

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Zoning Commission**



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**NOTICE OF FINAL RULEMAKING<sup>1</sup>**

**Z.C. CASE NO. 20-02**

**(Office of Planning - Text Amendment to Subtitles B, C, F, G, I, K, U, X, and Z for  
Inclusionary Zoning Plus)**

**June 10, 2021**

The Zoning Commission for the District of Columbia (**Commission**), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797), as amended; D.C. Official Code § 6-641.01 (2018 Repl.), and pursuant to § 6 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206; D.C. Official Code § 2-505(c) (2016 Repl.)), hereby gives notice of its intent to amend the following provisions of the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations, Zoning Regulations of 2016, to which all references are made unless otherwise specified), with the proposed text at the end of this notice:

- Subtitle B, Definitions, Rules of Measurement, and Use Categories – § 100
- Subtitle C, General Rules – §§ 1001, 1002, 1003, 1006, and 1505
- Subtitle F, Residential Apartment (RA) Zones – §§ 105, 302, 602
- Subtitle G, Mixed-Use (MU) Zones – §§ 104, 504, and 804
- Subtitle I, Downtown (D) Zones – §§ 502, 516, 531, 539, 547, 555, 562, and 569
- Subtitle K, Special Purpose Zones – § 500
- Subtitle U, Use Permissions – § 320
- Subtitle X, General Procedures – §§ 500, 501, and 502
- Subtitle Z, Zoning Commission Rules of Practice and Procedure – §§ 400 and 500

**SETDOWN**

On September 4, 2020, the Office of Planning (**OP**) filed a petition (**Petition**) to the Commission proposing revisions to the aforementioned provisions, expanding the Inclusionary Zoning (**IZ**) program to include map amendments that increase the permitted gross floor area (**GFA**) and floor area ratio (**FAR**).

At its September 14, 2020 public meeting, the Commission voted to grant OP's request to set down the Petition for a public hearing and authorized flexibility for OP to work with the Office of the Attorney General to refine the proposed text and add any conforming language as necessary.

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<sup>1</sup> This Notice of Final Rulemaking shall also be known as Z.C. Order No. 20-02 only for Office of Zoning tracking purposes

OP filed a November 6, 2020 public hearing report, that addressed public comments raised in OP's public outreach and that recommended revising the proposed text to:

- Exempt the Northern Howard Road (**NHR**) and Barry Farm (**BF**) zones from the Expanded IZ/IZ Plus Inclusionary Zoning requirements as these zones have their own affordable housing/IZ requirements that exceed the IZ requirements of Subtitle C, Chapter 10; and
- Require the Zoning Administrator, based on OP's recommendations, to determine that an IZ Plus Inclusionary Development qualifies for the twenty percent (20%) reduction for IZ Plus Inclusionary Developments that provide at least fifty percent (50%) of units with three or more bedrooms based on specific criteria.

OP filed a November 13, 2020<sup>2</sup> supplemental report (**OP Supplemental Report**), that addressed the economic modeling based on its proposed required set-aside for IZ Plus Inclusionary Developments, and proposed revising the proposed text to:

- Change the set-aside in Subtitle C §§ 1003.3 and 1003.4 calculation from being based on increments of the FAR increase due to a map amendment to a sliding scale based on the percent of FAR increase; but
- Exempt the following map amendments that shall remain subject to a flat twenty percent (20%) set-aside requirement:
  - A PDR zone or unzoned land to an R, RF, RA, MU, D, CG, or ARTS zone; or
  - Any zone with a residential FAR limit to a D zone without a residential FAR limit.

### **ANC 3E REPORT**

ANC 3E filed a resolution stating that at its properly-noticed public meeting on November 12, 2020, at which a quorum was present, the ANC voted to support the Petition as a means of increasing IZ units to address the District's affordable housing needs. The ANC also stated its concern that additional affordable housing units were needed for the District as a whole and for Ward 3 in particular.

### **PUBLIC HEARING**

At the November 16, 2020 public hearing, the Commission heard testimony from OP, which testified in support of the Petition and responded to the Commission's questions. In addition to multiple written comments filed prior to the public hearing, the Commission heard testimony in support of the case from multiple witnesses, including ANC 3E's authorized representatives, all but one (1) of whom supported the Petition citing the critical need for affordable housing across the District of Columbia. These comments raised the following concerns:

- That the Petition should not apply to map amendment applications:
  - For which the Commission had approved final action prior to the public hearing but the order had yet to be issued; and
  - Filed prior to the effective date of the Commission's approval of the Petition, provided that the map amendment's proposed new zone is not inconsistent with the current Comprehensive Plan;
- That the Petition should not apply to existing unzoned land; and

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<sup>2</sup> The OP Supplemental Report was filed on November 13, 2020, but dated November 6, 2020.

- That the Petition should be revised to calculate the percent of FAR increase that determines the IZ set-aside requirements by:
  - Including the current IZ bonus density for both the current and new zones; and
  - Limiting it to the “achievable” IZ Plus density actually realized in a project in the new zone, not on the potential increase in density between the current and new zones.

One group, SW Action, opposed the Petition on the grounds that it ignored the need to first fundamentally reevaluate the entire IZ program before considering expanding it as proposed by the Petition.

OP testified that any vesting provision should be limited to map amendment applications filed before the November 16, 2020, hearing and that it opposed the proposed revisions to the calculation of percent FAR increase.

**INITIAL PROPOSED ACTION**

The Commission agreed that map amendment applications filed before the public hearing should not be subject to the Petition. However, the Commission did not find persuasive the proposed exclusion of map amendments of unzoned land or the proposed changes to the calculation of the percent FAR increase for determining the IZ set-aside requirement, both of which OP opposed.

