to assist in the provision of the Inclusionary Housing Component.

Income, Area Medium. The annual median family income of the smallest geographic area of the state including the City of Madison as annually estimated by HUD pursuant to Section 8 of the Housing Act of 1937.

Local Public Funding. Loans and grants from the Housing Trust Fund, Federal Home Investment Partnership Program (HOME), TIF and other programs originating from the City of Madison even if the funds are derived from other units of government.

Madison Zoning Ordinances. City Zoning Ordinances as they may be amended.

Market Rate Unit. A Dwelling Unit whose selling price is not restricted to an Affordable Housing Price.

Off-Site Unit. An Inclusionary Unit built separately or at a different location than the main site of a Development Project.

On-Site Unit. An Inclusionary Unit that will be built as apart of the main site of a Development Project.

One Location. All adjacent land owned or controlled by the same Owner or a Related Owner, the property lines of which are contiguous at any point, or the property lines of which are separated only by a public or private street, road or other public or private right-of-way.

Owner. A person, persons, partnership, joint venture, association, corporation, or public or private Entity having sufficient proprietary interest in real property to commerce, maintain and operate a Development Project.

Percent. A one hundredth part. Any portion of a Percent less than one-half percent shall be disregarded and any portion of a Percent more than one-half percent shall be rounded up to the next whole number.

Project, For Sale. A Residential Project, or portion thereof, which is intended to be sold to the owner-occupants upon completion.

Project Level Approval. Includes a concept plan, permits or other administrative or adjudicatory approval or determination in connection with a Development Project.

Residential Project. The entirety of Market Rate residential development in a Development Project Subject to the requirement to provide an Inclusionary Housing Component as specified in this Section.

1.1.3. STANDARD INCLUSIONARY HOUSING COMPONENT

- A. Number of Inclusionary Units. For all Residential Projects of 25 units or more, the Inclusionary Housing Component shall consist of Inclusionary Units developed for, offered to and sold as follows: at least 5% of the units must be restricted for sale to Low Income Households and 5% of the units must be restricted for sale to Moderate Income Households. Additional Inclusionary Incentives may be offered for additional Inclusionary Units.
- B. Location of Inclusionary Units. Inclusionary Units shall be built, except as otherwise designated, on the main site of a Development Project and should be dispersed in a Development Project.
1. Inclusionary Units in a detached residential housing development may be placed in condominium units not to exceed 6 in number.
 2. A Developer may designate 20% of a development as “Inclusionary-free.”
 3. In any building three-stories or more in size, the Inclusionary Units may be “stacked” or grouped in a manner to facilitate cost savings.
- C. Timing of Development. The Inclusionary Housing Plan and Inclusionary Housing Agreement may include a phasing plan that provides for the timely development of Inclusionary Units as a Development Project is built out. The phasing plan shall provide for the marketing of the Inclusionary Units at the same time as for the Market Rate Units. The Developer may create up to 25% of the Market Rate Units first to encourage sales, encourage economies of scale and infrastructure needs. The Developer may apply to the Department for permission to create additional Market Rate Units for cause.
- D. Design. Inclusionary Units shall be comparable in infrastructure, construction quality and exterior design to Market Rate Units. Inclusionary Units may be smaller in aggregate size and different interior finishes and features than Market Rate Units as long as the interior features are durable of good quality and consistent with local/state standards for construction. Inclusionary Units must be a minimum of 1,400 sq. feet for moderate-income households, and 1000 sq. feet for low-income households. The number of bedrooms in the Inclusionary Units should be comparable to those in the Market Rate Units but need not exceed three. The ratio of bathrooms per bedrooms should be the same as for the Market Rate Units. Design standards shall be consistent with the proposed development.
- E. Unit Size. For Development Projects over 100 units, diverse family sizes shall be served by including a range of one, two and three bedroom units.
- F. Exterior Appearance. Inclusionary Units shall be visually compatible with the Market Rate Units. While interior finishes may vary, exterior finishes shall be of the same general type and quality, variation will be allowed to the extent that different architectural styles are employed.
- G. Development Standards. Except as provided in the Inclusionary Housing Agreement pursuant to this section shall comply with all applicable Development Standards.

1.1.4. INCENTIVES, ASSISTANCE AND SUBSIDIES

The Developer of a Development Project subject to this ordinance may request that the City of Madison provide Inclusionary Incentives as set forth in this Section. The amount of the Inclusionary Incentives shall be equal to the gap between the net revenue from Inclusionary Units and the net revenue from Market Rate Units. The Developer may voluntarily waive the right to Inclusionary Incentives, or request more Inclusionary Incentives for providing additional Inclusionary Units or units at a lower AMI. The goal is to apply Inclusionary Incentives to qualifying projects in a manner that fully offsets the lost revenue relating to providing the Inclusionary Housing Component.

