

INCLUSIONARY ZONING PROGRAM POLICY AND PROTOCOLS

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This set of policies and protocols is presented in three major parts:
PART I - Sections A through C seek to outline the steps in the Inclusionary Zoning process for creation of the Inclusionary Dwelling Units.
PART II - Sections D and E describe the sales procedures for the Inclusionary Dwelling Units. (RENTAL)
PART III - Sections F and G expand on the use of particular terms and the Annual Report.

Section A: DEVELOPER'S STEPS IN THE INCLUSIONARY ZONING PROCESS

In order to facilitate the development and sale of inclusionary dwelling units, the City will publish quarterly a list of figures needed for the inclusionary dwelling units, such as current expected sales prices affordable to households at particular income levels. The City will also maintain a website that will be a "developer's toolbox and handbook", that will include sample documents, required sales price, a chart of the development review process, and other items that may help developers in understanding or using the City's inclusionary zoning program. The City of Madison will maintain a "Project Development Guide" which provides a summary of the development review processes for all major approvals required as part of the development process. This guidebook will be updated to incorporate the procedures in this policy document. (RENTAL)

The general inclusionary zoning process for a developer/owner will entail 9 steps:

1. Pre-application Conference for Concept Development

Prior to the acceptance of any zoning map amendment, land subdivision, subdivision plat or Inclusionary Dwelling Unit Plan required by Madison General Ordinance 28.04 (inclusionary zoning ordinance), the applicant shall meet with the Planning Unit, Community Development Block Grant Office and Zoning Unit staff to review and discuss aspects of the proposal. This preapplication conference shall include, but not be limited to:

- a) the site and the relationship between the site and its surroundings
- b) potential impacts of the project,
- c) initial design direction,
- d) plans to meet with the neighborhood and the alderperson, and
- e) all elements required to be included in the Inclusionary Dwelling Unit Plan.

This phase is intended to provide an opportunity for the applicant to discuss issues related to the preparation of an application and the Inclusionary Dwelling Unit Plan prior to the expenditure of significant resources in the detailed development of the proposal. The City's lead contact for the purpose of setting up the initial meetings shall be the designated Planning Unit staff person. More than one meeting may be necessary following the initial meeting. It is also recommended that the applicant meet individually with the Community Development Block Grant Office to

discuss the details of the Inclusionary Dwelling Unit Plan and other agencies, as is currently the case.

2. Developer Presentation of Pre-Application to a City Inter-Agency Staff Review Team

During the pre-application meetings, the applicant shall submit a development concept for review by an inter-agency staff review team at an informational meeting. City staff shall send the materials 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.. The concepts submitted shall include major characteristics of the proposal including, but not limited to

- a) the site and its context,
- b) potential impacts of the project,
- c) initial design direction,
- d) any responses to input gathered as a result of meetings with the neighborhood and the alderperson for the area,
- e) and all elements required to be included in the Inclusionary Dwelling Unit Plan.

The applicant shall schedule a meeting through the Planning Unit lead staff person, with the interagency staff review team to discuss submittal requirements and the proposed concept plan prior to the submittal and acceptance of any Inclusionary Dwelling Unit Plan application for a zoning decision. The Inter-agency staff review team includes, but is not limited to representatives of the: Planning Unit, Community and Economic Development Unit, City Engineering, Traffic Engineering, Madison Metro, Inspection Unit, Parks Division, Fire Department, Police Department, CDBG, Water Utility, and the Office of Business Assistance. The City's Lead Contact shall be the Planning Unit staff person.

The applicant should submit draft application materials to the Planning Unit for distribution to the Inter-agency staff review team that adequately addresses the submittal requirements outlined in Section 3. The intent of this requirement is to ensure that there is a clear understanding between the applicant and staff concerning the proposed elements included in the Development Concept Plan, the Inclusionary Dwelling Unit Plan, and the offsets, which are being sought from the City.

