



Legislation Text

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170938
SUBSTITUTE 2

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A substitute ordinance relating to the provision of affordable housing units in conjunction with certain types of residential development.

316-7-1-a am
355-1 rc
355-3 am
355-5-3 am
355-5-4 am
355-12 cr
355-18 cr

This ordinance provides that whenever the city provides direct financial assistance to any developer in connection with the development of a housing development in the greater downtown area, the developer shall be required to establish not less than 20% of the housing units in the housing development as affordable housing or pay an in-lieu fee of \$125,000 per required affordable unit.

For purposes of this ordinance, "greater downtown area" is defined as: beginning at the intersection of Interstate 43 and West McKinley Avenue, West McKinley Avenue, the Milwaukee River, East North Avenue and East North Avenue extended, Lake Michigan, the Milwaukee River, the Kinnickinnic River, East and West Greenfield Avenue, and Interstate 43 to the point of beginning.

The in-lieu fees collected under this ordinance shall be deposited in the city's housing trust fund. The in-lieu fee shall be annually adjusted by the city clerk based on changes in the consumer price index.

Every affordable unit required by this ordinance shall continue to be affordable housing for a minimum period of 30 years after the initial rental of the affordable unit.

This ordinance also provides that, prior to the issuance of a building permit for any housing development subject to the affordable housing requirements, the developer shall do one or both of the following, as applicable:

1. Pay an amount equal to the required fee in lieu of establishing affordable units.
2. Execute and record a development agreement against the housing development to secure the requirements of this ordinance relating to the establishment of affordable units.

The commissioner of city development is authorized to adopt such rules and regulations as the commissioner may deem necessary for the proper implementation, administration and enforcement of this ordinance. In addition, the commissioner shall have discretion, subject to common council

approval, in certain limited circumstances as specified in the rules and regulations, to waive, adjust or reduce the requirements of this ordinance, including, without limitation, the income eligibility and other affordability covenants and restrictions, for developers or owners of affordable units who have used good faith efforts to comply with such requirements.

This ordinance also sets forth standards for required affordable housing units, including standards relating to:

1. Dispersal of affordable units throughout a development.
2. Comparability to market-rate units in terms of unit type, number of bedrooms, quality of exterior appearance, energy efficiency and overall quality of construction.
3. Resident access to on-site amenities available to residents of market-rate units.
4. Timing of construction, completion and marketing relative to the same for market-rate units.

Finally, this ordinance establishes the following sanctions and penalties for violations of the affordable housing requirements:

1. If a developer fails to provide the required affordable housing units or to pay the required fee in lieu, the commissioner of city development may impose a fine in an amount equal to 2 times the required in-lieu fee.
2. Upon the rental of any affordable unit at a rental price that is not affordable, or to a household that does not meet the eligibility criteria, the owner shall pay a fee of \$500 per unit per day for each day that the owner is in noncompliance.
3. The commissioner may seek an injunction or other equitable relief in court to stop any violation and to recover any funds improperly obtained from any rental of an affordable unit in violation of this ordinance, plus costs and interest at the rate prescribed by law from the date a violation occurred.
4. Any person, firm or corporation knowingly engaging in fraud, misrepresentation or any attempt, direct or indirect, to evade the provisions of this ordinance by providing false, misleading or fraudulent information shall, upon conviction, forfeit not less than \$2,000 nor more than \$5,000 together with the costs of prosecution.
5. The commissioner may seek such other remedies and use other enforcement powers as allowed by law.

The Mayor and Common Council of the City of Milwaukee do ordain as follows:

Part 1. Section 316-7-1-a of the code is amended to read:

316-7. Financing the Housing Trust Fund.

1. SOURCES.

a. It is anticipated that the housing trust fund is to be funded by sources identified in common council resolution file number 060071, such as start-up funding using general obligation bonds, surplus Potawatomi Bingo Casino revenues, post-closure tax incremental district revenues, excess payments in lieu of taxes and other funding sources that may be identified by the common council and the housing trust advisory board >>, including in-lieu fees paid to attain compliance with the affordable housing requirements of s. 355-12<< .

