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COMMUNITY CHANGE**

**Zoning Commission Case No. 04-33
Inclusionary Zoning
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Good evening, members of the Zoning Commission. My name is Nina Dastur. I am a resident of Ward 1 and an Equal Justice Works fellow in the Catalyst Project at the Center for Community Change. I am very pleased to be here tonight to discuss the Campaign's petition for a text amendment to the Zoning Regulations that would establish a mandatory inclusionary zoning program in the District of Columbia.

I'll start by giving you a quick overview of the issues that my fellow panelists and I will address in support of our proposal.

You've already heard from Mary Spencer about the Campaign and why we think inclusionary zoning – requiring private residential and mixed use developments to include housing units affordable to low and moderate income families – can play an important role in addressing the city's need for affordable housing. I will briefly discuss the goals and principles on which our proposal is based, and why we think that the Commission should adopt them as the foundation of an effective inclusionary zoning policy for the District. Tad Baldwin will review the methodology that we used to generate the technical aspects of our proposal and our recommendations regarding the percentage of units that should be set-aside and the income targeting limits that should apply to them. Cheryl Cort will then discuss the housing opportunities and other benefits that more compact growth can create, and why transit-oriented development is critical in the context of regional growth. Jim Campbell will critique the economic model used by the Office of Planning and will compare its proposal to the one that the Campaign has proposed. Finally, Fred Allen will describe the impact of the affordable housing shortage on low and moderate income workers, and explain why the labor community feels that this policy is critical to the continued growth and vitality of the city.

As described more fully in the memorandum included in the supplemental materials we filed with the Commission, we developed the Campaign's proposal based on three principles:

First, we wanted to reach the deepest affordability levels possible – that is, to make units available to truly lower and moderate income households, reflecting the affordable housing needs of current residents. In particular, we wanted to ensure that the program helped to achieve one of the main benefits of IZ – preserving and creating stable mixed-income communities – by targeting affordable units to households otherwise priced out of the housing market. When appropriately targeted, inclusionary zoning can help to

**ZONING COMMISSION
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address gentrification that is threatening to displace current residents from their communities.

Second, we wanted to maximize the number of units that would be produced. We recognize that IZ is not a silver bullet that will solve the District's affordable housing crisis, but believe that a strong IZ program, as part of a comprehensive housing strategy, can produce new housing units to serve a significant portion of the need amongst low and moderate income residents.

Finally, we wanted to balance any costs associated with the program with some form of compensation in order to mitigate any impact on developers and landowners. We appreciate the analysis conducted by the Office of Planning to support the feasibility of providing bonus density as a form of compensation, and support the adjustments to other zoning regulations that they have proposed in order to reasonably accommodate bonus density across the different zones.

We believe that achieving these goals is the key to an effective inclusionary zoning program, and, just as importantly, that in seeking to achieve these goals, an inclusionary zoning program should promote both transparency and consistency. We urge you to use these principles as the basis for your evaluation of the two mandatory proposals before the Commission. Toward that end, I want to touch on a few areas where in our view, the proposals depart from each other in achieving these goals.

First, our proposal reaches deeper levels of affordability, to address the serious need for affordable housing amongst low income households as demonstrated by the analysis in the DC Fiscal Policy Institute report included in our supplemental materials. Half of all units created under our proposal would be accessible to families making less than 50% of the Area Median Income, regardless of whether the units are constructed in low rise or high rise developments. The OP proposal only serves these families in low rise projects; no units in high rise developments would be accessible to families with this income level under their proposal. We also reach deeper affordability by providing a first right to purchase or rent units to nonprofit housing developers or the DC Housing Authority. These entities can layer in additional subsidies to make inclusionary housing units even more affordable, with the added benefit of maintaining the affordability of the units in perpetuity. As noted more fully in our memorandum, jurisdictions around the country are lengthening the control periods applicable to inclusionary zoning projects – Montgomery County has moved to 99 year control periods for rental housing and 30 years for homeownership units – in response to ongoing needs for affordable housing.

A second, significant difference between the two proposals is that the Campaign's uses set-asides defined as a percentage of the units in the development project, while the Office of Planning uses square footage. While this makes it difficult to compare them exactly, our analysis suggests that the proposals could generate roughly the same number of affordable units. That said, however, the Office of Planning's approach raises a number of related concerns that could ultimately undermine the effectiveness of an inclusionary zoning program if not properly addressed.

