

CITY OF MADISON, WISCONSIN

AN ORDINANCE \_\_\_\_\_

PRESENTED \_\_\_\_\_  
REFERRED \_\_\_\_\_

Amending Section 28.04(25) of the Madison General Ordinances to change the equity distribution at sale and add exemptions to the inclusionary zoning ordinance.

RULES SUSPENSION \_\_\_\_\_  
PUBLIC HEARING \_\_\_\_\_



Drafted by: Katherine Noonan

Date:

SPONSORS: Mayor Cieslewicz; Alds. King  
Konkel, Benford, Olson,  
Verveer, Webber, Gruber

DRAFTER'S ANALYSIS: Purpose of these amendments is to expand the types of development that are not subject to the ordinance and change the formula for equity distribution when an inclusionary dwelling unit is sold by an income eligible family.

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

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

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

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

Approved as to form:

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

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

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

Market Equity. ~~The increase in value of an inclusionary dwelling unit as determined by the difference between the purchase price and the sale price.~~

Other Residential Occupancy. Those residential arrangements other than rental or owner-occupied, including but not limited to, continuing care contracts, agreements known as 'life leases', 'continuum of care agreements', or any other agreement whereby the resident of a dwelling unit makes some payment other than or in addition to a periodic occupancy payment, but does not obtain fee title to a residential unit.

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

Notwithstanding the above:

a. Development that contains only rental dwelling units financed by Section 42 low income housing tax credit shall not be subject to this ordinance.

b. Development with at least fifteen percent (15%) rental dwelling units financed by Section 42 low income housing tax credit and/or qualified housing revenue bonds and in which those dwelling units are dispersed throughout the development per Subdivision (g)6 of this ordinance, shall not be subject to this ordinance.

c. Development that contains fewer than fifteen percent (15%) rental dwelling units financed by Section 42 low income housing tax credit and/or qualified housing revenue bonds are subject to this ordinance and the number of rental dwelling units receiving low income tax credits that count toward the total number of inclusionary dwelling units required shall depend on the dispersion of the inclusionary dwelling units in the development per Subdivision (g)6.

d. Development, owned by a non-profit that provides housing, where at least fifteen percent (15%) of the dwelling units are provided to families at or below fifty percent (50%) AMI, where the inclusionary dwelling units are dispersed pursuant to Subdivision (g)6., and where City financial assistance has been provided to the development, shall not be subject to this ordinance.

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

a. Development where at least fifteen percent (15%) of the dwelling units are developed by a non-profit that provides housing, are dispersed throughout the development, will be provided for families at or below seventy percent (70%) AMI, and where City financial assistance has been provided to the non-profit, shall not be subject to this ordinance.

b. Development where a non-profit that provides housing has received City financial assistance and provides at least seventy-five percent (75%) of the dwelling units to families at or below eighty percent (80%) AMI shall not be subject to this ordinance.

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

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

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

6. Existing General Development Plans and Plats. This ordinance applies to all development subject to (c)1. and 2. above, for which completed applications for development approval are submitted on or after the effective date of this ordinance. Notwithstanding the above, this ordinance does not apply to development with an approved plat or an approved General Development Plan as of the date this ordinance becomes effective, unless:

- a. an application is submitted for a zoning map amendment, on or after the date this ordinance becomes effective other than one submitted in b. below or one based on a requirement for R2S, R2T, R2Y or R2Z zoning that is a condition of approval for a plat approved prior to the effective date of the ordinance, or
- b. a Specific Implementation Plan is submitted on or after the effective date of this ordinance that requires a major amendment to the General Development Plan, in which case, this ordinance shall apply to the development covered by the submitted Specific Implementation Plan.

7. The City of Madison CDA (CDA) or a non-profit entity designated by the Director of the Department of Planning and Development 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.

8. 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 Inclusionary Zoning Special Revenue Fund, 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 the difference between the total number of inclusionary dwelling units that are required and the number provided on site or some greater number if the Plan Commission determines that an increased number is financially feasible.

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 and plans shall be approved by the Plan Commission based on their consistency with the inclusionary dwelling unit plan and the requirements of the ordinance.~~

f. If the obligation to provide inclusionary dwelling units is assigned or provided off-site, 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 Inclusionary Zoning Special Revenue Fund, 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 Inclusionary Zoning Special Revenue Fund, or another fund designated by the Common Council, for a waiver of rental inclusionary dwelling units shall be ten percent (10%) of the appraised value of the average unit times the number of units waived.

i. Payment to the Inclusionary Zoning Special Revenue Fund for a waiver of other residential occupancy dwelling units shall be an amount equal to ten percent (10%) of the appraised value of the average rental unit multiplied by the number of required, but not provided, inclusionary dwelling units.

j. The Plan Commission may reduce the number of inclusionary dwelling units required for the development if the applicant can establish by clear and convincing financial evidence that it is not financially feasible to provide the required number of inclusionary dwelling units on-site, off-site, by assignment of the obligation, by payment of the required amount into the Inclusionary Zoning Special Revenue Fund, or any combination of the above.

k. 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.