Part 2. Section 355-1 of the code is repealed and recreated to read:

355-1. Definitions. In this chapter:

1. **AFFORDABLE** means a rent less than or equal to the amount at which total monthly housing costs, as specified in the rules and regulations, would total not more than 30% of household income for a household whose income is the maximum allowable for an eligible household.
2. **AFFORDABLE HOUSING** means housing that is affordable to households earning up to 60% of the area median income. However, when a housing project receives financial assistance from tax increment financing, “affordable housing” for that project means one-half of the housing units required to be affordable are affordable to households earning up to 60% of the area median income, and one-half of the housing units required to be affordable are affordable to households earning up to 50% of the area median income.
3. **AFFORDABLE UNIT** means a housing unit required by this chapter to be affordable.
4. **AREA MEDIAN INCOME** means the median household income for the 4-county Milwaukee-Waukesha-West Allis metropolitan statistical area as calculated and adjusted for household size on an annual basis by the U.S. department of housing and urban development.
5. **COMMISSIONER** means the commissioner of city development or the commissioner’s designee.
6. **CONTIGUOUS PARCEL** means any parcel of land or lot that is any of the following:
 - a. Touching another parcel or lot at any point.
 - b. Separated from another parcel or lot at any point only by a public or private street, road, or other right-of-way.
 - c. Separated from another parcel or lot at any point only by a public or private utility, service, or access easement.
 - d. Separated from another parcel or lot only by other real property under common ownership or control which is not subject to the requirements of this chapter at the time of application for the city approval that triggers the obligation to comply with this chapter.
7. **DEPARTMENT** means the department of city development or other city department partnering on a private construction project.
8. **DEVELOPER** means the owner of the housing development and, if different from the owner, any

person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities which develops the housing development, together with the owner or other entity's successors and assigns, but does not include a lender, any governmental entity or the general contractor working for any developer.

9. DEVELOPMENT OR DEVELOP means, for purposes of determining whether the requirements of this chapter are triggered, the construction or substantial rehabilitation of housing units or the conversion of any non-residential building into housing units.

10. DEVELOPMENT AGREEMENT means an agreement between the city and the developer governing implementation of a project for which direct financial assistance is approved and, in the case of a project subject to the requirements of s. 355-12, shall include a covenant, lien, regulatory agreement, promissory note, mortgage, deed restriction, right of first refusal, option to purchase or similar instrument, governing how the developer and subsequent owners of affordable units shall comply with s. 355-12.

11. DIRECT FINANCIAL ASSISTANCE means the value of below-market land sales, any direct subsidies to developers and city expenditures for private improvements, with a combined value of \$1 million or more, as determined by the commissioner, targeted specifically to a project. It includes the value of tax increment financing and below-market-rate loans provided by the city.

12. ELIGIBLE HOUSEHOLD means a household whose combined annual income, adjusted for household size, does not exceed, at the time of the first rental by that household, 60% of the area median income. However, when a housing development receives financial assistance from tax increment financing, for one-half of the required affordable units, at the time of the first rental by a household, that household shall earn not more than 60% of the area median income, while for the other half of the required affordable units, at the time of first rental by a household, that household shall earn not more than 50% of the area median income.

13. GREATER DOWNTOWN AREA means the area bounded by, beginning at the intersection of Interstate 43 and West McKinley Avenue, West McKinley Avenue, the Milwaukee River, East North Avenue and East North Avenue extended, Lake Michigan, the Milwaukee River, the Kinnickinnic River, East and West Greenfield Avenue, and Interstate 43 to the point of beginning.

14. HOUSING DEVELOPMENT means one or more buildings that collectively contain 20 or more new or additional rental housing units on one or more parcels or lots under common ownership or control, including contiguous parcels. A "housing development" may be developed in one or more phases and may consist of new construction, substantial rehabilitation, or the conversion of a non-residential building to housing units. In determining whether a development constitutes a housing development, the department shall consider all relevant factors, including whether the development is marketed as a single or unified project, shares common elements, or is a phase of a larger development. The definition of "housing development" shall be interpreted broadly to achieve the purposes of this chapter and to prevent evasion of its terms.

15. HOUSING UNIT or UNIT means a room or suite of rooms designed, occupied or intended for occupancy as a separate living quarter with cooking, sleeping and sanitary facilities provided within the unit for the exclusive use of the occupants of the unit; provided this term does not include a dormitory or hotel, as defined in s. 200-08, or a manufactured home, as defined in s. 295-201.

16. MARKET-RATE UNIT means a housing unit in a housing development that is not an affordable unit as defined in this section, and may be rented at any price.

17. SUBSTANTIAL REHABILITATION means the reconstruction, enlargement, installation, repair, alteration, improvement or renovation of a building, structure or portion thereof requiring a permit issued by the city, provided the cost of this work is \$75,000 or more per housing unit.

18. UNEMPLOYED OR UNDEREMPLOYED means that the resident has worked less than 1,200 hours in the preceding 15 days or, regardless of employment status, has household income at or below the federal poverty guidelines as adjusted by the Wisconsin department of public instruction to define eligibility for reduced lunch in public schools.

