Fiscal Note

This ordinance amendment dramatically alters the rules governing the expenditure of funds in the Affordable Housing Trust Fund, expanding both the scope of eligible expenditures and the maximum amount that could be expended in any given year. Roughly $94,000 was added to the fund during 2009, bringing the balance in the fund at the beginning of this year to about $4,100,000.

The existing Affordable Housing Trust Fund ordinance restricts spending to the creation of affordable housing units, prohibiting the use of Trust Fund resources for operating expenses. The amount that can be spent in any given year is limited to 25% of the additions to the fund received in the previous year. Thus, under current rules, only about $23,000 would be available for expenditure in 2010, of which $19,000 has already been committed.

The proposed ordinance would expand the eligible uses of Trust Fund resources to include the operating expenses of for-profit and non-profit developers that receive a grant or loan from the Trust Fund. It also broadens the definition of eligible projects to include the repair, preservation and upgrade of existing affordable units. Additionally, it removes the current annual expenditure limitations, replacing them with the provision that no more than 25% of the total fund balance could be spent on any single project. Thus, under the proposed ordinance, the full $4,100,000 balance in the fund could be spent in 2010 as long as no more than $1,025,000 was spent on any one project.

Title

AMENDED ALTERNATE Amending Sec. 4.22 of the Madison General Ordinances to allow the payment of developers' operating costs from the Affordable Housing Trust Fund.

Body

DRAFTER'S ANALYSIS: This amendment revises the uses of Trust Fund monies to provide greater flexibility in authorizing disbursements, increases the amount that may be disbursed from the Fund, and makes certain definition changes.

****

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

Section 4.22 entitled "The Madison Affordable Housing Trust Fund" of the Madison General Ordinances is repealed and recreated to read as follows:

"**4.22 THE MADISON AFFORDABLE HOUSING TRUST FUND.**

(1) Creation; Purpose and Intent.

There is hereby created and established for the City of Madison a fund to be known and denominated as the Madison Affordable Housing Trust Fund. The Trust Fund shall be a continually renewable source of revenue to meet, in part, the housing needs of low income households in the City, as defined in (2)(b) below. The Trust Fund is to provide loans and grants to for-profit and non-profit housing developers for the acquisition, capital and soft costs necessary for the creation, repair and preservation of Affordable rental and owner-occupied housing. Preference shall be given to those projects that ensure that the Assisted Units remain Affordable for the longest period possible. Projects funded by the Trust Fund shall be disbursed throughout the City so no single neighborhood experiences a disproportionate concentration of housing units for low income households.

(2) Definitions.

In this section:

(a) "Affordable" means a housing unit that has an Affordable Housing Cost.

(b) "Affordable Housing Cost" means an amount satisfied by:

1. for owner-occupied housing, a housing payment inclusive of loan principal, loan

interest, property taxes, property and mortgage insurance, and homeowners association dues which allows a household, whose gross income adjusted for family size is at or below eighty percent (80%) of Area Median Income, to purchase a home;

2. for rental housing, a housing payment, inclusive of a reasonable allowance for heating, which allows a household, whose gross income adjusted for family size is at or below sixty percent (60%) of Area Median Income, to rent a unit, while paying no more than thirty percent (30%) of their gross household income; and
3. for Housing Cooperatives and Limited Equity Cooperatives, a housing payment that allows a household whose gross income adjusted for family size is at or below sixty percent (60%) of Area Median Income, to purchase a home.

(c) "Area Median Income" means the median income for the greater Madison area adjusted for family size, as published by the United States Department of Housing and Urban Development.

(d) "Assisted Unit" means a housing unit that is Affordable and is assisted by the Trust Fund. Assisted Units shall be specifically identified in the deed restriction required under Sec. 4.22(7), M.G.O.

(e) "Committee" means the City of Madison Community Development Block Grant Committee created pursuant to Sec. 33.15, M.G.O.

(f) "Contingent Fund" means the fund created pursuant to Sec. 4.03, MGO.

(g) "Director" means the City's Community Development Division Director, or his or her designee.

(h) "Housing Cooperative" means a corporation that exists to provide housing to its owners, who are the individuals who live in the cooperative.

(i) "Limited Equity Cooperative" means a limited equity Housing Cooperative that limits the return allowed when its shares are sold.

