

CITY OF MADISON, WISCONSIN

AN AMENDED SUBSTITUTE ORDINANCE _____

PRESENTED May 2, 2006
REFERRED Plan Commission

Amending Section 28.04(25) to add a sunset provision, creating new Section 28.04(26) to set out a new inclusionary housing program, and renumbering current Section 28.04(26) to (27) of the Madison General Ordinances.

RULES SUSPENSION
PUBLIC HEARING PC 6-5-06
CC 6-20-06

Drafted by: Katherine Noonan

Date: July 13, 2006

SPONSORS: Mayor Cieslewicz; Aids. Golden & Konkel

DRAFTER’S ANALYSIS: These amendments add a sunset provision to the existing inclusionary housing provisions that will apply to development already in the approval process. A new inclusionary housing ordinance is created with changes to the equity model used when inclusionary zoning units are sold; replacement of the incentives point system with a revenue offset system to make application of the ordinance revenue neutral; changes to the waiver process; and changes to the marketing requirements..

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

1. Subdivision (n) of Subsection (25) entitled “Inclusionary Housing” of Section 28.04 entitled “General Provisions” of the Madison General Ordinances is created to read as follows:

“(n) This ordinance shall have no effect when all developments to which it applies have been granted or denied all final approvals.”

2. Subsection (26) entitled “Inclusionary Housing” of Section 28.04 entitled “General Provisions” of the Madison General Ordinances is created to read as follows:

“(26) Inclusionary Housing.

(a) Statement of Purpose. The purpose of this ordinance is to further the availability of the full range of housing choices for families of all income levels in all areas of the City of Madison. A full range of housing options promotes diverse and thriving neighborhoods, schools, and communities. It also aids the recruitment and retention of local businesses and their workforce, which are essential to the economic welfare of the City. This purpose can be accomplished by providing dwelling units for families with annual incomes less than the area median income.

(b) Definitions.

Area Median Income (AMI). The median annual income figures, adjusted for family size, calculated annually by the U.S. Department of Housing and Urban Development (HUD) for the metropolitan area that includes the City of Madison.

Inclusionary Dwelling Unit. A dwelling unit for rent to a family with an annual median income at or below sixty percent (60%) of the Area Median Income (AMI), for sale to a family with an annual median income at or below eighty percent (80%) of the Area Median Income (AMI), or for other residential occupancy for a family with an annual median income at or below sixty percent (60%) of the Area Median Income (AMI).

Approved as to form:

Income eligible family. A family whose annual income qualifies the family to rent or purchase an inclusionary dwelling unit. For purposes of this ordinance, the City of Madison Community Development

Authority (CDA) is an income eligible family and the Director of the Department of Planning and Development may designate a non-profit entity that provides housing as an income eligible family.

Qualifying Sale. The sale of an inclusionary dwelling unit to an income eligible family. An qualifying sale shall not include a sale of a lot to a builder who intends to construct an inclusionary dwelling unit.

Leased Residential Space Occupancy. Those residential arrangements whereby space in all dwelling units in a building is leased individually to each of the tenants in a dwelling unit.

Other Residential Occupancy. 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.

Period of affordability. The time, specified in a recorded deed restriction, land use restriction agreement, and/or ground lease during which a rental or other residential occupancy inclusionary dwelling unit shall be provided only to an income eligible family.

(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, shall provide a number of inclusionary dwelling units equal to no less than fifteen percent (15%) of the total dwelling units or leased residential spaces in the development.

Notwithstanding the above:

- a. Development that contains only rental dwelling units financed by 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 financed by Section 42 low income housing tax credit and/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.
- c. Development that contains fewer than fifteen percent (15%) rental dwelling units financed by Section 42 low income housing tax credit and/or qualified housing revenue bonds are subject to this ordinance and the number of rental dwelling units receiving low income tax credits 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.

2. Owner-Occupied. All development as defined in Sec. 28.03(2), with ten (10) or more owner-occupied dwelling units on one or more contiguous parcels shall provide a number of inclusionary dwelling units equal to no less than fifteen percent (15%) of the total dwelling units

3. Other Residential Occupancy. All development as defined in Sec. 28.03(2), with ten (10) or more other residential occupancy dwelling units on one or more contiguous parcels shall provide a number of inclusionary dwelling units equal to no less than fifteen percent (15%) of the total dwelling units.

