

AGENDA # _____
Copy Mailed to Alderpersons _____

CITY OF MADISON, WISCONSIN

AN AMENDED 2ND SUBST. ORDINANCE _____

creating Section 28.04(25) of the Madison General Ordinances to provide for inclusionary dwelling units.

Drafted by: Katherine C. Noonan
Assistant City Attorney

Date: January 21, 2004

Fiscal Note: See separate report of the Comptroller.

SPONSORS: Mayor Cieslewicz, Alds. Konkel, King, Webber, Verveer, Benford, Olson, MacCubbin, Sloan, Brandon, Golden, Markle, and Holtzman

PRESENTED July 15, 2003
(TITLE ONLY)

REFERRED Plan Comm.; Housing
Comm., Board of Estimates; Comptroller; EDC;
CCOC; CDA

REREFERRED Plan Comm., Hsg. Comm.,
BOE, Comp., EDC, CCOC, CDA, CDBG, C,
Transit Genl. Mgr., CC Mtg. 10-7-03 (8/5/03);
Plan Comm., Hsg. Comm., BOE, Comp., EDC,
CCOC, CDA, CDBG, Transit Genl. Mgr., CC
Mtg. 12-2-03 (10/7/03); Plan Comm., Hsg.
Comm., BOE, Comp., EDC, CCOC, CDA,
CDBG, Transit Genl. Mgr., CC Mtg. 10-7-03
(8/5/03); Plan Comm., Hsg. Comm., BOE,
Comp., EDC, CCOC, CDA, CDBG, Transit
Genl. Mgr., CC Mtg. 1-6-04 (12/2/03); CC Mtg.
1-20-04 (1/6/04)

REPORTED BACK 8/5/03, 10/7/03, 12/2/03,
1/6/04, 1/20/04

ADOPTED X POF _____
RULES SUSP. _____ TABLED _____
PUBLIC HEARING _____

* * * *

MAYOR SIGNED _____
PUBLISHED _____

* * * *

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

Comptroller's Office

* * * *

AMENDED 2ND SUBSTITUTE 13501
ORDINANCE NUMBER _____
ID NUMBER 34421

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

Subsection (25) entitled "Inclusionary Housing" of Section 28.04 entitled "General Provisions" of the Madison General Ordinances is created to read as follows:

Approved as to form:

/s/
James M. Voss, Acting City Attorney

“(25) 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.
- Improvement Equity. The increase in value of an inclusionary dwelling unit due to cash improvements made by the seller, except those that increase the square footage of the unit, unless necessary for accessibility.
- Inclusionary Dwelling Unit. A dwelling unit for rental or sale to a family with an annual median income at or below the income in (d)(3).
- 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 City may designate a non-profit entity that provides housing as an income eligible family.
- Market Equity. The increase in value of an inclusionary dwelling unit as determined by the difference between the purchase price and the sale price.
- Paid Equity. The amount of down payment and mortgage principal that the owner of an inclusionary dwelling unit has paid during the period of ownership, except for any amount withdrawn as part of additional financing.
- Period of affordability. The time, specified in a recorded deed restriction, land use restriction agreement, and/or ground lease during which a rental inclusionary dwelling unit shall be rented only to an income eligible family. The period of affordability for rental inclusionary dwelling units begins on the date the certificate of occupancy is issued.
- (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, except development receiving Section 42 low income housing tax credits or tax-exempt bonds, shall provide a number of inclusionary dwelling units equal to no less than fifteen percent (15%) of the total dwelling units in the development.
 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. 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.
 4. 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, ~~other than to a planned development district,~~ 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, ~~or~~
- ~~e. a plat approved prior to the effective date of this ordinance requires rezoning to the R2Y and/or R2Z District as a condition of approval.~~
5. The City of Madison CDA or a non-profit entity designated by the City may purchase a parcel that has been designated for an inclusionary dwelling unit. The initial 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.
6. Waiver.
- a. The Plan Commission may waive the requirement to provide inclusionary dwelling units on-site (in the development) if the applicant can establish by clear and convincing financial evidence that providing the required inclusionary dwelling units on-site shall render providing the required number of affordable dwelling units financially infeasible.
- b. If a waiver is granted, the requirement to provide inclusionary dwelling units shall be met by providing some or all of the inclusionary dwelling units off-site by assigning the obligation to provide some or all of the inclusionary dwelling units to another person, by making a payment into the Affordable Housing Trust Fund (or another fund designated by the Common Council), or any combination of the above.
- c. A waiver for providing the inclusionary dwelling units on-site shall be granted for no more dwelling units than is necessary to make the development financially feasible.
- d. If inclusionary dwelling units are provided off-site, the number of off-site inclusionary dwelling units shall be between 1.0 and 1.25 times the difference between the total number of inclusionary dwelling units that are required and the number provided on site.
- e. Off-site inclusionary dwelling units shall be new construction and shall be located within a one (1) mile radius of the edge of the proposed development, if feasible.
- f. 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.
- g. Payment to the Affordable Housing Trust Fund, or another fund designated by the Common Council, for a waiver of owner-occupied inclusionary dwelling units shall be in 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.
- h. Payment to the Affordable Housing Trust Fund, or another fund designated by the Common Council, for a waiver of rental inclusionary dwelling units shall be 1.1 times the difference between the cost to provide a market rate rental dwelling unit and the cost to provide a rental inclusionary dwelling unit for an income eligible family at the specified AMI.
- i. 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 Affordable Housing Trust Fund (or another fund designated by the Common Council), or any combination of the above.
- j. The applicant for the waiver and/or 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 and/or 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.