(j) "Recipient" means any for-profit or non-profit housing developer that receives funds in the form of a loan or a grant from the Trust Fund. A Recipient may be an individual, partnership, joint venture, limited liability company or partnership, association or corporation.

(k) "Tax Incremental Financing Equity Participation Payment" means an equity payment received by the City from a developer pursuant to a TIF Development Agreement in which the tax incremental district has been dissolved.

(l) "Trust Fund" means the Madison Affordable Housing Trust Fund.

(3) Trust Fund; Sources of Trust Fund Moneys.

(a) There is also hereby established a Madison Affordable Housing Trust Fund, to be maintained by the City Comptroller. All funds received by the City on behalf of the Trust Fund shall be deposited in the Trust Fund. Principal and interest from loan repayments, and all other income from Trust Fund activities, shall be deposited in the Trust Fund. All funds in the Trust Fund shall earn interest at least at the same rate as pooled investments managed by the City Treasurer. All interest earnings from the Trust Fund shall be reinvested and dedicated to the Trust Fund.

(b) The Trust Fund shall consist of funds derived from the following:

1. Private cash contributions designated for the Trust Fund;
2. Payments in lieu of participation in current or future affordable housing programs;
3. Matching funds from a federal affordable housing trust fund;
4. Principal and interest from Trust Fund loan repayments and all other income from Trust Fund activities~~.~~;

~~**5. The balance of the Inclusionary Zoning Special Revenue Fund.**~~

~~**6**~~**5**. Any other appropriations as determined from time to time by legislative action of the Common Council, including, but not limited to, (i) Residual Contingent

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Reserve funds; (ii) Amounts from the Operating Budget equivalent to City fees collected from dedicated uses related to housing, such as reinspection fees; (iii) Tax Incremental Financing Equity Participation Payments; and (iv) Proceeds from the sale or use of surplus City land.

(4) Committee's Powers and Duties.

(a) The Committee shall have the following powers and duties:

1. Recommend policies, goals and objectives for the Trust Fund program to the Mayor and the Common Council;
2. Review project funding requests and recommend to the Mayor and the Common Council all disbursements from the Trust Fund;
3. Investigate and recommend to the Mayor and Common Council additional sources of money for deposit to the Trust Fund; and
4. Publish and distribute requests for proposals and notices of funding availability.

(b) All projects considered for funding will be reviewed prior to Committee action by the CDBG staff, and the Director shall submit to the Committee comments and recommendations.

(c) The Committee shall within ninety (90) days following the close of each fiscal year prepare and submit an annual report to the Common Council on the activities undertaken with funds from the Trust Fund. The report shall specify the number and types of units assisted, the amount loaned per Assisted Unit, the amount of state, federal and private funds leveraged, the geographic distribution of Assisted Units and a summary of statistical data relative to the incomes of assisted households, including their monthly rent or mortgage payments, and the sales prices of owner-occupied Assisted Units.

(5) Evaluation of Applications.

In evaluating requests for disbursements from the Trust Fund, the Committee and the Council shall give preference to developments:

(a) that leverage other public and private sources of funds;

(b) that seek loans from the Trust Fund, rather than grants, which will allow the Trust Fund to grow over time;

(c) that will tie up funds from the Trust Fund for shorter periods of time, rather than longer, which will allow the Trust Fund to be used to support a greater number of projects throughout the City;

(d) that are targeted to a mixture of household incomes, where Assisted Units are distributed throughout the building or development so as to avoid a disproportionate concentration in any one area;

(e) that ensure that the Assisted Units remain Affordable for the longest period possible;

(f) that lead to lower, long-term utility costs for occupants of Assisted Units;

(g) that meet the highest accessibility standards, as defined by federal, state and local requirements; and

(h) that are consistent with the Committee's framework and any other similar policy statements adopted by the Committee from time to time.

(6) Trust Fund Distributions.

The Trust Fund shall fund loans and grants in accordance with this Section, to assist Recipients in the creation, repair and preservation of Affordable Units. The Trust Fund program shall be administered by the Director. No disbursements shall be made from the Trust Fund without the prior recommendation of the Committee and authorization by the Common Council, subject to the following.