Fee Waivers or Deferrals. Upon application, the City shall make available to a Residential Developer a list of waiver, reduction or deferral of development fees, impact fees, administrative and financing fees for Inclusionary Units.

Modification of Development Standards. Upon application, the City may modify development standards, including but not limited to road widths, curb and gutter, parking and housing types. The value of such modifications will be determined by the methods outlined in Section 1.1.5

Streamlining and Priority Processing. The City shall expedite development Permits for Residential Projects that include an Inclusionary Component. This shall include simultaneous review by committees and clearly limited review times to allow zoning permits to be provided within one hundred and eighty (180) days of application.

Density Bonus – The City shall make available to the Residential Project a density bonus of up forty (40) percent.

Local Public Funding. The Developer may apply to the Director of the Department for funding Local Public Funding of up to \$5000 per Inclusionary Unit for all units sold at 80% AMI and \$10,000 per Inclusionary Unit for all units sold at 60% AMI.

A Developer providing an Inclusionary Component to a Development Project, shall provide the City with a financial statement to demonstrate the gap between the total net revenue from the Inclusionary Units and Market Rate Units that would be supplied if there was no Inclusionary Component (the “Gap”) and a list of requested Inclusionary Incentives and the value of each requested Inclusionary Incentive for the Development Project.

The City shall evaluate the financial statement and the Inclusionary Incentives list and;

- 1) agree to offer the requested Inclusionary Incentives at the requested level;
- 2) offer a different package of Inclusionary Incentives for the Developer’s approval; or reduce the Inclusionary Component so that the Gap is fully offset by the Inclusionary Incentives.

The City may offer additional Inclusionary Incentives in exchange for additional Inclusionary Units. Additional incentives may also be offered to the Developer and/or Buyer to encourage the construction and sale of Inclusionary units in areas offering few market rate alternatives.

1.1.5 Construction of the Inclusionary Housing Component to Avoid Over Concentration

- A. Multi-family buildings may contain any proportion of Inclusionary Units, but exclusively multi-family Inclusionary Units may not be located adjacent to another.

1.1.6 Exclusions

This ordinance does not apply to:

- A. Any Development Project in which a change of zoning is not required
- B. A Development Project that has 25 or less Dwelling Units
- C. The Development Project already includes an equal or greater number of Dwelling Units at or below the Affordable Housing Price.

1.1.8 Right of First Refusal

~~At time of sale of an Inclusionary unit, the owner shall notify the City of pending sale. The City shall have thirty (30 days) to evaluate the building and indicate whether it will be purchased for resale as an Inclusionary unit. If the City does not provide a qualified offer in thirty (30 days), the owner shall market the unit to a qualified buyer for sixty (60) days. If the seller has owned the building for more than 15 years, he/she may sell the unit as Market Rate after the City's right of first refusal has lapsed.~~

1.1.7 SALE AND RESALE OF RESIDENTIAL UNITS

- A. Initial Sale. The purchaser of an Inclusionary Unit will be required to be pre-qualified at the required income levels. There is no asset test. A purchaser may request to be pre-qualified by the Department. The Department shall maintain a list of all qualified families. With their permission, this list will be distributed to all Developers who have Inclusionary Units for sale.
- B. Initial Cost, The maximum cost for units created under this ordinance is established on the basis of AMI levels and that no Low Income Household or Moderate Income Household shall spend more than 33% of monthly income for Housing Expenses.
- ~~B. Resale to an Income Eligible Family. For the first 15 years of ownership, if the City does not purchase an Inclusionary unit within 30 days of notification of sale, the Owner must, for sixty days (60) market the unit to an income-eligible family at the Inclusionary price. The City shall indemnify the buyer for the difference between the Inclusionary price and the assessed value minus 15% of the market equity. After the ninety (90 days), the owner may sell the unit at Market Rate, returning 15% of the increase in market equity to the City. After fifteen (15) years, the Owner of an Inclusionary unit may sell the unit at the Market Rate with the City receiving 10% of the increase in market equity.~~

~~C.~~

- B. **Resale Price.** Resale of an Inclusionary Unit shall be at the unit's assessed value at the time of sale. The Owner of the Inclusionary Unit shall recover the initial cost of the unit and a percentage of the increase in market equity with an improvement allowance (**Sanborn Equity Model**).

