

Government of the District of Columbia
OFFICE OF ZONING



MEMORANDUM

TO: Arnold R. Finlayson, Administrator
Office of Documents and Administrative Issuance

FROM: Sharon S. Schellin *SS*
Acting Secretary to the Zoning Commission

DATE: March 2, 2006

SUBJECT: Publication for the Office of Zoning

Please publish the following in the *D.C. Register* on March 10, 2006:

1. Z.C. Notice of Filing (Case No. 06-04);
2. Z.C. Notice of Filing (Case No. 06-08);
3. Z.C. Notice of Filing (Case No. 06-10);
4. Z.C. Notice of Filing (Case No. 06-12);
5. Z.C. Notice of Filing (Case No. 06-13);
6. Z.C. Notice of Public Hearing (Case No. 06-07);
7. Z.C. Notice of Public Hearing (Case No. 06-09);
8. Z.C. Notice of Public Hearing (Case No. 06-05);
9. Z.C. Notice of Emergency and Proposed Rulemaking (Case No. 06-05); and
10. Z.C. Notice of Proposed Rulemaking (Case No. 04-33); and
11. Z.C. Notice of Final Rulemaking (Case No. 04-27) – two copies provided and also on the attached diskette.

Attachments

Office of
Documents and
Administrative
Issuance

MAR 10 37

RULEMAKING TRANSMITTAL FORM

TYPE OF RULEMAKING ACTION: ☐ EMERGENCY RULES
☐ FINAL RULES ☐ PROPOSED RULES ☒ COMBINED

DATE AND TIME RECEIVED

Office of Documents use only

AGENCY: OFFICE OF ZONING

AGENCY REPRESENTATIVE: MS SHARON SCHELLIN

ADDRESS 441 4th Street, N W , Suite 210 South

TELEPHONE (202) 727-0340

TITLE AND DESCRIPTION OF RULES ZC CASE NO 04-33 (Text Amendment – Inclusionary Zoning)

If this rulemaking action will amend or repeal existing rules, give a complete citation to the rules being amended or repealed Title 11 (Zoning) New Chapter 26

FINAL RULES ONLY Give the D.C REGISTER citation and date of publication of the Notice of Proposed Rulemaking for these rules DCR DATE

COMPLETE CITATION to the statute, regulation, or other legal authority which specifically authorizes the issuance of the substance of these rules. Section 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat 797, 799 D C. Official Code § 6-641 01)

LEGAL CERTIFICATION I certify that I have reviewed the attached rulemaking and, in my opinion, the substance of the text of the rules is legally sufficient

DATE FEBRUARY 28, 2006

SIGNED. *Alan Byrnes for*

PHONE (202) 442-9777

☒ FINAL ☐ CONDITIONAL NAME: ROBERT J SPAGNOLETTI TITLE ATTORNEY GENERAL

PROMULGATOR Name and title of the person legally authorized to adopt and promulgate these rules (or the name of the board or other body authorized to adopt rules by vote)

Zoning Commission For The District Of Columbia

Title

COMPLETE CITATION to the statute, regulation, order, or other legal authority that specifically authorizes this person or agency to adopt and promulgate these rules

SIGNATURE OF THE PERSON AUTHORIZED TO ADOPT RULES OR ATTEST TO THE ADOPTION OF RULES

DATE OF APPROVAL OF VOTE

2/9/06

APPROVAL OF ATTEST

Sharon J. Schellen

Acting Secretary to the Zoning

TITLE

Commission

PHONE

(202) 727-0340

Office of Documents use only

THIS NOTICE PUBLISHED AT

VOL

DCR

DATE

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PROPOSED RULEMAKING
ZC CASE NO. 04-33
(Text Amendment – Inclusionary Zoning)

The Zoning Commission for the District of Columbia, pursuant to its authority under §§ 1 and 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended, D.C. Official Code §§ 6-641.01 and 6-641.07 (2001)), hereby gives notice of its intent to amend the Zoning Regulations (Title 11 DCMR) by adding a new Chapter 26 to establish an Inclusionary Zoning Program in the District of Columbia. The proposed rules set forth the minimum amount of affordable housing that must be provided on-site by projects subject to these provisions and authorizes such project's to use bonus density of up to 20%. The proposed rules also provide for development standards and exceptions to compliance. Because the rules cannot be fully implemented until the Zoning Commission maps the properties to be subject to the inclusionary requirements and the District of Columbia publishes the first schedule of maximum rents and purchase prices, the proposed rules provide for a delayed applicability date. The actual length of the delay has been left blank for the public to suggest an appropriate number of days.

Final rulemaking action shall be taken in not less than forty-five (45) days from the date of publication of this notice in the *D.C. Register*.