(ORDINANCE CHANGE)

Following this interagency staff team meeting, the applicant/developer will contact the neighborhood association registered with the City that serves the area in which the proposed development is located, if any and the alderperson of the district to arrange for communication regarding the Inclusionary Dwelling Unit Plan and offsets sought from the City, and a possible meeting to discuss the proposal. **(ORDINANCE CHANGE)**

3. Application Submittal Requirements

a. The Inclusionary Dwelling Unit Plan shall be submitted in a form acceptable to the Director of the Department of Planning and Development concurrent with the submittal of any other application required by the Inclusionary Zoning Ordinance (MGO 28.04) or any other City ordinance. City staff shall send 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. Rejection would be based on incomplete information. Checklists will be developed to assist in determining if all of the information has been provided.

b. As part of any application for the approval of an Inclusionary Dwelling Unit Plan, the developer will provide the following materials. This list is intended to describe those components essential to an Inclusionary Dwelling Unit Plan, which would be submitted as part of the general application. It should also be noted that 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 5 through 10. 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. A statement describing the general character of the intended development.
2. A plan of the proposed project showing sufficient detail to make possible the evaluation of the approval criteria.
3. A general outline of the intended organizational structure, agreements, bylaws, provisions, deed restrictions or covenants related to any of the following, if applicable:
 - a. The property owners' association, condominium association or homeowners association,
 - b. Private provision for common services, common areas or other facilities, and the continued protection of the development.
4. An identification of the current owner, the proposed developer, and any entity that has an option to purchase or contractual interest in the property that is the subject of the application. The application shall include an identification of all individuals and companies and proportionate share of interests in all corporations including, but not limited to, limited liability corporations, limited liability partnerships, etc. in a form acceptable to the Director of the Department of Planning and Development.
5. A construction schedule indicating 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.
6. The arrangement of buildings and their architectural character. *
7. The total number of inclusionary and market-rate dwelling units that will be constructed; and of that total, the number owner-occupied inclusionary dwelling units.
- (RENTAL)**
8. The breakdown of unit size by number of bedrooms. *
9. The location and distribution of the inclusionary dwelling units throughout the development.
10. The projected sales prices for the inclusionary dwelling units. * (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 offsets, but the specific sale prices won't be determined until the bedroom size is determined. **(RENTAL AND ORDINANCE CHANGE)**

11. The offsets sought from the City for the construction of the inclusionary dwelling units. **(ORDINANCE CHANGE)**

12. The applicant/developer may submit a proposal seeking alternatives to on-site inclusionary dwelling units including assignment of responsibility for inclusionary dwelling units, off-site units, cash payment in lieu of producing the units or some combination of on-site, off-site, cash payments or a reduction in the proposed percentage of inclusionary dwelling units. (See Phase 6: Waiver and appeal for reduction.)

* 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.

4. Staff Review and Recommendations to the Plan Commission

Following the submittal of a formal application under this ordinance, the application will be circulated to several City reviewing agencies. This circulation will now include the Community Development Block Grant Office which will review the Inclusionary Dwelling Unit Plan, with assistance from the Community and Economic Development Unit if there is a request for a waiver or a reduction under the ordinance. City agencies will also be responsible for reviewing the offsets sought by the developer from the City as outlined in the ordinance. City agencies will provide a recommendation to the City's Plan Commission and the Common Council on the application and the requested offsets and compliance with the requirements of the ordinance. These recommendations will also be provided to the applicant. 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 offsets request. 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 offsets rests with the City's Plan Commission and Common Council. If staff recommends an offset but the Plan Commission or Common Council denies the offset, 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 offset. The Community Development Block Grant Office will make a recommendation to the Plan Commission and Common Council whether the inclusionary dwelling units are dispersed throughout the development. **(ORDINANCE CHANGE)**

5. City Policy Group Review and Approval of the Inclusionary Dwelling Unit Plan

The City's Plan Commission will review the Inclusionary Dwelling Unit Plan and other related materials at a scheduled Plan Commission meeting. The approval by the Plan Commission and

Common Council will generally include conditions of approval, which must be met prior to the

final sign-off by City agencies. The conditions of approval attached to the project by the Plan Commission and Common Council shall be provided to the applicant in writing by the Planning Unit. The applicant is required to comply with the conditions of approval prior to requesting final sign-off on the plans by City agencies. Once the revised plans and all conditions of approval have been met, City agencies will sign off on the plans, after which the City's Zoning Administrator will record the approved Inclusionary Dwelling Unit Plan at the Dane County Register of Deeds Office with any required deed restrictions, land use restriction agreements, ground leases, subdivision plats, certified survey maps, Planned Development District documents, or other documents required. The City's Lead Contact shall be the Zoning Administrator.