9. Option to purchase.

a. With the exception of b. below, 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 CDA or a designated non-profit entity. The purchase price to exercise the option shall be the assessment at the time the City receives notice of intent to sell from the owner. 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 from the owner, 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.

b. If the initial sale of an owner-occupied inclusionary dwelling unit is to the CDA or a non-profit entity that has a City-approved buy-back provision or a ground lease as part of its specific program operation, the unit shall not be subject to an exclusive option to purchase by the City until such time as the CDA or non-profit entity determines not to buy back the unit. This provision applies to other residential occupancy inclusionary dwelling units administered by a non-profit. If the non-profit entity has no buy-back provision, the income eligible family that purchases the unit shall be subject to the option requirements in a, above. At that time, the purchase price to exercise the option to purchase and the procedure for exercising or declining to exercise the option shall be as in a. above.

c. The option agreement shall contain the following provision:  
 "Judicial Foreclosure, Deed in Lieu of Foreclosure, and Trustee's Sale. The provisions of Sec 28.04(25),MGO are subordinate to any deed of trust or mortgage that is granted by the owner and secured in the first priority position by the inclusionary dwelling unit to the extent that any party, successor, or assign who receives title to the inclusionary dwelling unit through a trustee's sale, judicial foreclosure sale or deed in lieu of foreclosure with respect to such aforementioned deed of trust or mortgage or any private mortgage insurance company that obtains title to an inclusionary dwelling unit shall receive title free and clear of any resale restriction of this ordinance. The owner of any inclusionary dwelling unit shall provide notice to the Department of Planning and Development of any foreclosure action that is filed involving the inclusionary dwelling unit within thirty (30) days of the date on which the owner of the unit was served in the foreclosure action. At no time may the City or assignee exercise its option to purchase an inclusionary dwelling unit from the holder of a mortgage or deed of trust in first priority position for less than such holder's debt on the inclusionary dwelling unit. The City or its assignee shall have the right of first refusal that must be exercised within ninety (90) days after the property is listed for sale.

(d) Incentives.

1. If requested, 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 2. 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 4. below.

2. As set forth in Subparagraphs a. through c. 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 DWELLING UNITS**

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

b.

**INCENTIVE POINTS FOR RENTAL AND OTHER  
RESIDENTIAL OCCUPANCY DWELLING UNITS  
AND LEASED RESIDENTIAL SPACES**

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

c. 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%).

3. Expedited review is available as follows:

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:

i. The applicant agrees in writing that the Common Council shall have ninety (90) days to act on the completed application, and

ii. The ninety (90) day period may be extended pursuant to Sec. 16.23(5)(b)3.

b. For development that is consistent with adopted city plans, as determined by the Director of the Department of Planning and Development, the Planned Unit Development District or Planned Commercial Development District General Development Plan and Specific Implementation Plan may be combined.

c. Following approval of the development, revised documents may be routed concurrently to City agencies for final review and sign off. No points need be used for an eligible development to receive expedited review.

4. 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 m. 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 four (4) or more stories and at least seventy-five percent (75%) of parking is provided underground or has 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. An additional density bonus may be available based on applicable approval standards in the Zoning Code.

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.

f. A cash subsidy from the Inclusionary Zoning Special Revenue Fund of up to five thousand dollars (\$5,000) per inclusionary dwelling unit provided for families with an AMI denoted by an asterisk in 3. above or from Tax Incremental District funds, disbursed pursuant to adopted policies, for units provided to families with an AMI denoted by an asterisk in 3. above. No more than two (2) points may be used for any cash subsidy. The subsidy shall be adjusted annually based on the Consumer Price Index and shall be subject to availability of monies in any of the above funds. No more than two (2) points may be used for a cash subsidy.

g. A cash subsidy from the Inclusionary Zoning Special Revenue Fund, of two thousand five hundred dollars (\$2,500) per inclusionary dwelling unit or from Tax Incremental District funds, disbursed pursuant to adopted policies. In either case, the subsidy shall be only for on-site inclusionary dwelling units for developments with forty-nine (49) or fewer detached dwelling units or developments with four (4) or more stories and at least

seventy-five percent (75%) of parking is provided underground. No more than two (2) points may be used for any 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.