The following rulemaking action is proposed:

Title 11 of the DCMR, ZONING, is amended by adding a new chapter 26, to read as follows:

CHAPTER 26 INCLUSIONARY ZONING

2600	General Provisions
2601	Definitions
2602	Applicability
2603	Set-Aside Requirements
2604	Bonus Density
2605	Development Standards
2606	Exceptions from Compliance
2607	Off-site Compliance
2608	Applicability Date

2600 GENERAL PROVISIONS

2600.1 This chapter establishes an Inclusionary Zoning Program that furthers the Housing Element of the Comprehensive Plan by increasing the amount and expanding the geographic distribution of adequate, affordable housing available to current and future residents.

2600.2 It is the intent of the Zoning Commission to promulgate only such regulations as are necessary to establish the minimum obligations of property owners applying

for building permits or certificates of occupancy under an Inclusionary Zoning Program. All other aspects of the program, including the setting of maximum purchase prices and rents, the selection and obligations of eligible households, and the establishment of enforcement mechanisms such as covenants and certifications shall be as determined by the Council and Mayor of the District of Columbia

2600 3 The most important general purposes of the Inclusionary Zoning Program include the following:

- (a) To utilize the skills and abilities of private developers to produce quality affordable housing,
- (b) To leverage private development, combined where appropriate with zoning density increases, to produce affordable housing throughout the District of Columbia,
- (c) To mitigate the impact of market-rate residential development on the availability and cost of housing available and affordable to low and moderate-income households,
- (d) To increase the production of affordable housing units throughout the District to meet existing and anticipated housing and employment needs,
- (e) To provide for a full range of housing choices throughout the District for households of all incomes, sizes, and ages to preserve diversity and to ensure the benefits of economic integration for the residents of the District;
- (f) To stabilize the overall burden of housing costs on low and moderate-income households,
- (g) To create a stock of housing that will be affordable to low and moderate-income residents over a long term, and
- (h) To make homeownership opportunities available to low and moderate-income residents

2601 DEFINITIONS

2601 1 When used in the chapter, the following terms and phrases shall have the meanings ascribed:

Achievable bonus density - The amount of the bonus density permitted under § 2604 that potentially may be utilized within a particular inclusionary development, notwithstanding constraints resulting from the physical

characteristics of the land or restrictions imposed by District or federal laws and agencies

The Act – [NAME OF THE LEGISLATION ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA TO IMPLEMENT THE PROVISIONS OF THIS CHAPTER]. References to the Act include any Mayor's Order, agency rule, or other administrative issuance promulgated pursuant to that legislation

Development, inclusionary– a development subject to the provisions of this chapter pursuant to § 2602.1

Development, for-sale – an inclusionary development in which the majority of the market-rate units are separately offered for sale to individual purchasers.

Development, off-site – a development that accounts for all or part of an inclusionary development's requirements under this chapter if approved pursuant to § 2607

Development, rental – an inclusionary development in which the majority of the market-rate units are offered for lease to individual tenants, regardless of whether a condominium regime has been established

Eligible household – one or more persons certified by the Mayor as being a low or moderate-income household pursuant to the Act

Inclusionary unit – a unit set aside for sale or rental to eligible low and moderate-income households as required by this chapter or by order of the Board of Zoning Adjustment pursuant to § 2607

Inclusionary Zoning Overlay – the overlay district established by Zoning Commission Order __-__, published in the _____, 200__ edition of the *D.C. Register*.

Low-income household – a household of one or more individuals with a total annual income adjusted for household size equal to or less than fifty percent (50%) of the Metropolitan Statistical Area median as certified by the Mayor pursuant to the Act

Mayor – the Mayor of the District of Columbia, the Director of the agency or agencies delegated the authority to implement the Act, or the agency official or officials re-delegated such authority

Moderate-income household - a household of one or more individuals with a total annual income adjusted for household size equal to between fifty percent

(50%) and eighty percent (80%) of the Metropolitan Statistical Area median as certified by the Mayor pursuant to the Act

Purchase\rental schedule -the most current schedule, published by the Mayor pursuant to the Act, establishing the maximum purchase prices and rents for inclusionary units

2602 APPLICABILITY

2602 1 Except as provided in 2602 3, the requirements and incentives of this chapter shall apply to developments that

- (a) Are mapped within the Inclusionary Zoning Overlay, and
- (b) Have ten (10) or more dwelling units (including off-site inclusionary units); and
- (c) Are either
 - (i) New multiple-dwellings;
 - (ii) New one-family dwellings, row dwellings, or flats constructed concurrently or in phases on contiguous lots or lots divided by an alley, if such lots were under common ownership at the time of construction, or
 - (iii) An existing development described in subparagraph (i) or (ii) for which a new addition will increase the gross floor area of the entire development by fifty percent (50%) or more

2602 2 A new development with less than ten (10) dwelling units shall be become subject to this chapter upon the filing of an application for a building permit to add one or more dwelling units to the development within a two year period after the issuance of the last certificate of occupancy, if the construction for which application has been filed would result in the development having ten (10) or more dwelling units.