At the close of the public hearing, the Commission voted to take **PROPOSED ACTION** to adopt the Petition as advertised in the public hearing notice and as modified by the revisions proposed by the OP Hearing and Supplemental Reports and including an exemption for map amendment applications filed prior to the public hearing:

**VOTE (November 16, 2020): 5-0-0** (Robert E. Miller, Michael G. Turnbull, Anthony J. Hood, Peter A. Shapiro, and Peter G. May to **APPROVE**)

OZ published a Notice of Proposed Rulemaking (**NOPR**) in the November 27, 2020 *D.C. Register* (67 DCR 14003, *et seq.*).

The Commission received one comment in response to the NOPR from the District of Columbia Building Industry Association (**DCBIA**), which reiterated its support of the Petition from its public hearing testimony with two proposed revisions to the calculation of the increased density created by a map amendment to ensure the Petition encouraged and did not disincentivize the production of additional affordable housing:

- For the upper measuring point of the increased density calculation, use the actual FAR constructed (or “utilized”), instead of the Petition’s proposed maximum potential FAR allowed under the new zone; and
- For the lower measuring point of the increased density calculation, include the IZ bonus density as part of the maximum FAR allowed under the prior zone by right.

DCBIA argued that the first revision, by only measuring the actual FAR built, would be fairer and not disincentivize map amendments that would otherwise impose an IZ Plus requirement based on the maximum potential FAR regardless of location, design, and program constraints for a particular

property. DCBIA asserted that the second revision would only include density actually created by the map amendment and would thus also be fairer.

#### **NATIONAL CAPITAL PLANNING COMMISSION**

The Commission referred the Petition to the National Capital Planning Commission (NCPC) on November 17, 2020, for the thirty (30)-day review period required by § 492(b)(2) of the District Charter (Dec. 24, 1973, Pub. L. 93-198, title IV, § 492(b)(2)); D.C. Official Code 6-641.05 (2018 Repl.).

NCPC filed a December 2, 2020 report, stating that NCPC had determined, pursuant to delegated authority, that the Petition was not inconsistent with the federal elements of the Comprehensive Plan for the National Capital and would not adversely impact any identified federal interests.

#### **REVISED (2<sup>ND</sup>) PROPOSED ACTION**

OP filed a November 13, 2020 second supplemental report (**OP 2<sup>nd</sup> Supplemental Report**), that addressed the public testimony and comments responding to the Petition. Specifically, the report:

- Reiterated OP's opposition to exempting unzoned land from IZ Plus, because unzoned land that becomes available for development should have the zoning permissions and limits, including IZ, established as part of the initial zoning;
- Accepted DCBIA's proposed revision that the upper measuring point of the density created by a map amendment be the actual FAR utilized or achieved by construction on the site instead of the maximum FAR of the new zone; and
- Opposed DCBIA's proposed revision to include IZ bonus density as part of the prior zone's by-right density used as the lower measuring point in calculating the increased density created by a map amendment based on accepting DCBIA's proposed actual FAR utilized for the upper measuring point.

The OP 2<sup>nd</sup> Supplemental Report also proposed several minor revisions, including basing the IZ Plus set-aside requirements only on the construction type used regardless of the by-right height limit of the zone and several corrections to the text of the NOPR.

OP submitted a February 16, 2021 third supplementary report (**OP 3<sup>rd</sup> Supplemental Report**), that corrected the OP 2<sup>nd</sup> Supplemental Report's proposed tables in Subtitle C §§ 1003.3 and 1003.4 to reflect the changes due to the adoption of the revision described above.

At its January 28, 2021 public meeting, the Commission voted to:

- Take **REVISED PROPOSED ACTION** to adopt the Petition, as published in the NOPR with the revisions proposed by the OP 2<sup>nd</sup> Supplemental Report, as corrected by the OP 3<sup>rd</sup> Supplemental Report; and
- Authorize a Notice of Second Proposed Rulemaking with a reduced seven (7)-day comment period because the Petition had already been published for public comment for thirty (30) days and the limited nature of the revisions were logical outgrowths of the Petition as published in the NOPR, as well as the public testimony and comments on the Petition.

**VOTE (January 28, 2021): 5-0-0** (Peter A. Shapiro, Robert E. Miller, Anthony J. Hood, Peter G. May, and Michael G. Turnbull to **APPROVE**)

OZ published a Notice of Second Proposed Rulemaking (**NOSPR**) that superseded the NOPR in the February 26, 2021, *D.C. Register* (68 DCR 2302, *et seq.*).

The Commission received one (1) comment in response to the NOSPR from the Committee of 100 (**C100**) that expressed support for the elimination of height in the set-aside calculation and hoped it would be incorporated into regular IZ; but also raised the following concerns:

- OP should provide examples of the Petition’s proposed set-aside calculation to confirm that it would not allow developers to add significant density with little additional IZ;
- The Petition could result in a lower IZ set-aside than current IZ based on OP’s recommendation to accept DCBIA’s “total FAR utilized” without also imposing a minimum amount of the bonus density used as part of the set-aside calculation, as exists in the current IZ regulations;
- The Petition would effectively reduce the impact of community groups by facilitating increased density outside of the PUD process that provides for community input;
- The Petition might lose some IZ units by not explicitly requiring subsequent developers to be subject to IZ Plus if building more than the initial project, whose IZ contribution was calculated on the basis of “total FAR utilized;”
- The Petition did not apply IZ to currently exempt office-to-residential conversions and the Downtown Zones;
- The NOSPR’s seven (7)-day comment period was too short because OP’s proposed revisions were substantive; and
- The Commission should consider a single comprehensive and simple overhaul of the IZ program, including increasing the number of three- and four-bedroom IZ units, instead of its current piecemeal approach including the Petition.