Part 3. Section 355-3 of the code is amended to read:

355-3. Requirements for Projects Receiving Direct Financial Assistance. All persons or entities receiving direct financial assistance for projects approved after August 8, 2009, shall comply with this chapter in the implementation of such projects >>, provided the requirements of s. 355-12 shall only apply to projects approved after the effective date of this ordinance [city clerk to insert date]<< .

Part 4. Section 355-5-3 and 4 of the code is amended to read:

355-5. Application Process.

3. Any resolution proposing direct financial assistance shall include a term sheet outlining the conditions under which such assistance is to be provided >>, including, for any housing development subject to s. 355-12, a statement of the manner by which the developer shall comply with the requirements of s. 355-12-1<< .

4. The department shall negotiate development agreements governing the implementation of projects for which direct financial assistance is approved. Such agreements shall incorporate the conditions contained in the term sheet approved by the common council. No city funds may be released for any project governed by this chapter without the approval of a term sheet and execution of a development agreement. Development agreements shall require compliance with all provisions of ss. 355-7 to 355-13, except that the common council may by resolution impose lesser or different requirements. >>A development agreement for a project subject to s. 355-12 shall be in conformance with the requirements of s. 355-12-9, and shall be recorded against the housing development, run with the land and be binding on successors and assigns.<<

Part 5. Section 355-12 of the code is created to read:

355-12. Affordable Housing. 1. GENERAL REQUIREMENT. Whenever the city provides direct financial assistance to any developer in connection with the development of a housing development in the greater downtown area, the developer shall be required to establish not less than 20% of the housing units in the housing development as affordable housing or pay an in-lieu fee of \$125,000 per required affordable unit.

2. EXEMPTION. No developer who receives federal low-income housing tax credits under s. 42 of

the internal revenue code shall be subject to the requirements of this chapter.

3. APPLICABILITY TO EXISTING BUILDINGS. In the case of an existing building subject to the requirements of sub. 1, the number of affordable units required shall be calculated on the basis of the total number of units in the building.

4. USE OF FEES. The in-lieu fees and any other fees collected under this section shall be deposited in the housing trust fund established under ch. 316.

5. ADJUSTMENT OF IN-LIEU FEE. The city clerk shall annually adjust the in-lieu fee in sub. 1 beginning on January 1 of the year following the second anniversary of the effective date of this ordinance [city clerk to insert date], based upon the U.S. department of labor, bureau of labor statistics consumer price index for all urban consumers for the Milwaukee metropolitan area, or some other comparable index selected by the commissioner in his or her reasonable discretion if this index no longer exists.

6. DURATION OF AFFORDABILITY RESTRICTIONS. The 20% requirement of sub.1 shall apply for a period of 30 years from the date the certificate of occupancy for the housing development was issued. However, the specific housing units rented as affordable units to meet the requirement may change during the 30-year period.

7. ELIGIBILITY CRITERIA. All affordable units required under this section shall be leased only to eligible households. However, if a household's income increases after the time of initial rental to a level such that the household no longer qualifies as an eligible household, the household may continue to live in the affordable unit and the unit shall be counted towards compliance with the applicable requirement of sub. 1 until such time as the household moves to a different unit in the development or moves out of the development entirely.

8. TERM SHEET. For any housing development subject to this section, the term sheet required under s. 355-5-3 shall include, as a condition under which the direct financial assistance is provided, a statement of the manner by which the developer shall comply with the requirements of sub. 1.

9. DEVELOPMENT AGREEMENT. The development agreement required under s. 355-5-4 shall be recorded against the housing development and shall run with the land and be binding on successors and assigns. Each development agreement shall:

- a. Specify the number, type, location, size and phasing of construction of all affordable units and such other information as the department requires to determine the developer's compliance with this section.
- b. Specify maximum qualifying incomes and maximum affordable rents.
- c. Include provisions for income certification of potential renters of affordable units.
- d. Limit the rental of affordable units for the affordability period.
- e. Require the developer to submit an annual report to the department including the name, address, and income of each household occupying an affordable rental unit and identifying the monthly rent of

each affordable rental unit.

f. Authorize a release of the affordability restrictions following foreclosure or other transfer in lieu of foreclosure if required as a condition to financing pursuant to procedures set forth in the rules and regulations.

g. Describe remedies for breach of the agreement.

h. Include any other provisions required by the city to document the obligations imposed by this section.

10. COMPLIANCE REQUIRED PRIOR TO ISSUANCE OF BUILDING PERMIT. Prior to the issuance of a building permit for any housing development subject to the affordable housing requirements of this section, including, without limitation, a footing and foundation permit or a demolition permit, the developer shall do one or both of the following, as applicable:

a. Pay an amount equal to the required fee in lieu of establishing affordable units pursuant to sub. 1.

b. Execute and record the development agreement negotiated pursuant to s. 355-5-4 against the housing development to secure the requirements of this section relating to the establishment of affordable units.