6. Waiver Process

A developer will be expected to provide 15% of the dwelling units as affordable units except where providing the inclusionary dwelling units would render providing the inclusionary dwelling units financially infeasible. In such a case, a developer may request a waiver to provide the units off-site, assign the obligation to provide the units to another party, or pay cash in lieu of the units, or any combination of the above. If provision of the inclusionary dwelling units through the waiver is still financially infeasible, the developer may seek a reduction in the percent of units to the point where the project becomes financially feasible.

If the developer wants to request the waiver, the developer conveys that request to City staff during the application process. Staff will select the offset that the developer will use to base the claim of financial infeasibility and staff will select which one of the four waiver options the developer will seek. Those four alternatives to providing the units on-site are: **(ORDINANCE CHANGE)**

- a) off-site provision of units,
- b) assignment of responsibility to a third party,
- c) cash payment in lieu of the units,
- d) or a combination of any of the three.

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.

If the developer wants to request a waiver the developer should provide evidence regarding why this request should be granted. The evidence that the developer should provide is outlined in the section that deals with criteria for determining financial infeasibility.

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.

The Plan Commission will make one determination based on the evidence provided, 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.

Once the Plan Commission makes its determination the developer can either agree with the determination or appeal the 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.

Regardless if the Common Council confirms or modifies the determination of the Plan Commission the developer can appeal to the circuit court.

7. Developer Compliance with the Approved Inclusionary Dwelling Unit Plan

The applicant has certain responsibilities for implementing the provisions of the inclusionary zoning ordinance, including but not limited to construction and standards for inclusionary dwelling units, notification of availability of units to the City, marketing to target income groups, establishment of price points and other changes to the Inclusionary Dwelling Unit Plan. These responsibilities will be outlined in the Inclusionary Dwelling Unit Plan and Subdivision Improvement Contract (where applicable). **(RENTAL)**

(RENTAL AND ORDINANCE CHANGES)

8. City Review and Monitoring of Initial Developer Compliance with the Inclusionary Dwelling Unit Plan

The City will monitor the construction phases of the overall development, including Building Inspection Unit and the Public Works Department staff site visits to verify progress in accordance with the zoning requirements, the Inclusionary Dwelling Unit Plan, and the subdivision

improvement contract, where applicable. Phasing of the IDUP will be enforced through deed restriction language that prohibits transfer of ownership of parcels, which will be released as proof of compliance is provided. The subdivision improvement contract (where applicable) will be enforced using currently adopted procedures.

The City may arrange with the applicant/developer, as part of the Inclusionary Dwelling Unit Plan review, to purchase a set number of units or parcels for residential use and a timeline for those transfers. Lots would be purchased for transfer to the CDA or a non-profit agency. The City will exercise its option to purchase during the development phase.

The City’s Lead Contact for the construction phase for the inclusionary dwelling unit plan shall be the Engineering Department with assistance from the Building Inspection Unit staff and the Community Development Block Grant Office.

When determining if inclusionary dwelling units are being provided on the same schedule as the market rate units in order to move on to the next phase of the project, the Engineering Division and Building Inspection staff will count the units at the point where the foundation is complete. A complete foundation means the foundation has been dug, poured, stripped and backfilled. Each phase that has begun will be considered when making a determination if an that the appropriate proportion of inclusionary dwelling units and market rate units are being provided based on the approved plan. Any lots owned by the city will be considered complete regardless of the status of construction. The developer shall be responsible for guaranteeing that the units are provided as determined in the Inclusionary Dwelling Unit Plan, including lots no longer under ownership by the developer.

The Inclusionary Dwelling Unit Plan agreement shall define the threshold requirements to move forward with each phase and shall outline requirements to be fulfilled prior to moving to the next phase of the development. The City may negotiate either deed restrictions or options to purchase for undeveloped lots as a way to guarantee developer compliance with later phases of the Inclusionary Dwelling Unit Plan, but shall not impose a performance bond or letter of credit for such guarantee. If the inclusionary dwelling units are not built according to the approved Inclusionary Dwelling Unit Plan, the City may withhold approval of construction of the remainder of the project until the inclusionary dwelling units are provided. In order to facilitate the development and sale of inclusionary dwelling units, the City will publish quarterly a list of figures needed for the inclusionary dwelling units, such as current expected sales prices affordable to households at particular income levels. The City will also publish brochures, and maintain a website that will be a "homebuyer's toolbox and handbook", that will include sample documents, required price, a chart of the purchase processes, and other items that may help owners and residents in understanding or using the City's inclusionary zoning program. The City's Lead Contact shall be the Community Development Block Grant Office staff person. **(RENTAL)**

9. City Review and Monitoring of Continuing Compliance with the Inclusionary Conditions for Resale **(RENTAL)
(ORDINANCE CHANGE)**

The Common Council will presume purchase of the unit unless the inclusionary dwelling unit meets one of the criteria outlined under the "Sales Procedure under City Option to Purchase" in the definitions section of this policy document.