4. AMI Levels. A development shall provide the required fifteen percent (15%) inclusionary dwelling units for income eligible families at one or more of the AMI levels in (d)2. No more than ten percent (10%) of all the dwelling units in the development shall be provided for income eligible families with an annual income at eighty percent (80%) AMI for owner-occupied inclusionary dwelling units and sixty percent (60%) AMI for rental inclusionary dwelling units or other residential occupancy dwelling units, except that developments with forty-nine (49) or fewer detached dwelling units or four (4) or more stories and at least seventy-five percent (75%) of parking is provided underground may provide all inclusionary dwelling units at the above AMI levels.

5. Individual Parcels. Once a development has met its requirement for inclusionary dwelling units, no parcel in that development shall be included in any other development for the purpose of calculating a requirement to provide inclusionary dwelling units. A parcel that has not been designated for an inclusionary dwelling unit, however, may be used as an off-site parcel for inclusionary dwelling units for another development.

6. Existing General Development Plans and Plats. This ordinance applies to all development subject to (c)1. and 2. above, for which completed applications for development approval are

submitted on or after the effective date of this ordinance. Notwithstanding the above, this ordinance does not apply to development with an approved plat or an approved General Development Plan as of the date this ordinance becomes effective, unless:

- a. an application is submitted for a zoning map amendment, on or after the date this ordinance becomes effective other than one submitted in b. below or one based on a requirement for R2S, R2T, R2Y or R2Z zoning that is a condition of approval for a plat approved prior to the effective date of the ordinance, or
 - b. a Specific Implementation Plan is submitted on or after the effective date of this ordinance that requires a major amendment to the General Development Plan, in which case, this ordinance shall apply to the development covered by the submitted Specific Implementation Plan.
7. Qualifying Sale To CDA or Non-Profit Entity. The City of Madison CDA or a non-profit entity designated by the Director of the Department of Planning and Development may purchase a lot that has been designated for an inclusionary dwelling unit. The purchase price shall be the cost of the land plus the cost of preparing the parcel for the inclusionary dwelling unit, including but not limited to, engineering costs, costs to install utilities, and costs to install public rights of way.
8. Waiver.
- a. If a waiver is requested under Sec. 28.04(26)(d)4., the Plan Commission may reduce the number of inclusionary dwelling units required for the development if the applicant can establish by clear and convincing financial evidence that it is not financially feasible to provide the required number of inclusionary dwelling units on-site, off-site, by assignment of the obligation, by payment of the required amount into the Inclusionary Zoning Special Revenue Fund, or any combination of the above.
 - b. The applicant for the waiver for a reduction in the number of inclusionary dwelling units or the Alderperson of the district in which the development is proposed may appeal the determination on a request for a waiver for a reduction in the number of inclusionary dwelling units to the Common Council by filing a request with the Secretary of the Plan Commission within twenty (20) days of the determination of the Plan Commission. The Secretary of the Plan Commission or her/his designee shall transmit such appeal to the City Clerk who shall file such appeal with the Common Council. The Common Council shall fix a reasonable time for the hearing of the appeal, and give public notice thereof as well as due notice to the parties in interest, pursuant to MGO 28.12(10)(e). In addition, notice shall be provided to a neighborhood association registered with the City that serves the area in which the proposed development is located and the Common Council shall decide the same within a reasonable time. The action of the Plan Commission shall be upheld unless the Common Council, by a favorable vote of the majority of the members of the Common Council reverses or modifies the action of the Plan Commission. Appeal of the determination of the Common Council shall be by commencement of an action for certiorari within thirty (30) days of the Common Council's determination.
9. Option to purchase.
- a. With the exception of b. below, after the qualifying sale, all owner-occupied inclusionary dwelling units shall be subject to an exclusive option for the City to purchase the unit. The option to purchase may be assigned by the City to the CDA or a designated non-profit entity. The purchase price to exercise the option shall be the appraised value at the time the City receives notice of intent to sell from the owner.
 - i. If the Common Council has budgeted or appropriated funds to the Inclusionary Zoning Special Reserve Fund for the purchase of inclusionary dwelling units and these funds are sufficient to exercise the option, the Department of Planning and Development has ~~thirty (30)~~ fifteen (15) days from the date the City receives notice of the intent to sell an inclusionary dwelling unit to determine whether or not to exercise the option to purchase, making an offer to purchase to the owner at that time.
 - ii. If the City has assigned the option to purchase, the assignee has ~~thirty (30)~~ fifteen (15) days to determine whether or not to exercise the