### **REVISED (3<sup>RD</sup>) PROPOSED ACTION**

At its March 11, 2021 public meeting, the Commission voted to take **FINAL ACTION** to adopt the Petition, as published in the NOSPR, and to authorize the publication of a Notice of Final Rulemaking:

**VOTE (March 11, 2021): 5-0-0** (Robert E. Miller, Michael G. Turnbull, Anthony J. Hood, Peter A. Shapiro, and Peter G. May to **APPROVE**)

OP filed an April 19, 2021 supplemental report, as subsequently corrected, (**OP 4<sup>th</sup> Supplemental Report**), in Z.C. Case No. 20-02A that responded to the one comment to the NOSPR by proposing three revisions:

- Amend Subtitle C §§ 1003.3 and 1003.4 to prevent the potential loss of density in the IZ Plus set-aside calculation by adding a minimum percent of bonus density utilized to the calculation;
- Correct Table C § 1003.4 to fully capture potential increased density; and
- Add new §§ 502.6 and 502.7 to Subtitle X to explicitly authorize OP to propose, and the Commission to adopt, an alternative zone than the one requested by the applicant in an IZ Plus application.

Since the NOFR had not been published, the Commission voted at its April 29, 2021 public meeting, to respond to the OP 4<sup>th</sup> Supplemental Report with the following actions:

- Rescind its March 11, 2021 vote to take final action to adopt the Petition as published in the NOSPR; and
- Incorporate the OP 4<sup>th</sup> Supplemental Report, as corrected, (submitted in Z.C. Case No. 20-02A) into Z.C. Case No. 20-02 as OP's proposed revisions addressed the comment raised in response to the NOSPR and was found to be a logical outgrowth to the Petition that is the subject of this case.

**VOTE (April 29, 2021): 5-0-0** (Peter A. Shapiro, Anthony J. Hood, Robert E. Miller, Peter G. May, and Michael G. Turnbull to **APPROVE**)

OZ published a Notice of Third Proposed Rulemaking (**NOTPR**) that superseded the NOSPR in the May 21, 2021, *D.C. Register* (68 DCR 5457, *et seq.*).

### **FINAL ACTION**

The Commission received one (1) comment on the NOTPR from C100 that:

- Supported the OP's 4<sup>th</sup> Supplemental Report's adding a "bonus density" factor;
- Asserted that the Petition, as revised, would not require additional IZ in proportion to the increased density of a map amendment;
- Proposed that the Petition be further revised to:
  - Fully capture the increased density from a map amendment that might be lost due to the Petition's "density utilized" formula;
  - Impose lower MFI levels for IZ units, without the Petition's proposed 20% reduction in the IZ set-aside for IZ developments that provide lower MFI levels (proposed Subtitle C § 1003.9); and
  - Clarify standards for OP to propose an alternative zone in response to a map amendment application (proposed Subtitle X §§ 502.6 and 502.7) to require OP to establish a significantly higher set-aside requirement when there has been a map amendment that allows a significant increase in the allowable density and intensity of use.
- Opposed the NOTPR's seven (7)-day comment period as too short and asserted that the Commission should accept oral testimony as well as written comments to the NOTPR;
- Proposed that the Commission apply the IZ Plus standards to PUD-related map amendments, which the Petition specifically excludes;
- Questioned if OP's recommendations should be given "great weight" since it proposed the Petition; and
- Therefore asserted that the Petition was not ready for adoption and that the Commission should ask OP to further refine the Petition.

### ***"Great Weight" to the Recommendations of OP***

The Commission must give "great weight" to the recommendations of OP pursuant to § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2018 Repl.)) and Subtitle Z § 405.8. (*Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)

The Commission finds persuasive OP's recommendation that the Commission take proposed action to adopt the Petition, as published in the NOTPR with the revisions proposed by the OP 4<sup>th</sup> Supplemental Reports and concurs in that judgment.

***“Great Weight” to the Written Report of the ANCs***

The Commission must give great weight to the issues and concerns raised in the written report of an affected ANC that was approved by the full ANC at a properly noticed public meeting pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.)) and Subtitle Z § 406.2. To satisfy the great weight requirement, the Commission must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. (*Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).) The District of Columbia Court of Appeals has interpreted the phrase “issues and concerns” to “encompass only legally relevant issues and concerns.” (*Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted).)

The Commission finds persuasive the concern expressed by ANC 3E - the only ANC to respond to the Petition – in its written report and testimony, that additional IZ units are needed to address the need for affordable housing, particularly in Ward 3, and concurs in the ANC's support of the Petition as an additional tool to address this concern.

With regards to the public comments, the Commission concludes that:

- The Petition is one part of a multi-case review of the IZ program that includes addressing (i) currently exempt zones from the IZ program and modifying the set-aside requirements as they relate to construction type (Z.C. Case No. 21-02); (ii) currently exempt non-residential-to-residential conversions from the IZ program (Z.C. Case No. 21-05); and (iii) currently exempt downtown zones from the IZ program (a future case); and OP and the Commission will monitor the implementation of these amendments to ensure their effectiveness;
- It is more effective to revise the IZ program in a series of amendments than to dismantle it and start anew with a brand new program;
- The Commission has provided sufficient time to respond, as the Commission set this text amendment down on September 4, 2020 for a public hearing, with three (3) opportunities for public comment;
- OP's proposed revisions successfully responded to the public comments to ensure that additional IZ units are created with additional density granted by map amendments, with the use of “total FAR utilized” balanced by the revisions of the OP 4<sup>th</sup> Supplemental Report; and
- Map amendment cases include community participation, although there is no requirement for public benefits because there is no request for development flexibility against which to balance the public benefits as there is with a PUD application.

At its June 10, 2021 public meeting, the Commission voted to:

- Take **FINAL ACTION** to adopt the Petition as published in the NOTPR; and
- Authorize a Notice of Final Rulemaking.

**VOTE (June 10, 2021):**            **5-0-0** (Peter A. Shapiro, Robert E. Miller, Anthony J. Hood, Peter G. May, and Michael G. Turnbull to **APPROVE**)

The complete record in the case can be viewed online at the Office of Zoning’s Interactive Zoning Information System (IZIS) website at: <https://app.dcoz.dc.gov/Content/Search/Search.aspx>.