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).

i. Reservation of up to ten percent (10%) of total floor area or ten percent (10%) of the developable residential area within a development for non-inclusionary dwelling unit designation. Any floor area reserved shall be for contiguous dwelling units and may include dwelling units on more than one floor if the floor area of one floor is less than ten percent (10%) of the total floor area. No more than two (2) points may be used for such reservation.

j. Up to ten percent (10%) of the inclusionary zoning units may be duplexes if both dwelling units in the duplex are inclusionary zoning units, the exterior appearance of the duplex inclusionary dwelling units is similar to dwelling units on adjacent lots, and duplexes are allowed in the zoning district. No more than two (2) points may be used for a total of not more than twenty percent (20%) of the inclusionary dwelling units.

k. Eligibility for a number of residential parking permits equal to the number of inclusionary dwelling units in Planned Development Districts, if the provisions of Sec. 12.138 are met.

l. 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.

m. 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.

n. Consideration of modifications to City plans, to allow residential development in areas currently identified for other uses.

5. Density Bonus. The density of dwelling units/acre that will be used to calculate the bonus density shall be based on the existing zoning. However, if the existing zoning is agricultural or for lands to be annexed to the City of Madison and a Neighborhood Plan exists for the area, the density 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 is 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

(e) Price of Inclusionary Dwelling Units.

1. Rental Inclusionary Dwelling Units. The monthly rental price for rental inclusionary dwelling units or leased residential spaces shall include rent and utility costs and shall be no more than thirty percent (30%) of the monthly income for the applicable AMI.
2. Owner-Occupied Inclusionary Dwelling Units. The initial sale price of an owner-occupied inclusionary dwelling unit or a lot that is designated for an owner-occupied inclusionary dwelling unit shall be calculated by the City and shall be based on a monthly payment that includes property taxes, homeowner's insurance, private mortgage insurance, homeowner's or condominium association fees (if applicable), monthly ground rent, and the principal payment and interest on a mortgage based on the available fixed-rate thirty (30) year mortgage. The monthly payment that is used to calculate the initial sale price shall be no more than thirty percent (30%) of the monthly income for the applicable AMI. The applicable interest rate for establishing a sale price shall be the rate, as determined quarterly by the Department of Planning and Development, that is available as of the date on which the building permit for the inclusionary dwelling unit is issued or the date on which marketing of the unit begins. Marketing begins on the date the Director of the Department of Planning and Development receives notice that marketing of a unit has begun. With the exception of a refrigerator and stove, major appliances in the home and landscaping shall be considered as optional amenities. If the owner-occupant of an inclusionary dwelling unit wishes to finance these optional amenities as part of the home mortgage, their cost should not be considered part of the purchase price of the unit.
3. Other Residential Occupancy Inclusionary Dwelling Units. The price of another residential occupancy residency inclusionary dwelling unit shall not exceed thirty percent (30%) of the monthly income for the applicable AMI and shall include all occupancy fees, utility costs and, if applicable, any monthly payment for the financing of the cost to enter into an agreement for such unit. The monthly payment shall be calculated in the same manner as a monthly payment under (e)2. above.
4. Dwelling Unit/Family Size. For purposes of calculating rental and sales prices, the following relationship between family size and dwelling unit size shall apply:
  - a. Leased residential space - One bed in a two-bed bedroom - .5 person family.
  - b. Leased residential space - One bedroom in a multi-bedroom unit - .66 person family.
  - c. Efficiency dwelling unit - 1 person family.
  - d. One bedroom dwelling unit - 1.5 person family.
  - e. Two bedroom dwelling unit - 3 person family.
  - f. Three bedroom dwelling unit - 4.5 person family.
  - g. Four bedroom dwelling unit - 6 person family.
  - h. Five bedroom dwelling unit - 7.5 person family.
  - i. Six bedroom dwelling unit - 9 person family

The median income for a family of 1.5 is the average of median income for a 1 and 2 person family. The median income for a family of 4.5 is the average of the median income for a 4 and 5 person family. The median income for a family of 7.5 is the average of the median income for a 7 and 8 person family.