(a) The total disbursements from the Trust Fund in any calendar year shall be limited to fifty percent (50%) of the balance of the Trust Fund as of the prior January 1st.

(b) At least sixty percent (60%) of the funds eligible for disbursement annually shall be used to create, repair and preserve Affordable Units for households whose gross income,

adjusted for family size, is at or below sixty percent (60%) of Area Median Income.

(c) At least fifty percent (50%) of funds eligible for disbursement annually shall be reserved for commitments to nonprofit corporations until September 1st, after which these reserved funds may be disbursed to any Recipient.

(d) The total disbursements from the Trust Fund for any one project shall be limited to twenty-five percent (25%) of the balance of the Trust Fund as of January 1st of the year prior to the disbursement.

(e) Recipients may use the funds directly or through an affiliated entity to pay for:

1. capital costs, including but not limited to the actual costs of rehabilitating or constructing Affordable Units;
2. preserving Affordable Units;
3. demolishing or converting existing non-residential buildings to create new Affordable Units;
4. real property acquisition costs;
5. accessibility modifications;
6. modifications for health, safety and energy conservation purposes; and
7. professional service costs, including but not limited to, those costs incurred for architectural, engineering, planning and legal services which are attributable to the creation, repair and preservation of Affordable Units, provided that no more than fifteen percent (15%) of the total funds allocated to the project from the Trust Fund may be used for such costs.

(f) Trust Fund moneys may not be used for operating expenses of any program, provided, however, that up to fifty percent (50%) of the interest income earned by the Trust Fund in the prior calendar year may be disbursed in the form of grants to be used by Recipients to pay for operating expenses of programs that provide direct assistance to buyers or renters, including, but not limited to, security deposit loan programs, private mortgage insurance guarantee programs, and homebuyer down payment assistance programs.

(g) No Recipient may refuse to lease or otherwise make unavailable any rental Assisted Units solely because an applicant for housing is a direct recipient of a federal, state or local governmental housing subsidy.

(7) Term of Affordability.

To ensure long term affordability, Assisted Units shall be deed restricted for at least thirty (30) years as follows:

(a) Owner-occupied Assisted Units shall be available only to households whose gross income, adjusted for family size, is at or below eighty percent (80%) of Area Median Income.

(b) Rental Assisted Units shall be available only to households whose gross income, adjusted for family size, is at or below sixty percent (60%) of Area Median Income."

EDITOR'S NOTE:

Sec. 4.22, MGO, currently reads as follows:

"**4.22 THE MADISON AFFORDABLE HOUSING TRUST FUND**

(1) Purpose and Intent.

There is hereby created and established for the City of Madison a fund to be known and denominated as the Madison Affordable Housing Trust Fund. The Trust Fund shall be a permanent endowment and continually renewable source of revenue to meet, in part, the housing needs of the Low Income and Very Low Income households of the City. The Trust Fund is to provide loans and grants to for-profit and non-profit housing developers for the acquisition, capital and soft costs necessary for the creation of new Affordable rental and owner-occupied housing. Preference shall be given to those projects that ensure that the Assisted Units remain Affordable for the longer period possible. Projects funded by the Trust Fund shall be disbursed throughout the City so no single neighborhood experiences a disproportionate concentration of

housing units for Low Income and Very Low Income households.

(2) Definitions.

In this section:

(a) "Affordable" means a housing unit that has an Affordable Housing Cost.

(b) "Affordable Housing Cost" means an amount satisfied by:

1. for owner-occupied housing, a housing payment inclusive of loan principal, loan interest, property taxes, property and mortgage insurance, and homeowners association dues which allows a Low Income or Very Low Income household to purchase a home, while paying no more than thirty (30%) of their gross household income, or no more than thirty-three (33%) of their gross household income for homes meeting a performance standard of energy conservation equal to 115% of the performance required by state building codes; and,
2. for rental or cooperative housing, a housing payment, inclusive of a reasonable allowance for heating, which allows a Very Low Income household to rent a unit, while paying no more than thirty (30%) of their gross household income.

(c) "Area Median Income" means the median income for the greater Madison area adjusted for family size, as published by the United States Department of Housing and Urban Development.

(d) "Assisted Unit" means a housing unit that is Affordable because of assistance from the Trust Fund.