**TEXT AMENDMENT**

The following amendments to the text of the Zoning Regulations are hereby adopted.

**I. Amendment to Subtitle B, DEFINITIONS, RULES OF MEASUREMENT, AND USE CATEGORIES**

**The definition of “Inclusionary Development” in § 100.2 of § 100, DEFINITIONS, of Chapter 1, DEFINITIONS, of Subtitle B, DEFINITIONS, RULES OF MEASUREMENT, AND USE CATEGORIES, is amended by revising the definition of “Inclusionary Development” to read as follows:**

Inclusionary Development: A residential development that is subject to the provisions of Subtitle C, Chapter 10, Inclusionary Zoning, as a Mandatory Inclusionary Development (including an IZ Plus Inclusionary Development) or Voluntary Inclusionary Development, or that is required to comply with the provisions therein by an order of the Zoning Commission or of the Board of Zoning Adjustment, as established by Subtitle C § 1001.2.

**II. Amendment to Subtitle C, GENERAL RULES**

**Subsections 1001.2 and 1001.4 of § 1001, APPLICABILITY, of Chapter 10, INCLUSIONARY ZONING, of Subtitle C, GENERAL RULES, are amended to read as follows:**

1001.2            Except as provided in Subtitle C § 1001.5, the requirements of this chapter shall apply to, and the modifications to certain development standards and bonus density of this chapter shall be available to, developments in zones in which this chapter is identified as applicable as specified in the individual subtitles of this title; provided the development falls into one of the following categories:

- (a)            A “Mandatory Inclusionary Development” – a development that meets one (1) or more of the following ...<sup>3</sup>
  - (1)            Is proposing new gross floor area ...

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<sup>3</sup> The use of this and other ellipses indicate that other provisions exist in the subsection being amended and that the omission of the provisions does not signify an intent to repeal.

- (2) Will have ten (10) or more new dwelling units constructed concurrently ... for the first building permit;
  - (3) Consists of a residential building that has penthouse habitable space pursuant to Subtitle C § 1500.11; or
  - (4) An “IZ Plus Inclusionary Development” – a development located on property that was the subject of a map amendment that increased the allowable FAR pursuant to Subtitle X § 502 and as indicated with an “IZ+” on the Zoning Map and that meets one of the categories of subparagraphs (1) through (3) of this paragraph 1001.2(a); or
- (b) A “Voluntary Inclusionary Development” – any single household ...

...

1001.4 For existing buildings that become subject to the requirements of this chapter pursuant to Subtitle C § 1001.2, the requirements of Subtitle C §§ 1003.1 through 1003.4 and the available modifications to applicable development standards shall apply:

- (a) To both the existing ...

...

**Subsection 1002.3 of § 1002, MODIFICATIONS OF DEVELOPMENT STANDARDS AND BONUSES TO INCENTIVIZE INCLUSIONARY ZONING, of Chapter 10, INCLUSIONARY ZONING, of Subtitle C, GENERAL RULES, is amended to read as follows:**

1002.3 Inclusionary Developments, except those located in the HE, R, RF, NHR, SEFC, StE, and WR zones, may construct up to twenty percent (20%) more gross floor area than permitted as a matter of right (“bonus density”) as reflect in the zone-specific development standards and subject to all other zoning requirements (as may be modified by the zone) and the limitations established by the Height Act.

**Section 1003, SET-ASIDE REQUIREMENTS, of Chapter 10, INCLUSIONARY ZONING, of Subtitle C, GENERAL RULES, is amended to read as follows:**

1003.1 An Inclusionary Development other than an IZ Plus Inclusionary Development that does not employ Type I construction as classified in Chapter 6 of the District of Columbia Building Code (Title 12-A DCMR) to construct a majority of dwelling units and which is located in a zone with a by-right height limit, exclusive of any bonus height, of fifty feet (50 ft.) or less, shall set aside for Inclusionary Units the sum of the following:

- (a) The greater of ten percent (10%) of the residential gross floor area as defined in Subtitle C § 1003.5(a), excluding penthouse habitable space, or seventy-five percent (75%) of the bonus density utilized; and
- (b) An area equal to ten percent (10%) of the penthouse habitable space as described in Subtitle C § 1500.11.

This set-aside requirement shall be converted to net square footage pursuant to Subtitle C § 1003.6.

1003.2

An Inclusionary Development other than an IZ Plus Inclusionary Development that employs Type I construction as classified in Chapter 6 of the District of Columbia Building Code (Title 12-A DCMR) to construct a majority of dwelling units, or which is located in a zone with a by-right height limit, exclusive of any bonus height, that is greater than fifty feet (50 ft.), shall set aside for Inclusionary Units the sum of the following:

- (a) The greater of eight percent (8%) of the residential gross floor area as defined in Subtitle C § 1003.5(a), excluding penthouse habitable space, or fifty percent (50%) of the bonus density utilized; and
- (b) An area equal to eight percent (8%) of the penthouse habitable space as described in Subtitle C § 1500.11.

This set-aside requirement shall be converted to net square footage pursuant to Subtitle C § 1003.6.

1003.3

An IZ Plus Inclusionary Development that does not employ Type I construction as classified in Chapter 6 of the District of Columbia Building Code (Title 12-A DCMR) to construct a majority of dwelling units shall set aside for Inclusionary Units the greater of either ninety-five percent (95%) of the utilized bonus density based on the new zone or the sum of (a) and (b):

- (a) The percent of the residential gross floor area, as defined in Subtitle C § 1003.5(a), excluding penthouse habitable space, set forth in the following table:

**TABLE C § 1003.3 SET-ASIDE FOR INCLUSIONARY UNITS**

Type of Map Amendment	Required Set-Aside
From a PDR zone or unzoned land to an ARTS, CG, D, MU, R, RA or RF zone	20%
From any zone other than a PDR zone to a D zone without a prescribed residential FAR	20%
Up to and including 20%	12.5%

Type of Map Amendment		Required Set-Aside
All Other Map Amendments – Percent Increase in Total FAR Utilized as defined in Subtitle C § 1003.5(b)	More than 20% up to and including 40%	14%
	More than 40% up to and including 60%	16%
	More than 60% up to and including 80%	18%
	More than 80%	20%

- (b) An area equal to ten percent (10%) of the penthouse habitable space as described in Subtitle C § 1500.11.