- option to purchase, making an offer to purchase to the owner at that time.
- iii. ~~If funds sufficient to purchase the inclusionary dwelling unit have not been budgeted or appropriated to the Inclusionary Zoning Special Reserve Fund, the City has thirty (30) days from the date the City receives written notice of the intent to sell from the owner to determine whether or not to exercise the option to purchase and ninety (90) days from the date the City receives written notice of the intent to sell to finalize the purchase of the inclusionary dwelling unit. The City or assignee has thirty (30) days from the date the City receives notice of the intent to sell an inclusionary dwelling unit to close the sale of the property unless extended by the owner.~~
 - b. If the qualifying 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, that has been approved by the Director of the Department of Planning and Development, 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. This provision applies to other residential occupancy inclusionary dwelling units administered by a non-profit. If the non-profit entity has no buy-back provision, the income eligible family that purchases the unit shall be subject to the option requirements in a, above. 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.
 - c. The option agreement shall contain the following provision:
“Judicial Foreclosure, Deed in Lieu of Foreclosure, and Trustee’s Sale.” The provisions of Sec 28.04(25), MGO are subordinate to any deed of trust or mortgage that is granted by the owner and secured in the first priority position by the inclusionary dwelling unit to the extent that any party, successor, or assign who receives title to the inclusionary dwelling unit through a trustee’s sale, judicial foreclosure sale or deed in lieu of foreclosure with respect to such aforementioned deed of trust or mortgage or any private mortgage insurance company that obtains title to an inclusionary dwelling unit shall receive title free and clear of any resale restriction of this ordinance. The owner of any inclusionary dwelling unit shall provide notice to the Department of Planning and Development of any foreclosure action that is filed involving the inclusionary dwelling unit within thirty (30) days of the date on which the owner of the unit was served in the foreclosure action. At no time may the City or assignee exercise its option to purchase an inclusionary dwelling unit from the holder of a mortgage or deed of trust in first priority position for less than such holder’s debt on the inclusionary dwelling unit. The City or its assignee shall have the right of first refusal that must be exercised within ninety (90) days after the property is listed for sale.
 - (d) Revenue Offsets.
 - 1. The applicant may request offsets equal in value to the difference between the revenues generated by development without any inclusionary zoning units and those generated by a development that provides inclusionary dwelling units. The Director of the Department of Planning and Development shall review the valuation of the offsets.
 - 2. The applicant may request offsets from the list below equal in value to the revenue differential determined in (d)1.
 - a. Density Bonus. An increase in the base densities set out in Sec. 28.04(26)(d)5.
 - b. A reduction in Park Development fees for on-site inclusionary dwelling units, pursuant to the requirements in Sec. 20.16. A park developed to City of Madison standards prior to the time it would be developed under City of Madison plans shall be maintained for up to five (5) years by the applicant.

- c. A reduction in Park dedication requirements, pursuant to the requirements in Sec. 16.23(8)(f).
- d. A reduction in Parking Requirements, if approved, pursuant to Sec. 28.11(8)(2)(c).
- e. A cash subsidy from the Inclusionary Zoning Special Revenue Fund of up to five thousand dollars (\$5,000) per inclusionary dwelling unit provided for families with an AMI lower than fifty percent (50%) for owner-occupied units, forty percent (40%) for rental inclusionary dwelling units and forty percent (40%) for other residential occupancy inclusionary dwelling units. The City also may provide a cash subsidy from Tax Incremental District funds approved and disbursed pursuant to adopted policies. 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 and shall be granted only when all other reasonable offsets have been granted.
- f. A cash subsidy from the Inclusionary Zoning Special Revenue Fund of two thousand five hundred dollars (\$2,500) per inclusionary dwelling unit. The City also may provide a cash subsidy from Tax Incremental District funds approved and disbursed pursuant to adopted policies. 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. The subsidy shall be adjusted annually based to the Consumer Price Index, shall be subject to availability of monies in any of the above funds, and shall be granted only when all other reasonable offsets have been granted.
- g. One additional story for development in Downtown Design Zones, not to exceed the requirements of Sec. 28.04(14) or the height limits of the Downtown Design Zones in Sec. 28.07(6)(e).
- h. Reservation of up to twenty percent (20%) of the total floor area in multi-family dwellings for market rate units. Floor area reserved for market rate units may include dwelling units on more than one (1) floor.
- i. Reservation of up to twenty percent (20%) of the net residential lot area for single-family or two-family dwellings for market rate units.
- j. Up to seventy-five percent (75%) of required single-family inclusionary dwelling units may be provided in two-family or multi-family dwellings with no more than eight (8) units and no more than two (2) units sharing an entry. These units shall be dispersed among or immediately adjacent to single-family dwelling units. If these inclusionary dwelling units are provided in multi-family dwellings with between five (5) and eight (8) dwelling units, no more than fifty percent (50%) of the dwelling units in any building may be inclusionary dwelling units.
- k. Eligibility for a number of residential parking permits equal to the number of inclusionary dwelling units in Planned Development Districts, if the provisions of Sec. 12.138 are met.
- l. For development that is located in the Central Urban Service Area and is contiguous to existing development, but for which no Neighborhood Plan exists, the preparation of a