(e) "Committee" means the City of Madison Community Development Block Grant Committee created pursuant to Sec. 33.15, M.G.O.

(f) "Contingent Fund" means the fund created pursuant to Sec. 4.03, MGO.

(g) "Grants Supervisor" means the City's Community Development Grant Supervisor, or his or her designee.

(h) "Low Income" means gross household income adjusted for family size that is at or below eighty percent (80%) of Area Median Income, but more than fifty percent (50%) of Area Median Income.

(i) "Recipient" means any for-profit or non-profit housing developer that receives funds in the form of a loan or a grant from the Trust Fund Account. A Recipient may be an individual, partnership, joint venture, limited liability company or partnership, association or corporation.

(j) "Tax Incremental Financing Equity Participation Payment" means an equity payment received by the City from a developer pursuant to a TIF Development Agreement in which the tax incremental district has been dissolved.

(k) "Trust Fund" means the Madison Affordable Housing Trust Fund.

(l) "Very Low Income" means gross household income adjusted for family size that is at or below fifty percent (50%) of Area Median Income.

(3) Trust Fund Account; Sources of Trust Fund Moneys.

(a) There is also hereby established a Madison Affordable Housing Trust Fund Account, to be maintained by the City Comptroller. All funds received by the City on behalf of the Trust Fund shall be deposited in the Trust Fund Account. Principal and interest from loan repayments, and all other income from Trust Fund activities, shall be deposited in the Trust Fund Account. All funds in the Trust Fund Account shall earn interest at least at the same rate as pooled investments managed by the City Treasurer. All interest earnings from the Trust Fund Account shall be reinvested and dedicated to the Trust Fund Account.

(b) The Trust Fund shall consist of funds derived from the following:

1. Private cash contributions designated for the Trust Fund;
2. Payments in lieu of participation in current or future affordable housing programs;
3. Matching funds from a federal affordable housing trust fund;

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4. Principal and interest from Trust Fund loan repayments and all other income from Trust Fund activities.

(c) The Trust Fund may consist of funds derived from, but not limited to the following, subject to appropriation by the Common Council, upon notification from the Comptroller that funds are available.

1. Residual Contingent Reserve funds;
2. Amounts from the Operating Budget equivalent to City fees collected from dedicated uses related to housing, such as reinspection fees;
3. Tax Incremental Financing Equity Participation Payments;
4. Proceeds from the sale or use of surplus City land;
5. Any other appropriations as determined from time to time by legislative action of the Common Council.

(4) Trust Fund Distributions.

(a) The Trust Fund is to function as an endowment fund to fund loans and grants in accordance with this Section. The Trust Fund program shall be administered by the Grants Supervisor. No disbursements may be made from the Trust Fund Account without the prior recommendation of the Committee and authorization by the Common Council. Unless authorized by a vote of the Common Council, for any year that the Trust Fund Account balance is less than $10 million, the total disbursements from the Trust Fund Account shall be limited to twenty-five percent (25%) of all revenue sources deposited into the Trust Fund Account in the previous fiscal year, except loan repayments. For any year that the Trust Fund Account is greater than $10 million, the total disbursements from the Trust Fund Account shall be limited to:

1. The total interest accrued on the Trust Fund Account from the previous fiscal year, plus
2. Any unexpended amount from the allowable disbursements from the previous fiscal year.

(b) Disbursements from the Trust Fund Account shall be made as loans or grants to assist Recipients in the creation of Assisted Units. Recipients may use the funds to pay for: capital costs, including but not limited to the actual costs of rehabilitating or constructing Assisted Units; preserving affordable units; demolishing or converting existing non-residential buildings to create new Assisted Units; real property acquisition costs; and professional service costs, including but not limited to, those costs incurred for architectural, engineering, planning and legal services which are attributable to the creation of Assisted Units.

(c) Trust Fund moneys may not be used for operating expenses of any program, or supporting services such as childcare or any other social program.

(d) At least 60% of the funds eligible for disbursement annually shall be used to create Assisted Units for Very Low Income households.

(e) Rental Assisted Units shall be available only to households whose gross income, adjusted for family size, is at or below fifty percent (50%) of Area Median Income.