This set-aside requirement shall be converted to net square footage pursuant to Subtitle C § 1003.6.

1003.4

An IZ Plus Inclusionary Development that employs Type I construction as classified in Chapter 6 of the District of Columbia Building Code (Title 12-A DCMR) to construct a majority of dwelling units shall set aside for Inclusionary Units the greater of either seventy percent (70%) of the utilized bonus density based on the new zone or the sum of (a) and (b):

- (a) The percent of the residential gross floor area, as defined in Subtitle C § 1003.5(a), excluding penthouse habitable space, set forth in the following table:

**TABLE C § 1003.4 SET-ASIDE FOR INCLUSIONARY UNITS**

Type of Map Amendment		Required Set-Aside
From a PDR zone or unzoned land to an ARTS, CG, D, MU, R, RA or RF zone		20%
From any zone other than a PDR zone to a D zone without a prescribed residential FAR		20%
All Other Map Amendments – Percent Increase in Total FAR Utilized as defined in Subtitle C § 1003.5(b)	Up to and including 20%	8.5%
	More than 20% up to and including 50%	10%
	More than 50% up to and including 75%	12%
	More than 75% up to and including 100%	14%
	More than 100% up to and including 125%	16%
	More than 125%	18%

- (b) An area equal to eight percent (8%) of the penthouse habitable space as described in Subtitle C § 1500.11.

This set-aside requirement shall be converted to net square footage pursuant to Subtitle C § 1003.6.

1003.5 For the purposes of this section:

- (a) “Residential gross floor area” shall be the entire residential floor area including, but not limited to:
  - (1) Dwelling units located in cellar space;
  - (2) Enclosed building projections that extend into public space; and
  - (3) Increases in FAR authorized by variances granted by the Board of Zoning Adjustment; and
- (b) “Percent Increase in Total FAR Utilized” shall be the percent increase from (1) to (2):
  - (1) The maximum permitted FAR of the existing zone from which the Zoning Commission approved a map amendment subject to Subtitle X § 502.1(b), as stated in the Zoning Commission order approving the map amendment pursuant to Subtitle X § 502.4; and
  - (2) The total FAR of the IZ Plus Inclusionary Development.

1003.6 The square footage required to be set-aside for Inclusionary Units pursuant to Subtitle C §§ 1003.1 through 1003.4 shall be converted to net square footage based on the ratio of net residential floor area to gross residential floor area. For purposes of this chapter, “net residential floor area” means:

- (a) For flats and multiple dwellings, the area of a unit that is bounded by the inside finished surface of the perimeter wall of each unit including all interior walls and columns; and
- (b) For all other types of dwelling units and penthouse habitable space, the gross floor area.

1003.7 Except as provided in Subtitle C §§ 1003.8 through 1003.10, Inclusionary Zoning resulting from the set-asides required by Subtitle C §§ 1003.1 through 1003.4 shall be reserved for households earning equal to or less than:

- (a) Sixty percent (60%) of the MFI for rental units; and

(b) Eighty percent (80%) of the MFI for ownership units.

1003.8 One hundred percent (100%) of inclusionary units resulting from the set-aside required for penthouse habitable space shall be set aside for eligible households earning equal to or less than fifty percent (50%) of the MFI.

1003.9 Except for Inclusionary Units resulting from the set-aside for penthouse habitable space, the square footage set aside established by Subtitle C §§ 1003.1 through 1003.4 applicable to an Inclusionary Development may be reduced by twenty percent (20%) if it complies with one or more of the following:

(a) All Inclusionary Units are ownership units and are set aside to households earning equal to or less than sixty percent (60%) of the MFI;

(b) One hundred percent (100%) of Inclusionary Units in an IZ Plus Inclusionary Development are reserved for households earning equal to or less than fifty percent (50%) of the MFI; or

(c) At least fifty percent (50%) of Inclusionary Units in an IZ Plus Inclusionary Development are three (3) bedroom or larger units; provided that the Zoning Administrator determines, pursuant to paragraph (d) of this subsection, that the request for this reduction demonstrates that the IZ Plus Inclusionary Development satisfies the following criteria:

(1) A market study demonstrates that demand exists for Inclusionary Units with three (3) or more bedrooms in the neighborhood within a half-mile radius of the IZ Plus Inclusionary Development;

(2) A floor plan demonstrates that three (3) bedroom or larger units represent a minimum of twenty percent (20%) of all units in the IZ Plus Inclusionary Development; and

(3) Access to active outdoor space suitable for children is located in the IZ Plus Inclusionary Development or in a park or publicly accessible area located within one thousand feet (1,000 feet ft.); and

(d) The Zoning Administrator shall base the determination required by paragraph (c) of this subsection on the written recommendations of the Office of Planning, which shall include consultation with the Department of Housing and Community Development and shall be submitted to the Zoning Administrator within forty-five (45) days of the filing of the request with the Zoning Administrator and Office of Planning.

1003.10 An Inclusionary Development that results from a conversion of a single dwelling unit or flat to a multiple dwelling unit development in an RF zone for four (4) or

more dwelling units approved by the Board of Zoning Adjustment shall set aside every even numbered dwelling unit beginning at the fourth (4<sup>th</sup>) unit as an inclusionary unit reserved for eligible households earning equal to or less than eighty percent (80%) of the MFI.