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.

(RENTAL)

In circumstances where the homeowner desires to rent their home, the homeowner will notify the Community Development Block Grant Office 45 days in advance of offering the inclusionary dwelling unit for rent. **(RENTAL)**

For inclusionary dwelling units where the owner wishes to refinance the property, the owner will notify the Director of the Department of Planning and Development of the amount and term, the interest rate, the refinancing fees and the lending institution that will approve the terms of the

refinance agreement.

If there is a refinance where the homeowner does not withdraw any equity from the home, the Director of Planning and Development must be notified. If there is a refinance where the homeowner does withdraw equity the Director of Planning and Development shall determine if the homeowner has sufficient equity to offset the refinance amount and any related costs and will inform the lending institution the maximum amount of equity available to the homeowner and approve such a request. It is the seller's responsibility to provide proof of improvement equity if they want to receive improvement equity.

In case of foreclosures involving an inclusionary dwelling unit, the City will review the notice of foreclosure required of the family by the City's exclusive option to purchase agreement. The City would determine whether to exercise its option to buy or transfer the property to the City of Madison Community Development Authority or a non-profit agency, or forego its interest in the property, based upon the criteria outlined earlier. The City's Lead Contact shall be the Community Development Block Grant Office staff person.

(RENTAL)

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.

Section B: Certification Process for Non-Profit Agency

A non-profit agency may apply to the CDBG Office for City certification as an income-eligible family at any time during the year, but need become certified only once unless it changes its basic qualifying characteristics.

The non-profit agency should register with the City of Madison Community Development Block Grant Office and become certified so that the City may notify the non-profit agency when an inclusionary dwelling unit becomes available, and developer/owners may recognize the non-profit agency as an eligible family. **(RENTAL)**

See definition under "Non-profit Agency Certification as Eligible Family".

Section C: Offsets

This section summarizes the use of offsets and the selection or use of the offsets offered by the City as part of the Inclusionary Zoning program.

If the proposed offsets are not approved there may be a reduction in the number of required inclusionary dwelling units by the Plan Commission. Staff will report to the Plan Commission the compelling reasons why particular offsets are either not available or not applied to particular developments.

In reviewing the request for offsets, City staff shall make a recommendation to the Plan Commission and Common Council to approve, deny or modify the offsets being requested. The staff shall include a written rationale for the recommendation. **(ORDINANCE CHANGE)**

Procedure and Standards for Expedited Review, the Application for the Additional Story, Consistency with Neighborhood Plans and Other Related Items

The ordinance allows developers to request permission to build one additional story within Downtown Design Zones (not to exceed the Capitol View Preservation Limits or the height limits within the Downtown Design Zones). The Downtown Design Zones apply to all Planned Unit Development zoning map amendments within these zones. These standards do not allow developers to automatically build to the maximum height allowed in these districts. Developers

must submit proposals that comply with all of the criteria within the ordinance in order to justify building the maximum allowed in these districts. Developers will be able to request permission to build an additional story within those zones that allow bonus stories to be approved and will be able to cite the inclusion of affordable housing as the basis for the request. Developers will still need to comply with all of the other ordinance requirements.

In order to be eligible for expedited review under Section (d) Offsets Subsection 7 Expedited Review, the development proposal must be reasonably consistent with adopted City plans. Factors which will be used to determine consistency include the mix of attached and detached dwelling units, the densities proposed, the location of proposed parks, the location of all local, collector and arterial streets, the location and sizing of stormwater management facilities, etc.