Neighborhood Plan may be funded by non-City sources upon approval of the Common Council.

- m. Expedited review is available as follows:
 - i. For development that is consistent with adopted City plans, as determined by the Director of the Department of Planning and Development, is located in the Central Urban Service Area, and is contiguous to existing development, the preliminary and final platting processes may be combined if:
 - A. The applicant agrees in writing that the Common Council shall have ninety (90) days to act on the completed application, and
 - B. The ninety (90) day period may be extended pursuant to Sec. 16.23(5)(b)3.
 - ii. For development that is consistent with adopted city plans, as determined by the Director of the Department of Planning and Development, the Planned Unit Development District or Planned Commercial Development District General Development Plan and Specific Implementation Plan may be combined.
 - iii. Following approval of the development, revised documents may be routed concurrently to City agencies for final review and sign off.
 - n. Consideration of modifications to city plans, to allow residential development in areas currently identified for other uses.
 - o. Reduced street widths pursuant to Sec. 16.23(8).
 - p. Other offsets specific to the development requested at the time of application.
3. In the event the offsets do not cover ninety-five percent (95%) of the revenue differential in (d)1., the applicant may request:
- a. Provision of inclusionary dwelling units off-site or assignment of the obligation to provide some or all of the required inclusionary dwelling units to another person if:
 - i. Off-site inclusionary dwelling units are located within a one (1) mile radius of the edge of the proposed development or within the same elementary school attendance area in the City of Madison, if feasible, are comparable in quality to inclusionary dwelling units that would have been on-site, and if the obligation to provide inclusionary dwelling units is assigned, the units shall be provided within one (1) year of when they would have been provided under the requirements of Subdivision (g)6.
 - ii. The number of off-site inclusionary dwelling units equals the difference between the total number of inclusionary dwelling units that are required and the number provided on site or some greater number determined by the Plan Commission;
- and/or
- b. Making a payment into the Inclusionary Zoning Special Revenue Fund if:
 - i. Payment to the Inclusionary Zoning Special Revenue Fund, for a waiver of owner-occupied inclusionary dwelling units 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.
 - ii. Payment to the Inclusionary Zoning Special Revenue Fund for a waiver of rental inclusionary dwelling units is ten percent (10%) of the appraised value of the average unit times the number of units waived.
 - iii. Payment to the Inclusionary Zoning Special Revenue Fund for a waiver of other residential occupancy dwelling units is 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.
- 4. In the event that offsets, provision of off-site inclusionary dwelling units, assignment of the obligation, and/or payment to the Inclusionary Zoning Special Revenue Fund do not cover ninety-five percent (95%) of the revenue differential in (d)1., the applicant may request a waiver in (c)8. to reduce the number of inclusionary dwelling units required.
- 5. In the event the offsets exceed five percent (5%) of the revenue differential in (d)1., the offsets may be reduced by the Plan Commission.
- 6. Density Bonus. The density used to calculate the density bonus shall be based on the existing zoning as shown below in a. However, if the existing zoning is agricultural or for lands to be annexed to the City of Madison and a Neighborhood Plan exists for the area, the density used to calculate the density bonus shall be as shown in b. If development is located in the Downtown Districts, as shown on Maps 2-3 of Vol. 2, City of Madison Comprehensive Plan, the density used to calculate the density bonus will be determined by the Director of the Department of Planning Development, based on consideration of the existing zoning designation, Historic or Urban Design District designation, and in a manner consistent with the intent and integrity of existing Neighborhood or Special Area Plans, and the existing development neighborhood pattern.