7. Option to purchase. After the initial 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 City of Madison CDA or a designated non-profit organization. The purchase price to exercise the option shall be the assessment at the time the City receives notice of intent to sell. The City or assignee has 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. Within thirty (30) days from the date the City receives written notice of the intent to sell, the City or assignee shall determine whether or not to exercise the option to purchase. A determination by the City to exercise the option to purchase is not final until a resolution authorizing the purchase of the property is adopted by the Common Council. If the City or assignee declines to exercise the option to purchase, the option to purchase shall expire, unless the owner has not sold the inclusionary dwelling unit within one (1) year from the date on which the City was notified of its right to exercise the option, in which case, the option to purchase shall continue. ~~For any sale of a building containing sixteen (16) or fewer dwelling units that includes one (1) or more rental inclusionary dwelling units, for the initial sale at the end of the period of affordability, the City shall have an option to purchase the building at market price and the City may assign that option to the CDA or a non profit designated by the City.~~

(d) Incentives.

1. The applicant shall receive one or more incentives for providing inclusionary dwelling units or cash in lieu of inclusionary dwelling units. As set forth in 3. below, each development will receive a number of points. The incentives available for a development shall be based on the number of points for the development and the incentive guidelines in 5. below.
2. A development shall provide the required fifteen percent (15%) inclusionary dwelling units for income eligible families at one or more AMI level. No more than ten percent (10%) of the dwelling units 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, except that developments with forty-nine (49) or fewer detached dwelling units or ~~more than~~ 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.
3. As set forth in Subparagraphs a. through d. the number of incentive points for a development will be determined by the percentage of units, in increments of five percent (5%), that are provided for families at specific AMI levels, as well as the number of AMI levels for which units are provided, and the applicable interest rate.

a.

INCENTIVE POINTS FOR OWNER OCCUPIED DWELLINGS UNITS

Percent of Dwelling Units	80% AMI	70% AMI	60% AMI	50% AMI
5%	0	1	2*	3*
10%	1	2	3*	4*
15%	2	3	4*	5*
20%	3	4	5*	6*

b.

INCENTIVE POINTS FOR RENTAL DWELLINGS UNITS

Percent of Dwelling Units	60% AMI	50% AMI	40% AMI	30% AMI
5%	0	1	2*	3*
10%	1	2	3*	4*
15%	2	3	4*	5*
20%	3	4	5*	6*

- c. ~~A development shall receive an additional point for providing inclusionary dwelling units for families at more than one (1) AMI level.~~
- d. A development shall receive an additional point for an increase in the applicable interest rate above seven percent (7%), limited to one (1) point for any fractional change between whole percentages, i.e., an interest rate of seven and one quarter percent (7.25%) has a value of 1 point; an additional point is not available until the interest rate exceeds eight percent (8%).
- 4. All development shall receive expedited review if eligible pursuant to 7. below. No points need be used for eligible development to receive expedited review.
- 5. Each of the incentives below has a value of 1 point. The applicant may select an incentive, or combination of incentives, according to the points received for the development and the guidelines in Subparagraphs a. through j. below. If the Director of the Department of Planning and Development determines that any incentive(s) selected by the applicant should not be provided to the development, the reasons for such determination shall be provided to the Plan Commission in the report of the Planning Unit.
 - a. Density Bonus – a ten percent (10%) bonus, unless a development has ~~more than~~ four (4) or more stories and at least seventy-five percent (75%) of parking is provided underground or has thirty (30) ~~forty-nine (49) or fewer~~ detached dwelling units in which case, each point provides a twenty percent (20%) bonus. No more than three (3) points may be used for a density bonus.
 - b. A reduction in Park Development fees for on-site inclusionary dwelling unit, pursuant to the requirements in Sec. 20.16. No more than one (1) point may be used to reduce Park Development fees. 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). No more than one (1) point may be used to reduce Park dedication requirements.
 - d. Twenty-five percent (25%) reduction in Parking Requirements, if approved, pursuant to Sec. 28.11(8)(2)(c). No more than one (1) point may be used to reduce Parking Requirements.
 - e. Non-City provision of street tree landscaping.
 - e.f. A cash subsidy from the Affordable Housing Trust Fund disbursed pursuant to Sec. 4.22, Tax Incremental District funds, disbursed pursuant to adopted policies, or another fund designated by the Common Council, disbursed pursuant to the rules of that fund of ten thousand dollars (\$10,000) per unit for up to 50% of inclusionary dwelling units that are provided for families with an AMI denoted by an asterisk in 3. above. No more than two (2) points may be used for a cash subsidy.
 - f.g. A cash subsidy from the Affordable Housing Trust Fund, disbursed pursuant to Sec. 4.22, Tax Incremental District funds, disbursed pursuant to adopted policies, or another fund designated by the Common Council, disbursed pursuant to the rules of that fund of five thousand dollars (\$5,000) for up to fifty percent (50%) of on-site inclusionary dwelling units for developments with forty-nine (49) or fewer detached dwelling units or developments with ~~more than~~ four (4) or more stories and at least seventy-five percent (75%) of parking is provided underground. No more than two (2) points may be used for a cash subsidy. The subsidy shall be adjusted annually based to the Consumer Price Index and shall be subject to availability of monies in any of the above funds.