**Paragraph (c) of § 1006.2 of § 1006, OFF-SITE COMPLIANCE WITH INCLUSIONARY ZONING, of Chapter 10, INCLUSIONARY ZONING, of Subtitle C, GENERAL RULES, is amended to read as follows:**

- 1006.2 Among the factors that may be considered by the Board of Zoning Adjustment in determining the existence of economic hardship are:
- (a) Exceptionally high fees ...
  - (b) The inclusion of expensive and specialized social or health services ...
  - (c) Proof that continuation of the existing rental inclusionary development is no longer economically feasible, when the owner wishes to change the property's use to a non-residential use or to a use meeting the exemption requirements of Subtitle C §§ 1001.5 and 1001.6(b)-(c).

**Subsection 1505.1 of § 1505, AFFORDABLE HOUSING PRODUCTION REQUIREMENT GENERATED BY CONSTRUCTION ON A NON-RESIDENTIAL BUILDING OF PENTHOUSE HABITABLE SPACE, of Chapter 15, PENTHOUSES, of Subtitle C, GENERAL RULES, is amended to read as follows:**

- 1505.1 The owner of a non-residential building proposing to construct penthouse habitable space shall produce or financially assist in the production of residential uses that are affordable to households earning equal to or less than the income limits established by Subtitle C § 1003.8, in accordance with this section.

**III. Amendment to Subtitle F, RESIDENTIAL APARTMENT (RA) ZONES**

**Subsection 105.1 of § 105, INCLUSIONARY ZONING, of Chapter 1, INTRODUCTION TO RESIDENTIAL APARTMENT (RA) ZONES, of Subtitle F, RESIDENTIAL APARTMENT (RA) ZONES, is amended to read as follows:**

- 105.1 The Inclusionary Zoning (IZ) requirements, and the available IZ modifications to certain development standards and bonus density, shall apply to all RA zones as specified in Subtitle C, Chapter 10, Inclusionary Zoning, and the zone-specific development standards of this subtitle; provided that in the RA-5 and RA-10 zones, the IZ requirements, modifications, and bonus density shall not apply except that IZ Plus Inclusionary Developments shall be subject to the IZ requirements of Subtitle C, Chapter 10.

**Subsection 302.2 of § 302, DENSITY – FLOOR AREA RATIO (FAR), of Chapter 3, RESIDENTIAL APARTMENT ZONES – RA-1, RA-2, RA-3, RA-4, AND RA-5, of Subtitle F, RESIDENTIAL APARTMENT (RA) ZONES, is amended to read as follows:**

302.2 Except for IZ Plus Inclusionary Developments, the Inclusionary Zoning (IZ) requirements, modifications, and bonus density of Subtitle C, Chapter 10, shall not apply to the RA-5 zone.

**Subsection 602.2 of § 602, DENSITY – FLOOR AREA RATIO (FAR), of Chapter 6, DUPONT CIRCLE RESIDENTIAL APARTMENT ZONES – RA-8, RA-9, AND RA-10, of Subtitle F, RESIDENTIAL APARTMENT (RA) ZONES, is amended to read as follows:**

602.2 Except for IZ Plus Inclusionary Developments, the Inclusionary Zoning (IZ) requirements, modifications, and bonus density of Subtitle C, Chapter 10, shall not apply to the RA-10 zone.

**IV. Amendment to Subtitle G, MIXED-USE (MU) ZONES**

**Subsection 104.1 of § 104, INCLUSIONARY ZONING, of Chapter 1, INTRODUCTION TO MIXED-USE (MU) ZONES, of Subtitle G, MIXED-USE (MU) ZONES, is amended to read as follows:**

104.1 The Inclusionary Zoning (IZ) requirements, and the available IZ modifications and bonus density, shall apply to all MU zones, except for the portion of the MU-13 zone in the Georgetown Historic District and the MU-27 zone, as specified in Subtitle C, Chapter 10, Inclusionary Zoning, and in the zone-specific development standards of this subtitle; provided that new penthouse habitable space, as described in Subtitle C § 1500.11, and IZ Plus Inclusionary Developments, that are located in the portion of the MU-13 zone in the Georgetown Historic District or in the MU-27 zone shall be subject to the IZ requirements of Subtitle C, Chapter 10.

**Subsection 504.3 of § 504, LOT OCCUPANCY, of Chapter 5, MIXED-USE ZONES – MU-11, MU-12, MU-13, AND MU-14, of Subtitle G, MIXED-USE (MU) ZONES, is amended to read as follows:**

504.3 Except for new penthouse habitable space, as described in Subtitle C § 1500.11, and IZ Plus Inclusionary Developments, the Inclusionary Zoning (IZ) requirements, and modifications of Subtitle C, Chapter 10, shall not apply to the portion of the MU-13 zone in the Georgetown Historic District.

**Subsection 804.3 of § 804, LOT OCCUPANCY, of Chapter 8, NAVAL OBSERVATORY MIXED-USE ZONE – MU-27, of Subtitle G, MIXED-USE (MU) ZONES, is amended to read as follows:**

804.3 Except for new penthouse habitable space, as described in Subtitle C § 1500.11, and IZ Plus Inclusionary Developments, the Inclusionary Zoning (IZ) requirements, and modifications of Subtitle C, Chapter 10, shall not apply to the MU-27 zone.

**V. Amendment to Subtitle I, DOWNTOWN (D) ZONES**

**Subsection 502.3 of § 502, DENSITY – FLOOR AREA RATIO (FAR) (D-1-R), of Chapter 5, REGULATIONS SPECIFIC TO PARTICULAR DOWNTOWN (D) ZONES, of Subtitle I, DOWNTOWN ZONES, is amended to read as follows:**

502.3 Except for IZ Plus Inclusionary Developments, residential density in the D-1-R zone is not subject to the Inclusionary Zoning requirements or bonuses of Subtitle C, Chapter 10.