a.	<u>Existing Zoning</u>	<u>Density to Use as Basis for Density Bonus</u>
	R1	5.44 units/acre
	R1-R	0.6 units/acre
	R2	7.26 units/acre
	R2T	8.72 units/acre
	R2S	10.89 units/acre
	RS	5.44 units/acre
	R3	10.88 units/acre
	R4/R4A/R4L	21.78 units/acre
	R5	33.50 units/acre
	R6/R6H	72.60 units/acre
	Conservancy	5.44 units/acre
	Planned Unit Development	The density specified in the zoning text.
	Planned Community Development	The density specified in the zoning text.
	Planned Community Mobile Home Park	The density specified in the zoning text.
	OR	72.60 units/acre
	O1	21.78 units/acre
	O2	21.78 units/acre
	C1, C2, C3, C4	38 units/acre
	C3L, M1, M2, PSM, SM	5.44 units/acre

- b. Agricultural or Lands to be Annexed:
 - a. Low Density Seventy-five percent (75%) point of the density range in Neighborhood Development Plan

- b. Low-Medium Density
- c. Medium Density
- d. Medium-High Density
- e. High Density

Midpoint of density range in-Neighborhood Development Plan
Midpoint of density range in-Neighborhood Development Plan
Midpoint of density range in-Neighborhood Development Plan
Midpoint of density range in-Neighborhood Development Plan

(e)

Price of Inclusionary Dwelling Units.

1. Rental Inclusionary Dwelling Units. The monthly rental price for rental inclusionary dwelling units or leased residential spaces shall include rent and utility costs and shall be no more than thirty percent (30%) of the monthly income for the applicable AMI.
2. Owner-Occupied Inclusionary Dwelling Units. The qualifying 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 by the City 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 sales price of a lot shall be not more than twenty-five percent (25%) of the qualifying sales price of an owner-occupied inclusionary dwelling unit. The monthly payment that is used to calculate the qualifying 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 Department of Planning and Development, that is available as of the date on which the building permit for the inclusionary dwelling unit is issued or the date on which marketing of the unit begins. With the exception of a refrigerator and stove, major appliances in the home and landscaping shall be considered as optional amenities. If the owner-occupant of an inclusionary dwelling unit wishes to finance these optional amenities as part of the home mortgage, their cost should not be considered part of the purchase price of the unit.
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.
4. Dwelling Unit/Family Size. For purposes of calculating rental and sales prices, the following relationship between family size and dwelling unit size shall apply:
 - a. Leased residential space - One bed in a two-bed bedroom - .5 of a one (1) person family.
 - b. Leased residential space - One bedroom in a multi-bedroom unit - .66 of a one (1) person family.
 - c. Efficiency dwelling unit - 1 person family.
 - d. One bedroom dwelling unit - Average AMI of a 1 and 2 person family
 - e. Two bedroom dwelling unit - 3 person family.
 - f. Three bedroom dwelling unit - Average AMI of a 4 and 5 person family
 - g. Four bedroom dwelling unit - 6 person family.
 - h. Five bedroom dwelling unit – Average AMI of a 7 and 8 person family
 - i. Six bedroom dwelling unit – 9 person familyThe median income for a family of 1.5 is the average of median income for a 1 and 2 person family. The median income for a family of 4.5 is the average of the median income for a 4 and 5 person

family. The median income for a family of 7.5 is the average of the median income for a 7 and 8 person family.

5. Tenants. Rental inclusionary dwelling units shall be rented only to income eligible families during the period of affordability. An income eligible family may remain in a rental inclusionary dwelling unit for additional rental periods as long as the income of the family does not exceed one hundred twenty-five percent (125%) of the applicable AMI.