For example, while it will be the responsibility of the City Council to pass legislation authorizing most of the administrative and enforcement aspects of the IZ program, it is critically important that the Zoning Commission adopt a program that will not be unduly complex or burdensome for the Administration to implement, and that lends itself to being rigorous, robust, transparent to the public, and consistent in its application to development projects and with other DC programs.

We have only been able to identify one other jurisdiction that bases set-asides on a square footage formula rather than as a percentage of units, so there isn't much learning available from other jurisdictions' experiences as to how to define what should and should not be included in square footage calculations, and how such programs are best administered and enforced. We also note that action that the Council has already taken to establish inclusionary housing requirements on the Anacostia Waterfront and legislation that it is now considering to extend inclusionary housing requirements to all publicly-owned land are based on set-asides of units, not square footage. It is unnecessary and unwieldy to ask that the Council craft separate administrative schemes to cover these programs along with any mandatory policy adopted by the Commission.

If the Commission does consider adopting a formula based on square footage, we urge you to take steps to ensure that the program is designed to produce the maximum number of affordable units, and that its application is both transparent and consistent. This would include, among other things, establishing minimum and perhaps maximum unit sizes and requiring that affordable units be produced of the same type (by bedroom size) and in the same ratios as market rate units in the development. Additionally, it will be necessary to translate the square footage requirements into the number of affordable units to be generated in each development project, to require developers to designate the units in the property that will be made affordable, and to designate the affordable units in public records and covenants recorded with the deed on the property. All of these elements are critical to ensuring that the affordability requirements have been met and that they can be monitored and enforced over the term of the affordability control period.

A final area in which our proposals differ significantly, particularly in promoting consistency in the application of inclusionary requirements and transparency regarding compliance, is in whether and when a developer may be permitted to build units off-site or otherwise seek a waiver from part or all of the program requirements. Recognizing that a good policy should provide some flexibility regarding the application of program requirements, and that the particulars of site location and development specifications might make the on-site development of affordable units burdensome, our proposal provides a mechanism for developers to request relief from the requirements, either in whole or in part. Our proposal contemplates that a developer that would suffer a significant economic hardship if required to comply with the IZ program could appeal for an exception, with alternative forms of compliance, in the following order of priorities: either building affordable units off-site or paying a fee in lieu of development to the Housing Production Trust Fund to subsidize the production or preservation of affordable housing. In cases where the developer demonstrates that the requirements would deprive

him/her of all economically-viable use of the property, the requirements could be waived altogether. While we designated the Mayor (or his designee) as the arbiter of exemptions, we understand that under existing law, the Board of Zoning Adjustment would have responsibility for handling applications for waivers or variances from the zoning regulations. To make this process faster and easier while ensuring transparency, we would support exempting the BZA's consideration of some waivers from the definition of "contested case" and permitting it to make a determination without a public hearing; however, it is our understanding that the authority for such proceedings would have to be established by statute.

Conversely, the OP proposal establishes a range of circumstances giving rise to different levels and standards of review. For example, the OP proposal would permit developers to decide when to place up to 50% of the affordable units being produced in another, off-site development. While we believe that there are situations in which alternative standards for compliance would be warranted as set forth in our proposal, we are concerned that the complexity and discretion provided for in the OP proposal could undermine the program overall. First, the OP proposal would assign a significant part of the waiver process to individual negotiation between developers and an administrative agency. This case by case review would provide little of the consistency that developers told us would be a key to their success in working under an inclusionary zoning program while remaining competitive in the development market. Additionally, it would undermine transparency to the public in knowing where inclusionary units were to be built, and the basis for granting a developer a variance or waiver from the requirements. Finally, as a social policy, inclusionary zoning programs are intended to do more than just produce affordable housing. They are also designed to create and preserve diverse, vibrant, mixed-income communities, which is especially important in a city that is as divided along racial and economic lines and that is facing overwhelming gentrification pressures as the District is. Toward those ends, it is important that affordable units be constructed onsite to the greatest extent possible to help promote diversity in our communities. Permitting developers to decide, to a great extent, when to build affordable units on site undermines this goal, and can undermine the confidence of the wider community of the District's commitment to ensuring the development of mixed-income communities.

Now I'll turn to Tad Baldwin, who will explain the technical components of our policy in more detail.