(f) Owner-occupied Assisted Units shall be available only to households who are Low Income or Very Low Income.

(g) The Committee shall periodically review the terms of assistance, and structure these terms to encourage the longest period of affordability possible.

(h) Loans or grants from the Trust Fund shall be used to develop Assisted Units within a project. The Trust Fund may assist up to one hundred percent (100%) of the units within a building or development of one (1) to nine (9) total units, up to fifty percent (50%) of the units within a building or development of ten (10) to fifteen (15) units, and up to twenty-five percent (25%) of the units within a building or development of sixteen (16) or more units.

(i) Assisted Units shall be distributed throughout the building or development so as to avoid

a disproportionate concentration in any one area.

(j) The Committee shall give preference to projects not located in any Tax Incremental District whose project expenditure period has not expired.

(k) Notwithstanding the stated purpose in subsection (1) herein to create the Fund as a continually renewable source of revenue, the Committee may, in its discretion, recommend that disbursements from the Trust Fund Account may be made as grants at any time that the Trust Fund Account balance exceeds $10 million.

(l) At least fifty percent (50%) of funds available in any calendar year shall be reserved for commitments to nonprofit corporations~~.~~ until October 1st, after which these reserved funds may be disbursed to any Recipient or carried over to the following year. Exceptions to this provision may be approved by the Common Council.

(5) Commission's Powers and Responsibilities.

(a) The Committee shall have the following powers and duties as regards the Trust Fund:

1. Recommend policies, goals and objectives for the Trust Fund program to the Mayor and the Common Council;
2. Review project funding requests and recommend to the Mayor and the Common Council all disbursements from the Trust Fund;
3. Investigate and recommend to the Mayor and Common Council additional sources of money for deposit to the Trust Fund Account; and
4. Publish and distribute requests for proposals and notices of funding availability.

(b) All projects considered for funding will be reviewed prior to Committee action by the CDBG staff, and the Grants Supervisor shall submit to the Committee comments and recommendations.

(c) The Committee shall within ninety (90) days following the close of each fiscal year prepare and submit an annual report to the Common Council on the activities undertaken with funds from the Trust Fund. The report shall specify the number and types of units assisted, the amount loaned per Assisted Unit, the amount of state, federal and private funds leveraged, the geographic distribution of Assisted Units and a summary of statistical data relative to the incomes of assisted households, including their monthly rent or mortgage payments, and the sales prices of owner-occupied Assisted Units.

(6) Term of Affordability.

(a) The minimum term of affordability for any Assisted Unit shall be thirty (30) years. The Committee shall give preference to those projects that ensure that the Assisted Units remain Affordable for the longer period possible.

(b) Assisted Units shall be deed restricted to ensure long term affordability.

(c) In those cases where an Assisted Unit is sold or transferred, or where an Assisted Unit is no longer Affordable, the initial Recipient of assistance from the Trust Fund shall be obligated to repay to the City the original loan amount, plus a pro-rated percentage of the appreciated value of the Assisted Unit as determined by the Commission. If an Assisted Unit has remained Affordable for more than fifty (50) years, the Committee may waive the obligation of the Recipient to pay the pro-rated appreciated value.

(7) Building Standards.

The Committee shall encourage a set of building standards or initial improvements that lead to lower, long-term utility costs for occupants of Assisted Units. The specific set of these standards and improvements shall include the following:

(a) Compliance with such health and safety standards such as direct vent hot water units when individual hot water heating units are provided within the Assisted Unit;

(b) Protection from radon gas;

(c) A passive solar-slab ventilation system when sub-grade areas are exposed during construction or rehabilitation; and

(d) Within the Assisted Unit, features that help achieve a performance standard of energy

conservation equal to 115% of the performance required by state building codes.

(8) Accessibility.

The Committee shall establish a program-wide goal of helping to create at least one (1) accessible unit out of every five (5) it assists. An accessible unit shall have accessible features as defined by the applicable sections of Wis. Admin. Code chs. Comm 61-65, and include one curb-less shower and a step-free entry into the Assisted Unit.

(9) Section 8 Participants.

No Recipient may refuse to lease or otherwise make unavailable any rental Assisted Units solely because an applicant for housing is a direct recipient of a federal, state or local governmental housing subsidy."