6. Failure to Rent or Sell During Marketing Period. For all inclusionary dwelling units, marketing begins on the date when at least one (1) dwelling unit has been sold (closed) or rented and a completed unit is available to walk through or view in a virtual presentation and the Director of Department of Planning and Development receives notice that the completed unit is available ~~for~~ to walk through or viewing in a virtual presentation:

a. Owner-Occupied Inclusionary Dwelling Units. After one hundred eighty (180) days of marketing, a number of inclusionary dwelling units may become market rate units by one of the following mechanisms:

i. If the percentage of market rate units in a phase of development that have sold is more than the percentage of inclusionary dwelling units in the development phase that have sold, a number of inclusionary dwelling units may become market rate units, The sum of the number of inclusionary dwelling units that become market rate dwelling units and the number of inclusionary dwelling units that have sold shall be a percentage of inclusionary dwelling units in a development phase that is no more than the percentage of market rate units in the development phase that have sold. Every ninety (90) days thereafter, owner-occupied inclusionary dwelling units may become market rate units following the above process.

or

ii. The builder or developer has submitted a marketing plan for review and approval by the Director of the Department of Planning and Development. Such plans shall include, but not be limited to, how marketing will be conducted and how the units will be advertised, as well as how documentation of completions will be delivered. Upon certification of the completion of the marketing plan the remaining inclusionary dwelling units may become market rate units.

If an owner-occupied inclusionary dwelling unit becomes a market rate unit, the owner shall return to the City fifty percent (50%) of the difference between the sales price as a market rate unit and the price for which it was marketed as an inclusionary dwelling unit. These funds shall be deposited in the Inclusionary Zoning Special Revenue Fund.

b. Rental, Other Residential Occupancy, and Leased Residential Space Inclusionary Dwelling Units. These units are subject to the same procedure as in a. above, using rentals rather than sales, except that no funds shall be returned to the City for inclusionary dwelling units that are rented or leased as market rate units and when a new family occupies such a unit, it must be offered to a family with the

AMI required under the restriction for that inclusionary dwelling unit.

- (f) Inclusionary Dwelling Unit Plan. Following required meetings with staff, an Inclusionary Dwelling Unit Plan shall be submitted to the Director of the Department of Planning and Development. The Inclusionary Dwelling Unit Plan shall be in addition to any other plan or agreement submitted as a requirement by this or any other ordinance and shall be reviewed and approved as part of the applicable land use approval process. The Inclusionary Dwelling Unit Plan shall include: the total number of inclusionary and market rate dwelling units that will be provided; of that total, a projection of the number that will be rental inclusionary dwelling units inclusionary dwelling units and other residential occupancy inclusionary dwelling units; the breakdown of dwelling unit size by number of bedrooms and square footage; the distribution pattern of the inclusionary dwelling units throughout the development; the schedule for the provision of market rate and inclusionary dwelling units; the offsets sought from the City for provision of the inclusionary dwelling units. A land use restriction agreement, or ground lease agreement shall be prepared that includes the provisions of the Plan and shall be recorded with other documents requiring recording under this or any other ordinance. The Plan may be amended to reflect changes in the above information or to add required information that may not have been available at the time of Plan approval. Any such amendments shall be approved by the Plan Commission, however, the Director of Planning and Development may approve minor amendments that are compatible with the concept approved by the Common Council and consistent with the provisions of this ordinance. All amended Plans shall be reflected in an amended land use restriction agreement that shall be recorded and shall supersede previously recorded Plans and agreements.
- (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 financed by Section 42 low income housing tax credit and/or qualified housing revenue bonds
1. The size need not be the same as market rate dwelling units in the development, except that the size of the inclusionary dwelling units shall not be less than the following:
 - a. Multi-family buildings
 - Efficiency – 400 square feet
 - 1 Bedroom – 500 square feet
 - 2 Bedroom – 650 square feet
 - 3 Bedroom – 850 square feet
 - 4 Bedroom – 1050 square feet
 - 5 Bedroom – 1300 square feet
 - b. Detached units and duplexes -- 950 square feet
 2. The exterior appearance of the inclusionary dwelling units shall be similar in general style to the market rate dwelling units, consistent with the Inclusionary Dwelling Unit Plan. Two-family and multi-family dwellings provided under (d)2.j. shall be complementary in general style and character to the single family market rate and inclusionary dwelling units in the development.
 3. Except as permitted pursuant to Sec. 28.04(26)(d)2.j., the proportion of attached and detached units shall be similar for inclusionary and market rate dwelling units and shall be consistent with the Inclusionary Dwelling Unit Plan.
 4. The mix of dwelling units, based on the number of bedrooms, shall be similar for inclusionary and market rate dwelling units and shall be consistent with the Inclusionary Dwelling Unit Plan.
 5. The proportion of rental and owner-occupied dwelling units shall be similar for inclusionary and market rate dwelling units and shall be consistent with the Inclusionary Dwelling Unit Plan.