2602.3 This chapter shall not apply to hotels, motels, inns, dormitories, rooming houses, boarding houses, community-based residential facilities, single room occupancy developments, or developments in R-1, R-2 and C-4 zone districts

2602.4 Except as provided in §§ 2602.5 and 2608 1 (c), all inclusionary units created pursuant to this chapter shall be leased or sold only to eligible households for so long as the inclusionary development exists

2602 5 An owner\occupant of an inclusionary unit may sell the unit at a price greater than the maximum permitted under the purchase/rental schedule if the price is offered by the Mayor

2603 SET-ASIDE REQUIREMENTS

2603 1 Inclusionary developments for which the primary method of construction does not employ steel and concrete frame structure located in an R-3 through an R-5-B zone district or in a C-1, C-2-A, W-0 or W-1 zone district shall devote the greater of 10% of its matter of right density, or 75% of its achievable bonus density to inclusionary units

2603 2 Inclusionary developments of steel and concrete frame construction located in the zone districts stated in § 2603 1 or any development located in a C-2-B, C-3, CR, SP, W-2 or W-3 zone district shall devote the greater of 8% of its matter of right density or 50% of its achievable bonus density to inclusionary units

2603 3 Inclusionary developments located in R-3 through R-5-E, C-1, C-2-A, W-0 and W-1 shall set aside 50% of inclusionary units for eligible low-income households and 50% of inclusionary units for eligible moderate-income households.

2603.4 Developments located in CR, C-2-B through C-3-C, W-2 through W-3, and SP zone districts shall set aside 100% of inclusionary units for eligible moderate-income households

2603 5 At any time prior to the issuance of the first certificate of occupancy for an inclusionary development, the Mayor shall have the right to purchase up to twenty-five percent (25%) of inclusionary units in a for-sale inclusionary development in accordance with such procedures as are set forth in the Act

2604 BONUS DENSITY

2604 1 Inclusionary developments subject to the provisions of this chapter may construct up to twenty percent (20%) more gross floor area than permitted as a matter of right ("bonus density"), subject to all other zoning requirements (as may be modified herein) and the limitations established by the Act to Regulate the Height of Buildings in the District of Columbia, approved June 1, 1910 (36 Stat. 452, D C. Official Code §6-601 01, *et seq* (2001 Ed)

2604 2 Inclusionary developments in zoning districts listed in the chart below may use the following modifications to height and lot occupancy in order to achieve the 20% bonus density

Base Zone	Matter of Right Zoning Constraints			IZ Zoning Modifications	
	Lot Occupancy	Zoning Height	Zoning FAR	Lot Occupancy	Height
R-5-E	75%	90	6.00	90%	90
CR	75%	90	6.00	80%	100
C-2-A	60%	50	2.50	75%	50
C-2-B	80%	65	3.50	80%	70
C-2-C	80%	90	6.00	90%	90
C-3-A	75%	65	4.00	80%	65
W-1	80%	40	2.50	80%	50
W-2	75%	60	4.00	75%	80
W-3	75%	90	6.00	80%	100
SP-1	80%	65	4.00	80%	70
SP-2	80%	90	6.00	90%	90

- 2604.3 Inclusionary developments in R-3 and R-4 zoning districts may use the minimum lot dimensions as set forth in the following table

Base Zone	IZ Zoning Modifications	
	IZ Min Lot Area	Min Lot Width
R-3	1,600	16.0
R-4	1,500	15.0

2605 DEVELOPMENT STANDARDS

- 2605.1 Inclusionary units within a for-sale development may not be offered for lease.
- 2605.2 Inclusionary units within a rental development may not be offered for purchase. Upon conversion of a rental development to for-sale, the inclusionary units may be sold to eligible households in accordance with this chapter and the Act.
- 2605.3 A development that provides, pursuant to federal or other District housing programs, affordable dwelling units for sale or lease may count such units towards the requirements of this chapter provided that all provisions of this chapter and the Act are met.
- 2605.4 The mix of unit sizes amongst the inclusionary units in an inclusionary development shall contain on average at least the same number of bedrooms as the market-rate units in the project.
- 2605.5 All inclusionary units shall be comparable in exterior design, materials, and finish to the market-rate units.