(ORDINANCE CHANGE)

Procedure to Receive RP3 Permits

If the Plan Commission approves a Inclusionary Dwelling Unit Plan where the Developer seeks residential parking permits, the City of Madison Parking Utility will issue the approved number of vouchers for the development which the developer/owner may issue to occupants of the development and meet the standard terms of the ordinance and current policies for these permits. The developer/owner shall distribute these vouchers in a manner that gives preference to the occupants of the inclusionary dwelling units. The occupant receiving such a voucher must then apply to the City through the current administrative process to obtain the permit and comply with the requirements as follows: **(RENTAL)**

1. Live in an area shown on the Residential Parking Permit Boundaries map.
2. Have a properly registered vehicle at the applicant's permanent home address.
3. Have no outstanding parking tickets. Outstanding tickets must be resolved before application for a residential parking permit
4. Bring the following information when applying for a permit
 - a. Vehicle registration form.
 - b. Driver's license
 - c. Proof of residence that could be either a lease signed by applicant and landlord, a utility bill or bank statement that shows a date as well as name and current address.
5. Vehicle must be owned by occupant, occupant's child, parent, legal guardian, spouse or registered domestic partner or be a leased or company vehicle, which is assigned to the occupant.

(ORDINANCE CHANGE)

Procedure to Obtain Advanced Neighborhood Planning

The ordinance allows developers to pay for the preparation of neighborhood plans for those areas within the Central Urban Service Area that are contiguous to existing development, but for which no neighborhood development plans exist. Developers will need to request permission to fund the neighborhood development plan in writing. The Department of Planning and Development will

assess the availability of staff to develop Request for Proposals to hire a consulting firm to prepare the neighborhood development plan, and the availability of staff to manage the planning process. The Department of Planning and Development will respond to the developer in writing and recommend a timeline for the preparation of the neighborhood development plan if staff is available to manage the process. If it is determined that staff is not available, the Department of Planning and Development will notify the developer and provide an estimate of when staff will be available. The Director of the Plan Unit shall forward the request to the City Plan Commission with a recommendation. If the Plan Commission supports the request, the Planning Unit will draft a resolution for consideration by the Common Council to authorize the preparation of the plan, which includes a report on anticipated cost to the developer and the City as well as the anticipated timeline for the planning. The City of Madison would then hire a planner with the funds provided by the developer.

The Madison Common Council, following a recommendation from the Plan Commission and the Board of Estimates will determine whether the funding of the neighborhood development planning process by the developer will be approved, as well as the timeline for the planning process.

Procedure to Secure Park Dedication Credits and Park Development Fee Credits

The applicant must submit this request as part of the Inclusionary Dwelling Unit Plan. The application must include a sufficient level of description of the design, phasing and maintenance requirements as needed by the Parks Division in order to determine whether the park would meet public park standards, and how much credit the Parks Division can provide. The Parks Division would review the development plan and issue its decision on park credit within 30 days after the submission of a complete park development element within the development plan application. This process should be administrative and would not require the Park Commission to vote on each development once a clear policy is established.

The planning and policy guidelines for parkland and facilities are established in the Park and Open Space Plan (1997) and the Needs Assessment for Park Dedication and Development Impact Fees (2002). These set forth the basic park facilities which are to be supported by park dedication or fees in lieu of dedication, and supported by park development impact fees. Credits given under Inclusionary Zoning shall meet the requirements of MGO Chapters 16 and 20.

Approximately half of the park dedication/fees and park development fees are used to provide the local land and facilities for neighborhood use. The other half are to provide community parks and playfields that are usually outside of the immediate plat. Credits may be given if the private land and facilities provided would replace land and facilities that the city would otherwise have to provide and are available for public use without restriction. Credit may not be given if the land and facilities are an extra amenity for the neighborhood that does not reduce the need for the land and facilities that the city has to provide. Credit may also be given for improvements to the public parks that are installed by the developer, if these facilities meet the basic needs requirement (as opposed to being extra amenities that do not reduce the city burden to meet basic

needs).

Credit for land is based on the square footage that qualifies as meeting the basic park needs. Credit for improvements is based on the lowest cost that the city expects for such an improvement, based on recent staff construction or public low-bidder construction.