6. The inclusionary dwelling units and leased residential spaces shall be dispersed throughout the development and shall be provided on similar schedules as the market rate dwelling units, and shall be consistent with the Development Plan. More than one (1) leased residential space may be located in the same dwelling unit.
 7. The period of affordability for all rental inclusionary dwelling units shall be no less than fifty (50) years, and shall be documented by a recorded deed restriction, ground lease, or land use restriction agreement. The period of affordability begins on the date the certificate of occupancy is issued.
 8. Prior to approval by the Zoning Administrator that is necessary to obtain a building permit to provide an inclusionary dwelling unit, the Director of the Department of Planning and Development shall certify that the above standards have been met.
- (h) Distribution of proceeds from sale of an owner-occupied Inclusionary Dwelling Unit.
1. At the time of the qualifying sale of an owner-occupied inclusionary dwelling unit, the income eligible family shall provide the City with a promissory note, secured by a second mortgage, for an amount that is the percentage difference between the appraised value of the unit, determined within thirty (30) days prior to the sale, and the sales price of the unit. The resulting City percentage share of the value of the inclusionary dwelling unit shall be the percentage of the total value represented by the difference between the appraised value and the sales price divided by the appraised value of the inclusionary dwelling unit.
 2. At the time of the sale of an inclusionary dwelling unit, the amount of the sale proceeds paid to the City shall be the City's percentage share of ninety-five percent (95%) of the sales price of the inclusionary dwelling unit. This provision applies to all inclusionary dwelling units sold by income eligible families before or after the effective date of this amendment.
 3. Any proceeds of a sale that are remaining after the seller's share shall be deposited in the Inclusionary Zoning Special Revenue Fund.
 4. The seller cannot offer the inclusionary dwelling unit for sale at a price below the assessed value unless approved by the Director of the Department of Planning and Development.
- (i) No owner shall rent an inclusionary dwelling unit constructed as owner-occupied for more than a total of twelve (12) months in any seven (7) year period of ownership by one owner. Notice to the Department of Planning and Development shall be given prior to renting any such dwelling unit for any period of time and the inclusionary dwelling unit shall be rented to an income-eligible family with an annual income at or below the AMI level of the owner at the time of the owner's purchase with the exception of the Madison CDA.
- (j) The owner of any inclusionary dwelling unit for which a judgment of foreclosure has been granted shall provide notice of the judgment to the Department of Planning and Development within thirty (30) days of the judgment.
- (k) Administration and Enforcement. This ordinance shall be administered and enforced by the Department of Planning and Development. The Department shall prepare the Inclusionary Zoning Program Policies and Protocols, which shall be guidelines to be adopted by resolution by the Common Council for the determination of area median income, verification of family median income, the determination of rental and sales prices and interest rates, the applicability of condominium and homeowner association fees, the designation of a non-profit entity as an income eligible family, rental and sales procedures for inclusionary dwelling units, ongoing monitoring of the inclusionary dwelling units, and other policies as are necessary for the implementation of this ordinance. Prior to adoption by the Common Council,

the guidelines shall be reviewed by the Plan Commission. The Plan Commission shall recommend the Common Council that the guidelines be approved as submitted, approved with modifications, referred for further modifications, or disapproved.

- (l) Any completed application for development submitted to the City prior to the effective date of this ordinance shall be subject to the provisions of Sec. 28.04(25), except that the proceeds of the sale of an owner-occupied inclusionary dwelling unit shall in all cases be subject to Sec. 28.04(26)(h). An applicant who has submitted a completed application for development prior to the effective date of this ordinance may withdraw the application prior to approval and resubmit it subject to Sec. 28.04(26).
- (m) Severability. It is hereby declared to be the intention of the Common Council of the City of Madison that the provisions of any part of this ordinance are severable. If any court of competent jurisdiction shall adjudge any provision of this ordinance to be invalid, such judgment shall not affect any other provision of this ordinance not specifically included in the judgment. If a court of competent jurisdiction shall adjudge invalid the application of any provision of this ordinance to a particular property, building or structure, such judgment shall not affect the application of said provision to any other property, building or structure not specifically included in said judgment."
- (n) This ordinance shall have no effect after January 2, 2009. The Council shall be notified of this provision by City staff at least 120 days prior to this date."

3. Current Subsection (26) entitled "Home Occupations" of Section 28.04 entitled "General Provisions" of the Madison General Ordinances is hereby renumbered to Subsection (27).