11. RULES AND REGULATIONS. The commissioner is authorized to adopt such rules and regulations as the commissioner may deem necessary for the proper implementation, administration and enforcement of this section.

12. HARDSHIP WAIVER. The commissioner may, in certain limited circumstances as specified in the rules and regulations, and subject to common council approval by resolution, waive, adjust or reduce the requirements of this section, including, without limitation, the income eligibility and other affordability covenants and restrictions, for developers or owners of affordable units who have used good faith efforts to comply with such requirements. The commissioner shall exercise this discretion in the best interests of the city and with the goal of balancing long-term affordability and private investment. The rules and regulations shall set forth criteria for granting waivers, adjustments and reductions, such as establishing a minimum time period that a developer or owner shall market affordable units, establishing criteria related to unusual economic or personal circumstances, and providing a maximum percentage for the increase above the maximum income limit currently allowed.

13. APPLYING PERCENTAGES; FRACTIONAL UNITS. Calculation of the number of affordable units required by this section shall be based on the total number of housing units in the housing development. Where the application of the percentage requirements of this section results in a fractional housing unit, the developer shall round up to the nearest whole number for any portion of 0.5 or above and round down to the nearest whole number for any portion less than 0.5.

14. DEVELOPMENTS WITH BOTH OWNER-OCCUPIED AND RENTAL UNITS. When a housing development includes both owner-occupied and rental units, the provisions of this section shall apply only to that portion of the project that consists of rental units.

15. STANDARDS FOR AFFORDABLE UNITS. Affordable units required to be provided pursuant to this section shall comply with the following standards, as may be detailed further in the rules and regulations:

a. Affordable units shall be reasonably dispersed throughout the housing development, such that no single building or floor therein has a disproportionate percentage of affordable units.

b. Affordable units shall be comparable to the market rate units in the housing development in terms of unit type, number of bedrooms per unit, quality of exterior appearance, energy efficiency, and overall quality of construction.

c. Affordable units may have different interior finishes and features than market-rate units in the housing development as long as they are durable, of good and new quality, and are consistent with then-current standards for new housing.

d. Residents of affordable units shall have access to all on-site amenities available to residents of market-rate units, including the same access to and enjoyment of common areas and facilities in the housing development.

e. Affordable units shall have functionally-equivalent parking when parking is provided to the market-rate units in the housing development.

f. Affordable units shall be constructed, completed, ready for occupancy, and marketed concurrently with or prior to the market-rate units in the housing development or phase thereof. As used in this section, "concurrently" means that a proportionate share of affordable units shall be completed for each group of market-rate units completed at 25%, 50%, 75% and final completion of the housing development. The commissioner may approve an alternative timing plan if the commissioner determines, in his or her sole discretion, that there is no economically feasible way to comply with the phasing requirements, in which event the developer shall post a bond or similar security in an amount equal to one and one-half times the required in-lieu fee to secure the completion of such units.

g. The marketing requirements and procedures for affordable units shall be contained in the rules and regulations.

h. The rules and regulations may specify minimum household sizes for affordable units of different bedroom sizes.

16. ENFORCEMENT; SANCTIONS. a. The commissioner is authorized to enforce the provisions of this section.

b. If a developer fails to pay the required fee in lieu, the commissioner may impose a fine in an amount equal to 2 times the payment of fees in lieu required in sub. 1.

c. Upon the rental of any affordable unit at a rental price that is not affordable, or to a household that does not meet the eligibility criteria at the initial time of rental, the owner shall pay a fee of \$500 per unit per day for each day that the owner is in noncompliance.

d. In addition to any other available remedy, the commissioner may seek an injunction or other

equitable relief in court to stop any violation of this section and to recover any funds improperly obtained from any rental of an affordable unit in violation of this section, plus costs and interest at the rate prescribed by law from the date a violation occurred.

e. The commissioner may seek such other remedies and use other enforcement powers as allowed by law. The remedies and enforcement powers established in this section are cumulative, and the commissioner may exercise them in any order.

Part 6. Section 355-18 of the code is created to read:

355-18. Sanctions; Affordable Housing Requirements. In addition to any relevant sanctions provided in s. 355-17, the sanctions set forth in s. 355-12-16 may be imposed for failure to comply with the affordable housing requirements of s. 355-12.

APPROVED AS TO FORM

Legislative Reference Bureau

Date: _____

IT IS OUR OPINION THAT THE ORDINANCE
IS LEGAL AND ENFORCEABLE

Office of the City Attorney

Date: _____

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Jeff Osterman
11/16/2017