Some of the criteria that will be considered:

1. It must be stated in a legal document that these private open space areas are open to all of the public that would be expected to use them, such as residents of adjacent developments or visitors.
2. Areas must be high quality useable open space, including active recreation and sports areas, not unusable or undevelopable environmental corridors such as steep slopes, wetlands, required drainage ways, infiltration, buffers, etc.
3. Greater consideration will be given to spaces with prominent street frontage and public access, as opposed to backyard spaces with limited access.
4. The park dedication need must be met for all parks according to the park and open space plan and the neighborhood plan. The total package of public and private open space must meet the needs specified in the park and open space plan and the neighborhood development plan. The full public dedication will be taken where it is needed for any type of public parkland, even though the proposed private open space may otherwise qualify for credit.
5. There must be a property owner's association legally required to develop and maintain all private open space sites, whether credit is given or not, to ensure that the sites will be perpetually maintained and cannot revert to public maintenance responsibility.
6. There must be a commitment to a development and management plan for the private open space site, with some understanding that the facilities may change in the future to meet changing neighborhood needs. There may need to be a provision for public trail systems.
7. For conservation open space to be considered for credit, it must be a high quality natural community, and there must be a guarantee that necessary restoration and management will be conducted.
8. The reduction of fees for a promise of improvements must be supported by a bond or letter of credit that provides for fee payment or public construction of those improvements if the developer does not complete them. For subdivisions, the park fees are assessed with the subdivision improvement contract for each phase of the plat. The park credits, public and private park improvements, and bond/letter of credit can also be implemented with the contract for each phase.
9. When the developer installs improvements to new public parks ahead of the budgeted schedule for operating those parks, the developer shall agree to maintain the park until the Parks Division operating budget is increased to operate them (not to exceed five years). Such maintenance shall include mowing, plowing snow, garbage collection, playground/facility inspection and maintenance, vandalism, etc. Liability insurance coverage shall be provided listing the city as also insured.

Procedure and Standards for a Cash Subsidy under the Inclusionary Zoning Ordinance (formerly the Affordable Housing Trust Fund)

As part of the application and the Inclusionary Dwelling Unit Plan process, the Developer may

seek subsidy payments from this special revenue fund as one of a set of offsets earned with points from the matrix. These points are earned based upon the proposed percentage of inclusionary dwelling units and the sales based upon the targeted income levels for those units. **(RENTAL)**

The ordinance lists the amounts and circumstances for these subsidy payments.

Per the ordinance, if the special revenue fund has no available and uncommitted dollars at the time of the application, the Developer will not receive a commitment of funds and will need to seek another offset as part of the Inclusionary Dwelling Unit Plan process. **(ORDINANCE CHANGE)**

(ORDINANCE CHANGE)

Section D: Application, Certification, Purchase Process for a Family (RENTAL)

Under the terms of the ordinance, the City uses the term “family” to include households of one person as well as household of two or more people.

(RENTAL)

Eligibility for “Income Eligible Families”, Student Status and Asset Tests.

Each April 1, the Department of Planning and Development will issue income guidelines to developers, builders and realtors associated with inclusionary dwelling units. These guidelines will set forth the income levels by family size, not the comparable dwelling unit size to be associated with each family size solely used to determine the sales price as defined in MGO 28.04(25)(e)2., and the method for calculation and documentation of income. **(RENTAL)**

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.

(RECOMMENDED BY IZ OVERSIGHT COMMITTEE)

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.

Resources for the family:

In order to facilitate the purchase/sale of inclusionary dwelling units, the City will publish quarterly a list of figures needed for the inclusionary dwelling units, such as current expected sales prices affordable to households at particular income levels. The City will also maintain a library, brochures, and a website that will amount to a ‘residents’ toolbox, that will include sample documents, an income eligibility calculator, required sales, charts of the sales processes, and other items that may help residents in understanding or using the City’s inclusionary zoning program. **(RENTAL)**

Developer/Builder: Certification Measures

The City will expect the certifying entity (developer or non-profit agency) to collect and retain the documents needed to establish eligibility for at least a three-year period starting from the date the family purchases the unit.

(RENTAL)

Section E: Sales Price and Purchase procedures for Inclusionary Dwelling Units

Inclusionary Dwelling Unit Plan

In addition to the items listed in Section A, step 3, the Inclusionary Dwelling Unit Plan will specify all of the inclusionary dwelling units that will be used to meet the requirements of the ordinance.

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.