Marketing. The Developer shall market all Inclusionary Units in the Inclusionary Housing Development for one hundred and twenty (120) days after the installation of roads, sewer and water to the Inclusionary Units. ~~If there is no sale to a qualified buyer, the unit will be marketed again for another one hundred and twenty (120) days at a ten (10%) higher increment.~~ If there is no buyer at the time, the unit is removed from the Inclusionary program. The City will require no marketing plan, but Inclusionary Units shall be marketed in a manner comparable to Market Rate Units. The City has the right to list available Inclusionary Units on its website or other communication vehicles it uses to inform the public regarding the Inclusionary Housing Plan. ~~In the event that an Inclusionary unit was built, but not sold, the Developer shall keep all incentives, monetary and otherwise. In the event that the Inclusionary unit was marketed but not built, the Developer will return the monetary incentives, including a portion of waived fees, but will retain those incentives such as relaxation of development standards or density bonuses.~~

In the event that an Inclusionary Unit is built, but not sold as an Inclusionary Unit, the Developer shall retain all incentives, monetary and otherwise if the unit is sold at the Inclusionary price. If the unit is sold at a higher price, the Developer shall return to the City one-half of the difference between the Inclusionary price and the actual sale price.

1.1.8 **OCCUPANCY REQUIREMENT**

- A. A buyer of an Inclusionary Unit shall occupy that unit as their principal residence.
- B. An owner of an Inclusionary Unit shall be allowed to rent such a unit no more than two (2) years ~~33% of the time~~ in any seven (7) year period. The Owner of the Inclusionary Unit may petition the Director of the Department to increase the number over ~~thirty-three (33%) percent~~ two years.

1.1.9 **ADMINISTRATION OF THE INCLUSIONARY HOUSING COMPONENT (IHC)**

The IHC shall be administered by the Department. The Department shall conduct a study beginning eighteen (18) months into the twenty-four (24) month voluntary effective period to evaluate the success of the program, and recommend any changes. The Madison City Council shall approve the scope of the study. The Department shall conduct a study upon passage the Inclusionary ordinance to help detail consumer needs and demand. This will be done within six (6) months to help provide amendments to the plan within the first eighteen (18) months of the voluntary period to enhance changes for a successful outcome.

- A. Proposed Inclusionary Housing Plan. At the time of and as a part of the zoning application, the Developer of a Development Project shall present to the

Department a draft Inclusionary Housing Plan that shall contain, at the appropriate level of detail, the number, unit mix, location, structure type, cost and phasing of Inclusionary Units. If land dedication or an off-site location proposed, the Draft Plan shall include the necessary information to establish the site location, suitability, development constraints and the number of Inclusionary units assigned.

- B. Action on Inclusionary Housing Plan. The elements of the Inclusionary Housing Plan shall be incorporated into the terms and conditions of the applicable Project-specific Approvals.
- C. Requirement. All projects including an Inclusionary Component must have an executed Inclusionary Housing Agreement executed by the Owner of the Development Project and the Director of the Department.
- C. Timing. The Inclusionary Housing Agreement shall be negotiated concurrently with the processing of an application of a Department Agreement or the first Project specific approval.
- D. Contents. The Inclusionary Housing Agreement shall be consistent with the Inclusionary Housing Plan and shall indicate: ownership name, the number and size of Inclusionary Units, the developer of the units, the phasing and construction scheduling, commitments of Inclusionary Incentives and any other information required by the Department relative to the Inclusionary Component. As necessary, the agreement may also include information on land dedication or Off-Site Inclusionary Housing.
- E. Information Required from the Developer. The Developer shall provide plans, schematics, and details of phasing of the Residential Project as a whole including the Inclusionary Component; financial justification for the requested Inclusionary Incentive package; the name and address of the entity that will develop the Inclusionary Component if not the Developer; relevant information to justify land dedication or Off-Site development; and, any other information reasonably required by the Department
- F. Incorporation into Project-Level Approvals and Recordation. The Developer's obligations and in the Inclusionary Incentives in the Agreement shall be incorporated into the Project-specific approvals. The executed Inclusionary Housing Agreement shall be recorded as a covenant running with the land against the real property of the Residential Project unless the Inclusionary Units are removed for lack of sale after the specified time.

1.1.10 ADMINISTRATIVE FEES.

The City shall not establish any fees for the administration of this program. It shall provide a list of the fees which may be waived as a part of the Inclusionary Incentives program.

1.1.11 PARTICIPATION.

Participation in the Inclusionary Housing Program shall be ~~voluntary~~ mandatory for a twenty-four (24) month period after which it will sunset until the Madison City Council determines the effectiveness of the program and the conditions for its future implementation.

1.1.12 SEVERABILITY.

The Madison City Council hereby declares that every section, paragraph, clause and phrase of this Ordinance is severable. If, for any reason, any provision of the ordinance is held to be invalid, such invalidity shall not affect the validity of the remaining provisions.

1.1.13 EFFECTIVE DATE.