5. Tenants. Rental inclusionary dwelling units shall be rented only to income eligible families during the period of affordability. An income eligible family may remain in a rental inclusionary dwelling unit for additional rental periods as long as the income of the family does not exceed one hundred twenty-five percent (125%) of the applicable AMI.
6. Failure to Rent or Sell During Marketing Period. If an inclusionary dwelling unit or leased residential space is not rented after having been marketed for ninety (90) days after issuance of a certificate of occupancy, or if there is no accepted offer to purchase after having been marketed for one hundred twenty (120) days after the issuance of a building permit, it may be marketed to a family with an AMI that is at or below the next greater ten percent (10%) increment of AMI than that specified in the restriction on the unit. For each additional consecutive ninety (90) or one hundred twenty (120) day period without a rental or sale, the inclusionary dwelling unit or leased residential space may be offered to a family with an AMI that is at or below an additional ten percent (10%) increment of AMI. The owner or lessor also shall provide the sale or rental price of the inclusionary dwelling unit or leased residential space and shall notify the City when the inclusionary dwelling unit or leased residential space is sold or rented. If the owner or lessor has provided notice of marketing as required in (e)2. and has marketed a rental inclusionary dwelling unit or leased residential space for one hundred eighty (180) days after the issuance of a certificate of occupancy or an owner occupied inclusionary dwelling unit for two hundred forty (240) days after the issuance of a building permit, the owner or lessor may rent or sell the inclusionary dwelling unit or leased residential space at market rate. When a new family occupies the rental inclusionary dwelling unit or leased residential space, it shall be marketed to a family with an AMI at the level required for that unit. For purposes of this paragraph, other residential occupancy inclusionary dwelling units shall be treated in the same manner as rental inclusionary dwelling units. If a building permit for an owner-occupied inclusionary dwelling unit expires

during the marketing period and an additional building permit is necessary to complete the dwelling unit, the marketing period begins again after a subsequent building permit is issued and the Director of the Department of Planning and Development has been provided notice that marketing has begun.

(f) Inclusionary Dwelling Unit Plan. Following required meetings with staff, an Inclusionary Dwelling Unit Plan shall be submitted to the Director of the Department of Planning and Development. The Inclusionary Dwelling Unit Plan shall be in addition to any other plan or agreement submitted as a requirement by this or any other ordinance and shall be reviewed and approved as part of the applicable land use approval process. The Inclusionary Dwelling Unit Plan shall include: the total number of inclusionary and market rate dwelling units that will be provided; of that total, a projection of the number that will be rental inclusionary dwelling units inclusionary dwelling units and other residential occupancy inclusionary dwelling units; the breakdown of dwelling unit size by number of bedrooms and square footage; the distribution pattern of the inclusionary dwelling units throughout the development; the schedule for the provision of market rate and inclusionary dwelling units; ~~and the incentives sought from the City for provision of the inclusionary dwelling units;~~ and a plan to market 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. After approval and recording, the Plan may be amended to reflect changes in the above information or to add required information that may not have been available at the time of Plan approval. Any such amendments shall be approved by the Plan Commission, however, the Director of Planning and Development may approve minor amendments that are compatible with the concept approved by the Common Council and consistent with the provisions of this ordinance. All amended Plans shall be recorded and shall supercede previously recorded Plans.

(g) Standards for Inclusionary Dwelling Units. The following standards shall apply to all inclusionary dwelling units except that par. 7 shall not apply to those units financed by Section 42 low income housing tax credit and/or qualified housing revenue bonds

1. The size need not be the same as market rate dwelling units in the development, except that the size of the inclusionary dwelling units shall not be less than the following:

a. Multi-family buildings

Efficiency – 400 square feet

1 Bedroom – 500 square feet

2 Bedroom – 650 square feet

3 Bedroom – 850 square feet

4 Bedroom – 1050 square feet

5 Bedroom – 1300 square feet

b. Detached units and duplexes -- 950 square feet

2. The exterior appearance of the inclusionary dwelling units shall be similar in general style to the market rate dwelling units, consistent with the Inclusionary Dwelling Unit Plan.

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 and leased residential spaces shall be dispersed throughout the development and shall be provided on similar schedules as the market rate dwelling units, and shall be consistent with the Development Plan. More than one (1) leased residential space may be located in the same dwelling unit.

7. The period of affordability for all rental inclusionary dwelling units shall be no less than fifty (50) years, and shall be documented by a recorded deed restriction, ground lease, or land use restriction agreement.

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.~~ At the time of the initial sale of an owner-occupied inclusionary dwelling unit, the income eligible family shall provide the City with a promissory note, secured by a second mortgage, for an amount that is the difference between the appraised value of the unit, determined within thirty(30) days prior to the sale, and the sales price of the unit. the resulting City percentage share of the value of the incusionary dwelling unit shall be the percentage of the total value represented by the difference between the appraised value and the sales price.

2. At the time of a sale of an inclusionary dwelling unit, the amount of the sale proceeds paid to the city shall be the City's percentage share multiplied by the appraised value of the unit, as determined at the time of sale. The remaining proceeds shall be the seller's share of the sale proceeds. 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. If, at the time of the initial sale, there is no difference between the appraised value of the inclusionary dwelling unit and its sales price, the income eligible family purchasing the unit shall record a deed restriction providing a forty (40) year period of affordability during which the unit may be sold only to another income eligible family at the same AMI as the seller at the time of the initial sale. The period of affordability shall begin on the day of the initial sale and during the period of affordability the sales price shall be calculated pursuant to Sec. 28.04(25)(e)2. 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 Inclusionary Zoning Special Reserve 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.”