2605 6 The interior amenities of inclusionary units such as finishes and appliances shall be comparable to the market-rate units, but may be of less expensive materials and appliances

2605 7 The gross floor area of an inclusionary unit shall be not less than 95% of that of a comparable market-rate unit, as determined by bedroom size. If there is more than one size for a particular type of market-rate unit, the average inclusionary unit size shall be not less than the 95% of the average size of the comparable market-rate units

2605.8 All inclusionary units in an inclusionary development shall be constructed prior to or concurrently with the construction of market-rate units, except that in a phased development the inclusionary units shall be constructed at a pace that is proportional with the construction of the market-rate units

2605 9 All inclusionary units shall be reasonably dispersed throughout the development project

2606 EXEMPTION FROM COMPLIANCE

2606.1 The Board of Zoning Adjustment shall reduce the requirements of § 2603 for each square foot of achievable bonus density that cannot be accessed due to

(a) Site conditions such as shape, slope or other similar physical conditions;
or

(b) Development restrictions imposed on the property by District or federal government agencies

2606 2 Applicants seeking relief under § 2606.1 (a) shall submit architectural plans and elevations studies demonstrating the impact of site conditions on achieving the maximum permitted bonus density

2606 3 Applicants for relief under § 2606.1 (b) shall include with their application the written order that imposed the relevant development restriction and shall certify that the restriction was not in the original plans submitted by the applicant to the agency, but was either offered in response to the agency's concerns expressed on the record or was unilaterally imposed by the agency

2607 OFF-SITE COMPLIANCE

2607 1 The Board of Zoning Adjustment is authorized to permit some or all of the set aside requirements of § 2603 to be constructed off-site on property owned by the Applicant upon proof, based upon a specific economic analysis, that compliance would impose an economic hardship. Among the factors that may be considered by the BZA in determining the existence of economic hardship are

- (a) Exceptionally high fees in condominium developments that cannot be reduced to levels affordable to eligible households,
- (b) The inclusion of expensive and specialized social or health services in a retirement housing development or a development that principally provides housing for the disabled, if such services that are not severable from the provision of housing and render units in the development unaffordable to eligible households; or
- (c) For a rental development whose owner wishes to change the property's use to one listed in § 2602.3, proof that continuation of the rental use is no longer economically feasible

2607.2 An applicant who has demonstrated the existence of economic hardship shall further demonstrate that the off-site development

- (a) Is located within the same census tract as the inclusionary development,
- (b) Consists of new construction for which no certificate of occupancy has been issued
- (c) Is at a location suitable for residential development
- (d) Has complied with or will comply with all on-site requirements of this chapter as are applicable to it,
- (e) Has not received any development subsidies from federal or District government programs established to provide affordable housing, and
- (f) Will provide inclusionary units comparable in type to the market-rate units being created in their place, with gross floor areas of not less than 95% of the gross floor area of such market-rate units, and of a number no fewer than the number of units that would otherwise have been required on-site.

2607 3 The requirement of 2607 2 (a) may be waived upon a showing that the Applicant, after good faith efforts, was unable to locate properties within the same census tract or that the costs to purchase and develop available properties would render both the inclusionary and off-site projects economically infeasible

2607 4 Inclusionary units constructed off-site shall not be counted toward any set aside requirement separately applicable to the off-site development pursuant to § 2603

2607 5 No order granting off-site compliance shall become effective until a covenant, found legally sufficient by the Office of the Attorney General, has been recorded

in the land records of the District of Columbia between the owner of the off-site development and the Mayor

2607.6 The covenant shall bind the owner and all future owners of the off-site development to

- (a) Construct and reserve the number of inclusionary units allowed to be accounted for off-site in accordance with the plans approved by Board and the conditions of the Board's order;
- (b) Sell or rent, as applicable, such units in accordance with the provisions of this chapter and the Act for so long as the off-site development remains in existence;
- (c) Neither apply for nor accept any development subsidies from federal or District government programs established to provide affordable housing,
- (d) Acknowledged that the owners are legally responsible for the set aside requirement accepted as if the requirement had been imposed directly on the off-site development, and
- (e) Not request special exception or variance relief with respect to the obligations accepted, or its own obligations under this chapter

2607.7 Upon the recordation of the covenant, the set aside requirements permitted to be accounted off-site shall be deemed to be the legal obligation of the current and future owners of the off-site development. All dwelling units as are required to be reserved in the off-site development in accordance with the BZA order shall be deemed inclusionary units for the purposes of this chapter and the Act

2607.8 No application for a certificate of occupancy for a market-rate unit on the inclusionary development shall be granted unless construction of the off-site inclusionary units is progressing at a rate roughly proportional to the construction of the on-site market-rate units

2608 APPLICABILITY DATE

2608.1 The provisions of this chapter shall become effective ____ days following the issuance of the first purchase/rental schedule or the publication date in the *D.C. Register of Zoning Commission Order* ____, establishing the Inclusionary Zoning Overlay, whichever is the last to occur

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments, in writing, to Sharon Schellin, Acting Secretary to the Zoning Commission, Office of Zoning, 441 4th Street, N W , Suite 200-S, Washington D.C 20001 Comments must be received

not later than forty-five (45) days after the publication of this notice in the *D C Register*. A copy of this proposal may be obtained, at cost, by writing to the above address.