**Subsection 516.2 of § 516, DENSITY – FLOOR AREA RATIO (FAR) (D-3), of Chapter 5, REGULATIONS SPECIFIC TO PARTICULAR DOWNTOWN (D) ZONES, of Subtitle I, DOWNTOWN ZONES, is amended to read as follows:**

516.2 Except for IZ Plus Inclusionary Developments, residential density in the D-3 zone is not subject to the Inclusionary Zoning requirements or bonuses of Subtitle C, Chapter 10.

**Subsection 531.4 of § 531, DENSITY – FLOOR AREA RATIO (FAR) (D-4-R), of Chapter 5, REGULATIONS SPECIFIC TO PARTICULAR DOWNTOWN (D) ZONES, of Subtitle I, DOWNTOWN ZONES, is amended to read as follows:**

531.4 Except for IZ Plus Inclusionary Developments, residential density in the D-4-R zone is not subject to the Inclusionary Zoning requirements or bonuses of Subtitle C, Chapter 10.

**Subsection 539.2 of § 539, DENSITY – FLOOR AREA RATIO (FAR) (D-5), of Chapter 5, REGULATIONS SPECIFIC TO PARTICULAR DOWNTOWN (D) ZONES, of Subtitle I, DOWNTOWN ZONES, is amended to read as follows:**

539.2 Except for IZ Plus Inclusionary Developments, residential density in the D-5 zone is not subject to the Inclusionary Zoning requirements or bonuses of Subtitle C, Chapter 10.

**Subsection 547.3 of § 547, DENSITY – FLOOR AREA RATIO (FAR) (D-5-R), of Chapter 5, REGULATIONS SPECIFIC TO PARTICULAR DOWNTOWN (D) ZONES, of Subtitle I, DOWNTOWN ZONES, is amended to read as follows:**

547.3 Except for Square 487 and IZ Plus Inclusionary Developments, residential density in the D-5-R zone is not subject to the Inclusionary Zoning requirements or bonuses of Subtitle C, Chapter 10.

**Subsection 555.2 of § 555, DENSITY – FLOOR AREA RATIO (FAR) (D-6), of Chapter 5, REGULATIONS SPECIFIC TO PARTICULAR DOWNTOWN (D) ZONES, of Subtitle I, DOWNTOWN ZONES, is amended to read as follows:**

555.2 Except for IZ Plus Inclusionary Developments, residential density in the D-6 zone is not subject to the Inclusionary Zoning requirements or bonuses of Subtitle C, Chapter 10.

**Subsection 562.3 of § 562, DENSITY – FLOOR AREA RATIO (FAR) (D-6-R), of Chapter 5, REGULATIONS SPECIFIC TO PARTICULAR DOWNTOWN (D) ZONES, of Subtitle I, DOWNTOWN ZONES, is amended to read as follows:**

562.3 Except for IZ Plus Inclusionary Developments, residential density in the D-6-R zone is not subject to the Inclusionary Zoning requirements or bonuses of Subtitle C, Chapter 10.

**Subsection 569.2 of § 569, DENSITY – FLOOR AREA RATIO (FAR) (D-7), of Chapter 5, REGULATIONS SPECIFIC TO PARTICULAR DOWNTOWN (D) ZONES, of Subtitle I, DOWNTOWN ZONES, is amended to read as follows:**

569.2 Except for IZ Plus Inclusionary Developments, residential density in the D-7 zone is not subject to the Inclusionary Zoning requirements or bonuses of Subtitle C, Chapter 10.

**VI. Amendment to Subtitle K, SPECIAL PURPOSE ZONES**

**Subsections 500.4 and 500.6 of § 500, GENERAL PROVISIONS, of Chapter 5, CAPITOL GATEWAY ZONES – CG-1 THROUGH CG-7, of Subtitle K, SPECIAL PURPOSE ZONES, are amended to read as follows:**

500.4 The Inclusionary Zoning (IZ) development standards for the CG zones are as established in this chapter and indicated by the abbreviation IZ, and all other Inclusionary Zoning requirements for the CG zones are as specified in Subtitle C, Chapter 10, including IZ Plus Inclusionary Developments.

...

500.6 Except for IZ Plus Inclusionary Developments, the Inclusionary Zoning requirements, modifications, and bonus density of Subtitle C, Chapter 10, shall not apply to the CG-1 zone, provided that the IZ bonus density of Subtitle C § 1002.3 is available for Voluntary Inclusionary Developments in the CG-1 zone.

**VII. Amendment to Subtitle U, USE PERMISSIONS**

**Paragraph (b) of § 320.2 of § 320, SPECIAL EXCEPTION USES (RF), of Chapter 3, USE PERMISSIONS RESIDENTIAL FLATS (RF) ZONES, of Subtitle U, USE PERMISSIONS, is amended to read as follows:**

- 320.2           The conversion of an existing residential building ... and subject to the following conditions:
- (a)       The building to be converted or expanded ...
  - (b)       The fourth (4th) dwelling unit and every additional even number dwelling unit thereafter shall be subject to the requirements of Subtitle C, Chapter 10, Inclusionary Zoning, including the set aside requirement set forth at Subtitle C § 1003.10; and
  - (c)       There shall be a minimum ...

**VIII. Amendment to Subtitle X, GENERAL PROCEDURES**

**The title of § 500, MAP AMENDMENTS, of Chapter 5, MAP AMENDMENTS, of Subtitle X, GENERAL PROCEDURES, is amended to read as follows:**

**500           MAP AMENDMENT REVIEW STANDARDS**

**Subsection 500.1 of §500, MAP AMENDMENT REVIEW STANDARDS, of Chapter 5, MAP AMENDMENTS, of Subtitle X, GENERAL PROCEDURES, is amended to read as follows:**

- 500.1           The Zoning Commission will evaluate and approve, disapprove, or modify a map amendment application or petition according to the standards of this chapter.

**Section 501, APPLICATION OR PETITION REQUIREMENTS, of Chapter 5, MAP AMENDMENTS, of Subtitle X, GENERAL PROCEDURES, is amended to read as follows:**

- 501.1           An application or petition for a map amendment shall meet the requirements of Subtitle Z § 304.