- g-h. 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-i. 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.
 - i-j. Assistance from the Department of Planning and Development in obtaining other funding and information regarding other sources of funding related to the provision of housing.
 - j-k. 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.
6. Density Bonus. The density of dwelling units/acre that will be used to calculate the bonus density shall be based on the existing zoning. Notwithstanding the above, 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 of dwelling units/acre that will be used to calculate the bonus density shall be the midpoint of the density ranges recommended in the Neighborhood Development Plan. The density of dwelling units/acre for all of the above are as follows:

<u>Existing Density</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

Agricultural or Lands to be Annexed:

- a. Low Density Midpoint of density range in-Neighborhood Development Plan
- b. Low-Medium Density Midpoint of density range in-Neighborhood Development Plan
- c. Medium Density Midpoint of density range in-Neighborhood Development Plan
- d. Medium-High Density Midpoint of density range in-Neighborhood Development Plan
- e. High Density Midpoint of density range in-Neighborhood Development Plan

7. Expedited Review. Eligibility for expedited review is dependent on the following:
- a. 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:

commences within ten (10) days of the beginning of the marketing period. The owner or lessor also shall provide the sale or rental price of the inclusionary dwelling unit and shall notify the City when the inclusionary dwelling unit is sold or rented. If the owner or lessor has provided notice of marketing as required in (e)5. and has extended the marketing period two (2) times, the owner or lessor may rent or sell the inclusionary dwelling unit at market rate.

- (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 and the number that will be owner-occupied 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; and the incentives sought from the City for provision of the inclusionary dwelling units. The Plan shall be recorded at the same time as any required deed restrictions, land use restriction agreement, ground lease, or other documents requiring recording under this or any other ordinance.
- (g) Standards for Inclusionary Dwelling Units.
 - 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.
 - 3. 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 similar for inclusionary and market rate dwelling units and shall be consistent with the Inclusionary Dwelling Unit Plan.
 - 6. The inclusionary dwelling units 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.
 - 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.
 - 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. After the initial sale of an owner-occupied inclusionary dwelling unit, the proceeds from additional sales that will accrue to the seller shall be an amount that represents the seller's paid equity, plus the seller's market equity plus any applicable improvement equity.

2. The seller's market equity is a percentage of the total market equity and is dependant on the length of the seller's ownership. No market equity is available to the seller until the end of two (2) years. The percentage of market equity available to the seller increases at the end of each subsequent calendar year as follows:

<u>Length of Ownership</u>	<u>Seller's Market Equity</u>
Less than 1 year	0%
1 Year	0%
2 Years	5%
3 Years	10%
4 Years	15%
5 Years	20%
6 Years	25%
7 Years	30%
8 Years	35%
9 Years	40%
10 Years	45%
11 Years	50%
12 Years	45%
13 Years	40%
14 Years	35%
15 Years	30%
16 Years	25%
17 Years	20%
18 Years	15%
All following years	15%

3. The seller's improvement equity is the total improvement equity adjusted for the age of the improvement. The age adjustment shall be calculated using the depreciation schedules in the Internal Revenue Code.
 4. Any proceeds of a sale that are remaining after the seller's share shall be deposited in the Affordable Housing Trust Fund, or another fund designated by the Common Council.
 5. The Director of the Department of Planning and Development shall be notified before significant improvements, as set forth in the Inclusionary Zoning Program Policies and Protocols, are made to an inclusionary dwelling unit.
 6. 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.
 7. The Director of the Department of Planning and Development shall be notified before an inclusionary dwelling unit is refinanced.
- (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) 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.
- (m) This ordinance shall be effective February 15, 2004.”