The City's role in purchasing inclusionary zoning lots or dwelling units will be to facilitate transfer to an income eligible family. 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 for how many units the City of Madison Community Development Authority and other nonprofit agencies can purchase in a year. (Example: The City of Madison Community Development Authority may establish a goal to purchase at least 10% of the available inclusionary zoning owner units.) The plan shall include the number of units proposed to be purchased for homeownership and the criteria for determining where the units will be purchased including how this meets 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. If the City of Madison Community Development Authority does not have the resources to purchase the units, the City will designate particular agencies as 'eligible families'. **(ORDINANCE CHANGE)**

(RENTAL)

(ORDINANCE CHANGE)

Initial Sales Price Targeted for Owner Units

The City will calculate the maximum household share of the 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 each March 1, June 1, September 1 or December 1 or soon thereafter; **(PREVIOUS CHANGE)**
- c) Calculation of taxes based upon the average fair market value, 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. **(RECOMMENDED BY THE OVERSIGHT COMMITTEE)**
- e) 5% down payment and the correlating private mortgage insurance

For the purposes of the determining the initial sales price of a home, the definition of dwelling unit in Chapter 28 includes a full kitchen facility, however, a refrigerator and stove shall not be required in the cost of the unit.

Sales Price for Resales of Owner-occupied Inclusionary Dwelling Units under City Option to Buy

(ORDINANCE CHANGE)

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).

Sales Procedures and 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.

Part THREE: Interpretation of Terms and Annual Report

Section F: Definitions and Interpretations of Terms

The City will use the following definitions in its implementation of the inclusionary zoning program.

Area Median Income

The City will continue to use Housing and Urban Development (HUD)-provided Area Median Income (AMI) that serves 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. Each year around March, the City Department of Planning and Development will issue area median income figures to be used in the calculation of sale price for the inclusionary dwelling units. **(RENTAL)**

“Bedroom” as Distinct from a “Den”

The Building Inspection Unit defines a ‘bedroom’ by minimum room standards as required by the State of Wisconsin Building Codes.

(ORDINANCE CHANGE)

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

“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.

Covered 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 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.

(ORDINANCE CHANGE)

Non-profit Agency Certification 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 certification, 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.

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.

(ORDINANCE CHANGE)

Similar

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 shall 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.

Similar Schedule

The City will use this term to indicate that the pace of the construction of inclusionary dwelling units will be defined by the mix of inclusionary zoning and market rate units in each phase in which construction has begun according to the approved plan.

Square Footage of Units

The City will use the gross square footage (minus the garage, attic, and unfinished basement) to calculate the minimum dwelling size of inclusionary dwelling units.

(RENTAL)

Waiver

Waiver Criteria for “Financially Infeasible” Inclusionary Zoning Component and Request for Waiver to Provide On-Site Units, Off-Site Units, Assignment or a Cash Payment in Lieu of Providing Inclusionary Dwelling Units

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 offsets provided by the City, including such items as added density, cash subsidy, park fee and park development credit (Refer to the full range of offsets listed within the ordinance at subsection 25, 7. d.Offsets.); 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 developer can demonstrate a good faith effort to contact other developer/builders and arrange for the assignment of the obligation to provide the targeted number of comparable inclusionary dwelling units within the time frame outlined in the ordinance.

If the Plan Commission or Common Council denies 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. **(ORDINANCE CHANGE)**

If the Plan Commission determines the inclusionary dwelling unit component of the project is infeasible, the Plan Commission should then determine to what extent a reduction in the expected percentage of the inclusionary dwelling units within the development proposal would make the inclusionary dwelling unit component of the project feasible.

Footnote for information purposes only:

Staff will develop measures, benchmarks and standards for determining financial infeasibility in conjunction with the development industry, which may include an independent third party consultant for presentation to the Plan Commission on or before March 1 for approval by Plan Commission and Common Council.

Waiver Criteria Concepts: Request for Reduction of Percentage of Inclusionary Dwelling Units for a “Financially Infeasible” Inclusionary Zoning Component

The Plan Commission may determine that all or part of the inclusionary dwelling unit component of the project is infeasible at the ordinance goal of 15% of the project’s units, even with the use

of off-site or cash payments or assignment of the off-site inclusionary component, and that a project qualifies for a reduction of the inclusionary dwelling units if it meets one of the criteria outlined above and if, the estimated combination of on-site and off-site inclusionary dwelling units and the option for a cash payment exceeds the value of the offsets provided by the City, including such items as added density, cash subsidy, park fee and park development credit. (Refer to the full range of offsets listed within the ordinance at subsection 25, 7. d. Offsets.)

(ORDINANCE CHANGE)

Footnote for information purposes only:

Staff will develop measures, benchmarks and standards for determining financial infeasibility in conjunction with the development industry, which may include an independent third party consultant for presentation to the Plan Commission on or before March 1 for approval by Plan Commission and Common Council.

Section G: ANNUAL REPORT

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. The first report shall not be due until July 2005.