**A new § 502, is added to Chapter 5, MAP AMENDMENTS, of Subtitle X, GENERAL PROCEDURES, to read as follows:**

**502           INCLUSIONARY ZONING PLUS**

- 502.1           Except as provided in Subtitle X § 502.2, the requirements of this section shall apply to:

- (a) A map amendment that rezones a property:
  - (1) From a PDR zone to an ARTS, CG, D, MU, R, RA or RF zone;
  - (2) From any zone other than a PDR zone to a D zone without a prescribed residential FAR; or
  - (3) From unzoned to an ARTS, CG, D, MU, R, RA or RF zone; or
- (b) A map amendment not described in paragraph (a) of this subsection 502.1, which rezones a property from any zone to a zone that allows a higher maximum FAR, both exclusive of the twenty percent (20%) IZ bonus density, if applicable.

502.2 The requirements of this section shall not apply to a map amendment that:

- (a) Is related to a PUD application;
- (b) Is to a HE, NHR, SEFC, StE, USN, or WR zone;
- (c) The Zoning Commission determines is not appropriate for IZ Plus due to the mitigating circumstances identified by the Office of Planning in its report recommending that the map amendment not be subject to IZ Plus; or
- (d) Was filed as an application that was accepted by the Office of Zoning prior to November 16, 2020.

502.3 The requirements of Subtitle C, Chapter 10, Inclusionary Zoning, shall apply to any map amendment subject to this section.

502.4 In its order approving a map amendment subject to Subtitle § 502.1(b), the Zoning Commission shall state the maximum permitted FAR of the existing zone, exclusive of the twenty percent (20%) IZ bonus density, if applicable, from which the Zoning Commission approved a map amendment. For computation purposes of this subsection, the R-1 and R-2 zones shall have a FAR equivalent to 0.4, the R-3 zones shall have a FAR equivalent to 0.6, and the RF-1 zones shall have a FAR equivalent to 0.9.

502.5 Property subject to a map amendment subject to the requirements of this section shall be indicated with a “IZ+” symbol on the Zoning Map.

502.6 In reviewing an IZ Plus application pursuant to Subtitle Z §§ 400.5 and 405.7, the Office of Planning may recommend an alternate zone than proposed by the IZ Plus application if the Office of Planning determines that the alternate zone may be more

appropriate in achieving the goals of IZ Plus or the Comprehensive Plan and may advertise the alternate zone in the alternative as part of the same public hearing.

502.7 In reviewing an IZ Plus application, the Commission may determine that an alternate zone, whether proposed by the Office of Planning or by the Commission on its own motion, may be more appropriate than the zone proposed in the IZ Plus application to achieve the goals of IZ Plus or the Comprehensive Plan and may advertise the alternate zone in the alternative as part of the same public hearing.

**IX. Amendment to Subtitle Z, ZONING COMMISSION RULES OF PRACTICE AND PROCEDURE**

**Subsection 400.5 of § 400, SETDOWN PROCEDURES: SCHEDULING CONTESTED CASE APPLICATIONS FOR HEARING, of Chapter 4, PRE-HEARING AND HEARING PROCEDURES: CONTESTED CASES, of Subtitle Z, ZONING COMMISSION RULES OF PRACTICE AND PROCEDURE, is amended to read as follows:**

400.5 For all other types of applications, the Commission, at a public meeting, shall determine if the application should be scheduled (set down) for a hearing. The Office of Planning shall review each such application and submit a report that recommends whether the application should be set down for a hearing, with the report on a map amendment application to include whether the application is:

- (a) Not inconsistent with the Comprehensive Plan;
- (b) Consistent with the purpose of the map amendment process;
- (c) Appropriate for IZ Plus per Subtitle X § 502, including mitigating circumstances, if any, and an alternative zone, if appropriate; and
- (d) Generally ready for a public hearing to be scheduled.

**Subsection 405.7 of § 405, REFERRALS TO AND REPORTS OF PUBLIC AGENCIES, of Chapter 4, PRE-HEARING AND HEARING PROCEDURES: CONTESTED CASES, of Subtitle Z, ZONING COMMISSION RULES OF PRACTICE AND PROCEDURE, is amended to read as follows:**

405.7 For a map amendment case, the Office of Planning shall report on the:

- (a) Compatibility of the proposed zoning with the Comprehensive Plan and other approved plans;
- (b) For an IZ Plus application, the appropriateness of the proposed zoning for IZ Plus per Subtitle X § 502, including mitigating circumstances, if any, and an alternative zone, if appropriate; and

- (c) Issues or concerns raised by the affected ANC(s) or community members.

**Subsection 500.5 of § 500, SETDOWN PROCEDURES: SCHEDULING RULEMAKING PETITIONS FOR HEARING, of Chapter 5, PRE-HEARING AND HEARING PROCEDURES: RULEMAKING CASES, of Subtitle Z, ZONING COMMISSION RULES OF PRACTICE AND PROCEDURE, is amended to read as follows:**

- 500.5 For all petitions, the Commission, at a public meeting, shall determine if the petition should be scheduled (set down) for a hearing. The Office of Planning shall review the petition and submit a report that recommends whether the petition should be set down for a hearing, with the report on a map amendment petition to include whether the petition is:
- (a) Not inconsistent with the Comprehensive Plan;
  - (b) Consistent with the purpose of the map amendment process;
  - (c) Appropriate for IZ Plus per Subtitle X § 502 including mitigating circumstances, if any; and
  - (d) Generally ready for a public hearing to be scheduled.

The text amendment shall become effective upon publication of this notice in the *D.C. Register*, that is on July 23, 2021.

  
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ANTHONY J. HOOD  
CHAIRMAN  
ZONING COMMISSION

  
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SARA A. BARDIN  
DIRECTOR  
OFFICE OF ZONING